

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEES ON CONTRACTS AND SMALL BUSINESS

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February 16, 2012
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HELD AT: Council Chambers
City Hall

B E F O R E:

DIANA REYNA
DARLENE MEALY
Chairpersons

COUNCIL MEMBERS:

Council Member Margaret S. Chin
Council Member Mathieu Eugene
Council Member Letitia James
Council Member Michael C. Nelson

A P P E A R A N C E S (CONTINUED)

Andrew Schwartz
Deputy Commissioner
Department of Small Business Services

Greg Bishop
Assistant Commissioner, Division of Economic and
Financial Opportunity
Department of Small Business Services

John Chapman
Executive Director
Department of Small Business Services

Joe Grifferberger
Arborist, Nurseryman
Valley Tree Landscape

Reginald Swinney
CEO
R&S Painting Company, Inc.

Nicholas Spirius
Contractor
Sharra Construction

CHAIRPERSON REYNA: Okay. [gavel]

Good morning to all. I apologize for our tardiness. It's "Respect for All Week" in our public schools, and we are participating in numerous events. I know I went to visit PS34 and we were very happy to read a book. We hope they enjoyed my reading and we hope that they enjoy this week and learn a lot. Thank you, PS34 for having me as your special guest. My name is Diana Reyna, I'm Council Member representing the 34th District in Williamsburg and Bushwick in Brooklyn, and Ridgewood Queens. I serve as Small Business Chair of this Committee, which oversees and advocates for 215,000 small businesses across the five boroughs. I would like to thank my Co-Chair, Council Member Darlene Mealy, Chair of the Committee on Contracts for convening this oversight hearing to explore the locally based enterprise program, or other known as LBE for short. I welcome my colleagues. We have been joined by Council Member Chin, who's always on time. [laughter] First, Deputy Commissioner Andrew Schwartz, from the Department of Small Business Services, and Assistant Commissioner Greg

1 Bishop from the Division of Economic and Financial
2 Opportunity of the Department of Small Business
3 Services. The number of small business owners who
4 have participated in the LBE program to get their
5 take on this effectiveness is what we want to
6 accomplish here today. As many of you know, small
7 businesses are the backbone of New York City's
8 economy and account for almost two-thirds of the
9 City's private sector jobs. The small business
10 sector employs over 1.5 million people. Of the
11 approximate 215,000 small businesses in the City
12 of New York, nearly 90 percent have 20 or fewer
13 employees, and over 60 percent have five or fewer
14 employees. The importance of the small business
15 sector to New York City's economy, and job market
16 cannot be overstated. The LBE program has been in
17 existence since the early 1980s, and stands as the
18 oldest certification program administered by the
19 Department of Small Business Services. The
20 program assists qualifying construction businesses
21 gain access to contracting and subcontracting
22 opportunities on City construction contracts. The
23 LBE law states that the City, that City agencies
24 must seek to ensure that at least ten percent of
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2 the dollar value of construction contracts in each
3 fiscal year will be awarded to LBEs. In order for
4 some construction businesses to participate in the
5 LBE program, they must apply for certification to
6 SBS. To qualify for certification, businesses
7 must have an annual revenue of under \$2 million
8 and perform at least 25 percent of their work in
9 economic development areas; or employ a workforce
10 in which at least 25 percent are economically
11 disadvantaged persons. In addition to contracting
12 opportunities, certified LBEs are entitled to a
13 listing in the New York City online directory for
14 certified businesses. One-on-one assistance from
15 an SBS procurement specialist assess--access to
16 networking events, where they can meet City and
17 private sector contracting officers and access to
18 capacity building classes. As part of their
19 mandate, City agencies are required to include
20 certain LBE specific language in contracts and bid
21 information. Also, City agencies are each
22 supposed to have a designated contract manager to
23 ensure the successful implementation of the LBE
24 program, and to submit quarterly reports to SBS
25 summarizing LBE related contracting activity.

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2 Additionally, the LBE law requires that the
3 administration submit an annual report to the City
4 Council concerning the administration of the LBE
5 program. As Chair of the Committee on Small
6 Business, one of my goals is to ensure that
7 opportunities exist for small businesses. The LBE
8 program was designed to nurture small construction
9 firms, help them become established and grow. It
10 was also designed to encourage job growth among
11 the City's disadvantaged people. This program is
12 critical the livelihoods of many, and we need to
13 know whether it is being run effectively. That is
14 why it is important for the Committee on Small
15 Business and the Committee on Contracts to examine
16 the LBE program at today's hearing. At this time,
17 I would like to invite my colleague, Council
18 Member Darlene Mealy, to deliver her opening
19 statement, and I'd like to end with thanking my
20 Committee staff, Matthew Hickey, our Counsel,
21 Faith Corbett our Policy Analyst, Ralph Hernandez
22 our Finance Analyst, and my own staff, Peter
23 Partier [phonetic] and Malcolm Hom [phonetic], who
24 have all been very instrumental in convening the
25 details of this hearing.

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2 CHAIRPERSON MEALY: Good morning,
3 everyone. I'm Council Member Darlene Mealy, Chair
4 of the Contracts Committee. I would like to thank
5 the Chair of the Small Business Committee, Diana
6 Reyna, my colleague with whom we are holding this
7 joint hearing, as well as other Council Members,
8 like Ms. Chin, thank you for being here, on time.
9 Both Committees, I would like to also thank the
10 staff of Contracts Committee, Shannon Manigault,
11 Tim Matusov, and my Legislative Director Donna
12 Shaw-Gross [phonetic]. As Chair Diana Reyna
13 noted, we are here today to examine the
14 effectiveness of the Locally Based Enterprises
15 program, and whether it is successful, whether it
16 has succeeded in increasing small business
17 participation in City construction contracts. We
18 will hear from the Department of Small Business
19 Services, who will tell us whether City agencies
20 are achieving the targets set by this legislation;
21 as well as what they are doing more generally to
22 ensure that the City is as friendly to small
23 business as possible. We will also hear from some
24 construction firms to get their perspective on how
25 well the City is doing. As well as get feedback

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2 how we can improve. Thank you all for being here
3 and I look forward to everyone's testimony. Thank
4 you, Chair.

5 CHAIRPERSON REYNA: I'd like to
6 thank the companies that are here, as well. If
7 anyone is interested in testifying, I'd like to
8 ask you to speak to the Sergeant-at-Arms and fill
9 out the form he is holding up for you. It is
10 important that you register, so that way we have
11 your information and we are able to call you up.
12 The matter of--just one more second. [pause]
13 Okay. I'd like to ask the City of New York Small
14 Business Services to come up and testify. We are
15 joined by Andy Schwartz, Greg Bishop and John
16 Chapman. [pause] And I'm going to ask the
17 Department of Small Business Services to remain to
18 hear testimony from the two companies that are
19 here. We wanted to have them share their
20 testimony prior to, because the feedback we had
21 received was that the Administration didn't remain
22 the last time they had a hearing on LBE. And that
23 was in, that was prior to my chairing this
24 Committee.

25 [pause, background noise]

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2 ANDREW SCHWARTZ: It is? Thank
3 you. Good morning, Chairwoman Reyna, Chairwoman
4 Mealy, and Members of the Small Business and
5 Contracts Committee. I am Andrew Schwartz, First
6 Deputy Commissioner for the Department of Small
7 Business Services. I'm here today with Assistant
8 Commissioner Greg Bishop to my right and Executive
9 Director John Chapman to my left. We also have
10 some of their colleagues from SBS here. And
11 somebody will be here for certain to hear the
12 testimony after we're finished. Thank you for the
13 opportunity to testify today. I'd like to discuss
14 the Locally Based Enterprise program, and outline
15 how it operates in light of the expanding role of
16 Local Law 129 in City procurement. Like the
17 City's current Minority and Woman Owned Business
18 Enterprise program, LBE was designed to promote,
19 as the Councilwoman indicated, contracting
20 opportunities for small construction firms in the
21 City. Generally, the program requires agencies to
22 utilize LBEs as prime or subcontractors on
23 specific construction contracts. However, the
24 number of contracts subject to the LBE program has
25 substantially decreased in recent years due to the

1 applicable goal setting programs from City, State
2 and federal government. Under the LBE program
3 rules, contracts are excluded if they are
4 federally or state funded, and goals program
5 applies. Federal construction is generally
6 subject to what's called the Disadvantage Business
7 Enterprise program, and State contracts are
8 subject to various requirements, including Article
9 15(a) of the New York State Executive Law. Many
10 city construction contracts are federally and
11 state funded, and subject to subcontracting goals
12 under these programs, so they are not covered by
13 LBE. With the enactment of Local Law 129, MWBE
14 subcontracting goals are now applied to City
15 funded construction contracts, and that's
16 something that the Council and the Administration
17 have worked on ensuring that MWBE goals are on
18 those contracts. So we, along with the Council,
19 as I say, have attached to those opportunities,
20 and this further limits the applicability of the
21 LBE requirements. The Division of Economic and
22 Financial Opportunity at SBS administers a
23 comprehensive certification program for MWBEs and
24 also certifies LBEs. To qualify for
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1 certification, a company must average no more than
2 \$2 million in gross receipts per year, and either
3 perform at least 25 percent of their work in
4 economically disadvantaged areas of New York City,
5 or employ a workforce of which at least 25 percent
6 are composed of economically disadvantaged
7 persons. A company's initial certification can
8 last up to three years, after which they may be
9 renewed on a yearly basis if they continue to meet
10 the certification criteria for LBE. In addition
11 to competing for city contracts, certified LBEs
12 can also use the tools and services that SBS has
13 developed for the MWBE program to promote the
14 capacity and growth of the business. For example,
15 as a certified LBE, a company receives a listing
16 in the New York City Online Directory for
17 Certified Businesses, and this is where City
18 agency procurement staff look to find certified
19 vendors. Certified firms receive assistance from
20 SBS procurement specialists, invitations to
21 industry networking events to meet with City and
22 private sector contracting officers, and they get
23 access to exclusive classes that will help them
24 become better equipped to bid, win and perform on
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1 City contracts. For example, our certified
2 construction companies have had opportunity to
3 participate in our Fundamentals of Construction
4 Management program, with CUNY's College of
5 Technology, the program offered six courses that
6 follow the life cycle of a construction project,
7 and are taught by industry experts. Students
8 receive a Certificate of Completion for each
9 course, and a Certificate in Fundamentals of
10 Construction Management for completing the entire
11 program. Of particular assistance is
12 participation in networking events and receiving
13 one-on-one services from our procurement
14 specialists. This lets companies know about
15 opportunities and helps them respond effectively
16 to competitive sealed bids and requests for
17 proposals. Presently, there are 84 certified LBEs
18 in our online directory, or our directory. Many
19 of our LBEs are also certified as minority or
20 women-owned companies. I think it's approximately
21 71 percent of the total. By doing so, they are
22 able to be considered for targeted subcontracting
23 opportunities on City construction projects. Over
24 the past five fiscal years, certified LBEs won
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1 approximately \$134 million in prime and
2 subcontract awards. Every six months, SBS, in
3 coordination with the Mayor's Office of Contract
4 Services, publishes comprehensive data on contract
5 utilization for MWBEs, and annually reports on
6 subcontracting dollars awarded to MWBEs. SBS
7 plans to add this LBE data to the annual report.
8 In addition to the opportunity to participate in
9 capacity building programs offered by SBS,
10 companies are also able to take advantage of the
11 full set of services offered through our business
12 solutions program. SBS provides direct assistance
13 to small business owners through NYC Business
14 Solutions, a set of services that helps businesses
15 start, operate and expand in New York City. The
16 Services are provided at no cost, and address the
17 needs of entrepreneurs and businesses of any size
18 and at any stage. In addition to assistance with
19 program certification, services offered include
20 business courses, access to capital, incentives
21 information, pro bono legal review of contracts
22 and leases, navigation of government rules and
23 permit processes, selling to the government,
24 hiring assistance and training of employees.
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2 Businesses also have access to information online
3 through NYC Business Express. This is a citywide
4 initiative that makes starting, operating and
5 expanding a business in New York City clearer,
6 faster and simpler. The one stop online tool has
7 all the license, permit and tax information and
8 applications needed to do business in New York
9 City, and allows businesses to access consolidated
10 information about their interactions with the
11 City. SBS will continue to examine the LBE
12 program and work with the Council to determine how
13 it can be used productively, alongside the
14 expanding MWBE program and requirements. We'll
15 continue our efforts to ensure that small
16 businesses can compete for City of New York's
17 procurement opportunities and look forward to
18 working with you. And at this time, we would be
19 happy to answer questions.

20 CHAIRPERSON REYNA: Thank you so
21 much. I just want to thank the Administration for
22 making sure that the LBE data will be added to the
23 annual report. And it's something that we want to
24 make sure is transparent as far as having
25 oversight, whether or not the program is actually

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2 working. I want to just direct your attention to
3 the screen, because we just want to make sure that
4 we understand if a company out there is in
5 interested in becoming an LBE, because they saw
6 this featured on the New York City channel, and
7 they go to the website, what they would be able to
8 click on would be your particular website,
9 correct?

10 ANDREW SCHWARTZ: That looks like
11 it, yes.

12 CHAIRPERSON REYNA: And there
13 doesn't seem to be any LBE specific workshops
14 available to help small businesses become
15 certified. How does one do that, unless we're not
16 clicking appropriately?

17 GREG BISHOP: If you go to the
18 courses, actually under--

19 CHAIRPERSON MEALY: Say your name,
20 please.

21 GREG BISHOP: I'm sorry, my name is
22 Greg Bishop, how you doing? So, we offer a
23 workshop twice a year, that's conducted at our
24 offices, for individuals who are interested in
25 actually getting certified. And the workshop

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2 basically goes over the components of the
3 application, what we mean by certain questions,
4 etc., etc. They can actually register under the
5 certification contract in courses. I'll check to
6 see why it's not listed there. But we do have
7 registration, we've had workshops in the past and
8 individuals were able to come and actually take
9 that class. [background comment] Yep, and also
10 when a company comes in under the MWB program, if
11 they more than likely are eligible for the LBE
12 program, we don't make them fill out another
13 application. We actually get additional
14 information that the LBE program requires and
15 certify them concurrently. So--

16 CHAIRPERSON REYNA: That's
17 excellent.

18 GREG BISHOP: --we actually screen
19 companies. And vice versa. So, if a LBE
20 application came in, and that company was also
21 eligible for the MW program, we would also
22 encourage them to apply for that program. And the
23 website--sorry, one more thing, the website is
24 NYC.gov/getcertified. So, for anyone who's
25 interested in actually learning about any of our,

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2 our certification program. And when we go out
3 into the field, we don't talk exclusively about
4 any of the programs, we talk about the MW program,
5 we talk about the LBE program, and we talk about
6 the EB program.

7 CHAIRPERSON REYNA: And as far as
8 the LBE certified directory, there's 84, you
9 testified to, Commissioner, and I just want to
10 understand, are all 84 in contracts right now?

11 GREG BISHOP: No. Oh, in, when you
12 say "in contracts," meaning--?

13 CHAIRPERSON REYNA: Receiving
14 procurement opportunity, you know, so that there's
15 100 percent utilization rate?

16 ANDREW SCHWARTZ: No, I don't think
17 it indicates that. Again, just same way that we
18 have about 3,400 MWBs in our program, they don't
19 all necessarily are winning or awarded contracts,
20 but they are certainly competing more, and we're
21 seeing better utilization.

22 CHAIRPERSON REYNA: Well, I ask
23 only because the 84 number is so small, in
24 comparison to the contract dollar in the City of
25 New York. So the contract dollar is how much?

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2 ANDREW SCHWARTZ: You mean the
3 total procurement budget?

4 CHAIRPERSON REYNA: Correct.

5 ANDREW SCHWARTZ: I think, \$12 to
6 \$16 billion.

7 CHAIRPERSON REYNA: Correct.

8 ANDREW SCHWARTZ: From on a year-
9 to-year basis.

10 CHAIRPERSON REYNA: Correct. And
11 so, the utilization rate according to the LBE
12 program should reach what?

13 ANDREW SCHWARTZ: Well, currently,
14 I think it's much lower, I don't have the exact
15 number, but as I say, the, a lot of the contracts
16 that are going out now, because of local law 129,
17 are no longer LBE program requirements, they're
18 not applicable, because of that. I mean, the more
19 that--

20 CHAIRPERSON REYNA: Because the law
21 was changed?

22 ANDREW SCHWARTZ: No, under the LBE
23 program, as I say, if the, if the contract that an
24 agency is putting out is subject to either federal
25 or state subcontracting requirements, or City MWBE

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2 requirements, then the LBE program kind of takes a
3 backseat. And I think that has a historical
4 reason that's kind of in the report that the
5 committee put together, I think it really
6 addresses kind of the history of that, of the
7 program being first adopted in 1980, and--

8 CHAIRPERSON REYNA: I did read it--

9 ANDREW SCHWARTZ: Yeah.

10 CHAIRPERSON REYNA: --but it
11 doesn't make mention to the fact that the LBE
12 program should take a backseat. It should be
13 running concurrently.

14 ANDREW SCHWARTZ: Well, it runs
15 concurrently, but as I say, if an agency is
16 putting out a construction contract for bid, and
17 the MWBE subcontracting requirements apply, which
18 I think we all want it to apply, the Council, the
19 City have worked very hard, to ensure that
20 agencies are putting those requirements on. Then
21 under the LBE rules, the program, that contract is
22 not subject to LBE. It's just that you don't have
23 both working on a single contract. They are
24 operating concurrently, but they're not going to
25 be put on the same contract award.

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2 CHAIRPERSON REYNA: So, the
3 contract's language, if we're referring to
4 specific LBE language, to be included in
5 construction contracts, information to bidders on
6 construction contracts would be assured because
7 it's going to refer to LBE specific language.
8 Correct?

9 ANDREW SCHWARTZ: There, in the
10 City standard construction contract, or the, that
11 they put it, it does include the language about
12 LBE. I'm not sure what this provision is directly
13 from the City rules, but the standard, the City
14 standard construction contract has the LBE program
15 requirements.

16 CHAIRPERSON REYNA: So I want to
17 just, you know, read--

18 ANDREW SCHWARTZ: And I can send
19 that to the Committee.

20 CHAIRPERSON REYNA: Right. As part
21 of the LBE program requirements, Title 66, Section
22 11-04(b) of the rules requires that each city
23 contracting agency include LBE specific language
24 in each construction contract. Who reviews that
25 for assurance that we're following the LBE

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requirement?

ANDREW SCHWARTZ: The Law Department, Corporation Council, will be reviewing contracts, bidding documents that go out on construction jobs, and the contracts that come out of those jobs, are reviewed by Corporation Council. And they are the ones who also put together the standard, the City standard construction contract, that includes the LBE language I was referring to.

CHAIRPERSON REYNA: And--

ANDREW SCHWARTZ: Go ahead, I'm sorry.

CHAIRPERSON REYNA: No, I just want to understand what you were referring to before, where you mentioned that Local Law 129 cannot be included in the contract as language, concurrently with Title 66.

ANDREW SCHWARTZ: Okay, I think in Title 66 it's a little further up, it's the first provision in that, in the rules there, under Title 66, I think it's 1101, then. Are we in the 11s here? [background comment]

CHAIRPERSON REYNA: No, we don't

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have--

ANDREW SCHWARTZ: If you go up to 11-01, that lays out what I said in my testimony about the applicability of LBE. And I think I do have a copy of that section here, and I'll--

CHAIRPERSON REYNA: Mm-hmm. I would love to see that.

ANDREW SCHWARTZ: Okay.

CHAIRPERSON REYNA: I'm just trying to understand--

ANDREW SCHWARTZ: Yeah, it--

CHAIRPERSON REYNA: The LBE program and the issue of having codified language in the rules, where the Department of Small Business Services should be able to run concurrent programs, not limited to only one specific, one more recent than the other, but rather making sure that there's opportunity for access to procurement.

ANDREW SCHWARTZ: No, I understand that, Councilwoman, and we would, you know, certainly you should sit down and discuss how that could be done. And this section I just gave you from the Rules 1101 is, reflects what I'm, I'm

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2 discussing. And that's kind of the current
3 constraints that we work under in administering
4 both programs. And you know, I was talking about
5 the history of the program, how it really predated
6 this City's first MWBE program, and in a way it
7 represented a race and gender neutral program that
8 attempted, I think, to get at a lot of the small,
9 minority owned construction firms. Even though
10 they were talking and calling them LBEs. And then
11 you did ultimately have a City MWBE program under
12 Mayor Dinkins that when it sunset in 1998, really
13 the LBE program did take priority again until this
14 Council and the Mayor adopted Local Law 129, in
15 2005. And I think your report reflects kind of a
16 somewhat declining certification after the MWBE
17 program, was enacted. Because again, MWBE program
18 is going to have subcontracting goals on every
19 construction contract, hopefully every
20 construction contract that's being put out.

21 CHAIRPERSON REYNA: But there is no
22 rule, or law that prohibits you from doing both.

23 ANDREW SCHWARTZ: No, both programs
24 are up and functioning right now, I'm just saying
25 the rule that I provided you with does talk to the

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2 idea of a single construction contract won't have
3 both programs attached to it.

4 CHAIRPERSON REYNA: But out of a
5 \$14 to \$16 billion contracting budget--

6 ANDREW SCHWARTZ: Overall.

7 CHAIRPERSON REYNA: --you're
8 talking about, there's sufficient for there to be
9 a utilization rate that is effective on both what
10 would be LBE and any other program you have to
11 administer. And so I'm just trying to understand
12 what is the utilization rate for your current
13 certified LBEs.

14 ANDREW SCHWARTZ: Okay, I think
15 some of the data we provided to your staff last
16 night has, you know, the \$134 million that were
17 awarded over the last five fiscal years, that's a
18 combination prime and subcontracting data. I
19 don't know, John, if that has the average contract
20 amounts on it. But we can get you some additional
21 info on what the LBEs, how much they're winning.
22 I think what we gave you was broken out by agency
23 and the number of contracts awards that LBEs were
24 getting. I don't know if we have kind of each LBE
25 what, what share they're getting, but we can

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2 probably break this data out a little further for
3 you, that we gave you. We also got a set of, a
4 set of questions from the Committee yesterday that
5 we're going through and we're going to provide you
6 with, you know, full written responses to those
7 questions, as well.

8 CHAIRPERSON REYNA: I do appreciate
9 the work and the charts that were provided by
10 agency. I'm still left the question of who are
11 thee qualifying agencies that are not
12 participating in the program effectively, which
13 makes your job harder.

14 ANDREW SCHWARTZ: Right, well,
15 we'll, we can study that data a little more. I
16 think there are a number--again, when we talked
17 about the \$12 to \$16 billion contract budget, when
18 we're talking about LBE, we're certainly only
19 talking about construction. So that's probably
20 closer to a third of the overall budget, you know,
21 procurement budget. And then of course you're
22 only talking about a limited number of agencies
23 that do construction, there's probably six to
24 eight large, I don't know even know if large
25 construction agencies, but they're more limited.

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2 And I think on the chart we sent, there are
3 probably awards from most of the agencies to, to
4 some dollar amount. But you know, when we did
5 MWBE, also, one of the concerns was having
6 agencies have an additional reporting burden. And
7 what we committed to, along with MOCS at that
8 time, is that we were going to get data from a
9 centralized source, rather than, you know, having
10 this to be an additional burden that agencies were
11 going to have to report. And I know the LBE
12 program, given that it goes back to 1980, has
13 language about, you know, reporting from the
14 agencies. But we have committed to getting the
15 data that we provided you with, from a central
16 source, rather than, you know, requiring the
17 agencies to go through some, you know, periodic
18 reporting. Because now we can get that
19 information centrally. Which I think is a
20 tremendous improvement, and I credit, you know,
21 the Mayor's Office and Marla Simpson for putting
22 together that data collection effort, particularly
23 on subcontracting where it didn't really exist
24 before.

25 CHAIRPERSON REYNA: So, and I do

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2 appreciate, you know, the information, and the
3 willingness to go back and--

4 ANDREW SCHWARTZ: Surely.

5 CHAIRPERSON REYNA: --really study
6 the data, because it's important to us that we're
7 going to do the effort in order to tell a story as
8 to this particular program is concerned. Because
9 it, despite the fact that it's running
10 concurrently, I believe that it falls short of
11 meeting the goals, and meeting the goals is the
12 goal. And so I want to make sure that we're
13 assisting you and can you share with the Committee
14 what are some of the obstacles that you as an
15 agency are experiencing?

16 ANDREW SCHWARTZ: Well, in terms of
17 construction opportunities, I think we, you know,
18 we recognize that the smaller construction firms,
19 which are what LBEs tend to be, have issues again
20 with putting together construction bids,
21 mobilizing, if they do win an award, how they get
22 started, you know, how they get bonding
23 assistance. And actually, I know the Mayor and
24 Deputy Mayors Steel and Holloway yesterday
25 announced a new pro--a number of new initiatives

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2 to address many of those concerns, particularly in
3 the construction arena, and we're grateful for the
4 support that came from you, Council Member, and
5 Council Member James, and other members of the
6 Council on that. And a number of those
7 initiatives are going to be actually led by
8 Assistant Commissioner Bishop, so you know, we're
9 really thrilled with getting these things started,
10 and they are going to go towards addressing the
11 needs of these smaller construction firms. Do you
12 want to discuss them a little bit?

13 GREG BISHOP: Part of, and another
14 release went out under the banner of MWBE, but a
15 lot of these initiatives are for all small
16 businesses, including LBEs. Part of it is
17 expanding our capacity to not only, in the past,
18 help about 60 companies a year, to sort of provide
19 them technical assistance to respond to a bid, we
20 now have enough funding to actually handle 600
21 companies a year. So we're going to be doing a
22 lot of outreach, so any company that has never
23 done business with the City or have done business
24 and lost, we're providing technical assistance so
25 that way we can help them understand how to

1 respond to a bid without getting it tossed out.

2 One of the other areas, and because it's in
3 construction, bonding is one of those things that
4 we hear a lot, it's capital and it's bonding. So
5 we have two programs to address those things. For
6 bonding, we want to make sure that it's not just
7 about classes, but we want to make sure that a
8 company that goes through this program actually
9 leaves the program and becomes bondable. So, we
10 are finalizing the, sort of the framework of that
11 program, and we're planning on actually launching
12 it this, actually next month, in terms of getting
13 a curriculum together, and working with charities
14 to get that issue taken care of. On the
15 construction alone, it's really about mobilizing,
16 so if a company actually wins a contract, we want
17 to make sure that they actually have the dollars
18 to, you know, get the materials, pay their staff,
19 etc., 'cause sometimes it could take about, you
20 know, four-six weeks before they get the first
21 payment, and for some small businesses that's way
22 too long. So companies now have the ability to
23 borrow up to \$125,000, \$150,000, against their
24 contract. So it's a different model because a lot
25

1
2 of the times traditional banks don't really look
3 at a City contract as collateral, but we've worked
4 with lenders to recognize that as collateral. And
5 then the final thing is really just teaming,
6 helping businesses understand that by themselves
7 they may not be able to tackle that project, but
8 if you team up, and there's a proper way to team,
9 and there's not, there's a legal way to team,
10 which could get you in trouble, and we want to
11 make sure that our MWBs, or LBEs, they understand
12 how to properly team up with another part--with
13 another company, so we're providing the
14 opportunities for that. We're providing workshops
15 on how to properly team, we're providing events
16 where they can actually meet other businesses in
17 that particular area. So, all these things we're
18 pushing forward and, you know, we're trying to get
19 them out as quickly as possible.

20 [pause, background comments]

21 CHAIRPERSON MEALY: Good morning.

22 I'm ... I'm just kind of distressed right now.
23 With the \$8 billion budget we have with contracts,
24 and only, how could you say, 84 small business
25 companies have gotten contracts. That's, that's

1 way below, I mean, that's not even to me success.
2 So, all this time that we were doing, I taught, I
3 was there at the launching of the solution
4 program, and right there, I did speak on regards
5 to why there were not a lot of small businesses
6 there, and they said, "Y'all do a mass mailing,"
7 but I can say a lot of people from Brooklyn was
8 not there, a lot of small, small businesses were
9 not there. So, how do you really do your
10 marketing to the small business or small
11 contractors?
12

13 GREG BISHOP: We do a lot of
14 outreach events. So, first of all through the
15 funding from Council, we have about ten
16 neighborhood associations that we work with to
17 reach, to penetrate the outer boroughs.

18 CHAIRPERSON MEALY: Could you name
19 a few?

20 GREG BISHOP: We have Axion
21 [phonetic], we have the Women Chamber of Commerce-

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23 CHAIRPERSON MEALY: Which ones are
24 in Brooklyn?

25 GREG BISHOP: Khaki.

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CHAIRPERSON MEALY: Khaki is one.

GREG BISHOP: Yeah.

CHAIRPERSON MEALY: I know Khaki.

GREG BISHOP: Yeah, Dr. Hastick, he's a great partner of ours. We have BEDC, which is the Brooklyn Economic Development Corporation, they're out there. We have QEDC, which is in Queens. We have SoBro, which is in the South Bronx. So we have, we have ag--organizations, who are working with us, not only to get the message out about our certification, but also to get message, the message out about the services that we provide. But in addition to those organizations, we, SBS, we have a staff headed by Walter Maxwell, he's the Director of External Affairs, he attends a number of events every year. Last year we did like about 84 events in terms of working either with federal partners or state partners, working with the different groups, in terms of going out there, tabling and making sure that businesses understand what services are available to them. Part of the new initiatives that we just launched yesterday, actually carries a marketing budget, so you'll see a lot more--

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2 CHAIRPERSON MEALY: How are you
3 going to advertise?

4 GREG BISHOP: We are looking at all
5 the, the--at any of the sort of ethnic
6 publications, we're looking at, you know,
7 Amsterdam News, we're looking at--at any of the
8 newspapers that, you know, Carob News, that
9 reaches into the, into the population that we're
10 looking for. We're right now talking to certain
11 radio stations with the--

12 CHAIRPERSON MEALY: Okay.

13 GREG BISHOP: --demographics that
14 we're looking for. So we have, we have sort of a
15 strategy to get the word out, on--yeah.

16 CHAIRPERSON MEALY: That's good to
17 year, 'cause a lot of people are saying that
18 they're not getting a fair share. Does SBS have
19 the ability to tell where the big construction
20 projects are meeting their LBE goals requirements?

21 [pause, background comments]

22 JOHN CHAPMAN: Test, okay.

23 CHAIRPERSON MEALY: Okay.

24 JOHN CHAPMAN: Hi, John Chapman.
25 So, I head up the division that works with all the

1
2 City agencies, to help them understand based upon
3 the type of spending they do, and their budgets,
4 where they can find real opportunities for MWBEs,
5 and really for all certified firms. Especially
6 there's increased opportunity under \$100,00, where
7 there's more opportunity for outreach to MWBEs.

8 And we know that our smaller companies can
9 perform. But also, all of the agencies have been
10 pushing efforts to do additional outreach on
11 contracts that are coming out to the MWBE
12 community.

13 CHAIRPERSON MEALY: I'm just asking
14 you how can you tell if the big construction
15 companies are meeting their requirements by hiring
16 LBE programs?

17 JOHN CHAPMAN: As Andy mentioned,
18 we're, we're tracking the utilization on projects
19 for MWBE, and most of the contracts are subject to
20 MWBE goals. And therefore, not subject to LBE
21 goals.

22 CHAIRPERSON MEALY: If some are not
23 reaching their goals, how can we know that? How
24 do the--the community, 'cause I just did a
25 transparency legislation, in which now the City

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2 will be able, anyone, will be able to go online
3 and see any City contract, how much it costs, who
4 has it, when is the due date, when is the ending
5 date, and if it go over, it will not be another
6 CityTime. We, anyone could come and blow the
7 whistle. So, how, who is really tracking this?

8 ANDREW SCHWARTZ: Yes, I think,
9 depending on which program you're talking about, I
10 mean, I, first I applaud your efforts on the
11 transparency of the contracts. And I want to--

12 CHAIRPERSON MEALY: Thank you.

13 ANDREW SCHWARTZ: --and we have
14 done the same thing. Again, working with MOCS,
15 putting together a report biannually, that lists
16 every agency and the contract dollars awarded
17 across four different industries, across the
18 different ethnicities and gender, is in that
19 report every six months. The LBE program, when a
20 contract is awarded under it, the agencies do have
21 an obligation to monitor the LBE performance. And
22 we have--

23 CHAIRPERSON MEALY: Where's the
24 stopgap? If they're not going it

25 ANDREW SCHWARTZ: There are--

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CHAIRPERSON MEALY: What do we do?

ANDREW SCHWARTZ: There are penalties that the agencies can impose on those prime contractors if they didn't meet their LBE obligations.

CHAIRPERSON MEALY: Like what?

ANDREW SCHWARTZ: And--could look in the statute for the numbers, I would have to, I will get that and when we, when we submit our written response to you.

CHAIRPERSON MEALY: Okay.

ANDREW SCHWARTZ: And we do hear from agencies, Sanitation, Parks from time to time, that are--you know, these can get into ongoing--they're ongoing either litigation or back and forth because the contracts go over a period of, you know, four or five years on the larger construction contracts.

CHAIRPERSON MEALY: Okay. Hm.

Okay.

ANDREW SCHWARTZ: Okay.

CHAIRPERSON MEALY: Of approximately 76 certified LBS listed in New York City online directory, and certified businesses,

1
2 how many have been awarded subcontracts as part of
3 the program?

4 ANDREW SCHWARTZ: That's what I
5 said, we will give you the additional data. We
6 provided the overall dollar amounts, but as I
7 indicated we will have to get that, that further
8 breakdown for you. And I do want to indicate when
9 you say the number is low, again, under our, under
10 our MWBE program, which includes a lot of the
11 LBEs, we have nearly 1,000 construction firms in
12 that program, that are either minority or women
13 owned. And we are working, you know, daily, to
14 try to get them either prime or subcontracts. And
15 we're seeing a much larger dollar amount than the
16 number cited earlier. The MWBE program has
17 produced nearly, or over \$3 billion now, since
18 Local Law as adopted in contract awards.

19 CHAIRPERSON MEALY: So which agency
20 makes the most use of the LBE certified program?

21 ANDREW SCHWARTZ: I would say Parks
22 has probably had the most awards in the data that
23 we provided.

24 CHAIRPERSON MEALY: You know I have
25 issues with the Parks Department.

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ANDREW SCHWARTZ: Well--

CHAIRPERSON MEALY: They get contracts over and over and over, the same company. Something has to change. And if some new people try to even bid on Parks contracts, they never get the bid, so that program you having, Mr. Bishop, is going to be so important, that you let people know exactly what went wrong with their bid for that contract, and when they resubmit it, I hope they will be able to get it. So we're going to be really looking at that program. And I feel that it should've started long time ago, 'cause this is nothing new that people are not getting the subcontracts in the City, the small business ones. Do they have a process of, or method that can, or should be re-- reciprocated by other agencies, in order to get small contracts or subcontracts? Like you say the Parks Department, is there anything in there that we can utilize that another small business corporation can do the same thing and get a contract, that'd make your job much easier?

ANDREW SCHWARTZ: I think John is--

CHAIRPERSON MEALY: I guess Parks

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2 Department is the highest, so I guess they're
3 doing something right, to keep getting the
4 contracts. So, can we replicate whatever they're
5 doing, to help small businesses?

6 JOHN CHAPMAN: Certainly. And
7 actually one of the kind of best practices we
8 rolled out to the other construction agencies,
9 which was pioneered by Parks, is having the
10 project managers and resident engineers track on
11 the, on the project level, the dollars that are
12 being awarded to subcontractors. Primarily this
13 is minority and woman owned subcontractors, but
14 they're tracking these with each voucher for
15 payment, made by the prime contractor, to make
16 sure that the prime is giving the, the correct
17 amount to subs according to their, to the goals
18 that are set in the contract. Primarily, again,
19 for minority and woman owned businesses, the
20 lion's share of which are small businesses. And
21 so we've actually spread that to the other
22 construction agencies. Additionally, at pre-bid
23 meetings, we've asked MWBE officers to be present
24 at all pre-bid meetings, to demo our online
25 directory, show everyone how you can find

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2 certified firms, and to understand that if you do
3 not meet the, the goals in the contract, there are
4 penalties. There's penalties for liquidated
5 damages, there's penalties where you can receive--

6 CHAIRPERSON MEALY: How many have
7 been penalized?

8 ANDREW SCHWARTZ: That's a new
9 requirement, and has not been, has not been
10 imposed to my knowledge, yet.

11 CHAIRPERSON MEALY: As of yet.

12 ANDREW SCHWARTZ: Yes, that's
13 correct.

14 CHAIRPERSON MEALY: This is the
15 21st Century, and we just now going to penalize
16 them, right? It's just put, it was just put in
17 place.

18 ANDREW SCHWARTZ: That particular
19 provision, yes. We are building, just like these
20 initiatives, we are continuing to build on the
21 program.

22 CHAIRPERSON MEALY: Okay. Thank
23 you. We've been joined by Council Member Mathieu
24 Eugene of the, Brooklyn. No, the Republic of
25 Brooklyn. And we're going to turn it over to our

1
2 colleague, Ms. Chin, she have a question. Thank
3 you.

4 COUNCIL MEMBER CHIN: Thank you,
5 Madam Chair. Is it true, I mean, I guess that the
6 School Construction Authority has their own LBE
7 certified program?

8 ANDREW SCHWARTZ: Yes.

9 COUNCIL MEMBER CHIN: So is there
10 any effort to try to combine the two?

11 GREG BISHOP: Yeah. We've been
12 working very closely with the, with the School
13 Construction Authority. What we've been doing is
14 we established a fast track program, so if you're
15 certified with the SCA as an LBE, you can fast
16 track into our program. We are now working with
17 the SCA on a larger initiative, where we're
18 sharing data electronically. So, when they
19 certify a company, we will know, and then that
20 will be sort of the onus on us to then do outreach
21 to those companies who may not be aware that they
22 could fast track. We would actually go after them
23 and say, "Hey, you're now certified with the SCA,
24 you can actually certify with us. The reason why
25 the SCA has their own program is 'cause they're an

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2 authority, so they're sort of outside of, we work
3 with the Mayoral agencies, so they also certify
4 MWBEs independently of the City of New York.

5 COUNCIL MEMBER CHIN: So do you
6 have the statistic form them? In terms of the
7 amount of contracts that they have ordered to the
8 LBES?

9 GREG BISHOP: We, we do not. I
10 would probably put a request out, 'cause we work
11 really closely with them and say, and let them
12 know that you're interested in finding out that
13 information. And we'll put that on our list of
14 things, yeah.

15 COUNCIL MEMBER CHIN: Okay, thank
16 you. The other thing is that you have this map of
17 economic development area.

18 GREG BISHOP: Disadvantaged areas.

19 COUNCIL MEMBER CHIN: Oh. Okay.

20 GREG BISHOP: Yeah.

21 COUNCIL MEMBER CHIN: So, do you
22 have a breakdown of the number of businesses that
23 are doing work in these areas?

24 GREG BISHOP: So--

25 COUNCIL MEMBER CHIN: I mean, I see

1 Lower Manhattan is in here.

2
3 GREG BISHOP: Right, when, when
4 someone comes in to certify as LBE, we look at
5 their, where their contract work is. And we
6 compare it to the economically disadvantaged areas
7 that's as identified by the federal government.
8 And I think most of them cover Manhattan, I'm
9 sorry, Brooklyn, Queens, parts of Manhattan, so
10 it's a, it's a federal designation, it's not
11 actually a City designation. But we can ... if
12 your question is, "Do we know where the work is?"
13 the, the company who is applying for the
14 certification has to show us proof that they
15 actually did work in that area. And then we
16 compare it to the maps. And that's how we know
17 whether they're eligible for the program or not.

18 COUNCIL MEMBER CHIN: So it's not
19 for determining where should be doing work.

20 GREG BISHOP: That's right. It's
21 determining what the, in the past, have they done
22 work in economically disadvantaged areas, then
23 they're eligible for the program. They could
24 also, if they have 25 percent of their staff that
25 are economically disadvantaged, they can actually

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2 uses that, but in the past, since the history of
3 the program, no company has ever used that method,
4 probably because, you know, in order to do that,
5 the employees would have to submit their tax
6 returns to the employer, and then the employer has
7 to submit it to us, and I'm assuming no employee
8 will want to submit their tax returns to their
9 employer. So, no companies have used that method
10 to certify with us.

11 COUNCIL MEMBER CHIN: So how, do
12 you have any kind of a program that sort of help
13 people, like your entrepreneurship program, to
14 help people set up businesses that can qualify, s
15 LBES?

16 GREG BISHOP: So part of the
17 program is that, so yes, so the business solution
18 centers help entrepreneurs start expand and
19 operate. If someone wanted to actually start a
20 construction business, they can come to a business
21 solutions center and we can actually help them.
22 Once a construction company--and depending on
23 where we're doing outreach, if we find a company
24 that's not in our database, we would actually talk
25 to them about certification and try to figure out

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2 what's the right certification for them. However,
3 it's a good idea, in terms of if we have someone
4 that came into a solutions center, and said, "Hey,
5 I want to start a construction company," but they
6 do have to get a track record. 'Cause remember,
7 these contracts are not like a home improvement
8 contract. So if someone is starting a
9 construction company, we'd probably want them to
10 get their feet wet first, before we start pushing
11 them to sort of, to this program, because they
12 have to develop a track record. And we have these
13 programs to help them build up their, you know,
14 the capacity, but you know, a new company probably
15 government in general, may not want to start with
16 a government contract.

17 COUNCIL MEMBER CHIN: But I think
18 this is good information to give out to people,
19 especially now a lot of people are, you know,
20 trying to kind of set up companies where there is
21 co-op companies, or entrepreneurship, you know, a
22 group of construction worker banning together to
23 say, "Hey, maybe we can do something on our own
24 to, to create a small business."

25 GREG BISHOP: Sure.

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2 COUNCIL MEMBER CHIN: So, if, if
3 they know about these kind of program, that they
4 can, you know, expand and they can create these
5 opportunity, it could be, it could make a
6 difference.

7 GREG BISHOP: Agreed. I was going
8 to say part, part of what we do, with John's work,
9 when we do analysis of the City procurement, we
10 actually look at the areas there are gaps. So, we
11 do it for the entire, the MWBE program, the LBE
12 program, in terms of if there are opportunities
13 for companies to certify in that area, to actually
14 fulfill a need that the City has, we actually
15 share that information with the solution centers.
16 So, if a company, for instance, like lime painting
17 or core drilling, I mean, if there's certain areas
18 that we don't have certified firms, that we put
19 the message out not only to the solution centers
20 but also to the bids, which we work closely with,
21 to say like, "Hey, if you see these type of
22 companies, the City of New York has opportunities
23 for them, we need to get that information to them.

24 COUNCIL MEMBER CHIN: Okay, thank
25 you.

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2 CHAIRPERSON REYNA: Thank you,
3 Council Member Chin. I wanted to just take an
4 opportunity to clarify. You had mentioned on, you
5 mentioned the online database of LBEs. And in
6 our, in our outreach efforts for the LBE hearing,
7 my staff went through an exercise of contacting
8 businesses that were in need of updates because
9 your online director as listed, it's not on that
10 screen--I don't know if we have that, do we? The
11 issue of disconnected numbers, incorrect email
12 addresses, businesses that were no longer in
13 business, presents a larger comprehensive issue of
14 the online directory in need of being cleaned up.
15 And I mention this because it's not only the LBE
16 director, it's also the MWBE. And so, we have to
17 go through a very extensive search and ...
18 referring to each company, to be able to confirm
19 what would be contact information. So that the
20 directories, if I'm a prime contractor, I'm going
21 to waste my time.

22 GREG BISHOP: So, as, as you can
23 imagine, as the directory gets larger, data
24 accuracy becomes a challenge for us. We have a
25 number of ways to try to keep that updated, and

1
2 I'd love to get the findings from your staff so we
3 can jump on that. But if you look at the tab and
4 you look at the, under vendors, that's an area for
5 companies who are interested, you know, if I'm a
6 City vendor, there's a link there that says, "I
7 want to update my information," and that goes to
8 our staff. And then we make that, those updates
9 on a monthly basis. We also have a yearly
10 affirmation where if anything's changed, companies
11 are supposed to notify us. Unfortunately, if
12 you're going out of business, you probably notify
13 the City of New York--

14 CHAIRPERSON REYNA: Won't receive
15 it, right.

16 GREG BISHOP: --is not on top of
17 your list. So, we rely on, you know, any
18 information that we get, you know, whether someone
19 tells us, "I was looking for this company, and
20 it's out of business," we rely on a number of a
21 things to tell us that. We, we recently, about a
22 year ago, purchased some information from Dunn &
23 Bradstreet, so that way we can figure out in terms
24 of the incorrect data, to figure out what
25 percentage of our data was incorrect. And we've

1
2 been working tirelessly to correct that, to
3 correct those information. If you're a prime
4 contractor, under the buyer tab, there's a big
5 orange - - that says, "I'm a city prime
6 contractor." The directory's supposed to sort of
7 help prime contractors find companies, but
8 sometimes companies, especially prime contractors,
9 have specific needs that's not on the directory.
10 So, they're looking for, like, recently we got a
11 request from a private organization who they're
12 looking for specifically painters, but who can
13 paint transmission towers. So, it's a union job,
14 they're looking for revenues over a certain
15 amount. You're not going to find it on a
16 director, but there's a link there that says, "If
17 you have a specific need, to click here," that
18 goes to John's team, and then we on the backend,
19 we look at all the additional capacity information
20 that we have on our firms, and we actually
21 customize a list for those prime contractors. So-

22 -

23 CHAIRPERSON REYNA: So--

24 GREG BISHOP: --it's really getting
25 the word out that that service is available to

1
2 prime contractors. We do this for agencies, when
3 they're looking for specific companies. So we, we
4 were trying our best, so once, you know, I hear
5 that there's data inaccuracies, please send it to
6 me, and we'll take care of it.

7 CHAIRPERSON REYNA: You do an
8 excellent job.

9 GREG BISHOP: Thank you.

10 CHAIRPERSON REYNA: I want to
11 express that the, just to go back to the
12 contracting dollars. So, the procurement budget
13 is \$14 billion, and obviously it's a fluctuating
14 number. The percentage is a third of that
15 particular dollar amount in a capital budget. And
16 assuming that that, a third of the \$14 is \$5
17 billion, ten percent of that would be \$500
18 million. Of the \$500 million, if we were up to,
19 if that is the goal dollar amount, and on average
20 what you're seeing is \$27 million per year, based
21 on your five year, over the past five fiscal
22 years, LBEs won approximately \$134 million in
23 prime and sub, subprime, subcontract awards, then
24 we are significantly falling short of the ten
25 percent goal. Correct my analysis if it needs

1
2 correction. Okay.

3 ANDREW SCHWARTZ: No, I think your
4 numbers are roughly okay--

5 CHAIRPERSON REYNA: Okay, okay.

6 ANDREW SCHWARTZ: --but I go back,
7 as I say, that a lot of those contracts had
8 applicable MWBE or a federal DBE goals or state
9 Article 15(a) goals, and a lot of that work and
10 subcontracting dollars, did go to City certified
11 MWBEs. Is, which is a good thing, I know they're
12 not--the LBES, we got to find a way to have the
13 programs operating in a way, you know,
14 harmoniously in a way that you see fit. And I
15 would sit down and we talk to you or your staff a
16 little further about how might do that.

17 CHAIRPERSON REYNA: Okay. I
18 appreciate, you know, the clarity, and I want to
19 just go back to the economic and the willingness,
20 Commissioner. I just want to make sure that we do
21 continue the conversation. I know that your
22 efforts are always genuine, because I have seen
23 the tremendous effort with MWBE, and so this is a
24 partnership. The maps of the economic development
25 area, this is printed by the federal government.

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And is this based on census?

ANDREW SCHWARTZ: Yes, that's CDBG eligibility areas--

CHAIRPERSON REYNA: Correct.

ANDREW SCHWARTZ: --and, right, as an agency we do administer CDBG funds in another area of our agency, so we're pretty familiar--

CHAIRPERSON REYNA: So this is going to be changed significantly due to census data.

ANDREW SCHWARTZ: Yes.

CHAIRPERSON REYNA: How are you gearing up towards dealing with revamping what would be the LBE concurrent with this type of information?

ANDREW SCHWARTZ: Right. We do need that information, as I say, also form our community work that we use CDBG dollars. And we do work closely, we get that information really, we don't produce it, as you say, it is federal. But it comes to the City through OMB, has a Management and Budget, has a CD unit that kind of monitors all of that, as well as City planning on the census data. So we do rely on those agencies

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to give us that up-to-date information.

CHAIRPERSON REYNA: So, is it fair to say that you already have that information from OMB, considering the publishing of the census data already?

ANDREW SCHWARTZ: Right, we have what we need right now, and I know there's been some discussion about when the actual 2010 census data will take effect in these programs, so we are communicating with them on that.

CHAIRPERSON REYNA: Do you--

ANDREW SCHWARTZ: Because we, we do need to know that.

CHAIRPERSON REYNA: Correct.

ANDREW SCHWARTZ: Yes.

CHAIRPERSON REYNA: And do you believe that that data will be made available to you by the end of this year, calendar year?

ANDREW SCHWARTZ: I would think so. Yeah.

CHAIRPERSON REYNA: Or before our fiscal budget year ends?

ANDREW SCHWARTZ: I wouldn't want to hazard a guess here.

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2 CHAIRPERSON REYNA: And the new one
3 begins.

4 ANDREW SCHWARTZ: It's June or
5 December. June or December.

6 CHAIRPERSON REYNA: Because there's
7 a big difference, clearly.

8 ANDREW SCHWARTZ: Yes. Yeah, some
9 of these areas will change, perhaps a little more.
10 I mean, we know The Bronx and Brooklyn,
11 predominately are eligible; Queens pretty much
12 half, to maybe 60 percent; Manhattan, a lot of the
13 northern part and some other areas of Manhattan;
14 and then Staten Island, less so. But, so we would
15 expect to see some change.

16 CHAIRPERSON REYNA: And how would
17 you take advantage of those changes in regards to
18 the LBE and reaching the goals of the ten percent
19 according to the rule?

20 ANDREW SCHWARTZ: Well, it could be
21 helpful again in the outreach efforts, the
22 marketing efforts, where we're going, the
23 community groups that we work with, and we do, you
24 know, again, tend to try to sell our programs
25 together to get the most effective our message.

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2 But in those ways, it could be helpful.

3 CHAIRPERSON REYNA: All right, we
4 have a question from Council--or several questions
5 from Council Member Eugene.

6 COUNCIL MEMBER EUGENE: Thank you
7 very much, Madam Chair. Thank you to all the
8 members of the panel. Thank you. Let me say that
9 I think that, you know, I want to commend you, you
10 know, for this program. This is very important
11 with most of the people in New York, you know,
12 they want to have their own businesses, and they
13 try to do everything they can have to have a
14 living, especially at this very time when there is
15 no jobs. But one of the thing that happened, you
16 know, there are many people in the community, they
17 have the skill, the expertise, they do everything
18 that they can do, but it is very difficult for
19 them to navigate the system and get contract, a
20 contract, or to benefit from the resources
21 available in the City of New York. Now, the
22 reason I think this program should be a very
23 important one, in case, you know, in the, in case
24 if the program fulfill the need of those people
25 who need it the most. I know you probably you

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2 mentioned that before I came because if you
3 didn't, could you please tell me, how many
4 subcontractor businesses have been benefited from
5 LBE? Probably you mentioned that all before I
6 came.

7 ANDREW SCHWARTZ: I'm sorry, how
8 many businesses? I--

9 COUNCIL MEMBER EUGENE: How many
10 subcontractors or businesses that have benefited
11 from the LBE program?

12 ANDREW SCHWARTZ: I mean, looking
13 over at least the data from the five fiscal, last
14 five fiscal years, we're probably in the area of,
15 there've been 270 or 280 in terms--

16 COUNCIL MEMBER EUGENE: 270.

17 ANDREW SCHWARTZ: --of companies
18 that have been part of that program.

19 COUNCIL MEMBER EUGENE: Do you
20 think that there are other businesses that could
21 benefit from that? Or do you believe that you
22 reach all the businesses--

23 ANDREW SCHWARTZ: No, I'm sure we
24 haven't reached all the businesses for any of
25 these programs that we've been discussing. And

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2 that's why marketing and outreach and working with
3 Council Members and the community groups that,
4 that are funded by the Council, is so important.
5 And we've done events, I know, with certainly
6 Council Member Reyna, Mealy, we have been out in
7 the communities, with--out in Flatbush, we have
8 the vendor market. I think we've done some
9 outreach activity there, as well, in your
10 district, Council Member. And we're always
11 looking for avenues for doing that, to get to more
12 firms, through our business solution centers, of
13 course. I think you hit the nail on the head when
14 you talked about starting your business, because
15 that's, most of the folks we see there, are
16 entrepreneurs who want to start a business. I
17 mean, sometimes they walk away realizing it's not
18 for them, because of the challenges and the costs.
19 But we have found ways to, to get access to
20 capital for a lot of new startup businesses, the
21 programs that Greg Bishop is going to head up is a
22 mobilization loan program, which was one of the
23 things we heard about from construction firms,
24 "Hey, it's great, I won a contract, now I have to
25 hire some folks to be able to actually perform

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2 that contract." So, working actually with the
3 construction agencies and Corporation Council, we
4 found a way to fund the loan program and they
5 pretty much the company has the best collateral
6 they could have. They've got a contract from the
7 City, which is going to pay them and going to
8 repay that loan. So things like that are, have
9 been helpful.

10 COUNCIL MEMBER EUGENE: One of the
11 challenges, I believe, that the people in the
12 community they are facing, is I don't believe,
13 they cannot get access to loans from the banks,
14 when they want to have a loan to improve the
15 businesses, it's in the, it is very difficult. Do
16 you have something in place to help them, or what
17 have you done to help those who are facing
18 difficulties to receive or to be qualified for a
19 loan for small businesses?

20 ANDREW SCHWARTZ: That's actually
21 one of the big growth areas at business solutions,
22 is that access to capital program. And I think in
23 the last year it was about over 800 companies, I
24 don't have the exact figure of the loan amounts,
25 but it may be online at our website, is, they're

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2 coming in and they're looking for loans. Now
3 we're not making the loans to them, but we are
4 sitting down with them looking at their finances
5 and seeing how they can get a loan proposal that
6 will be funded and referring them to what are more
7 the micro-lenders, the Axions, who provide that
8 type of service to a startup business. We've also
9 actually worked closely with the larger banks, I
10 think Citibank and some of the others, for a
11 second look type program, where companies that
12 have been turned down for a loan can come to our
13 business solutions center and be re-reviewed for
14 how they can get a loan. Now, not everybody is
15 going to get a loan because you do have to reach a
16 certain credit, credit score or credit
17 availability, but we have been successful in
18 getting that kind of access to capital. So that's
19 another area that we saw a real need in, and it
20 does need to be addressed.

21 COUNCIL MEMBER EUGENE: Based on
22 your experience, what is the biggest issue or the,
23 the biggest problem that prevent the small
24 business owners to get loans from the banks? Is
25 it credit or lack of organizations or track

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record, or--?

ANDREW SCHWARTZ: You want to jump in?

COUNCIL MEMBER EUGENE: What is it?

GREG BISHOP: Yeah, I think for all small contractors, it starts with credit.

COUNCIL MEMBER EUGENE: Excuse me?

GREG BISHOP: Credit.

COUNCIL MEMBER EUGENE: Credit.

GREG BISHOP: In terms of because most small business owners they start their business with their personal credit. And sometimes, you know, that's, that's, we've seen that a issue. And then the next challenge is just back off support. Because most small business owners, they're the person that's tearing down the wall and they're the person that's also closing their books. And certainly, we're trying to help business owners understand that sometimes you need to remove yourself either from the back office or the front office, but you need that type of support. Because even in cert--in certification, sometimes companies take forever to certify because there's standard documents that a business

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2 owner should have, they don't have. And they need
3 someone to help them put it together. And those
4 are the things that are going to trip you up,
5 especially if you're looking to do business with
6 the City, because we're very specific, we tell you
7 exactly what we want, when we want it, and you
8 have to document everything. So, I think those
9 two things is the back office support, and credit,
10 is the biggest challenge for small contractors.

11 COUNCIL MEMBER EUGENE: But in
12 addition to that, in general, in addition to the
13 credit situation, what is the biggest challenge
14 that they all, and the small business owners are
15 facing right now, that prevent them to grow or to,
16 to have a sustainable business? Or to be
17 successful in their endeavors?

18 ANDREW SCHWARTZ: Is that right?
19 Do you want to jump in on, that's on the credit
20 side, John?

21 JOHN CHAPMAN: Yeah.

22 ANDREW SCHWARTZ: Okay.

23 COUNCIL MEMBER EUGENE: In addition
24 to the credit, you know, besides credit.

25 JOHN CHAPMAN: I just think,

1
2 certainly with a construction loan, I can only
3 speak to what we're seeing in early applicants for
4 the construction loan. A problem is loss of value
5 in their homes. For a lot of people, their, their
6 biggest asset is their--

7 COUNCIL MEMBER EUGENE: Not only
8 the loan on this, but I'm talking in general.
9 That's the - -

10 ANDREW SCHWARTZ: [interposing]
11 Well, you probably, you probably hear--

12 COUNCIL MEMBER EUGENE: Many people
13 they open businesses, and they fail.

14 ANDREW SCHWARTZ: Yes.

15 COUNCIL MEMBER EUGENE: You know,
16 they are not successful. But what is, if we want
17 to identify one big reason, or the big challenge,
18 you know, that many small business owners are
19 facing, what it would be?

20 ANDREW SCHWARTZ: I mean, sometimes
21 it's, in retail its location and ability to get a,
22 a commercial lease, could be an issue there. I
23 don't know if I could put my finger on the one
24 problem, that there's one thing we could solve for
25 this.

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2 COUNCIL MEMBER EUGENE: Well, there
3 may be ten, but give me one.

4 ANDREW SCHWARTZ: It's that--Right,
5 I'm going to tell you.

6 COUNCIL MEMBER EUGENE: Yes.

7 ANDREW SCHWARTZ: Space, commercial
8 leasing, property, that type of thing, is, is an
9 issue we've heard about many times.

10 COUNCIL MEMBER EUGENE: And do you
11 have anything in place to help those small
12 business owners facing this challenge? If you
13 know.

14 ANDREW SCHWARTZ: Well, if we're
15 talking about neighborhood retail, there are
16 programs in our agency, there is a neighborhood
17 retail program, where we're working in, actually
18 again, CDBG eligible areas, with organizations
19 that give counseling advice on streetscape
20 improvements, and, and a retail attraction to
21 those communities. They also work with the
22 business improvement districts, which are, there
23 are 66 of those now in the City. And they are
24 part of that retail effort. So we've also been
25 training hood, training neighborhood leaders, from

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2 the bids, from the local development corporations,
3 on all those types of skills, so that they can in
4 turn work with the local businesses to deal with
5 the problems that they're facing.

6 COUNCIL MEMBER EUGENE: When we
7 talk about the businesses, we're talking about
8 jobs, we're talking about the life in New York
9 City. We cannot, you know, afford not to mention
10 immigrant, because you know that's, New York
11 City's a city of immigrants, and many immigrant
12 they are facing many challenges because of
13 language barrier, culture and value, they don't
14 understand the system, they cannot navigate
15 through the system. What do you have in place to
16 help the immigrant people understand this system,
17 the business system, the New York, and the way,
18 you know, that thing have been done in, in term of
19 business?

20 ANDREW SCHWARTZ: Again, we do
21 offer courses for micro-entrepreneurs, there are
22 several--

23 COUNCIL MEMBER EUGENE: What type
24 of courses?

25 ANDREW SCHWARTZ: --several

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2 language--micro-entrepreneur business basic
3 courses, to learn the beginning aspects of running
4 and starting a business. And some of those are--

5 COUNCIL MEMBER EUGENE: And what
6 are the languages that you are using to--?

7 ANDREW SCHWARTZ: That, I'd have to
8 go back and look, it didn't come with that today.

9 COUNCIL MEMBER EUGENE: Oh, you
10 don't know, or can you give me five languages?

11 ANDREW SCHWARTZ: But Greg, can you
12 - -

13 COUNCIL MEMBER EUGENE:
14 Approximately?

15 GREG BISHOP: I mean--

16 COUNCIL MEMBER EUGENE: Be honest,
17 you know.

18 GREG BISHOP: Yeah, no--

19 COUNCIL MEMBER EUGENE: If you
20 don't have it, say you don't have it. - -

21 GREG BISHOP: We don't, we don't
22 have it today, but a perfect example is last year
23 we did a certification outreach and we worked with
24 the Asian Women in Business organization. And
25 they had a translator there. So, depending on

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what your--

COUNCIL MEMBER EUGENE: No, I'm not talking about translation. Do you have something in place where somebody who speaks Spanish, or Russian, or Creole, they can go and they have people who will speak their languages, and that who can help them?

GREG BISHOP: Yeah, well, part of the Mayor's initiative--

COUNCIL MEMBER EUGENE: Not translation.

GREG BISHOP: --all our services, if someone came into our office, and wanted to speak to someone in their language, it's part of the language access program. So, it doesn't really matter, so if you came into a SBS office, and you wanted to speak to someone in creole, and there was, either we'd find someone on staff that could speak to you in creole, or we would actually get someone on the phone to translate what we're saying. So--

COUNCIL MEMBER EUGENE: No, what I'm trying to figure out, of course you can get somebody--

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2 GREG BISHOP: Are you asking me if
3 there's written materials?

4 COUNCIL MEMBER EUGENE: --if you
5 have something in place. Let's say somebody
6 speaks Russian.

7 GREG BISHOP: Yep.

8 COUNCIL MEMBER EUGENE: And want to
9 start a business or has some problem with his
10 business. And want to go to you--

11 GREG BISHOP: Well, it's, it's the
12 language access program that you're asking about.

13 COUNCIL MEMBER EUGENE: What?

14 GREG BISHOP: The language access
15 program that the City has.

16 COUNCIL MEMBER EUGENE: Yeah, if
17 you have staff, who speak different languages, if
18 you have a system in place. Let's say you have
19 Spanish speaking people, Russian speaking people,
20 creole speaking people, French speaking people, to
21 address the issue or to serve the people.

22 GREG BISHOP: Yes. It's the
23 language access program. The, so, the City has--

24 COUNCIL MEMBER EUGENE: Has staff?

25 ANDREW SCHWARTZ: We have staff,

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too, that speak some--

GREG BISHOP: Yeah, we, we have staff that speak some of the different languages. If we don't have staff present, for because there's a number of different languages around the world.

COUNCIL MEMBER EUGENE: Of course.

GREG BISHOP: Then we have a process in making sure that we connect that person to someone who actually can speak that language.

COUNCIL MEMBER EUGENE: Now, the reason I'm asking that, also one of the reason, I think that the Mayor took a, an executive order and I think that there's seven languages that institution in New York City should provide services in. Do you have staff who can, you know, speak those seven languages, or provide services in those seven languages?

ANDREW SCHWARTZ: I, as I said, we were aware of the executive order, and Greg has talked about language access. I will have to check on the specifics of the programs that applies to, and that we provide, but I believe we follow that, yes.

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2 COUNCIL MEMBER EUGENE: Okay. Let
3 me ask you my last question, sorry. Veterans.
4 I'm sorry, you know, I got to stand for my
5 veterans. [laughs] And those people who have
6 served all of us. You know, that one of the
7 biggest problem for veterans is jobs. You know?
8 There are many veterans in New York City, and
9 there are many who will come also from service.
10 And do you have, what, what have you been doing to
11 help the veterans have jobs? Or help them with
12 their small businesses, for those who are in the
13 small businesses? And also, what do you have in
14 place to help those veterans who are coming back
15 from service?

16 ANDREW SCHWARTZ: Yeah, again, this
17 is another part of our agency, our Workforce
18 Development Division, who the, I don't have the
19 staff here from there, but I can tell you that
20 through the Workforce centers that we have in the
21 five boroughs, we have some specialized programs
22 for veterans, we're working with the Council as
23 well as the Mayor's Office on veterans affairs, in
24 terms of reaching out specifically to veterans on
25 job opportunities. As far as starting a business,

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2 they also are able to use our business solutions
3 services in the same way as we've been talking a
4 little bit about before. And we certainly
5 encourage that.

6 COUNCIL MEMBER EUGENE: All right,
7 so, you know, I'm trying to see what we can do as
8 a City, as a nation, to make sure that we address
9 the issues of the veterans, and I would appreciate
10 if you can reach out, you know, to my office, and
11 let us know what you have, what you are working
12 on, and we can work together.

13 ANDREW SCHWARTZ: Thank you, that's
14 what I was going to say, I will refer that
15 question to the Deputy Commissioner, for
16 Workforce, and let them know that you are
17 interested in that specific issue.

18 COUNCIL MEMBER EUGENE: Thank you
19 very much. Thank you, the Chairs, thank you,
20 thank you very much.

21 CHAIRPERSON REYNA: Thank you,
22 Council Member. I want to just confirm,
23 Commissioner, the City Council should expect by
24 April 1st a annual report that will include the
25 LBE program? I know that the hard and fast date

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is never--

ANDREW SCHWARTZ: We, we do file the, the, what I was looking at was the local 0129 report, is done in April and October. October has the full fiscal year data from the, the year that ends June 30th, and I will have to find out if we've got the subcontracting data by, I doubt we'll have that by April 1st, we tend to have that for the October report, for the full fiscal year. So, April we will report probably on prime contract awards.

CHAIRPERSON REYNA: Specifically--

ANDREW SCHWARTZ: For the--

CHAIRPERSON REYNA: --for the LBE program, is what I'm referring to.

ANDREW SCHWARTZ: Yes, yes. That's correct.

CHAIRPERSON REYNA: So, we should be able to expect the annual report with the ...

ANDREW SCHWARTZ: LBE data.

CHAIRPERSON REYNA: Correct.

ANDREW SCHWARTZ: That we discussed, yes.

CHAIRPERSON REYNA: As we have al--

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2 discussed it in the details that help us
3 understand where we're falling short, how we're
4 falling short, meeting the goals.

5 ANDREW SCHWARTZ: Yes, or, yes,
6 certainly discussing the results of the LBE
7 program.

8 CHAIRPERSON REYNA: Okay. And you
9 continuously mention the MWBE contracting goals
10 and how those are the goals that we're meeting far
11 more aggressively than the LBE, and that in terms
12 of MWBE, there may be an MWBE that is a LBE.
13 Could you tell us what is the percentage--or how
14 many LBES are MWBES of the 84 that are registered?

15 ANDREW SCHWARTZ: I think Greg you
16 said 71 percent of the current certified LBES are
17 also certified M or WBES.

18 CHAIRPERSON REYNA: And of the 71
19 percent, how many have--71 percent of the 84
20 certified LBES are MWBES. How many of the 71
21 percent have contract dollars?

22 ANDREW SCHWARTZ: That I'll have to
23 get you that information.

24 CHAIRPERSON REYNA: Okay. And
25 separating the data as far as, you know, the

1 remaining 29 percent--

2 ANDREW SCHWARTZ: Right.

3 CHAIRPERSON REYNA: How many LBEs
4 of the 29 percent have received contract dollars?

5 ANDREW SCHWARTZ: Similar question.
6 Okay, break it out that way.

7 CHAIRPERSON REYNA: Correct,
8 correct.

9 ANDREW SCHWARTZ: Okay.

10 CHAIRPERSON REYNA: And this is,
11 you know, clearly, trying to understand how as a
12 City can we assist your Department achieve the ten
13 percent goal requirement? And is it a problem
14 within the agencies, your sister agencies, not
15 doing their part to report to you? I do
16 understand that you've given us the agencies that
17 are reporting, that have the contracts issued to
18 LBEs, and you're going to get back to us those
19 that are not, whether or not they are doing the
20 LBE contracting.

21 ANDREW SCHWARTZ: That's correct.

22 CHAIRPERSON REYNA: Okay. I'm just
23 trying to go through what we agreed on. So give
24 me a moment to just continue to review through my
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notes.

ANDREW SCHWARTZ: Well, I know from recent hearings, too, that your staff has been terrific in sort of following up, summarizing requests.

CHAIRPERSON REYNA: Thank you.

ANDREW SCHWARTZ: And we have been doing our best to keep up with the Committee's requests because they, they have been extensive on some areas.

CHAIRPERSON REYNA: And, and we do appreciate you getting back to us.

ANDREW SCHWARTZ: And we, that's what we do. And--

CHAIRPERSON REYNA: So, I don't believe that there's any other questions. Oh, Council Member, Chair Mealy has a question.

CHAIRPERSON MEALY: That was the only question I really wanted to ask. In your testimony, you said that you have pro bono legal. Where can someone go and get pro bono legal help with certified, being certified and becoming a small business contractor with the City?

ANDREW SCHWARTZ: Well, yeah, pro

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2 bono--

3 CHAIRPERSON MEALY: That is good to
4 let people know. I hope they watch this program.
5 That they can know where to get help from.

6 ANDREW SCHWARTZ: Yeah, business
7 solutions center is one of the services that we,
8 we pioneered, was getting agreements with law
9 firms for attorneys, pro bono, to help small
10 businesses. Often it comes up really with their,
11 with their lease negotiations for space and
12 contracts, where it's critical. We hope generally
13 that for certification you don't need legal help.
14 So, but we, if it goes that way--

15 CHAIRPERSON MEALY: I'm opening up
16 my own business, I need help.

17 ANDREW SCHWARTZ: Right, that's why
18 I said--

19 CHAIRPERSON MEALY: I got a lawyer.

20 ANDREW SCHWARTZ: --that's why I
21 wanted to focus, that generally when you're
22 starting your own business, contracts, leasing of
23 space, that's where the law and business
24 structure, that's where the lawyer have come in
25 handy.

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2 CHAIRPERSON MEALY: Yes. I just
3 text my lawyer. [laughs] But I want, one other
4 thing I want to say, how can we help, 'cause we
5 done a revitalization in Brownsville, Belmont
6 Avenue. We're doing something so major, but we
7 need anchor people and we're trying to create
8 jobs. So, I'm going to really need your, your
9 agency to sit down with people. So, I'm setting
10 up numerous meetings with you in regard to that,
11 'cause a lot of people want to start businesses,
12 but really do not know the significance, how deep
13 it gets when you need the lease space. And having
14 Belmont where now \$10 a square feet is good,
15 right? So, we're trying to get people who would
16 really want to stay and be anchored tenants in
17 Brownsville. So, I'm looking forward to talking
18 with you and meeting with you intensively.

19 ANDREW SCHWARTZ: Oh, we would- -
20 that.

21 CHAIRPERSON MEALY: Thank you--

22 ANDREW SCHWARTZ: Sounds like a
23 tremendous opportunity.

24 CHAIRPERSON MEALY: Yes, it is.
25 Thank you.

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2 CHAIRPERSON REYNA: Thank you,
3 Chair Mealy. I just wanted to ask, there, in
4 2008, that was the last hearing that the Small
5 Business Committee was examining, along with
6 contracts, the LBE program. And then, it was
7 mentioned in your testimony that there were, a
8 lacking of technological capacity. Today, 2012,
9 we have FMS, Financial Management System. FMS 2
10 and 3. Is this now not an obstacle for you? Are
11 you in the FMS? And where would the staff be able
12 to gather that information as far as LBE is
13 concerned?

14 ANDREW SCHWARTZ: Different
15 questions, but yes, we, we particularly were
16 concerned several years ago with the, the
17 collection of subcontracting data, and that's
18 where I mentioned earlier that MOCS has really
19 made the effort and has, you know, it's still
20 improving. You know, and FMS has so many
21 different features and affects so many different
22 things in the City's budget and financial system,
23 that I'm, I'm not the expert on it. But agencies
24 put in the data, and that gets to the point I was
25 saying earlier, that we don't want to burden the

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2 agencies with, you know, us sending them a paper
3 to fill out and return to us, we want to take the
4 obligation on to be able to get the data from FMS,
5 and that's what we could do now. And that's what
6 the figures I cited to you came out of the FMS
7 data collection. And it's, it's improving each
8 year since then.

9 CHAIRPERSON REYNA: So, so the
10 information, we're still in the technological
11 capacity issue is dealt with, but now, now you're
12 referring to the next obstacle, which is the data
13 entry, receiving from the agencies.

14 ANDREW SCHWARTZ: Well, that's what
15 could be an obstacle. I'm hopeful that it's not.
16 I'm hopeful that it's been going in, the
17 subcontracting data.

18 CHAIRPERSON REYNA: And, and the
19 subcontracting data, because this is not just
20 subcontracting, this is also prime contracting, as
21 far as LBE is concerned.

22 ANDREW SCHWARTZ: Right. Prime
23 data is going to go in FMS all the time, there's
24 no way the vendors could get paid in that type of
25 thing.

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2 CHAIRPERSON REYNA: So do we--
3 right. So do we see that in the FMS 2 or 3?

4 ANDREW SCHWARTZ: Well, I don't
5 know if it's 2 or 3, but it's in, I use the term
6 FMS, that we get, get it out of, yes.

7 CHAIRPERSON REYNA: Right. Could
8 you let us know with further clarity whether or
9 not it's FMS 2, FMS 3, because we're trying to
10 access the information.

11 ANDREW SCHWARTZ: Oh, you think it
12 is FM--

13 GREG BISHOP: John, so, sorry, FMS
14 2, well, FMS 3 is an upgrade of FMS 2.

15 CHAIRPERSON REYNA: Mm-hmm.

16 GREG BISHOP: So, it's everything's
17 coming from FMS 3.

18 CHAIRPERSON REYNA: Okay.

19 GREG BISHOP: Yep.

20 ANDREW SCHWARTZ: Thank you.

21 CHAIRPERSON REYNA: All that lingo.
22 I want to thank the Department of Small Business
23 Services, my colleagues, my Co-Chair, the staff
24 that worked on this hearing. I want to make sure
25 that we apply the April 1st as a deadline to be

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2 able to further engage with the Department of
3 Small Business Services, in reaching the ten
4 percent goal of this program. I think having
5 programs such as the LBE, provides opportunity
6 across the board, and it's important that we
7 continue to hold ourselves accountable as a
8 government to be able to assist small business in
9 the City of New York. I know that the City has
10 not conducted a market analysis as to what is out
11 there regarding businesses that don't exist that
12 we should be encouraging and have had the
13 conversation with City Hall, with the Deputy Mayor
14 of Operations to be able to assist us in
15 identifying holes in the market. And figuring out
16 ways in order to get more companies mentored or
17 started, to be able to service the City of New
18 York. I'll give you an example of pier work, you
19 know, we're developing, redeveloping our
20 waterfronts across the City, along the Hudson
21 River, as well as the East River. And there's
22 only one contractor. That is not by anyone's
23 fault other than perhaps the market doesn't even
24 realize that. And so, I hope that this is an
25 opportunity for us to engage in several prongs to

1
2 be able to give the environment, the culture, a
3 small business entrepreneur startup or existing
4 small business, the interest in seeking this
5 larger picture of what is out there, where the
6 holes are, and how they can help the City of New
7 York.

8 ANDREW SCHWARTZ: No, we certainly
9 share that. And in that case, we'll certainly
10 look at peer pressure to get us [laughter] a
11 vendor.

12 CHAIRPERSON REYNA: Thank you.
13 Thank you, Commissioner.

14 CHAIRPERSON MEALY: Thank you.

15 CHAIRPERSON REYNA: We will now go
16 to the next panel. I'd like to call--and
17 Commissioner you have an excellent Assistant
18 Commissioner in Greg Bishop.

19 CHAIRPERSON MEALY: [laughs]

20 CHAIRPERSON REYNA: I just want, I,
21 that cannot be understated. I know that we don't
22 make his life easy, and he's probably one of what,
23 three staff unit, working on all of this?

24 ANDREW SCHWARTZ: Well, within the
25 larger world, there are more, but John Chapman, as

1 well, and Greg Bishop, he's, these guys have--

2 CHAIRPERSON REYNA: John, I wasn't
3 leaving you out.

4 ANDREW SCHWARTZ: Tremendous work
5 in the area of helping small businesses win
6 contracts. John is on the agencies day in and day
7 out. And--

8 CHAIRPERSON REYNA: Thank you very
9 much, both of you. I just wanted to make sure
10 that you understood how we have come a long way,
11 and I only want us to continue to go further.
12 Thank you.

13 ANDREW SCHWARTZ: Absolutely, thank
14 you.

15 CHAIRPERSON MEALY: Thank you.

16 CHAIRPERSON REYNA: I'd like to
17 call Reginald Swing, Swinney, I'm so sorry,
18 Reginald Swinney, it looked like a G here, from RS
19 Painting--

20 REGINALD SWINNEY: Yes, ma'am.

21 CHAIRPERSON MEALY: --Company,
22 Incorporated; Joe Grifferberger [phonetic], Valley
23 Tree Landscape; and Andy I don't know if staffing
24 is going to stay from Department of Small Business
25

1
2 Services? Fantastic. Nicholas ... Spirius
3 [phonetic]. Oh [laughs]

4 CHAIRPERSON MEALY: Come on down.

5 NICHOLAS SPIRIUS: I just have one
6 questions.

7 CHAIRPERSON MEALY: You can come on
8 up and ask. Let it be on the record.

9 [pause, background noise]

10 CHAIRPERSON REYNA: And this is the
11 last panel. I don't have any other witnesses
12 listed.

13 CHAIRPERSON MEALY: Any of you
14 young men can jump in and start. Just identify
15 yourself.

16 JOE GRIFFERBERGER: Want me to
17 start off?

18 MALE VOICE: Yes, go ahead.

19 JOE GRIFFERBERGER: Okay, I do have
20 a prepared statement, which the gentleman is
21 presenting to the Council. But in response to
22 some of the matters I heard this morning, if it's
23 Councilman Eugene asked, you know, what are some
24 of the problems small businesses face? Well, in
25 regard to LBE, LBE is a very--

1
2 CHAIRPERSON MEALY: Could you move
3 the mic a little closer to you.

4 JOE GRIFFERBERGER: Sure.
5 Specialized program that really deals with
6 companies that service, they act as a ancillary
7 services to the construction industry. So that
8 being said, in the construction industry, you have
9 some unique issues there that are different than
10 retail or manufacturing. We're dealing with
11 prevailing wage, for one thing. The lowest rate,
12 really, on any contract is a laborer's rate, which
13 is about, just approaches \$80 an hour, with the
14 supplemental benefits. So, after careful analysis
15 of that with my accountant, and other contractors,
16 it costs the contractor \$100 an hour out of his
17 pocket to put a laborer in the field, \$800 a day
18 for one man. When you couple that with the fact
19 that you may not get paid on a contract for six to
20 nine months, those are some issues, and some
21 reasons that some people would walk away from the
22 opportunity to work in the construction industry.
23 If you put five or six laborers on the job, you
24 could be easily talking \$4,000 to \$5,000 a day in
25 payroll, and you'd need several hundred thousand

1
2 dollars to finance your own operation, for one,
3 for one. Another issue that he, the gentleman
4 that was sitting in this seat, I'm not sure if
5 that was Mr. Bishop, talked about back office.
6 I'm fortunate, I employ a fulltime bookkeeper, and
7 a secretary in my office, and the paperwork from
8 the City, including the application process for
9 LBE is quite onerous, cumbersome, difficult, and
10 if I had to do it myself, I would throw it in the
11 garbage. And I mean to be, you know, quite
12 honest, I wouldn't--

13 CHAIRPERSON MEALY: - -

14 JOE GRIFFERBERGER: [interposing] I
15 wouldn't be able to take myself out of the field
16 for that long to complete that paperwork. And
17 that's only one City agency. I have to do a
18 Vendex, I have to be approved by Parks, I have to
19 maintain all kinds of various certifications,
20 undergo training. We have to, in my industry, we--
21 -I'm a certified arborist, and a nurseryman, so I
22 prune and plant trees. The pruning requires us to
23 have certification to work around electrical
24 hazards, which we have to document and show to the
25 City each year. Then I have to have other

1 certification to work with plants and the
2 Department of Ag and Market. So there's a lot of
3 certification. With that said, I would like to I
4 guess read my statement at this point, if
5 everybody's got a copy of it. Dear Council
6 Members, thank you for holding this hearing and
7 expressing obvious concerns regarding the status
8 of the LBE program. While the issue is a subject
9 of, while the issue of LBE is a subject of New
10 York City Council's Committees on Contract and
11 Small Business interests, I would like to bring
12 several issues to your attention. At the 2008
13 meeting I was gravely disappointed the first
14 Deputy Commissioner Andrew Schwartz, Department of
15 Small Business Services, could not stay for
16 concerned parties' testimony. Their inability to
17 avail themselves of any questions you might have
18 had due to issue raised during testimony was a
19 lost opportunity to substantiate where the program
20 is and if any remediation is possible. While the
21 issue is a subject of New York City Council
22 Committee on Contracts and Small Business--I'm
23 sorry, that got a type. As mentioned in your
24 testimony earlier, the LBE program is one of the
25

1
2 oldest and smallest, yet smallest. This in no way
3 reflects poorly on the program or its
4 implementation. This is because LBE is a very
5 specific program designed to assist qualifying,
6 New York Construction firms to obtain
7 subcontracting opportunities on large scale City
8 projects. The LBE program assisted local small
9 businesses that provide specialty services vital
10 to the completion of large construction projects.
11 The special nature of the trades often requires
12 licenses, certifications or specialty equipment
13 that is not practical or economical for prime
14 contractors to maintain. The highly skilled
15 nature gives rise to small subcontractors that
16 offer the expertise required. You mentioned
17 earlier the dock building. I'm sure that's a
18 highly specialized type of equipment needed, to
19 refurbish the piers. Often sometimes the
20 equipment involved in some of these operations, I
21 have approximately a million dollars of
22 specialized equipment, it's only good to plant
23 trees or to prune trees. I can't go out and pave
24 a road with that type of equipment. These small
25 companies often design their services and

1 capabilities and capacities to meet the needs of
2 general contractors performing large contracts.

3 These small companies are dependent on the
4 subcontract relationship for their survival.

5 Unlike WMBE, LBE is utilized only on construction
6 contracts. LBE has no bearing on the broader

7 citywide procurements. Current LBE program no

8 longer mandates a ten percent participation goal

9 for LBEs. The current program favors MBEs, there

10 is no longer a participation goal for W, women

11 based enterprises in most construction contracts,

12 either. So the current program favors MBEs and

13 excludes the LBE from contract opportunities.

14 This is a devastating situation for small

15 companies that have faithfully participated in the

16 LBE program. Companies that have invested heavily

17 in planting equipment, staff and training, no

18 longer have a market for their services. The

19 current WMBE mandate eliminates the LBE's ability

20 to compete and obtain contracts. A summary of the

21 current problems. Without a participation value,

22 LBE has a limited value. If there's not a ten

23 percent goal, or if the threshold is, "Okay, we're

24 only going to give you contracts that are over \$2

1 million, but we don't have any contracts for an
2 LBE that are over \$2 million, then the program has
3 no value. In a desire to meet WMBE goals, LBE
4 goals are pushed out of the market. The
5 percentage of LBE firms, and this was going back
6 to 2008, recertifying remains high. LBE firms
7 that provide specialty services required on the
8 projects, hope to stay in business, and that's the
9 reason they maintain this certification. That's
10 why I've maintained my certification. They say to
11 win it you have to be in it; well, if I give up
12 and I quit, and I become one of the fewer and
13 fewer companies that maintain my certification,
14 I'll have no voice on this panel. Certification
15 of new firms is down due to lack of participation
16 goal for LBEs. I have gone through that list
17 myself, I've called the other LBEs, and I've asked
18 them to participate in this forum, and they said,
19 "What's the use? There's no participation goal,
20 there's no point in being an LBE. I'm not going
21 to fill out all that paperwork for nothing." The
22 service classification barrier. Construction
23 contracts, and remember LBE is strictly for
24 construction contracts. Construction contracts

1
2 require prime contractors to submit a certain
3 percentage of services to MBE firms. They call it
4 a goal; in reality it's very close to a
5 requirement. Although many special services are
6 required on large construction projects, only a
7 small percentage of the services qualify towards
8 MBE utilization goals. For instance, trucking and
9 site security personnel, like if you see a
10 gentleman or a young lady wearing a security hat,
11 or security uniform. They are now classified as
12 standard services and even if an MBE firm, even if
13 it happens to be an MBE firm that's providing that
14 service, these services do not count towards the
15 MBE goals. The narrow scope of services
16 categorized as construction, and therefore
17 qualifying for MBE utilization goal, has two
18 detrimental consequences. Contractors are forced
19 to meet their MBE goals using only a few of the
20 trades and the services they require. They might
21 need to hire 50 or 60 subcontractors, but only a
22 dozen of those contractors may qualify to meet MBE
23 goals. I have included on the back a list of
24 services, and there's probably about 50 back here.
25 I don't believe it's totally comprehensive, but

1
2 what, the point it makes is, how few of these
3 services are listed as construction, and therefore
4 qualify as a, as an LBE or MBE goal. LBE
5 subcontractors that provide services that count
6 towards MBE utilization, either lose market share
7 or stand by as others who are willing to employ
8 questionable practices take advantage of the
9 system. Six, general contractors trying to comply
10 with the WMBE are forced to give up satisfactory
11 relationships they have maintained with LBEs in
12 order to meet WMBE mandates. Seven, the list of
13 certified firms from SBS includes companies with a
14 wide variation in capacity and ability. SBS
15 certification does not ensure competency or
16 capacity to perform. One day when I called up SBS
17 and I said, "You know, you have a contractor
18 listed there who's, doesn't have certification
19 from New York State, which is a requirements to
20 work on a City project," and they said to me,
21 "Well, his, the name of business says, 'Tree
22 Expert,' so he must be a tree expert." And I
23 said, "Well, I could call myself anything I want
24 but that doesn't mean I'm, I'm an expert by any
25 means, and it doesn't mean he's gotten any

1 certification or done anything to ensure that
2 he's, knows how to do the proper job." Another
3 issue with that is if you look at the SBS list,
4 some people will list every possible service
5 imaginable under their firm. They do fencing,
6 they do water testing, they do everything.
7 Anything that they can do to get a hand on one of
8 these jobs, they list it, because they'll take a
9 job and they'll go out and find somebody else to
10 do the job under their, under their name. And
11 I've been approached many times by other
12 contractors asking me to subcontract for a
13 subcontractor, which is illegal under DDC and DEP
14 criteria. Contracting agencies have a limited
15 ability, or motivation, to ensure that WMBE firms
16 are in fact performing the work themselves. The
17 first criteria are that the MBE participation goal
18 is met. The quality of the work performed and
19 maintaining strict adherence to doing the work
20 with their own employees and equipment, is
21 secondary to meeting the participation goal. It
22 would take a very limited investigation to prove
23 that point true, if, in my industry in particular,
24 if anybody took the trouble to talk to any of the
25

1
2 department heads of forestry in all five boroughs,
3 or capital projects at Parks at the Olmstead
4 Center, that's in charge of all the park, park
5 reconstruction, if they told you what's really
6 going on, the hair would stand up on the back of
7 your neck. You wouldn't, you wouldn't like what
8 you hear. The current situation creates an
9 environment that encourages bending the rules to
10 meet onerous MBE goals. The burden of meeting MBE
11 participation goals carried on the shoulders of
12 just a few services--I'm sorry, this got a little
13 messed up. But what I wanted to say was
14 inequalities should not be balanced on the backs
15 of just a few services, such as arborists,
16 landscapers, painters and demolition crews. All
17 services, such as auditing, photography, site
18 security, soil testing, trucking, water testing,
19 any service that's utilized on a construction
20 contract, should count towards an MBE goal, and in
21 my mind for that matter, towards an MB--LBE goal.
22 If you're trying to promote small businesses,
23 what's wrong with a guy who wants to have a water
24 testing business? Maybe that's something he can
25 start by himself. My business, you know, I

1 started it with a pickup truck and a chainsaw 34
2 years ago, but I can't jump into City contracts.
3 I, you need \$100,000, maybe more, in the bank, to
4 finance yourself. But certainly some aspects of
5 these jobs, somebody could start with a small
6 budget. The photography, it's often done by one
7 or two people. So, depending on what the scope of
8 the work is, there are definitely opportunities
9 out there for both minority enterprises, women
10 enterprises, and locally based or small
11 enterprises. The current LBE certification
12 program is in jeopardy of becoming irrelevant.
13 Without participation goals, the program loses its
14 primary function, which is to provide subcontract
15 opportunities for certified firms. Thank you.

17 CHAIRPERSON REYNA: Thank you.

18 CHAIRPERSON MEALY: You said you
19 had a question.

20 REGINALD SWINNEY: I'm not going
21 away too long, I'm going to get a little water.

22 [laughter]

23 [pause, background noise]

24 REGINALD SWINNEY: Good morning,
25 everyone, and my name is Reginald Swinney, I'm the

1
2 CEO of R&S Painting. A little small history of my
3 firm, I've been certified for more than 15 years
4 with every certification that the City, the State
5 has offered. I'm here today to testify, to bring
6 some true light to how great the program can be,
7 how I've seen where the program has went in the
8 last ten years, and to give you some true, true,
9 hardcore information. And I supplied the panel
10 with some serious documentation that can really
11 help eradicate the whole issue on the MB--the LBE
12 program, and I'm ready to get started. The City
13 of New York has a situation where that there's no
14 compliance. You have so many contracts going out,
15 and the budget that I heard today is really
16 alarming because out of \$12 billion, I do know
17 that we can get this right. I have supplied you
18 the first document that I've offered is how the
19 agency determines how they're going to administer
20 an MBE goal or an LBE goal. And this is before a
21 contract. So, say for instance if you're going to
22 big on a contract, you're a prime, you're a sub,
23 the agencies put out the contract. They assign
24 goals to the contract. What I have found with the
25 city, is when you do, if you look at the utiliza--

1 subcontractor utilization form that I supplied you
2 with, and this is before bid, you see no goals,
3 you see the listed in the race/creed columns, and
4 there's no goals there. So, if I'm a general
5 contractor, and I'm going to bid on a project, and
6 I open up the bid package with the scope of work,
7 all of the contract documents, and I get to the
8 utilization for LBE, MBE or--and I think we have a
9 new one out here called the SBE, that was created
10 by the Economic Development, I don't know how that
11 get a part--but you'll see that if I'm a vendor,
12 hey wow, there's no specific goals mentioning on
13 that subcontractor utilization form. So you leave
14 open the door for someone to try to skate around
15 the rules. I believe that if the goals are put in
16 the contract, subcontractor utilization form,
17 whether they be for Asian, black, white female,
18 whatever, if you got five, ten, 15, 20, it gives
19 the general contractor the ability to start really
20 honing down on who he's going to solicit to meet
21 his contractual obligations. So that's the first
22 problem that I notice that, whether it be DDC, or
23 any other City agency, they're not really
24 identifying these goals, percentages, from the
25

1 point of contract, from the very, very beginning.
2 So, if I'm the general contractor, I'm like, "Hey,
3 you know what? I see the race/creed, you know,
4 breakdown, gender breakdown, I don't have any
5 goals." So, we'll do what we always do:
6 basically nothing. To the point where they will
7 be awarded, and the question still remains: Where
8 am I meeting my percentages at? 'Cause you didn't
9 list 'em in your contract documents. The next
10 thing I supplied the panel with, I was fortunate
11 enough, I think by being in business for 15--I
12 started in '93 to this day, I was fortunate enough
13 to be able to take the procurement rule and
14 regulation of the City of New York, early. And I
15 think SBS, you can certify as many folks as you
16 want, as many businesses as you please, but when
17 these businesses get certified, they should
18 automatically be handed the procurement rules and
19 regulations of the State, City of New York,
20 automatically. They'll, they'll educate
21 themselves just by reading that language. And
22 that'll give them a little more insight on how
23 they're going to navigate through this system and
24 this process. If I'm, if I'm Asian, for instance,

1
2 and I'm, you know, come in that I'm a manufacturer
3 or I have a specialty trade that I do, whether
4 it's, make metalwork, or anything like that, and I
5 get that, that information, I'm going to know how
6 and what to do, and what not to do, by just
7 following the procurement rules and regulations of
8 the City of New York. Just getting the
9 understanding of what an agency is supposed to do.
10 The City. The next thing, I was fortunate enough
11 that being a contractor, and we bid a lot, you
12 know, that I was listed as a potential
13 subcontractor. I'm not quite sure whether it was
14 an LBE participation or an MBE, but I think it was
15 an LBE, where that I was listed, and based on the
16 award, the contractor has listed its ex--you know,
17 certain firms to perform certain services, we were
18 listed and just I was shocked to get a letter,
19 I've supplied you with the letter of the audit,
20 they were doing an audit. And the audit was done
21 based on seeing if the contractor really engaged
22 my firm. Meaning, he's been awarded based on his
23 utilization that he submitted. Now that he's been
24 awarded the contract, I think that some of the SBS
25 members, or whoever's in charge or responsible, to

1
2 really make sure that these goals, that he has
3 submitted, for award, you know, you have a pre-
4 award, that they adhere to these goals, and the
5 money that they put down. So, basically, what had
6 happened was we got a outside firm, a third party
7 firm, not a City firm, and they were doing an
8 audit on this particular contract. And I supplied
9 you with that form. And if you read you'll see
10 the mechanism and how the form, how that audit
11 worked. The audit worked as this. They called,
12 they--I received the letter, and the general
13 contractor that listed me received the letter.
14 And do you know, we got a phone call. We didn't
15 get a phone call from the City or SBS or the
16 contracting agency. We got a phone call from the
17 general contractor. And the phone call went like
18 this. "Hey, what's going on, Mr. Swinney? I got
19 a letter from the City, some outside third party,
20 and--" and I said, "Yes, I got the same letter.
21 And if you read the letter, they're ordering your
22 contract in your subcontractor utilization to find
23 out if in fact you plan on using us for the dollar
24 value that you put in on the contract, at award."
25 And I was so happy to see that. Because within

1
2 three days, we got a contract. The contract came,
3 and I was so happy, we talked, he said, "I don't
4 know nothing about this Asian/Race, you know, all
5 of these little criterias," and I think the
6 general contractor's, the primes need to be
7 educated on actually what is the policy. Because
8 to be so surprised that you would even get a
9 letter that someone is reviewing the fact that you
10 listed X amount of firms, you slated to say that
11 you will engage these companies, they're LBEs, and
12 even some cases MBEs, but you haven't sent the
13 contract to anyone, you--I don't know why you're
14 surprised to see that the City is following up.
15 Now, I don't know what happened with that process,
16 because I know, I don't think the lady is no
17 longer working there, at the agency, that was SBS,
18 but I thought that was the beginning of the
19 change. And I would just love to know what
20 happened with that particular mechanism of
21 backtracking and holding people accountable,
22 whether it be the minority sub, the LBE, and the
23 prime. That is crucial, you have nothing if
24 you're not able to do that. The next document
25 that I supplied the Council with, when you work

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2 for the MTA, which is quasi--you know, they get
3 the federal money, they get the State money, and
4 maybe sometimes City funds, or whatever the case
5 may be. I'm not quite sure, but if, you know, I'm
6 a little nervous, but I do know what I'm getting
7 at. Every single time I have bid to the MTA,
8 if a prime contractor has reached out to me, and
9 he sent me a letter of intent, that's a document,
10 it's a one page document, I supplied you at the,
11 on the panel with, the Small Business Committee,
12 that every single time my firm has received a
13 letter of intent, we were on that contract. The
14 letter of intent from the MTA side of things,
15 where it's federal funds, or state funds, but I
16 think they use it for both, that is a Class D, or
17 if I'm not mistaken, that's a felony. If you
18 submit on award, a letter of intent, showing the
19 firms, the DBE firms or the small businesses that
20 you will be using, and you fill that out, the
21 small business filled that out, the subcontractor
22 filled that out, submitted it to the prime, and at
23 award the prime submits that part of his
24 utilization package, you are 99.9 percent will
25 work on that job. But if they do the opposite of

1
2 what they submitted at award, that could be a
3 felony. I supplied that for the City, because so
4 many times, well we'll get a phone call from a
5 general contractor or a prime, "Hey, how you
6 doing? Are you LBE?" Not asking who we are, but
7 "Are you LBE or MBE? And listen, we're bidding on
8 a project, actually we won the project, we need to
9 meet our goals, can I get your Federal ID number?"
10 We are so willing to give them that federal ID
11 number, because I'm praying then hope that they
12 list me. 'Cause once you list me, at the MTA, on
13 that letter of intent, and you do not utilize us,
14 there's a lot of, lot of penalties to pay. I
15 don't see anyone fooling around with that. They
16 used to get away with it, but enforcement has been
17 picked up, and they, they just can't get away with
18 that anymore. I don't think the City has anything
19 that would have, help a prime, help a prime, not
20 hurt these primes, 'cause there are some good
21 prime contractors that will hire small minority
22 firms, locally based business. So if you have a
23 document created, that functions similar to the
24 letter of intent, I don't see anybody getting away
25 with anything, because you then have the prime

1 contractor submitting you a document that is part
2 of his bid package, that he is stating prior to,
3 you know, in the award process, that here's these
4 documentations, these are the subs that filled it
5 out, here's the IN number, here's their
6 certification information, here's the amount of
7 their contract, that will be supplied to this
8 vendor. So, I really know that if the City can
9 incorporate some type of document. Now I do know
10 DDC has a form. But I don't know how much teeth
11 it has, because I've dealt with a lot of issues
12 with DD--not, not bad, but it's all about
13 business, so you know, there's issues. You're
14 going to eliminate all of the headaches for the
15 prime contractor. He's going to identify the
16 companies that he has truly vetted himself, that
17 he knows that they could perform this work. If
18 he's having a problem finding someone that he has
19 a specialty trade or something that he--he can go
20 to the City, they can find that out. But I can't
21 understand how the City has certified so many
22 companies. And then, you know, unfortunately I
23 don't know this gentleman here, but I needed to
24 just get in, and I didn't want to be last, I was
25

1
2 going to be last, 'cause I wanted to hear what
3 everybody had to say. There's a ton of companies
4 out there that could do this work. They, they're
5 a little down on their luck right now, especially
6 the minorities, the black, the Latinos, the Asian
7 communities. You know, we have it rough, you
8 know, there's a big disadvantage. So, when I hear
9 people say, "Well, I can't find someone," or this
10 and that, I'm noticing that he's a tree gentleman,
11 you know, you do the landscaping. Well, there's a
12 great company called Flower Works, I mean,
13 everybody knows them. And I get a little annoyed
14 when we hear that the small business or the
15 minorities, we don't have what it takes. You'd be
16 surprised. I mean, I'm not throwing shots at
17 anyone, I'm here to tell the truth today. And
18 you'll be surprised. You, if you want to hire who
19 you want to hire, you're not going to find
20 anybody, because if you're doing a good outreach,
21 and you're following the rules and regulations,
22 because it's a privilege to be a contractor in the
23 State of New York, in the City of New York. It's
24 a privilege to be certified, no matter whether
25 you're LBE or MBE, or State. Just remember, I've

1
2 they're interested in, if they see that they can
3 do the work, then they will be an asset to that
4 contract, that if selected. So, a lot of us know
5 where we don't fit in, but where we do fit in,
6 we're very aggressive. And we're there. I
7 believe the next form that I gave you, naturally I
8 gave you my testimony, and my testimony would've
9 been like just basically allowing you the City and
10 the Council to understand that you have to audit
11 these contracts. You have to really hone down on
12 these contracts and have some checks and balances.
13 But when you award contracts, and somebody submits
14 a goal utilization package, there has to be
15 someone, a mechanism, a process or a--something to
16 just make sure that these contractors are not just
17 listing people and in some cases they're not
18 qualified to do the work. I mean, if you don't
19 submit 941s, those are quarterly tax returns.
20 That when you have workers, you have 941s. If a
21 company doesn't have any 941s, something's wrong.
22 And they're getting, they're getting contracts.
23 One of the major, major things that I think our
24 City needs, I love my City, I love the, the vibe,
25 you know, everything about the City, even though

1
2 I'm not happy with the way the Administrations are
3 doing things. But I, you know, I mean, it is what
4 it is. How about if we do this? I'm a prime
5 contractor. I'm winning multiple contracts. I
6 come into a community that has an LBE
7 participation goal on it. And I'm in that
8 community, because when you say LBE, and I need
9 people to understand what LBE means. LBE means
10 the community children, the community families,
11 the community stores, the merchants, everything
12 about a community. And in order for a community
13 to even grow within its own doing, and to build
14 them all, increase their tax base, we have to get
15 people working in these communities. There's no
16 excuse for any contractor, whether it be minority,
17 nonminority, to skate around with this. I've
18 watched this MWBE, LBE, DBE, SBE, LB--whatever you
19 want to call it, pawn, this has been a pawn, a
20 tool to really put people, I mean, hurt, hurt a
21 certain population of the City. I mean, it's
22 almost genocide, the way things are going right
23 now, and I don't want to hear about the economy.
24 I mean, nobody did an impact study when 9/11 hit
25 on small minority businesses. We were barely out

1
2 of business, and it put a lot of people out of
3 business. So, when you have a scorecard, if you
4 use a scorecard, teachers are being evaluated,
5 think some of the EEO officers throughout the--all
6 the ackles [phonetic] have to be really judged for
7 their performance on a year in and year out basis.
8 Some of them are there for years. So, let's
9 score, let's have a scorecard on some of these
10 contractors that are winning these contracts in
11 these distressed neighborhoods, basically, 'cause
12 there's a boom going on in New York City, there's
13 no--I mean, I, I hear what everybody's saying, but
14 I see a lot of cranes, there's a lot of action out
15 here. Long term projects that get out to bid,
16 they could be in the billions. And the game just
17 keeps going on. But when you start doing merit,
18 when you start taking a look at these prime
19 contractors that are working in these areas,
20 because all of the discretionary money that comes
21 from Council, or earmarked money, or whatever way
22 you want to call it, when someone brings in funds
23 in the community, they're truly hoping and praying
24 that their constituents, their businesses, their
25 tax voting public, gets a fair shot at working on

1
2 these projects. We don't need a contract that
3 telling us whether we qualified or not. We need a
4 scorecard, we need a scorecard to show that say
5 like you were on a DDC project, and you won this
6 bid, and you submitted your utilization, and you
7 just didn't meet your goals. Or, you just gave
8 the agency so much legwork to just call you and
9 track you and ask if you're, did you hire
10 somebody, whatever. If you start keeping score on
11 these vendors, whether it be the minority vendors
12 or the subcontractors the prime, you're going to
13 start weeding out a lot of the bad apples that
14 just won't comply with your program. They
15 obviously feel they, I mean, I get guys calling
16 me--we're smart enough to know how to navigate.
17 But after hearing SBS speak, I was just jotting
18 down so many different things because, you know,
19 they're kind of like friends in a good way, and
20 you know, I try to be cordial when I go there, but
21 there's a lot of things that is contradictions to
22 what they were saying, that I don't agree with.
23 But that scorecard will eliminate a whole lot,
24 because if you get a score, say like you do on a
25 contract, and it's a \$7 million or a \$10 million

1 contract. You have MWBE goals, for instance, and
2 I know it's not all about MWBE, but if you have an
3 LBE goal there, let's see how that contract winds
4 up ending. I mean, we have the Comptroller
5 watching everything, they sign off on a lot of
6 contracts, let's see if we can look at a method of
7 giving scores again, to JCs that just won't
8 comply. Just, you know, hey, listen, A, B, C, you
9 get an A, you've done everything that the contract
10 documents have asked you, you've followed the
11 utilization portion of the particular rules and
12 Article, Local Law Number 29. You've done good.
13 Especially on the subcontractors. If the subs get
14 on the project, the prime is having difficult
15 times, 'cause I know of some nonminority prime
16 contractors that really had a rough time with some
17 of these minority contractors. You know, they
18 think because they get certified it's a ticket to
19 the City, so they don't really have to perform.
20 That is a big problem. We have so many pass-
21 throughs in this state that it's unbelievable. So
22 we need to start keeping score on who's doing
23 what, how they're doing. If they've made, brought
24 that project in under budget, done the right thing
25

1
2 by small business, we need to say, "Hey, you know
3 what, you get a A score, and when we, when you're
4 up for review again, we'll take a strong look at
5 how we do things." I have another thing that I
6 want to bring to--

7 CHAIRPERSON REYNA: Mr. Swinney,
8 can you wrap--

9 REGINALD SWINNEY: I'm going to
10 wrap it--

11 CHAIRPERSON REYNA: --your
12 testimony--

13 REGINALD SWINNEY: Yes, ma'am, I'm
14 sorry.

15 CHAIRPERSON REYNA: --because I
16 know that you have a second page here.

17 REGINALD SWINNEY: No, no, that--

18 CHAIRPERSON REYNA: Okay.

19 REGINALD SWINNEY: --I'm not even
20 getting to the second page--

21 CHAIRPERSON REYNA: Okay.

22 REGINALD SWINNEY: --but, I find
23 now that a lot of things are being shortlisted,
24 meaning they're selecting certain companies, per
25 se. So, a lot of the bids are not just public

1
2 advertised and it goes out and anybody that can
3 bid on it. When you start to give out these
4 contracts in these locally based areas, you have
5 major general contractors that are in these
6 locally based areas. We've got, and I mean,
7 everybody has a right to work, but when you're
8 talking about locally based, you should look at
9 the prime contractors. They're there. And when a
10 company comes out of New Rochelles or Yonkers,
11 they have no clue about the locally based
12 business, other than getting on a website that is
13 not updated to a certain point, and they bring in
14 their contractors from where they're coming from.
15 So, SBS has a lot, I didn't get their testimony
16 but I appreciate everything, I hope I made some
17 sense, but I mean, that audit process, that
18 scorecard, that letter of intent, that just
19 review--that, you know, and one last thing is so
20 important. When somebody gets awarded a contract,
21 it takes months and months for a general
22 contractor to submit a contract to this vendor.
23 And nine out of ten, the longer it takes for them
24 to submit a contract, that vendor's not going to
25 work. I have something going on right now, I'll

1
2 keep it private, but it's nasty, it's not fair,
3 it's a City contract, and I don't think SBS, I
4 look at SBS as a marketing element for the City.
5 They have not enforcement power, in my, in my
6 eyes, because I call all the time, and I think
7 they need Council to be around. There is a
8 problem at the bids, when people don't speak the
9 language. There is a problem with just some of
10 the ackles and some of the folks that just don't
11 really know, and, and that's my testimony, but I
12 appreciate everything. I'm worried about
13 repercussion, I came here today just knowing that
14 I have a lot to offer, you know, and we're good at
15 what we do as minority vendors, and I'm getting a
16 little worried about how I see my community just
17 dwindle, dwindle out of the way about the process.
18 It's not right, and it's even almost, you know,
19 it's against some of the Constitution of things
20 that we believe in as Americans and human beings.
21 Thank you.

22 CHAIRPERSON REYNA: Thank you very
23 much, Mr. Swinney, I just want to interrupt the
24 last panel member, introducing Mike Nelson from
25 Brooklyn, Council Member Nelson has joined, has

1
2 joined us. And I want to ask our last speaker,
3 and if you could just say your name, so that way I
4 know how to pronounce it correctly.

5 NICHOLAS SPIRIUS: My name is
6 Nicholas Spirius. Okay, I just have a question.
7 Listening to the New York City Solutions over
8 here, they were discussing that only 84--

9 CHAIRPERSON REYNA: Could you speak
10 into the mic?

11 NICHOLAS SPIRIUS: I'm sorry, that
12 only 84--

13 CHAIRPERSON REYNA: Intro-
14 reintroduce yourself, take the mic, own it. Very
15 good.

16 NICHOLAS SPIRIUS: Okay. Sorry.

17 CHAIRPERSON REYNA: Okay.

18 NICHOLAS SPIRIUS: My name is
19 Nicholas Spirius.

20 CHAIRPERSON REYNA: Thank you.

21 NICHOLAS SPIRIUS: Okay. I just
22 have one question. As the New York City business
23 solutions center gentlemen were discussing, on
24 their website there are only 84 vendors listed as
25 LBES that company can get to, when there are

1
2 3,500. I mean, LBEs, as there are 3,500 MBEs
3 listed working with them. They're interviewing us
4 anyways, so I don't understand where they're
5 making the cutoff between the MBE and the LBE.
6 That's my one question. And the second part is
7 that if we need certifications to go after SCA
8 work, Empire State work, federal government work,
9 these are all institutions that are doing business
10 in the City of New York and why there is no place
11 to have a one-stop shop to be able to get all of
12 these certifications together, if we do qualify
13 for them. And 'cause we're running around like
14 idiots and I'm redoing paperwork, and everybody
15 then's asking for another thing, and another thing
16 and another thing. So, those are the questions
17 that I have. And I just don't have answers for
18 them.

19 CHAIRPERSON REYNA: So, I want to
20 thank each and every one of you for taking time.
21 I know that you're taking time, I know that you're
22 running businesses, and that's where your focus
23 should be. But it is important that you take the
24 time to share with us some of your frustrations
25 and experiences because those are the telling

1 stories that allow us as a legislature to be able
2 to find solutions and implement solutions and
3 implement solutions that make sense to make the
4 process less cumbersome. I have heard the
5 criticism of, loud and clear, of the issue with
6 the scorecard, the auditing, the lack of auditing,
7 the enforcement, you know, the teeth behind the
8 agency as to how to hold their cohorts responsible
9 for information, the accuracy of the data, the
10 issue of making sure that these general
11 contractors are following through with what
12 they're submitting, as opposed to just utilizing
13 your information. One of the things I wanted to
14 just ask is, are you each LBE certified currently?
15

16 PANEL: Yes.

17 CHAIRPERSON REYNA: If you could
18 just say that into the record.

19 REGINALD SWINNEY: R&S Painting is
20 currently certified as an LBE firm.

21 CHAIRPERSON REYNA: Thank you.

22 NICHOLAS SPIRIUS: Sharra
23 [phonetic] Construction is certified.

24 JOE GRIFFERBERGER: Valley Tree and
25 Landscape is certified.

2 CHAIRPERSON REYNA: Thank you. And
3 are each of you currently in a procurement process
4 bidding for a contract?

5 REGINALD SWINNEY: I'm involved
6 with, I constantly bid, but I'm involved with a
7 bidder bidding process that I don't want to
8 mention because I just don't think I should
9 mention it.

10 CHAIRPERSON REYNA: You're in a
11 bidding process currently.

12 REGINALD SWINNEY: Right, it's not
13 good.

14 JOE GRIFFERBERGER: I'm constantly
15 in a bidding process, but it's not through the LBE
16 program anymore, 'cause there's no longer an LBE
17 goal. I'm not called--

18 CHAIRPERSON REYNA: I just want to
19 correct that.

20 REGINALD SWINNEY: I don't
21 understand.

22 CHAIRPERSON REYNA: There is an LBE
23 goal, is it ten percent, it is all over this
24 hearing, which is why I'm conducting this hearing,
25 with my Chair who had to excuse herself, Council

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2 Member Mealy. And so, the, the statement of
3 "there is no goal" is inaccurate, and I just want
4 to assure you that there is still a ten percent
5 goal.

6 JOE GRIFFERBERGER: All right, I--
7 I've seen my business drop by 50 percent, exactly.
8 And made it up in other areas, excuse me [clears
9 throat]. But I am not participating in any of the
10 City contracts I'm on as an LBE, to meet any type
11 of LBE goal, and I'm working for the same
12 contractors. They don't ask for my LBE
13 certification. And they all informed me that
14 there is no LBE participation.

15 CHAIRPERSON REYNA: Okay, that,
16 that's a problem.

17 JOE GRIFFERBERGER: Okay. And I
18 think--

19 CHAIRPERSON REYNA: All right, and
20 those are City contracts that those prime
21 contractors have.

22 JOE GRIFFERBERGER: Yes, that's
23 correct.

24 CHAIRPERSON REYNA: Okay.

25 JOE GRIFFERBERGER: I think you

1
2 might be surprised when you look at the recent
3 round in the last two or three years, there's been
4 no participation.

5 CHAIRPERSON REYNA: Okay. Yes.

6 NICHOLAS SPIRIUS: And we are in
7 the midst of bidding jobs.

8 CHAIRPERSON REYNA: Okay. And
9 currently, do you have a contract as an LBE
10 certified company?

11 REGINALD SWINNEY: Currently,
12 currently, we are in a bid negotiation as far as
13 price, for an LBE contract. I believe I've
14 filled, finished up within the last three years
15 maybe two small LBE contracts and that is, that,
16 that's, I can say over the years, I've done
17 several. And there are LBE contracts out there,
18 and I'm shocked that EDC is not here, because they
19 put out a lot.

20 JOE GRIFFERBERGER: I'm not
21 involved in any LBE contract at all. I work
22 primarily for DDC, Department of Design and
23 Construction, and was formerly like DOT, and they
24 don't have a participation goal that I'm aware of.
25 I also work for, I work for SCA, School

Construction Authority, they may have a goal.

CHAIRPERSON REYNA: And have you reviewed the contracts to refer to whether or not there is a ten percent goal as part of the contract?

JOE GRIFFERBERGER: Yes, for the ten percent contracts--

CHAIRPERSON REYNA: You reviewed it.

JOE GRIFFERBERGER: Yes. And--

CHAIRPERSON REYNA: And there is no ten percent LBE certification goal. Utilization goal?

JOE GRIFFERBERGER: I'm, I'm certain there is not.

CHAIRPERSON REYNA: Okay. And you are currently an SCA contract, and SCA does not have a ten percent utilization for LBE.

JOE GRIFFERBERGER: No, SCA may, may have that. They may have.

CHAIRPERSON REYNA: May have, but you have not reviewed that contract?

JOE GRIFFERBERGER: I'm not certain, I'm just--

2 CHAIRPERSON REYNA: Okay.

3 JOE GRIFFERBERGER: --not sure.

4 NICHOLAS SPIRIUS: Under the SCA,
5 I'm not sure either.

6 CHAIRPERSON REYNA: Because you
7 have a contract with the SCA currently?

8 NICHOLAS SPIRIUS: No, no, we're
9 currently bidding on one.

10 CHAIRPERSON REYNA: Okay.

11 NICHOLAS SPIRIUS: Okay.

12 CHAIRPERSON REYNA: Can you review
13 that, please, and get back to me.

14 NICHOLAS SPIRIUS: You got it.

15 REGINALD SWINNEY: Can I--

16 CHAIRPERSON REYNA: And is there--
17 I'm sorry--is there another contract you're
18 currently awarded?

19 NICHOLAS SPIRIUS: Not from the
20 City.

21 CHAIRPERSON REYNA: Okay.

22 REGINALD SWINNEY: This is why,
23 first of all, if people want to truly understand
24 the LBE program, it's a disadvantage program based
25 on, you can't be a million dollar contract or a \$2

1 million contract within the LBE program. So, if
2 you're one of those firms that if you can prove,
3 and even when earlier I heard that if you go, if
4 you try to get certified as an LBE and you list
5 your employees or the people that are in that
6 disadvantaged area, that they're not willing to
7 give up the tax information, or there's different
8 ways that you can prove that you are in a
9 distressed, locally based district area, we for
10 one, we have no problem doing that, and for two, I
11 don't think you can be a million dollar contract
12 claiming locally based disadvantaged, you know, to
13 a certain extent. I think there should be a cap
14 on that, I don't know if you're not getting
15 certified because of that. And I think these, the
16 two gentlemen next to me, if you handed out the
17 procurement rules and regulations of the City of
18 New York, Local 129, the law, you would truly
19 understand that these programs and this, it still
20 does exist. I think the agencies where you market
21 to, in some cases, may not have LBE participation
22 or it's not slated based on how the dollars come
23 in, or how they, you know, how, how they work it
24 out. But if you look at EDC, if you look at the
25

1
2 School Construction Authority, and if you track,
3 and if you actually read the bid documents, that
4 big folder, that big book, that normally the
5 primes pay attention to, but not the subs, that's
6 how we figure out how we're going to market
7 whether we tell 'me we're LBE certified or MBE
8 certified.

9 CHAIRPERSON REYNA: I appreciate
10 the clarity, and your specific experience to help
11 us move forward on the LBE program. There was, I
12 want to just share with you that, you know, the
13 LBE is not being replaced with MWBE, the LBE is
14 still in existence, and we have to do a better job
15 as a City to concurrently run both programs, and
16 reach utilization goals. And so, I want to just
17 make sure you understand that, that we leave with
18 certainty on that, this hearing. And
19 understanding that I myself from time to time go
20 into some of these contracts that are listed to
21 see whether or not the language in the contract is
22 referring to MWBE, LBE or EBE, as far as City
23 contracts are concerned. And I can tell you there
24 has been instances where neither of the three have
25 been listed. And so there are contracts and it

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2 begins with the language or the lack of referring
3 to these programs, that is the beginning of what
4 is an underutilized program. So, with that, I
5 want to thank you. I will definitely continue to
6 her form you, I know that you have certain
7 specifics that you are going to make available for
8 me, as far as what I have asked. And this
9 Committee is very happy to have heard a lot of
10 where our holes are, and hopefully we can work
11 together on fixing those holes. We have the
12 willingness of the Administration, which is a good
13 start, because we have to start changing the
14 culture within the City agencies, and we've come a
15 long way, so I'm, we're trying to ride that wagon
16 as we move forward, and we continue to have this
17 dialogue with you, the small business owners.

18 REGINALD SWINNEY: Can I just say
19 one last thing on my mind. I forgot to let you
20 know that we, I came here, and a lot of people
21 were calling me. We are hoping that when there's
22 an award for an MBE or an LBE, that we can go
23 online and actually see who's been awarded those
24 contracts. Then that'll help stop bidding to
25 these contractors when they call us up, because

1
2 they shop the numbers around. But we need to see
3 who actually, online, has won these bids. And
4 that'll give you your data on who's getting what,
5 the dollar amount, all in one shot.

6 CHAIRPERSON REYNA: Mm-hmm.

7 REGINALD SWINNEY: Thank you.

8 CHAIRPERSON REYNA: The
9 transparency is very important. And that's what I
10 want to be able to work on, with this
11 Administration. It's important because the lack
12 of transparency is leading to a lack of reporting.

13 REGINALD SWINNEY: Exactly.

14 CHAIRPERSON REYNA: Thank you.

15 REGINALD SWINNEY: Thank you.

16 CHAIRPERSON REYNA: Yes, sir.

17 JOE GRIFFERBERGER: May I make one
18 more comment? I like the idea on the report card,
19 I wish I had a report card, because if I could
20 come in here and say I've got an A+ for the past
21 30 years, rather than me telling you I have, you
22 would appreciate that fact. And then if you see
23 other contractors that are receiving award after
24 award, who have all various degrees of
25 noncompliance and capability of doing a proper

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2 job, and agencies that can't do anything about it,
3 because they're meeting a utilization goal, and
4 they don't have a choice, you mentioned before
5 some people just feel they have a free ticket to
6 run, you know, run a lousy operation.

7 CHAIRPERSON REYNA: Right.

8 JOE GRIFFERBERGER: And otherwise
9 they wouldn't even be in the business, they're
10 only there to take advantage of the opportunity
11 presented by the program. And I don't think
12 that's what you're looking for.

13 CHAIRPERSON REYNA: Right, no, and
14 we shouldn't be turning a blind eye, nor excusing
15 bad practices. And so, I liked the scorecard as
16 well, and it's something that I want to further
17 explore. And I will continue to have further
18 conversations as to how could we try to understand
19 what criteria would be necessary. And for that we
20 need the industries to be able to give feedback.
21 And so, think about what that criteria should be
22 as far as scorecard is concerned, so that we are
23 rewarding good practices, and not the bad ones.

24 REGINALD SWINNEY: Thank you.

25 CHAIRPERSON REYNA: Thank you.

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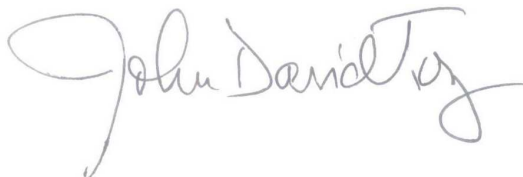
This meeting is adjourned. [gavel] Oh, Council Member James has joined us, before we adjourn. [laughter] And I wanted to just make note of that. Thank you all for coming, and have a wonderful day.

[background noise]

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "John David Tong". The signature is written in black ink and is positioned to the right of the printed word "Signature".

Date March 6, 2012