

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONTRACTS JOINTLY WITH THE COMMITTEE ON
ECONOMIC DEVELOPMENT

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16th Fl.

B E F O R E: HELEN ROSENTHAL
Chairperson

DANIEL R. GARODNICK
Chairperson

COUNCIL MEMBERS: Peter A. Koo
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Chaim M. Deutsch
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A P P E A R A N C E S (CONTINUED)

Michael Owh, Director & Chief Procurement Officer
Mayor's Office of Contract Services, MOCS

Jackie Mallon, First Deputy Commission
Department of Small Business Services

Jonnell Doris, Senior adviser & Director
NYC Mayor's Office of Minority and Women Owned
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Denise Richardson, Executive Director
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Tracy Robinson, Senior Policy Analyst
Human Services Council of New York

Laura Abel, Senior Policy Counsel
Lawyers Alliance

Quenia Abreu President
New York Women's Chamber of Commerce

Frank Garcia, Outgoing Chairman
New York State Coalition of Chambers
New Elected National Chairman
National Association of Latino State Chambers

1 COMMITTEE ON CONTRACTS JOINTLY WITH THE COMMITTEE ON
ECONOMIC DEVELOPMENT 4

2 [sound check, pause]

3 CHAIRPERSON GARODNICK: Good morning

4 everyone. Welcome to the Economic Development
5 Committee of the New York City Council. Today is
6 Thursday, June 22nd. My name is Dan Garodnick and I
7 in a moment will have the privilege of co-chairing
8 this hearing along with Council Member Rosenthal, the
9 Chair of the Contracts Committee. I want to thank
10 members and staff of both committees for joining us
11 for today's hearing, and we have present Council
12 Members Koo and Richards. Gentlemen thank you.
13 Today's hearing provides both committees with an
14 opportunity to review a critical piece of legislation
15 that will provide clarity for the many prime
16 contractors and subcontractors who participated in
17 the city's procurement process. Introduction 1615,
18 which has been introduced by Council Member Laurie
19 Cumbo and Council Member Rosenthal and others, will
20 ensure that whenever a city contractor brings on a
21 subcontractor to handle a portion of its contract
22 obligations, all parties involved will have access to
23 the same information about their rights under the
24 contract. This could amount to an overview of the
25 payment process, points of contact at city agencies

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2 or subcontractors in case they enter into a dispute
3 with the prime contractors or general information
4 about the city's contracting process overall
5 including where to find necessary paperwork such as
6 approval forms or registration documents. In sum,
7 this legislation hopefully will expedite agency
8 contract processing by expanding information
9 available to subcontractors and improving their
10 relationships with prime contractors and the city.
11 This would ordinarily be the point in the program
12 where I would turn the microphone over to my-my co-
13 chair, but she is stuck on the subway. So, I'm going
14 to give her that chance after you guys get started.
15 So, with that, I'd like to invite Jackie Mallon of
16 SBS, Jonnel Doris and Michael Owh of the Mayor's
17 Office of Contracts, and we're glad to have you all.
18 So, please, if you don't mind, just introduce
19 yourselves as you go, and feel free to begin. So,
20 thank you.

21 MICHAEL OWH: Thank you. Good morning
22 Chairs Rosenthal and Garodnick and thank you for-all
23 for the opportunity to share our thoughts on the
24 proposed legislation to create subcontractors bill of
25 rights. We believe this bill is a step in the right

1
2 direction toward providing information to businesses
3 and connecting them with resources. My name is
4 Michael Owh, and I am the Director of the Mayor's
5 Office of Contract Services and the City Chief
6 Procurement Officer. MOCS is responsible for the
7 oversight of the city's procurement process ensuring
8 fairness, transparency and efficiency. In Fiscal
9 2016 city agencies procured \$1 MOCS is responsible
10 for the oversight of the city's procurement process
11 ensuring fairness, transparency and efficiency. In
12 Fiscal 2016 city agencies procured \$15.3 billion
13 worth of goods, services and construction through
14 more than 41,300 transactions and 9,000 vendors. New
15 York City vendors seek out relationships with
16 subcontractors to complement, enhance and deliver the
17 wide range of goods and services for which the city
18 contracts. These diverse relationships vary based on
19 the requirements, needs and structure of the vendor
20 organization, the underlying industry, and the prime
21 vendor city contract. Each relationship between a
22 vendor and a subcontractor results in its own unique
23 independently negotiated contract to which the city
24 is not a party. Subcontractors seek out contractual
25 relationships with vendors for a number of reasons as

1 well. Subcontracting provides an opportunity for
2 small businesses including Minority and Women Owned
3 Businesses enterprises to build capacity and
4 experience through smaller contracts. Subcontracting
5 also provides these businesses with an invaluable
6 window into government contracting processes,
7 expectations and requirements. We are supportive of
8 these subcontracting relationships and the benefits
9 that are unique (sic) to the vendors, contractors and
10 the city. We believe in a nuanced approach of
11 supporting contractors will prove beneficial and
12 ensure that the bill reflects the—the fact that a
13 subcontractor's relationship with a contractor can
14 often differ based on an individual contract. MOCS
15 will be pleased to work with the Department of Small
16 Business Services in prioritizing and developing
17 informational resources, which reflect the
18 variability in subcontractor agreements and maximizes
19 impact for businesses. SBS has a robust
20 understanding of the issues that small businesses
21 face and can provide information about the services
22 they currently offer to subcontractors. I will now
23 turn it over to my colleague Jackie Mallon to share
24 more.
25

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2 DEPUTY COMMISSIONER MALLON: Good morning
3 Chair Rosenthal in spirit, Chair Garodnick and
4 members of the Committees on Contracts and Economic
5 Development. [coughs] My name is Jackie Mallon and
6 I'm the First Deputy Commission of the Department of
7 Small Business Services. At SBS we aim to unlock
8 economic potential and create economic security for
9 all New Yorkers by connecting them quality jobs,
10 building stronger businesses and fostering vibrant
11 neighborhoods across the five boroughs. As Director
12 Own Mentioned, subcontracting provides an opportunity
13 for small businesses to build capacity through
14 smaller contracts that provide essential experience
15 to win bigger contracts in the future. For the over
16 5,000 Minority and Women Owned Business enterprises
17 that are certified through SBS, contracting serves as
18 a launching pad to only participate in government
19 contracting but also to expand their business
20 operations. At SBS we offer a number of capacity
21 building programs targeted at MWBEs as well as
22 services to all small businesses. Through the seven
23 NYC Business Solution Centers across the five
24 boroughs SBS provides free accessible business
25 services including how to secure financing and access

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2 city benefits. Cash flow is often an issue for small
3 companies working on city projects particularly for
4 subcontractors. So, we recently launched the
5 Contract Financing Loan Fund. This revolving fund
6 offers low interest loans of up to \$500,000 capped at
7 a 3% APR. The fund is available to all small
8 business and MWBEs working on city contracts, and to
9 date we've already awarded over \$1 million in loans.
10 Yesterday, we also announced the launch of \$10
11 million bond collateral assistance fund. The fund
12 supports MWBEs and small businesses facing obstacles
13 accessing surety bonds, bonds that offer collateral
14 to ensure businesses can successfully perform on city
15 construction projects. The fund allows business to
16 apply for surety bonds, collateral assistance of up
17 to \$500,000 or 50% of the contract amount, whichever
18 is lesser. These services along with a number of
19 business development tools available at our business
20 solution centers, ensure that subcontractors have
21 what they need to successfully compete—complete city
22 contracts. SBS is supportive of any measure that
23 would provide more information to subcontracts and
24 agree with MOCS, but a nuanced approach would prove
25 beneficial. Thank you and I'm happy to take

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2 questions about services. I just also wanted to note
3 that—that Jonnel Doris who's the head of the Mayor's
4 Office of MWBE is also here to help answer questions.

5 CHAIRPERSON GARODNICK: Terrific, thank
6 and Chair Rosenthal is here, and would like to make
7 an opening as well as promised. Thank you.

8 CHAIRPERSON ROSENTHAL: Thank you so much
9 Chair Garodnick. Thanks for kicking this hearing for
10 me. I did a little business on the Upper West Side
11 this morning. So, my name is Helen Rosenthal. I
12 chair the Committee on Contracts, and I really want
13 to thank the staff of both committees especially Alex
14 Paulenoff, who has one of the hardest jobs in the
15 city as committee counsel for both Dan and me. So,
16 we keep him busy, and he—he'—he's great about it.
17 So, I'm very excited that today we're hearing
18 testimony on Introduction 1615, and on the city's
19 role in the subcontracting process. At more than \$15
20 billion the city's contract budget it is the heart of
21 so much of what we do here, construction of public
22 infrastructure and affordable housing, the whole
23 range of human services from pre-K all the way up to
24 senior services. The contracting process is an
25 essential part of how New York City government works,

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2 and a substantial portion of that work in turn winds
3 up being done not by the entity directly contracted
4 with by the city, but the subcontractor. So, whether
5 it's an electrician being brought in on a
6 construction job or a small specialized non-profit
7 being brought in on large human service contracts,
8 subcontractors are a vital part of the ecosystem in
9 which the city gets work done, but also a critical
10 piece of the city's effort to reach its participation
11 goals for Minority and Women Owned Businesses and
12 enterprises, which you clearly referred to and I
13 really appreciate that, and I very much appreciate
14 Mr. Doris being with us this morning.

15 Introduction 1615 sponsored by my
16 colleagues Council Members Cumbo and Cornegy is a
17 great place for us to start as we explore this issue.
18 It would require the creation of a bill of rights for
19 subcontractors that would be in essence a new piece
20 of technical assistance literature for subcontractors
21 by laying out their rights, and most importantly
22 making it clear who they can turn to more assistance
23 when necessary. This bill would represent a
24 thoughtful and measured first step as the city seeks
25 to improve the subcontracting process. This

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2 legislation and this hearing serve as a great
3 springboard for a broader discussion about the
4 challenges facing subcontractors and it's an
5 opportunity for us to explore what the city can do to
6 address them. I'm especially excited to hear from
7 the public today. I know a wide range of perspective
8 from a broad variety of industries will be
9 represented especially as the city continues to rely
10 on subcontractors. As a part of its MWBE strategy,
11 it's critical that we better understand any possible
12 flaws or loopholes that are in the current process,
13 and that we can work to address them. So, thank you
14 very much, and I'll be reading your testimony right
15 now, Council Member.

16 CHAIRPERSON GARODNICK: Good. Thank you,
17 Chair Rosenthal, and I-I'll start off with some
18 questions, though, while-while you do that. So,
19 let's just start with some-some basics. Mr. Owh,
20 you-you noted in your testimony that there is a
21 uniquely negotiated contract here between a
22 contractor and a subcontractor and the city is not a
23 party to those contracts. What exactly are the
24 subcontractors' rights relative to the city in these
25 subcontracts if any?

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2 MICHAEL OWH: As I mentioned, we have
3 annually. I think last year was what, 43,330
4 transactions over the-the-more than that, and a
5 subset of those result in subcontracts, and so we can
6 see sort of the wide array and the breadth of-of-of
7 transactions that we have there, and it gets very
8 complicated, and I think that's-that's what I-what
9 I'm mentioning when I'm talking about the unique
10 agreements that-that-that result from the
11 negotiations between the prime and the subcontractor.
12 So, our legal relationship is wit the prime. The
13 prime and the subcontractor negotiate their terms and
14 conditions. We are not a part to that, but we do
15 have provisions in our contracts that-that do flow
16 down in certain cases, and I think because of that
17 complexity, because of the numbers that we're talking
18 about, it's very difficult to speculate on the
19 specific rights of subcontractors here, but I think
20 we always go back to the more information--I think we
21 agree that the more information about the process,
22 about the general provisions, about all of these
23 resources available to subcontractors the better for
24 all parties.

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2 CHAIRPERSON GARODNICK: So, in terms of
3 rights that either flow down or flow up by virtue of
4 the contractual relationship between the
5 subcontractor and the contractor, what are they, or
6 what sort of things are we talking about? Let's
7 start with the stuff that the city has in its own
8 contracting process with a--with a prime contractor
9 that might actually flow down to a subcontractor.

10 MICHAEL OWH: Well, I think it's really
11 difficult to talk about them as sort of like an
12 overall because it's a--

13 CHAIRPERSON GARODNICK: [interposing]
14 Give us two examples, one example. Give us any
15 examples.

16 MICHAEL OWH: So, in our, for one for
17 instance in our standard construction contract I
18 believe that we have specific payment terms that
19 would flow down about rights on the prime contractor
20 to the subs. Also, subcontractors must be approved.
21 That is a general provision that we have as well.
22 Those are two examples.

23 CHAIRPERSON GARODNICK: So, the--so, in-in
24 the example that you gave about a construction
25 contract, so it would require that a particular

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2 payment schedule be offered to any subcontract with
3 whom that prime contractor had entered into an
4 agreement? Is that what you're saying?

5 MICHAEL OWH: Yes, broadly that's right.

6 CHAIRPERSON GARODNICK: Okay, and
7 otherwise do you know of any contracts between a
8 prime contractor and a subcontractor, which would
9 give a subcontractor any rights relative to New York
10 City?

11 MICHAEL OWH: I do not have that
12 information on me. Again, because all of these
13 contracts are so unique. I think they're—they're
14 very independent.

15 CHAIRPERSON GARODNICK: Has any
16 subcontractor ever pursued a legal claim against New
17 York City directly in connection with a failure,
18 perceived failure of a contractor to perform on the
19 contract that they had with the subcontractor?

20 MICHAEL OWH: I do not have that
21 information on me, but we can go back and—and come
22 back to you with that.

23 CHAIRPERSON GARODNICK: Okay, and both—
24 both of you testified in your formal testimony that
25 you believe that a nuanced approach was as if you had

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2 might even spoken before the hearing, which is fine
3 and good. Both argued for a nuanced approach in
4 supporting subcontractors. So, do you—do you like
5 the bill?

6 MICHAEL OWH: We do support the bill. We
7 support the bill. Again, we really—we agree with the
8 Council that providing all the necessary information
9 and connecting the businesses to resources, that's a—
10 that's a huge part of being a business—a better
11 business partner.

12 CHAIRPERSON GARODNICK: Is it nuanced
13 enough? Do you have any specific edits, changes,
14 recommendations that you would make to the bill to
15 make it more nuanced or should we pas it as it?

16 MICHAEL OWH: I think the—the—the—the
17 reference to the nuance that I think we're trying to
18 get at is to make sure that we get enough feedback
19 from not just our agency and the Law Department and
20 our—and internal stakeholders, but also the community
21 the contracting community and as well as the
22 subcontracting community to make sure that we are
23 able to take in all of the various factors before we—

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CHAIRPERSON GARODNICK: [interposing]

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So, the point is just what exactly is conveyed onto

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the subcontractors not the existence of certain

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rights being conveyed onto the subcontractors?

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MICHAEL OWH: That's fair.

7

CHAIRPERSON GARODNICK: Okay. I just

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want to note we've been joined by Council Member

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Borelli. Welcome and I'm gong to turn it back to

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Chair Rosenthal.

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CHAIRPERSON ROSENTHAL: Thank you so

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much, and thanks for laying the groundwork, Chair

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Garodnick. So, thank you for that, and that's

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actually a really nice starting place that, you know,

15

the notion of doing a bill of rights is something you

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guys agree with, and we will learn a lot today from

17

the public. So, it's a matter of listening and on

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the City Hall side running it by your lawyers, and

19

really get that, but I'm—I'm thrilled that the idea

20

of it is something that you support. Director Owh,

21

you mentioned in your testimony 41,300 transactions,

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9,000 vendors, and that you do have to approve the

23

subcontractor. Is that right?

24

MICHAEL OWH: That's right. The—the

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contracting agency would approve subcontracts.

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2 CHAIRPERSON ROSENTHAL: So, the
3 contracting agency hypothetically would know how many
4 subcontracts there are on any given contract?

5 MICHAEL OWH: They should--

6 CHAIRPERSON ROSENTHAL: [interposing] By
7 definition?

8 MICHAEL OWH: Yes. There are some
9 thresholds, and some sort of unique sort of terms
10 around that because for certain smaller value
11 subcontracts you might not need the agency's
12 approval, but broadly speaking I think you're right.

13 CHAIRPERSON ROSENTHAL: Right, but you
14 might miss some micro purchasing that are in there,
15 which is fine. You know, you want to give agencies
16 that latitude. Is-is the crux of the problem sort of
17 computer systems that they're too arcane to be able
18 to capture all this information and capture it
19 [coughing] so that it's compatible--in a way that's
20 compatible between agencies? I mean from a 30,000
21 foot view, you know, the obvious question is: What?
22 You don't know all the subcontractors and what their
23 names are especially after City Time. You know, it's
24 curious that you wouldn't know that. It's reassuring
25 to know they subcontract, but why couldn't--that the

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2 subcontracts are approved, but why—from SBS' point of
3 view, from the MWE point of view, why not rush to
4 know who the subcontractors are, and keep them in,
5 you know, well, I know about Accelerator. For
6 example, keep them in Accelerator or any other large
7 database?

8 MICHAEL OWH: So, I think that I'll start
9 with sort of the broad question about the universal
10 subcontractors. I think there's also overlap between
11 subs. Some primes act as subs on some contracts, and
12 so I think there is a capturing of that information
13 at a certain point. The relationship for the
14 contracting agency again is with the prime, and so
15 they should know who the subs are. I guess sitting
16 here right now I don't know all of the sub
17 information, and so that's—that's something that I do
18 apologize for. And then within the MWBE's sphere, I
19 will say that we do track for the Local 01 Program or
20 MWBE program we just can't track subcontracting
21 utilizations. So we do have that—those numbers
22 around that universe.

23 CHAIRPERSON ROSENTHAL: So, sitting here
24 now, you don't have the subcontractor list, but that
25 is something that's gettable.

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2 MICHAEL OWH: I think we—we do—have not
3 collected it regularly. So, it would be labor
4 intensive. There is some level of effort there, but
5 it is possible to get.

6 CHAIRPERSON ROSENTHAL: In the new
7 computer systems capturing information we talked
8 recently about putting Vindex online and stuff like
9 that. Will you have a platform to capture this
10 information?

11 MICHAEL OWH: We're—we're looking at that
12 question as one—as one of the items to check. We can
13 come back to you with what the options are there.

14 CHAIRPERSON ROSENTHAL: Thank you. I
15 mean because if it's a matter of resources, but the
16 issue is, you know, so important to us, I think
17 that's important for all of us to know together. One
18 of the questions that I've never been able to get
19 answered is of the certified MWBEs, and I know this
20 administration is trying to track this. How many of
21 the certifieds are—or how many of the subcontractors
22 are MWBEs, but are not certified? Is that
23 information that we could track actually so we can
24 take the credit for, you know, and it strikes me that
25 agency by agency is actually not that complicated.

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2 You can imagine saying to any agency. I don't know I
3 mean agency X. If you know internally that let's say
4 DOT starts easy with construction contracts that 30%
5 that your primes are indeed meeting of 30%
6 contracting with MWBEs, then you could hypothetically
7 labor intensive get a list of the MWBEs, right, and
8 then match that against what the city is certifying.
9 Is that the work you're working on now, and I don't
10 know Mr. Doris, do you want to---? [pause]

11 MICHAEL OWH: I-I just wanted to say
12 again for the Local Law 1 universe we do have the
13 contracts, the number of contracts as well as the
14 dollars within those contracts, and then we do match
15 them up-match that universe up against the MWBE
16 Certified List. But, I think what you were asking
17 was, and correct me if I'm wrong, if we can have the
18 fuller universal subcontracts and then try to see if
19 there's any overlap there, and I think that's the-
20 that's the piece that I think that's going to be more
21 difficult to do.

22 CHAIRPERSON ROSENTHAL: And real quickly.
23 Sorry, in that world so just within Local Law 1, what
24 percentage of the verified or what percentage of the
25 MWBEs are certified?

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2 MICHAEL OWH: So, the total number of
3 dollars that went to MWBEs last year under
4 subcontracting was 31%?

5 CHAIRPERSON ROSENTHAL: Right.

6 MICHAEL OWH: Under the Local Law 1
7 Program--

8 CHAIRPERSON ROSENTHAL: Right.

9 JONNEL DORIS: --and I think the total
10 number of subcontracts in that universe, the number
11 of contracts was about 1,500.

12 CHAIRPERSON ROSENTHAL: 1,500 separate
13 vendors or vendors--

14 MICHAEL OWH: [interposing] Separate.

15 CHAIRPERSON ROSENTHAL: --we don't know?

16 MICHAEL OWH: Yeah, that's the--

17 CHAIRPERSON ROSENTHAL: [interposing] And
18 have you done a run of those 1,500 or somewhere
19 between 0 and 1,500 vendors, and done a match with
20 the MWBE Certified List?

21 MICHAEL OWH: That's how we got to the 1%
22 about for the dollars, but the number of vendors, to
23 you question about the number of vendors, we can go
24 back and see what the number of unique vendors are.

1
2 CHAIRPERSON ROSENTHAL: Well—oh, maybe
3 I'm misunderstanding your answer. I'm trying to find
4 out if the DOT said—let's make it easy.

5 MICHAEL OWH: Uh-huh.

6 CHAIRPERSON ROSENTHAL: DOT has six
7 contracts, and so in those six contracts 30% would be
8 whatever, 20% of their work--

9 MICHAEL OWH: Uh-huh.

10 CHAIRPERSON ROSENTHAL: --and then you
11 get a list of those subcontractors that are doing
12 that work. Do you know if those subcontractors are
13 certified MWBEs?

14 MICHAEL OWH: Yes. So, for—so for that
15 particular contract if it was subject to Local Law 1,
16 we would get a report back from the agency, but also
17 the prime on the—on the list of contracts, and so
18 that would be the overall, and then out of that we
19 would match that with the certified list to come up
20 with that percentage.

21 CHAIRPERSON ROSENTHAL: Oh, so 31%. I
22 got confused because the 31 is so close to 30, right?

23 MICHAEL OWH: That's right.

24 CHAIRPERSON ROSENTHAL: So, 31% are—of
25 the MWBEs are certified.

1
2 MICHAEL OWH: So, 31% of the dollars for
3 subcontracts when to certified firms. We can go back
4 and figure out some of the --

5 CHAIRPERSON ROSENTHAL: [interposing]
6 Right.

7 MICHAEL OWH: --meaning there. (sic)

8 CHAIRPERSON ROSENTHAL: So, of-of the
9 firms, though, how many of those went to certified to
10 certified firms? Does that mean some of the dollars
11 did not go to certified firms, but they were
12 subcontractors? Yeah, I'm in a loop. I'm going to
13 take myself out of that rabbit hole, and turn it over
14 to someone else, and then come back unless no one
15 else has any questions except for my colleague.

16 CHAIRPERSON GARODNICK: Thank you, Madam
17 Chair. Let me jump in with just some more basic
18 stuff. How often do you all get complaints from
19 subcontractors that they are not being paid by a
20 prime contractor, if at all?

21 MICHAEL OWH: I'll-I'll speak first and
22 then turn it over to my colleagues. I do on occasion
23 get complaints with regard to that issue. I will say
24 that the number one complaint that I get or the
25 number one question that I get, though, is usually

1
2 where is my contract in the process, and that kind of
3 visibility is really the--the--the type of service that
4 we've been able to offer to contractors as a whole.

5 As you know, the process--

6 CHAIRPERSON GARODNICK: [interposing]

7 That's from the contract--that's from the contractors?

8 MICHAEL OWH: But even I would say
9 contractors and sometimes even subcontractors, but
10 much more contractors are, and so I don't really--on
11 occasion will--will hear from subcontractors, but I
12 don't--I wouldn't say it's--it's--it's very often for me
13 at least.

14 CHAIRPERSON GARODNICK: And in--in a
15 situation in which a subcontractor has a--a conflict--a
16 conflict with a--with a contractor, we were talking
17 before about what rights they have, and it seems like
18 unless the city has put in a payment schedule and a
19 construction contract, for example, a subcontractor
20 does not have many rights relative to the city
21 itself. But do we offer any service--services to them
22 in the event that they have a conflict with a prime
23 contractor? [pause]

24 DEPUTY COMMISSIONER MALLON: We offer
25 [coughs] you may be familiar because I think we've--

1
2 we've spoken about it before, but free legal
3 services. So in the--in the--I am assuming that in
4 some cases the subcontractor might make the--the--the
5 use of the services to sort of figure out how to
6 negotiate, and maybe even in advance of signing the
7 contract, they would consult and--and go over the
8 terms and--and conditions and ensure that they're
9 comfortable.

10 CHAIRPERSON GARODNICK: So, it's not
11 specific as to subcontractor as well as the

12 DEPUTY COMMISSIONER MALLON:
13 [interposing] Correct.

14 CHAIRPERSON GARODNICK: --contractors.
15 It's just legal services--

16 DEPUTY COMMISSIONER MALLON:
17 [interposing] Correct.

18 CHAIRPERSON GARODNICK: --that are
19 otherwise offered by SBS?

20 DEPUTY COMMISSIONER MALLON: Correct.

21 CHAIRPERSON GARODNICK: Okay, similarly,
22 is there any protocol or mechanisms to resolve or
23 mitigate conflicts that may exist between a
24 contractor and a subcontractor? Is there any role
25 for resolving those sorts of disputes, again

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2 recognizing that the city is not a party to the
3 contract, but do you do anything to resolve conflicts
4 that may exist?

5 MICHAEL OWH: So, again I'll start and
6 I'll ask my colleagues to jump in, but in my
7 experience the—the mechanism rests at the contracting
8 agency. Usually the—the disputes do hear about start
9 there, and then the contracting agency which, as you
10 know, has a—manages all these contracts and projects
11 from start to finish, would step in or play a role —a
12 mediator role or—or some other role that's necessary
13 to resolve the issues. [pause]

14 DEPUTY COMMISSIONER MALLON: We offer
15 services to businesses, which—to—to support
16 navigating government in general and so on occasion I
17 am certain that we receive inquiries from some small
18 businesses or MW—and often MWBEs—not often but
19 probably more likely an MWBE who may be experiencing
20 an issue on a contract, and we can facilitate
21 communication. We can make a—a call to a contracting
22 agency. We can talk with the Office of MWBE, and see
23 if there's something that we can do in terms of
24 facilitation.

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2 CHAIRPERSON GARODNICK: And if you—if a—
3 if a prime contractor were found to—was actually
4 found to have withheld a payment to a subcontractor,
5 let's say it was in a situation like in the
6 construction world where there was a payment
7 scheduled delineated by the city, the contractor did
8 not deliver payments in an appropriate and timely
9 fashion. The administration, the contracting agency
10 has concluded that that is, in fact, the case. Is
11 that information disclosed and reflected on Vindex?

12 MICHAEL OWH: So, if there any
13 performance issues like that that would be raised and
14 it could be reflected in their annual performance
15 evaluations as well as potentially captured in some
16 other responsibility information about the vendor if
17 it rose to that, and it could be shared with other
18 agencies.

19 CHAIRPERSON GARODNICK: So, there's an
20 annual—Let me just back up on that one for a sec.
21 So, there's an annual performance evaluation that is
22 done by the contracting agency of the prime
23 contractors?

24 MICHAEL OWH: That's correct.
25

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2 CHAIRPERSON GARODNICK: And when you say
3 it could be reflected, is it as a matter of course
4 reflected in the annual performance evaluation when a
5 prime contractor does not pay a subcontractor?

6 MICHAEL OWH: I do not actually know if
7 it's included as a matter of course. I will say that
8 the performance of the contractor on the project
9 depending on the type of contract has various
10 categories involved, and so that would be potentially
11 captured in one of the categories. And so, they
12 could be raided and evaluated pursuant to that.

13 [pause]

14 CHAIRPERSON GARODNICK: And my last
15 question before I go back to Chair Rosenthal, and I
16 also want to recognize that we've been joined by
17 Council Member Miller. Is there any publicly
18 available information today that would educate
19 subcontractors on city contracts about what their
20 rights are other than the document itself? Does the
21 city put out anything that tells subcontractors what
22 their rights are in any existing contract where the
23 city is the initiator?

24 MICHAEL OWH: We—we have a lot of the
25 information about the general contracting process,

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2 and the city's procurement process. I would also
3 pass it over to Jackie just on the--the services and
4 resource that we have, but that is all available, and
5 that would apply not to just primes but any business
6 that wants to have a contract with the city.

7 DEPUTY COMMISSIONER MALLON: I would just
8 add that we offer lots of support for businesses that
9 are contemplating contracting. Lots of workshops on
10 the government, one-on-one technical assistance.
11 We've been thinking about responding on a particular
12 contract, and--and all kinds of support like that, and
13 different seminars and workshops all about the
14 contracting process, and a lot of that is available
15 on our website and also sometimes through brochures
16 that we distribute.

17 CHAIRPERSON GARODNICK: Okay and the last
18 question I just want to go back to the--the text of
19 the bill itself as to whether or not it is nuanced
20 enough. I mean the bill essentially requires the
21 Department SBS in consultation with the city's Chief
22 Procurement Officer to develop and make available to
23 all contracting agencies a subcontractor bill of
24 rights. It is, you know, it defines it as a written
25 document using plain and simple language advising

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2 subcontractors of their rights as they relate to both
3 the contractors and the agency. It includes, you
4 know, rights to payments, available city services to
5 the extent they exist and contact information for the
6 city agency where a subcontractor may have questions
7 or complaints or want additional information. It
8 also allows SBS to update this bill of rights as
9 necessary. Is there anything in that language or
10 text that requires greater nuance for it to proceed
11 or is it ready from your perspective for us to pass
12 this bill?

13 MICHAEL OWH: I—I think the one thing
14 that we just want to recognize is the complexity and
15 the—and—and the diversity of our contracting
16 portfolio and so I just want to—we would just want to
17 talk a little and collaborate with the Council on
18 making sure that we take that into consideration
19 before we finalize, and if--

20 CHAIRPERSON GARODNICK: [interposing] So
21 that might be a question about the—the timeline of
22 how quickly it—the bill goes into effect because it
23 would be SBS essentially developing the bill of
24 rights, but it is—there's nothing about the language
25 in the bill that you see as either too specific or

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2 not specific enough about your ability to proceed?
3 Is that accurate?

4 MICHAEL OWH: I think that's an accurate
5 assessment.

6 CHAIRPERSON GARODNICK: Okay, helpful.
7 Thank you. Chair Rosenthal.

8 CHAIRPERSON ROSENTHAL: Thank you so
9 much, Chair Garodnick. You know, when we were
10 talking about wage theft, subcontractors who I guess
11 are alleged where there's alleged wage theft or
12 mistreatment of workers. In those situations that
13 information from my understanding would go to DOI,
14 right, and I'm wondering if as part of the
15 performance criteria for a prime contractor included
16 in that is alleged allegations that have gone to DOI.

17 MICHAEL OWH: So any time there is an
18 allegation of corruption or—or malfeasance I believe
19 that DOI the complaint are routed to DOI. I'm—I'm
20 not familiar.

21 CHAIRPERSON ROSENTHAL: The question is a
22 little different.

23 MICHAEL OWH: Okay.

24 CHAIRPERSON ROSENTHAL: It's in, you
25 know—I've had situations where a contractor that, you

1 know, was under investigation and later found guilty,
2 but while they were under investigation, go another
3 city contract because it's not part of the
4 performance evaluation to note that there at DOI. Am
5 I wrong, right or--

7 MICHAEL OWH: So--

8 CHAIRPERSON ROSENTHAL: [interposing] In
9 other words more than a red flag that it's in the
10 criteria itself for evaluation.

11 MICHAEL OWH: So, if the contractor is
12 aware of the investigation then they are required to
13 disclose that, and that--

14 CHAIRPERSON ROSENTHAL: [interposing] The
15 contractor?

16 MICHAEL OWH: That's right.

17 CHAIRPERSON ROSENTHAL: Not the ACCO?
18 (sic)

19 MICHAEL OWH: So, if the city is aware
20 and DOI actually--if DOI issues that notice to the
21 city agencies that is--that is visible to the city
22 agencies. As part of that caution the flag process
23 that we've discussed previously, and so that
24 information would be available, and then that's also
25 through the self-disclosures that's also something

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2 that gets tagged. There are—there are occasions when
3 the city or the contractor may not know that they're
4 under investigation, and so that—if that information
5 is not known, then we—that wouldn't be visible in
6 the—in the data—database.

7 CHAIRPERSON ROSENTHAL: Although
8 hypothetically DOI could know, and if you had
9 computer systems linked up that would be easy enough
10 to run that information.

11 MICHAEL OWH: If they—if they notified
12 that they didn't—they did know, yes, we could do
13 that, and we do that today.

14 CHAIRPERSON ROSENTHAL: So, it's a
15 caution or a red flag, but it's not part of the
16 criteria itself? In other words someone could get a
17 performance evaluation, which according to the
18 criteria itself, they could get an excellent
19 performance evaluation. So, in others words, is part
20 of the criteria allegations of wage theft?

21 MICHAEL OWH: Specifically, we have—I
22 have to go back and look at all of the various
23 performance evaluation templets that we have, but
24 really that process is to make sure that the—the
25 contractor is delivering on what the service or good

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2 that—that we are purchasing. The—the allegation of
3 wage theft or some responsibility issues like that
4 would come into play due to the disclosure process or
5 the—the notification of the caution process that I
6 described, and that would be taken into consideration
7 in terms of the responsibility of the vendor, and if
8 it—depending on the contract, you know, it may affect
9 the performance as well as other terms and conditions
10 of the contract and so that, it can be addressed that
11 way.

12 CHAIRPERSON ROSENTHAL: Okay. [coughs] I
13 promise—I promise not to go into the rabbit hole.
14 This is my last set of questions. So, if you know
15 that roughly 50—so, if—how many MW—certified MWBEs
16 are you at now? Where's the number.

17 MICHAEL OWH: It's a little over 5,000.

18 CHAIRPERSON ROSENTHAL: Over 5,000.

19 Sweet, and so it sounds like of those, 15, you know,
20 somewhere between 0 and 1,500 we know are getting
21 city contracts. Is that fair.

22 MICHAEL OWH: So, the 1,500 number is the
23 number of subcontracts there.

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2 CHAIRPERSON ROSENTHAL: That's right,
3 the--or are getting contracts, and some could be
4 duplicative.

5 DEPUTY COMMISSIONER MALLON: Yes. It's--
6 it's probably around 1,200, 1,500. We don't actually
7 have the--

8 CHAIRPERSON ROSENTHAL: [interposing] So,
9 1,200 of the 5,000 roughly all draft. No one is
10 going to take you to court over this.

11 DEPUTY COMMISSIONER MALLON: No, although
12 I could get back to you with a more specific number.

13 CHAIRPERSON ROSENTHAL: What's up with
14 the other, you know, 3,800? Are they--I've always
15 wonder is that--are they--and I know it's not the
16 subject of this hearing. So, I apologize, but are
17 you guys looking at sort of why they aren't getting
18 subcontracts and whether or not they would be even
19 eligible or do they provide a service that's not
20 something the city would buy or purchase?

21 DEPUTY COMMISSIONER MALLON: Yes, are
22 looking at--at all of that, and--and--and under a
23 thorough analysis, I'm trying to figure out who we
24 could provide more support to. Is it a matter of
25 you're not actually good at contracting. So, that's

1
2 one strategy for helping them. You're not a match
3 for the things that we buy. That's another strategy
4 or your business is just not at the point where it
5 can—it can succeed on a—on a government contract.
6 Maybe we have to get you on a lower level like a
7 micro, and then help to build your capacity and sort
8 of move you through. So, we're looking at all of
9 that.

10 CHAIRPERSON ROSENTHAL: So, part—say
11 again.

12 DEPUTY COMMISSIONER MALLON:
13 Unequivocally. (sic)

14 CHAIRPERSON ROSENTHAL: [interposing] So,
15 part of the analysis that you'll come back with is
16 you'll let us know how many fall into each category?

17 DEPUTY COMMISSIONER MALLON: Yeah, we
18 can—we can and so it's a pretty complex analysis, but
19 absolutely. Happy to--

20 CHAIRPERSON ROSENTHAL: [interposing] It
21 would be once, right?

22 DEPUTY COMMISSIONER MALLON: Happy to do
23 it.

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2 CHAIRPERSON ROSENTHAL: I couldn't help
3 myself. DEPUTY COMMISSIONER MALLON: Thanks one.
4 (sic)

5 CHAIRPERSON ROSENTHAL: Yeah, thank you.

6 DEPUTY COMMISSIONER MALLON: Touché.

7 CHAIRPERSON ROSENTHAL: No, no, no, I'm
8 sorry. I didn't mean it that way at all. Council
9 Member—Council Member Garodnick I turn it back to
10 your, or may I ask--? Okay.

11 CHAIRPERSON GARODNICK: [off mic]

12 CHAIRPERSON ROSENTHAL: I'd like to
13 recognize Deutsch. Thank you for coming today and
14 Council Member Miller do you have questions? [pause]

15 COUNCIL MEMBER MILLER: Thank you, Madam
16 Chair, Mr. Chair. So, I—I and I do recognize that
17 we're talking about the subcontractors here, but I
18 want to—Good morning—talk about something that we
19 have been discussing over the past few months, and—
20 and that the general contractors, and—and how many
21 MWBE general contractors are doing construction
22 specifically in the city now? [pause]

23 MICHAEL OWH: We don't have that number
24 with us now, but we can come back to you with that.
25 [pause]

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DEPUTY COMMISSIONER MALLON: You have a-

a--

COUNCIL MEMBER MILLER: [interposing]

Yeah, but I'm asking--

DEPUTY COMMISSIONER MALLON: --you have a very specific question. You're asking how many. How many MWBEs want a construction prime contract, right?

COUNCIL MEMBER MILLER: That is correct.

DEPUTY COMMISSIONER MALLON: Yeah, I don't-I don't have that on me today, but we can get back to you.

CHAIRPERSON ROSENTHAL: [off mic]

DEPUTY COMMISSIONER MALLON: Sorry.

DEPUTY COMMISSIONER MALLON: Isn't that another report? Is that in the performance indicators report that you be looking at? [background comments] Okay.

COUNCIL MEMBER MILLER: How many current-- so in-in-so, you said it's 1,500 subcontractors that have been--

DEPUTY COMMISSIONER MALLON:

[interposing] Awards.

COUNCIL MEMBER MILLER: Awards?

DEPUTY COMMISSIONER MALLON: Yeah, not-
not subcontractors. Just there may be some
duplicate-duplicates.

COUNCIL MEMBER MILLER: How many
subcontractors now working in-in-in the city of New
York? [background comments,

DEPUTY COMMISSIONER MALLON: I don't know
this.

CHAIRPERSON ROSENTHAL: So that's the
number that we don't have right now.

COUNCIL MEMBER MILLER: So-so let me
just-here's where we're going. Here's the atypical
picture. Now, we can be in Manhattan, the Bronx, or
we could be in my district where DEP is doing \$2
billion in infrastructure work, not a single MWBE
contract out there, not a single MWBE even in the
workforce represents that community. How do we
capture and leverage those dollars? That's where I'm
going. So, I walk down here. I come down Lafayette
and here is the atypical picture that is a microcosm
of the city. There are 12 people working on the
contract, nine non-folks of color. The three with
color are doing the flagging on the side. How do we
fix that? How-how has that not become the norm? How

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2 is that not the norm, and where are we when--? So,
3 how far when--when--when the RFPs go out, are they
4 national? [pause]

5 MICHAEL OWH: The RFPs are released just,
6 you know, through--through and they're open, the
7 competitions are open, and so theoretically we would--
8 -0

9 COUNCIL MEMBER MILLER: [interposing] Do
10 we--do we seek out MWBE firms outside the New York
11 area?

12 MICHAEL OWH: They would--so the MWBE
13 categorization that we use would be city certified
14 MWBEs, and I know that we've been making a big push
15 to attract and certify more firms, and I don't if
16 Jonnel wants to--

17 COUNCIL MEMBER MILLER: [interposing] The
18 firms that are doing the work currently, are they all
19 from the New York City area?

20 MICHAEL OWH: MWBE Certified firms--

21 COUNCIL MEMBER MILLER: [interposing] No.

22 MICHAEL OWH: --or just firms?

23 COUNCIL MEMBER MILLER: The contractors
24 that are doing the majority of the work that we see

1
2 being done in particular the construction work, are
3 they New York City companies?

4 JONNEL DORIS: We have a variety of
5 companies in our portfolio across all of the sectors.
6 So within—I'm—I'm not sure if you're to look at all.

7 COUNCIL MEMBER MILLER: [interposing] So,
8 here's what I know—what I do know that a—a—a lot of
9 the companies that I see doing work like the hiring
10 and the locals obviously, but a lot of them are from
11 Connecticut. A lot of them are from New Jersey, a
12 lot of them from outside of New York City area. Why
13 then aren't we seeking out MWBEs from outside of New
14 York City area that—who potentially have the capacity
15 to take on general contract responsibilities? I
16 think that is the obvious answer to this problem here
17 because we know that minority contractors are more
18 apt to hire locally. They're more apt to solve the
19 problems that we're talking about, and we're not
20 worrying about who they're going to sub with, and the
21 rest of that stuff there whether or not someone else
22 is going to break off a part or a piece of something
23 or whether or not someone is going to be in
24 compliance. The best way to fix it—to fix that is to
25 make sure that we have MWBE and—and—and I will tell

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2 you, and I think that we had this conversation, my
3 background in transportation, and-and-and other
4 infrastructure I've head, the-the-the fortune of-of
5 working with minority contractors in transportation
6 and infrastructure all over the U.S. and Canada, and
7 they are readily available and willing to come here.
8 Why-why isn't that happening? Because there is
9 obviously direct correlation between minority
10 contractors who have this type of capacity and their
11 ability to hire locally, which I think is the
12 objective here, right? Whether it's the
13 subcontractors or the ultimate workforce, but how are
14 we not leveraging in particular in Southeast Queens
15 where you're doing \$2 billion worth of work, and none
16 of it is reflective of--it's great that we're having
17 services. What people want to see is their wealth in
18 our own community, too, and I think that's what we're
19 trying to accomplish. We need to expand our outreach
20 and find these businesses throughout the country and
21 that is not-I-I will be willing to walk them in the
22 door at any given time. But we're-we're spinning our
23 wheels here asking these questions that we've been
24 asking time and time again trying to amend something
25 that's putting a Band-Aid on a bigger problem. Why

1 aren't we get-getting the work in this city in
2 particular when we're creating the wealth in our
3 communities? Just food for thought. If anyone wants
4 to speak on that in-in terms of what outreach could
5 potentially look like, I'd-I'd love to hear it.

7 JONNEL DORIS: So, so Councilman, thank
8 you very much. I think we-when in our offices I've
9 met with several MWBEs who do not call New York their
10 home who I think have seen the administration's, you
11 know-how shall I put this? The administration's
12 efforts here to-to have MWBE as a part of our
13 contracted process. It-it has begun to attract other
14 companies to come to New York now. As you can
15 imagine, for the past 20 years that was not the case.
16 So, what we have is companies not really thinking of
17 New York as a place that they can do work and,
18 therefore, they-they have no, you know, business plan
19 that includes us. But, so, now we're seeing we
20 shifted our policy, our goals, the resources, the
21 opportunities, the laws that are passed here, we are
22 seeing more companies come. Can we see more?
23 Absolutely. There's also we-as we note there's some
24 gaps in the existing firms that we have, and the work
25 that can be done, and so when we talk about scale and

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2 capacity of some of our firms, and some of the
3 projects you're mentioning, yeah, we're looking at
4 those to actually join us. We—as you—as you probably
5 heard, yesterday for the first time I think in the
6 history of the Senate we have a bill that passed the
7 Senate and the Assembly specific to New York City,
8 which allows us to do some creative things when it
9 comes to our contractors. So, we—we're very excited
10 about that. As a matter of fact, we've been fighting
11 for many years for that, and it actually passed
12 unanimously in the Senate, which is unheard of, if I
13 may, and also passed overwhelmingly in the Assembly.
14 But one component to what we were looking for is our
15 pre-qual list for MWBEs similar to what we have at
16 EDC, similar to what we have at HPD where can sort of
17 set projects that are scaled at a very significant
18 size, and have this pre-qual list actually where
19 MWBEs can actually participate or put in RFPs, RFTs
20 for that for those projects. So, that did fail. We
21 are—we'll go back with that, but all of these are
22 tools that we're trying to build on to increase that
23 opportunity, but outreach and we agree with you and
24 certainly want to hear more from you on how we can do
25 that more. We're willing to sit down with you and—

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2 and any of those businesses, but we've started to
3 actually hear those businesses because they actually
4 see there's movement here in the city for the first
5 time in 20 years.

6 COUNCIL MEMBER MILLER: Absolutely, I
7 thank you and—and I just want to mention that I was
8 at a conference in the city here with about 40 of
9 those companies as I said from—threw out to you and—
10 and they were excited about potentially being about
11 being able to do business here in the city. So, I'd
12 love to—to link them up.

13 JONNEL DORIS: Thank you.

14 COUNCIL MEMBER MILLER: Thank you.

15 CHAIRPERSON ROSENTHAL: I want to welcome
16 Council Member Constantinides from Queens, and I'm—
17 I'm afraid I'm going to go back into the rabbit hold
18 for just one quick second. I just wanted to check—
19 I'm going to repeat out loud what I think you're
20 saying, and then tell me that I'm wrong or right.
21 Okay, so what I heard you say is that the general
22 contractor, the prime has to certify that 30% of her
23 subcontractors are MWBEs. That's what I heard you
24 say. I did not hear you say that the general
25 contractor has to certify that 30% of her sub-primes—

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2 subcontractors are certified MWBEs, and they could be
3 certified—I think we've discussed this—by the city,
4 the state or MPA, but do you understand the
5 distinction I'm making?

6 MICHAEL OWH: So, I'll just go back to
7 what—what—what to the numbers that I was referring to
8 actually is—are the number of contracts that we have
9 on cell contracts, under our Local Law 1 MWBE program
10 and the 31% is the number is the total number of
11 dollars that actually went to MW—so city certified
12 MWBEs to certify.

13 CHAIRPERSON ROSENTHAL: [interposing]
14 City Certified?

15 MICHAEL OWH: That's right, city
16 certified MWBEs.

17 CHAIRPERSON ROSENTHAL: Okay, got it.
18 Okay, thank you very much.

19 MICHAEL OWH: No problem.

20 CHAIRPERSON GARODNICK: Okay, with that
21 we will thank you guys for your testimony today, and
22 we're going to call our next panel. It's a—it's a
23 big panel. So, we're going to pull up on extra
24 chair. The sergeant will help us with that. The
25 panel will include Frank Garcia of the New York State

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2 Coalition of Hispanic Chambers; Laura Abel of the
3 Lawyers Alliance; Quiena Abreu of the New York
4 Women's Chamber of Commerce; Denise Richardson of the
5 General Contractors Association; and Tracy Robinson
6 of the Human Services Council of New York. Welcome
7 all. Come on up and get settled and we will get
8 started. [pause] Alright, Ms. Richardson, you have
9 drawn the pole position. You're sitting on the end.
10 We're going to start with you. So, welcome. If you
11 would just hit the button on that microphone and get
12 started.

13 DENISE RICHARDSON: Thank you. I'm Denise
14 Richardson, Executive Director of the General
15 Contractors' Association. This bill should be a
16 contractors bill of rights not limited to just
17 subcontractors. Many of the issues that we are
18 talking about are driven by the larger city
19 processes. Issues with agencies moving payment;
20 issues with agencies processing change orders; an
21 extraordinarily adversarial set of contract terms
22 that limit both subcontractors' as well as prime
23 contractors' rights in terms of making claims. Very
24 strict notification procedures. All of these process
25 are designed in one way or another to protect the

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2 city, and in—and in many instances, that's important.
3 However they are often used against both prime and
4 subcontractors in a very harmful and punitive way.
5 And so, when we talk about subcontractor's bill of
6 rights, what we need to be talking about are
7 contractor's bill of rights so that the contractors
8 come to the table understanding how that contract is
9 structured, how it may be used against them and to
10 understand what the terms are. So, we support a
11 contractor's bill of rights, but not limiting those
12 terms to just the subcontractors, and in the interest
13 of time, I'll let my other panelists speak. Thank
14 you.

15 CHAIRPERSON GARODNICK: Thank you.

16 TRACY ROBINSON: Good morning. My name
17 is Tracy Robinson and I'm the Senior Policy Analyst
18 at the Human Services Council of New York, and so I'm
19 coming to this hearing with perhaps a unique
20 perspective. My organization represents about 170
21 non-profit social services organizations throughout
22 the city. As you know, the city relies very heavily
23 on these organizations to deliver social services in
24 communities across our city. A lot of non-profits
25 that contract with the city are prime contractors,

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2 and they subcontract out work to smaller more
3 neighborhood based organizations. I actually fully
4 agree with what my co-panelist here just said. We
5 believe that this should actually be a contractors'
6 bill of right than a subcontractors' bill of rights.
7 There are many problems—good morning. There are many
8 problems with contracting for human services non-
9 profits including the amount of time that it takes to
10 get a contract registered, and the amount of time
11 that it takes for these organizations to receive
12 their first payment for services. These problems
13 unfortunately often get passed onto the
14 subcontractors. So they translate into more
15 magnified problems for them because a lot of these
16 smaller non-profits have no cash reserves whatsoever.
17 So, one late payment can be catastrophic for them.
18 If a contract isn't registered in time or if the
19 prime contractor has to cancel the contract for any
20 reason even if it's beyond—even if those reasons are
21 beyond the prime contractor's control, that can
22 actually shutter one of these small neighborhood
23 based non-profits, and I have written testimony that
24 goes into more detail. And, I will just say that the
25 Council and the Mayor have taken some very important

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2 steps in this year's budget to address some of these
3 problems, and so we thank you all and especially
4 Council Member Rosenthal for your leadership on that,
5 but all of the details of my testimony are in the
6 written file. Thank you so much.

7 CHAIRPERSON ROSENTHAL: Thank you.

8 Actually, I'm going to jump the queue for a second
9 just real quickly for a quick question for you,
10 Tracy. I think the other things you're pointing out
11 and it's part of the administration's point that the
12 subcontracts are so very different for the world of
13 human service contracts, and the world of everything
14 else.

15 TRACY ROBINSON: That's exactly right.

16 The prime contractor can't get paid until they
17 actually deliver services or well, they don't get
18 paid until they deliver services, and so it's
19 impossible for the prime to pay the subcontractor
20 before the subcontractor before it receives payment.
21 And that—one other thing I'll say is that a lot of
22 the larger organizations that are prime they have
23 cash reserves, they have a line of credit, they have
24 access to the loan funds. These smaller non-profits
25 are not eligible for the loan fund.

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CHAIRPERSON ROSENTHAL: Why not?

TRACY ROBINSON: And I'm—I'm actually not
sure. I—I don't know.

CHAIRPERSON ROSENTHAL: Okay, for the
record, we need a hearing on the Returnable Grant
Fund.

TRACY ROBINSON: I—I—sorry I don't know
the rationale for that, but not having access to that
fund means they can't really front their prime--

CHAIRPERSON ROSENTHAL: [interposing]
Yeah.

TRACY ROBINSON: --in the way that the
prime often fronts the government.

CHAIRPERSON ROSENTHAL: And again, for
the record, I think Human Service Contracts are
exempt from Local Law 1 because you have a board, not
a—it's not a business contract. Okay, thank you.

TRACY ROBINSON: Thank you so much.

LAURA ABEL: So, thank you, committee
chairs and Council Members. My name is Laura Abel.
I'm the Senior Policy Counsel at Lawyers Alliance for
New York, and we are a small non-profit organization.
We provide business and transactional legal
assistance to non-profits that serve low-income

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2 communities across New York City. We represent prime
3 and subcontractors not in same—not at the same—the
4 same contract. [laughs] But we representing hundreds
5 of non-profits every year through our network of pro
6 bono attorneys, and we support this bill. I would
7 agree with my fellow panelists that it would be
8 helpful to have just a general contractors' bill of
9 rights. I want to echo what Tracy was saying that
10 subcontracts particularly in the human services
11 sectors are often the only way that the city is able
12 to provide services to—particularly to vulnerable
13 communities. Right, you have small grassroots
14 organizations that know their communities that are
15 trusted by their communities that have the language
16 access skills and they need to serve immigrant
17 communities in particular. The city's large
18 contracts don't go to those neighborhood
19 organizations. It's the subcontracts that bring in
20 those neighborhood organizations and allow the city
21 to provide those services on the local level that it
22 needs to provide. One problem that we see often is
23 that the neighborhood organizations don't have
24 attorneys. They don't have in-house attorneys. In
25 fact, they often don't even have staff who are

1 familiar with administering contracts. They have
2 line staff, they organizers, they have social
3 workers, they have a very difficult time
4 understanding what's in their contracts. When they
5 make their way to us, we help explain what's in the
6 contract. We help negotiate a contract, but often
7 the groups don't know that we and other free or low-
8 cost resources are available. So, one thing that I
9 would like to see in a bill of rights is information
10 about access to free or low case legal assistance,
11 and also a strong caution that no organization, no
12 entity should sign a contract without talking to a
13 lawyer. Right, contracts are not written--

14
15 CHAIRPERSON ROSENTHAL: [off mic] Who
16 doesn't know that? (sic)

17 LAURA ABEL: Well, yes, in self-interest,
18 but on the other hand we give it away so [laughs]
19 we're not going to be making money off of this. The
20 contracts are not written for non-lawyers, right?
21 There's a lot of legalese, there's whereas, there's
22 language about indemnification. They're very long
23 and I've spoken to numerous organizations that have
24 contracts involving city funding that come to me with
25 some issue that's arisen in the contract, and I say

1 well what does the contract say about it? And they
2 say oh, it's all boilerplate, it's, you know,
3 there's--there's nothing in there. You know, there
4 tends to be language in there that's very helpful to
5 them, but they don't know that because without a
6 lawyer they can't understand it. So, I would just
7 urge that that be part of any bill of rights, and you
8 have my written testimony. Thank you.

10 QUENIA ABREU: Good morning everyone and
11 thank you, Madam Chair for--for inviting me. My name
12 is Quenia Abreu. I'm the President of the New York
13 Women's Chamber of Commerce, and an organization that
14 primarily works in helping women and also minority
15 become certified with the city of New York and also
16 apply for contracts with the city and the state and
17 other entities. We are one of the MWBE leadership
18 organizations contracted by SBS to help with the MWBE
19 efforts, and we've been doing this since Local Law 1--
20 129 went into effect. We're one of the advocates
21 that allocated for that law, and then later on for
22 what became Local Law 1. So, we have been working
23 both with prime and with subcontractors for a very
24 long time, and I--I do agree with my colleagues in
25 terms of the bills of rights and not only addressing

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2 the issues of our subcontractors, but also our
3 contractors. As the New York Women's Chamber of
4 Commerce being contracted by the City of New York by
5 SBS, and a small organization I can echo some of the
6 things that my colleagues have said that it's-it's a-
7 it's-it's a burden a lot of times with a lot of the
8 paperwork, with everything else. The fact that we
9 don't-a lot of times the same way with the subs, and
10 even the primes because you've got to remember the
11 primes when we talk about a larger prime they tend to
12 be the construction companies, but then you have the
13 smaller primes that sometimes are smaller than other
14 subcontracts. Yes, a lot of them. So, that's
15 something that needs to be taken into consideration
16 when you look at this bill of rights. When we-when
17 we advocated for the position of the chief diversity
18 officer that was created and we were asked to-to-to
19 specifically for that to be placed in the
20 Comptroller's Office, what we had in mind at that
21 time was for that position to be almost like a
22 ombuds-ombudsman to address the issues that were a
23 lot of times oppressed the-the prime and also the
24 subcontractor. And we want to go back, and we would
25 like for you to revisit to take a look at that

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2 decision again because I think that that that's a key
3 position when it comes to that as well. When the
4 primes or the subcontractors have complained on
5 different things, they don't know where to go most of
6 the time. Okay, so that's—that's very important to
7 us. And then, I'm going to look in my phone because
8 I just put in some notes that I wanted to-- Going
9 back to the—you asked questions about the MWBE
10 tracking. We have a lot of times asked and advocated
11 for the tracking of all MWBEs not just the primes,
12 but also the subcontract. As a—as a contractor of
13 SBS we make it an effort to make sure that we when we
14 subcontract those are MWBEs, but we have never been
15 asked really by SBS if they really are MWBEs or not.
16 We just make it an effort because that's what we do.
17 So, it is the logical thing to do for us to
18 subcontract MWBEs, but we have never—that's not part
19 of a form. That's not, you know. We do have to—
20 there is a form that they submit to—that we have to
21 submit to SBS with our contract for all the
22 subcontractors, but it mainly has to do with the City
23 Council and the conflict of in—you know, the conflict
24 of interest. That's really what it is. It's not
25 really more than—than that. So, that's very

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2 important. The other thing is that in terms of human
3 services organizations, I want to take the
4 opportunity again to encourage the participation of
5 MWBEs in Human Services contracts. It is written
6 into our contract that we are a non-profit. I think
7 it says if we are going to subcontract more than 5%
8 to make sure that those are MWBEs. I don't see why
9 we can't also talk about—I know they're not—they are
10 sent from the law, but they should at least be an
11 encouragement to encourage human services, non-
12 profits or any other entities to—to subcontract our
13 MWBEs because that's very important. There was
14 something else I wanted to say. Oh, on the issue of
15 payments, again when we—when you have a small prime
16 contractor that is contracted by the city, the city
17 doesn't pay on time. That's the reality. I go back
18 to even when we opened this chamber commerce as an—as
19 an example, we just had one of our contracts
20 registered last week, and we still have one pending
21 that has not been registered. So, if you look at
22 that--

23 CHAIRPERSON ROSENTHAL: [off mic] That's
24 what it's set to do. (sic)

25 QUENIA ABREU: Yes, so if you--

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2 CHAIRPERSON ROSENTHAL: I'm going to say
3 that. Could you just say that again for the record?

4 QUENIA ABREU: Yes.

5 CHAIRPERSON ROSENTHAL: For Fiscal Year
6 17.

7 QUENIA ABREU: Yes, one of our contracts
8 just got registered last week, and we still have one
9 pending. So, when you look at that and then you have
10 subcontractors, that affects the way we pay them.
11 That's, you know, that's a reality. Then, also in
12 terms of the loan, I would like you, Tracy, to double
13 check that because I do have to say that we got a
14 loan from SB—helped us get a loan to be able to bring
15 in the cash flow that we needed.

16 CHAIRPERSON ROSENTHAL: You would be a
17 prime.

18 QUENIA ABREU: Yes, yes, exactly. We
19 would be prime. So the subcontractors don't have
20 that.

21 CHAIRPERSON ROSENTHAL: Yes.

22 QUENIA ABREU: And that's something to
23 look at as well because as I said, you have some
24 contractors that have a—might have a contract that is
25 150, you know, \$150,000 or \$100,000, and they need

1 that cash flow and that money is not coming in.
2
3 Where do they go for a—you know, it's hard for them
4 to go for a loan even—even more so than for the
5 prime. So, I think it's important that we have
6 something for them as well.

7 CHAIRPERSON ROSENTHAL: Thank you.

8 FRANK GARCIA: Good morning. My name is
9 Frank Garcia. I'm chairman—outgoing chairman of the
10 New York State Coalition of Chambers representing 26
11 chambers in the State of New York. I just got
12 elected as National Chairman of the National
13 Association of Latino State Chambers representing 80—
14 thank you, Madam Chair, 80% of the Hispanic Chambers
15 in the U.S. and Puerto Rico. So, to me it's a great
16 honor to be testify. I've testified many times in
17 front of you, Madam Chair, on the MBE. One thing I
18 want to say you know I've been very crucial, very
19 critical of this Administration. Me and another
20 advocates--me and Quenia--have worked very hard with
21 you to make sure. So, I—before I get into this
22 issues, I just want to say that I congratulate and
23 the Administration for doing an incredible job with
24 the MBE issues, and you've never heard me testify
25 that before. So, I just wanted to say that and—

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CHAIRPERSON ROSENTHAL: On the record.

FRANK GARCIA: [laughs] On the record.

CHAIRPERSON ROSENTHAL: Thank you.

FRANK GARCIA: And I know that SBS would be very happy on that, but on this bill I do want to say that I—we do support it. I spoke with Lomax from DC-9 who sits on our board, and they say they said they do support this. They couldn't make it today, but they did ask me to—they're going to send a written statement to your legal counsel, to your council to let you know they do support it the way it is. Okay, I do want to say something that I haven't heard my counsel quite say how this bill—if this bill was there before we would have saved Joe Cochatto (sp?). I know you know Joe Cochatto from JDL Sales who went out of business because Skanska could—did not may him, and we got him paid, but he only got pennies on the dollar, and my concern is as good—a lot of these contracts, he had a contract with the city and the state through Skanska. So, my concern is will companies like Skanska try to go oh, this is a state contract and—and that's a concern because to me Joe was one of the top Hispanic furniture and interior design in New York. He created a lot of

1 jobs in Long Island City. Now those jobs—those 50
2 jobs are no longer there, and so I think that this is
3 important to have legislation like this to protect
4 the minority contractors. Allen Sapera (sp?),
5 President of the Hispanic Construction supports this
6 also. We're seeing that there's a lot of work being
7 out there, and contractors are not being—what I'm
8 hearing from the contractors, and you know, I'm very
9 vocal against the Mayor and the Governor. We are
10 very, very concerned that some of the subcontractors
11 that are minority business are going out of business,
12 and that's a very big concern. I haven't heard
13 anybody who said anything about that. I know Quenia
14 knows that. She's tried to save a couple, and we
15 have not been able to save that because it's one
16 thing for SBS to say they're great and minorities
17 they are they're doing better, but we still are
18 having a lot of problems with them saying we can't
19 find the contracts, and when they do they give
20 contracts that minority business can't handle when it
21 comes to construction. They're trying to choke these
22 businesses. So, what we're working with, DC-9 in
23 preparing their members to own businesses and doing
24 workshops and helping their members, and that's
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2 something we would like to partner up with the City
3 Council to work with all the unions in creating more
4 minorities. You know, as the National Chairman I
5 could say—I could go to my counter-parts in
6 California and Texas and Puerto Rico, but I think
7 that here through the union we have enough qualified
8 laborers that want to start their business that we
9 could—we—we could—we could have those—those unions
10 have their—their membership start their own
11 businesses. I think that's extremely important
12 because that way we eliminate the excuse at SBS, and
13 I do want to say thank you to the Comptroller Office
14 for working with us and Wendy Garcia and meeting a
15 lot of these contractors when SBS has not met with
16 them. So, I want to be very clear. They don't even
17 meet wit me and Quenia. So, they talk about, you
18 know, they're looking to locate national. I'm the
19 national chairman, and they even met with me on that.
20 So, again, we need more communication with SBS with
21 the advocates, and I feel they haven't done that.
22 Thank you, Madam Chair.

23 CHAIRPERSON ROSENTHAL: Thank you. Can I
24 ask you is anyone from the Administration here?
25 There is a column in front of me. Is somebody

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2 raising their hand? Oh, hi. So, you're hearing all
3 of this for the record and someone from City Hall is
4 here. I-I think these are important questions, and
5 I-the-these committees would like to get the answers
6 to many of the issues that are being raised by this
7 panel. You know, do they track the number of MWBEs
8 that go out of business? Do subcontractors on the
9 Human Services sector side have access to the
10 Returnable Grant Fund? Is there outreach or how is
11 there outreach to the MWBE community to make sure
12 they're not going, you know, to have contacts if
13 somebody is near bankruptcy. And what are we doing
14 to work with the unions to grow MWBEs? DC-9 is a
15 great example.

16 FRANK GARCIA: And they've done an
17 incredible job, Madam Chair, to help us. They fund
18 the Puerto Rican Business Summit here New York the
19 last-two years ago with the Puerto Rican Day Parade,
20 and they didn't have to do that. They brought the
21 top contracts and hosted a summit for the first time
22 where contractors in Puerto Rico became minority
23 contractors here. So, I would like to see that being
24 done more on that side. I don't see SBS being
25 proactive like that, and-and one more thing, Madam

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2 Chair. We would like to see in this that there will
3 be a penalizing because Skanska got away with putting
4 Joe Cochatto (sp?) out of business.

5 CHAIRPERSON ROSENTHAL: [interposing]
6 Sorry, but--

7 FRANK GARCIA: [interposing] They should
8 not--they should get penalized for something for
9 putting a minority business out of business.

10 CHAIRPERSON ROSENTHAL: Thank you for
11 reminding me. The other question is does Skanska
12 have caution in its Vindex so that agencies know that
13 they allegedly did not pay their subcontractor on
14 time. I know if it's--

15 FRANK GARCIA: [interposing] We have
16 paperwork.

17 CHAIRPERSON ROSENTHAL: Yes, I know you
18 do.

19 FRANK GARCIA: I mean I know that Quenia
20 still has that paperwork.

21 CHAIRPERSON ROSENTHAL: Right. Right and
22 I would imagine the Skanska is being contracted with
23 on a regular basis by the city and by EDC, but where
24 in the file wherein the paperwork does it show that
25

1
2 they, you know, they were late payers, and that that
3 was a serious, that late payment has that--

4 FRANK GARCIA: [interposing] That
5 happened with one of their subcontractors

6 CHAIRPERSON ROSENTHAL: Okay thank you.

7 QUENIA ABREU: I just wanted to add one
8 more thing. I know it's not part of this, but I
9 would the--the Committee on Contracts to also look at
10 the audits for contractors because we sometimes spend
11 most of our time responding to audits even on very
12 small contracts, which is insane. The state handles
13 small contracts differently when it comes to audits,
14 and the same thing happens here--the smaller--the small
15 primes if you have a contract of \$75,000 they don't
16 give you the reimbursement unless you submit all of
17 the invoices and the pay--you know, the--the--the
18 checks. Everything has to be submitted, but at the
19 end of the year you hit--you get hit with an audit and
20 sometimes it takes two years and then you get hit
21 with other one and the other one and the other one.
22 So you have sometimes three audits with the city open
23 at the same time, sometimes four. And when you're a
24 small prime, that takes a lot of your time, a lot of
25 your time.

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2 CHAIRPERSON ROSENTHAL: And that's
3 helpful. Thank you, Quenia.

4 QUENIA ABREU: Uh-huh.

5 CHAIRPERSON ROSENTHAL: Alright, thank
6 you all so much. Any other points you want to raise.
7 This has been very helpful. Thank you.

8 QUENIA ABREU: Thank you.

9 CHAIRPERSON ROSENTHAL: And I don't see
10 anyone else ready to testify. I am going to add to
11 your list, however. Sorry, and that is if SBS and
12 MOCS could please clarify over—they gave the number
13 12—roughly 1,200 or MWBEs or 1,500 subcontracts over
14 what period of time was that? Was that a quarterly
15 number? Was that an annual number. Okay, great.
16 Thank you very much. The hearing is closed. [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date July 23, 2017