

# Transportation and Infrastructure/ Contracts Committees

February 14, 2024

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New York City Department of Design and Construction

Thomas Foley, Commissioner

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Good morning, Chair Brooks-Powers and Chair Won. I am Magalie D. Austin, Executive Deputy Commissioner of the NYC Department of Design and Construction (DDC) and I am very pleased to appear before your committees today to discuss DDC's MWBE program.

I currently oversee the Office of Diversity and Industry Relations which manages our MWBE Program. Previously I served as Senior Advisor to the Mayor and Director of the Mayor's Office of MWBEs. With me this morning is Deputy Commissioner Tom Wynne, who leads our Infrastructure Division.

I am proud to report that DDC remains one of the City's leading agencies for contract awards to MWBE firms. We have had many successes and best practices that are now shared citywide. And we anticipate substantial improvement in the future as we continue to move toward alternate forms of capital project delivery outside of the traditional lowest bidder contracting system, which give us greater flexibility.

We also still struggle with some aspects of the program where we would like to see improvements. This is in part because of the laws that we would like to change in Albany, but it is also a function of the construction market and the availability of subcontracting opportunities and capacity challenges on DDC infrastructure projects.

#### DDC's MWBE Program

DDC structures its procurements to take advantage of new tools authorized by New York State to create additional opportunities for MWBEs. We have also been creative in our efforts.

In Fiscal Year 2021, our utilization rate on projects subject to Local Law 1, which requires us to report annually on MWBE contract awards, was nearly 26 percent, with 350 total contracts valued at \$660 million awarded to City-certified MWBEs. In Fiscal Year 2022, our utilization rate on projects subject to Local Law 1 was 19 percent, with contracts valued at \$515 million to MWBEs. Though this was the first time in over five years that DDC's utilization was below 20%, this was due to an especially large contract valued at over \$1.2 billion for highly specialized sewer, water main and flood protection work. In the latest annual MWBE Program Compliance Report for Fiscal Year 2023, as well as the most recent PMMR, DDC achieved 25.2 percent MWBE utilization, with approximately \$370 million in contract awards to MWBEs.

Note that for our Alternative Delivery program, including Design Build/Borough Based Jails, we have exceeded our goals on both programs to date and we would be happy to discuss this good news further.

We have an extensive public outreach program, and, since 2015, the Office of Diversity & Industry Relations has engaged more than 9,400 MWBEs through internal and external workshops and seminars led by DDC staff. Earlier this month, for example, in conjunction with Queens Borough President Donovan Richards, DDC hosted its second Construction Career and Training Resource Fair at Queens Borough Hall.

And DDC supports MWBEs not just in the construction industry but also in design, engineering and construction management. Currently half of the 20 firms that provide architectural design services for the City's next generation of public buildings are certified MWBEs. Forty percent (40%) of the 15 firms providing construction management services are MWBEs. And most

notably, 68% of the 31 firms providing Resident Engineering Inspection (REI) services, which encompasses day-to-day oversight of our infrastructure work, and four of the five firms providing Special Inspections are MWBEs.

#### Legislative Successes

Much of the City's and DDC's MWBE program is regulated by the State, and we have devoted significant time and resources to lobbying for changes that would enable us to enhance our program. Those efforts have been coordinated with the Mayor's Capital Process Reform Task Force and our sister City agencies.

In 2023, as part of the City's collective efforts, DDC helped to secure legislation in Albany to allow for comprehensive wrap-around insurance. We also helped to raise the MWBE discretionary threshold to \$1.5 million. We also realized significant success in establishing an MWBE Pre-Qualified List (PQL) for our general construction procurements between \$500K and \$3M.

And our Mentoring Program for MWBEs and small construction firms – which required legislation to establish – was so successful that it has now been taken over by City Hall to expand to other agencies. Prior to that, in 2023, we awarded our first contract under the Mentoring Program and also accepted 29 new firms to add to the already approved 49 firms.

#### Alternative Delivery

As I mentioned earlier, we have already demonstrated that alternative methods of project delivery outside of the traditional lowest bidder contracting system greatly increase opportunities for MWBEs. And that is because alternative delivery in its various forms allows for greater flexibility, and we can include the proposed MWBE utilization plan as a formal factor/score in the evaluation and selection of our alternative delivery teams.

For years, culminating in the introduction of our Strategic Blueprint in January 2019, DDC has been engaged in an extensive process to implement capital process reform. And we have had substantial success in Albany gaining permission to use design-build.

Our very first design-build project is a combined parking garage and community space in Kew Gardens completed as part of Borough-Based Jails. Not only did we build it in less than half the time we could had we used the lowest bidder contracting, but MWBE participation exceeded 37 percent for design and 44 percent for construction.

Again, that is because design-build does not base everything on the lowest-bid price. And that inevitably leads to higher levels of MWBE participation. We set MWBE goals of 30 percent for both the design and the construction portions of our design-build contracts. And acknowledging that there is much work to do in ensuring that Black and Hispanic MWBEs have equal access to contracting opportunities in the program, we have disaggregated those goals further with individual 10 percent targets for both Black vendors and Hispanic vendors.

We continue to advocate for other methods of alternative delivery, which will also increase opportunities for MWBEs. One of those is called CM-Build – DDC successfully used CM-Build during the pandemic, for example, and built three large clinics for the City's public hospital system valued at \$117 million with 46 percent MWBE utilization. Another is progressive design-

build, which will be particularly helpful with infrastructure projects, and ultimately making DDC an Authority.

### Infrastructure

While we've seen substantial progress in our public buildings division and the alternative delivery program, one of the greatest challenges for our MWBE program remains our extensive portfolio of infrastructure projects, the barriers for entry for smaller firms, and the manner in which the work in a typical project is divided.

Even in New York City, the number of firms capable of competing for our large infrastructure projects -- similar to the type we work on every day in the \$2.5 billion Southeast Queens Initiative that we are completing with DEP and DOT -- is limited. We see the same group of firms over and over and few of them are MWBEs. This is not likely to change soon as the barrier for entry into the market to complete these contracts is very high, requiring large investments in machinery and materials.

### Enhanced Local Outreach

Another element that we are bringing to our design-build contracts is aiming to hire local MWBEs. For example, in July we held a Construction Career & MWBE Expo for the Brownsville Girls Empowerment Center and Community Hub that DDC is building at 444 Thomas S. Boyland Street in Brooklyn. On March 13, we are hosting our next quarterly information session and job fair for East Side Coastal Resiliency focusing on how local residents can get into the relevant unions. We further held the Rockaway MWBE vendor event on December 14th and will be replicating events like this across the City.

### Conclusion

In closing, I would reiterate that DDC is one of the leading agencies for contract awards to MWBEs, and we are actively trying to improve on that performance both through legislative actions in Albany and through innovative contracting and hiring strategies here in the City. And as we improve capital project delivery for the City, we anticipate we will also expand the opportunities for MWBE firms.

Thank you and we would be happy to answer any questions.

**CHIEF BUSINESS DIVERSITY OFFICER – 2/14/24 TESTIMONY  
COUNCIL COMMITTEE ON INFRASTRUCTURE & TRANSPORTATION**

Good morning, Committee Chairs Brooks-Powers and Won. It's a pleasure to once again engage with you all on our shared interest in, and commitments to, the betterment of the overall M/WBE Community.

As someone who's served a significant portion of my professional career on major infrastructure and transportation projects, I'm happy to be here with my colleagues at the NYC Dept of Design and Construction in this testimony; and our colleagues at the Mayor's Office of Contract Services, and the NYC Department of Transportation who are also present and available to answer questions.

When Mayor Adams brought me on as NYC's first Chief Business Diversity Officer last year, I made a commitment to taking our overall program to the next level, and to build on the work and progress made by the last administration.

It's important to note here that NYC's MWBE program operates within the federal guidelines as set out by the federal courts and the applicable NYC local laws and rules. The program is tailored to maximize MWBE outcomes within that legal framework. It is not operated as a set aside or a quota system. It is MWBE availability and aspirational MWBE goal based. It provides for setting MWBE contracting goals based on the disparity and availability of certified MWBEs. And where the MWBE marketplace has changed over time, it also provides for appropriate goal relief such as MWBE goal waivers and exemptions. It seeks to successively match the available MWBEs certified within our city's MWBE vendor pool with appropriate contracting opportunities.

To this end, I'm very much happy to report on our key M/WBE wins the last fiscal year, and during Mayor Adams's first full fiscal year in Office.

Our program's FY23 successes are promising and have put us on track to meet the Mayor's aggressive OneNYC M/WBE goals - *which represents all procurement dollars spent by City and City-affiliated agencies* - of awarding **\$25 billion by FY26** and **\$60 billion by FY30** in M/WBE contracts. These FY23 successes include:

- Over 1,900 M/WBEs were awarded a contract in FY23 – a programmatic record
- 2 straight FYs of record M/WBE contracts with Local Law 1 City agencies - FY 23 saw a record \$1.4 billion in awards

- 2 straight FYs of over \$6 billion in M/WBE contracts with City & City-affiliated agencies under the OneNYC program
- Record tying 28% M/WBE utilization rate
  - Tied with FY20, which was right before the COVID state of emergency
  - Mayor Adams's goal is 30% M/WBE utilization
- Record year of agencies using their available Discretionary Authority on M/WBE contracts
  - Using this Discretion, awarded \$170 million to M/WBEs
  - A 55% increase over FY22
- Largest award in M/WBE program's history went to World Wide Technology - \$372 million – a black M/WBE technology firm

However, we recognize that there are still major challenges to be addressed and solved. Our program still experiences disparities within the program, or as we call them, the 'Disparity Within the Disparity.' There are still major spend areas of procurement where we don't see an equitable distribution of awards going to M/WBEs, specifically our underutilized categories, but also our overall vendor pool. To more closely address this, we've instituted the following:

- **Weekly M/WBE CompStat-like meetings** to address key challenges agencies may be facing in achieving the City's M/WBE goals, and to promote best practices
- **Weekly Asylum Migrant Seeker meetings** to ensure that we learned from our experiences during COVID and put M/WBE in the critical path of our emergency contracting opportunities
  - Through this focused effort, we've **awarded over \$1 billion** in asylum seeker emergency contracts to M/WBEs
- Expanded on **Citywide M/WBE Pre-Qualified Lists (PQLs)**, which was a goal under the Mayor's 'Blueprint for Economic Recovery'
  - Pre Qualified Lists are populated by available M/WBEs with sector expertise and can be accessed by City agencies

Next year, we also focused on an aggressive State legislative set of priorities that are designed to close disparities within the City's procurement eco-system, especially in the **Construction sector** which is the biggest area of the City's Local Law 1 spend dollars, but also where we see the largest disparities.

Under the leadership of Mayor Adams we successfully secured a successful slate of M/WBE State legislative priorities:

- The authority to establish a **Centralized Construction Mentorship Program**
  - The program is modeled after SCA and MTA's successful models
- More **Discretionary Authority** for City agencies to contract with M/WBEs (\$1.5 million)
  - This is the **2nd time it's been raised** in the last two years under Mayor Adams
  - We saw a record use of this discretionary authority in FY23
- **Lower insurance costs** that prevent M/WBEs from market entry (OCIP)
  - Insurance is a major barrier to market entry for M/WBEs and small firms

All things withstanding, there is still more work to be done. So, our focus now is to ensure that we use the available tools our efforts have granted, including:

- Operationalizing our Albany Legislative 2023 victories, especially the **Construction Mentorship Program**
- Streamlining technology and leveraging it towards our being able to track M/WBE outcomes in real-time
- Closing the 'Disparity within the Disparity' and make it a truly equitable program
  - Mayor Adams **signed Executive Order 26** last year to memorialize an internal City policy that was set during the COVID emergency to ensure that our underutilized ethnic/gender categories in procurement are **prioritized**
- Ensure M/WBEs are receiving payments in a business-like timeframe

Lastly, I stand with DDC, DOT, and the Mayor's Capital Process Reform Taskforce in ensuring that NYC remains a great place to do business for both M/WBEs and small businesses across all our procurement sectors. Prioritizing M/WBEs means prioritizing our local communities and the economies they support.





THE CITY OF NEW YORK  
**OFFICE OF THE COMPTROLLER**  
BRAD LANDER

**Testimony of New York City Comptroller Brad Lander**

**New York City Council Joint Hearing of the Committee on Contracts and Committee on  
Transportation and Infrastructure**

February 14, 2024

**Introduction**

Thank you Chair Brooks-Powers and Chair Won, and Members of the Transportation & Infrastructure and Contracts Committees, for the invitation to testify today.

We appreciate the opportunity to join this important discussion about how New York City can advance equity as we build the infrastructure required for a more just and resilient future for all New Yorkers. As the City's chief financial and accountability officer, I take seriously the responsibility of digging into the data and being honest about what we find.

My office recently released a report on [the racial wealth gap in New York](#), which highlighted the stark disparities between white and black New Yorkers. We found that the median household net worth of white New Yorkers is \$276,900, nearly 15 times that of the median Black household, at \$18,870. The numbers are comparable for Hispanic families. New York State has a wider racial wealth gap than the United States as a whole.

We find that these racial wealth gaps are perpetuated through continuing patterns of discrimination in homeownership, in education, in student loans, in investment holdings, in retirement security – and in City procurement.

Contracting is a powerful tool to achieve New York City's priorities – it's how we build our schools, repair our roads, upgrade our parks, protect our water supply, provide meals to home-bound seniors, childcare and afterschool programs for our kids, and so much more. This past fiscal year, the City spent roughly \$40 billion on contracts for everything from office supplies to human services to technology projects to the construction of large-scale infrastructure projects.

If these contracts were distributed equitably, proportionately to our population in a city where 29% of the population is Latino or Hispanic, 20% is Black, 16% are Asian, and more than 50% are women, they would be an enormous force for reducing those wealth gaps and sharing prosperity more broadly. Sadly, of course, that has not been the case. Despite decades of efforts, disparities in the City's procurement continue to exacerbate racial and gender disparities, rather than narrow them.

Today, our office is releasing our Annual Report on M/WBE Procurement for FY 2023. The report measures M/WBE utilization in compliance with Local Law 174 of 2019, which authorized the City's current M/WBE program by requiring City agencies and elected offices to establish contracting goals that ensure a more meaningful share of their contracts are awarded to M/WBEs. We also evaluate the City's work to move the needle in the direction of greater equity and make concrete recommendations for reform.



## Report Findings

Overall, we find that while the Adams Administration, led by Chief Business Development Officer Michael Garner, has made meaningful efforts that have resulted in some progress on prior recommendations, City agencies continue to fall woefully short.

- **M/WBEs continue to win only a very small share of City contracts.** M/WBEs accounted for only **5.3%** of the value of all new City contracts and purchase orders registered in FY23 (compared with 5.2% in FY22), and just **9.8%** of the narrower universe of City contracts and POs subject to M/WBE participation goals under LL 174, which make up about one quarter of the City's total procurement (down from 16% in FY22).
- **The value of contracts with Black, Hispanic, or women-of-color owned businesses each hovers at just 1%.**
  - Only 1.16% of the value contracts and POs subject to LL 174 participation goals were registered to Black M/WBEs, and only 0.96% to Hispanic M/WBEs.
  - Only a combined 1.03% of the value of contracts and POs subject to LL 174 participation goals were registered to businesses owned by women of color (and more than half of these were registered to businesses owned by Asian American women). Male-owned MBEs account for nearly 8 times the count of registered contracts and POs than women-owned MBEs.
- **M/WBEs are winning more contracts, but those contracts are, on average, for a small fraction of the value of the contracts won by firms owned by white men.** M/WBEs accounted for 61.8% of the total number of new contract registrations and POs subject to LL 174 participation goals in FY23 (up slightly from 58.5% in FY 22). However, the average value of a new contract registered in FY23 to a non-certified firm was \$4.6 million, over nine times larger than the average value of a new contract registered to a M/WBE, which was just \$511,000.
- **Most M/WBEs registered with the City don't benefit from City contracting.** In FY23, only about 20% of City-certified M/WBEs had a contract, PO, or approved subcontract registered by the City.
- **More than half of contracts awarded to M/WBEs are registered late.** Approximately 61% of M/WBEs contracts registered in FY23 were retroactive. This is a particular challenge for smaller firms without sufficient working capital to endure long wait times for payment.

## Performance by City Agency

In addition to providing analyses of the overall state of City procurement with M/WBEs, the Report provides a snapshot for each agency. Utilizing a new overall performance metric developed to account for difference among agencies, we examine the relative performance of agencies in doing LL 174-eligible business with M/WBEs as compared to their peers with similarly sized LL portfolios. In FY23:

- Among agencies with large LL 174-eligible contracting portfolios, the Department of Environmental Protect (DEP) was ranked first and the Department of Transportation (DOT) was ranked last. The Office of Technology and Innovation (OTI) had the most relative improvement from FY22.



- Among agencies with moderate LL 174-eligible contracting portfolios, the Department of Homeless Services (DHS) was ranked first and the Department of Citywide Administrative Services (DCAS) was ranked last. DHS also had the most relative improvement from FY22.
- Among agencies with small LL 174-eligible contracting portfolios, the Law Department (LAW) was ranked first and the Department of Finance (DOF) was ranked last. LAW also had the most relative improvement from FY22.
- Among agencies with micro LL 174-eligible contracting portfolios, the Comptroller's Office (COMP) was ranked first and the Civilian Complaint Review Board (CCRB) was ranked last. The Business Integrity Commission (BIC) had the most relative improvement from FY22.
- The Department of Education ("DOE") is a non-mayoral agency and previously was not subject to LL 174 participation goals. However, in FY23 DOE's Procurement Policy and Procedures were amended to implement a M/WBE goals program consistent with LL 174. FY23 is the first fiscal year in which the procurement rules were legally effective. M/WBEs accounted for 8.92% of DOE prime contract and PO registrations subject to participation goals.

### **Construction Contracts**

M/WBE utilization also varies the industry. The challenges are particularly notable on construction contracts, which really speaks to the focus of today's hearing. While an impressive 63.6% of the value of contracts for goods went to M/WBEs, and a respectable 21.6% of contracts for professional services, **only 7.5% of construction services prime contract registration value went to M/WBEs.**

This is particularly troubling on very large capital construction projects. By far the largest single contract entered into by a City agency in FY23 was the \$3 billion contract entered into by the Department of Design and Construction, with a non-certified firm, for the design-build construction of the Brooklyn borough-based jail. This contract has a 30% M/WBE utilization goal, which if realized would deliver \$900 million to M/WBE subcontractors; however, less than a year into the 6-year contract term, M/WBEs account for just 1% of the value of approved subcontractors.

### **Subcontractor Transparency**

Subcontracting should be a source of significant contract value for M/WBEs, especially on construction projects, where much of the value flows to subcontractors. Prime contracts in the construction industry accounted for about 70% of the subcontract records that were visible to our Office via the Payee Information Portal (PIP) for our FY23 report. Unfortunately, the pervasive underutilization of subcontract data in the Payee Information Portal, or PIP, is a giant barrier to making this happen. Mayoral agencies approved subcontract records against just around ~13% of the 2,927 LL 174-eligible prime contracts registered in FY23 at the time the data for this report was pulled from FMS.

Last year's report discussed the gaps in the City's ability to effectively monitor participation goals set on prime contracts. As a result, the City is not only unable to assess compliance with the requirements set forth in LL 174, but it also is unable to measure the utilization of M/WBEs at the subcontract level where most participation goals are set to be achieved. The goal-setting process remains onerous, the subcontractor tracking system has not been digitized for transparency, and reporting processes remain paper-based—all of which remain a barrier for meaningful M/WBE utilization.



## Progress Report and Recommendations

The Report also evaluates the Adams Administration's efforts to move the needle. It finds meaningful effort, some progress on the recommendations we made last year in the FY22 report, and substantial areas for continued improvement.

Working with the Capital Process Reform Task Force, which we were proud to be a member of, City Hall successfully lobbied in Albany to raise the M/WBE Noncompetitive Small Procurement method threshold to \$1.5 million, a significant victory. We were happy to work with the Administration to quickly operationalize and implement this threshold change to allow M/WBEs a greater ability to compete for larger contracts.

The Task Force was also successful in getting the State Legislature to pass a law facilitating the expansion of the City's construction mentorship programs, as well as legislation that lower prohibitively high insurance requirements. These changes will greatly support the ability of M/WBEs to build the capacity to be more competitive for large contracts.

Some progress has been made since last year by City Hall in establishing more pre-qualified lists, utilizing "best value" procurement, achieving higher dollar use of M/WBE NCSP, directing micro-purchases to M/WBEs, updating training and guidance to agencies, and making relevant data more easily accessible.

No progress was made reforming the subcontracting process, validating commodity codes to agencies can find the right M/WBEs, or improving the timeliness of contract registration.

The FY24 report also offers new recommendations to the Administration:

- **Streamline connections between M/WBEs and agencies.** Strengthen the tools to connect M/WBEs to appropriate contracting opportunities, by standardizing commodity code selection and searches across agencies procuring similar goods & services.
- **Survey underutilized firms.** Understanding the reasons most certified M/WBEs do not engage in business with the City is essential for implementing targeted improvements and enhancing the effectiveness of M/WBE participation programs.
- **Strengthen goal-setting procedures, support, and oversight.** The City must establish and enforce standardized expectations for setting goals and monitoring compliance for all eligible contracts, including for contract changes and modifications.
- **Increase utilization of M/WBE subcontractors in human services contracting.** The City should increase M/WBEs participation in the human services sector, through prime contracting and especially through more effective subcontracting processes.

## Intro 23 of 2024

I want to acknowledge and speak briefly to Intro 23 of 2024, sponsored by Chair Brooks-Powers, which would require the Comptroller to perform an annual audit of M/WBE procurement. I applaud the intent of the proposed legislation to ensure transparency and accountability, recognizing that the current report is voluntary, and would not be required to be continued by future Comptrollers. As witnessed by the report we are issuing today, our office, through our contract review, access to FMS and Checkbook NYC, and

related oversight powers, is well positioned to conduct this important work. We welcome feedback on the report, including suggestions for how we can make it even more useful. With that said, our office has concerns about the specific language of the bill, and we look forward to further discussion with the sponsor about how to best achieve our shared goals.

### **Voices of M/WBEs**

Finally, in addition to analyzing all this contract data, we organized a series of roundtable discussions in neighborhoods around the city (in East New York, Jamaica, the Northeast Bronx and the North Shore of Staten Island) to hear directly from a wide array of M/WBE business owners about the challenges they faced at various steps in the process. While there was a lot of frustration about pain points, there was also a lot of hope that New York City government could figure out better ways to invest more equitably in our future.

### **Conclusion**

Thank you very much for this opportunity to testify, to present our FY 2023 M/WBE Annual Report, and to share these voices of hard-working and diverse business owners looking for a fair opportunity to contract with the City of New York.



**MANHATTAN  
CHAMBER OF  
COMMERCE**

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONTRACTS  
JOINTLY WITH THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**DELIVERED BY JESSICA WALKER, PRESIDENT & CEO**

**HEARING TOPIC: EXAMINING THE CITY'S INFRASTRUCTURE  
PROJECTS THROUGH THE LENS OF EQUITY**

**FEBRUARY 14, 2024**

The Manhattan Chamber of Commerce is the convener, voice and advocate of the 125,000+ businesses across the borough of Manhattan, which holds the largest central business district in the world. We're focused on advancing the economic vitality of our region by building a strong and thriving climate for the broad business community, including small businesses, startups and large companies.

We strongly support Int. 23 because we all know the facts too well: minority- and woman-owned business enterprises (MWBEs) face unique hurdles such as less access to business education resources, financing, and business networks, which were all accentuated by COVID-19.

Programs designed to help MWBEs tap into the tremendous buying power of city and state government are improving, but structural barriers remain. Moving the needle on this issue would be truly transformational for many MWBEs in New York.

We are at a pivotal moment where so many good things are coming together:

- Mayor Adams has made the advancement of MWBEs a top priority of his administration and even appointed the city's first Chief Diversity Officer who is already implementing smart reforms like debundling more large contract, holding weekly MWBE CompStat meetings with SBS and MOCs, and targeting its marketing to contractors who are a good match for upcoming projects and opportunities.

- At the State level, Governor Hochul’s administration eliminated the years-long backlog of applications for MWBE certification. And they increased the city’s limit on discretionary contracts to \$1.5 million, higher than it has ever been.

So we have an immense opportunity! But we must keep agencies focused on the goal. This bill does that.

Formally auditing the MWBE activities of each city agency not only holds their feet to the fire, it also provides an opportunity for learning moments. The auditors can help identify contracts that could have been handled differently so that they can amend their processes going forward. That’s more than what the Comptroller’s current annual evaluation is capable of doing. That is why we support this important legislation.

Finally, I want to urge the City Council to continue funding vital programs like Chamber on the Go and the Five Borough Chamber Alliance, which allows nonprofit organizations like ours to send specialists out into neighborhoods throughout the city to help small businesses with everything from MWBE certification to help securing the capital they need to successfully complete the contracts they win. We host outreach events to publicize upcoming contract opportunities. We are the “boots on the ground” working hand in glove with SBS to help attain their aggressive goals. This is an essential part of the ecosystem to support MWBEs and to advance equity in our city through economic growth and entrepreneurship.

Thank you to Chair Brooks-Powers, who sponsored Int. 23, and also to the four other Council members who have already given their support to the legislation. I stand ready to assist you.

Thank you.






**THE NEW YORK ROAD CONTRACTORS' ASSOCIATION INC.**  
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# DON'T RENEW UNDERPERFORMING JOINT BIDDING LAW THAT FAILS TO ACHIEVE ITS GOALS!!

The City of New York's misapplication of the Joint Bid Law (Chapter 322 of the NYS Laws of 2014) has wasted millions of taxpayers' dollars by using that money to subsidize privately owned, billion-dollar utility companies. In addition, Joint Bidding projects are not being completed on time, with 70% of completed projects overrunning the original contract duration by over 145%.



Op-Ed: De Blasio era contracting reforms to cost taxpayers hundreds of millions



Op-Ed: NYC ignores Supreme Court ruling, continues to use illegal and wasteful procurement program costing taxpayers millions



Staten Island: Millions in New York taxpayer dollars wasted on new bidding program: contractors

The NYCDDC has explicitly shared that their intention in formulating the City's most recent iteration of Joint Bidding, JB 4.0, was to circumvent the "antiquated" and draconian (in their opinion) PPB rules, General Municipal Law, and the "low bidder wins" bidding format, all of which are designed to protect the public fisc and avert corruption. JB 4.0 furthers the aforementioned negative trends of the Joint Bid Law and magnifies those deleterious effects by utilizing a grossly undervalued fixed price list for private utility work, forcing contractors to place any additional costs for private utility work on to the City fisc. This fatal flaw in the JB 4.0 system will cost taxpayers more than \$260 million over the next four years.

## JOINT BID PROJECTS DO NOT HAVE TO ADHERE TO EXISTING LAWS PROTECTING THE PUBLIC FISC

- JB 4.0 ruled in violation of existing laws – the NYS Supreme Court recently ruled that the JB4.0 bidding format is in violation of General Municipal Law 103 (GML 103), AND does NOT protect the public fisc. Also referenced that there are other bidding formats in place that can be used that are in compliance with the law (i.e. Section 'U').
- Loophole in language saves Joint Bidding – the NYS Appellate Court overturned the Supreme Court's ruling, citing a loophole in the Joint Bidding Law language, wherein it is not subject to any other existing laws, rules, or regulations, including GML 103;
- Joint Bidding need not concern itself with the public fisc – In its decision, the Appellate Court asserted that any Joint Bidding format under the Joint Bid Law (not just JB 4.0) does NOT have to protect the public fisc.

## JOINT BID PROJECTS RESULT IN COST SHIFTING TO CITY TAXPAYERS

- Undervalued Fixed Price List for Private Utility Work – an analysis of the fixed prices in the NYC Utility Price List for private utility work show that the prices set by the City of New York are approximately 47% below the prices that resulted from a competitively bid marketplace;
- Additional Costs Shifted to Taxpayers – with undervalued, fixed pricing for privately owned utility work, there is only way for contractors to bid these projects: by increasing the prices that they can bid on, which is limited to the public work portion of the contract, effectively shifting the costs of the private utility work to the taxpayers

## JOINT BID PROJECTS ARE NOT BEING COMPLETED ON TIME

- 70% Failure Rate- 23 out of 33 Joint Bid projects bid and completed under the original Downtown Reconstruction Act were NOT completed on time and finished well past the scheduled completion date;
- 146% Overrun in Project Duration- those projects overran the original contract completion date by an average of 146%
- JB 4.0 Continuing the Trend- 6 out of 9 completed/active JB 4.0 projects are experiencing significant delays with lengthy periods of inactivity due to private utility companies' inability to adhere to the new contract language

## \$260 MILLION IN POTENTIAL SAVINGS TO CITY USING NON-JOINT BID FORMATS

With the Joint Bidding process applied to all projected projects in the NYCDDC Infrastructure budget for FY2022 through FY2026 (a total of \$4.171 billion according to the City Council Budget Report), the JB 4.0 process ends up costing NYC taxpayers more than \$260 million.

The City can save that \$260 Million by utilizing one of the existing non-Joint bidding formats.

## ENDING Joint Bidding will:

- 1) **SAVE** City taxpayers hundreds of millions of dollars
- 2) **SPEED** up construction projects in all five boroughs
- 3) **EXPAND** opportunities by allowing more City projects to be bid





## JOINT BIDDING LIMITS MWBE OPPORTUNITIES

The City of New York's wasteful and unconstitutional Joint Bid Law (Chapter 322 of the Laws of NYS of 2014) has cost taxpayers hundreds of millions of dollars by shifting the costs of critical infrastructure projects away from billion-dollar utility companies to taxpayers. In addition to adding to the City's existing budget deficit and hurting New York City Small businesses, the structure of JB 4.0 favors private companies that do not participate in the Minority and Woman Owned Business Enterprise (MWBE) program.

The fundamental flaw in JB 4.0 is the way contractors have to bid on the slew of city contracts let each year across all five boroughs. The City adheres to a low-bid policy however, while the contractor has wide discretion on how it can bid on the primary construction work, the complementing utility work that is usually required (moving power, phone and other lines and wires) is subject to dramatically lower fixed pricing.

As a result of the two different pricing structures, one for the private contractors and one for the private utilities, the utility companies have not participated in and are not being required to disclose whether or not their contracts meet MWBE requirements.

### Private Utility Companies REFUSE to Participate in MWBE Program on JB Projects

- Since 2004, the private utility companies have not participated in the MWBE program on Joint Bid projects, even though the money allocated to their work in the contract is subject to MWBE participation.
- In 2022, the NYRCA requested that the private utility companies provide a qualified list of MWBE subcontractors for their respective scopes of work and implored the NYCDDC to enjoin the private utilities to provide this information. The private utility companies refused to respond.
- The NYCDDC attempted to assist, however, DDC only provided a list of MWBE subcontractors for the City scope of work and NOT for the private utility scope of work.
- This is in direct conflict with the City's efforts to expand MWBE opportunities.

### Joint Bid Projects Limit MWBE Firms' Participation Instead of Expanding It

- By subsidizing the private utility companies, the City has allowed private entities that do NOT participate in the MWBE program to have their work included in value of the City contract.
- Since the private utility companies have not provided any certified or qualified MWBE firms for their scope of work, they have effectively eliminated MWBE opportunities for that substantial portion of the contract work.

### — SUPPORTED BY LEADING NEW YORK CITY MWBE SUBCONTRACTORS —

- Arbor Consulting, Inc.
- C. Francis Construction Corp.
- ENP Environmental, Inc.
- GGN Co., Inc.
- HHJR Construction
- KNR Management, Inc.
- MAC Contracting of S.I., Inc.
- Nadine Plaut Photography
- RMI Road Marking, Inc.
- Zero Below Trucking



# Building Material Teamsters Local 282

THOMAS GESUALDI  
President

LOUIS BISIGNANO  
Secretary-Treasurer

December 19, 2023

Thomas Foley, P.E., CCM, DBIA, NAC  
Commissioner  
NYC Department of Design and Construction  
30-30 Thomson Ave.  
Long Island City, NY 11101

Re: Joint Bidding 4.0

Dear Commissioner Foley:

I write on behalf of IBT Local 282 to urge your office to discontinue utilization of the procurement process known as Joint Bidding 4.0.

As you know, Local 282 represents thousands of members, many employed by contractors and subcontractors who perform infrastructure construction and repair work, including related utility and so-called "utility interference" work, that DDC is responsible to procure. Over the years, and particularly recently, we have been encouraged by the attention that DDC has given to upholding area labor standards in the performance of this work, particularly as it pertains to prevailing wage requirements.

Several contractors who are party to CBAs with Local 282, and who in turn employ scores of Local 282 members, have expressed to us their frustration with Joint Bidding 4.0 insofar as it has hampered their ability to procure work at adequate rates and prices. As they have argued in the New York State courts, by undervaluing utility interference work that is to be funded by private utilities such as Verizon, the process as implemented results in the City's overpayment for underlying infrastructure work and serves to drag on the amount of infrastructure work that can be funded.

Local 282 offers no opinion on the legality of Joint Bidding 4.0. Our concern is that to the extent that the procurement process leads to fewer projects, it leads to fewer employment opportunities for our members. As such, we join with the New York Road Contractors' Association Inc. and its members in asking that Joint Bidding 4.0 be discontinued.

Thank you for your attention to this matter, and we look forward to continuing our work with your Agency to ensure that in building a better New York City, working people are protected through adherence to and vigorous enforcement of labor standards.

Sincerely,

Thomas Gesualdi  
President

Affiliated with the International Brotherhood of Teamsters

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Paul Ahoja, Executive Deputy Commissioner

Address: \_\_\_\_\_

I represent: DOT

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Matt Taylor

Address: 528

I represent: ACD-CORP

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Matthew Robinson

Address: 116-42 231 Street

I represent: True Patriots of America

Address: \_\_\_\_\_



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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: CHARLETT HANMAGLARI (PLEASE PRINT)

Address: ONE CENTRE ST

I represent: COMPTROLLER'S OFFICE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Michael Garner (PLEASE PRINT)

Address: 253 Broadway (city Hq/D)

I represent: Office of the Mayor MWBE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Charles Diamond, Special Counsel (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: City of NY, Mayor's Office of Contract

Address: 255 Greenwich Street Services



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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 2/14/24

(PLEASE PRINT)

Name: Carlos Bannister

Address: 55 Water Street, NY, NY 10041

I represent: NYC DOT

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Thomas Wynne

Address: 30-30 Thomson Ave LIC NY

I represent: NYC DDC

Address: 30-30 Thomson Ave LIC NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 2/14/24

(PLEASE PRINT)

Name: Jeffrey Mancoske

Address: 30-30 Thomson Ave, LIC

I represent: NYC DDC

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 2-14-24

(PLEASE PRINT)

Name: Magnlie D. Austin

Address: 400 Central Park W, NY, NY 10027

I represent: NYC Dept of Design + Construction

Address: 30-30 Thomson Ave, LIC, NY 11101

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Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Yitzhak Yitzel

Address: 146-17 182 St. Queens NY 11413

I represent: Structure Point

Address: 146-17 182 St Queens NY 11413

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**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: 2/14/25

(PLEASE PRINT)

Name: Christopher Leonard Johnson

Address: 273 Buffalo Ave Apt 13 H River

I represent: Self

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Raul Rivera

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

*Please complete this card and return to the Sergeant-at-Arms*