

**Testimony of Denise Richardson, Executive Director of
The General Contractors Association of New York, Inc.
Before the Committee on Contracts
Hearing on Intros 346, 1293, 1379, 1452
Preconsidered File #s 2019-4707 and 2019-4708
250 Broadway, Committee Room
Thursday, June 20, 2019, 1:00pm**

Thank you, Chairman Kallos and members of the Committee for the opportunity to testify today. I am Denise Richardson, Executive Director of the General Contractors Association of New York. The GCA represents the heavy civil construction industry here in New York City. Our members build New York's roads, bridges, transit and water systems, parks, schools and building foundations.

We are here today to comment on six bills that would increase MWBE goals on City contracts; require contractors on certain size projects to hire an MWBE consultant; mandate the auditing of City agency MWBE procurements, and; make other changes to Local Law 1 of 2013, the City's MWBE Law.

The MWBE program, as originally envisioned and implemented, was designed to increase diversity in government contracting and create opportunities for qualified MWBEs. Its global goal was to help level the playing field for such businesses, build industry capacity, and provide pathways to success for MWBEs so they could ultimately be mainstreamed.

Certainly, progress has been made over the past two decades for MWBEs, but rather than take a thoughtful approach to look at what is working, what is not, and propose improvements to the program that would further strengthen its goals, the bills before you today simply ratchet up goals. They do nothing to help build capacity, assist MWBE businesses to grow and graduate into becoming prime contractors, nor do they encourage new MWBEs to enter the industry.

Without any analytical basis, **Intro 1293** would simply increase the citywide MWBE goals for construction to 73.27 percent, which includes 6 percent for Emerging Business Enterprises (EBEs). Such a goal ignores the City's own legally-mandated disparity study, which itself fails to evaluate capacity or qualifications of firms and already overstates capacity. That study, as flawed as it is, suggests that MWBEs – at best – represent only 54.8 percent of all vendors in the construction category. The same study states that it provides support for a total procurement aspirational goal of 30 percent, but notes correctly that the city – in accordance with the law – should be setting “project-specific” goals based on an individual project's scope and qualified MWBE availability. That is simply not done. Instead, an arbitrary 30 percent goal is set on virtually all projects, leaving it to the bidding community with all of the risk of trying to

actually meet the goal. Intro 1293 will make this problem worse because if the pool of available MWBE firms cannot today support a 30% goal, it certainly cannot support a 73% requirement tomorrow. Moreover, in the City's directory of certified businesses there are a grand total of 10 companies certified as EBEs which is less than 1/10 of one percent of the number of certified MWBEs. How is it then possible to set *any* EBE goal, let alone goal of 6 percent for all contracts?

Intro 1379 would require contractors to pay for agencies to hire an independent consultant on contracts over \$10 million to assist the prime contractor in recruiting MWBEs and to perform the level of oversight of the program that each agency should be currently handling.

Such a mandate would simply be a waste of taxpayer dollars. The universe of qualified MWBEs is identified, finite, and well-known, since contractors can only hire firms that are both certified by the Department of Small Business Services (SBS) and included in the SBS directory under the industry classification that reflects the work the firm is engaged to perform.

That said, there are some serious concerns with the accuracy of the SBS directory. While we would like to commend SBS for taking some action to improve the accuracy of the directory over the past year, significant issues remain. We noted in 2017 and again in 2018 that only 14% of the firms certified as MWBE Plumbers and 51% of the firms certified as MWBE Electricians actually possessed the required license from the New York City Department of Buildings to work as a Plumber or an Electrician. A recent review of the same list of firms shows that 29% of the firms that had been listed as Plumbers and 15.7% of the firms listed as Electricians are no longer certified. Unfortunately, of the remaining list, only 16% possess the required plumbing license and 54.8% possess the required electrical license. This is but one of many examples of the troubling inaccuracies in the directory. If the law in New York City is that licensed plumbers and electricians must be hired for this work, how can the City possibly set goals for its available plumbing and electrical work when the majority of the certified firms do not even possess the required licenses?

The directory must be correct because it is the primary means by which prime contractors identify MWBEs for business opportunities. Moreover, the participation of an MWBE can only be counted towards contract goals if the firm is included in the directory and only if the work performed matches the industry code under which a firm is certified. Incorrect coding also provides misleading information about the availability of firms to perform specific scopes of work. There is no need for a series of consultants to conduct MWBE outreach. Instead, the City would be far better served – as would the MWBE community and prime contractors – by an investment in ensuring the accuracy of the directory.

Both SBS and MOCs understand the problem – we have discussed it with them directly. While some improvements have been made, the directory nonetheless remains inaccurate, making it difficult to near impossible for the GCA and for our individual members to connect MWBEs to

business opportunities. It also makes it impossible for City agencies themselves to accurately determine availability and capacity in setting project specific goals.

Intro 346 would require the Comptroller to audit agency MWBE utilization plans every year. Until the City fixes the directory and ensures an accurate list by industry classification of certified MWBEs, and agencies demonstrate that they are actually setting contract specific goals based on the MWBE availability for project scopes, audits will cite discrepancies, but will do nothing to actually improve utilization.

Intro 1452 makes other problematic changes. For example, it would authorize an agency to set goals on the specific goods or services to be provided by the prime contractor. This appears to differ from overall contract specific goals and instead the City agency would direct prime contractors on how to meet those goals. Such micromanagement comes without a concomitant assumption of risk on the part of the City in terms of assuming all of the risk for the cost, quality and timeliness of the MWBEs' work.

The bill would also limit opportunities for smaller MWBEs to participate in multi-year contracts by requiring detailed information on each MWBE to be used on the contract with the bids. Much of the MWBE participation on heavy civil construction projects is performed in later stages of a project, in terms of doing finish work, landscaping, etc. It is very difficult for even an experienced prime contractor to forecast pricing and availability a year or more ahead. This situation is compounded if a project is delayed or the scope changes.

In addition, two pre-considered bills were added to the agenda at the last minute, file numbers 2019-4707 and 4708. We are concerned that these bills are simply an attempt to avoid the requirement to conduct regular disparity studies and instead rely on an in-house data review.

The City's MWBE law must be updated to provide a date by which the City must procure and conduct a new disparity study. The current study, published in 2018, is based on data from 2006 through 2015. File number 4707 would authorize the City to "use the most recent data available" rather than requiring a formal updated study and file number 4708 would require the MWBE directory include the updated findings. This approach is not consistent with a constitutionally sustainable program. Local Law 1 must be amended to provide a date by which the City must conduct a new disparity study. SBS must focus its resources on ensuring an accurate directory that lists firms in the industry classification that reflects the MWBE's actual expertise.

The bottom line is that rather than simply layer on a patchwork of arbitrary goals and mandates, the Council should, instead, be looking at thoughtful ways to make the program work more smoothly and therefore increase opportunities for MWBE and contractor alike. We would be happy to work with you and with the Administration on ways to do so.

Thank you for taking our comments and suggestions into consideration as these bills are evaluated and discussed.

ACEC New York

American Council of Engineering Companies of New York

Testimony

Committee on Contracts - June 20, 2019

Intro. 1293, Intro. 1452 and Intro. 1379 in relation to M/WBEs

Introduction

The American Council of Engineering Companies of New York (ACEC New York) is an association representing nearly 300 consulting engineering and affiliate firms with 30,000 employees in New York. Our members engage in every discipline of engineering related to the built environment including civil, structural, mechanical, electrical, environmental and geotechnical. Please note that the distinction between these categories of work underlies our testimony today.

We thank Chair Kallos and the Committee for this opportunity to testify on Intro. 1293, which updates M/WBE procurement goals on engineering contracts, and which we believe is problematic in its current form, and Intro. 1452, which modifies the City's M/WBE program and which we generally support. We oppose Intro. 1379, which imposes a new requirement on engineering firms, which creates redundant work functions and which will increase costs on City projects without having a commensurate benefit on the achievement of diversity goals. Costs created by Intro. 1379 will ultimately be passed on to City agencies.

Our Association believes that having a diverse, broad talent pool ensures projects are performed by the most qualified professionals available and can provide opportunity for those traditionally underrepresented in the industry.

Historically, we have supported initiatives seeking to increase the number of women and minorities entering the engineering profession, to maximize the participation of M/WBE firms in the industry, to increase the capacity of M/WBE firms and to remove barriers to participation on City contracts, such as poor payment practices.

One example, we have encouraged our member firms to access the Department of Small Business Services database of certified engineering firms and have encouraged our 48 certified member firms to make sure their listings are up to date and reflect the type of work they do.

We support the intent of the City's M/WBE program and note that the success of the program rests on having streamlined procurement processes and right sized participation goals. The goals must be thoughtful and fact-based. If they are too low, they will not support the utilization and growth of M/WBE firms. If goals are too high, they set firms and City agencies up for failure and jeopardize the M/WBE program. With this in mind, we submit the following specific comments and recommendations on the bills.

Intro. 1293

- **The City's 2018 Disparity Study found availability of M/WBE firms in the engineering and architecture sector is *lower* than the goals proposed by Intro. 1293 for Professional Service Contracts. For this reason, the goals applied by Intro. 1293 to engineering contracts will not be achievable.** For example, Intro. 1293 proposes goals for professional service contracts [which includes contracts for architecture and engineering (A&E) services] for African Americans and for Asian Americans of 12.15% and 9.56%, respectively. In the Disparity Study (Page 4-5, Table 4-2), A&E services are broken out separately from the larger professional services category. As a

result, the “Estimation of Available Firms, Architecture & Engineering” for African Americans and for Asian Americans are 7.54% and 7.33%, respectively.

- **The goals proposed in Intro. 1293 are not based on accurate data as it relates to the availability of M/WBE firms in New York’s engineering industry.** The bill proposes a 74.52% M/WBE overall goal for professional services contracts, which includes engineering and architecture services. The 2018 Disparity Study purportedly found 51.84% M/WBE availability in the engineering and architecture sector. The fact that these numbers are so different is a serious concern. In addition, in our own analysis which is based upon publicly available State Education Department data, we found M/WBEs account for 20-25% of engineering firms in New York (8-10% when firm employee count is taken into consideration).
- **We respectfully request the Committee’s help in obtaining the 2018 Disparity Study’s underlying data, as it relates to measuring the “availability” of M/WBE engineering firms.**
- We are particularly concerned about the lack of distinction between types of engineering work. Yes, all civil engineers receive the same license, but you would no more want the most competent electrical engineer to design a bridge than you would want a talented pediatrician to perform a liver transplant. In fact, state regulations specifically prohibit an engineer from, “accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform” *regardless* of licensure. Yet the Diversity Study ignores this obvious consideration, and unfortunately, that omission carries forward into the proposed legislation.
- Contrary wise, the SBS certified firm data base is very granular in the categories it offers to certified firms to self-identify as being able to perform, add to this that every capital agency values experience and capacity in awarding contracts through detailed RFPs. And while agencies have some latitude in reducing goals when capacity is lacking, their results are always going to be disappointing if the goals are based on numbers failing to take this into account. There is a balance to be struck in attempting to assist minority firms to grow their capacity but you cannot address an issue that is ignored or misunderstood.
- **The bill should set goals specific to engineering and architecture services, broken-out from and independent of the “Professional Service Contract” goals set by the bill.** The bill lumps engineering and architecture services into the broad “Professional Services Contracts” category, which also encompasses accountants, lawyers, doctors, computer programmers and others professions. The bill applies the same M/WBE goals to all of these various types of contracts. However, the process of becoming a professional engineer includes technical education, examinations and licensure by New York State, a factor in the shortage of engineers nationally of which President Obama spoke. The City’s goals on contracts for engineering and architecture services should be determined irrespective of the availability of doctors, accountants and other unrelated professionals. The goals should be specific to engineering and architecture and reflective of the availability of MWBE firms in this unique sector. We understand that this may be constrained by state law but we believe that we can collaboratively account for this, again, if the substantive issue is acknowledged.
- **Adopting disproportionate goals could jeopardize the City’s entire M/WBE program because in order for goals to withstand legal challenges, the goals must be based on an accurate and valid disparity study.** At the Contracts Committee’s October 10, 2018 oversight hearing on the “Administration’s Efforts to Expand Contracting with Minority and Women-Owned Businesses”, ACEC New York submitted testimony highlighting problems with the

City's 2018 Disparity Study methodology and accuracy as it relates to the engineering industry (see attached). For example, the study posits an underrepresentation of Native American firms compared to availability, however, we are unable to identify a *single* Native American-owned licensed firm.

Intro. 1452

- **We recommend that the bill require City agencies to include in their RFPs a list of M/WBEs that are a) certified firms in the SBS database, b) have expertise in the project's relevant engineering discipline, c) are available to work on the project and d) the size of each firm's City projects completed.** ACEC New York feels strongly that this will create a shared partnership between SBS, the agencies, M/WBE firms and prime firms in achieving the participation goals on a project by project basis.
- It will serve the additional function of causing agencies to make their determinations about the actual universe of certified firms qualified for the work at hand before firms create their teams to seek the work and introduce firms to M/WBE potential team members with whom they may not otherwise be familiar.
- In sum, while current and anticipated law allow agencies to vary goals based on capacity, the burden is on the engineer to demonstrate that they were unsuccessful after reasonable effort. And that burden is on the firm seeking the contract to demonstrate those efforts to agencies under increasing pressure to satisfy the goals. This lends itself to arbitrary and inconsistent decision making, unfair to both majority firms and M/WBE firms alike.

Intro. 1379

- **This bill is a solution in search of a problem and we strongly oppose it. The bill imposes a new requirement, which is redundant and which will increase costs on City projects without having a commensurate effect on the achievement of diversity goals.** The costs ultimately will be passed on to the client agency. This money would be better spent through the agencies on encouraging firms to become certified and on mentoring programs.
- Engineering firms take great steps to ensure they are in compliance with agency diversity goals on every project. Firms employ staff who perform the functions described by the bill. They work closely with the diversity officers at City agencies. Agencies monitor engineering firms' compliance with diversity goals and only firms that comply with the City's requirements are awarded contracts.
- Engineering firms, themselves, are in the best position to identify subcontractors that have the expertise and qualifications necessary to perform specific engineering tasks in a manner that meets the high quality and safety expectations of public projects. In the engineering field, particularly, it is not clear that an outside consultant would have necessary expertise to identify qualified subcontractors to perform specific engineering tasks given the technical and specialized nature of engineering work and applicable State licensure requirements.

We look forward to continuing to work with the City toward a well-designed and successful M/WBE program.

Attachments:

- 1) 10/10/18 testimony to the Committee on Contracts
- 2) 6/26/18 letter to Mayor's Office and SBS re: Disparity Study
- 3) 9/12/18 letter to Mayor's Office and SBS re: Data Request

For further information please contact:

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American Council of Engineering Companies of New York

Testimony for the Record
Committee on Contracts - October 10, 2018
Oversight Hearing – Update on the Administration’s Efforts to Expand
Contracting with Minority and Women-Owned Businesses

The American Council of Engineering Companies of New York (ACEC New York) is an association representing 270 consulting engineering and affiliate firms throughout New York State, collectively employing over 30,000 people statewide, with a concentrated presence of firms located in New York City.

We thank Chair Brannan and the Committee on Contracts for this opportunity to share the following testimony regarding the Administration’s efforts to expand contracting with Minority and Women-Owned Businesses (M/WBE).

We believe a strong, diverse, broad talent pool ensures projects are performed by the most qualified professionals available. Our association and member firms have historically supported initiatives seeking to increase the number of women and minorities entering the engineering profession; to maximize the participation of M/WBEs firms in the engineering industry; to increase the capacity of M/WBE firms; and to remove barriers to participation on City contracts.

We applaud the City Council’s and Mayor Administration’s recent initiatives to reduce barriers to participation on City contracts by streamlining City procurement processes. Recent efforts include Local Law 192 of 2017, requiring City agencies to implement electronic invoicing, and the launch of the PASSPort procurement webportal. Most M/WBE firms in the engineering industry are small-to-midsized. When procurement processes make it financially or administratively difficult to participate on City contracts, these burdens have a disproportionate impact on small-to-midsized firms. For example, when the City delays payment for engineering services rendered, small- and midsized firms have less access to capital to sustain their businesses as they wait for payment, causing them financial distress. For this reason, procurement reform is critically important to the health of small-to-midsized firms, including M/WBE engineering firms in the metropolitan area.

We additionally support the ideals and intent of the City’s M/WBE program. The success of the program rests on having rightsized M/WBE participation goals. Goals must be thoughtful and meaningful. If the goals are too low, they will not support the utilization and growth of M/WBE firms. If goals are too high, they may have negative impacts by setting the procuring agency and majority consultant up for failure when unreachable goals are not reached. Considering this, we supported the City’s commissioning of MGT Consulting Group to provide an independent and fact-based disparity study.

Unfortunately, the 2018 “City of New York Disparity Study” released in May does not appear to provide an accurate assessment of the demographics of the engineering industry. Therefore, the study does not provide a sound and defensible basis on which the City can establish updated M/WBE goals for the industry.

The 2018 Disparity Study is methodologically flawed in the way it assessed the availability of M/WBE firms in the engineering industry. We will not detail all the study's issues in this testimony but have attached two letters hereto, which we have sent to the Mayor's Office of M/WBEs and Department of Small Business Services (SBS), providing deeper analysis of the study.

The Disparity Study found that M/WBEs represent 51.84% of available firms within the Architecture & Engineering category. While we cannot speak for architects, we can tell you that this finding simply does not comport with reality in the engineering industry. ACEC New York recently undertook a close examination of its own membership, as well as the consulting engineering industry in the State. Because engineering is a licensed profession, regulated by the New York State Department of Education's Office of the Professions, no engineer can practice in New York without a license, and with few exceptions, no engineering firm can practice without a Certificate of Authorization granted by the State Department of Education. Thus, data on engineers is accurate and completely available in New York as compared to other, non-regulated industries. Apparently MGT did not use this readily available and 100% accurate data.

An analysis of our membership data shows 20-25% of firms are M/WBEs. When you take employee count into consideration, M/WBEs represent 8-10% of available capacity of engineering work statewide. The more comprehensive state license data shows a lower number, with 15-20% of all licensed engineering firms being M/WBEs. Given that this accurate and complete data is readily available for the engineering industry, we are at a loss to understand the difference in numbers between that which was provided via the State education website and the Disparity Study's numbers.

On September 5, our association leaders met with the Mayor's Office of M/WBEs and SBS to explain these and some related issues with the Disparity Study's findings. The Mayor's Office and SBS have engaged us in an open and constructive manner. We look forward to the administration's response to these issues. We also offered to coordinate meetings between the Administration and M/WBE member firms to discuss how the City can help build capacity of M/WBE engineering firms.

We know the Council will want to make sure that any legislative action it takes is based on sound methodology and analysis.

We look forward to continuing to work with the City toward a well-designed and successful M/WBE program.

Attachments:

- 1) 6/28/18 letter to Mayor's Office and SBS re: Disparity Study
- 2) 9/12/18 letter to Mayor's Office and SBS re: Data Request

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June 26, 2018

Hon. Gregg Bishop
Commissioner, NYC Department of Small Business Services
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Mr. Jonnel Doris
Senior Advisor and Director, Mayor's Office of Minority and Women Owned Businesses
City Hall
New York, NY 10007

Re: 2018 City of New York Disparity Study

Dear Commissioner Bishop and Mr. Doris:

The American Council of Engineering Companies of New York (ACEC New York) is an association representing over 280 consulting engineering and affiliate firms throughout New York State, collectively employing close to 25,000 people statewide, with a concentrated presence of firms located in New York City.

Our association opposes unfair and discriminatory barriers to licensed professional engineers' participation in the engineering industry and their utilization on public works projects. We believe that a strong, diverse and broad talent pool ensures projects are performed by the most qualified professionals available, strengthening our industry. For this reason, our association and member firms have historically supported numerous initiatives seeking to ensure fair and equitable MWBE representation in the engineering industry.

We support the ideals and intent of the City's M/WBE program and its administration in a fair and rational manner. Accordingly, we welcomed an independent and fact-based disparity study to serve as the legal basis for the City's M/WBE program. Unfortunately, we believe that the recently released Study does not accurately reflect the demographics of our industry, and therefore does not provide a sound and defensible basis upon which the City can act.

MGT Consulting Group's "City of New York Disparity Study" issued in May 2018 is methodologically flawed and draws inaccurate conclusions. The method of data collection used in the Study is neither transparent nor accurate as it relates to measuring the "availability" of M/WBE certified firms within the Engineering sector. This undermines the validity of the Study and could potentially jeopardize the M/WBE program if its goals were to be adopted according to the Study's numbers.

As stated on page 4-1 of the Study, to determine the availability of M/WBEs, "MGT will concentrate on the willingness of the vendors and not adjust availability due to capacity."

As we have communicated to the City in the past through in-person meetings, letters and testimony, it is imperative for the disparity study to evaluate firms' *capacity* in terms of their size and areas of engineering expertise. Capacity roughly relates to the type as well as volume of work a firm can produce. Comparing the sheer number of MWBE versus non-MWBE firms does not accurately measure the volume of business conducted by the firms in either category. Past court cases have criticized and rejected studies that overlook this critical aspect. As the Study did not account for capacity as described above, its data is badly flawed in the exact way we have cautioned the City about, and its findings with respect to the availability of M/WBE firms cannot be considered accurate or credible.

Furthermore, the Study states on page 4-1 that "Able, or capability to perform work, is more loosely defined [...]. Therefore, the measure of "ability" used to cull the universe of available vendors is that they have a presence within the defined market area." By this definition, an engineering firm's "capability" to perform engineering tasks of all scales and sizes is determined simply by virtue of whether such firm has a presence near the City and ignores even whether the firm is legally authorized to practice in the State.

It is a fundamental flaw of the Study to have placed Architectural and Engineering services in one category. Simply put, they do different work and must hold different licenses. An architect cannot practice engineering nor may an engineer practice architecture without violating the state Education Law. Combining these two related, but different, professions distorts the analysis of how many eligible firms are competing for the same work. By way of analogy, one would not calculate health provider capacity by combining medical doctors and dentists.

The process of becoming a professional engineer includes technical education, real-world experience and examinations. This is for good reason. The work of professional engineers affects the life and safety of the public. Due to the variety in types, sizes and scale of engineering tasks, not all licensed engineers are capable of performing all engineering work. For example, an engineer capable of designing an air conditioning system in a firehouse may not have the expertise or capacity necessary to design a large bridge, and vice versa. An engineer's *capacity* is an essential factor in determining their availability to complete a particular engineering task and to participate on particular City contracts.

The New York City Department of Small Business Services (SBS) "NYC Online Directory of Certified Businesses" is illustrative of MGT's flawed way of analyzing engineering firms. The SBS Directory lists M/WBEs firms and includes National Institute of Governmental Purchasing (NIGP) Codes to show their areas of expertise. In one specific example, the Directory lists a WBE firm with expertise in: Air Conditioning, Heating and Ventilating Engineering; Drainage Engineering; Electrical Engineering; Fire Protection Engineering; Gas Systems Engineering; Mechanical Engineering; Sanitary Engineering; Value Engineering and Value Analysis, Professional; Utilities/Engineering and gives some idea of their recent project size. This firm does not have expertise in other engineering disciplines, including Civil Engineering; Concrete Engineering; Geological Engineering; Highways and Streets Engineering; Rapid Transit Engineering; Structural Engineering; Traffic and Transportation Engineering; Tunnels Engineering and Subways Engineering. The SBS Directory is maintained this way in recognition that not all firms are qualified to do all work. By contrast, under the MGT's Study's methodology, this firm would be counted as "available" to design a highway interchange notwithstanding the fact that it does not have expertise in this engineering discipline.

We should note that we had shared this concern with each of your organizations on numerous occasions during the Study process in an attempt to prevent exactly this situation.

MGT's study estimates that M/WBEs represent 51.84% of available vendors within the Architecture & Engineering category. While we cannot opine on the number of certified architects, we do note that many architectural professionals are solo practitioners or in small firms, while engineering firms which do public works tend to be on the larger side. In any event, the stated percentage is not an accurate representation of the engineering profession.

In anticipation of this updated disparity study, ACEC New York undertook a close examination of its own membership, as well as the consulting engineering industry in the State. Because engineering is a licensed profession, it is regulated by the New York State Department of Education's Office of the Professions. No engineer or other design professional can practice in New York without a license, and with few exceptions, no engineering firm can practice without a Certificate of Authorization granted by the State Department of Education. Accordingly, the data on engineers and other licensed professionals is accurate and completely available in New York as compared to non-regulated industries. Apparently MGT did not use this readily available and 100% accurate data, which also shows a lack of appropriate attention to available data.

An analysis of our own membership shows that up to 20-25% of our member firms are women or minority owned. The sizes of these firms vary, but in most cases, they are small-to-midsized. The capacity to perform work is related to the size of their firm as measured by employee counts. Given the intersection of the number of M/WBE firms and their firm size, these firms represent between 8 and 10% of the available capacity of design work statewide. The more comprehensive state license data shows a slightly lower number, with 15-20% of all licensed engineering firms being women or minority owned and, as a result, the relative capacity would be lower than the 8-10% capacity level that we have documented within our association's membership. Given that accurate and complete data is so readily available, we are surprised at the difference in numbers between that which was provided via the State education website and the MGT Study numbers. We note the data is constantly changing slightly as firms open and close, and merger and acquisition activity reorders the ownership of existing firms, but this does not account for the over-counting. If the high percentage is attributable to the inclusion of certified architectural firms, it all the more demonstrates the flaw in lumping the two professions together.

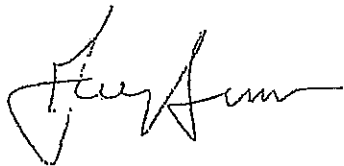
We respectfully request, therefore, that the data be revisited and that a more accurate and specific analysis of engineering "availability" and capacity be conducted prior to the use of this study to establish goals for any construction related design services. On a specific personal note from the study, MGT identified Native American design professionals being under-represented. We would like to have their information to share with our members as we have not been able to locate a single Native American owned engineering firm in New York.

We would like to commend some of the ideas in MGT's study – such as recommendations related to M/WBE capacity building and removing barriers to participation – which we hear frequently from member firms, both M/WBEs and non-M/WBEs alike.

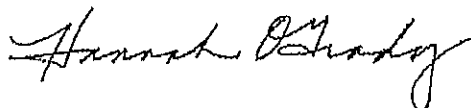
In closing, we would like to point out that goals that are not practical or achievable harm all firms. If goals are too low, certified firms will be underutilized. If goals are too high, certified firms can be pigeonholed into narrow areas that won't allow them to gain the expertise to grow. It can also limit their use to less commercially useful functions solely to get a percentage of work. Forcing small firms to grow too quickly can also lead to quality control problems, further harming their reputation and long-term viability.

We would welcome the opportunity to discuss this matter with you. Thank you for your consideration.

Sincerely,



Jay Simson
President



Hannah O'Grady
Vice President

cc:

Laura Anglin, NYC Deputy Mayor for Operations

Dan Symon, Acting Director, NYC Mayor's Office of Contract Services

Council Member Justin Brannan, chair, Committee on Contracts, NYC Council

September 12, 2018

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Mr. Jonnel Doris
Senior Advisor and Director, Mayor's Office of Minority and Women Owned Businesses
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Re: NYC 2018 Disparity Study

Dear Commissioner Bishop and Mr. Doris:

Thank you for meeting with us on September 5th. We appreciated the opportunity to share thoughts about the City's M/WBE program and to discuss the questions and concerns we had raised in our letter to you on June 26th. We also appreciated your candor and willingness to share information and maintain a transparent process.

It was helpful to understand that, in the Architecture & Engineering category, Asian-American firms will be included for the purpose of crediting their utilization towards A&E M/WBE goals because the study recommendation referenced professional services more broadly. We respectfully request that this clarification be documented to us so we can share with our membership. We appreciate that the study's recommendations will not be implemented until Local Law 1 is amended.

As reflected in our letter and our comments at the meeting, we continue to be concerned that the study did not distinguish between architecture and engineering, which are related but nonetheless different services provided under different licenses, and that the universe of qualified M/WBE available firms did not reflect which firms can perform which services, or the need for experience for particular types of work. It is with this in mind, that we requested the additional information outlined below:

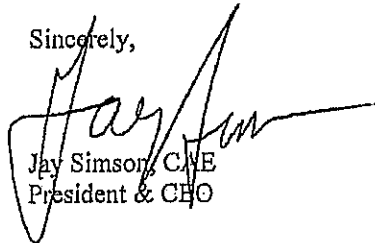
- Can you share the breakdown of M/WBE engineering firms and, separately, M/WBE architectural firms found to be available in the study?
- Can you confirm that available M/WBE engineering firms considered in the report have a Certificate of Authorization and license issued by the State Education Department? Please know on page 4-1, the study's definition of "ability" and "availability" do not recognize these requirements, which must be met by all engineering firms in order to perform engineering services in New York State, and as we mentioned, sometimes unlicensed firms have names suggesting a status that may not necessarily be the case.

- Table 4-2 lists the availability of firms within the Architecture & Engineering category for each business ownership classification. Can MGT provide us with the list of all of the firms that were used as the basis for the percentages listed in Table 4-2, including their designation as an M or W (or both) and the specific minority category where applicable?
- Table 3-3 in the study states that, in the Architecture & Engineering category, utilization of M/WBE firms is 4.03%. Can MGT provide the data behind this finding? Does the non-M/WBE contract listed amount mean that none of those dollars were subcontracted to M/WBE firms? Or are these prime contract amounts only (without subcontractor amounts)?
- Finally, can you advise whether the \$13.6 billion for A&E services referenced in the report was analyzed to determine which M/WBE firms might be qualified for the various subcategories of work which are captured in the SBS database of certified firms? We understand that the general methodology was based on self-reporting of availability by the firms, but hope that the amendments to Local Law 1 will reflect the classifications used by SBS in providing direction to agencies on the establishment of goals.

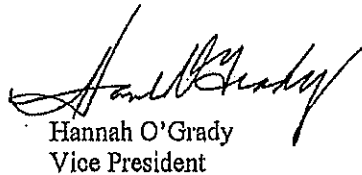
We also wanted to reiterate our offer to schedule meetings with both certified and majority member firms to offer some insight into how goals are currently met and obstacles to broader participation.

Thank you, again, for meeting with us and for considering this request for additional information.

Sincerely,



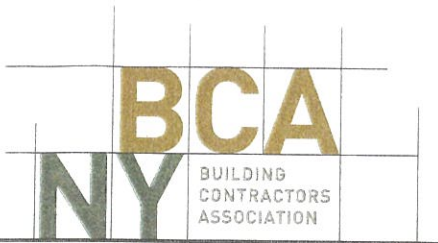
Jay Simson, CNE
President & CEO



Hannah O'Grady
Vice President

cc:

Laura Anglin, NYC Deputy Mayor for Operations
Dan Symon, Acting Director, NYC Mayor's Office of Contract Services
Council Member Justin Brannan, chair, Committee on Contracts, NYC Council



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NEW YORK CITY COUNCIL
COMMITTEE ON CONTRACTS

STATEMENT OF

BUILDING CONTRACTORS ASSOCIATION, INC.

OPPOSITION TO INTRO 1293-A-2018

June 20, 2019

Introduction:

The Building Contractors Association, Inc. (“BCA”) is Metropolitan New York’s leading membership association of unionized construction contractors. Formed in 1933, the BCA represents and promotes the general welfare and interests of its construction industry employer members. The BCA has historically provided the unified contractor voice needed to address and enter equitable, long term collective bargaining agreements with organized labor.

BCA members represent the finest of New York’s builders. One quarter of the Metropolitan areas largest construction firms are BCA members.¹ Some are multi-generational family owned businesses, one reaching back over 125 years. Several are large, multi-national publicly traded companies. Others represent the growth of minority and women owned construction firms. 42 of the 200 current members of the BCA are certified MWBE firms, 21 percent of the association. BCA member projects line the streets and skyline of the City of New York. They have employed generations of unionized construction workers providing solid, well-paying jobs to thousands of New Yorkers.

The BCA supports the City of New York’s continuing efforts to increase MWBE capacity, as it does for all new and small businesses. The ability of MWBE firms to compete competitively in the New York construction market, especially the unionized construction market, serves the best interests of the City of New York.

However, the BCA opposes the proposed substantial increases to citywide participation goals set forth in Intro 1293-2018. It is the position of the BCA that the City’s 2018 Disparity Study upon which Intro 1293-2018 is based is out of date,

¹ Crain’s, 2017 List of NY Area’s Largest Construction Firms, July 10-23, 2017, pages 11-12.

inaccurately calculates contractor availability and does not correctly represent current significant MWBE utilization.

A. Intro 1293-A-2018:

Intro 1293-A-2018 proposes substantial increases to existing citywide MWBE statutory participation goals, including construction contract awards. The current participation categories and participation goals were established by Local Law 1 of 2013. Intro 1293-A-2018 proposed participation goal numbers are drawn directly from questionable estimates of construction firm availability set forth in the City's 2018 Disparity Study.²

The proposed categories and participation goal increases for construction contracts are as follows:

Black Americans: Increase from 8 to 12%	Increase value: 50%
Asian Americans: Increase from 8 to 11%	Increase value: 37.5%
Hispanic Americans: Increase from 4 to 17.95%	Increase value: 348.75%
Native Americans: New category .56%	
Women: Increase from 18 to 25.66%	Increase value: 42.55%

The current construction contract participation goals for the four categories (Black, Asian, Hispanic and Women) set forth by Local Law 1 of 2013 total 38%. Intro 1293-2018 proposes the additional Native American category and increases the cumulative participation goal of all five categories to 67.17%. This is a cumulative increase of 76.76%.

The 2018 Disparity Study makes no recommendation that its estimates of available firms be adopted as new participation goals.

**B. City of New York Disparity Study, Published May 2018
Period Covered 6/1/06-6/30/15:**

1. The 2018 Disparity Study is Out of Date:

The 2018 Disparity Study presents an out of date and inaccurate assessment of MWBE utilization, especially as it concerns construction contract participation. More

² <https://www1.nyc.gov/assets/mwbe/business/pdf/NYC-Disparity-Study-Report-final-published-May-2018.pdf>

recent MWBE utilization compliance records published by the Mayor's Office of Contract Services ("MOCS") and NYC Department of Small Business Services ("SBS") establish that the 2018 Disparity Study's finding of "significant underutilization" of MWBE firms as prime or subcontractors is inaccurate.³

The BCA is not alone in questioning the timeliness and accuracy of the 2018 Disparity Study. The City Council's Committee on Contracts Report, dated October 10, 2018, states that the Disparity Study period of 2006-2015 fails "to take into account programs that have been initiated since 2015, which means **its findings are inherently out of date**" (see attached copy of "City Council Report", page 3, emphasis added). In addition, the City Council Report states that the 2018 Disparity Study "offers little information regarding the progress of the [MWBE] program in the last three years" (City Council Report, page 14). Most importantly, the City Council Report acknowledges that this lack of timeliness and inclusion of recent information regarding MWBE participation in City contracts "questions the accuracy and relevance of some of the recommendations made" in the Disparity Study (City Council Report, page 14).

Contrary to the 2018 Disparity Study, the SBS Quarterly MWBE Compliance Reports ("SBS Reports") present a current and accurate analysis of MWBE utilization. The SBS Reports analyze participation for Fiscal Years 2015 through 2019 and show significant MWBE utilization (see summary of SBS MWBE Compliance Reports for Fiscal Years 2015-2019 attached hereto).

2. 2018 Disparity Study's Ambiguous Calculation of MWBE Availability:

The U.S. Supreme Court's 1989 *Crosson* decision established the legal principle that disparity studies can establish a constitutional footing for MWBE programs. The Court stated:

"Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." ... In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion."⁴

The Supreme Court in *Crosson* identified parameters and conditions that should be considered when performing a disparity study. The Court noted that when "special qualifications are required to fill particular jobs, comparisons to the general population

³ <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>;
<https://www1.nyc.gov/site/sbs/about/publications-reports.page>

⁴ *City of Richmond v. J.A. Crosson Co.*, 488 U.S. 469 (1989)

(rather than to the smaller group of individuals who possess necessary qualifications) may have little probative value.” In addition, where “special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion **must be** the number of minorities qualified to undertake the particular task.”⁵

The special or necessary qualifications that accurately reflect the qualified MWBE firms willing and able to perform particular construction services in the City of New York are certification and, for some trades, licensing. NYC requires MWBE certification. Compliance with MWBE participation goals requires the use of certified firms. This is not a flexible rule. Local Law 1 of 2013 mandates that no contractor shall be credited for the use of non-certified MWBEs. Certification and licensing therefore define the permissible universe of qualified available, willing and able MWBE firms. The *Crosson* decision makes it clear that the “relevant statistical pool ... must be the number of minorities qualified to undertake the particular task. The 2018 Disparity Study ignores this requirement.

The 2018 Disparity Study analyzes MWBE availability using an ambiguous study of the 13 county “market area” defined as the five boroughs and surrounding counties located in New Jersey, Westchester, Putnam, Rockland and Long Island (2018 Disparity Study, Ch. 3). The 2018 Disparity Study surveys this market area to estimate what it deems are potential “available vendors” without any reference to the City’s existing MWBE program or certification requirements (2018 Disparity Study, Ch 4). The 2018 Disparity Study further states when calculating its estimations of availability, MWBE ability only requires a “presence within the defined market area” (2018 Disparity Study, page 4-1).

This highly questionable market based analysis of availability and ability results in an “estimate” of the percentage of firms that can be assigned to each participation goal category. The 2018 Disparity Study concludes that its estimations are the “most accurate representation of available firms” (2018 Disparity Study, page 4-2). This analysis and its estimated conclusions ignore four very important factors:

- 1) the existence of an MWBE certification process mandated by the City of New York for compliance with its MWBE program;
- 2) the existence of a certification list that identifies the universe of qualified, willing and able MWBE construction contractors;
- 3) requirements that only the use of NYC certified MWBE firms counts towards MWBE participation goal credits; and
- 4) the Supreme Court’s directives that where “special qualifications are necessary, the relevant statistical pool for purposes of demonstrating

⁵ City of Richmond v. J.A. Crosson Co., 488 U.S. 469 (1989)

discriminatory exclusion must be the number of minorities qualified to undertake the particular task.”

Failing to accurately measure availability and follow the directives set forth in *Crosson*, the 2018 Disparity Study presents analysis and conclusions of “little probative value.”⁶

The 2018 Disparity Study estimates that MWBE firms constitute 54.80% of the “available” construction firms in the 13 county market area (2018 Disparity Study, Table 4-3, page 4-6; see also, 2018 Disparity Study Executive Summary, Table ES-1, page ES-3). Intro 1293-A-2018 simply incorporates these estimated availability numbers as proposed new participation goals.

3. Comment on 2018 Disparity Study Availability Analysis Impact on Utilization Calculation:

As noted above, the 2018 Disparity Study employs an ambiguous method of calculating contractor availability. This method of calculating availability inflates the estimated number of MWBE firms as compared to those firms certified by the City of New York and actually participating in measurable contract award utilization. The result drives down utilization numbers. It is an apples to oranges comparison. This is unfair to all contractors that contract with New York City and its agencies and work within the parameters of Local Law 1 of 2013. This is especially true when subject to a mandate that no contract participation goal credit be allowed for use of non-certified MWBEs.

C. Comparison of 2018 Disparity Study with Department of Small Business Services MWBE Program Compliance Reports for Fiscal Years 2015-2019:

1. SBS Reports Show Current and Significant MWBE Participation:

The 2018 Disparity Study concludes that MWBE utilization in the construction category totaled 19.45% for the June 1, 2006 through June 30, 2015 study period (2018 Disparity Study, page 3-9). The Disparity Study concludes that MWBE firms “are utilized at substantially lower rates than their non-MWBE counterparts” (2018 Disparity Study, page 3-25). The BCA disagrees and points to the SBS Reports for the Fiscal Years 2015-2019 for a more current and accurate picture of MWBE construction contract award participation. The news is positive.

2. Contract Value Threshold and MWBE Utilization

The most accurate and current analysis of the state of the City of New York’s MWBE program measures compliance using contract value thresholds. This measures utilization based on scales of contract dollar values.

⁶ City of Richmond v. J.A. Crosson Co., 488 U.S. 469 (1989)

Both the SBS Reports and the 2018 Disparity Study employ contract value threshold analysis (2018 Disparity Study, page 3-13). Even the outdated 2018 Disparity Study concludes that contract value threshold analysis establishes that “**MWBEs have been able to win a sizeable share of awards of increasing values spanning across all procurement categories**” (2018 Disparity Study, Figure 3-2, page 3-14). For the construction category, the threshold analysis shows MWBE utilization rates as high as 48% (2018 Disparity Study, Figure 3-3, page 3-15).

Most important for the BCA’s opposition to Intro 1293-A is the following: **The 2018 Disparity Study states that 94% of all construction contracts awarded by the City had values at or below \$1 million** (2018 Disparity Study, Table 3-11, page 3-18). **97% of all MWBE contracts awarded in the construction procurement category occurred at or below this \$1 million threshold** (2018 Disparity Study, Table 3-11, page 3-18). Figure 3-3 shows MWBE utilization for construction contracts below **\$100,000 at 47%**, contracts between **\$100,000 and \$200,000 at 48%** and for contracts between **\$200,000 and \$1 million at 46%** (2018 Disparity Study, see page 3-15).

What this contract value threshold analysis reveals is that for 94% of all construction procurement contracts awarded, City agencies substantially exceeded the cumulative 38% participation goal set for in Local Law 1.

The SBS Reports review quarterly “percentages of total city construction dollars [MWBE] firms now receive” as prime contractors and subcontractors let by NYC. The news remains positive. For example, the latest quarterly SBS Report shows construction contract utilization as follows:

First and Second Quarters: July 1, 2018 – December 31, 2018

Prime Contracts:	Utilization %:
Contract dollar values: up to \$35,000	59% micro purchases
Contract dollar values: btwn \$20K and \$100K	64% small purchases
Contract dollar values: btwn \$100K and \$1M	36%
Contract dollar values: btwn \$1M and \$5M	25%

Subcontracts

Contract dollar values: up to \$20,000	41%
Contract dollar values: btwn \$20K and \$100K	56%
Contract dollar values: btwn \$100K and \$1M	59%
Contract dollar values: btwn \$1M and \$5M	76%
Contract dollar values: btwn \$5M and \$25M	38%

The BCA disagrees with the 2018 Disparity Study's conclusion that MWBE firms "are utilized at substantially lower rates than their non-MWBE counterparts" (2018 Disparity Study, page 3-25). What it does establish is that **based on contract value thresholds, MWBE firms compete competitively and receive awards far and above participation preference goals.** There are substantial capacity issues that are faced by all new and growing businesses. Building capacity to be qualified, willing and able to perform a particular service should remain the central focus of the City's MWBE program.

D. The Future of NYC Local Law 1 2013 MWBE Program:

Intro 1293-A's proposed participation goals raise serious constitutional issues. As discussed above, even the outdated 2018 Disparity Study shows MWBE firms received a "sizeable share" of construction contract awards during the 2006-2015 study period (2018 Disparity Study, Figure 3-2, page 3-14). Since 2015, SBS Reports show even more significant MWBE utilization in construction contracts covered by Local Law 1 of 2013.

In addition to NYC's measurable and statutory Local Law 1 of 2013 MWBE program, Mayor de Blasio's Administration has instituted an expansive policy commitment to increase the use of MWBE firms setting a City-wide goal of 30% MWBE utilization by end of Fiscal Year 2021. This policy includes contract awards beyond measurable statutory Local Law 1 of 2013 categories. For example, in 2017 the Mayor announced that six affordable housing development projects were awarded exclusively to MWBE firms. These exclusive MWBE contract awards were deemed not covered by Local Law 1 of 2013 and therefore not measurable for purposes of MWBE utilization (see attached copy of testimony of Jonnel Doris, Senior Advisor and Director Mayor's Office of Minority and Women-Owned Enterprises, dated October 16, 2018, submitted to Joint Hearing of NYS Senate Committees of Labor, Agriculture and Economic Development). This example shows that reports measuring Local Law 1 of 2013 MWBE utilization do not even tell the full story of MWBE construction-related contract participation.

The BCA believes that current measurable MWBE utilization rates, combined with other City of New York policy based MWBE priority programs, undermine constitutional support for increasing Local Law 1 of 2013 participation goals as proposed in Intro 1293-A.

The U.S. Supreme Court's 1989 *Crosson* decision provided constitutional footing for MWBE programs, but did state, "**In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate**

exclusion.⁷ It is very difficult to conclude that an “extreme case” of “deliberate exclusion” exists in City contract award decision making when current SBS Reports establishes Local Law 1 of 2013 MWBE participation rates at rates as high as 76%. Quite the opposite from deliberate exclusion, the City of New York has made MWBE utilization a policy priority.⁸ This includes seeking increases in discretionary spending allowing City agencies to contract directly and exclusively with MWBE firms outside the requirements of competitive bidding laws. The NYCEDC ConstructNYC program, implemented in 2016, prequalifies, trains and provides bid access to MWBE firms for contracts resulting in awards totaling “nearly \$18 million.”⁹ A joint NYC Department of Small Business and EDC loan program designed to give MWBE and small businesses firms access to low interest loans has awarded 90% of its loans to MWBEs.¹⁰

Constitutionally allowable “deviations from the norm of equal treatment” must be remedial, temporary and must account for a logical stopping point. The Supreme Court in *Crosson* warned against racial preference programs veering into perpetual existence supported by racial politics and unconstitutional policies of “outright racial [and gender] balancing.” It warned of “an amorphous concept of injury that may be ageless and without a logical stopping point.”

Crosson is clear: “States must undertake any remedial efforts [to redress society wide discrimination] in accordance with [the U.S. Constitution’s 14th Amendment equal protection clause].” Race based measures are a “highly suspect tool” subject to a strict scrutiny standard of judicial review. The City Council must ask itself, what is the constitutionally permissible “remedial conclusion” contemplated by Intro 1293-A. The data shows that an extreme case of deliberate exclusion based on the irrelevant factor of a person’s race is unlikely.

Conclusions:

The 2018 Disparity Study authors state that “the calculations of availability and disparity serve as the foundation for the future of the City’s MWBE program.” If that is the case, then the City must base its decisions on accurate and current information. The 2018 Disparity Study fails to do so.

⁷ *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989)

⁸ For example of MWBE policy statement and legislative priorities see March 21, 2019 Statement from Office of Mayor de Blasio, <https://www1.nyc.gov/office-of-the-mayor/news/154-19/mayor-de-blasio-business-leaders-advocates-elected-officials-state-proposal-level#/0>

⁹ <https://www.nycedc.com/press-release/nycedc-releases-update-constructnyc>

¹⁰ March 21, 2019 Statement from Office of Mayor de Blasio, <https://www1.nyc.gov/office-of-the-mayor/news/154-19/mayor-de-blasio-business-leaders-advocates-elected-officials-state-proposal-level#/0>

Chapter 5 of the 2018 Disparity Study is entitled “Anecdotal Analysis.” What conditions and obstacles do MWBE firms encounter?¹¹ The findings consistently show that most firms expressed concerns with the certification/re-certification process, dealing with City agency procurement bidding, contracting and payment practices and, most of all, financial issues. Discriminatory “or disparate” treatment was cited by only 6.8% of MWBE firms working on City contracts.

The BCA believes that the future success and legal stability of the City of New York’s MWBE program should reflect accurate and current market conditions as reflected in the SBS Reports. The numbers show strong utilization, but a weakening of capacity as contract values increase above certain dollar values. What problems they do indicate and specifically note (bonding, financing, capital) are all problems faced by small and large businesses. The Mayor and the City Council must remain cognizant of the skepticism expressed by the Supreme Court for racial preferences when “race neutral” or “nonracial factors” can be used to address barriers faced by businesses.

The BCA recommends:

1. Leaving current Local Law 1 of 2013 participation goals as is;
2. Create an MWBE construction industry commission that includes MWBE and non-MWBE firms to examine, evaluate and make recommendations on the continued operation of NYC’s MWBE program.
3. Increase and continue race neutral capacity building efforts to address issues such as capital, insurance, bonding, contracting, bidding, payments, labor relations, etc.

¹¹ It is interesting to note that in this instance, the 2018 Disparity Study states that they “focused on firms registered to do business with the City.”

**SUMMARY OF DEPARTMENT OF SMALL BUSINESS SERVICES MWBE
PROGRAM COMPLIANCE REPORTS FOR
FISCAL YEARS 2015-2018**

Fiscal Year 2015:

First Quarter: July 1, 2014 – September 30, 2014

Prime Contracts:

Contract dollar values: up to \$20,000	45%
Contract dollar values: btwn \$20K and \$100K	42%
Contract dollar values: btwn \$100K and \$1M	34%
Contract dollar values: btwn \$1M and \$5M	14%

Subcontracts

Contract dollar values: up to \$20,000	54%
Contract dollar values: btwn \$20K and \$100K	41%
Contract dollar values: btwn \$100K and \$1M	54%

First and Second Quarters: July 1, 2014 – December 31, 2014

Prime Contracts:

Contract dollar values: up to \$20,000	47%
Contract dollar values: btwn \$20K and \$100K	55%
Contract dollar values: btwn \$100K and \$1M	38%
Contract dollar values: btwn \$1M and \$5M	9%

Subcontracts

Contract dollar values: up to \$20,000	50%
Contract dollar values: btwn \$20K and \$100K	45%
Contract dollar values: btwn \$100K and \$1M	53%

First through Third Quarters: July 1, 2014 – March 31, 2015

Prime Contracts:

Contract dollar values: up to \$20,000	45%
Contract dollar values: btwn \$20K and \$100K	54%
Contract dollar values: btwn \$100K and \$1M	40%

Contract dollar values: btwn \$1M and \$5M	12%
Subcontracts	
Contract dollar values: up to \$20,000	49%
Contract dollar values: btwn \$100K and \$1M	54%
Contract dollar values: btwn \$1M and \$5M	0%

Fiscal Year 2016

First Quarter: July 1, 2015 – September 30, 2015

Prime Contracts:

Contract dollar values: up to \$20,000	57%
Contract dollar values: btwn \$20K and \$100K	51%
Contract dollar values: btwn \$100K and \$1M	38%
Contract dollar values: btwn \$1M and \$5M	10%

Subcontracts

Contract dollar values: up to \$20,000	38%
Contract dollar values: btwn \$20K and \$100K	47%
Contract dollar values: btwn \$100K and \$1M	53%
Contract dollar values: btwn \$1M and \$5M	28%

First and Second Quarters: July 1, 2015 – December 31, 2015

Prime Contracts:

Contract dollar values: up to \$20,000	50%
Contract dollar values: btwn \$20K and \$100K	51%
Contract dollar values: btwn \$100K and \$1M	37%
Contract dollar values: btwn \$1M and \$5M	17%

Subcontracts

Contract dollar values: up to \$20,000	34%
Contract dollar values: btwn \$20K and \$100K	53%
Contract dollar values: btwn \$100K and \$1M	51%
Contract dollar values: btwn \$1M and \$5M	38%

First through Third Quarters: July 1, 2015 – March 31, 2016

Prime Contracts:

Contract dollar values: up to \$20,000	49%
Contract dollar values: btwn \$20K and \$100K	56%
Contract dollar values: btwn \$100K and \$1M	44%
Contract dollar values: btwn \$1M and \$5M	16%

Subcontracts

Contract dollar values: up to \$20,000	34%
Contract dollar values: btwn \$20K and \$100K	52%
Contract dollar values: btwn \$100K and \$1M	55%
Contract dollar values: btwn \$1M and \$5M	27%

Fiscal Year 2017

First Quarter: July 1, 2016 – September 30, 2016

Prime Contracts:

Contract dollar values: up to \$35,000	57% micro purchases
Contract dollar values: btwn \$35K and \$100K	0% small purchases
Contract dollar values: btwn \$100K and \$1M	31%
Contract dollar values: btwn \$1M and \$5M	23%

Subcontracts

Contract dollar values: up to \$20,000	26%
Contract dollar values: btwn \$20K and \$100K	39%
Contract dollar values: btwn \$100K and \$1M	59%
Contract dollar values: btwn \$1M and \$5M	23%

First and Second Quarters: July 1, 2016 – December 31, 2016

Prime Contracts:

Contract dollar values: up to \$35,000	46% micro purchases
Contract dollar values: btwn \$20K and \$100K	38% small purchases
Contract dollar values: btwn \$100K and \$1M	30%
Contract dollar values: btwn \$1M and \$5M	27%

Subcontracts

Contract dollar values: up to \$20,000	36%
Contract dollar values: btwn \$20K and \$100K	46%
Contract dollar values: btwn \$100K and \$1M	58%
Contract dollar values: btwn \$1M and \$5M	16%

First through Third Quarters: July 1, 2016 – March 31, 2017

Prime Contracts:

Contract dollar values: up to \$35,000	44% micro purchases
Contract dollar values: btwn \$20K and \$100K	46% small purchases

Contract dollar values: btwn \$100K and \$1M	37%
Contract dollar values: btwn \$1M and \$5M	27%
Subcontracts	
Contract dollar values: up to \$20,000	31%
Contract dollar values: btwn \$20K and \$100K	43%
Contract dollar values: btwn \$100K and \$1M	56%
Contract dollar values: btwn \$1M and \$5M	28%

Fiscal Year 2018

First Quarter: July 1, 2017 – September 30, 2017

Prime Contracts:

Contract dollar values: up to \$35,000	47% micro purchases
Contract dollar values: btwn \$35K and \$100K	100% small purchases
Contract dollar values: btwn \$100K and \$1M	57%
Contract dollar values: btwn \$1M and \$5M	35%

Subcontracts

Contract dollar values: up to \$20,000	43%
Contract dollar values: btwn \$20K and \$100K	42%
Contract dollar values: btwn \$100K and \$1M	48%
Contract dollar values: btwn \$1M and \$5M	30%

First and Second Quarters: July 1, 2017 – December 31, 2017

Prime Contracts:

Contract dollar values: up to \$35,000	50% micro purchases
Contract dollar values: btwn \$20K and \$100K	100% small purchases
Contract dollar values: btwn \$100K and \$1M	61%
Contract dollar values: btwn \$1M and \$5M	28%

Subcontracts

Contract dollar values: up to \$20,000	38%
Contract dollar values: btwn \$20K and \$100K	38%
Contract dollar values: btwn \$100K and \$1M	52%
Contract dollar values: btwn \$1M and \$5M	37%

First through Third Quarters: July 1, 2017 – March 31, 2018

Prime Contracts:

Contract dollar values: up to \$35,000	49% micro purchases
Contract dollar values: btwn \$20K and \$100K	56% small purchases
Contract dollar values: btwn \$100K and \$1M	54%
Contract dollar values: btwn \$1M and \$5M	36%

Subcontracts

Contract dollar values: up to \$20,000	36%
Contract dollar values: btwn \$20K and \$100K	40%
Contract dollar values: btwn \$100K and \$1M	55%
Contract dollar values: btwn \$1M and \$5M	53%

Fiscal Year 2019

First Quarter: July 1, 2018 - September 30, 2018

Prime Contracts:

Contract dollar values: up to \$35,000	56% micro purchases
Contract dollar values: btwn \$35K and \$100K	72% small purchases
Contract dollar values: btwn \$100K and \$1M	39%
Contract dollar values: btwn \$1M and \$5M	31%

Subcontracts

Contract dollar values: up to \$35,000	47% micro purchase
Contract dollar values: btwn \$35K and \$100K	53% small purchase
Contract dollar values: btwn \$100K and \$1M	59%
Contract dollar values: btwn \$1M and \$5M	70%
Contract dollar values btwn \$5M and \$25M	100%

First and Second Quarters: July 1, 2018 – December 31, 2018

Prime Contracts:

Contract dollar values: up to \$35,000	59% micro purchases
Contract dollar values: btwn \$20K and \$100K	64% small purchases
Contract dollar values: btwn \$100K and \$1M	36%

Contract dollar values: btwn \$1M and \$5M 25%

Subcontracts

Contract dollar values: up to \$20,000 41%

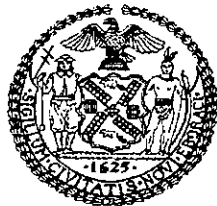
Contract dollar values: btwn \$20K and \$100K 56%

Contract dollar values: btwn \$100K and \$1M 59%

Contract dollar values: btwn \$1M and \$5M 76%

Contract dollar values: btwn \$5M and \$25M 38%

Committee on Contracts
Alex Paulenoff, *Legislative Counsel*
Casie Addison, *Senior Legislative Policy Analyst*
Andrew Wilber, *Financial Analyst*
John Russell, *Finance Unit Head*



THE COUNCIL OF THE CITY OF NEW YORK
BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION

Jeffrey Baker, Legislative Director
Rachel Cordero, Deputy Director, Governmental Affairs Division

COMMITTEE ON CONTRACTS
Hon. Justin Brannan, Chair

October 10, 2018

**Oversight: Update on the City's Efforts to Expand
Contracting with Minority and Women-Owned Businesses**

I. INTRODUCTION

On October 10, 2018 the Committee on Contracts, chaired by Council Member Justin Brannan will hold an oversight hearing on the City's Minority and Women-Owned Business Enterprises ("M/WBE") program. The Committee last held a hearing on M/WBE contracting in December of 2016. Those invited to testify include the Mayor's Office of Contract Services ("MOCS"), the Department of Small Business Services ("SBS"), the Mayor's Office of M/WBEs and other interested parties.

II. BACKGROUND

According to the United States Small Business Administration, New York is home to millions of small businesses, which collectively employ over 3.9 million people and represent the diversity of the City.¹ Despite the large presence of M/WBEs in the City, these businesses have historically struggled with participation in City contracting. The City's M/WBE program was originally established following a 1989 voter referendum approving the establishment of a program to assist M/WBEs.² The M/WBE disparity study conducted pursuant to the program examined the number of MWBEs that operate in the city compared to rates of procurement of government contracts and found substantial underutilization of M/WBEs.³ The study revealed that M/WBEs were underutilized in the awarding of both prime contracts and subcontracts.⁴

In 2005 the Council passed Local Law 129, which re-established the City's M/WBE program to "address the impact of discrimination on the city's procurement process, and to

¹ United States Small Business Administration, *Small Business Profile: New York* https://www.sba.gov/sites/default/files/advocacy/New_York.pdf

² Pursuant to *City of Richmond v. J.A. Croson Company*, 488 U.S. 469, 470-499 (1989), in which the Court held that a "race-based relief" program for public contracting requires a jurisdiction to demonstrate "identified discrimination" in government contracting against parties for whom relief is sought, and that the remedy be narrowly tailored to meet a compelling government interest.

³ See United States Small Business Administration, *Small Business Profile: New York*, at 10-4 available at https://www.sba.gov/sites/default/files/advocacy/New_York.pdf.

⁴ *Id.*

promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.” Local Law 129 set aspirational goals for City agencies to increase their contracting with MWBEs, set target percentages for certain types of contracts, and established an M/WBE certification program, which provides greater access to information about contracting opportunities through classes, networking events, targeted solicitations, and includes an online directory for certified businesses within the City that promotes M/WBE businesses to purchasers.⁵

In 2013, the City passed Local Law 1⁶, which made a number of significant changes to the city’s M/WBE program, including: (i) removing the requirement that M/WBE goals only apply to contracts valued at one million dollars or less; (ii) the creation of “M/WBE stat,” an accountability program that requires agency M/WBE officers to convene quarterly to discuss progress with reaching M/WBE goals; (iii) requiring M/WBE reports from MOCS on a quarterly basis instead of semi-annually (as was required under Local Law 129 of 2005); and (iv) overall, improving and increasing education and outreach regarding the MWBE program and city contracting.⁷

III. FINDINGS OF THE 2018 NYC M/WBE DISPARITY STUDY

In May 2018, the independent consulting firm MGT Consulting Group (“MGT”) released the *City of New York Disparity Study* (“Disparity Study”), which analyzed the utilization rate of M/WBEs in city contracting in order to inform the city in its establishment of future aspirational goals for the M/WBE program.⁸ The critical question posed by the Disparity Study was whether

⁵ New York City Department of Small Business Services, “Minority and Women-owned Business Enterprise (M/WBE) Certification Program,” <https://www1.nyc.gov/nycbusiness/description/minority-and-womenowned-business-enterprise-certification-program-mwbe> (last visited Oct 9, 2018).

⁶ L.L. 1/2013

⁷ *Id.*

⁸ See MGT Consulting Group, “City of New York Disparity Study,” May 2018 *available at* <https://www1.nyc.gov/assets/mwbe/business/pdf/NYC-Disparity-Study-Report-final-published-May-2018.pdf>.

there was “statistical evidence of disparity between the availability and utilization of M/WBE firms” by city agencies in their contracting processes.⁹ In the course of its analysis for the Disparity Study, MGT considered agency procurement data from 2006 – 2015, and reviewed contracting opportunities and awards in several procurement categories to determine whether there was a statistical disparity of data for particular groups identified by the M/WBE program.¹⁰

The three primary recommendations from MGT in the Disparity Study were:

1. Revising the State’s 100,000 cap on goods or commodities purchased from M/WBE firms;
2. Crediting Asian-American firms in the Professional Services category towards M/WBE participation goals;
3. Expanding the minority categories to include Native American firms¹¹

Much of the data analyzed in the Disparity Study was done in light of the administration’s stated aspirational goal of achieving 30% M/WBE utilization in procurement, as part of the OneNYC Plan.¹² Unfortunately, none of the data considered by the Disparity Study takes into account programs that have been initiated since 2015, which means its findings are inherently out of date.¹³ Nonetheless, the utilization rates revealed in the Disparity Study are consistent with the continuation of the citywide M/WBE program in accordance with federal requirements.¹⁴

A more up-to-date analysis of M/WBE procurement citywide is provided in the next section and includes data up to and including Q4 of fiscal year 2018.

⁹ *Id.* At 1-2

¹⁰ *See id.*

¹¹ *See id.* at 6-3.

¹² *See Croson*, note 2 *supra*.

¹³ *Id.*

¹⁴ *Id.*

IV. FISCAL YEAR 2018 M/WBE UTILIZATION

In Fiscal Year 2018 (“FY18”) the City’s total contracting budget was \$19.8 billion dollars.¹⁵ Of the City’s total contracting budget, \$5.3 billion dollars was subject to the M/WBE program.¹⁶ In FY18, the City achieved a combined prime and subcontract M/WBE utilization rate of 19% amongst contracts subject to Local Law 1¹⁷, an increase from 11.4% in FY17.¹⁸ FY18 was the highest combined utilization rate under the City’s M/WBE Program. M/WBEs were awarded 16% (\$835.3 million) of prime contracts in FY18 and 51% (\$258 million) of subcontracts subjected to the program.¹⁹

Although 35 agencies are subject to M/WBE participation goals, a significant percentage of the total dollar value of citywide awards to M/WBEs were made by three agencies, consistent with prior years.²⁰ The Department of Design and Construction (“DDC”), the Department of Parks and Recreation (“DPR”), and the Department of Environmental Protection (“DEP”) collectively awarded 72% of all prime and 67.75% of subcontracts awarded to M/WBEs.²¹ In recent years, awards made by DDC has accounted for a significant proportion of both prime and

¹⁵ City of New York, Mayor’s Office of Contract Services, *Agency Procurement Indicators: Fiscal Year 2018* available at <https://www1.nyc.gov/site/mocs/reporting/citywide-indicators/how-the-city-spends-its-money.page>

¹⁶ *Id.*

¹⁷ City of New York, Mayor’s Office of Contract Services, Minority and Women-Owned Business Enterprise Program Annual Report for Fiscal Year 2018 available at https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy18_final_mwbe_compliance_rpt.pdf

¹⁸ City of New York, Mayor’s Office of Contract Services, *Agency Procurement Indicators: Fiscal Year 2017* available at

https://www1.nyc.gov/assets/mocs/downloads/pdf/MWBEReports/2017_AgencyProcurementIndicators.pdf

¹⁹ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²⁰ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²¹ City of New York, Mayor’s Office of Contract Services, Minority and Women-Owned Business Enterprise Program Annual Report for Fiscal Year 2018 available at

https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy18_final_mwbe_compliance_rpt.pdf

subcontract awards. In FY18, DDC awarded 467.6 million in prime contracts to M/WBEs²², an increase from \$91.7 million in FY17, more than any other agency.²³

While certain agencies have contributed significantly to the City's M/WBE efforts, analyzing each agency solely by the total dollar value of their awards does not present a truly accurate assessment, as many agencies have budgets that are substantially larger than others. It's important to note that while DDC awarded the greatest dollar value in awards to M/WBEs, the agencies prime and subcontract awards represents a very small fraction of the agencies total contracting budget subject to the M/WBE program.²⁴

In FY18, DDC had the largest prime contracting budget, compared to all other agencies at \$2.3 billion.²⁵ While DDC awarded 19.69% (\$467.6 million) to M/WBEs, the agency also awarded \$1.9 billion to non-certified firms.²⁶ Understandably, larger budgets provide different challenges to agencies than those with smaller budgets. Generally, agencies with smaller budgets have awarded a greater share of contracts to M/WBEs and have higher utilization rates, compared to agencies, like DDC, with considerably larger budgets. For example, the agency that awarded the highest percentage of its budget in prime contracts to M/WBE firms in FY18 was the NYC Commission on Human Rights ("CCHR").²⁷ CCHR awarded M/WBE firms 77.94% of

²² See "Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²³ City of New York, Mayor's Office of Contract Services, *Agency Procurement Indicators: Fiscal Year 2017* available at

https://www1.nyc.gov/assets/mocs/downloads/pdf/MWBEReports/2017_AgencyProcurementIndicators.pdf

²⁴ City of New York, Mayor's Office of Contract Services, *Minority and Women-Owned Business Enterprise Program Annual Report for Fiscal Year 2018* available at

https://www1.nyc.gov/assets/sbs/downloads/pdf/about/mwbe-reports/fy18_final_mwbe_compliance_rpt.pdf

²⁵ See "Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²⁶ See "Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²⁷ See "Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

its \$1.2 million in prime contracts.²⁸ Notably, the Department of Health and Mental Hygiene (DOHMH) awarded 99.84% of its \$6.3 million in subcontracts to M/WBE firms.²⁹ However, some agencies with substantial budgets have high utilization rates. In FY18, the New York City Police Department awarded M/WBEs nearly 50% of its \$131 million dollar budget.³⁰ Comparatively, the Department of Transit, which had the second largest contracting budget subject to the program, awarded 98% (\$632 million) to non-certified firms and just 2% (\$13 million) to M/WBE firms.³¹ The charts below illustrate the agencies with the highest and lowest M/WBE utilization rates, with budgets greater than one million dollars in FY18.

Agencies with the Highest M/WBE Utilization Rates of Fiscal Year 2018

²⁸ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

²⁹ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

³⁰ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

³¹ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

Agency	Total FY18 Budget Subject to M/WBE Goals	% Awarded to M/WBEs
NYC Commission on Human Rights (CCHR)	\$1.2 Million	77.94%
Department of Small Business Services (SBS)	\$3.2 Million	74.43%
Department of Buildings (DOB)	\$2.4 Million	64.88%
New York City Police Department (NYPD)	\$131.8 Million	49.95%
Department of Housing, Preservation, and Development	\$27 Million	47.73%
Department of Probation (DOP)	\$1.2 Million	45.99%
NYC Human Resources Administration (HRA)	\$16.9 Million	34.87%
Department of Parks & Recreation (DPR)	\$315.2 Million	29.82%
Department of Investigations (DOI)	\$2 Million	28.07%

* includes agencies with budgets greater than \$1 million dollars, subject to the program.

Agencies with the Lowest M/WBE Utilization Rates of Fiscal Year 2018

Agency	Total FY18 Budget Subject to M/WBE Goals	% Awarded to M/WBEs
Department of Transportation	\$645.5 Million	2.04%
Department of Information & Telecommunications	\$513.1 Million	4.27%
Department of City Planning (DCP)	\$5.6 Million	4.43%
FDNY	\$148.5 Million	4.84%
Department of Sanitation (DSNY)	\$220.4 Million	7.68%
Department of Environmental Protection (DEP)	\$533.5 Million	8.16%
Law Department	\$38 Million	8.67%
Department of Youth & Child Development (DYCD)	\$8.7 Million	11.07%
Department of Corrections (DOC)	\$38.6 Million	12.35%
DOHMH	\$58.5 Million	15.09%
New York City Emergency Management (Administration for Children Services (ACS)	\$8.8 Million	17.44%
Department of Finance (DOF)	\$42.5 Million	18.53%
Department of Design and Construction (DDC)	\$4.8 Million	19.38%
Department of Homeless Services (DHS)	\$2.3 Billion	19.69%
	\$57.3 Million	22.16%

V. DISPARITIES WITHIN CITY-CONTRACTING OF M/WBEs

Awards by Certification & Industry

Firms included in the M/WBE Program can be certified as either a minority owned-business (“MBE”) or a women-owned business (“WBE”). Businesses owned by women of color can be certified as both and are listed as MBE/WBE. As part of the M/WBE program, participation goals are attached to four industries: construction, goods, professional services, and standard services. Of the \$835 million in prime contracts awarded to M/WBE firms, 50% derived from goods contracts, 20.51% from professional services contracts, 10.93% from construction contracts, and 7.80% from standard services contracts.³² Of the \$258 million in subcontract awards, 77% standard services contracts, 54.88% derived from professional services contracts and 46% from construction contracts.³³ In FY18, no subcontracts for goods contracts were awarded to M/WBEs, consistent with prior years.³⁴

Awards by Race and Gender

While the City has generally improved its contracting with M/WBE firms, disparities exist among the type of MWBEs awarded contracts across industries. Of the \$835 million in prime contracts awarded to M/WBEs in FY18, nearly half was awarded to businesses owned by Asian Male-owned firms.³⁵ Of the total dollar value of prime contracts awarded to M/WBEs in FY18, 47.50% were awarded to Asian Male-owned firms, 23.46% were awarded to White Women-owned firms, 9.73% to Black Male-owned firms, 8.59% to Hispanic Male-owned firms, 5.83% to Asian Women-owned firms, 2.77% to Black Women-owned firms, and 2.13% were

³² See “Fiscal 2018 M/WBE Report Appendices Final Report: Table G- Prime Contract M/WBE Utilization Final Report available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

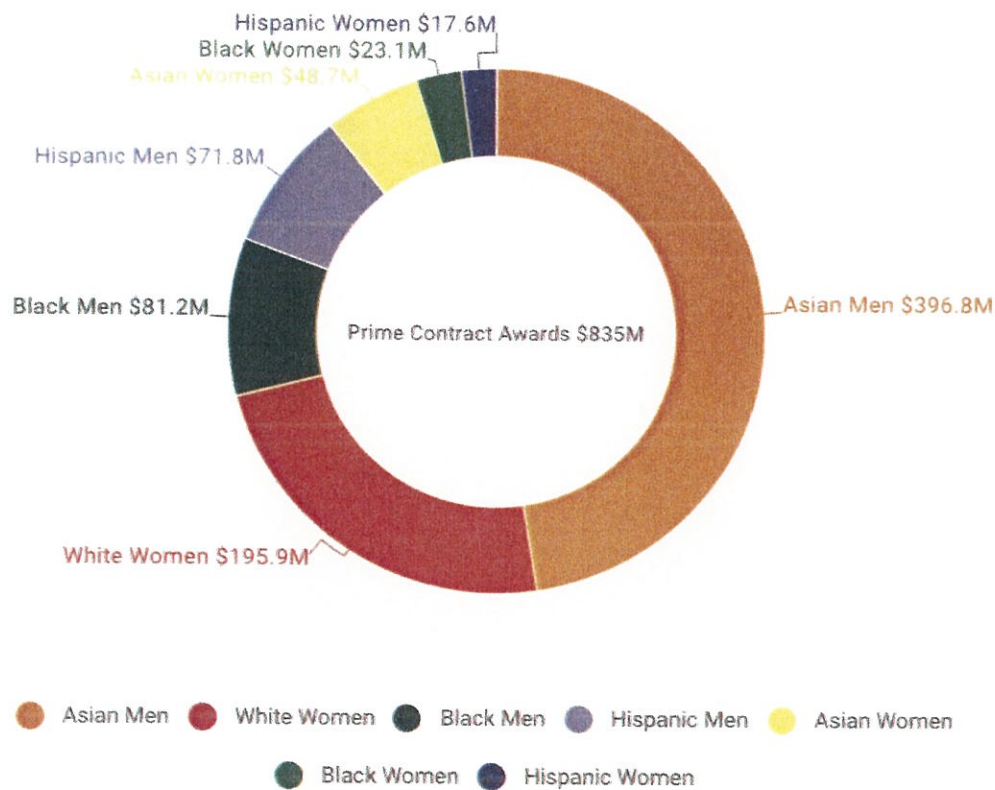
³³ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

³⁴ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

³⁵ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

awarded to Hispanic Women-owned firms.³⁶ The pie chart below depicts the distribution of prime contract awards to M/WBEs by race and gender.³⁷

FY18- Total Dollar Value of Prime Awards to M/WBEs by Race and Gender



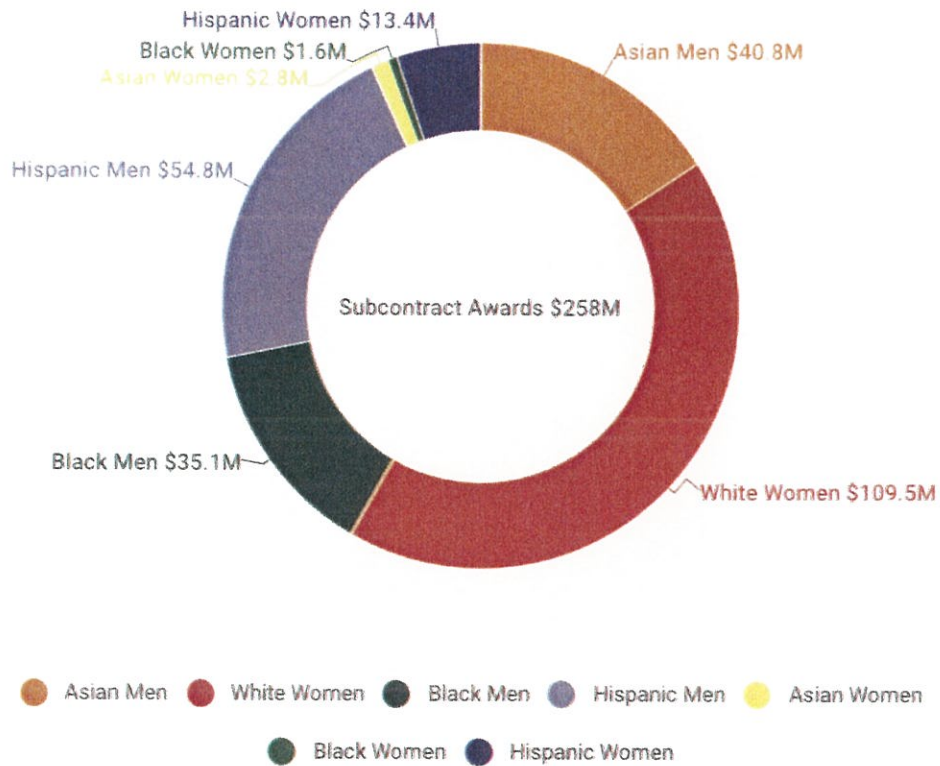
Of the \$258 million in subcontracts awarded to M/WBE firms, 42.45% were awarded to White Women-owned firms, 21.23% to Hispanic Male-owned firms, 15.84% to Asian Male owned firms, 13.60% to Black Male-owned firms, 5.18% to Hispanic Women-owned firms,

³⁶ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

³⁷ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

1.08% to Asian Women-owned firms, and 0.61% to Black Women-owned firms.³⁸ The pie chart below depicts the distribution of subcontract awards to M/WBEs by race and gender.³⁹

FY18- Total Dollar Value of Subcontract Awards to M/WBEs by Race and Gender



In the last three fiscal years, an overwhelming share of the total value of contracts awarded to certified M/WBE firms has been awarded to businesses owned by Asian Men and White Women.⁴⁰ In Fiscal Years 2016, 2017, and 2018 combined, the City awarded M/WBE firms a total of \$2.3 billion dollars in prime contracts and \$532 million in subcontracts.⁴¹ Asian Male and White Women-owned businesses were collectively awarded 68% of the total value in

³⁸ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

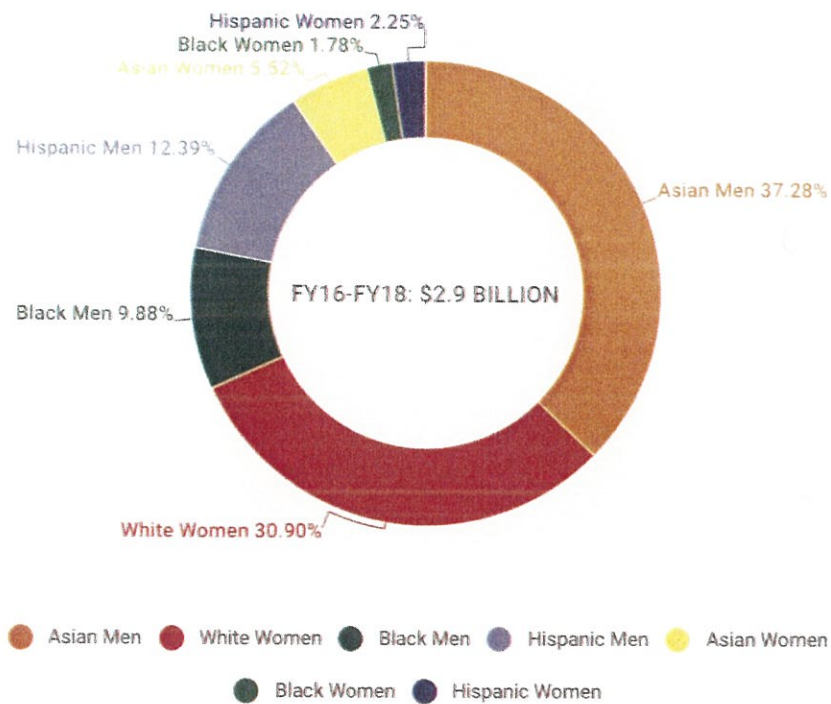
³⁹ See “Fiscal 2018 M/WBE Report Appendices Final Report: Table I- MWBE Subcontracting on Primes Final Report Prime available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

⁴⁰ See “M/WBE Reports” Fiscal Years 2016, 2017, and 2018 available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

⁴¹ See “M/WBE Reports” Fiscal Years 2016, 2017, and 2018 available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

prime and subcontracts awards to M/WBEs between FY16 and FY18.⁴² Businesses owned by Asian Men and White Women have benefited the most from the City’s current efforts to expand contracting opportunities for M/WBEs while businesses owned by women of color have seen minimal improvement. Of the total value of all contracts awarded to M/WBE firms between FY16 and FY17, 1.78% were awarded to businesses owned by Black Women, 2.25% to Hispanic Women, and 5.52% to Asian Women owned firms.⁴³ The chart below illustrates the distribution of all contract awards to M/WBEs between FY16 and FY18.⁴⁴

Total Dollar Value of Prime/Subcontracts Awarded to M/WBEs in FY16, FY17, and FY18



⁴² See “M/WBE Reports” Fiscal Years 2016, 2017, and 2018 available at <https://www.l.nyc.gov/site/mocs/partners/m-wbe-reports.page>

⁴³ See “M/WBE Reports” Fiscal Years 2016, 2017, and 2018 available at <https://www.l.nyc.gov/site/mocs/partners/m-wbe-reports.page>

⁴⁴ See “M/WBE Reports” Fiscal Years 2016, 2017, and 2018 available at <https://www.l.nyc.gov/site/mocs/partners/m-wbe-reports.page>

From the data released by the administration, it is unclear how the proportion of certified firms and the services they provide reflect the distribution of awards. For example, more White-Women and Asian Male owned firms could be certified in particular industries than other groups, which could possibly explain why they are awarded a greater share of contracts. Additionally, there are a myriad of challenges M/WBES experience when trying to contract with the City. These findings and trends may provide a deeper understanding of which M/WBES need targeted supports and capacity building.

VI. CITY PROGRAMS TO ASSIST M/WBES

The Department of Small Business Services (“SBS”) offers several different programs to assist small businesses and M/WBES toward approval and completion of city projects. In recent years, the administration has sought to create programs that assist M/WBES with the financing.

A. Contract Financing Loan Fund

The Contract Financing Loan Fund is administered by SBS and is offered to small businesses and M/WBES that have been awarded city projects.⁴⁵ The fund loans up to \$500,000 at an annual interest rate of 3% to existing prime or subcontracting firms that are applying for financing toward a contract with a city agency or city-funded entity.⁴⁶

B. Bond Readiness Program

The Bond Readiness Program is a 3-month intensive program offered by SBS for M/WBE-certified and small construction firms.⁴⁷ The program provides a variety of financial management training and one-on-one guidance towards obtaining surety bonds and expanding

⁴⁵ See NYC Business, “Contract Financing Loan Fund,” <https://www1.nyc.gov/nycbusiness/article/contract-financing-loan-fund> (last visited Oct. 3, 2018).

⁴⁶ See *id.*

⁴⁷ See NYC Business, “Bond Readiness Program,” <https://www1.nyc.gov/nycbusiness/article/bond-readiness-program> (last visited Oct. 3, 2018).

bond capacity on city construction projects.⁴⁸ SBS connects program participants to a network of surety companies, provides training on the surety bonding process and guidance on how to qualify for bonding.⁴⁹

C. Construction Mentorship Program

The Construction Mentorship Program is a four-month intensive program offered by SBS to M/WBE-certified construction firms to assist in navigating city contracting opportunities and expanding professional networking.⁵⁰ The program offers one-on-one business mentoring, specialized education and training, bidding assistance, and customized business needs assessment and growth plans to qualified M/WBE-certified construction firms.⁵¹

D. NYC Goods and Services Mentorship Program

The NYC Goods and Services Mentorship Program is a four-month intensive program offered by SBS to M/WBE-certified firms in non-construction industries.⁵² The program is designed to assist non-construction M/WBEs towards expanding their businesses and successfully bidding on city contracts.⁵³ The program offers tailored business development courses, bidding assistance for city contracts, one-on-one mentoring with management consultants, and customized business assessments and growth plans.⁵⁴ The target businesses of this program are certified M/WBEs looking to provide goods or professional or standard services to city agencies.⁵⁵

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See NYC Business, "NYC Construction Mentorship," <https://www1.nyc.gov/nycbusiness/article/nyc-construction-mentorship> (last visited Oct. 3, 2018).

⁵¹ *See id.*

⁵² See NYC Business, "NYC Goods and Services Mentorship," <https://www1.nyc.gov/nycbusiness/article/nyc-goods-and-services-mentorship> (last visited Oct. 3, 2018).

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ *See id.*

VII. ISSUES & CONCERNS

Although the 2018 Disparity Study offers the most comprehensive data on M/WBE utilization across city agencies and achieves the goal of justifying the continued existence of the M/WBE program, the data included in the study is unfortunately three years out of date.⁵⁶ Since the study only covered M/WBE utilization rates through mid-2015, the study offers little information regarding the progress of the program in the last three years.

From Fiscal Years 2016-2018 the City awarded a combined \$2.8 billion in prime and subcontracts to certified M/WBE firms, which is not reflected in the study.⁵⁷ The lack of inclusion of this utilization in the disparity study questions the accuracy and relevance of some of the recommendations made. One recommendation in particular, to re-establish goals for Asian Male-owned businesses in professional services contracts⁵⁸, warrants more exploration as utilization rates for Asian Male owned firms in the last three years has drastically improved.⁵⁹

During Fiscal Years 2016-2018, the City awarded \$1.4 billion in professional services contracts to M/WBE-owned firms.⁶⁰ Businesses owned by Asian Men alone were awarded 44.08% of the total value of professional services contracts during this period, a total of \$617

⁵⁶ See MGT Consulting Group, "City of New York Disparity Study," May 2018 *available at* <https://www1.nyc.gov/assets/mwbe/business/pdf/ NYC-Disparity-Study-Report-final-published-May-2018.pdf>

⁵⁷ See "M/WBE Reports" Fiscal Years 2016, 2017, and 2018 *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

⁵⁸ The

⁵⁹ See "M/WBE Reports" Fiscal Years 2016, 2017, and 2018 *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

⁶⁰ See "M/WBE Reports" Fiscal Years 2016, 2017, and 2018 *available at* <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

million.⁶¹ Based on this information there remains significant disparity in utilization across M/WBE groups in professional services contracts. .

In terms of absolute numbers, M/WBE-certified professional services firms in each category were awarded on the following amount citywide between Fiscal Years 2016-2018:

Awards for Professional Services Contracts to M/WBEs FY2016-2018

Race/Gender	% of total amount awarded to M/WBEs	Actual Dollar Amount Awarded Between FY 2016-2018
Asian Men	44.08%	\$617,116,806
White Women	20.24%	\$283,400,213
Black Men	11.96%	\$167,429,471
Hispanic Men	10.77%	\$150,768,442
Asian Women	10.27%	143,750,970
Black Women	1.32%	\$18,476,065
Hispanic Women	1.36%	\$18,996,904

It is evident that significant disparity still exists across M/WBE firms, and much remains to be done in order to ensure each of the various M/WBE groups receives a reasonable share of city procurement contracts. The City is far behind in reaching its goals to specifically improve contracting with businesses owned by women of color, Black Men, and Hispanic Men.

Some M/WBE-certified firms have also voiced concerns regarding inconsistent procurement processes across agencies, non-standardized bidding processes, a lack of performance feedback from agency procurement officers, and ineffective training of agency

⁶¹ See "M/WBE Reports" Fiscal Years 2016, 2017, and 2018 available at <https://www1.nyc.gov/site/mocs/partners/m-wbe-reports.page>

contracting officers and contract managers to support M/WBE firms.⁶² Addressing these issues could improve the relationship between the M/WBE community and city agencies, and allow for greater engagement of M/WBEs in the procurement process citywide.

VIII. CONCLUSION

The Committee looks forward to hearing from the Administration, advocates and industry representatives today in an effort to improve the City's utilization of M/WBE firms as well as to mitigate some of the ongoing issues faced by M/WBEs in city procurement.

⁶² See MGT Consulting Group, "City of New York Disparity Study," May 2018 at 5-11 *available at* <https://www1.nyc.gov/assets/mwbe/business/pdf/NYC-Disparity-Study-Report-final-published-May-2018.pdf>



October 16, 2018

Good morning Committee chairs and members of the State Senate's Committees on Labor, Agriculture, and Economic Development. My name is Jonnel Doris and I am the Senior Advisor and Director of the Mayor's Office of Minority and Women-Owned Enterprises (OMWBE). Today I will provide an overview of the Citywide M/WBE Program, including the progress made toward our M/WBE certification and utilization goals set by this administration.

About the M/WBE office and goals

In the Fall of 2016 Mayor Bill de Blasio announced the creation of the Mayor's Office of M/WBEs as a critical next step in the Administration's commitment to increase contracting opportunities for minority and women entrepreneurs. The Mayor pledged ambitious goals of achieving 30% M/WBE utilization by end of FY 2021 and having 9,000 City-certified M/WBEs by end of FY2019.

In 2015 the Mayor outlined a separate citywide goal to award \$16 billion to Minority and Women-Owned Businesses over the next 10 years. This "One NYC goal", the 30% goal, covers both mayoral and non-mayoral agencies. On the heels of the May 2018 disparity study, the

Mayor announced that we were \$1.8B ahead of our One NYC goal and decided to increase our goal from \$16B to \$20B by 2025.¹

We are excited to have the leadership of Deputy Mayor, J. Phillip Thompson, whose career-long justice and equity work includes increasing economic development opportunities by calling out and challenging structural and historical barriers in the marketplace and within government. Under the supervision of the Deputy Mayor, Small Business Services (SBS), and the Mayor's Office of Contract Services (MOCS) play an integral role in implementing the M/WBE program. SBS certifies M/WBEs and provides essential capacity building services and technical assistance to ensure they can compete for and execute City contracts. MOCS tracks and reports on utilization data for all City contracts subject to Local Law 1 (LL1).

The foundation and mission of the City's M/WBE program

The purpose of the City's M/WBE program is to remedy the impact of discrimination in the market where the City makes its procurements. This impact is statistically analyzed in a disparity study. The most recent disparity study demonstrated that minority- and women- owned firms are underutilized in City procurements. Local Law 1 of 2013 established Citywide contracting goals which match the disparity gaps revealed by the 2011 disparity data analysis. The City will make policy changes in accordance with the key findings and recommendations of the disparity study that was published this past May 2018. Along with my colleagues here today, my Office will continue to play a strategic role in ensuring that City agencies remain focused on achieving the goals of the program.

¹ <https://www1.nyc.gov/office-of-the-mayor/news/277-18/-1-8-billion-ahead-projections-mayor-de-biasio-new-goal-award-20-billion-to>

M/WBE certification and utilization:

Since the start of the de Blasio administration, the number of certified firms has increased by 86%. As of the close of FY18 the number of certified MWBE firms was 6,829. Additionally, at the end FY18 MOCS reported the MWBE utilization at 19%, representing \$1.069B in awards to MWBEs of City contracts under Local Law 1, as compared to the 8% or \$465 million dollar value of City contracts in FY15 at the start of this Administration. We are also very happy to report that since 2015 over \$10B has been awarded to M/WBEs by mayoral and non- mayoral agencies Citywide (pursuant to the One NYC goal).

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

Key achievements and initiatives

Pursuant to LL1 and the goals therein, the percentage of dollars awarded to M/WBEs subject to the City's Program has trended upward from 8% in FY2015 to nearly 20% in FY2018. Just to put that into perspective, at the close of FY18, we are proud to report that, in record time, the City is closing in on its 30% goal, which we know we can achieve by FY21.

Still we have more to do; we are lowering and, wherever possible, removing, structural barriers to entering the City's procurement marketplace by providing resources for increased programming at City agencies and creating strategic initiatives to increase M/WBEs' ability to compete successfully.

In accordance with the four core principles of the City's program, accountability, accessibility, capacity and sustainability, we have implemented initiatives to address issues that M/WBEs face in the private marketplace: namely access to capital, which is a common obstacle

Going forward we will continue to work closely with all of our elected partners to increase opportunities for M/WBEs and work together on M/WBE outreach, networking, and educational events. Thank you for the opportunity to testify today and your continued support and advocacy for our program. I would be happy to answer any questions you may have.

FOR THE RECORD

NEW YORK CITY COUNCIL COMMITTEE ON CONTRACTS
HEARING ON BILLS CONCERNING
THE NEW YORK CITY M/WBE PROGRAM

Good afternoon Chair Kallos and members of the Committee. I am Louis J. Coletti, President and CEO, of the Buildings Trades Employer's Association (BTEA). The BTEA represents some 1,100 construction managers, general contractors and specialty trade contractors, including 108 M/WBE contractors (the most of any trade association in NYS) who in 2018 put in place some \$50 billion worth of construction in NYC. Thank you for the opportunity to testify on how best we can achieve our shared goal of increasing M/WBE participation in construction and this package of bills including Intro's 1293 and 1379.

Prior to discussing these particular bills, I would like to offer some context. In 2017, the BTEA commissioned and wrote two statistical reports on the capacity of M/WBE contractors in NYC, based on contracts awarded, using data from the Comptroller's Office. They contain many recommendations tied to increasing contractor capacity and are submitted along with this testimony.

When reading the bills, I want to start by saying that there is a fundamental misunderstanding of how the construction industry in New York City operates, and this causes many bills relating to construction to miss their intended end result. Let me explain how this fundamental misunderstanding affect some of the proposed legislation, for example Intro 1379. Most large construction managers and general contractors employ full time staff charged with maximizing M/WBE and diversity utilization in their projects (If Committee members were interested I'd be more than happy to introduce you to them and allow them to explain how they seek to fulfill their goals). By mandating outside consultants be used, the bill adds a further expenditure for city agencies. Winning bidders of city contracts would be cognizant of the additional charge and would factor that into the bid (again, a fundamental misunderstanding of capital contract bidding), and create a redundancy of services. It is important to note that non-M/WBE prime contractors are willing and eager to increase M/WBE participation, but, would like to be part of the process that leads to proposing legislation.

On Intro 1293, I'd like to say that BTEA contractors always make every effort to meet project aspirational goals. However, in order to really provide an accurate account of the City's efforts in awarding contracts, we feel it is important to know and track the number of M/WBE contractors who compete and bid on city contracts. City agencies should be required to track the number of M/WBE contractors who submit bids and compete for contract awards, and subcontractors

awarded contracts to help prime contractors meet their goals. By doing this we can get an accurate assessment of capacity instead of increasing goals to a standard that may be arbitrary and unable to be reached, disappointing all contractors involved.

Another belief of the BTEA is that government needs to become a better partner in our shared goal of increasing M/WBE participation. The certification lists kept by City and State agencies and Authorities are practically no help in identifying M/WBE contractors with the capacity to do meaningful work. Government needs to do a better job in assuring bonding and insurance for M/WBE contractors, and, among other recommendations, change payment and change order processes in order to help M/WBE's keep a positive cash flow and operating capital balance.

Members of the Committees, it is incumbent on all of us to have a vibrant and working M/WBE program in this City. Increased competition produces better service. We need to make sure that M/WBE contractors are being utilized in, bidding on, and winning, city contracts, our City residents would expect no less. Thank you.

Jaclyn Tacoronte, jaclyn@jmtmedia.nyc (210) 215-0621
Testimony
Date June 20, 2019

Good afternoon and thank you Chairman Kallos of the Committee of Contracts and the entire committee for the floor. My name is Jaclyn Tacoronte and I am a small business owner living in the greenest borough, Staten Island. In 2017, my marketing and public relations agency, JMT Media, applied for a Minority Women Business Enterprise Certificate with the encouragement of Staten Island Borough Hall, Staten Island Economic Development Corporation, Staten Island Chamber of Commerce, and the Small Business Development Center. I am a proud Native American.

After 9 months of an intense and vetted application process, it was truly a shock to find out my application was denied. Not because I didn't have solid financial statements and not because of lack of business acumen; I was denied simply because of my minority status. Currently in New York City legislation, "Minority Group" means Black Americans, Asian Americans and Hispanic Americans." But what is a minority? If it is not the indigenous Native Americans.

The current poverty level for Native Americans is at 26% while for the nation the poverty rate is at 14%. (Source: <https://www.census.gov/newsroom/facts-for-features/2017/aian-month.html>)

With Native Americans having the lowest employment rate of any racial or ethnic group in the United States (Bureau of Labor Statistics, 2012), economic development and inclusion to bid and apply for city contracts is essential in creating economic growth for my borough and my city.

In the 2018, Making The Grade Report- The City spent more than \$1.5 billion through requirements contracts in FY 2018, but M/WBEs received only \$102.5 million – less than **seven percent** – of this spending. Of this, Hispanic American-owned businesses received just \$5.4 million and African Americans received just \$1 million of all spending through requirements contracts, less **than one percent combined. Native Americans Zero.**

What's happening on paper is not happening in real life. We need to change the paper.

This administration has done tireless work to diversify all facets of our great city. But diversity extends beyond 3 ethnic groups...there are others that need to be recognized, and without Native Americans, the MWBE standard is incomplete for New York City.

Native Americans share a painful history. While we can't rewrite that history, today you can change history by changing the law to include this group who have been marginalized and impoverished.

New York City is the strongest, most resilient city in the United States; and the inclusion of every race should never be omitted again. Thank you for your attention today.



June 21, 2019

Supplemental testimony by Jonnel Doris, Senior Advisor and Director of the Mayor's Office of Minority and Women-Owned Enterprises

Thank you for the opportunity to testify. To clarify a point raised during the hearing, I would like to submit the following:

- In LL 129, M/WBE participation goals were set for “Asian Americans,” “Black Americans,” “Hispanic Americans,” and “Caucasian females,” categories based on the 2005 Disparity Study. Note that the category representing women only includes non-minority females.
- In LL 1, the category of “Women” replaced the previous LL 129 category of “Caucasian females,” a category change based on the 2011 MOCS Update Study. This change was intentional and is reflected in the legislative record (see page 6 of the Committee on Governmental Operations/Contracts Report dated December 17, 2012) and in distinctions between Int. No. 911-2012 and Int. No. 911-A, the bill version enacted into law and subsequently reflected in Section 6-129(d) of the Administrative Code.
- According to the [M/WBE Compliance Reports](#) (p.11 of the linked compliance report for FY19 Q1 & Q2):
 - *As required by §6-129 of the Administrative Code, the M/WBE performance data is summarized separately for each of the following categories: MBE, WBE, minority women (certified as both MBE and WBE), and total M/WBE. MBEs include all minority-owned businesses, regardless of gender. **WBEs include all women-owned businesses regardless of race.***
 - This is supported by the appendices, published by MOCS. Table A&B – Prime Contract MWBE Utilization Quarters under M/WBE Report Appendices by quarter, shows the breakdown of race/ethnicity within the WBE category and Table E-F show the same breakdown for subcontracts: <https://www1.nyc.gov/site/mocs/reporting/appendices.page>
 - When reporting on overall M/WBE utilization, note that minority women-owned businesses are reported in the minority category so that the contract award is not double-counted.

Thursday, June 20,2019 at 1:00 P.M.
250 Broadway, 14th FL Committee Room
New York, New York 10007

Bertha Lewis Committee Hearing Tesitimony:

I want to first acknowledge the work that our elected officials in Albany did this session to extend and strengthen the M/WBE program in NYS. These changes will increase opportunities for minority and women owned businesses to succeed across the state and city of New York.

The legislation before the committee today also builds on the work that has been done to improve the NYC MWBE program and I support all four items. However, there is still more work to be done.

MWBEs continue to face institutional and discriminatory barriers to access to capital that limits their ability to prosper. Far beyond construction, which too often dominates these discussions, these obstacles reach across all industries. I have included a proposal that outlines directing 1% of the NYC pension funds to allow for target M/WBE investment. Additionally, I have included a list of legislation that I hope to see reintroduced to the CityCouncil as part of a continued effort to strengthen these programs here in New York City. I look forward to working with this committee on each of those items.

Bill No	Prime Sponsor	Summary	Sign-Ons (as of July 1 st)
Int. 923	Cumbo	A Local Law in relation to requiring the department of small business services to submit an annual report regarding the satisfaction of MWBE requirements by recipients of economic development benefits who contract with the economic development corporation. This bill would require the Economic Development Corporation ("EDC") to assess and evaluate whether contractors receiving economic development benefits have fully complied with MWBE requirements and require the Department of Small Business Services to submit a report on EDC's assessment.	Cumbo, Cornegy, Rosenthal, Chin, Eugene, Gentile, Koo, Rose, Williams, Dickens, Wills, Richards and Palma
Int. 976	P.A. James	A Local Law to amend the administrative code of the city of New York, in relation to requiring training for agency chief contracting officers and agency M/WBE officers and posting related information on the city's website. This bill would require the Department of Small Business Services to conduct mandatory trainings for agency chief contracting officers and agency minority-owned and women-owned businesses contracting officers regarding participation of minority-owned and women-owned businesses in city procurement, and to post information on its website regarding agency chief contracting officers, including the date of the last mandatory training attended by each agency chief contracting officer.	The Public Advocate (Ms. James) and Council Members Chin, Gentile, King, Mendez, Palma, Richards, Rose and Dickens
Int. 981	Cumbo	A Local Law in relation to the creation of an advisory board to enhance procurement opportunities for minority and women-owned businesses. This bill would create an advisory board to enhance city procurement opportunities for minority and women-owned businesses.	Cumbo, the Public Advocate (Ms. James), Rosenthal, Crowley, Cornegy, Chin, Dickens, Eugene, Gibson, Koo, Rose, Wills, Rodriguez, Richards and Palma
Int. 1005	Crowley	A Local Law to amend the administrative code of the city of New York, in relation to requiring agency minority and women-owned business enterprise utilization plans to be published online. This bill would require agencies to post their agency utilization plans online.	Crowley, Mealy, Cumbo, Rosenthal, Cornegy, Chin, Gentile, King, Koslowitz, Rose, Wills, Richards, Palma and Dickens
Int. 1019	Rosenthal	A Local Law to amend the administrative code of the city of New York, in relation to amending reporting requirements related to M/WBE participation. This bill would amend reporting requirements related to M/WBE participation by amending the types of contracts for which certain information must be reported.	Rosenthal, Chin, Johnson, Koo, Mendez, Rose, Wills, Rodriguez, Richards, Palma and Dickens
Int. 1021	Rosenthal	A Local Law to amend the administrative code of the city of New York, in relation to requiring a minority and women-owned business enterprise consultant for city projects with budgets in excess of ten million dollars. This bill would require that City contractors hire an independent MWBE consultant for every contract over ten million dollars as a way to enhance city procurement opportunities for minority and women-owned businesses.	Rosenthal, Cornegy, Crowley, Chin, Johnson, Koo, Mendez, Rose, Wills, Richards, Palma and Dickens

Program Description

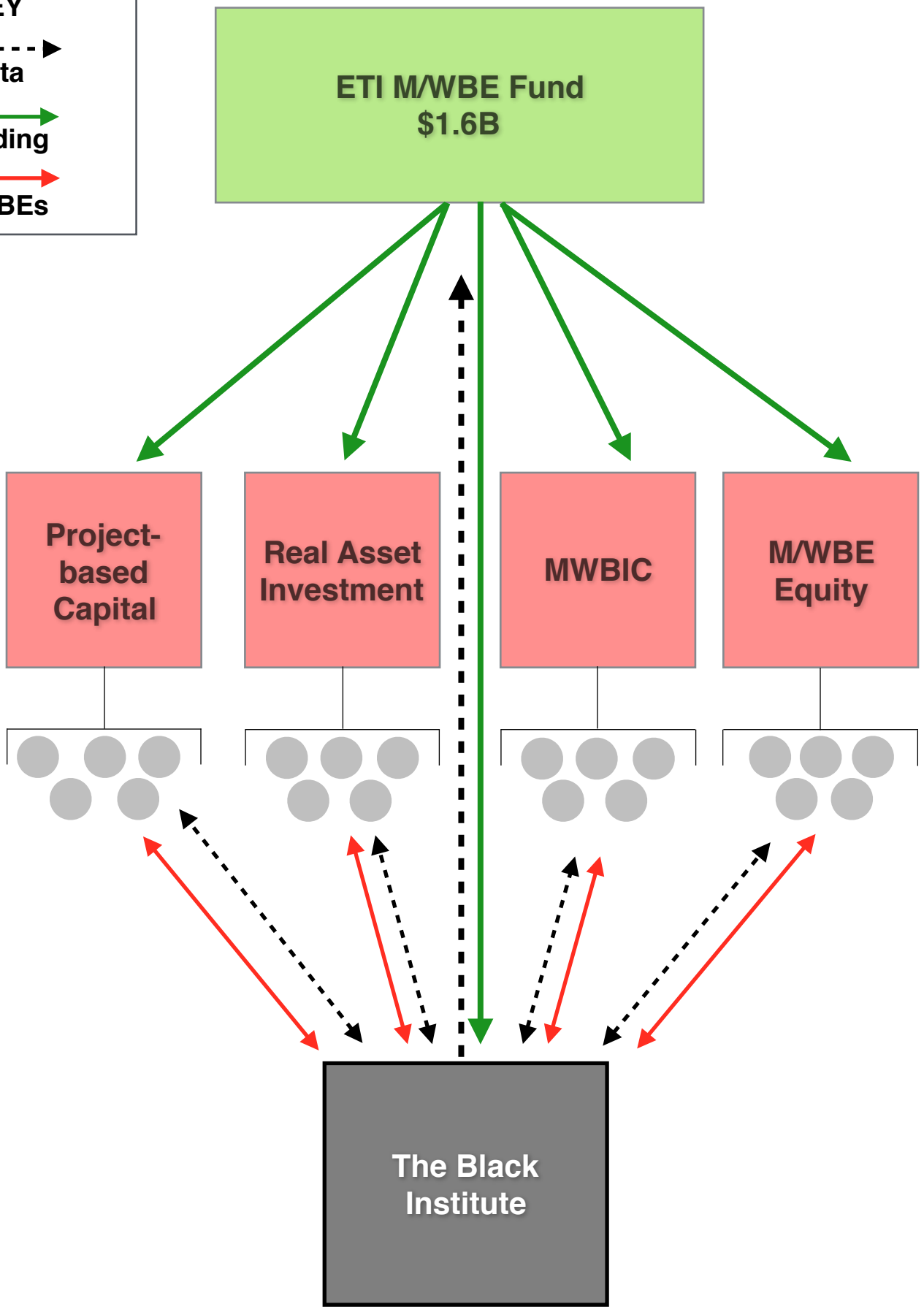
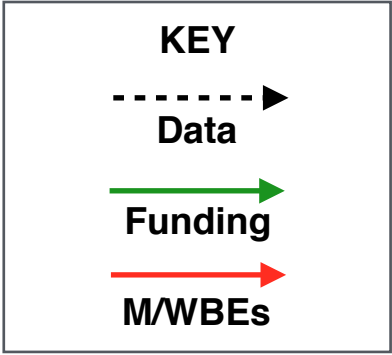
We are proposing the creation of a new fund under the current Economically Targeted Investments program in which 1% of the assets of the New York City Employee Retirement Systems (approximately \$1.6 Billion) are allocated specifically towards “street-level” investments in M/WBEs. The ETI’s dual mandate to support sustainable growth for New York’s economy while generating competitive returns for the NYCERS pensioners makes it a natural partner for this type of undertaking. Allocation of 1% of the fund for this type of investment is within the ETI’s scope; as the ETI already manages an allocation of 2% for investments that promote good-paying jobs and affordable housing. By allowing another 1% to be directed towards M/WBEs of all sizes, we can drastically decrease the gap of credit and capital access for M/WBEs while generating an acceptable rate of return for the NYCERS.

Program Target: This investment fund would direct capital products towards small, medium, and large M/WBEs in the New York area, regardless of certification status. The goal is to reach a previously underserved market of businesses while producing a competitive return for the fund. This investment will spur locally-driven job growth within New York’s communities.

Program Products: There are demonstrated gaps across every part of the capital spectrum for women and minority-owned businesses. Businesses require an array of different financial products based on their sectors, scales, growth plans, and target markets. In order to serve all of the underfunded M/WBE community and distribute risk within the portfolio, the NYCERS M/WBE Fund must invest in a variety of financial products, including project-based capital, real assets, M/WBICs, and M/WBE private equity.

Program Management: The NYCERS should seek to direct as much of the M/WBE allocation as possible through its existing financial managers. However, in order to offer multiple products at multiple scales, it will be necessary to bring in additional managers. Suggestions for pilot managers are included in the program descriptions later in this document, and will be expanded upon through joint research and recommendations.

Program Coordination: It has been repeatedly demonstrated that transparency, efficiency, and accountability are integral to any public investment program. The key to the success of this M/WBE investment fund is an independent coordinating body, headed by The Black Institute. Data collection and interpretation, fraud prevention, market impact research, and business preparation and assistance would ensure the efficiency, efficacy, and transparency of the NYCERS’s investment. TBI’s inclusion as a coordinating organization would maximize the economic impact of such investment and minimize risk to the pension fund.



Product #1: Project Based Capital

Target Sector: There is a demonstrated need for project-based capital investment in M/WBEs through factoring, trade credit, or other types of financial partnership. A small to mid-scale factoring product would allow many M/WBEs to significantly expand the scope and scale of their operations without taking on long-term debt or surrendering control of their company. Additionally, contract-based financial partnerships with large, established funders provide some insulation and negotiating leverage for M/WBEs and their employees when dealing with late or extended payment cycles. At the same time, contract-based products like factoring provide an incredibly safe investment if well-chosen and well-administered. The goal of this financing should be to significantly expand the capacity of existing M/WBEs to perform larger and more profitable contracts or projects.

Allocation: \$640 million

Proposed Pilot Partners:

MBE Capital Partners: MBECP was established as a Finance company with the strategic objective of developing straight-forward Financing products for small and mid-size MBEs. MBECP has grown into a company with an international reach, offering alternative financing through Accounts Receivable, Purchase Order, Inventory, Equipment and Export Financing on three continents. MBE has more than \$2.5 billion in dedicated assets, and has a long track record of successful partnerships with New York M/WBEs.

Structure: This program will ultimately fund several managers with experience financing contracts and capital projects. Managers will provide explicit underwriting requirements to The Black Institute, who will work with New York-based M/WBEs to prepare them for funding and ensure the long-term success of the partnership. The Black Institute will also coordinate information between program managers regarding potential investees, in order to prove the creditworthiness of businesses and reduce the overall risk to the pension fund.

Product #2: Real Asset Investment

Target Sector: Far and away the investment product most sought by M/WBEs is credit, or credit-based investment. There is an opportunity for significant fixed-income investments for M/WBE capital improvements, particularly real estate. New York City has demonstrated the capacity and capability to successfully manage real asset investment. It would be relatively simple for New York City to expand current affordable real estate investment programs to target capital improvements to M/WBEs as well. This is consistent not only with the current (and profitable) investment policies of the NYCERS ETI portfolio, but with the stated goals of the ETI portfolio to address credit disparity and reduce predatory lending. Given the current and historic strength of the New York real estate market, it's hard to argue that such expansion can't be safely made through investments in New York markets. Investment in other types of real asset provide the same sort of security. Capital investment of any type in M/WBEs would address aspects of the credit disparity while providing relatively safe returns to investors.

Allocation: \$320 million

Proposed Pilot Partners:

TruFund Financial Services: Trufund Financial Services is a national not-for-profit Community Development Financial Institution (CDFI) with more than \$45 million in assets under management. In New York, TruFund targets funding towards minority and women-owned businesses, with the goal of filling gaps in capital and credit markets and encouraging community development. TruFund works closely with private, governmental, and community partners to develop and operate programs that address specific capital gaps within local markets, and seeks to obtain funding commitments from local financial institutions to serve local needs.

Basis Investment Group: Basis is a commercial real estate (CRE) investment manager, primarily focused on debt and structured equity strategies. Basis was founded in 2009 by Tammy K. Jones in partnership with JEMB Realty Corporation, and is a certified Minority and Woman Owned Business. Since 2009, Basis has made over \$2.5 billion in CRE debt and structured equity investments. The company's flexible approach to structuring provides borrowers and investment partners with a one-stop shop for financing along with customized solutions for investment needs.

Structure: This program will ultimately fund several managers with experience financing commercial real assets. Managers will provide explicit underwriting requirements to The Black Institute, who will work with New York-based M/WBEs to prepare them for funding and ensure the long-term success of the partnership. The Black Institute will also coordinate information between program managers regarding potential investees, in order to prove the creditworthiness of businesses and reduce the overall risk to the pension fund.

Product #3: M/WBIC

Target Sector: The New York City Employee Retirement System should create and fund Minority and Women-owned Business Investment Corporations (MWBICs); investment vehicles modeled from the United States Small Business Administration's (SBA) Small Business Investment Corporations (SBICs). While the current Federal SBIC program relies on private investment capital backed by public leverage, New York could directly establish and fund SBICs targeted at M/WBE investment (MWBICs). The ongoing success of SBA registered SBICs demonstrates the potential returns of such investments. An M/WBIC could tailor its offered products to the needs of individual businesses, and find creative funding solutions at every scale. SBA leverage would allow M/WBICs to offer competitive rates to investees, while producing market-rate returns.

Allocation: \$480 million

Proposed Pilot Partners:

Brightwood Capital: Brightwood focuses on the "lower middle market," characterized by companies with an EBITDA of \$5 million to \$75 million, and actively seek opportunities across five industry verticals: Technology and Telecom, Energy, Business Services, Healthcare, and Franchising. Since its founding in 2010, Brightwood has invested in dozens of small to medium-sized businesses. Brightwood's investor base includes leading public and private pension funds, endowments, foundations, and high net worth individuals. As a trusted partner, Brightwood's expertise in small to medium-sized businesses would prove invaluable to the creation of a city-backed MWBIC program.

Structure: This program will ultimately fund several managers, offering a variety of general financing products, including but not limited to loans, mezzanine financing, and micro-cap equity. Managers will provide explicit underwriting requirements to The Black Institute, who will work with New York-based M/WBEs to prepare them for funding and ensure the long-term success of the partnership. The Black Institute will also coordinate information between program managers regarding potential investees, in order to prove the creditworthiness of businesses and reduce the overall risk to the pension fund.

Product #4: M/WBE Equity

Target Sector: Currently, equity investment represents a relatively small share of the financial products sought by M/WBEs. However, there is a demonstrated disparity in access to private networked capital, as well as access to formal external investment. M/WBE firms at all stages of growth could benefit significantly from access to non-discriminatory venture capital. Still, there are two obvious targets for private equity investing. Private equity investment programs should be targeted at medium-to-large M/WBE firms with the long-term potential to transition into the public sector.

Allocation: \$160 million

Proposed Pilot Partners: We are proposing that the NYCERS use its existing Emerging Managers for traditional private equity investments targeted at M/WBEs.

Structure: This program will supplement existing allocations to New York City's private equity Emerging Managers. Any Emerging Manager who identifies a potential M/WBE investee would be eligible to apply for funds for that investment from this program allocation. Any funds allocated would increase the total managed portfolio of the Emerging Manager, providing a small incentive for the NYCERS's traditional private equity managers to conduct targeted outreach and direct funds towards minority and women-owned businesses. The Black Institute will also coordinate information between program managers regarding potential investees, in order to prove the creditworthiness of businesses and reduce the overall risk to the pension fund.

TBI Role:

If funded as a coordinating partner focused on administration, research, and oversight with 1% of the allocated program assets, The Black Institute will be able to provide the following services:

Data Collection and Coordination: One of the core ways that the risks of investment can be mitigated is by ensuring that information about the past performance of a partner is as available as possible. A \$1.6 billion fund with a variety of capital products and services will produce large quantities of data about the performance of its investees, and that information can inform the future investments and partnerships. TBI will reduce risk to the overall portfolio by ensuring that as much information as possible about potential investees is made available to participating managers, and add value by collecting and coordinating data that fund managers could be reluctant to share with competing investors.

Outreach and intake: Any successful investment program requires active participation from both *investees* and *investors*. Given the lack of capital access within the M/WBE market, significant outreach efforts will be required to establish strong business relationships. The gap between investors and M/WBEs requires a trusted partner to bridge. Through our extensive community relations campaign, TBI has developed the knowledge and experience to make that connection. Throughout our campaign, TBI has been the only organization working full-time to not only address the challenges facing M/WBEs, but to also network M/WBEs in a manner in which they can gain access to resources and information. With the connections we have made, TBI is confident that our role as an outreach specialist is essential to both promoting the program and ensuring participation.

Research, Monitoring, and Oversight: The commendable goal of New York City's economically targeted investments is to ensure the sustainable and equitable economic development of New York City. To do that, this program will require regular research, monitoring, and oversight. Program allocations may need to be adjusted to match the demands of an evolving and rapidly growing M/WBE sector, or to maximize the job-creation and wealth-creation impact of public investment. The Black Institute will compile and interpret data related to job creation, economic impact, and social impact from this program.

Fraud Prevention: Much of the discussion of the “men-in-skirts” problem in M/WBE programs has been a smokescreen for inaction on the real and pressing issues facing the M/WBE community. However, a program targeting capital towards minority and women-owned firms may attract some level of fraud, and certainly will require vetting to determine the true ownership and management of prospective investees. TBI will ensure that assets allocated towards M/WBE investment are actually reaching their targeted communities.

Business Preparation and Assistance: A common challenge that disproportionately affects M/WBEs is lack of administrative resources. There are substantial costs for both the investor and investee associated with preparing and interpreting the financial documents required for responsible investment. Many minority and women-owned businesses seek capital in order to scale their business, but are prevented from doing it because they lack the capacity that investment would help them achieve. TBI will ensure transparency, efficiency, and fairness in public investment through standardization, centralization, and support of any preparation processes.

DRAFT

Suggested Program Timeline

Source Pilot Partners and Establish Program Parameters

Through the summer, the NYCERS, TBI, and partner organizations will work to establish the parameters and underwriting criteria for the program.

July-September, 2016



Continue Sourcing Partners and Build Capacity

From October to December, the NYCERS will continue sourcing management partners. During this period TBI will build capacity for its role as a coordinating partner.

October-December, 2016



Initial Pilots

Beginning January 1st, 2017, pilot partners will start investing allocated funds according to the established parameters. TBI will coordinate data collection and prepare investees for underwriting.

January-June, 2017



Evaluation and Adjustment

At the beginning of FY18, the NYCERS and TBI will evaluate the first 6 months of the program and make any adjustments required, and bring in additional management capacity.

July-December, 2017



Rollout at Scale

By January, 2018, the full \$1.6B will have been allocated to managers across all four program areas.

January, 2018

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{1293, 1412} 1324 Res. No. _____
 in favor in opposition

Date: 6/20/19

(PLEASE PRINT)

Name: Ken Fisher

Address: _____

I represent: ACEC New York

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{1293, 1452} 329 Res. No. _____
 in favor in opposition

Date: 6/20/19

(PLEASE PRINT)

Name: Vicki Arbitano

Address: _____

I represent: on behalf of ACEC New York

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1293-A Res. No. _____
 in favor in opposition

Date: 6/20/19

(PLEASE PRINT)

Name: HARSHAD LAKHAN

Address: 315 MADISON AVE N.Y. NY 10017

I represent: ALLIANCE OF INDIAAN BUSINESS AND

Address: 315 MADISON AVE N.Y. NY 10017

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: 6/20/2019

(PLEASE PRINT)

Name: RAM TIRUMALA

Address: 1001 Ave. of Americas (2nd Floor)

I represent: ANAYE / DISTINCT ENGINEERING SOLN. INC

Address: 4300

**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: _____

Address: _____

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

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Address: _____

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

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Address: _____

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: _____

Address: _____

I represent: _____

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. ^{1095-A} 1379 Res. No. _____

in favor in opposition

Date: 6/20/19

(PLEASE PRINT)

Name: Brian Cunningham

Address: 451 Park Avenue So NY NY

I represent: Building Contractors Assoc, Inc

Address: 451 Park Avenue So NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1293A Res. No. _____

in favor in opposition

Date: 6/20/2019

(PLEASE PRINT)

Name: Ravi Shenoj

Address: 460 Park Av. South, NYC

I represent: Alliance of Asian Architects

Address: 65 Broadway, Suite 1002, NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1203 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: _____

Address: 387 E 11th St. 5L NY 10001

I represent: _____

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: _____

Address: _____

I represent: _____

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: *David D...*

Address: *City Hall*

I represent: *Mayor's office*

Address: _____

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