

TESTIMONY BY
COMMISSIONER ROBERT W. WALSH
NEW YORK CITY
DEPARTMENT OF SMALL BUSINESS SERVICES
BEFORE
THE CITY COUNCIL COMMITTEES ON
CONTRACTS AND SMALL BUSINESS
NOVEMBER 24, 2009

Introduction

Good afternoon Chairwoman James, Chairman Yassky and members of your committees. I am Robert Walsh, Commissioner of the Department of Small Business Services (SBS). Thank you for the opportunity to testify today. Now that you've heard from Marla Simpson about contracting results, I would like to provide you an update on the progress of the New York City Minority and Women-owned Business Enterprise (M/WBE) program and highlight our accomplishments thus far.

Building a Foundation for M/WBEs

Building a strong M/WBE program was an important initiative from the beginning of the Bloomberg Administration. In 2003, Mayor Bloomberg issued Executive Order 36 encouraging the certification and use of M/WBEs in City procurement. Shortly thereafter, SBS launched the comprehensive Online Directory of Certified Businesses to make it easier for firms to market their services and for agency buyers to find them. The agency also added staff to expedite certification, provide procurement assistance and develop educational services. We invested resources into the M/WBE program while cuts were being made in every other division of the agency. We've hired a talented staff; in 2002, the M/WBE program had three employees; but today we have 24 employees, led by a Deputy Commissioner and two Assistant Commissioners, dedicated to the objectives of this program. A culture of customer service was instilled throughout the division, and performance reports were developed to track progress and enhance internal accountability.

Following the issuance of the City Council's disparity study in 2005, the Mayor issued Executive Order 71, calling for the creation of an M/WBE goals program to address the findings of the study. In response to the Council's request to create the program by law, the City worked with the Council to

fashion legislation that would meet constitutional and state law standards, be practical to administer and have substantive goals. The Council then passed, and the Mayor signed, Local Law 129, which created a new Minority and Women-owned Business Enterprise (M/WBE) program for the City of New York. Implementation began in the spring of 2006, and comprehensive data tracking started on July 1, 2006.

Simplifying certification and increasing awareness

Our first priorities were to make M/WBE certification easier and faster and to get more companies to participate in our program. We reduced the length of the application, extended the certification period (from two years to five), and put the application online at www.nyc.gov/getcertified. We aggressively pursued partnerships with other regional certifying entities, including the Empire State Development Corporation, the School Construction Authority, the Port Authority of New York and New Jersey, the Women Presidents' Educational Organization, and the New York/New Jersey Minority Supplier Development Council.

To raise awareness and increase the certified pool, SBS, in partnership with the City Council and multiple community organizations, participated in over 900 events across the city in the past three years. In doing so, we've been able to educate the M/WBE community about the benefits of certification and the positive changes made under this Administration. These efforts have paid off. There has been a dramatic increase in the number of certifications: the number of certified M/WBEs recently topped 2,400, up from 760 in 2002. The other good news is that we have continuously increased the recertification rate. In 2006, only one in four M/WBEs recertified. Today, the rate is nearly four out of five. This means companies see real benefits from certification and know it's worth going through the recertification process.

Enhancing the M/WBE Program

SBS has worked hard to build out many aspects to improve our program. These efforts include:

- Obtaining more comprehensive and detailed information on M/WBE vendors to better market their goods and services to agency buyers
- Technology improvements to better match our growing pool of M/WBE companies with appropriate procurement opportunities
- Targeted strategies for increasing M/WBE utilization within each contract size and procurement method
- Agency progress reports to provide greater detail on each agency's performance and its efforts to increase M/WBE utilization while simultaneously identifying specific challenges they face
- A quarterly e-newsletter with tips on selling to government, information on upcoming training, and features on successful M/WBEs and agencies; the newsletter, published three times so far this year, is sent to over 3,000 subscribers including certified companies, agencies, and community partners.

The successful implementation of this strategy begins with a focus on the City agencies that do 90% of the City's purchasing, as well as those City agencies that do the most Local Law 129-defined spending (under \$1 million).

We frequently provide program updates and direction at MOCS' Agency Chief Contracting Officer (or "ACCO") monthly meetings. SBS has trained over 1,100 City purchasing staff and the City's largest prime contractors on Local Law 129 compliance. We continue to offer these monthly sessions at the City's Procurement Training Institute. We also work individually with agencies, to help them better use the online directory, review utilization plans; and identify contracts with potential M/WBE subcontracting opportunities.

As I mentioned earlier, to make it easier for buyers to find M/WBEs, we created the Online Directory of Certified Businesses (available at www.nyc.gov/buycertified) and have made repeated enhancements since it launched. This directory is searchable by keyword, commodity code, location and the ethnicity or gender of the owners. It provides a detailed profile for each certified firm that showcases past public and private-sector work. Lists can be downloaded, newly certified firms are featured, and the directory now includes links to support services for both agencies and certified firms.

Holding agencies accountable

Along with certification, a top priority has been to develop our relationships with the purchasing staff at each City agency to ensure they are increasing M/WBE utilization. SBS has partnered with the Mayor's Office of Contract Services (MOCS) to educate agencies about the M/WBE program. We are working with agencies to ensure they are doing all they can to implement the provisions of the law and using all available tools to do so. We also encourage agencies to develop their own tools, the best of which can be replicated at other agencies.

This past year, SBS took an extra step to ensure accountability by creating an account manager team that closely monitors agency performance. Each account manager is assigned a portfolio of agencies, which enables us to analyze what agencies buy, understand their purchasing restrictions and develop specific utilization strategies to address them. As a result of this portfolio management approach, we are much more familiar with the purchasing trends at City agencies, and have already referred 1,650 certified firms to agencies and prime contractors for specific opportunities.

Fostering the growth of certified firms

As the number of City-certified companies grows, SBS provides capacity-building services to help our M/WBE firms bid on and win contracts. For example, we conduct free monthly classes on how to do business with the City. We also offer several programs aimed at increasing our firms' ability to compete for contracts. Our *Fundamentals of Construction Management* seven-course series, a CUNY certificate program, teaches M/WBEs about the financial, legal, and managerial issues associated with City construction projects. Since this program began in 2007, 298 participants from 230 firms have attended these classes. In addition, we offer firms one-on-one guidance on how to prepare bids and proposals. Over 100 firms have used this service since it was launched in Fiscal Year 2008. Certified firms are also advised on bond and loan application packaging and related resources.

Last year, in an effort to apply innovative models of business development, SBS piloted a mentorship program with Columbia University for small contractors in the construction field. Eighteen companies graduated from the pilot, 10 of which have won \$5 million in contracts on Columbia projects to date. This year, we have enrolled an additional 22 companies, and we hope to replicate this model across other industries. Finally, vendor service representatives are available to assess a firm's ability to sell to government, help them navigate City procurement systems, and e-mail them contracting opportunities. All of these efforts reflect a long-term investment in our certified firms.

Connecting buyers and certified companies

We have been very aggressive about getting M/WBEs out in front of agencies and prime contractors. This helps establish critical connections and build the trust needed for successful business partnerships. In July, we held our third annual Citywide Procurement Fair, which attracted over 400 attendees from M/WBE firms and over 40 agencies and authorities. Within twelve months following the first two

Procurement Fairs, certified firms that attended have won over 4,300 contracts valued at nearly \$58 million. While the Procurement Fair offers a chance to meet with all agencies and provides important workshops, we also host smaller, more targeted forums where M/WBEs can hear firsthand about specific agencies' needs and what they look for in vendors. In Fiscal Year 2009, we held five such events in partnership with 17 City agencies. These were attended by over 400 certified firms.

Supporting M/WBEs' complete business needs

Over the past eight years, SBS has spent a lot of time and effort to build out NYC Business Solutions, a suite of services that helps businesses start, operate, and expand in New York City. In addition to free business courses, recruiting assistance, and access to cost-saving tax and energy incentives, companies can receive pro bono legal advice, loan packaging, and referrals to lenders. We work hard to make sure our certified M/WBEs know about all the services available to them through NYC Business Solutions. We know that among our currently certified firms, nearly one in five has chosen to access services through NYC Business Solutions Centers. We aggressively cross-sell all our services at every point of contact with our M/WBEs. For example, Big Apple Visual Group, a Manhattan-based certified MBE that makes signs and large digital displays, was recently awarded a \$50,000 grant to train 23 employees in marketing, sales, and operations. So whether or not an M/WBE ultimately wins a City contract, SBS provides a number of services to support their businesses.

Promoting policy changes that benefit M/WBEs

SBS applauds MOCS and the City's Law Department to create policies to further support the M/WBE community. As Marla Simpson testified, more opportunities are now available for M/WBEs on contracts under \$100,000 as a result of the recent amendment to a bidding rule. Our certified

construction firms will also benefit from greater access to the Small Business Administration's bond guarantee program and the new project labor agreements to be signed with the City's building trades.

Results to Date

The bottom line is clear: certified companies who use our services – classes, bidding guidance, and introductions to agencies – win contracts. As Marla just testified, the Mayor announced in September that the City had surpassed the \$1.2 billion mark in contracts awarded to certified firms since the implementation of Local Law 129. This reflects continuous increases in the value of prime and subcontracts awarded in each year. In Fiscal Year 2007, we awarded 5,191 prime and subcontracts, totaling \$254 million. Two years later, in Fiscal Year 2009, we awarded 7,122 prime and subcontracts, totaling \$488 million.

We have also seen progress in the use of M/WBEs in specific procurement categories. For example, micro purchases - contracts up to \$5,000 - make up the bulk of competitive procurements. In Fiscal Year 2009, there were 35,000 micro purchases, which represented the vast majority of opportunities below \$1 million. These contracts can often be entry points for companies seeking to do business with the City. And the data tells us that when companies win one contract, they are likely to win again.

We are seeing gains within ethnicity categories as well. The value of prime contracts awarded to Black-owned firms tripled from \$15 million in Fiscal Year 2008 to \$45 million in Fiscal Year 2009. Subcontracts to the same group quadrupled over the same time frame, from \$9 million to \$36 million. The value of prime contracts awarded to Hispanic-owned firms has increased each year, and subcontracting dollars more than tripled from \$21 million in Fiscal Year 2008 to \$72 million in Fiscal Year 2009.

Concluding remarks

We continue to provide support to M/WBEs, analyze the past three years' data to improve our services, and work more closely with the City agencies to continue increasing utilization. We recognize that making progress can only happen as a combined effort of Agency action and the ability of each M/WBE contractor to deliver quality goods and services at competitive prices.

As you can see, we are working hard for the City's M/WBEs. However, we recognize that there is always more that can be done. As we now move out of the program's ramp-up phase, we look forward to working together over the next four years to continue building on the gains already made.

Thank you for the opportunity to testify.



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MARLA G. SIMPSON
Director

**Testimony of Marla G. Simpson, City Chief Procurement Officer and Director,
Mayor's Office of Contract Services (MOCS), Before the City Council
Committees on Contracts and Small Business: Oversight – L.L. 129**

November 24, 2009

Good morning, Honorable Chairs and Members of the City Council. I am Marla G. Simpson, the City Chief Procurement Officer and Director of the Mayor's Office of Contract Services, and I am here today with Commissioner Robert Walsh of the Department of Small Business Services. Today, we are proud to present to you a progress report, detailing the City's track record for the three-year "ramping up" period under the Local Law 129 Minority- and Women-Owned Business Enterprise (M/WBE) program.

Commissioner Walsh will speak to the accomplishments and challenges of the program itself, but first I will highlight four very exciting developments benefitting the M/WBE community, and will also provide a brief summary on overall M/WBE procurement participation. The first of those is a true milestone: in FY 2009, our certified M/WBE companies crossed the billion dollar threshold. Despite a 25% decrease in our procurement spending in FY 2009, M/WBE contracting rose significantly, as we officially topped the \$1.2 billion mark by last July. City agencies awarded nearly 19,000 contracts and subcontracts to certified M/WBEs during the first three years of our program. We remain fully committed to ensuring that we meet all of the ambitious goals of the Local Law 129 program. But this is a great start, and our certified companies deserve enormous credit for their achievements.

Second, as Mayor Michael R. Bloomberg will announce later today, together with Speaker Christine Quinn and representatives of the building trades, construction industry and minority business



advocacy community, we are about to embark on a series of landmark Project Labor Agreements (PLAs) covering City construction work in the next four years. Thanks to the willingness of representatives from labor and the M/WBE community to roll-up their collective sleeves and work with us, these PLAs contain provisions that will dramatically enhance M/WBEs' ability to compete for and win City PLA work.

The third recent development that we believe will have a major impact on that participation is the City's new bond form for contracts and subcontracts valued at up to \$5 million. As you know, the City requires companies to obtain performance bonds for all construction projects greater than \$500,000, which often presents an insurmountable barrier for small vendors. Because of specific terms in the City's standard bond form, moreover, the United States Small Business Administration (SBA) had refused – for more than ten years – to allow the City's small businesses to participate in the SBA Surety Bond Guarantee Program, which helps companies secure the bonds by providing federal guarantees to the sureties, to cover most of their potential losses. The American Recovery and Reinvestment Act (ARRA) recently increased the limit of the SBA program from \$2 million to \$5 million.

Last month, the Mayor announced that we have reformed the City's bonding policy, easing requirements and increasing opportunities for small and minority-owned businesses. The SBA has approved our new bond form, which will be used for all prime contracts valued at up to \$5 million, and we are also encouraging prime contractors on our larger projects to allow their subcontractors to use the SBA bond form for qualifying subcontracts. We expect that this will open up more than \$500 million worth of business to companies that may previously not have been able to secure bonds.

The fourth and final milestone I want to mention has to do with our small purchase procurements. This past July, Mayor Bloomberg announced a key change to our rules, aimed at increasing opportunities for M/WBEs. Contracts valued at up to \$100,000 make up more than 40 percent of the contracts covered by the LL 129 program. Previously, agencies were required to solicit proposals from five M/WBE firms,



along with five firms randomly selected from the City's bidders lists, but they were also allowed to add additional vendors – often, companies they had used in the past – at their discretion. Now, agencies have been directed to offer those opportunities to the randomly selected vendors, absent special circumstances, so that we can ensure that more of those small purchases serve as the entry point for new competitors. We anticipate that this reform will drive our small purchase volume up significantly in the years to come.

So where are we, at this point, on M/WBE participation? You have received with today's testimony a copy of our Annual Procurement Indicators report for FY 2009, and I'll be available to answer any specific questions you may have. But here's a broad overview of where we stand.

FY 2009 was the final year of the Local Law 129 three-year "ramping up" period. During this period, M/WBE prime contract and subcontract awards have steadily risen in all categories. As I noted earlier, the City's procurement volume declined overall in FY 2009 by a factor of 25%. However, M/WBE prime contract participation *increased* over our FY 2008 levels. M/WBE participation on prime contracts between \$100,000 and one million dollars was up by nearly 80% from last year, rising from \$14.8 million to \$26.4 million. M/WBEs also won nearly \$190 million worth of contracts valued at more than one million dollars, even though there are no Local Law 129 goals at that dollar level.

The M/WBE share of City procurement has steadily increased during the three-year ramping up period across all industries and dollar thresholds. In FY 2009, Local Law 129 covered about 11% of the City's total portfolio, up from 8% in FY 2008. We are working very hard both to expand the coverage of the law, and to ensure that we track and encourage M/WBE participation on all procurements regardless of the applicability of Local Law 129 goals. As you know, under federal constitutional law, Local Law 129 must be "narrowly tailored" to address the gender- and race/ethnic-based disparities identified in an economic study this Council released in 2005. The most significant limitation under that study was its exclusion of prime contracts and subcontracts valued at one million dollars or more.



Local Law 129 also excludes human services contracts – which totaled nearly \$3 billion in FY 2009. In other industries, the law sets prime contract goals ranging from 22% to 36% – but in most cases the goals apply only for certain gender and racial/ethnic subgroups, not for all. For subcontracts, goals apply only to construction and professional services, and again, they only cover some subgroups.

During FY 2009, City agencies registered 217 new prime contracts valued at about \$989 million within the industries for which LL 129 subcontractor goals are authorized. Current estimates indicate that M/WBE subcontractors will obtain \$63 million worth of work, which amounts to about 39% of the target subcontracting amounts projected on those prime contracts. This is consistent with, and indeed slightly ahead of, the LL 129 citywide goals, as well as with industry norms for how much subcontracting typically occurs, how much occurs in subcontracts valued below one million dollars and how much would occur in the covered industries of construction and professional services.

For approximately 18% of the dollar value of prime contracts that were covered by Local Law 129, agencies were not able to set goals because no subcontracting was anticipated at the relevant dollar thresholds or in the covered industries. Examples of such contracts include litigation support, medical services, street lighting and tree planting. In addition, for any construction contracts that are required by the Wicks Law to be bid out with separate prime contracts for plumbing, electrical and heating/air conditioning/ventilation (HVAC) work, unfortunately, Local Law 129 subcontracting rarely occurs – but the upcoming PLAs will remedy this problem by eliminating the Wicks Law restrictions on City work.

Another reason many contracts are exempt from Local Law 129 is that they are covered by state and federal goals programs. About half of the dollar value of FY 2009 contracts in the construction and professional services industries was covered by such programs, which set goals for minority- or women-owned business enterprises (MBE or WBE), and/or for “disadvantaged business enterprises” (DBE).



FY 2009 prime contracts valued at almost \$1.6 billion will generate over \$328 million worth of MBE, WBE and DBE subcontracts, which is about 21% of their total value, under state and federal goals.

Most of the prime contracts in any given fiscal year represent work that occurs over a multi-year period as projects are built out. For this reason, we also track agency approvals of subcontractors for all Local Law 129 prime contracts since the program's inception in FY 2007. For all such contracts that remained in open payment status at the end of FY 2009, agencies have approved more than \$68 million worth of M/WBE subcontracts for construction and professional services work. This amounts to 44% of the total subcontracting dollars (to date); at the current rates, we expect that these contracts will eventually generate about \$121 million worth of M/WBE subcontracts. Agencies also approved \$1.5 million worth of M/WBE subcontracts in non-covered industries (mostly in standardized services) and \$14.5 million worth of subcontracts valued at or above one million dollars. While none of those contracts count directly toward the Local Law 129 goals, they do represent significant progress for our program overall.

Finally, to provide a comprehensive picture of our rate of progress in providing procurement opportunities to certified M/WBEs, we also track subcontract data across the entire City portfolio, including all the many types of contracts that fall outside of Local Law 129, both those that are subject to state or federal participation goals and those that are not subject to any goals program – for example, because they pre-date the adoption of the law. In FY 2009, certified M/WBEs won approximately \$180 million worth of subcontracts, about 19% of all those approved. For subcontracts below one million dollars in the construction and professional services, that M/WBEs won 30% of all those approved.

We agree that there is much work still to be done. But we are encouraged that, despite the challenging economic climate, M/WBEs continue to grow and to win larger subcontracts and prime contracts within the City's portfolio. Commissioner Walsh will now outline for you the steps that SBS has taken to produce that result. We are also both available to answer your questions.



Testimony by
Sandra Wilkin, President of the Women Builders Council
before the Committees on Contracts and Small Business
regarding the
Department of Small Business Services' Compliance with
Local Law 129 and administration of the MWBE program

November 24, 2009

I thank the Members of the Council for today's invitation to this morning's hearing.

Before giving my testimony, I wish to express the deep gratitude of the members of the Women Builders Council for the City Council's generous grant to our organization for our programs.

Speaker Quinn and the Council have been very financially supportive in the past. Your funding this year will help us in our mission to expand opportunities for women in the construction field.

The WMBE community regards the City Council as one of its strongest advocates.

WBC continues to have a strong working relationship with SBS. Our organization has collaborated with SBS on certifying businesses to become eligible for inclusion in the city MWBE programs.

The SBS Commissioner, Deputy Commissioners and staff have given their counsel without fail.

WBC welcomes the SBS willingness to change the focus of WBC's activities from certification to new innovative programs to increase capacity and provide for new procurement approaches.

WBC has led the way in providing new bonding initiatives for WMBEs.

WBC has taken a leadership role in addressing the insurance needs for our community.

SBS has been open to new idea and new approaches. The agency recognizes the complexity of the challenges facing us.

WBC has every confidence that the Department of Small Business Services will continue to be a valued partner in making WMBEs even more important to the city's economic future.

In an initial review of "Agency Procurement Indicators, Fiscal Year 2009", and an examination of the performance under Local Law 129, I wish I could be as positive.

Let me cite some examples of our concerns.

When you review the Local Law 129 report section regarding Prime Contracting Opportunities, you can only conclude that there is an "Opportunity Gap". If you review pages 54 and 55 and look at all the categories listed, you see that it reports higher percentages. However, the dollar volume is rather low. If the purpose of the law is to grow firms and certify more firms, the real dollar amount shows that it is not reflected in the number of opportunities.

The section on Subcontracting Opportunities raises many concerns.

Under the Utilization Plan, we know all too well that prime contractors commit to one subcontractor who gives them one price only to use another subcontractor.

There should be a review of how prime contractors are soliciting subs. It is important for you to examine the effectiveness of the prime's outreach to subs. I would hope that you would review how subcontracting are sought. Too often primes request services which are not consistent with the services to be provided by the sub. For example, a prime faxes a request for plumbing services to an electrician.

When you look at the Waivers materials (page 57), you realize that concerns are raised by the number of waivers which is simply too high. Waivers should only be used in rare instances. It is important for the Council to review this area.

I am concerned by the limitation the city is placing on WMBEs. Let me read from page 56, paragraph 3:

“The City agency first determines the percentage of the prime contract that is likely to be subcontracted for those three types of work where the subcontract's dollar value will fall under the one million dollar threshold. Once this calculation, termed the “target subcontracting percentage” (TSP), is performed, the agency determines the appropriate M/WBE goals and applies those to the dollar value of the TSP, using the estimate of the value of the prime contract about to be bid out.”

The translation simply says: “*MWBEs are only valued at \$1M or less per project.*”

After a review of Agency Procurement Indicator's Appendix K-1, you clearly see that the agency goals are not being met. There is a pressing need for an audited report indicating why goals for agencies are not being achieved. I would hope that the Council

continues to press the agencies as to this concern and what measures will be taken to reach the stated goals.

In conclusion, let me say that progress has been made. WBC is confident that the city administration, the City Council and Women and Minority Business Enterprise community will continue their work together to eliminate the obstacles and challenges for the benefit of a strong and sustainable economy for the City of New York.

Thank you.

NEW YORK WOMEN'S CHAMBER OF COMMERCE

MWBE Hearing

10:00 am November 24, 2009

Presented by: Josefina Nidea

On June 28, 2009, the New York Women's Chamber of Commerce submitted to the NYC Small Business Services the MWBE Certification Application of **Blue Water Construction and Restoration Corp.** A few weeks later, Robert Lopez, the owner of the company, received a Letter Notice of Deficiency from SBS. Most of the items listed were easily complied with except for the item that states: **provide a document of one of his parents or grandparents showing their country of origin.**

In the initial submission of the application to SBS, a copy of Robert Lopez's birth certificate has been provided but it showed that both his parents name, Robert Angel Lopez and Lillian Gloria Belkoski, were both born here in the USA. So when SBS asked him to submit his paternal grandparent's birth certificate, he knew that he will not be able to comply with it. He knows that both his paternal grandparents were born in Cuba and migrated to the USA in the early 1900s. They have both passed away when Robert was a young child. Robert's father, Robert Angel Lopez, does not have any documents to show their ethnicity because the house where he grew up was burnt down including important documents such as birth certificates. When SBS learned that he could not comply with the requirements, he was asked to withdraw his MWBE Certification application.

Upon learning from Robert the result of SBS's review, I called up the Analyst that reviewed his application and was told that since he is a 3rd Generation Hispanic, he should prove the country of origin of his grandparents. When asked why the African Americans, Asian Americans applicants who were born here and so with their parents, were not asked this requirement, I was told that it applies only to Hispanic as they want to know whether they are Spanish or Portuguese descent.

It was an internal policy of SBS, I was told, and it stemmed from the Civil Rights Law. However, the Analyst could not give me the specifics of the ruling. I did a little research but could not find any ruling in the Civil Rights Law to that effect. I called up the Analyst again a few days after, to ask for a copy of the ruling or their policy guidelines but the Analyst suggested that I call up their Director and request for such. She also mentioned that they had a similar case like this too and was brought to court but the MWBE applicant did not win the case and the judge upheld the position of SBS. After my talk with the Analyst, I tried to get in touch with the Director but we had a phone catch that day, so I decided to email her the next day. My email was to request for a copy of the guidelines or policies that are important for the Leadership organizations to know so that we could respond and pre-qualify applicants accordingly. My email fall on deaf ears and never got any reply.

While the Certification review was on-going, Columbia University emailed the Chamber of their upcoming Mentorship Program for construction companies. I emailed this information to our MWBE certified companies including Blue Water Construction and Restoration Corp. Robert Lopez was very much interested since the program includes partnering with a Prime Contractor. He worked on his application and got qualified to participate in the Mentorship Program. In fact, the NYWCC was able to bring about 4 clients/ members to the program. In the midst of the program, Robert was asked by Columbia University on the status of his MWBE Certification. The partnering with a Prime Contractor was to take effect in the coming weeks and he should have to be MWBE Certified with the City by then.

Robert is doing everything, networking, attending seminars on new construction technology and new trends in the construction industry such as the LEED Program, so that his company will have better profits this year despite the economic downturn. He recently attended the Turner Construction Procurement event last week where the Chamber was one of the participant for MWBE Certification, and Robert and was invited to bid for a Turner project for 2010. He got so excited but was again told that his company should be MWBE Certified. Opportunities are coming his way as a result of all his efforts, but he feels that his hands are tied and can't do much unless he gets MWBE Certification approval.

To conclude, I just want to reiterate my email letter to SBS, please furnish the Leadership organizations a copy of your policy guidelines on Ethnicity, to enable us determine the exact meaning of Minority. Thus, making us more effective in our service to minority-owned and women-owned small businesses and most importantly to make Local Law 129 really work!!

Thank you.

FILE NAME: EMAIL TO PHYLLIS @ SBS REUSED
7/29/2009 9:01AM

Dear Phyllis,

Thank you for returning my call, sorry I missed it. I was calling you because I am in need of some clarification regarding an MWBE policy that was brought to my attention.

A couple of weeks ago, I received a phone call from a client of the NY Women's Chamber of Commerce whose application we submitted to be considered for MWBE and LBE Certifications. He is a contractor that does construction management as well. His application was declined and your office advised him to pull his application since he was not qualified as he is a 3rd generation Hispanic ethnicity, meaning he and his father were born here.

I was surprised to learn the reason for his disqualification, since the application does not make reference to generations only to those groups considered minorities which are: Blacks, Hispanics and Asians. I was not only surprised but also confused when I learn from Nara Sainthil, the Certification Analyst that reviewed the application that only Hispanics are given this 3rd generation disqualification. In trying to understand this I asked her to direct me to where this information could be found since I had check Local Law 129 and could not find this important information. Ms. Sainthil told me that this policy stemmed from a Civil Rights Law, however after extensive research I couldn't find any ruling to that effect.

To better serve and target the right companies for the MWBE certification, I would like to request a copy of all the guidelines and policies having to do with the qualifications for applying to the city MWBE certification. This will not only assist and guide us, as well as other leadership organizations, in better serving our target market, but it will also help us in effectively assisting your office with the MWBE Program and in avoiding any future misunderstandings.

Thank you for your assistance and collaboration.

Very truly yours,

Josefina Nidea

HENRY C. CHAN, ESQ.

PARTNER,
WILSON & CHAN, LLP
(MBE CERTIFIED LAW FIRM)

BOARD MEMBER,
ASIAN MWBE ASSOCIATION, INC.

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LOCAL LAW 129 OF 2005 – MWBE LAW

PRESENTED TO THE:
COMMITTEE ON CONTRACTS JOINTLY WITH
THE COMMITTEE ON SMALL BUSINESS

NOVEMBER 24, 2009

INTRODUCTION

Chairpersons, distinguished members of the Committees, thank you for allowing me the opportunity to testify today. It is a pleasure to appear before you on behalf of WILSON & CHAN, LLP, an MWBE certified law firm based in Manhattan, our clients, consisting of over fifty (50) MWBE certified companies in the greater New York City area, and the ASIAN MWBE ASSOCIATION, a non-profit organization serving and promoting the interests of Asian and Asian-American MWBE companies in the State of New York. Today, respectfully, I would like to address the figures, data, and conclusions contained in City's Agency Procurement Indicators (Fiscal Year 2009) publication. While my testimony will likely cover issues of importance for all minority- and women-owned businesses, I will attempt primarily to focus my testimony on Asian and Asian-American businesses and what appears to be a lingering inequity in the City's

procurement process as regards these groups. Simply put, a lot more work needs to be done if the professed goals of Local Law 129 of 2005 are to be achieved. The testimony I give today is based on my own personal experiences with the City's MWBE program as well as from substantial feedback from my clients and members of the Asian MWBE Association.

WHERE WE ARE - 2009

It was exactly seventeen months ago today that I testified before these same two committees regarding the results of the first year of a three year "ramping up" period under the statutory framework of Local Law 129, particularly discussing the Fiscal Year 2007 report of the Agency Procurement Indicators publication. In my testimony, I noted what appeared to be a drastic disparity in how the City contracts with MWBE's for professional services. At the time, it contracted at an appalling 0.46% (based on dollars awarded) rate. Now, following three years of "ramping up," the figure sits at a slightly less appalling 1.7%, with Asian MWBE firms receiving 0.3%. Not a single contract over \$1 million was awarded to an Asian MWBE firm (or, for that matter, a Caucasian female-owned firm). As of November 23, 2009, there are more than 456 Asian MWBE services firms registered in the City's MWBE database.

In June 2008, I also discussed how the LL129 program and its goals were designed as an "outreach program" to MWBE firms. I detailed what my clients and my members considered to be "a complete disconnect between Small Business Service ("SBS") and the city's agencies, specially, the procurement decision makers at each agency in its adherence to the M/WBE law." That disconnect, for whatever reason, continues. The MWBE coordinators and the certification process has achieved no measurable effect on convincing the decision makers to broaden their procurement horizons. Increasingly, MWBE firms are expected to expend substantial time and

energy and resources toward certification and participating in the RFP process only to watch those resources go wasted as contracts are awarded to the same companies over and over again.

A telling statistic was included in the Fiscal Year 2009 report, wherein it stated that “[o]nly one complaint was made in Fiscal 2009 and the evidence did not indicate non-compliance by the City agency.” These committees should be profoundly disturbed by a system that produces such a result. One complaint?! It is powerful evidence that complaints are tantamount to black-balling, that it is better to say nothing and “simply take it” if you have any interest in doing business with the City. It’s a “go along to get along” approach that is precisely what LL129 was designed to eliminate. I can assure you, committee members, there are thousands of complaints among the MWBE community. You are just not hearing them or, worse, the City’s agencies are ignoring them.

REPORT ISSUES

A common technique in argument is to accentuate only those areas where your proffered position is enhanced, ignoring those areas which detract. Unfortunately, that approach often backfires, implicating the speaker’s credibility by failing – or hiding – perceived weaknesses rather than addressing them forthrightly. I note a few such items contained or not contained, as the case may be, in the Fiscal 2009 report.

First, one glaring item that went unaddressed is the focus simply on dollar values as a measure of success. The fact of the matter is that, as an “outreach program” the number of MWBE participants, particularly new participants, is an equally important figure. It is ignored in the Fiscal 2009 report. Such an omission creates suspicion. Taking the Asian MWBE figures

alone, of the \$140 million in prime and subcontracts issued in 2009, for example, at least 30% (\$41 million) of those were awarded to only TWO Asian businesses. Fiscal 2009 report, p. 62. This cannot be described as “outreach” in any meaningful way. If the same Asian businesses are getting contracts over and over, the “ambitious” goals of LL129 are being undermined, creating a disturbing “tokenism” in City procurement that was certainly not intended in this statute.

Second, a frank discussion of whether LL129’s framework is unworkable should have been addressed, but, sadly, was ignored. The Fiscal 2009 report does acknowledge that the “LL129 program does not cover all of the City’s procurements,” it excludes from the goal program “any prime contract valued at one million dollars or more” (the vast majority of City contracts), a similar pattern occurs in subcontracting where the goals “do not cover subcontracts which themselves equal or exceed one million dollars,” LL129 “excludes some contracts from its coverage based upon the industry of the vendor and type of services,” and, in certain industries, LL129 sets goals “only for *some* gender and racial/ethnic subgroups, not for all.” See Fiscal 2009 report, p. 53. All of these holes in the LL129 framework address only the City’s own responsibilities; still other “exclusions” and holes are effected depending on whether the source of funding is from the State or Federal government.

Three years of “ramping up” has labored to produce 4.6% of all prime contracts from the City going to MWBE firms. In New York City, where MWBE demographics exceed 60%, there’s a lot more “ramping up” to be done. A lot more.

ONE CASE

I will use the experience of my firm as one example of how LL129 has failed to achieve its goals. We are a minority-owned firm, representing dozens of minority-owned firms. We are certified by the City and State as an MWBE. We have participated in every RFP for legal services issued in the last year and a half. I have personally attended seminars and workshops and given lectures at City- and State-sponsored initiatives for MWBE firms. I can confidently state that there isn't a professional service firm in the City of New York who is more competently informed on the issues surrounding MWBE contracting than my firm. What has all of this produced? My firm, in accordance with the numbers above, has received not a single dollar in contracted business from the City of New York.

My clients often ask me to explain why their RFP submissions failed or were not accepted. Like them, I am at a loss for explanations. While I have tried to not let suspicion and conjecture inject negativity into my approach to the MWBE programs, I am increasingly at a loss for any other explanation. Unfortunately, this Fiscal 2009 report doesn't help any. The system is not working. It is easy to use the term "outreach." It is a lot harder, apparently, to avoid placing confusing and illogical conditions upon the outstretched hands the City and its contracting agencies choose to reach for. When a man is drowning, you don't offer to help on the condition that he be the lowest-cost bidder for your rescuing services.

CONCLUSION

That concludes my prepared remarks. Again, I want to thank the Chairman, distinguished members of the Committee, for allowing me the opportunity to testify today. Much has been accomplished since the enactment of the MWBE law. There is much more to do. Nearly one-third (33%) of all companies in New York City are owned by minority entrepreneurs

- there is absolutely no excuse that MWBE companies are not being awarded its fair share of New York City government contracts. The math simply does not make sense. If the fair participation and equal opportunity principle is being applied in the first place, these numbers should be more in line with each other. Let me say again how much I appreciate the Committee's time and attention on these important issues. Our law firm stands ready, willing, and able, to do whatever we can to adhere to the spirit of the MWBE law.

I will be glad to answer any questions.

Testimony On Oversight: The Department of Small Business Services' Compliance with Local Law 129 and Administration of the MWBE Program

November 24, 2009

Good morning hearing committee. My name is Wendell Niles. I am the President of Niles Advertising & Display Solutions, Inc., a Harlem-based, Certified Minority Owned Business Enterprise. While I am currently the President of Niles Advertising, I am also a founding member of the newly formed New York State Coalition of Minority Businesses. The Coalition consist of Hispanic, Asian and African American business advocates who are dedicated to addressing the frustrations, dissatisfactions and difficulties of the minority business community with regards to awards of contracts, certification and access to capital.

The coalition has formed an independent minority business task force, to serve as a conduit between minority business owners, the community and legislators, both New York City and New York State. Based on independent research, the Task force will produce an independent report card that will tackle the overwhelming disparities associated with contract awards to minority-owned business and the misappropriate spending of tax dollars with organizations that are contracted to certificate minority-owned business and provide technical support. The report card will also provide in-depth analysis of each agency, and its treatment of minority-owned businesses.

According to the Agency Procurement Indicators Fiscal Year 2009 Report, utilization of African Americans Owned Small Businesses is as follows:

Industry	African-American	All M/WBE
Architecture/Engineering	0.3%	8.2%
Construction Services	0.3%	2.5%
Goods	0.2%	1.6%
Professional Services	0.3%	0.7%
Standardized Services	0.6%	2.4%
Micro Purchases	0.5%	12.0%
Sub-Contracting	1.9%	11.1%

Conclusion:

While there is no one size fit all solutions, the Coalition strongly recommends the following actions:

1. Appoint new leadership at the New York City Department of Small Business Services.
2. Dismantle large contracts to provide more procurement opportunities for small businesses and spark competition
3. Reduce goals set for WBE's in order to increase usage of MBE's
4. Change the 129 Law language from "Caucasian Women" to "Women"
5. Allow one of our members to participate on the Mayor's Task Force.

I would like to thank all the members of the City Council who are present; managers at various New York City agencies that are trying to make a difference, and my colleagues Frank Garcia and Henry Chan who are passionate about supplier diversity and fairness.

Thank you

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LL129 Res. No. LL129 of 205
 in favor in opposition

Date: 11/24/99

(PLEASE PRINT)

Name: Moli Wilson
Address: 83-37 St. James Ave. Apt. 2T Elmhurst NY 11373
I represent: Asian MWBE
Address: 1375 Broadway 3rd floor, NY NY 10019

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 in favor in opposition

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Name: HENRY CHAN
Address: 1375 BROADWAY, 5th FL
I represent: ASIAN MWBE ORG
Address: _____

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Name: Colleen Galvin
Address: 110 William St.
I represent: SBS - NYC Small Bus. Services
Address: _____

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Name: Andrew Schwartz (PLEASE PRINT)

Address: 110 William

I represent: NYC Small Business Services

Address: _____

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Name: DR Eda F. Harris Hestrick (PLEASE PRINT)

Address: CACTI, Brooklyn Navy Yard

I represent: Caribbean American Chamber

Address: Roy D. Hestrick Sr. President JCEO

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Name: Frank BACIA (PLEASE PRINT)

Address: 2017 17 NY

I represent: BHCC

Address: _____

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Name: REGINA SMITH

Address: 103 W. 130th ST.

I represent: HARLEM BUSINESS ALLIANCE

Address: 275 LENOX AVE

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Name: WENDELL NILES

Address: 109 WEST 136th STREET

I represent: NILES Advertising

Address: _____

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Name: Marla Simpson, Director

Address: 253 Broadway

I represent: Mayor's office of Control Services

Address: _____

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Name: SANDRA WILKIN

Address: WOMEN BUILDERS COUNCIL

I represent: _____

Address: _____

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Name: JOSEFINA NIDEA

Address: _____

I represent: NEW YORK WOMEN'S CHAMBER OF COMMERCE

Address: 1524 AMSTERDAM AVE. NY NY 10031

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Name: Quenia Abreu

Address: 177 W. 83rd Street

I represent: NY Women's Chamber of Commerce

Address: 1524 Amst. Avenue

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Name: ROB WALSH, COMMISSIONER

Address: _____

I represent: SMALL BUSINESS SERVICES

Address: _____

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