

**TESTIMONY BY**  
**FIRST DEPUTY COMMISSIONER ANDREW SCHWARTZ**  
**NEW YORK CITY**  
**DEPARTMENT OF SMALL BUSINESS SERVICES**  
**BEFORE**  
**THE COMMITTEES ON SMALL BUSINESS AND CONTRACTS**  
**OF THE**  
**NEW YORK CITY COUNCIL**

**FEBRUARY 16, 2012**

Good afternoon Chairwoman Reyna, Chairwoman Mealy and members of the Small Business and Contracts Committees. I am Andrew Schwartz, First Deputy Commissioner of the Department of Small Business Services (SBS) I am here with Assistant Commissioner Gregg Bishop and Executive Director John Chapman. Thank you for the opportunity to testify today. I'd like to discuss the Locally Based Enterprise (LBE) program and outline how this program operates in light of the expanding role of Local Law 129 in City procurement.

Much like the City's current Minority and Women Owned Business program, the LBE program was designed to promote the growth of small construction firms through greater access to contracting opportunities with the City. Generally, the program requires agencies to utilize Locally Based Enterprises as prime or subcontractors on specific construction contracts. However, the number of contracts subject to the LBE program has substantially decreased in recent years due to applicable goal setting programs from the City, State and federal government.

Under the LBE program rules, contracts are excluded from the program, if they are federally or State funded and goal programs apply. Federal construction is generally subject to the Disadvantaged Business Enterprise program and State contracts are subject to various requirements, including Article 15-A of the New York State Executive Law. As many City construction contracts are federally and State funded and subject to subcontracting goals under those programs, they are not covered by LBE. With the enactment of Local Law 129, M/WBE subcontracting goals are now applied to City

funded construction contracts. We, along with the support of the Council, have worked to ensure that M/WBE goal requirements are attached to these contract opportunities and accordingly, this further limits the applicability of the LBE requirements.

The Division of Economic and Financial Opportunity at SBS administers a comprehensive certification program for the Minority and Women-owned Business Enterprise Program and also certifies Locally Based Enterprises. To qualify for certification, a company must average no more than 2 million dollars in gross receipts per year, and either: perform at least 25% of their work in an economically disadvantaged area of New York City, or employ a workforce of which at least 25% are economically disadvantaged persons. A company's initial certification can last up to three years, after which they may be renewed on a yearly basis if they continue to meet the certification criteria of an LBE.

In addition to competing for City contracts, certified LBEs can also use the tools and services SBS has developed for the M/WBE program to promote the capacity and growth of their business. For example, as a certified LBE, a company will receive a listing in the NYC Online Directory for Certified Businesses, where City agency procurement staff looks to find certified vendors. Certified firms receive assistance from SBS procurement specialists, invitations to industry networking events to meet with City and private-sector contracting officers, and access to exclusive classes that will help them become better equipped to bid, win and perform on City contracts. For example, our certified construction companies have had the opportunity to participate in our Fundamentals of

Construction Management program with CUNY's NYC College of Technology. The program offered six courses that follow the lifecycle of a construction project and are taught by industry experts. Students receive a certificate of completion for each course, and a Certificate in Fundamentals of Construction Management for completing the entire program. Of particular assistance is by participation in networking events or receiving assistance from a procurement specialist. Direct one-on-one service connects companies with opportunities and helps them respond to competitive sealed bids and requests for proposals.

Presently, there are 84 certified LBEs in our directory. Many of our LBEs are also certified as minority or woman owned companies. By doing so, they are able to be considered for targeted subcontracting opportunities on City construction projects. Over the past five fiscal years, certified LBEs won approximately \$134 million in prime and subcontract awards. Every six months, SBS, in coordination with the Mayor's Office of Contract Services, publishes comprehensive data on contract utilization for M/WBEs and annually reports on subcontracting dollars awarded to M/WBEs. SBS plans to add this LBE data to the annual report.

In addition to the opportunity to participate in capacity building programs offered by SBS, companies are also able to take advantage of the full set of services offered through our Business Solutions program. SBS provides direct assistance to small business owners through NYC Business Solutions - a set of services to help businesses start, operate and expand in New York City. The services are provided at no cost and address

the needs of entrepreneurs and businesses of any size and at any stage. In addition to assistance with program certification, services offered include business courses, access to capital, incentives information, pro-bono legal review of contracts and leases, navigating government rules and permit processes, selling to the government, hiring assistance, and training employees. Businesses also have access to business information on-line, through NYC Business Express ([www.nyc.gov.businessexpress](http://www.nyc.gov.businessexpress)), a City-wide initiative that makes starting, operating, and expanding a business in New York City clearer, faster, and simpler. The one-stop online tool has all the license, permit and tax information and applications needed to do business in New York City and allows businesses to access consolidated information about their interactions with the City.

SBS will continue to examine the LBE program and determine how it can be used productively alongside M/WBE requirements. We will continue our efforts to ensure that small businesses can compete for the City of New York's procurement opportunities and look forward to working with you. Thank you. We would be happy to answer any questions you have.

# **VALLEY TREE & LANDSCAPE, INC.**

**PROFESSIONAL PRUNING & PLANTING**

**P.O. BOX 986 • LONG BEACH, NEW YORK 11561**

**(516) 889-7534 • (718) 527-8410 • FAX (516) 889-4562**

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February 16, 2012

Council Member Darlene Mealy  
Chair of Contracts Committee  
Council Member Diana Reyna  
Chair of Small Business Committee

RE: NYC Council Committee on  
Small Business Hearing on LBE's

Dear Council Members:

Thank you for holding this hearing and expressing your obvious concern regarding the status of the LBE program.

While the issue of LBE is a subject of New York City Council's Committees on Contracts and Small Business interest, I would like to bring several issues to your attention.

I was gravely disappointed that First Deputy Commissioner Andrew Schwartz, Department of Small Business Services, could not stay for concerned parties' testimony. Their inability to avail themselves of any questions you might have had due to issues raised during testimony was a lost opportunity to substantiate where the program is now and if any remediation is possible.

While the issue of LBE is a subject of New York City Council's Committees on Contracts and Small Business interest, I would like to bring several issues to your attention.

As mentioned in your testimony the LBE program is one of the oldest yet smallest. This in no way reflects poorly on the program or its implementation. LBE is a very specific program designed to assist qualifying New York construction firms to attain subcontracting opportunities on large-scale City projects.



OFFICE OF THE COMPTROLLER  
OFFICE OF CONTRACT SERVICES

253 Broadway -- 9th Floor  
New York, New York 10007  
(212) 788-0018 Fax (212) 788-0049

MARLA G. SIMPSON  
Director

Post-It Fax Note	7671
To	
Co./Dept.	Joel
Phone #	
Fax #	889.4562

List of Services

The services below have been determined to fall into the following procurement categories. This document will be updated periodically based on contract-by-contract decisions. It was last updated on August 15<sup>th</sup> 2007.

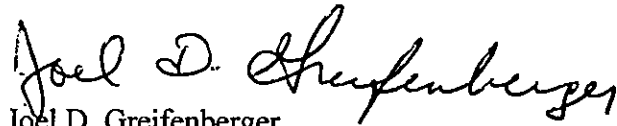
<u>Services</u>	<u>Procurement Categories</u>
Advertising (as in design / market consulting)	Professional Service
Advertising (as in buying time/space)	Standard Service
Auditing	Professional Service
Auto Mechanics and Repair	Standard Service
Catering	Standard Service
Construction (Rehabilitation)	Construction
Construction (Renovation)	Construction
Construction Management Services	Professional Service
Demolition	Construction
Extermination	Standard Service
Fencing - Permanent / Decorative	Construction
Fencing - Temporary (as in site protection)	Standard Service
Fitness Consultant	Professional Service
Forensic Consulting	Professional Service
Landscaping (as in new work)	Construction
Landscaping (as in maintenance)	Standard Service
Language Interpreter (such as for 311)	Professional Service
Lead Containing Materials (removal and disposal)	Construction
Legal Consulting	Professional Service
Medical Consulting	Professional Service
Nutritional Consulting / Nutritionist	Professional Service
Painting - Interior or Exterior (as part of new building, rebuilding, or redesign)	Construction
Painting - Interior or Exterior (as maintenance)	Standard Service
Photography	Standard Service
Physician Consultant	Professional Service
Psychiatry Consulting	Professional Service
Real Estate Consulting	Professional Service
Shipping	Standard Service
Site Clearing	Construction
Site Security (personnel)	Standard Service
Site Security (system/goods)	Construction
Sodding	Construction
Software / Tech Services (as maintenance)	Standard Service
Software / Tech Services (as part of a new project)	Professional Service
Soil Testing	Standard Service
Surveying (On-Site)	Standard Service
Surveying and Mapping Consulting	Professional Service
Tree Consultants	Professional Service
- Tree Planting (new and replacement)	Construction
- Tree Pruning (as part of new landscaping project)	Construction
- Tree Pruning (as maintenance)	Standard Service
- Tree Removal	Construction
Trucking	Standard Service
Water Testing	Professional Service

7. The list of certified firms from SBS includes companies with wide variation in capacity and ability. SBS certification does not ensure competency or capacity to perform.
8. Contracting agencies have limited ability or motivation to insure W/MBE firms are, in fact, performing the work themselves. The first criteria are that the MBE participation goal is met. The quality of the work performed and maintaining strict adherence to doing the work, with their own employees and equipment, is secondary to meeting the participation goal.

The current situation creates an environment that encourage bending the rules to meet onerous MBE goals. The burden of meeting MBE participation goals carried on just a few services should not be categorized as construction, but spread over all services. Inequalities should not be balanced on the backs of Arborists, Landscapers, Painters and demolition crew. All services such as auditing, photography, site security, soil testing, trucking and water testing should count towards MBE utilization goals.

The current LBE certification program is in jeopardy of becoming irrelevant. Without participation goals, the program loses its primary function, providing subcontract opportunities for certified firms.

Sincerely,  
VALLEY TREE & LANDSCAPE SERVICE INC.



Joel D. Greifenberger  
NYS Certified Arborist/President

The LBE program assisted local small businesses that provide specialty services vital to the completion of large construction projects. The special nature of the trades often requires licenses, certifications, or specialty equipment that is not practical or economical for prime contractors to maintain. The highly skilled nature gives rise to small subcontractors that offer the expertise required. These small companies often design their services and capacities to meet the needs of general contractors performing large contracts. These small companies are dependent on subcontract relationship for their survival.

Unlike W/MBE, LBE is only utilized in construction contracts. LBE has no bearing on the broader citywide procurements.

The current LBE program no longer mandates a 10% participation goal for LBE's. The current program favors MBE and excludes LBE from contract opportunities. This is a devastating situation for small companies that have faithfully participated in the LBE program. Companies that have invested heavily in plant and equipment, staff and training no longer have a market for their services. The current W/MBE mandate eliminates the LBE ability to compete and obtain contracts.

#### **Summary of Current Problems**

1. Without a participation value LBE has limited value.
2. In desire for W/MBE goals, LBE goals are pushed out of the market.
3. The percentage of LBE firms recertifying remains high. Established LBE firms provide specialty services required on larger projects hope to stay in business.
4. Certification of new firms is down due to lack of participation goal for LBE

#### **5. The Service Classification Barrier**

Construction contracts require prime contractors to subcontract a certain percentage of services to MBE firms.

Although many special services are required on large construction projects, only a small percentage of services qualify towards MBE utilization goals. For instance - Trucking and site security (personnel) are now classified as standard service and utilization of any MBE firm for these services does not count toward MBE goals. The narrow scope of services categorized as construction and therefore qualifying for MBE utilization goal has two detrimental consequences.

- a. Contractors are forced to meet their MBE goals utilizing only a few of the trades and services they require.
  - b. LBE subcontractors that provide services that count toward MBE utilization either lose market share or standby as others who are willing to employ questionable practices take advantage of the system.
6. General contractors trying to comply with W/MBE are forced to give up satisfactory relationships with LBE's in order to meet W/MBE mandate.

February 16, 2012

Written Testimony to New York City Council Committee on Small Business Hearing

Given by: Reginald Swiney, President and CEO R.S Painting Company Co Inc

Prepared By: Reginald Swiney Sir, Pat Williams, Consultant

\*The City under Local Law 129 must Audit all LBE,MBE subcontractor utilization plans to make sure for compliance as set forth in New York City Administrative code section 129(I) Audit

\* The City need a (form) call Intent to perform as subcontractor /sub-consultant this document need to be added to Administrative code section 129(I) for Audit

\* All Utilization Plans need to be posted on line, who is being awarded the contract as LBE and subcontractor.

\* The City need a Vendors score card (Audit) a tool to stop company who don't compliance with Local law 129 for Prime /Subcontractor

While the creation and development of news jobs for the 21 century is paramount in staying off the decline of New York City and New York State's economy, I must bring attention to the problem of local neighborhood construction jobs systemically given to firms that hire undocumented workers, don't comply with prevailing wage requirements, violate OSHA safety rules, and regulations and continue to take money out of the local economy instead of bringing revenue back in the communities.

For many years I have asked this question of my elected body and as of yet I have received no definitive answer or solution. As a local painting contractor living within the Bedford Stuyvesant Community I am perplexed about how active construction projects operated all around my location and I have no knowledge of where, who and what I can do to get this work.

Not only are the projects underway without giving LBE,MBE's, firms like mine who hire and train residents from the community an opportunity to bid and work on them, local vendors don't get an opportunity to sell their materials and services. The community contiguous to these projects is completely ignored by the contractor and workers. In cases where a contractor will not get credit for a vendor who is not on a certified list any contractor that utilizes local business near the project should get special credit when being considered for future work. A score card on vendors

There needs to be a more open and comprehensive monitoring (Audit ) of all construction in the Boroughs as well as a central registry where a local contractor or vendor can look up a project get all the contract information and inquire about business opportunities. If an on line service like "construction wire" can create a central log of projects and information local and nationally for a fee. Government can duplicate it for

the small business. Local community boards should play an intricate role in establishing a local information registry

Undocumented workers not paid prevailing wages needs to halt immediately. If minority contractors operate in violation of prevailing wage they are fined and in some cases prosecuted. I have personally gone on the sites of several of these projects and found out form workers that they are not being paid according to NYS prevailing wage guidelines. In addition I have taken pictures of gross violations of OSHA safety regulations.

The notion of alternative financing is not new but what has not changed is the fact that the banks do not lend to LBE, MBE firms at a rate sufficient to justify them holding revenue generated from city, state and federal construction projects. Due to the failing economy banks have not improved in this practice. Even with stimulus funds added to their bottom line banks have not addressed the needs of local minority firms. In this failing economy we must have funds to bid and obtain drawings to bid we need financing. We need additional revenue to hire staff. Alternative finance opportunities to keep us in business such as a local area grants and special project specific funds are a must.

Finally, I am a certified green contractor when I work I create green jobs for my employees. If hundreds of green certified contractors are working thousands of green workers are employed and thousands of jobs are created. We Need Work!

**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: Feb. 16, 2012

(PLEASE PRINT)

Name: Nickolas Spyreas

Address: 632 Bway 7th floor

I represent: Stara Const. Corp

Address: 632 Bway 7th floor

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Name: John Chapman

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

I represent: Small Business Services

Address: 110 William Street

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Name: Joel D. Greenburger

Address: 441 E. Beech St

I represent: Valley Tree Landscape Serv

Address: 155-46 Bayview Ave Rosedale

PO BOX 1052 LONG BEACH N.Y. 11427

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

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Name: Gregg Bishop

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

I represent: SBS

Address: 110 William St

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Name: D.C. Andrew Schwartz

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

I represent: SBS

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

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 in favor  in opposition

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

(PLEASE PRINT)

Name: Reginald Swine

Address: 57 Hancock Street

I represent: R.S. Painters Co Inc

Address: 57 Hancock St Brooklyn NY 11216

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