

FOR THE RECORD



Statement of  
Denise Richardson, Managing Director  
General Contractors Association of New York  
December 17, 2012  
NY City Council Committee on Contracts Hearing  
Intro 911

Re: Opportunities for minority and women owned business enterprises  
and emerging business enterprises in city procurement

---

The ostensible purpose of Intro. 911 is to make long term, sustained increases in the availability and capacity of firms bidding on city contracts. A deep pool of capable firms ensures robust competition for bids and guarantees to the taxpayers that the City's goods, services and construction are procured and delivered in the most efficient and cost-effective manner.

To achieve a lasting impact, the MWBE program must recognize that successful businesses begin small and grow steadily over time, and goals for contractor participation must reflect the availability of certified firms and be tailored to opportunities within a project's scope of work. Intro. 911 is at risk of falling short in these two significant areas.

As written, Intro. 911 makes no linkage between the availability of **certified** firms and the goal setting effort. Similarly, the bill makes no provisions for agencies to be required to provide information in their solicitation documents that explains how the goals were established. Without these two provisions, Intro. 911 will follow the same patterns as past programs: establishing goals that do not match the availability of certified firms or the scope of work being required by the agency and seeking to place blame when the program falls short of expectations.

Intro. 911 has the opportunity to break this cycle if the legislation is modified to contain provisions that require goal setting to be based upon the **certified** firms in the City's MWBE directory. By establishing citywide goals that reflect the general marketplace and not the pool of certified firms, the legislation makes the flawed assumption that every business owned wants to

do business with the City and that discrimination has prevented them from doing so. This fallacy allows the City's elected and agency officials to escape responsibility for addressing the real issues that discourage firms of all sizes and demographics from doing business with the City, including onerous contract terms that place all risk on the contractor, poorly written specifications, unrealistic schedules, slow payment and an adversarial and punitive dispute and changed condition resolution process.

While the legislation appropriately emphasizes that firms must perform a commercially useful function and not just serve as a middle-man or broker, it is important to recognize that in the construction industry, it is common practice for the entity that installs equipment to also furnish it. This ensures that responsibility for the fit and operation of the equipment is concentrated with one entity, protecting the owner in the event of a dispute. For a small firm looking to grow to take on larger projects, supply chain management is a critical skill. No owner in the private sector will hire a contractor that expects others to supply its materials, and in fact, when the City has been asked to supply materials in order to facilitate delivery schedules or because the material is heavily customized, the response from the City is a universal rejection – on the basis that the City itself does not want to become involved in warranty and guarantee issues. When evaluating if a firm is performing a commercially useful function on a project, its participation must be considered against the totality of the entire project and the requirements that the contract establishes for all firms working on the project.

Although the legislation contains provisions to “encourage” Joint Ventures as a way to meeting MWBE goals and expanding opportunities, there are significant risk factors that must be addressed. First, business partnership law requires Joint Venture partners to assume joint and several liability. This means that each party can be made fully liable for the entire project, and the City's contracts do not permit liability to be proportional. Also, each party must be able to bond its portion of the work and each party must be able to provide its proportional share of capital for the project. The legislation should not promote joint ventures without fully understanding its inherent risks.

Dun & Bradstreet research shows that construction businesses fail at rates that are 60 to 80% higher than any other business. A study published earlier this by the University of Tennessee Research Center found that only 47% of construction businesses survive longer than 4 years. The history of the General Contractors Association includes an equal number of business successes and failures, and most of the business failures can be traced directly back to a bad experience on a public sector contract. Minority, women-owned and emerging businesses should see Intro. 911 not as a panacea, but as the first step in building a business that can withstand the vagaries of public sector contracts to emerge as strong, viable and growing entities capable of competing in the larger marketplace.

## FOR THE RECORD

---

**TO:** New York City Council Committee on Contracts  
**FROM:** American Council of Engineering Companies of New York  
**DATE:** December 17, 2012  
**RE:** **Intro 911**

---

The American Council of Engineering Companies of New York / Metropolitan Region ("ACEC New York") is an organization representing leading professional design services firms. Founded in New York City in 1921, ACEC New York is one of the oldest continuing organizations of professional consulting engineers in the United States. ACEC New York represents 280 member firms throughout New York State that collectively employ more than 20,000 people statewide, with a concentrated presence of firms located within the five boroughs of New York City.

ACEC New York is concerned by the lack of availability of licensed professionals in the engineering industry and supports the removal of barriers to entry that are not related to technical proficiency. Having a strong talent pool ensures that all engineering projects are performed by highly qualified professionals in an efficient and safe manner. To that end, ACEC New York and its members firms have supported numerous initiatives that seek to increase M/WBE participation in the engineering industry.

ACEC New York member firms actively participate in the ACE (Architecture, Construction, and Engineering) Mentor Program, which helps prepare high school students, particularly those from under-represented populations, for careers in design and construction. ACEC New York as an organization also underwrites an annual scholarship that is awarded through the ACE Mentor Program to a deserving minority or woman student. In November 2011, ACEC New York, in conjunction with several New York City and State agencies, hosted a program entitled, *Prime/Sub/Public Client Relationships: Design Professions Working Together to Provide Value*. The program included several panels that discussed the need to improve participation from M/WBE firms and featured a keynote speech from Bill Thompson, the then head of Governor Cuomo's M/WBE Task Force.

ACEC New York supported and helped successfully implement Qualifications-Based Selection (QBS) as the method for selecting design professionals for city construction projects. QBS involves ranking engineering and architectural firms based on overall competence – rather than

solely price - for a particular project. Under QBS, more small and mid-sized firms have had the opportunity to propose on City projects.

ACEC New York agrees with the primary objective of Int. 911, which is to encourage participation in the industry. We also support the Council's decisions to include Asian American owned firms in their new goals for Professional Service companies and to allow prime consultants that are MWBEs to count toward agency goals.

Notwithstanding our overall support for the bill, it is important to recognize, as the Council has done in other circumstances, that professional engineering is a highly regulated profession. The process of becoming a professional engineer is difficult and includes technical education, real-world experience, and the passing of rigorous examinations. And for good reason - the work of professional engineers affect the life and safety of all New Yorkers.

Due to the wide array of tasks engineers perform, not all licensed engineers are capable of performing all engineering assignments. Engineers must have the necessary expertise and familiarity with the safest and most efficient techniques in order to complete a particular task. For example, an experienced mechanical engineer who is able to design an air conditioning system to be used in a police station or a library may not have the expertise necessary to design a bridge or a sewage treatment plant, and vice versa.

Therefore, it is critical that agencies set realistic M/WBE goals for contracts involving engineers and other design professionals. The agencies must look at the capacity of qualified firms in particular engineering disciplines and align those with the goals for each specified task. Otherwise, the outcomes will not reflect the reality of the market.

ACEC New York is hopeful that we can increase participation in the industry while maintaining the same high level of safety and efficiency that the City expects from the engineering community. We look forward to working with the Mayor's Office of Contract Services, the Department of Small Business Services and the City Council on appropriately increasing participation levels in the engineering and design services industry.