

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND CONTRACTS

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December 2, 2008

Start: 1:35pm

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HELD AT: 250 Broadway  
14<sup>th</sup> Floor

B E F O R E:  
THOMAS WHITE, JR.  
LETITIA JAMES  
Chairperson

COUNCIL MEMBERS:  
David I. Weprin  
Michael C. Nelson  
Annabel Palma  
Kendall Stewart  
Alan J. Gerson  
Michael E. McMahon

## A P P E A R A N C E S

Andrew Schwartz  
First Deputy Commissioner  
Department of Small Business Services

Chris Browne  
Senior Director for Government Affairs  
New York City Department of Finance

Dara Jaffee  
Assistant Commissioner for Legal Affairs  
New York City Department of Finance

David Ehrenberg  
Vice President  
Economic Development Corporation

Sandra Wilkin  
President  
Women Builders Council

Quenia Abren  
New York Women's Chamber of Commerce

2 CHAIRPERSON WHITE: Good afternoon.  
3 I'm Councilman Thomas White, Jr., Chairman of the  
4 Economic Development Committee. We are joined by  
5 the Committee on Contracts, Chaired by Council  
6 Member Letitia James. Today's hearing will focus  
7 on a preconsidered Introduction of a Local Law to  
8 amend the Administrative Code of the City of New  
9 York in relation to the participation of minority  
10 and women-owned business enterprises in  
11 construction projects related to proprietaries  
12 receiving tax benefits in accordance with the  
13 Industrial and Commercial Abatement program.

14 Intro Number 82-A, which  
15 established New York City's participation in the  
16 ICAP program, was approved by the Council on  
17 September 24<sup>th</sup>, 2008. On October 10<sup>th</sup>, 2008,  
18 Mayor Bloomberg signed Intro 822 into law. On  
19 November 19<sup>th</sup>, the Council passed Intro 860, which  
20 amended the ICAP legislation to provide for  
21 suspension of benefits if a Court or the  
22 Environmental Control Board finds that there has  
23 been a violation of New York City construction  
24 codes, the 1968 Building Codes or other laws or  
25 rules enforced by the Department of Buildings,

1  
2 classified as immediate hazardous. A violation of  
3 a rule of the Department of Environmental  
4 Protection related to asbestos handling and a  
5 violation of New York City Fire Code or the Title  
6 3 of the Rules of the City of New York, related to  
7 the failure to provide a fire protection system or  
8 emergency power system or maintain it in good  
9 working order, to prepare or, where required,  
10 submit for Fire Department approval, a fire safety  
11 and evaluation plan or emergency action plan or  
12 provide fire safety and evaluation plan or  
13 emergency action plan staff or related to the  
14 obstruction of a means of egress at any property  
15 receiving benefits pursuant to this part.

16 Yesterday, December 1<sup>st</sup>,  
17 Mayor Bloomberg signed Intro 860 into law. Local  
18 Laws 861, Local Law 61. The preconsidered  
19 Introduction before us today would amend the  
20 Administrative Code of the City of New York to  
21 provide that no benefit from the ICAP program  
22 shall be granted to any construction work unless  
23 the applicant participates in the minority and  
24 women-owned business enterprises program to be  
25 administered by the Division of the Economic and

1  
2 Financial Opportunity within the Department of the  
3 Small Business Services, created by this proposed  
4 Introduction. This preconsidered Introduction  
5 would establish requirements for certification of  
6 the applicant's participation in the program based  
7 on the cost of the construction project involved.

8 The creation of this program is a  
9 wonderful addition to the ICAP legislation already  
10 passed by the Council and a positive step in  
11 pursuing participation of minority and women-owned  
12 businesses enterprises in the construction  
13 associated with the ICAP program.

14 I would like to call on the Chair  
15 of the Contracts Committee, my colleague, Council  
16 Member Letitia James for her opening statement.

17 CHAIRPERSON JAMES: Good morning.  
18 And, thank you-- good afternoon. And, thank you  
19 all for coming today for this very important joint  
20 hearing of the Economic Development and Contracts  
21 Committee. I'd like to thank the Chair of the  
22 Economic Development Committee, Council Member  
23 White, for allowing the Contracts Committee to  
24 join in this hearing.

25 Today's hearing concerns the

1  
2 creation of a MWBE requirement for applicants of  
3 the Industrial and Commercial Abatement Program,  
4 ICAP. Generally, ICAP provides abatements of real  
5 property taxes for eligible industrial and  
6 commercial buildings that are built, rehabilitated  
7 or expanded. Legislation passed earlier this year  
8 by the State authorized the City to create a  
9 program to ensure meaningful participation of  
10 MWBEs in construction work for which an ICAP  
11 applicant receives benefits.

12 We are here today to discuss  
13 legislation that creates such a program. The  
14 preconsidered Intro establishes a number of  
15 requirements to ensure that MWBEs are given work  
16 opportunities on construction projects that are  
17 being considered for the tax abatement. For  
18 example, every applicant for ICAP benefits will be  
19 given information on how to access the directory  
20 of certified MWBEs. This ensures that anyone with  
21 a project, regardless of size, has the information  
22 necessary to contact any MWBE that is certified  
23 with the City in order to solicit bids from them.

24 Additionally, for projects between  
25 \$750,000 and \$1,500,000, applicants must certify

1  
2 to the Department of Finance that they accessed  
3 the WMBE directory. The applicant must also  
4 report whether or not efforts were made to include  
5 MWBEs in the construction work and if they were  
6 made, to specify what those efforts were.

7           For projects that are \$1,500,000  
8 and over, the bill establishes a number of  
9 requirements, all intended to encourage the  
10 participation of MWBEs in construction work on  
11 projects being considered for ICAP benefits. Some  
12 of the requirements-- thank you-- that an  
13 applicant must perform are; one, informing the  
14 Division of Economic and Financial Opportunities  
15 at the Department of Small Business Services of  
16 all the contracting and subcontracting  
17 opportunities available at the construction site  
18 under consideration for ICAP benefits. The  
19 Division must also post those opportunities on its  
20 website. Two, reviewing the MWBE directory to  
21 identify MWBEs that are qualified to perform the  
22 work. Three, soliciting or arranging for the  
23 solicitation of bids from at least three certified  
24 MWBEs for each subcontract on the project. And,  
25 four, reporting to the Department of Finance the

1  
2 contact information of every MWBE that bids were  
3 solicited from and were awarded subcontracts. All  
4 of these requirements go a long way in ensuring  
5 that MWBEs get opportunity to participate in the  
6 project that receives benefits.

7           The City Council has been working  
8 to make the MWBE program stronger. We have  
9 coordinated with MWBE Summits. We have  
10 coordinated MWBE Summits and certification  
11 workshops all over the City. We have had  
12 oversight hearings and countless meetings with  
13 advocates and City officials. We are working to  
14 get change at the State level to improve the  
15 City's MWBE program. And, hopefully, with our new  
16 Governor, I'm confident that that change will  
17 come. And, today, we consider this legislation  
18 that will add another benefit for certified MWBEs  
19 outside of the City's procurement opportunities.

20           The creation of this program is a  
21 wonderful complement and enhancement to the City's  
22 current WMBE program. I thank all of you for  
23 coming. I now turn it back to the Chair of the  
24 Economic Development Committee, my colleague,  
25 Council Member Thomas White.



1  
2 CHAIRPERSON WHITE: I would just  
3 like to make note that Council Member Weprin was  
4 here and he had to go to another meeting. He'll  
5 be back. As well as, Council Member Nelson.

6 I would like to call upon the  
7 Deputy Commissioner, Small Businesses, Andrew  
8 Schultz, along with David Alvinberg--

9 MALE VOICE: Ehrenberg.

10 CHAIRPERSON WHITE: -- Ehrenberg,  
11 okay. And, Chris and Dora Jaffee.

12 MALE VOICE: Chris Browne.

13 CHAIRPERSON WHITE: Chris Browne.  
14 You'll have to share the--

15 MALE VOICE: That's fine.

16 CHAIRPERSON WHITE: -- the  
17 microphones.

18 ANDREW SCHWARTZ: Thank you. Good  
19 afternoon [off-mic] Thank you. Very good. Again,  
20 good afternoon, Chairman White, Chairwoman James  
21 and members of the Economic Development and  
22 Contracts Committees. I am Andrew Schwartz, First  
23 Deputy Commissioner for the Department of Small  
24 Business Services. Thank you for the  
25 opportunity to testify in support of today's

1  
2 preconsidered Intro.

3           The proposed legislation provides  
4 an important component to the City's new  
5 Industrial and Commercial Abatement Program,  
6 ICAP, by encouraging the utilization of New York  
7 City certified minority and women-owned business  
8 Enterprises on projects that receive ICAP  
9 benefits.

10           We appreciate the opportunity to  
11 have worked with the Council and our colleagues at  
12 the Department of Finance in order to develop a  
13 bill that will require ICAP developers to  
14 familiarize themselves with the many certified  
15 companies that are available to assist as  
16 contractors or subcontractors on their development  
17 projects. As my colleague, Chris Browne from the  
18 Department of Finance will shortly explain, the  
19 MWBE requirements for ICAP applicants will vary  
20 depending on the overall cost of the projects.  
21 And, I will leave it to him to lay out the  
22 differing requirements in detail. The baseline  
23 requirement of the bill is that the City provide  
24 all ICAP applicants with information on how to  
25 access our online directory of certified

1  
2 companies. This requirement will ensure that  
3 ICAP beneficiaries know where to search for  
4 certified companies that may be able to perform  
5 construction work related to ICAP projects.

6 In addition, for the largest of  
7 these projects, meaning \$1.5 million or more, ICAP  
8 beneficiaries will be required to inform SBS of  
9 contracting and subcontracting opportunities so  
10 that SBS can publicize these opportunities to  
11 MWBE firms on our website. This ICAP  
12 Opportunities page will be one where certified  
13 companies will know where to go to in order to  
14 promote the use of their services at ICAP-  
15 eligible projects. As the SBS website currently  
16 has specific content designed for the MWBE  
17 program, it is already a well-established location  
18 to which companies go for this type of  
19 information. There are also links to our  
20 certification process page at  
21 [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified). And, our staff will  
22 always be available to provide appropriate  
23 guidance to developers and companies, including  
24 technical assistance on proposal submissions,  
25 bonding requirements and insurance.

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2 The legislation further requires  
3 that developers maintain records of their efforts  
4 to perform outreach to certified companies and  
5 grants SBS the authority to audit these records  
6 to assess the performance of developers.

7 In sum, the legislation will  
8 further the goal of increasing the participation  
9 of MWBEs on construction projects in the City by  
10 tying a valuable tax benefit to the performance  
11 of outreach to certified MWBEs.

12 We are happy to have the  
13 opportunity to promote the use of the certified  
14 companies and look forward to continued work with  
15 Department of Finance and the Council as this  
16 initiative is implemented.

17 CHRIS BROWNE: Good afternoon,  
18 Chairs White and James and members of the City  
19 Council's Committees on Economic Development and  
20 Contracts. My name is Chris Browne. And, I am  
21 the Senior Director for Government Affairs at  
22 the New York City Department of Finance. Thank  
23 you for inviting me to speak today in support  
24 of the preconsidered Intro before you,  
25 sponsored by Chairs White and James, along with

1  
2 Council Members Reyna and Dickens. This Intro  
3 requires that recipients of Industrial and  
4 Commercial Abatement Program, ICAP, benefits  
5 make good-faith efforts to reach out to  
6 certified minority and women-owned business  
7 enterprises, or MWBEs.

8 I send greetings from our  
9 Commissioner, Martha E. Stark, and I'm joined  
10 today by Dara Jaffee, Finance's Assistant  
11 Commissioner for Legal Affairs. And, as we  
12 mentioned before, David Ehrenberg, who's the  
13 Vice President at the Economic Development  
14 Corporation, which is the organization that has  
15 taken the lead in the reform of ICAP over the  
16 last two years.

17 As Speaker Quinn noted, when the  
18 full Council passed the new ICAP law in October,  
19 ICAP is a leaner, meaner program that ensures that  
20 economic development incentives go to industrial  
21 and commercial projects in communities where  
22 targeted economic development can make a  
23 difference. And as the Council added reasonable  
24 requirements in November, that Chairman White  
25 has already mentioned, that ICAP beneficiaries

1  
2 be in compliance with statutes governing  
3 serious health and safety violations, and, as  
4 he also mentioned, the Mayor signed that bill  
5 into law yesterday, it is also reasonable that  
6 the new ICAP law encourage that these same  
7 beneficiaries perform outreach to minority and  
8 women-owned business enterprise contractors in  
9 order to receive valuable tax abatements for  
10 their construction work.

11 As Deputy Commissioner Schwartz  
12 alluded, this bill establishes a three-tiered  
13 system for ICAP recipients, requiring them to  
14 perform outreach to MWBEs in order to receive  
15 benefits. For all projects, including those  
16 small projects with construction budgets under  
17 \$750,000, the central requirement of the bill  
18 is that the City provide ICAP applicants with  
19 information on how to access the MWBE directory  
20 maintained by the Department of Small Business  
21 Services so that applicants can perform  
22 outreach, if they wish to do so.

23 For projects between 750,000 and  
24 \$1.5 million, applicants would also be  
25 required to certify that they actually

1  
2 accessed the SBS directory of MWBEs. However, in  
3 addition to making such certification, these mid-  
4 level applicants also would be required to give a  
5 report on their outreach efforts. But, I'll get  
6 to that point in a moment.

7           The largest ICAP-eligible projects,  
8 those with construction costs exceeding \$1.5  
9 million, would be required to work with SBS in  
10 publicizing contracting and subcontracting  
11 opportunities and would also be required to  
12 solicit bids from at least three MWBEs listed in  
13 the SBS directory for construction work related  
14 to an ICAP-eligible project. Applicants would  
15 then have to list those three companies on their  
16 final ICAP application to Finance and certify  
17 as to whether any of those MWBEs were actually  
18 awarded contracts.

19           Finally, the bill provides the very  
20 strongest incentive for owners and developers to  
21 work with SBS and Finance. That is, a potential  
22 beneficiary who does not comply with the MWBE  
23 outreach requirements I have just outlined can  
24 be denied the very valuable property tax  
25 benefits granted by ICAP.

1  
2           As I just mentioned, our only  
3 issue with this bill is the reporting  
4 requirement for those mid-level projects.  
5 Under Commissioner Stark, Finance has tried  
6 very hard to keep all its abatement and  
7 exemption applications simple and streamlined.  
8 We now ask applicants only for the information  
9 that the agency needs to know. As a result,  
10 personal exemption applications that used to be  
11 six and seven pages long are now only two pages  
12 long. I have brought with me today a copy of  
13 the two new and very lean ICAP applications,  
14 which will obviously require some editing after  
15 this law is passed. And, I can pass them  
16 along. But, as you'd be very quickly able to  
17 see, these applications are one and three  
18 pages, respectively.

19           So, we support the bill's very  
20 detailed requirements for what the very  
21 largest projects will need to do in terms of  
22 solicitation, outreach and record-keeping.  
23 But, having smaller projects also report on  
24 details of outreach efforts seems  
25 unnecessarily burdensome. Therefore, we



1  
2 would ask that this new reporting requirement  
3 for mid-level projects be removed.

4 Respectfully, we ask that.

5 Otherwise, Finance joins SBS in  
6 support for this bill and looks forward to  
7 working with our sister agency and the Council  
8 as we administer the new ICAP program. Thank  
9 you for this opportunity to testify before you  
10 today. And, the panel, including Deputy  
11 Commissioner Schwartz and Assistant Commissioner  
12 Jaffee and Mr. Ehrenberg and I would all be  
13 happy to answer any questions you may have.  
14 Thank you.

15 CHAIRPERSON WHITE: I would like to  
16 recognize that we have been joined by Council  
17 Member Palma, Council Member Stewart, Council  
18 Member Gerson and Council Member McMahon. Are  
19 there any questions? Council Member Stewart.

20 COUNCIL MEMBER STEWART: Thank you.  
21 Thank you, Mr. Chair. You just mentioned, let me  
22 get your name right, Mr. Schwartz. No, I think  
23 it's--

24 CHRIS BROWNE: Mr. Browne is from  
25 Finance and Schwartz.

1  
2 COUNCIL MEMBER STEWART: All right.  
3 Let me, you know, you said a while ago applicants  
4 would then have to list those three companies on  
5 their final ICAP application for Finance and  
6 certify as to whether any of those MWBs were  
7 awarded contracts. What if they were not awarded  
8 any contracts?

9 DARA JAFFEE: There's no result.  
10 There's not a result. They're required to do the  
11 bids, but they're not required to do an award.

12 COUNCIL MEMBER STEWART: Yeah, but,  
13 you know, what's the sense of listing three  
14 companies if no awards were made to them, no real  
15 juice was put into that application in terms of  
16 making the awards?

17 CHRIS BROWNE: I think the simple  
18 answer and Council may be able to point to it if  
19 there are some constitutional issues involved in  
20 requiring who a contractor hires.

21 COUNCIL MEMBER STEWART: I just  
22 want to see the necessity for having listed three  
23 companies, other than listing one or none. What's  
24 the big thing in listing these three companies?

25 CHRIS BROWNE: Well, these are the

1  
2 three companies, or three companies that they have  
3 solicited for actual subcontracting opportunities.  
4 And, that's what I think this bill is about,  
5 getting opportunities out that may not have been  
6 offered before to certified minority and women-  
7 owned companies on these types of projects. So,  
8 maybe they don't necessarily win every opportunity  
9 that they get, I mean, even if one wins it, two  
10 are not going to. So, there will be winners and  
11 losers in that process.

12 COUNCIL MEMBER STEWART: Right,  
13 but, my main concern is that just to get the  
14 award, if you just list three, any three  
15 companies, you know. No real effort being made to  
16 really get them really involved. Just listing  
17 them, to me, doesn't make much of a difference.  
18 And, that's why I'm asking.

19 DARA JAFFEE: You can't just list  
20 any three.

21 COUNCIL MEMBER STEWART: Right.

22 DARA JAFFEE: You have to actually  
23 solicit the bids and do what you're supposed to  
24 do. But, yeah, that could, I mean, that could  
25 happen because you can't legally require a company

1  
2 to give an award to a company. I suppose that  
3 could--

4 COUNCIL MEMBER STEWART: Well--

5 DARA JAFFEE: Yeah, that's-- I  
6 think it's a [crosstalk]--

7 COUNCIL MEMBER STEWART: What I'm  
8 trying to get at, basically, is that they don't  
9 really have to put any effort into dealing with  
10 these companies. They can know these companies  
11 and list these three name. That's what you're  
12 saying.

13 DARA JAFFEE: No, [crosstalk]

14 CHAIRPERSON WHITE: I think--

15 DARA JAFFEE: -- I didn't say that  
16 they-- I want to say, respectfully, they-- you  
17 still have legitimately do solicit a bid. But, I  
18 think your point that you don't have to select the  
19 companies and how much effort you put into it, I  
20 suppose that's fair. That's not in the statutes.

21 COUNCIL MEMBER STEWART: It's not  
22 in the statute. But, as part of the application,  
23 I just wanted to know-- there should be some juice  
24 in this application to say that if you solicit  
25 these three companies to at least to participate

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2 in this and there should be some way of showing  
3 that you really did some effort. And, listing the  
4 three names, I don't know where you have in this  
5 application, or anyplace else, that you can really  
6 determine that you have really done something,  
7 other than just listing these three companies.

8 DARA JAFFEE: Well, yeah.

9 CHRIS BROWNE: Well, once they list  
10 these, it will be subject to verification.

11 DARA JAFFEE: Right.

12 CHRIS BROWNE: So, to make sure--

13 COUNCIL MEMBER STEWART: When you  
14 verification, what is verification [crosstalk]--

15 CHRIS BROWNE: That--

16 COUNCIL MEMBER STEWART: -- listed  
17 them or that they did work with them to see if  
18 they can [crosstalk]--

19 CHRIS BROWNE: That they did the  
20 outreach, that they solicited bidding  
21 opportunities. And, I think what we find, in our  
22 program, is that, you know, opening up the  
23 opportunities is an important step, obviously, in  
24 actually winning contracts, because if they are  
25 the low bidders, I think it's going to be the

1  
2 interest of the developer to use companies that  
3 are bidding or bidding lower and expanding their  
4 opportunities to use other companies that they may  
5 not have used before. So, we're hopeful in that  
6 regard.

7 COUNCIL MEMBER STEWART: I'm just  
8 concerned that, at the end of the day, when that  
9 company is doing that work and they're doing the  
10 work, you find out minorities don't get a piece of  
11 the action. And, all you have done is listed  
12 their names in the application. That's what I'm  
13 concerned about that some way, somehow we have a  
14 way of checking to make sure that just listing the  
15 name is not all about it. It's being getting them  
16 to be involved in this contract. That's what I'm  
17 concern about.

18 ANDREW SCHWARTZ: They both have to  
19 certify on an application that is then signed that  
20 they actually did reach out and solicit the bids.  
21 And, SBS will then have the authority to verify  
22 that. So, it is the intent, and I believe the  
23 actual application will make clear that it's not  
24 just list three names, the first three names on  
25 the list. It's an active attempt to solicit the

1  
2 bids.

3 DARA JAFFEE: Right. You can't  
4 just write the-- you can't just write names down.  
5 There has to be that you went through the actual  
6 process of what you're supposed to do and it's  
7 subject to audit. It's on the signed application,  
8 like any other information that has to be truthful  
9 on an application.

10 CHRIS BROWNE: Right. And, I would  
11 underscore that we've created databases then for  
12 this, for all ICAP applications, we will create a  
13 sortable, searchable database that will allow us  
14 to look at all projects of 1.5 million or more and  
15 sort them, show-- be able to create a list that  
16 shows which companies were solicited for bids.  
17 And, it will be a fairly straightforward program  
18 to be able to cross-check through SBS.

19 COUNCIL MEMBER STEWART: Just a  
20 little follow up on that. How do we really, you  
21 know, after the bid has been granted, you got a  
22 contract, and even though they made the attempts  
23 to reach out to these three MWBE companies, how do  
24 we really put it on the contract to make sure that  
25 they at least accept MWBE applicants?

1  
2 DARA JAFFEE: You can't,  
3 unfortunately, you can't do that because you can't  
4 force a company to accept a particular bid.

5 CHAIRPERSON JAMES: I think our  
6 colleague and a lot of us sympathize with the  
7 questions that have been put forth by Council  
8 Member Stewart. I wish we could require that  
9 contractors hire a certain amount, but we  
10 recognize, as Mr. Browne has indicated, that there  
11 are some legal impediments to doing so. And so,  
12 basically we have to make sure that we are  
13 consistent with the law and consistent with the  
14 constitution, which restricts our ability to  
15 require contractors to hire a certain number of  
16 WMBEs. And so, what we have to settle for is best  
17 efforts. And so, certifying and verifying that  
18 there's outreach is the best that we can do given  
19 the restrictions that are upon us legally. But,  
20 Council Member Stewart, we certainly sympathize  
21 with your point. Any other questions? I have  
22 some questions.

23 So, the program will be housed in  
24 SBS or within Department of Finance?

25 DARA JAFFEE: Finance administers



1  
2 the ICAP program. The piece of it that relates to  
3 MWBE is under SBS.

4 CHAIRPERSON JAMES: So, I'm a  
5 business. I'm certified as a WMBE. I want to  
6 apply for-- a contractor is building a project  
7 over a million dollars. They want to apply for  
8 ICAP benefits. They're building some structure.  
9 So, they would have filed their application with  
10 the Department of Finance--

11 DARA JAFFEE: Yeah.

12 CHAIRPERSON JAMES: -- first?

13 DARA JAFFEE: Yes.

14 CHAIRPERSON JAMES: And, the  
15 Department of Finance--

16 CHRIS BROWNE: The preliminary  
17 application.

18 CHAIRPERSON JAMES: -- would verify  
19 whether or not they've reached out to WMBEs based  
20 on a directory?

21 DARA JAFFEE: Well, the way this is  
22 set up is that Finance is going to make this  
23 information available to applicants with the  
24 application. And, we're looking to electronic  
25 applications. So--

1  
2 CHAIRPERSON JAMES: And, that  
3 information will be in a directory? Okay. Um,  
4 hm. Go ahead. I'm sorry, go ahead.

5 DARA JAFFEE: So, that  
6 information's going to be provided at that time.  
7 Then, they're going to, you know, on the higher  
8 dollar value projects, have to access the  
9 directory and do what the statute requires to  
10 solicit a range for the bids and to do the  
11 certifications. And, that information will be  
12 provided on the final application that they  
13 provide to Finance later on.

14 CHAIRPERSON JAMES: Now, in the  
15 event that we run into a scenario which was  
16 pointed out by Council Member Stewart, you have a  
17 contractor who simply just lists three WMBEs.  
18 And, in fact, did not do any outreach; in fact,  
19 never even attempted to do any outreach. He just  
20 selected three from the directory, put it on there  
21 and I guess thought that you would not be in a  
22 position to check given physical constraints.  
23 What would happen then?

24 DARA JAFFEE: Well, you want to  
25 answer that part? SBS audit.

1  
2 CHAIRPERSON JAMES: Do they get  
3 decertified? Do they lose the benefits? What  
4 happens?

5 ANDREW SCHWARTZ: Yeah, that's  
6 where that can lead. I think we're talking about  
7 where they're violating a very basic term of what  
8 they've signed on their preliminary application  
9 that they've certified they're going to do.

10 CHAIRPERSON JAMES: And so, those  
11 benefits could be rescinded?

12 DARA JAFFEE: Yes.

13 CHAIRPERSON JAMES: Okay.

14 DARA JAFFEE: 'Cause they wouldn't  
15 have met the eligibility requirements in the  
16 application.

17 CHAIRPERSON JAMES: And, the staff  
18 that will be required to verify and certify all of  
19 this information and to check to ensure that the  
20 contractor has, in fact, engaged in outreach,  
21 we're going to do it with existing staff? Or,  
22 will there be a new unit set up within the  
23 Department of Finance? Or..

24 DARA JAFFEE: That part would be at  
25 SBS.

2 CHAIRPERSON JAMES: SBS.

3 ANDREW SCHWARTZ: Yeah, certain  
4 aspects of that, we will be working with DOF to  
5 get the information on who's filing for ICAP  
6 benefits and determining what the volume is at the  
7 three different levels. And, we do auditing under  
8 Local Law 129 now. And, we will be incorporating  
9 this into that process.

10 DARA JAFFEE: Finance's role in  
11 this is more administrative in terms of taking in  
12 the application.

13 CHAIRPERSON JAMES: And, Mr.  
14 Browne, there was one recommendation and that was  
15 because of you wanted to simplify the process, you  
16 thought that a report, I guess a report to-- they  
17 would be reporting to who? The City Council?

18 CHRIS BROWNE: No, the way the bill  
19 is now structured it seems like it's in a report  
20 that they'd be making to the Department of  
21 Finance. And, if you look at our applications,  
22 and, you know, I make this point, our data fields  
23 in our applications are-- we're very clear that we  
24 want to only create data fields that are, you  
25 know, searchable, sortable or have data that is

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2 measurable in some way. And so, having a report  
3 coming to us, it's just not an administrable, you  
4 know, element to the piece.

5 For the big projects, it's very  
6 clear. They're going to name the three companies.  
7 They're going to check off a box whether the bid  
8 was solicited. This requirement for a report is  
9 just, you know, it's a, you know, it's a harder  
10 nut. And, I'm not exactly sure what exactly we  
11 would do with the information once we got it.

12 CHAIRPERSON JAMES: Okay. We'll  
13 take that under consideration.

14 CHRIS BROWNE: Okay. Thank you.

15 CHAIRPERSON JAMES: My question is  
16 there any fields or, within the construction  
17 industry, where we lack WMBEs? Is there any  
18 aspect in the construction field that we don't--

19 ANDREW SCHWARTZ: I think we  
20 anticipate here that we will have companies  
21 available for any of the type of work that's  
22 construction work. Now, if developers come to us  
23 and they are struggling-- I mean we have that  
24 situation now on certain City projects and we help  
25 prime contractors identify available vendors.

1  
2 But, it's something, as you know, we are trying to  
3 build up our certified base. And, you've been  
4 very helpful on the five Borough Summit that we  
5 went on, reaching out, bringing in more companies.  
6 And, so far, so good.

7 CHAIRPERSON JAMES: And, if a  
8 contractor is selected as a sub, and if they need  
9 assistance with bonding or if they need assistance  
10 with cash flow, SBS is in a position to assist  
11 them?

12 ANDREW SCHWARTZ: Yes.

13 CHAIRPERSON JAMES: Okay. Any  
14 other questions? Mr. Chair?

15 CHAIRPERSON WHITE: Thank you very  
16 much. Okay. We have a Sandra or Saundra Wilkins,  
17 the Women's Builders Council, and Quenia Abren,  
18 the New York Women Chamber of Commerce. Sandra?

19 SANDRA WILKIN: Good afternoon.  
20 Thank you, Chairpersons White and James for giving  
21 me the opportunity to testify concerning this  
22 preconsidered bill, which is designed to expand  
23 the opportunities for women and minority business  
24 enterprises in the building and construction  
25 fields. The legislation's requirement for

1  
2 applicants for City tax benefits under ICAP to  
3 include WMBEs will serve to enhance the position  
4 for our business community in getting additional  
5 work. Women Builders Council applauds the  
6 Council's continued support for WMBEs.

7           It makes perfect sense for New York  
8 City to maximize the impact of its tax benefit  
9 programs. By requiring those developers who  
10 apply for such programs to include us, they will  
11 be a strengthening those WMBEs. Such  
12 strengthening will have a very positive impact on  
13 the City's economy. Our member companies provide  
14 an expanding chance for more employment of workers  
15 in underserved areas around the City. This  
16 maximization would be an economic shot in the arm  
17 during a very difficult financial time.

18           Requiring applicants that they must  
19 agree to comply with the program is a major move  
20 forward for WMBEs. There are three suggestions  
21 that WBC would like to offer to add to the  
22 legislation objectives.

23           Under section 4(d), we suggestion  
24 that there be an explanation of what type of  
25 efforts would be undertaken to include WBEs,

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2 rather than just a check box on any application.  
3 This will allow for a review of the depth of those  
4 outreach efforts. The requirements that  
5 contracting and sub-contracting opportunities be  
6 posted on the agency website should be expanded by  
7 an e-mail notice to those certified under the  
8 City's MWBE program. Last, WBC suggests that the  
9 Division be required to report to the Council on a  
10 yearly basis on the compliance with that program.

11 There's just two other notes I'd  
12 like to make. One is that the importance of the  
13 continuing reporting process to the City Council.  
14 And, in addition to that, that we are still  
15 struggling with the challenge that women, both  
16 general contractors and subcontractors, have zero  
17 goals under Local Law 129.

18 But, with that, the Women Builders  
19 Council and our fellow WMBEs are gratified for the  
20 consistent support we have received from the New  
21 York City Council. Our mission would be so much  
22 more difficult without the encouragement. Thank  
23 you. Any questions?

24 CHAIRPERSON WHITE: Any questions?

25 Okay.



QUENIA ABREN: Okay. Good

afternoon, members of the City Council. My name is Quenia Abren, the President of the New York Women's Chamber of Commerce. My organization represents over a thousand women and a few brave and smart men who own small businesses in the City of New York. Our organization was founded five years ago to provide support and technical assistance to current and aspiring small businesses within the confines of the City of New York.

Over 90% of the businesses that produce revenue for the City of New York are small businesses. They also employ the largest number of workers in the City of New York. Yet, there are industries that receive large contracts from the City of New York that are not necessarily domiciled in New York and do not employ as many City residents as they should. Such an industry is the construction industry. The large majority of the workers are non-minority and do not live in the City of New York. Much of the money leaves the City as soon as they are paid and little impact is left in our economy and our small

1  
2 businesses.

3 For this reason, I support the City  
4 Council's amendment of Section 1(e) of Section  
5 11270 of the Administrative Code of the City of  
6 New York by adding a paragraph that will deny  
7 benefits to any construction company unless they  
8 ensure meaningful participation of minority or  
9 women-owned businesses. This is only fair.

10 Our City is facing a major  
11 financial crisis. We can no longer afford to  
12 ignore the fact that we have worthy individuals  
13 and businesses that can be utilized to rebuild the  
14 City. As Washington begins to discuss economic  
15 stimulus packages, this point is even more  
16 important. Unless this effort is in place,  
17 efforts to employ the individuals most impacted  
18 will be passed by. Our small businesses are  
19 capable of doing the work, deserve to be  
20 contracted and would do a great job. Using  
21 minority and women-owned businesses would ensure  
22 that a portion of contracted money will be  
23 generated and will be used in the community and  
24 would generate further revenue.

25 My only concern regarding this

1  
2 amendment is the fact that I do not see any  
3 provisions regarding noncompliance. We can  
4 monitor and they can report. But, until such time  
5 that someone is caught not complying and we hit  
6 their bottom line, we will not have a good bill.  
7 That's really a reality. May I respectfully  
8 recommend that a provision be added that will  
9 address the ramifications to the contractor if  
10 they do not comply?

11 And, I would have to add to what  
12 Sandra said that we are also very concerned and I  
13 understand your explanation of the legality of not  
14 having goals, but we should really be in the - - .  
15 We should really ask for reports. We should  
16 really employ, also, the organization as the  
17 Women's Builder and the New York Women's Chamber  
18 of Commerce to make sure that our MWBE-certified  
19 companies know about this opportunities and that  
20 we work side-by-side with SBS and the City Council  
21 to make sure that the word gets to them and that  
22 we can also work with them to make sure that they  
23 can bid and that they meet the requirements that  
24 these contractors ask for, so they can really - -  
25 themselves of this opportunities. And, I thank

1

2 you very much.

3 CHAIRPERSON WHITE: Thank you. Any  
4 questions?

5 CHAIRPERSON JAMES: Just let me say  
6 that you heard the question with regard to the  
7 failure to certify or the failure to engage in any  
8 outreach resulting in a rescission of your tax  
9 benefits. Is that sufficient penalty? Or, your  
10 suggestion is for something more?

11 QUENIA ABREN: No, I think that's a  
12 good result. But, I would like to see that in  
13 there somewhere.

14 CHAIRPERSON JAMES: And, I also  
15 agree that we need to look at their reporting  
16 requirements. That's something that I had  
17 discussed with Council yesterday. And, your goal-  
18 - and the fact that we have zero goals for WMBE,  
19 again, hopefully, when we do a new disparity study  
20 looking at the universe of WMBE, we will capture  
21 women businesses.

22 And, last, but not least, I see  
23 Eddie Baptiste is in the audience. And, Quenia, I  
24 know that you've not even gotten your grant letter  
25 yet. So, Eddie, she's putting you on the

1  
2 spotlight. The fact that these contractors are  
3 doing great work and they don't even have their  
4 grant letter for last year's budget, make a note.  
5 Thank you.

6 QUENIA ABREN: Thank you very much,  
7 Council.

8 SANDRA WILKIN: Thank you.

9 CHAIRPERSON WHITE: Anyone else?

10 COUNCIL MEMBER STEWART: I just  
11 wanted to get your view on the fact that you said  
12 that there shouldn't be just a checkbox in terms  
13 of determine whether there's some sort of depth in  
14 reaching out to the MWBE participants. But, if  
15 there should be a contract with an MWBE company,  
16 should there be the same type of reporting as to  
17 the outreach?

18 SANDRA WILKIN: Yes, Councilman.  
19 There are several models that are used among the  
20 different authorities, both on the City and State  
21 level that are very, very easy to follow. They  
22 all comprise having a utilization plan. So, prior  
23 to a developer having to put together a plan, as  
24 they would their plans for engineering, their  
25 architectural plans, they would have a plan for

1  
2 utilizing MWBEs. And, that plan would show the  
3 goal and the participation of the various  
4 contractors, both on a dollar value and also on a  
5 percentage. And, that plan makes it easier to  
6 track throughout the entirety of the project,  
7 'cause often we see best of intentions.

8 And, however, they put the names  
9 down for the contractors they're going to use  
10 perhaps as a subcontractor, and then, either they  
11 are limited by the budget and it's not the goal  
12 that they had originally planned. Or, the value  
13 of that contract becomes limited. And, without a  
14 utilization plan, it becomes less effective or  
15 less important to consider for that developer.

16 COUNCIL MEMBER STEWART: I do  
17 understand what you're saying. But, I want to  
18 know if it's the same effort would be made if  
19 there are MWBE participation in the contract or if  
20 there's none because I think we want to show that  
21 there's some sort of real depth in terms of  
22 efforts to be made to reach out to the MWB groups,  
23 especially when they're not participating in the  
24 contract.

25 SANDRA WILKIN: Did you want to...

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2 QUENIA ABREN: Yes. Well, one of  
3 the things that I think we can ask is for them to,  
4 when they solicit subcontractors, have to provide  
5 a bid or have to provide a quote, you know, they  
6 have to provide something to them. It will be, I  
7 think it will be important to be able to see that  
8 in the reports. Like, who are these people? What  
9 kind of outreach did they really employ to get to  
10 these people? And, why would they deny the--

11 SANDRA WILKIN: Council Member,  
12 you're correct. I think that if you're only  
13 limiting, perhaps, going off a list per se and  
14 looking at that list, it doesn't lend itself to  
15 encouraging other firms who may not have wanted to  
16 participate in the ICAP program. And, that there  
17 would be very, very helpful to have a formal  
18 process for outreach to the community. Often  
19 MWBEs are the last to know that something is  
20 happening. And, outreach is very, very key.

21 COUNCIL MEMBER STEWART: Thank you.

22 QUENIA ABREN: And, can I just add  
23 one more thing? It's also important, what you  
24 just said, Sandra, the MWBEs a lot of times are  
25 the last one to know. And, they will get the

1  
2 notice, you know, two weeks before the information  
3 is due, which gives them very little time to  
4 really get everything together and submit to the  
5 contracting company.

6 SANDRA WILKIN: You have between  
7 the City Council and the programs that the City  
8 Council has had in the past, which have been  
9 terrific. And, also, from the SBS, there is an  
10 opportunity here among those programs to really  
11 talk about. This is very, very new. And, the  
12 Council here has really, really should be  
13 applauded and thank you, Chairs, for doing this,  
14 'cause this gives an opportunity that is normally  
15 has not been out there. And, through the City  
16 Council and their efforts and SBS, there should be  
17 a mechanism that we can have a substantial notice,  
18 both in outreach and, as you said, in terms of  
19 timing of these projects that, hopefully, are  
20 going to come to pass.

21 COUNCIL MEMBER STEWART: Do you  
22 think that there should be some sort of a rating  
23 as to these companies in terms of their having  
24 minorities working and participating with them?  
25 There should be some sort of a rating?



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2 SANDRA WILKIN: Well--

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COUNCIL MEMBER STEWART: I know we have a lot of ratings in different areas. But, do you think we should have a rating in terms of look at a company who's been doing work with the City to say well, they have been, they have not been, they've, you know, they may list the names, but no participation?

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SANDRA WILKIN: That is a very, very good question and, very provocative. There are other cities that do have ratings for participation. You know, I'm not sure necessarily, I mean, I think it's something that would be wonderful to look at and to consider to see if contractors, once you put them to a test or to a rate or give them a grade, whether or not they would be more focused on the importance of joining with small business enterprises, minority and women, to make sure that they're working correctly and effectively.

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COUNCIL MEMBER STEWART: All right. I just want to know that these companies are not just listing the name and say well, you can see the list. And then, you have no way of really

1  
2 checking whether these companies, these MWBE  
3 companies, really got some sort of participation  
4 with them in terms of getting a piece of the pie.

5 CHAIRPERSON JAMES: Interesting  
6 concept, but-- interesting concept. But, I'm not  
7 sure whether or not it would pass muster, legal  
8 muster. But, something to look at. Maybe on a  
9 voluntary basis. I don't know. We'll see. But,  
10 I had a question. But, after that thought  
11 [laughter]. So, nevermind.

12 QUENIA ABREN: Report cards for  
13 everybody.

14 CHAIRPERSON WHITE: Anybody else?  
15 We've been joined by Council Member Nelson, he's  
16 back.

17 CHAIRPERSON JAMES: Oh, I know what  
18 the question was. So, the Contracts Committee  
19 several months ago, we had a committee on Local  
20 Law 129 agencies not doing too good. They got  
21 blasted. So, has things improved?

22 QUENIA ABREN: No.

23 CHAIRPERSON JAMES: No. Still  
24 agencies not doing-- not meeting the goals, not  
25 even coming close? Numbers still abysmally low?

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QUENIA ABREN: Um, hm.

CHAIRPERSON JAMES: Zeros and zeros  
across the Board.

SANDRA WILKIN: Still a struggle.

CHAIRPERSON JAMES: Still a  
struggle. Eddie?

SANDRA WILKIN: Still struggling.

CHAIRPERSON JAMES: Second note.  
Thank you.

CHAIRPERSON WHITE: There being no  
further questions, thank you very much. This  
meeting is adjourned.

C E R T I F I C A T E

I, DeeDee E. Tataseo certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "DeeDee E. Tataseo". The signature is written in black ink and is positioned above a horizontal line.

Date December 18, 2008