

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

Recess: 2:27pm

HELD AT: 250 Broadway
14th 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 24th, 2008. On October 10th, 2008,
18 Mayor Bloomberg signed Intro 822 into law. On
19 November 19th, 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,

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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 1st,
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

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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

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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

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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

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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.

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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

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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

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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. 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

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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

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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

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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.

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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

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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.

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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

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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

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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

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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

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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?

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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

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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--

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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.

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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.

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CHAIRPERSON JAMES: SBS.

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

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

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

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

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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

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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

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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

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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

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2 you very much.

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CHAIRPERSON WHITE: Thank you. Any
4 questions?

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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?

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

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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.

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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

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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

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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

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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

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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