
Commission Meeting

of

DISPARITY IN STATE PROCUREMENT STUDY COMMISSION

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: March 3, 2020
10:00 a.m.

MEMBERS OF COMMISSION PRESENT:

Hester Agudosi, Esq., Chair
Senator Ronald L. Rice, Vice Chair
Assemblywoman Nancy F. Muñoz
Maurice Griffin, Esq.
Alex Solomon (for Senators Chris A. Brown and
Declan J. O'Scanlon Jr.)



ALSO PRESENT:

Tracey Pino Murphy
Office of Legislative Services
Commission Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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HESTER AGUDOSI, Esq. (Chair): We are going to call this meeting to order.

Pursuant to statute, the purpose of the Disparity in State Procurement Study Commission is to assess the procurement of goods and services by State departments and agencies, including independent State authorities and local government units, to determine disparities, if any, between the availability and utilization of small, disadvantaged, and minority- and women-owned business enterprises in particular market areas.

The Commission shall also recommend policies, practices, and programs that further this State's efforts to promote opportunities for small, disadvantaged, and minority- and women-owned business enterprises in purchasing and procurement by State departments and agencies, including independent State authorities and local government units.

At this time, we will have a roll call.

Honorable Vice Chair Ronald L. Rice, Senator.

SENATOR RONALD L. RICE (Vice Chair): I'm here.

MS. AGUDOSI: Honorable Senator Chris A. Brown.

MR. SOLOMON: Alex Solomon, from the Senate Republican Office, for Senators Brown and O'Scanlon.

MS. AGUDOSI: Honorable Annette Chaparro. (no response)

I did receive notification on February 27, by e-mail, that Assemblywoman would not be able to attend today's meeting.

Honorable Sandra B. Cunningham. (no response)

Honorable former Governor Richard J. Codey. (no response)

Maurice Griffin, Acting Director, Division of Purchase and Property.

MR. GRIFFIN: Present.

MS. AGUDOSI: Honorable Jamel C. Holley, Assemblyman. (no response)

Honorable Nancy F. Muñoz. Assemblywoman.

ASSEMBLYWOMAN MUÑOZ: Here.

MS. AGUDOSI: Honorable Nancy J Pinkin. (no response)

I did receive notification that Assemblywoman Pinkin would be in attendance today.

Honorable Nellie Pou, Senator. (no response)

Senator Pou initially confirmed; but I did receive notification that she will not be able to attend.

Honorable Britnee Timberlake, Assemblywoman. (no response)

And Melanie Walter, Director of Local Government Services.
(no response)

Okay; I believe everyone should have a copy of the agenda.

Just a couple of notations.

Under new business, we have listed Kirk Sims, who is Emerging Manager and Program Director for the Teacher Retirement System of Texas. I was informed by Mr. Sims that he will be unable to be available to provide testimony by phone today; he's in transit to New York. However, we are going to see whether or not he will be available by phone at one of our subsequent meetings.

I invited him due to a trip that I had last week in Texas, to an emerging manager program that they have there; and I'll speak about that a little bit later.

So just kind of housekeeping notes -- on your agenda, it has listed the dates that we have reserved for this room: March 10, March 17, and March 24. And this, really, is going to come under old business. We talked about the fact that we have some work to do in terms of extending the term of this Commission; but in the interim that we would continue to move forward, as it relates to work.

And so, those are the dates that we have appointed. And I think one of the things that I would like for us to talk about today, under old business, is how we move forward in some of these-- What I believe is, we might want to break into some subcommittees to tackle some of the things on our agenda, as it relates to issuing our final report and studies.

So that being the case, I did indicate at the last meeting that one of the things that I would endeavor to do is put together an outline for us, as it relates to the report that the Commission is going to issue.

I've handed out an outline of that. I wanted, for those Commission members who are here, to kind of just take a look at that and to give me any comments as it relates to: Are you okay with the headers? Are there some other areas that you believe should be included for purposes of what we're going to discuss in our report?

Because I think once we can agree on what those topic headers will be, it will then be easier for us to compile the necessary information from not only testimony, but other areas where that information is available throughout State government.

So I'll give you a minute to take a look at that.

Does everyone have a copy of that? It says *State Disparity and Procurement Study Commission Report Outline*. It looks like this (indicates).

This is just an outline of the topics to be discussed and explored in the report.

SENATOR RICE: Can we have, also, someplace -- as best we can in what we have on record -- testimony, and someplace in there where folks were making recommendations as to some of the things that we should be looking at, and some of the testimony, probably, asked as to why people aren't being awarded contracts?

MS. AGUDOSI: So what I had envisioned -- and we can talk about that -- we can have a separate header, so to speak, as it relates to testimony. But what I had envisioned was actually incorporating the testimony, and references to the testimony, as it relates to the particular topic.

So for instance, when we're talking about challenges in public contracting, we would just excerpt that testimony there. When we're talking about supplier diversity best practices, there was testimony regarding that.

So we would just put -- weave the testimony, and any other reports, or any other information that we need to supplement, under these headers.

SENATOR RICE: That's good. I just wanted to make sure that it's in there. Because I think that some of the testimony was very powerful from some of the experts who are in this business.

So that's good; that will work.

MS. AGUDOSI: Any other thoughts or comments?

MR. GRIFFIN: So where do you envision -- and as I look at it now, it's probably in *Legislative and Regulatory Overview* -- but the challenges that are brought about because of the statutory requirement? Is that going

to be what's in the *Legislative and Regulatory Overview*, or is that an overview of this Commission?

MS. AGUDOSI: So it would be -- we would we talk about, under *Legislative and Regulatory Overview*, pretty much what the State is right now.

MR. GRIFFIN: Okay.

MS. AGUDOSI: And then when we go into recommendations, we can talk about what we propose to do then; or we can also incorporate, as a subsection -- again, this is kind of just big picture thinking. Even under *Challenges in Public Contracting*, that will come out as it relates to -- because of these legislative requirements, this is what happens.

So I think under the first *Legislative and Regulatory Overview*, we need to, kind of, lay out all of our legislation that touches upon procurement and our regs that touch upon procurement. And give an outline and understanding of, really, where the State is right now, as it relates to that. So I think we should, at least, lay out that overview, and then we can, kind of, go into it, okay?

And to piggyback on that -- the way that I have it broken up is really a way that we need to, kind of, section off ourselves in terms of pulling together all the information under these different subject headers, okay?

Any other thoughts? (no response)

So to move on, as it relates to this outline -- I wanted to at least start talking about the first one, which is *Data Capture and Analysis*. And some of the information that I provided to you -- the supplemental documents -- reference that.

So the first one that I want you to take a look at is the letter dated April 9, 2019, to Governor Murphy.

The second referenced document that we'll be looking at -- I handed out the *Division of Minority and Women Business Development Quarterly Report*, and I'm going to be referring to them, as it relates to data capture.

So one of the things that was decided by this Commission -- and you can see it's referenced in the letter -- is that after we met, we felt that it was important for there to be an effort to renew data capture and reporting by the State departments and agencies pursuant to the executive orders that are attached to the letter.

There was discussion by me, that early on and being placed in position as Chief Diversity Officer, and doing an assessment of the data reporting, one of the things that I have found is that there had been a lack of data reporting consistent with the executive order requirements under the prior Administration. And so this Commission, by majority, requested that a letter be sent to Governor Murphy asking him to issue a directive to have all of the State departments and agencies, colleges and universities, consistent with their reporting obligations, to start providing their data reports as it relates to procurement spend with minority- and women-owned businesses.

And that letter was dated April 9, 2019.

So in light of the fact that today is March 3, 2020, what I can share with you is that I have been in contact with the Governor's Office, particularly through the Authorities Unit. I do have a meeting scheduled with Governor's Counsel next week. However, I don't believe that there has been anything that has been sent out from the front office, nor has there been any ramp up, as it relates to reporting, from all of these approximately 72 reporting agencies.

And frankly, that's problematic.

SENATOR RICE: Hopefully I can get the members' who are here support.

We need to send, as the Commission, a second letter to the Governor. The Governor's going to go out soon and undergo some medical. And Speaker Oliver, the Lieutenant Governor, will be Governor.

But I need to talk to the Chief of Staff. So I would like to see a letter go out, like, yesterday; and make sure I get a copy so I can make a phone call to the Chief of Staff. Because this is some of the stuff I've been telling them about -- as it relates to the Legislature, as it relates to the Legislative Black Caucus -- is people don't get back to us in a timely fashion. And I don't like it, and I want that on the record.

This is not the Governor; these are people around him not taking this stuff seriously.

So if I can have the support of everybody, I would ask you, Madam Chair, to generate a letter, and send a copy of this to let them know that this went out almost a year ago; and that members of this Commission -- we're not happy that there has not been a written response to us, okay?

Right?

MS. AGUDOSI: Yes.

SENATOR RICE: Okay; and everybody agree with that on the Commission, who are here? (no response)

Do you have any problem with that, Assemblywoman?

ASSEMBLYWOMAN MUÑOZ: No, I'm just reading, because-- As I'm reading it, it says that there is 100 percent compliance in the responses that you've received. However, what you're stating is that

many groups are not actually tracking the data. Is that what we're looking for, is that tracking of the data? Because you write that 100 percent compliance in responses has been received. So the letter is to get further information, or to ask for -- that we start to collect the data?

Which is it that we're looking for?

MS. AGUDOSI: So to clarify, in the absence of there being data reporting, I developed an assessment survey questionnaire.

ASSEMBLYWOMAN MUÑOZ: Okay.

MS. AGUDOSI: So there was 100 percent compliance to the survey questionnaire--

ASSEMBLYWOMAN MUÑOZ: Right.

MS. AGUDOSI: --but not as it relates to quarterly reporting that the departments and agencies are supposed to do, pursuant to the executive order.

ASSEMBLYWOMAN MUÑOZ: Understood.

MS. AGUDOSI: So independent of the assessment survey, quarterly they're supposed to provide reports.

ASSEMBLYWOMAN MUÑOZ: Okay; so I just wanted to clarify that.

MS. AGUDOSI: Yes.

ASSEMBLYWOMAN MUÑOZ: Because as I read this letter, that's how I see that.

MS. AGUDOSI: Yes.

ASSEMBLYWOMAN MUÑOZ: Okay, very good.

Thank you.

SENATOR RICE: And that's correct, because we had asked-- Initially what the governors have done in the past, they have sent, from the Governor to every department, mandating that they comply, period. And so not to have that kind of piece in writing tells us there's somebody-- We want stuff in writing when we ask for it, as a Commission. They're going to take this seriously, and I'm going to have a conversation with them. I just need you to generate the second letter from the Commission, so I can have it when I have conversations with the Chief of Staff, as well as the Lieutenant Governor, who will probably be Acting Governor, and we're going to get this done.

Because we have to document everything we're doing in writing as best we can. And the policy people should know that. We can't argue a disparity study without showing all we have done procedurally for the Commission, and all that we requested was actually followed through, okay? Because then if we wind up in court, there are going to be questions and they'll be sending us back to start over again. And I don't want that.

MR. GRIFFIN: Hester, I would say--

ASSEMBLYWOMAN MUÑOZ: Yes, I just wanted to make sure that I got that clear -- what was in the letter.

SENATOR RICE: Sure.

ASSEMBLYWOMAN MUÑOZ: Thank you.

MR. GRIFFIN: It is a bit of semantics, but the first letter -- we didn't tell them a *written directive*. We just said a *directive*. So I don't know if he told them -- if he told cabinet members and cabinet sessions. So I think we should probably say a *written directive*. That way there's a record of it.

SENATOR RICE: Yes, and I concur.

Just use the word *written*. But if this is the Governor's Administration, they should know, and his legal people should know that you commit this kind of stuff to writing. That's just a general rule.

And so that's what annoys me. They have to think over there; and that's not all of them, it's some of them. But I'll deal with it; you just get the letter ready, I'll take care of it.

MS. AGUDOSI: So thank you.

I wanted to just, by way of reference, set the table, because I think we can all agree -- when we're talking about just what our procurement is with these businesses, in order to have an understanding and appreciation we need to know what the data is. So data capture is essential.

The second document that I passed out, which is entitled *Division of Minority and Women Business Development Quarterly Report*-- Pursuant to the executive order, the Division of Minority and Women Business Development was created, and it was charged with taking that information -- the data that was reported out -- and providing an annual report to the Governor and to the Legislature.

There was an annual report that was done in, I believe it was 2006. And then this -- what I provided to you -- is the last quarterly report that was issued pursuant to this executive order; and that was in 2007. So there's not anything that I am aware of, post-2007, that provides for any comprehensive quarterly reporting out of what the departments, agencies, authorities, colleges, and universities are spending with these businesses.

And as you can see from the report, it's designed to, again, give us an overview of not just the executive order that's listed on page number 4, but I'll also direct your attention to page number 10, which lists the findings

of statewide payments. And then it goes on to give the statewide payments as it relates to procurement categories.

Of note, on page 16 -- again, this is 2007, and this is the last report that we have -- under total awards for MBE ethnic groups, it was 3.26 percent out of \$226 million.

And then if you look--

ASSEMBLYWOMAN MUÑOZ: And we don't have any data since then, are you saying?

MS. AGUDOSI: There has not been any quarterly reports generated, post this 2007 report.

One of the issues and challenges that this presents as well is, you know I discussed previously that we are in the process of issuing an RFP -- or we have issued an RFP for the State to conduct a disparity study. So it is imperative that these departments and agencies do their due diligence in reporting.

One of the other things that is referenced in this report -- and I think it's important for us to talk about, as it relates to -- we can talk about whether or not we want to put this in a letter to the Governor. I think it might be more appropriate to include this in our report -- that as it stands right now, as it relates to the reporting of data -- and it's referenced in the annual report that was provided by the Division of Minority and Women Owned Businesses -- the only data that's captured is spend at a prime level. And so what I mean by that is -- and that really becomes significant when we talk about, let's say, construction contracts or other contracts where they are large contracts and they're awarded to a prime, and then the prime subcontracts out. We do not capture the subcontractor spend with minority-

and women-owned businesses. And that's problematic. Again, just as a best practice and a standard, when you're looking at procurement spend, procurement spend is not limited to prime spend; it's actually a combination of spend with primes, as well as with subs.

I can tell you -- because we're in the process now of trying to implement and onboard a State dashboard so that we're able to get this information electronically from the data systems across the different departments and agencies -- and part of the discussion that's come up with some of the liaisons in that group is the fact that they're not required to report subcontractor spend, and some have concerns about requesting primes to provide subcontractor spend.

ASSEMBLYWOMAN MUÑOZ: Is that data that is available, but we don't capture it, or it is simply not available? When you say that some of the primes aren't reporting, is it there for us to capture, or is it simply just not available? And we need to put a tool in place so that we can capture that information.

MS. AGUDOSI: So what I found is it's a mixed bag. So some authorities capture that information, and the primes report it out; and some departments and authorities don't require the primes to provide that information, and so they don't have it.

My recommendation would be, and generally what is found in terms of standards, is that that's just something that could be included in the terms of the contract agreement -- is that the primes-- And the primes, as it stands right now, they provide utilization plans. They have to do that to say who's working on these jobs.

So to the extent that they are already providing who's working on the jobs, they should be able to not only give who's working on the job, but what that contract amount is with the sub, and who they are. So that way we're able to capture that information as well.

And what that will do is really give us a truer picture of what the spend is. Because in many cases, even for the numbers that are reported out in this report, it's really an understatement of what the actual numbers are, when you think about it. Because it's only capturing the prime spend; it's not capturing the subprime spend. And it's important for us to know what the true numbers are, and it's also important for us to know how many of these diverse business owners are part of the supply chain, even if they're not a prime, if they're a subcontractor.

SENATOR RICE: So here's what I'm going to suggest and recommend, and hopefully I can get support for it.

I'm going to suggest that we-- Based on the hearings we have had and based on what we know so far, in terms of what our needs are, in terms of the data and information that we should have had over the years-- But after 2008, the Christie Administration told folks a lot of stuff they didn't have to do. He just deep-sixed the stuff. The politics of it is that those of us, -- women and minorities, who supported this Governor's Administration -- I know this personally, because I was a part of it. We indicated that our concern on policy is that we get a government, whether Republican or Democrat, someone who's going to support what we have put in place, these rules and regulations. And there was a commitment from the Administration to do just that.

So what I'm suggesting is that the Co-Chairs put together a list of the data information we need, how we think it should look, what we should be capturing; put it in a letter to the Governor. So there should be a letter going out indicating that we never had a written response to this, and what our needs are; this is the one we did (indicates). Also, we can put in the same letter that, in addition to that concern, the other concerns -- that we do *ABC*. And if I have to legislate, I'll do that.

But once we get that letter together, then I want permission today for the Co-Chairs -- and we can put that in the letter too -- that we'll be subsequently setting up a meeting with the Administration. And the Co-Chairs will go and meet with the Administration and articulate the importance of this information as it is related to this disparity study.

This is a bipartisan Commission; when we did the disparity study before, it was bipartisan. We made a lot of headway; that's how we managed to get the stuff into law that's there, that no one is supporting.

And so, me personally, I can't allow that to happen, number one, as Co-Chair; number two, as the sponsor of the resolution; number three, being black and politically being supported by this Administration with the understanding.

We're in an era right now -- all you're hearing on the TV is that we cannot elect a president -- whether it's a Republican or a Democrat-- without the black and the female vote. And then the feedback from the black and female communities is like, "Once we deliver -- and you say you need us, but then we deliver, our concerns go unaddressed." That's problematic; that is very problematic.

South Carolina just gave a substantial vote, and there is no way one of the candidates could have pulled back up in the race without that black vote. But they did it with the understanding that someone's going to carry the agenda that we keep crying for.

In New Jersey, 94 percent of the vote that went to the Governor came from black folks -- 94 percent of the black vote, rather, went to the Governor. And that is the same thing we're talking about now in the presidential election. We thought it would be someone who would take our concerns and interests seriously. The concerns of women and minorities -- not just black folks; women, white, Latino, and minorities -- are that we have some equity, we have some parity, things are fair. And the only way we can do that is capture data to prove that we are not being treated justly and equitably in this government.

And so that's why I need permission to get all the stuff in writing; that we need to let them know that we're not happy -- we didn't receive anything back from you on this. And then once we get that we'll send it, and then we'll all subsequently-- I'll set a meeting up for the Co-Chairs to go and have a sit-down verbal conversation on behalf of the Commission, okay?

And I'm not going to wait for the ones who don't make this Commission meeting, in the Legislature, to be responding, okay?

MS. AGUDOSI: Senator Rice, I don't disagree.

But with all due respect, getting back to this outline, right?

SENATOR RICE: Yes.

MS. AGUDOSI: One of the concerns that I have is that I don't want us to approach this kind of ad hoc, when the point of this is-- Let's cover all of these things, give it a comprehensive discussion -- comprehensive

in terms of the testimony that we received, the data that we have, even as it relates to the assessment survey that was done -- with our best practices and with our recommendations. And then having that holistic discussion with the Governor's Office-- I just have a concern if we're just going to go and talk about data capture; but there are so many other things--

SENATOR RICE: But you can't get to the rest without the data. Tell me what you can get to in here without the data.

MS. AGUDOSI: Well, when you say, "Well, we're going to--" I think all of it is important.

SENATOR RICE: No, no. What are we going to get to-- Are we talking about just data capture now? It says *Legislative and Regulatory*-- Are you talking about looking at all of that?

MS. AGUDOSI I'm saying--

SENATOR RICE: My point is, how can we do anything without number one?

MS. AGUDOSI: I'm not disagreeing; all I'm saying is that--

SENATOR RICE: Then the conversation I want to have-- And we can do this by way of the Commission, or I'd do it by myself, because I know where I'm coming from.

I don't like the fact that the last report we had was around 2010, dealing with who got money from the one-half of 1 percent. And then the Division of Women and Minorities was put on the side, and we can't capture data.

And then we sent a letter out, April 9, 2019, and no one has really responded back, one way or the other, indicating that, "Yes, we are

going to do this,” or, “We already did it,” by way of writing to those departments.

I need to have that conversation, because the Governor said he doesn’t like me saying -- he doesn’t like the word *patronizing*. That’s what he told me -- I’m putting that on the record -- in a one-on-one conversation. He said it hurts him, because he’s doing all he can to help us with these concerns that we have as women and minorities.

I said, “Well, I know when I’m being patronized. When someone’s stringing me along, I feel like I’m being patronized. You may not like the word, but I come from a whole different world.”

And so the thing is, all of this is relevant to me, and you can see it’s getting me emotional and upset; because I am not afraid-- This is a Commission, okay? We are Co-Chairs. And when we request, and the Commission requests, through us, information, then the Administration can’t get angry with us; they have to provide it. And if we don’t get it, and we question why not, they can’t get angry.

If that’s the kind of relationship we’re going to have, we’re never going to have a good disparity study.

I’m still concerned about where we are with the RFPs to start to get these consultants on board to get us substantial information. But I do know that the Senate President is fast-tracking the disparity extension for me; it’s on second read, and we bypassed the committees, okay? We did the first.

So I’m getting ready to leave here and go to the Assembly to see if they can fast-track theirs too. So I suspect that our piece will come up before I get to the next meeting, so that we can move forward.

Well, we have deadlines specific; and so we can't be tied down because of some administrative stuff, and we can't be ashamed or afraid to go over there and talk to them.

I will go, as Co-Chair, and represent the Commission. I just need letters going out, identifying what our needs are -- preliminary needs now -- and let them know there's going to be other needs, okay? So this way I don't have to worry about supplier diversity, the challenges, and all that kind of stuff. I just want the data capture and analysis stuff that we have. And I want them to-- And some of the stuff we don't have, I want to know that they're going to send a letter, forthwith -- to every agency, every department; and everybody has to get it -- and say, "Here's what we need. We're not asking you; we're telling you. This is what you have to supply to the Chief Diversity Officer and the Commission."

MS. AGUDOSI: So to follow up on that, the way that -- by way of example, what I just said -- that the data capture-- I actually printed it out. I didn't want to kill a lot of trees, so I didn't print out numerous copies. So as it stands right now, based upon the template form that was developed for the departments to report out, I'm going to go over the relevant data fields that they are required, now, to provide.

SENATOR RICE: It's under the present law that it's being enforced?

MS. AGUDOSI: This is under this-- Under this EO, at the time that the departments were reporting--

SENATOR RICE: Yes.

MS. AGUDOSI: --there was a form that they were given, an Excel spreadsheet--

SENATOR RICE: Yes, Governor Corzine sent a form out to everybody, initial and date, and they were told, "This is what you have to do and here's what you do, and *here's* what you do, and here's what you tell your contractors."

MS. AGUDOSI: Right.

SENATOR RICE: I remember all of that; that's why I get angry.

ASSEMBLYWOMAN MUÑOZ: And it's by Executive Order, not by statute.

MS. AGUDOSI: Right.

SENATOR RICE: Yes, that's why I get angry, okay?

MS. AGUDOSI: So what I want to do at this point is, I want to just, on the record, clarify as it relates to data capture, what data the departments, and agencies, authorities are being required to report, because I think that's constructive.

So in the form -- and I will send a copy of the form as an attachment in an e-mail -- the template form, they are to provide the vendor's name, the vendor's Federal employee identification number, the contract ID number, the commodity code that's relevant for the contract vendor, the award amount-- And I'll give you the definition for award amount.

"The award amount is the dollar value awarded to the vendor under the reported contract.

"They are also required to provide the amount paid, and that's the amount that has actually been paid, check dispersed, to the vendor exclusively, during the current reporting period.

"If a contract has been awarded, but no payments have been made during the reporting quarter, then they will just put 0.

“In addition, they are to provide the procurement process. The contract process can be defined as either formal or informal. Formal contracts are those done above the threshold --” in this case, that would be \$40,000 or above -- “and are awarded either through a formal bid process and/or after proper public advertisement of a request for proposal has been made.

“If a purchase is under the no bid threshold, but complied with pay-to-play rules that require bids on public process, it should be listed as a formal procurement opportunity.

“Informal contract awards are those contracts which do not require a public bid process.”

Another term utilized for *informal* is *delegated purchasing authority*.

So in addition to providing what type of procurement process was listed, they are also required to provide the type of business enterprise. There's a drop-down that will list it either as category small, minority, women-owned, veteran-owned, etc.

And then the last category to be captured is ethnicity, and that's by race.

So I just wanted to clarify -- right now, that is the only information that has been required to be reported. So as I indicated initially, when we looked at award amount, that's the amount awarded to the vendor as a prime. It does not require subcontractor spend.

So my question is, even as it relates to follow up with the Governor regarding the directive and required reporting, is this something that we want to talk about as it relates to additionally capturing subcontractor spend? Or is that something that we want to put in our report and recommendations?

SENATOR RICE: No, what I want to do now-- We need to start getting information.

I want to go back and say, "Here's what we're supposed to be getting, and we want it, period," okay? And I'll say it in a nice way, but I need to say that, okay? And we also -- what is not required now, we need to start to get, and we need to direct people to start to prepare that now, by way of Executive Order, if necessary, until we can codify it. That's what I'm talking about. We can't wait over here and have pieces, when we know there are other needs.

I'm saying we need to say, "Look, we didn't get this information. That's what's required. We thought, by now, someone would notify everybody that they have to start providing that, in writing; it's compliance, that's the compliance piece. But the Commission also recognized, through testimony -- and everything else, and queries -- that we need *ABC*. And we would encourage you to do an Executive Order -- send a memo, number one, directing it -- and then do an Executive Order," for now. And that's what I'm talking about.

Because, to me, it's not the rest of it that's going to play; and there's going to be some voids in our findings at the end, or we're going to run into problems at the end. That's just my personal opinion; and I have history here, like, 34 years' worth, and so, disparity studies are not new to me. I did them on the City Council in Newark, and we did one in Essex County. So I kind of know what folks are looking for, and that's why I'm backing up again and saying, "I want to know when this consultant person is going to be identified and brought onboard, because they have real work to

do. A lot of the stuff that we need, they're going to need if we don't get it now. They're going to need it to be effective in what you're doing."

And so we need to have that conversation, because it may not be so much that the folks are just delaying us intentionally. They may not understand the importance of it, because there has been too much politicking going on, with everybody fighting in the newspaper, other issues, that-- And I tell them, "Take this stuff seriously."

And so I don't want to know who's looking at this in the Governor's Office, besides the Chief Diversity Officer; and I don't want to talk to agencies. I don't talk to subordinates; I talk to the Governor, and then he can trickle it down to subordinates. I'll talk to a subordinate after I've talked to the Governor, so he understands, and they understand. "You talk to me as a subordinate, then, right now, I'm looking at you as the Governor." That's the way I deal; that's the way I've been doing it for 34 years. McGreevey, Christie -- they'll all tell you that, and that's how I get things done. I don't have time for nonsense.

So if we can just put that together and get support, then I'll set the meeting up. It will be a nice, cordial meeting; but it will be one where they'll understand the importance of expediting this stuff and why it is necessary.

MS. AGUDOSI: So by way of follow-up to that -- and I've raised, in terms of the subcontractor spend -- one of the issues that comes up -- and that's one of the reasons why I'm meeting with Governor's Counsel-- Because when it comes to these contracts and what can and cannot be done, advice is given by the Attorney General's Office.

SENATOR RICE: Yes.

MS. AGUDOSI: And so there really needs to be some clarity and lockstep, in terms of the guidance that is being given by the Attorney General's Office as it relates to these issues.

And so even when we're talking about capturing subcontractor spend -- because as I indicated, I've been in working groups with these folks -- the pushback to requiring that information, or getting that information, is that it's not "contractual." So that to the extent that we have a contract with vendor A, it is not stated, in the terms or conditions, that they have to provide that information. So now how can I -- agency, or department, or whomever; fill in the blank -- request them to do something that they are not contractually required to do?

So I say that, to say this -- that I don't think it's a problem in not only issuing a directive or even making that change legislatively or regulatory. But I say this, to say that we may not be able to -- because that's a legitimate concern -- we may not be able to enforce that on contracts that are currently existing; but I think we absolutely can say, from day one going forward, "These changes need to be made."

And that's part of the larger picture of what we need to capture in our report, in our findings, and our recommendations. Because there are just some holistic changes that need to be made in our legislation, our regs, and our process; and this is just one of them.

SENATOR RICE: My argument and my concern is what in this law we can enforce. I don't care what the Attorney General says we can enforce. And I'm not an attorney, but I'm not stupid either. I understand contracting law, and all that kind of stuff; and for good reason I understand it, okay? I did go to law school, okay?

The other information that needs to be captured-- Yes, there needs to be conversations, because the stuff that we have wasn't done without legal authority. I think it's dumb for any governor or any legislator to move forward on some things without getting legal counsel, even if you know the answer, okay? But if we don't have the meeting to say, "Here's what we need," and let the Attorney General, or whoever the Counsel is going to be, get back to us -- they have to know what it is we want. And then, I'm not comfortable having that done in a vacuum, because I don't want them pushing you back, because you do come from the Administration.

But there is a legislative side of this -- and that's why I'm Co-Chair -- is there are things I think you can say and do, and I think that there are things that maybe you shouldn't say and do. Because you have two hats; you have the Chief Diversity Officer, but here, the Commission. And so it's the Commission speaking right now.

And so that's why I want to sit -- I think if we sit, based on the concerns you have-- Which means that, hopefully, whatever the AG and them are going to do, or tell us they expedited-- That's my concern -- that when we're asking for things, nobody writes back. We should know that it's being asked for, they should know the Commission asked for it and we want it in a timely fashion.

Because I know how they operate over there; that's been a concern of the Black Caucus. They'll lay things down, and sometimes -- it's not malice -- it's not important to them because they don't understand it. And I had to tell them one time, "Look, if it comes from the Black Caucus, and black elected officials, then that may not be important to you or the people who are handling it; but once you know it's coming from us or from

me, then you treat that as a priority, just like everything else on your desk. Because we don't send stuff to be playing. So don't get to it on your time, get to it on our time. That's why we asked for it."

And that's my concern. You know, this April 9 thing (indicates) bothers me, because this is not new to me. It may be new to people here, but I do a lot of stuff away from this Commission, and this is what continues to happen on a lot of issues.

And that's why I said we have a sit-down and say, "This is a serious Commission. We're on a statutory time frame," and the statute is very clear. Whatever we request, they have to provide in a timely fashion. Read the disparity resolution; they can't play with this. If we need personnel, they have to give it to us; and the same on the legislative side.

And that's why I say I need to sit-- And we can have a conversation, a better conversation, from your perspective as Co-Chair, as to how we should approach the meeting. But I really believe we need to have this meeting forthwith, okay? Because if not, then I'm going to solo and go in there and raise hell about this. And I don't want to raise hell, I want to have a decent conversation.

ASSEMBLYWOMAN MUÑOZ: May I?

MS. AGUDOSI: Yes.

ASSEMBLYWOMAN MUÑOZ: I don't come to this with the same amount of experience as you both do. So I just want to clarify -- you're saying, right now, Senator Rice, that part of this is required under law. But you, Hester, are saying that it's only required of the prime. Is that what we're saying right now?

MS. AGUDOSI: So what I'm saying is, it's--

ASSEMBLYWOMAN MUÑOZ: We're talking specifically about the data. So, yes, data.

MS. AGUDOSI: Right, right; I know we're talking about data, so I'm trying to be very clear.

What I read to you is the data that has historically been captured, right? And that's only prime, as it relates to-- When you look at the actual Executive Order, it speaks in general terms. And so, therefore, that's why we just got the prime.

So it doesn't say specifically, in the Executive Order, "Only give prime spend;" it just talks about *spend*.

In the absence of being specific, what has happened, historically, is that they've only captured the prime.

ASSEMBLYWOMAN MUÑOZ: And Senator, you're saying we already have a statute that says that they have to report this.

And according to both of you, what I'm hearing is that it's sort of written in a vague way, so that you're only capturing prime.

So if we were to go forward and write legislation that said, "We have to capture it for all of that," would that be the more effective way than doing an executive order? Because that could go through pretty quickly, no?

SENATOR RICE: Yes, either way. But I think the conversation is still necessary.

And I have to go back and check my files, because I have a lot of stuff from before, when Jon Corzine did Executive Orders with the qualification stuff. That's when Michellene Davis was here; she was really good at this stuff, and we had (indiscernible). And I remember some

subcontracting language also, and some people -- something, I'm not sure what.

But the point I'm making is that even if it's only for prime, they have not been capturing it. And I'm saying, "Hold it--"

ASSEMBLYWOMAN MUÑOZ: You're saying it's in statute now?

SENATOR RICE: "--if there are two primes--" What I'm saying is, the conversation should be, "Look, this is the law."

ASSEMBLYWOMAN MUÑOZ: Right.

SENATOR RICE: "We want this done now. We recognize, depending on who's doing the interpretation, it is not impacting this other group. We need you to start to pay attention, and start to get that information, too. But right now, until we get that, we want this enforced." That's the conversation I'm talking about.

And I don't believe it needs to be co-mingled, right now, for a conversation. And we need to say, "Hold it. We asked for compliance on what the law is. And in the process, we recognized we need this; and we also know that reasonable minds can agree and disagree. I would argue that that prime piece refers to subcontractors and others too. You may argue it doesn't."

So we won't dispute that. So just deal with the prime, and this way we won't get -- and who's going to argue the differences and the interpretations. We'll clear that up. But we need that other part of it. That's all; yes.

ASSEMBLYWOMAN MUÑOZ: Were there any penalties associated in legislation with not complying with--

SENATOR RICE: No, I don't remember putting penalties in it.

ASSEMBLYWOMAN MUÑOZ: No? Okay.

SENATOR RICE: And the reason I say I don't remember, because the Governor did the Executive Order.

ASSEMBLYWOMAN MUÑOZ: Right, okay.

SENATOR RICE: But let me be clear.

ASSEMBLYWOMAN MUÑOZ: No, I'm just trying to be very clear, so that those of us who don't have 25, 35, 45 years of historical perspective--

MR. GRIFFIN: I don't think -- there are no penalties associated, but I think the way the statute is currently written, you can capture subcontractor spend. It is just that it has never been -- how do I put it -- done, or it hasn't been a part of the conversation. So if you change the conversation, I think-- The way the statute is written it allows you to capture subcontractor spend, because it requires showing spend on women- and minority-owned businesses, so that would include subcontractors. It's just that no one has ever, in past Administrations or past agencies, done that.

ASSEMBLYWOMAN MUÑOZ: Because I would suspect that if you included the subprimes, you would capture more women and minority businesses.

SENATOR RICE: Let me clear, for the record; because we're being recorded.

ASSEMBLYWOMAN MUÑOZ: Yes.

SENATOR RICE: I know the intent of the Executive Order. I was here, and I'm not dead. The Executive Order was written at the request of the Legislative Black Caucus. I could bring Michellene Davis in, who

worked for the Governor, to help us put it together. We went to Hoboken and met in the Governor's house. I could bring the Congresswoman in here. We crafted this, with the Administration. So we know the intent; it was intended-- So that's why we can argue, but if you put me on the stand, I'm going to tell them what the legislative intent was, what the Executive Order intent was, okay? And that's why I'm trying to get this codified as well.

But rather than fighting them over it-- Because Corzine never had a chance to really get this done. Christie came in and stopped it. Had Governor Corzine been re-elected, there's no doubt in my mind it would have been very clear to everybody that it applied to both, okay? That's where the problem is.

But I was a part of that, a very intricate part of that. And the Executive Orders that got codified, those Executive Orders, if you look at it-- I sponsored that legislation with Congresswoman Bonnie Watson Coleman, and so I know this very well. That's why I get upset with the way it's going, and with some of the members from the Legislature not being here, too.

ASSEMBLYWOMAN MUÑOZ: Well, that's why I wanted to make sure that I say these -- because I don't go back to those years with you.

SENATOR RICE: Exactly.

ASSEMBLYWOMAN MUÑOZ: And so now we have it on record that -- so you would explain that, because I'm not questioning your intent at all. I just want to be very clear that this is already statute; and that it's not being followed; and that people are interpreting it differently, based on whether this is prime including the subs.

SENATOR RICE: Exactly.

ASSEMBLYWOMAN MUÑOZ: And we can make corrections to that legislation through future legislation.

SENATOR RICE: You got it.

ASSEMBLYWOMAN MUÑOZ: And that's the summary from me, who has only been here 11 years, not decades.

SENATOR RICE: Exactly, exactly.

ASSEMBLYWOMAN MUÑOZ: Thank you.

MS. AGUDOSI: So to sharpen the point, I'm going to direct your attention to Executive Order No. 34, which is attached to this letter.

If you look at Executive Order No. 34, and you go to the third page, where it says No. 4.

ASSEMBLYWOMAN MUÑOZ: "The Director shall be responsible--"

MS. AGUDOSI: "The Director shall be responsible for administering--" And I'm just going to read this on the record.

"The Director shall be--" And the Director that they're referring to is the Director of the Division of Minority and Women and Business Development -- "shall be responsible for administering and monitoring programs to increase the participation of minorities and women in State purchasing and procurement processes in an effort to remedy the significant disparities identified in the Disparity Studies. Specifically, the Director shall:

"a. Develop M/WBE utilization goals, initially basing those goals on data contained in the Disparity Studies and thereafter periodically updating those goals based on subsequent studies, findings, recommendations, or other information as approved by the Division, and

develop M/WBE policies and programs aimed at meeting those goals through race- and gender-neutral means.”

I can tell you, as it relates to *a* --that has not been done.

“*b*. Track and monitor, in coordination with the Division of Purchase and Property in the Department of the Treasury and the State departments, agencies, authorities, colleges, and universities” -- and this is the key part -- “all of the State’s procurement practices, including but not limited to the share of contracting dollars paid to M/WBEs through formal bidding processes, pursuant to delegated purchasing authority, and under cooperative purchasing agreements.”

So under *b*, that is the relevant portion of the EO that talks about capturing the share of contracting dollars paid to MWBEs.

So as I indicated, that’s general. It doesn’t say *prime*, it doesn’t say *sub*. It says contract -- *the share*. So an argument can be made that that share includes both, in order for there to be an accurate understanding of what that spend is with these businesses.

However, as I indicated, the form that was given, and the information that has been captured historically, has limited that data to prime spend.

ASSEMBLYWOMAN MUÑOZ: And we don’t know if it’s intentional or non-intentional.

MR. GRIFFIN: So I think-- Hester, who -- for lack of a better term -- controls the form? Is that you; do you now control that form? Because if it is you, based upon the EO, you can just add *subcontractor spend* to the form. I mean, it’s not--

ASSEMBLYWOMAN MUÑOZ: You don't have to do anything else--

MR. GRIFFIN: You don't need anything else.

MS. AGUDOSI: So I agree with-- And so to clarify.

Yes, there is no longer the Division of Minority and Women Business, and that function now has been transferred to the Office of Diversity and Inclusion. And so that's one of the reasons, again, that we have this dashboard that we're trying to implement -- so we can capture this information electronically.

So again, for purposes of just clarity and discussion, because these agencies had not, in the past, provided that subcontractor spend data, and because some of them have raised some concerns about the ability to require primes to provide them with that -- and I'm just putting this on the record, right? Because this is real -- that we need to address -- that they are presenting concerns that, to require the primes to provide them with that information is not consistent with the terms and conditions language of their contracts; some have some concerns.

Be that as it may, I agree that the language in this Executive Order, which is still binding, requires them to provide the share that goes to minority- and women-owned businesses and, arguably, that includes subcontractors as well.

SENATOR RICE: And what I'm saying is -- I think we're agreeing. I'm saying we need to have a conversation to say what-- If you want to give a strict construction in the reading, then we do that; and then go back and get the other piece.

But what's in here-- See, my attitude with-- "Governor, interpret this any way you want to. It's the law, so tell me how you interpret it." "Well, we interpret it that it's only primes." "Fine; I want it enforced." Do you see what I'm saying? Then we do the other; do you see what I'm saying? Because I could argue-- And we're not looking to litigate; we're looking to get cooperation. Because I can argue not only intent, because I was a part of it; but I can also argue that this is all relevant to what the GEOD Corporation did by knocking out set-aside programs. The set-asides were for all; do you see what I'm saying? That's why the intent is still there; we can leverage that.

But that's not what we're trying to do. We're not looking for a fight; I just want to have a conversation, "Look, here's what the law is; this is our interpretation. But we'll get a reading from the AG in the meanwhile, but in the meanwhile, enforce the law as it is on the primes, okay? And then we'll do some other things, but we're going to bring it to your attention." And then we'll also set it up in recommendations, if we have to.

See, I'll go in there now and start putting together some stuff -- legislation, as the Assemblywoman said -- to just make this public. But I don't want to do that initially; I want to have a conversation. But I want to be able to go in there and say, "Well, look, based on the Commission and the Chief Diversity Officer, these are some of our findings to date. This needs to be enforced, this needs to be captured. We believe it can be done under this Executive Order, but we can clear that up; or we just want you to know that we need to get this, too." And then start to move that part forward; that's what I'm trying to say.

MS. AGUDOSI: So what I was saying, following up-- And again, with all due respect, but the fact that there was never an ask at the onset for the subcontractor spend--

SENATOR RICE: Yes.

MS. AGUDOSI: --I don't think that that's something that we should just necessarily roll over and say, "That's okay," because that was an error that was done then.

And I think that what's compelling -- if you look at this, it says this came on the heels of the last disparity study that was done.

SENATOR RICE: Yes.

MS. AGUDOSI: So as a result of the last disparity study that was done, this Division was instituted and this mandate was placed in there.

In the disparity study that was done itself, they had to look at subcontractor spend as well.

SENATOR RICE: Yes.

MS. AGUDOSI: So there's no way that you're doing spend analysis without looking at prime and sub. So now to say that we set up this Division, we want to monitor spend with these businesses, but only interpret it as prime -- I don't think that that's the position that we should be taking as a Commission. Because, again, in reading the language -- there is nothing in that language that limits the data collection to just being prime.

ASSEMBLYWOMAN MUÑOZ: It says *all*.

SENATOR RICE: No, no, it doesn't.

MS. AGUDOSI: It doesn't.

SENATOR RICE: But that's why--

MS. AGUDOSI: And so I don't think we should, at all. I think, at best, we should say that, unfortunately, this was an oversight and error -- whatever it is. But clearly on the heels of doing a disparity study, where they had to look at the spend daily, and they had to look at subcontractor spend, there's no way we're going to ask a Division, going forward, to continue to monitor spend and not include that as the component of spend.

MR. GRIFFIN: I think you two are having the same conversation.

So I think -- and Senator Rice can correct me if I'm wrong -- that what you're saying is you believe it should all be captured; but right now, you don't want to have the argument about whether or not subs are included. So what you're saying is, whatever it is that should be reported and hasn't been, needs to start happening now. Whether that's just prime, subs and primes -- however we want to spin it -- just start doing it.

MS. AGUDOSI: Right. And what I am saying is that that means prime and sub. Because *share of spend* means prime and sub. The fact that you may not have done that in the past does not bind us to that, because there is nothing in this language that limits us from collecting that.

MR. GRIFFIN: He is not arguing against that.

SENATOR RICE: No.

MR. GRIFFIN: He's just saying whatever it is, just do it. You two are having, sort of, a mini argument about something that is not even a different idea.

SENATOR RICE: Yes, what I'm saying is, let's go have the discussion on what we're supposed to be getting in terms of data, period.

Now, if someone -- the AG wants to say, "Well, we can't give you that," then my attitude is, "Fine, okay? Then we'll make it happen. We'll make you give it to us; there are other ways of doing that."

But I want to have a discussion. And my point-- I don't really think that George, and those folks over there, who are supposed to be overseeing some of this stuff, have been brought abreast of what the needs are and what these things are saying; I really don't, okay? And I put too many years on this stuff to just let it slide and start from scratch again, when it's already in place. And so it's not going to make us happy.

But if need be, I'll go have a conversation, because I think it's important. I know you're going to be speaking to the legal people, and that can come up, then, too. But I want an immediate meeting so that -- because we're in the Budget, and everything else, right now; we're trying to do a disparity study -- because we need legislation. I need to do legislation to get support for it. We need to get clarity on some of this stuff. I may even have a bill in already, putting back -- codifying the Executive Order. So if I have one in, I may have to amend the bill to get clarity.

But the thing is, I need to have that discussion; that's all I'm saying. We need to have it, and it should be, like, yesterday, as one of the agenda items. So we can report back to the Commission that we had a discussion, particularly as it relates to this, as to what we're not getting and what we should be receiving. And let the Commission know how that discussion went, so we can know where to go from there. I really believe that, okay?

Because I know there are some things we can do now. I still have people -- quiet as this is kept -- inside some of these agencies. They talk

to me and say, "Ron, they can do this now. What happened to the minority piece? They can do this now." I said, "Well, can you give me something sidebar, in writing, so I--" "No, I don't want to put a name on it."

But the thing is, we know there are things that can be done. But I just can't-- As a Commission, I don't want us talking -- we can talk to everybody; that's what you have to do, Chief Diversity Officer. But I think as a Commission, we have to keep the Chief of Staff and those folks up to date on where we are and what our needs are. This way, if we don't get things done, it's not because he wasn't aware of it -- because some Commission decided they're going to take their time, or some Attorney General decides he's going to take his time, okay? I don't mind them disagreeing with us, so we can argue back; but we're not looking to argue now, we just want to have a conversation.

My gut feeling is, if we have a conversation, the Chief of Staff and the Governor are going to say, "Well, okay, we didn't know they didn't get back to you." I know I'm going to hear that, because he's probably going to tell me, "I don't know where it is," or, "We forgot about it," all right? And, "It won't happen again." And, "Yes, we'll get you what you need." Because we're going to lay down the disparity study, and say they have to meet our request for needs.

Where we need interpretations, then that's where the legal people can do that. And that's the way we flow.

MS. AGUDOSI: So to move us on, and to tie a knot on data capture and analysis--

SENATOR RICE: Right.

MS. AGUDOSI: --we're going to send the letter; and what we need to do is determine parameters, right? So when we're talking about data capture, and we want these department -- all the reporting agencies to report out their spend data, do we want to go back-- This letter was 2019; do we want to go for data -- "You have to provide us four quarters, beginning Fiscal Year--" I think we should define the parameters of what we want them to provide us, as it relates to data.

SENATOR RICE: Yes.

MS. AGUDOSI: So at this juncture, I don't think we need to go all the way back to 2008.

SENATOR RICE: No.

MS. AGUDOSI: But we should have some back date going forward.

MR. GRIFFIN: Knowing what you and I know, I think it should probably be 2015, at least?

SENATOR RICE: At least.

ASSEMBLYWOMAN MUÑOZ: Why do you choose that date? Is it a random date?

MR. GRIFFIN: It's not a random date.

ASSEMBLYWOMAN MUÑOZ: Okay.

MR. GRIFFIN: It relates to the study that needs to be done, and the dates that are, sort of, part of that disparity study.

ASSEMBLYWOMAN MUÑOZ: Is it my understanding that the last disparity study done is this one from 2007? Has there been one since?

MR. GRIFFIN: That is just a report, not a disparity study. So the last disparity study, I believe, was 2005.

ASSEMBLYWOMAN MUÑOZ: So the last disparity study was 2005; the report was 2007. So 2015--

MR. GRIFFIN: At a certain point the data becomes too old to be useful.

ASSEMBLYWOMAN MUÑOZ: Too old, okay, got you.

Very good, okay.

I just wanted to be clear; okay, thank you.

Again, I'm just providing clarity to myself.

SENATOR RICE: And that's the reason we're doing a disparity study now, because the data was not useful. And we know if we try to use what we know, they're going to push us back in the courts again.

MS. AGUDOSI: So I would agree; and I think it would be helpful, for purposes of the study, and in terms-- Again, just for purposes of getting the agencies back to doing reporting -- that we request that timeline from 2015, going forward; all of their spend data -- and we're looking for prime and sub -- and we just make that request.

MR. GRIFFIN: I would suggest that the way we frame it is that they must start doing the quarterly, and also pull the back data. Because what you don't want is for someone to say, "Well, I can't do 2015, so I can't do anything." So at a minimum you have the data for the quarter that you're in or just got out of. And then you need to go back and try to get the rest.

MS. AGUDOSI: Okay.

So I think we're good, as it relates to data capture and analysis.

I want to-- I was hoping, because we're not doing testimony, that this would be a shorter meeting.

So I want us to, kind of, move on a little bit to the next piece, which is Legislative and Regulatory Overview.

What that's going to require is pulling all the legislation that touches upon State procurement. And I have a couple of things, right now, that we can talk about; but at the next meeting, in the interim, we'll try to pull that, as well as all regs that talk about procurement, or touch upon procurement. Because I think we need to--

MR. GRIFFIN: Are you trying to do it, or are you going to prevail upon--

MS. AGUDOSI: The Office of Legislative Services--

MR. GRIFFIN: Because that would be much-- Because it's a lot.

MS. AGUDOSI: That would be wonderful if the Office of Legislative Services can provide us-- We need any and all legislation that touches upon procurements, public contracting.

SENATOR RICE: All right, so we need to just generate a letter, from the Commission to OLS, making a request of what the needs are. They have to do that; that's in the disparity study as well. So we can sign off as Co-Chairs on behalf of the Commission.

MS. AGUDOSI: Okay, wonderful.

So we will do that; I'll make sure that that happens this week, so that they can start pulling that together.

When I get that, I will compile it, and e-mail it, and send it out so that we can start looking at that. Because one of the things that we want

to do is just give that regulatory overview of what the state of affairs are, and then we can talk about some of the things that we need to do to address it.

SENATOR RICE: Just make sure, when the letter goes out, I get a copy of it. As soon as I get it, I'll call Marvin and have him get on it.

MS. AGUDOSI: Absolutely.

So having said that, I wanted to just briefly touch upon a piece of legislation that's proposed; and Maurice, I'm going to ask you to weigh in on this. Because this was something that was discussed previously -- I sent the information out to the Commission members -- and this was Senate Bill 2991, sponsored by Senator Sarlo, which basically proposes revisions to certain aspects of the State procurement process.

This is what you had sent to me, Maurice, in terms of just some of the challenges that you see from your side at DPP, and that it would be something that would be recommended for consideration.

So I just want to--

SENATOR RICE: Wasn't that a bill that was held up -- that we needed to move? Is that the bill I was supposed to talk to Sarlo about?

MR. GRIFFIN: Yes.

SENATOR RICE: All right; is that the new number? Is that a pre-file, or an old number?

MS. AGUDOSI: This is the last--

MR. GRIFFIN: That's the original.

SENATOR RICE: So we don't even know if he put it back in.

MR. GRIFFIN: We do not. As far as I know, it has not been reintroduced.

SENATOR RICE: Okay; so can you get me a copy of it, and let me talk to Sarlo; and I'll tell him if he doesn't want to put it in, I'll put it in.

MS. AGUDOSI: Sure; so I just want to read the statement.

It says, "This bill revises certain aspects of the State procurement process. Specifically, the bill amends existing laws to: provide that in order to bid on a contract or a public work a contractor or a subcontractor must be eligible to register as a contractor or subcontractor pursuant to law and not registered as such when submitting a bid as is currently required; change the deadline by which a prospective bidder must submit a statement of its owners having more than a 10 percent ownership interest from the time a bid is received to the time the contract is awarded; change the deadline by which a bidder must certify that the bidder is not engaged in activities in Iran from the time the bid is submitted to the time the contract is awarded or renewed; and authorize the Director of the Division of Purchase and Property to structure an advertisement for bids to include an auction or reverse auction procedure, whereby pricing is revealed to all other qualified bidders during the course of the auction or reverse auction, when it is determined that best value will result."

So I'm going to pass this to Maurice; and I'm going to ask -- if you can just give some insight as to--

ASSEMBLYWOMAN MUÑOZ: Could I read it first, as you're doing that, because I'm a visual learner.

MS. AGUDOSI: Okay.

If you can give some insight as to why those recommended changes would be helpful in the procurement process in general, and how they would benefit minority- and women-owned businesses.

MR. GRIFFIN: So the impetus of the Bill was for certain forms -- Iran ownership disclosure-- It requires bidders, as a condition of bidding, to submit those forms. Oftentimes, what happens is-- For instance, I'm a small business. We find, a lot of times, they will say "Well, Iran; I don't do any business in Iran, so I don't need to do that," when it's not -- you have to submit the form whether or not you do business--

And so more sophisticated, larger businesses don't get hung up on this. Small and also women- and minority-owned businesses -- oftentimes this will trip them up. And if you don't submit it with the bid, there is no mechanism for correcting. So if you don't submit it with your bid, you're non-responsive, you're out.

If it is moved from "You have to submit it at the time of bid" to "You have to submit it before time of award," that means if you don't submit it, we can get it from you before we give you the contract.

And so that move-- It's a difference of a few words in the statute, but those words make all the difference between someone being non-responsive and someone being able to cure not having a form. It gives them a little more time. And almost all of the other forms -- when it is due, is at time of award, not time of bid.

And so I don't really need to know who your players are in your business when you submit the bid, because I'm not going to look at it until I'm ready to award, to make sure there's nothing -- that you hadn't made any contributions under (indiscernible).

So that is why we think that will help. I mean, there are other reasons why people are being non-responsive, but that will help.

The other part was the reverse auction. That is more about-- Because of budgetary constraints, the State is always looking to save money. Surrounding states -- Pennsylvania, in particular -- use reverse auctions to drive down cost. So a reverse auction is: Bidders are invited to bid, they bid online, we set a high price, and you must bid down from that price to arrive at the number you will charge the State.

So coincidentally, the statute -- there was a special statute to allow reverse auctions in the pharmacy benefits procurement. So bidders who were going to provide us pharmacy benefits could see what the other bidders were going to charge; and if they wanted the business, they would go lower with the pricing. That is the same mechanism that would drive down costs for almost all other procurements, meaning the State will be paying less for the same services.

But the way the statute that governs, at least DPP, works is, we can't reveal pricing until after award. So if we can't reveal pricing that means we can't have a reverse auction so the people know what the other person bid.

And you don't know who the bidder is in a reverse auction; but you just know one of the players, who is bidding on this -- this is what they bid. And it's done in rounds. So there's, typically, four or five rounds. So round one -- everybody puts in their price. There's a week for people to look at the information. Round two, you now know the lowest bid from round one, and you have to get under that to still be in line to be the awardee.

And so, final round -- best price; because there's no other opportunity. And then, if one bidder is being awarded after that final round

-- that is assuming the person met all the other standards, they were responsive, they could provide all the services -- that's the awardees.

ASSEMBLYWOMAN MUÑOZ: That's what we do currently?

MR. GRIFFIN: That's *not* what we do currently.

ASSEMBLYWOMAN MUÑOZ: But you said that other states around us do do this.

MR. GRIFFIN: Other states around us do that.

ASSEMBLYWOMAN MUÑOZ: Do the majority of states around us do that?

MR. GRIFFIN: I don't know if it's the majority. But I know New York and Pennsylvania do; and I know, having conversations with Pennsylvania, they have reduced their costs by a good percentage because of this. So that was one of the things we said -- that will drive down costs.

ASSEMBLYWOMAN MUÑOZ: And that's in that legislation?

MR. GRIFFIN: Yes.

ASSEMBLYWOMAN MUÑOZ: Okay.

MR. GRIFFIN: Yes, because everyone always yells every year, about, "Why are costs going up; we need to get costs down."

Well, a prime example of how that happens, and it -- at least, from the standpoint of maybe a women- and minority-owned business -- now you know what you have to do. (laughter)

ASSEMBLYWOMAN MUÑOZ: Right; you have an idea.

MR. GRIFFIN: And maybe you can get there, and maybe you can't. But at least you're in the same ballpark. You can be in the same ballpark if you have--

ASSEMBLYWOMAN MUÑOZ: You're not shooting in the dark.

MR. GRIFFIN: Exactly.

ASSEMBLYWOMAN MUÑOZ: Got you; very good, thank you.

MS. AGUDOSI: So let me ask you, Maurice, as it relates to the reverse auction -- and I'll take a look at the language in the statute -- is that something that gets applied across the board? Is that envisioned to be applied across the board for all procurements coming out of DPP -- utilizing that structure? Or is it just certain, like you mentioned -- well, for pharmaceuticals we utilize this.

So what is the envisioned approach?

MR. GRIFFIN: It is not universal; it will be, sort of, on a case-by-case basis. But there are categories of procurements where we know it will work.

Our pharmacy and healthcare benefits, certainly. It can work in -- it could probably work in areas of investments; but there you're, sort of -- you have to make sure that the person -- that the company can do what it needs to do first. In our commodities-based things, it certainly will work. Vehicles, cleaning products; it could certainly work in some instances of technology procurement. It can work in some instances of professional services procurements, but not in all.

It is a tool more for things and services, but it certainly could work in the services procurements.

MS. AGUDOSI: So do you know -- for instance, you mentioned New York and PA -- how long they've been doing it, and what areas they utilize it in?

MR. GRIFFIN: For Pennsylvania, it's been several years. And they are mostly in the commodities arena; and I consider health benefits and pharmacy benefits a commodity.

New York -- I'm not sure; I can certainly find out. So I don't know the extent to which they use it, but that is knowable.

MS. AGUDOSI: So can I ask you if you can do that follow up for the Commission? If you can find out not just how long they've been doing it, but also in what areas do they apply the reverse auctions; as well as, to your point, how successful they believe it's been in cost, as well as just, more broadly, leveling the playing field for vendors.

I think that would be helpful for the Commission's consideration.

MR. GRIFFIN: Yes.

MS. AGUDOSI: So thank you for that.

So with that being said, on our agenda -- this is really kind of old business, because we were talking about really, kind of, moving forward and working on the report, and getting all the information that we need in order to move forward in issuing a report on our findings. So for our next meeting, we'll hopefully have an overview of what, if any, response we receive from issuing the letter on the data capture and analysis, as well as we will have put that request in for the legislative and regulatory overview. And we will probably see who on the Commission would be interested in, kind of, mining

and leading that discussion, in terms of looking at this data, what our legislation is and regulations are for our discussion, as well as findings.

At the next meeting, we'll talk about diversity and inclusion practices and policies. I'll be able to give some insights on that, as well as pull from some of the testimony that we received that touch upon that piece. And I'll also be able to -- I can't get through all of that, and I'll have to speak with our Co-Chair-- When it comes to that section on challenges in public contracting, we have a lot of testimony that speaks to that; and it will be parceling out the testimony so that we can kind of look at that in isolation and talk about how we want to structure that within that section.

So those will be the two pieces that we're going to start trying to work on.

Having said that, I don't have any new business, unless any of the other members do. (no response)

Okay, great.

Any comments, questions? (no response)

Wonderful; we are adjourned.

(MEETING CONCLUDED)