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# *Commission Meeting*

of

## Disparity in State Procurement Study Commission

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

**DATE:** September 17, 2019  
10:00 a.m.

**MEMBERS OF COMMISSION PRESENT:**

Hester Agudosi, Esq., Chair  
Senator Ronald L. Rice, Vice Chair  
Assemblywoman Annette Chaparro  
Carol Cuadrado (for Senator Nellie Pou)  
Maurice Griffin, Esq.  
Assemblywoman Nancy F. Muñoz  
Rebecca Panitch (for Senator Chris A. Brown)  
Assemblywoman Nancy J. Pinkin  
Erin Rice (for Senator Richard J. Codey)  
Ricky Stephens (for Assemblyman Jamel C. Holley)  
Melanie Walter, Esq.



*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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## **AGENDA**

### **Disparity in Procurement Study Commission Meeting**

**Tuesday, September 17, 2019**

**10:00 a.m.**

#### **Location:**

Statehouse Annex

125 West State Street, Trenton, New Jersey

Committee Room – CR – 10, 3<sup>rd</sup> Floor, Room 358

#### **I. Call to Order – Roll Call**

#### **II. Housekeeping Matters**

#### **III. Old Business**

- Supplemental documentation to support Division of Purchase and Property (DPP) Testimony
- Formation of Disparity in Procurement Commission Sub-committees

#### **IV. New Business**

- Best Practices in Public Sector Supplier Diversity  
Gerrard P. Bushell, President and CEO, Dormitory Authority State of New York (DASNY)
- Overview of Geod Corp. v. State of New Jersey and its impact on MWBE set-asides and contracting goals.  
AAG Beth Mitchell, Division of Law, Department of Law & Public Safety

#### **V. Open Discussion/Adjournment**

#### **VI. Delegated Purchase Authority Sub-Committee Meeting**

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**HESTER AGUDOSI (Chair):** Good morning.

**SENATOR RONALD L. RICE (Vice Chair):** Good morning.

**MS. AGUDOSI:** We are going to start this session of the Disparity in State Procurement Study Commission.

My name is Hester Agudosi; I am Chair of the Commission.

And for purposes of a roll call, I will begin. And if you are present, if you can just confirm by acknowledging -- saying "aye," or some form of affirmation.

Ronald L. Rice.

**SENATOR RICE:** Here.

**MS. AGUDOSI:** I'm sorry, *Honorable* Ronald L. Rice.

Honorable Chris Brown.

**MS. PANITCH:** I'm Rebecca Panitch, here for Senator Chris Brown.

**MS. AGUDOSI:** I'm sorry?

**MS. PANITCH:** Rebecca Panitch here, for Senator Chris Brown.

**MS. AGUDOSI:** Thank you.

Honorable Annette Chaparro.

**ASSEMBLYWOMAN CHAPARRO:** Here.

**MS. AGUDOSI:** Honorable Sandra Cunningham. (no response)

Honorable Governor Richard Codey. (no response)

Maurice Griffin.

**MR. GRIFFIN:** Present.

**MS. AGUDOSI:** Honorable Jamel Holley.

MR. STEPHENS: My name is Rickey Stephens; I'm the Legislative Director for Assemblyman Holley. He couldn't be here today, as we lost somebody in the District. So he's back home tending to those matters.

MS. AGUDOSI: Thank you.

Honorable Nancy Muñoz.

ASSEMBLYWOMAN MUÑOZ: Here.

MS. AGUDOSI: Honorable Declan O'Scanlon. (no response)

Honorable Nancy Pinkin.

ASSEMBLYWOMAN PINKIN: Present.

MS. AGUDOSI: Honorable Nellie Pou. (no response)

Honorable Brittanie Timberlake. (no response)

And Melanie Walter. (no response)

SENATOR RICE: Madam Chair.

As Vice Chair, and as a Senator, and one who moved the Disparity Commission legislation, let this go in the transcript.

I've been here going on 33 years, and we had to do a disparity study before. And I am very much offended that the past government and the Attorney General didn't challenge the GEOD Corporation on the women and minority set-aside programs. We did a consent; and that's history. But this Disparity Study Commission is very important for us to show all of New Jersey and the world that there are discriminatory practices here in New Jersey, and we have to fix them.

And therefore, it's important that the legislators who were appointed to this Commission -- I know they can't make all the meetings, but I think some haven't made any. I probably won't be able to make them

all, but it's important that they be here. It's good to have staff; but we need their input. Because as soon as we wrap this up, some of the folks here I know we'll be the first to criticize what we did or how we got there.

So once again, this is Senator Ronald L. Rice putting this on the record; and hopefully we can reach out to -- the staff will reach out and just remind them that this is a statutory responsibility.

So I just had to say that, because it bothers me not to see some of the folks here, particularly black and brown people. While I know the Senator has been here, but some other folks and women -- and they are always here -- when we're impacted the most by what GEOD did and what the consent decree says. And I know everybody has a copy of the consent decree.

So hopefully we can pick that up, because the legislation requires to report back at a specific time as to how we got to where we are. And we're in no place, in my estimation, near where we should be in this process, in terms of identifying that there are truly discriminatory practices. We're in preliminary stuff right now.

So Madam Chair, I needed to say that; this way it's not coming from the Chair, it's coming from Senator Ronald Rice, Chairman of the New Jersey Legislative Black Caucus and Vice Chair of this Commission, and a Senator for 33 years, okay? Now, if nobody likes that, I apologize for you not liking it; but I'm not going to apologize for saying it, okay?

MS. AGUDOSI: Thank you, Senator Rice.

For the record, my office, through my assistant, Mary Filipowicz, reaches out to all of the members on the Commission to ensure that they receive the notice, and also to determine whether or not they will

be able to participate for the meetings, in advance, so that I would have an understanding as to whether or not we have a quorum. So it is our practice to ensure that we send out communications in advance of all of our meetings, and that we reach out to the offices specifically.

And follow-up to that, I would just like to read from the enabling legislation, that, "There is established the Disparity in State Procurement Study Commission. The purpose of the 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 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."

Now I'd like to direct your attention to the agenda for today.

As it relates to housekeeping matters -- a couple of things.

I previously sent out to all of the Commission members the meeting dates for the balance of this year, just for your reference. The next meeting is Tuesday, October 29, at 10 a.m., in this room; followed by Tuesday, December 3, 2019, 10:00 a.m., in this room.

I would like to schedule the remaining meetings that this Commission shall have, and that would be in January and February. As Senator Rice had indicated, we have a definite term on which we are to act,

and that's one year from the time of our first meeting. Our first meeting was in February of this year, so that would make our last meeting February of 2020.

So I'll be reaching out to you again to just try to facilitate those meeting dates. I would say, in advance, that we may most likely have more than one meeting in February, in light of the fact that we need to comprise and compose our findings and our recommendations.

MR. GRIFFIN: Hester, I think, if necessary, we could probably also have two in January.

MS. AGUDOSI: Agreed; thank you.

In addition, I'd like to bring to your attention that there was information that was requested by Senator Pou, during our last meeting, from the Department of Treasury Purchase and Property. That information is available on that credenza (indicates) on the left; as well as there is information regarding the Delegated Purchasing Authority, which is something that is marked under our Old Business and a matter that we had previously discussed. And I would like for us to separately break into a Commission meeting regarding that; a subcommittee meeting.

I had asked whether or not anyone was interested in serving on the subcommittee. I didn't have a whole lot of hands being raised at that time, to the extent that no one is, kind of, willing to voluntarily be a part of that subcommittee. I will just take executive privilege and appoint some members to assist.

SENATOR RICE: Well, Madam Chair, as I'd indicated before, I will serve-- Maybe you didn't make the observation, but I will serve on it.

MS. AGUDOSI: Thank you, Senator Rice.



So just to be clear. This is a subcommittee. One of the things that we talked about at our prior meetings is that the State has a delegated purchasing authority threshold of \$40,000. We previously had testimony from Michael Garner of the Metropolitan Transit Authority who talked about best practices there. And one of the things that they were able to do - - which they found made a big difference in terms of impacting minority- and women-owned businesses -- was increasing their delegated purchasing authority to, in the instance of Metropolitan Transit Authority, up to \$1 million.

The significance of that is this. For goods and services in the State of New Jersey, anything \$40,000 or over has to be sent out to public bid. Our Commission member Maurice Griffin shared some information about that process. But essentially, that means that it goes out through his shop; there are a lot of requirements that have to be met. And oftentimes, those contracts, in terms of the people responding to them, can be somewhat daunting. We had representatives from some of the different State Chambers -- I should say ethnic Chambers -- who also previously came in and testified.

Commission member Griffin indicated that that threshold is something that is up for -- to be revisited -- and you can correct me if I'm wrong -- in July of 2020. Is that correct?

MR. GRIFFIN: Correct.

MS. AGUDOSI: And so we now have an opportunity to make a recommendation or adjustment of that amount.

The reason why that is significant is that anything below the threshold does not require going out to public bid. It simply requires a

solicitation of quotes, three or more. And that in and of itself can open up a myriad of opportunities to these businesses -- minority-owned, women-owned, veteran-owned, and small businesses -- because now they're not competing with the world; but we're able to reach out now to them directly by solicitation of these quotes.

So as a result of that, and understanding the significance and importance of that, one of the things that I want us to do is to have a subcommittee so that we can look more closely into the Delegated Purchasing Authority that currently exists, and make recommendations from this Commission as to what we believe that threshold change should be.

Any questions?

Yes.

ASSEMBLYWOMAN PINKIN: I'm happy to serve on that, if you would like.

MS. AGUDOSI: Thank you very much.

So in addition to Assemblywoman Pinkin and State Senator Rice, I'm going to ask if Commission member Maurice Griffin be a part of that, as well as the Commission member who just walked in.

I'm sorry; can you just--

Could you just state your presence for the record?

MS. RICE: Yes; Sorry about that.

I'm Erin Rice, Chief of Staff to Senator Codey.

MS. AGUDOSI: Thank you.

MR. GRIFFIN: So Hester, I think -- I didn't say anything, because I think at the end of the last meeting you indicated that you were appointing both myself and the Director of Local Government Services--

MS. AGUDOSI: Yes.

MR. GRIFFIN: --to the Committee.

ASSEMBLYWOMAN CHAPARRO: Do you need anybody else, or you're good? Because I'll volunteer if you want me to.

MS. AGUDOSI: I'm more than happy to--

Bear in mind that there may be some other subcommittees that may need to be developed.

ASSEMBLYWOMAN CHAPARRO: Okay.

MS. AGUDOSI: So we have four now; so I think we should be fine.

ASSEMBLYWOMAN CHAPARRO: Okay.

MS. AGUDOSI: Thank you.

The other thing that I want to just say for point of--

SENATOR RICE: Excuse me; question, Madam Chair.

Do you have someone taking notes for you, besides the transcription?

MS. AGUDOSI: No, I don't.

SENATOR RICE: Okay.

ASSEMBLYWOMAN PINKIN: It's being transcribed.

SENATOR RICE: Yes, I understand that; but the transcriptions don't come out, all the time, the way they should. I have witnessed that, because I speak with these defective types of wording, if you will.

But just keep in mind that the legislation is set up that any assistance you need from the Administration, OLS, or anyone else -- this Commission has the authority to get that. So you may want to consider having a staff person, or someone, come with you to take some written notes as well, okay?

MS. AGUDOSI: Thank you very much.

Now, I'd like to, by point of clarification -- our first speaker, who is Gerrard Bushell, who is with the state of New York -- the Dormitory Authority of the State of New York -- will be calling in at 10:30. It's 10:22 now, so I want to just give you a little background as to Dr. Bushell and why I reached out to him to provide some insights to this Commission.

I provided to the members a copy that states, *Advancing One DASNY and Strengthening our Partnerships; an Overview of Accomplishments*. It just so happened that I received this from Dr. Bushell yesterday, and his last day at DASNY will be tomorrow. So we are actually very fortunate to have the opportunity to have him provide remarks and make himself available to answer any questions about best practices that were established under his tenure there at DASNY, four-and-a-half years ago, as the CEO.

One of the things that I would just like to highlight for purposes of a queue up, so to speak, to his presentation is, if you turn to page two, where it states *Diversity and Inclusion*. I will just, for the record, highlight the activities undertaken under his leadership.

"Fostering diversity and inclusion both inside and outside DASNY is central to our mission. We recognize that diversity is one of New York's and DASNY's greatest assets. To that end, we have undertaken a number of initiatives to enhance diversity and inclusion at DASNY and

across the state. We integrated our Procurement Unit and Opportunity Programs Group, to ensure diversity and inclusion is a centerpiece of our contracting process. We established a Public Finance Diversity Fellowship to promote diversity within the finance industry. We empaneled many small businesses, minority- or women-owned business enterprises, and service disabled, veteran-owned businesses to provide professional services built upon our Surety Bond Training program to expand capacity; and partnered with minority and majority underwriters and bond counsels on numerous financings. Earlier this year, we won passage of a bill establishing a pilot program to create targeted, competitive procurement opportunities for small businesses and MWBEs.”

It is noteworthy that under Dr. Bushell’s leadership the Dormitory Authority of the State of New York -- and I will he’ll ask him and have him really set the foundation for the work that they do, which is very broad -- but one of the things that I think is notable for us is that, in New York state, under Governor Cuomo, he has set goals for all of the state departments and agencies, and they have increased the goals, up to this year, of 30 percent. And as Dr. Bushell leaves DASNY, DASNY has exceeded that 30 percent contracting goal with minority- and women-owned businesses.

And what’s particularly significant about that is that the work that DASNY is involved in is not only on goods and services on the construction end -- because they do and are responsible for the construction of large-scale construction projects, and that’s listed in this two-page handout that I’ve provided -- but they also are involved in the capital financing and underwriting for these projects. So when we had Mr. Graves,

who came in at our last meeting to talk about professional services and using these diverse asset managers, and bond counsels, and insurance agents, and bonding and surety, these are all under the scope and umbrella of DASNY's reach. So that 30 percent actually penetrated in all of the areas that we would be looking at to penetrate here in the State of New Jersey. And that was one of the reasons why I felt that having Dr. Bushell share his knowledge, insight, and actually strategic leadership for bringing DASNY to that point, would be of benefit and value.

So having said that, unless there are any questions, what I'm going to do is I'm going to at least try to dial him in now.

And subsequent to his remarks, we will have Beth Mitchell from the Attorney General's Office.

Again, Senator Rice had talked about GEOD, and the GEOD case, and how that impacts disparity in procurement in the state. Ms. Mitchell was involved in that litigation. She is the lead person in the Attorney General's Office who all of us actually reach out to as it relates to guidance, advice, and historical understanding of what can be done as it relates to contracting. So she is being called here to be able to not only share historical context, but also to provide some guidance, through her experience as an Assistant Attorney General in the Department of Law and Public Safety, as to some of the things that we can or may be able to do.

So that being said, if you will give me a moment I will queue up the call for Dr. Bushell.

Good morning; this is Hester Agudosi. I serve as the Chair of the New Jersey State Disparity in Procurement Study Commission.

**G E R R A R D P. B U S H E L L, Ph.D.:** Good morning.

MS. AGUDOSI: I have you on speakerphone with the members of the Commission, many of whom are our representative leaders in State government, as part of our Assembly as well as our state Senate.

And we also have present two of our representatives in State government overseeing Treasury's Department of Purchase and Property, as well as our Division of Community Affairs that oversees our Local Government Services.

May I ask who is on the line?

DR. BUSHELL: So good morning, Hester, good morning members, and certainly partners in our metropolitan area of New Jersey to New York. We have a lot of conversation. So thank you.

I'm Gerrard Bushell, and I'm President and CEO of the Dormitory Authority.

And Mike, do you want to introduce yourself?

**M I C H A E L M. C L A Y:** Michael Clay, Senior Director, Procurement Opportunity Programs at DASNY.

MS. AGUDOSI: Good morning, Gerrard.

Let me first thank you again -- and Michael, thank you for making yourself available to participate with us at this meeting today. And let me personally extend my congratulations to you, Gerrard, as you move on to greater and higher heights.

I shared with the Commission members the overview of your accomplishments under your four-and-a-half-year tenure at DASNY. And I thought it would be appropriate -- although I know you, and I'm a fan of all that you have done and you've been doing in this arena -- it would be wonderful if you could, by way of context, just give the Commission

members an overview of DASNY, what DASNY is, what DASNY does. And then just take us through what you did, in terms of your strategic plan and execution to address greater engagement of minority-, women-, and veteran-owned businesses.

DR. BUSHELL: Okay.

Well, thank you very much. And it really is a pleasure and certainly an honor to partner with you, and really identify ways that we can do more in terms of leveraging excellence and leveraging diversity and inclusion.

And so I always use those concepts in tandem to help people understand that we are foundationally, fundamentally breaking down barriers and creating opportunities. So we want access to the broadest talent pool.

And so we start with that, because the Dormitory Authority of the State of New York is a rare institution; it is a public benefit corporation with a very huge business enterprise. We're unique in that we do both financing and construction. We're in the infrastructure business; we provide infrastructure solutions. Our role is to support and grow the state's social infrastructure. We finance, design, develop, and construct the most important projects for public and private health care and higher education institutions.

So we have both public and private clients. Our public client would be the Division of Budget, New York state. So we execute on behalf of New York state a AA+ rated credit personal income tax, and the sales tax. Those are two very critical credit -- stellar credits, I might add. And that is a huge credit for New York state, in terms of doing our



infrastructure; as well as creating opportunities across the state. So that's first.

The second category of clients would be our private clients. Our private clients are our higher education, healthcare institutions. So we do work for Colombia University, NYU, Siena College, Mount Sinai -- you name it -- every private hospital, every private university or college across the state. We just recently completed a critical financing for Memorial Sloan-Kettering.

When we think about our public clients, our public clients are clients that we both generally finance and build for. Understanding that the genesis of the Authority started with the focus on the part of Governor Nelson Rockefeller in the 1950s. He wakes up, he looks at New York state, and he compares us to the states of Ohio, Michigan, and the state of California. And we do not have -- right? -- a very large and broad state educational, state higher education public system.

And so the Dormitory Authority was created, envisioned to build the social infrastructure that would integrate the State University of New York. So that is our largest and most prolific public relationship. So we build, we finance for them. We do what we call *dormitories*, or what we now call *residence halls*.

Our second-largest public client would be the City University of New York, which has 26 campuses across New York City. So those are two very big and important public higher education clients.

We also do work for the health and hospital systems in New York. There are very few public healthcare systems; but I think the two critical segments that we support across this state in the space of social

infrastructure are public and private higher education and healthcare institutions.

Our mandate is that New York state must, in fact, always be in a position to win the opportunity to capture the best talent, the best minds, and also create opportunities to educate the least of us; and create opportunities to ensure that our health care system is competitive, it is affordable, it is innovative. So our mandate is always to support New York state's higher education and healthcare institutions; and we have to be fast, we have to be efficient, and we have to drive impact. And with impact, that is the mandate in terms of diversity and inclusion. So that is something that we own as well.

I will tell you equity inclusion is an essential component of our mission. And it is essential to maintaining the stature, attractiveness, and competitiveness of our city and state. So first, it's important to note that Governor Cuomo has set an important benchmark for all state agencies and authorities, in New York state, with a 30 percent MWBE participation rate on all state contracts. So as the President and CEO of DASNY, I am a member of the Governor's MWBE Advisory Council, where our focus is to discuss building capacity and cultivate growth.

It's also important to note that, most recently, DASNY -- working very closely with MTA, the Port Authority, as well as other state and local entities -- helped with the reauthorization and extension of Article 15A, which supports the participation of MWBE in state contracts.

So how do we do it?

We have always been a leader in that space. And so Michael, who is the co-head of our Procurement and Opportunity Programs Group --

and that's a very important concept that I will get back to a little later. DASNY, since its inception, has always had the seed of working around the issues of equity and inclusion, long before Article 15A; so that's important. But under our current governor, Governor Andrew Cuomo, there has been a very aggressive implementation and extension of the goals. So when he came into the office, the goals were at 10 percent under a previous governor, Governor David Paterson; and the Governor increased that to 20 percent, and then 30 percent.

MWBE participation, certainly at DASNY, is integrated into all of our business models. So again, we do finance, design, and construction; we have a huge construction portfolio. So it's in construction, it's in finance, it's in professional services, and it's in commodities. Our procurements always make the business case. And I emphasize the business case for diversity all and all. We do not make a case that diversity is good, it makes people feel better. We ensure that the alignments are in place. You come to do business in the state of New York, it is on the front of the door. Thirty percent is, in fact, the goal. So our expectation is that you are going to drive performance faster, you are going to meet our schedules; you're also going to deliver at cost, on budget.

We have huge goals -- all right? -- in which the expectation is we want the best vendors who will participate with us; but we also want to make assurances that they will support and build out capacity. There are those who will say they don't want to do that; that's fine. We accept that. But the mandate, the bottom line, in terms of the business case for diversity, is that your business is competitive. As you drive performance,

focus on excellence, focus on the broadest talent pool across the state. That is a bedrock of our goals.

So proposers must include-- Again, we use qualifications-based selection process. MWBEs must be considered. We hold contractors accountable, such as damages for blatant non-compliance. So we're always looking for best efforts -- always looking for best efforts. And our contracts are specifically tailored for Ms, Ws, and service-disabled veterans -- SDVOBs. So everyone, as I indicated earlier, who does business with DASNY recognizes our procurements demand more than just delivering a project on time and on budget. In some respects, we like to use the term -- we have a very maniacal focus on equity and inclusion throughout our procurement process. We do not wait to the end. We hold folks accountable very early on.

So as I said, as a vendor, your business would otherwise be deemed non-competitive if you do not bring reportable metrics to each of these categories. We want reportable metrics. So again, it is best efforts -- best efforts. I'll tell you, DASNY worked with the Port Authority of the State of New York which, just last year, revised its policies to bolster MWBE participation on some projects. They, in fact, raised their contracting goals to 20 percent for MBEs and 10 percent for WBEs.

So again, the thing that I have said to Hester on a number of occasions, how do you make this work? And you make it work not just from a regulatory and legal perspective; but you make it work in a way in which -- who can drive performance? And it's very important that leadership across the state is necessary. It is essential; it is necessary to build out a team and an infrastructure of support across the entire business.

It is not satisfactory just to have a goal and objective; you need that, but you must build your organization, as well as your metrics, to support that vision.

We embed equity and inclusion into our business goals and objectives. It is fully incorporated across all of DASNY. Each of my businesses and business leaders are accountable for pushing and promoting more ways we can build out capacity across our businesses. In other words, we're not here to check boxes, all right? Our focus is, again, objective value creation and execution; not to check boxes. Checking boxes is really going to be counterproductive.

Our internal communications also is very critical in supporting our day-to-day business practices that drive for excellence, that drive for efficiency, that drive for stronger risk management and impact. And when we say *impact*, we're also talking about diversity and inclusion.

So let me give you a couple of ways that we've done it, and I'll let Michael add some points.

One of the first steps that we took -- and I've been here close to five years -- almost three-and-a-half years ago, I looked at our organization. Inside the organization we have a procurement arm which is at the center of everything that we do. So all of our procurements go through this particular organization.

And we had a group called Opportunity Programs Group that my predecessor had established; and it existed in some iterative form for many years. And that had been the DNA of our success in many respects. When I started, we would have our procurements out and our OPG team was involved. But I never felt that it was institutionalized; I felt that we

had two very separate organizations. And so what I thought was hugely important -- because I come out of a background in the world of finance, where there are no problems associated with identifying, internally, organizations that need to have greater efficiency and more impact, and saying, "Okay, you're taking two different businesses and you're realigning them. And you're going to seek to integrate all teams." That's what we did. We created a resource acquisition organization in which the Procurement and Opportunity Programs Group would move to one. I made Michael Clay, who headed up our OPG unit, Opportunity Programs Unit; and a guy named Lou Cirelli -- who just recently retired, and has been replaced by Matt Moore -- co-heads of the organization, and held them accountable for all metrics, all procurement. So it was not "OPG is responsible for" -- okay? -- "diversity and inclusion." Because I've always felt that that was-- Again, coming out of corporate America, I'd worked with enough groups and organizations where you had a stand-alone commitment to diversity and inclusion -- all right? -- and you have all of the businesses -- all right? -- in the corporation focused on their goals, focused on their methods of executing on excellence.

What I always felt the weakness, however, was that there was no synergy between both practices. We felt very strongly that we needed to have synergy. And so the head of procurement is going to be scored -- all right? -- on goals and metrics, just as he or she would be scored on their procurements. Michael will be scored on our procurements, just as he's going to be scored on our diversity and inclusion.

So you basically make sure everyone has skin in the game, and you drive that down through the entire organization. And so that was a very important mandate that we started with.

I will tell you this: We did not telegraph that; we did that here internally. Because what I learned very early on -- this is not my first, nor is this my second, sojourn in government. So I'm a person who has gone between government public service and the private sector, and I recognized that we needed to demonstrate a level of proficiency and success to show that we were driving; and we had small successes. And once we had that, then we could unveil this as a benchmark and a mandate for everyone to aspire to. And we've been doing this for three-and-a-half years successfully; and only in the last year we made a change and just eliminated the name *Resource Acquisition* and called it *Procurement and Opportunity Programs Group*.

Now, people are saying -- you know, it's a fascinating thing. People are saying it's successful, and we have Michael; we have a wait and see. There's no wait and see. We've done some incredible work behind us.

I'll give you one example.

J.P. West became the first MWBE firm to be selected as DASNY's broker of record for our commercial, general, and excess liability insurance program. We were very intentional in calling for strategic partnerships with MWBE firms, and giving MWBE firms the opportunity to bid on this project. We went to the market before the procurement; we sounded out the market. And after an exhaustive legal review, we sounded out the market and, of course, there were those who said, "You can't do it." And then there were those who said, "You know what? If that is the demand, we can partner and identify strategic relationships." In other

words, where there are pools of capital -- where there are pools of capital and you create the incentives, you will see the partnerships developing. That's real clear; that's very clear, as someone who has worked inside the private sector, worked inside government. But I felt very strongly -- if we had just attacked this from a regulatory perspective, we were not going to get the results. But if you attack this in terms of, if we have the mandate -- all right? -- and now we create the performance metrics to drive people's intentionality to say that we're going to deliver excellence, and we're also going to deliver your projects, and we are also going to meet the very important metrics that are associated with success. And success is community participation, MWBE participation.

So we went into the market, and there was those insurance brokers who said that this was doable. We did the procurement, and the procurement came out with J.P. West as the firm that won the mandate. It was an MWBE firm. It was not even a strategic partnership between an MWBE firm and a global firm, because we had some of those. They won this outright -- a very strong opportunity -- and they have been managing our business for the last two to three years. It's very exciting.

You know, we have a lot of those; but I think I want to let Michael go into the detail more, because he's closer to this.

But look, we don't profess to have the last word on this. But we do profess to say that we've been doing this a long time; we've made our fair share of mistakes. We know the pitfalls; but we also know that if you're going to be successful, you have to own what I call, metaphorically, *real estate*. You have to do this in the agencies and the organizations. So yes, you can get a lot of push from the governor's office, you can get a lot of



push from the legislature. So that is a benchmark; that's your first principle. But if your agencies and your agency heads are not executing with the right metrics, it doesn't matter; it does not matter.

And so I'll turn it over to Mike to get into the detail.

MR. CLAY: Good morning, Hester, and the Commission.

Thank you for allowing us to present the business case for diversity and inclusion at DASNY.

One of the things I think is important-- And as I understand it, Hester you're embarking on trying to build out a diversity inclusion program in New Jersey; and I applaud your efforts. One of the things that's important, as Gerrard has mentioned, and I call it *infrastructure*: the who, what, where, and how does diversity work. And as Gerrard was just alluding to, in your agencies and authorities that are responsible for executing on this, how will they go about doing it?

And one of the things with Procurement and OPG together, and me as the co-leader -- all procurements are reviewed, as they normally would be. However, I'm sitting at the table or staff is sitting at the table with the business units, discussing the procurements; and not waiting to have to do the who, what, and where of a procurement discussed. And then it makes a stop on the last door out of the agency for advertisement, at the Diversity Office, to get goals. No, we talk about this from the onset -- how the procurement is structured; how can it be better structured to include the metrics of succeeding, but also of diversity and inclusion. I think that's critical.

And as I had mentioned to you, the infrastructure portion-- For example, no contract can be awarded -- okay? -- unless it passes through

Procurement OPG for goal assignment. No contract can be closed out unless it makes that same trek through Procurement OPG. And that's critical; because those are your points of inflection, where you can ensure that MWBE and SDVOB participation is actually occurring on every single contract.

And I think that's critical, because that's how you make sure that the rubber hits the road. There needs to be, also, obviously, boots on the ground to ensure that MWBE is actually occurring on every contract. We trained our 250-plus staff -- construction staff out in the field to understand that not only building the project on time and within budget, and managing our contractors and design professionals -- that diversity inclusion is also a part of that metrics that Gerrard had mentioned. So it's not, "Let's build the building," and then, "Oh, there's MWBE?" No, it's all part of it from day one; part of the duty of the DASNY professional to manage that aspect of the project in all of our projects.

And as Gerrard had indicated, we've been creative. As he mentioned, at J.P. West -- that was the first MWBE insurance broker in DASNY's history to lead this procurement. Prior, we had had that same insurance with a non-minority broker for about 15 to 20 years. And we just thought outside the box where we placed an MWBE in the lead, using a discretionary procurement vehicle, and had them partner with large industry experts. And the simple reason was, they had never been in a position -- the MWBEs -- to lead a procurement such as this; so therefore, they would never be selected. So that was critical.

One of the things we did in another area is the legal RFP, where our Counsel's Office utilizes some outside counsel to assist with

carrying out legal mandates within DASNY. And so one of the things that we did, creatively, was identify emerging law firms -- which were MWBE, SDVOB firms -- and we essentially put them as part of the RFP process -- that whoever was going to be bidding on our work in the various practices would need to align themselves with MWBE smaller firms. So as they embarked on, once selected, carrying out work assignments, they would have to partner with an emerging MWBE law firm. And if they did not, then the Counsel's Office would partner those firms together.

We've not had to do that very often; and we've had tremendous success in this area where we were told, previously, that MWBE participation in the legal arena was very difficult to do. DASNY found a way, thinking outside the box, to do that. And we're getting ready, probably in the next year, to embark on a re-advertisement of those law firms, and we will be following a similar script.

So those items are some of the things that we do. As Gerrard mentioned, there is accountability that we hold our contractors, our consultants, commodities and services vendors to, with contract language that says if they do not make the best efforts, then they're not going to be able to continue to work for DASNY. We do not select firms that do not offer the diversity inclusion, in addition to following everything else that's required in the RFP.

So I think that's what I mean when I allude to *infrastructure*; that's what I mean by how the Procurement and the OPG group are one, not separate entities. And I think that's paid huge dividends for our business divisions in understanding -- not just dusting off an RFP that's sitting on the shelf and now it's time to re-advertise it. We look at it, we

massage it, we break it apart, if necessary; and then re-advertise it to make it a more effective and efficient procurement vehicle for the business groups within DASNY.

DR. BUSHELL: I would also add that-- So we've started with a framework of MWBE and SDVOB participation, okay? We talk-- That's very critical. We start at a broader level, in terms of diversity and inclusion. And why do I say *diversity and inclusion*, and not just MWBE participation or SDVOB? I say that because the other aspect that is hugely important, that you must mind -- right? -- if you build the infrastructure and you do it the right way, you will get the participation. There is no question about it. If you create the incentives, you have the pools of capital, I can assure you businesses that want to work with you, that have historically done business with the State, will reposition themselves and meet those mandates and metrics; no question.

A bigger issue that you also have to grapple with is, you cannot let your large, national, and global institutions that work with your State off the hook, all right? Because what you will run into is, you will get your MWBE participation with your smaller businesses, but you are not holding the larger businesses accountable for their vendor participation -- i.e., their strategic partnerships -- as well as qualifications associated with having a diverse workforce.

We've seen that, we've tackled that. We have been very aggressive. So folks know that you do not do business with us and come in here and say, "Listen, there's no diversity. We can't do diversity." There are many ways to do diversity; and what we've said to folks, in particular, is that, "You can come in here, and you can tell me that you have done a crap

job when it relates to diversity and inclusion. But you have to tell me -- okay? -- that what we are doing today is seeding for the future. So I cannot tell you, equivocally or unequivocally, that I have a diverse workforce that will source your relationship and your account. But I can tell you, unequivocally, that we are partnering with local institutions. We are in the SUNY and CUNY system, identifying diverse candidates to be in our applicant pool. And we're going to have a class of five people over the next six months; and in the next three or five years we can assure you a commitment to moving people and partnering with people across this organization."

That is a very different conversation than those folks who come in and say, "Well, we don't have diversity, we can't do diversity." That's one. Or the other ones who say, "You folks -- that's all you talk about is diversity." No, we don't. We talk about excellence; we talk about excellence. And you have to be able to deliver, unequivocally, when you work with DASNY. Because we're doing design-build, we're doing P3s. We understand that it's not just who you have inside your organization, it's who you partner with, it's the value proposition that you are driving in terms of any engagement, service, or commodity that you're selling.

So we hold the large institutions accountable; we hold the small institutions accountable. I have had-- When we did this broker RFP, we had a number of the national and global brokers come in here and say, "Well, are you only working with MWBEs?" And I said to them, as did Michael, and as did our team, "Well, I guess you didn't read the RFP." Because we went out and we sourced the market to understand if there was capacity -- capacity for strategic partnerships. We didn't say how the

strategic partnership should look, what are the structures. But we wanted strategic partnerships, and we wanted Ms and Ws to participate as well.

And a number of counterparties went in -- and they were big -- and they created strategic partnerships. And that has enabled their business -- whether or not they won or not; they didn't win for New York -- but that enabled their business to compete in other municipalities and states. And there were those who felt that they just weren't going to do that.

And so what we've said is, "Look, that's how we do business here. And so you've got to have the qualifications that are associated with equity and inclusion; that's hugely important. You have to have the metrics, and you have to hold people accountable. Because if you don't--" And people don't respond.

And look, we understand that. There are some businesses that are just not going to change; and if they don't change, then they're not going to work with us. And they have other partners that they can work with, and so we wish them well. But what we're saying is, you know, the state, and its capital, its resources, its human capital, and its intellectual capital -- all right? -- are important enough that we are seeking to create competitive outcomes for the broadest talent pool across New York. And we have been doing this for a very long period of time; but the success is very different with the mandate under our existing governor, Governor Cuomo, because we're seeing significant change.

Look, there are always growing pains with this; but I think it's hugely important that the agencies have the infrastructure in place. So that's -- I mean, that's the basis of what we do and who we are.

And I'll leave it at that.

MS. AGUDOSI: Thank you so much, Gerrard and Michael, for sharing that.

I'm sure that some of the Commission members have some questions that they would like to ask to get just a little more clarity as we try to craft and develop what it is that we plan to do here in New Jersey.

And just in the interest of time, I note in the highlight that you had distributed in your e-mail, Gerrard -- that you had mentioned particular programs that were lifted up under diversity and inclusion. And what I'm going to seek to do afterwards is just get a little more information on each of those programs, that I'll be able to bring back to the members of the Commission.

But for purposes of our time now, I will open up the floor to any other Commission members who would like to either comment or ask a question.

SENATOR RICE: How are you?

DR. BUSHELL: How are you doing?

SENATOR RICE: I'm fine. And let me commend you and your team on the work you have done. I've been in the Legislature for 33 years over here, so I've kind of watched New York, and we try to take some leads. But we had bad governors (laughter) in the process -- particularly since the GEOD Corporation decision.

But let me ask you a question -- a couple of questions.

What role, if any, has the legislature played in getting you to where you are? And the back-up question to that -- has there been any litigation, good or bad, in the process?

DR. BUSHELL: What's that last -- the last question?

SENATOR RICE: Has there been any litigation against what you're trying to do--

DR. BUSHELL: Okay.

SENATOR RICE: --whether it's a bad or good outcome?

MR. CLAY: The legislature plays a huge, huge role because they established, legislatively, executive law Article 15A and 17B, which legislated MWBE participation and SDVOB service-disabled, veteran-owned business participation. So that's the benchmark. So that includes establishing the infrastructure to certify firms, as Ms and WBEs, and, respectively, SDVOBs; establishing the goals. And Empire State Development Corporation in New York state has the fiduciary responsibility of managing the MWBE program within the state. And they provide guidance to the 96 executive agencies and authorities across the state on this subject matter.

So, in fact, this past legislative session they extended the executive law Article 15A another five years, and that was as a result of the disparity study that was conducted.

And so along with that, there were some other enhancements, such as discretionary procurements; the level was increased to \$500,000; they increased the cap-- There is a cap, in terms of how much a minority- or woman-owned business can earn. That was increased to \$15 million to stay within the program. They also passed on some mandates for Empire State Development regarding how long it should take to get certified; things like that. Every five years the legislature, along -- under the leadership of Governor Cuomo, has managed this particular piece to ensure that the



program is up-to-date and, more importantly, there's a legislative mandate for MWBE and SDVOB participation in New York state.

DR. BUSHELL: I will just add, as I said earlier, the first principle is one that is based on the importance of cooperation -- i.e., collaboration between the executive and the legislature, right?

SENATOR RICE: Yes.

DR. BUSHELL: I mean, this is-- We're talking about a law, and that is hugely important. So we have to have that-- So the legislature is critical to that.

The second principle is-- Okay, now that we have the law or the executive order, then how do we execute? And that is hugely important. And the executive operation must build the infrastructure, and execute on it. And if you do not build the infrastructure, you can have all of the rules and regulations, but you will fall short. So that is a very important tandem that has to exist.

Now, I always encourage -- and we've talked to a number of states across the U.S., and I say, "Look, it takes a long time to get where we are in New York state." Some states can move a lot faster, some states cannot. But what I would recommend is, certainly in terms of that partnership between the legislature and the executive operation -- that you have to do it. That's the bedrock of everything; that's going to be the DNA of your accomplishment.

But I would also then say, if you can't scale this out very aggressively, then I would say identify three to five key agencies and really build out from there. And you can build out your metrics, you can build

out your vision, you can build out how you are going to drive this, and use those best practices and bring them to your other agencies.

Because what happens is, you get a lot of unevenness when you just say, "Okay, here's the mandate. This is what the legislature and the executive have put together," and you don't put resources and infrastructure in place. It just is completely uneven. So you have to test this out, because you don't want this to fail; and, of course, you will be challenged. And so we have had challenges; we have beaten back those challenges. But again, there are always legal obstacles to us. We had hoped, last year, that we would have been in the position to extend -- or the year before, that we would have been in the position to extend longer than one year. Last year, we were able to extend for five years. We'll certainly anticipate that there are going to be challenges to us on a go-forward basis. But what's important, again, is making sure that you are doing a disparity analysis and always evaluating capacity; capacity. And once you do that, build out the infrastructure that will support that.

SENATOR RICE: So one other question.

In your process, did you document an organization chart of your built-out infrastructure process that we could -- you could share with us?

And actually, one other question. How important is the Legislative Black, and Latino, and Women's Caucuses' legislators to this process, and being active and vocal?

DR. BUSHELL: I mean, I would just say -- look, this is -- with all due respect, this is New York state, and so they're very active and very visible. We've got a very rich and deeply textured history of folks

collaborating and working -- certainly across the legislature, inside the caucus. So there are leaders in the assembly as well as the senate. Assembly member Rodneyse Bichotte is someone who has worked very closely with the Governor's Office on the extension of Article 15A. State Senator James Sanders, who's in Queens, is also someone who has been really a very important advocate here. There are many; I mean, I feel badly, in terms of just identifying those two; but those two have been very visible. But it's very deep.

And the governor-- You know, Governor Andrew Cuomo has been engaged and involved in New York state politics since the late 1970s, and has cultivated many of these relationships. So his success in this space is also attributed to the relationships and the collaboration that he has with both houses, and certainly the Black and Latino Caucuses.

SENATOR RICE: Thank you.

DR. BUSHELL: You're welcome.

MS. AGUDOSI: Any other questions?

ASSEMBLYWOMAN MUÑOZ: Thank you.

You know, when you mentioned national, global firms cannot be left off the hook-- As you look forward, did you favor New York-based firms? Because that's something I'm interested in, because our state is obviously much smaller than the state of New York. But was that your focus -- to make sure that the firms were based in New York and not from, like, a foreign firm or a firm from another state? So you gave the benefit to people within your state?

DR. BUSHELL: No, we did not do that.

Look, we recognize and want New York state to be open and competitive to ideas and different talent pools. The mandate -- the mandate and the method is qualifications. And so if you're a firm that is doing business in the US of A, and certainly doing business in the state of New York, we want the assurance and the reality that you are focused on qualifications in a very broad talent pool. And we, unfortunately, have had the experience to work with a large number of firms that did not have a commitment to diversity, that did not focus on a broad talent pool. And they were domiciled in New York state, and they were domiciled in New Jersey, or Connecticut, or in California. And when those procurements were ready, we signaled to the market a procurement that would reflect the appropriate qualifications: breadth, talent, diversity.

So we don't say, "Buy New York," right? I mean, we have-- And financial services is-- So most of the big banks are based here, with the exception-- Okay, so you have the Carolina banks, right? So you have Wells Fargo, you have Bank of America. Those are banks that are not New York state-based. They have charters in New York, but those are from Carolina. There is U.S. Bank, which comes from the state of California; we do work with them. There's UBS; UBS is a Swiss bank. We hold them all to the same metrics. We have done work with, on the construction side -- that I know you've worked with -- Skanska. Skanska, in terms of their performance -- we dealt with them; we felt that they did not have the diversity that we wanted on our projects. We pushed them, right? We pushed them here.

So, you know, I think you put-- And look, every state is different. But I think you put yourself at a disadvantage if you just limit it

to your state. Because you know, you're going to get a lot of ideas that are outside of your state. But I think if your mission and mandate is excellence, and diversity, and inclusion, you hold them accountable; you hold them accountable in terms of sourcing a talent pool of people, particularly if they want to do business in your state.

ASSEMBLYWOMAN MUÑOZ: Thank you.

MS. AGUDOSI: Any other questions?

ASSEMBLYWOMAN CHAPARRO: If I can just make a comment.

I just want to make a comment.

Thank you so much for all the information that you provided to us.

I just think that you drove it right -- you drilled it right in my brain, which is excellence. And, of course, if we had the right infrastructure and what we expect, I think that when we talk about diversity, and people of color, women businesses -- that we need to make sure that they're included. We know they're qualified; we just want to, maybe, do that -- just keep saying excellence, and just keep driving at that, and the rest will fall into place. Because we want to make sure that whatever we do is done right; but that we want the best of the best, and we know they're out there.

So I really thank you for all this information, because I think it kind of brings us in on what we need to do here. And this is very, very helpful.

So thank you very much.

DR. BUSHELL: Well, thank you; you're welcome.

Look, I firmly believe-- I've occupied three spaces over time. Michael's older than I am, so he has occupied five. (laughter)

But I was certainly around in New York City in the 1980s, when we did the first MWBE program in the City; and that was under David Dinkins. It was a very successful program. That was defeated with the Croson decision. And then subsequent to that, the state -- the great state of New York fell after Governor Mario Cuomo lost. He had been in office for 12 years. Affirmative action programs were in disarray; no conviction, no focus, nothing -- absolutely nothing.

Senator David Paterson becomes the first African American to be governor of New York state. He immediately recognizes that we have done next to nothing, and there was an opportunity to really rethink how we do things. And so he put the program in place at 10 percent.

Governor Cuomo comes in after Governor Paterson and Governor Spitzer, and says, "Okay, we're doing 10 percent, but we can do better. We can do better because we recognize, when we do the disparity study, there's a lot of capacity out there." And quite candidly -- quite candidly we are held accountable by this governor to ensure that we have -- we are consistently doing procurements.

When I got here, and people told me that we had a procurement, and an incumbent that we had been working with for 12 years, and we had not done a procurement -- that was just not acceptable. And so our best practice is that, at some date certain, you should have procurements in place. And it's all contingent on the type of service or program you have.

So in the case of our legal panel, we do our procurements every three years, with a one-year extension. In the case of our investment banks -- the same thing. In the case of our auditors, we do that four-plus-one. In the case of our payments processing system-- Again, remember, you know, the more complicated the process, the greater the start-up costs are. So you don't want to consistently have to go out there, so we do the payments processing four-plus-one, with a one-year extension.

So I think best practices are, again, getting to your procurement organization; ensuring that your best people are in procurement. Because that is a failure inside most governments. We just make sure that we put people in procurement, and all they do is check a box. If you do it that way, you're going to fail; I'll tell you, very candidly, because we've had that problem. But if you begin to realign your procurement organization and say, "Procurement is the center of discovery, engagement, commitment, metrics, and vision," okay? Then the CEO or Commissioner is now accountable for that procurement organization that must leverage the talent and the franchise of each business inside that corporation. So my procurement organization has to push back on my construction organization, on my finance organization, on my public finance organization; because I need good procurement. The biggest problem that government has is our procurements are generally being -- I can't use the technical term, so I won't use it. But it starts with an S.

And so we really want people to do business with us; we really do. And the procurements have to be clear, they have to be plain-meaning, and they must reflect your goals and objectives. People need to understand that if they're going to do business with you, they're going to be scored

based on these metrics. It is unfair to them if you are saying, "My mandate, in terms of excellence, cost, schedule," but you don't score them overtly on the question of diversity and excellence. And so they're not focused on that. They come in, and there's no discussion around that.

So I think you want all of your metrics to be very transparent so that your partners can match your needs and goals. That is hugely important; you have to get the right people in your procurement organization; you have to tackle the processes; do audits to make sure that your procurements have impacts; that people want to respond. And the complexity of your businesses will determine that, right? So construction -- right? -- you're doing big construction projects. You want as many competitors to respond to your procurements. Why? Because you want better pricing. So if you write bad procurements, you're going to get fewer participants. That's it.

So what I'm saying is, you have to get this excellence in with diversity and inclusion. Most people look at them as two separate concepts. It is like a quarter; it is two sides of the same coin, and people have to understand that.

MS. AGUDOSI: Thank you, Gerrard and Michael.

I just have one last question -- and we have Beth Mitchell from our -- who is an Assistant Attorney General from the Department of Law and Public Safety, who will be speaking. I'm happy she's here to hear at least some portions of what you're sharing with us.

And I just want to piggyback on just the legal piece again.

Unlike New York state, New Jersey has not conducted a disparity study. And you may or may not know the answer to this, but I'm



just going to put this out. Because it seems to me, to be able to be effective in establishing some goals and creating this as part of your scoring, your rating, that you have to stand on some data and some facts to be able to support it legally.

Has the disparity studies that New York state conducted -- has that been implemented into your action plan of how you determine-- Because you mentioned capacity being important; and that's one of the things that I would agree, right? We don't want to set goals that are not realistic, because the capacity and the market out here just does not provide that.

So I'm interested if you can just share with us, as it relates to that legal piece, how a disparity study has impacted, to the extent that it has at all, on how you're able to execute.

MR. CLAY: The disparity study is the linchpin for the MWBE program in New York state and across the country. Because not only, as Gerrard had mentioned, capacity; but it's availability. So if you're going to establish a goal and there's only -- and this may not be a reflective example - - only have five firms available, and you want a 20 percent, 30 percent goal, then, you know, you're going to get challenges as a result of that.

But if you do a disparity study it lays the framework for you to establish a program. Because based on the availability of firms and, number one, that they are available for contracting purposes -- but also that there is a disparity. From a legal predicate perspective, you must show that out of -- in this case, New Jersey's budget -- that there are available firms to work on opportunity procurements from the State of New Jersey; and that they are

getting a disproportionate amount of dollars from that budget as a result of not having these types of capacity-building programs. And that's critical.

So once you're able to establish a disparity study, that then shows that there is availability. And then as part of that disparity study, the firm performing the study is going to evaluate the dollars -- who are getting prime dollars -- those are first contracts going out from the agencies -- and what about subcontractors? And there's probably going to be a disparity -- that minority and certain group members are not getting their "fair share," and that's what builds the basis for you to establish an MWBE program, where the goals are established to allow these firms to get an opportunity to participate, in this case, in New Jersey's budget.

And then from there, you build out your program. And then if someone wants to question, then the legal predicate has been established. There was a disparity study; it showed availability. And then, also, as part of that study, it showed that these MWBE firms were not receiving their fair share; and as a result, these *remedial programs* -- as they are called -- would be established to allow these particular businesses to participate in New Jersey's budget.

And I think from that perspective, that's where -- you're on very firm ground. That has been the practice of New York state. And I can tell you that in looking at Maryland and other states -- all of them have these studies -- disparity studies first, and build their programs after that.

MS. AGUDOSI: Well, gentlemen, I want to again, on behalf of the members of the Commission, thank you so much for devoting this time to share with us your insights, your best practices, as well as just the

recommendations that you think would be helpful as New Jersey moves forward in addressing this issue.

Thank you again, Gerrard; I'm wishing you all the best in the very next steps of your professional career.

DR. BUSHELL: Thank you.

MS. AGUDOSI: And I will be sure to reach out to both of you personally afterwards to just thank you again.

DR. BUSHELL: Well, I would say thank you; and certainly this is perhaps the very last opportunity that I will be talking about equity and inclusion in my current capacity. And it really has been an honor and a tribute to my team, members of the legislature, the governor's office that we have worked collectively together.

And it's certainly a privilege to, kind of, close out my career in government, and talk to you as the State of New Jersey begins to launch its program. I think you have an incredible opportunity, an incredible horizon. And yes, there are hurdles; but there are huge opportunities.

And I will say, Hester, you've not seen the last of me, because this is going to be something that I will be working on in the private sector. And so we will be talking to the State of New Jersey. And, you know, if you want to avail any insights and perspectives, I'll be in a position to at least give you a perspective on that.

But this is a huge mandate, not just for New Jersey, New York state, and the 48 other states; this is a huge mandate for corporate America as well. And we have to hold corporate America accountable. Corporate America responds to a very different set of metrics, and it's a very simple set of metrics. And so when we get that, we can drive -- we can drive change.

So I look forward to working with you again, and sharing whatever insights and experiences we have. Michael will continue to be here as the co-head of our Procurement and Opportunity Programs Group. I would encourage you to build an organization like that; I really would. That is the sacred stone, in terms of getting this stuff done. Again, no magic; no magic. Do the work, put the right people in place, build the organizations. Make sure that those organizations are replicated across some discrete agencies, and push them.

So thank you.

MR. CLAY: Thank you Hester.

SENATOR RICE: Let me thank you, too.

And certainly, Hester is doing a wonderful job as our Diversity Officer as well.

Oftentimes, our Governors don't listen. I've had the experience of going through several Governors and Acting Governors.

What we did put in place I think brought about some progress. Chris Christie just cut and diminished everything, but he couldn't change the laws.

At some point of time in the future, I'm glad to hear you say you will be available. Because I'm going to try to encourage our Governor to sit personally with you and Hester. Because I think the conversation, the way you articulated today, is very clear as to what we need to be doing.

Now, I know that Hester has the ability to go back, and explain, and educate the Governor on this. But I really believe he needs to personally hear from somebody like you, who has been through this process. Because his support is going to be needed. He's always talking about social

justice, and I'm going to hold him accountable for social justice and economic justice.

And so I, once again, appreciate you, and I'm glad to know you're on standby.

Thank you very much.

DR. BUSHELL: Well, thank you.

I know your Governor fairly well; he and I are members of a group -- organization called the American Council on Germany. And he certainly comes out of Goldman Sachs; I come out of the financial services -- Citi. And at the end of the day -- and I knew your other Governor from Goldman Sachs -- at the end of the day, I think you're going to have to speak and use a language that is going to be very critical for him, and that's metrics, and those are dollars and cents. And financial people understand that very clearly. And if you use that language, and if you can construct policies around that, you're going to get your outcomes; you will get your outcomes, I kid you not.

Because that's what the marketplace responds to. And you have to push them. They're not going to just come in and say, "I'm going to give you the best service, and I'm going to meet your qualifications for diversity and inclusion." They're not going to do that. But boy, oh, boy, one person or one institution comes in and recognizes that they did something good for you, but they failed on these other areas -- I think everybody will know that. Because you will also have your disparity analysis in place, which will support what you're doing and where you're going. Keep that in mind; use the language that people understand best. Always use that language. It's like if you go into a community, you have to know

how people think, you have to know -- you have to mirror them, in many respects, so that we're having the same conversation. That's always my recommendation. And I say that as somebody who's been in finance, and I get a lot of financial people coming before me, "Yes, we can talk about social justice," but I know how social justice is articulated by financial people. Put the dollars and cents behind social justice -- okay? -- and you will find social justice. In a community, you don't have to put the dollars and cents behind social justice, because people say, "I want social justice." That's a very different conversation. Understand those conversations -- you can find the little walkways to get to people. That's important.

Listen, I'd love to keep talking to you. I'm very passionate about this. I'm damned old enough to recognize I've gone through this too many times, when we've had successes and we've had failures.

So I want you to succeed; we want to succeed. Wherever we can help you, please reach out. Hester has all my information.

MS. AGUDOSI: Gerrard, Michael, again, thank you so much.

We just appreciate your willingness to-- And you've always been collaborative. And I can assure you that the Commission will be following up with you, at a later point, as we work through how New Jersey is going to build its own infrastructure.

Thank you, again.

DR. BUSHELL: Thank you.

And I'll make sure I come to New Jersey, because I'll be in a position to come to New Jersey, okay? I'm not in the position to tell my Governor that, "Well, I'm out here in New Jersey doing--"

Listen, I'll be in a position to come to New Jersey. I would love to see you.

MS. AGUDOSI: Well, a shameless plug, but the New Jersey Connects' inaugural summit is Friday, this Friday. And I think you're free tomorrow, right? (laughter)

DR. BUSHELL: Send me something.

MS. AGUDOSI: So I'll send you that information--

DR. BUSHELL: If I can, I'll come.

MS. AGUDOSI: --and we will have a special shout-out and put you right on that plenary stage, Gerrard. I'm just saying. (laughter)

DR. BUSHELL: Okay, send me some information.

MS. AGUDOSI: Thank you.

DR. BUSHELL: Okay, thank you.

MS. AGUDOSI: Absolutely; all righty.

Thank you.

DR. BUSHELL: Goodbye.

MS. AGUDOSI: Goodbye.

Okay; I know that was a long presentation and briefing, and I thank everyone for hanging in there with us.

Beth Mitchell from the Attorney General's Office is here now. So I'm going to ask Beth to come up.

Do we need a break, or can we power on?

MR. GRIFFIN: I think we should go on.

MS. AGUDOSI: Sounds great to me.

Good morning, Beth.

BETH LEIGH MITCHELL, Esq.: Good morning, Hester. It's very nice to be here.

MS. AGUDOSI: Beth, thank you.

I previously introduced the fact that you're on our agenda. And just to give you some backdrop -- the Commission is charged with looking at disparities, to the extent that they may exist, in procurement in the State; and making some findings and recommendations.

And since we started our first meeting in February, up until now we have been calling in representatives from different diverse Chambers and professional organizations to give us, just anecdotally, what some of their experiences have been for their members as it relates to contracting with State government.

And we've also had the benefit -- and you just heard the tail end of that -- from representatives from other states, sharing with us some of their best practices on how they've been effective in having very robust supplier diversity programs.

So that being the case, I would like if you could just assist the Commission now in giving some backdrop and context to when the State initially had established its MWBE program -- how that was addressed by way of the GEOD litigation--

MS. MITCHELL: Okay.

MS. AGUDOSI: --and, kind of, where, as a result of that, where that places the State now, as it relates to being able to stand up any type of MWBE goals; and what we may need to do or to consider in order to diversify the State's contracting supply chain.

MS. MITCHELL: Okay; so thank you.



So I'm happy to give the background on the historic thing. Once we get to the point of talking about how to strategize about making the program as robust as possible and as legally defensible as possible -- which is, you know, near and dear to my heart, since it's our office, and probably I would be involved in that litigation -- that would be attorney-client privileged information. And so we would want to proceed with just the Commission at that point, so as not to jeopardize the privilege at this early stage, and have things subject to OPRA or those types of concerns.

So we'll start with the background--

MS. AGUDOSI: Thank you; I appreciate that.

MS. MITCHELL: So we'll start with the background.

And I don't have all the dates in front of me -- but in the 1980s the State enacted a statute that both registered small businesses, and then small businesses owned by a minority -- with a majority ownership by minorities. And that was -- those are minority-owned businesses; and then women-owned businesses. So small businesses that are also owned by women. New Jersey has never tracked larger organizations. So in New Jersey, a small business is 50 or less employees; federally, it's 100 or less. That's always been a little disparity in our law between the Federal. So some of the data we might get federally about small businesses in New Jersey may not be applicable within the State law context.

So those businesses began to be registered. In being registered, there was a Division of Minority Women Business Enterprises (*sic*), created by the Treasurer as part of the Treasurer's plenary responsibility to organize the work of the Department. That registration happened; and various programs and some, sort of, informal general assistance was available to

help those businesses learn State contracting procedures, how things would happen, you know? And they would connect with other organizations and hold events similar, if maybe not as large in scope, to the one you've planned for Friday.

So that has existed for a long time. And that is still true; New Jersey still registers its small businesses, women-owned businesses, and minority-owned businesses upon application. So a business has to know about it, and feel incited to go through that process of organization.

Every once in a while we get appeals from that process, the same way as can happen with any government registration, or license, or certification. And those are usually complicated -- more disputes over how the ownership is structured. Because in this day and age, very few businesses are structured very simply; and even small- to mid-sized businesses engage tax counsel and other corporate counsel to advise them on the most advantageous ways to structure their businesses. So sometimes, you know, there's a holding company and two smaller child companies, so to speak; and the parent is minority-owned, but maybe one of the children--

So those are the types of issues that arise, from time to time, as part of that appeals process.

MS. AGUDOSI: Can I just stop you for one second?

MS. MITCHELL: Yes.

MS. AGUDOSI: I am going to try not to do that.

But as it relates to the certification of minority-, women-, even veteran-owned businesses that are still in place now.

Oftentimes the question is posed, what is the value of that? And so I would ask that to you, in the State of New Jersey right now, as it relates to these businesses being certified -- what does that bring them, other than they're certified?

MS. MITCHELL: So I think it does make it easier for a business to say if they're registered with New Jersey as a small business, if they're contacted to subcontract or whatever, it's very easy for that contractor to show that they've got a genuine small business. They don't have to go through the proof process.

Other than that, I don't believe it's been a very robust program for the last several years, through the last Administration, as was previously noted. Before that I believe it was a much more robust program. And to be honest, that was the beginning of my time in this area of specialization, so I was Counsel to the Division on Small Minority and Women Businesses; veterans were later added. And I know they were running other programs; but I don't know the full scope.

So Deirdré Webster Cobb, who's the Director now -- or the whatever the head of Civil Service is called; I apologize for not knowing the title off the top of my head -- was the Director of a sister organization that was the Division of EEO Contract Compliance. So we do require, pursuant to LAD, that all businesses that contract with the State of New Jersey *a)* not discriminate in their hiring practices and adhere to the principles of New Jersey LAD; and second of all, that they tell us what their employment makeup looks like. So they report statistical data about the number of employees and the number who fall into various protected classes. And that--

ASSEMBLYWOMAN MUÑOZ: Do you mind if I ask you what LAD is?

MS. MITCHELL: The Law Against Discrimination. So that's New Jersey's seminal piece of anti-discrimination legislation.

ASSEMBLYWOMAN MUÑOZ: Thank you.

MS. MITCHELL: Sorry. And I am an acronym user, so please interrupt any time.

ASSEMBLYWOMAN MUÑOZ: Thank you.

MS. MITCHELL: If I do that again, I apologize.

So New Jersey has always been progressive that way; but that goes to who an employer employs, versus registering as a business under the statute. And that goes to who owns and controls; and that goes, in some ways, probably, more directly to economic disparities in different communities. Certainly employment is a piece of that, and having people be able to get jobs and employers incented to have-- Appropriate outreach to all communities for employers is important; but obviously, having minorities, women, and veterans as owners of businesses, and at that level of the economy, has also been, as a matter of policy, deemed important.

So the other thing that the statute, from the 1980s, did is that it set, by statute, a 15 percent goal for award of contracts to minorities and to women-owned businesses. And that was challenged almost immediately by an organization called GEOD, which is a nonprofit that largely exists simply to challenge these types of laws. It was just an association; it wasn't a particular business.

They actually brought two lawsuits. So the first one was against the State and the implementation of the statute in Title 52:32 -- I

think it starts around 12 or 13 -- that law that was passed in the 1980s. And then they also challenged New Jersey Transit's implementation of their minority program. Their program -- because they spend a lot of Federal dollars -- is actually fully aligned with the Federal regulations on that. So the two lawsuits had totally different legal challenges. One was to the State law, and one was to the implementation of Federal law.

So for reasons that predate me, I do not know why the one challenging state law was called *GEOD 1*. And GEOD 1 -- so they brought it by order to show cause, which means you apply to the court, along with your complaint, right away, for temporary relief. And before much litigation ensued -- before the State really had much chance to answer -- we began settlement negotiations with GEOD because we recognized that the passing of a specific target in a statute without a disparity study behind it was inconsistent, even at that point, with Federal law.

And so we signed a consent order that said that we would not implement just that 15 percent quota in the statute. So the rest of the statute remained operative, but the 15 percent quota of contracts to be awarded to minority and women businesses was enjoined -- which means we agreed, and a court ordered, that we would not enforce it.

So if we were to randomly today start writing that requirement into our procurements, GEOD could bring what's called *a motion in aid of litigant's rights*, and enforce their rights in that order. And we would be considered in contempt if we violated that.

That said--

MS. AGUDOSI: I'm going to stop you one second again.

MS. MITCHELL: Yes.

MS. AGUDOSI: And that's just because I want to make sure that we're all clear before you move on.

In that statute, that legislation that GEOD opposed--

MS. MITCHELL: Yes.

MS. AGUDOSI: --was the 15 percent a set-aside or was it a goal?

MS. MITCHELL: I believe it was-- The language didn't clearly use either term in the statute; but it was more like a set-aside, more like a mandate than a goal.

So that difference between those two becomes important. The Supreme Court has delved into this topic, and Federal courts have delved into this topic a jillion times. And so all of these terms -- *a jillion* is a technical term, by the way -- so they've delved into it and they've made these words -- *set-aside*, *goal*, *target* -- they've made them sort of magic words. They have, you know, paragraph definitions that follow them. And so set-asides or mandates are impermissible under that body of law at any level. We can always, however, set goals for ourselves and encourage our contractors to either meet the goal or show us good faith efforts were made to reach that goal. But we may not penalize them for not reaching the goal, so long as they made good faith efforts. If they made no good faith efforts to reach the goal, we are permitted to take action in the form of bypassing them on the public works side, if they're the lowest responsible bidder; or taking equivalent action on the purchase and property side where we award contracts that are -- to vendors that propose things that are most advantageous to the State -- price and other factors. So we have two

different awards standards, and then apply the Federal case law that allows us to set targets over that.

MS. AGUDOSI: So thank you.

So just to kind of tease that out a little bit more, my understanding is that Croson spoke to set-asides specifically; where it's not a goal, it's you must-- You know, based upon history of disparity and discrimination, you have the ability to provide a set-aside for a set amount that's consistent with what the disparity study shows.

MS. MITCHELL: Correct.

MS. AGUDOSI: Versus a goal, which is not a mandated set-aside; it's aspirational.

So my next follow-up question to that is, we know or we have an understanding that for a set-aside -- that has to foundationally rest on a disparity study. Do you need the same foundational disparity study to rest aspirational goals?

MS. MITCHELL: My understanding -- and I see the Senator shaking his head -- but my understanding is, yes, you do; that the goals should reflect the disparities.

So the way the courts conceive of this is sort of deeply rooted in constitutional law. So they said that anytime you invoke race or any other protected class -- which includes ethnicity or gender; well, gender's a little bit less than protected, but I digress -- in any case, you have to use the means most narrowly tailored to address whatever problem is there. And so a disparity study is necessary to determine you have a problem at all; and that is the way. So the disparity study -- and I echo the witness who preceded me; it was either Michael or Gerrard, and I didn't catch which

voice was which -- but the disparity study is the linchpin. For instance, in New Jersey, if you wanted to have a set-aside for Alaskan natives and Pacific Islanders, it may never -- you can never-- Well, first of all, I don't think you can ever uphold a true set-aside. You can always uphold a goal; but we would have to show that there was some sort of disparity. And a disparity itself is one of these magic words; and it means the difference -- the delta, so to speak, or the gap between the number of firms that were qualified, ready, willing, and able to respond to a contract in your subcontracting opportunity; and the number that actually did. So the disparity study -- which is the linchpin, or it's almost the first step -- then relies very heavily on having past contract data. So we need to know how many contracts--

And the fields are different, right? Because a contract awarded by DOT for milling and paving -- you know, grinding up the pavement and repaving -- which they're doing all year long, as long as they possibly can, to get all the roads de-potholed and smoothed out -- that's a totally different-- If we have a disparity there it's totally different than if we have a disparity in, say, financial services, or a disparity in auditing firms. You have to look at these things in smaller slices. And the reason for the smaller slices comes from this constitutional principle that if you're going to say that you're preferring, in any way -- even with a small preference that functions like a goal, that you hold vendors accountable for good faith efforts -- you have to show that that is narrowly tailored, designed to correct the disparity that exists, and that there is not a more narrowly tailored way to do it that doesn't involve using categories, or using race, or protected class categories.

So that is the philosophical underpinning of all of these decisions. It is, some may argue-- As has been argued, but has not carried



the day, that it's a sort of perverted understanding of the Fourteenth Amendment. But at this point, it is Supreme Court law and is the law of the land.

So having it just -- pulling together all the data for DOT, for Transit-- And both of those agencies collect a tremendous amount of data already, because they must comply with the Federal DBE, Disadvantaged Business Enterprise statute when they spend Federal funds. So they have a lot of data for those federally funded projects.

Starting with that data, and any data that Purchase and Property has -- that they have kept historically about this, then gets provided to someone who is able to do a statistically meaningful analysis of this. Because this gets into-- So I will confess that I don't know anything about statistics; I've never taken statistics. (laughter) This is-- I am so far beyond my ken. But it is recognized as a professional discipline, and there are ways to look at those numbers and crunch the numbers, so to speak, that would be right within the discipline of statistics. And there would be ways to do it the wrong way. And what those are I don't understand. But there are ways that they handle that. They can also control for certain factors that may be skewing it, but not be race- or gender-based.

So we need that type of person or a firm to conduct the disparity study. And that is, sort of, the first piece. Providing that firm with as much data and working with them to figure out what data you need in order to conduct a robust study is really the first step.

Just stepping back to close the loop on the two GEOD cases.

In case you were desperate to know what happened to GEOD 2 -- that case actually was tried. So it was really a very technical trial,

because the code of Federal regulations -- the Federal regulations that fall under the statutes -- set out, actually, a specific formula that is statistically valid. And you just plug your agency's numbers into those various categories. And GEOD challenged how New Jersey Transit had plugged in the numbers. The matter was partially decided on summary judgment in the State's favor; and then, ultimately, tried. We had extensive expert testimony, and we prevailed. And New Jersey Transit's program was held to be properly created, and New Jersey Transit could continue to operate the DBE program, consistent with Federal regulations, as it had been doing. There was no order in any way limiting the scope of that program.

So the two GEODs had very different outcomes; one went all the way to trial, one was settled very early. The one that was settled early resulted in a court order enjoining, or prohibiting us from enforcing that State law program. And then GEOD 2 was Federal all the way to the end, and we prevailed, and the program stands still to this day.

SENATOR RICE: Madam Chair.

So let's be clear. If I'm correct, because I was a part of all of those things, with my tenure here.

And prior to GEOD, there were only two black Senators in the State of New Jersey. When I came, was 1986. Before I came, only one black Senator sat in the 40-member Senate, and that was Senator Wynona Lipman. And we argued affirmative action. We had, throughout the state, a number of Saturday sessions with minority businesses; (Indiscernible) and all of them from construction, constantly whipping around folks about why we couldn't get business.

And we started to change laws. And New Jersey Transit was one of those entities -- along with the Port Authority; but they don't respond to much of anything -- and others, that were not providing women and minorities business.

The problem I had -- and I want the Commission to understand -- that we have to concede today as to what the law is. And under GEOD, there were two different --there was 1 and 2. One never got resolved the way I felt it should have been resolved, because of a mistake. And what Peter Harvey did was agree to do a consent decree, and I thought that was wrong. I don't believe that the GEOD Corporation has standing, because they were never harmed by set-asides of affirmative action. They were doing business, and doing very well. As you said, they were probably just there to challenge; but we didn't go to court. Had we gone to court, we probably could have argued, up to the U.S. Supreme Court, the difference between a *goal* and a *set-aside*. Because if you go back to the Federal law, the Federal law actually talks about goals and set-asides in their law. And we could have argued that difference, etc. But we never got that far.

So now we're stuck with this "into perpetuity," and I'm not even sure about that issue of -- we can't do set-asides. The courts have said that we have to do strict scrutiny now; but I think that was always the case anyway, okay?

MS. MITCHELL: Yes; strict scrutiny is what requires the narrow tailoring.

SENATOR RICE: Yes, exactly. So that was always the case.

And we always knew there had to be availability, willingness, and readiness. And the folks who we were bringing forward were willing,

ready, and available. The idea was that if you don't have enough, in terms of setting your goals, then how do you create additional people of color, if you will, and women? And that's going back to what New York is saying -- you marry them.

And so we messed that up in New Jersey; but I always thought the Legislature and the Governor -- Democrats and Republicans -- (indiscernible) never wanted women and minorities to have it. Just like when Chris Christie came on board, if you go back and look at the legislation that I authored -- along with Assemblywoman Bonnie Watson Coleman, Congresswoman Bonnie Watson Coleman, under the Corzine Administration, led by the charge of the Legislative Black Caucus and Latino Caucus members -- that legislation has started to put in place accountability and everything else.

And what the Chris Christie Administration did -- it took away all the monitors on the jobs, and everybody else. And that bothers me. What I don't want this Governor to do-- If you go back and look at the court decision in GEOD, it talks about the things you spoke about; but it never said that we should not collect the data. And that goes back to the value issue that Hester argued: What is the value of registering people as women and minority businesses? The value is, it helps to show the disparity, as long as it's true women and minorities, and not a front.

MS. MITCHELL: I would agree with that, Senator.

SENATOR RICE: And so the data-- I believe Christie told his people not to collect data after 2010, okay? And so we don't have the kind of information-- He abolished all of the units, and put them in different locations, that are supposed to be monitoring.

And so we need to go back to that legislation; and hopefully the Governor, by executive order, puts that stuff back in place. Because that's where the real teeth was -- us working with the Federal Labor Department. If you look at the legislation, all the agencies and authorities had to be put on notice; and they were. There had to be contract information in the language of contracts that the State established. A lot of stuff that my colleagues don't know about, we did; and it is still in place.

MS. MITCHELL: Right; and the language is still in the contracts -- that requires the employers to comply with LAD and those pieces.

SENATOR RICE: But the office that -- and this is why I was interested in New York -- the office that was put in place to monitor women business stuff--

MS. MITCHELL: Yes.

SENATOR RICE: --was basically abolished by Christie; because that's where we would have established, by now, real problems in our procurement and stuff.

MS. MITCHELL: Right.

SENATOR RICE: But we never collected the data, because he abolished the office.

MS. MITCHELL: Right; so I won't comment--

SENATOR RICE: And then this Governor, and the Senate President, and the Speaker need to say, "We're going to put that back," okay? Because I just want to be clear on the record, because I want the transcript to reflect some historical stuff too; because I was a part of the history.

MS. MITCHELL: And I appreciate that, Senator.

So I won't comment on what Christie instructed--

SENATOR RICE: Sure.

MS. MITCHELL: -- or didn't instruct. There wasn't an executive order, sort of, directing them not to collect; but what was said informally, I can't comment on. I wasn't party to it.

SENATOR RICE: Sure; no, I don't want you to do that.

MS. MITCHELL: But you are correct -- that the Division of Minority, Women Business Enterprise, which had been established pursuant to the Treasurer's authority to organize the work of the Treasury Department, was reorganized, in essence, out of existence. The functions of that office that are created by statute were delegated to other existing Treasury organizations.

And while the Senator has a good point -- that this Governor can direct otherwise by EO -- I would suggest that executive orders can always be changed by a future executive, in a manner that legislation cannot.

SENATOR RICE: Well, we codified some of that legislation. Because we met with Governor Corzine at his house in Hoboken, and beat him up because he didn't understand this stuff. And he did executive orders -- okay? -- 34 and the rest.

MS. MITCHELL: Yes.

SENATOR RICE: We went back -- 151 and all that -- so if you look at Public Law 313, 2009, and Public Law 335 -- that's all my legislation. See, I track my stuff--

MS. MITCHELL: Right; and I'm familiar with both of those statutes.

SENATOR RICE: Yes; so I just want to be clear.

So the Governor has to -- can actually go back and say, "Well, this was an executive order in terms of diminishing the capacity of the Administration to actually document and monitor." And say, "I'm putting it back."

So keep that in mind, because we may have to send him a note to tell him that he should take a look at that.

MS. MITCHELL: Yes, so I am very familiar with both of those statutes, Senator; and I take your meaning. But unfortunately, between the various statutes that existed, they didn't require that the Department be organized that way, and they didn't--

The information that we have at this point is the information we have. And unfortunately, one can never go back.

In certain instances, information could be reconstructed from records, if the time and staff were available to do so, and so long as the records exist; so that may not be lost entirely to the sands of time. But to the extent it isn't maintained through the document retention schedules, etc., or we don't have anybody to actually go through it all and crunch it for the data that we would need for a disparity study, it is lost to us. So resources are always part and parcel of a process like this.

And also echoing what the prior witnesses said -- having a strong procurement department that can counsel agencies is really important too, because we know that very few of the Fortune 500 -- the large organizations, the large corporations; or the Fortune 1000 -- are

minority- or women-owned enterprises. But we do business with a fair number of those. And every time an agency comes forward looking for what they might call a *turnkey* or a very large contract where something is created, and maintained, and administered all through the same contract, we are necessarily limiting contracting to those organizations large enough to perform all of those different functions. Which has, often, a knock-on effect of pushing it towards larger and larger entities, which statistically we already know, primarily, are not minority- and woman-owned.

So part of an effective Minority/Women Business Enterprise promotion program, through the State's procurement program, is to be sure that if there are not -- either that you are putting out contracts of the size that those contract partners can actually bid on -- they have the wherewithal, going to the ability and the capacity -- or that there are meaningful subcontract opportunities for them and you are asking your contractors to subcontract. Which is the way a lot of the Federal program has done -- a lot of the targets for the Federal program are satisfied by the contractor, who is not minority- or woman-owned, subbing to smaller minority- or woman-owned.

So you have to think about it on a number of different levels; and it does require a fairly robust procurement organization. And we do have the pleasure of having the Director here, who is someone I work with all the time and have tremendous faith in. But I do know that he struggles with staffing issues. And so every time we say that this ought to move forward, I would encourage -- having seen how these things have to happen -- I would encourage you to keep a hash count of how many bodies that might take, how many FTEs that might take. And as part of whatever



proposal you would make coming out of this Commission -- if you want it to be fulsome and to be fully implemented, you have to take into account those resources. This kind of data doesn't collect itself. This kind of discerning thinking about how to structure things in ways that are advantageous to that community, so that those vendors can leverage the fact that they said, "Hey, I got a New Jersey State contract. Look, that's like indicia that I am a well-established business," and they can use that to leverage other business -- it's not the same thing when they're a State subcontractor.

And so those types of things-- You know, subcontracting isn't always the answer either if you're really looking to push social justice. And I will say these are my own comments, and not the comments of the Attorney General's Office. I have read a lot of these cases and I have my own opinions, which are not necessarily those of the Attorney General.

But I would encourage you to think about those things because, in thinking about how to defend it, every time I say, "Oh well, then there's somebody doing this and there's somebody doing that." And when I can put somebody on the stand, if I have to, or set somebody up for a deposition, they can explain how there wasn't another way to address the disparities in New Jersey without doing this. And all of the work it takes and everything we do to be intelligent about it, and keep it narrowly tailored, but still aimed very squarely towards the goals of this Commission.

So I just encourage you to really think about that, because-- And again, my view, not that of the Attorney General's Office -- you do get the government that you're willing to pay for. (laughter)

SENATOR RICE: Can you bring a little bit more clarity, for the Commission members'--

MS. MITCHELL: Yes.

SENATOR RICE: --edification, if you will.

GEOD also spoke about the data--

MS. MITCHELL: Yes.

SENATOR RICE: --in terms of how it's used and measured.

MS. MITCHELL: Right.

SENATOR RICE: And they spoke about -- it has to be, pretty much, in New Jersey; if it's local stuff, pretty much county-- You know, that-- Can you kind of bring it out? Because that's important, because--

MS. MITCHELL: I'd be happy to.

SENATOR RICE: --we know in New Jersey that we have capacity to do better, to do more; and we don't have capacity to do more.

The reason I say that is because Bob Smith, who's been running around with his paint truck -- one of the best painters around -- is now a subcontractor, or maybe he can't get any work. So he doesn't even apply for the State stuff; he's been turned down so much. That's why a lot of folks in New Jersey--

So the question is, we know we can do better; but based on those who may come forward -- ready, willing, available, capacity -- okay? -- we wind up with 10 percent, 5 percent. When we know we could do much better in areas; but we're not getting people to come forward because of what we're not doing to help them get contracts when they do apply.

The conversations we have had at most of the hearings is that every time you apply to State government -- or anybody else, local

government -- folks get their friends and people like that. They find ways to reject you; and that's been the complaint from women and minorities every time we've had a hearing as long as I've been here. And to be quite frank about it, I find it to be true. They use the law to do it, and they kind of stretch it sometimes.

But a good example is State government. They claim that-- In the past, the Governor told me, "We don't have people who can be a manager." I said, "That's not true," etc. And only one black manager, over here, and that was a guy who owned a seat in Wall Street, on the stock market, years ago; and we got him in there. Maybe I'm being (indiscernible); he was one of two blacks in a seat on Wall Street -- you know, on the stock exchange. And yet, every time we turn around, they say they're going to do better. So you have 13, 14 people dealing with entities, dealing with the bond stuff. And they want to get women and minorities underwriting stuff where you make no money. And they claim they can't find women and minorities to do the bond and co-bond piece, so they keep giving it to Goldman Sachs -- that's why when the words *Goldman Sachs* came up, I got a chill a little bit, okay? (laughter) -- and Morgan, and all those other folks. It's the same old folks. Because when you look at it, we have a council of folks appointed to make a decision.

And so I think it's important that you maybe give some clarity about what GEOD is saying about the geographics, if you will.

MS. MITCHELL: Yes.

SENATOR RICE: Because we may have to, very well, go out to build capacity, like New York, and say, "Hold it. Don't tell me we don't have folks who can do bondings. I have a whole list of people -- co-

managers and managers throughout the whole country. They're just not based in New Jersey."

And one time we had a New York and New Jersey base that -- they got nothing from Governor Corzine who claimed he couldn't find anybody, even though he talked to them. And three weeks later, the county in New York gave him the manager, and Chicago gave a manager. So I'm saying to myself, "That's on us."

So how do you talk to the geographic-- Or how do we fix the internal piece of discriminatory practices and bias of people who we are actually hiring?

MS. MITCHELL: Okay; so I think we're-- From what you said, and I've been following and am familiar with most of the areas that you're discussing -- they are, sort of, three related things, okay?

So let's start with post-GEOD -- what happened in the State.

The State, then, in the early 2000s, actually commissioned disparity studies to be done in a variety of areas. And the disparity studies came out, and I think they're dated 2002 and 2003, or 2003 to 2004; they're consecutive, in any case. And there are three of them: There was one for goods and services procurements, primarily done by Purchase and Property; there was one for local construction done, I think; and then there was one for State-level construction. Because all of these-- And those levels matter, because of that principle of narrow tailoring.

So when the statistician looks at all the data -- aside from looking at the data of who's applied to the State -- a statistician and a firm will have the means and resources to do and structure polls or surveys that they can do into the community, to find those entities that you're talking

about that are not applying to the State, but nonetheless are out there and should be counted as at least some form of potential capacity -- if they actually thought it was worth their time to apply.

And so that is why, again, finding a well-qualified firm to do a robust disparity study in targeted areas-- So for certain things, the State uses local companies. For instance, you're not going to use a firm out of the Midwest to do milling and paving of roads. That's a, sort of, regular -- it is capital construction on the DOT side, but it's sort of regular routine capital construction. And you're not going to have people truck in their equipment from fill-in-the-blank in the Midwest or the West Coast. So we use local companies, sort of, de facto because of that job.

But for other things -- particularly on the goods side -- goods can come from almost anywhere; and given the United States' robust transportation system, if we're getting supplies from a large supply company -- in the past, we've had contracts with Staples, and others I don't honestly even know who our contract is with right now -- they sometimes have local partners to help them with distribution, or they may even sub out provision of some of them under their own programs.

But those tend to go to larger organizations, for some of the same reasons that I touched upon before -- which is, doing procurements that-- The State could, in theory, do instead of one procurement contract for supplies, they could do one for North Jersey, Central Jersey, South Jersey. That might give smaller supply companies a better opportunity. But that means they have to run three textbook, statutory, by-the-law procurements; and running a procurement takes time and it takes -- not necessarily *skilled*, in the sense of being professional, licensed people; but

experienced and well-trained people. And those types of opportunities, those types of people have been, for whatever reason, retiring out of and otherwise fleeing State government. State government has become smaller in the last -- some period of time.

So you can't-- And there's sort of always this management speak of, "You can do more with less," which is true to a point. But at some point, you do less with less. And so if you want to structure your contracts in a way that would make it much more likely that smaller entities, which are statistically more likely to be owned by minority groups or by women -- you have to break those things down. You have to do, sort of, right-size procurements, but then you have to have the people to run them.

And so the State -- at the same time that a lot of this has been going on -- also passed a statute that allowed what are called *cooperative contracts*. And that means-- So first it started out that just New Jersey-- Say, hypothetically, New Jersey and Pennsylvania could combine their needs to buy PCs for State workers. And they could combine their needs for the next two to three years and put out a contract together. And when we did it that way, nobody did it because the only thing harder than doing a procurement is doing it with another public entity. (laughter) Because getting people together and getting-- You know, our processes are slightly different than your processes. How do we talk to each other? How is this all going to work? It's a whole other layer of complexity.

Then we said, "Oh, well, okay, New Jersey can get together and can be in a group from the inception, but they don't have to lead it." Like, it doesn't have to be just New Jersey and Pennsylvania going out together.

It can be, like, a group, and New Jersey can participate. And that was mildly successful. But that said we had to be defining our need so that it could be placed into that procurement, perhaps led by another state -- Pennsylvania, Ohio, Maryland; I don't know who, it doesn't matter -- at the same time they were putting together their procurement.

And the reality of procurements, you know, is that you're on a contract schedule that was started in the 1970s, and we re-procured contracts every few years, etc. And so you don't always get those opportunities. Then the law was amended one more time on cooperatives to make it even easier; and this one really took. So we said, "You can do what gets affectionately called, *piggyback cooperatives*." So if Massachusetts or Pennsylvania went out to do a contract for PCs, and they told the bidding community that, "Oh, this will be open to other states to join. We don't know who's going to join yet, but we'll make ourselves available -- our contract available to other public entities. So not only are you getting my sales, but there's this great possibility that you'll get New Jersey, or Newark, or Essex County sales as well, because they can all join my procurement."

And that really took off in New Jersey. Locals are getting involved in -- satisfying a lot of their needs through cooperatives. The State is satisfying a lot of its needs through cooperatives in large part because it is less work than procuring under the State's procurement law, and it still meets all of the public requirements.

So that has led and pushed things to-- So now New Jersey participates in a couple of, almost, nationwide cooperatives that might be led by a Western state or a Midwestern state. And so, necessarily, you're getting large organizations responding to those bids, and those large

organizations end up supplying New Jersey needs. And this, I would say, is primarily on the goods side; but some services are uniform enough and organizations are large enough that they also can be made available through cooperatives.

There's also a drive to do it for public works, where you sort of create a massive schedule; so that if you need a bricklayer for an hour, it costs this, and if you need-- And I understand that there's more complexity to it; I just don't know what it is. But in all the trades, I know there are different levels and skills of people, and there are titles appropriate to that. And you can, sort of, basically get almost like a full menu of anything you might need. Those are all efforts that are out there. The cooperatives, though -- the large ones are happening, and they do impact who the State is buying from. So the State is doing fewer contracts itself, and it's the contracts that the State is doing itself that are more likely to result in an award to a woman- or minority-owned business.

So that's one of the realities we're talking about.

So there are some things around procurement. The other thing is, New Jersey's procurement regulations and statutes--

MS. WALTER: AG Mitchell, if I could just cut you off for one second.

I have a question for you related to that.

MS. MITCHELL: Yes; I'm sorry.

MS. WALTER: The other issue that arises, related to the co-ops-- You see things, like Houston-Galveston, like you're talking about, where all the fire trucks are getting purchased through Houston. And you



can imagine you don't have a lot of control over the allocation of the bidding entities there.

But we're also seeing a lot of job order contracting.

MS. MITCHELL: Yes.

MS. WALTER: If you could just touch on that, and how that aggregates some of these smaller paint contracts and things, that would be very helpful.

MS. MITCHELL: Right. So job order contracting is what I was somewhat inartfully describing at the end. So that's where there's a schedule that says, like, "Oh, if you need an hour of a painter's time, it costs this; and if you need an hour of basic carpentry, or whatever--" And so when a school, in the summer, says, "Oh, we're painting all of the classrooms in the west wing," they can, instead of doing a public bid for the number of classrooms and awarding to one or two vendors to get the whole west wing painted, they go to a job order contract where bidders have bid to establish those prices and are willing to get paid on that schedule. And it's that entity that put together the job order contract that's controlling who actually gets the work, not the school district or not the State.

So far, job order contracting isn't used in any large scale at the State. But it's getting very popular at the local level; and there is certainly interest in it, again because it's easier. It's the equivalent of one-stop shopping for State divisions or departments that have-- They're down a third from where they were 10 years ago, in terms of numbers of people to administer these projects. And whether you're administering a project for these things that are sort of public works-- But I'm not talking about building a building from the ground up; I'm talking about things like

repainting, redoing playing fields, redoing parking lots at the schools or at the municipal buildings, the county buildings, and even State property -- whatever -- it could happen as well. It's sort of those more routine, but capital projects. It's much easier for a department that is half the size it was 10 years ago to go to one place -- this job order contract -- and get all of those summer construction needs at the schools taken care of; than it is to put out a bunch of public bids in the spring and hope that you get awards and no challenges so that the work can be done for the kids to come back in the fall.

And it is just the reality of how stuff is happening. Everybody is stretched in terms of time, dollars, and whatever.

So this is where contracting seems to be going. And once you take the control, over who actually gets the work, away from the public entity who can have these types of programs-- And as the prior witnesses indicated, corporate America, who may hold the job order contract and then find the people to satisfy the work, they're not accountable in the same ways that you can make public organizations accountable to the greater good of the State. And so that's something that you should be aware of.

The other related procurement thing is that New Jersey's procurement requirements around additional certifications, disclosures -- those types of things are considered very onerous by vendors. I personally, on the semi-regular, where it is not prohibited by the public vetting laws -- I walk expert witnesses who need to fill out all those forms, other people, through these forms. I tell you, college professors cannot figure this stuff out. And you can say what you want about college professors -- and I have two college professors as in-laws (laughter), so I will say nothing bad about

them; and they're lovely people -- like, if they can't read and-- It is not intuitive -- how to do all this.

And a number of the statutes behind those requirements for certifications or disclosures make them fully mandatory, due when a bid is submitted. And, God forbid, if they miss checking -- if there are three or four boxes you have to go through and answer three or four questions -- if they miss one, they will be disqualified. And if college professors struggle to figure this out, small businesses, that are under 50 employees-- The nature of a small business is that the people who are running it are chief cook and bottle washer. And I have tremendous respect for small business owners, be they minority, women, veterans -- anybody else; it's a tough job. To add onto it what seem to be very picayune requirements of the State -- specific disclosure, certification, and other laws -- we eliminate contractors, and we eliminate those contractors who don't have redundancy to have another person to double-check the proposal submission.

And that happens not just with Purchase and Property; that happens at all levels. There are always people being disqualified because they didn't properly fill out an ownership disclosure, because they forgot to check a box on the Iran certification, because they didn't turn in one of the forms.

Those are just common, garden variety reasons that, every day, contractors are being turned away. And I don't have numbers to support this -- although Purchase and Property might -- but I do believe those tend to be less sophisticated, in the sense of having a large organization sophistication -- not necessarily inability to perform the work -- they tend to be less sophisticated, smaller organizations that get disqualified because

they can't pay for the redundancy to have somebody do all the work of the proposal, and then somebody to go through it and make sure they didn't accidentally miss checking a box that will otherwise disqualify a perfectly qualified firm from being a State vendor.

So those are procurement-related things that I think stand in the way, and that I've seen happen. I've been working in this area for, I think, 12 years now; these are things that I've seen happen.

MR. GRIFFIN: Following up on what--

MS. AGUDOSI: I'm going to just-- One second; just for point of order.

I had all good intentions of us having a subcommittee meeting; however, that is unlikely. And that's fine, because I think that the information that's being presented to this Commission is vitally important.

And so I just want to say that I will send out, via e-mail, a separate date for us to be able to assemble as a subcommittee. So I just want to take that off the table.

Please.

MR. GRIFFIN: So I wanted to just, sort of, give a follow-up to what Beth was just saying.

So DPP recently procured plowing and spreading services for State roads and highways. There were 170 bidders; 40 of them were disqualified because of the forms Beth is talking about. And almost all of those bidders in that type of procurement were small; I know there were some women, there were some minority. They were disqualified.

And the form she's talking about -- the disqualification cannot be fixed. You're out.

MS. MITCHELL: And that's a function of how the statute is written.

Some of the statutes do allow us to collect the forms. So there's the difference between when the bid is submitted, and then, when whatever decision-making process is made, to decide who the bidder should be; and then the contract is actually struck. Those are two different points in the procurement process. Some of the forms only have to be submitted before then; and if somebody turns it in at that point, and you say, "Oh, you missed a box; can you give me a fresh form and have it fully filled out," that is legally permissible. But for those statutes that require submission upon bid -- where we're doing advertised sealed bidding -- you cannot correct that.

And so I would encourage, as a side light -- but as probably potentially very dispositive to what the State's contract award numbers might look like -- that this Commission look at that issue tangentially. Because it does impact smaller businesses, which tend to be our minority-, veteran-, and woman-owned businesses. So I think that's a huge issue.

So the State did-- Now, that was point one. So I think there are some procurement reasons, in two streams -- the cooperatives, as well as the forms -- that disproportionately seem to impact or sway us to more sophisticated -- AKA larger -- and less likely to be minority-, woman-, or veteran-owned businesses.

Then the State did do the disparity studies after GEOD; and set, through NEO, appropriate goals based on those disparity studies. And those goals -- which we required good faith efforts for the vendors to meet -- were enforced, were in place, and were operative for five, six, seven years

before they were, sort of, informally disabled. There wasn't a statute behind those; it was all done by EO. And the EO was carefully drawn to avoid stepping into the prohibition of the GEOD consent order. But that did exist.

So New Jersey has been here before; and we were not challenged. And I will tell you that GEOD and other organizations are out there looking for statutes, or processes, or executive orders, or whatever they are, that are vulnerable to legal challenge. I can't tell you that the prior implementation was perfect, but I can tell you it was never challenged.

MS. AGUDOSI: Are you referring-- Just for clarification, are you referring to Executive Order 34?

MS. MITCHELL: Correct. So that sort of rectified and put the program back on track that had been sidelined by GEOD 1.

Like I said, I can't tell you they were perfect; but I can tell you there were people looking to take potshots at them -- because those organizations always exist -- and they didn't.

And then there was the, sort of, reorganization that we've talked about, and the de-emphasis of all of these programs. So it is possible; the State has been here before, to a point, where we had meaningful goals set and meaningful institutions aimed at tracking that good faith effort to include minority and women -- we didn't have veteran-owned businesses at the time, it wasn't a defined category -- and to track those good faith efforts. I don't know what impact; I was never made aware that there had been any sort of study about whether that actually impacted our total awards, or what impact it may have had on the larger New Jersey economy. But there was a period of time where that existed.

I had three things; I can't remember what the last one was.

MS. AGUDOSI: Well, I'm going to-- While the last one comes to you, one comment, and then-- Well, actually, two comments for expansion.

Number one: Executive Order 34 is still in effect; because to the extent that it has not been rescinded, it's still in effect. And I think that's important to note; and you agree.

Number two: One of the things this subcommittee, that I was referring to-- I think at our last Commission meeting we had Michael Garner from the MTA -- Metropolitan Transit Authority in New York -- he came and testified. And one of the things -- and they touched upon that earlier, too, with the representatives from DASNY. One of the things that New York state did that they found was a -- I won't say *quick fix*, but made a huge difference in terms of penetrating and getting to minority- and woman-owned businesses, and I think speaks to what you're talking about as well -- in terms of, you need people in these procurement offices to be able to do this work, or we're going to default to larger procurements just because of the efficiency.

So what they did at the MTA and what they did in New York state is that they raised their DPA up so that you did not have to procure-- Right now, let's say New Jersey -- we're \$40,000, right? So everything \$40,000 and above has to go out of Maurice's shop, versus if you increase the DPA, then that means, number one, when you source these things you don't need a college degree or law degree to be able to respond to a quote, as you would for an RFP above that. And number two, by increasing the

threshold that relieves some of the stress that DPP would be handling and managing contracts.

And so those are some of the things that we want to look at, as a subcommittee, as ways that we might be able to make this process more efficient by taking some of that work load off of DPP; as well as not making the process so cumbersome. Why? As we know, if we're talking about a contract that's \$45,000, let's say, do we really need for this person to have to respond to an RFP that's a hundred pages? It's ridiculous.

So those are-- And I'm not saying that personally to you or your shop. But I'm just saying, our process that we're talking about -- right? -- all of this standard language and contract language that's included in those procurements that, to your point, just becomes cumbersome. Not just the fact that these businesses-- And we've received testimony here, in this Commission, from -- and I'll just use, for lack of a better term, *sophisticated business owners*.

Because I think that's another thing that I want to put on the record. When we talk about minority- and woman-owned businesses, I don't want us to capture that under this umbrella -- that that means *small business*, or that that means *mom and pop*. Because it's not a one-size-fits-all. These businesses go from startups to handling and managing multi-million dollar accounts and servicing. So it's the whole umbrella, when we're talking about minority- and woman-owned businesses.

So that being the case, we've had business owners come here and talk about what you just said: The challenges that they've had; how they have had to bring in teams to be their attorneys or accountants to be able to just comply, in order to be part of our contract and supply chain.



So for them it was not just an issue of the ability to understand the process; but it was also the monies that were needed to be able to be on top of these things.

So to that extent, we are looking at this threshold that we currently have.

So can you speak to that?

MS. MITCHELL: Yes.

So currently, DPA is set by a formula -- was originally set at a specific rate in the statute; and the statute used to be amended from time to time to raise it, at the point at which it didn't seem meaningful anymore. And this idea of Delegated Purchase Authority exists back to very early in New Jersey's public contracting statutes.

So it's always been around; they used to periodically amend it. And then at some point somebody got smart and said, "You know, it's really dumb to have to amend the statute every, four, or five, or six years, when the number isn't really meaningful anymore." And they gave the authority to the Treasurer to reset it, but it's reset pursuant to a formula. So if you wanted to be able to change it in a way that wasn't responsive to that formula -- which is always, sort of, what percent has a certain indicator increased since the last increase, or whatever -- if you want to get away from that metric and change it as a matter of policy -- not as a matter of inflation or whatever it's currently really pegged to -- that would require a statute change.

And so keeping track of what would be in a recommendation for legislation in this process would be helpful. And that would be the only comment I would-- I mean, there's certainly-- It's true.

The businesses, though, you should know are still required to fill out all of the forms; because the Delegated Purchase Authority just gives authority to not follow advertised sealed bidding to the using agencies, instead of sending their procurements to Purchase and Property. They still get competition; and most of the statutes do not have a threshold. So, for instance, if you're doing a contract for \$3,000 to get a speaker in for something -- for a three-day conference or something, whatever -- and you're getting the preeminent whoever, he or she still -- and they're an individual, you're not contracting with a corporation -- they still have to fill out the Iran statute certification. There is no threshold for it; there's no exception for it.

So looking at those statutes at the same time and saying, "Hey, if we're saying this is DPA, maybe we don't need some of these things." And those are policy decisions; not for you to make, but you could make recommendations on and, ultimately, they're calls for the Legislature to make. But those are things that you might want to consider, because we do have to get all of the forms.

It is easier, however, because we're not doing that sealed bidding. So if we get -- if I'm, say, working on this procurement on behalf of my agency, Law and Public Safety -- and I do get involved in outside counsel retentions and I get involved in finding experts and contracting with them -- if my expert, who I asked to fill out all the forms, has missed something or done something incorrectly -- because it's not sealed bidding, the law permits me to go back to them and say, "Hey, you didn't do this quite right. Can you read this question more carefully? I don't think that's the answer you meant to give," or whatever it is. Or, "You missed this," or

“You forgot this form.” And that is not illegal; anybody can do that in a DPA or in a waived bid.

So waivers are another way you get around sealed public bidding, and where the using agencies do the legwork, thereby relieving Purchase and Property. But waivers have always been strictly construed -- the various categories. So waivers are not waived -- you're not waiving the contract, you're waiving the public bidding. And there are two statutes: one sets for certain categories of things we might need, and the other sets out certain circumstances.

So we don't have to go through advertised, sealed procurement to contract with another public entity, even in another state. We don't have to go through advertised, sealed public bidding in the case of a public exigency. But those -- there's case law that says that we read all of those exceptions narrowly, so they don't -- so the waiver, the exception doesn't really swallow the rule.

But that's another area where, if the Legislature was interested, there might be latitude to take some of the work off Purchase and Property and put it with the using agencies. Which, frankly, the using agencies are usually happy to do because they feel they have more control of the process.

So changing DPA is totally a policy decision. I can see why you might want to make it; and it does create -- it does have the effect. You would still want to, though, make sure that you're collecting the data for those, because those are certainly still State contracts and they may be the perfect size for the mom and pop, or the slightly larger slice of contractors out there who are looking to become the 50-person.

The other thing is, we could define *small business* more in line with the Feds, of 100 people; and that is another statutory change that would still collect minority-, and woman-, veteran-owned businesses that are still not -- they're not even in the Fortune 5000, right? There's the whole world there. And where that number should be -- and it maybe shouldn't be 100; it should, maybe, be something else. But that's another area where a statute change might redefine who's in the pool of businesses we could count as minority- or woman-owned businesses ready, willing, and able.

Thank you.

MS. AGUDOSI: Thank you for that.

Just one other point, and then I promise I will--

And we are going to end at 1 p.m., wherever we are. (laughter)

It came up at our last Commission meeting that even with the focus being on making -- looking at and considering some of these changes to DPA, that may essentially have little impact or effect on local governments, because their own--

MS. MITCHELL: Right. So there isn't really a DPA concept in local government. There is a dollar amount below which they don't have to do sealed advertised bidding.

So the Delegated Purchase Authority is really a creature of the State, because all State agencies must -- all departments, divisions; that level of State agency, not necessarily the *in* but not *of* authorities -- but they all must do their purchasing through the Director of Purchase and Property. The office was originally created in the 1920s as the Department of Purchase and Property, and the statute says, "Oh, no; this individual and

his Department,” now *Division*, “do procurement on behalf of all of these other entities.” And so delegation is a way back out of that. And that was done as part of the same statute; it was an amendment later on. They said, “You know, that’s crazy. We can’t have the Director of Purchase and Property procuring these low-dollar small things.”

And so the delegation statute was created. I don’t have a lot of the history, but it’s been around for a long time.

So DPA isn’t really a concept for the locals, because the locals themselves don’t have all of the expressions. Or if they have departments, they’re so small they’re already having their fiscal office or their business office do their procurements.

But the relationship between the Division of Purchase and Property, and the Division that has some responsibility for ensuring vaccines are administered to kids in health -- like, there’s no relationship between those except when they need to procure something, right? So if they need to do an expensive public service campaign, they have to go through Purchase and Property for the expertise there, but otherwise, they don’t work together a lot. And so Purchase and Property has the unenviable task of having to form working relationships with each and every nook and cranny of State government to get what they need, and understand what it is enough and whatever. So if some of that were delegated back out under the statute at a higher -- raised DPA, and more contracts go back to being prepared by the using agency who knows what an effective public service ad campaign for getting parents to vaccinate kids, or getting adults to re-MMR themselves, or whatever-- Like, that can happen there, where they know about it.

Like, there's sort of two schools of thought; two different, sort of, policy pulls. One says, do it close to where the subject matter is; and one says no, use the leverage -- the expertise of somebody who buys all the time. Finding that right place is totally a policy call, totally for the Legislature. It certainly could be at a different point, and it decreases the number of contracts that Purchase and Property has to do, so they could focus their expertise on larger dollar contracts done in a way that might be more responsive to the interests of this Commission. But it's also -- you're going to get now a bunch of agencies having to make sure the forms are all filled out and do all that stuff.

So it's always a push-pull, right? There's always -- you know, with the good comes the bad. So it's the nature of anything.

MS. AGUDOSI: Thank you.

Senator Rice; and then after that, I'm going to respectfully say we're going to adjourn and continue this discussion at a later date.

Yes.

SENATOR RICE: A couple of things.

Thank you very much for your presentation and your responses to questions.

So for the Commissioner and for the Chair, number one: I want to make a suggestion that you look around on the Administration side and get a person here to take notes. And also reach out to Marvin in OLS and ask them for someone to work with the Disparity Commission, primarily because some of this may require research and working with the Administration. And I think we had that in the past when we did disparity studies.

From the Governor's side, and from the Administration side, this Commission -- it appears that we are doing the right thing, because there are two things we have to do simultaneously.

We have a short window; we have to report back. And we need to be reporting back on some of the things in New Jersey that need to be fixed, to make it more feasible and possible for women and minority to do better in terms of procurement and getting awarded contracts.

And that's what I hear coming out of this particular session here, and other sessions we've had.

The other responsibilities are that we're going to have to engage some folks to start to look at the data; and identify these folks who are willing, and able, and capable, to show that we have people who are not getting any business, even though they are there and they are willing, able, and capable, and available.

And so I'm hoping that the Commissioner, and hoping that we have identified, on the Administration side, an entity that can be brought on board immediately to start to get that data. I'm very concerned about having the report saying, "These are things we can do to fix some things," but not information saying, "These are real problems" after the last disparity study showed. And that's what made us move forward with the (indiscernible) everything else, okay?

And so I would hope that the Administration -- from this meeting we can go back and we can share the transcript with the Governor too, so at least he'll know what I said, okay? -- that they start to ask the Administration now -- you and others in the AG's Office -- to start to look

to things that people continue to complain about for 30-plus years. The (indiscernible) paper process, for example, okay?

MS. AGUDOSI: I'm sorry, Senator--

SENATOR RICE: The (indiscernible) paper process, okay?

The things that you were talking about -- that's not new. I'm telling you, I've been here 33 years. I've heard it from day one, here and locally. And it's almost like governors don't want to deal with policy, because I know that some of the folks who are still around have sent many, many communications to the governors arguing the same thing; but not once has a Governor come to us and said to the Legislature, "Let me recommend some legislative changes for your review." It's always like, "Wait until we respond," and sometimes we don't respond, because we don't know internally what those problems are.

And so I would hope, Madam Chair, that we can go back and let them know this Commission would like the Administration to start to pull together some of the negative aspects of our procurement process and awarding of contracts that we see -- whether we fix them or not -- and some recommendations for fixing them. Understanding that some of these things were put in place because we have racism in the State of New Jersey, and legislators did not want us to have diversity. That's some; some of them are gone, some are still around. I know that, okay?

Some of it was put in place because of political bosses. That's real, and it's still around -- some of them, okay?

Some was put in place because New Jersey is known throughout the country as one of the most corrupt states, to this day, in the country. So it was put in for accountability and transparency.



So for all of those reasons -- okay? -- we messed up. (laughter) And so I think that if we can kind of fix it and keep the accountability, and the transparency, the integrity of the process, etc., and do better-- But we need to start to hear from these-- The Governor's been around long enough, with his people in place. He needs to take away the politics of his policy people, and let these workers in these agencies -- and some have been around for years -- tell him, "These are your problems," okay? -- "as we see them."

And that's important. And we need to work on that immediately; and hopefully, at the next meeting you can report back to the Commissioners that the Governor is doing just that -- that transmission has been sent already. Because we look at some of this stuff from a legislative perspective.

So I just wanted to say those things to you, because I see my job here, as a Commissioner, to drive the side of what needs to be done that most folks are willing to do, but don't know the history; and I know the Administration won't do, unless they are pushed to do certain types of things. And it has nothing to do with the Governor personally. There are still some folks inside the Administration who are looking at the politics and how the Governor and others are going to get reelected. And the folks in the Legislature are looking at how they're going to get rid of the Governor. And meanwhile, women and minority businesses are suffering out here, just as women and minorities are suffering out here, and low-income people.

So I said that for the transcript; and I'm Senator Ronald L. Rice. I want to be clear who's saying that.

MS. AGUDOSI: Thank you, Senator Rice.

Thank you, Beth, on behalf of the Commission. We absolutely appreciate your coming and sharing some insight and some clarity in terms of just the contracting process in the State.

I can also assure you that we will be reaching back out to you as we move forward.

And just a couple of things.

Our next Commission meeting is Tuesday, October 29, in this room. You will receive notices of that. I will, as I indicated, be reaching out to those who have identified their willingness to work on our subcommittee, so that we can have, separately, a date scheduled to meet. I'm looking to do that in advance of that October 29 date so that we will be able to, at that meeting, at least be able to report out some of the discussion and how we propose moving forward.

And then just in wrapping up -- Senator, I think one of the things that I'm encouraged about this Commission, in terms of its legislation, is it gave us a one-year shelf life, right? So that means that this is not a discussion that we're going to be having -- a run-on conversation; but that we really have to propose some findings and recommendations. And that date is February.

So I respectfully think, as it relates to having that conversation with the Administration, that they're really going to be looking for us to provide the findings and recommendations based upon the work that we're doing now.

So that's why I think it's critically important, with the remaining months that we have, to really kind of double up our efforts. We

have the ability, under the legislation, to utilize and access any State department and agency that would be able to assist us in our mission; so that moving forward, at this point, it's really going to be more strategic in how we're going to be pulling together the necessary pieces to issue our findings in February.

So with that being said, thank you all. And our meeting is adjourned.

**(MEETING CONCLUDED)**