

APPENDIX

ADDITIONAL APPENDIX MATERIAL
SUBMITTED TO THE
JOINT COMMITTEE ON ECONOMIC JUSTICE AND EQUAL OPPORTUNITY
for the
May 21, 2024 Meeting

Submitted by

Abby Adams, Government Affairs Director, Associated Construction Contractors of New Jersey

Darlene Regina, Chief Operating Officer, "Attracting a Diverse Workforce in the Construction Industry,"
New Jersey Construction, c 2023, Associated Construction Contractors of New Jersey.

GOOD MORNING. THANK YOU FOR YOUR TIME IN ATTENDING WHAT WILL BE A VERY ACTIVE JOINT COMMITTEE SURROUNDING THE RELEASE OF THE ADMINISTRATIONS DISPARITY STUDY.

I FIRST WANT TO MENTION SENATOR RON RICE, WHO FOUGHT HARD FOR EQUITY AND EQUALITY ON THIS JOINT COMMITTEE, THE DISPARITY STUDY SHOWS WE STILL HAVE MUCH WORK TO DO.

- Why the Disparity Study is important to *you*-----

We are on the cusp of a pivotal moment in our state's journey towards equity and justice. With the release of the long-awaited disparity study conducted by Mason Tillman Associates through the Office of Governor Murphy, we now have a clearer understanding of the systemic inequities that persist in the allocation of government contracts.

This report, a culmination of meticulous research and analysis, leaves no room for doubt about the depth of profound disparities faced by minority-owned businesses in our state. Its findings provide valuable insights into the challenges and barriers that have hindered equitable access to opportunities for far too long. And as much as it confirms the truth of what is a painful reality for Black New Jerseyans and minorities at large it brings statistical evidence into the awarding of government contracts across various ethnic and gender groups. **It is time to improve it.**

For those of us who have a personal stake in this issue, as someone who has sons who are entrepreneurs, students who are advocates, aspiring lawmakers, and all of our neighbors who are marked as marginalized people in pursuit of a just life, the findings hit close to home. We understand the profound impact these disparities have on the livelihoods and opportunities of individuals and families.

As you'll hear throughout the day the numbers are indeed startling. From construction to professional services to goods and services, the disparities persist across all categories, leaving minority-owned businesses severely underrepresented and underutilized. According to the study, minority-owned businesses in our state have collectively lost billions of dollars in potential government contracts. For example, Black Americans, who represent 9.19% of available construction businesses, received only 0.14% of the dollars on construction contracts valued over \$65,000 to \$5.71 million. This potentially cost these businesses \$209 million. Similar disparities are observed for Hispanic Americans and Asian Americans and women amounting to a total loss of an estimated more than \$813 million across these groups.

The statistics presented in the report are not just numbers; they represent the lived experiences and aspirations of countless individuals and families in our community. They underscore the urgent need for action to address these disparities which have a domino effect on employment, homeownership, poverty rates, healthcare, education and the economic fragility of our overall community infrastructure.

As we prepare to invite testimony, let us approach it with openness, empathy, and a shared commitment to justice. Let us use this moment as a catalyst for change, rallying together to advocate for legislative solutions that address the root causes of these disparities and pave the way for a more inclusive and prosperous future.

We will have a package of bills, we will introduce in the near future, as OLS is working on.

Together, we have the power to change the paradigm and create a community where every individual, regardless of race or ethnicity, has an equal opportunity to thrive. Thank you for being present. Let's proceed with inviting each of you to share your testimony.

Joint Committee on Economic Justice and Equal Employment Opportunity

May 21, 2024 – Invited Testimony – NJ Disparity Study

Associated Construction Contractors of New Jersey (ACCNJ)

Abby Adams, Government Affairs Director

732-225-2265 | aadams@accnj.org

Dear Members of the Joint Committee on Economic Justice and Equal Employment Opportunity,

Thank you for the opportunity to testify before you.

ACCNJ represents general building contractors, construction managers, and heavy, highway, site development and utility contractors in New Jersey that employ tens of thousands of skilled union craftworkers each year. ACCNJ truly has a hand in glove working relationship with our union trade partners, who have come up often since the disparity study publication as an obscurer of diversity in New Jersey. For years, the trades have worked hard to make sure this could not be further from the truth.

While many companies talk about diversity, the trades have developed or participate in programs to help build or strengthen diversity. These programs provide access to resources through mentorship and guidance, networking opportunities, skills development and much more. Rather than recite all the trades' programs and initiatives here, we have left you a copy of *New Jersey Constructor's*, recent feature article on the extraordinary efforts our trade partners have made over the years to create a diverse workforce.

As a result of the disparity study being published, we have heard a lot about capacity in the last couple of months. I want to touch on capacity a little bit.

In 2017, ACCNJ, along with other members of the New Jersey Construction Alliance, commissioned The EuQuant Study. EuQuant conducted a capacity analysis of certified DBEs in New Jersey certified by NJDOT and NJ Transit. Capacity estimates were made for 1,046 certified DBEs that operated in six construction service industries and six professional service industries. Capacity, which is the volume of work a firm can perform efficiently during a given period, was analyzed by looking at a firm's past contracts and other business fundamentals like revenue, employment size, years in operation, and bonding capacity, among others. The EuQuant Study found that DBEs had the most extensive capacity in sectors where the smallest amount of contracting occurred. In contrast, DBEs had the lowest capacity in the two areas where the most substantial amount of contracting occurred: (1) Heavy and Highway Construction; and (2) Bridge Construction, Repair & Steel Erection.

The uncomfortable truth is that the capacity of DBEs is not as strong as it could be. This is at no fault of DBEs.

If New Jersey's existing set-aside programs were truly setup for business development, we would not see the results found in the EuQuant Study. More DBEs capable of performing larger jobs would exist. Those larger DBEs would likely subcontract with other DBEs, thereby creating A pattern of DBE growth and a pipeline for future projects.

Because of the rigid rules of New Jersey's set-aside programs, established prime contractors are legally prohibited from assisting certified DBEs in their growth.

In 2021 ACCNJ prepared a position paper in consultation with contractors (both disadvantaged and non-disadvantaged). Firms participated in meetings and interviews to provide their thoughts on ways set-aside programs can be improved.

A company's development will always hinge on its ability to create meaningful business relationships. Unfortunately, existing set-aside programs do little to promote relationship growth because a web of complex and outdated rules leave contractors more focused on checking compliance boxes, rather than building relationships.

In our Position Paper, "Improving Set-Aside Programs Through Flexible Compliance Measures," ACCNJ identifies areas where increased flexibility can promote business development by enhancing the working relationship.

The Paper identifies 14 changes that could create a compliance environment that allows prime contractors and DBEs to operate more like traditional prime-subcontractor relationships.

I will give you one quick example. If a certified MBE, a minority business enterprise, is working on a project with a prime contractor and a piece of the MBE's equipment breaks down, the prime contractor is not allowed to assist the MBE with replacing that equipment. Even if the prime contractor has a yard full of additional equipment, that sharing is not allowed. However, when a non-certified, non-MBE contractor has the same situation, they would be able to accept the assistance. How does this make sense?

Since the Paper's completion, we have met with key state and federal government officials to personally present the Paper and discuss potential changes to help disadvantaged firms grow their business. I have left a copy of the paper on each of your desks for your review.

Our efforts continue today to help disadvantaged firms grow as well as build and help a diverse workforce succeed in the construction trades. We are not here today to point out the problem. Our position paper offers solutions.

I appreciate your time here today and I am happy to take any questions.

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TO: Joint Committee on Economic Justice and Equal Employment Opportunity

FROM: Michele N. Siekerka, Esq. President and CEO- NJBIA

DATE: May 21, 2024

RE: NJ Disparity Study Results and Next Steps

Good morning, Senator Johnson, Assemblyman Wimberly and members of the Joint Committee on Economic Justice and Equal Employment Opportunity. Thank you for the invitation to offer testimony on the findings of the NJ Study on Disparity in State Procurement.

NJBIA is the largest business trade association in the state representing ~7,000 businesses, the overwhelming majority of which are small businesses. Small business is the fabric of our NJ business community and state procurement should always reflect the diverse makeup of the business community.

NJBIA is proud to be a part of the New Jersey Diverse Business Advisory Council. Lifting diverse businesses lifts all businesses and catalyzes our economy.

As a state, there is much we can do to help our small businesses build capacity and in turn then be best prepared to benefit from procurement opportunities. To do so, the state should approach its disparity strategy through a three-legged stool:

1. Conduct, know and use data in real-time.

The Disparity study revealed a wealth of data, both hard research and anecdotal.

Understanding the data and maintaining real-time data that addresses real-time realities going forward will make the state much more agile in addressing ongoing changes needed to the procurement system. The recent statewide web-based Supplier Diversity Management System (SDMS) is a great example of collecting real-time vendor, contract, and diverse spending data. We must ensure the data collected is used in real-time.

Collecting data on best practices: Let's collect and use best practices that can be learned from other states and even our large NJ businesses who have tirelessly worked over the years to improve their procurement for more diversity. NJBIA worked with the AACCNJ on a learning lab a few years back to enable some of

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NJ's largest companies to find ways to increase their vendor pool, assist in making potential small and minority businesses qualified for their own bids and ease the procurement process. I am proud to note that NJBIA set vendor goals as a result of that process, as well.

2. Make proactive investments to build capacity for NJ small and minority-owned businesses.

Early education must include a process to assist small businesses in prequalification. Regular meetings, fairs, classes, etc. to walk small businesses through the process is key. This can be done through direct state assets and/or through grants to business groups who are already equipped to provide technical assistance, many of which are in this room today. These organizations exist to be a resource to their members. Enable them to best assist their members to be procurement ready.

Consider tax credits and incentives for large companies that are best able to handle larger contracts to subcontract with smaller companies as part of the bid. There was a prior legislative bill addressing this opportunity that did not make it across the finish line.

Get to better know the small businesses and minority-owned companies that can be a part of this critical pipeline. Better engagement with your state trade associations by the different agencies and increased education and continued support for procurement fairs through and including these associations.

3. Remove barriers that are holding NJ small and minority-owned businesses back.

Rollback the 2019 apprentice requirements. While the 2019 law was well intended to increase training opportunities in the building trades, it has had the unintended consequence of severely limiting the ability of small businesses to bid on public works contracts unless they had the resources to participate in an aggregated apprenticeship program. For example, following the creation of the apprenticeship program requirement in 2019, more than 1,900 potential contractors were initially denied bidding on public works contracts in 2020, with most of them losing out on a contract for failing to participate in an apprenticeship program. Last December, S-3635 was considered which would have removed registered apprenticeship program requisites of public work contractors and set apprenticeship standards for prevailing wage projects. Another opportunity that didn't make it across the finish line.

By removing the apprenticeship requirement to bid on public work, competition in the market will improve, resulting in lower-cost projects for the state and less burden for the taxpayer.

Contract language: The report showed evidence of tailoring language to enable known bidders to have an edge given the contract language. More general language and broader definitions will yield a more diverse pool of bidders.

Allow me to provide an analogy to illustrate this. In the world of job recruitment, many hiring employers have removed certain limiting language from job specs and job descriptions such as the need for a higher education or advanced degree. As a result, employers have found the pool of candidates to greatly widen and be more diverse. As such, life experience and work credentials were in many instances substituting for a formal degree and employers were finding qualified candidates without the need to seek higher education degrees exclusively.

Other specific barriers noted in the report were cost-basis approval requirements, the existing contract thresholds and the payment process that results in majorly delayed payments that can stifle a business's ability to keep its head above water. These types of procedural challenges should be able to be reviewed and revisited in terms of their role in the overall bids and process.

The business community stands ready to assist with targeted outreach and messaging to ensure good communication on the availability of opportunities for our small businesses. Setting and attaining procurement goals for small and minority-owned businesses will achieve positive results. When you have more competition in the bidding process and increased participation from bidders, this fosters competition and ultimately leads to cost savings for the state in the end.

Joint Committee on Economic Justice and Equal Employment Opportunity
Committee Hearing
Candice M. Alfonso, Esq.
Chief Diversity Officer and Director of the Office of Diversity and Inclusion
May 21, 2024

Good morning, Senator Johnson, Assemblyman Wimberly, and members of the Joint Committee.

Thank you for the opportunity to submit testimony regarding the findings of the 2024 New Jersey Disparity Study released by Governor Murphy and Treasurer Muolo on January 23rd as well as how the Department of the Treasury has actively worked toward finding administrative solutions to help improve access to public contracting for minority-owned and women-owned businesses.

Treasury will keep its remarks brief given that we understand that most, if not all, are aware of the stark data found in the study regarding the disparities in state public contracting. Even prior to the results of the study, we all knew intuitively and anecdotally about the disparities within our State's public contracting system. There are systemic barriers in place across all three industries, goods and services, professional services, and construction, which make it harder for minority- and women-owned businesses to compete in this space.

The seminal case for race-conscious remedies for public contracting programs, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), indicated that government set-aside programs based on racial classifications must abide by strict constitutional standards, including that such programs or policies be justified based on strong evidence of actual discrimination by the governmental entity and that the remedial program or policy be narrowly tailored to remedy the discrimination. Therefore, New Jersey had to conduct a disparity study order to prove that significant disparities remained. The five-year, 60+ agency disparity study was commissioned in December 2020 and completed January 2024.

It is important to provide some general context regarding the magnitude of scope and size of the 2024 disparity study as it is the first study completed in New Jersey in nearly 20 years, as well as the largest one ever conducted in New Jersey.

The disparity study covers a 5-year period from July 1, 2015 to June 30, 2020. It is inclusive of data from over 60 agencies and institutions with procurement authority, which included cabinet departments, agencies and authorities, colleges and universities. For all agencies studied, the vendor, Mason Tillman Associates, LLC, (MTA) reviewed procurement records for construction, goods and services, and professional services.

MTA's process of data collection, review, streamlining, and analyzing information from over 60 separate and unique entities statewide across all three procurement industries was a massive, extensive, and challenging undertaking as the review and analysis alone encompassed over 1.2 million records and 240,000 contracts from various data sources provided to MTA in different formats and systems.

The Chief Diversity Officer (CDO) and the Office of Diversity of Inclusion (ODI) is housed in the Department of the Treasury (Department). As noted above, below are just some of Initiatives the CDO and the Department have undertaken over the last several years prior to, and while, the disparity study was being conducted, several of these are ongoing:

Office of Diversity and Inclusion/Chief Diversity Officer (ODI/CDO):

- In September 2019, led by CDO, the Department launched a successful Minority-, Women-, and Veteran-Owned Business Summit, NJ Connects, with more than 1,200 attendees to provide information and resources to the state's diverse business community. As part of this effort, a website, marketing materials and an electronic advertising campaign were developed for the office.
- In 2020, due to COVID-19, ODI partnered with the Supplier Diversity Development Council to host a Virtual Matchmaking event with approximately 1,000 attendees, 73 unique exhibition booths and over 400 matchmaking sessions conducted. The event was held to increase awareness and understanding about State procurement, what the State solicits bids for and procures, supported outreach efforts, connected diverse businesses with NJ Administration leadership and departments.
- The CDO provided a Diversity Participation Proposal for the Atlantic City Casino & Gaming Industry Inter-Agency Working Group.
- The CDO provided technical support and guidance to the NJ Economic Development Authority in setting up requirements for the recently established NJ Film Tax Credit Diversity Bonus program.
- The CDO assisted the NJ Economic Development Authority in drafting and establishing Fund Incentives for its Venture Fund Investment Program.
- The CDO conducted research on NJ medical marijuana program and the impact of present policies on minority and women owned businesses. Recommendations were presented to the NJ Department of Health prior to the establishment of the Cannabis Regulatory Commission.
- In 2021, Treasurer Muolo waived the \$100 fee for business certifications in order to remove any financial barriers for businesses seeking to obtain certification (MBE, WBE, SDVOB, VOB, MWBE, SBE). This waiver continues and following Governor Murphy's issuance of Executive Order 295, now includes LGBTQ+ certifications.
- In 2019 and 2020, the Department partnered with the New Jersey Economic Development Authority (NJEDA) to host 2 events with the two national developers, Turner Construction and Torcon Inc., responsible for constructing the new Department of Health and Division of Taxation buildings. In order to increase awareness of contracting opportunities to small, local and diverse businesses, the contractors provided contractor readiness presentations and worked one-on-one with businesses to become qualified vendors for current or future work. In addition to the contractors, resource tables were staffed by the Division of Property and Management Construction (DPMC), Division of Purchase and Property (DPP), Division of Revenue and Investments (DORES), NJEDA and NJ Business Action Center (NJ BAC). Turner and Torcon were so pleased with the success of the events that a third was planned for March of 2020 but had to be canceled due to the onset of the pandemic.
- Treasury strongly supported legislation for amending the Service Disabled Veteran-Owned Business Set-Aside law, reducing the number of vendors within the same commodity code

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required to trigger the set-aside from 3 to 2. This should allow the set-aside to be used more often due to the lack of certifications across commodity codes.

- In collaboration with representatives from the Department's DPP, the NJ Attorney General's Office and the NJ Veterans Chamber Association, ODI hosted SDVOB Set-Aside trainings for state procurement professionals. The training curriculum was designed to (1) provide an overview of the SDVOB legislation; (2) give guidance on ways that procurement officers can better structure SDVOB procurement opportunities; and (3) highlight best practices that have garnered positive results on a federal, state and local level.
- In order to continue and increase compliance, DPP and ODI provide annual DPA training to State agencies and encourage agencies to utilize DPA and the State's NJ SAVI (Selective Assistance Vendor Information) database of certified minority-, women-, minority, disabled veteran-, veteran-, and LGBTQ+ -owned businesses to diversify their vendor pool.
- Treasury supported legislation to gradually increase the delegated purchasing authority for the executive branch departments from just under \$48,000 to \$250,000 as of Jan. 1 2024 for goods and services. This will allow more direct purchases from agencies utilizing the SAVI database to ensure that diverse businesses are notified of DPA opportunities.
- DPP Circular No # 24-07-DPP, issued in November 2023, requires agencies to report their DPA spend for MBE, WBE, SDVOB, VOB, MWBE, SBE and LGBTQ businesses to ODI for tracking and monitoring. Monitoring trends will help us identify and share best practices as well as develop focused opportunities for customized training.
- In order to comprehensively review statewide spend, a comprehensive database was identified and procured. In January 2023, ODI launched a statewide web-based Supplier Diversity Management System (SDMS) to collect real-time vendor, contract management, and diverse spend data. The SDMS is designed as a publicly available database for use by vendors and procurement agencies.
- In October 2023, P.L. 2023, c. 165 was passed which requires the Chief Diversity Officer and Treasury, in partnership with the Business Action Center, to host an annual Matchmaking event for small and diverse businesses; as well as the newly enacted Socially and Economically Diverse Business Enterprise law (SED).

Divisions of Purchase and Property (DPP), Property Management and Construction (DPMC) and Revenue and Enterprise Services (DORES)

The Department's divisions of DORES, DPMC, DPP, and ODI have traveled around the state working collaboratively with stakeholders and agencies such as the NJ Business Action Center, NJ EDA, and NJ Small Business Association, Counties and Municipalities, and Chambers of Commerce, conducting outreach events. The Department provides training regarding the procurement process and systems (NJ START, Bid Express) business registration and certification, contractor classification and qualification to help businesses identify and prepare for contracting opportunities. Activities may include presentations, panel participation and staffing resource tables.

Some examples:

DPP staff spoke at a community-facing event in Newark this past Saturday, May 18, 2024, that was organized by the New Jersey Puerto Rico Commission. The event was a free legal clinic to educate the

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public on the resources and services available to New Jersey businesses by various State agencies, including DPP's NJ START, to assist Puerto Rican residents with establishing businesses in New Jersey. DPP staff attended to help raise awareness about State contracting opportunities and the valuable support available to businesses.

Every year DPMC attends the Associated Construction Contractors of New Jersey (ACCNJ) conference and the School Development Authority's (SDA) small business training seminar to train attendees about DPMCs classification process.

DPMC, DPP, DORES, and Taxation have participated in vendor events sponsored by industry chambers including the New Jersey State Veterans Chamber and the New Jersey Hispanic Chamber of Commerce.

DPMC organized a contracting opportunity event at the War Memorial building in Trenton to provide Small, Minority-, Women-, or Veteran-Owned Business Enterprise (SMWVBE) contractors with possible construction opportunities for the \$280 million New Jersey State House renovation.

NJ Division of Investment:

In 2019, senior Treasury officials and members of the Governor's office visited the City of New York's Comptroller's office to learn more about their fund managers and discuss best practices in strengthening diversity in investments. One of the recommendations was to develop an emerging managers program. New Jersey's Division of Investment, with support and approval of the State Investment Council, launched their own platform detailed below:

NJ Division of Investment Emerging Managers Platform

The Emerging Managers Platform is a dedicated program to address the New Jersey Division of Investment's need to access a greater number of smaller investment managers, including women-owned and minority-owned investment firms. This effort of focusing on a dedicated and smaller universe of investment firms is designed to further identify and enhance the Division's access to a more diverse pool of investment firms and thereby enable the pension fund portfolio to benefit from a wider array of perspectives and investment opportunities that may otherwise be overlooked. In order to access the greatest number of such opportunities the Division has engaged the services of dedicated and focused program partners such as Barings and GCM Grosvenor, investment firms with significant experience and a demonstrated track record with smaller and women and minority-owned investment firms. By utilizing specialized program partners, the pension fund portfolio will gain access to additional investment opportunities much sooner than would otherwise be feasible. Data on investments made in the program thus far point towards successful execution with investments made to firms squarely within established parameters of the program.

The Emerging Managers Platform is designed and structured into sleeves of several asset classes with the ability to utilize a different specialized program partner for each asset class as needed. Additionally, the structure allows the Division to grow the program by adding asset classes as further work and diligence is completed in order to identify and determine which asset classes add the most value to the program and to the pension fund portfolio. So far, the program includes allocations to private equity and real estate, while further work is being conducted on the feasibility of adding private credit and risk mitigation

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strategies within private market asset classes, as well as exploring the potential of including public equity and fixed income in public market asset classes. While adding increased investment value to the pension fund portfolio is the primary objective of the Emerging Managers Platform, by growing the number of smaller, as well as women and minority-owned investment firms in the portfolio, the program enables the Division to add greater diversity to its investment program.

In addition to the Emerging Managers Platform, the Division continues efforts to add diverse investment managers as noted below:

NJ Division of Investment's diversity efforts

NJ Division of Investment believes that the pension fund portfolio can benefit from having diversity of perspectives, experiences and knowledge with respect to its investment process. As such, to the extent feasible, the Division makes an effort to add diverse investment managers within its pool of investment managers.

Data compiled by the Division highlights the following:

- As of March 31, 2024, the Division had made investment allocation commitments of over \$5 billion to MWBE investment managers (ownership of 50%+), representing an increase of over \$2 billion and over 70% as compared to December 31, 2017. Additionally, the Division was able to increase the number of MWBE investment managers by over 70%.
- As of March 31, 2024, the Division had made investment allocation commitments of over \$2.4 billion to Black-owned investment managers (ownership of 50%+), representing an increase of over \$1.1 billion and over 92% as compared to December 31, 2017. Additionally, the Division was able to increase the number of Black-owned investment managers by over 150%.
- As of March 31, 2024, the Division had made investment allocation commitments of over \$250 million to Hispanic-owned investment managers (ownership of 50%+), representing an increase of over \$100 million and over 60% as compared to December 31, 2017. Additionally, the Division was able to increase the number of Hispanic-owned investment managers by over 100%.
- As of March 31, 2024, the Division had made investment allocation commitments of over \$250 million to Asian-owned investment managers (ownership of 50%+), representing an increase of over \$100 million and over 50% as compared to December 31, 2017. Additionally, the Division was able to increase the number of Asian-owned investment managers by over 50%.
- As of March 31, 2024, the Division had made investment allocation commitments of over \$2.5 billion to Female-owned investment managers (ownership of 50%+), representing an increase of over \$800 million and approximately 45% as compared to December 31, 2017. Additionally, the Division was able to maintain the number of women-owned investment managers by adding other women-owned investment firms as some rolled off.

The Division is actively engaged with industry organizations and associations which work with diverse and women-owned investment firms in order to encourage greater diversity within the investment industry. For example, the Division has a strong professional relationship and engagement with the National Association of Investment Companies (NAIC). Furthermore, the Division Director also has a professional

relationship with The Robert Toigo Foundation, a not-for-profit organization focused on increasing ethnicity, gender and experience diversity in investment leadership.

Division of Property and Construction Management:

The DPMC is working closely with ODI to create a dedicated outreach group within the DPMC to initiate outreach and advertise bidding opportunities in underserved communities, conduct workshops regarding the classification, qualification and bidding processes, and serve as a resource to minority- and women-owned businesses throughout the application process. The DPMC seeks to promote inclusion by working with other State agencies to address the insurance and bonding requirements for each contract and the related expenses thereof.

With a population of nearly 9.3 million residents, New Jersey ranks sixth in the nation for having the most racial diversity. Our diverse population is an invaluable asset to the State and its business community, which we celebrate. Minority-owned, women-owned and small businesses are the backbone of New Jersey's economy and are vital to our State's economic well-being. Our racial and ethnic diversity is one of the key reasons why the New York/New Jersey region was selected by FIFA to host the final matches of the World Cup in 2026.

Since 2020, I have served on the NYNJ FIFA World Cup 26 Team. In my capacity as New Jersey's Chief Diversity Officer working with the NYNJ Host City Committee, my role is to ensure that supplier diversity is front and center for the region and I continue to demand, from all parties involved, that NYNJ is represented in contract utilization and supplier diversity in equitable proportion to our availability in the marketplace.

Again, these are just some of the initiatives the Chief Diversity Officer and the Department of the Treasury have undertaken over the last several years prior to, and while, the disparity study was being conducted.

On behalf of the Department of the Treasury and the Office of Diversity and Inclusion, I would like to thank Senator Johnson and Assemblyman Wimberly for allowing us to submit testimony regarding efforts to diversify the State public procurement process.

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Date: May 21, 2024
To: Members of the Joint Committee on Economic Justice and Equal Employment Opportunity
From: Samantha Roman, President & CEO, Associated Builders & Contractors of New Jersey
Re: New Jersey Study on Disparity in State Procurement

The Associated Builders and Contractors (ABC) is a national association representing 23,000 merit shop construction and construction-related firms in 68 Chapters across the United States. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors of the industry.

ABC-NJ is over 1,300 members strong and the largest chapter in the country. Merit Shop contractors employ in excess of over 165,000 workers in the State of New Jersey. Merit Shop contractors are responsible for over \$19 billion in New Jersey construction annually. ABC-NJ is committed to workforce development through our United States Department of Labor registered apprenticeship program and in all areas of education and training.

We truly appreciate the opportunity to weigh in on the obstacles in contracting and procurement for women, persons of color and veterans.

- Lay of the Land

- Nationwide, 89.3% of the construction industry chooses to not belong to a union.¹
- In New Jersey, 87.8% of the construction industry chooses to not belong to a union.²
- 98% of black contractors don't belong to a union.³
- ABC-NJ member companies have a larger percentage of female workers and non-white workers when compared to nationwide and statewide averages in the construction industry.

- Project Labor Agreements

Anti-competitive project labor agreements (PLAs) are special interest kickback schemes that end open, fair and competitive bidding on construction projects. PLAs discourage or eliminate merit shop contractors from competing for and winning contracts on construction projects. Construction contracts subject to PLAs are almost always awarded exclusively to unionized contractors and their all-union workforces. In 2002 legislation was passed in NJ that allowed for PLAs to be placed on public works contracts exceeding \$5 million.

IN NJ, PLAS HAVE BEEN PROVEN TO BE EXPENSIVE, SLOW, & UNFAIR

¹ <https://thetruthaboutplas.com/2024/01/31/bls-a-record-89-3-of-the-u-s-construction-industry-is-not-part-of-a-union/>

² <https://thetruthaboutplas.com/2024/01/31/bls-a-record-89-3-of-the-u-s-construction-industry-is-not-part-of-a-union/>

³ <chrome-extension://efaidnbnmnibpcjgpcglclefindmkaj/https://oversight.house.gov/wp-content/uploads/2012/01/20090923alford.pdf>

- They are plagued by Cost Overruns: "School constructions contracts designed to allow only unionized workers cost taxpayers 30% more in the last decade" - NJ.com.
- They are poorly planned: "Missed deadlines, broken promises and widespread finger-pointing are among the problems affecting Egg Harbor Township High School's renovation and expansion, which still is not complete and will cost nearly twice as much as originally estimated." - Press of Atlantic City
- They displace non-Union workers: "PLAs require that all contractors hire through union halls ... non-union contractors won't even bid on the projects" - NJ.com.

BUT, DON'T TAKE OUR WORD FOR IT - HERE'S WHAT THE NJ DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT (LWD) FOUND:

- Finding - Building Costs: School projects that used a PLA tended to have higher building costs, as measured on a per square footage and per student basis, than those that did not use a PLA.⁴
- Finding - Duration: PLA projects tended to have a longer duration than non-PLA projects. For fiscal year 2008, the average duration of PLA projects (12) was 100 compared with 78 weeks for non-PLA projects (60). A variety of factors may explain this difference in duration.

In 2023, the Biden Administration raised the federal threshold for PLAs on federal projects from \$25 million to \$35 million. We ask that if the NJ Legislature went outright ban PLAs as 25 other states have done, that it considers increasing the state threshold to be consistent with the federal government. By doing so, the tax payers and minority and women owned construction firms will benefit.

- **Workforce Development & Career Opportunities**

Nationally, the construction industry will need to attract an estimated 501,000 additional workers on top of the normal pace of hiring in 2024 to meet the demand for labor.⁵ Training the next generation is the only way that we will make up the gap in hiring to support the industry in the years forward. New Jersey has made quantitative leaps in its investment into workforce development and investing in the next generation by requiring public works contractors to participate in apprenticeship programs. Through this requirement, apprenticeship in New Jersey has increased significantly. In ABC-NJ's apprenticeship program we have seen a tremendous positive impact for female and minority apprentices. We have more female and minority apprentices enrolled in our program than ever before. However, these apprentices and craft trainees need to be sustained by working in the field. If their employer cannot bid and win work effectively because of discriminatory practices, this significantly effects the apprentice's ability to continue their education and also could lessen the number of apprentices the employer is willing and able to sponsor. At ABC, our goal is to invest into our apprentices and provide debt free, quality education where a person's background, skin color, race, gender and even past mistakes are not judged. Anyone that is interested in a career in construction should be extended an opportunity to learn about opportunities that exist and how to pursue them. We ask that the legislature consider options that allow all apprentices and construction businesses to thrive in NJ whether they are affiliated with a construction labor union or not.

Thank you for considering our recommendations and your attention to this significant disparity. Please do not hesitate to contact me at (732) 597-2434 or by email at samantha@abcnjc.org.

⁴ 1. US Department of Labor's Bureau of Labor Statistics -2009 2. "NJ School Construction Using Union Workers Is Slower, Costlier, Report Shows", Ginger Gibson, NJ.com, December 14, 2010 3. "School in Suspension", Sarah Watson, Press of Atlantic City, January 7th 2011 4. *ibid*, NJ. com projects.

⁵ <https://www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million>

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New Jersey Taiwanese Chamber of Commerce

NJTCC ~ Kevin Tsay 2024 President (200 Taiwanese Businesses in NJ creating more than 800 jobs)

In New Jersey, several example cases highlight the obstacles faced by women, persons of color, and veterans in contracting and procurement processes

Limited Access to Information:

Many minority-owned, women-owned, and veteran-owned businesses report not receiving adequate information about bidding opportunities. This lack of access to timely and relevant information hinders their ability to participate in state contracts effectively.

Certification Barriers:

The process to become certified as a minority, women, or veteran-owned business can be complex and time-consuming. Some businesses face difficulties in navigating the certification requirements, leading to delays or ineligibility to bid on contracts.

Networking and Relationships:

Established relationships often influence the awarding of contracts. Many businesses owned by women, persons of color, and veterans may not have the same networking opportunities as their counterparts, making it harder for them to secure contracts.

✓ Financial Challenges:

Smaller businesses, particularly those owned by underrepresented groups, often face financial constraints. They may struggle to meet the financial requirements or provide the necessary upfront capital and bonding for larger contracts.

Discrimination and Bias:

There are instances where implicit or explicit biases affect the selection process. Reports of discriminatory practices, such as biased evaluations and exclusionary criteria, have been noted as significant barriers.

✓ Technical Assistance and Support:

Adequate support and technical assistance are often lacking for minority, women, and veteran business owners. This includes help with preparing bids, understanding regulatory requirements, and enhancing business capabilities.

✓ Past Performance Requirements:

Many state contracts require a history of past performance on similar projects. Newer businesses, particularly those owned by underrepresented groups, may find it challenging to meet these requirements due to a lack of prior opportunities.

Subcontracting Issues:

Even when prime contracts are awarded to larger firms, minority, women, and veteran-owned businesses often face difficulties securing subcontracting roles. They may encounter unfair practices such as being given less profitable or less significant portions of the work. Addressing these obstacles requires a multifaceted approach, including policy changes, enhanced support systems, targeted outreach, and efforts to foster an inclusive procurement environment. The testimony aims to shed light on these issues and propose strategies to mitigate these challenges and promote equitable participation in state procurement.



NEW JERSEY DIVERSE
BUSINESS ADVISORY
COUNCIL

Priority Legislation needed for the NJ Diverse Business Advisory Council 2024-2025

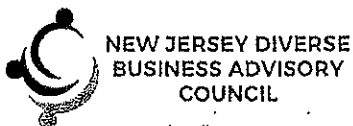
1. **Prompt Payment Program** – a law that states that all small diverse businesses will be paid from each state agency that they have a contract, within 15 days of the completion of work on that contract, or portion of that contract that is established at the awarding of the contract.
2. **Creation of the Office of Small Diverse Business Development** – Creation and memorialization of the official office of small diverse business development in the office of the Governor, and provide a budget to the office commensurate with the activities that are required.
3. **Funding to diverse chambers of the NJDBAC** – create a line item in the budget to provide funding to the diverse chambers that are part of the NJDBAC to conduct outreach and programming for the diverse business community.
4. **Publish all spends in every state agency with procurement power** – A bill that mandates that every state agency with procurement power, publishes all spends of that agency with small diverse businesses vs. total spends both as a total dollar amount and as a percentage. This data should be listed on their website and should be updated quarterly. It should track spends of all the certifications listed on the state's NJ SAVI system or subsequent diversity certification system.
5. **Require every procurement officer to undergo annual diversity procurement training** – Put together training that is run out of the office of diversity & inclusion, conducted by the Chief Diversity Office and members of the Attorney General's office and members of the NJDBAC, that instructs procurement officers on the need for primes to conduct a true good faith effort, how to outreach to the diverse business communities, and the laws associated with diverse procurement in the state.
6. **No registration fees for newly formed small diverse businesses**, – waive the start-up costs and registration fees for newly created small diverse businesses if they are certified under one of the diversity categories in the state.
7. **Waive EZPass tolls for one to two vehicles owned by small diverse businesses** – Create a law that will waive the EZPass tolls of up to two vehicles owned by small diverse businesses in the state.
8. **Create a 10% Price Preference Program for small diverse businesses in the state.** – Allow small diverse businesses a price preference when bidding public jobs. Previous bills were S1866/A4042 (which focused on disabled veteran owned businesses). Thirteen other states have price preference laws, so there is a precedent for this law.
9. **NJEDA Diverse Business Lending fund** – Create a fund either run out of the Office of small diverse business development or NJEDA, for \$10-20 Million, that allows small diverse businesses to use a state contract as collateral and draw up to 100% of the award amount in funding to be paid back via low-interest or no-interest loan. This would be eligible for county and municipal contracts as well.



NEW JERSEY DIVERSE
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10. **Any state dollars that go to counties and municipalities be tied to a diversity business goal** – Much like the way NJEPA establishes SED goals to state/federally funded projects, any state money that is allocated to counties and municipalities will be tied to a small diverse business goal.
11. **For all Infrastructure Bank (I Bank) funded projects, small diverse businesses should be included in the diversity goals of 10%** (Currently only M/W). Waivers need to be issued for any prime vendor that is unable to meet their required diversity goals
12. **Provide funding for training in capacity building and mentorship between prime vendors and small diverse businesses** – Have the state create a training fund to help build capacity for small diverse businesses in the state.
13. **Create a state certification for Military Spouse Owned Businesses** – The creation of the MILSPOUSE state certification will continue to help diverse owned businesses including those owned by military spouses.
14. **Create a First look Program** – Procurement personnel would be required to first look at small diverse businesses when purchasing through delegated purchase authority or under the threshold purchases in the state.
15. **Create Ombudsmen at all state agencies with procurement power** – The creation of Ombudsmen will allow small diverse businesses to speak directly to a person within the state agency that can help them with problems such as getting paid, contract resolution, and other business-related aspects.

For more information, please reach out to us at info@njveteranschamber.com



Short Term Goals

- Governor to issue an Executive Order with the following information:
 - Memorialize the NJDBAC and make it an official state council
 - Official NJ Council, NJ Diverse Business Advisory Council - NJDBAC, should be made up of the diverse chamber leads, front office personnel, NJEDA, Treasury, and members of the legislature (Diverse chamber leads are voting members)
 - Every state agency must cooperate with the council
 - All RFPs moving forward will contain language for diverse business utilization
 - Establish an office for small & diverse business development
 - NJ to commit to 30% Small & Diverse procurement by setting inclusive procurement goals – Legislative priority
- Provide funding in the state budget to diverse chambers to conduct outreach & programming
- Conduct significant outreach & education programs
- Streamlined certification that lasts 5 years, without having to update every year
- Networking events and conferences
- Conduct training to all state procurement professionals on defining the good faith effort and S&D utilization

Mid Term Goals

- Unbundling of state contracts – make it easier for small & diverse businesses to compete as a prime vendor
- Delegated purchasing authority increase from \$17,500 to \$50,000
- Price preference program of 10% for small & diverse businesses - Legislation
- Regular evaluation & adjustment
- Create a “friendlier” and accurate diverse supplier database
- Transparency in procurement opportunities
- Capital fund for small & diverse businesses

Long Term Goals

- Mentorship programs with Prime suppliers
- Incentives for Prime Contractors
- Regular reporting & accountability (Report Cards)
- Supplier diversity liaisons in all state agencies
- Feedback mechanisms and meetings
- Regular evaluation & adjustment
- Recognize Military Spouse Owned Businesses as a diversity category
- Publish yearly procurement data for all small & diverse businesses in Prime & Tier 2 categories
- Publish plans on how each agency plans to meet its small & diverse business procurement goals
- Help remove obstacles for credit, bonding, and access to capital
- Strengthen the laws to investigate and prosecute those businesses who allege diversity to gain state contracts
- Make the RFP process easier by streamlining on a state portal