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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:** February 20, 2020  
10:00 a.m.

### **MEMBERS OF COMMISSION PRESENT:**

Hester Agudosi, Esq., Chair  
Senator Ronald L. Rice, Vice Chair  
Senator Nellie Pou  
Assemblywoman Annette Chaparro  
Assemblywoman Nancy J. Pinkin  
Assemblywoman Nancy F. Muñoz  
Maurice Griffin, Esq.  
Alex Solomon (for Senators Chris A. Brown and  
Declan J. O'Scanlon Jr.)  
Ricky Stephens (for Assemblyman Jamel C. Holley)  
Melanie Walter, Esq.



### **ALSO PRESENT:**

Tracey Pino Murphy  
*Office of Legislative Services*  
*Commission Aide*

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

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

We're going to call to order the meeting of 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 also recommend policies, practices, and programs that further this State's efforts to promote opportunities for small, disadvantaged, and minority- and women-owned business enterprises in purchasing and procurement by State departments and agencies, including independent State authorities and local government units.

And now for the roll call.

Honorable Senator Ronald L. Rice.

**SENATOR RONALD L. RICE (Vice Chair):** Present.

MS. AGUDOSI: Honorable Chris A. Brown.

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

MS. AGUDOSI: Thank you.

Honorable Annette Chaparro. (no response)

I did receive an indication that she would not be able to attend today.

Honorable Sandra B. Cunningham. (no response)

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

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

MR. GRIFFIN: Present.

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

Honorable Nancy F. Muñoz.

ASSEMBLYWOMAN MUÑOZ: Here.

MS. AGUDOSI: Honorable Declan J. O'Scanlon, just for the record.

MR. SOLOMON: Alex Solomon, on behalf of Senator O'Scanlon.

MS. AGUDOSI: Thank you.

Honorable Nancy J Pinkin. (no response)

I did receive notice that Assemblywoman Pinkin would be attending today, and she may be joining us later.

Honorable Senator Nellie Pou.

SENATOR POU: Good morning, everyone.

ASSEMBLYWOMAN MUÑOZ: Here.

SENATOR POU: Here; sorry. (laughter)

MS. AGUDOSI: Honorable Assemblywoman Britnee Timberlake. (no response)

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

No calls for-- I'm not sure -- we did send out, previously, the agenda; but I will pass hard copies to my left and right.

We are now moving to old business.

We had discussed at our last meeting that, pursuant to the statute, this Commission is scheduled to end one year from the date of its first meeting, and that would be February of this year.

We are now at February 20. We discussed extending the Commission's ability to continue to take in information, and to also have additional time to prepare its findings and responses.

So that being the case, there were previously -- we had some discussion about how we were going to move forward.

In the interim, I did check and confirm the following dates are available, and they are Tuesdays, March 3, 10, 17, and 24. So we are, pretty much confirmed the four Tuesdays in the month of March from 10 a.m. until noon. And I just wanted to -- I know this might be a little difficult, Senator Rice, with your strained voice, to give us some insight on how we might be able to move this forward on the Senate side, as well as on the Assembly side. And in the interim -- I think we had discussed moving forward in the interim.

SENATOR RICE: So forgive me, but I'm here. Marines always show up.

Legislation resolutions have been already introduced to fast-track in the Senate soon. And I'm almost sure last time it was introduced, (indiscernible). They called me because the Board was still open and asked me if we wanted them to have the staff put it in; so they'll do that. So we'll check today.

On the other side, I think it was prepared for Assemblyman Wimberly to put in the Assembly side. So we'll fast-track that.

I also spoke to Kevin Drennan, and I told him, "Look, this Commission is important, so we're going to be all over Committees." And so

that's what we are. So we'll continue to move; we'll keep the record straight, and we should have something in place as soon as we can get back in.

I'm going to see if one can bypass -- if we can bypass Committee and go to the floor. Because I don't think there's any, you know, budget problems.

And by the way, AJ, I can talk a little bit now; you know, when I get upset my voice becomes clearer. (laughter)

SENATOR POU: Are you upset?

ASSEMBLYWOMAN MUÑOZ: Are you upset?

SENATOR RICE: Not yet.

ASSEMBLYWOMAN MUÑOZ: Not yet. (laughter)

SENATOR RICE: I want to put AJ on warning.

MS. AGUDOSI: Okay, thank you, Senator Rice.

And we have two more Commission members who have walked in, in the pendency.

And I'm just going to ask if you can please just state your name for the records

MS. WALTER: Good morning; Melanie Walter, Director of Local Government Services.

ASSEMBLYWOMAN CHAPARRO: Assemblywoman Annette Chaparro.

MS. AGUDOSI: Good morning. I did mention that you had confirmed, and you would be here.

And just to let you know where we are -- we're under old business, and we were talking about the fact that the Commission is slated to

end, via statute, one year from the date of its first meeting, which was in February of 2019.

At our last meeting, we talked about bringing forth a resolution to extend the term of the Commission so that we can continue to not only take in testimony, but issue some findings and recommendations for the Governor's consideration, as well as the Legislature.

And there has been some activity that has been taking place, both on the Assembly side and on the Senate side, in that effort. But in the interim, we are going to continue to move forward.

SENATOR RICE: So I'm just checking.

The Resolution, SJR 55, is already submitted to extend; we just have to get it moved.

MS. AGUDOSI: I'm just going to repeat what Senator Rice said, which is that the Resolution, SJR 55, has already been placed forward.

Is that correct, Senator Rice?

SENATOR RICE: That's correct.

MS. AGUDOSI: Thank you for that update.

SENATOR RICE: No, it's not been moved forward; it's in -- that's the number. We're going to try to move it forward.

MS. AGUDOSI: Okay, so it's in, and now the effort will be made for it to move forward.

Thank you.

SENATOR RICE: Okay.

MS. AGUDOSI: Okay, so with that old business being taken care of, we're going to move forward as it relates to new business.

The structure for today's meeting will basically be to continue to take in testimony, as indicated on your agendas.

And I'm just going to ask if you can pass an additional agenda for--

ASSEMBLYWOMAN MUÑOZ: I think she has one.

MS. AGUDOSI: Oh, do you have one?

ASSEMBLYWOMAN CHAPARRO: I have one; thank you.

MS. AGUDOSI: Okay, wonderful.

Melanie, do you have an agenda?

MS. WALTER: Yes.

MS. AGUDOSI: Okay, wonderful.

We're going to move forward; we're taking in some testimony.

I just want to make a note that, at our prior meeting Senator Rice had requested Reverend DeForest B. Soaries come before this Commission -- as a former Secretary of State, and someone who is very active in this area of what we're discussing -- to provide testimony.

We did reach out to Reverend Soraies. Unfortunately, he was not able to attend today because he is at a meeting in New York. He asked if we can keep him in mind for future opportunities, and so I will make him aware of subsequent dates that we have for his availability.

But in the interim, we do have three speakers who are lined up to give this--

Good morning. I'm just going to give you a second to settle in, and ask if you can just place your name on the record.

ASSEMBLYWOMAN PINKIN: Nancy Pinkin.

MS. AGUDOSI: Good morning, Assemblywoman Pinkin.

We basically just talked about, at our last meeting, that we're going to be moving forward with the resolutions for us to be able to extend the term of the Commission. We also looked at available dates for this room, and decided that our next meeting date is going to be on March 3, here in this room, from 10 a.m. to noon.

And so we're moving forward now with new business.

We've had, as a Commission -- we've been seeking to get information directly from minority- and women-owned businesses that operate here in the State of New Jersey, or try to do business in the State of New Jersey, to really give us an on-the-ground understanding of what their experiences are, as it relates to public contracting, any barriers, any challenges that they see -- be it anecdotal or otherwise -- to assist us, as Commission members, in having a clear understanding of how we can move forward in making the necessary changes, here in State government, to create a more robust supply chain which is inclusive of diverse businesses.

And so that being the case-- Again, we have another person who joined us.

If you can please state, on the record, who you are representing.

MR. STEPHENS: Good morning; Ricky Stephens, Legislative Director, here on behalf of Assemblyman Jamel Holley.

Thank you.

MS. AGUDOSI: Thank you.

And so we previously heard from a number of different diverse Chambers. We previously heard from the African American Chamber of Commerce, we heard from the Hispanic Chamber, the Asian Indian Chamber. And there has been a lot of discussion before this Commission, as

it relates to public contracting, on construction and particularly the construction trades.

One of the things that we lifted through our prior meeting, is that we had representatives who came in to provide testimony for African Americans in professional services. And in a continuation of that, we have representatives here who are going to be talking about the challenges that are presented to those who are in professional services, and construction, and engineering, representing the Asian Indian community.

And so I'm going to ask, at this time, AJ Sabath, President and CEO for Advocacy and Management Group (*sic*) -- if you could come forward. And hopefully his testimony -- I guess, according to Senator Rice -- may get Senator Rice's voice back. But I hope it will be in a positive way. (laughter)

**AJ SABATH:** I hope that Senator Rice relaxes and takes time and rests. (laughter)

Good evening, everybody.

SENATOR POU: Good morning.

MR. SABATH: Or good morning. Oh, my God (laughter), it's been a long few days.

Co-Chairs Agudosi and Senator Rice, and distinguished members of the Commission, my name is AJ Sabath, and I'm here on behalf of Bill Mullen, who is the President of the State Building and Construction Trades Council.

I have some prepared remarks, which I'll read; but I'm sure that there will be some questions afterwards, which I'll be happy to answer.

I do not know what I do not know. So if there's information that you request of me that I don't have with me, I'll be certain to provide it in a speedy fashion to the Commission.

The State Building and Construction Trades Council is composed of 15 international building trades unions, 13 County Councils, and some 150,000 union tradesmen and women across New Jersey.

I'm here to let you know that our membership is in accord with the purpose and lofty goals of the Disparity in State Procurement Study Commission to recommend policies, and practices, and programs to improve access and promote employment opportunities for small, disadvantaged, women- and minority-owned businesses throughout New Jersey.

New Jersey has a number of small minority-owned and disadvantaged businesses and enterprise firms that are having problems making ends meet, often because they are prevented from making inroads into certain market sectors. In a state with as diverse a population as ours, it makes sense to increase business opportunities for these firms, to help them grow and, in turn, provide more and better jobs for minority workers.

Many of these firms are located in urban areas and have ready access to a pool of willing minority workers. Government contracts can help serve this purpose. However, the situation is far worse outside the goods and service sectors where, in our industry, there are fewer small minority- and women-owned, and disadvantaged business enterprise firms.

Our Council represents the union tradesmen and women who work on construction projects of all kinds. As such, our organization and members do not bid on public or private contracts; rather, we provide the

manpower, and woman power, and job expertise for the construction firms that do bid on them, and ultimately bring a project to completion.

In this regard, our Council and affiliated unions are proud of the efforts we've made to promote and administer a Federal initiative that provides a pathway for returning military veterans, with an emphasis on women and minorities, to pursue successful and good-paying careers in the building trades. Since 2007, our Council has administered the New Jersey Helmets to Hardhats program, which recruits and provides skilled training for veterans who want a satisfying career in the union building trades. Working with every branch of the military, including the Marines, Army, Navy, Air Force, Coast Guard, and the National Guard, the Helmets to Hardhats program has registered more than 3,000 participants and placed more than 1,000 in the state-of-the-art apprenticeship programs with one of our union trades.

With funding from the State Department of Labor and Workforce Development, our New Jersey program has consistently been recognized as one of the most successful in the nation. It was awarded a Bronze Medal for Excellence in 2013 for the special emphasis it places on targeting women and minority applicants.

In addition, many of our member unions have initiated their own community outreach and specialized training programs to encourage more women and minority participation. For example, the Carpenters Union has a program to actively seek qualified candidates within the Hispanic community through the Puerto Rican Association for Human Development.

The Carpenters also launched a successful effort to recruit more women into its workforce through its Sisters in the Brotherhood initiative.

This program focuses on community-based women and minority organizations, re-entry programs, One Stop centers, and organizations that specifically serve women. Sisters in the Brotherhood supports female members by providing assistance in obtaining craft training and leadership skills, by being advocates on women's issues, and by mentoring new members and even potential members.

This is just a sampling of the various programs being instituted by our member unions to solidify and boost their ranks with minority, women, and veteran workers.

Our State Building Trades Council is also working hand-in-hand with our signatory contractor associations -- which I think they testified at the last hearing -- such as the Association of the Construction Contractors of New Jersey, or the ACCNJ, to assist in their ongoing efforts to promote and expand the presence of diverse business interests in the construction industry. Our members participated in the ACCNJ commissioned study to evaluate the effectiveness and capabilities of the disadvantaged business enterprise firms that have been qualified to perform construction contracts for the New Jersey DOT and New Jersey Transit.

The results of the study, which have been presented to the State Office of Diversity and Inclusion, show that many of these Disadvantaged Business Enterprises currently lack the capacity to efficiently handle the heavy highway, civil, and utility construction work; and in some cases, traditional vertical building construction; and those that do have the greatest capacity received the smallest amount of spending awarded by the two agencies.

Likewise, our unions have participated in several diversity conferences sponsored by the Association, which have brought minority-, women-, and veteran-owned firms together to meet with contractors, construction managers, and public agencies to discuss the multiple certifications and pre-qualifications required to be eligible for government work set-asides.

Through these and other initiatives, the New Jersey State Building and Construction Trades Council has demonstrated its commitment to reducing existing disparities faced by minority-owned businesses in procuring construction contracts awarded by State and local government agencies.

There is still much work to be done; our councils and unions stand ready to assist the Commission, and relevant agencies, in any way we can.

As I noted previously, our Council and member unions do not bid on public or private construction contracts. However, day-to-day experience with our signatory contractors has made us aware of the obstacles that confront small and diverse business enterprises, and the difficulties in achieving the small minority-owned and disadvantaged business enterprise goals that have been set for the construction projects.

This Commission might want to consider one or more of the following suggestions for resolving some of these issues, most of which I think have been echoed by other speakers before me.

Develop a universal registration system whereby, once a diverse business is registered, it will be pre-qualified with all State agencies. The

existing system of registering with multiple State entities is extremely complex, confusing, expensive, and time-consuming.

Reduce the time and paperwork needed for a qualified small, minority-owned, women-owned, and disadvantaged business enterprise firm to obtain State certification.

Create a State database or website of qualified minority, women, and veteran firms that reflects accurate construction classifications, and is easily accessible by State and local governing agencies, general and subcontractors, and other minority firms.

Schedule regular workshops to instruct small, disadvantaged, and minority- and women-owned businesses on how to apply for certifications and prepare bids on public contracts. Many certifications are denied and bids are rejected because owners are unsure of the process.

Create a procurement monitoring system that attests to the validity of the outreach efforts to include more women, minority, and veteran participants on public construction projects. This should apply both to the awarding agency and prime contractors who are awarded bids.

So on behalf of Bill Mullen and the New Jersey State Building and Construction Trades Council, I want to thank members of the Commission for the opportunity to speak before you. We applaud and will continue to support your efforts to improve the State procurement policies in New Jersey.

I'm happy to answer any questions.

MS. AGUDOSI: So thank you.

I just want to clarify that in the introductions, I misspoke -- I'm sorry, because my assistant and I changed the agenda a couple of times -- and

that Mr. Sabath is speaking on behalf of Mr. Mullen who -- again, Senator Rice had requested that we reach out to the New Jersey State Building and Construction Trades Council. Because as much as we look at the participation of these businesses, we understand that labor plays an important role as it relates to these construction projects. And we're also looking at what diversity is, as it relates to what labor is working on these construction projects that are State-funded.

So with that being said, I have a laser-like focus when it comes to data. And so I appreciate your comments, and I'm wondering if you can give me some sense of the numbers. And if you don't have that readily available, if you could provide that to the Commission.

So by way of example, when we look at your membership, what percentage of it represents women, minorities, and veterans, as you indicated?

MR. SABATH: That's a tough question for me to answer, because the structure of the Building and Construction Trades Council is a literal Association of trade associations that are construction trade unions. So we don't keep that specific data; the individual trades do.

I can check with the National Building and Construction Trades Council that may have specific data for that. But otherwise, we can reach out to our 15 members to see what information we can provide for you.

MS. AGUDOSI: So that would be helpful. By way of example, you mentioned some of the programs that you have in place receiving awards for the efforts that you have. And for me, it's -- well, what are those benchmarks? Where did you start with, in terms of your numbers, and where are you now as a result of that outreach? And then having an understanding

of the gamma; we're talking about capacity. How many people do we have who are available to be on-boarded?

So to the extent that you don't have that information, I might recommend that maybe that might be something that the organization does, right? Maybe do an internal analysis or assessment from the different trades to give us an understanding of what those numbers are. Because right now, I have no way of knowing, from what you're saying or providing to us, who you're reaching. And is that 1 percent, is that 10 percent? And without having that, I can't assess.

MR. SABATH: That's a valid point.

I don't want to say I'm certain, but I'm pretty sure that each of the different trades has demographic information of their members and their apprenticeship programs; graduation rates and things of that nature. So I'll see what we can put together, and provide that information to the Commission.

MS. AGUDOSI: Thank you.

I try not to hog with the questions, so I will defer for others on the panel who have questions, and then I'll come back.

SENATOR RICE: So AJ, thanks for coming.

I've noticed in your testimony-- And people get offended when we raise this issue of blacks, and Latinos, and women.

And so you indicated that there are programs in the Carpenters, for example, working with the Puerto Rican Association for Human Development. And that's good because, oftentimes, they are left out; and all other Latinos are participants in what (indiscernible) in these cities at large.

And then you mentioned women, and people get offended when I constantly say to the Legislature that when we argue about women and minority participation, there's a little growth and movement in minority participation. Not much; but blacks are still status quo.

So are there any programs for black folks in these unions, besides apprenticeship programs that everybody gets in; any little focus? That's one question. I have a couple of others about your numbers, okay?

MR. SABATH: So the first answer to the question -- there is a focus through the Helmets to Hardhats program, in particular. But the program through the Carpenters, the Sisters in the Brotherhood, does work with various community organizations, some of which I think would meet the description of what you're referring to. And I could provide a list to the Commission of that information.

SENATOR RICE: You provide the information. And I thought you would go back to the Helmets to Hardhats. We (indiscernible) things to put through, with money coming from a Bill I put in, that says that one-half of 1 percent of all State contracts have to go into women and minority apprenticeship programs. And then the State stopped collecting data in 2010, and funding. And that program didn't even get much money.

So in that program, Helmets to Hardhats -- that's a veterans' program. The majority of our people who are looking for work are not veterans. I can say this, because I can appreciate veterans, because I'm a Vietnam veteran; I'm a war veteran -- not just a veteran. But I can also tell you that when these buildings are taking place, and the trades -- a lot of it is taking place in the City of Newark -- the folks who are looking for these jobs and looking to be trained are not veterans.

And so we can't do that apple pie-motherhood thing, and then duck.

And then the other issue is that we get too many complaints-- And that's why I wanted to talk to President Mullen, and have an objective tough conversation for unions. But we have to shift the times we are in. We've gotten too many complaints over the years -- and I've been here over 30-plus years -- that the handful of blacks, and Latinos, and women who you do have in the trades, they sit in the union halls. So we're doing all these jobs, particularly in the communities we represent, and people are beating us up because there's no "minority participation"-- maybe one here and one there; and we get elected by those folks, then the unions say, "We're going to run you out of office; you're fighting us, trying to get people work." That doesn't make any sense to me. I don't care about it, because I've been there before.

But the point is, the unions are telling me that the way the halls are set up is the reason that some folks are sitting in the union hall, and other folks are getting more work. You need to revisit that. Can you explain that process to us?

MR. SABATH: Sure.

And first of all, what you said is very concerning, and I'm going to take that back to President Mullen. Because I've been working as the lobbyist for the Building and Construction Trades Council for 10 years, I'm the former Commissioner of Labor, I staffed the Senate Labor Committee when I was on staff in the Senate. And, you know, that's something that I haven't heard.

There's a seniority--

SENATOR RICE: What did you not hear?

MR. SABATH: I did not hear that, in particular, people of color sat in the union halls--

SENATOR RICE: Oh, yes.

MR. SABATH: --while other people who are not of color (*sic*) did not get work.

SENATOR RICE: They do; and when we do get black participation and Latino participation, it's with the laborer's union. And then legislation is always coming through to take the jobs, that are made available, for the laborer's unions. So it means that between those other trades out there -- they are not getting equitable participation or something reasonable, okay?

So that's why we want numbers; the numbers will give us the story.

MR. SABATH: So my point is-- I mean, I'm going to take that back to all the trades, you know. I mean, it's-- I'd be very surprised if that was accurate, but-- And you know, like I said, it's very concerning.

SENATOR RICE: So the data we need-- For example, you said a thousand -- you had *X* number of people go through the Helmets to Hardhats, and a thousand were placed in various unions.

We need you to give us a breakdown on that: How many of those folks were black out of that thousand, Latino, and women, and other ethnic minorities. And so we'll see just what that thousand looked like. Because there are more white veterans than black and Latino veterans. That's just given the makeup of our society, okay? So we need to know that.

We also need to know the number of union workers for each trade, and a breakdown of those workers. Now, I'm going to tell you what you're going to get. You're going to get some people calling Senate President Sweeney saying, "We don't want to give the information up." Hopefully, that's not the case. We just need to know if, out of a thousand people, (indiscernible) out of 300 over here -- out of that population, that out of a thousand people, 25 are black people, 30 are women, 400 are whatever. Do you follow what I'm saying?

MR. SABATH: Yes, I know exactly.

SENATOR RICE: And if they don't keep that, then there's something wrong with our process. Because we're talking about diversifying and don't really mean it, because we can't really tell what we have and what our needs are.

Do you follow me?

MR. SABATH: I follow you completely.

SENATOR RICE: Do you think you can accomplish getting that information to us? Or am I going to have to sit with Bill and have Bill call me, getting mad with me, and the unions telling me they're going to run me out of office the next time, and the Senate President clumping down on me, and I'm cussing everybody out, and I hit the streets.

MR. SABATH: I don't ever recall any union telling you they're going to run you out of office (laughter); because, they couldn't.

SENATOR RICE: Well, they tried that before.

MR. SABATH: Nobody I work with; nobody I work with would say--

SENATOR RICE: Okay, but I think, on a serious note, those numbers are really important.

MR. SABATH: But I will tell you, please don't mistake President Mullen's inability to be here, and to have me here, as any indication that this isn't an important interest. And I know that, over the years, even before I worked as the lobbyist for the Building Trades, and when I was on the Senate staff, we've had a good relationship, as far as being able to communicate and sit down with one another. And I think, based on some of our dialogue here, I think that that would be beneficial to coordinate.

SENATOR RICE: I don't take it that way. In fact, Bill is a good friend and he understands.

But he oversees the Council of different unions. And (indiscernible) doesn't get involved in the mix at all, okay? And that's the concern I have. And the concern I have is that those of us who are women and minorities are caught in the midst of everybody -- union politics. Where there are jobs coming forward, where there's this vision of more work and minorities are participating like they were union -- then Bill is coming, saying, "Well, you want to grab some of that work which you don't traditionally do--" And we don't want to be caught in that; we just want to make sure whatever comes through, there's a proportion and equitable justice piece there.

And I also say this. In your testimony you testified-- And you're right; the unions don't bid jobs. The problem is that unions go after contractors who bid the jobs; if they're not union contractors, they put a lot of pressure on them to get union workers on those jobs.

The problem is that some of the non-union contractors have blacks, and Latinos, and women who are very capable. And the reality is that when the unions come in, some of those folks won't get any things of that magnitude. So it's a harm to push yourself on people if you're not going to entertain the contract relationships. Because those contracts tell us that when they bid these jobs, they say, "Look, we're competitive and we expect to have X number of minority and women on our job." That's what they write out; that's their goals. (Indiscernible) fight for a few of those goals, and they can't fulfill them because they get boxed into the union scenario; and then the union can't produce a number of people to fill those goals. That's real; you know that's real.

So we need to take a look at that.

I guess what I'm asking is that some of these scenarios that I'm talking about -- that you were frowning about, like you never heard them -- and maybe because you don't live in the black community where we live and see these jobs going up, and people running to the Mayor or to the Council, and people coming to us and calling us. And you don't want to offend the union boss, because they are scared they'll get no work then.

We just need to take the information and say, "Okay, if this is true, how do we fix it?" Do you see what I'm saying? That's where we're trying to go.

Based on what I'm saying and what I'm hearing, those are some of the problems with our participation. And I just want to make sure that there are fixes for that. And I don't have a problem sitting down with Mullen and the Council; I think the Black and Latino Caucus should do that anyway,

so we can be honest with each other about what we hear and what we know, and particularly about what we see.

And the final thing is, do you have to have a union card to stand in the middle of a highway? Because you said capacity -- we may not have it for bridges and stuff-- To hold a flag up telling traffic to stop--

MR. SABATH: I think we're conflating two issues, when I talk about *capacity*. Because right now, what we're not talking--

The discussion of this Commission is not, what are barriers to people being employed in the construction industry; the discussion is, what are the barriers to contractors procuring State projects at local government and county government? Two important discussions.

But the issue of capacity that I was referring to was a barrier to minority-, women-owned, and disadvantaged contractors. And a lot of that capacity, in my experience -- when I was on legislative staff, when I participated back at the conversion of the School Construction Corporation to the School Development Authority -- was on bonding capacity, which was one of the biggest barriers to being able to partner in a design-build relationship with general contractors.

The other capacity was having experience in size and scope of work. If you're starting off as a small contractor and bidding on million-dollar jobs, it is a huge challenge, for a variety of reasons, to break into doing \$5 million and \$10 million jobs. And the biggest is, no other prime contractor is going to want to do business with you if you're not bonded for the appropriate capacity for it.

So when I talked about *capacity*, that's what I was referring to -- in the context of contracting.

SENATOR RICE: Okay.

Okay, but just keep in mind -- and I'm going to end on this -- there's a direct relationship to contracting and unions. Because a minority contractor or a woman contractor says, "Look, I can build city houses, and I can do this." The unions come in and say, "You're not going to do it unless we get the job," in many cases, to get some of the work.

And so we go to prevailing wages; and then the unions -- and I know this for a fact, because I was a victim of it -- the unions step in and say, "Well, you're doing prevailing wages, but we would prefer you do it another way." Prevailing wages are union wages. So this minority contractor gets shut down, which means they're no longer participating in the process, for a lot of different reasons. And I'm just saying that there is a relationship; and unions, sometimes -- not all unions; I support unions -- become a barrier to the process of the contracting, even if they have workers there, you know?

And I just wanted to be clear on that, okay?

MR. SABATH: One of the other things -- if I just might respond to one of the things you said, which was somewhat of a characterization -- that unions would go after non-union contractors or workers on non-union projects, and basically say, "If you don't put our people on--" I mean, we spent a hundred years organizing contractors; that's what we do for a living, you know? We're not going to be bashful about that. Public employee unions do it, private unions do it, and construction unions do it.

So I don't know if the characterization is accurate the way that it was presented. It is accurate that if there was a public contract that a public entity awards, that's a prevailing wage contract -- which means it's a union rate, but it's a contractor who is not a signatory to any one of our trades that

are performing work -- we're not going to be bashful about trying to organize that site. That's what we do for a living, and that's kind of how we stay viable to be able to support the high wages that we get paid, the private insurance that we provide our membership, and the premier health insurance that we provide to the hard-working men and women of the building and construction trades.

But your point, as far as to the nexus of union contractors and the building trades unions -- I mean, they're related discussions, but there are separate barriers to getting women, minorities, and other disadvantaged people into apprenticeship programs. Which is an important conversation, but a different one than the barriers to contractors that are minority, women, and disadvantaged that are bidding on State projects, whether they're goods and services or construction.

ASSEMBLYWOMAN CHAPARRO: May I just (indiscernible) that?

MS. AGUDOSI: Yes.

ASSEMBLYWOMAN CHAPARRO: So since we touched on that, I just want to say that, to be fair, in Hudson County there are a lot of trades that are trying to get apprenticeships. And they call my office all the time, trying to get the community to be involved.

And I have to tell you -- not to disagree with the Senator, but my community in Hoboken, I remember specifically-- And I have something, and I need you to understand this, because it's a frustration for me. I was kind of being attacked, saying they don't have jobs, they need these trades to come in and employ them. And I do a job fair, and no one shows up. I had to go back to the community, "Look--" I was embarrassed. I had to go back

and say, “Well, excuse me, you’re beating me down that I’m not looking out for you. I look out for you; but no one is showing up.” It was just embarrassing.

So it’s there, but maybe there’s more communication we need, and maybe we just need to be in constant communication with each other so we know who to call, how to correct it. Because I’m sure it is happening in certain areas, but we just need to make sure that the community is more involved, and we’re more involved, and that we don’t just go by hearsay; and just, kind of, work together. Because we do need to make this grow, and they need it. I mean, the guys in Hudson County say, “We’re getting older; we need young blood. They need to come in, we need them.”

I’m actually getting my son into one of the trades, too. I said, “You don’t have a job, you don’t want to go to school, get out there.” And it’s not easy. He’s coming back home -- “Oh, it’s like school, you know? You have to go there, and you have to do this, you have to--” Yes, exactly.

So we have to communicate more.

But a different topic; I just wanted to touch on that, just to be fair. Because it is out there, and they are trying. We just need to promote it more.

SENATOR POU: Madam Chair.

MS. AGUDOSI: Yes.

SENATOR POU: Good morning, AJ.

MR. SABATH: Good morning, Senator.

SENATOR POU: I wanted to just kind of follow up on a statement that you just made moments ago.

MR. SABATH: Okay.

SENATOR POU: You talked about the capacity of contracting, and some of the ills, or some of the concerns, or some of the problems based on your experience as the former Commissioner of Labor -- and all the years that you have, for such a young man. (laughter)

MR. SABATH: Thank you for saying that on the record.

SENATOR POU: And I say that because I see your beautiful wife in the audience, so it's, you know-- I'm giving her--

MR. SABATH: You shouldn't have outted her. (laughter) I'm afraid it will ruin her street cred, so-- (laughter)

SENATOR POU: But just the same, let me just--

So on the capacity for contracting that you talked about-- Because yes, I totally agree in terms of the most important piece of the subject area here is the procurement process. Although I fully, fully understand Senator Rice's concern, because they really are, in many ways, intertwined in everything that we're talking about. Even if you have the capacity, if you don't have the ability to hire and follow through on that, the capacity doesn't matter.

So I think that's what Senator Rice was saying; but that's not my question.

So my question to you is, what would be something -- again, based on your experience -- what would be some of the recommendations that you have that will help to streamline the process, that will get us to build that capacity that is so very desperately needed?

And I know that there were some recommendations that you shared here. But I'd like you to just, kind of, take it back to -- specifically refer to it in that context.

MR. SABATH: Well-- And I appreciate the question; and I kind of shared my comments through the kaleidoscope of the building construction trades. But kind of stepping out of that role for a moment, I know that one of the things that was always discussed -- and it was always hard to achieve -- was to create some type of gap surety system that would enable contractors, who couldn't meet that bonding capacity, to secure necessary bonding that was backed by the State in some way. And you know, insurance is outside of my purview; I know just enough about it to get me into trouble. And there are a lot of smart people who work in the Administration and the in Legislature. But I think that that, at least, is one solution to address that bonding capacity issue.

With regard to the experience -- I mean, a lot of that is kind of dictated in RFPs by public entities. So to the extent that there's something that local government services could do; or that there's some type of program that could alleviate that, to enable prime contractors to feel more comfortable and secure with a new subcontractor who they haven't worked with or might not have the experience -- but that there's some kind of protection that they have. Because at the end of the day, I mean, what really dictates in our industry is liability, personal and professional.

So those are the two things, off the top of my head. It's not really what I came here to talk about, but it's something that was kicked around when I was on the Senate staff, and just was elusive, and nobody could seem to, really, come up with a way where that would work. And maybe it was actually finding a surety company that would provide that, and maybe there's a way that one of the government agencies could provide that in some capacity.

MS. AGUDOSI: So thank you for that.

We had -- previously, Mike Garner from the Metropolitan Transit Authority came and testified before this Commission, and spoke about a program that they have in New York where, basically, the MTA itself supports the financing, the surety for these businesses through their program. So that's something that we're going to take a deeper look at.

So thank you for that.

One of the things that-- You know, I'm Chief Diversity Officer, so diversity is always on my mind, right? And I was looking at an article -- I don't know if others saw that -- that came out, talking about just the diversity index in this state and how it has increased exponentially. So when I speak to people about diversity and inclusion being a business imperative, and something that the State has to embrace -- all of us have to embrace it by necessity. And I'll send a copy of the article, but it's very interesting when it breaks down by municipality; and when they look at this diversity index, basically what they're saying is, if we have 10 people, how many of those people come from, or comprise, different ethnicities, right? And so 100 percent would be all of them are different; and zero or 1 -- you know, right?

And what we're finding is that, as a state, our diversity index number is in excess of 60; and when we break that down into many of these urban communities -- and many of these areas where we have a lot of our larger construction projects operating -- that diversity index is approaching 70.

So it does kind of tie in, when we're talking about, again, what are these economic opportunities and how are people being on-boarded.

So I say all of that to ask -- in terms of the efforts that the Council is doing to diversify the ranks -- I know in my role, I was just appointed in 2019; so this is the first time the State has someone who's looking at that specifically -- is there anyone in the Council who has that mission as it relates to integrating these, as you indicated, minorities, women, veterans; and diversifying that workforce in light of what the numbers are on the ground?

MR. SABATH: The Council itself does not have that. But I know that some of the trades do have -- not just people, but teams that are responsible for outreach programs. And again, we could have another whole hearing on just some of the barriers to getting somebody from a job fair into an apprenticeship program, and what are some of the barriers just between them.

MS. AGUDOSI: So can you educate me, just a little bit, in terms of how the Council -- what type of relationship it has to the trades that are underneath it? Are you kind of advisory to those trades? Can you make--

MR. SABATH: I would describe us as more of a coordinating body. And a lot of what we-- And this is a structure that's like a hundred years old. It's an *Association of associations*, is the best way to describe it. You know, Bill Mullen is your retired ironworker, a local President of a local Ironworkers union. And he's in retirement now as the President of the State Council.

The State Council is comprised of each of the heads -- the vice presidents, business managers; some of them have different titles, some are presidents, some are-- And those are from all the 15 trades, and they range from basic trades to skilled trades. And some of the trades are -- their

apprenticeship programs are high in STEM; to be an electrician, to be a plumber, to be an operating engineer, to be a carpenter, there's a lot of math, science, physics, geometry. That being said, the Council itself coordinates annual conferences; it coordinates programs with a lot of the business agents, providing information, seminars.

The Council itself serves as kind of a governing body to deal with jurisdictional issues. So for example, at one time all bridges were made of wood. So if you talk to a carpenter, any bridge-- Because, you see, I'm kind of making a joke, but-- So sometimes it happens that there are different trades that lay claim to different work. And so there's an internal structure that's set up to address those issues. And I would honestly say the main role of the Building Construction Trades Council is to handle those jurisdictional issues, especially the major ones that are on large multi-state or large, complex projects that many counties are involved in.

The trades themselves are organized in a county regional way. So for example, a construction project in Bergen County -- the work is largely going to be performed by people who live in Bergen County. And so you're not going to have people from Union County, and so on and so forth.

And when there are disputes between work in different counties, again, the Building Construction Trades Council serves as, kind of, that governing body to adjudicate those disputes. In addition, with the advent of the use of project labor agreements -- which are tools that are used for very complex projects that basically allow the trade unions to step outside of their bargaining agreements with their contractors, and to basically say there's a small window to do this job in, so the entity that's letting the project will say, "We need a PLA, because we need this done in six months," when it would

normally take a year. So there's going to have to be certain kind of work rule changes, that there's going to have to be an agreement on from the contractors and from the union, as well as from the (indiscernible) government agency.

And so the State Building Construction Trades Council will be the chief negotiator of that for a large complex project. If it's a smaller kind of county project, there are county councils -- I referred to the 13 county councils, which are a microcosm of the Building Construction Trades Council that kind of do the same kind of thing, but just on a county or regional level. You have some parts of the state where the counties are merged, just because of population-wise.

I hope that gives you--

MS. AGUDOSI: Yes, absolutely; that's very helpful.

And so in light of that, again, and just trying to get an understanding in terms of just influence-- Because you're here, and you presented information again in terms of efforts, and outreach, and integrating women and minorities and veterans into these trades.

So at your level, at the Council level, is that something that -- if it's 13 -- or, I forgot what the number is across the board -- is that something that all 15 talk about, and then it trickles down into their respective-- I'm just trying to get an understanding of how does that DNI work from the Council level to actually, then, come down into the independent trades?

MR. SABATH: It's an excellent question, because I think that all the trades are aware of their own demographics. And I think the answer to your question is, some of the trades have different barriers than others, based upon some of the advanced academic requirements that are necessary

to sit for a test to become an apprentice. And then, too, some of the apprenticeship programs actually have lower graduation rates because they're much more complex. And, quite frankly-- And I don't know this to be a fact, and this is purely my opinion, so I really don't have any data to back this up -- but I think if you're a woman, a minority, or disadvantaged, and you have a skill set to be able to sit for a test to become an operating engineer, or an electrician, or a plumber, I think that you might be looking for another opportunity that may be more beneficial, and may be easier to obtain, and be a less, kind of, gruesome type of work. And that's just my opinion, and I kind of -- I'm hoping I'm saying it in a genuine kind of way, but I think that there's a whole host of barriers that exist to the-- Besides the example of going into a community and trying to put together a job fair-- I didn't even talk about it, but, over the years the Building Trades Council, as a whole, got money from the Department of Labor called *YTTW* money-- it's the *Youth Transition to Work* program. And they would specifically go into urban high schools, and the whole idea was to use this as a minority recruitment tool. And just as colleges come in and talk about the importance of going to college, we would come in and provide that same kind of presentation.

The problem is -- and this has been a discussion, because there's been a number of apprenticeship bills and efforts that have moved through the Legislature -- apprenticeship programs are looked down upon. I know that when I was growing up, it was expected that I was going to go to college. And I remember -- my brother-in-law happens to be a member of Local 9, which is the UA Plumbers. And I remember my mom was devastated when she found out that my brother-in-law-to-be was a plumber. And then I told

her what his starting salary was, and how he's making more than me--  
(laughter)

But the point is that there needs to be a change in our culture, in our educational system. STEM has become something there's been a focus on, and I think everybody understands how that's important because of technology. But there needs to, kind of, still be an analog discussion about - - what about for kids who are not technically savvy and--

MS. AGUDOSI: Right, I agree wholeheartedly.

And that's why my question is trying to get an understanding. Because I know unless we have something in place, institutionally, that says, "This is our focus; and so, therefore, we're going to see what those challenges are, and then we're going to address them through systematic programs or changes in policies and procedures--" That's why I'm just trying to get a sense of what that apparatus is; and if it doesn't exist, that's fine too. But at the same time that you, as a Council, are providing recommendations to us, I feel it necessary to provide recommendations as well. And one of those would be that this focus -- again, when we're talking about diversity and inclusion, and we look at just what our numbers are in the State as it relates to workforce -- that this is something that has to be handled in a more structured way.

And that's one of the reasons -- no slight to you -- but what I find, oftentimes, is that when we have this discussion, we talk about this big picture. But then when we get down to, "Let's look at what the numbers are," and when you can't tell me what the numbers are, that means that you don't really have a serious program. Because a serious program means that my outreach is going to be measured by, "This is where I am, and this is where I need to be," or, "This is what the pool is."

And in the absence of that, or in the absence of even gathering that information, we're just kind of going through the motions. And that's why we have the hue and outcry in the community, because it's not really real. If it's really real, then we're looking at what our numbers are, and we're trying to make sure that there's some increase and measurable outcomes. And whatever it is that we're doing -- if those numbers aren't moving, then that means that we need to refocus.

So that would be my recommendation; and I'm happy to come and speak to the Council about some of the ways that they may be able to accomplish that.

MS. WALTER: I had two questions for you, kind of related to that tracking of progress within existing programs; and getting beyond the underlying recruitment to the capacity building within larger contracts.

Because I find it interesting -- your testimony focused a lot on the micro level: the programs that exist to get people in the apprenticeship programs into the trades initially. But then, as you correctly stated, the big question here is building capacity within established contractors, within teams, to be able to take on bigger projects to get into those State contracts.

And so even assuming *arguendo* that everyone is coming in through these programs and succeeding at that base level, what is being done and what is being measured to track progression within the industry? Once someone comes in at the base level and completes their apprenticeship, is there support to help them get into those larger projects? Is there training available to help them learn the paperwork, how to fill out those RFPs? And has there been any investigation within the industry to look at pooled bonding? Because you're talking about the need for bonding capacity; and

sometimes if you have a higher risk pool, you put people together and they're able to access bonding that they wouldn't be able to individually, with the risk-sharing.

MR. SABATH: That's a great question; unfortunately, outside of our purview.

We're the hired help, so we don't do any of the documentation filling out. Our training is specifically limited to the knowledge of or the trade and craft capacity work that's necessary to perform the duties of a carpenter, or an operating engineer, or a plumber, or a pipefitter.

Which just to kind of dovetail on the point before -- you know, that Building Trades Council itself does not recruit apprentices for the carpenters; the carpenters do that. And listen, some do a better job than others. I'll need to go back and have a conversation to be able to get something-- While we don't track that information, they do; I know some of them do. We have never tracked that information, as the Building Trades Council. However, I know that there are individual trades that do do that.

SENATOR POU: Madam Chair -- I'm sorry.

MR. GRIFFIN: Hester, if I may.

I'm sorry.

Could you, sort of, walk us through the extent to which the Council has any ability to mandate programs or, sort of, policies to the individual trades? For instance, if there is a representative of each trade on the Council, can those representatives vote on something? You know, increasing minority participation -- anything? Or is it that each trade has control of its own destiny, and the Council, sort of, just -- in the instance

where there's a dispute over which trade is going to do what, that's what you do.

MR. SABATH: I would liken the Building Trades Council to a federation with a lot of home rule that is tethered to-- A lot of the internationals make a lot of those decisions. But I'd have to go back and find out if that's something that can be facilitated; I'm not certain. I'm not aware of-- I think, largely, what our Council has done is tried to do programs that would encourage participation, as opposed to do mandates. So you know, when we talked about the Youth Transition to Work program, or we talked about the Helmets to Hardhats, or the other support that we provide to some of the individual recruitment programs that some of the trades have, I'm not aware of anything like that being done; and I'd have to take a look at that, if that's something that's in their capacity to do.

MS. AGUDOSI: And I just want to clarify.

I am not suggesting a mandate; I'm suggesting that this is something that when we're talking about diversity and what the diversification of the state and the workforce looks like -- that this is an issue that all of the trades would share. And so to your point, in terms of having a Council with that collection, having some discussion about that and, kind of, leading some direction in terms of how do we approach that and leverage that.

MR. SABATH: I mean -- and I'd just also like to underscore -- because I think you're, kind of, lifting the hood and saying, "Well, how does the Council work?" You know, there are a lot of things that we're empowered to do by virtue of the governance structure; and a lot of it really relates to issues of jurisdiction in how the trades interact with one another when it

comes to external issues. I mean, in my experience, each trade kind of operates on its own -- is the best way to look at it.

MS. AGUDOSI: Before we take on any more questions, I just want to, in the interest of time-- Because it's 11:11 a.m., and we do have some more speakers who are here, and we have one of our members who has to leave, so I--

SENATOR POU: That would make it two.

MS. AGUDOSI: I'm sorry?

SENATOR POU: That would make it two.

MS. AGUDOSI: Okay; so--

MR. GRIFFIN: Four. (laughter)

MS. AGUDOSI: Okay. So unless there's a really burning question that cannot be addressed at a sidebar, I'm going to thank you very much on behalf of the Commission members.

MR. SABATH: My pleasure; and we have some information to give to you.

So thank you.

MS. AGUDOSI: Thank you.

Okay; so moving on, I'd like to ask Mahendra Patel and Sunjay Naik if they could please approach.

Good afternoon, gentlemen.

On behalf of the Commission, I previously had a conversation about professional services, and particularly the challenges and the barriers that face diverse businesses in the area of professional services.

I do understand that you are prepared to be able to give us some insight, from your perspective, as business owners in public contracting and

to be able to, kind of, just share with us those experiences for our consideration.

And if there were things that were mentioned previously, through the other testimony, that you think may be germane, please feel free to speak to that as well.

Thank you.

And again, if you could just introduce yourself and tell us a little bit about your business and your operations, before you give us your testimony, that would be helpful.

**MEHENDRA PATEL:** Good morning.

My name is Mehendra Patel; I am the owner of MP Engineers. We do civil engineering, structural engineering solutions here in New Jersey. We mostly work for New Jersey DOT and New Jersey Turnpike authorities.

I have an office in New York also; and we do similar government contracting work for all the design services for different agencies in New York.

Thank you.

Good morning, all the members of the State Procurement Study Commission, and the Chief Diversity Officer Hester Agudosi, present here today.

My name is Mahendra Patel; I'm an Asian Indian American, and I own MP Engineers, an engineering firm. I am also President of the Alliance of New York Asian Architects and Engineers, *The Alliance*.

As an MWBE business owner, I am here to express my strong support for the MWBE program.

Collectively, The Alliance is comprised of more than 50 Asian American-owned architectural and engineering firms, which provide a full

spectrum of engineering and architectural services, and employ more than 1,000 individuals across the states of New York and New Jersey.

The MWBE program in New Jersey and New York state has had a substantial impact on my company. At this point, more than 50 percent of our work at MP Engineers involves subcontracting services we provide for other large firms on government MWBE contracts. This generates over \$10 million in revenue annually for my company, and supports the employment of 90 people, including 51 minorities and 12 women at our firm.

Larger firms would be less likely to engage our firm if they did not have to meet the MWBE goals provided by the governors of New Jersey and New York. Therefore, on behalf of the Asian architectural and engineering community, I humbly request that the Legislature and the Executive focus on the importance of this program, and the economic success and future of our community as it reviews and considers making changes to the program. The current MWBE program has provided us immense opportunities, and we in turn have contributed to developing a very useful workforce in the State of New Jersey and New York.

Thank you.

MS. AGUDOSI: Thank you.

**SANJAY NAIK:** Good morning.

Good morning, Chairwoman Agudosi and all the members of the Commission.

My name is Sanjay Naik; I'm the owner of the Naik Consulting Group, located in Edison, New Jersey. I'm also on the Board of Directors for the Alliance of Asian Architecture and Engineers.

Thank you for giving me the opportunity to discuss the impact of the MWBE program on State contracts. My firm is a certified Minority-Owned Business Enterprise in the State of New Jersey. We provide civil engineering, land surveying, and construction management services, primarily to government clients like the New Jersey Department of Transportation, the New Jersey Turnpike Authority, and the Port Authority of New York and New Jersey.

Our Edison office currently has over 50 people, mostly in high-paid positions, many of whom live in New Jersey with their families.

It is the State MWBE and the Federal Disadvantaged Business Enterprise, DBE, program that gave me the confidence and encouragement to start my own consulting engineering business 20 years ago. Our survival and our successes, to date, are entirely attributed to the MWBE program. Even today, after nearly 20 years in business, we rely significantly on our MWE and SBE designation to secure contracts.

The majority of our contracts are as a subcontractor or a subconsultant to large, non-MBE firms. Most often, these contracts are awarded to us due to the fact that these large firms need to meet their MBE or SBE goals. Without these goals, firms such as ours would struggle to compete.

And a case in point -- a firm like ours, and many of our member firms, does very little or no work at the county level or at the municipal level.

As you embark on a new disparity study, it is very important to do it right. I request you examine the results of the 2005 and 2019 New York City Disparity Studies.

The 2005 study incorrectly established a lack of disparity for Asian Americans in professional service categories, and eliminated MBE goals for this ethnic group from New York City contracts. As a result of this policy, this group lost many opportunities to work with New York City agencies. The negative impact this policy had on Asian firms has been documented in New York City's 2019 Disparity Study. The 2019 study showed that eliminating the MBE goals for this group placed them at a great disadvantage and led to a disparity for this group.

We believe the 2005 study had two major shortcomings.

In the 2005 study, the professional services were too broadly defined, and placed many businesses -- like legal services, technology services, engineering and architectures services -- under one category.

Also, the 2005 study included contracts received by the minority- and women-owned businesses to meet the MWBE goals in its analysis of determining the disparity. When, in fact, these contracts should have been excluded from the analysis to determine the true inequalities. Including these contracts in the study would only indicate the success or failure of the MWBE program. Only contracts received directly from the State agency should have been considered for the true evaluation.

While you are looking to design, implement, and utilize the next MWBE program, I would like to bring up one more issue for your consideration.

Many MWBE programs around the country fail to provide opportunities for minority- and women-owned firms to work directly as a prime with the State agencies. These programs only promote subcontracting opportunities. Once again, the recently completed disparity study in New

York highlights this issue very clearly. I urge you to look into creating either a set-aside or a discretionary spending program for MWBE businesses, just like the MTA has done in New York.

We look forward to working with the Commission on this important issue, and we welcome any opportunity to meet and continue our discussions.

Thank you very much.

MS. AGUDOSI: Thank you.

I have a couple of questions for you, because you mentioned MWBE, and I know that the two of you do work in New York and New Jersey.

We currently don't have, in New Jersey, an MWBE program; whereas, they do have one in New York, and they have goals. So can you give me an appreciation of what difference, if any, is there for your businesses directly in public contracting in New York State with MWBE programs and goals, versus in New Jersey, where we only have an SBE goal?

MR. NAIK: Yes, so fortunately for our industry, a lot of our member firms are also certified as a small business enterprise with New Jersey. So we are still taking a lot of advantage of SBE programs in New Jersey, but, again, we are only taking advantage of that pool only. There is no opportunity for us to work directly with the agencies, even through an SBE program.

The New York side was similar. It has strong MBE goals, so we get very meaningful work out of many New York contracts because the type of work and the type of services those kinds of contracts require. So those have been the two different experiences for us. Although we do have SBE

designation for many of our members, including my firm; we take advantage of that with either the New Jersey Turnpike or the Port Authority.

MS. AGUDOSI: So are you saying that you are able to-- And I'm asking this question because when I look at the numbers of SBE and I drill down in terms of African American, or Hispanic, or even Asian, if the goal is 30 percent or 25 percent, those numbers are very small even in SBE representation.

So are you saying that you have been successful in getting contracts in New Jersey as an SBE? And if so, that's good to know. I just need to have an understanding if there is a disparity between your ability to get contracts, or would you say it's equal in terms of your SBE contracts that you get in New Jersey with your MWBE contracts in New York?

You did mention that there's a difference in the type of contracts, and I'm going to ask you if you can put a little more meat on the bones, in terms of what those contract amounts are, as well as what those types of contracts are.

MR. NAIK: Okay.

So in answer to your first part -- is, yes, it is pretty much equal from both sides, from SBE and MBE in New York. We probably get enough amount of work through the SBE program, also, on the New Jersey side. Whether those goals are adequate for the capacity and the availability of the firm, I can't answer, because I don't have the full data. But I'm sure we are capable of handling more work even on the New Jersey side if the opportunities were given to us.

And as far as the type of work that we tend to get on the New York side -- because, first, the MBE designation, as well as the percentage

goal itself -- is we get to be, really, part of the project, rather than providing just the support services in New Jersey.

If I give you an example: We would be, as an SBE, invited to, on a big design project, just to do surveying services. Well, if we continue to grow our business in the surveying services and grow to a level that we are no longer certified as an SBE firm, surveying services alone cannot sustain us in the open fair market.

Whereas, on the New York side, the projects and the goals are so large that we get to design part of the bridge also. So it gives us an opportunity to establish our staff, and our management structure, and everything else to go along with it, so that when it comes time for us to come out of the program we are at least capable of handling some small bridge design-type of projects.

MS. AGUDOSI: And so I just -- and I promise I will defer -- I also was struck by the fact that you -- and you can correct me -- that your firm has been in business for 20 years, correct?

MR. NAIK: That is correct.

MS. AGUDOSI: And part of your testimony was that when you look at these programs that are in place, that they focus on subcontracting opportunities as opposed to prime.

And so what struck me is how, in the course of 20 years, you grew to the numbers that you are, but you're not able to compete and bid as a prime. Can you give me, and us, some understanding of-- I would think that you would be, kind of, the poster child for a successful MBE, to the extent that you've been operating for 20 years, that you're working with big

public agencies on both sides of the Hudson, and you employ a considerable number of staff. But yet, you're still operating as a sub.

So can you give me some clarity on that?

MR. NAIK: Yes. So there -- it might be a little bit of a broader answer.

It's just not the MWBE goal or the program; but it's probably somewhat of a reform required at the procurement level as well. The type of experience, and expertise, and staff level that each agency requires when you propose on a project -- some of the firms like us, even after 20 years, may not have those-- If I give you an example: On a typical bridge design project, the RFP, the Request for Proposal, would come out and say, "A firm needs to have 15 licensed engineers." Well, if it's a single-span small bridge, why do you have to have a firm with 15 engineers? I have 5; I could do the bridge design. I have a capable staff.

So there are some procurement-related issues, too. And when the agencies put out the Request for Proposal, there are requirements that are imposed that kind of preclude firms like ours from even proposing on those types of projects.

MS. AGUDOSI: So thank you, because we hear that. And I think that's something that we need to look at as well, which is -- are those requirements needed.

And so can you-- And thank you for giving that example. And I'm going to ask you, in your experience -- over 20 years of being involved in engineering, the services that you provide -- how routinely do you see that being the case? Where the qualifications over-exceed what's necessary for performance?

MR. NAIK: I would say almost all the time. I mean, that's one of the reasons we wouldn't pursue some of those contracts as a prime, as directly. We seek to be subbed to some larger firms.

There are also, probably, some misconceptions over at the agencies, too, that these are minority-owned, small firms, "We don't want to trust them to get our job done on time or on budget," or, maybe, "There are some complications; maybe that small firm cannot handle it." It's just the whole understanding and culture that sometimes prohibits a small firm from going after projects like that.

But I would say probably, very routinely, on almost all projects that would be the case.

MS. AGUDOSI: So what would you say to this Commission if we wanted to come up with some objective standards for procurement criteria? Is there any particular place that one can look to, to get some guidance to understand, well, what's the baseline that will be needed to design a bridge, as it relates to engineering or any of the particular trades that your alliance represents? So that when we go back and caucus this and look at this, we can make an assessment as to what the baseline is, versus what some of these RFP requirements are. Because I hear that, as it relates to -- like you said, it could be-- We had someone who came in the last time and said, "I alone worked on this job at the big firm. I was the person doing it. Now I start my own business, and none of that translates in consideration, when I now want to bid on this project. That's erased, even though, under a large prime, so to speak, it's not everybody in the firm who is doing it; it might be a team of two or three. Which, to your point, I have in my firm."

MR. PATEL: I would just want to clarify and give more information to the Commission.

So when there is a proposal out there -- let's say there is one bridge design, and it's open to everyone. So there is a company where they have 1,000 employees, 1,500 employees, 2,000 employees. They go after this kind of job since it is open to everyone, right? So, in fact, we got encouraged that, "Okay, this is the project, and it is open to everyone."

But these big companies, like, 1,500, 2,000 employees, which have a broader range of professional people, all the categories-- So we got discouraged, and usually we don't go after those kinds of jobs.

Just to give you an example of what the Commission can do -- there is one project coming out for what they call a LCD report for New Jersey DOT. They have put it on their website -- their upcoming five projects; they are going to select five consultants to do that kind of selection. So internally, the DOT procurement people decide whether they want to put, out of these five projects, one as an SB set-aside or not. If we have exposure to meet with these agencies, and sit down with them, and give us the option that we can say, "Okay, as a minority or as a small business, we can manage these kinds of jobs;" and if we have some input to decide that kind of thing, that would be really helpful to us so we can get some impact. Otherwise, if the agency people just sit there, and if they decide that, "Okay, this project -- we want to put it out as open to everyone, and this one--"

They put, like, the small bridge inspection projects out as a set-aside. Sometimes they put some, like, deck replacement projects out there. But there are larger projects out there that can be put as an SB set-aside also.

So if we have access to discuss with procurement and all those people, once a year or once every six months -- once they know what kind of projects are in the pipeline -- that will be a good opportunity to discuss these kinds of things.

MS. AGUDOSI: Thank you.

Any questions from any of the other members?

SENATOR RICE: If I heard you correctly, you said in New Jersey you do okay. I thought I heard you say you do okay because of relationships through MWBE over here. And it's like a team; except when they get the small business work here, they call you in. So I'm still not going to get any work.

And that's why I keep arguing that the MWBE program, some kind of way, has to get back in place in New Jersey. Because you're going to find that the prime people and those who are getting all the work, once they get someone -- they know they need minority participation, they're going to carry that. And it's easy for them to come and say, "Well, I have somebody; I have Ron Rice." And so I'm always getting work on either side of the equation.

Meanwhile, the other women and minorities are putting in for work, and there's no expansion. So the work starts to grow like this (indicates), when it should be growing this way (indicates). And that's part of the problem. Because I knew I heard you say-- And I'm saying, "Wait a minute now. What he's saying, on the SBE side is, "We do okay because we work for her, and we work for the Assemblywoman in New York, and they brought us into New York on the MWBE program." And now, in New Jersey,

you don't have one; so they are going over as a small business. But they need us to show the diversity -- that's why they're doing it, okay?

So to me MWBE has to get back in the mix. The GEOD Corporation really did harm to us. And it wasn't really the GEOD Corporation; I give the blame to the McGreevey Administration for not challenging them in court, and doing a consent decree. I really blame them for that.

MR. PATEL: I think--

MS. AGUDOSI: Any other questions?

MR. PATEL: Sorry.

MS. AGUDOSI: I'm sorry; you wanted to make a comment?

MR. PATEL: Yes, Senator Rice has a good point, right?

And similar, to consider that point -- in New York City, the (Indiscernible) has a program where they advertise the projects, and they will identify -- this project is for less than 10 employees, this project is from 10 to 50 employees, this project is for 50 to 200 employees, and these projects are for 200-plus employees. So that really helps, overall, the whole community of minorities. Like, if you are less than 10 people, then you go after these kinds of projects; and you have competition of those there.

So again, in minority also, right? If there are people with 100, 200 things; and then only the minority set-aside comes in, and only the larger guys go -- then the same thing happens that Senator Rice mentioned.

MS. AGUDOSI: Thank you.

Any other questions? (no response)

So gentlemen, thank you very much for coming and providing this very important information.

I'm sure I will be reaching back out -- not only in my role here as Co-Chairing this Commission, but also in my role as Chief Diversity Officer -- as we try to fashion some programs that can assist us in addressing some of the challenges and some of the deficits that you have advised us.

So I want to thank you again for your time and your very important testimony.

Thank you.

MR. PATEL: Thank you.

MR. NAIK: Thank you very much; thank you, everybody.

MS. AGUDOSI: Well, we're doing well, Commission members.

It is 11:37 a.m.

ASSEMBLYWOMAN MUÑOZ: That is very good.

MS. AGUDOSI: Unless there is any-- We'll kind of open -- the floor is open for discussion.

MR. GRIFFIN: I just wanted to get a sense of your, sort of, thinking about the report and how we would structure that happening.

Is it -- you draft it, we then, in one of our meetings, go over it? Do we, sort of, each provide input? I just wanted to get a sense of how we were going to accomplish that?

MS. AGUDOSI: So my thinking -- and it's just that, thinking -- is to provide just an outline of the information that we've received overall; to kind of take that and provide an outline and summary. And then we will just discuss internally how we want to move forward.

In those sections, get some consensus based upon the information that has been made available through testimony; what our positions, if any, are going to be on those particular sections, as it relates to

findings and recommendations. So it's really an outline; let's talk about the information that we received and how we want to report that out, in terms of consensus, on findings and recommendations.

Any other questions?

SENATOR POU: Just a comment; just a quick comment.

When Mr. Sabath was here, and we were discussing-- Melanie, I think you were making a comment with regards to -- I think you used the term *capacity pool bonding*, I think is the term that you used.

And I thought that that would be more of-- First of all, I think that's great, and that's more of a responsibility that I see coming from an Administration governmental structure, rather than it being placed on the part of the former speakers who we've had.

But I think that we as a Commission ought to be looking at considering some of those tools to implement within our structure, wherever it best lies. Because there are multi-interdepartmental concerns that we have to think about when we arrive at those conclusions or recommendation -- whether it be DCA, whether it be EDA, whether it be NJ Transit; any number of different projects, all the authorities -- so that we come up with one program, I suppose, that helps to provide those opportunities and language; that would help to be retrofitted within their projects.

I'm kind of being very selective with my words, so that it can be applicable to a number of different things. But I thought that-- I kind of automatically felt, "Oh, my God, it's great. We ought to be doing that here within our governmental structure."

Thank you.

MS. AGUDOSI: Thank you.

And one of the things I would say is, that as we start going over the testimony and the information that's been received, this Commission has the ability to call in whatever State entity or agency to provide us with any type of additional information or guidance. And that might be something that we may find might be needed. "Okay, we're talking about this, but how is that really going to operate on the ground?" So maybe we need to bring in someone from DOT or someone from New Jersey Transit to discuss in more detail.

So that's one of the reasons why having that extension-- Because now we need to, kind of, just call-- We have a lot of information, and I understand that we're all very busy. So I have no problems taking the lead on just trying to organize that, like I said, in an outline schematic; and kind of highlight some of the key information so that we can talk about what we want to do, and who we need to bring in, in order to have some certainty as to whether or not that's a good path to proceed with in terms of recommendations.

So the last thing I would just ask is that -- we have our next meeting date. If there are any additional witnesses or representatives that you believe that the Commission should extend an invitation to, to come and present, please let me know. If not, what I will endeavor to do, between now and March 3, is to get that outline together for our consideration.

**(MEETING CONCLUDED)**