



LET'S GET TO WORK!



*The Voice of Long Island's Highway & Infrastructure Professionals*



June 11, 2018

Commissioner Howard Zemsky  
President and Chief Executive Officer  
Empire State Development Corporation  
633 Third Avenue, 37<sup>th</sup> floor  
New York, New York 10017

Re: NYS Senate Standing Committee on Economic Development  
NYS Senate Standing Committee on Labor  
Minority and Women-Owned Business Enterprise Public Hearing

Dear Commissioner Zemsky:

The above referenced NYS Senate Committees have commenced joint public hearings to discuss the State's MWBE program. The hearings' purposes include identifying and addressing problems and creating a more effective and efficient program. The first hearing was conducted in Albany on May 30<sup>th</sup>.

The positions of the undersigned organizations were well represented at the May 30<sup>th</sup> hearing through the oral testimony and written submissions provided by Mike Elmendorf, President and CEO of the New York State Chapter of the Associated General Contractors, Denise Richardson, Executive Director of the General Contractors Association of New York, and others. The testimony offered made abundantly clear that despite all the problems with the way this program is currently being conducted, the construction industry actively

supports the MWBE program. Unfortunately, the State's MWBE program, as it is currently being administered under an Executive fiat imposing an arbitrary and capricious statewide 30% participation "goal," is in this group's opinion severely flawed and beyond statutory and constitutional parameters. The 2016 Disparity Study is deeply defective containing conclusions that strain credibility. The Study's purposes more intended to shore up the Governor's 30% mandate rather than accurately measure disparity resulting from discrimination. To these points, this group stands firm. It has, however, never been the response or position of this group that the program should be terminated or discontinued. As a matter of fact, it was never mentioned during the four plus hour hearing by any Senator or witness that the MWBE program should be discontinued or terminated. Never.

In response to the May 30<sup>th</sup> hearing, ESDC released the following statement by e-mail to the press:

"Claiming the disparity study is fundamentally flawed is nothing more than a warped agenda to disenfranchise MWBEs or simply reject the results which will provide more opportunities for MWBEs. The facts are clear. The 2016 MWBE Disparity Study, conducted by the nationally recognized public policy research firm Mason Tillman with decades of experience, provides a robust, comprehensive and concrete analysis of more than 25,000 state contracts. The statistical findings reflect continued disparity among minority and women business owners in support of the continuation of the MWBE program. Our economy is strongest when it is inclusive and accessible, and by raising the floor – through tailored programs, tools, training and outreach – we can help ensure the full spectrum of New York's vibrant diversity is represented by how we do business in the Empire State."

The undersigned organizations, representing the construction industry and employers across New York State, find a specific portion of this statement deeply offensive and indicative of this Administration's absolute disregard for a civil and cooperative discussion aimed at addressing and resolving problems associated with the State's MWBE program. The use of the phrase "warped agenda to disenfranchise MWBEs" is so loaded with inference that little is needed to read between the lines. It is telling though that the only entity that reduced itself to name calling and smear is ESDC.

Every organization represented in this letter has MWBE members, has participated in MWBE mentoring programs, has funded MWBE mentoring and training programs, has members that employ and contract with MWBEs, has MWBE representatives on their Boards of Directors or staff. The list goes on. ESDC, however, appears blind to these facts. To raise questions and concerns about the MWBE program and specifically the 2016 Disparity Study is in the eyes of ESDC indicative of a "warped agenda to disenfranchise MWBEs." It really is beyond the point of galling and a statement that could not be ignored. Indeed, it is this Administration's illegal conduct of this program that is placing it in jeopardy. Our organization's efforts to have it conform with the law and constitutional standards is in defense of the continuation of the MWBE program, not against it.

Over the years, the construction industry has conducted or participated in studies on MWBE programs and has reached out to this Administration in a good faith effort to share their stories, identify and discuss problems, and offer practical and realistic solutions. This Administration has shown no interest in listening to the construction industry. The Part Q Executive Budget proposals showed contempt for the construction industry, as well as the legislative process and governmental transparency. Thankfully, the undersigned organizations were helpful in convincing the Legislature to abandon those proposals.

The Senate's hearings will continue, and the undersigned organizations will be participating and making their concerns heard. If ESDC chooses to listen, maybe it will recognize that the construction industry is not advocating a "warped agenda." If our concerns are so off base, it would have been helpful if ESDC had actually chosen to participate in this Legislative hearing to communicate why we are wrong. It would also

have been useful and appropriate for Mason Tillman Associates to have been made available to explain their study.

Maybe a civil discourse, instead of very thinly veiled insults, will occur and perhaps those who govern will learn that our industry has something credible to add to the conversation.

Very truly yours,

Michael J. Elmendorf II, President & CEO  
Associated General Contractors of NYS

John O'Hare, Managing Director  
Building Contractors Association, New York

Matthew Pepe, Executive Director  
Building Contractors Association of Westchester &  
the Mid-Hudson Region

Aaron Hilger, President  
Builders Exchange of Rochester

Brad Walters, Executive Director  
Builders Exchange of the Southern Tier

Earl R. Hall, Executive Director  
Building Industry Employers of New York State  
Construction Employers Association of  
Central NY, Inc.

James Logan, Executive Vice President  
Construction Industry Employers Association,  
Buffalo

Alan Seidman, Executive Director  
Construction Contractors Association of  
Hudson Valley, Inc.  
Fabricators & Erectors Association of  
Hudson Valley, Inc.  
Executive Vice President, SMACNA,  
Southeastern New York

Ross Pepe, President  
Construction Industry Council of Westchester &  
Hudson Valley, Inc.

Todd Helfrich, President & CEO  
Eastern Contractors Association

Michael Misenheimer, Executive Director  
Empire State Subcontractors Association

Denise M. Richardson, Executive Director  
General Contractors Association of New York

Ross Pepe  
Hudson Valley Construction Industry Partnership

Marc Herbst, Executive Director  
Long Island Contractors Association

Dominick Kasmauskas, CFPS, NFSI NY Regional  
Manager  
National Fire Sprinkler Association

John A. Marich, Chairman  
NYS Association of Electrical Contractors

Lindsay T. Mills, Chairman  
NYS Council of NECA Chapters

Pete Mastorocco, Executive Director  
Long Island Chapter, NECA

Melissa Barbour, Chapter Executive  
Sheet Metal & Air Conditioning Contractors'  
National Association of Long Island

Joseph Leone, Executive Director  
UNICON

CC: Committee Members