



NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING

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NYSFAH Testimony Regarding the Minority and Women-Owned Business Enterprise Program

October 16, 2018

Thank you for the opportunity to participate in today's hearing regarding the Minority and Women-Owned Business Enterprise (MWBE) Program. My name is Jolie Milstein, President and CEO of the New York State Association for Affordable Housing (NYSFAH), the trade association for New York's affordable housing industry statewide. Our 375 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSFAH's members are responsible for most of the housing built in New York State with federal, state or local subsidies.

NYSFAH strongly supports the efforts to encourage greater participation by MWBEs in public and private contracting. Greater diversification of the contractor population ensures a more equitable prosperity for New Yorkers, leads to a stronger more resilient workforce and to greater innovation. All of these outcomes contribute to a prosperous business climate for which New York has historically been recognized and to which we always aspire.

Based on the 2016 Disparity Study conducted by New York State, we are seeing positive trends in utilization of MWBEs for public projects and procurements. Similarly, in the affordable housing industry, MWBEs have become a more active part of the affordable housing industry as evidenced by their growing membership within NYSFAH, which now stands at 12 percent of our total membership - and is an even higher percentage of the construction portion of our membership. We are especially proud of this growth because our MWBE members provide dynamic contributions in the development and preservation of affordable housing. They are the architects and engineers who create energy efficient housing, the developers who bring together the many resources necessary to build affordable housing, and the contractors and subcontractors who construct the safe, quality housing that is critical for families to thrive.

State funding and subsidies are essential in the construction of affordable housing. In 2017, the Senate, the Assembly, and the Governor appropriated \$2.5 billion for a five-year housing plan that will produce around 100,000 units of affordable housing. This was a landmark level of support for housing in New York State, and I would be remiss if I did not thank you all for your support for those funds. Moreover, because use of the subsidies from those funds include

MWBE participation utilization requirements, the topic of this hearing is very relevant to NYSFAH.

While we understand increasing MWBE utilization rates is a complex issue, and one that we all have a stake in improving, we believe that efforts should continue to focus on enhancing the administration of the existing MWBE requirements. We hear from MWBEs in the affordable housing industry that the regulatory burdens and inefficiencies in the program create challenges for MWBEs. Many MWBEs working in the housing field tend to be small, with 10 or fewer employees, and lack significant capital. Even more lack the staff resources to fulfill key compliance requirements imposed by the State, prompting many to forego opportunities where the State is a party. The State should create a system with fewer regulatory burdens for MWBEs or, at a minimum, greater financial and technical assistance such as the availability of no-cost or low-cost program software, in order to comply with the various state recordkeeping and reporting obligations.

Administration of the MWBE program has improved over the years. However, there remain many impediments. The certification and recertification process for an MWBE can take up to three years; significantly more time than the typical three month certification approval process in New York City. One common sense improvement would be for the State to expedite recertifications where the MWBE is already performing services pursuant to an awarded State contract. MWBEs should also be allowed to update their profiles to include their certification status, their MWBE certification expiration date, and capacity-related information such as the size of the largest project worked on, the percent of work that is self-performed, general and excess liability limits, and references. Developers and contractors do not want to hire an MWBE only to then find out its certification is about to expire or it lacks the bonding capacity to undertake the project.

There is also still too much duplication in reporting. For instance, MWBEs operating in New York City and New York State must include their information through two separate portals and databases. We appreciate that these are two different jurisdictions, but seeking ways to import information from one database to another would be one modest efficiency to help these small businesses. This applies to updates in MWBE contractor information as well – efforts must be made to ensure the MWBE only has to input the updated information once.

Moreover, the list of MWBEs from which developers and contractors can select is in need of improvement. One common complaint shared with NYSFAH is that the list of MWBEs lacks companies in key major trades including excavation and foundation, plumbing, structural steel, and pre-cast concrete, among others, making it difficult to satisfy utilization plan requirements. Accordingly, while developers must agree to certain MWBE utilization goals, it makes sense that the State should have goals to increase the number of listed MWBEs, in total and by category of

work, and to actively market through outreach events across the state to fulfill those goals. The State could go even further by helping identify MWBEs with experience in key areas. The Division of Homes and Community Renewal could, for instance, provide the list of MWBEs participating on affordable housing projects to the Division of Minority and Women's Business Development which could include that information on the MWBE profile and provide an overall list to the affordable housing industry. There is significant potential to collate the data held by the State to help increase MWBE participation and visibility and to market upcoming opportunities on public projects – if the State is willing to invest in the systems to do so.

A more immediate reform that the Senate and the Assembly have championed is a proposed change to the MWBE net worth criteria. Currently, each minority or woman owner upon whom MWBE certification is based cannot have a personal net worth exceeding \$3.5 million. This limitation prevents otherwise qualified MWBEs from participating on public contracts. The criteria encourages MWBEs to underperform in order to remain under the net worth threshold and punishes them when they are successful. It is for this reason that we support legislation sponsored by Senator Ritchie and Assemblymember Peoples-Stokes (S.8870-A/A.10744-A) and passed by the Senate and the Assembly earlier this year. The legislation would provide for additional certification classifications for MWBEs that are otherwise ineligible to be certified due to the personal net worth or the small business criteria. While we prefer eliminating or raising the net worth threshold, given that the Governor vetoed such legislation in 2017 based on legal concerns, we believe the current legislation is a reasonable solution to the net worth issue. We hope Governor Cuomo will approve the legislation and enact this common sense reform.

Thank you for the opportunity to testify today and for your consideration of NYSFAH's comments regarding the MWBE program. I welcome any questions you may have.

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