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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE ON COMMERCE AND

4

ECONOMIC DEVELOPMENT

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, December 12, 2007
10:30 a.m.

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PRESENT:

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COUNCILMAN W. WILSON GOODE, JR., CHAIR

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COUNCILWOMAN JANNIE BLACKWELL

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COUNCILMAN FRANK DiCICCO

14

COUNCILMAN WILLIAM GREENLEE

15

COUNCILWOMAN DONNA REED MILLER

16

COUNCILWOMAN BLONDELL REYNOLDS BROWN

17

COUNCILMAN FRANK RIZZO

18

COUNCILWOMAN MARIAN B. TASCO

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RESOLUTION 040977 - Resolution authorizing the
Committee on Commerce and Economic Development
to hold hearings to examine the Minority
Business Enterprise Council...

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RESOLUTION 070741 - Resolution authorizing the
Committee on Commerce and Economic Development
to hold hearings to review the annual
disparity study and City contract
participation goals...

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COUNCILMAN GOODE: Good

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morning. This hearing is called to

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order. This is a public hearing of the

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Commerce and Economic Development

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Committee on Resolutions No. 040977 and

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070741.

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My name is W. Wilson Goode,

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Jr., Chair of this Committee. I note

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that a quorum is not present, but it's

11

not necessary. To my left is

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Councilwoman Tasco, the primary sponsor

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of one of the resolutions. Also present

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are Councilwoman Reynolds Brown,

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Councilwoman Miller and Councilman Rizzo.

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The title of Resolution No.

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040977, resolution authorizing the

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Committee on Commerce and Economic

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Development to hold hearings to examine

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the Minority Business Enterprise Council

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with regard to Chapter 17-500 of The

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Philadelphia Code and Executive Order No.

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1-03, and to assess the efforts to

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improve participation levels and

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utilization goals for Minority, Women and

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2 Disadvantaged Business Enterprises in
3 City contracting and procurement and the
4 effectiveness of attempts to eliminate
5 related discriminatory and unfair
6 practices; and

7 Resolution No. 070741,
8 resolution authorizing the Committee on
9 Commerce and Economic Development to hold
10 hearings to review the annual disparity
11 study and City contract participation
12 goals released by the Finance Department
13 pursuant to Title 17 of The Philadelphia
14 Code.

15 Our first witness is our City
16 Controller, Mr. Butkovitz. Please
17 approach the witness table.

18 And before Mr. Butkovitz
19 proceeds with his testimony, Councilwoman
20 Tasco would like to make an opening
21 statement.

22 COUNCILWOMAN TASCO: Thank you
23 very much, Mr. Chair.

24 I just want to thank everybody
25 for coming out this morning for this

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2 hearing and just give some brief remarks
3 to kind of set the tone for what we're
4 going to do here today.

5 Last Friday, the Urban League
6 of Philadelphia released their 2007 State
7 of the Black Philadelphia report. As the
8 Daily News reported, the report painted a
9 grim picture on the issue of race and
10 inequality in our city. In the report,
11 the median household income of blacks is
12 \$26,728. This figure is more than
13 \$15,000 less than the median household
14 income of whites.

15 One of the principal ways to
16 address this income gap is to increase
17 the number of minority businesses in
18 Philadelphia. In this regard, the City
19 Minority Business Enterprise Council is
20 charged with helping minority businesses
21 in our city. However, and based on the
22 Controller's recent report, reforms are
23 needed to ensure that MBEC meets this
24 goal.

25 Today we will hear testimony

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2 from our City Controller regarding his
3 department's audit and analysis of MBEC.
4 Further, we will also hear testimony from
5 Erik Moses, Esquire. Mr. Moses is the
6 Director of Small and Local Business
7 Development for Washington, DC. Finally,
8 we will hear testimony from Beverly
9 Harper of Portfolio Associates.

10 Through this hearing, we plan
11 to gain insight on how MBEC can be
12 changed, what other cities have done to
13 address this issue and how we can move
14 forward to address this issue in the new
15 mayoral Administration.

16 So thank you, Mr. Chair, and
17 thank you, Mr. Butkovitz, for coming to
18 talk about your report and move forward.

19 MR. BUTKOVITZ: Thank you.
20 Good morning, Chairman Goode and
21 Councilman Tasco, members of the Commerce
22 and Economic Development Committee. I'd
23 like to thank you and Councilman Tasco
24 for giving me the opportunity to discuss
25 the Controller's Office report entitled

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2 "Barriers Facing Minority, Women and
3 Disabled-Owned Businesses in City
4 Procurement and Contracting."

5 I have sitting up with me today
6 our Deputy Controller, John Thomas, and
7 Isa Al-Muid, who is the Senior Auditor.
8 These two individuals actually led the
9 substantial amount of work in the study
10 that we released.

11 First, I'd like to take a
12 moment to acknowledge Howard Rye, the
13 former Diversity Affairs Director and
14 Policy Planner in the Office of the
15 President of this esteemed body. As you
16 all know, Howard was a dedicated
17 individual at any task he undertook. He
18 was committed to the concerns that
19 plagued humanity and the rights and
20 protection of people on so many issues
21 such as prison re-entry programs, youth
22 education, gun control and economic
23 development.

24 Howard was instrumental in
25 working with our staff for over a year in

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2 planning and discussing the many issues
3 related to minority participation in
4 Philadelphia. In April of 2007, he
5 testified at one of our hearings and
6 eloquently spoke about the barriers
7 facing MBEC-certified firms.

8 And I say I got out of order,
9 but I wanted to thank Mr. Thomas and
10 Mr. Al-Muid for helping me for the study.
11 So thank you again.

12 Shortly after being sworn in as
13 City Controller last year, our office
14 initiated this investigation to examine
15 the barriers facing minorities, women and
16 disabled-owned businesses.

17 Minorities represent 55 percent
18 of the population of our city, yet they
19 are awarded less than 12 percent of City
20 contracts. This is patently unfair in a
21 city that models itself on the ideal of
22 fair and equal opportunity for all of our
23 citizens.

24 As part of our review, we
25 interviewed many minority business owners

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2 who felt that the Minority Business
3 Enterprise Council, MBEC, and other City
4 agencies were not effectively carrying
5 out their mission to increase minority
6 participation in City procurement and
7 contracting.

8 We also mailed out a
9 comprehensive questionnaire to all
10 MBEC-certified firms. We held three
11 public hearings to investigate
12 allegations aimed at MBEC and to explore
13 ways to increase minority participation
14 in City procurement and contracting. And
15 we also audited 61 public works
16 construction project bid sheets to
17 determine actual minority participation
18 in the projects.

19 In the course of our
20 investigation, we found that despite some
21 progress in recent years, minority, women
22 and disabled-owned businesses still face
23 several significant barriers that hinder
24 their ability to gain a fair share of
25 contracts generated by the City of

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Philadelphia. Some of the barriers to minority participation in the City's procurement and contracting process are unnecessary granting of waivers from MBEC participation requirements to prime contracts; bid packages are too complex for smaller contractors to participate as prime contractors; lack of availability of bonding and insurance for smaller minority contractors; lack of a comprehensive plan of action to address diversity and inclusion in City contracting and procurement; and a slow certification process.

Barriers during participation in the City's procurement and contracting process are inadequate monitoring and enforcement of minority participation; deficient contract language and contract requirements; MBEC-certified firms are included in bid proposals, but are marginalized and don't actually get the work after the contract is awarded.

Barriers to the growth and

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2 development of minority, women and
3 disabled-owned firms are slow payment by
4 the City of Philadelphia and/or prime
5 contractors; limited access to working
6 capital; lack of technical assistance for
7 small businesses before and after
8 contract; lack of minority participation
9 goals for not-for-profit contracts;
10 inexperienced and understaffed MBEC
11 office.

12 Our review of recent City
13 reports on disparity and diversity
14 revealed that the participation data was
15 overstated. The key inclusion data
16 should show the number of minorities
17 actually receiving contracts from the
18 City. However, these reports present
19 numbers based on incumbrance data. In
20 other words, these reports, including
21 MBEC's 2006 annual disparity study, are
22 based on promised participation as
23 reported by contractors prior to any work
24 being done.

25 These promised amounts

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2 represent goals only and do not reflect
3 whether a minority firm was actually
4 hired and paid the original promised goal
5 amount.

6 At present, the City cannot
7 accurately determine how much of its
8 contracting dollars actually go to
9 minority, women or disabled-owned
10 businesses. The City does not have a
11 tracking mechanism in place to verify
12 payments from prime contractors to
13 MBEC-certified subcontractors.

14 The core issue for addressing
15 many of the barriers discussed in our
16 report is a need for a collective
17 commitment by all levels of City
18 government to implement, monitor and
19 enforce diversity and inclusion measures.
20 This commitment would be demonstrated by
21 the quality and quantity of staff,
22 technology and financial resources that
23 are allocated to the City's
24 anti-discrimination program.

25 As a result of our

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2 investigation, we made 13 key
3 recommendations. One, restructure MBEC
4 by making the majority of MBEC's
5 administrative and enforcement functions
6 a cabinet-level reporting position within
7 the Mayor's Office. The contract
8 monitoring and oversight function should
9 be transferred, in our view, to the City
10 Controller's Office. Because MBEC has
11 not taken the proper enforcement action
12 against non-compliance contractors, a new
13 counsel should be appointed who will
14 properly monitor and enforce both the
15 spirit and the law of the City's minority
16 anti-discrimination policy.

17 Two, improve contract
18 monitoring and enforcement by
19 establishing more effective procedures
20 for monitoring all joint ventures and
21 subcontracting relationships sanctioned
22 by MBEC. All relevant City departments
23 and agencies should be sanctioned for
24 failure to properly administer and
25 enforce the City's anti-discrimination

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2 policy, which includes several penalties
3 for prime contractor non-compliance,
4 including withholding of payments,
5 termination of contracts in whole or
6 part, suspension from City contract bids
7 for up to three years and recovery of one
8 percent of the total dollar amount of the
9 contract for each one percent of the
10 commitment shortfall.

11 Three, eliminate the seven-day
12 rule, which presently allows a prime
13 contractor to identify its proposed
14 minority subcontractors seven days after
15 the awarding of the contract. This rule
16 undermines the integrity of the City's
17 anti-discrimination policy. The City
18 should require prime contractors to
19 retain MBEC-certified subcontractors as a
20 prerequisite for winning a contract.

21 Four, standard contract
22 language modification should include
23 provisions of contract for third-party
24 minority contractors. In other words,
25 the subcontractor should have a right as

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2 a contractor or right to sue under the
3 contract just like the general contractor
4 has.

5 Five, a participation waiver
6 should only be granted after a prime
7 contractor clearly demonstrates that a
8 good-faith effort was made to identify
9 quality minority participants.

10 Six, reduce bid packages and
11 contract sizes and require purchasing
12 departments and other relevant agencies
13 to unbundle requests for proposals, RFPs,
14 and bid packages unless contracting
15 agents can demonstrate that bundling
16 provides significant financial or other
17 tangible benefits to the City.

18 Seven, create a bonding
19 assistance program for small and emerging
20 businesses so they can participate as
21 prime contractors rather than as
22 subcontractors.

23 Eight, implement prompt payment
24 policy for subcontractors. The City
25 should penalize purchasing departments

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2 and prime contractors who fail to
3 promptly pay subcontractors. The City
4 should also allow subcontractors to
5 receive mobilization payments in which a
6 portion of a project's value is paid in
7 advance to pay for start-up costs and
8 other early-stage expenses. Right now
9 the City does provide that for prime
10 contractors, but they don't have such a
11 program for subcontractors.

12 The City should change its
13 invoicing process to require prime
14 contractors to document payments to
15 subcontractors within a reasonable period
16 of time so that they could show when they
17 get paid, the subcontractor gets paid.

18 Nine, provide technical
19 assistance and training to minorities in
20 the area of project and financial
21 management, bonding insurance, bid
22 preparation, marketing and technology
23 support.

24 Ten, promote more minority
25 collaboration by encouraging joint

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2 ventures among minority contractors.

3 Eleven, set goals for
4 not-for-profit contracts. The City
5 should establish policy and procedures
6 for setting goals for minority
7 participation in City contracts with
8 not-for-profit organizations. These
9 organizations receive approximately 75
10 percent of the City's annual contracting
11 dollars.

12 Twelve, streamline the MBEC
13 certification process and establish a
14 goal to process new certification
15 applications within 60 days and
16 recertification applications within 30
17 days.

18 And, 13, the City of
19 Philadelphia should facilitate access to
20 capital by establishing the creation of
21 public/private financing mechanisms that
22 can provide working capital, mobilization
23 and term loans to businesses that have
24 been awarded contracts through the City's
25 minority participation process.

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2 Again, thank you very much for
3 the opportunity to come in here and
4 present our findings.

5 COUNCILMAN GOODE:

6 Mr. Butkovitz, thank you for your
7 testimony.

8 Let me note for the record we
9 were also joined by Councilman Greenlee.

10 Are there questions for this
11 witness?

12 Councilwoman Tasco.

13 COUNCILWOMAN TASCO: Thank you
14 very much for your testimony. Boy, it
15 sounds like if you worked your
16 recommendations out, we have a pretty
17 good system. But I just wanted to ask a
18 couple of questions, because you were
19 pretty thorough in your testimony and I
20 think you answered the question in
21 another portion of your testimony when
22 you talked about one of the 13
23 recommendations. No. 1, restructure the
24 Minority Business Enterprise Council by
25 making the majority of MBEC

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2 administrative and enforcement -- I wrote
3 it on the wrong line. That's all right.

4 MR. BUTKOVITZ: About raising
5 the --

6 COUNCILWOMAN TASC0: I really
7 was going to the act of the payment
8 issue.

9 MR. BUTKOVITZ: Okay.

10 COUNCILWOMAN TASC0: I think
11 maybe putting the enforcement in your
12 office, because from time to time -- on
13 occasion we have called your office
14 because the vendors/contractors have not
15 gotten paid. I think Councilwoman Donna
16 Reed Miller has introduced legislation
17 somewhere in this body about the timely
18 payment of contractors, and certainly if
19 you're doing the monitoring, what would
20 that do to help us assure the timely
21 payment for these vendors?

22 MR. BUTKOVITZ: Well, our
23 office has been able to cut down the
24 period of time that invoices are sitting
25 in our office, but we're not in control

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2 of the whole payment process. It's
3 really got to go through the City
4 Treasurer. So when it comes out of the
5 Finance Department and comes to us, we
6 get it turned around within four days.

7 What we're suggesting for our
8 office here is that we do a job of
9 checking on the numbers, of the
10 compliance on it, but Finance and the
11 Treasurer are going to have to get these
12 bills paid faster.

13 We ran into this problem at the
14 School District, and sometimes the
15 question is, is it just the technology
16 isn't up to date or why can't they get --
17 but then you run into situations where
18 there's cash flow situations and you see
19 that they've designed these systems
20 because the City or the School District
21 is depending on not having to spend this
22 money within the fiscal year.

23 The federal government has a
24 policy of paying these vendors within 14
25 working days. In Philadelphia it's

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2 common for it to be 90 days or more. And
3 you're talking about people that are on a
4 very narrow margin to begin with. Who in
5 the world would be able to keep their
6 employees paid and keep functioning while
7 waiting for 90 days? A lot of people
8 have to say, The heck with it, we don't
9 even want City work.

10 That probably is one of the
11 most important things the City could do
12 to improve performance in this area, is
13 to make sure that these small contractors
14 who are operating on a narrow margin get
15 paid timely.

16 COUNCILWOMAN TASC0: That is
17 very important, and sometimes I believe
18 the City may pay a higher cost because
19 some of the contractors may build in the
20 cost of the slow payment.

21 MR. BUTKOVITZ: Absolutely.

22 COUNCILWOMAN TASC0: So in the
23 end, it could cost us more money --

24 MR. BUTKOVITZ: Yes.

25 COUNCILWOMAN TASC0: -- for the

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2 effort.

3 You also talked about -- you
4 were just going so fast, and I just saw
5 this this morning.

6 You said the City provides a
7 service to the major contractor but not
8 the subcontractor.

9 MR. BUTKOVITZ: The City will
10 provide start-up capital.

11 COUNCILWOMAN TASC0: Right.

12 MR. BUTKOVITZ: If you're the
13 prime contractor on a project, you can
14 get -- I forget -- what's the percentage;
15 do you remember?

16 MR. THOMAS: It varied, but
17 sometimes --

18 COUNCILWOMAN TASC0: Identify
19 yourself for the record, please.

20 MR. THOMAS: Good morning. My
21 name is John Thomas, Deputy Controller.

22 Mobilization funds can be
23 provided between 10 to 15 percent of the
24 contract for a prime contractor, and as
25 the Controller said, that's for start-up,

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2 early-stage costs and --

3 MR. BUTKOVITZ: So the City is
4 giving them the money to get started, but
5 they're the people who are already rich
6 and established. The people that don't
7 have any money don't get anything to tide
8 them over and they got to wait longer to
9 get paid. It's a really uneven type of
10 result.

11 COUNCILWOMAN TASC0: Is this a
12 function of the MBEC office or a function
13 of the Procurement Department?

14 MR. THOMAS: It's alive under
15 the procurement rules. It's not an MBEC.
16 It's the City procurement rules that
17 allow this.

18 COUNCILWOMAN TASC0: Has there
19 been any discussion with the Procurement
20 Department to find out why they do not
21 provide this service to subcontractors?

22 MR. THOMAS: No, we haven't.
23 They just say that the rules allow it for
24 the prime contractors. I think this
25 Council and the City would have to make a

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2 determination that the City thinks that
3 it's a needed service for small firms and
4 make it available. Procurement would
5 just have to change its rules to allow
6 it.

7 COUNCILWOMAN TASCO: I'll stop
8 and get my questions together while other
9 people have questions. Thank you.

10 COUNCILMAN GOODE: Let me note
11 for the record we've also been joined by
12 Councilwoman Blackwell.

13 Councilwoman Reynolds Brown,
14 then Councilwoman Miller.

15 COUNCILWOMAN BROWN: Good
16 morning.

17 MR. BUTKOVITZ: Good morning.

18 COUNCILWOMAN BROWN: Let me
19 also thank you for the comprehensive
20 report, which will really both inform and
21 instruct us as Councilmembers how we can
22 continue to make an impact and a dent on
23 this issue.

24 Item No. 8, what can we do,
25 what would you recommend in instances

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2 where parts of government; namely, the
3 School District, make a decision not to
4 pay a contractor because either the
5 contractor submitted their paperwork late
6 or by the time the paperwork from the
7 contractor comes in, the feedback we get
8 from the School District is, Oh, we've
9 spent the money, it's after the fiscal
10 year and the money is no longer there. I
11 mean, the situation is where the
12 businessperson has done the work,
13 possibly submitted their paperwork late
14 but have been told, Sorry, the money is
15 spent and we cannot, therefore, pay you.

16 MR. BUTKOVITZ: Look, the
17 School District is completely out of
18 control. They've essentially had a
19 policy of not paying people for nine
20 months because they were operating under
21 the secret deficit for a long time. So
22 they were carrying it on the back of
23 their vendors and suppliers, and that's
24 just inexcusable.

25 Thank God the City has never

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2 been in that kind of situation. I mean,
3 the City has got a surplus, about a \$300
4 million or \$260 million surplus in their
5 General Fund. So when we're dealing with
6 the City part of it, it's not that the
7 City doesn't have the money to pay the
8 bills. The specific problem that we
9 focused on is that the contractors can
10 get paid, albeit even they get paid late,
11 but how do we make sure that the
12 subcontractors under them are also
13 getting paid. And in terms of that kind
14 of problem, we would suggest that there's
15 a variety of ways that could be handled.
16 Either the City could issue the checks to
17 the contractor and to the subcontractor
18 or the City could require some kind of
19 documentation from the contractor that
20 you paid the subcontractor before you get
21 paid or before you get your next payment.
22 We think that's the approach to assure
23 that that money gets into the hands of
24 the subcontractors.

25 As far as the School District

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2 is concerned, they got to operate on a
3 balanced budget so that they have as much
4 money as they need to complete their year
5 and that people aren't misled.

6 COUNCILWOMAN BROWN: Okay.

7 Secondly, Item No. 11, talk about that a
8 bit. Do you know of other municipalities
9 that indeed have this practice in place?
10 It's about setting goals for
11 not-for-profit contracts.

12 MR. THOMAS: Some of the cities
13 that we think have those type -- we don't
14 have data on the exact percentage of
15 participation of the other cities, but
16 one of the cities is Chicago. They have
17 some form of goals for non-profit
18 contracting.

19 COUNCILMAN GOODE: For the
20 record, the City does now, and we're
21 hoping they're going to change that goal.
22 But as a result of the Charter change and
23 subsequent legislation, where they have
24 to set annual participation goals,
25 they've set a goal of five percent for

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2 DBEs, but those goals are being reviewed
3 as a result of our last hearing on the
4 disparity study and goals. So we're
5 hoping that five percent will increase,
6 but the City has in fact, for the first
7 time, set a goal for not-for-profit
8 contracts.

9 COUNCILWOMAN BROWN:

10 Mr. Chairman has addressed that issue.

11 Provisions that call for
12 penalties and clawbacks, if you will.
13 I'm looking to see which, if any, of
14 those actually address that issue.

15 MR. BUTKOVITZ: We talked about
16 a penalty for late payment and for not
17 meeting the threshold of what the
18 contractor is guaranteed to provide to
19 subcontractors.

20 COUNCILWOMAN BROWN: Yes.

21 MR. BUTKOVITZ: I forget which
22 number that was, but I think we were
23 talking about a one percent penalty for
24 every percent by which they miss their
25 goal.

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2 COUNCILWOMAN BROWN: Okay. All
3 right, then. Thank you.

4 MR. THOMAS: And, Councilwoman,
5 that's currently allowable, but it's just
6 not enforced.

7 COUNCILWOMAN BROWN: Oh, so
8 then how does one fix what you just
9 stated?

10 MR. THOMAS: I think that
11 the --

12 MR. BUTKOVITZ: The Mayor has
13 got to do it.

14 MR. THOMAS: Whoever you put in
15 charge of the minority business, be it
16 MBEC or whatever you're going to call the
17 program, you have to give it the power
18 from the top. And the Controller says
19 the person at the top got to -- they have
20 to be feeling power from the people at
21 the top that they can carry out their
22 responsibility.

23 COUNCILWOMAN BROWN: Okay,
24 then. Thank you very much. Thank you,
25 gentlemen.

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2 Thank you, Mr. Chairman.

3 COUNCILMAN GOODE: Councilwoman
4 Miller.

5 COUNCILWOMAN MILLER: Hi.

6 Thank you. Thank you.

7 Good morning and thank you for
8 your -- this is really good testimony.

9 MR. BUTKOVITZ: Thank you.

10 COUNCILWOMAN MILLER: We run
11 into all these at different times, but
12 it's good to see it in a list, in black
13 and white. I think that many of the
14 problems start from the waiver stage.

15 MR. BUTKOVITZ: Right.

16 COUNCILWOMAN MILLER: Do you
17 have any data that says how many
18 contracts were awarded and how many of
19 those received a waiver?

20 MR. THOMAS: No. We don't have
21 the detail on the number that were
22 waived, but of some of the contracts
23 that we did review and during our audit,
24 we noted that some of the waivers -- we
25 questioned whether those waivers should

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2 have been granted. It appears that
3 contractors just requested waivers and
4 they were granted, without thoroughly
5 checking to see whether it was really
6 necessary or whether the contractors
7 could really find qualified firms to
8 participate on their contracts.

9 COUNCILWOMAN MILLER: Because
10 the terms of "good faith" or "best
11 efforts," it's not tangible and it's hard
12 to measure. I ran into the waiver
13 problem at a contract that was being
14 issued at a playground to build actually
15 a new structure and I just couldn't
16 believe that people were granted a
17 waiver. You can't find minorities? I
18 mean, you know what kind of trades goes
19 into building a building. So you can't
20 tell me that you can't find minority
21 firms.

22 So I ran into that issue maybe
23 five years ago, and since then, we have
24 been pretty dedicated with making sure
25 waivers are not issued on projects in our

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2 district.

3 But also I wanted to talk about
4 the fact that there are lots of
5 contractors that won't even bid because
6 they know the whole system for payment is
7 too slow and it drives them bankrupt. We
8 get all the calls in our offices to help
9 out. Enforcement, I guess, is the key to
10 any of this, but we have to, I think,
11 always think about -- and I think you did
12 address it -- some type of dispute
13 resolution when it comes to paying them.
14 Someone else has to be involved in the
15 resolution of the dispute other than just
16 the two contractors. There needs to be
17 some type -- if the monitoring arm would
18 be involved in a dispute, if it was a
19 dispute.

20 MR. BUTKOVITZ: Right. I
21 mean --

22 COUNCILWOMAN MILLER: You just
23 can't rely on the prime.

24 MR. BUTKOVITZ: Right now you
25 have prime contractors who have all the

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2 power in the relationship. The whole
3 point of this regulatory system was to
4 provide entryway for people who didn't
5 have power and people who didn't have
6 money, but the size of the contracts
7 awarded are too big. If you don't have
8 money, then you can't qualify to do the
9 work to get the money. So they were made
10 junior partners and subordinate to the
11 prime contractors, but they are potential
12 competitors of the prime contractors.
13 And now they have -- they're locked in a
14 relationship where the prime contractors
15 are always able to keep them down and
16 keep them from growing large enough to
17 become their competitors.
18 So there's something wrong with
19 the way that power is allocated, and
20 there needs to be more of a level playing
21 field and more of -- the subcontractors
22 have to have similar powers to enforce
23 their statute to what the general
24 contractors have, and that could include
25 the right to sue directly or to deal

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2 directly with the City or with the City
3 enforcing that they get paid in time.
4 But right now they are at the mercy of
5 people who see them as a threat.

6 COUNCILWOMAN MILLER: Well, I
7 think that there are lots of unfair
8 practices. I've consistently said --
9 I've been here 12 years and we've been
10 talking about the same thing for 12
11 years, how do we include -- how can we
12 put together inclusion in all this. So I
13 guess enforcement is the strong arm.
14 That's going to be the arm. If people
15 just won't abide, then you have to figure
16 out a way to enforce.

17 Your recommendation that the
18 oversight monitoring be at the
19 Controller's level, would that help with
20 enforcement?

21 MR. BUTKOVITZ: Yeah, because
22 first of all, it would be no nonsense on
23 what the numbers are. Our people are
24 really very good at counting. But the
25 other impression that our people had is

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2 that there's a strong cultural bias on
3 the part of the departments to continue
4 to do business with the people they've
5 always done business with. They have to
6 comply with what the rules are, but when
7 everything is said and done, they really
8 prefer dealing with a narrow group of
9 contractors that they're used to.

10 So that's got to get broken up
11 too, and the bureaucracy needs to be more
12 in sync with what the policy of the
13 Council and the policy of the City is.

14 COUNCILWOMAN MILLER: All
15 right. Thank you.

16 Thank you, Mr. Chair.

17 COUNCILMAN GOODE: Councilwoman
18 Tasco.

19 COUNCILWOMAN TASCO: So when
20 the Procurement Department puts out a bid
21 for a project or for a service, the prime
22 contractor has to submit their minority
23 participation?

24 MR. BUTKOVITZ: Right.

25 COUNCILWOMAN TASCO: And that

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2 goes to MBEC, that information goes to
3 MBEC?

4 MR. BUTKOVITZ: Right.

5 COUNCILWOMAN TASC0: And MBEC
6 certifies the minority contractor?

7 MR. BUTKOVITZ: Right.

8 COUNCILWOMAN TASC0: Okay. So
9 do they keep a list of certified minority
10 contractors?

11 MR. BUTKOVITZ: Well, let me
12 correct you so far, because the prime
13 contractor submits a list or within seven
14 days after -- they promise that within
15 seven days they will submit a list, and
16 that's the end of it. What we find is
17 that a lot of minority subcontractors
18 whose names were on the list said, What?
19 My name was on the list? I never got any
20 money. I never got any work. And
21 there's no mechanism for -- MBEC
22 certifies them as MBEC-certified
23 contractors, but it doesn't have any role
24 in determining whether they actually got
25 any work or any money.

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2 COUNCILWOMAN TASC0: It was our
3 impression that the prime contractor had
4 to submit prior to receiving the contract
5 the name of the subcontractor.

6 MR. BUTKOVITZ: He has up to
7 seven days after getting the contract.

8 COUNCILWOMAN TASC0: So it's
9 not prior to getting the contract?

10 MR. THOMAS: Let me clarify.
11 That was a policy that it was prior, but
12 MBEC had started last year using the
13 seven-day rule, which was -- especially
14 when certain state and federal work, when
15 state and federal dollars were used in
16 the contract, they were allowing the
17 seven-day rule, which, as the Controller
18 said, allowed for seven days after the
19 awarding of the contract for them to
20 identify their minority participants.
21 And that put more pressure -- that gives
22 more power to the prime contractor,
23 because once he or she knows that they
24 have the contract, then they can put more
25 pressure on the subs in terms of what

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2 they are willing to -- how much they are
3 willing to give to them, how much price
4 they are willing to pay to them. So it's
5 just contrary to the whole goals and
6 objectives of the MBEC program.

7 COUNCILWOMAN TASCO: Well,
8 somewhere along the line I thought at one
9 point the prime contractor had to submit
10 the minority participation with the bid
11 when they bid on the project, when they
12 submitted the bid to the City of
13 Philadelphia.

14 MR. THOMAS: In general,
15 Councilwoman, that's the general practice
16 and that had been the practice for a
17 number of years, but as I suggested, last
18 year they started utilizing this
19 seven-day rule on certain contracts,
20 which allows for them to submit it after
21 the bid. But the general practice had
22 been and has been that they submit it
23 prior to the bid and it was included as
24 part of the bid in the contract.

25 COUNCILWOMAN TASCO: Do you

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2 know why they might have changed that
3 policy?

4 MR. THOMAS: I haven't the
5 slightest idea. It didn't make sense to
6 us.

7 COUNCILWOMAN TASCO: Thank you.
8 Point of information.

9 COUNCILWOMAN BROWN: Point of
10 information on Councilwoman Tasco's
11 question. Would it be fair to say, then,
12 that there is no trigger for verification
13 of subcontractors that come in with the
14 bid?

15 MR. BUTKOVITZ: Correct.

16 COUNCILWOMAN BROWN: When I
17 hear you say that you get a list and that
18 list is taken as gospel, we've had
19 experiences where we get calls from MBEs
20 and WBEs who are surprised and have the
21 discovery that they appear on the list.

22 MR. BUTKOVITZ: Right.

23 COUNCILWOMAN BROWN: So what
24 we're hearing you say is that there's no
25 trigger for verification, right?

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2 MR. BUTKOVITZ: Right. I guess
3 you could consider some kind of signature
4 requirement that if you're going to be
5 listed, you have to acknowledge that
6 you've been talked to and you consent to
7 have your name listed in the bid.

8 COUNCILWOMAN BROWN: Thank you,
9 Councilwoman Tasco.

10 COUNCILWOMAN TASCO: And
11 there's no follow-through from MBEC
12 presently to verify that these
13 subcontractors are part of the contract?

14 MR. THOMAS: There should be.
15 That's their policy, but we found that in
16 a lot of cases, it did not occur. And
17 even after -- even if they're listed to
18 get the contract, there's definitely not
19 adequate follow-through after the work
20 starts to see whether they actually do
21 any work.

22 So being listed is one thing
23 and being called before the contract is
24 awarded is one thing, but then after the
25 contract is awarded to the prime, there's

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2 no follow-through and monitoring to see
3 whether these minority firms are actually
4 doing any work, whether they're actually
5 getting the amount of work that was
6 promised to them or whether they're
7 actually getting paid in a timely
8 fashion.

9 COUNCILWOMAN BROWN: Or getting
10 paid at all.

11 MR. THOMAS: Exactly.

12 COUNCILWOMAN TASC0: What role
13 should the City take to enforce or
14 penalize contractors that don't use
15 minority subcontractors?

16 MR. BUTKOVITZ: Well, first of
17 all, that's figured into their bid
18 application. So, first of all, they have
19 to comply with the thresholds. The
20 problem is that they shouldn't be allowed
21 to make pretend that they're complying.
22 You need to check that there's actual
23 compliance. And we think, first of all,
24 there needs to be somebody other than
25 MBEC who is checking the numbers, and

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2 we're suggesting the Controller's Office
3 to do that, because you're not going to
4 check yourself accurately.

5 And then, secondly --

6 COUNCILWOMAN TASC0: But if
7 that's your role and --

8 MR. BUTKOVITZ: Well, it's not
9 our role now.

10 COUNCILWOMAN TASC0: I mean the
11 role of MBEC and the mission of MBEC is
12 to certify and monitor and verify, I
13 mean, that is supposed to be their
14 mission. That's why we set the office
15 up.

16 MR. BUTKOVITZ: But you see now
17 it's a conflict of interest, because if
18 they're not doing their mission well,
19 they're not going to issue a report card
20 on themselves saying that we're not doing
21 it well, right?

22 And at the other end, MBEC or
23 the agency responsible for this needs to
24 be more powerful. In other cities it's
25 either the Mayor's Office or the Law

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2 Department that when they bark, people
3 jump, because they know something is
4 going to happen. MBEC largely doesn't
5 have that image or reputation. There's a
6 feeling they can be ignored.

7 COUNCILWOMAN TASCO: Okay. Let
8 me just ask one other question and I
9 think I'm done, because you've done a
10 very thorough job here of citing the
11 barriers to participation.

12 You talked about the
13 non-profits, and Councilman Goode
14 mentioned that we have a five percent
15 goal right now to be inclusive. Did you
16 see any minority participation or did you
17 audit any of the non-profits? Most of
18 them are DHS or Health Department, the
19 social services agencies.

20 MR. THOMAS: We did not audit
21 those contracts because we know that the
22 rules don't require -- it's not required,
23 and we know that it's like 75 percent of
24 the contracting dollars. So we just know
25 that in order -- if the City wants to

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2 improve the amount of participation or
3 level of participation, if it had
4 requirements on those contracts, I think
5 that would help improve the amount of
6 participation.

7 COUNCILWOMAN TASC0: So what
8 would you --

9 COUNCILMAN GOODE: It wasn't
10 required.

11 MR. THOMAS: It wasn't required
12 prior to, correct.

13 COUNCILWOMAN TASC0: What area
14 would you see the requirement taking
15 place, in terms of employment or their
16 purchasing of services?

17 MR. THOMAS: I think in both
18 areas it's important, because a lot of
19 the non-profit -- they're non-profit, so
20 a lot of them are providing service and a
21 lot of dollars -- DHS is one of the
22 biggest non-profit organizations that
23 receive contracts, DHS and Health, and a
24 lot of their dollars float through to
25 providing services, and that is through

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2 their employees. So you could look at
3 having levels of participation in the
4 employment of those non-profit agencies.
5 But also those non-profit agencies also
6 buy goods and services to operate. So
7 they could have participation in the
8 goods and services that they buy to
9 provide the service to the City.

10 COUNCILWOMAN TASCO: Thank you.

11 COUNCILMAN GOODE: Councilwoman
12 Brown.

13 COUNCILWOMAN BROWN: Yes. An
14 aside, did you discover in your findings
15 and discovery on this issue that -- let
16 me ask the question differently.

17 Were women and minorities
18 treated with the same level of lack of
19 support for what MBEC could and should
20 do? Did you find any distinctive
21 differences between the treatment of
22 minority, MBEs, and women business
23 owners?

24 MR. THOMAS: Not in our review
25 we didn't.

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2 COUNCILWOMAN BROWN: Okay. Did
3 you discover in your review the lack of
4 the department's ability to treat
5 differently MBEs and WBEs who had a
6 longstanding certification with the
7 department but were not treated
8 differently because of their track
9 record? Do you follow me? One treatment
10 for those who have been certified forever
11 and another treatment for those who are
12 brand new on the certification process.

13 MR. BUTKOVITZ: I think they're
14 both treated poorly. I don't think
15 incumbency helps minority contractors in
16 this system. When they come up for
17 renewal or whatever, they go through a
18 slow process also.

19 COUNCILWOMAN BROWN: And in
20 your estimation based on your findings in
21 the report, do you think it makes sense,
22 do you believe it's reasonable to have
23 different tracks of treatment given the
24 status of that MBE or WBE?

25 MR. BUTKOVITZ: Once you've

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2 been originally certified, it should be
3 easier to check your continued compliance
4 than it is when you're breaking in for
5 the first time. So there's really no
6 need for them to go through these long
7 delays like the ones they've been
8 certified.

9 COUNCILWOMAN BROWN: And the
10 then, finally, again based on the
11 homework you've done --

12 COUNCILMAN GOODE: Point of
13 information.

14 COUNCILWOMAN BROWN: Please.

15 COUNCILMAN GOODE: This just
16 actually triggered a question.

17 What is your understanding of
18 the certification process? We've had a
19 lot of discussion about that in previous
20 hearings, particularly on the disparity
21 study and the participation goals, and
22 testimony has been made that MBEC is not
23 just certifying whether a business is
24 actually owned by a minority person or a
25 woman or disabled person, but in some

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2 cases MBEC is trying to determine who
3 they believe is worthy to receive
4 business. Did you receive testimony to
5 that regard?

6 MR. BUTKOVITZ: This reminds me
7 of something. After you're done, I got
8 something to say.

9 MR. THOMAS: I'm sorry,
10 Councilman. Repeat the question again,
11 please.

12 COUNCILMAN GOODE: The question
13 is, is MBEC simply certifying whether a
14 business is actually owned by a minority,
15 a woman or disabled person or has it been
16 your experience in terms of testimony you
17 received, because we have received
18 testimony, that MBEC is also, in addition
19 to that, going through these businesses
20 with a fine-tooth comb to determine, in
21 their estimation, whether they believe
22 that those businesses are actually worthy
23 to receive City contracting business,
24 which we don't believe is the mission of
25 MBEC.

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2 MR. THOMAS: We had some
3 testimony to that effect from some of the
4 witnesses and some of the people we did
5 talk to during our surveys, that those
6 kind of things were happening.

7 MR. BUTKOVITZ: And I would
8 like to note, Councilman, also that one
9 of our other possibilities is that we
10 could rely on certifications that have
11 already been accomplished by other
12 governments, whether New Jersey or the
13 state government. Philadelphia insists
14 on doing everything itself from scratch
15 at a time when they don't have the
16 capacity to get it done. So there are
17 shortcuts that are reasonable that are
18 available.

19 COUNCILMAN GOODE: And I think
20 part of this is what I'm saying, the
21 added type of examinations that they're
22 doing, which is not part of their
23 original mission.

24 MR. BUTKOVITZ: Right. Yes.

25 COUNCILMAN GOODE: Thank you.

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2 MR. BUTKOVITZ: Right.

3 COUNCILWOMAN BROWN: That just
4 triggered another question. As of
5 August, there's now a new expectation
6 that all persons seeking to do business
7 with the City have to have an EOP plan.
8 What did you discover in your work with
9 regard to the adherence of this new
10 expectation?

11 MR. THOMAS: Councilwoman, our
12 audit work was done prior to the
13 implementation of that plan.

14 COUNCILWOMAN BROWN: All right,
15 then. Thank you very much.

16 So then let me ask, is there
17 any municipality in the country that gets
18 it and does it right when it comes to
19 MBE/WBE participation? Is there any
20 model city that we can look at that gets
21 it?

22 MR. BUTKOVITZ: I think we list
23 a number of model cities in here. I
24 don't remember what page it's on, but
25 Chicago, Baltimore and Atlanta all have

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2 pretty good records. I think even
3 Boston.

4 COUNCILWOMAN BROWN: Boston?

5 MR. BUTKOVITZ: I think Boston
6 even had some things that we could learn
7 from.

8 MR. THOMAS: But some of their
9 policies are currently being challenged,
10 but --

11 COUNCILWOMAN BROWN: I cannot
12 hear you.

13 MR. THOMAS: I said some of
14 their goals are being challenged at this
15 time, but in terms of, as the Controller
16 said, their program, it's a pretty good
17 program. Their performance is pretty
18 good in Boston.

19 But also in terms of the
20 enforcement, one agency that we looked at
21 was the federal government. Their
22 enforcement and compliance and payment
23 process is superior to any of the cities,
24 and so the City of Philadelphia can look
25 toward the federal program to get ideas

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2 in terms of just the payment process.

3 MR. BUTKOVITZ: I forget the
4 exact statistic, but one of the stunning
5 points that was made to us is that the
6 Bush Administration's performance on
7 minority inclusion and participation is
8 better than the City of Philadelphia's.

9 COUNCILMAN GOODE: Just one
10 thing for the record. Mr. Thomas or
11 Mr. Butkovitz, for the record, it also is
12 not just a matter of policy, because this
13 Council actually passed legislation in
14 2003, the Ortiz bill -- I think it was
15 030125 -- that basically was based upon
16 the Baltimore model and best practices
17 that was never implemented by this
18 Administration. So it's not a matter of
19 not having policy in place. It's also a
20 matter of this Administration not
21 implementing that policy.

22 MR. BUTKOVITZ: Yes.

23 COUNCILMAN GOODE: Thank you.

24 COUNCILWOMAN BROWN: Well,
25 again, thank you for the report. It

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2 gives us much homework to do going
3 forward. Thank you very much.

4 MR. BUTKOVITZ: Thank you very
5 much.

6 MR. THOMAS: Thank you.

7 MR. BUTKOVITZ: Am I excused?

8 COUNCILMAN GOODE: Any more
9 questions for this panel?

10 (No response.)

11 MR. BUTKOVITZ: Thank you very,
12 very much.

13 COUNCILMAN GOODE: Thank you
14 very much, and I applaud you in your
15 work, Controller.

16 MR. BUTKOVITZ: Thank you.

17 COUNCILMAN GOODE: Our next
18 witness is Erik Moses.

19 Good morning, sir, and welcome
20 to Philadelphia. Please state your name
21 for the record and please proceed with
22 your testimony.

23 MR. MOSES: Good morning,
24 Chairman Goode. My name is Erik Moses.
25 I am the Director of the Department of

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2 Small and Local Business Development in
3 the city of the District of Columbia, and
4 with me is my general counsel, Ms. Nicole
5 Becton.

6 Again, my name is Erik A.
7 Moses. I'm the Director of the District
8 of Columbia's Department of Small and
9 Local Business Development, and I'm
10 pleased to appear before this body to
11 testify in connection with this
12 Committee's examination of the Minority
13 Business Enterprise Council.

14 First I want to share some
15 background on how we run our program in
16 the District of Columbia and some
17 similarities of mission between our
18 agency and your MBEC before addressing
19 some of the recommendations that you just
20 discussed and have read in your
21 Controller's report.

22 The mission of the Department
23 of Small and Local Business Development
24 is to foster the economic growth,
25 development and retention of

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2 District-based businesses through
3 supportive legislation, business
4 development programs, advocacy within the
5 public and private sectors, and tracking
6 and monitoring and enforcement of agency
7 and private contract compliance. By
8 actively and vigorously pursuing this
9 mission, the agency seeks to accomplish
10 three primary outcomes: Stimulate and
11 expand the local tax base of the District
12 of Columbia; increase the number of
13 viable employment opportunities for
14 District residents; and extend economic
15 prosperity to local business owners,
16 their employees and the communities that
17 they serve.

18 The DC Department of Small and
19 Local Business Development is an agency
20 that has experienced enormous change over
21 the last two years, beginning with the
22 passage of the Small, Local and
23 Disadvantaged Business Enterprise
24 Development and Assistance Act of 2005.
25 This Act has significant changes to the

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2 laws affecting the District's race and
3 gender-neutral certification program,
4 known as the Certified Business
5 Enterprise, or CBE, program and mandated
6 the conversion of the former Office of
7 Local Business Development into a
8 full-fledged cabinet-level department.
9 The Act signaled a formal shift in
10 emphasis of the agency from certification
11 and DC agency compliance reporting to
12 value-added business development
13 services.

14 By calling for the
15 establishment of two new programmatic
16 areas to accompany our previously
17 existing Office of Certification,
18 Compliance and Enforcement, an Office of
19 Business Opportunities and Access to
20 Capital and an Office of Training and
21 Education were added. The Act
22 contemplates an agency that will engage
23 in the hard work of facilitating the
24 growth and development of local
25 businesses via full-time advocacy,

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2 oversight, and program and policy
3 development.

4 In addition, this past year,
5 the commercial revitalization programs in
6 the District of Columbia were transferred
7 under the purview of our department,
8 thereby consolidating small business
9 services into one government agency.
10 This programmatic and philosophical
11 change is one that the local business
12 community has long desired and
13 universally accepted.

14 Our challenge amidst all of
15 this change has been to stabilize and
16 improve current operations in the
17 certification and compliance areas while
18 developing programs and hiring staff for
19 our Business Opportunities and Access to
20 Capital and Training and Education
21 Divisions, and while integrating and
22 enhancing our Commercial Revitalization
23 Unit. While there remains much to be
24 done to improve the operations of the
25 agency to what I believe are acceptable

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2 levels, I'm pleased to report that we're
3 making substantial progress. To give you
4 an idea of the organization that we
5 inherited when I joined the department in
6 March of 2006, the agency was staffed
7 with only six full-time employees and as
8 many as five extended-term temporary
9 employees through temporary services. A
10 year and a half later, our agency has
11 increased the number of full-time
12 employees from six to 26.

13 It is worth noting here,
14 Mr. Chairman, that these legislative and
15 institutional changes would not be
16 possible without the very strong support
17 and leadership of our Mayor, Mayor Adrian
18 M. Fenty, and our Deputy Mayor for
19 Planning and Economic Development, Neil
20 Albert, as well as Councilmember Kwame R.
21 Brown, the Chairman of our DC Council
22 Committee on Economic Development and
23 your counterpart, each of whom
24 understands and appreciates the
25 importance of a robust small and local

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2 business community to the economic
3 vitality of our city.

4 We have reviewed the special
5 report issued by the City of Philadelphia
6 Office of the Controller regarding
7 barriers facing minority, women and
8 disabled-owned businesses in City
9 procurement and contracting. We
10 encourage this Council to carefully
11 consider the well-reasoned
12 recommendations from the Controller's
13 Office, and we are happy to share our
14 experiences with restructuring and
15 improving our city's local business
16 program. Having faced similar challenges
17 in reforming our department, we
18 understand the hard work it will take to
19 implement the necessary changes to
20 transform Philadelphia's MBE, WBE and
21 DSBE program into an effective economic
22 development agency of which this city can
23 be proud.

24 The first and most important
25 step in making this transformation is

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2 ensuring the support and leadership of
3 Philadelphia's Mayor-elect and of the
4 City Council. Without the political will
5 and the commitment to economic inclusion
6 from the City's leadership, real progress
7 and institutional change are unlikely.

8 The Controller's Office first
9 recommendation is to transform MBEC's
10 administrative and enforcement functions
11 to a cabinet-level reporting position
12 within the executive branch and to shift
13 contract monitoring and oversight
14 functions to the Controller's Office.

15 There are advantages and disadvantages to
16 this approach of splitting
17 responsibilities between different
18 organizations. Nevertheless, we could
19 not agree more with the importance of
20 elevating the primary responsibilities
21 for the program within the executive
22 branch. Doing so signals the City's
23 commitment to these issues and focuses
24 increased attention and oversight on the
25 importance of economic inclusion.

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2 In conjunction with and as a
3 result of this elevated position within
4 the executive branch, the new and
5 improved operation must receive the
6 funding and staff necessary to carry out
7 its mission. In the District, Mayor
8 Fenty's leadership and focus on issues of
9 economic development have allowed our
10 department to grow substantially in size
11 and areas of responsibility, and as a
12 result, we are better able to serve our
13 local business community.

14 The Controller's Office second
15 recommendation is to improve contract
16 monitoring and enforcement. Your MBE,
17 WBE and DSBE ability to demand
18 transparency and accountability is
19 critical to the success of a program that
20 really seeks to materially alter the
21 status quo. Over the past several
22 months, DSLBD has focused increased
23 attention on restructuring and
24 strengthening our compliance program for
25 monitoring District of Columbia

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2 government contracts as well as local
3 business participation on private
4 development projects. On the public
5 side, our law requires that all contracts
6 under \$100,000 be set aside for certified
7 small business enterprises. In addition,
8 each agency in the District of Columbia
9 is required to expend at least 50 percent
10 of their discretionary budget with
11 certified small business enterprises.
12 The agencies must submit quarterly
13 reports to our department, and quarterly
14 and annual reports are submitted by us to
15 our City Council. During the fiscal
16 year, if we determine that an agency is
17 falling far behind its 50 percent
18 spending target, we institute mandatory
19 SBE set-asides for contracts of that
20 agency. We have mandatory 35 percent
21 subcontracting requirements for any
22 construction contract over \$250,000 and
23 for any non-construction contract in
24 which any portion will be subcontracted.
25 Prime contractors are required to submit

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2 a subcontracting plan prior to contract
3 award which must identify the certified
4 businesses that will receive
5 subcontracts.

6 Similar to the situation in
7 Philadelphia, in the past we have had
8 difficulty monitoring and enforcing this
9 subcontracting requirement and have
10 received reports that certified
11 businesses were listed on the prime
12 contractor's subcontracting plans, but
13 never brought on board as subcontractors
14 after the contract was awarded. It is
15 particularly difficult to monitor this
16 activity because our procurement office,
17 which receives the subcontracting plans
18 and awards the contracts, is a separate
19 agency from our department. To combat
20 this problem, we have established a close
21 working relationship with our new Chief
22 Procurement Officer and his staff so that
23 we can share information and be better
24 apprised of contractors that do not
25 fulfill their subcontracting obligations.

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2 Members of our City Council have also
3 recently introduced additional amendments
4 to our statute which required prime
5 contractors to submit quarterly
6 subcontracting reports. Under this new
7 legislation, failure to meet the
8 subcontracting requirements may be
9 considered breach of contract, which
10 could result in termination of the
11 contract, amongst other remedies.

12 We have also conducted best
13 practices research to find ways to
14 improve our compliance efforts and
15 identify useful enforcement tools. While
16 the District has a mandatory
17 subcontracting requirement for
18 construction contracts in excess of
19 \$250,000, for non-construction contracts
20 the prime contractor is only required to
21 subcontract 35 percent if the prime
22 chooses to subcontract any portion of
23 that contract. We believe this
24 permissive requirement not only falls
25 short of the mark, but has also had a

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2 chilling effect on primes, as many would
3 elect not to subcontract at all rather
4 than be required to subcontract 35
5 percent to certified businesses.
6 According to our procurement staff,
7 several contract recipients that would
8 entertain subcontracting out a small
9 portion of the work, say five to ten
10 percent, have opted to self-perform
11 rather than hire local SBEs to complete
12 35 percent of the work and, therefore,
13 receive 35 percent of the revenues.

14 By contrast, another
15 jurisdiction we contacted has a mandatory
16 20 percent subcontracting requirement on
17 all city contracts. That city considers
18 a bid non-responsive if the bidder does
19 not provide a list of certified
20 subcontractors, and primes are prevented
21 from substituting certified
22 subcontractors unless the replacement is
23 also certified and the substitution is
24 approved by the small business office.
25 They enforce this requirement through the

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2 use of inspectors who actually visit work
3 sites. In light of this research, we are
4 considering modifying our subcontracting
5 requirements to institute a mandatory
6 subcontracting requirement for all
7 contracts as well.

8 We have made significant
9 changes to our compliance and enforcement
10 efforts on the private development side.
11 Traditionally, in virtually every
12 development project that has taken place
13 on District-owned property or that was
14 funded in whole or in part with economic
15 assistance from the District, including,
16 for example, grants, tax increment
17 financing, payments in lieu of taxes and
18 tax abatements, or is otherwise
19 government supported through industrial
20 revenue bonds or planned unit development
21 or zoning variances, the District has
22 traditionally required that as a
23 condition of receiving the government
24 support, the private developer enter into
25 a Memorandum of Understanding with our

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2 department. In these MOUs, the developer
3 agreed to use good-faith efforts or
4 reasonable efforts to contract with and
5 procure from local businesses for at
6 least 35 percent of the dollar volume of
7 the goods and services required for the
8 development project. Beginning this
9 year, we eliminated the old MOUs which
10 subjected developers to no consequences
11 if they failed to meet their goal and we
12 have replaced them with certified
13 business enterprise agreements. These
14 new agreements require developers to make
15 firm commitments to utilize local
16 businesses rather than simply making
17 good-faith efforts to reach a contracting
18 goal.

19 In addition, to ensure that
20 private developers do not ignore their
21 responsibilities to contract with local
22 businesses, the new agreements include
23 adverse consequences should the developer
24 not meet its obligations, including
25 financial penalties and cross default

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2 mechanisms with other critical project
3 agreements within the District. We have
4 upgraded our reporting forms through
5 which we require developers to submit
6 quarterly reports on their progress
7 towards achieving their contracting
8 target.

9 In addition, we now require the
10 general contractors to submit payment
11 verification forms to allow certified
12 contractors to verify payments made to
13 them under such subcontracts. We are
14 working with the District's Office of the
15 Chief Technology Officer to develop a
16 user-friendly electronic method for
17 certified businesses to verify such
18 payments received on government-supported
19 private sector projects. We anticipate
20 that this verification and reporting tool
21 will be used to monitor subcontracting
22 requirements on both the public and
23 private side.

24 In conclusion, we applaud this
25 Committee, the Philadelphia City Council

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2 and the Mayor-elect Michael Nutter for
3 taking a serious and close look at an
4 issue critically important to the
5 economic vitality of every major city,
6 the growth and development of small and
7 local businesses. Our department is
8 working through many of the same issues
9 as Philadelphia, strengthening our
10 compliance and enforcement mechanisms,
11 creating and implementing a bonding
12 program and other financial assistance
13 tools, streamlining a certification
14 process, providing technical assistance
15 and training, devising solutions to
16 address slow payment to small businesses
17 by city agencies, and encouraging and
18 promoting mentor-protege programs and
19 other teaming arrangements that allow
20 small businesses to accelerate their
21 growth.

22 I will not attempt to address
23 all of these issues today, nor do we have
24 all of the answers, unfortunately.
25 However, my staff and I are happy to be

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2 of whatever assistance we can during this
3 transition period for the City of
4 Philadelphia and beyond. Please consider
5 the District of Columbia a partner in
6 this process as you work to reform and
7 evolve your MBE program.

8 Thank you again for the
9 opportunity to appear before you today.
10 This concludes my testimony, and we are
11 happy to answer questions that the
12 Committee may have.

13 COUNCILMAN GOODE: Thank you
14 for your testimony, Mr. Moses, and thank
15 you for traveling to Philadelphia and
16 offering your continued partnership in
17 this process.

18 My only question is actually a
19 hypothetical question. Do you have deep
20 roots in DC?

21 MR. MOSES: I've been there for
22 12 years.

23 COUNCILMAN GOODE: But would
24 you consider relocating to Philadelphia?

25 MR. MOSES: Our Mayor might

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2 have something to say about that.

3 COUNCILMAN GOODE: You don't
4 have to answer that question, but feel
5 free to contact Mayor-elect Nutter if you
6 feel so inclined.

7 MR. MOSES: I'm flattered.

8 COUNCILMAN GOODE: Are there
9 questions from members of the Committee
10 for this witness?

11 Councilwoman Tasco.

12 COUNCILWOMAN TASCO: I just
13 want to say thank you so much for coming
14 to testify and present your testimony.
15 I'm sure that you have not obtained all
16 the goals that you seek, but it seems
17 like you all are on the right track to
18 moving forward in DC.

19 Are you getting much push-back
20 from the contractors as you move forward
21 to implement your program?

22 MR. MOSES: In short, yes, but
23 change is often painful for those who are
24 expected to change. The thing that
25 allows us to push through that resistance

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2 is the support of our Mayor and of our
3 Deputy Mayor and, quite frankly, of our
4 Council as well. Often times we will
5 enter into negotiations with developers
6 to ensure that they're compliant with our
7 requirements and, you know, many of those
8 entities are well connected within the
9 city and so they make a phone call to
10 City Hall to try to see whether or not a
11 different standard can be set for them,
12 and they are quickly told, No, go back to
13 the department and make them happy.

14 And so anyone who is tasked
15 with changing the status quo and business
16 as usual in the way that you're
17 considering and that we're trying to
18 accomplish must have support from the
19 highest levels of government. Without
20 that, you can't make the progress that's
21 necessary.

22 COUNCILWOMAN TASC0: Well, we
23 know that.

24 Let me ask you another
25 question. You talk in your testimony

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2 about small and local business

3 development, small and local businesses.

4 Do you have goals for minority

5 participation?

6 MR. MOSES: We don't. We're a
7 race and gender-neutral program, and I'm
8 going to defer in a minute to my general
9 counsel to speak a little bit more about
10 the background of that, but as you all
11 are, I'm sure, aware of the line of cases
12 in Adoran and Crosin and others that have
13 challenged minority set-asides throughout
14 our country, our city decided in 1992 as
15 a result of the O'Donnell case, which is
16 our local case, to move to a race and
17 gender-neutral program. That's not all
18 bad when you consider that the District
19 of Columbia is 60 percent minority. And
20 so in helping small businesses, we are
21 naturally helping minority-owned and
22 women-owned businesses because they're
23 present in our city. We have been pushed
24 recently by our City Council to start
25 tracking more demographic information

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2 about the minorities and women, gay,
3 lesbian, bisexual, transgender-owned
4 companies, disabled-owned companies that
5 are present in our database of about a
6 thousand certified businesses right now
7 and we plan to start implementing that
8 tracking mechanism very shortly.

9 COUNCILMAN GOODE: Mr. Moses,
10 what percentage of businesses are owned
11 by minorities?

12 MR. MOSES: I honestly don't
13 know. We don't have that information
14 available to us. I can tell you broadly
15 that, again, out of a thousand certified
16 businesses in our program, 60 percent of
17 them are classified as disadvantaged
18 business enterprises. Now, you can be
19 disadvantaged while not being a minority
20 or a woman depending on your narrative
21 and that you have a net worth of less
22 than \$750,000. By and large,
23 disadvantaged businesses are going to be
24 minority and woman owned. So somewhere
25 probably around 60 percent of the 1,000

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2 businesses we have are going to be
3 minority owned.

4 COUNCILMAN GOODE: And do you
5 know what percentage of city contracting
6 goes to disadvantaged businesses?

7 MR. MOSES: No.

8 COUNCILMAN GOODE: Thank you.

9 COUNCILWOMAN TASCO: How do you
10 define "disadvantaged businesses"?

11 MR. MOSES: I'm going to defer
12 to my general counsel who can answer that
13 question far better than I.

14 MS. BECTON: It's a little bit
15 of a complicated definition, but it's
16 basically you're economically
17 disadvantaged if your ability to compete
18 in the free enterprise system is impaired
19 because of diminished opportunities to
20 obtain capital and credit compared to
21 others in the same line of business where
22 the impairment is related to your status
23 as socially disadvantaged. And you're
24 socially disadvantaged if you have reason
25 to believe that you've been subjected to

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2 prejudice or bias because of your
3 identity as a member of a group without
4 regard to your qualities as an
5 individual. So in most cases, you can
6 use you're social disadvantaged as a
7 member of a racial ethnicity or as a
8 woman or disabled or whatever to qualify,
9 as long as you also meet the economic
10 requirements of being disadvantaged as
11 well, which, as Mr. Moses mentioned, was
12 a net worth of less than \$750,000.

13 MR. MOSES: So if you can
14 figure out the definition, then we'll
15 think about certifying you as DBE.

16 MS. BECTON: So we require
17 those applying for disadvantaged status
18 to fill out a template with their net
19 worth, in addition to write a statement
20 explaining how their membership in a
21 particular group has led them to have not
22 the same opportunities for access to
23 capital or business opportunities. And
24 we evaluate those statements and
25 determine whether or not they meet the

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2 disadvantaged status.

3 MR. MOSES: Let me give you an
4 example, just a real-world example. So a
5 female, even a white female, might come
6 in and say, I'm starting a construction
7 company. I've been in business for three
8 years. I've been to 17 different banks
9 and seeking loans for my business. I was
10 in the construction industry for 15 years
11 with one of the biggest companies in
12 town. I decided to go out on my own and
13 I can't get a loan despite my background
14 and experience, et cetera. And she would
15 in that narrative explain why she was
16 disadvantaged. And so that would
17 normally qualify. Or even with a white
18 male who might have grown up in
19 Appalachia somewhere and been the first
20 person to go to high school or college or
21 what-have-you. That's how it ends up
22 working out. And obviously with
23 minorities and others, facing the
24 challenges that minority businesses often
25 face, being able to write a persuasive

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2 narrative is not hard to do.

3 COUNCILMAN GOODE: Councilwoman
4 Brown.

5 COUNCILWOMAN BROWN: Yes. Are
6 there any benefits for those who are
7 purely local businesses, any advantages?
8 Could you speak to them?

9 MR. MOSES: Absolutely. Our
10 program has six different certification
11 categories. Everyone must be local to be
12 in our program, and that was a change
13 that was instituted about a year ago.
14 Because the District is unique as a
15 jurisdiction and so small, we used to
16 allow companies in Virginia and Maryland
17 to waive into our program. That's been
18 done away with. So you have to be
19 headquartered in the District of
20 Columbia, within our jurisdiction. So
21 local is the first category.

22 Small is another category,
23 disadvantaged, resident owned, business
24 located in an enterprise zone and
25 long-time resident business; i.e., a

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2 business that has been situated and
3 headquartered for 20 consecutive years in
4 the District of Columbia. All of those
5 six categories have points associated
6 with them, and so when going through the
7 procurement process on the public side,
8 those points are tabulated based on your
9 certification categories and they're
10 either applied as preference points in an
11 evaluation or as discount points if it's
12 a request for bids. So, for instance,
13 Ms. Becton has an office supply company
14 and she's not certified. I have an
15 office supply company and I'm certified,
16 and I receive 12 points as a result of my
17 certification categories. We both bid on
18 a contract with the city. She bids
19 \$105,000. I bid \$112,000. The city
20 would then take my 12 points, apply it to
21 my bid, lower it to \$100,000, I'm now the
22 low bidder, I win the contract and then
23 they pay me \$112,000.

24 So it actually -- our program
25 provides a competitive advantage and an

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2 economic advantage to businesses. And
3 you can be certified as just local. You
4 can be a very large firm that's certified
5 as just local, because, again, we are as
6 a district seeking to recycle as many of
7 our dollars through our local economy as
8 possible before they go out. We're
9 losing, just in the retail area, a
10 billion dollars a year in leakage to the
11 suburbs. And so this is a program that
12 is intended to capture more of those
13 dollars and recycle them in our economy.

14 COUNCILWOMAN BROWN: Now, did
15 you evolve to the practice you just
16 outlined? Is that relatively new where
17 you have the six different categories of
18 points?

19 MS. BECTON: There have been
20 categories -- when the law was first
21 enacted back in '92 when they switched
22 over from being a minority and
23 women-owned program to this race and
24 gender-neutral program, there were only
25 three categories. There was local,

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2 small, disadvantaged. And I think there
3 was also the enterprise zone location.

4 And then over the years, additional
5 categories have been added and the points
6 have changed a little bit. So we now
7 provide more preference for

8 resident-owned businesses, because we
9 know those businesses that are owned by
10 DC residents, those are people who we
11 know are paying taxes to the District and
12 so they get additional preferences for
13 that. The long-time resident was added a
14 couple of years ago as well.

15 COUNCILWOMAN BROWN: Did that
16 require legislation or it was simply --
17 it did?

18 MS. BECTON: Yes.

19 MR. MOSES: Our statute has
20 been amended quite often, and any advice
21 I can give to this body, if you are
22 looking at legislative changes, try to
23 make those as comprehensive as possible,
24 because the lack of certainty about what
25 the law requires is one of the main

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2 complaints that we've gotten from the
3 contracting community, both big and
4 small.

5 COUNCILWOMAN BROWN: Could you
6 forward copies of that legislation to the
7 Chair of the Committee?

8 MR. MOSES: I believe the
9 Committee already has those.

10 COUNCILWOMAN BROWN: All right.
11 All of us have experienced too scenarios
12 where the woman-owned business is really
13 a front. So do you have caps for
14 women-owned businesses?

15 MR. MOSES: No.

16 MS. BECTON: We don't have
17 caps, but in the situations where if a
18 certified business is selected as a prime
19 contractor, there's a requirement that
20 that prime -- that they do a certain
21 percentage of the work to ensure that
22 they're not just being simply used as the
23 pass-through. So if they win the bid as
24 a prime contractor, they have to do 35
25 percent of the work themselves at least.

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2 COUNCILWOMAN BROWN: Was that
3 by legislation as well?

4 MS. BECTON: Yes.

5 COUNCILWOMAN BROWN: Okay.

6 Thank you very much.

7 COUNCILWOMAN TASC0: And so you
8 certify whether the companies are women
9 owned? You don't do any certification?

10 MR. MOSES: No. We don't --
11 again, the program is race and gender
12 neutral, so anyone can apply. What we're
13 really focused on is locality. We're
14 trying to make certain that the only
15 businesses that are allowed into our
16 program are businesses that are
17 headquartered in the District of Columbia
18 and making the requisite contributions to
19 the District of Columbia in terms of
20 employing our residents and paying taxes
21 that we think warrant their inclusion in
22 the program. We have many women-owned
23 businesses, many minority-owned
24 businesses, and I would dare say the
25 large majority of the businesses, the

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2 thousand businesses in our program, are
3 women and minority owned. I don't have
4 the statistics yet to bear that out, but
5 I'm very, very confident that that is the
6 case.

7 COUNCILWOMAN TASCO: According
8 to your testimony, your department
9 recently changed from a primarily
10 certification-based organization to one
11 that does certification and enforcement.
12 Can you discuss the challenges that your
13 department has had with the new
14 enforcement power with city departments
15 and private contractors?

16 MR. MOSES: Yeah. I think --
17 and I'm a little remiss in not praising
18 your Controller's Office. I thought that
19 their report was very thorough, and I was
20 remarking to Ms. Becton while we were
21 listening that they're the same problems
22 wherever you go. I mean, we're dealing
23 with the same issues in the District of
24 Columbia. We're probably a couple steps
25 ahead of where you are right now, but

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2 we've come from where you are.

3 It requires a change in
4 culture. The comment that your
5 Controller made about procurement
6 professionals in the City being
7 accustomed to working with a small group
8 of contractors that they have confidence
9 in, familiarity with, that's not unique
10 to Philadelphia or any other city. I
11 mean, we fight against that as well. You
12 have procurement professionals whose job
13 it is to make their customers happy, and
14 their customers, at least in the District
15 of Columbia, are the people who are
16 working in the agencies, the program
17 people who need the goods and services
18 that they need in order to execute on the
19 mission of their agency. They don't care
20 who ends up providing the services. They
21 just want them reliably, on time and
22 within their budget. And so there is
23 this natural tension between the
24 procurement professionals, who are trying
25 to get goods and services in as quickly

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2 as possible, and our department, who are
3 trying to make certain that there is
4 inclusion in those procurements. So
5 we've experienced some problems there,
6 and there's some culture shock and we're
7 changing that culture. I have a very
8 good working relationship with our Chief
9 Procurement Officer. And, again, it has
10 to push down from the top. The people
11 who are on the line, the staff workers
12 need to understand that they will be
13 measured individually and collectively by
14 their efforts to achieve these goals and
15 targets.

16 One of the things that we will
17 be recommending to our Mayor soon is that
18 all of my colleagues, the District agency
19 directors, be measured in their
20 individual performance by how their
21 agencies comply with their contracting
22 goals. And so bonuses and other things
23 should be tied to, at least in part, to
24 how they achieve their goals in these
25 areas. So I think you have to have real

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2 metrics to measure people by, both
3 individually and collectively.

4 COUNCILWOMAN TASC0: How much
5 push-back did you get on requiring that
6 you use city residents, businesses that
7 are located in the city, from the
8 other --

9 MR. MOSES: It's interesting,
10 there were a number of companies that had
11 waived into the program from Virginia and
12 Maryland, but not that many. I mean, DC
13 is a pretty provincial town, and so I get
14 much more comments from local businesses,
15 especially longstanding businesses who
16 feel like they see a \$9 billion
17 government and don't feel like as much of
18 that money is making it into the hands of
19 local businesses as these businesses in
20 Virginia or Maryland. So we are
21 encouraged to be the watchdog and to be
22 the cop on the beat, if you will, with
23 respect to protecting the program from
24 businesses that are located outside the
25 city.

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2 So that hasn't been the real
3 push-back. Most of the push-back has
4 come from the private sector developers
5 who receive economic assistance or land
6 from our city and that are accustomed to
7 using who they want and are certainly not
8 accustomed to us assessing financial
9 penalties if they fall short. That has
10 been the biggest resistance that we've
11 received. But to the credit of our
12 Administration, we've been given all of
13 the leeway to continue to push ahead with
14 instituting those changes.

15 COUNCILWOMAN TASCO: Have you
16 found that you've increased the number of
17 businesses moving into the city so they
18 can do business? Particularly some of
19 the businesses that were in other cities
20 and doing business in DC, have any of
21 them relocated to DC?

22 MR. MOSES: There have been
23 some and we're starting to see a trickle
24 of more. One of the problems there is
25 that our city is a very expensive city to

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2 live in as well as to locate your
3 business in. We've had a real state boom
4 over the last ten years that's
5 unprecedented and one of the hottest real
6 estate markets in the country. And so
7 it's an expensive place to be. So that
8 counter-balances, I think, the number of
9 businesses that would move in.

10 One of the things that we've
11 done and I think is encouraging
12 businesses to move into the city is that
13 we started forecasting on the
14 construction and development side the
15 vast opportunities available to these
16 businesses. We're in the middle of \$60
17 billion worth of spending on construction
18 and development in our city, and just
19 back of the envelope, 35 percent of that
20 number is going to have to go to these
21 certified businesses. What we've said
22 to -- we had an expo recently to forecast
23 these numbers, and what we said to those
24 businesses was, Look at the size of the
25 pie that's available to you if you're in

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2 this program. That should be enough to
3 want you -- to motivate you to move into
4 the city and try to get a piece of it.

5 So we're starting to see more
6 of that, and we're also encouraging
7 larger businesses outside of the city to
8 partner with, to invest in local
9 businesses that will be headquartered in
10 the city as another opportunity for them
11 to break into the marketplace.

12 COUNCILWOMAN TASCO: What
13 department within DC oversees the
14 construction aspect of what's going on in
15 terms of -- and also the inclusion of
16 minorities and women on construction
17 sites? You know what we're dealing with
18 here in Philadelphia relative to our
19 Convention Center in our effort to make
20 sure that the workforce is diverse.

21 Are your workers diverse in DC
22 on the projects that go up?

23 MR. MOSES: They are. Probably
24 not as diverse as we'd like them to be.
25 I have a colleague who runs our

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2 Department of Employment Services that's
3 responsible for the workforce development
4 efforts of the city. We have an
5 agreement called the First Source
6 Agreement that requires that on any
7 government-supported project, that 51
8 percent of the new hires on those
9 projects must be DC residents. And so
10 the Department of Employment Services is
11 tasked with overseeing the implementation
12 and oversight of that law.
13 We don't have a construction
14 group in the city. The Procurement
15 Office handles procurement for all
16 agencies that have capital budget. Maybe
17 similar to your Convention Center, we
18 have a -- we're about to spend \$3 billion
19 on school modernization in the District
20 of Columbia over the next 10 to 15 years,
21 and the Mayor has recently created an
22 Office of Public Facilities Management
23 for the school system to manage that
24 budget, and they set a 50 percent goal
25 for inclusion of certified businesses on

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2 all of that school work.

3 We just built a \$600 million
4 baseball stadium. We're at 53 percent
5 participation for certified businesses on
6 that project.

7 So we're certainly making great
8 strides, but there is not one
9 consolidated construction group in the
10 city, at least not yet.

11 COUNCILWOMAN TASC0: Thank you
12 very much.

13 MR. MOSES: You're welcome.

14 COUNCILMAN GOODE: I failed to
15 note that Councilman DiCicco is also
16 present.

17 Are there any more questions
18 for this witness?

19 (No response.)

20 COUNCILMAN GOODE: Again, thank
21 you, Mr. Moses.

22 MR. MOSES: Thank you.

23 COUNCILWOMAN TASC0: Thank you
24 very much for coming.

25 COUNCILMAN GOODE: Our next

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2 witness is Beverly Harper.

3 MS. HARPER: Good morning.

4 COUNCILMAN GOODE: Good
5 morning. How are you? Please state your
6 name for the record and proceed.

7 MS. HARPER: I'm Beverly
8 Harper, President of Portfolio
9 Associates.

10 COUNCILMAN GOODE: Please
11 proceed.

12 MS. HARPER: Good morning,
13 Chairman, Councilpeople. Thank you for
14 the opportunity to present testimony on
15 my history and experiences as a minority
16 business based in Philadelphia for 38
17 years, my knowledge of the history of the
18 MBEC and recent insult and disrespect
19 inflicted upon me by the current Minority
20 Business Enterprise Council staff, and,
21 finally, some recommendations about how
22 this government can truly assist minority
23 firms.

24 I am Beverly Harper, President
25 and CEO of Portfolio Associates, Inc., a

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2 marketing services and communications
3 consulting firm I founded in 1969. We
4 have continuously operated in
5 Philadelphia, paying hundreds of
6 thousands of dollars in wages and taxes
7 to hundreds of employees. We have had
8 hundreds of prime and subcontracts
9 working for eight federal agencies, six
10 state departments and over the years
11 several City departments and quasi-public
12 agencies. We have developed and
13 implemented social marketing campaigns,
14 customized training programs, large
15 multi-year community relations projects,
16 and many focus groups and research
17 assignments.

18 In the early '80s I helped to
19 found and became the first and only
20 President of a minority business action
21 group called the Brain Trust. Our goal
22 was to get the City of Philadelphia to
23 pass what was called at that time
24 set-aside legislation that would
25 guarantee minorities and women a share of

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2 City contracts. Working with the late
3 Lucien Blackwell and John Anderson, among
4 others, we were successful, not only in
5 getting the legislation passed but also
6 helping to organize the unanimous vote to
7 override Mayor Bill Green's veto. This
8 occurrence was a glorious day in City
9 Council.

10 Chapter 17-500 of The
11 Philadelphia Code became law, creating
12 the Minority Business Enterprise Council.
13 I became one of the first businesses
14 certified. I believe in a certification
15 process. My company, Portfolio
16 Associates, Inc., has been and is
17 currently certified in numerous
18 jurisdictions, many of them for years.

19 In February of this year, both
20 my Unified and City certifications
21 expired. Prior to February, late last
22 year, I received and responded to a
23 letter from the MBEC asking for
24 information. I had an Affidavit of No
25 Change notarized and sent to the City.

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2 In January I received another letter
3 saying that my certifications were in
4 jeopardy. I called and asked what else
5 was required and was told that I would
6 receive a call back. None came.

7 A bit of information: The
8 Unified Certification Program is an
9 agreement that took at least four years
10 to be finalized. Its purpose was to
11 reduce the paperwork required from
12 minority firms. The agencies involved
13 are PennDOT, SEPTA, Allegheny County, the
14 Port Authority of Allegheny County and
15 the City of Philadelphia. Philadelphia
16 is the only one of these that also
17 requires an additional certification,
18 both requiring the exact same level of
19 information and documentation. What a
20 shameful waste of resources. It is a
21 mystery to me why the City needs two
22 certifications.

23 By February of this year, I was
24 worried about my Unified Certification
25 and after speaking to PennDOT and SEPTA,

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2 I requested that my files be transferred
3 from the MBEC to SEPTA, where I was sure
4 I would get a response. A request was
5 made by SEPTA for my files. In an
6 unusual occurrence, the files were not
7 transferred. I was asked by SEPTA to
8 submit my complete recertification
9 package, which I did. SEPTA recertified
10 my firm within three weeks, including
11 conducting a site visit.

12 I still had to submit a
13 complete recertification application to
14 the City, which I did on July the 11th,
15 after months of frustrating dealings with
16 the MBEC.

17 In August I was asked to bid
18 with two teams on different projects, one
19 with the City Planning Commission and one
20 with PIDC. I called the MBEC in late
21 August and informed them of these two
22 projects. I was told that my paperwork
23 had passed the first level of review and
24 was on a supervisor's desk. I called the
25 supervisor and was told that the MBEC

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2 could take three months to complete the
3 certification and that there was nothing
4 that could be done to expedite the
5 process.

6 Shortly after that, I received
7 a call from one of the prime contractors
8 I had bid with, saying that they had
9 received a call from the MBEC saying that
10 I did not have a current certification
11 and they would have to find a
12 substitution for my firm. MBEC never
13 informed the prime that my application
14 was in process, that I had been certified
15 for years and that nothing about my
16 firm's ownership or management had
17 changed. I was outraged, hurt and
18 incredulous.

19 During this time, I held a
20 current Pennsylvania Unified
21 Certification, certifications from the
22 Maryland Department of Transportation and
23 New Jersey Transit. I again called MBEC
24 and asked if I could send copies of these
25 other certifications. I was told that if

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2 I submitted these documents, the process
3 would start all over again and the wait
4 would be longer. I could not believe
5 what was happening. If the MBEC could do
6 this to me, how many other legitimate
7 firms have been so devastated by this
8 incompetence that they went elsewhere, to
9 Philadelphia's great loss?

10 I wrote a letter to Carolyn
11 Nichols, Director of the MBEC, and
12 received no response, and in a rare move,
13 I sent copies of the letter to several
14 elected officials. None could believe
15 what was happening. All responded by
16 calling me and the MBEC. The MBEC
17 provided inaccurate and misleading
18 information to the elected officials,
19 telling one that they were waiting for
20 additional information from me. They
21 never asked for anything additional.
22 They continually told different elected
23 officials that the certification letter
24 would be mailed in two weeks. After that
25 time expired, they said next week, and

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2 then that time expired. Finally, on
3 October 1, 2007, I received my
4 certification.

5 I must say that I'm puzzled by
6 the actions of the MBEC, as they are an
7 entity whose mission is assisting
8 minority enterprises and they have
9 recertified me numerous times. We have
10 bid on hundreds of projects with dozens
11 of engineering and planning firms,
12 multiple times with most. In my 38 years
13 of business and more than 20 years of
14 being certified by dozens of state,
15 county and city agencies, including the
16 MBEC, I have never experienced anything
17 like this. In the past when an agency
18 has been slow to process a
19 recertification application, they have at
20 least confirmed to the prime that it was
21 in process.

22 Ironically, we were on a team
23 that was awarded a contract from another
24 City department at this same time. Since
25 this particular department knew of my

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2 firm and knew of many problems with the
3 MBEC, they believed me when I said my
4 certification was imminent. I was able
5 to stay on this team.

6 The bottom line for me is that
7 I lost a \$250,000 opportunity. Because
8 of the MBEC, the relationship I had
9 worked for years to establish with this
10 engineering firm is irrevocably damaged.
11 They think that they did not get the
12 project because they had to submit a less
13 qualified firm for Portfolio Associates.

14 What can be done? One, take
15 all responsibility away from the MBEC,
16 create a program that works and place it
17 in the Mayor's Office.

18 Two, develop a minority
19 business strategy for the City that will
20 increase the number and size of minority
21 businesses.

22 Three, work with the new
23 Administration to develop real
24 accountability for making sure that
25 minority firms have real opportunities to

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2 do business with the public and private
3 sectors in this City.

4 Four, require annual reports on
5 progress that can be documented from all
6 City departments and agencies,
7 authorities, quasi-agencies and all who
8 do business with the City.

9 Five, solicit periodic reports
10 from minority businesses about how the
11 City is doing in providing opportunities
12 and business.

13 Six, find a way to show public
14 recognition of small businesses such as
15 Portfolio Associates. We have hired more
16 people and paid more taxes than many of
17 the newcomers who get tax breaks and
18 recognition far beyond their staying
19 power.

20 Seven, pay attention. Small
21 businesses are the new engine of this
22 economy.

23 I stay in business in this city
24 because I love what I do and I love the
25 City. It might have been easier to do

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2 business somewhere else, but I have made
3 a difference here, professionally and
4 personally. I am President of the Board
5 of Directors of Philadanco. I chair the
6 Board of the Painted Bride Art Center. I
7 am a former Chair of the Board of the
8 Enterprise Center. I co-chair an
9 organization called PenTrans,
10 Pennsylvanians for Transportation
11 Solutions. I am President of the Board
12 of Governors of the Philly Ad Club and I
13 am on the Board of the Philadelphia
14 Orchestra Association. I believe in
15 giving back.

16 Thank you for this opportunity.
17 I look forward to answering any questions
18 you may have.

19 COUNCILMAN GOODE: Thank you
20 for your testimony, Ms. Harper.

21 Councilwoman Tasco.

22 COUNCILWOMAN TASCO: Thank you
23 so much, Ms. Harper, for coming in to
24 testify. We worked to share and shared
25 your story and your trials and

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2 tribulations with MBEC, and I have to say
3 that I know that you're angry, because
4 otherwise you might not be here, but you
5 care and you just have been done an
6 injustice, and I have to apologize for
7 that.

8 MS. HARPER: Thank you. You're
9 the first person who has apologized to
10 me.

11 COUNCILWOMAN TASC0: It is my
12 understanding that you conduct business
13 in other cities. Can you describe your
14 experience in other cities as compared to
15 Philadelphia?

16 MS. HARPER: Yes. We are
17 certified in other cities and other
18 states. When my recertification is
19 coming up for New Jersey Transit, about
20 two months before the certification is
21 up, I get a phone call asking me whether
22 anything has changed and telling me
23 whether or not they have changed any of
24 their policies or procedures, and they
25 ask me also if I am going to submit for

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2 recertification. They note in their file
3 that they had that conversation with me.

4 The same thing happens at
5 PennDOT when I talked to their MBEC --
6 when I talked to their DBE office. They
7 note in the file every time I call them
8 and so that there is a record that I have
9 reached out.

10 We recently did a project in
11 Maryland, and that was through the
12 Maryland Department of Transportation.
13 Our recertification was in process when
14 we were asked to bid on a project as a
15 subcontractor. Their office informed the
16 prime that my certification was in
17 process and that they did not anticipate
18 any problems at all because I had been
19 certified with them for a long period of
20 time.

21 So, yes, I get treated with a
22 lot greater respect in other
23 jurisdictions than I do here in
24 Philadelphia.

25 COUNCILWOMAN TASCO: When you

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2 are seeking recertification, I know -- I
3 don't know, but I understand that a lot
4 of information is required when you're
5 getting your initial certification and a
6 lot of businesses don't want to go
7 through that process, and we've been told
8 that dealing with the MBEC office,
9 they're not really confident that their
10 information will be held in
11 confidentiality.

12 MS. HARPER: I am very worried
13 about that and for several reasons. One,
14 over the years, several times they have
15 told me that they have lost my package
16 and I had to resubmit it again. Now, the
17 same stock certificates that I submitted
18 to them back in the '80s are the same
19 ones that they still require when I get
20 recertification today. So the amount of
21 paperwork that has been submitted to the
22 MBEC over and over and over again is, as
23 I said, a shameful waste of resources.

24 COUNCILWOMAN TASCO: Did they
25 find your package?

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2 MS. HARPER: No. I mean, then
3 we were doing a project for the Streets
4 Department where we were looking at the
5 recycling that various City offices and
6 buildings do and I have photographs where
7 out of one of the offices there were
8 boxes put out on the sidewalk of people's
9 files. So, of course, my great fear is
10 that somebody goes through and, you know,
11 cleans out a file and all of my corporate
12 records are sitting out on the sidewalk
13 someplace.

14 So, no, I don't have any
15 confidence that those records are
16 confidential.

17 COUNCILWOMAN TASC0: Do you
18 know the size of the MBEC staff?

19 MS. HARPER: No, I don't.

20 COUNCILWOMAN TASC0: Okay.
21 What steps do you -- well, you gave us
22 some ideas for change for the MBEC
23 office. And I do want to cite for the
24 record that we had another contractor
25 with the City call us because their

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2 certification was being held up, and it
3 just seemed to be very odd that we were
4 getting these phone calls at the time
5 about -- and I know both of you very
6 well. I remember when you went into
7 business. And this other gentleman has
8 been in business and has been known -- if
9 you work and live in Philadelphia, you
10 know your minority-owned businesses.

11 Do you know what the purpose of
12 the recertification is?

13 MS. HARPER: Well, I think that
14 when you submit -- there are a couple of
15 things that you do. I think annually you
16 have to submit an Affidavit of No Change
17 that you get notarized, and then when
18 your certification actually expires, you
19 have to submit a new package. It seems
20 to me that if you have submitted an
21 Affidavit of No Change, which is
22 essentially a one- or two-page document
23 that you get notarized, I don't
24 understand why you have to submit -- if
25 you're saying that nothing has changed,

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2 then why do you have to give them two
3 inches of paper again and again and
4 again?

5 COUNCILWOMAN TASC0: What, in
6 essence, are they certifying --

7 MS. HARPER: They're
8 certifying --

9 COUNCILWOMAN TASC0: -- when
10 you fill out the paperwork?

11 MS. HARPER: Yes. They're
12 certifying that the ownership and
13 management of the company has not
14 changed. They're certifying that you do
15 not exceed the income limits. And all of
16 that can be a part of the Affidavit of No
17 Change. You're saying that nothing has
18 changed. So to me, it's a waste of staff
19 resources for them to have to plow
20 through all of that paperwork again when
21 it's -- I mean, I have a whole file of
22 just the papers that we give them over
23 and over and over again, and then I also
24 keep a copy of exactly what I send them
25 each time. And I understand that most of

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2 the times when certifications are slow,
3 it's because some of the paperwork isn't
4 there, but as many times as I've been
5 certified in so many jurisdictions, I
6 know exactly all of the paperwork that
7 needs to be there, and it's always there.

8 COUNCILWOMAN TASCO: You have
9 dealt with the MBEC office for many
10 years. Is this the first time you've had
11 this problem in the last year to this
12 extent?

13 MS. HARPER: Previously
14 certifications have been slow, but when
15 they were slow, I could get MBEC to send
16 a letter to the prime or MBEC would tell
17 me to put their person's name, whether it
18 was Jim Roundtree or Marlon Hamilton, put
19 their name at the bottom of my
20 certification letter and their telephone
21 number and saying that my certification
22 was in process, and that was helpful. If
23 it was slow, that was fine, it didn't
24 hurt me. What MBEC did this year hurt
25 me. I mean, it hurt my business, to say

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2 nothing of how I feel personally, but I
3 lost a \$250,000 opportunity and I lost a
4 great relationship with a firm who thinks
5 that I was responsible for them not
6 getting a contract.

7 COUNCILWOMAN TASCO: Well,
8 again, thank you for coming in to
9 testify. As we move forward, we take
10 some of the recommendations from the
11 Controller's Office and from DC and
12 hopefully that the new Administration
13 will try and come up with a better
14 program.

15 MS. HARPER: Thank you.

16 COUNCILWOMAN TASCO: Thank you.

17 COUNCILMAN GOODE: Councilwoman
18 Brown.

19 COUNCILWOMAN BROWN: Thank you.

20 The only comment I would add
21 is, the record should reflect that you
22 were one of the authors of the initial
23 legislation of the bill that ultimately
24 created that office, and for now, a
25 couple decades later, to be in a

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2 circumstance where the office and,
3 therefore, the Administration haven't
4 figured out how to treat longstanding
5 certified MBEs differently from those who
6 are just showing up at the door in many
7 ways is a disgrace.

8 Thank you for your testimony.

9 MS. HARPER: Thank you.

10 COUNCILMAN GOODE: Thank you.

11 MS. HARPER: Thank you.

12 COUNCILMAN GOODE: Our next
13 witness is Judith Robinson.

14 Good morning.

15 MS. ROBINSON: Yes. Good
16 morning. My name is Judith Robinson.
17 I'm here today to testify on Bill No.
18 040977 and really 070741.

19 I want to say thank you to
20 Mr. Butkovitz and his office for a very
21 comprehensive report, but I feel like
22 deja vu. I am a business owner, a very
23 small business owner, and I've never
24 taken the time to get certified. I
25 thought it was disrespectful to my

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2 ancestors to certify myself sort of like
3 in a ghetto of business. This is
4 required, I know, to get the big
5 contracts, but after hearing some of the
6 stories that you just heard, I knew it
7 was really not worth my time for a
8 business in real estate where you can go
9 out to the people and get business and
10 you don't have to go through these
11 governmental processes to do business.

12 This has been going on with
13 MBEC for over 30 years, as MBEC has been
14 a patronage haven of a lot of
15 African-American folks that have sat
16 around for over 30 years while business
17 people that did not have -- that have to
18 earn a paycheck or make the money have
19 not gotten contracts. So I did not waste
20 my time with that.

21 But I say it's like deja vu in
22 that last time we were here there was an
23 illusion of inclusion. There have been
24 many studies and reports completed and
25 they always tell us the same thing that

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2 this great report has told us presently,
3 that we're not getting business from City
4 contracts. Minority representation in
5 the City is 55 percent and we're getting
6 less than 12 percent. Now, that's
7 minorities, which includes
8 African-Americans and all others, while
9 we vote for our elected officials, put
10 them in office and we continue with the
11 same.

12 So I want to talk about
13 enforcement, leverage and political will.
14 I heard here today that non-profits get a
15 substantial amount of City contracts.
16 That's an area where our City Council has
17 much leverage, and I'm requesting that
18 you use some of your leverage. Housing
19 agencies, non-profits come before this
20 organization and they request funding for
21 various projects. There is no
22 responsibility for them to be inclusive.
23 We can deal with that very quickly as you
24 negotiate to give them funding for
25 various projects.

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2 Recently, this body of City
3 Council voted 16 to 1 regarding an issue
4 where the Boy Scouts, the cradle of
5 liberty, are using a building on the
6 Parkway. You all use your leverage,
7 without having any public hearings,
8 without any opportunity for public input.
9 You use your leverage to force this
10 agency that you all are claiming is
11 discriminating against folks. Well, all
12 of these issues that we're talking about
13 are about discrimination. I would like
14 to know how you did that process with the
15 Boy Scouts and that whole agenda that's
16 being pushed. I would like you to use
17 the same power, the leverage,
18 enforcement. And I know it's a smaller
19 issue, but you did it. I don't know how
20 it was done, but you did it. You have
21 the same kind of clawback powers as it
22 relates to these contracts.

23 So I'm just here today to ask
24 that you use the same kind of political
25 will that you used in that particular

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2 case. I'm asking that you use your
3 negotiating skills prior to demolition,
4 prior to projects moving forward, such as
5 the Convention Center. I'm asking that
6 you use your political will to move us
7 out of this mucky mire, this nonsense
8 that we go through over and over again.

9 I have only been coming to City
10 Council for about ten years now, and each
11 year almost around about this time we
12 have these hearings. I'm asking you all
13 to read the reports, see where your
14 leverage is as it relates to this process
15 and have the guts to stand up and do what
16 is necessary to move us forward.

17 Now, we're coming with a new
18 Administration, and I'm very optimistic
19 that we can do this, but I know it's
20 going to take political will. I am a
21 voter, a business owner, taxpayer,
22 homeowner, all that. I will support you
23 all in any way that I can so that you can
24 have the political will, the guts to move
25 us in the 21st century with dignity and

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2 respect. Our ancestors are calling us to
3 do that.

4 Thank you very much.

5 COUNCILMAN GOODE: Thank you
6 for your testimony.

7 Is there anyone else to testify
8 on any of these resolutions?

9 (No response.)

10 COUNCILMAN GOODE: Seeing none,
11 the hearing of these resolutions is
12 concluded.

13 Thank you.

14 (Committee on Commerce and
15 Economic Development adjourned at 12:15
16 p.m.)

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CERTIFICATE

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I HEREBY CERTIFY that the

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proceedings, evidence and objections are

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contained fully and accurately in the

6

stenographic notes taken by me upon the

7

foregoing matter on December 12, 2007, and

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that this is a true and correct transcript of

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same.

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MICHELE L. MURPHY

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RPR-Notary Public

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