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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
Monday, December 4, 2006
10:15 a.m.

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PRESENT:

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COUNCILMAN W. WILSON GOODE, JR., CHAIR

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COUNCILWOMAN CAROL ANN CAMPBELL

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COUNCILMAN DARRELL L. CLARKE

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COUNCILWOMAN DONNA REED MILLER

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COUNCILMAN JUAN RAMOS

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COUNCILWOMAN BLONDELL REYNOLDS BROWN

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COUNCILMAN FRANK RIZZO

18

COUNCILWOMAN MARIAN B. TASCO

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BILL 060855 - An ordinance amending Title 17
of The Philadelphia Code, entitled "Contracts
and Procurement," by adding a new Chapter
defining and detailing the categories of
Disadvantaged Business Enterprises and of City
contracts that must be considered separately
by the Finance Director in conducting the
Annual Disparity Study...

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V A R A L L O Incorporated

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Litigation Support Services

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COUNCILMAN GOODE: Good

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morning. This hearing is called to

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order. This is the Commerce and Economic

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Development Committee hearing. The Bill

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is No. 060855. My name is W. Wilson

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Goode, Jr., Chair of the Committee. I

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note that a quorum is present. To my

9

left is Councilman Frank Rizzo,

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Councilwoman Marian Tasco. To my right,

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Councilwoman Donna Reed Miller and

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Councilman Darrell Clarke.

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The title of Bill No. 060855,

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amending Title 17 of The Philadelphia

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Code, entitled "Contracts and

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Procurement," by adding a new Chapter

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defining and detailing the categories of

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Disadvantaged Business Enterprises and of

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City contracts that must be considered

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separately by the Finance Director in

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conducting the Annual Disparity Study and

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devising the Annual Participation Goals

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as required by Section 6-109 of the

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Philadelphia Home Rule Charter, and

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specifying additional matters that must

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2 be included in the Finance Director's
3 annual report required by that Section,
4 all under certain terms and conditions.

5 Allow me to briefly explain the
6 purpose for the bill. The Charter change
7 recently approved by the voters related
8 to new contract opportunities requires
9 the Finance Director to do an annual
10 report containing an Annual Disparity
11 Study and Annual Participation Goals.
12 The Annual Disparity Study will analyze
13 participation of disadvantaged business
14 enterprises and City contracts compared
15 to the overall availability of qualified
16 disadvantaged business enterprises in the
17 marketplace. The Annual Participation
18 Goals will set out the City's goals of
19 participation by disadvantaged businesses
20 for the upcoming year.

21 Through the Charter amendment,
22 City Council was given the authority to
23 define and detail the categories of
24 disadvantaged business enterprises and
25 the City contracts that must be

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2 considered by the Finance Director in
3 conducting the Annual Disparity Study and
4 devising the Annual Participation Goals.
5 That's the purpose for the bill.

6 The bill also includes
7 additional matters that should be
8 included in the report as authorized by
9 the Charter change: No. 1, an up-to-date
10 listing of qualified disadvantaged
11 business enterprises to be approved by
12 City Council; No. 2, contract
13 participation rates for
14 Philadelphia-based disadvantaged
15 businesses; and, 3, City contract
16 participation goals for not-for-profit
17 City contracts related to for-profit
18 subcontracting opportunities.

19 I will be offering an amendment
20 that's drafted by the Law Department,
21 which are technical amendments per a
22 memorandum sent to me. They are
23 essentially just technical amendments.
24 The only other amendment that's included
25 among the proposed amendments I'll just

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2 mention, we also would like to devise a
3 category of Philadelphia-based
4 disadvantaged businesses. We want to
5 know how many Philadelphia businesses are
6 getting contracts as well. That's the
7 other thing that's added to the bill.

8 Actually, both of our witnesses
9 are here. I'm going to ask them to come
10 as a panel. So I call A. Bruce Crawley,
11 Millennium 3 Management, Carolyn Nichols
12 of Minority Business Enterprise Council
13 and Vince Jannetti, the Finance Director.
14 You can all come as a panel.

15 Mr. Crawley, could you please
16 state your name for the record and
17 proceed with your testimony.

18 MR. CRAWLEY: Bruce Crawley.

19 COUNCILMAN GOODE: And proceed
20 with your testimony.

21 MR. CRAWLEY: Okay. Great.
22 Thank you very much.

23 I'm Bruce Crawley, President of
24 Millennium 3 Management.

25 I've lived in Philadelphia all

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2 of my life, and for the last 17 years,
3 I've owned my own business here. As an
4 African-American business owner, I've
5 always been concerned about the lack of
6 meaningful access to contract
7 opportunities in Philadelphia for
8 businesses owned by blacks and other
9 so-called minorities.

10 The evidence is abundantly
11 clear that there's a significant and
12 damaging imbalance in the way that
13 contracts have been awarded by the City
14 of Philadelphia. In fact, a recent
15 Disparity Study completed in 2004 by D.J.
16 Miller and Associates indicated that
17 businesses owned by blacks, Asians and
18 Hispanics collectively represented just
19 two percent of the City's contract
20 revenues, and businesses owned by white
21 females represented an additional two
22 percent. Over the five-year period of
23 the study, there was virtually no City
24 business awarded to businesses owned by
25 disabled Philadelphians. That left about

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2 96 percent of the City government's
3 contract revenue to businesses owned by
4 white males.

5 If we do just a bit of analysis
6 based on most recently available Census
7 Bureau data, we can very quickly realize
8 how damaging such a contract distribution
9 pattern has been for the true majority of
10 the City's population and for the City as
11 a whole.

12 The 2005 Census update informed
13 us, for example, that blacks constitute
14 45.2 percent of the City's population,
15 that Hispanics constitute 9.7 percent and
16 Asians, an additional 5.2 percent.
17 Together that's 60.1 percent of the
18 City's population.

19 Non-Hispanic whites, according
20 to the 2005 Census, constitute 40 percent
21 of the City's population. Of that
22 non-Hispanic white population, however,
23 53.5 percent are white females, who have
24 also been systematically excluded from
25 City contract opportunities.

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2 By deduction, white males
3 represent about 272,000 persons in
4 Philadelphia, a little less than 19
5 percent of the City's overall population.
6 That leaves our City with 96 percent of
7 its contract revenue flowing through
8 about 19 percent of the population. It
9 has been that way for as far back as any
10 of us can remember.

11 As egregious as these numbers
12 are, they don't include at all the
13 additional piece of Census Bureau
14 information that informs us that there
15 are 354,409 persons in Philadelphia over
16 the age of five who are described as
17 living with a disability. That's an
18 additional 24.2 percent of our City's
19 population, virtually all of which has
20 been excluded from doing business in the
21 City in which they live.

22 These circumstances go far
23 beyond any issue of affirmative action,
24 fairness or equal opportunity. These
25 concepts, when discussed by most

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2 governments, mainstream business leaders
3 or when they are covered by mainstream
4 media outlets, are cloaked in outdated,
5 condescending images of charitable
6 assistance and civil rights.

7 But given the new demographics
8 of Philadelphia, this can no longer be
9 reduced to a divisive issue of fairness
10 perceptions. This is, instead, a simple
11 matter of economic competitiveness and
12 survivability for the City as a whole.

13 I'll go out on a limb and say
14 that no economic unit, no city, no state,
15 no country, will be able to feed its
16 people, create jobs for those who need
17 them or provide incentives for people to
18 achieve as long as 96 percent of their
19 gross business receipts are limited to 19
20 percent of their population.

21 This is what occurs in
22 Philadelphia's public sector contracts,
23 and the situation in the private sector,
24 without government leadership, is just as
25 desperate and deplorable.

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2 There's an additional issue
3 created by this contract imbalance. The
4 most recent Census Bureau data informs us
5 that 24.5 percent of the City's
6 population now lives below the poverty
7 level. I am absolutely convinced that
8 our economic and contract disparities are
9 a leading contributor to that situation.

10 I would not be surprised at all
11 to find in any city where one out of four
12 adults were living in poverty, that there
13 would be social unrest, a lingering sense
14 of desperation, a greater tendency to
15 pursue alternative, illegal sources of
16 income and a higher incidence of crimes
17 of violence. That certainly was the case
18 of the total U.S. population during the
19 Great Depression, and it's true today of
20 Philadelphia.

21 With all of that as background,
22 I was especially pleased to see on the
23 morning of November 8th that the citizens
24 of Philadelphia seemed to have a greater
25 understanding of all this than most

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2 people in the government ever expected.
3 On that morning, I saw that more than
4 150,000 Philadelphians, about 68 percent
5 of those who cast a ballot on the
6 question, had voted to approve City
7 Council Bill No. 060855, which would
8 mandate a more effective process for
9 ensuring that City contract opportunities
10 are expanded to include blacks and other
11 so-called minorities.

12 With that hurdle having been
13 cleared very emphatically on Election
14 Day, as I understand it, we are now at
15 the step of the procedure wherein we
16 ensure that the infrastructure and
17 processes are appropriate to achieve the
18 results that Philadelphia voters now
19 expect from their government.

20 In that regard, I do have a few
21 lingering concerns.

22 Business award by discrete
23 classification. It is long overdue that
24 the City's contracting process break out
25 from a broad minority classification and

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2 individually calculate the percentage of
3 contract revenue and number of contracts
4 awarded to African-Americans, to
5 Hispanics, to Asians, the disabled and
6 white females. Heretofore, for some
7 inexplicable reason, we have been advised
8 that the MBEC didn't have either enough
9 staff or enough computers to make such
10 calculations, obviously. If they were
11 able to provide an aggregate number for
12 so-called MBEs, they did have to have the
13 ethnic components available to do so.

14 They simply chose not to
15 provide that discrete information, making
16 it more difficult for blacks, as an
17 example, to know how much revenue the
18 City ever awarded to their businesses.
19 With this change, we'll know precisely
20 where the imbalances are and will be
21 better prepared to address them.

22 Another concern is the
23 inclusion of not-for-profit contract
24 awards in all future disparity reports.
25 In recent years, about 75 percent of the

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2 City's \$2.4 billion in contract awards,
3 that amount that went to not-for-profit
4 business entities, were not required at
5 all to adhere to any mandate to include
6 businesses owned by blacks, Hispanics,
7 Asians, the disabled or even white women.
8 All of the calculations produced by MBEC,
9 therefore, were based on just 25 percent
10 of the City's overall contract revenues.
11 So if the MBEC reported the percentage of
12 minority inclusion in a single year at
13 ten percent, the true percentage of
14 minority inclusion would only be
15 determined by dividing that figure by 25
16 percent, producing about 2.5 percent as
17 an actual number, very close to the 2004
18 Disparity Study result.

19 The amendment to include
20 not-for-profit contracts will add some
21 \$1.8 billion to the City contract awards
22 available to blacks, other minorities,
23 the disabled and white females.

24 Another concern is local
25 preference. We are absolutely delighted

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2 to see that the proposed amendment will
3 now focus on DBEs that are located within
4 the City of Philadelphia as a first
5 preference. These contract awards are a
6 means to improve Philadelphia's economy
7 overall and it is entirely appropriate
8 that the process be amended to reflect
9 that.

10 Annual Disparity Study.
11 Perhaps our greatest concern is to ensure
12 that there is an annual report presented
13 to Council but that there be no question
14 about the accuracy and the objectivity of
15 the reported data. Accordingly, we
16 strongly suggest that a third-party
17 agency or firm with experience in
18 completing such studies be retained to
19 ensure the accuracy and objectivity of
20 the reports that will be submitted.

21 Another concern is prime
22 contractors as an emphasis. In a city
23 where more than 24.1 percent of the
24 businesses are owned by so-called
25 minorities and 22.1 percent are owned by

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2 females, it is difficult to understand
3 the virtual lack of any prime contracts
4 to minority firms during the 1998 to 2003
5 Disparity Study period.

6 The language in the MBEC
7 Mission Statement clearly limit minority
8 participation in City contracts to
9 subcontract status. While that seemed to
10 make sense more than 20 years ago, it
11 serves as an artificial ceiling on the
12 growth potential of minority-owned
13 businesses. That, too, needs to be
14 changed and there should be a new
15 emphasis on identifying so-called
16 minority firms that can serve the City as
17 prime contractors.

18 The Census Bureau also tells us
19 that about 85 percent of people employed
20 at minority-owned firms are themselves
21 minorities. If we have a dangerously
22 high minority unemployment rate in
23 Philadelphia, it appears that the
24 quickest way to address it is to nurture
25 a new generation of prime business

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2 relationships between the City and DBE
3 firms.

4 In summary, let me say that
5 even with all that there is still left to
6 consider and improve, I am absolutely
7 delighted that Councilman Goode's bill
8 and the vote of the people of
9 Philadelphia has brought us this far.

10 Back in 1996 when I served as
11 Chairman of the African-American Chamber
12 of Commerce, we did a comprehensive
13 report to City government on all of the
14 steps that were needed to be taken to
15 finally include all Philadelphians in the
16 City's economy. Here, ten years later,
17 I'm encouraged that we have the right
18 people at the helm and a popular mandate
19 to ensure that it will finally happen.

20 I am confident that this will
21 be one of the smartest things that
22 Philadelphia has ever done to improve its
23 own economy and its own neighborhoods.

24 Thank you.

25 COUNCILMAN GOODE: Thank you

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2 for your testimony, Mr. Crawley.

3 We note for the record that
4 we've been joined also by Councilwoman
5 Blondell Reynolds Brown.

6 Ms. Nichols, please identify
7 yourself for the record and proceed with
8 your testimony.

9 MS. NICHOLS: Yes. Good
10 morning. My name is Carolyn Nichols.
11 I'm the Director of the Minority Business
12 Enterprise Council for the City of
13 Philadelphia. I'll just briefly just go
14 through my testimony I've submitted.

15 COUNCILWOMAN BROWN: Right
16 before you proceed, Mr. Crawley, do you
17 have copies of your testimony? I'd just
18 like to have it for the record.

19 MR. CRAWLEY: It's being typed.
20 It will be here in a few minutes.

21 COUNCILWOMAN BROWN: Great.
22 Thank you.

23 MS. NICHOLS: As you know, MBEC
24 is responsible for implementing and
25 administrating the City of Philadelphia's

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2 anti-discrimination policies relating to
3 the inclusion of minority, women and
4 disabled-owned businesses in City
5 contracts. Bill No. 060855, the bill,
6 proposes to add a new chapter, Chapter
7 17-1500 to The Philadelphia Code. This
8 new chapter contains some definition
9 changes to existing law, such as adding
10 the term "qualified" to the definition of
11 Disadvantaged Business Enterprises as set
12 forth in Section 2.M of Executive Order
13 02-05, reauthorized effective September
14 4, 2006, which is referred to in my
15 testimony as the Reauthorized Executive
16 Order.

17 Section 17-1502 of the bill
18 requires the separate consideration of
19 DBEs, or disadvantaged business
20 enterprises, owned by African-Americans,
21 Hispanic-Americans, Asian-Americans,
22 native-Americans, women and disabled
23 persons for purposes of conducting the
24 Annual Disparity Study and for devising
25 Annual Participation Goals as set forth

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2 in Section 6-109 of the Philadelphia Home
3 Rule Charter. Further, the contract
4 categories of Professional Services and
5 Public Works must be separately
6 considered.

7 As a practical matter, I've
8 been advised by the legal department that
9 the proposed change definitions for DBEs
10 may result in the unintended consequence
11 of rendering firms that are certified
12 under the Reauthorized Executive Order as
13 MBEs, or minority business enterprises,
14 which currently contain Asian-American,
15 Hispanic-American and African-American-
16 owned businesses as not being certified
17 under the new proposed definitions set
18 forth in Section 17-1502.

19 Additionally, MBEC would have
20 to work with two sets of DBE definitions,
21 one to complete the Annual Disparity
22 Study and Annual Participation Goals and
23 the other for purposes of setting
24 participation goals in individual
25 contracts, economic opportunity plans and

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2 related work. I would propose further
3 discussions to clarify the DBE
4 definitions set forth in the Reauthorized
5 Executive Order and Section 17-1502 to
6 develop a viable, workable solution.

7 Section 17-1503 requires
8 up-to-date listings of qualified
9 disadvantaged enterprises and City
10 contract participation goals for DBEs and
11 not-for-profit City contracts related to
12 for-profit subcontracting opportunities.
13 MBEC currently maintains a directory
14 listing of minority, women and
15 disabled-owned business enterprise firms
16 that is constantly updated and is
17 accessible online and is amenable to the
18 recommendation of enhancements and/or
19 improvements.

20 The setting of contract
21 participation goals in non-profit City
22 contracts is workable and coincides with
23 MBEC's plan to begin reporting non-profit
24 City dollars spent with MBEC-certified
25 vendors in upcoming annual contract

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2 participation reports.

3 In conclusion, I look forward
4 to working with City Council to maximize
5 City contracting opportunities for
6 minority, women and disabled-owned
7 businesses, and thank you for allowing me
8 to provide this testimony. I am
9 available for any questions of the
10 Committee.

11 COUNCILMAN GOODE: Thank you
12 for your testimony, Ms. Nichols.

13 Mr. Jannetti, are you offering
14 testimony?

15 MR. JANNETTI: No, Councilman,
16 I'm not.

17 COUNCILMAN GOODE: Thank you.

18 Let me start with several areas
19 of your testimony, Ms. Nichols. First,
20 you state that the new chapter contains
21 some definition changes to existing laws,
22 adding the term "qualified" to the
23 definition of Disadvantaged Business
24 Enterprise, as set forth in Chapter
25 17-501(8) of The Philadelphia Code.

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2 You are aware that the Charter
3 amendment that was approved by over
4 150,000 voters at a margin of more than
5 two-to-one used the term "qualified
6 disadvantaged business enterprises"; are
7 you not?

8 MS. NICHOLS: Yes. The legal
9 department corrected me on that. That's
10 why I took it out of the testimony I
11 submitted to you earlier.

12 COUNCILMAN GOODE: So not only
13 does the Charter amendment, which rises
14 above Executive Order and ordinance, take
15 precedent, but this bill specifically
16 also says at the end of it in Section
17 17-1504 that for the purposes of this
18 disparity study and the annual DBE plan,
19 that all matters within this legislation
20 will control over issues within 17-501.
21 You do understand that as well?

22 MS. NICHOLS: Yes.

23 COUNCILMAN GOODE: I guess my
24 primary question is, what do you consider
25 to be contained within that section of

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2 the Code right now in 17-501? Are you
3 considering that to be the amendment
4 that's offered through the Ortiz Bill in
5 2003 or not?

6 MS. NICHOLS: Well, I've been
7 advised by the legal department that, in
8 effect, with the effect of 6-109 and the
9 Executive Order has been to override or
10 supersede 17-500. That's my
11 understanding now after I conferred with
12 the legal department. The only thing I'm
13 trying to get at is --

14 COUNCILMAN GOODE: My question
15 was, were the amendments that City
16 Council unanimously approved to 17-500 in
17 2003, do you consider that to be law?

18 MS. NICHOLS: Yes.

19 COUNCILMAN GOODE: That has not
20 been the position of the Administration.
21 The Administration has said that the
22 Ortiz bill was illegal because Council
23 did not have the authority to legislate
24 on issues of contracting.

25 MS. NICHOLS: I understand.

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2 The only point I'm trying to bring home,
3 Councilman Goode, is that I'm hopeful
4 that we can sit down and work all of this
5 out, work out the definitions and come to
6 a common understanding so that we don't
7 have any adverse effect on current MBEs
8 and we can begin -- because I'm not
9 adverse to working with separate
10 categories of DBEs.

11 COUNCILMAN GOODE: Ms. Nichols,
12 does the Charter at all refer to -- prior
13 to this recent Charter amendment, does
14 the Charter at all refer to Minority
15 Business Enterprise Council?

16 MS. NICHOLS: No.

17 COUNCILMAN GOODE: Does this
18 bill refer to the Minority Business
19 Enterprise Council?

20 MS. NICHOLS: You mean
21 referring to MBEC? No, this bill does
22 not refer to MBEC. It refers to the
23 Director of Finance.

24 COUNCILMAN GOODE: So why
25 exactly are you testifying?

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2 MS. NICHOLS: MBEC is a
3 services unit within the Office of the
4 Director of Finance.

5 COUNCILMAN GOODE: I understand
6 that.

7 MS. NICHOLS: And that's the
8 only reason.

9 COUNCILMAN GOODE:
10 Mr. Jannetti, did you officially assign
11 MBEC to do this Annual Disparity Study
12 and annual DBE plan?

13 MR. JANNETTI: I didn't
14 actually officially assign it,
15 Councilman. It's something we discussed,
16 we talked about internally. It's, by
17 default, assigned.

18 COUNCILMAN GOODE: I think the
19 Administration would understand that if
20 City Council unanimously approved a bill
21 in 2003 and were told that that bill was
22 illegal and the City Council should
23 pretty much mind its own business because
24 it does not have authority under the
25 Charter to legislate any of these

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2 matters, then we pass a Charter change
3 that allows us to define how the report
4 should be done, that we don't have any
5 reason to seriously consider how that
6 conflicts with MBEC's current functions
7 when MBEC was not mentioned in the
8 Charter change nor is MBEC mentioned in
9 this bill.

10 Of course, anything can be
11 worked out, but that's not the approach
12 we're taking, and for Ms. Nichols on
13 behalf of MBEC to come testify and to
14 even raise issues of how it conflicts
15 with MBEC's current functions is
16 ridiculous to me. Obviously you don't
17 get what we're trying to do.

18 City Council is obviously
19 trying to seize as much control and
20 authority over fairness and diversity in
21 contracting that we can, not only because
22 we don't have confidence in this
23 Administration on that issue, but we
24 don't want to leave it to even future
25 administrations of what they may or may

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2 not do by Executive Order or who may or
3 may not be elected. So we put something
4 in the Charter. It has nothing to do
5 with whether MBEC exists or who is the
6 Finance Director or who is the Mayor. It
7 has more to do with having an annual
8 process in which we can assure that when
9 taxpayer dollars are being spent, they're
10 being done in a fair way.

11 In setting up a data-driven
12 process, it shows that there's
13 underutilization and there will continue
14 be underutilization unless we undertake a
15 new process, and that the process is not
16 going to conform with what this
17 Administration or any other
18 administration wants to do through
19 Executive Order. It's set by the voters,
20 as everything else is set by the voters,
21 including our being here is as a Charter
22 mandate. There are 17 members of Council
23 because the Charter says so.

24 So this has nothing to do with
25 what anyone does as a matter of practice

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2 and routine business.

3 MR. JANNETTI: I understand,
4 Councilman.

5 COUNCILMAN GOODE: Thank you.

6 Mr. Crawley, do you have any
7 comments on the testimony of Ms. Nichols?

8 MR. CRAWLEY: No real comment,
9 other than a point of confusion as to why
10 the position is one addressing the
11 difficulty in making all of this work. I
12 just think that it has been shown in
13 other procurement functions around the
14 City that it makes ultimate sense to
15 break out discrete ethnic groups who have
16 been previously discriminated against for
17 purposes of making reports. The School
18 District now does it, African-Americans,
19 Hispanics, Asians, native-Americans,
20 white females and the disabled. They did
21 it very simply. I don't think that it
22 disqualified any of their previous
23 vendors. And if it did, then they
24 certainly went right back out and made
25 another list. I mean, it doesn't seem to

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2 be a major problem, and I wouldn't think
3 that it would be a problem.

4 The bigger issue for us is that
5 there are virtually no businesses of
6 color getting contract opportunities now,
7 and if you disqualify all of them and
8 have to start over with people who are
9 really going to get an opportunity, then
10 that, too, would be an improvement.
11 Again, the Disparity Study showed two
12 percent for African-American, Hispanics
13 and Asians collectively, and white
14 females another two percent, and that
15 only counted -- when they do their count,
16 it does not include the 1.8 billions of
17 dollars that have been excluded on the
18 not-for-profit side.

19 So I think that anything that's
20 done would be an improvement, and I am
21 sure that's why people in the electorate
22 voted so overwhelmingly for this bill.

23 COUNCILMAN GOODE: And as part
24 of this process even as outlined through
25 this particular bill, it asks for there

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2 to be an up-to-date listing of
3 disadvantaged businesses. That is
4 already part of the process. And this
5 particular bill creates a new chapter.
6 It does not impact any other chapter, but
7 those provisions within this chapter for
8 purposes of this chapter control over the
9 other chapter.

10 So it does not interfere with
11 your process at all, and I think you know
12 that. And for the record, I received a
13 legal opinion from the Law Department and
14 actual amendments from the Law Department
15 that were technical changes. At no point
16 whatsoever did the Law Department raise
17 to me those issues of this interfering
18 with certifications. And I have a copy
19 of the legal opinion right here.

20 MS. NICHOLS: If you'd like, I
21 can forward the information that was sent
22 to me and we can work on that.

23 COUNCILMAN GOODE: Was it a
24 legal opinion?

25 MS. NICHOLS: It was forwarded

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2 to me. It was an e-mail, yes.

3 COUNCILMAN GOODE: It was an
4 e-mail?

5 MS. NICHOLS: Yes, from one of
6 the lawyers in the Law Department.

7 COUNCILMAN GOODE: I have a
8 legal opinion signed by the City
9 Solicitor.

10 MS. NICHOLS: Okay.

11 COUNCILMAN GOODE: Any
12 questions from members of the Committee?

13 COUNCILWOMAN BROWN: Yes.
14 Thank you, Mr. Chairman.

15 I, too, circled the word
16 "qualified" here, but I believe that
17 Councilman Goode has adequately addressed
18 that.

19 On Page 2 of your testimony,
20 you state, "Further, the contract
21 categories of Professional Services and
22 Public Works must be separately
23 considered."

24 Please just share with us why
25 that makes sense to the Department.

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2 MS. NICHOLS: Well, that's part
3 of the bill. I was just describing part
4 of the bill, 060855. That's part of the
5 bill.

6 COUNCILWOMAN BROWN: And I
7 should mention in the presence now of
8 Mr. Crawley that just last week the City
9 Solicitor affirmed that MBEC will do what
10 I've come to observe and realize, and,
11 that is, that the Philadelphia Public
12 School District and PHA specifically,
13 those departments, have figured out a way
14 to address the issues you just raised.
15 That's number one.

16 And, number two, I've had
17 concern that those departments don't talk
18 to each other. MBEC has not talked with
19 the School District and its procurement
20 officers and PHA -- long term, over the
21 past -- since I've been here, and the
22 City Solicitor indicated that they are
23 doing what they do in a way that is
24 transparent and better, and so MBEC will
25 be having more discussions and

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2 conversations, if there's no other way,
3 to model some of their practices that
4 they've done well.

5 MS. NICHOLS: Right.

6 COUNCILWOMAN BROWN: So thank
7 you for your testimony.

8 MR. CRAWLEY: Thank you.

9 COUNCILMAN GOODE: Councilman
10 Ramos.

11 COUNCILMAN RAMOS: Thank you,
12 Mr. Chairman.

13 I huddled with my colleague and
14 Chairman, who has done an extraordinary
15 job in this area that's so important to
16 the City and to the members of this
17 Council, and the concern that I have
18 gotten in the last almost three years now
19 here in City Council with minority
20 businesses that have come by to say, I've
21 read Philadelphia is doing well and we
22 want to see what kind of work is out
23 there that we can get information on and
24 bid on and so forth. And this issue of
25 minority businesses that were not, for

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2 lack of a better description of it,
3 signed up with MBEC were being left out
4 of the process, and I considered that to
5 be a substantial problem, because there
6 are minority-owned businesses in
7 Philadelphia. There's probably folks
8 also from outside of Philadelphia that
9 want to do business with the City, but
10 the response that they get either
11 directly or maybe even verbatim when they
12 go to MBEC is that if you're not on the
13 list, you have to get on the list, and
14 then at that point, you can qualify.

15 Do you think that in what you
16 read of this, Ms. Nichols and
17 Mr. Jannetti, that this would make sure
18 that in this study that not only people
19 that are qualified and certified under
20 MBEC but people that are not certified
21 under MBEC but are qualified are entitled
22 to bid on work in the City of
23 Philadelphia?

24 MS. NICHOLS: As I understand
25 the Disparity Study, the Disparity Study

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2 would look at certified businesses as
3 well as those businesses that are not
4 certified, because that's where the
5 disparity impact is weighed. You have to
6 look at the pool of ready, willing and
7 able vendors that are out in the
8 community in the Philadelphia region and
9 then look at the certified vendors
10 working with the City of Philadelphia.
11 That's how you develop the whole
12 analysis. So that would all be
13 considered as part of the Disparity
14 Study, as I understand it, and you would
15 look at the legal, historical, anecdotal,
16 best practices. You would look at all of
17 that evidence and come up with a report
18 on an annual basis.

19 COUNCILMAN RAMOS: And we'll
20 probably get more into this as we get
21 ready for the budget season in about
22 another few weeks, right, Mr. Councilman
23 and Councilmembers, that you would need
24 some restructuring over there at MBEC,
25 because now we want to open this up much

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2 more and make sure that our minority
3 community does in fact get equal
4 treatment in the area of business, where
5 if you don't restructure, MBEC might
6 become almost irrelevant, because with
7 this piece of legislation, the minority
8 contractors that want to do work in a
9 particular field don't necessarily have
10 to be signed up with MBEC or, for that
11 matter, wait for what a lot of people
12 have told me for a bunch of years, not
13 just in the years I've been here and in
14 Council, that it is a long, arduous
15 process.

16 Anyway, just, I think, a
17 heads-up from my point of view that MBEC
18 is going to -- if it's going to survive,
19 the changing of the guard in this City
20 might mean that there is going to be
21 significant changes in the way MBEC has
22 done business in the view of whoever
23 becomes the next Mayor of this City in
24 conjunction with the City Council, but
25 definitely I would take a look at

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2 restructuring, because if not, I just
3 think that MBEC becomes a thing of the
4 past.

5 MR. CRAWLEY: Councilman, in
6 response, I think that a few years ago we
7 had recommended to the Mayor's office
8 that they begin a process of accepting
9 universal certifications. I think
10 Carolyn was there when we made those
11 recommendations, that being a situation
12 wherein people who wanted to bid on a
13 piece of City business who had not
14 previously been certified, because
15 everybody wants to know that this
16 business actually is black-owned,
17 Hispanic-owned, Asian-owned,
18 female-owned, issues with all of that.
19 So you want to be certain that these
20 people are not fronts. So you do want
21 certification. So we don't want to do
22 without certification. The problem is
23 that people who had not previously been
24 concerned about being certified through
25 MBEC because the City's track record for

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2 including businesses owned by people of
3 color had been so dismal, they had not
4 wanted to go through the process. But a
5 contract comes up and there's an
6 opportunity for them to do business with
7 the City. They come in and they're told
8 that they need an MBEC certification, and
9 now the contract bid process is about a
10 month, a month and a half and the MBEC
11 certification cycle is six months to a
12 year, so they missed their opportunity.

13 So we had recommended that
14 there be a universal certification so
15 that if the State of Pennsylvania -- for
16 example, the Department of Transportation
17 has a certification process, SEPTA has a
18 certification process, PECO has a
19 certification process. All of these
20 people -- the federal government has ADA.
21 Many businesses owned by people of color
22 are triple and quadruple and quintuple
23 certified and yet they have to stand in
24 line and wait to get in line at the City.
25 And so what we recommended was that these

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2 universal certifications, as long as they
3 were all current, would stand in place of
4 having to wait six to 12 months. And so
5 that would make sense and it would be
6 appropriate for having people have
7 opportunity.

8 COUNCILMAN RAMOS: Thank you,
9 Mr. Chairman.

10 COUNCILMAN GOODE: Thank you.

11 MS. NICHOLS: I just wanted to
12 add that we have implemented that. We do
13 have reciprocal certification right now.
14 So we did move on that.

15 COUNCILMAN GOODE: Councilwoman
16 Campbell.

17 COUNCILWOMAN CAMPBELL: Good
18 morning. I would like to know what
19 percentage is disabled and what is the
20 percentage for all six categories?

21 MS. NICHOLS: All six
22 categories?

23 COUNCILMAN GOODE: The
24 participation rates as defined.

25 MS. NICHOLS: The participation

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2 rate has been below one percent, as I can
3 recall, like 0.5 percent or somewhere in
4 that change. It's been very low. That's
5 something that we've been working on to
6 outreach, working with the Mayor's Office
7 of Disabilities and other groups in the
8 community to try to develop a pool of
9 disabled-owned businesses that can become
10 certified and work with the City. But
11 that is something that has been very low,
12 very low participation rate in City
13 contracts.

14 COUNCILWOMAN CAMPBELL: Do you
15 have a program in place to encourage them
16 to seek certification?

17 MS. NICHOLS: The City has not.
18 We're working on developing that now.
19 Heretofore there has not been anything in
20 place at all to do any outreach to
21 disabled-owned businesses. Since I've
22 been in, we've started to begin to do
23 that, to identify the leaders and the
24 groups in the communities to begin to get
25 our arm's around the universe of

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2 disabled-owned businesses in the
3 Philadelphia region to begin to bring the
4 individuals in, and we're just in the
5 beginning of doing that, because it's
6 never been done heretofore.

7 COUNCILWOMAN CAMPBELL: Another
8 thing I want to know, what is done to
9 guarantee that a minority participant
10 receives the money that they're supposed
11 to receive from a contract?

12 MS. NICHOLS: We have come a
13 long way in that. Several things have
14 been done. Electronically, the City now
15 has electronic payment systems to track
16 payments to minority vendors, which
17 hasn't existed before. Primarily, as
18 Mr. Crawley has pointed out, which we're
19 working on, most of the minority vendors
20 are subcontractors, and the problem in
21 the past has been that these
22 subcontractors do not have privity with
23 the City. The City has privity with the
24 prime. So a lot of times we didn't know
25 what was going on at the subcontracting

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2 level.

3 We've addressed that, that now
4 in contract language the prime is legally
5 obligated to pay the subcontractor within
6 five days of receiving their payment, and
7 not only do they have to affirm that as
8 part of the contract, but there's an
9 electronic payment system that affirms
10 that that payment has been made and the
11 prime is required to record that
12 information in that system. And in
13 addition to that, MBEC also has
14 enforcement personnel to follow up, when
15 need be, to make sure that these things
16 happen.

17 COUNCILWOMAN CAMPBELL: My
18 understanding is that they're only using
19 the pool of approximately 1,200 when
20 there's been 13,000 to 15,000
21 participants who would like to be
22 certified; is that correct?

23 MS. NICHOLS: I can't hear you.
24 Say again.

25 COUNCILWOMAN CAMPBELL: My

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2 understanding is, they pull participants
3 from a pool of 1,200 when there's
4 approximately 13,000 to 15,000.

5 MS. NICHOLS: Oh, you mean the
6 size of the MBEC directory?

7 COUNCILWOMAN CAMPBELL: Yes.

8 MS. NICHOLS: Yes. The size of
9 the MBEC directory, City directory, is
10 1,200, but I do want to say that the
11 DBE -- we also do the federal DBE
12 certification. In that directory we have
13 approximately another 600 vendors. But
14 you're correct, there are about 15,000
15 disadvantaged businesses in the City of
16 Philadelphia. So we're less than ten
17 percent. So that's something that we're
18 working on.

19 COUNCILWOMAN CAMPBELL: I would
20 think a city of this size, that they
21 should address this aggressively.

22 MS. NICHOLS: Yes. Yes, ma'am.
23 That is something we're very aggressive
24 in addressing.

25 COUNCILWOMAN CAMPBELL: Thank

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2 you.

3 COUNCILMAN GOODE: Thank you,
4 Councilwoman.

5 Are there any other questions
6 from members of the Committee?

7 (No response.)

8 COUNCILMAN GOODE: Is there
9 anyone else here to testify?

10 Thank you.

11 MR. CRAWLEY: Thank you very
12 much.

13 MS. NICHOLS: Thank you.

14 COUNCILMAN GOODE: Good
15 morning, Mr. Ali. Please state your name
16 for the record.

17 MR. ALI: Good morning,
18 Councilman and other distinguished
19 members of the panel. My name is Jihad
20 Ali. I'm with a group of developers and
21 unionized contractors who wanted to take
22 a minute to thank you. Thank you, thank
23 Councilwoman Tasco and the rest of you
24 that have been on the forefront of this
25 struggle about inclusion. And I also

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2 would like to thank the voters of the
3 City of Philadelphia.

4 Everything that we're talking
5 about today has a significant impact on
6 the lives of a lot of young people in the
7 City of Philadelphia. One of the things
8 that some of the other panel testified
9 about this bill, one of the questions
10 that one of our members had was about the
11 \$5 million limit for DBEs. Does that
12 match the U.S. Small Business
13 Administration's limit as far as
14 regulations? It's the limit for three
15 consecutive years. Because the reason I
16 have a concern is that if we look at --
17 one of the things that we want to do is
18 increase the primes, and if we look at
19 developers and general contractors, it
20 would only be a little bit of time before
21 they pass that limit, and I was under the
22 impression that the U.S. Small Business
23 Administration looks at a limit of \$17
24 million a year.

25 COUNCILMAN GOODE: I'm sorry,

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2 Mr. Ali. I was looking at three
3 different pieces of legislation before I
4 could address specifically your question.

5 That 5 million can be looked
6 at, but still even within that -- that is
7 just a broad categorization that we can
8 change, but even within that
9 categorization and even through the
10 amendment that we're offering today, the
11 decision can still be made by the Finance
12 Director based upon whether they feel
13 that that business has still been
14 discriminated against and is not
15 participating fully within the process.
16 In fact, I'll read the amendment. The
17 amendment says "unless it can show that,
18 as a result of prejudice or differential
19 treatment based on socially and
20 economically disadvantaged status of its
21 ownership, its ability to compete in the
22 free enterprise system has been impaired
23 due to diminished capital and credit
24 opportunities as compared to others in
25 the same business who have not been

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2 subject to such prejudice or differential
3 treatment."

4 So there is -- I won't say a
5 waiving of it, but it is not a hard
6 category as much as it is a guideline for
7 examination.

8 MR. ALI: Okay. One of the
9 other things that -- Councilwoman
10 Campbell, welcome to the City of
11 Philadelphia's Council. One of the
12 things that you talked about was disabled
13 business. I regularly attend the
14 Redevelopment Authority's meetings
15 monthly. I've been doing that for the
16 past four years. One of the things that
17 has often disturbed me, although it
18 wasn't my focus, was that a lot of times
19 contracts are let at different agencies
20 and they have some goals, and if you
21 follow some of these agencies through the
22 cycle before the contract might be let,
23 they'll have all kinds of promises that
24 they're going to hit so many goals. At
25 the conclusion of that, maybe six months

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2 forward, you'll come back and they'll
3 say, well, they didn't hit the DBE goal.
4 And the DBE goal over there was always
5 never met, and that was only two percent,
6 but they were never meeting the two
7 percent goal over there for DBEs. So I
8 think that that concern needs to be
9 looked at, because when we talk about
10 construction, I've had a 20-year history
11 in construction, in the field. I mean,
12 I've worked with my hands. I came up out
13 of the Marine Corps. I became a
14 contractor, and in the course of that,
15 throughout my experience, there's a lot
16 more opportunities for people to work in
17 construction that's not working with
18 their hands. There's office personnel.
19 There's all kinds of support services
20 that can be provided. So we really need
21 to be inclusive when we look at that and
22 just not focus on the people out there
23 with their hands every day out in the
24 field.

25 The other thing about payment,

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2 a couple of my contractors that have come
3 to me, when we look at this payment
4 issue, one of the things that we don't
5 really particularly focus on is this
6 change order, payment for change orders.
7 A lot of times that's a secondary issue
8 that contractors will not get paid on,
9 and nobody is fighting for them. There
10 was one of our contractors who was owed
11 close to \$25,000 for 17 months on the job
12 that was already closed out. Had it not
13 been for our efforts to go to the Board
14 of one of the agencies to get him paid,
15 he wouldn't have gotten paid. So I think
16 those are vital concerns.

17 And the last one is
18 enforcement. One of the things I think
19 that this panel should consider as you
20 move forward is enforcement. Because we
21 all have these good intentions and we all
22 have people that come out and have a
23 different set of agenda than you, and
24 you're actually the representative of the
25 people, but there's staff underneath you

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2 that will go against what you want from
3 different agencies, and I think you
4 should have a strong enforcement and I
5 think you have to be tough, because when
6 we look at the paper every day and we see
7 these young people dying, we have a lot
8 of young people walking around with work
9 clothes not working, and ultimately we're
10 going to have to face that issue of that
11 whole inclusion of youth in these trades.
12 And I'm sure that you will get there, but
13 we can't do that unless we have a
14 collective effort. And I also look at
15 this as a continuation of our struggle
16 that we, African-Americans and other
17 disadvantaged people, have had since the
18 1960s. This is a continued struggle that
19 Dr. King talked about before he was
20 assassinated. So I'm sure that we'll all
21 do well, but one thing, we all have to be
22 united and we all have to stay focused
23 and we can't let people misdirect our
24 efforts.

25 But thank you for the

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2 opportunity, and I commend this panel,
3 once again, for all your efforts.

4 COUNCILMAN GOODE: Thank you.
5 Thank you for your testimony.

6 Questions from any members of
7 the Committee?

8 COUNCILWOMAN TASC0: I have a
9 question for you about the same issue in
10 terms of the \$5 million. In the
11 amendment it said that unless -- I'm just
12 going to go where you have the amendment.
13 "Shall not be considered a DBE, unless it
14 can show that, as a result of prejudice
15 or differential treatment." How does
16 somebody prove all of that?

17 COUNCILMAN GOODE: That's a
18 determination that can be made by the
19 Finance Director, on one hand, as the
20 bill says. On the other hand, we also
21 have the ability on an annual basis to
22 approve a list of qualified disadvantaged
23 businesses.

24 COUNCILWOMAN TASC0: City
25 Council does?

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2 COUNCILMAN GOODE: Yes.

3 COUNCILWOMAN TASC0: So if a
4 company is doing business with the City
5 and they receive more than \$5 million
6 each year or is it in three consecutive
7 years?

8 COUNCILMAN GOODE: It's over a
9 period of time.

10 COUNCILWOMAN TASC0: \$5
11 million?

12 COUNCILMAN GOODE: It's a
13 classification over a period of time, but
14 in any given year if they're still facing
15 discrimination, there can be a review if
16 they can prove that they are still being
17 discriminated against and they should be
18 involved in the process, and Council,
19 through this legislation as originally
20 crafted and even through the amendment,
21 has the ability to approve the list of
22 disadvantaged businesses.

23 COUNCILWOMAN TASC0: Well, \$5
24 million is such a low amount of money.
25 It's not a lot of money. I mean, do we

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2 have to have that in there at all?

3 COUNCILMAN GOODE: We don't
4 have to.

5 COUNCILWOMAN TASC0: I don't
6 think we ought to limit how much they can
7 get, because we look at the sheet and
8 totally there was, Fiscal Year 2005,
9 \$600-and-some million and only about 14
10 percent went to MBE and seven to DBE and
11 none to disabled, and totaling 21
12 percent. I don't know if the dollar
13 value has any meaning to it.

14 COUNCILMAN GOODE: Dollar value
15 has some meaning. Whether we should
16 stick to the dollar value or how we
17 should consider the dollar value I
18 believe is debatable, but what we
19 definitely want to look at long term is
20 diversity. Even as we increase
21 opportunity, we don't want the business
22 to continue to go to the same black
23 business. So there has to be a point in
24 which people graduate and become part of
25 the majority market. That's why that

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2 language has consistently been in there.
3 It's actually consistent with the
4 legislation we passed in 2003 and it's
5 been consistently applied, but it's
6 something that is flexible.

7 So in terms of how we make it
8 more flexible, we can decide, but, in
9 general, it's there so that the business
10 does not continually go to the same
11 businesses, even if those businesses are
12 considered to be disadvantaged and fall
13 in those categories. So it's to provide
14 the greatest diversity.

15 MR. ALI: Councilman, I'd like
16 to comment on Councilwoman Tasco's
17 comment. My question that I asked was,
18 you cite in Paragraph 9 that you're
19 adopting these regulations almost in
20 accordance with the U.S. Small Business
21 Administration regulations. Well, my
22 question was, doesn't the Small Business
23 Administration regulations have that
24 threshold of \$17 million? Because I
25 agree, like you, that we should have a

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2 threshold, but one of the things from our
3 experience of this whole fight, if we go
4 back a couple years ago, you can almost
5 know that there's going to be certain
6 adversaries lining up to fight this
7 issue. And one of the things that
8 happened before in the past was, we
9 didn't have a threshold, and my concern
10 now is, this is too low, because we're
11 talking about general contractors and
12 developers who sometimes have their own
13 construction companies. Most of them
14 will be over this threshold in three
15 years with no problem, because majority
16 of jobs are from \$6 to \$7 million, but
17 nobody is doing -- very few, maybe one or
18 two African-American firms in terms of
19 development in this City, is doing 17
20 million a year. So I think that if we
21 went to that, we would still have a great
22 opportunity. And even those firms that
23 are consistently -- there's only a few
24 firms that are consistently getting work,
25 and they are headed by MBEs, but still

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2 shouldn't they -- they're still helping
3 the process. They're still helping other
4 MBEs and DBEs participate.

5 COUNCILMAN GOODE: Okay. Is
6 the Committee comfortable with the \$17
7 million threshold?

8 COUNCILWOMAN TASC0: If you're
9 going with the guidelines of Small
10 Business.

11 COUNCILMAN GOODE: Okay. Any
12 other questions for this witness?

13 (No response.)

14 MR. ALI: Thank you.

15 COUNCILMAN GOODE: Is there
16 anyone else to testify on this bill?

17 (No response.)

18 COUNCILMAN GOODE: We will now
19 move from our public hearing into a
20 public meeting to consider Bill No.
21 060855.

22 There are amendments to this
23 bill that have been circulated. The
24 amendments are those that were drafted by
25 the Law Department. The only amendment

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2 that was contained within this bill that
3 was not drafted by the Law Department as
4 a technical amendment is on the third
5 page. We're adding a separate category
6 G, DBEs operating within the City of
7 Philadelphia.

8 In addition to that, on Page 2,
9 I would like to go to the first
10 paragraph, the third sentence and scratch
11 the word "five" and put in the word
12 "seventeen."

13 COUNCILMAN RAMOS: Point of
14 information, Mr. Chairman, if I may. Can
15 you again briefly repeat why the 17
16 million number. Why is that a threshold?

17 COUNCILMAN GOODE: It's
18 consistent with the new threshold by the
19 Small Business Administration.

20 COUNCILMAN RAMOS: Okay. Thank
21 you.

22 COUNCILMAN GOODE: And I'd like
23 to strike the numeric amount of
24 "\$5,000,000" that's in parentheses and
25 change it to "\$17,000,000."

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2 session.

3 (Duly seconded.)

4 COUNCILMAN GOODE: All in

5 favor?

6 (Aye.)

7 COUNCILMAN GOODE: Those

8 opposed?

9 (No response.)

10 COUNCILMAN GOODE: Bill No.

11 060855 as amended is reported out of the

12 Committee with a favorable recommendation

13 and with a suspension of rules to allow a

14 first reading at the next Council

15 session.

16 Thank you all for your

17 testimony. Thank you, Committee members,

18 for attending. Thank you very much.

19 (Committee on Law and

20 Government adjourned at 11:10 a.m.)

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