



NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING

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

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

NYSFAH strongly supports the efforts to encourage greater participation by MWBEs in public procurements and projects and we are pleased to see the positive trends in utilization of MWBEs in the 2016 Disparity Study's findings. NYSAFAH's MWBE membership has similarly increased in recent years, and now stands at 12 percent, although the percentage is even higher among our construction and construction-related members. We are especially proud of this growing membership because our MWBE members provide dynamic contributions in the development and preservation of affordable housing. They are the architects and engineers who are creating energy efficient housing, the developers who bring together the many resources necessary to build affordable housing, and the contractors and subcontractors who construct the clean, safe housing that is critical for families to thrive.

State funding and subsidies are essential in the construction of affordable housing. Earlier this year, the Assembly, the Senate and the Governor appropriated \$2.5 billion for a five-year housing plan that will produce around 100,000 units of affordable housing. This was a landmark level of support for housing in New York State, and I would be remiss if I did not thank you all for your support for those funds. Moreover, because the State contracts related to the subsidies from those funds include MWBE participation utilization requirements, this issue is very relevant to NYSAFAH.

While we understand increasing MWBE utilization rates is a complex issue, and one that we all have a stake in improving, we believe that efforts should continue to focus on enhancing the administration of the existing MWBE requirements. What we hear from MWBEs in the

affordable housing industry is that the regulatory burdens and inefficiencies in the program create real challenges for MWBEs. As is the case in most industries, MWBEs working in the housing field tend to be small, with 10 or fewer employees, and lack significant capital. For this reason, they seek to do “more with less,” and in any other context would be considered overachievers. However, while we generally emulate overachievers, with a business, it is a recipe for disaster, as these small companies can only sustain themselves for a very short time. A large business can hire new people and redirect resources, a small MWBE cannot.

Administration of the MWBE program has improved over the years. However, there remain many impediments. The certification process for an MWBE can take up to two years; significantly more time than the typical 3 month certification approval process in New York City. There is also still too much duplication in reporting. For instance, MWBEs operating in New York City and New York State must include their information through two separate portals and databases. We appreciate that these are two different jurisdictions, but seeking ways to import information from one database to another would be one, modest efficiency to help these small businesses. This applies to updates in MWBE contractor information as well – efforts must be made to ensure the MWBE only has to input the updated information once.

Moreover, the list of MWBEs from which developers and contractors can select is in need of improvement. One common complaint NYSFAFH hears from its members is that the list of MWBEs lacks companies in key major trades including excavation and foundation, plumbing, structural steel, and pre-cast concrete, among others, making it difficult to satisfy utilization plan requirements. Accordingly, while developers must agree to certain MWBE utilization goals, it makes sense that the State should have goals to increase the number of listed MWBEs, in total and by category of work, and to actively market through outreach events across the state to fulfill those goals.

Making decisions as to whether to engage a particular MWBEs from the list is further complicated by a lack of information detailing whether the MWBE’s certification is about to expire and the bonding capacity of the MWBE. Developers and contractors do not want to hire an MWBE only to then find out its certification is about to expire or it lacks the bonding capacity to undertake the project. These are common-sense changes that could lead to a more efficient process for hiring MWBE companies.

A more immediate reform that the Assembly could champion in order to increase MWBE utilization would be to change the MWBE qualification criteria. Currently, each minority or woman owner upon whom MWBE certification is based cannot have a personal net worth exceeding \$3.5 million. This limitation prevents otherwise qualified MWBEs from participating on public contracts. This criteria encourages MWBEs to underperform in order to remain under the net worth threshold and punishes them when they are successful. It is for this reason that we

support A.2189, introduced by Assemblymember Bichotte and passed by the Assembly and Senate earlier this year, which would eliminate the net worth criteria. We hope Governor Cuomo will approve the legislation and enact this common sense reform.

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

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