



2017

# Governor's Working Group on Diversity in Construction

Initial Findings



Prepared by:

Department of Administration

Office of Diversity, Equity and Opportunity

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## I. Letter from Co-Chairs Darrell Waldron and John Sinnott

October 23, 2017

Governor Gina M. Raimondo  
State of Rhode Island  
82 Smith Street  
Providence, RI 02903

Dear Governor Raimondo,

On behalf of the members of the Governor's Working Group on Diversity in Construction (WGDC), we are pleased to submit this interim report, which outlines our progress to date.

Executive Order 17-01, which you signed on January 5, 2017, established the role and responsibilities of the WGDC. In an effort to meet the requirements outlined in the executive order, we introduced several strategies:

- Creation of two subcommittees through which the work of the WGDC would be done;
- Development of a task assignment list, which outlined the responsibility of each member in relation to the work of the WGDC;
- Identification of State agencies and staff that could support the WGDC; and,
- Development of meeting agendas, dates, and locations.

After establishing the structure through which the WGDC would operate, we hosted meetings to solicit the viewpoints of several stakeholders, including representatives of the minority community, certified M/WBEs, firms interested in becoming a certified minority- and woman-owned business enterprise (M/WBE), individuals from large and small prime construction companies, as well as others interested in the M/WBE program. We held focus group discussions that yielded a wealth of information, and we have included their comments in this report.

While this report represents an interim report intended to provide you with our legislative proposals and initial findings, we have gone beyond that expectation by sharing much of the information that was presented to us and through which our final recommendations will be forthcoming.

We appreciate the support and input from each member of the WGDC, and we especially appreciate the guidance and assistance from the many State staff who devoted countless hours to provide us with the information and resources we needed to do the work of the WGDC.

Sincerely,

Darrell Waldron  
Executive Director  
Rhode Island Indian Council  
Co-Chair of the WGDC

John Sinnott  
Vice President  
Gilbane Building Company  
Co-Chair of the WGDC



## II. Introduction & Overview

As will be discussed in this report, the WGDC has made great strides over the past 6 months toward understanding minority participation in construction contracts: including the current landscape, gaps, and needs based on input from a range of stakeholders. Based on this work, we have begun to explore the following areas:

- Laws relating to bonding, insurance, cash flow issues, and work distribution
- MBE Utilization Reporting Requirements by State and Quasi-State Agencies
- Enforcement/Sanctions – Compliance Policies and Practices
- Training
- Communication on Access to Bid Opportunities
- Access to Capital
- Mentor Protégé Programs and Joint Ventures
- Minority Participation in Apprenticeship Programs

To meet the timeline needed to submit proposed legislation to the General Assembly for the 2018 legislative session, we have included in section 1 of this interim report a set of preliminary legislative proposals regarding:

- Bonding laws
- Prompt payment laws
- Retainage laws

However, the work of the WGDC is far from finished. Over the next six months, we will take numerous steps to better understand and provide further recommendations based on the initial findings and items for consideration detailed in this report. Specific areas of interest from now until April include the following:

- Directly engage minority construction business owners for feedback on initial findings
- Explore various private and public sector models for improving access to capital for small and minority business and recommend new program or program improvements
- Propose specific recommendations around training, a mentor-protégé program, and other small business support needs
- Obtain needed funding to support a disparity study that will capture the number of ready, willing, and able minority-, women-, veteran-, and disability-owned firms by race/ethnicity and gender for each classification of goods/commodities/supplies, services (including professional services, construction and construction-related services)
- Focus on high spend areas such as school building and large public works projects



### III. Legislative Proposals

Below are a few of the legislative proposals that have been discussed and will be submitted by the Department of Administration, Office of Diversity, Equity and Opportunity, on behalf of the Governor's Working Group on Diversity in Construction. We ask that the legislature move swiftly to enact the following legislative changes based on the findings of this group:

#### **Proposal A – Bonding:**

Bill Title: Contractors' Bond

Current law establishes requirement for the submission of bond, with surety, for all public construction contracts exceeding \$50,000

Statutory revision raising the bonding requirement to \$100,000 with a State option to waive the bonding requirement up to \$250,000 is needed in order to reflect inflation and to achieve parity with bonding requirements in surrounding states.

#### **Proposal B – Prompt Payment:**

Bill Title: Prompt Payment by Department of Administration

Current law establishes requirement for the prompt and timely payment to vendors, construction contractors, and providers of services to the State of Rhode Island.

Revision to statutory prompt payment requirement is needed in order to improve prompt payment between contractors and subcontractors and to provide a mechanism for the timely payment of invoices to subcontractors and suppliers.

#### **Proposal C – Retainage:**

Bill Title: Retainers relating to contracts for public works, sewer, or water main construction

Current law establishes requirement for the retention of funds on public works projects.

Revision to statutory retainage requirement is needed in order to improve retainage requirements between contractors and subcontractors, and to provide a mechanism for insuring the timely release of retainage to subcontractors.



#### **IV. Establishment of a Diversity in Construction Working Group**

On January 5, 2017 Governor Raimondo signed Executive Order 17-01 entitled “Working Group on Diversity in Construction”. The executive order charged the Working Group on Diversity in Construction (“WGDC”) with conducting a comprehensive review of all aspects of horizontal and vertical construction laws, regulations, rules, policies and practices, and their impact on minority, women and disability business enterprises. Moreover, the review included, but was not limited to, the following:

- Technology used to track actual payments to minority, women and disability business enterprises;
- Strategies developed to expand the number of minority, women and disability business enterprises seeking certification;
- Barriers to the utilization of minority, women and disability business enterprises with a goal toward developing strategies to increase their utilization;
- Bid process used to solicit and award state funded construction projects;
- Role of the Office of Diversity, Equity and Opportunity (ODEO) to ensure the participation of minority, women and disability business enterprises in the award of construction contracts, where such opportunities exist;
- Barriers to ODEO’s inclusion and participation in the solicitation, award and contract compliance process related to state construction projects;
- Regulations governing prompt payment, contract performance, participation, processing and tracking of complaints and the imposition of sanctions and/or remedial actions; and,
- Municipal construction projects funded in whole or in part with state funds or federal funds that the state administers to ensure compliance with state laws, regulations, policies, practices and requirements regarding the utilization of minority, women and disability business enterprises.

The inaugural meeting of the WGDC was held on April 24, 2017 at the Rhode Island State House, State Room. Those in attendance included appointed members of the WGDC, construction industry leaders, union leaders, representatives of minority trade associations,



community advocates, representatives of business support organizations, and staff from relevant government entities. After opening remarks from the Governor, brief introductions, and an overview of the State's Minority Business Enterprise (MBE) Program updates, those in attendance participated in an exercise to identify barriers to greater utilization of minority- and women-owned firms on construction related projects. Participants were asked to jot down their views on a sticky note. The following is a list of the comments that were received:

#### Policy

- Language in PLAs and TSAs that allow and incentivize MBE participation
- Ensure compliance
- Ability of new businesses to create paperwork that meets Purchasing Standards (invoices, contracts)
- No enforcement procedures
- It's an economic development matter and should be an important element of the state's economic development strategy
- Prime contractors should report their diversity statistics – not all minorities own businesses
- MBE plan at bid submission is required.
  - <10% participation is disqualifying
- Re-establish DOT Loan Program
- Establish MBE Loan Program
- Carried as RFP DBE, but then not actually contracted to do the work
- Increase bonding required to 100k
- M/WBE/DBE Qualification
- Not enter future PLAs
- Eliminate the % of MBE as calculated on non-MBE trades Items
  - Example: fee, permits, insurance, staffing, GC's/GR's
- Redefine M/WBE to DBE program – owner of profit does not indicate disadvantage
- Lack of a standardized process that is easy to understand and follow
- Establishing what the facts are and policy based on facts
- Require compliance and DBE development line items in bids
- Carry dollars in budget for activities
- Federal barriers to mentoring in MBE companies
- Obstacles in obtaining through state/governmental systems
- Increase the # of certified MBE contractors from other states (like MA and CT)
- Track and publish participation details by:
  - W/MBE category
  - Construction by business, services by area

#### Resources

- Good faith efforts
- Roadblocks to greater MBE
  - Also looking for words: "innovation" "new ideas"
- Uncertainty and/or turnover in agency staff and processes after delay payments or force total rebilling





- Ability of small business (the majority of MBE) to survive the timeline of public payment processes
- Form a construction business incubator supported by ODEO/state sponsored
- Cultural competency of ability to access the opportunity
- Free tuition for apprentice trades at CCRI/URI (if electrical/plumbing)
- Advertise and pool out of state MBE vendors for a quick boost
- Lack of cultural knowledge on construction business
- % of participation vs. capability
- Capacity building assistance (helping minority businesses to multiply and grow)
- M/WBE/DBE suppliers
- We need a way to link prime contractors to MBE sub-contractors
- Lack of welcome mentality

#### Opportunity

- MBE density in RI
- Stereotypical good ole' boys network
- Invite someone from ABC
- Create a set-aside for MBE only bidders on select projects and/or select trades within a project
- Public construction projects in RI (have not successfully employed) a diverse workforce that... change
- Obtain RIBBA W/MBE studies

#### Whiteboard notes:

- Economic development – Integrate CWG effort into strategic plan
- Bookkeeping
- Pay within 5 days
- PLAs
- TSA
- Bonding
- Insurance

These comments were shared with members of the WGDC and were subsequently referred to during meeting discussions.



## V. Working Group on Diversity in Construction Members

The following individuals were appointed by Governor Raimondo to serve as members of the Working Group on Diversity in Construction:

F Name	L Name	Title	Organization
Mario	Bueno	Executive Director	Progreso Latino
William	Bundy	Chairman of the Board	Rhode Island Black Heritage Society
Charles	Byrne	c/o Byrne Bonding Division of Starkweather & Shepley	Associated Builders and Contractors, Inc.
Stanford	Cameron	Founding Member	The Black Contractors Association of RI
Stephen	Cardi, Jr.	Treasurer	Cardi Corporation
Channavy	Chhay	Executive Director	Center for Southeast Asians
Christine	Rancourt Bruzzi*	Assistant State ADA Coordinator	Governor's Commission on Disabilities
Andrew	Cortés	Executive Director	Building Futures
Lindsay	Desjarlais	Chapter President	National Association of Women in Construction
Carmen	Diaz-Jusino	Regional Director	Center for Women and Enterprise
Julius	Kolawole	President	African Alliance of Rhode Island
Angus	Leary	President & General Manager of the Northeast	Suffolk Construction Company
John	Marcantonio	President	RI Builders Association
Douglas	Peckham	Project Executive	Dimeo Construction Company
Justin	Kelley*	Business Representative, Local 195 of District Council 11	International Union of Painter's and Allied Trades
John	Sinnott, Co-Chair	Vice President	Gilbane Building Company
Jr Neville	Songwe	Executive Director	Urban Ventures
Barbara	Thornton	Principal	Brewster Thornton Group Architects
Luis	Torrado	President	Latino Contractors Association
Michael	Van Leesten	CEO	OIC of Rhode Island
Darrell	Waldron, Co-Chair	Executive Director	Rhode Island Indian Council
Joseph	Wanat	Managing Director	Vanasse Hangen Brustlin, Inc.
Belinda	Wong	President	Care Technology LLC
Kasim	Yarn	Director	Rhode Island Office of Veterans Affairs

\* Christine Rancourt Bruzzi has been appointed to replace Bob Cooper and Justin Kelley is replacing Michael Sabitoni



## VI. Review of Laws, Regulations, Programs and Problem Areas

Two subcommittees were created; i.e. the Legal, Policy, and Regulatory Subcommittee, which undertook an extensive review of state and federal laws and/or programs, as well as other topic areas, and the Resources, Access and Workforce Subcommittee reviewed practices and specific problem areas that impact workers of color, and the utilization of certified minority- and women-owned business enterprises, as well as disability business enterprises.

### **LAWS, REGULATIONS, AND PROGRAMS:**

The following is a compilation of the laws, regulations, and programs that were presented to the WGDC and discussed at the Legal, Policy, and Regulatory Subcommittee meeting held on June 7, 2017:

#### **Description of Law and/or Program:                      Establishment of ODEO**

**Citation:** R.I. Gen. Laws § 42-11-2.7

- ODEO was established by legislation as a division within the Department of Administration
- The purpose of ODEO is to ensure non-discrimination, diversity, equity, and equal opportunity in all aspects of State government, including, but not limited to, employment, procurement, policy and practices relative to State programs, services, and activities.
- ODEO has 4 subdivisions:
  - State Equal Opportunity Office
  - Human Resources Outreach and Diversity Office
  - Minority Business Enterprise (MBE) Compliance Office
  - Supplier Diversity Office

#### **Description of Law and/or Program:                      State MBE Program**

**Citation:** R.I. Gen. Laws § 37-14.1-1 et seq.

**Type of Law:** State Law

**Contents:** Sets forth minimum participation rate for MBEs/WBEs in State construction projects of 10%.

**Applies To:** Any and all State purchasing, including, but not limited to, the procurement of goods, services, construction projects, or contracts funded in whole or in part by State funds. Applies to *RhodeWorks* projects pursuant to R.I. Gen. Laws § 42-13.1-17.

**Agency Role:** DOA - Responsible for establishing standards to determine compliance formulas and procedures and authorized to impose sanctions for non-compliance. DOT has delegated authority for DOT projects



**Additional Information:** Legal concerns set forth by *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), which requires strict scrutiny of all race-based actions by State and local governments to determine whether such governmental action complies with the U.S. Constitution. The government must demonstrate that its MBE program serves a "compelling state interest" and is "narrowly tailored" to advance that interest.

**Description of Law and/or Program:** **State MBE Program (Non-DOT Projects)**

**Citation:** 150-RICR-90-10-1

**Type of Law:** State Regulation

**Contents:** Establishes standards and procedures to determine compliance with State MBE laws. For RFQs (used for the majority of State construction projects) - Requires contractor to provide MBE Utilization Plan within five (5) business days of tentative award notice.

For RFPs - ISBE Participation Rate and Plan required at time of bid, and proposers receive evaluation points based upon their ISBE Participation Rate.

**Applies To:** Any and all State purchasing, including, but not limited to, the procurement of goods, services, construction projects, or contracts funded in whole or in part by state funds.

**Agency Role:** User Agency shall designate MBE/WBE Coordinator for each RFQ and RFP. MBE/WBE Coordinator responsible for compliance oversight, tracking, and recordkeeping and for reporting to ODEO/Minority Business Enterprise Compliance Office (MBECO). Purchases, in consultation with ODEO, may issue good faith waivers in connection with MBE Utilization Plans.

**Description of Law and/or Program:** **Good Faith Waiver (Non-DOT Projects)**

**Type of Law:** State Regulation

**Contents:** Sets forth the factors used to determine whether a good faith waiver is appropriate. Factors include but are not limited to whether the bidder:

- Provided timely written notice to a reasonable number of specific MBEs/WBEs that may be interested in working on the project;
- Followed up with MBEs/WBEs that showed an initial interest;
- Selected portions of work to be performed by MBEs/WBEs in order to increase the likelihood of meeting MBE/WBE participation requirements;
- Negotiated in good faith with interested MBEs/WBEs.

**Agency Role:** Purchases in consultation with ODEO. DOT administers good faith waivers for DOT projects.

**Description of Law and/or Program:** **Sanctions for Non-Compliance with MBE Laws**

**Citation:** R.I. Gen. Laws § 37-14.1-8

**Type of Law:** State Law



**Contents:** Sets forth sanctions that may be imposed upon contractors who do not comply with MBE laws and regulations.

**Authorized Types of Sanctions:** Suspension of payments; termination of contract; recovery by the State of 10% of the Contract award price as liquidated damages; and denial of right to participate in future projects for up to three years.

**Agency Role:** DOA – The DOA Director has the power to impose sanctions.

**Additional Information:** Authority delegated to DOT Director for DOT contracts.

**Description of Law and/or Program:** State MBE Program (DOT Projects)

**Authority:** Pursuant to R.I. Gen. Laws § 37-14.1-7 and 150-RICR-90-10-1, DOT has delegated authority to administer State MBE Program for DOT projects.

**Contents:** For all DOT projects, DOT administers the projects in accordance with the USDOT DBE program. (See below)

**Agency Role:** DOT sets DBE goal and ensures compliance with USDOT DBE regulations.

**Additional Information:** RhodeWorks projects fall under projects administered by DOT. The vast majority of DOT projects involve federal funds.

**Description of Law and/or Program:** USDOT Disadvantaged Business Enterprise (DBE) Program

**Citation:** 49 CFR 26 (49 CFR 23 for Airport Concessions)

**Type of Law:** Federal Law

**Contents:** Sets forth compliance rules and participation requirements for DBEs on projects funded in whole or in part with funding from the USDOT. Every three years, recipients of federal funding are required to set an overall DBE goal that they must either meet, or show that they used good faith efforts to meet, annually.

**Applies To:** Federal-aid highway dollars expended on federally-assisted contracts issued by USDOT (FHA, FAA, FTA) to recipients such as state transportation agencies. In Rhode Island, recipients include DOT, Rhode Island Public Transit Authority (RIPTA), Rhode Island Airport Corporation (RIAC), and DOA's Division of Statewide Planning

**Agency Role:** Recipients of funding from USDOT are required to ensure compliance with 49 CFR 26 and 49 CFR 23, as applicable, and are required to report to USDOT accordingly.

**Description of Law and/or Program:** USDOT DBE Certification

**Citation:** 49 CFR 26 (49 CFR 23 for Airport Concessions)

**Type of Law:** Federal Regulations

**Contents:** Establishes criteria for certification as a USDOT DBE or Airport Concessionaire Disadvantaged Business Enterprise (ACDBE). Applicant firms must be a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is



owned by one or more such individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Applies To:** Any and all applicants seeking certification under the USDOT DBE program.

**Agency Role:** ODEO responsible for certification of USDOT DBEs and ACDBEs.

**Description of Law and/or Program:** State Disability Business Enterprise Program

**Citation:** R.I. Gen. Laws § 37-2.2-1 et seq.

**Type of Law:** State Law

**Contents:** Establishes State policy of supporting the fullest possible participation of small disadvantaged businesses owned and controlled by persons with disabilities in State procurements.

**Applies To:** Procurement of State goods, services and projects but does not apply to any business whose primary business is road or highway construction.

**Agency Role:** DOA, in consultation with the Governor's Commission on Disabilities, is responsible for establishing rules and regulations regarding awarding contracts to disability business enterprises.

**Additional Information:** Pursuant to 150-RICR-90-10-1, scoring formulas used to evaluate responses to requests for proposals factor in anticipated participation of disability business enterprises.

**Description of Law and/or Program:** State Disability Business Enterprise Certification

**Citation:** 525-RICR-20-00-5

**Type of Law:** State Regulation

**Contents:** Establishes criteria for certification as a Disability Business Enterprise. Applicant firms must be a small business concern that is at least 51% owned by one or more individuals with disabilities, and whose management and daily business operations are controlled by one or more individuals with disabilities. Eligible firms must have fifty or fewer employees.

**Applies To:** Any and all applicants seeking certification under the State's Disability Business Enterprise program.

**Agency Role:** The Governor's Commission on Disabilities is responsible for certification of Disability Business Enterprises.

**Description of Law and/or Program:** Contractor Reporting

**Citation:** R.I. Gen. Laws § 37-13-4

**Type of Law:** State Law

**Contents:** Requires general contractors to submit a list of subcontractors to awarding authority after the public works contract has been awarded.



**Applies To:** All general contractors on all public works construction jobs.

**Agency Role:** DLT - Responsible for enforcing.

**Description of Law and/or Program:** Contractor Reporting

**Citation:** 150-RICR-90-10-1

**Type of Law:** State Regulation

**Contents:** Requires general contractors to furnish copies of MBE purchase orders and subcontractors, MBE invoices, and cancelled checks for payment of same, as well as other records to substantiate the contractor's compliance with its approved MBE/WBE Compliance Plan.

**Applies To:** Any and all contractors performing work on construction projects or contracts funded in whole or in part by State funds.

**Agency Role:** User Agency MBE/WBE Coordinator responsible for ensuring compliance.

**Description of Law and/or Program:** Prompt Payment – Subcontractors

**Citation:** R.I. Gen. Laws § 37-13-5

**Type of Law:** State Law

**Contents:** Sets forth time periods for payment by State agencies and time periods for subcontractor payments by State contractors. In general, the law requires that all bills be paid within 30 working days of receipt of a proper invoice and each contractor make payment to subcontractors within 10 days of receipt of payment by the State.

**Applies To:** All State agencies, except for DOT contracts, and all State contractors

**Description of Law and/or Program:** Prompt Payment – Trucking and Materials

**Citation:** R.I. Gen. Laws § 37-13-5

**Type of Law:** State Law

**Contents:** Sets forth requirements for prompt payment for trucking and materials furnished for public works projects.

**Applies To:** A contractor or subcontractor on public works projects shall pay any obligation or charge for trucking and materials furnished for the use of the contractor or subcontractor, in connection with the public works project, within ninety (90) days after the obligation or charge is incurred or the trucking service has been performed or the material has been delivered to the site of the work, whichever is later.

**Agency Role:** User Agency required to monitor compliance.



**Description of Law and/or Program:** Retainage

**Citation:** R.I. Gen. Laws § 37-12-10

**Type of Law:** State Law

**Contents:** Sets forth requirements for retainers for public works, sewer or water main construction projects.

**Applies To:** Contracts with any state agency, political subdivision, or municipality for the construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water mains, or for any public works project. Awarding authorities may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%).

**Agency Role:** Upon completion and acceptance of work by the awarding authority, the retainage shall be paid to any contractor or subcontractor within ninety (90) days.

**Description of Law and/or Program:** Independent Contractors and Insurance

**Citation:** R.I. Gen. Laws § 28-29-17.1

**Type of Law:** State Law

**Contents:** A person will not be considered an independent contractor unless that person files a notice of designation with DLT.

**Applies To:** Any employer hiring an independent contractor should request proof of workers compensation insurance coverage, a copy of the DWC-11-IC from the independent contractor or confirmation of the filing from DLT.

**Agency Role:** DLT- has form DWC-11-IC that may be filed in paper format or electronically

**Additional Information:** All employers of one or more employees are required to obtain workers compensation insurance.

**Description of Law and/or Program:** Workers' Compensation Insurance

**Citation:** R.I. Gen. Laws § 28-36-1

**Type of Law:** State Law

**Contents:** Requires all employers to secure workers' compensation insurance or become self-insured through furnishing proof of financial ability to DLT through bond or other means.

**Applies To:** All employers

**Agency Role:** DLT - Responsible for enforcing.

**Description of Law and/or Program:** Bonding

**Citation:** R.I. Gen. Laws § 37-13-14

**Type of Law:** State Law





**Contents:** Requires general contractors and subcontractors to submit a bond to awarding authority for all public works contracts with a contract price in excess of \$50,000.00.

**Applies To:** All general contractors and subcontractors on all public works construction jobs with a contract price in excess of \$50,000.00

**Agency Role:** DLT - Responsible for enforcing.

**Description of Law and/or Program:** Contractors' Registration

**Citation:** R.I. Gen. Laws § 5-65-1 et seq.

**Type of Law:** State Law

**Contents:** Sets forth requirements to be a registered contractor to conduct business within the State. Applicants must pay registration fee, complete 5 hours of pre-registration education; meet insurance requirements; possess knowledge of governing laws; list all business names; and maintain a RI address to receive service (if applicant is from out-of-state).

**Applies To:** Any person who wishes to do work as a contractor on a structure or arrange to have work done.

**Agency Role:** Administered by Rhode Island Contractor's Registration and Licensing Board.

**Description of Law and/or Program:** Electricians and Licensed Trades

**Citation:** R.I. Gen. Laws § 5-6-4

**Type of Law:** State Law

**Contents:** Addresses the composition of the Board that oversees the examinations and licensing requirements of electricians.

**Applies To:** All licensed electricians and those unlicensed individuals performing electrical work, such as apprentices.

**Agency Role:** DLT - Responsible for regulating and enforcing.

**Additional Information:** This statutory scheme applies equally to all licensed trades that DLT oversees, such as the plumbing, hoisting, etc. This statutory scheme also applies to the State Apprenticeship Council.

**Description of Law and/or Program:** Apprentices

**Citation:** R.I. Gen. Laws § 37-13-3.1

**Type of Law:** State Law

**Contents:** Requires general contractors and subcontractors to have apprentices on public works construction jobs valued in excess of one million dollars; requires the general contractors and subcontractors to meet particular journeymen to apprentice ratios.

**Applies To:** All general contractors and subcontractors on construction jobs valued in excess of one million dollars.

**Agency Role:** DLT - Responsible for regulating and enforcing.



## **PROBLEM AREAS:**

The Resources, Access and Workforce Subcommittee held focus group meetings and informal discussions with several minority- and women-owned firms, as well as with prime contractors, to solicit their input and identification of problem areas.

The following is a summary of the comments that were shared during the Resources, Access and Workforce Subcommittee meeting held on June 6, 2017:

- M/WBEs felt they were being underutilized and that there exists a lack of enforcement regarding prime contractors meeting M/WBE subcontracting requirements
- Prime contractors felt pressure to meet M/WBE requirements and voiced concern regarding M/WBEs bidding on projects for which they were not prepared; i.e. they either lacked the necessary capital and/or the required manpower
- Primes identified gaps in communication that prevented them from finding qualified subs and vice versa
- M/WBEs felt that utilization of minority firms was not fairly distributed across all minority demographic groups
- Communication between M/WBEs and primes was lacking
- Access to affordable insurance amongst small minority- and women-owned firms was needed
- All agreed that there was a need for access to capital and training resources
- There is a lack of available data on the State's utilization of in-state/out-of-state M/WBE subcontractors
- There is a need to research and consider practices related to M/WBE policies, regulations, and legislation that has been adopted by other states and federal agencies



## VII. Identification of Target Areas

The full committee of the Diversity in Construction Working Group convened on June 19, 2017 and identified several specific target areas to focus on throughout the remainder of their year-long review.

The following is a list of the target areas that were voted on and approved by the full committee for research and review by each subcommittee:

### I. Legal, Policy, and Regulatory Subcommittee:

A. Bonding and Insurance Law

B. Laws and Regulations Impacting Cash Flow Issues:

- Prompt Payment
- Retainage
- Deposit/Up-front Payment and Mobilization Money

C. Laws Affecting Work distribution:

- PLAs/Carve Outs
- Set-asides
- Breaking Up Projects

D. MBE Utilization Reporting Requirements by State and Quasi-State Agencies

E. Enforcement/Sanctions – Compliance Policies and Practices

### II. Resources, Access and Workforce Subcommittee:

A. Training

B. Communication on Access to Bid Opportunities

C. Access to Capital

D. Mentor Protégé Programs and Joint Ventures

E. Minority Participation in Apprenticeship Programs



## VIII. Points of Consideration and Initial Findings for Each Target Area

Research was completed for each topic identified as a target area. After reviewing the results, the researchers put forth the following points and initial findings for WGDC consideration:

### I. Legal, Policy, and Regulatory Subcommittee:

#### A. Bonding and Insurance Law

1. Explore revising Rhode Island's statutory construction bonding requirement to make it tiered based on the size of the contract, using Massachusetts' construction bonding law as a model. Consider meeting with those overseeing Massachusetts' bonding program to learn more.
2. Consider establishing a bonding fund in the state treasury that can be used to provide construction bonds to certified MBEs that are unable to obtain bonding through standard surety companies.
3. Consider having the State guarantee part or all of the construction bonds which MBEs are required to obtain in order to contract with state agencies.

#### B. Laws and Regulations Impacting Cash Flow Issues:

##### - Prompt Payment

1. Rhode Island does not currently track subcontractor payments, regardless of tier. Rhode Island currently has no mechanism in place to ensure prompt payment to subcontractors and suppliers.
2. Legislative and/or policy amendments, as applicable, should be considered to improve prompt payment between contractors and subcontractors, and to provide a mechanism for insuring the timely payment of invoices to subcontractors and suppliers. Rhode Island should consider implementation of payment enforcement policies like those in Maryland and Massachusetts.

##### - Retainage

1. Rhode Island's current 5% retainage rate is consistent with practices in other, local jurisdictions and does not appear to be onerous.
2. Legislative and/or policy amendments, as applicable, should be considered to improve retainage requirements between contractors and subcontractors, and to provide a mechanism for insuring the timely release of retainage to subcontractors.



- **Deposit/Up-front Payment and Mobilization Money**

1. Review state procurement regulations, policies and procedures to determine if advance payment or deposits would be appropriate for high-cost equipment manufactured to meet functional specifications and/or for specialized goods or services that would result in a cost savings for the State.

**C. Laws Affecting Work distribution:**

- **PLAs/Carve Outs**

1. A 2011 study by researchers at Cornell University's School of Labor Relations found that most PLAs contain language that requires a non-discriminatory job referral process and compliance with laws about equal employment opportunities for women and minorities. Of the 185 PLAs reviewed:
  - o 103 agreements included minority/women hiring provisions ranging from a standard non-discrimination clause to specified employment ratios by gender and racial and ethnic group
  - o 13 PLAs provided for hiring ratios that ranged from an overall 9 to 30% minority workforce, or specific ratios ranging from 15 to 20% for minorities and from 5 to 6.9% for women
  - o 50 PLAs required compliance with ratios specified in the owner, agency, or authority's bid provisions, including requirements established by local ordinances, executive orders, and memorandums of understanding

- **Set-asides**

1. Prioritize completion of disparity study to understand whether set-asides would be appropriate.

- **Breaking Up Projects**

1. Review state procurement regulations, policies and procedures to determine if contract unbundling and/or breaking up procurements into smaller contracts would be appropriate.

**D. MBE Utilization Reporting Requirements by State and Quasi-State Agencies**

1. Enforcement mechanisms (how to ensure compliance by state agencies)
2. Scope of the recordkeeping and reporting rule (which entities must comply with the recordkeeping and reporting rules)



## **E. Enforcement/Sanctions – Compliance Policies and Practices**

1. Rhode Island’s existing MBE laws and regulations include enforcement and sanction language. However, historically such sanctions have never been authorized.
2. It is recommended that existing regulations be enforced, including the ability to issue sanctions as appropriate in instances of egregious non-compliance.
3. It is further recommended that Rhode Island model New York in that any monetary damages assessed be deposited into an MBE/WBE technical assistance fund to be administered by ODEO.

## **II. Resources, Access and Workforce Subcommittee:**

### **A. Training**

1. We propose the creation of a centralized system for Access to Training Information and Resources. The benefit of having a One Stop Business Resource Center is that any training opportunity can be found without difficulty in one single place.

### **B. Communication on Access to Bid Opportunities**

1. There needs to be an improvement in communication from ISBE’s and the State with regard to Bid Opportunities
2. How can we improve communication between State Agencies Project Managers and ODEO

### **C. Access to Capital**

1. Consider establishing a private-public partnership loan fund for certified M/WBE construction firms in Rhode Island, modeled after the St. Louis Contractor Loan Fund, including business development and financial management component



#### **D. Mentor Protégé Programs and Joint Ventures**

1. Consider working with large prime vendors, such as Cardi Corporation, Gilbane Building Company, Dimeo Construction Co., and Suffolk Construction Co., and others, in order to establish a Rhode Island based mentor-protégé program for construction M/WBEs
2. Consider development of an educational component on joint ventures for construction M/WBEs in Rhode Island

#### **E. Minority Participation in Apprenticeship Programs**

1. Consider the development of expanded outreach strategies to identify and increase the participation of minorities and women in apprenticeship programs
2. Data collection:
  - Demographic data on minority participation.
  - Collect data from firms/vendors on utilization of minority apprentices.
  - Collect data on retention of individuals who have completed the apprenticeship program.



**Appendix A**



**State of Rhode Island and Providence Plantations**

Gina M. Raimondo  
Governor

SECRETARY OF STATE

2017 JAN -5 PM 3:53

**EXECUTIVE ORDER**

17-01

January 5, 2017

**WORKING GROUP ON DIVERSITY IN CONSTRUCTION**

WHEREAS, Rhode Island is committed to enhancing the economic health and prosperity of socially and economically disadvantaged minority, women and disability business enterprises; and

WHEREAS, a diverse business community strengthens the state economy; and

WHEREAS, Rhode Island is committed to infrastructure development that will build on and enhance the existing minority, women and disability business enterprise programs; and

WHEREAS, the state recognizes that horizontal and vertical construction laws, regulations, policies and practices are key components to economic growth and development for Rhode Island; and

WHEREAS, it is critical to ensure that the state has an adequate, efficient and inclusive process that ensures participation of minority, women and disability business enterprises on public horizontal and vertical construction projects.

NOW, THEREFORE, I, GINA M. RAIMONDO, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, do hereby order as follows:





Executive Order 17-01  
January 5, 2017  
Page 2

- A. There is hereby established a Working Group on Diversity in Construction (“Working Group”) that shall exist for the purpose of advising the Governor on the adequacy, efficiency, and inclusiveness of state laws, regulations, policies and practices governing the participation of minority, women and disability business enterprises on public horizontal and vertical construction projects.
1. The members and chair(s) of the Working Group shall be appointed by the Governor and shall serve at the pleasure of the Governor. The membership shall consist of a broadly inclusive group of construction industry stakeholders and representatives, including but not limited to Rhode Island state and municipal agencies, major prime contractors, subcontractors, representatives of the minority, women and disability business communities, labor and trade organizations, and representatives of diverse community groups.
- B. **Cooperation with the Working Group** - All departments, offices, boards, commissions and agencies of the State shall cooperate with the Working Group, including providing necessary staff support and use of State Facilities, which may be necessary to fulfill the purposes of this Executive Order.
- C. **Duties and Purpose** - The Working Group shall review all aspects of horizontal and vertical construction laws, regulations, rules, policies and practices as it relates to their impact on minority, women and disability business enterprises. Such review shall include, but not be limited to:
1. Use of technology to track actual payments to minority, women and disability business enterprise prime contractors, subcontractors, and suppliers who participate in state-funded construction projects.
  2. Development of strategies to expand the number of minority, women and disability business enterprises seeking Rhode Island certification for construction projects.
  3. Identification of barriers to the utilization of minority, women and disability business enterprises and development of strategies to increase the participation of minority, women and disability business enterprises in the state’s construction projects.
  4. Utilization of data and input regarding the state’s procurement process to understand how state construction project bids are solicited and awarded, as well as the process for granting “good faith effort” waivers.
  5. Processes regarding the role of the Office of Diversity, Equity and Opportunity (“ODEO”) prior to final awards being made to ensure that participation of minority, women and disability business enterprises is considered and factored into



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January 5, 2017

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- all construction projects, where the opportunity for such entities to participate exists.
6. Identification of barriers to inclusion and participation of ODEO in the solicitation, award and contract compliance related to state construction projects.
  7. As it relates to the utilization of minority, women and disability business enterprises, compliance with regulations governing prompt payment, contract performance, participation, processing and tracking of complaints and the imposition of sanctions and/or remedial actions, as well as practices related to all such activities.
  8. Review of municipal construction projects funded in whole or in part with state funds or federal funds that the state administers to ensure compliance with state laws, regulations, policies, practices and requirements regarding minority, women and disability business enterprises.
- D. The Working Group meetings shall be open public meetings held in such locations throughout Rhode Island in order to engage the public and to ensure transparency of process.
- E. The Working Group shall begin its work immediately and shall submit a report of initial findings to the Governor six (6) months from the date when all Working Group members have been appointed and convened. A final report shall be provided to the Governor six (6) months thereafter.

This Executive Order shall take effect immediately.

So ordered:

A handwritten signature in black ink, appearing to read "Gina Raimondo", written over a horizontal line.

Gina M. Raimondo  
Governor

Dated: January 5, 2017



## **Appendix B**

### **DIVERSITY IN CONSTRUCTION WORKING GROUP**

**Event:** Diversity in Construction Working Group

**Date:** April 24, 2017

**Time:** 12 PM – 1 PM

**Location:** State House; State Room

**Attendees:** Darrell Waldron - Chair, John Sinnott – Chair, Mario Bueno, William Bundy, Stephen Cardi, Jr., Channavy Chhay, Andrew Cortés, Lindsay Desjarlais, Julius Kolawole, Douglas Peckham, Jr Neville Songwe, Barbara Thornton, Luis Torrado, Michael Van Leesten, Kasim Yam; Michael Sabitoni – late

**Absent:** Stanford Cameron, Bob Cooper, Carmen Diaz-Jusino, Angus Leary, Joseph Wanat

#### **Governor Raimondo's Opening Remarks:**

The first meeting of the Diversity in Construction Working Group began with remarks from Governor Gina M. Raimondo. On January 5, 2017, Governor Raimondo signed Executive Order 17-01 establishing a Working Group on Diversity in Construction that will identify the barriers that disadvantaged minority, women and disability business enterprises are facing in construction and to develop strategies to provide these groups with fair participation in Rhode Island's public construction projects.

In FY' 16, Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) and Disability-Owned Businesses were awarded 6.3% of the State's procurement dollars. Through this Working Group and "leading by example," the State is positioned to double the 6.3% of MBE participation by 2020.

#### **Introduction of Members:**

Following Governor Raimondo's opening remarks, introductions were made by members of the Working Group, as well as State employees assisting Working Group members with the Diversity in Construction initiative.

#### **Discussion on Scope and Objectives:**

**Problem Statements:** Darrell Waldron, Executive Director of the Rhode Island Indian Council, and John Sinnott, Vice President of Gilbane Building Company, provided the Working Group with an overview of the draft problem statements:

1. Currently, the State of Rhode Island is not meeting its participation goals for MBEs in either vertical or horizontal public construction. Participation is limited in both the design and construction phases of public projects.



## DIVERSITY IN CONSTRUCTION WORKING GROUP

2. Public construction projects in RI have not successfully attracted a diverse workforce that reflects the state's demographics.
3. Roadblocks to greater MBE participation include access to capital, insufficient training and mentorship opportunities and limited capacity building assistance for the MBE pool in Rhode Island.
4. MBEs often cite regulatory, legal, and contractual issues such as lack of timely payment from prime contractors to subcontractors, bonding requirements, and insurance requirements as additional barriers to participation.
5. MBEs are typically not positioned to capture public work through Requests for Qualifications (RFQs) or Master Price Agreements (MPAs).
6. New MBEs have significant difficulty breaking in to the pool of vendors called on in the public construction market.
7. A significant percentage of MBEs are certified by the MBE Compliance Office, but not registered through the Contractors' Registration Board.

The Working Group engaged in an exercise to discuss the impediments or obstacles with MBE/WBE/Disability-Owned Businesses representation in State services using Post-it's. Each Working Group Member and others in attendance had the opportunity to submit the impediments they believe exist for MBEs/WBEs/Disability-Owned Businesses in State construction projects.

The following is a list of those comments:

### Policy

- Language in PLAs and TSAs that allow and incentivize MBE participation
- Ensure compliance
- Ability of new businesses to create paperwork that meets Purchasing Standards (invoices, contracts)
- No enforcement procedures
- It's an economic development matter and should be an important element of the state's economic development strategy
- Prime contractors should report their diversity statistics – not all minorities own businesses
- MBE plan at bid submission is required.
  - <10% participation is disqualifying.
- Re-establish DOT Loan Program
- Establish MBE Loan Program
- Carried as RFP DBE, but then not actually contracted to do the work
- Increase bonding required to 100k



## DIVERSITY IN CONSTRUCTION WORKING GROUP

- M/WBE/DBE Qualification
- Not enter future PLAs
- Eliminate the % of MBE as calculated on non-MBE trades Items
  - Example: fee, permits, insurance, staffing, GC's/GR's
- Redefine M/WBE to DBE program – owner of profit does not indicate disadvantage
- Lack of a standardized process that is easy to understand and follow
- Establishing what the facts are and policy based on facts
- Require compliance and DBE development line items in bids
- Carry dollars in budget for activities
- Federal barriers to mentoring in MBE companies
- Obstacles in obtaining through state/governmental systems
- Increase the # of certified MBE contractors from other states (like MA and CT)
- Track and publish participation details by:
  - W/MBE category
  - Construction by business, services by area

### Resources

- Good faith efforts
- Roadblocks to greater MBE
  - Also looking for words: “innovation” “new ideas”
- Uncertainty and/or turnover in agency staff and processes after delay payments or force total rebilling
- Ability of small business (the majority of MBE) to survive the timeline of public payment processes
- Form a construction business incubator supported by ODEO/state sponsored
- Cultural competency of ability to access the opportunity
- Free tuition for apprentice trades at CCRI/URI (if electrical/plumbing)
- Advertise and pool out of state MBE vendors for a quick boost
- Lack of cultural knowledge on construction business
- % of participation vs. capability
- Capacity building assistance (helping minority businesses to multiply and grow)
- M/WBE/DBE suppliers
- We need a way to link prime contractors to MBE sub-contractors
- Lack of welcome mentality

### Opportunity

- MBE density in RI
- Stereotypical good ole' boys network
- Invite someone from ABC
- Create a set-aside for MBE only bidders on select projects and/or select trades within a project



## DIVERSITY IN CONSTRUCTION WORKING GROUP

- Public construction projects in RI (have not successfully employed) a diverse workforce that... change
- Obtain RIBBA W/MBE studies

### Whiteboard notes:

- Economic development – Integrate CWG effort into strategic plan
- Bookkeeping
- Pay within 5 days
- PLAs
- TSA
- Bonding
- INS.

**Action Item:** Darrell Waldron and John Sinnott will put together ideas from the exercise and provide the group with a concise list objectives to discuss at the next meeting.

### **Overview Presentation:**

Cheryl Burrell, Associate Director of the Office of Diversity, Equity and Opportunity (ODEO), Carole Cornelison, Associate Director of the Division of Capitol Asset, Management & Maintenance (DCAMM), and Richard Sparks, DOT - Chief of Program Development, provided the Working Group with the Diversity in Construction overview presentation.

In addition to the topics mentioned previously, the presentation highlighted the State's progress on MBE utilization within the RFP process. A new MBE point system for RFPs will require utilization plans at the time of bid, rather than after an award has been made. By doing this, an improved review turnaround on applications for certification can be made: cutting the time from an average of 50 days to an average of 14 days for approval. It is important to note that this new point system cannot be used for low bid construction contracts.

The Working Group has proposed three (3) Sub-Committees to assist in developing strategies to increase diverse participation in State construction projects.

- **Legal:** To compile a comprehensive list of existing related laws and regulations.
  - This sub-committee will assess the state of the current Rhode Island construction laws.
- **MBE/WBE Access and Support:** To provide recommendations for MBE/WBE training, mentoring, financial support, capacity, recruitment, and incentives.
  - This sub-committee will identify and development robust strategies to accomplish these goals.



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- **Workforce Development:** To strategize an increase in workforce diversity in the construction sector. Issues to be discussed will include education, incentive structures, and self-selection into construction careers.
  - This sub-committee will provide the steps necessary for folks to get into the construction business by way of trades and/or go on to own their own businesses. By looking at creative strategies currently in place around the country, the group can identify a number of solutions for issues such as working with unions and the expansion of particular apprenticeships.

**Action Item:** Cheryl Burrell to provide the Working Group with the MBE Utilization Plan and a breakdown of the current MBE utilization for construction projects by race/ethnic and gender groups.

### **Schedule for Future Meetings:**

The next Diversity in Construction Working Group meeting will take place on *Monday, June 19, 2017*. Time and location for the next meeting is to be determined.

### **Adjournment:**

Hannah Abelow, Policy Advisor, provided the group with closing remarks. The meeting adjourned at 1:05 PM.



## Overview of Governor's Diversity in Construction Working Group

### Resources, Access and Workforce Subcommittee

#### Meeting Notes

June 6, 2017

Subcommittee members present: John Sinnott - Co-Chair, Darrell Waldron – Co-Chair, Doug Peckham, Michael Van Leesten, Andrew Cortéz, Caroline Skuncik, Lindsey Desjarlais, Channavy Chhay, Mario Bueno, Julius Kolawole, Jr Neville Songwe

Subcommittee members absent: Stanford Camron, Stephen Cardi, Bob Cooper, Carmen Diaz-Jusino, Angus Leary, Michael Sabitoni, Joseph Wanat

Internal State Staff present: Dorinda Keene, Cheryl Burrell, Richard Palmieri, Elvys Ruiz, Armindo Goncalves, Sean Fontes, Melody Weeks, Dan Jennings, Hannah Abelow,

Internal State Staff absent: Carol Cornelison, Andrew Marcaccio, Richard Sparks

Guests: Denise Correy, Belinda Wong

Quorum Present: Not initially. Two members arrived late, at which time a quorum was achieved

Keywords: protégé/mentorship program, communication, resources, manpower, training, bonding, Minority Business Enterprise (MBE), Women Business Enterprise (WBE) Disadvantaged Business Enterprise (DBE)

- I. Call to order
  - a. Meeting called to order at 2:22 PM by Darrell Waldron.
- II. Introduction of members
  - a. Insufficient number of members for a quorum at start of meeting. It was determined that no business would be conducted, rather, there would be discussion only
- III. Overview/Discussion
  - a. Darrell provided an overview on the focus group meeting held on May 30, 2017 with M/WBEs – outcomes and recommendations:
    - i. M/WBEs feel underutilized and that there is a lack of enforcement regarding primes meeting M/WBE subcontracting requirements
    - ii. Letters of complaint were received from an MBE contractor who has not been able to secure any work
  - a. John provided an overview on the focus group meeting held on June 5, 2017 with prime contractors – outcomes and recommendations:
    - i. Primes feel pressure to meet diversity standards and voiced concerns regarding M/WBEs bidding on projects for which they (M/WBEs) are not prepared financially and/or in manpower. Questions concerned communication gap preventing primes from finding qualified subs, and vice versa, suggested third party to provide business management assistance to fledgling subs, and





- including subs with business management experience in policy-making discussions.
- b. Discussion of areas for improvement:
  - i. Communication between M/WBEs and primes
  - ii. Access to workman's compensation
  - iii. Confidence in and communication between primes, subs, and the state government
  - iv. M/WBEs business management skills
  - v. Workforce culture
  - vi. Outcomes for M/WBEs across all minority demographic groups
- c. Identification of target areas:
  - i. Enforcement
  - ii. Access to capital for M/WBEs
  - iii. Capacity building
  - iv. Mentor protégé
  - v. Centralized training resources
- IV. Additional issues discussed:
  - a. Creating and implementing a mentor protégé program
  - b. Centralizing and streamlining process from both sides by creating a cabinet member within the governor's staff
  - c. Exploring policy, regulations, and legislation adopted by other states and federal agencies – specifically those addressing mentor protégé programs (example given: SBA All Small program), good faith efforts, best practices, M/WBE rating systems, insurance and bonding pools, loan development through quasi-governmental agencies
- V. Comments and Announcements:
  - a. Data on subcontracting by in-state/out-of-state and minority/demographic groups to be presented at full committee meeting
- IV. Meeting adjourned at 4:30 PM by John Sinnott.



## Overview of Governor's Diversity in Construction Working Group

### Legal, Policy, and Regulatory Subcommittee

#### Meeting Notes

June 7, 2017

Subcommittee members present: John Sinnott - Co-Chair, Darrell Waldron – Co-Chair, Doug Peckham, Andrew Cortez, Jr Neville Songwe, Doug Peckham, Barbara Thornton, Luis Torrado,

Subcommittee members absent: William Bundy, Stan Cameron, Bob Cooper, Michael Sabitoni,

Internal State Staff present: Dorinda Keene, Cheryl Burrell, Richard Palmieri, Elvys Ruiz, Sean Fontes, Melody Weeks, Hannah Abelow, Mike Mitchell, George Whalen, Andrew Marcaccio, Kathleen Corbishley, Kevin Carvalho

Internal State Staff absent: Carol Cornelison, Richard Sparks, Kasim Yarn

Guests: Denise Correy, Christine Rancourt Bruzzi

Quorum Present: Yes

Keywords: communication, enforcement, implementation, Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disability Business Enterprise (DisBE), monitoring.

- I. Call to order
  - a. Meeting called to order at 2:15 by John Sinnott who provided a recap of the last meeting
- II. Introduction of Members
- III. Overview/Discussion
  - a. Presentation on diversity in construction laws and regulations by Dorinda Keene followed by questions and discussion of presentation contents. Mr. Cortez suggested creating a plain language guide from the regulations. Questions concerned general laws regarding retainage, purchasing regulations on state payment of deposits to contractors, complaint procedures and the definition of 'public works' --explained to include all construction funded wholly or in part by the state.
  - b. Discussion of areas for improvement:
    - i. Uniform implementation and enforcement of existing regulations and capabilities
    - ii. Communication between W/MBEs, prime contractors, and the state
    - iii. Streamlining and better explaining process of compliance and attaining certification
  - c. Identification of target areas:
    - i. Implementation and enforcement
    - ii. Improving public explanation of rules and regulation
    - iii. Improving access to capital and incentivizing W/MBE utilization within law
    - iv. Disparity study



- IV. Issues all Parties Agreed On:
  - a. Need for a disparity study to accurately update regulations
  - a. Need for plain-English explanation and Spanish translation of rules and regulations to assist small minority business contractors and the general public better comprehend statutes, laws, and regulations
  - b. Review of best practices for incentivizing contractors to use affirmative action without a public actor
- V. Comments and announcements:
  - a. Upcoming information seminar for vendors and contractors on compliance for recently updated regulations
- VI. Meeting adjourned at 4:24 PM by John Sinnott.



Overview of Governor's Diversity in Construction Working Group  
Full Committee Meeting  
June 19, 2017

Committee members present: John Sinnott - Co-Chair, Darrell Waldron – Co-Chair, Michael Van Leesten, Channavy Chhay, Mario Bueno, Julius Kolawole, Jr Neville Songwe, Kasim Yarn, Barbara Thornton, Mario Bueno, Doug Peckham, Channavy Chhay, Christine Rancourt Bruzzi on behalf of Bob Cooper, Roy Coulombe on behalf of Michael Sabitoni

Committee members absent: Stanford Cameron, Stephen Cardi, Carmen Diaz-Jusino, Angus Leary, Joseph Wanat, Luis Torrado , William Bundy, Andrew Cortez, John Marcantonio, Lindsay Desjarlais

Internal State Staff present: Dorinda Keene, Cheryl Burrell, Richard Palmieri, Elvys Ruiz, Armindo Goncalves, Sean Fontes, Melody Weeks, Hannah Abelow, Carole Cornelison, Andrew Marcaccio, Kevin Carvalho, Kathleen Corbishley, George Whalen, Kelly Caesar

Internal State Staff absent: Richard Sparks, Mike Mitchell

Guests: Denise Correy, Belinda Wong

Full Committee Meeting Minutes approved (two abstentions recorded). Ms. Thornton introduced a motion to approve the minutes from the April 24, 2017 Full Committee Meeting with the adjournment correction. The motion was seconded. The floor opened for questions; none were raised. The motion passed with none opposed with Mr. Coulombe and Ms. Rancourt Bruzzi abstaining.

Quorum Present: Yes

I. Call to Order

Mr. Waldron called the meeting to order at 2:24 p.m.

II. Report on M/W/DBE Utilization

Ms. Keene presented reports on the utilization of MBEs, WBEs, and DBEs through state procurements for FY15, FY16, and FY17 to date.

Ms. Abelow suggested rearranging the agenda to vote to approve minutes and the recommendation of target areas due to time constraints of voting members.

Mr. Waldron expressed his preference to discuss target areas before voting.

III. & IV. Subcommittee Reports and Recommendations for Target Areas:

**Legal, Policy, and Regulatory Report** - Mr. Sinnott provided a brief overview on the work of the subcommittee then introduced Barbara Thornton to report out on the subcommittee's findings. Ms. Thornton identified 3 additional target areas from the Legal, Policy and Regulatory Subcommittee: Utilization reporting requirements, enforcement and compliance policies / practices, and classification issues. Potential solutions identified by Ms. Thornton



are requiring an MBE utilization plan in the cost phase of bid proposals as is done in the design sector bidding process, the continuation of monthly construction payment reporting which includes information on which MBE subcontractors are working on-site and how much of the contract is being allotted to MBEs, exploring less strenuous alternatives to sanctions and processes to recognize contractors who meet and exceed goals, the enforcement issues surrounding the misclassification of small contractors as independent contractors, and exploring the need for a centralized enforcement and tracking entity. Mr. Sinnott emphasized the importance of a commitment to investment of resources and manpower towards compliance, and noted the limited nature of such resources. He suggested coordinating with existing programs within the DLT, ODEO and other organizations.

Mr. Peckham identified four main target areas from the Legal, Policy, and Regulatory Subcommittee: bonding, insurance, cash flow, and the relationship between prime- and sub-contractors. Potential solutions identified by Mr. Peckham are raising the bonding requirement from \$50,000 to \$200,000, exploring contractor- and owner-controlled insurance programs, creating a fund to provide M/WBEs with project startup money, lessening the burden of retainage on M/WBEs, prime contractors breaking up large projects into smaller projects more accessible to M/WBEs, and utilizing set-asides.

Mr. Sinnott noted that any commitment to established goals will require an investment of time and financial resources, then opened the floor to questions and comments. There were none.

**Resources, Access, and Workforce Report** - Mr. Waldron introduced J.R. Neville Songwe to report out on the Resources, Access and Workforce Subcommittee. Mr. Songwe identified 14 target areas:

1. Communication
2. Resources
3. Oversight
4. Obtaining data (emphasis on Disparity Study)
5. Prime contractor penalization
6. Apprenticeship
7. Defining existing regulations
8. Mentorship
9. Big jobs
10. Access to capital
11. Lack of trust
12. Legal
13. Procurement
14. Bonding

Mr. Songwe then identified 4 target areas for the ODEO to focus on:

1. Advocate for fairness in system
2. Strong, enforceable compliance regulations
3. Legislation and policy



#### 4. Outreach and communication

He then identified 4 recommendations for the governor's office:

1. Create a fund for subcontractors during the time compliance and regulations are being readjusted
2. Reinforce the status and capacity of ODEO, allow it the breadth and depth to oversee compliance and regulation at a statewide level
3. Immediately initiate a Disparity Study and make results accessible
4. Reporting systems on minority vendors: (1) be standardized (2) have a clear, established line of responsibility (3) vest ODEO with the authority to facilitate compliance (4) ask ODEO Director for regular input and agency compliance and reporting performance, (5) regularly conduct surveys of vendors and buyers to determine whether there are barriers to full participation within existing laws and regulations, (6) the State should carefully examine and implement action to avoid any adverse impact on M/WBEs resulting from procurement policies and practices, (8) establish a formal mentorship/protégé program to build an effective long-term working relationship between established and early-stage businesses

Mr. Songwe identified recommendations for the state legislature:

1. Increase the budget of ODEO to the level appropriate to the fulfill the duties of the division
2. Create a fund to ease the financial burden on M/WBEs
3. Require that each procurement agency include in its minority business plan a forecast of goods and services which it intends to purchase in the next fiscal year
4. Authorize the governor to take action to address and remedy M/WBE procurement disparities found in Disparity Study when such study is complete

#### Vote on Proposed Target Areas for Subcommittees:

Mr. Sinnott called for a motion to vote on the Legal, Policy and Regulatory Subcommittee's work on the established target areas. The motion was recommended by Mr. Bueno and seconded by Ms. Chhay, and carried unanimously.

Mr. Waldron called for a motion to vote on the Resources, Access and workforce Subcommittees work on the established target areas. The motion was recommended by Mr. Kolawole and seconded by Ms. Chhay.

Mr. Waldron opened the floor for debate. There was no call for debate. The motion carried unanimously.

#### V. Actionable Target Areas

Mr. Waldron acknowledged the similarity of the target areas identified by both subcommittees, and noted that these target areas are included in the action items. He then asked Mr. Marcaccio if he believes that the target areas are covered by the action items, Mr. Marcaccio stated that he believes this to be accurate.



Ms. Abelow emphasized the importance of the coordination of training resources in addition to working on a mentorship/protégé program, and noted the importance of looking into resources.

Mr. Waldron opened the floor for questions and comments. Mr. Van Leesten noted his appreciation of the diligence and competence of the committee. There were no further questions or comments.

Ms. Burrell asked Mr. Marcaccio to provide an overview of race-neutral and race-conscious policies and recommends, that subcommittees divide target areas between race-neutral and race-conscious. Race-neutral policies, such as bonding, which apply equally regardless of race. Race-conscious policies, such as an MBE goal or race-targeted set-asides, do not apply equally regardless of race, must be motivated by a compelling public interest subject to strict scrutiny, and be narrowly tailored to the targeted discrimination. He then recommended the committee look towards race-neutral policies until a disparity study is completed.

Ms. Abelow informed the committee that the governor has acknowledged the importance of a Disparity Study and that the governor's office is exploring funding options, including the possibility of assistance from private funding.

Mr. Marcaccio noted that enforcement of existing laws and regulations is an area where immediate action can be taken and that doing so will increase the amount of data ODEO collects and is able to use to craft polices in the future.

Mr. Sinnott, and Mr. Waldron agreed that cash flow, bonding, and insurance, are priority areas.

Ms. Burrell suggested that both subcommittees approach these issues from their individual perspectives. The floor was opened for questions and comments.

Mr. Songwe introduced Timothy Byrne, Business Manager of plumber and pipefitter union UA Local 51 to discuss the union's program which reaches out to minority communities to promote diversity within the union. Mr. Byrne emphasized the importance of addressing cash flow, bonding, and insurance. He stated that these issues are essential because their presence prevents firms from investing in and training their workforces.

Mr. Goncalves brought up the importance of addressing business acumen and the ability to execute a project on-time within the mentorship/protégé program.

Mr. Waldron and Mr. Sinnott both noted the importance of providing business guidance to W/MBEs and building trust in the relationship between primes and subs.



Ms. Wong recommended the committee look into standardizing sub-contracting forms in order to simplify the process. Mr. Waldron agreed, citing New York as an example.

Mr. Van Leesten noted the importance of improving relationships and building trust.

Mr. Waldron noted the importance of utilizing relationships to fill generational gaps in training.

Mr. Songwe organized the discussed points into categories of resources, data, and legal.

VI. Next steps

Ms. Abelow offered that the State staff would begin research into best practices, landscaping and data. Mr. Kolawole recommended the State look into best practices. Mr. Waldron recommended introducing subcontractors to prime contractors in order to increase communication between the groups. He noted that many contractors do not spend much time on computers and may not be familiar with the resources, such as the W/MBE directory, available online. He recommended looking into alternative methods of distributing the database.

Ms. Abelow agreed, and added that the internal staff group would begin looking into improved methods of distributing the directory.

Mr. Kolawole recommended paying more attention to asset mapping.

VII. Comments and Announcements

Mr. Waldron noted that a suggestion had been made to decrease the size of the committee in order to more easily achieve a quorum.

Ms. Keene noted that she and Mr. Marcaccio had updated the "Diversity in Construction" presentation, which was presented to the Legal, Policy and Regulatory Subcommittee at its previous meeting, to include information on retainage and the formal definition of "public works". New slides were made available.

Mr. Waldron recommended periodically resending the meeting calendar in order to increase attendance.

VIII. Adjournment

Meeting adjourned at 3:45pm by Mr. Sinnott





## Overview of Governor's Diversity in Construction Working Group

### Legal, Policy, and Regulatory Subcommittee meeting

September 12, 2017

Committee members present: John Sinnott - Co-Chair, Darrell Waldron – Co-Chair, Doug Peckham, Andrew Cortez, Barbara Thornton, Luis Torrado, Belinda Wong, Joseph Wanat, Channavy Chhay, Lindsay Desjarlais, Stanford Cameron, Andrew Cortez, Justin Kelly, Luis Torrado

Committee members absent: Stephen Cardi, Carmen Diaz-Jusino, Angus Leary, Michael Sabitoni, William Bundy, John Marcantonio, Charles Byrne, Christine Rancourt Bruzzi (for Bob Cooper), Jr Neville Songwe (relocated to another state), Kasim Yarn

Internal State Staff present: Dorinda Keene, Cheryl Burrell, Elvys Ruiz, Sean Fontes, Hannah Abelow, Andrew Marcaccio, Vilma Peguero, Krystal Waters, Jean Heiss

Internal State Staff absent: Mike Mitchell, Armindo Goncalves, Carole Cornelison, Kathleen Corbishley, George Whalen, Ryan Erickson

Keywords: Individuals with Small Business (ISBEs), Project Labor Agreement (PLA)

Guests: Craig Lewis

Quorum Present: Yes

### III. Call to Order

Mr. Sinnott called to order the committee meeting at 2:08 p.m.

### IV. Reports/Discussion on Target Areas

**Bonding and Insurance Law-** Ms. Keene explained the three part presentation disseminated to the committee members as Bonding Requirements, Key Terms / Incentives and a Power Point presentation.

Bonding Requirements and thresholds were discussed for Rhode Island and neighboring states including Massachusetts, Connecticut, Maine, New Hampshire, Vermont and New York. Ms. Keene defined the three critical types of bonds:

Bid Bonds

Performance Bonds

Payment Bonds

A tiered bonding requirement was suggested to allow for the establishment of bonding requirements based upon the size of the contract. Implementing a program to assist M/WBEs in getting bonding had also been suggested. Companies not providing the appropriate paperwork required to document their experience and financial information to obtain bonding insurance was identified as a main problem area.



Mr. Sinnott stated that there is an issue with firms putting their businesses on the line by allowing their payments to suppliers and vendors to fall behind consequently affecting their credit.

Mr. Waldron asked if it would be more attainable to provide some type of technical assistance to vendors rather than providing trainings.

Ms. Keene identified the three points of consideration as:

- Legislative changes to bonding law
- Tiered approach
- Establishing a bonding fund

Ms. Thornton asked about the possibility of considering the removal of the prohibition against waiving the bonding requirements.

Ms. Abelow asked if the committee was in agreement to add the four mentioned points of consideration to list of recommendations.

Mr. Cortez said that if the State is taking the risk in establishing a bonding fund guaranteeing a portion with programmatic requirements to increase M/WBE utilization then the State should provide the guarantee around that as well as establish the requirements to get into that pool. He also asked that we take a look at what sort of programmatic elements are tied to the mentioned considerations.

Mr. Cameron stated that bonding waivers and higher bonding thresholds are applicable to contracts between the state and the prime contractor. Bonding requirements for subcontractors are established by the prime.

Ms. Abelow asked about the usual practice prime contractors follow with regard to their subcontractors bonding requirements and whether primes base this on the States' requirements.

Mr. Sinnott answered by stating that Gilbane usually bases their requirements on relationships, past experience and good standing.

Ms. Burrell stated that the goal of this meeting is to report on research completed by the State staff and the committee should hold all recommendations until the next full committee meeting.

**Prompt payment** - Ms. Keene continued with her presentation on prompt payment defining it as the assurance that valid and proper invoices are submitted by vendors and paid on time including both prime and subcontractors. She presented her research on the existing Federal and State laws referencing the neighboring states closest to us geographically. Maryland and Massachusetts were identified as the two best practices states. She suggested that the committee look into considering legislative and policy amendments to incorporate some of the prompt payment mechanisms that Maryland and Massachusetts have in their existing laws. The committee agreed that prompt payment is a major issue.

Ms. Burrell stated that the RI Division of Purchases is looking into an e-procurement system that may solve some of the issues identified.

Ms. Wong suggested that there be some type of electronic system to keep track of invoices and dates rather than allow the information to be entered in at someone else's discretion.

**Retainage** - Ms. Keene continued her presentation on retainage defining it as money that is withheld from payments to contractors to insure successful completion of work as well as payment to all subs and suppliers. She suggested that the committee look in to modeling what Massachusetts is currently doing. She also suggested that the committee consider



recommending legislative and policy amendments due to the lack of a system in Rhode Island to insure that retainage has been released to the lower tier subs and suppliers. Ms. Thornton stated that in situation where projects last multiple years the contractor is required to release retainage to their subcontractor within 90 days but as a prime contractor retainage isn't released until after the project has been completed. She suggested that retainage be released with the phases of the work.

**Deposit/ Up-front Payment and Mobilization Money** - Ms. Keene presented her research based on her national findings stating that up-front payments and/or deposits are very rare in the public sector and that the majority of examples identified are higher education. Based on the best practice examples she presented, reviewing current State procurement regulations and policies were suggested to see if advance payments or deposits would be appropriate for high cost equipment manufactured to meet functional specifications and/or for specialized goods and services that would result in cost savings to the State. Ms. Thornton stated that larger items do not ship until they are PIF. Mr. Cortez suggested creating a transparent set of criteria that applies to everyone.

V. Laws Affecting Work Distribution

**PLAs/Carve Outs** - Ms. Keene began her presentation by discussing the advantages and disadvantages of PLAs stating that the information disseminated includes examples of best case scenarios across the country. One possible suggestion is the use of a carve-out provision in PLAs that would allow for the participation of M/WBE firms without becoming signatory.

Mr. Kelly indicated that the Building Trades are determined to see an increase in MBE and WBE firms that become signatory to the trade unions, and he has a resolution regarding that matter.

Mr. Cortez asked why contractors who are nonunion are not able to bid successfully, although theoretically they should be able to do so regardless of their affiliation. Why are non-signatory contractors uncomfortable bidding on contracts or not winning contracts for projects subject to a PLA?

Mr. Cameron indicated that there are legitimate concerns, and the answer partly lies in the stance of the trade unions that they are looking to increase the number of MBEs that are signatory; i.e. permanent union members, vs. the number of non-signatory MBEs that might participate with PLA.

Mr. Kelly indicated that it is a goal of the Building Trades to increase the number of signatory members. Mr. Kelly also indicated that he welcomes non-signatory MBEs to participate on PLA projects. This is seen as an opportunity to work together as a precursor of a more permanent relationship.

Ms. Wong indicated that, as an open shop contractor, she has received phone calls from prime vendors bidding or working on PLA projects. The first question asked is whether or not she is union. If not, they will not have any further discussions, even though she does pay prevailing wages.

Mr. Sinnott indicated that there is often a fear among subcontractors regarding PLA projects that is a business issue – will they be able to get enough work to sustain their employees at the prevailing wage?



**Set-asides** - Ms. Keene presented her research on set-asides explaining that many States had established set-aside laws in the 1980's. However, there were several Supreme Court cases in the late 80's and early 90's ruling that the set-aside laws were unconstitutional. She referenced the City of Richmond v. J.A. Crosson Co. which resulted in a finding that most of the set-aside programs were unconstitutional and therefore no longer exist. Any program based on race has to pass strict scrutiny, had to be narrowly tailored to satisfy compelling governmental interest and empirical evidence of past discrimination was necessary. There are a limited number of set-aside programs that exist today. The State of Connecticut has a small business set-aside program but it is not based on race therefore it is not subject to the same strict scrutiny as a program based for MBEs. Connecticut's program sets aside 25% of all construction contracts to small business and within that program they have an aspirational 25% of the 25% for certified M/WBEs. Connecticut has a current and valid disparity study which would support any program based on race. The State of Ohio also has an MBE set-aside program that establishes a 15% set-aside on their contracts that does not apply to construction contracts. She stated that Ohio also has a current and valid disparity study to support their program. The State of South Carolina has a program that is just for their 100% state funded highway projects. USDOT specifically prohibits set-asides on anything that is funded wholly or in part by USDOT, and they only allows set-asides in cases of very egregious discrimination and only after recipients have petitioned for a waiver. South Carolina conducted a disparity study in 2005. The City of Chicago also has a set-aside program for small and midsize businesses which is not subject to the same strict scrutiny standards as M/WBEs. Chicago has a valid disparity study conducted in 2009.

Ms. Keene said that the research presented validates the importance of Rhode Island completing a disparity study.

Mr. Sinnott asked if there is a possibility to go forward with a small business set-aside which are not subject to the same strict scrutiny.

Mr. Waldron asked how far away from the study we are.

Ms. Abelow answered by stating that there is currently a funding issue because the legislature did not approve the request for funding for the disparity study. Internal funding options are being looked into as well as external such as other state agencies and community partners who see the disparity study as being a useful tool.

The questions was asked if there could be a small business set-aside based on zip code or hub zones.

Mr. Marcaccio said any questions related to set-asides with respect to zip codes or hub zones will not get a black and white answer because they would be contested by the courts and what standard they use will matter. Anytime you have a law that will impact race when framed in a manner that they are being discriminated on the basis of race, for example if it's a set-aside program for women, which is a gender based program the courts point of view may be that because its gender we are not going to scrutinize as much as race. With regard to zip code the result would depend on how the law is crafted.

Ms. Wong stated that income would be a more appropriate basis.

Mr. Sinnott asked if the set-aside programs in other states were based on the results of the disparity studies.

Ms. Keene answered by stating that the historical data shows that after the set-aside programs of the 1980's were deemed to be unconstitutional the disparity studies started commencing. Now disparity studies are conducted to provide the necessary empirical data to support existing and new programs. For example the City of Chicago's set-aside program



has an expiration date. Therefore they are required to conduct a new study whenever they request an extension of the program.

Mr. Sinnott asked what if we are to establish a short term goal for a set-aside based upon census results with a sunset clause, while we are awaiting the completion of the disparity study.

Mr. Waldron asked if the pre-constitution (common law) can be used to establish a set-aside program.

Mr. Fontes said the zip code may be a path that can get us to where we want without violating race as a category.

The committee discussed concerns about whose zip code would be used for the basis. If firms use their zip codes their corporate headquarters zip codes or their personal residence. If the company zip code is used it may not benefit the M/WBE.

**Breaking Up Projects** - Ms. Keene said there has been a push to bundle contracts into larger contracts but many states are moving in the opposite direction by unbundling projects.

Ms. Thornton said Rhode Island has a perfect program to facilitate the unbundling of projects by getting qualified MPA vendors to build capacity for the smaller MBE companies if the purchasing department would allow use of the MPA for projects larger than the current thresholds or caps on the utilization of MPAs.

Ms. Abelow asked if increasing the MPA/ Mini Bid threshold would be helpful to MBEs.

#### VI. MBE Utilization Reporting Requirements by State and Quasi-state Agencies

Mr. Marcaccio explained that whenever you have a program based on race you need to meet that high level of scrutiny which can be determined by the disparity. He said the law also needs to be narrowly tailored and to determine whether the laws are narrowly tailored you need to show whether the program is working or not by tracking the data.

Mr. Cameron asked to what degree we currently track

Ms. Burrell said that there is a lack of continuity in terms of who is reporting that data. She suggested that the committee take a look at some of the information presented and consider some recommendations around continuity and reporting and how that information is collected.

#### VII. Enforcement/Sanctions – Compliance Policies and Practices

Ms. Keene said that the current law has good language with respect to enforcement and sanctions however sanctions have not historically been utilized.

Mr. Marcaccio explained that because Maryland has a good program with good studies, data, and tracking, they are able to hit people with sanctions and they feel confident that if they are challenged, they will win.

#### VIII. Next Steps

Mr. Waldron said that we should probably look into putting a team together to look into the legislative issues with regard to the disparity study. He said that it is very disappointing to hear that the funding for the disparity study has been defeated.



Ms. Abelow stated that there has been some funding identified internally but what we have been told is that additional funding will not be provided. The Department of Administration is looking into other funding options.

IX. Comments and Announcements

None identified

X. Adjournment

Meeting adjourned at 4:02 p.m. by Ms. Burrell



## Overview of Governor's Diversity in Construction Working Group

### Resources, Access and Workforce Subcommittee meeting

September 15, 2017

Committee members present: John Sinnott – Co-Chair, Darrell Waldron – Co-Chair, Doug Peckham, Andrew Cortez, Belinda Wong, Channavy Chhay, Andrew Cortez, Justin Kelly, Julius Kolawole, Stan Cameron

Committee members absent: Stephen Cardi, Carmen Diaz-Jusino, Angus Leary, Michael Sabitoni, William Bundy, Mario Bueno, Charles Byrne, Christine Rancourt Bruzzi (for Bob Cooper), Lindsay Desjarlais, John Marcantonio, Jr Neville Songwe (relocated to another state), Michael Van Leesten, Joseph Wanat

Internal State Staff present: Dorinda Keene, Cheryl Burrell, Richard Palmieri, Elvys Ruiz, Sean Fontes, Melody Weeks, Hannah Abelow, Andrew Marcaccio, Ryan Erickson, Vilma Peguero, Jean Heiss, George Whalen, Krystal Waters

Internal State Staff absent: Mike Mitchell, Armindo Goncalves, Carole Cornelison, Kathleen Corbishley

Keywords: Individuals with Small Business (ISBEs), Project Labor Agreement (PLA) Rhode Island Vendor Information Portal (RIVIP) Rhode Island Financial Accounting System (RIFANS) Office of Diversity, Equity and Opportunity (ODEO) Affirmative Action Plan (AAP)

Guests: Andrew Boardman

Quorum Present: Yes

#### XI. Call to Order

Mr. Sinnott called to order the committee meeting at 2:11 p.m.

#### XII. Reports/Discussion on Target Areas

**Training** – Mr. Ruiz began his presentation on training information and resources explaining the different resources available to those who need guidance. There are many entities in Rhode Island that provide training and information to MBEs.

Secretary of State resources – State laws, tax requirements from RI Division of Taxation, Requests for letter of good standing, administrative rules, name availability guidelines, Title 6A – Uniform Commercial Code, Title 6-2 Registration and Protection of Trademarks.

Providence Public Library offers various workshops and seminars monthly.

University of Rhode Island services - Business planning, financial statement development, loan application preparation, establishing your business, strategic planning, marketing and brand building, licenses, permits and business regulations, international trade assistance.

Training – Primer Paso, The Right Foot.



Procurement Technical Assistance Program (PTAC) services– BidMatch opportunities, one-on-one counseling. Workshops – Doing Business with the State of RI, Opportunities in Government Subcontracting, Market Research, Advance Proposal Preparation.

Federal Governments - U.S. Small Business Administration services – Business guide, loans & grants, contracting, learning center, Local assistance. Trainings – Financing Options for Small Businesses, Establishing Values for your Business, How to Write a Business Plan, Selling Your Business, Strategic Planning, Young Entrepreneurs etc.

RI Office of Diversity, Equity and Opportunity workshops – Pre-Certification and Capacity Building, Getting Certified with the State as an ISBE, How To Do Business with the State of Rhode Island, Financing Your Business Expansion.

Department of Labor & Training resources – Workforce Development Business Workforce Center.

RI Contractor’s Registration and Licensing Board – Pre-education and continuing education courses.

Center for Women & Enterprise trainings – Accounting for Non-Accountants, Business Planning: Getting Started, Legal Consideration for New Business Owners, Understanding Cash Flow Management, Steps to Grow Your Business, Pricing for Your Market, Protect Your Business Brand with Copyrights.

Mr. Ruiz mentioned other entities that offer services and trainings such as Roger Williams University and RI Black Business Association.

Mr. Sinnott asked if the trainings/information are offered in multiple languages.

Mr. Ruiz answered by stating that the all the websites have the capability to be translated in multiple languages through Google Translator.

Ms. Burrell asked if Mr. Whalen could provide a brief summary on the requirements for continuing education for those registered with the RI Contractors Registration Board.

Mr. Whalen stated that in 2015 they started pre-education for those that are performing work on residential and commercial buildings. Currently there is a continuing education program for those that are registered which entails a five hour course of construction education. There are also online courses available at an affordable price. The goal is to raise the bar by providing the education and resources needed.

Mr. Ruiz suggested creating a centralized system for access to training information and resources. The benefit of having a one stop business resource center is that any training opportunity can be found without difficulty in on single place.

**Communication on Access to Bid Opportunities** - Ms. Heiss began her presentation by explaining how the public is currently informed about bidding opportunities. She stated that when individuals come into the office they are given the applications for MBE and DBE and within the application is information on the purchasing website, how to bid and a list of projects they may be interested in. Firms are always encouraged to register with RIVIP and RIFANS. She discussed the major benefits of the Supplier Portal and the procurement opportunities posted on the DOA purchasing website.

The committee discussed the inconsistency with municipalities posting about bid opportunities on the website and that consistency in posting opportunities would be particularly relevant with the school construction projects.





Ms. Weeks stated that the City of Newport has offered to take all the municipal bids and post them on their website. The Bid Match program picks up everything that is listed publically on the site which triggers a notification to be sent to clients.

Ms. Abelow suggested that we expand what RIVIP does.

Ms. Heiss outlined the three ways the Office of Diversity, Equity and Opportunity communicates their outreach efforts:

1. In the application package for certification
2. When a firm is approved as an M/WBE in the certification approval letter
3. On the ODEO website

She also explained the process with pre-bid conferences stating that not every project has a required pre-bid conference. For example RIDOT, RIPTA, RIDEM may or may not have a pre-bid conference, and not all are mandatory.

**Access to Capital** - Ms. Keene stated that access to capital is one of the critical issues for W/MBEs. She said that vendors in the construction industry face unique challenges such as:

- Very small profit margins
- The construction payment chain is complicated
- Managing growth and working capital
- Complexity of projects – unpredictable problems cut into profits
- Large capital requirements at startup stage

MBEs and WBEs have some particular challenges such as:

- Credit history of firm
- Wealth & credit history of owner (collateral/personal guarantees)
- Financial literacy
- Location

Mr. Sinnott asked how location is a challenge for a construction company or a subcontractor Ms. Keene responded by stating that they considered to be a socioeconomic challenge.

Many of the vendors are in communities where the collateral that they have may not be of the same value as property in other locations in the state so what they have for assets may not be comparable. She also discussed the existing landscape for access to capital breaking them out into three groups:

- RI Commerce Corporation Small Business Assistance Program
- Bank Local Community Deposit Program
- Community Development Corporations (CDCs)

Mr. Kolawole said that it is important that we know how many firms applied, how many loans are granted/ rejected and why so that we may discuss solutions.

She also discussed other community based entities that provide services and/or access to capital such as:

- BDC Capital/Goldman Sachs 10,000 Small Businesses
- Accion East
- Community Investment Corporation
- Center for Women & Enterprise
- Rhode Island Black Business Association

Ms. Keene recommended Missouri as a best practice state with respect to their Loan fund program. She explained that St. Louis Contractor Loan Fund was developed by 30 local governments, nonprofits, community advocates, financial institutions, private sector businesses and educational institutions. The program features are as follows:

- Loans up to \$1 million



- Below-market rates
- Term flexibility
- Receivable- or equipment- backed
- Technical assistance for application
- Approved loans include lines of credit, start-up cost loans, and loans for growth of established contractors

She stated that 11 loans (\$2.8 million) were approved and 8 loans (\$1.5 million) closed in 2016.

Eligibility Determinations:

- Made on a case by case basis, permitting access to credit for broad range of customers
- Applicants with credit issues, including a history of bankruptcy, other derogatory credit history, or prior negative legal actions are still eligible to participate

Business Assistance Programs Provided Regarding:

- Financial Capacity
- Ability to Estimate
- Project Management Skills
- Business Development
- Contract / Legal Literacy

She suggested that the committee consider recommending the establishment of a private-public partnership loan fund for certified M/WBE construction firms in Rhode Island, modeled after the St. Louis Contractor Loan Fund, including business development and financial management components.

Mr. Cortez said that he doesn't want the committee to lose sight of tying the source of capital from financing the project to the source of capital for the business enterprise we are trying to develop.

**Mentor-Protégé Programs and Joint Ventures** – Ms. Keene explained that mentor protégé and joint venture programs administered by the U.S. Small business Administration both rely on federal set-asides and are not matching programs. RIDOT facilitates Disadvantaged Business Enterprise mentor protégé agreements and business development programs on its projects. She outlined the private sector mentor protégé programs for companies such as:

- Gilbane Building Company
- Suffolk Construction Company
- Turner School of Construction Management

Ms. Keene also listed several public programs in cities and states such as:

- New York
- NJ
- Florida
- Chicago
- Denver

She suggested that the committee consider working with large prime vendors, such as Cardi Corporation, Gilbane Building Company, Dimeo Construction Co., and Suffolk Construction Co., and others, in order to establish a Rhode Island based mentor- protégé program for construction M/WBEs. Also that the committee consider developing an educational component on joint ventures for construction M/WBEs in Rhode Island.

**Minority Participation in Apprenticeship Programs** – Mr. Fontes began his presentation by defining apprenticeship and outlining the process in Rhode Island. He explained that



apprenticeship is governed by federal and state law. He discussed structure of apprenticeship being set up by sponsors that may come in the form of joint employer relationships, joint employer relationships with labor groups and also individual employers. The apprentices receive paid on the job training but that there are a number of requirements that need to be met to qualify.

Ms. Burrell asked if there were any restrictions for individuals who may have a criminal record.

Mr. Cortez answered by stating that it is at the sponsor's discretion.

Mr. Fontes continued his presentation on the apprenticeship program standards that are completed and sent to the State registration agency office which would then go to the State apprenticeship council for review and approval. He also mentioned the Affirmative Action Plan requirements (AAP) stated that prior to 2003 apprenticeship programs required AAPs to insure that discrimination would not occur within the programs. Recently regulations have changed to require all sponsors to have an AAP. They must outline their outreach efforts, provide an underutilization analysis, establish goals and any good faith efforts they use to ensure that minorities are participating. Mr. Fontes also discussed pre-apprenticeship programs which are designed to prepare individuals for entering registered apprenticeships programs. The program should have a documented partnership with a registered apprenticeship program sponsor and some entity that will perform the training.

Ms. Peguero mentioned some of the benefits the apprenticeship program provides to the community and the individual. Mr. Ruiz presented his research on the best practice state identified as New York. They suggested the committee think about how we reach out to the minority community and increase minority participation in the apprenticeship program.

Mr. Cortez suggested that the committee also look into the State of Washington.

XIII. Comments and Announcements

None identified

XIV. Adjournment

Meeting adjourned at 3:58 p.m. by Mr. Sinnott