

Capital Reporting Company
Community Meeting 06-16-2010

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WASHINGTON SUBURBAN SANITATION COMMISSION

Disparity Study

Montgomery Community College - Student Center

51 Manakee Street, Room 222

Rockville, Maryland 20850

Wednesday, June 16, 2010

6:00 p.m.

Reported by Gervel A. Watts - Capital Reporting Company

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A P P E A R A N C E S

SPEAKERS:

- Jim Neustadt
- Jerry Johnson
- Dr. Eleanor Ramsey
- Edward Norton

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1 P R O C E E D I N G S

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3 MR. NEUSTADT: Good evening. We're going to
4 begin now. There are some people who are still
5 missing, so they will come in as the presentation goes
6 on.

7 My name is Jim Neustadt. I'm the director of
8 communication, community relations at WSSC; and it is
9 my pleasure to welcome you here this evening, on behalf
10 of the Commission. Our goal tonight it convey to you
11 the specific purpose, the methodology, and the schedule
12 of the disparity study project that is currently
13 underway. This meeting will go on to approximately
14 8:00 tonight. We have a lot of ample time at the end
15 of the presentation for our speakers to respond to
16 questions and answers, specific to this disparity
17 study.

18 So in the interest of time, we ask that you
19 hold your questions until we have reached that portion
20 of the agenda. At that time, we will answer as many
21 questions as possible about the disparity study. If
22 you are here to discuss some other issue about WSSC, we

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1 ask that you talk with some of the WSSC SLMBE staff at
2 the back of the room. If they cannot answer right
3 away, we have also provided a form that's in your
4 packet to write down your questions. Please give your
5 form to one of the representatives in the SLMBE office,
6 as you exit the meeting, for follow-up responses, which
7 we will post on our website.

8 We will continue to provide updates about the
9 disparity study on the Commission's website at
10 wsscwater.com, and so please check that site
11 frequently. Before we continue, there are a couple of
12 people I would like to acknowledge, here there evening.
13 First of all, I notice that Delegate Herman Taylor is
14 in the room. Welcome.

15 MR. TAYLOR: Thank you.

16 (Audience applauds.)

17 MR. NEUSTADT: Speaking of elected officials,
18 this is Election Day at WSSC, so we have here this
19 evening the newly elected vice chair of the commission;
20 that's Dr. Roscoe Moore.

21 (Audience applauds.)

22 MR. NEUSTADT: We have the outgoing chair,

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1 Gene Counihan.

2 (Audience applauds.)

3 MR. NEUSTADT: And I believe I saw
4 Commissioner Mandell sneak in a few moments ago.

5 (Audience applauds.)

6 MR. NEUSTADT: Now I would like to introduce
7 Mr. Jerry Johnson. Mr. Johnson serves as general
8 manager and CEO of the Washington Suburban Sanitary
9 Commission. And prior to his appointment as GM for the
10 Commission, he served as the general manager of the
11 District of Columbia Water and Sewer Authority for 12
12 years, which as of today, is D.C. Water, I believe. He
13 guided D.C. WASA to an unrated -- from an unrated
14 agency to one with an A+ credit rating in just two
15 years, and we are happy to have him here tonight, as
16 well as at WSSC.

17 Mr. Johnson?

18 (Audience applauds.)

19 MR. JOHNSON: Thank you very much, Jim. I
20 appreciate the introduction, and I appreciate all of
21 you for being here this evening for this very important
22 kick-off event. This will be the second public meeting

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1 regarding this issue that's being held. The first
2 presentation was done before the commission, in advance
3 of the election, while Mr. Counihan was actually still
4 chairman. And I think it was well-received, and we
5 hope that the same will be the case this evening.
6 Because this is something that is very important to the
7 organization, we've also -- I'd like to pick up on a
8 couple of points from Jim.

9 We have a number of senior staff from WSSC
10 here this evening, to include, our deputy general
11 manager, Teresa Daniels; our director of personnel,
12 director of acquisitions, our director of the LSDBE
13 office; our chief engineer, our director of logistics,
14 and the program manager for this particular study, who
15 is sitting in the back of the room.

16 So we do think that this is something that's
17 critically important to the organization, and it's part
18 of the very vain of what we do at WSSC. Fairness and
19 fair play has to be one of the mantras of the
20 organization; and the way that we get there is through
21 this study that we're about to undertake, and we're
22 going to tell you a bit about that this evening. I

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1 also recognize in the back of the room, Mr. Sterling
2 Crocket. Did I see him? I thought he was back there.

3 MALE SPEAKER: He was.

4 MR. JOHNSON: Well, when he comes back in, let
5 him know he's been introduced. Mr. Crocket is the
6 president of the Montgomery -- or chairman of the
7 Montgomery County Chamber of Commerce, and we're real
8 pleased to have him here tonight.

9 Why is the commission conducting a disparity
10 study? The study will evaluate how well the
11 commission's current procurement practices promote
12 equal opportunity in the award of contracts. It will
13 evaluate the business market in this region, and
14 determine if a statistical disparity exists in awarding
15 commission contracts to women-owned and minority-owned
16 firms, relative to the availability of such firms in
17 the marketplace.

18 Now, that's in a nutshell of what the
19 disparity study is about. And it is a prerequisite,
20 and a predicate, as you'll understand from the
21 presentation as it goes on, to creation or the
22 development of any kind of program, to right any wrongs

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1 that might be followed as a part of doing that review.

2 On November 30th, the commission voted to
3 extend the interim minority business program through
4 April 30, 2001. That's significant because that sets
5 the timeframe for when we want to complete this study
6 and move on to another opportunity to develop a program
7 at WASA -- or WSSC. I'm trying to pronounce words that
8 don't even exist anymore. They've changed the name of
9 the organization, and I'm still blurting it out here.
10 But after 12 years of living with that name, you have
11 to make a transition. So if I happen to let the words
12 WASA slip out at some point, just waive your hand, or
13 put your thumb on your nose or something and we'll
14 continue to move on.

15 This action, I think, demonstrates the
16 commitment of the commission in the creation and
17 stimulation of the local economy, by increasing
18 contract opportunities for minority-owned and women-
19 owned business enterprises. The commission is equally
20 committed to fair and best in class procurement
21 practices at the same time. Our commitment requires
22 serving the public interest demands that the commission

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1 ensure that the completion of the comprehensive
2 disparity study -- that we will hold ourselves
3 accountable for its findings, and the recommendations.

4 This is Commissioner Jones on the telephone.
5 He told me that he was going to be over here, so I kept
6 my phone on, waiting to get his call. Now I can turn
7 it off. Thank you for your patience. If you have any
8 electronic devices in your pockets, please put them on
9 vibrate.

10 The commission has embraced three core values,
11 as it relates to this study: cooperation, transparency
12 and accountability, which all characterize the conduct
13 of the study. These core values are the foundation
14 upon which the commission will engage and integrate the
15 business community, the WSSC management, and our
16 disparity consultants in this process and partnership.
17 And I emphasize partnerships.

18 The commission issued a request for proposals
19 for a disparity study during the fall of 2009. It was
20 an evaluative proposal process. There were five firms
21 which submitted proposals; three were invited again for
22 interviews. Through that interview process, both

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1 commission staff, as well as representatives from
2 Montgomery and Prince George's commissioners,
3 participated in the evaluation and the selection
4 process. Before I introduce the representative from
5 Mason Tillman & Associates, who was the firm that was
6 selected, I want to emphasize that the purpose of this
7 community meeting is to strictly discuss the disparity
8 study, its methodology, the specific purpose and
9 schedule. With time provided, we want to ensure that
10 we are able to address questions regarding the
11 disparity study, and possible ways to get involved in
12 the process.

13 Now, we do have staff available from the SLMBE
14 office, and other senior staff available here as well,
15 to answer any questions that you might have about any
16 specific concerns about other business related to WSSC.
17 However, we want to try to reserve this time for this
18 discussion. Mason Tillman is a nationally recognized
19 consultant on disparity issues. The firm has a long
20 history of designing and executing disparity studies
21 since 1990. Mason Tillman's statistical model has been
22 utilized in 108 disparity studies, which has resulted

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1 in sound findings, upon which public policy have been
2 formulated, and none of which have been legally
3 challenged.

4 So I am now pleased to introduce to you, Dr.
5 Eleanor Mason-Ramsey, president of Mason Tillman.

6 (Audience applauds.)

7 DR. RAMSEY: Thank you, Mr. Johnson. I'd like
8 to take this opportunity to personally thank you for
9 coming today. For those of you who are entrepreneurs,
10 I know you have about another three hours on your day,
11 and you think, in the course of that, you would make
12 some money. So the fact that you have chosen to come
13 and participate with us, I recognize as a significant
14 sacrifice. So I trust that this evening will provide
15 you with some useful information about the study we've
16 been engaged to perform. And that we will leave this
17 room as partners in this endeavor. Our success, as a
18 firm, and our partnership with the commission is only
19 as good as our ability to forage a partnership with
20 you, as the business community.

21 So with that, I would like to begin. In so
22 doing, I want to introduce you to Edward Norton, who is

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1 our legal advisor. And in the course of this
2 discussion, he will be sharing with you his insights
3 and overview of what the case law is because it is as a
4 result of his insights and legal acumen that we have
5 been able to perform 108 studies, and have 85 percent
6 of those studies actually result in a local government
7 putting in place a race-based program, and to have none
8 of those programs, or the study upon which there based,
9 challenged. And so we owe a great debt to him because
10 of his insight. He'd like to say his training, but I
11 won't go there.

12 With that, I want to take these moments that
13 have been allotted to me to talk about the staff that
14 has come to do this study, to explain the study's
15 purpose, and, as I say, I really hope that I'll be
16 successful in foraging with you a partnership. And
17 also to use the latter part of the evening -- and I
18 recognize we need to leave a significant portion of
19 that available for you to ask questions about study
20 process, and to share with us your insights. From you,
21 we can learn a lot to help us better understand the
22 marketplace in which the study is being conducted.

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1 Since I have the mic, I want to tell you a
2 little about our firm. Forgive me, I'll allow you to
3 introduce your firm if you ask a question, as long as
4 you let me tell you about mine. Mason Tillman is a
5 company that I established in 1978, and it is engaged
6 in public policy research. This particular commission
7 is very consistent with the work that we do. Our
8 approach to public policy is to give our clients a
9 working document; a document that they can use in a
10 very meaningful way.

11 As I talk about the study, hopefully I'll be
12 able to successfully convey to you the nature of this
13 product that we will produce throughout these months
14 that follow. But also, what is very important to us is
15 corporate communication. We think that government
16 deserves to have its information conveyed to its
17 constituents, in a very meaningful, attractive and
18 helpful manner. And so our study is also written in
19 such a way that it could be understood by the lay
20 public and effectively used as a tool by those members
21 of the commission that will be charged with carrying
22 out those recommendations, as they are agreed to by the

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1 commission.

2 So the work that we have done in the arena of
3 the disparity studies, as Ed [sic] had indicated, we've
4 been -- as the general manager has indicated. We've
5 done 108 of those studies, and we worked in a number of
6 districts dealing with both clean water and sanitary
7 systems; but we have also worked for counties. We
8 happen to work here for Baltimore County, a number of
9 years ago, and we worked for cities. The largest, I
10 suppose, of our clients, was the City of New York,
11 which absorbs about the greater part of any other
12 portion of the country. So we studied a number of
13 very, very large contracts in that study. So we've
14 handled a considerable amount of date. The most
15 important benefit that we've derived from this work is
16 that we have come to understand fairly well how the
17 government works, and also special districts like the
18 commission. You really need to understand the workings
19 of the procurement process to be able to effectively do
20 this work. So we bring that insight, and we bring a
21 number of years, at this point, over 20 years of
22 experience doing this work. So we have a lot of desk

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1 management practices that we have gleaned over the
2 years, and it's those practices that we hope that we'll
3 be able to leave with our report, and that they will
4 result in greater access for contracting for you. And
5 most importantly, when you do get the contract, it'll
6 be profitable.

7 With that, our staff that have been assigned
8 to this project have all had extensive experience.
9 This is not the kind of work that you do OJT; so we
10 bring you an experienced staff to that. Additionally,
11 we have on our staff a group of professionals who
12 represent the community of which we are part. We're
13 based in Oakland, California, which is a very diverse
14 community, as is the state of which we are part; and
15 our staff reflects that diversity. And that is as
16 important to us as the work that we do.

17 We also are very fortunate that we have a
18 number of local professional staff who have agreed to
19 be our partners. It's a compliment when you come into
20 a community and identify professionals who say they
21 want to be part of your team, and in so doing, that
22 they bring to you that extra skill that you need in

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1 order to carry out your work, as well as bring you a
2 local presence. Sheila at SRB is here before us.
3 Wayne is in the back. If you guys might stand up? Is
4 Mr. Boykin here? I haven't seen him. And VJ is not
5 present, but these are two of our four consultants, and
6 we're very lucky to have them as a part of this.

7 (Audience applauds.)

8 DR. RAMSEY: I suppose in the course of the
9 last few weeks, you've heard from each of them, maybe
10 more times than your e-mail can manage, but think of us
11 kindly when you go to clean the e-mails that have been
12 sent to you by my team over the last few weeks.

13 To the study objectives, this study is driven
14 by a decision that the Supreme Court made on the 23rd
15 of January 1989. When that historic decision was
16 issued by the U.S. Supreme Court, it changed the
17 landscape, as it affects the manner in which local
18 governments can offer benefits to their local community
19 of businesses owned by people of color. It's notable
20 that that decision, which was a decision resulting from
21 contracting activities in Richmond, Virginia, where our
22 general manager cut his teeth, that decision involved a

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1 program that was a minority business program. It did
2 not include women in the City of Richmond's program.
3 So the court did not review the standard for
4 implementing a program that gave a special
5 consideration to women. But this agency, as all of our
6 other client, have elected to study the actual use of
7 available women in performing a disparity study;
8 although, the legal standard does not require that they
9 had a statistical disparity in order for a program to
10 be put in place. With those objectives set forth by
11 the court, the challenge for us has been to, in fact,
12 determine if a statistical disparity exists for the use
13 of willing and able business. And that is what we have
14 to do. One of the reasons that this meeting is so
15 important, and the outreach that was done for this
16 meeting, is because we have an obligation to identify
17 all of the businesses, certainly in the two counties,
18 that are willing and able to business with the
19 commissioner, and that is a fairly daunting task. In a
20 moment, I'll share with you some statistics on your
21 community, which you may be familiar with, to show you
22 just how challenging it is when such a significant

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1 number -- percentage and number of business in a
2 community are really working virtually, as opposed to
3 in a formal office, in some location. But that is the
4 nature of the business structure in the country,
5 increasingly.

6 So that is our challenge; to determine willing
7 and able, and to make an assessment as to whether or
8 not there's a disparity. There's also a requirement,
9 legally, to ascertain if there are any practices that
10 the commission is engaged in that might affect any
11 statistical disparity. Are there procurement
12 activities that are being carried out by the commission
13 that might have resulted in any number that we might
14 discover that shows that there's uneven (inaudible).

15 What are the practices? How are procurement
16 contracts advertised? How are they bundled? How are
17 they paid for? How do they manage the relationship
18 between the client and the commission?

19 All of those would be of a race-neutral nature
20 that we need to look at. So that's going to be one of
21 the things that we must do. And the document that we
22 prepare will be a legally defensible document. There

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1 are challenges that have to be addressed when doing
2 this work. When you're working in a community as
3 diverse as this one, it is absolutely essential that we
4 identify all businesses that may be willing and able.
5 And part of understanding that is to understand the
6 nature of the contracting. It's quite well-known that
7 contracts that are awarded by the commission are large,
8 but it's for us to find out what the size is of the
9 average contract, and what the range of sizes are. So
10 that's going to be undertaken as part of this study.

11 And then we have to secure from the commission
12 all of their prime contracts awards, and indeed, we
13 have to identify all of the subcontractors used by
14 those primes. And that's a particular challenge here,
15 as it has been all across the country is because rarely
16 do the agencies know much more than the subcontractors
17 that meet their requirements, whether it's a small
18 business requirement, local business requirement, or a
19 minority and women business requirement. Whatever
20 those requirements are, those contractors are tracked,
21 and the other contractors who fall outside of those
22 provisions, tend not to show, but we must find them

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1 and, collectively, we can do that.

2 We also have to offer some desk management
3 practices that can, in fact, affect the way contracting
4 is done. In the mode of a management audit, our work
5 product would be helpful in that regard. So let's talk
6 just a moment about the legal standard that is the
7 unpinning for the work that we are doing, and then I'll
8 talk a bit more about the actual methodology that we're
9 going implore.

10 MR. NORTON: Thank you, Dr. Ramsey. First, a
11 little bit about my background. I have been directly
12 involved in minority business contracting since 1979
13 when I became general counsel of the United States
14 Small Business Administration. At that time, we were
15 faced with the recent Supreme Court decision, which had
16 to do with the 8A program, which was based on social
17 and economic disadvantage. But it was clear from the
18 court, at least my reading of that opinion, that we had
19 to make sure that the definition of social and economic
20 disadvantage was not racially exclusive. As a result,
21 we came up, the SBA, with regulations that enabled
22 people who could themselves, individually, could show

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1 social and economic disadvantage; that they could
2 become members of the program; and those regulations
3 are much more relaxed legal standard that subsequently
4 came into play, and continues in substantial part until
5 now.

6 In any case, moving on from 1979, in 1988, I
7 was retained by the New York State Metropolitan
8 Transportation Authority, whose program was under legal
9 challenge, to see whether or not the way in which they
10 were using race would meet developing constitutional
11 standards. It was clear to me that the way the law was
12 developing that this no longer could be a matter of
13 political compromise, righting historic wrongs; it was
14 going to be a fact-driven inquiry. There were three
15 basic principles: there had to be a compelling purpose
16 that any remedy based on the findings of systemic
17 racial discrimination had to be narrowly tailored, and
18 it had to be updated, periodically. This last point
19 about it being updated periodically is to emphasize the
20 importance of facts, current facts, and that's the
21 reason why we have to do a study, to find out what has
22 been going on in Prince George's and Montgomery County,

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1 in terms of who gets WSSCs contracts.

2 In 1995, the standard of strict scrutiny,
3 which was enunciated at Crowson, was applied to federal
4 contracts. So that standard, which had been a more
5 relaxed one in 1979, was elevated but it still
6 continued and was in effect for the 8A regulation.
7 Just to describe in a little bit more detail those
8 standards, systemic discrimination; what really is
9 systemic discrimination?

10 You have to find out what businesses are
11 willing and able to do the business of the
12 jurisdiction. Dr. Ramsey will go into some detail
13 about how we make that determination, but it is not
14 simply a matter of existing on the census list. We
15 have to find out if you do the work that WSSC does, and
16 then we have to look to see who's been utilized because
17 that utilization shows who received the contracting
18 opportunities that were available. And if you're going
19 to go to a race conscious remedy, that utilization has
20 to be -- under utilization to a statistically
21 significant extent. It has to also emphasize the
22 narrow tailoring aspect of the remedy. It has to be an

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1 ethnic and gender specific; you can't lump all
2 minorities together. You have to look to see what's
3 been the experience of African Americans, of Asians, of
4 Hispanics, Native Americans, to the extent that they
5 are present in this jurisdiction in any number, to see
6 whether there's this statistically significant
7 utilization. I emphasize that that has to do with a
8 remedy that is tied to race or agenda. It's our firm
9 belief that any well implemented disparity setting will
10 come up with recommendations that increase business
11 opportunities for members of all groups. And that is a
12 sure outcome of the work of which we're going to do
13 here. Any goals which would be applied to
14 subcontracts, would be based on those findings of
15 whether or not firms are available or underutilized,
16 and the extent to which they were, and then you could
17 put on those contracts goals, which would increase the
18 chance -- not the chance, but the outcome that those
19 businesses would be able to participate in the
20 contracts of the commission.

21 DR. RAMSEY: Thank you. To the study
22 elements; and this is important because it is at this

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1 point we begin to talk about the areas where our
2 partnership is going to be very important. So we must
3 collect all prime contracts that is, indeed, within the
4 purview of the commission. They have awarded those
5 contracts, and they monitor and track the contracts
6 that are awarded. That information will come from
7 them. And we must also collect all of the
8 subcontracts. We will obviously get some of those from
9 the commission because it is tracking some of those
10 contracts. Then from there, we move into an actual
11 data collection process. Part of it will involve going
12 to various files, project files, that will involve
13 going through various files, project files that the
14 commission has, in which they have letters of
15 substitution. They have communication for the kick-off
16 meetings. They have communication for the instruction,
17 start-up meetings. There would be a variety of reasons
18 why subcontractors, at different levels of the process,
19 both in terms of construction, professional services
20 and goods and services where a subcontractor will
21 emerge. And so we'll go through the records, looking
22 for that. We will also survey the prime contractors to

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1 ask them what companies they used to fulfill the
2 commission's contract. And when we have compiled the
3 data from the various sources, we will then survey the
4 subcontractors, that have been identified to ask: did
5 you work for Contractor A, and what did Contractor A
6 pay you, if indeed they kept you on the job long enough
7 to get paid. So we'll make those inquiries, and when
8 that call comes to you, the prime contractor, we really
9 need you to set aside the time and ask your bookkeeper
10 to run a report on the suppliers, the contractors, that
11 in trucking, if you're in construction, that were used
12 on a particular WSSC contract, and we will specify the
13 name of that contract, and the known amount of that
14 prime contract, to help you in identifying that data.

15 So we'll need you, the prime, to go do that
16 for us, and, ideally, just to send us a printout or an
17 Excel file from your financial accounting system. And
18 then we will need you, the subcontractor, when we
19 communicate with you and ask you, did you work on
20 Project A, to let us know. We need you to respond:
21 yes, you did. And if so, what the commitment was, and
22 what, indeed, the pay was. And if you didn't, just

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1 say, no, I never worked on that job. And then I'm sure
2 you'll ask, "Why do you ask? I didn't know I was
3 listed on that job." But that happens sometimes.
4 We'll need that interaction with you in order to do
5 that portion of it. The other level at which will
6 interact with you, in addition to identifying our
7 contractors who are willing analysis from the process
8 of the contracts that we identify, will also need to
9 come out and reach out to you and ask you -- in your
10 instance, by virtue of your being here is certainly an
11 expression of willingness, but to your colleagues who
12 we will identify from various sources, we'll have to
13 make sure they are willing to do the commission's work.
14 So it's another place of interface with the business
15 community.

16 So we will have those various forays in out of
17 your offices, electronically, by phone and by mail.
18 And the other thing we will be asking you to do is to
19 agree to be interviewed. In fact, one of the
20 conditions before leaving this evening, is to complete
21 the survey in your packet, and I would ask you to
22 affirm your willingness to be interviewed, but that is

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1 another part of your time or reason that we need to
2 turn to you to ask you to give us some of your time.
3 Just to help keep in focus the time period that we are
4 studying and the years that we would be asking you to
5 identify your subcontractors, if you're been a prime,
6 or if you have subbed out of prime contracts that you
7 worked on, this study will cover the fiscals years 2004
8 through 2009, and it's that group of contracts that we
9 will be making inquiry about from you, prime, and sub.

10 We will be looking at, essentially, all of the
11 contracts awarded by the commission "for profit"
12 entities. So we're looking at goods and general
13 services, professional services, non-architectural and
14 engineering, and architectural, engineering services
15 and construction. So it's the full range of spend of
16 the commission.

17 To compile that data and to ensure that we
18 have sufficient data to do our analysis, we have a
19 process, and it begins with a prime contract records
20 that will be provided to us, by the commission, for
21 each of those prime contracts. Once we have that
22 information, we can begin to look for the subs. And we

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1 want to ensure that every prime contract is unique.
2 That we're not counting contracts twice, and that if
3 it's a purchase order or blanket order where many
4 purchases are issued against it, we want to make sure
5 we're not counting the value of the blanket, as well as
6 the value of the individual purchase order. So that
7 take a little craft to make sure that we are talking in
8 every instance and analyzing in every instance, a
9 unique contract. And we have to ensure that we
10 classify the contracts in the correct industry; so that
11 takes a level of effort to do that. And we will then
12 have to confirm ethnicity and gender. Some of those
13 firms will be confirmed because we will be able to find
14 them on a certified list where a verification has been
15 done by another entity. Other firms, we will have to
16 contact them, and we usually start with the internet to
17 see if we can find the company profile, what you say
18 about your company's ownership. And if that doesn't
19 yield a definitive response, then we have to contact
20 the business, another interface with you to ensure that
21 the ethnicity agenda, signed to the contract that you
22 received, either a sub or a prime, is active. We want

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1 to make sure that our data is accurate, and again, we
2 need you to welcome us into your office and respond to
3 our inquiry. We will, as I noted a moment ago, also
4 survey subcontractors to verify the opinion.

5 Finding these subcontractors is daunting, to
6 say the least. And so we have a number of techniques
7 that we've developed. We're always looking for other
8 ways of finding this community of people called
9 subcontractors. When I use the term "subcontractors"
10 it's in the loose sense; I'm talking about sub-
11 consultants as well. We're looking at bids, proposals,
12 statements of qualifications, and certainly, on the
13 professional side, one of the ways you show how great
14 you are and how much capacity you have is to bring your
15 sub-consultants and name them. So we often get some
16 insights on the sub-consultants from the professional
17 side because they often appear in the proposals, but in
18 no way are we naive enough to believe that they're all
19 revealed because the other way of saying that you're
20 great is to not identify anyone to do the task but your
21 own firm. So we know that it can yield, in some
22 instances, useful information, and other instances not.

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1 So it's just one of several tools that we use.

2 Invoices; to the extent that project managers are
3 requiring the identification of the firm that performs
4 the work, in addition to the prime, that can be useful.
5 Close-out documents are also useful; utilization
6 reports, which are a requirement of the commission,
7 offers, yet some more insight. And then we move down
8 to the nuts and bolts where we're talking about looking
9 at project files of the managing contract, through a
10 contract manager, to find out exactly what they knew
11 about the project that they were managing. So all of
12 that occurs, and as I indicated earlier, we also survey
13 the prime, seeking to find, yet some more subs; and
14 finally, ask the subcontractors, as indentified to
15 verify that their participation is as recorded in the
16 various source documents that we will use.

17 Once we have identified our primes, we've
18 identified our subs, we have to start pursuing our
19 available firms. I refer to the availability source as
20 the Achilles heel because many of the -- the majority
21 of the lawsuits that have effectively resulted in the
22 suspension of MWBE programs have been based on the fact

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1 that the consultant failed to define availability,
2 willing and able, as the court has specified in that
3 decision on the 23rd of January 1989. So what becomes
4 very important in this process is to be very careful in
5 the way you define, and secure, and identify and
6 enumerate available businesses. The obvious source of
7 businesses available and able, are those businesses who
8 bid successfully: won a contract. Another source of
9 those who bid but were not successful, but were able to
10 put the package together and meet the bonding
11 requirement. So that's a second and very critical
12 source for the enumeration of available businesses.
13 And the third are those businesses, what for
14 information, about the opportunity, or but for the
15 perception that they could be successful if they
16 mustered up their resources to submit a bid, and that
17 becomes the group of what we call potential bidders.
18 Those are the firms that we need to get out and
19 identify. And we will be asking you in that survey
20 that's before you, if you are a member of any
21 organization because organization are one place that we
22 can turn to, to find businesses that are potential

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1 bidders. And we can presume, if you're not on a
2 government list, if you're not certified with Maryland
3 Department of Transportation, or certified with some
4 other public entity, that you are willing. So if we
5 don't get your name because you have bid successfully
6 or unsuccessfully, or that you're certified with local
7 certification, small business certification, minority
8 business certification, if you don't come from one of
9 the sources that is generated by government, then we
10 have to survey the business because we must confirm
11 that business identified from a non-governmental source
12 is indeed willing to do business with the commission
13 because we have to meet the willing standards. So we
14 engage in that, and if you provide us with your
15 membership list or give us lead to how we can secure
16 it, in any business there that you meet that we don't
17 have from any of our other sources, they will be
18 surveyed, and the question asked is: are you willing
19 to do business with the commission? Not have you, but
20 are you willing to do so?

21 So again, we need an affirmative answer if,
22 indeed, the business might be willing. And we will

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1 need your colleagues to assist us. Your presence
2 today, whether you have done business with the
3 commission or have been certified with the government,
4 is clear proof that you are willing. You gave up these
5 two hours and the transportation time from the
6 opportunity to make some money. So I think your
7 presence is certainly an affirmation of your
8 willingness, but we need to check that for others.

9 When we find these businesses, the issue that
10 we have to address is the capacity. And that, too, is
11 one of those areas of the law that has been
12 misunderstood. So our approach to determining capacity
13 is to look first at our pool; to look at our contracts
14 to see what capacity is needed to do the contracts.
15 And we cannot and do not presume that because what's
16 visible and most well-known are very large contracts.
17 Most agencies have a lot of smaller contracts. When
18 we've done state studies, on the average, somewhere
19 between 50 and 60 percent of that state, state spend is
20 under \$50,000. I don't know what the commission's
21 spend will be, but I do know it is commonly the case
22 with government that a very significant number of

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1 transactions, contracts are small; although the dollars
2 tend to be in number of very large contracts. But that
3 is for us to determine; that tells us something about
4 what capacity is needed for most contracts, not for all
5 contracts.

6 We will also look at our pool of available
7 businesses to determine the largest contract that
8 minorities and women receive that will also tell us
9 about the capacity in our pool. And then at the end,
10 when we have done that type of analysis, we have to do
11 the statistical analysis, in which we compare the
12 utilization with availability. And at that point, we
13 will cap the size of our prime contracts at the level
14 where there is clear evidence that there is capacity in
15 our pool. But when we do our subcontracting analysis,
16 we do not cap it because the issue of capacity takes on
17 a different meaning, according to the courts, because
18 it is general contractor who determines whether a sub
19 has a capacity. The general contractor chooses and
20 picks, based on their interest, which may have to do
21 with capacity, or it may be a company that's totally
22 new and out the business, but they wish to do business

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1 with them. So it's a different standard that the court
2 has used to make subcontracting decisions, as opposed
3 to prime contracts. But in any event, we will look at
4 both of those and we will handle availability in a very
5 careful way.

6 Take into consideration something that you may
7 be quite familiar with, or you may, as I have been for
8 many years, begin to look at these statistics, thinking
9 that it is a small business with fewer than 20
10 employers that I was sort of a novel; certainly, a
11 pimple in the scheme of things, but not a novel pimple.
12 There are a lot of pimples out there that have fewer
13 than 20 employees.

14 In fact, it is clearly the trend in this
15 country that businesses are small business, and they
16 are getting to be smaller. And you can now have a
17 virtual office with no rent, aside from your house
18 note, and you can make a lot of money if you've got
19 your internet system worked out and your applications.
20 You can order from your living room and have it shipped
21 and come in by a container and deliver it to your
22 client and they'll never know anything other than where

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1 to send your bill -- your check.

2 So the way of doing business has changed,
3 tremendously. And, as you well know, even at the
4 professional service level, been very surprised the
5 number of architects and engineers who are sitting in
6 their living room on their computer doing the drawings
7 that their clients require, and but for a meeting,
8 never put a suit on. So it's a different world, and
9 that's a world that we have to be sensitive to, so
10 never too small to do the work. It is our obligation
11 to find the too small and to find all of the others;
12 that is our commitment. Again, you can help us in that
13 endeavor because you know colleagues, you're members of
14 organizations, and we need to get that count. Just
15 bear in mind, look to your left and your right,
16 everybody is in the same boot, and the boot is very
17 small, but it can be very efficient. That is the
18 nature of this analysis, and one of the challenges in
19 doing this work.

20 So we are looking out there for this willing
21 and able businesses, and keep in mind, we will be
22 coming to you and to your colleagues, and we need you

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1 to assist us, but we have a number of strategies.
2 Chambers can be very helpful, if we can get their list.
3 Trade associations can be very helpful, and we know
4 that organizations are increasingly more protective of
5 their membership list, as they should be, but this is
6 one of those situations where we need the information
7 and we can work with an organization that says we won't
8 relinquish our list, but we will give you a survey; ask
9 you to have your organization mail it to its members:
10 E-mail it. You can use the snail, but you can do a lot
11 these days without paper, and ask those members to
12 return that information to us because that counts and
13 we want to make sure we get a fair account, and also
14 respect the propriety nature of any source that may be
15 available.

16 As I've indicated, we're going to take this
17 data that we are going to get from businesses, bidders
18 who are unsuccessful, the potential, and we're going to
19 look at it in these three way by comparing allies and
20 size of contracts; allies in the largest awards that
21 minorities and women receive, and then put a cap on the
22 size of the prime contracts, so that when we perform

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1 the analysis, there will be no question about the
2 capacity of the business in that pool to be a prime
3 contractor.

4 Once the utilization, the contracts are
5 identified, the available pool has been defined, then
6 the court said that we have to do an analysis in which
7 we compare the use of the -- identify the pool and
8 compare the percent of businesses awarded contracts to
9 the percent of businesses available. This is a
10 hypothetical. This is city USA, and there's no place
11 in particular, but it's used to illustrate to you this
12 model that we're using, as it's been defined by the
13 court. So in our hypothetical, we have the dollars
14 that this particular agency spent, and then we have a
15 pool of businesses that are defined as available, and
16 30 percent of this pool of hypothetical businesses were
17 minority businesses. In its most simplistic form, the
18 court said that 30 percent of the spend, of my
19 hypothetical community, should have gone to minority
20 businesses. If less than 30 percent was spent, and
21 that underutilization was significantly significant,
22 that a conclusion can be drawn that there is

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1 discrimination at play in the market, and then, and
2 only then does the agency have the legal authority to
3 put in place a minority business program. And that, in
4 its most simplistic form is what we're working with in
5 conducting this study.

6 The third leg of a disparity study; we have
7 the utilization side: the contracts awarded. The
8 availability side: businesses that are willing and
9 able, and then the third leg is the anecdotal. And the
10 anecdotal are those accounts of the business community
11 of their perception of doing business with the
12 commission and doing business in these two counties.
13 What the business is. Have they experienced? What do
14 they receive, and how do they explain what those
15 experiences have been. And the court says that it is
16 an opportunity to find out how businesses feel about
17 the contracting process. It's also an excellent
18 opportunity to get recommendations for modifications
19 and changes in the basic procurement process; general
20 issues about size of contracts, notification,
21 composition of selection panels, requirements,
22 prequalification, specifications, payment. All those

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1 issues can be examined in this context. And so I hope
2 that you will strongly consider allowing us to
3 interview you, and you will go to page 1 of this
4 survey, and you will so note that are willing and able
5 to be interviewed, and give us an opportunity to get
6 your perspective on what it's like to do business, and
7 to take this opportunity to share with the commission,
8 your recommendations for a modified method of doing
9 contracts.

10 So with that, I'd like to go forward and just
11 talk a moment about the anecdotal component of this
12 analysis because it is one that is intimately involved
13 with you, as business owners, and to give you an
14 appreciation for the kinds of issues that have come up
15 in our other studies. We do not have a handle or any
16 knowledge on what the characteristic is of the
17 experiences that you or others have had, or what it's
18 like doing business with the commission. But I just
19 want to give you something to think about, as you think
20 about your willingness to affirm your willingness to
21 talk with us through an interview. That interview will
22 be done by phone. It averages an hour to an hour and a

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1 half, and if you feel you need more of our ears than an
2 hour and a half, our people will be available to talk
3 to you at your leisure. And we will do it at a time
4 that's appropriate, and fits for you. I'm just talking
5 in some general terms about the kinds of anecdotal
6 findings that we have observed in our research over
7 these 20-odd years, is that we find, in some
8 communities, there is still gender stereotyping, and
9 they're still harassment.

10 My experience that still sticks most vividly
11 in my mind is a woman who was talking to us and was
12 greatly strained as she was relaying the story of going
13 out to her construction job site to supervise her
14 employees, and went in to use the portable john. She
15 felt it moving, and at some point, she decided she had
16 to determine why it was moving, and realized that
17 Cherry Pickett had lifted it up, and there she was
18 hovering over her employees. It didn't make for a very
19 significant sense of her being in charge. But those
20 are realities that are still in some marketplaces. I
21 have no knowledge as to what's here, but it's the kind
22 of thing that you want to think about, if indeed there

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1 is that; and if you have recommendations to address
2 that.

3 Securing financing and credit; I suppose all
4 of America, even BP may be challenged with that fact
5 today, but that is a reality for small business, and
6 it's something that you need to think about of what
7 those experiences have been, and how, as a contractor,
8 your access to credit and financing could be
9 facilitated, if indeed you think that is an area --
10 many businesses have ideas as to how those processes
11 can be improved. And a number of our clients have
12 gotten very innovative, even to doing weekly pay for
13 invoices in order to accommodate the nature of their
14 business community. Anecdotal findings that also
15 identify areas that public agencies have been involved
16 in; information about a contract sufficient for you to
17 prepare a competitive bid has been identified by some
18 as problematic. Lead time for the bid; is that bid
19 that comes out with five to seven days, does that mean
20 staff just hasn't gotten around to it, or did they
21 realize that they needed a little competition in order
22 to select the company of choice?

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1 So those are issues that you may have some
2 observations on. They certainly are issues that appear
3 in other jurisdictions. Payment is sort of a nation
4 phenomenon that few agencies have effectively worked
5 out. Again, it may be an issue that could be shared,
6 or something we're talking about here, from an
7 anecdotal standpoint. Also, prime contractors and
8 suppliers; there are issues in many communities about
9 those questions. And bid shopping is still very much
10 the case in some communities, particularly in
11 construction. The prime contractor receives the
12 contract, and in some jurisdictions, once he has
13 secured his contract, he then decides what it's going
14 to cost to put the paving for the concrete for the
15 paving and he calls up some subs and says I've got
16 \$10,000. Will you do it for ten? Even though he knows
17 it costs \$15,000 to do the job. Depending on how short
18 your payroll is, some companies say we'll try it. But
19 I don't know, again, whether that is an issue.
20 Substitution is still a national problem, after bid
21 award contractors do not get to do the scope of work,
22 either as defined, or they don't get to do it at all.

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1 And companies are still talking about the manner in
2 which standards are applied. They're digging a hole,
3 and they dig it in the wrong location, and the
4 inspectors and the contractors observe it being dug,
5 but the next day they tell them they have to fill it
6 because it's in the wrong place, when it was known at
7 the time that it was in the wrong place.

8 Again, those are some of the things that may
9 be part of what you know, part of what you experience,
10 and if not, there are also the exemplary experiences
11 that come out in every disparity study of how the
12 various offices or an individual in an agency has been
13 extraordinarily helpful; has made contract information
14 accessible; has made the contract profitable; has
15 helped the company through difficult times, and has
16 helped them to understand and navigate what the agency
17 requires.

18 At this point, what I want to do is once again
19 ask you if you will assist us in helping us to identify
20 people who will interview with us, to help us in
21 compiling the list of businesses willing and able.
22 And, as you know, current business owners that we

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1 should be counting, if you will let us know of their
2 existence, and we will reach out to them. Retired
3 business owners who have a story to tell; certainly,
4 another category of business that we'd like to
5 interview, as long as they were in business sometime
6 during our study period. Also, those businesses that
7 just didn't make it, where they have become ex-business
8 owners, like to talk with them as well. We've also
9 gotten some former employees of our clients or other
10 governments who just been inside, and they've
11 understood what the process was, and they have some
12 recommendations for how that process can be improved.
13 Again, consider this a management order, and one of the
14 tools is to be able to offer up procedures, policy that
15 would affect a more profitable contracting environment,
16 and to spread the wealth in a broader way.

17 So those are all areas that I'd like you to
18 give some thought to. And I'd like, at this point, to
19 open up the evening to have you ask us your questions,
20 or tell us about your experience, and give us an
21 opportunity to understand what your interests are.
22 We're very fortunate that the general is with us. And,

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1 as he noted, we have quite a number of members of the
2 commission staff who are present, that afford us an
3 opportunity to get a broader understanding of how
4 business is done and allow you to pose questions that
5 can offer you some insight. We're always welcome to
6 take recommendations because it only enhances our
7 ability to understand the contracting process, as it
8 relates to the commission in the two counties.

9 I'd like, at this point, to ask you please, if
10 you have a question or you'd like to give us
11 information about an experience, if you would state
12 your name, your business and your organizational
13 affiliation. We do have a court transcriber here, so
14 she's going to really need to be able to capture your
15 comments. With that, I'm in your hands. We have
16 someone in the audience with a mic.

17 We have a gentleman here to the right.

18 MR. SCHRAM: Hi. My name is Schrader Schram.
19 I run a company called Schram & Associates. The first
20 comment I want to make is: will this presentation be
21 available?

22 I sit on the board of an organization called

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1 the National Minority Supplier Development Council, and
2 I think a lot of its members would appreciate that.

3 DR. RAMSEY: It's actually on the commission's
4 website. They can just go and download it, and save
5 the trees.

6 MR. SCHRAM: My next question was: on the
7 mathematical slide that you have about the 30 percent
8 in City A, B, C --

9 DR. RAMSEY: Yes.

10 MR. SCHRAM: Does it take into account --
11 because what I think is great about WSSC is that they
12 have been successful, to date, with their minority
13 business practices. So it's kind of -- so if you would
14 do that analysis at WSSC, it would show 24 percent MBE
15 availability, let's say, or 20 percent. It would show
16 actual MBE dollars, 24 percent. So it's like, "Oh,
17 everything is going great." Would that analysis show
18 that well, we don't need a program?

19 DR. RAMSEY: If the use is at parity with the
20 availability, your answer is yes, you will not have the
21 factual predicate to have a program that has goals on
22 the contracts.

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1 MR. SCHRAM: But wouldn't that be like saying
2 then, if you're sitting in a room with oxygen, and
3 we've got oxygen, and if we don't need oxygen anymore;
4 we don't need to prove that. Let's just take all the
5 oxygen out of room --

6 DR. RAMSEY: Right.

7 MR. SCHRAM: How does that play through in
8 other cities?

9 DR. RAMSEY: Well, what it plays through, as
10 it would play through in the room if you took the
11 oxygen out: the businesses die. And that is, in fact,
12 a reality. The condition we're confronted with is that
13 the court made an assumption that if put in place a
14 goal and that goal is indeed implemented by a local
15 government, it is going to correct the marketplace. In
16 fact, when it corrects, is the way that agency does
17 business, but it's not a marketplace change. And since
18 it's not a marketplace change, you take the oxygen out
19 of the room, and it dies.

20 Now, theoretically, the prime contracting
21 should not die, if indeed it did change the agency.
22 But the subcontracting decisions are driven by the

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1 agency's requirements, and I don't think there's yet a
2 community that I've been in where the marketplace has
3 actually driven the subcontractor decisions. But
4 that's a problem with the law; that's the way it was
5 written. It's for that reason that we have to examine
6 very closely what the commission is actually doing to
7 make sure that 24 percent is a comprehensive number of
8 the percent spent with minority and women
9 subcontractors, as a percent of all subcontractors.
10 And if that is in fact our reality, in your
11 hypothetical, the availability is 24 and the use is 24,
12 they will not be a factor basis for a program.

13 You, I might ask, your council has been a
14 challenge to get a list. So even if Michelle will not
15 give us a list, maybe they will distribute, with your
16 assistance, to your members, to at least ask them to
17 identify those that have an interest; if can partner
18 with you in that regard.

19 Another question? Silence cannot prevail.
20 This is not working. Maybe you're not business people;
21 maybe you're something else.

22 MR. OLEKA: My name is Napoleon Oleka.

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1 DR. RAMSEY: Company name?

2 MR. OLEKA: Company name is SAPIt Consulting.

3 At SAPIt, we do statistical analysis and programming
4 and IT support.

5 DR. RAMSEY: Do you need him to spell that for
6 you?

7 THE REPORTER: I'll ask him after.

8 DR. RAMSEY: Okay. She's going to look for
9 you. Don't leave.

10 MR. OLEKA: I'm really interested in this on a
11 personal level. Although we are coming in late, what I
12 want to say is that we will be available to -- we will
13 be willing to participate in any way you want because
14 we are really interested in seeing the outcome.

15 The second thing I want to know is the cap.
16 You mentioned something about capping the prime
17 contracting, or capping the prime, but not capping the
18 subcontractors. How does that reduce the chances for
19 reaching the goal? I didn't really understand it.

20 DR. RAMSEY: Okay. That's fairly nuance. And
21 it's nuance because the fact is, if you are seeking a
22 remedy using a race program, or a minority business

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1 program, or a gender program with a WBE program, when
2 it comes to prime contracting, you cannot impose such a
3 requirement on prime contracting. The only way you
4 could have a program that says for this contract, you
5 have to get a minority business prime, is that you
6 would have to limit the competition to minority
7 businesses.

8 When it's a subcontracting goal, you say that
9 anyone can bid, and all those who bid, they must meet a
10 certain percent of their subcontracting with minority
11 businesses. The court will not allow you to have what
12 they call a preference program, where the other bidders
13 are from a particular group. So that when you do these
14 studies, there is no remedy for prime contracting,
15 except on informal contracts. Informal contracts that
16 do not have to be advertised, then there are ways that
17 you can take the study findings and bring about greater
18 equity, if indeed there's a disparity for those
19 contracts that are not advertised. Since you cannot
20 have a remedy for prime contracts, there is little
21 value in doing an analysis of all, and in most
22 entities, you analyze all prime contracting. They are

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1 very, very large, and usually, there are three, four,
2 maybe five companies in the while region that can do
3 the largest of the contracts.

4 So to put them in, would call into question
5 the actual capacity of the companies if we used all of
6 the companies. So you stay out of that line of fire
7 because there isn't a remedy, and it is a potential
8 problem because of the issue of capacity on very large
9 contracts. But what we are able to do is to look at
10 where you can have a remedy, which is subcontracting.
11 And many companies that could get a regular infusion of
12 \$25,000 contracts, I don't think they complain too
13 much. They like the big ones, but a regular flow.
14 Again, I don't know because we haven't gotten to the
15 point in the analysis. The percent of contracts that
16 the commission awards that are informal, but most of
17 our clients have awarded a significant number of
18 informal contract. That we could study, but that's why
19 we put the cap on it.

20 I mean, that's fairly nuance because it's hard
21 to think about the fact that you can't address that,
22 but the technique for addressing it is to put on goals

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1 on contracts, and those are on subcontracts. Before
2 Crowson, though, they have set aside, and I think that
3 may have been what was happening with our friends down
4 in the confederacy. There, they said that with these
5 contracts, the only people who can bid are minority.
6 That was great while it lasted, but it's no longer a
7 standard that we can use.

8 Another question? Come one; come all. The
9 door is open.

10 MS. BELL: Good evening. My name is Michelle
11 Bell. I represent First Choice Government Solutions.
12 I also represent MBE Committee of the Maryland, D.C.
13 Minority Supplier Development Council, where I also sit
14 on the board of directors.

15 My question to you is: you said the study
16 period is from 2004 to 2009. For those contracts that
17 were awarded in 2003 and are continually being
18 performed, will they be counted?

19 DR. RAMSEY: That's an interesting question.
20 As it's currently proposed, we will take contracts that
21 were awarded in 2004. We have yet to see the data, and
22 in many of the jurisdictions that we have studied,

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1 contracts go in place and they stay for 10 plus years.
2 I don't know what has happened in this jurisdiction.
3 And if indeed that's a finding, I can't tell you, now,
4 what would happen, but it may very well be that a very
5 significant number of contracts are those awarded
6 outside the study period that continued. So we will
7 take that under advisement, and I appreciate your
8 asking the question, and we will take note of that. I
9 will talk with our partners.

10 MS. BELL: Great. I also have one other
11 question. You identified the local business profile by
12 county, state and the nation. Is there a breakdown of
13 WSSC's current business profile?

14 DR. RAMSEY: We will do that in the study. I
15 had used that just to illustrate the size of the
16 business community in this region, and really to show
17 you that it is characteristic of the nation, and the
18 challenges that that gives us when we go out to try to
19 identify willing and able business. But the study will
20 indeed report out the specific -- the ethnicity agenda
21 of companies that were awarded contracts; the number of
22 companies that were awarded those contracts.

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1 Some years ago, we started profiling what we
2 initially called the high rollers, and we had to modify
3 that. We now call it the heavily used contractors.
4 But we will have in our report the number of companies
5 that are receiving repeat contracts, and what percent
6 of all the vendors I used, are getting 50 to 60 percent
7 of the contracts. And in some communities, it is a
8 very significant number of contracts; it goes to a very
9 small group. But we know nothing yet about WSSC
10 because we haven't gotten to that point, but we will
11 tell you how many vendors used and what the frequency
12 of the use is by vendors in this agenda.

13 MS. BELL: Okay. My last question is: will
14 you look at the last study for anything?

15 DR. RAMSEY: I don't think we're required to
16 do so. As Ed has indicated, you cannot do anything
17 with the past; you have to deal with the present, for
18 purposes of the analysis. So I don't think there is
19 going to be -- we're not going to look at that. Now,
20 having said that, obviously just your curiosity is
21 going to lead you to see what is different. Our method
22 is different from our competitors, and I'm here to say

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1 that the distinction that we have in never being
2 challenged, and we are unique in that regard, is
3 because we've used a different method. So I would
4 expect that our findings for availability, in
5 particular, will be different. Our subcontracting will
6 more comprehensive because most of our competitors look
7 at minority and women subcontractors as a percent of
8 prime dollars. When the court requires you to look at
9 minority and women spend, subcontracting as a percent
10 of all subcontracts. So we do it somewhat different.
11 From an intellectual standpoint, we will look at it --
12 for the research purposes, it will not be pertinent to
13 our work.

14 The gentleman in the front. We're coming
15 forward with something to amplify your voice.

16 MR. GUPTA: Hi. My name is Sachchida Gupta,
17 and I represent SNG Engineering. We are a local MBE,
18 and also registered with the WSSC as SLMBE, or
19 something program. We've been in business for almost
20 15 years and we are local. We have been available to
21 do business, but we have not had a single contract,
22 big, small or any kind, with WSSC, or matter of fact,

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1 with most of the local governments. I'm trying to find
2 out why it is so. We have been available for work. We
3 have attended so many seminars given by WSSC and worked
4 to get contracts, but we have not received one call or
5 one interested, you know, letter or something. I just
6 wanted to let you know that we are available, and we've
7 been doing business with so many -- as a matter of
8 fact, we've bid with some of the governments, and we've
9 bid as a prime as non-MBE, and have received some
10 contracts, but as MBE, we have not received one dollar
11 in the last -- in all the years that we've been MBE.

12 DR. RAMSEY: Do you have recommendations that
13 might improve that access for you?

14 MR. GUPTA: Well, I've attended a couple of
15 programs at WSSC, and you know, it's sponsored by their
16 MBE program, and the majority of the time I felt that
17 they were presented as goals, not as requirements. So
18 if you present as a goal, how would somebody will
19 interested in giving you work? Same thing happened to
20 me here in the Montgomery College where we're sitting.
21 We had a contract for five years that we won, not as
22 MBE. But now that we have the MBE status, we lost the

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1 contract. The prime companies here are not even local,
2 and we have so many recommendations, so we asked why we
3 lasted so short. They said they don't consider MBE for
4 awarding any contracts. This is at this college.

5 DR. RAMSEY: Okay.

6 MR. GUPTA: Thank you.

7 DR. RAMSEY: Thank you very much for that
8 insight. The gentleman in the back, she coming to you
9 now.

10 MR. LEE: Yes. My name is Matthew Lee. I'm
11 the president of Korean Business Enterprise. There are
12 about 70 members in 12 states. It was actually
13 originally named KNB, but we changed it to KBE, which
14 is Korean Business Enterprise. This gentleman kind of
15 mentioned to you about the MBE program wasn't
16 successful with WSSC, but for me it was really very
17 successful with WSSC. Fifteen years ago, for a few
18 thousand dollars, I got a subcontracting opportunity
19 from one of your prime contractors, and now we have our
20 own prime contract. So the last 15 years, with the MBE
21 program in WSSC was very successful. Because of that,
22 I've been actually advocating to the other Korean-

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1 American, or other minority and woman-owned company to
2 doing business with WSSC. So I guess, sir, you may not
3 want to give up hope.

4 Funny thing was, I got an expense from WSSC
5 for a few projects and then from that WSSC project, I
6 could be able to get more contracts with the federal.
7 And then when we get more federal contract orders, we
8 get state contracts, and then you kind build up your
9 capabilities and things, and then you go back to the
10 WSSC again.

11 So I just want to say thank you for the
12 business with the WSSC, and the procurement office is
13 doing a great job. Thank you.

14 DR. RAMSEY: Thank you very much. Mr. Lee,
15 you may also consider interviewing with us?

16 MR. LEE: I already got the form right here.

17 DR. RAMSEY: All right. Thank you very much.
18 Do we have another question?

19 MS. FREEMAN: Good evening. My name is Janice
20 Freeman, president of the African-American Chamber of
21 Commerce in Montgomery County. My question is a
22 question of clarification. You mentioned, I believe,

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1 as you were presenting, that you were interested not
2 only in those who are recognized, certified businesses,
3 but perhaps, there may be businesses that aren't
4 certified. Can you kind of explain what the impact
5 would be? Because I know that they want you to be MBE
6 certified. What are you expecting to find?

7 How much impact might that have with your
8 study?

9 DR. RAMSEY: That's an excellent question.
10 The process of performing the analysis, as the court
11 has defined it, requires us to look at dollars spent
12 with women, people of color, white males, and then it
13 requires that we look at the availability of those
14 pools of businesses. And the availability is not
15 limited to people who have done business. It's not
16 limited to people who are certified. We just need to
17 have that availability pool as wide as it is real.
18 Real, defined as, "Yes, I would like to do business, if
19 I can identify an opportunity, given an opportunity."
20 When we do the comparison, if you have high use and low
21 availability, you will not have a disparity. If your
22 use equals the availability, you will not have a

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1 disparity. So the higher the availability -- the use
2 is fixed; it is what it was. So the higher the
3 availability, the more likely you will find that there
4 may be a disparity. And so the value of your members
5 who are not certified -- because we will find those.
6 The value of those who are not certified could increase
7 the African-American availability. If indeed there is
8 a disparity between use and availability, any goal that
9 we might recommend cannot be higher than the
10 availability number. Availability is absolutely
11 critical. And the reason that we don't limit it to
12 people who have bid, or who were successful, or who
13 were large is because there are a lot of businesses in
14 the business environment, and I think Mr. Lee just
15 characterized it, you get a small contract, you can
16 then get a bigger one. So the small companies are
17 equally eligible to be counted in this pool.

18 So think about the guy in his cab; he's got a
19 license, he can do the job. He could be a ten-person
20 company if he just had a nice contract, where it was
21 profitable. So that's the significance of the
22 availability number. It's absolutely critical in doing

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1 this work. It's the only variable. The utilization is
2 what it is because that's already been carried out.

3 MS. FREEMAN: Thank you.

4 DR. RAMSEY: Does everyone understand that?
5 Because that question is a very pertinent question. So
6 if you think it's not important to survey the members
7 of the minority council, it is. There are, no doubt,
8 people there who have not done business, haven't done
9 public business because they can't figure out how to do
10 it. But those people need to be counted. So wherever
11 you know of the possibility of a business that's not
12 certified someplace, because if they are, we'll catch
13 them in the process that we use, but it's those others
14 who are not certified that are --

15 MS. FREEMAN: So does that mean that that
16 could bring about change as to how -- I mean, I know
17 you're doing the study, but is that a possibility that
18 that might bring about change as to how you go out to
19 acquire those businesses to participate?

20 DR. RAMSEY: How you go out to acquire does
21 not require a statistical finding, except to the extent
22 that when you go out to acquire, you say to the prime

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1 contractor, this is the goal, and you either meet the
2 goal or you make a good faith effort, and then there's
3 a rigorous one for that. So that part does affect it,
4 but all the others, the size of the contract that you
5 put together, the qualification package, the time you
6 advertise, whether you provide bonding, whether you
7 require insurance, all of that can happen, regardless
8 to whether there is a disparity. That's the
9 programmatic race-neutral component that, as Mr.
10 Johnson has said, can affect positively in all
11 businesses. Everyone would like to be able to get paid
12 timely, and to have a scope of work that is realistic,
13 or bonding that's realistic. They're doing a \$10,000
14 change the pipe in the restroom and they're given the
15 same insurance requirement as the guy that's building a
16 new annex to the building. So those are of general
17 interest to all businesses; there's two parts to that.

18 MS. BELL: I have one other question.

19 DR. RAMSEY: Yes, please.

20 MS. BELL: When looking at the availability,
21 are you looking at Maryland, D.C. and Northern Virginia
22 companies?

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1 DR. RAMSEY: Good question. I can't answer
2 that. There is a process that we use to determine the
3 market area for our client. In this case, we will look
4 to see in the factors that we take into consideration
5 is where the dollars are being spent. And so we will
6 take all of the spend and we will determine -- get a
7 count of where the prime contractors are domiciled, and
8 then we'll look at where the dollars are spent. So
9 that's one view. Another way we look it is the service
10 area; and if that's the case, then it would be the two
11 counties, but we can't tell you what that would be
12 until we can look at the data. So that is yet an open
13 question, and we are mindful of the fact that D.C. is
14 right on the heels of the District. Yes, we'll look at
15 that question, but it's not as fixed as how you define
16 availability or how you define utilization, but it has
17 not been defined yet.

18 Another question? Yes, sir?

19 MR. ROBINSON: I'd like to stand. My name is
20 Clasford Robinson, and today I'm here as a member of
21 the public. What I gathered from your presentation
22 today is that at the end of the day we will have a yes

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1 or no answer to whether or not we will have a MBE
2 program, a minority program or not. As I listened I
3 got the sense that your approach is anchored in the
4 recent court rulings, but what I did not hear was
5 mention of the position of the Maryland government.
6 I'm aware that there is some legislation that bears
7 relation to WSSC operations in that regard.

8 The other thing I would like to draw your
9 attention to that I have not heard too much mention of
10 is the context in which the WSSC operates. Our
11 environment is one which discrimination is a practice.
12 That is known; it is in the culture, and we all could
13 recognize that right from the beginning. So it seems
14 to me as if we are approaching this from the position
15 of arriving at a yes or no answer on the basis of the
16 court rulings. In my view, that is insufficient. We
17 need to look at the environment, the context in which
18 WSSC is operating, the realities of discrimination that
19 exist inside there, and take it from there to come to a
20 fair response as to whether or not the WSSC should
21 proceed with the MBE program. It seems to me that the
22 real question is how the program should be managed,

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1 rather than whether or not it should proceed. Thank
2 you.

3 DR. RAMSEY: Thank you. That's sort of the
4 oxygen theory: if you take away the oxygen, the people
5 in the room die. So if you take away the program that
6 you presently have, then that means that it's going to
7 have a potential adverse impact, and certainly in
8 communities where it's been taken away. That is a
9 reality.

10 There are a couple of parts to that, and then
11 you mentioned the state legislature. The state
12 legislature promulgates its rules and it provides that
13 direction to the commission and the commission then
14 will make its decision as to what it does. Our
15 responsibility is to see if there is any evidence of a
16 statistical disparity. We will not make the decision
17 as to whether it's a yes or no -- we will not make the
18 decision about what the commission does; it is our
19 responsibility to bring the facts before the
20 commission, based on our analysis. It is important,
21 though, that while there is a statistical analysis and
22 it will hinge on utilization and availability, that

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1 that information is not the only part of the study.
2 The study does look at programmatic issues. And there
3 are some very significant programmatic issues that
4 affect or product a net effect of what we have come to
5 know as discrimination in public contracting. Those
6 changes can be considered, even if the facts do not
7 support having a goal placed on your prime contracts.
8 If you do not have a goal placed on prime contracts
9 because of those findings, you can still come back in
10 12 months and find out when you take the oxygen out of
11 the air that it doesn't have a negative impact.

12 I would approach doing the study by trying to
13 ensure that we get the most comprehensive list of
14 available businesses, and it has been my experience
15 that if you can get that comprehensive list of
16 available businesses, since the utilization is fixed,
17 if indeed there has not been use of businesses at the
18 level that they are available, it will evidence itself.

19 If indeed the commission has been doing a
20 tremendous job and they've been awarding, as the
21 gentleman said, 24 percent, given your statistics, you
22 still have, in two counties, approaching 50 percent of

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1 the businesses owned by people of color. So there are
2 a lot of businesses for the percent of businesses of
3 color in the two counties is very high. If we can
4 approach the number in our count -- if they're doing 50
5 percent of the business with minority businesses,
6 that's going to be better than I've seen in my career. So
7 our obligation is to look and see, and that is a
8 possible outcome that there is parity. But that's not
9 the end because there are some programmatic things that
10 can make a difference. Selection panels and
11 professional service contracts make a big difference as
12 to who gets the contract. Informal contracts that are
13 advertised without bids, there's a big difference. And
14 it's also the basic philosophy of the agency that can
15 suggest a lot to what decisions prime contractors make
16 to want to come and do business with the commission.

17 So there are some things you can do in
18 addition to goals, but I wouldn't rule that out until
19 we actually see what the numbers are, and we really
20 invite you to identify any organizations that you know
21 where it may help in getting out and identifying this
22 pool of businesses, which, according to the census,

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1 because our numbers on the size of business comes from
2 the census, there a lot of businesses in these two
3 counties that are filing tax returns, and we want to
4 make sure we find them out, in the event they have an
5 interest in and could do the work with the commission.

6 So the answer to that is it could be a yes or
7 no. It could be a no, could be a yes, but our
8 obligation is to go about it as rigorously as possible
9 and to also invite you to interview so we can have you
10 help us indentify those areas that may be programmatic
11 in nature that could be corrected with changes that the
12 commission might entertain in the way it does its
13 contracting.

14 So will you interview with us?

15 MR. ROBINSON: Yes.

16 DR. RAMSEY: Thank you.

17 MR. ROBINSON: I certainly would, but if you
18 permit me --

19 DR. RAMSEY: Yes?

20 MR. ROBINSON: It seems to me that here we are
21 talking about whether there should be a disparity --
22 sorry, MBE program or not. We have a federal policy

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1 which seeks to deal with the issue of disparity in the
2 society all together. We look back at the work of the
3 civil rights legislation over the years, and that area
4 has not suddenly slipped back. So it seems to me that
5 it's not a yes or no issue that we should be dealing
6 with here. I think that if we approach the issue with
7 a view to getting a yes or no issue, rather than not
8 how to, then it quite easy for the discrimination to
9 continue to influence how organizations like WSSC does
10 business. And I must say that my experience with WSSC
11 is we have a great team there, people who do a lot of
12 wonderful work, and I recognize that. But, when you
13 conduct a study like this, if you set up the study in
14 such a way that allows it to be tilted in one
15 direction, you can be into some trouble. And I really
16 think that the approach to this should be conditioned
17 by what the national context is, rather than a court
18 ruling that we know puts us in a position to very
19 quickly say it is not legal to have an MBE program.

20 DR. RAMSEY: Okay. Thank you. Another
21 question or comment? Yes, ma'am?

22 MS. BYRD: Good evening. My name is Norma

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1 Byrd. It wouldn't be like me to be here and not make
2 some comment. I'm vice president of BPC. We've been
3 doing business with the commission since about 1992,
4 and I'd like to say that we're very pleased with the
5 work that we do, and we'd like for the MBE program to
6 continue.

7 In going back to the 2005 study, we were
8 around when that study was done, and the major
9 criticism that I think the MBE community had was how
10 they used and how they defined availability and
11 utilization: that is the crux of the whole study. And
12 I am very, very pleased with the approach that I think
13 that you're taking. It's really the approach that I
14 would've liked for the other consultants to have taken
15 on their study, and I really do look forward to the
16 fact that you are going to expand availability because
17 I think that what the previous study did was that they
18 only looked at the pool within WSSE, and that was --
19 and that's the criticism that we have had since 2005,
20 in terms of the recommendations that came from that
21 study. So I welcome you. I'd like to -- I think Wayne
22 Frazier has said, I'm on the list to be interviewed,

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1 and I look forward to working with you and giving you
2 my input. Thank you.

3 DR. RAMSEY: Thank you very much, Ms. Byrd.
4 Indeed, that is the distinguishing feature. I think,
5 to the gentleman in the back, I trust that it will make
6 a difference in our numbers, if we can get the benefit
7 of the list that various persons have; that you are the
8 key to going beyond what the government knows. And so
9 I know we're going to work with the Korean Business
10 Enterprise and the African-American Chamber, and that
11 all will come forward with these lists so that we can
12 have that group of businesses, the virtual businesses,
13 the struggling businesses, all others who are in
14 business, but for a contract, would be sitting here
15 today, viable.

16 So thank you. We see this as a partnership,
17 and I'm very pleased that no one will have to stay in
18 the room because you're all going to fill out your --
19 that's your comment, you can do that, too, but my
20 preference is that if you have to make a choice, give
21 me a survey and give me an affirmative on being
22 interviewed.

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1 Are there other questions? I want to respect
2 the fact that you may still make a dollar or two this
3 evening if we close on time.

4 Is there another question? We can't close
5 this without having Mr. Frazier having said anything.

6 MR. JOHNSON: Before you go to Mr. Frazier, if
7 I may, I'd like to introduce Antonio Jones -
8 Commissioner Antonio Jones, who was just elected today
9 as chairperson of the commission. He came in during
10 the presentation.

11 (Audience applauds.)

12 MR. FRAZIER: Yes. Good evening, my name is
13 Wayne Frazier, and I'm president of the Maryland
14 Washington Minority Contractors Association, and one of
15 the sub-consultants.

16 Can you just explain the significance of these
17 interviews that you were talking about? I know that
18 you have business groups, as well as individual
19 businesses. What's the significance of the interview?

20 DR. RAMSEY: Yes, thank you. That was a
21 plant, but we don't have to share that. There are two
22 types of interviews. We will want to interview

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1 association leadership because you can offer us
2 insights. The additional request is that we will
3 interview 50 business owners. That information have a
4 broad value; one, it is a primary tool for
5 understanding what people are actually experiencing as
6 they attempt to business. You are inside; you make
7 those decisions. You put that information together,
8 and that's why former employees, former business owners
9 are very important. We want people who have insight on
10 the process, as well as people who have had experiences
11 and they want to share them with us. So we will take
12 that information and describe the phenomenon of doing
13 business with the commission.

14 We also use that information to give us
15 insights on recommendations that we can make that
16 could, indeed, improve access to contracting. There
17 are descriptions, and increasingly, we learn about
18 pilot programs which may not have been used here but in
19 other places. And some communities have placed
20 programs where they actually bid to small businesses,
21 put them in a pool, and as they need a contractor, they
22 go into the pool and pull out one of those businesses,

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1 but they only allow small businesses to participate I
2 in the bid. It looks real simple, but if you've been
3 trying to get in and you find yourself constantly
4 competing with Turner Construction, it's nice to be
5 able to go into a pool where you're competing not with
6 Oracle or People Soft, but you're bringing your
7 technology to the table. So that's one kind of thing
8 that can come out.

9 So it's a source of programmatic
10 recommendations. It is also a source of just getting a
11 visual picture, and sometimes a very emotional picture
12 of what businesses experience. So we are looking for
13 new businesses, mature businesses. We're looking for
14 businesses in construction, architectural and
15 engineering, professional services. We're looking at
16 suppliers; there's a whole world out there of
17 suppliers. We want to find out what you're
18 experiencing. What would you like to see the
19 commission do differently? And we'd like to be able to
20 weave that into the story we tell about being a
21 business person in this market area and the information
22 that we offer as recommendations to alter the way

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1 business is done, to the extent that the commission may
2 take your recommendation, or our recommendation into
3 consideration as it goes forward.

4 So it has multi-purposes. And again, we can
5 only have the interviews if we have interviewees. We
6 have plenty of interviewers, but we have to get some
7 interviewees, and I'd appreciate if you would do that
8 for us.

9 There's a lady in the back. Please state your
10 name and organization.

11 MR. POWELL: Good evening, Dr. Ramsey. My
12 name is Mary Powell. I'm with Kinsley Construction.
13 Perhaps you could share the response to my question,
14 perhaps Attorney Norton might chime in on this, but my
15 concern is if the definition of availability is
16 expanded, how does that impact the credibility of
17 various certification programs?

18 DR. RAMSEY: It doesn't. And the important
19 thing is, the court has not told us that a company
20 identified as an African-American, Hispanic, Asian, has
21 to be certified; they simply have to so identify
22 themselves. This is an instance where self-

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1 identification increases the pool of Asian business of
2 every third business as an Asian business. It is not
3 for us to dispute that. So you can self-identify in
4 this context because there's no standard beyond that
5 for this purpose. Mr. Norton, who is more insightful
6 than I, may have something else to say.

7 MR. NORTON: If I understand your concern,
8 what we are driven to do in trying to come up with
9 facts that support the most far-reaching program is to
10 identify all the businesses that can do the work in the
11 jurisdiction, and many people don't want to go through
12 certification because it's burdensome and intrusive to
13 answer all the questions that these certification
14 program require. So we will want another way into the
15 availability determination, and the need to certify.

16 Obviously, if you certify, you're on a list that's
17 readily available that can be passed out to prime
18 contractors when they'll looking to reach a goal. If
19 you are not on that certified list, then it's going to
20 be harder for us to get to you. But hopefully, if we
21 can have you in the pool, then that will affect the
22 goal and you may, in good order, then decide to be

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1 certified so that you'll be on the list where you can
2 be included in the subcontracting opportunities. I
3 don't know if that answers your question.

4 DR. RAMSEY: It would be in the study,
5 regardless.

6 MR. NORTON: Absolutely. It will be in the
7 study. I have roughly in my head that through these
8 various outreach efforts beyond the list, that we get
9 as much as 10 percent more available businesses than we
10 would have found without making that outreach effort,
11 and that 10 percent could be critical to whether or not
12 you'd have statistically underutilization, and as a
13 consequence, the basis for a goal-based program.

14 MS. POWELL: I thank the both of you.

15 DR. RAMSEY: Thank you for your question. We
16 have time for one more question before we become
17 intrusive. No one has any final closing requests,
18 information or something they want to share, other than
19 good wishes and let you go home?

20 Okay. Please, on your way out, we'd like your
21 comments, but we would really ask you to not leave
22 without completing the survey, identify your

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1 willingness. Let us know if you can either make a list
2 available, identify a list so that we can go pursue,
3 and/or whether you will ask your leadership in your
4 organization to distribute the request for businesses
5 to identify themselves if they are willing and able to
6 do business with the commission so that we can count
7 them amongst the available firms.

8 With that, I'd like to thank you very much for
9 taking the time to come out, and I wish you all a good
10 evening. And with the remaining hours, please make it
11 profitable.

12 (Whereupon, at 7:58 p.m., the
13 proceedings were concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, GERVEL A. WATTS, the officer before whom
3 the foregoing hearing was taken, do hereby certify
4 that the testimony that appears in the foregoing pages
5 was recorded by me and thereafter reduced to
6 typewriting under my direction; that said hearing is
7 a true record of the proceedings; that I am neither
8 counsel for, related to, nor employed by any of the
9 parties to the action in which this testimony was
10 taken; and further, that I am not a relative or
11 employee of any counsel or attorney employed by the
12 parties hereto, nor financially or otherwise interested
13 in the outcome of this action.

14

15

16

GERVEL A. WATTS

17

Notary Public in and for the

18

State of Maryland

19

20

21 My commission expires:

22 June 7, 2012

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