

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT  
COMMITTEE HEARING

STATE CAPITOL  
HARRISBURG, PA

RYAN OFFICE BUILDING  
ROOM 205

WEDNESDAY, SEPTEMBER 19, 2012  
9:35 A.M.

PRESENTATION ON HB 2089, HB 2091, HB 2092,  
HB 2093, HB 2094, HB 2095, HB 2096, AND HB 2140  
MINORITY, WOMEN, AND DISADVANTAGED  
BUSINESS ENTERPRISES

BEFORE:

HONORABLE TOM C. CREIGHTON, MAJORITY CHAIRMAN  
HONORABLE TIM HENNESSEY  
HONORABLE DAVID S. HICKERNELL  
HONORABLE JERRY KNOWLES  
HONORABLE ROSEMARIE SWANGER  
HONORABLE ROBERT FREEMAN, DEMOCRATIC CHAIRMAN  
HONORABLE JAKE WHEATLEY

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*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

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COMMITTEE STAFF PRESENT:  
DONALD E. GRELL II  
MAJORITY EXECUTIVE DIRECTOR  
WANDA L. SNADER  
MAJORITY RESEARCH ANALYST  
SUZANNE M. STUCK  
MAJORITY COMMITTEE LEGISLATIVE ASSISTANT  
  
JOHN L. FULTON  
DEMOCRATIC EXECUTIVE DIRECTOR  
AMY E. BRINTON  
DEMOCRATIC RESEARCH ANALYST

I N D E X

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SUBMITTED WRITTEN TESTIMONY

\* \* \*

AMY STURGES  
DIRECTOR OF GOVERNMENT AFFAIRS,  
PA MUNICIPAL LEAGUE

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

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MAJORITY CHAIRMAN CREIGHTON: Seeing that the hour of 9:30 has reached, we would like to commence this hearing.

My name is Tom Creighton. I'm the State Rep from Lancaster County, and I've been looking forward to this hearing. It's an opportunity for me to learn a lot and understand this aspect of our legislation.

So welcome, everyone that's here. And there will be people moving about, coming and going, so I'm looking forward to learning a lot about these issues. I encourage you to use summaries. Don't go into a long period of presentation, but I want to emphasize question-and-answer. So we're a happy family here. We sort of try to seek for understanding and understand what the issues are.

I'm going to give standing to Jake. Many of the bills are Jake's, and he is sort of the key guy driving this.

To my right is Wanda. She's our counsel, and she has put a lot of effort into this and understands pretty much all the issues. Right, Wanda?

MS. SNADER: I'm trying to understand this; yes.

MAJORITY CHAIRMAN CREIGHTON: The video is on, so we're being videoed.

And I'd like to introduce the Members. Jerry?

REPRESENTATIVE KNOWLES: Thank you, Mr. Chairman.

1                   My name is Jerry Knowles. I am from the 124th  
2 Legislative District, which encompasses a portion of Berks and  
3 Schuylkill Counties.

4                   REPRESENTATIVE HENNESSEY: Good morning.  
5 Tim Hennessey from Chester County, District 26, northern and  
6 northwestern Chester County down in the southeastern part of  
7 the State.

8                   MINORITY CHAIRMAN FREEMAN: Representative  
9 Bob Freeman, ranking Democratic Chair, 136th District,  
10 Northampton County.

11                  MAJORITY CHAIRMAN CREIGHTON: And so at this point,  
12 the two major presenters are Jake and -- Oh, Dave, you snuck  
13 in.

14                  REPRESENTATIVE HICKERNELL: From my own county.  
15 Good morning. Dave Hickernell, 98th District,  
16 Lancaster and Dauphin Counties.

17                  MAJORITY CHAIRMAN CREIGHTON: The main speakers  
18 are Jake and Special Counsel Peter Speaks, who is with  
19 Senator Hughes' office, or you're working there. We'll be  
20 hearing from him soon.

21                  So I would like to turn the proceedings over to  
22 Jake, and you can take it from here.

23                  REPRESENTATIVE WHEATLEY: Thank you, Mr. Chairman.

24                  Good morning to everyone here, and I really want to  
25 say that I really appreciate Representative Turzai and

1 Mr. Chairman's commitment to this small business packet of  
2 bills. When we talked about it earlier on, they were very open  
3 and interested in holding some hearings to learn more about the  
4 work that we had done, and hopefully as we continue to move  
5 through this process, we can find that these bills or some  
6 version of them could see the light of day and possibly become  
7 law.

8 I think what I wanted to do, if I can, Mr. Chairman,  
9 is just give a brief kind of overview of how we got here and  
10 then invite Peter up. Peter was very instrumental in the  
11 beginning with helping us move through this to create the  
12 language to look at best practices of what the departments were  
13 already doing as it relates to supporting small businesses,  
14 what other areas in the country were doing to really promote  
15 small businesses and grow them. So I want to make sure he has  
16 the opportunity to really go into the meat of what our bill is  
17 trying to accomplish.

18 But many of you were aware back in, I think it was  
19 2009 where we came up with -- I'm sorry; 2009, yes -- where we  
20 introduced a resolution to create the select committee on  
21 minority, women, and disadvantaged business enterprise  
22 inclusion, and what we were charged to do was to take our time  
23 to investigate the environment, the usage, utilization of small  
24 businesses.

25 Now, we took over 6 months. The committee was made

1 up of seven Members, four from the Democratic Party, three from  
2 the Republican Party. And we as a committee tried to work very  
3 hard to have unanimous solutions, something that we all could  
4 agree on before we reported it out, and what you see before you  
5 is the work of those Members, along with, we held over 5 or 6  
6 hearings across the Commonwealth; we had almost 70 testifiers  
7 from the business community, from governmental bodies, from  
8 agencies that were doing business with small businesses. So we  
9 had a very good mix of individuals come before us.

10 And we came up with a 9-packet bill, a 9- or  
11 10-packet bill that we presented and that was passed out of the  
12 House actually one term before this. We had a passage that was  
13 overwhelming over 190 votes for the packet of bills. They  
14 stalled in the Senate. So we reintroduced them this session,  
15 hoping that we could have the same type of energy around  
16 getting them done.

17 Where I really wanted to direct attention, and we  
18 kind of had a little sidebar earlier, the purpose of this is  
19 really -- and we included, the other thing that we did and we  
20 saw was necessary was we included veteran-owned businesses and  
21 service-disabled veteran-owned businesses as another  
22 subcategory that we saw weren't really, that we didn't have a  
23 State program by which we could really support those small  
24 businesses, too. So the main intention of these bills, one,  
25 was to create or state a real commitment toward small

1 businesses. We've heard over and over again how small  
2 businesses drive our economy. When you look at the small  
3 business environment, the leading small business creators are  
4 women and minorities, and certainly you see a growing number of  
5 veteran-owned businesses that are coming onboard. So we felt  
6 like the Commonwealth as a whole should embrace those entities,  
7 should try to strengthen and support the utilization of those  
8 entities.

9           So we looked at, we wanted to really look at were  
10 there any barriers to doing business with the State from those  
11 entities' perspective, and the very first thing that we found  
12 that was easily identified by testifiers and entities that were  
13 working within the system was not all of our institutions, all  
14 of our Commonwealth authorities weren't even a part of our  
15 program. So we had a wonderful DGS program that was set up to  
16 really provide fairness for these small businesses to compete,  
17 but then you had 40 or so institutions that were independent  
18 agencies or commissions or authorities that were under the  
19 State's purview but didn't have to have or didn't feed into our  
20 program of monitoring and tracking and even having to have a  
21 diversity program by which they would even have a process of  
22 even asking the question, are you doing business with small  
23 businesses? So the very first thing we wanted to do was try to  
24 include them. So within the bill, the comprehensive bill, you  
25 will see that we try to include all of these agencies and



1 authorities that are our State agencies and authorities and  
2 State-related institutions, to pull them into our purview.

3           The other thing was, we saw that our monitoring and  
4 tracking of our system, we say we love those numbers out there,  
5 how much business we're doing with small businesses or how many  
6 opportunities we're providing for small businesses to thrive,  
7 but we didn't really have a good system of monitoring and  
8 tracking. So we wanted to figure out a way to do that on a  
9 realtime basis, not after all the contracts are let and a year  
10 later figure out, well, we didn't really do as we thought we  
11 were going to do. We wanted to really put some real measures  
12 in there.

13           We wanted to really define for the State as a real  
14 goal and to define for our residents to hold us accountable,  
15 you know, a process by which people understand when they do  
16 business with the Commonwealth, here's the process; here's the  
17 clear, transparent process by which you will be evaluated,  
18 judged, and awarded. So we tried to outline that in there. So  
19 you will see these common themes throughout all of these  
20 various conversations we're having.

21           Those were the real common themes that we were  
22 trying to address. And we've said all along we would love to  
23 have everything word for word like we have here, but we  
24 understand that government and this process doesn't work that  
25 way. We've been very flexible. I've said all along that our

1 real goal is to improve the business climate, and if we get  
2 that by this package of bills or somewhere else -- as evidenced  
3 when the Governor Corbett Administration came in. And I have  
4 to applaud him, he came in and he used a suggestion -- I don't  
5 know if he read our bill or if he used it from some other  
6 brilliant source -- but in one of our bills was exactly what he  
7 created, was a small business reserve. And that was something  
8 that we heard very prominent from our small business community  
9 that said, look, we need to have an environment where you can't  
10 just have the large prime contractors always winning the  
11 contracts; we can't compete on that level if you don't give us  
12 a chance to first build our capabilities and then, over time,  
13 have an opportunity to go out and show you that we can do a  
14 larger contract. So that small business reserve that allows  
15 small businesses to compete in a pool amongst themselves is  
16 something that was very evident in our research and something  
17 that we put into our packet. So I'm hoping that other ideas  
18 like that come, too. If it's not in these bills and we can't  
19 get them passed in these bills, then we'll introduce other  
20 bills.

21           But I think the other point that we were trying to  
22 make is to institutionalize the best practices. Like, we  
23 wanted to put them in regulation, because by Executive Order,  
24 that does one thing for the 4 years or 8 years that a Governor  
25 might be in office, but you want to change culture, and the

1 best way to change culture is to make sure laws reflect your  
2 interests and your goals that you stated. So we wanted to  
3 institutionalize them through law and regulation, and we're  
4 hoping that, again, that work is done.

5           And before I call up Peter or have the chamber call  
6 up Peter, I did want to recognize that this wasn't the first  
7 effort and attempts. There were many attempts before, and  
8 actually I built the idea of the select committee off of former  
9 Representative Gordon Linton, who was from Philadelphia in  
10 1984. He first created a select committee to look at the  
11 contracting practices for MBEs and WBEs, and we used his as a  
12 baseline to build on to see, 20 or so years later, where has  
13 the State moved in that capacity, and we found that we hadn't  
14 moved very far. We had done some good things, but there had  
15 not really been much significant change since that time. So we  
16 hope that it won't take another 25, 30 years for us to see us  
17 move or inch another step.

18           We're hoping that this will, again, give some very  
19 sensible, reasonable solutions to ways that we can, and just  
20 these small things, a way to identify all of our processes by  
21 which small business can enter and do business, a way to track  
22 and monitor how we're doing in a timely fashion, and a way to  
23 make sure there's clarity and transparency to making sure if  
24 you say you're doing business with a small business operator,  
25 that you're actually doing that business and that it's done in

1 a way that is not crippling that business but is actually  
2 helping that business to grow.

3 So with that being said, Mr. Chairman, I look  
4 forward to a very interesting conversation and an informative  
5 conversation and to work with this committee and others to move  
6 these bills or some bills similar to them along.

7 MAJORITY CHAIRMAN CREIGHTON: Thank you, Jake.

8 I need to apologize to my Minority Chairman,  
9 Bob Freeman. He is really a support system that I really  
10 appreciate. So go ahead. Do you have a question?

11 MINORITY CHAIRMAN FREEMAN: No, just to thank the  
12 Chairman for bringing this legislation up for some discussion  
13 today as we conduct this public hearing, and to commend  
14 Representative Wheatley for the fine job he has done in  
15 pursuing this issue, the tremendous amount of work he has put  
16 into the legislative package, and I look forward to the  
17 testimony and the questions that will follow. So thank you,  
18 Mr. Chair.

19 MAJORITY CHAIRMAN CREIGHTON: Thank you.

20 Do we have any questions for Jake to start off?

21 I guess we'll have Peter come up to the mic, and  
22 then we will have open questions and answers with Jake and  
23 Peter.

24 MR. SPEAKS: Good morning, Mr. Chairman, Vice  
25 Chairman, to this committee. My name is Peter Speaks, and I'm

1 delighted and certainly thank you for the privilege to present  
2 testimony before you this morning regarding the package of  
3 bills pertaining to minority, women, veterans, and  
4 disadvantaged businesses.

5           As the Chairman mentioned earlier, I currently have  
6 the privilege of serving in the State Legislature as Special  
7 Counsel to Senator Vince Hughes, Chair of the Senate Democratic  
8 Appropriations Committee. I also formerly served in the  
9 capacity as Deputy Secretary and Advisor to former Governor  
10 Rendell for minority, women, and disadvantaged business  
11 development. So this is an issue, as I'm sure it is of  
12 tremendous concern to you, one that is very important and very  
13 passionate, that I'm very passionate about.

14           And I also want to thank Representative Wheatley for  
15 his leadership and championing this important legislation. And  
16 I think Representative Wheatley gave an excellent summary and  
17 overview in terms of the importance of this issue in terms of  
18 seeing minority and women-owned and disadvantaged businesses as  
19 economic drivers and job creators in this Commonwealth.

20           And also just to very briefly give some historical  
21 context. And as I said, I think Representative Wheatley did an  
22 excellent job, but just to go back briefly in terms of how this  
23 issue came to the forefront earnestly, in addition to  
24 Representative Wheatley looking at the House select committee,  
25 which is a bipartisan committee, but also going back to 2001.

1           At that time, the Department of the Auditor General  
2 took a look at this issue and found that the Commonwealth was  
3 not really holding up its bargain in terms of ensuring that  
4 small businesses had a real opportunity to compete in State  
5 contracting. And as a result of that Auditor General's report,  
6 which found that the State had a very weak commitment to these  
7 businesses, a task force was then formed at that time to look  
8 at this issue, which consisted of elected and appointed  
9 officials, minority and women-owned businesses, as well as  
10 advocates and other stakeholders, and from that report came a  
11 series of 30 recommendations that were included in the  
12 Auditor General's report.

13           Then in 2003, a number of recommendations from that  
14 report as well as the statewide task force were able to  
15 introduce and implement a series of very aggressive and  
16 systematic reforms to increase opportunities for these minority  
17 and women-owned businesses throughout the Commonwealth, those  
18 agencies that were under the Governor's jurisdiction. And as a  
19 result of these reforms, over at least the last 8 to 10 years  
20 the percentage of participation in State contracting went from  
21 less than 2 percent of identifiable contracts to almost  
22 17 percent by the end of 2010. And what we wanted to see and  
23 as mentioned by Representative Wheatley, or we're hoping to  
24 see, is that we would begin to institutionalize this program  
25 now so that the improvements that had been made in the past

1 would continue, so that there was a level playing field and  
2 very real and meaningful, substantial opportunities for these  
3 emerging markets and important economic sectors within the  
4 Commonwealth.

5           Also let me just briefly add, before I get into some  
6 of the specifics of the legislation, that again on this  
7 continuum, we conducted a disparity study, the first ever  
8 disparity study that the Commonwealth ever conducted that  
9 looked at construction projects over a 3-year period to  
10 determine whether or not disadvantaged businesses were  
11 receiving their fair share of construction contracts. And  
12 basically what a disparity study will do is to determine  
13 whether or not the participation levels of the contracts that  
14 are being received are commensurate with the availability of  
15 the businesses, the minority and women-owned businesses  
16 throughout the community. And without getting into a lot of  
17 detail of what was a 300-page report, I will say that the  
18 disparity study essentially found that there was in fact a  
19 statistically -- which is a legal term -- significant disparity  
20 in the award of prime contracts and subcontracts going to  
21 minority and women-owned businesses.

22           And importantly, and again why I'm mentioning this  
23 is because this is why this legislation is so important,  
24 because the disparity study found that there was clear evidence  
25 or information of the many barriers that minority and women and

1 veteran-owned businesses continued to face, such as bonding,  
2 such as access to capital. So the disparity study set forth a  
3 number of recommendations, again, to enhance opportunities for  
4 these businesses, and that, again, is what eventually led up to  
5 our conversations with Representative Wheatley and others in  
6 the Legislature and the Representative's introduction of HR 78,  
7 which set forth a number of recommendations.

8 Now, with that having been said, some of the  
9 specific elements of some of the bills in the legislative  
10 package included establishing aspirational targets on  
11 Commonwealth procurement and construction contracts. And let  
12 me be very clear in saying not set-asides necessarily, but that  
13 it would just be an aspirational target that State agencies,  
14 State-affiliated, and State-related institutions would  
15 basically have an aspirational target of 25 percent of  
16 contracts going to small businesses. And this was consistent  
17 with other States that we looked at that had similar type  
18 programs, and we certainly felt that Pennsylvania was capable  
19 of being a leader in this area.

20 And in fact I would like to inform the committee  
21 that I believe it was in 2009 or '10, Pennsylvania was  
22 recognized because of the efforts that we were making in the  
23 area of promoting opportunities for small businesses, that we  
24 were recognized as one of the leading States, one of the top  
25 three leading States in the country in this area.



1           But one of the other areas in the package included  
2 increasing the employees' size limit from 100 to 250 employees,  
3 which was somewhat a little controversial, but what we were  
4 finding with that, although 95 percent or more of businesses,  
5 small businesses, generally have less than 100 employees, but  
6 there are a few that may have, as they grow -- and this is what  
7 we essentially would like to do, is to see small businesses  
8 grow and create jobs and drive the economy, and as we know,  
9 small businesses drive the local, State, and the national  
10 economy. So although the 100-employee limit would apply, the  
11 threshold would apply to most, 95 percent or more of small  
12 businesses in this Commonwealth, there are some that grow their  
13 businesses beyond 100 employees. So we wanted to give some  
14 cushion for those businesses that still were not able to  
15 compete with the primes, you know, the big boys, the Dells or  
16 the Apples of the world, but yet they had maybe 100 employees.  
17 And even at the Federal level they have an employee limit of  
18 500, depending upon the code or the industrial category.

19           Also, prompt payment. We were finding that  
20 oftentimes small businesses were not getting paid promptly.  
21 Sometimes it would take up to 60 days or more or longer, and  
22 that can cripple a small business in waiting that long for a  
23 payment. So we wanted to shorten that time period, and under  
24 the legislation we adopted, I believe it was 7 days in terms of  
25 a prompt turnaround to the small businesses.

1           Also, a statewide bonding program. That's one of  
2 the biggest barriers, as I said, and the disparity study  
3 pointed this out in study after study. It indicated that  
4 bonding is one of the biggest barriers that small businesses  
5 have in terms of being able to perform or to bid on State  
6 contracts, particularly construction contracts.

7           And as a matter of fact, Representative Wheatley was  
8 very instrumental in a pilot bonding program out in the  
9 Pittsburgh area that would provide bonding for small  
10 businesses, small firms that needed bonding. And they went  
11 through a rigorous training program, and after they completed  
12 that, then they were assisted with bonding. And we wanted to  
13 expand that statewide, and we were able to get some additional  
14 money from the Department of Community and Economic Development  
15 to assist with a statewide bonding program.

16           And the mentor-protégé program is part of the  
17 package as well, whereby the larger firms would mentor the  
18 small businesses in terms of performance, in terms of assisting  
19 with capital, technical support, and helping them to grow their  
20 businesses, because, again, that is the common theme also  
21 behind the legislative package, is to grow businesses.

22           As subcontractors or small minority, women, veteran,  
23 disadvantaged-owned businesses, or service-disabled businesses,  
24 we want them to bid on more than just being a subcontractor on  
25 all of the contracts, but also to enable them to grow their

1 businesses. So that was a part of the thinking as well, and a  
2 part of a way to do that was with respect to a mentor-protégé  
3 program.

4 And finally, I'll just touch on the small business  
5 reserve that the current Administration has formally adopted  
6 now as part of its policy. It was introduced as part of the  
7 package introduced last session by Representative Wheatley, and  
8 we were very happy that the Administration formalized this  
9 policy as well by an Executive Order by the Governor, and it  
10 was something that we piloted as well several years ago within  
11 the Department of General Services.

12 And what the Small Business Procurement Initiative  
13 that the Department of General Services has implemented  
14 essentially comprises is that you would set aside for small  
15 businesses, not just minority, women-owned, or veteran-owned,  
16 but all small businesses would be able to compete now in a  
17 sheltered market or reserve.

18 Now, we looked at at least a half dozen -- actually,  
19 we looked at all States, and about seven or eight States  
20 actually had a small business reserve. I believe Connecticut  
21 set aside 25 percent, Maryland maybe 10 percent. I actually  
22 went down and talked to colleagues at Maryland's Department of  
23 Transportation about their small business reserve, and then we  
24 decided to implement it here in Pennsylvania as a pilot, and  
25 then the recent Administration adopted it formally.

1           So essentially you would have a number of  
2 procurements just set aside only for small businesses,  
3 those businesses who meet that definition, which is under  
4 100 employees and under a certain dollar threshold of about  
5 \$20 million for most bids and \$25 million, I believe it is, for  
6 IT. But only small businesses could compete in this initiative  
7 or in this market. So again, the big boys would not be able to  
8 compete so that the smaller companies could bid as prime  
9 contractors.

10           Now, under the current initiative by the Department  
11 of General Services, there's no percentage goal attached. It's  
12 just that agency should put procurements into this reserve. In  
13 the legislation that is being proposed, I believe it was that  
14 agencies would set aside 10 percent of procurement, identify  
15 10 percent of their procurements to go into a small business  
16 reserve.

17           So let me just finally say that in addition to the  
18 Small Business Procurement Initiative, the Administration has  
19 also formally adopted the policy of a veteran, a  
20 service-disabled veteran business program, as part of the  
21 Small Business Initiative. And I was also very glad to see  
22 that, because I had written a white paper and also strongly  
23 encouraged, under the previous Administration, that we  
24 implement a veteran-owned program as part of the Commonwealth's  
25 disadvantaged business program, and we did that as part of our

1 stimulus outreach. When the stimulus dollars came down and we  
2 were going out and doing outreach to small businesses, we  
3 included veterans, and I thought that it was only appropriate  
4 and logical that we extend that opportunity to our veterans as  
5 well from a business standpoint and also the fact that it was  
6 the right thing to do because of the sacrifice and commitment  
7 of these brave men and women.

8           So in conclusion let me say that this has been a  
9 continuum with respect to opening doors and opportunities for  
10 minority, women, and now veteran-owned businesses within the  
11 Commonwealth, and it is something that or it is a process that  
12 persons like Representative Wheatley and others have worked  
13 very hard on. Also, Senator Washington in the Senate as well  
14 as Senator Vincent Hughes and others are looking forward to  
15 taking up this legislation as well in the Senate and promoting  
16 opportunities for small businesses as well.

17           And even I might just add briefly that the Secretary  
18 in her testimony before the Appropriations Committee, Secretary  
19 Phillips, has also noted in the past in terms of areas where  
20 the program still needs to be enhanced or improved to ensure  
21 that small businesses are getting the contracts and the money  
22 that they deserve.

23           So let me end by saying that this is an important  
24 issue. It's important to the Commonwealth. And I'll be the  
25 first to say, as well as the small business representatives

1 that are here today, that they're not looking for a handout  
2 through this legislative package. They're not relying solely  
3 on State contracting opportunities. They'll be the first to  
4 tell you that they are not in that -- they couldn't stay in  
5 business if they were. But it's simply a matter of, again,  
6 leveling the playing field to ensure that all Pennsylvanians in  
7 all business sectors and all markets have the opportunity to  
8 compete fairly and equitably on State contracting  
9 opportunities, and this is what this legislation does as well.  
10 And we hope that the committee and the House will, in its  
11 wisdom, continue to support the important package of  
12 legislation.

13 Thank you.

14 MAJORITY CHAIRMAN CREIGHTON: Thank you. Very well  
15 done.

16 Jake, do you want to take over question and answers?

17 REPRESENTATIVE WHEATLEY: Sure. Thank you,  
18 Mr. Chairman.

19 Are there any questions for -- Representative  
20 Freeman.

21 MINORITY CHAIRMAN FREEMAN: Thank you, Mr. Wheatley.  
22 Mr. Speaks, thank you for your testimony.

23 I just wanted to go over some of the recommendations  
24 again. I've got to get a little more clarity. Among them was  
25 the idea of raising the size for a small business in its

1 category from 100 employees to 250, and was the major intent  
2 there that these are companies that are growing but they're not  
3 yet big enough to be in the competition with the bigger players  
4 in terms of procurement?

5 MR. SPEAKS: Yes.

6 MINORITY CHAIRMAN FREEMAN: So in other words, you  
7 didn't want to get them to a point where they're starting to  
8 succeed and then exclude them so they can't possibly compete on  
9 a level that they would have a chance of winning.

10 MR. SPEAKS: That's correct.

11 MINORITY CHAIRMAN FREEMAN: Okay.

12 MR. SPEAKS: And I believe that even the Department  
13 of General Services may now have language where -- well, I  
14 think it was being proposed. I'm not sure if that is in  
15 legislation or policy now. But even if the contracts were  
16 taken on a case-by-case basis in terms of increasing and giving  
17 some latitude to increase the employee limit where there was a  
18 particular contract where a minority or women-owned or  
19 veteran-owned business was more than 100 employees, but it  
20 would afford them the opportunity to compete in that limited  
21 instance. So it could also be done on a contract-by-contract  
22 basis or it can just be done broadly across the board.

23 But you're absolutely right; the intent was to  
24 enable them to remain in the "small business" definition,  
25 because as you indicated, they would not be able to compete

1 with the Apples and the Dells and the Deloittes of our world  
2 and would find themselves basically, you know, losing potential  
3 contracting opportunities.

4 REPRESENTATIVE WHEATLEY: And let me add to that,  
5 Bob.

6 MINORITY CHAIRMAN FREEMAN: Sure.

7 REPRESENTATIVE WHEATLEY: Because unlike the Federal  
8 Government, we couldn't industry specific add like sizes.  
9 Like, we couldn't redefine industry specifics. There are  
10 certain industries that you might have 100 employees and do the  
11 \$20 million but you are nowhere near competitive or you're  
12 still small in that industry. And so what we wanted to do is  
13 give the Department of General Services the ability, limited  
14 ability, with some requirements around the utilization, which  
15 is why the tracking and monitoring was so important, because if  
16 they were to use this waiver, so to speak, they would have to  
17 first announce that they were going to use the waiver, and then  
18 they would have to prove or show how, in giving the waiver,  
19 they were actually enhancing opportunity for small business and  
20 not taking away.

21 So it wouldn't be just a free, well, I want to give  
22 this one contract to someone and I want to waive the size; they  
23 would have to show how it was actually going to benefit. And  
24 then that's what the report back -- we had a report-back  
25 mechanism of, how often did they utilize it? What was the



1 reason they utilized it? Why did they have to utilize it?

2 So there were other things that are wrapped around  
3 it in the language of the bill to try to help enhance, because  
4 we weren't trying, even though it was very controversial, a lot  
5 of our small businesses didn't want to see that change. We saw  
6 it as a way to try to get at the industry-specific realities  
7 that a small business in one industry may be a large business  
8 in another industry.

9 MINORITY CHAIRMAN FREEMAN: So there would be  
10 mechanisms, in other words, to monitor businesses of that scale  
11 to make sure they weren't squeezing out small businesses that  
12 only had 100 employees.

13 REPRESENTATIVE WHEATLEY: Yes.

14 MINORITY CHAIRMAN FREEMAN: Okay.

15 And just in terms of the small business reserve  
16 program, in terms of the recommendations and the legislation,  
17 is there any consideration towards, if you can't find a small  
18 business that steps forward under the reserve proposal, whether  
19 it's 25 percent or 10 percent, as Representative Wheatley's  
20 legislation points to, that the appropriate department would  
21 then have the ability to throw it open to others? The only  
22 concern there might be, we're not getting any takers. We're  
23 really trying to hold these elements of procurement aside for  
24 small businesses to help foster their growth and their  
25 opportunity. But for one reason or another no one is coming

1 forward, we still have to get the job done. At some point, are  
2 those departments able to say, let's throw it out to all  
3 bidders?

4 MR. SPEAKS: That's a very good question, and I  
5 would think they would be. I don't think the legislation  
6 specifically addresses that. But let me say that before they  
7 place the procurement into the small business reserve, there  
8 should have already been a determination that this is a  
9 procurement that we have identified a certain market---

10 MINORITY CHAIRMAN FREEMAN: Okay.

11 MR. SPEAKS: ---of businesses, small businesses that  
12 are available and that have the capacity and ability to perform  
13 this particular service or contract before they place it in a  
14 small business reserve, and that's the whole intended idea.

15 MINORITY CHAIRMAN FREEMAN: Okay. So there's a real  
16 anticipation that small businesses will step forward in that  
17 category.

18 MR. SPEAKS: Yes. Now, they may be limited.

19 MINORITY CHAIRMAN FREEMAN: Right.

20 MR. SPEAKS: But there should have been an  
21 identifiable market for that particular procurement before it's  
22 placed in a Small Business Initiative, as anticipated or  
23 intended.

24 Now, should there not be, then certainly I would  
25 think that the Commonwealth should reserve that right, not for

1 a reason to remove it from the Small Business Initiative---

2 MINORITY CHAIRMAN FREEMAN: No, no, just---

3 MR. SPEAKS: ---but after a good-faith effort.

4 MINORITY CHAIRMAN FREEMAN: No one's stepping  
5 forward.

6 MR. SPEAKS: Yeah. And then obviously the  
7 Commonwealth, I think, probably will reserve that.

8 REPRESENTATIVE WHEATLEY: Again, a part of the  
9 legislation did speak to the creation of each department, of  
10 all of our departments and agencies of identifying some  
11 individual who would be basically the coordinator of this small  
12 business program, and they would work with DGS because they  
13 would then fall within DGS purview. They would work with DGS  
14 -- what we were envisioning, they would work with DGS in the  
15 beginning of their cycle for procurement to identify  
16 opportunities for smaller businesses to compete. So they would  
17 already know in the beginning of a cycle where the  
18 opportunities were to meet this 10. And 10 was only a floor  
19 level. They could go above it, but 10 was a floor level that  
20 they would be able to identify, because again, at the end of  
21 this, they would have to report back how they met or did not  
22 meet and what was the realities that hampered them meeting  
23 those 10 percent or more.

24 And again, this was a way to create a system and  
25 culture shift that would allow for fairness to continue. And

1 so I think what we were hoping to get with that is, you would  
2 have individuals in every department, agency, or whatever that  
3 would be identified as the go-to person for that department  
4 that would have a purview of all their contracting  
5 opportunities in the beginning of their cycle, because any  
6 department that's going to be purchasing something, they know  
7 what they're going to be purchasing. And certain things, of  
8 course, we couldn't necessarily anticipate, but certain things  
9 they can, and they would be working with DGS to identify  
10 opportunities to meet that so that they would have, you know,  
11 there would be no instance where you would see at the end of  
12 the year they couldn't have met their 10 percent.

13           And again, if we had an on-time tracking system,  
14 halfway through their year they could see, I'm short on this,  
15 so are there other ways, when we are purchasing through the  
16 year, to meet it?

17           MINORITY CHAIRMAN FREEMAN: And my final question --  
18 thank you.

19           My final question deals with the mentoring-protégé  
20 program. I like the concept. I think it's very innovative.  
21 My only, I guess, question is, how do you incentivize someone  
22 to serve as a mentor knowing full well that the people they are  
23 mentoring will eventually become their competition? What do  
24 you envision as sort of ways to incentivize them to take a  
25 minority-owned business or a women-owned business or a

1       disadvantaged-owned business under their wing and say, hey,  
2       we're going to kind of show you the ropes, how you can work in  
3       this field and be successful?

4               MR. SPEAKS: I know Representative Wheatley is  
5       looking over there and anxious to respond. I'll defer to him,  
6       and then I'll briefly respond.

7               MINORITY CHAIRMAN FREEMAN: Okay.

8               REPRESENTATIVE WHEATLEY: Well, when we had a  
9       hearing with the primes, we just brought the primes in to talk  
10      about the climate, and one of the things that all of the primes  
11      talked about was this issue around, if they really were going  
12      to formalize a relationship with a small business, then they  
13      wanted to kind of lock the small business in to that  
14      relationship; meaning, they couldn't have other relationships  
15      with competitive primes, because then there could be a real  
16      trust to develop them over time.

17              Now, of course, that's a delicate situation, because  
18      anyone who wants, as a small business, you don't want to just  
19      be locked in to someone; you want to maybe be locked in to all  
20      of them, because you guarantee your business. So we were  
21      really and the relationship is really because it would be  
22      driven by DGS in their bidding process, because if you are a  
23      mentor and you have a real mentor relationship with a smaller  
24      business, it would help you in your bidding for contracts as  
25      you are developing. Because what DGS was essentially saying

1 is, if you are a part of this program and you are really  
2 mentoring these small businesses and you have a real  
3 relationship, then your score on those projects would be  
4 better. Do you know what I mean? So it's like anything else.  
5 Like, if you were a part of a program and you can get  
6 10 percent because you are a veteran or you can get another  
7 10 percent because you actually have a mentor relationship,  
8 that's 20 percent towards your bid process that would elevate  
9 you over your competitor.

10 So there are some safeguards that the primes wanted  
11 in the relationship, but they were not necessarily opposed to  
12 that relationship. It was really going to be fleshed out in  
13 the details of how that relationship would work, and that was  
14 really the -- I mean, I think if it means that they will have a  
15 better opportunity to get more contracts, they'll be interested  
16 in it. So that's the incentive for them, I think. Outside of  
17 being a good business environment, I think there's an incentive  
18 to get more contracts, because over a period of years they're  
19 going to be in that mentor relationship, so they don't  
20 necessarily fear -- necessarily -- them losing businesses right  
21 away.

22 MINORITY CHAIRMAN FREEMAN: So the real incentive is  
23 to increase the score on bids so that they have a better shot  
24 at other contracts down the road.

25 MR. SPEAKS: That's correct. And we implemented

1 that as part of the DGS construction program and some of our  
2 other fees, and we found that it was a very useful, very  
3 significant part of the program in terms of incentivizing  
4 primes to utilize smaller businesses, as Representative  
5 Wheatley indicated.

6 MINORITY CHAIRMAN FREEMAN: Okay. Thank you. Thank  
7 you both.

8 REPRESENTATIVE WHEATLEY: Representative.

9 REPRESENTATIVE HENNESSEY: Thank you, Jake.

10 Mr. Speaks, I'm interested in this idea of expanding  
11 the definition of "small business" from 100 employees, a limit  
12 of 100 employees, perhaps all the way up to 250. One of the  
13 things that is confusing to people in the general business  
14 world is trying to figure out sometimes whether you qualify for  
15 something, whether you qualify under a particular  
16 classification. And I'm wondering, you know, in Pennsylvania,  
17 do we have different -- it seems, to me, we have lots of  
18 different programs that deal with small businesses, and if we  
19 change the number so that a business, you know, ABC Corporation  
20 is a small business when we're dealing with DGS but not a small  
21 business because it has too many employees when we're dealing  
22 with a different agency of State Government, or if we have  
23 somebody who's a small business in Pennsylvania but doesn't  
24 meet the requirements to be a small business under the Federal  
25 tax laws or whatever, we create an awful lot of complications

1 for people trying to figure out -- you know, it almost sets up  
2 a situation where people might think they're being entrapped or  
3 set up to trip over these various qualifications or regulations  
4 that we've put in place.

5           While I understand what you're trying to do, and I  
6 think everybody likes flexibility -- well, we like flexibility  
7 unless I'm the guy who's the minority-owned business owner who  
8 just lost the contract to somebody who I think violated the  
9 regulations, because they have 150 employees and the limit is  
10 at 100. You know, I don't like flexibility in that situation  
11 because I would have won the contract otherwise. Obviously I  
12 was second in line, but the other guy got it even though they  
13 had to stretch the regulation and say he qualifies, even though  
14 I'm not convinced, because I'm smaller, that he's really a  
15 small business.

16           How do we do that? How do we find some sort of  
17 consistency in our statutes and our programs so that, you know,  
18 people aren't faced with an almost impenetrable mass of  
19 regulations that they are sitting there saying, I don't know  
20 whether I qualify or not; I might as well throw in a bid and  
21 see if it works and see if I get it. Or if I don't get it,  
22 I'll just walk away, because nobody is going to be able to  
23 figure out whether I really was the best qualified bidder or  
24 not.

25           MR. SPEAKS: That was one of the concerns expressed



1 when we first had some conversations around the whole idea of  
2 increasing the threshold from 100 to 250, to ensure that it had  
3 consistency and uniformity across the board with respect to  
4 small business application, even outside of the minority,  
5 women, business-owned program. So that's certainly a  
6 challenge, and that's why, as Representative Wheatley commented  
7 earlier, we wanted to basically, for purposes of contracting  
8 opportunities, allow the Department of General Services in its  
9 program, small business program, that flexibility or waiver to  
10 demonstrate and set forth certain criteria for when the small  
11 business owner may have exceeded the 100 employee limit. Then  
12 DGS could say that under these limited, very narrowly tailored  
13 and limited circumstances, that we're going to waive the  
14 100 employee limit requirement without increasing it across the  
15 board, because of the concerns that you raised with respect to  
16 consistency and uniformity.

17 I may also add, however, that in 2003, the employee  
18 limit was 50 employees, and we thought that that was much too  
19 low, way too low for small businesses; again, even though the  
20 vast majority are under 100 employees and may even be under 50.  
21 But we increased it by policy from 50 to 100, and we did not  
22 get the type of, I would say any systemic problems related to  
23 that by increasing it from 50 to 100, and that was 10 years  
24 ago.

25 So looking, again, at other States and looking at

1 the Federal requirements, even though they do it by industry  
2 codes, we thought that 250 would be a legally permissible and  
3 constitutional ceiling. Because actually, quite honestly, I  
4 had advocated for even more than that, but after conversations  
5 with other counsel and the Office of General Counsel, we  
6 decided that 250 would be a more sellable, would be a more  
7 legally defensible number. So there were, in addition to the  
8 very pragmatic and practical concerns, Representative, that you  
9 raised, there were also some legal issues that we discussed at  
10 the same time to, again, ensure the consistency and uniformity.

11           So again, I guess pointedly to your question, how do  
12 we do that, that there has to be one definition in the  
13 Procurement Code and in legislation in terms of what  
14 constitutes a small business, regardless of what area that  
15 you're looking at, so that everyone is on the same page and  
16 very clear about that definition, and I think that exists  
17 today.

18           REPRESENTATIVE WHEATLEY: And again, Representative,  
19 it was the intention of the legislation that when you did the  
20 bidding process, it would be clearly stated, if in fact the  
21 department was intending to waive that limit, they would put  
22 that in the bidding process so everyone would know upon  
23 responding to the bid. And if there were some issues with --  
24 again, it was meant to enhance opportunities for small  
25 business; meaning, they were looking to waive so that they

1 could add small business opportunity to the process, meaning  
2 they had an individual who met, for all intents and purposes,  
3 the "small business" definition except for either the size  
4 limits or the dollar amount. So it's not like you're adding  
5 the limit to bring in another prime to get the bid; you're  
6 adding the limit, you're trying to waive the limit so that you  
7 get another small business operator who is really in that  
8 industry, still really technically a small business, but they  
9 have met our artificial number in that industry category.

10           And again, it would be something that would be a  
11 part of the advance notice for the bid process. So it wouldn't  
12 be something that DGS would get bids back and then say, we are  
13 waiving it for someone. It would be out there in the  
14 advertisement that their intention is to waive this small  
15 business. So other small business operators who may be  
16 thinking that they were able to do this work, they could then  
17 go to DGS and say, look, you don't have to waive; we're able to  
18 compete on this level and we meet all the requirements right  
19 now, and then it would be up to DGS to verify or whatever. But  
20 that would be the process by which you could kind of still  
21 ensure some fairness to the system in that process.

22           MR. SPEAKS: And let me just also, briefly and  
23 quickly, is that also in the Small Business Initiative under  
24 the Governor's Executive Order and policy is that the companies  
25 self-certify, meaning that they self-certify that they are a

1 small business and that they meet all of the certification  
2 requirements. But as I understand it, before that contract is  
3 executed, they have to be able to submit and verify that they  
4 are in fact a small business. But currently, they self-certify  
5 that I am a small business and I meet all of the requirements  
6 to be a small business.

7 REPRESENTATIVE HENNESSEY: In terms of qualifying to  
8 be a small business or a minority small business, in the  
9 programs that we have on the State level now, if I am a  
10 minority-owned business, I qualify, assuming I'm small. If I'm  
11 a veteran-owned business, I qualify. If I'm a disabled  
12 veteran, I qualify. If it's a woman-owned business, I qualify.  
13 Does that just get me into the door and allow me to bid?

14 I guess what I'm asking, do we have any preferences  
15 in terms of, if you have -- and this will sound funny, and I  
16 don't mean it to be funny -- but if you have a Hispanic woman  
17 who's a disabled veteran, is she four steps closer to that  
18 contract than the person who was just a minority-owned business  
19 and got in the door?

20 MR. SPEAKS: No, she's not.

21 REPRESENTATIVE HENNESSEY: All that does is get her  
22 in the door, and she can come in any one of those four doors,  
23 she's in there, but now she bids on an equal footing with  
24 everyone else.

25 MR. SPEAKS: That's correct, under the small

1 business program.

2 REPRESENTATIVE HENNESSEY: Okay.

3 MR. SPEAKS: Right. That just gets you in the door.  
4 You have to designate whether you'd like to be Hispanic-owned,  
5 woman-owned, or a veteran or disabled. So you have to choose  
6 one of the categories, whatever category you would like.

7 REPRESENTATIVE HENNESSEY: But why? I mean, if you  
8 qualify under four different criteria, why can't you just come  
9 in and say, I'm a small business and I'm going to bid? Why do  
10 I have to couch it in terms of if I'm a minority business or  
11 I'm a woman, you know, a disabled veteran-owned business?

12 MR. SPEAKS: Well, I think under the initiative,  
13 it's so for reporting and tracking purposes. Now, she could  
14 come in and bid just as a small business owner, period, as any  
15 other small business could, as I understand it.

16 REPRESENTATIVE HENNESSEY: Okay.

17 MR. SPEAKS: But for purposes of reporting and  
18 tracking, because one of the concerns is that as the  
19 Commonwealth moves toward the Small Business Initiative or  
20 small business opportunities program, that also changed the  
21 name of the bureau from the Bureau of Minority and Women-Owned  
22 Businesses now to the Bureau of Small Business Opportunities.  
23 So I think it's important for the Legislature -- and they have  
24 to report annually to the Legislature, the Department of  
25 General Services -- so I think it's important for the

1 Legislature to know, how are we doing in the various  
2 categories, with minorities, with women, which is what the  
3 reporting does now, it breaks it down by minority or minority  
4 woman or woman-owned business, whatever the case might be. So  
5 I think for reporting purposes, the Legislature would want to  
6 know, how are we doing in these various categories?

7           But once you come in as a small business, again, you  
8 just have to designate that you're a small business and you  
9 meet the small business requirements. But I think it is  
10 important to have some distinction in terms of what category  
11 you're coming under or you may decide just to indicate "small  
12 business." That would be up to the business owner.

13           REPRESENTATIVE HENNESSEY: Okay. I guess the  
14 purpose of my question was to make sure that we didn't have one  
15 business that qualified under three different criteria and say  
16 they are that much farther ahead---

17           MR. SPEAKS: No.

18           REPRESENTATIVE HENNESSEY: ---or they should be  
19 weighted---

20           MR. SPEAKS: Right.

21           REPRESENTATIVE HENNESSEY: ---my bid should be  
22 weighted differently because I qualify under three of the four  
23 categories, for example.

24           MR. SPEAKS: No; that's not the case at all.

25           REPRESENTATIVE HENNESSEY: Okay. Thank you.

1                   Thanks, Mr. Chairman.

2                   REPRESENTATIVE WHEATLEY: Any other questions for  
3 Peter?

4                   Thank you, Peter.

5                   MR. SPEAKS: Thank you.

6                   REPRESENTATIVE WHEATLEY: Next, I think we're going  
7 to go two on the panel instead of all the panel? All right.

8                   So next we're going to bring up Patricia Gingrich,  
9 CEO of American Personnel Managers & Consultants, Inc.; as well  
10 as Kristine Kirk, President of Mentors Consulting & Training --  
11 two small business owners.

12                   We have six in total, but because of our seating  
13 arrangement, we're going to bring them up two at a time. And  
14 we'll ask if there are any questions for the business owners,  
15 that we will wait until all six have had their chance to  
16 present and then we can ask them.

17                   Go ahead.

18                   MS. GINGRICH: Good morning, Representative Wheatley  
19 and Members of the Local Government Committee. Thank you for  
20 your leadership and the opportunity to present testimony on  
21 HB 2140.

22                   It's an honor for me to appear before you today. My  
23 name is Patricia Gingrich, and I am the President and CEO of  
24 American Personnel Managers & Consultants. We hold WBE status  
25 with the Commonwealth of Pennsylvania, New Jersey, Maryland,

1 and the city of Harrisburg as well as Virginia and New York.

2 I am going to deviate away from the packet that you  
3 have and keep my remarks very brief. I think that Peter Speaks  
4 did an excellent job in presenting what the bill is and  
5 represents, and I will say that most portions of it I'm very  
6 much in support of.

7 I think that the ability to waive employee limits  
8 for alternate certification is important, and I say that from  
9 the perspective of, we are a small business. At the moment, we  
10 have about 50 people. We are growing due to some additional  
11 contracts that we were able to attain, which will take place  
12 probably in 2013, and that may be one of the good things that  
13 happens in terms of the economy and supporting jobs in  
14 Pennsylvania, which we're very much interested in.

15 The downside of that is, if the 100 employee limit  
16 remains in effect without any type of special considerations,  
17 we could fall out of the program. But on the other side of the  
18 program, the fact is, there is a \$20 million IT and a  
19 \$24 million limit in terms of revenue. So it sort of balances  
20 itself out. But as we continue to grow, if we are at  
21 100 employees, we certainly would still be part of that small  
22 business program.

23 I also look at the opportunity of women in  
24 Pennsylvania. We are the seventh in the nation as far as  
25 women-owned businesses. There are 282,000 women-owned



1 businesses throughout the nation. It's a 40-percent increase  
2 since 1997.

3 In terms of supporting the definition of "small  
4 business," I am very much in support of that and appreciate  
5 that, as I think there are important tracking mechanisms that  
6 are in place for not only women, minorities, and veterans, but  
7 as a small business, there are other opportunities out there  
8 that we would like to pursue.

9 In terms of the surety bonding program, that, to me,  
10 has been a very, very critical path that we have been unable to  
11 perform or be involved in some contracts because of the costs  
12 associated with that. So the ability to have something like  
13 that that would support small business is very important.

14 The mentor-protégé program, I can't tell you how  
15 important I think that is to all small businesses. We so often  
16 work as a subcontractor to a prime, which is a very large  
17 international company in most cases, and it is important that  
18 the prime work, I think, very closely with the subcontractors  
19 in that there are specific skill sets that come with every  
20 contract, and some of those skill sets are brought by the small  
21 business, but they need to be developed and honed according to  
22 the content of the contract, not only as it is in current form  
23 but as it expands and rolls out in future pieces of the  
24 contract. So the ability to sit and better understand how to  
25 hone those skills, I think, is really important. And from the

1 prime's perspective, if it does provide additional points,  
2 that's something that they're very interested in.

3 I think the best practices for every small business  
4 doing business with the government is important. It, I  
5 believe, sets standards that are important, that everyone can  
6 be held accountable to, and is a fair practice and  
7 across-the-board practice where businesses work together to  
8 really provide ongoing quality. I know we strive for that, so  
9 does most every small business, but there are issues that come  
10 up that, as you look at a project, you may not feel that it is  
11 a best practice, and then you have an opportunity to then  
12 perhaps give some input and further develop those best  
13 practices.

14 I guess in closing the only other thing that I can  
15 say is that the support for small business in providing access  
16 to capital is really important. Starting a business today and  
17 staying in business is exceptionally difficult, whether you are  
18 a small business or a medium-sized business, and for that  
19 matter, large businesses. We all have the same challenges.  
20 Everything continues to grow in cost, and the ability to grow  
21 and expand and experiences as well as abilities and working  
22 relationships with larger companies is very important, and I  
23 think this is an entrée to do that.

24 I thank Representative Wheatley for all his hard  
25 work on this and the committee and everything that Peter Speaks

1 has done to move this forward. For us, as we sit every day, we  
2 work probably 80, 90, 100 hours a week to try to maintain and  
3 grow our businesses, and we are held very often and frequently  
4 to the same standards that many large businesses are. That  
5 difference is, we don't necessarily have the depth in revenue  
6 that the larger businesses do, so we do more with less.

7 Thank you.

8 MS. KIRK: Good morning.

9 Good morning, Chairman Creighton. It's a pleasure  
10 to be here today and to speak in front of the committee. I,  
11 too, like Pat, am going to move around in my prepared speech  
12 after hearing a lot of what was discussed this morning.

13 But to start, my name is Kristine Kirk. I'm the  
14 founder and current owner of KKR, Inc. We do business as  
15 Mentors Consulting & Training. We provide organizational  
16 behavior consulting and custom design and development in the  
17 workforce area.

18 Prior to starting Mentors in 1994, I spent over  
19 10 years in a large corporation doing commercial finance  
20 business in the merger and acquisition area. In that job, I  
21 read lots of business plans. We approved them; we financed  
22 them. I had a lot of really good experience there before I  
23 started my own business.

24 So when I left, the idea for Mentors, my company,  
25 came up when I was selling a middle-market company and talked

1 about training in the future around -- this was in 1994. At  
2 that time, I had a secretary. I hand wrote my stuff, gave it  
3 to her, and she typed it up. So computers really were not the  
4 way they are now today. So we saw an opportunity---

5 REPRESENTATIVE HENNESSEY: If it makes you feel any  
6 better, we all do that up here when we're talking.

7 MS. KIRK: Uh-oh. Well, if you need training, let  
8 me know.

9 Anyway, so the idea for Mentors was born. We saw it  
10 at corporations. We're going to be starting to do a whole lot  
11 of training around technology. I was pleased because I did  
12 have an angel investor, and we did have a very credible  
13 business plan. A few years into it, after a lot of success, I  
14 bought him out, and that was part of the plan. After that, I  
15 became a State-certified woman-owned business, because  
16 everybody told me you could become a State-certified  
17 woman-owned business; you just, you know, you get business,  
18 which I knew was not true.

19 But my path to this microphone dates back a rather  
20 unfortunate 10 years. As I prepared my remarks for today, I  
21 was looking through mounds of data and disparity studies with  
22 depressing statistics. I wanted to build a business case for  
23 you. I wanted to sit in front of you and talk about  
24 demographic information and industry numbers, but the words  
25 would not come to the surface, because I was struggling with

1 how I felt. I was struggling with my emotions, so I decided to  
2 sit in front of you and tell you my story.

3           As you hear my story, please know that I am far from  
4 alone. There are thousands, thousands of women and  
5 minority-owned businesses who continue to experience the same  
6 exclusive, inequitable realities in State contracting at every  
7 single level, from the top to the bottom. Yet, our small  
8 businesses employ more than half of your constituents. We  
9 contribute significantly to the economy.

10           My story -- I'm going to skip here -- is facts  
11 based. I mentioned it started over 10 years ago, after I  
12 somehow managed my company through near bankruptcy at the hands  
13 of our education leaders, who breached a large contract for  
14 which we successfully for years delivered customized teacher  
15 training as they integrated technology into their classrooms.  
16 Our education leaders decided, without my knowledge, without my  
17 input or consent, to change the terms of the deal.

18           I spent thousands of dollars on legal fees to find  
19 out that I had an excellent case to defend my company, but I  
20 was up against a very expensive legal process, an impressive  
21 team of lawyers, and an endless stream of tax dollars to pay  
22 for those lawyers.

23           I had no choice: I had to lay off the four people  
24 that were on that contract. I had to sell my home. I had to  
25 move my children to an undesirable rental, and I racked up

1 credit cards to clothe them and feed them. My stellar credit  
2 rating was destroyed.

3 But I consider myself one of the lucky minority and  
4 women-owned businesses, because my company did survive. It was  
5 over 10 years ago that I came to Harrisburg looking for help,  
6 only to learn firsthand there are very few laws or programs to  
7 help support or protect minority and women-owned businesses.  
8 My greatest fears were confirmed. I learned that the playing  
9 field to win and retain State contracts starts with barriers to  
10 enter that are nearly impossible. Then if we ever even make it  
11 to the playing field, we gain access to competition with  
12 inequitable rules of engagement that favor government and prime  
13 contractors.

14 It was 10 years ago that I learned that the  
15 Pennsylvania Department of General Services and the  
16 Pennsylvania Department of Education contracting policies are  
17 stacked in favor of prime contractors, all of whom have a seat  
18 at the table.

19 It was 10 years ago that I learned that decisions  
20 are made behind closed doors. State procurement folks and  
21 prime contractors ultimately decide when and how our  
22 hard-earned invoices that are already past due will be paid.  
23 And if we make too much noise, then another study is  
24 commissioned to figure out what our problem is.

25 Ten years ago, I confirmed that the only way that

1 minority and women businesses in my line of work -- that's  
2 important -- can achieve revenue sharing is to participate --  
3 we've heard a lot about participating -- in contracts where  
4 prime vendors negotiate the terms, DGS agrees to them, and we  
5 have to accept them in order to participate. Please  
6 understand, it is very, very difficult to run a business when  
7 one learns after the fact that a decision was made that  
8 negatively affects the finances of our businesses.

9           Ten years ago, I was reminded of numerous, well  
10 documented, reputable studies that are often commissioned by  
11 government and academic institutions. So I wanted to remind  
12 all of us for just a minute what we all hear every day in the  
13 news. It's out there. Pay attention. Open your eyes:

14           • Minority and women-owned companies enjoy, by last  
15 count -- now, Peter mentioned 17 percent. I don't know  
16 where that's coming from. Five percent is what I  
17 remember, but we have no way to measure it, like  
18 Rep Wheatley was talking about. I think they still count  
19 on their fingers to find out how much business we  
20 actually have. There's no computer system to figure it  
21 out.

22           • Minorities and women make less salary than their  
23 professional counterparts.

24           • Minorities and women only hold a small percentage  
25 of management positions in corporations.

1           • Minorities and women only hold a small percentage  
2 of leadership positions in government.

3           • In an economic recession like we have today,  
4 minorities and women lose jobs at faster rates compared  
5 to our professional counterparts.

6           • In an economic recovery, we gain employment at  
7 much slower rates.

8           • Minority and women-owned businesses suffer more  
9 severely, obviously, in a down economy.

10          • Current increases in gun violence and crime right  
11 now with our current economy are happening in our  
12 predominantly White neighborhoods. The reason, we're  
13 hearing from our experts, is because people are facing  
14 financial disaster.

15           I challenge you to look in our Black neighborhoods  
16 and these young men picking up guns. They don't have many  
17 choices, do they? They don't have many choices.

18           I've been playing this equity game now since the  
19 eighties -- I told you I was old -- and I thought I had been  
20 exposed to every fathomable demonstration of racism and  
21 exclusion. But then just last year, Pennsylvania Governor  
22 Tom Corbett announced his Marcellus Shale Commission. Everyone  
23 invited to participate on the Shale Commission's pictures were  
24 displayed in full glory in the news. Our Governor told the  
25 world last year what Pennsylvania minority and women-owned



1 businesses already know: The Commonwealth is not open to do  
2 business with us.

3           Once again, we were not invited to shale meetings.  
4 We do not have a seat at the table. We are not participating  
5 in very important discussions about business growth and  
6 employment opportunities in a Pennsylvania industry that is  
7 emerging and rapidly growing and has promised to be very  
8 profitable.

9           Possibly now, with all of this information, we have  
10 enough reputable disparity studies. We have enough real-life  
11 stories. We have enough pictures of appointed commissions to  
12 understand that we arguably have a very big problem here. If  
13 another government body wants to pay for another study, may I  
14 please encourage you to find out why our leaders promote  
15 exclusive behavior and put their pictures in the paper?

16           For years under the direction of Deputy Secretary  
17 Speaks and the Bureau of Women and Minority-Owned Businesses,  
18 we made great progress. When I came here 10 years ago looking  
19 for help, I knocked on many, many doors, only to find out there  
20 wasn't any help. Then I met Peter.

21           Peter was kind enough to listen to my emotions.  
22 Peter was kind enough to calm me down. I'm Irish and Italian;  
23 that's hard to do. So anyway, we laid the groundwork. You've  
24 heard it from Rep Wheatley; you've heard it from Peter. In  
25 this bill, these are well researched best practices from other

1 States. We're not asking for something that isn't already  
2 proven. That's one of the things that we did on our panel when  
3 we were asked to sit around the table and help. That was what  
4 Peter said to me: Kris, you're right; the laws don't protect  
5 you, but if you will help me and sit around the table.... I  
6 was like, how long is this going to take?

7 I learned a lot about what you guys do every day.  
8 I have so much respect. I can't imagine I'm sitting here  
9 10 years later. So we thought that change was on the way. I  
10 believe HR 78 may have already been introduced at some level  
11 prior to the change in administration. I don't remember the  
12 details. But unfortunately, we all know this is not a partisan  
13 issue.

14 When this Governor came into office, DGS Secretary  
15 Sheri Phillips' first order of business was to eliminate  
16 Deputy Secretary Speaks. All of these programs came to a  
17 screeching halt. The small business reserve that we're talking  
18 about now? Read the details, please. Read the details. It  
19 doesn't do everything that we think it should.

20 Arguably, Peter was one of the highest ranking Black  
21 men in the Commonwealth. He accomplished great things. He  
22 made solid progress for minorities and women under very  
23 difficult circumstances, yet he was eliminated just hours after  
24 Governor Corbett was sworn into office. Our leader was  
25 eliminated, without any discussion. Not one question was asked

1 about what we felt.

2           Since then, we have been stonewalled. Secretary  
3 Phillips has denied numerous meetings to discuss our concerns,  
4 et cetera, et cetera. We were hung out to dry again, and we  
5 don't even know why.

6           In conclusion, I want to reiterate, it is an honor  
7 to testify before you today. I appreciate the time to tell you  
8 my story and hope that some parts resonate with you on some  
9 level. I am humbled to be in this great Capitol, to be able to  
10 sit calmly before you and speak my words, knowing that some of  
11 the civil rights leaders in front of me shed blood, sweat, and  
12 tears so that I could sit here calmly and talk to you.

13           Unfortunately, I'm not calm inside. I'm not calm  
14 inside. My worst fear is years from now, my daughter is going  
15 to be sitting here telling you this same story. Rep Wheatley  
16 mentioned 1980-something. That's the first time I heard that.  
17 We've been trying to get laws in place to help us since the  
18 eighties -- since the eighties, gentlemen.

19           Your vote today for HR 78 represents the beginning  
20 of a level playing field -- just the beginning. Your vote is a  
21 responsibility we all have to protect and help our impoverished  
22 and imprisoned with opportunities. Your vote today is about  
23 doing the right thing. Your vote today is about economic  
24 progress.

25           Thank you very much for your time, and I would

1 appreciate any questions you have.

2 REPRESENTATIVE WHEATLEY: We're actually going to  
3 save questions until all of the presenters have had a chance.

4 MS. KIRK: Oh; I'm sorry.

5 REPRESENTATIVE WHEATLEY: But if you can just hang  
6 around the front, and we'll make sure that happens.

7 Next, we have Kerry Kirkland, President, Kirkland  
8 Consulting; and Steve Powell, President of Powell Steel  
9 Corporation.

10 Welcome, gentlemen.

11 MR. KIRKLAND: Good morning.

12 MR. POWELL: Good morning.

13 REPRESENTATIVE WHEATLEY: We'll start with you,  
14 Kerry.

15 MR. KIRKLAND: Good morning.

16 My name is Kerry Kirkland. I'm President of  
17 Kirkland Consulting, LLC, a management and training consulting  
18 firm that specializes in contract compliance/minority business  
19 development policy and program development. My company offers  
20 turnkey programmatic implementation and a suite of training  
21 modules, including cultural diversity, sexual harassment, and  
22 personal and professional development.

23 I formerly served as Associate Deputy Administrator  
24 for Government Contracting and Business Development for the  
25 United States Small Business Administration and also the

1 Mid-Atlantic Regional Administrator responsible for lending to  
2 small businesses in the Mid-Atlantic States. I'm the cofounder  
3 of the American Contract Compliance Association, which is the  
4 largest contract compliance training organization in the world.

5 I also have tenure in State Government. I worked in  
6 the Departments of Transportation, General Services, and also  
7 the Office of Administration and Labor and Industry in contract  
8 compliance and minority business operations for many years.

9 I appreciate the committee providing this  
10 opportunity to testify and support Representative Wheatley's  
11 package of reform legislation benefiting small businesses and  
12 minority-owned business, women-owned business, and  
13 veteran-owned businesses across Pennsylvania.

14 In 1997, there were 3 million minority-owned  
15 businesses in the country that generated about 2.7 percent of  
16 the total gross receipts in the nation, and those firms also  
17 employed 4.3 percent of the total workforce. And by 2007,  
18 there were 5.8 million minority-owned businesses that generated  
19 \$1 trillion, or 3 percent of the total gross receipts, and  
20 employed 6 million workers, or 4.9 percent of the total  
21 workforce. There are 7.8 million women-owned businesses that  
22 generate \$1.2 trillion in gross receipts and employ 7.6 million  
23 workers.

24 The number of minority-owned businesses increased by  
25 2.8 million between 1997 and 2007. However, the percentage of

1 gross receipts increased only .3 percent, and the percentage of  
2 workers employed by minority-owned companies increased by only  
3 .6 percent. Between 1997 and 2007, the number of  
4 minority-owned businesses increased 46 percent compared to  
5 18 percent for nonminority companies. However, many minority  
6 business development experts are concerned that the size,  
7 scale, and reach of such businesses has not kept pace with the  
8 increase in the number of new business formations.

9           A major factor that contributes to this stagnation  
10 is inadequate access to capital. Unfortunately, minority  
11 businesses are still three times more likely to be denied  
12 credit, 41 percent, compared to 16 percent for nonminority  
13 businesses. When minority businesses do receive loans, they  
14 pay higher interest rates and are approved for less money.

15           Growing minority businesses to scale can be achieved  
16 by a couple of different methods: one, by adding new customers,  
17 contracts, and new business lines and building capacity; two,  
18 through mergers and acquisitions or joining or buying other  
19 businesses; and three, through the formation of strategic  
20 alliances, partnering with other businesses that bring value to  
21 the table.

22           I believe that Representative Wheatley's package of  
23 reform legislation, including the surety bond guarantee  
24 program, mentor-protégé program, the contractor fast-pay  
25 initiative, and changing the definition of "small business" are

1 very important capacity-building activities that could generate  
2 thousands of good jobs across Pennsylvania and provide an  
3 invaluable boost to our economic recovery.

4           The surety bond guarantee program provides access to  
5 bonding to minority businesses that may be experiencing limited  
6 working capital or other risk factors that negatively impact on  
7 the underwriting of bonds. The surety bond guarantee  
8 encourages the surety companies to issue bonds that they would  
9 otherwise not issue to a minority business. This program would  
10 increase the opportunities for minority-owned businesses to  
11 submit competitive bids; therefore, increase their ability to  
12 win State contracts.

13           The private-sector marketplace continues to be a  
14 major challenge for minority-owned businesses, particularly  
15 within those private-sector companies that do not have minority  
16 business programs or business inclusion initiatives. The  
17 mentor-protégé program encourages private-sector relationships.  
18 It encourages and enhances the capability of certified minority  
19 contractors to compete more successfully on State contracts and  
20 access private-sector markets. It's very, very important that  
21 at some stage in minority business development and women  
22 business development that we make a shift toward the private  
23 sector as well. This mentor-protégé program could certainly be  
24 a vehicle in that transition.

25           The fast-pay initiative would provide critical cash

1 flow for minority businesses that can be utilized for working  
2 capital, buying equipment, expanding operations, and creating  
3 jobs. The reduction in the time that prime contractors must  
4 make payments to their subcontractors is a vital component of  
5 capacity building for minority contractors.

6 As a Vietnam veteran, I believe that expanding the  
7 definition of the term "disadvantaged business" to include  
8 veteran-owned business and service-disabled veterans is long  
9 overdue. Their sacrifices enable us all to enjoy the best  
10 free market enterprise system in the world. I think, in my  
11 opinion, that's a no-brainer.

12 In closing, I would hope that the committee would  
13 consider the development and implementation of a compliance and  
14 monitoring component to ensure accountability and provide the  
15 capability of measuring the success of these small business  
16 initiatives.

17 Thank you for your attention on this very important  
18 matter.

19 MR. POWELL: Good morning.

20 My name is Stephen Powell. I'm President, CEO, and  
21 owner of Powell Steel Corporation, which is a minority steel  
22 fabricator and erector.

23 I've been in business going over 20 years. I  
24 purchased formerly SS Fisher Steel out of bankruptcy. It took  
25 2 1/2 years to secure the financing to do that. Some of the



1 projects that I've worked on within the Commonwealth is I  
2 fabricated and erected steel for the unified judicial building.  
3 I also built, fabricated, and erected Cumberland Valley High  
4 School; also, Downingtown Middle School and High School. I  
5 also erect and fabricate bridges.

6 I was going to provide testimony on the size  
7 standard and also the mentor-protégé program, but hearing the  
8 committee and some questions that they raised to both  
9 Representative Wheatley and also Peter, I feel as though I  
10 could add or shed some light on some things there in terms of  
11 the size standard and also the mentor-protégé program that  
12 would probably give the committee more insight on why these  
13 things would be relevant and prevalent and how to do this, and  
14 also about what we call now the small business in terms of, one  
15 of the questions that I think Representative Hennessey asked  
16 was, would there be any advantage to a woman or minority-owned  
17 business or Hispanic business if they are a small business? I  
18 can provide information where it does not, but what I can say  
19 is that it would actually work in the reverse form.

20 It's similar to what we call the State's or the  
21 Federal Government's disadvantaged business program. They are  
22 all-inclusive of women/minority businesses, but in terms of how  
23 contracts are awarded, they are awarded based on, always  
24 9 times out of 10, price, cost, ability to perform. And so  
25 therefore, there are some inadequacies within that system, and

1 I think what this legislation is trying to do is to level that  
2 where there would be an opportunity for equity across the board  
3 for women and minority businesses to perform and compete.

4 So with that being said, I'd rather defer anything  
5 I'd like to say in terms of the question-and-answer period to  
6 address those concerns by the committee.

7 REPRESENTATIVE WHEATLEY: I want to thank all four  
8 of the business owners. I just want to make sure, it's my  
9 understanding that Terry and Sue Schaffer, they are not here?  
10 I don't want to skip anyone.

11 But I want to thank all four of the business owners  
12 who presented here today, and I want to open it up for  
13 questioning to any of the business owners from anyone on the  
14 panel. Any questions?

15 Mr. Chairman.

16 MAJORITY CHAIRMAN CREIGHTON: Maybe you ought to  
17 have Ed---

18 REPRESENTATIVE WHEATLEY: Oh, you want Ed? I think  
19 he's a separate -- okay.

20 Any questions for any of the business owners?

21 Mr. Chair.

22 MINORITY CHAIRMAN FREEMAN: Thank you,  
23 Representative, and I extend this to all those who testified  
24 under this category of testimony.

25 It seems that there's one recurring theme that keeps

1 coming up for all the small businesses that would be affected  
2 by this, and it seems to be that one of the biggest hurdles is  
3 access to capital. Would you all agree that that's probably  
4 the biggest problem you're facing more than just about anything  
5 else? Because without the capital, it's difficult to grow;  
6 it's difficult to compete with the big boys who have a decided  
7 advantage, because they have a huge infrastructure of attorneys  
8 and accountants and whatnot to guide them through the  
9 procurement process and contract process. So is capital pretty  
10 much the big nut to crack here?

11 MR. POWELL: Well, in my case, not necessarily.  
12 I've been in business now going on 20 years. The biggest  
13 hurdle for me in my business is the ability to be able to have  
14 the opportunity to participate in a project.

15 It always comes down to, we get a bid package. For  
16 me, I'm a structural steel fabricator and erector. All  
17 fabricators get what we call S drawings and a scope of work to  
18 bid the project. We bid the project; we give a price. A  
19 majority contractor or fabricator gives a price based on, and  
20 it all goes down to how much you can buy your steel for, how  
21 much you get your detailing for, so it comes down to price. So  
22 when you get to that point, then there may be, say if it's a  
23 Federal contract or a contract that has what we call at that  
24 time participation levels, then they have the ability to make a  
25 decision whether or not they go with me, that my price may be a

1 little higher because of what I had to pay for my steel or my  
2 detailing costs, or to go with that low number. And most  
3 times, because it's always cost driven, it goes to the low  
4 number, so then I'm out.

5           The only other time that it comes into play is where  
6 you have some States which are very adamant about what you call  
7 leveling the playing field; they have participation levels.  
8 New York has written in that any contract that has State or  
9 Federal dollars on it has to have, regardless of who the prime  
10 contractor is, has to have 15 or 30 percent minority or WBE  
11 participation on the project. If you don't have it, you don't  
12 get the contract. And what they do is they offer and they  
13 provide the prime contractors with a list of WBEs, veterans,  
14 minority contractors in every scope of work, and they tell you  
15 that you got to get it. And they basically also tell you that  
16 going in, they want to know who you contacted, who you're going  
17 to use and utilize, and in what amount, and if you don't do  
18 that, they don't consider the bid. They go to the next highest  
19 bidder.

20           I mean, that's the way they do it, which means that  
21 there is more participation in those areas. Maryland is  
22 similar, does the same thing, but you have some States --  
23 Chicago is more aggressive with that. Unfortunately for me,  
24 and I'm ashamed to say this, most of the work that I've done in  
25 my 20 years of business has been outside of the Commonwealth of

1 Pennsylvania, because Pennsylvania does not and has not been a  
2 proponent of advocating for women, minority, or veteran-owned  
3 businesses. They make the "good-faith effort," as they say.  
4 Or they say, nonresponsive; the bid's too high. Well, they're  
5 right, the bid would be high because of what it costs us to buy  
6 the materials, because we don't get the break. If we don't buy  
7 in bulk as some major contractors do, we don't get the  
8 discount.

9           And when you're talking about -- and for me, I'll be  
10 specific about my particular trade. When you're talking about  
11 steel and you're talking about buying steel maybe at, say,  
12 3 cents a pound as opposed to getting it and I've got to pay at  
13 6 cents or 9 cents a pound, you're talking about an enormous  
14 amount of money. So therefore, you're out, you cannot compete,  
15 and that's what it is. Or if you're talking about that you  
16 have to buy in bundles and that you have to buy so much  
17 material from a particular supplier within a year's time to get  
18 any type of break, you're already under the gun; you don't have  
19 a chance to really compete. So the only avenue you have is  
20 basically if there are participation levels that if the  
21 Commonwealth or the State or the Federal entity upholds that to  
22 make sure that you are inclusive.

23           MR. KIRKLAND: Access to capital is clearly a major  
24 issue for small businesses. It's a major obstacle.

25           When I became Regional Administrator at the SBA in

1 Philadelphia, one of my first assignments was to take a look at  
2 disparities and access to capital, and I was absolutely amazed.  
3 Out of nine Federal regions across the country, Region III,  
4 which encompassed Pennsylvania and the Mid-Atlantic States, was  
5 last on the totem pole when it came to lending to minorities  
6 and women. I couldn't believe that, because I knew the  
7 metropolitan centers that were housed within the Mid-Atlantic  
8 States. They had everything from Philadelphia to Baltimore to  
9 Washington to Richmond. I just never would have imagined that  
10 they were last when it came to lending to these types of  
11 businesses.

12           It remains an issue. There are many, many studies  
13 out there. Right now, you can search the Web today and just  
14 look at the disparities and access to capital for minority and  
15 female companies. It has been an obstacle, it remains an  
16 obstacle, and I really believe that Representative Wheatley's  
17 surety bond program certainly is a step in the right direction,  
18 at least in easing those types of issues that we have.

19           MINORITY CHAIRMAN FREEMAN: So do you foresee a need  
20 for the financial institutions to maybe step up to the plate  
21 and offer more in the way of micro-business loans?

22           MR. KIRKLAND: Absolutely. There's no question  
23 about that.

24           In fact, one of the ways that we've addressed that  
25 problem at the SBA, what we did, we had major lending

1 conferences across the region, from West Virginia up to  
2 Pennsylvania, and we've gotten lenders together and we put  
3 lenders together with minority and women-owned businesses. We  
4 talked out the issues, tried to get them to take a look at  
5 their particular situations, and as well as trying to get some  
6 of the minority and women contractors to mitigate some of the  
7 risks that were associated with their loan denials as well.  
8 But at the end of the day, over a 16-month period we were able  
9 to increase that lending 46 percent by simply communicating,  
10 getting folks together, partnering, and getting a better  
11 understanding of minority and women business needs.

12           And that's one of the things that has been on the  
13 table for many, many years. There are not many forums by which  
14 these financial institutions are sitting down and understanding  
15 minority and female business needs in terms of their financial  
16 needs. It's about communication and collaboration. Many  
17 times, that can at least assist in resolving some of those  
18 kinds of issues. So much work needs to be done in that area,  
19 though.

20           MINORITY CHAIRMAN FREEMAN: Okay. Thank you.

21           Oh, did any of the other presenters wish to comment  
22 on the need for access to capital? If you would come up to the  
23 microphone, please.

24           MS. KIRK: Capital is definitely a problem, sir, but  
25 before capital comes, there has to be education, understanding,

1 advocacy, and inclusion. I was in banking years ago, and the  
2 reason banks lend money is because you have a good story and a  
3 good contract.

4 MINORITY CHAIRMAN FREEMAN: And you have to prove  
5 you don't need it, so.

6 MS. KIRK: Exactly. So it's hard, because we,  
7 again, participate.

8 And I even have a very good relationship with my  
9 banker. I say, "Hey, when I get this State contract and I  
10 bring it to you, will you increase my credit line?" "Are you  
11 sure you're going to get paid?" "Are you sure they're going to  
12 continue the contract?" You know, so those -- yeah.

13 And it's education. And the mentoring program is  
14 good, and I appreciate the fact that everybody is talking about  
15 how the prime vendors need to mentor us, but I believe also and  
16 even more important that we need to educate them.

17 You know, we are equals in many ways. We chose to  
18 have our own businesses. You know, I could have, along this  
19 time, gone and gotten a job; I've had job offers, but I like  
20 what I'm doing. But I don't have the resources that they do.

21 And, you know, I've been there; I was them. So it's  
22 education. In other words, sir, if I took away your cell phone  
23 and your expense account and your legal department and your  
24 marketing department and, you know, et cetera, et cetera,  
25 et cetera, try and do your job.



1           So we do our job; we're happy, but it's education.  
2 Yeah; I think.

3           MS. GINGRICH: I'll just speak to it very briefly.

4           I was awarded a contract a few years ago, and my  
5 credit line was maxed out at \$50,000. I was ready to start the  
6 contract -- it was a Commonwealth contract -- I was ready to  
7 start the contract, and a week before I was ready to start, I  
8 was advised by the prime that there were certain pieces of the  
9 agreement that needed to be implemented immediately. One of  
10 them was insurance.

11           Normally we carry a certain amount of insurance. I  
12 sent the information to my insurance agent. He calls me and he  
13 says, "I think you might have a problem, because there is a  
14 different kind of insurance that's required within this  
15 project, and it's very in-depth and it's very expensive."  
16 "What does expensive mean?" "Are you sitting down?" "Yes."  
17 "It's \$25,000." "Okay." Well, I don't have \$25,000, so I went  
18 back to the prime and I said, "At no point in any of our  
19 discussions was there any disclosure or discussion at all about  
20 a particular kind of insurance that needed to take place." So  
21 now we are in a situation, we have a week before we're to  
22 start, and in review of all the documents in the contract there  
23 was nothing specific related to the insurance, unless you were  
24 an insurance adjuster, and it was very brief as to what the  
25 description was. So, "I think it's in your best interests to

1 help me purchase the insurance or you can't start the  
2 contract." And the prime said, so sorry; too bad; maybe you  
3 won't be able to perform your services. "Oh, I get it."

4 So I was lucky enough to have a very good  
5 relationship with the bank. Then I went back to them and,  
6 exactly what Kris said, I took my contract in and they asked  
7 the same questions. And I had them talk to my insurance agent  
8 to assure that that was the correct amount of money, and the  
9 bank said, "I'll tell you what we'll do. We'll give you the  
10 \$25,000, but we can't do it right away, because it's  
11 Christmas." I went to my personal savings account, in which I  
12 had \$25,000, got the insurance, insured by Lloyd's of London,  
13 so we could start the Commonwealth contract. Those are just  
14 the kinds of things that---

15 MS. KIRK: Every day.

16 MS. GINGRICH: Every day.

17 MINORITY CHAIRMAN FREEMAN: Thank you very much.

18 REPRESENTATIVE HENNESSEY: If I could just continue.  
19 Jake, all right?

20 If you had said, I don't have \$25,000 in my bank  
21 account and I can't come up with this insurance policy, would  
22 the prime have said, fine, we'll do it ourselves? Or would the  
23 prime have said, well, then we'll look around for the second  
24 bidder who was a minority contractor and give it to them, and  
25 maybe they might have the ability to get that insurance in

1 place? I mean, I'm trying to figure out whether there's some  
2 dis---

3 MS. GINGRICH: I think it depends on the prime.

4 REPRESENTATIVE HENNESSEY: But I'm trying to figure  
5 out whether the prime, by sluffing over, you know, the  
6 information, was trying to find a way to get you out of the  
7 picture so that they could do it themselves and keep whatever  
8 profit there was in-house, or would they have to turn it over  
9 to another minority business owner who was better able to get  
10 that insurance and put it in place and then perform the  
11 contract? So there was no gain to the prime by pushing you  
12 aside and going to somebody else.

13 MS. GINGRICH: I think it's number one.

14 REPRESENTATIVE HENNESSEY: They were going to do it  
15 themselves?

16 MS. GINGRICH: Because there was---

17 REPRESENTATIVE HENNESSEY: Wouldn't that violate the  
18 restrictions? Because I think Mr. Powell said that certain  
19 people---

20 MS. KIRK: We wouldn't know, we wouldn't know---

21 REPRESENTATIVE HENNESSEY: Hang on. Mr. Powell  
22 said, I think, that a certain percentage of these subs have to  
23 be, you know, you have to have subs doing a certain percentage  
24 of the work. So if they're doing the work in-house, then it  
25 seems to me they're violating the contract.

1           MR. POWELL: What I was going to say is most times  
2 in the contract language, the prime has to carry that insurance  
3 themselves. So what the prime could do -- and I've done that  
4 with prime -- what the prime could do is have them as an  
5 additional insured. Whatever they pay for that percentage of  
6 the premium costs, they could have deferred that to her and  
7 moved on.

8           MS. GINGRICH: Didn't do it.

9           MR. POWELL: I mean, that's the way it should work  
10 in the real business world.

11          MS. GINGRICH: Yes.

12          MR. POWELL: So I'm getting right at your point that  
13 the prime doesn't get that contract if they don't have that  
14 insurance in place. And basically, the prime's contract is  
15 with the Commonwealth or the State. The subcontractor's  
16 contract is only with the prime, so the prime is the ultimate  
17 person that's responsible for it. The only thing the  
18 subcontractor's insurance does is give you additional  
19 insurance. But it ultimately always comes back to the prime  
20 contractor, that he or she has to finish the work, and they're  
21 the first line of defense. So what they could have done is  
22 say, okay, you don't have that; this is what we pay for it;  
23 this is what your cost is; you would have to give us some type  
24 of credit off of your contract for that amount, not 25 or  
25 whatever it may be, and moved on. That's how it normally would

1 work if they're doing the right thing.

2 REPRESENTATIVE WHEATLEY: And part of this,  
3 Representative Hennessey, and this is not a slight on any prime  
4 or any company, it's a business world where in the real sense,  
5 they go through steps that they feel like they have to to meet  
6 the minimum level of showing participation. And again, this is  
7 not to disparage; this is the reality.

8 I mean, one of the primes said at one of our  
9 hearings that, you know, this costs money just to entertain  
10 this aspect, right? So if you want -- there's always this  
11 question of, does the Commonwealth want the most, in their  
12 term, efficient and best price of a product, or do you want  
13 this other activity where you're trying to also entertain a  
14 policy position that may cost additional steps that's not going  
15 to get you to, you know, the lowest bid.

16 So what they -- and again, the primes want clarity,  
17 too, because if you really want a system where you have small  
18 businesses working with majority companies and larger firms and  
19 you're trying to develop it, then you have to have a process by  
20 which your enforcement meets that, too. Because what they will  
21 do is they will play these types of games where they'll wait  
22 until the last moment and then surprise a sub, even though they  
23 used that sub's numbers and that sub's relationship with them  
24 to help them win the bid, and then all along in the back of  
25 their head they're saying, we don't want to have the extra step

1 of having to deal with that sub, because we can manage this  
2 ourselves; we can maximize this contract ourselves.

3           There's no punishment for them doing what they did  
4 to her. If she couldn't come up with the 25, then they could  
5 self-perform, because at the end of the day, they could say she  
6 didn't have everything that was necessary for us to work with  
7 her, and it was a week before the start; we did it ourselves.

8           REPRESENTATIVE HENNESSEY: So I think what you're  
9 saying is that they actually could move her aside and do the  
10 work in-house and still meet the requirements---

11           REPRESENTATIVE WHEATLEY: Yeah, because---

12           REPRESENTATIVE HENNESSEY: No; hang on. ---meet the  
13 requirements that Mr. Powell talked about, that 30 percent of  
14 the business has to be done by minority contractors, by saying,  
15 well, we tried, but when she couldn't put up the insurance, we  
16 just, you know, decided to do it in-house.

17           I mean, if I'm a government auditor, I think I would  
18 say, why didn't you go to, say, Ms. Kirk and see if she could  
19 put up the money and perform that contract? Then we don't have  
20 any discrimination; we meet all the requirements for minority  
21 businesses to participate in that contract, and there's really  
22 not a problem.

23           REPRESENTATIVE WHEATLEY: Right.

24           REPRESENTATIVE HENNESSEY: But I'm just finding it  
25 difficult to believe or to accept the idea that you can sort of

1 shaft the small business person and then do it in-house and  
2 still have the government look the other way and say, okay,  
3 that's fine with us, you tried.

4 REPRESENTATIVE WHEATLEY: Well, that's one of the  
5 things that we discovered. And it wasn't really a discovery  
6 for us; it was something that was revealed, I think, more  
7 clearly. When you had a department that was the Bureau of  
8 Minority and Women-Owned -- the department, I'm not sure of the  
9 correct name, but Peter Speaks' department at that one point --  
10 he may at that time have had two or three employees who were  
11 responsible for the management and oversight over those  
12 department-related contracts. So think about the auditing  
13 situation.

14 This is why we said the tracking and monitoring was  
15 so important in the system. We don't even have a system, quite  
16 frankly, that is up to date, that will allow for us to know  
17 what contracts -- in a timely way. We have a system where we  
18 can do it, but it's 3 or 4 weeks, or maybe even longer than  
19 that, before it will tell you that information you need. But  
20 how many contracts we have out there; what are the requirements  
21 of those contracts as it relates to participation levels; who's  
22 doing them; who's meeting them. So if you tell us you're doing  
23 10 percent with steel construction, you know, we might not know  
24 those three individuals -- they might be lower now since they  
25 changed the department. They might not even have three

1 employees. There might be one employee over there -- whose  
2 responsibility would be to monitor, to make sure you're meeting  
3 what you said you were meeting, that you were actually doing  
4 the things that you were supposed to be doing with these subs,  
5 and then if you're not, holding back what we owe you until you  
6 do right by them. We don't have that system in place where  
7 it's effective, efficient, and somewhat staffed in a way that  
8 we can monitor it.

9           Again, it goes back to, even the primes, when we  
10 heard from them, they said, you are setting up a system by  
11 which it is very confusing. And yeah, primes will go through  
12 it because we have to go through it, but are we committed to  
13 it? No, because you're not really even committed to it. So  
14 once you commit -- as a Commonwealth -- once you commit to it  
15 and you tell us the rules of the game, we will adjust, because  
16 we've seen it. They've adjusted in New York. They've adjusted  
17 in Maryland. They've adjusted when there's been a clear  
18 definition saying, look, this is the way that we are going to  
19 have our program run. We're going to enforce; we're going to  
20 monitor; we're going to track. We value the program. We value  
21 the relationships. They said, okay, we know what you do. We  
22 go in and we do it.

23           But because you have this, you know, halfhearted  
24 attempt, there's a halfhearted -- and all you're doing is  
25 wasting business time. You're wasting the prime's time; you're



1 wasting the subcontractor's time, and that's really what you're  
2 hearing here.

3 REPRESENTATIVE HENNESSEY: Okay. I understand that  
4 part, but let me just go back, if we can.

5 You can't come up with the insurance money, but we  
6 turn and go to Mr. Powell, who has a minority business, and he  
7 can, and he's second in line; and then we go to Ms. Kirk and  
8 she's third in line, and she's a minority business. Both of  
9 them can provide the insurance. So if the prime says,  
10 Mr. Powell, you have the job then, because, Ms. Gingrich,  
11 you're out of the picture. At that point, the prime has met  
12 the letter of the law and the spirit of the law by having a  
13 part of that contract performed by a minority contractor,  
14 right? A minority-owned business, all right? So there's not a  
15 problem there. The problem comes, I guess, if we're lax enough  
16 as a State, to say, well, gee, you know, when Ms. Gingrich  
17 couldn't come up with that insurance, we're just going to let  
18 it go back in-house and forget about the idea that, you know,  
19 25 or 30 percent of the business had to be done by a minority  
20 business, minority-owned businesses. And if we're that lax,  
21 then we really have a problem as far as a State.

22 Now, I mean, it would seem to me that the State  
23 auditor could come in and say, all right, 30 percent of that  
24 was supposed to be done by minority-owned businesses; her  
25 portion was 12 percent; you're going to get 12 percent less

1 than your total bill, all right?

2 REPRESENTATIVE WHEATLEY: Right.

3 REPRESENTATIVE HENNESSEY: And I suspect at that  
4 point, that kind of shenanigans would be stopped, you know, it  
5 would be nipped in the bud, because people would realize if you  
6 can't get one minority-owned business to perform, you better go  
7 out and get another one because you can't do it yourself or the  
8 State will withhold that money.

9 REPRESENTATIVE WHEATLEY: And that's the challenge,  
10 though, because in order to do that system the way that you are  
11 proposing -- which we agree with, by the way -- in order to do  
12 that, you have to have the ability to do the on-time monitoring  
13 and tracking so that you know within the timeframe, because  
14 most of this will happen like a week before, then they will  
15 perform, and then we do the audit a year later, you know? So a  
16 year later, they've already gotten their checks; they've  
17 already gotten their performance. It doesn't really help the  
18 business climate. So again, you have to have a system. You  
19 have to have the staffing in place. You have to have the  
20 commitment in place to a real program.

21 And again, I don't want to say this in a way that  
22 the larger corporations are, you know, acting in a way that  
23 they don't want to participate. I think what you will hear  
24 them say is, we will participate if it brings the value to the  
25 system. Like, if you're going to hold us to a lowest bid

1 requirement and then say we must utilize small businesses in a  
2 partnership, okay, but help me understand how that benefits not  
3 only from a business sense but from a dollar strength, because  
4 you are still putting the low bid on me. You are saying I have  
5 to bring it in at this low number, but then you're telling me I  
6 have to utilize these businesses, right?

7           So they are just saying, okay, you create the  
8 system, we'll abide by the rules, but if you're creating the  
9 system and you really don't care about the rules, then we're  
10 going to do what's best and in the interests of low bid. Do  
11 you know what I mean? So it's in the interests of our profit  
12 and low bid to do it by ourselves, but we'll go through the  
13 mechanism of acting as if we want to use subs for our small  
14 business.

15           REPRESENTATIVE HENNESSEY: Okay. I'll get back to  
16 you.

17           REPRESENTATIVE WHEATLEY: Sure.

18           REPRESENTATIVE HENNESSEY: Maybe we can talk about  
19 that after the meeting.

20           Ms. Kirk, you seem like you're anxious to say  
21 something, so I don't want to cut you off. Go ahead.

22           MS. KIRK: Yes. Thank you very much, sir.

23           I don't want anybody to think in this room that  
24 we're criticizing prime vendors. They're business people. In  
25 fact, very early on in this process when I was learning about

1 it and I heard how we have to participate with prime vendors  
2 and what prime vendors have to do to even include us in their  
3 contracts, my response as a business person: Why as a prime  
4 vendor would I do that? Why would I give away some of my  
5 profit? And for what I do, in training. So the large vendors  
6 that I would work with are, you know, AT&T, IBM, Dell -- all  
7 great companies. Why would they carve out the training that  
8 they already do in-house to give me a piece of it? And they  
9 make a lot of profit on the training. There's not a lot of  
10 profit in hardware. So that was my question, why would they do  
11 that?

12           And then when we don't have measurements. And when  
13 Deputy Secretary Speaks was in office, what he would do -- and  
14 maybe you guys can confirm, because there was no compliance,  
15 there are no measurements. The process that he's talking  
16 about, I'm not joking, we're counting on our fingers. Now, it  
17 is an Excel spreadsheet, but it takes weeks to even figure out  
18 whether we are getting what we were told we were going to get.

19           It's about relationships then beyond that. What  
20 Deputy Secretary Speaks would do is, oh, okay, and he had  
21 staff. They've all been eliminated. On the compliance side,  
22 he would bring us into the room; no more closed-door meetings.  
23 We'd all come into a conference room: There is a problem here.  
24 What is it? Can we solve it? There was no prime vendor going  
25 up to DGS and saying, hey, Pat can't do it; he can't -- I'm

1 sorry; I don't know all your names -- can't do it; she can't do  
2 it. You know what? I've got to take this profit. I've got to  
3 do it back in-house. If I was on the other end of that, I'd  
4 say, okay; I understand. Or sometimes you get, oh, here we go  
5 again; these minority and women people, they just can't get it  
6 done.

7           So I don't want to criticize the primes. They're  
8 doing the best they can, but there's no measurement. And when  
9 they go back to their bosses, these are multi -- what I deal  
10 with -- multimillion-dollar contracts. They have people to  
11 report to. So if their report is, "Well, how does this work?"  
12 "Well, do they track it?" "Oh, they don't track it?" "Okay.  
13 Well, let's just bid on it, bring these people in, and then  
14 we'll figure out---" I don't know what they want to figure  
15 out. I'm not saying they consciously cut us out. It's profit.  
16 It's about profit.

17           REPRESENTATIVE HENNESSEY: Okay. I tend to agree  
18 with Mr. Powell's approach, which is the prime should have the  
19 umbrella of coverage and, in a sense, provide it for everybody.  
20 It's cheapest that way, and then you avoid all these other  
21 problems.

22           Mr. Kirkland, first of all, thank you for your  
23 service in Vietnam.

24           Secondly, you had talked about delays in the  
25 fast-pay initiative because you're experiencing delays in

1 payment. Is that something that's specific somehow to small  
2 business, or is that what's happening all across the country  
3 and the world in terms of the recession, when people, it seems  
4 to me, are hanging on -- you know, businesses that used to pay  
5 in 10 days are now paying in 30; businesses that paid in 30 are  
6 paying in 60. Everybody wants to hold on to their money. As a  
7 matter of fact, I'm thinking of the old American Express  
8 commercial where, I forget the guy's name who said, if you got  
9 \$100 or \$200 from an American Express check, keep it in your  
10 pocket, you know, and keep it in your wallet. And I thought,  
11 yeah, it's brilliant, because if you get, you know, 100,000  
12 people running around with that money in their pocket, that's  
13 millions of dollars for American Express to use, interest free.

14 MR. KIRKLAND: Yeah; that's exactly right.

15 REPRESENTATIVE HENNESSEY: Because if you cash in  
16 that American Express check 5 years, 7 years later, they'll  
17 give you exactly what it's worth. They don't pay you interest  
18 on that. So they get your money interest free for a long time.

19 MR. KIRKLAND: That's exactly right.

20 REPRESENTATIVE HENNESSEY: The kinds of things that  
21 you're talking about, the fast-pay initiative, are you not  
22 getting paid or are small businesses -- not your company -- are  
23 the small businesses not getting paid just because the bigger  
24 businesses are holding on to their money for a longer period of  
25 time, or are we talking about situations where, I'm not going

1 to pay you because you did a lousy job, you know, and we have  
2 some questions about the quality of your work? What are you  
3 seeing in terms of the marketplace?

4 MR. KIRKLAND: Well, what I'm seeing here on a  
5 repeated basis is -- and it's a little bit of both. I want to  
6 share that with you. We've seen minority contractors who  
7 literally went out of business because they couldn't carry  
8 their payroll for 90 days.

9 REPRESENTATIVE HENNESSEY: Right.

10 MR. KIRKLAND: And I might add, this is when the  
11 prime contractor had already been paid, and what we're talking  
12 about is a situation where we're asking for a reasonable amount  
13 of time in which the prime contractor pays the sub after  
14 they're paid. There's no reason for them to hold on to those  
15 dollars.

16 REPRESENTATIVE HENNESSEY: Because the prime  
17 wouldn't have been paid if the person who is buying the service  
18 wasn't satisfied.

19 MR. KIRKLAND: That's exactly right.

20 REPRESENTATIVE HENNESSEY: And you wouldn't pay the  
21 prime because, you know, the sub did a lousy job. You'd say to  
22 the prime, get the sub to correct it.

23 MR. KIRKLAND: I can't tell you how many times I'm  
24 talking to contractors who are on their way down to a prime  
25 contractor's home, and oftentimes they're working in central

1 Pennsylvania or driving down to Philadelphia or outside of  
2 Chester or somewhere else, trying to run down a check, and  
3 these guys are literally going down, camping out at these prime  
4 contractors' houses, basically trying to get paid. Now, I'm  
5 not talking about---

6 MS. KIRK: It gets expensive.

7 MR. KIRKLAND: I'm not talking about 7 days or  
8 14 days; I'm talking 30, 60, 90 days past due. And one of the  
9 major reasons that drive these small companies out of business  
10 is their inability to get prime contractors to pay in a  
11 reasonable amount of time.

12 And this portion of the package that Representative  
13 Wheatley is presenting I just think is absolutely essential.  
14 It's very, very critical, particularly for small and  
15 minority-owned businesses out there.

16 MR. POWELL: I think this may help with the question  
17 that you're asking, because what happens is, basically most  
18 contracts read with a subcontractor "we pay you when we get  
19 paid" or "we'll pay you 7 days from the time we get paid" or  
20 15 days from the time we get paid.

21 What happens is, when you submit your application,  
22 this is where the real issue is for me, is that the prime will  
23 submit their application to the State. The State may take  
24 120 days to process that application. So the prime has not  
25 received their money, but us as a sub, we've incurred that cost



1 with payroll and everything and we're looking for that. But  
2 the prime says, listen, I'm not there to support your business;  
3 you're one subcontractor; I can't pay you; I have to get my  
4 money from the State. And the prime will then proceed to tell  
5 you that's what you supposedly should have a line of credit  
6 for. The line of credit should be there based on 70 or  
7 65 percent of your receivable. If I'm the only job that you  
8 have, then you've got a problem, because I'm not going to pay  
9 you until I get paid.

10 So to me, the urgency should be that once the  
11 application is received by the State, the State should have a  
12 formula in place to turn that around within the timeframe that  
13 the prime has the contract with. But I can tell you, on most  
14 DGS contracts, they don't see a payment until 90 to 120 days  
15 after the first application on DGS contracts. That's a given.  
16 And I worked on them, and depending on what prime you work  
17 with, some will give you money out of their pocket, but most  
18 won't. Because for them, their billing is an enormous amount  
19 of money, and they have other contracts also, meaning the prime  
20 contractor. So with that being said, the problem there in  
21 terms of the prompt-payer turnaround would be in terms of when  
22 the application is submitted to the State and how quickly the  
23 State processes that application to get the revenue back.

24 Now, I will say this: It works both ways for me. I  
25 mean, it depends on how aggressive you are as a business owner.

1 When that has happened for me on DGS jobs, oh, I called the  
2 State; I called the DGS office. I mean, I said, hey, we got a  
3 problem here. I mean, I can't do this. And then the State  
4 says, well, let me call Treasury. They go do what they have to  
5 do, and most times, I will say this, I get a check within  
6 5 days.

7 MR. KIRKLAND: After you made contact?

8 MR. POWELL: After I made the contact. I mean, they  
9 go ask their people, what the heck is going on?

10 REPRESENTATIVE HENNESSEY: In the contract that you  
11 might or your prime might enter with DGS, isn't there a payment  
12 schedule? And are you telling me that DGS routinely either  
13 ignores it or stretches it?

14 MR. POWELL: Yeah, they stretch it. I'm telling you  
15 the truth.

16 REPRESENTATIVE HENNESSEY: I mean, we ought to know.

17 MR. POWELL: I mean, no, that's the truth.

18 REPRESENTATIVE HENNESSEY: But with the fast-pay  
19 initiative -- it's in here -- we would be telling the State  
20 that we've got to pay our bills fast.

21 MR. POWELL: Right, and that's what should happen.

22 REPRESENTATIVE HENNESSEY: And that's a good idea,  
23 you know---

24 MR. POWELL: But that's not what they do.

25 REPRESENTATIVE HENNESSEY: ---because it will get

1 some of the people off their butt and say, you know what? We  
2 actually have to process this, not let it sit on our desk for  
3 3 weeks while it gathers dust.

4 MR. POWELL: Right, but that's not what they do. I  
5 mean, they have a process, and that process is very  
6 complicated, because what they'll say is that we have an  
7 inspector that goes out and checks to see percentage of work  
8 complete. They've got to get that in, and then they wait to  
9 get that in. And then they go and look at what was submitted  
10 by the prime. Then they do their due diligence. And by the  
11 time all that happens, the clock is running. By the time you  
12 get that, you have your second application in. Because we bill  
13 the 20th -- they always want a pencil copy by the 20th of each  
14 month, then the hard copies by the 25th. Well, think about  
15 that. If I'm not seeing it until 90 or 120 days, I'm already  
16 3 to 4 months behind the curve and I'm getting my first one,  
17 and your first one is probably always your lowest one. And  
18 then you've got all that other cost behind that. Well, then  
19 you've got a big nut to crack, and that hurts you as a sub. I  
20 mean, it really does. And the prime says, I can't help you  
21 because I'm not going to pay you that money.

22 REPRESENTATIVE HENNESSEY: Thank you all very much  
23 for your answers. I don't want to -- I have other questions,  
24 and I'll be happy to stay after the meeting and talk to you  
25 guys, but I think we have another witness that's going to

1 testify, and I don't want to hold him up.

2 But wait---

3 REPRESENTATIVE WHEATLEY: We have a couple more  
4 questions.

5 REPRESENTATIVE HENNESSEY: Ms. Gingrich, we still  
6 have another question here. Thank you.

7 REPRESENTATIVE KNOWLES: Thank you very much,  
8 Mr. Chairman.

9 This really isn't a question. It's just that I  
10 think something needs to be clarified.

11 First of all, my wife and I ran a small business for  
12 10 years in the earlier stages of my life, and I know how  
13 challenging it is, and I certainly commend each of you or  
14 anybody who's running a small business. My statement is in  
15 regard to Ms. Kirk's testimony.

16 I really don't know Secretary Speaks. He seems like  
17 a very nice gentleman, very capable, bright, and I can't make  
18 excuses for the Governor. I have no idea what that was all  
19 about. But I think that you should remember that the DGS  
20 Secretary is Sheri Phillips, who is a woman. There are a  
21 number of women who are in the Corbett Administration in  
22 Secretary positions. And also, there's a woman by the name of  
23 Maria Montero who visited many of the Legislators recently, and  
24 she is the Executive Director of the Pennsylvania Commission  
25 for Women and the Governor's Advisory Commission on Latino

1 Affairs. So I would strongly suggest that you maybe would want  
2 to reach out to her, because I'm sure that she would be very  
3 interested in what's happening here today.

4 And I have to leave, by the way. I don't want  
5 anybody to say I went stomping out of the room or anything like  
6 that, but I do have to leave. But I do appreciate the  
7 information that you provided for us, but I just thought I  
8 should clarify that.

9 REPRESENTATIVE WHEATLEY: Thank you.

10 MS. KIRK: Do you know why she won't meet with us?

11 REPRESENTATIVE KNOWLES: I have no idea.

12 MS. KIRK: Okay. Thank you.

13 REPRESENTATIVE KNOWLES: No. But I just -- did you  
14 ask her to meet?

15 MS. KIRK: Many times.

16 REPRESENTATIVE KNOWLES: Okay. Well, I can maybe  
17 intercede on your behalf. I'm not quite sure. But I just want  
18 to make the point that there are people within the Corbett  
19 Administration that, you know, are interested in your issue and  
20 our issue.

21 MS. KIRK: Yes, sir. And I mentioned the Marcellus  
22 Shale Commission. I think there were 30 people on it, and  
23 1 person looked like me, and she was there because she was a  
24 geologist or an environmentalist. She earned her spot with her  
25 brain. None of them looked like Representative Wheatley.

1           REPRESENTATIVE KNOWLES: Okay. Well, but let's just  
2 not forget that there are minorities that are in the Corbett  
3 Administration. I think that needs to be said.

4           REPRESENTATIVE WHEATLEY: Thank you.

5           And are there any other questions? Seeing none, I  
6 want to thank the panelists again. I really appreciate your  
7 testimony and look forward to working with you as we move these  
8 bills and other similar ones through the legislative assembly.

9           I want to bring up our last testifier,  
10 Edward C. Troxell, Director of Government Affairs for the  
11 Pennsylvania State Association of Boroughs. Thank you.

12          MR. TROXELL: Thank you, Representative Wheatley.

13          And good morning, Chairman Creighton and Chairman  
14 Freeman and Members of the Local Government Committee. Good to  
15 see you on this coming to a close of our legislative session  
16 and a few of the last hearings I guess we'll be having on a  
17 multitude of things.

18          I want to thank you for the opportunity. First of  
19 all, you have my printed testimony. I may refer to it back and  
20 forth, whatever, but more or less just let me share with you a  
21 little bit about HB 2089 and the association's position.

22          I do serve as the Director of Government Affairs for  
23 the Boroughs Association in Pennsylvania. We've been  
24 representing the boroughs of our Commonwealth for over  
25 100 years now, and we do that to support and educate them and

1 provide various services that they may not or cannot provide on  
2 their own due to economies of scale, et cetera.

3           This legislative session was a very big session for  
4 us -- and the committee is quite aware of that -- that we were  
5 able to work collaboratively with the committee and also with  
6 the Local Government Commission and various stakeholders in  
7 developing and reenacting a revised Borough Code, Act 43 of  
8 2012.

9           Within the Borough Code, we had gone over each  
10 article painstakingly, looking at language, what needed to be  
11 added, what needed to be replaced, what needed to be  
12 modernized. Throughout the entire process of that 8 years that  
13 we spent on the Borough Code, this issue did not arise from our  
14 membership. They had not indicated that something like this  
15 may be of interest to them. They just weren't aware of it at  
16 that point. So that was 8 years that we spent regarding that.

17           The Borough Code committee, by the way, the revision  
18 committee, was a very broad committee with various membership.  
19 Many of them were small business owners. Many of them were  
20 members of the minority community. I don't know how to express  
21 that, you know, properly. I mean, we had women; we had folks  
22 from all diverse backgrounds, basically, that participated in  
23 our projects. So for 8 years, they worked together. We worked  
24 with the committee, and we put it through the law, and we're  
25 very grateful for that.

1           Actually, we're undergoing right now a large  
2 educational effort to our folks, so we'd like to be able to  
3 keep the codes maybe as static as possible at this point so we  
4 can just educate folks on what we have done.

5           Secondly, we also did some work earlier. Back in  
6 2011, we did Article XIV on procurements when it came to the  
7 bidding-threshold language. You'll recall how problematic that  
8 was getting things correct; what was the language going to look  
9 like. We were able to get that done. That took 7 years to do,  
10 and within those 7 years, something like this didn't really  
11 rise to the attention or have any gravitas before our  
12 membership. So therefore, we did not tackle it or insert it.  
13 So altogether, we spent 14, 15 years, you know,  
14 collaboratively, just looking at procurement language within  
15 the code. Something like this wasn't anticipated, wasn't  
16 expected, and so for the association, we have problems with it  
17 in that way. It puts a new dynamic that my folks still have to  
18 get used to the language of the code that we already changed.

19           Now, in particular, some of the things in the code  
20 that we did under 1402, which this bill would amend, we did put  
21 language in there enabling the boroughs to establish policies  
22 for the lowest qualified and responsible bidders. And they  
23 could also make policies on top of that that wouldn't be  
24 contrary to State law and Commonwealth law, because, you know,  
25 we're always responsible to the State Government and the



1 Commonwealth, et cetera, because we're considered creatures of  
2 the State, something that I always tussle with, but that just  
3 happens to be the nature of things. So we looked at that.

4           And lastly, before I close into an examination of  
5 the language itself -- okay? -- is the fact that we do have two  
6 policy documents that are very important to our association.  
7 They are our Municipal Policy Statement and our Member  
8 Resolutions. These act as formulating our platform for  
9 legislative action in the Commonwealth, and even at the Federal  
10 level. We really haven't engaged in this issue altogether.  
11 Whether it is an issue or not, it remains to be seen with our  
12 folks.

13           So that's a little bit of background, I guess, a  
14 little bit of a narrative about where our association is. Now,  
15 I'm speaking for borough communities; I'm not speaking for all  
16 of the local government communities.

17           Looking at the bill itself, some of the areas that  
18 give me pause, some of the language that could use some  
19 tweaking if it were indeed to be incorporated into law, are  
20 some of the things where, I'm going to start, first off, the  
21 mandate that it puts in page 1, line 11. Now, I'm going to  
22 raise mandates, and we know how tough they are. You know, we  
23 have to deal with Act 111 mandates. We have to deal with  
24 prevailing wage mandates. We have to deal with advertising  
25 mandates. You know, I'm not sure how prevailing wage would

1 even play in something that we're considering here, you know,  
2 and what folks would have to say there. So that's an area  
3 where I think that we should hear a little bit maybe from the  
4 Department of General Services. That would be helpful in the  
5 future, maybe their perspective on how this program is working  
6 out, et cetera, something like that.

7           Secondly, I have "Contracting and Subcontracting  
8 associated with the construction." You'll see later on in that  
9 same section, I believe it's section (a), they talk about --  
10 well, lines 13 and 14. To me, what that seems to do is place  
11 an administrative mandate on local governments that don't  
12 always have the capacity to fulfill these administrative  
13 mandates to also hold subcontractors of contractors available.  
14 Sometimes my guys can't even find a contractor, let alone the  
15 subcontractor. So there's a lot of difficulty that we have  
16 with that one. It could just kind of hamstring our ability to  
17 do some of those things that we did in the new code, and it  
18 kind of pulls us back a bit. We don't have as much of a  
19 freedom as we would have liked or a swiftness of purchase.

20           Secondly, while I also have "Performance  
21 of...purchasing of any materials," this gets kind of muddy for  
22 me, because it might be interpreted where the local government  
23 would have to actually begin to, not just with the primary  
24 contractor but also the subcontractor and the people they're  
25 purchasing supplies from, do we have to use those same

1 guidelines and do they have to be impressed upon all these  
2 suppliers -- the people that are making the tar, the people  
3 that are providing the road material, the people that are  
4 providing tires for my public works vehicles, the people,  
5 et cetera, et cetera, et cetera, all those merchants? So  
6 there's some question there where I think it lends itself to  
7 the need for some clarity.

8           We do have -- and I'll go on to the next page --  
9 "Established Procurement standards in The Borough Code," which  
10 I believe enable us not to use a lot of the procedures in the  
11 proposed bill when it comes to professional services,  
12 borough-owned utilities, intergovernmental and multi-municipal  
13 contracts. There are a sizable -- not a sizable amount, but an  
14 amount of purchases and procurements that our communities make  
15 that don't have to undergo a bidding process, and that's done  
16 because they're so minuscule at times. Case in point: If I  
17 have a community that wants to develop a contract for buying  
18 office paper and that's going to be maybe \$5,000 a year, and  
19 maybe they want to buy two computers at the same time, that  
20 doesn't have to undergo any type of bidding process. Under the  
21 new code, we have up until \$10,000 where we have to begin the  
22 telephonic purchasing or quotation process. So I'm not quite  
23 sure of the impact of that specific language in there, what  
24 might happen there.

25           I guess for the sake of time, I'm getting between

1 you and lunch, I'll launch down. In here is the "disadvantaged  
2 businesses" line, and that's on page 2, lines 5 and 6. And  
3 there's a little bit of, you know, I think a lot of times a lot  
4 of businesses would figure "I'm disadvantaged," I mean, just if  
5 they're not getting any business or anything like that, and  
6 then who is that decision left up to? If my municipality has  
7 to somehow make those decisions, we've been sued more than one  
8 or twice for even lesser causes. So if I get someone with some  
9 deep pockets looking at us, and my officials, I think they're  
10 the greatest in the world, but they're part time. We always  
11 have to develop educational efforts, et cetera, et cetera. So  
12 the professionalism we have to contract out to even start  
13 complying with something like this. So it may just be a little  
14 bit too much for them to have to play in this realm, et cetera.

15 I have the "Telephonic Quotes." Actually, the bill  
16 does run contrary to the new Borough Code regarding telephonic  
17 quotes, and there's a whole long page on the process to be used  
18 there. That's going to create a little of an administrative  
19 nightmare for folks, and we're going to have to start keeping  
20 account of that, and then whoever comes in makes an open  
21 records request on a secretary whose office is maybe only open  
22 3 days a week, Monday, Wednesday, and Friday from 9 till 11,  
23 you know? And then if I have someone who wants this business  
24 and they can't seem to get access to those records, there may  
25 be a little displeasure there that folks will have to deal

1 with. So the telephonic quotes and the records, et cetera, I  
2 think are something.

3           So overall, as I looked at the bill itself and saw a  
4 lot of the new nuances and steps added to it, it basically  
5 boiled down to another mandate that I believe our people could  
6 address some of the issues that are related to this subject in  
7 the existing Borough Code without having to add new language.  
8 So I'd be more than happy to work with Representative Wheatley,  
9 learning the balances and things like that, but I don't think  
10 the bill for the boroughs' sake at this point would help us too  
11 much. It might just create more, because all my members, all  
12 958 borough communities, now have a new code to deal with, and  
13 now they're going to get things layered on top of that, and I  
14 think that's going to really be problematic for us.

15           So that's basically just a little summary, some  
16 perspective that we have in the association regarding the bill.  
17 But I do want to thank you for the ability to share with you  
18 some of those observations, and I'm available to help with any  
19 questions you might have at this point.

20           REPRESENTATIVE WHEATLEY: Well, I want to thank you  
21 for your presentation today, and I wanted to get some clarity  
22 from you.

23           One was, you said that you nor your members have had  
24 a chance to really digest this but, just on your first brush of  
25 it, these were some concerns. At what point do you think you

1 and your members would be able to look very closely at the  
2 language?

3           Because I've just been assigned to the Local  
4 Government Committee this session, and when I first had the  
5 opportunity to hear that you all were revising the Procurement  
6 Code, I also had an amendment in the committee, which the  
7 Chairman convinced me, both my Chairmen, and the Majority  
8 Chairman convinced me that you all had put so much work  
9 together already to get to this point that it would not be  
10 beneficial at the last moment to try to implement or to look at  
11 moving the diversity language in these, but that we would have  
12 some chance later to kind of talk it through and work it  
13 through and figure out how and what it would look like.

14           Again, my purpose is not to add to your process  
15 anything that would be, you know, damaging to your already  
16 established process. I understand, you know, changing the way  
17 that you all discussed it, the drastic changes that have gone  
18 on to the code. But at the same time, I think it is very  
19 important that as you're doing that shift and change, we are  
20 also trying to make sure that the small businesses that are in  
21 every community, that they have a fair opportunity to compete.

22           So we're very, and I've said it at every point, we  
23 are very interested in working with whomever or however to try  
24 to make sure what we're proposing fits in a sensical way to  
25 what we're trying to do. I mean, I'm not locked into this

1 particular language---

2 MR. TROXELL: Okay.

3 REPRESENTATIVE WHEATLEY: ---as long as the  
4 sentiment of what the bills are meant to do is present.  
5 Meaning, we wanted to make sure there is a clear goal, a clear  
6 definition or declaration that we're open for fairness to all  
7 businesses and we have opportunities for all businesses to  
8 compete on a fair basis; that we have a practice of monitoring  
9 and tracking that statement objective; and that we are looking  
10 to grow and expand opportunities for all. So as long as those  
11 aspects are present, you know, we don't care how it looks.

12 And finally, we wanted it to be locked in so that  
13 when we state it as a goal, it is also part of our regulations  
14 the way we look at it, so that it doesn't change from an  
15 administration or leadership standpoint. So that's what we're  
16 really looking at. So we're open to working with you and your  
17 group or local association.

18 MR. TROXELL: Yeah, and I would share,  
19 Representative, that within our code -- I saw it earlier, and  
20 Wanda is sitting right there. She helped us work on it through  
21 all the years -- you know, we put some "lowest qualified  
22 responsible bidder" language into that and also giving us some  
23 leeway as local officials to incorporate. I look at this and  
24 you could almost, if you boiled out the policy language in here  
25 and then we put together an educational effort with our

1 membership, discussing that, you could actually insert this and  
2 you could probably have it within boroughs on a policy basis,  
3 not statutorily at this point, but, you know, as something that  
4 they could look at as possibly implementing. Because to be  
5 frank, I have some boroughs that are 16, 20 people in  
6 population. Actually, the small businesses are larger than  
7 they are.

8 REPRESENTATIVE WHEATLEY: Sure.

9 MR. TROXELL: And then versus I have some boroughs  
10 that are upwards of 40,000, 50,000.

11 REPRESENTATIVE WHEATLEY: Sure.

12 MR. TROXELL: I think it's a viable -- I mean, the  
13 idea is, the association, I mean our membership, is diverse,  
14 and we've got population all over the map when it comes to  
15 ethnic origin, et cetera, et cetera. So our guys will actually  
16 -- well, actually in the fall, we have our fall leadership  
17 conference coming up, and we will get together with our policy  
18 folks, and then also throughout the beginning of next year. So  
19 we'd be more than happy to work with you on this, because it's  
20 something that's relevant.

21 I mean, all businesses in this economy need to be  
22 looking for some type of leg up, some type of way they can  
23 manage. You know, we had to extend permit extensions. I'm not  
24 real happy about what we did there, but, you know, we had to do  
25 that to try to give more folks more time to acquire, like the



1 earlier group said, the capital financing, the financing they  
2 need, you know?

3 REPRESENTATIVE WHEATLEY: Sure.

4 MR. TROXELL: And here the funny part is, the Fed  
5 just dumped how many billion back into the economy, and we're  
6 hoping that comes to fruition somehow.

7 REPRESENTATIVE WHEATLEY: Sure; sure.

8 MR. TROXELL: But that's going off track a little.

9 REPRESENTATIVE WHEATLEY: And I would say to your  
10 other point that I'm sure DGS, at least at the time we were  
11 speaking with them, DGS would be more than willing to work with  
12 any of your boroughs who didn't have a program in place.  
13 Really, when you talked about the mandating, the program in  
14 place, if they wanted to accept DGS's program or tweak DGS's  
15 program, it would definitely cut down on their administrative  
16 operation. But we certainly, at any point you want, we can  
17 have further conversation about it.

18 MR. TROXELL: Thank you.

19 REPRESENTATIVE WHEATLEY: Go ahead.

20 MS. SNADER: Yes. Representative Wheatley, I'm  
21 wondering if you could provide a little clarification. We  
22 spoke briefly before the start of the hearing, because I was  
23 not -- I needed a little clarification, and this may be helpful  
24 to others, that your intent in these bills, for example, just  
25 one example being HB 2089 that would amend the Borough Code,

1 that I understood you to say that the requirements would kick  
2 in only when Commonwealth funds are being involved in the  
3 contract?

4 REPRESENTATIVE WHEATLEY: Yes, ma'am.

5 MS. SNADER: So it wouldn't be all contracts?

6 REPRESENTATIVE WHEATLEY: Yes, ma'am.

7 One of the things, when we initiated this  
8 conversation, it was really to try to mirror what the Federal  
9 Government does. So one Federal dollar kicks in their process;  
10 it would be the same. So one State dollar kicks in their  
11 process around the requirements. And if you didn't have your  
12 own local requirements, you could access DGS's requirement and  
13 list for those types of things.

14 MR. TROXELL: Yeah; I do recall that. Thank you.

15 REPRESENTATIVE WHEATLEY: Do you have a second  
16 question or clarification? Okay.

17 Any other questions from the Committee Members?

18 Again, I want to thank you for your presentation.

19 I look forward to working with you. If you want me to attend  
20 the fall conference, let me know, and I'll be there full-bore,  
21 ready to talk about anything that you all want to talk about.

22 I want to thank the Chairman. Again, I can't say it  
23 enough, I really appreciate you holding this hearing and being  
24 patient through it.

25 And I want to thank all the Members for their

1 participation, and I look forward to having more meaningful  
2 dialogue.

3           And again, I want to thank the presenters. I know  
4 you had to take another day away from work. As small  
5 businesses, every time you spend here talking to us, you're  
6 losing money, but I really do appreciate it. I think it's a  
7 very important endeavor, and we look forward to having some  
8 more resolutions to your situation soon.

9           So thank you, and have a great one.

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11           (The hearing concluded at 11:53 a.m.)

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1                   I hereby certify that the foregoing proceedings are  
2 a true and accurate transcription produced from audio on the  
3 said proceedings and that this is a correct transcript of the  
4 same.

5  
6                   Debra B. Miller

7                   Committee Hearing Coordinator/

8                   Legislative Reporter

9                   Notary Public

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11                  Nedra A. Applegate

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