



Twenty Years Behind:
Achieving Minority Supplier
Diversity for New York State

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Dear Friend,

The Council of Urban Professionals Institute (the "Institute") is pleased to sponsor this report examining the impact and effectiveness of minority contracting among New York State's top corporations and governmental agencies.

The Institute was created in 2006 to promote the participation and development of urban leaders, with a particular focus on African Americans and Latino Americans, in public and civic affairs. The Institute seeks to engage public and corporate leaders on the issues of access to capital, minority business development, board diversity, and education.

The Council of Urban Professionals believes that creating minority business opportunities through governmental and corporate supplier diversity is critical to New York State. It results in a more competitive economic environment as well as stronger communities. Government and corporate leaders must ensure that effective supplier diversity laws and programs are in place, a level playing field is created, and minority businesses are given opportunities to succeed.

This report examines supplier diversity programs in New York state corporations and government agencies. It provides data to evaluate the success and failure of current efforts, and offers recommendations to significantly increase state contracting dollars for minority business enterprises. This comes at a time when New York's new Governor and the first elected African-American Lieutenant Governor have already stated their interest in and commitment to advancing programs to enhance minority business opportunities.

Thank you for your interest in and support of this project and our organization.

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The Council of Urban Professionals
666 Third Avenue, 29th Floor, New York, NY 10017
www.nycup.org

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Executive Summary

Minorities represent 28% of the U.S. population but minority businesses represent only 15% of all businesses, 3% of gross receipts and 4% of corporate purchases¹
— U.S. Census Bureau

“*Twenty Years Behind: Achieving Supplier Diversity in New York State*” examines the minority business enterprise (MBE)² program established by the New York Legislature in 1988. This program was designed to ensure that minority and women-owned businesses would receive a fair share of state contract dollars from government agencies. After almost twenty years, New York government has failed to deliver to minority-owned business enterprises.

Section I describes an audit of the MBE program in 2004 by the State Comptroller that found: (1) a weak certification program, (2) limited oversight and reporting, and (3) concern that contract dollar goals for minority suppliers were too low. Only 19 of the 79 state government agencies met or surpassed an average goal of spending 4% with minority contractors. Total agency expenditure was \$10 billion, with minority business enterprise receiving only 2.7%, or \$301.4 million.³

In the words of Lieutenant Governor David Paterson, “When it comes to [minority and women-owned business enterprises], New York is a national embarrassment. Government should require that qualified MWBE’s be given opportunities for contracts to develop the permanent capacity of our minority and women-owned business so that they can eventually compete on a level playing field, because right now, the playing field isn’t level.”⁴

Section II focuses on New York corporations and demonstrates that the Empire State’s business sector has been more successful in creating successful minority supplier programs as well as advancing diversity in its top ranks. Almost every one of New York State’s top 25 corporations has seen an increase in the dollar amount and percentage of MBE utilization. Examining the annual reporting of the top 25 corporations, 72% show continual increases in MBE utilization.

In short, New York corporations outspend New York State government agencies in terms of the purchasing of goods and services from minority suppliers.⁵ Furthermore, the corporate sector has more than double the diversity in leadership at the highest levels.

1 United States Census Bureau, 2000 Economic Census.

2 In researching and compiling the data for this report, every attempt was made to break-out the MBE numbers from the overall MWBE reporting to provide the most accurate picture of diversity in New York State. By definition, MBE includes male and female business owners who are African American, Latino, Native American, Asian Pacific and Subcontinent Asian Americans. Minority business status requires 51% or greater ownership by minorities as well as management and control of daily business operations, with experience or technical expertise directly related to the primary product or service of the business.³ Empire State Development, Division of Minority and Women’s Business Development, *Annual Report*, 2005.

4 “Minority contract program faulted,” *Times Union*, 20 September 2006.

5 These figures are based upon survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate and governmental agency websites.

Diverse Supplier Contracts

NY Corporations	4.4% of Expenditures
NY Government	2.7% of Expenditures

Diversity in Leadership

(African Americans and Latinos on Boards, Top Elected Officials and Senior Executives/Staff)

NY Corporations	17.8%
NY Government	8.8%

Newly elected Governor Eliot Spitzer and Lieutenant Governor David Paterson have laid out a reform plan for minority business enterprises, as described in Section III. These reforms include asserting the executive leadership of the Governor and Lieutenant Governor to advance and develop minority business opportunities; establishing programs to increase the capacity and technical skills of current and potential minority suppliers; expanding the market for diverse contractors beyond construction and real estate to industries such as financial services; and taking measures to ensure enforcement and further development of current regulations.

To enhance the success of the Spitzer-Paterson plan, the Council of Urban Professionals offers a series of recommendations in Section IV that include calling on the state to establish a 5-year plan to increase minority contract dollars with state agencies from approximately 3% to 15%; to commit \$2 billion to investment funds that provide access to capital and technical assistance to minority businesses; to build programs that enhance the opportunities for minority suppliers to receive larger contracts; and to more effectively enforce and simplify current regulations.

The Council of Urban Professionals Institute believes this is a significant opportunity to enhance our commitment to economic diversity across the state of New York. Government and corporate investments in minority business enterprises will result in an enhanced business climate and in stronger communities for all New Yorkers.

SECTION I: NEW YORK STATE GOVERNMENT — A CASE STUDY IN SUPPLIER DIVERSITY MISSTEPS

I. Minority and Women-Owned Business Opportunities in New York State

*When it comes to [minority and women-owned business enterprises], New York is a national embarrassment. Government should require that qualified businesses be given opportunities for contracts to develop the permanent capacity of our minority and women-owned business so that they can eventually compete on a level playing field, because right now, the playing field isn't level. It's economically significant, it's politically significant, and it's morally significant.*⁶

— David A. Paterson, Lieutenant Governor, State of New York

On July 19, 1988, Article 15-A of New York State Executive Law authorized the creation of the Governor's Office of Minority and Women's Business Development—now known as the Division of Minority and Women's Business Enterprises (the Division or DMWBE), which is housed in the Empire State Development Corporation (ESDC). The mission of the Division is to ensure that minority and women-owned and controlled businesses receive a fair share of state contract dollars, to provide equal opportunities to minority group members and women on all state contracts, and to promote development among minority and women-owned business enterprises.

The Executive Law makes the Division responsible for monitoring state agencies' compliance with the provisions of Article 15-A. (*Appendix A* details the provisions of Article 15-A.)

Nearly 20 years have passed since this program was created. And the verdict is clear: New York State has failed to deliver on its promise to provide greater opportunities for minority and women-owned businesses.

There are 956,114 small businesses in New York owned by women, African Americans, Latinos, Asians and Alaskan natives, according to the U.S. Small Business Administration. New York State has more MBE's than any other state except California and Texas, and the most African American-owned firms in the country. New York ranks second in numbers of women-owned and Asian-owned firms, and fourth in the number of Latino-owned firms.⁷

Yet, the doors of opportunity have essentially remained closed for these enterprises at both the state and city level:

- The MWBE utilization rate under former Governor Pataki was 5%. Based on information available, in 2003-04, 1.0% of all state contracts were awarded to Asian-owned firms,⁸ 0.74% went to Latino-owned firms, and only 0.66% went to African American-owned firms.

⁶ "Minority contract program faulted," *Times Union*, 20 September 2006.

⁷ United States Small Business Administration, Office of the Advocacy, *New York State Small Business Statistics*, 2005.

⁸ New York State Office of the Comptroller, *Audit Report on New York State's MWBE Programs*, 2004.

- A 2005 study by Mason Tillman Associates for the New York City Council found that from 1997 to 2002, the City awarded \$18.8 billion in contracts, including \$6 billion involving construction. Yet, in the City, where minorities comprise 65% of the population, minority-owned businesses received only 7.27% of those contracts.

II. Comptroller's Audit

In 2004, the Office of the State Comptroller conducted an audit to assess the State's MBE program, and its findings did little to convey confidence in the program's success. Specifically, the audit found: (1) a weak certification program, (2) limited oversight and reporting, and (3) concern that contract dollar goals for minority suppliers were too low. The audit concluded that while "Article 15-A should be maintained to preserve an existing means for MWBEs to access State business,"¹⁰ the Division's weak oversight of the statute's implementation may have limited the potential benefit for MWBE firms.

With respect to certifying minority suppliers, the audit found that the Division's process was "cumbersome and inadequately controlled."¹¹ The Division had not set standards for the amount of time the application process should take, or established a reporting system that adequately tracked the applications in process, which, on average, was taking more than five months. And recertification took even longer – officials said that because of staff shortages the current management did not regularly recertify firms. In fact, they did not have a timeframe for regularly recertifying MBE firms to make sure they remained qualified and still in business.

In reviewing the Division's oversight and reporting mechanisms, the audit found that "about 25% of State agencies did not file one or more quarterly reports due for the 2000-01 fiscal year. The Division could not be sure that it received all the reports due because it had no master list of all the State agencies required to file. Further, when State agencies do not report their achievement of MBE goals, the Division simply informs them of their noncompliant status. The Division has no authority to enforce compliance."¹²

Article 15-A requires all reporting agencies to prepare an annual agency goal plan for participation by certified minority-owned and women-owned enterprises, expressed as a percentage of aggregate expenditures. However, the audit found that 5 agencies did not submit any goals to the Division, including the Governor's Office of Employee Relations; 8 state agencies that submitted reports had set no goals set for minority suppliers; and 17 agencies had not utilized any minority suppliers. Of the goals that were set, the Comptroller questioned whether they even represented sufficient contract dollars to constitute a "good faith" effort to expand supplier diversity participation in State business.

Finally, the Comptroller's visits to eight State agencies revealed that four agencies were not reporting participation data properly, and that one agency had overstated its MBE participation by more than \$25 million. It was recommended that the Division improve its oversight of Article 15-A implementation by developing a master list of reporting agencies; prominently reporting noncompliant agencies in the Division's Annual Report; and establishing a compliance review process to obtain reasonable assurance of agencies' overall compliance.

9 New York City Council, *Report on MWBE Activity in New York City* by Mason Tillman Associates, 2005.

10 New York State Office of the Comptroller, *New York State Department of Economic Development, Participation by Minority and Women-Owned Business Enterprises in State Contracts*, 2002.

11 Ibid.

12 Ibid

III. MBE Utilization by NY State's Top 25 Agencies

Minority supplier participation in state contracts has plummeted in recent years – from \$822 million in 1999-2000 to \$509 million in 2001-2002. In 2004-2005, this total further declined to \$301.4 million, or only 2.7% of state expenditures on \$10 billion of spending. Furthermore, only 19 of the 79 New York State government agencies met or surpassed an average MBE goal of 4%.¹³

Of the 25 largest New York State agencies, only 4 exceeded their MBE goal in 2005: Dormitory Authority, Office of General Services, New York Power Authority, and Capital District Transportation Authority.

Top 25 New York State Agencies (2004-05)¹⁴ Ranked by % Utilization of Minority Contract Dollars

<u>Agency</u>	<u>Expenditure (in \$ millions)</u>	<u>MBE Utilization (in \$ millions)</u>	<u>MBE Goal</u>	<u>MBE%</u>	<u>DIL%¹⁵</u>
Dormitory Authority	879.356	135.264	13.0%	15.3%	5%
New York Power Authority	278.503	16.662	3.5%	5.9%	1%
Hudson River Trust Fund	42.092	2.358	12.0%	5.6%	5%
Office of General Service	284.672	14.162	4.0%	4.9%	3%
NYC Health & Hospital Corporation	1,062.410	51.363	6.0%	4.8%	21%
State University Construction Fund	117.694	5.579	8.0%	4.7%	16%
Housing & Community Renewal	97.895	3.826	10.0%	3.9%	13%
Environmental Conservation	238.471	9.297	7.0%	3.9%	2%
Department of Transportation	140.112	5.177	8.0%	3.7%	2%
Thruway Authority	173.738	5.948	8.0%	3.4%	11%
Empire State Development Corporation	38.744	0.822	4.5%	2.1%	7%
CUNY	23.697	0.477	7.2%	2.0%	38%
Metropolitan Transportation Authority	2,083	31.882	10.0%	1.5%	41%
Battery Park City Authority	31.772	0.358	12.0%	1.1%	0%
Mental Retardation & Developmental Disabilities	125.220	0.710	1.0%	0.5%	8%
SUNY Central	419.816	1.754	3.0%	0.4%	14%
Long Island Power Authority	3,405.868	10.973	1.0%	0.3%	13%
Division of the Lottery	85.366	0.251	1.0%	0.2%	4%
Correctional Services	151.280	0.295	7.0%	0.1%	10%
State Police	65.493	0.061	2.1%	<0.1%	12%
Taxation & Finance	36.630	0.034	1.0%	<0.1%	4%
Jacob Javits Convention Center	20.747	0.013	4.0%	<0.1%	3%
Capital District Transportation Authority	26.763	0.014	<0.1%	<0.1%	11%
Office for Technology & Telecommunications	29.763	0.001	4.0%	<0.1%	8%
Housing Finance Agency	27.221	0.002	10.0%	<0.1%	7%

¹³ Empire State Development, Division of Minority and Women's Business Development, *Annual Report*, 2005.

¹⁴ These figures are based upon survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate websites.

¹⁵ Defined as Diversity in Leadership: African Americans and Latinos serving on corporate boards and in senior leadership/management positions as of December 31, 2006.

Of the remaining 54 New York State agencies, 15 exceeded their MBE goal: NYS Council on the Arts, Banking Department, Bridge Authority, Office of Children & Family Services, Department of Civil Service, Office of State Comptroller, State Commission on Correction, Division of Criminal Justice Services, Division of Human Rights, Insurance Department, Department of Motor Vehicles, Division of Parole, Public Employment Relations Board, Department of Public Service, and Workers' Compensation Board.

As demonstrated in the chart above, diversity in leadership in state agencies is generally low. New York's state government has lagged behind in the recruitment, mentoring and training of minority leaders in all levels of government. The number of commissioner-level minority appointees has dropped by 50% over the last 12 years – from 6 in 1994 to 3 in 2006.¹⁶

As described later in this report, New York state's current administration is proposing a set of reforms to improve agency performance and enhance minority business opportunities. As the next section demonstrates, there are lessons to be learned studying the experience of New York state corporations who have established successful supplier diversity programs.

¹⁶ "After 12 years, a pragmatic Pataki," *Times Union*, 24 December 2006.

SECTION II: NEW YORK STATE CORPORATIONS — SUPPLIER DIVERSITY BEST PRACTICES & LESSONS LEARNED

I. Corporate Development of Minority and Women-Owned Businesses

*Our commitment to diversity extends to all aspects of our business. Just as we need employees who can relate to customers, speak their languages, reflect their tastes and preferences, so too should our suppliers, our community partners and the nonprofit organizations we support. That is what builds customer loyalty, stimulates economic growth and draws out the entrepreneurship we need to compete.*¹⁷

—“Diversity is a Bottom Line Issue”, Verizon Diversity Strategy

*Our experience with MBE’s is that they add value to our business by providing a wider range of viewpoints that reflect our diverse employees and our customer base... Our chairman, Sy Sternberg, has stated it again and again: Diversity is the essential foundation on which the rest of the corporation’s culture is built.*¹⁸

—Annette Ficucello, Director of Supplier Diversity, New York Life Insurance Company

Current and future trends only underscore the power of diversity—both in business contracting and leadership:

- The buying power of African Americans will rise to \$852.8 billion in 2007.
- The United States is the 5th largest Spanish-speaking country in the world, with Hispanics possessing the fastest-growing median household income.
- By 2050, new immigrants will increase the United States population by 80 million people.¹⁹
- Over 50% of those who enter the workforce will be people of color.

In 2005, America’s largest corporations purchased more than \$94 billion in goods and services from minority-owned companies. This represents over 200% growth in a 10-year period. Thirteen of those corporations are members of the Billion Dollar Roundtable, a group of companies that purchase over a billion dollars in goods and services from their diverse suppliers annually. In an economy that was generally lackluster, these record purchases are a dynamic reminder that it is possible to create a successful supplier diversity program in a short period of time.²⁰

Minority business enterprises are also fortunate to have some of the most forward-looking corporations located in New York State. New York corporations recognize that diversity is more than a means to an end. Diversifying a workforce and seeking out, encouraging and contracting with minority-owned

17 Obtained through survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate websites.

18 Ibid.

19 United States Census Bureau, 2000 Economic Census.

20 National Minority Supplier Development Council, *2005 Annual Report*, and information provided on its website.

businesses does, in fact, improve the bottom line. These corporations promote purchasing across the company from minority businesses—to foster inclusion and create a strategic advantage. Diverse businesses offer companies a competitive sourcing environment while allowing a company to build strong relationships with these firms and enhance their economic viability.

II. Supplier Diversity Among Top 25 NY Corporations in 2006

The comparison of New York corporations to state agencies clearly demonstrates that New York’s business sector has been more successful in creating and promoting supplier diversity within its culture. Almost every one of New York State’s top 25 corporations has seen an increase in the dollar amount and percentage of MBE utilization. Examining the annual reporting of the top 25 corporations, 72% show continual increases in MBE utilization.

Top 25 New York State Corporations (2006)²¹ Ranked by % Utilization of Minority Contract Dollars

<u>Corporation</u>	<u>Revenues (in \$ millions)</u>	<u>MBE Utilization (in \$ millions)</u>	<u>MBE %</u>	<u>DIL#²²</u>
Verizon Communications	75,111.9	6,309.4	8.4%	29%
Pfizer	51,353.0	3,307.1	6.4%	13%
PepsiCo	32,562.0	2,061.2	6.3%	24%
Time Warner	43,652.0	2,619.1	6.0%	21%
Eastman Kodak	14,268.0	856.1	6.0%	15%
International Business Machines	91,134.0	5,285.8	5.8%	23%
New York Life Insurance	28,051.0	1,458.7	5.2%	20%
Citigroup	131,045.0	6,683.3	5.1%	17%
Bristol-Myers Squibb	20,222.0	950.4	4.7%	12%
Altria Group	69,148.0	2,904.2	4.2%	18%
Merrill Lynch	47,783.0	1,911.3	4.0%	18%
Alcoa	26,601.0	1,000.2	3.8%	27%
American Express	30,080.0	1,082.9	3.6%	18%
J.P. Morgan Chase & Company	79,902.0	2,716.7	3.4%	22%
American International Group	108,905.0	3,593.7	3.3%	16%
Lehman Brothers	32,420.0	940.2	2.9%	15%
Loews	15,363.3	430.2	2.8%	11%
Morgan Stanley	52,498.0	1,343.9	2.6%	12%
CBS	14,536.4	334.3	2.3%	14%
MetLife	46,983.0	1,043.0	2.2%	14%
TIAA-CREF	25,916.8	492.4	1.9%	22%
News Corp.	23,859.0	453.3	1.9%	10%
Amerada Hess	23,255.0	418.6	1.8%	15%
Goldman Sachs Group	43,391.0	620.0	1.4%	15%
Cendant	19,471.0	272.6	1.4%	9%

21 These figures are based upon survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate websites.

22 Defined as Diversity in Leadership: African Americans and Latinos serving on corporate boards and in senior leadership/management positions as of December 31, 2006.

New York corporations have a record of success in expanding diversity within their ranks and in purchasing goods and services from MWBE firms. When corporations increase leadership diversity within their ranks, the data suggests that greater opportunities become available to MWBE firms. For example, of those 7 companies where leadership in diversity is above 20%, their overall commitment to MBE supplier diversity is 5.4% compared to the remaining 18 companies, where diversity in leadership is below 20%, the commitment is only 3.8%.

*Diversity is not a social program, it's a business imperative. We recognize that a diverse supplier base is integral to the company's profitability, our objectives and our strategic imperatives. We offer the opportunity. It's up to them to step up and make it happen.*²³

— Michael Robinson, Program Director, Global Supplier Diversity, IBM

²³ Obtained through survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate websites.

New York Corporate Leaders in Diversity²⁴

Based on a study of the top 25 largest corporations in New York State, Citigroup, Lehman, JP Morgan, IBM and Pepsico provide good examples of corporate diversity programs that are working. Common features of successful corporate diversity programs include:

- Recruitment programs to identify college and MBA students from diverse groups
- Relationships with supplier diversity-focused organizations, such as the National Minority Supplier Development Council and its affiliate councils
- Employee mentoring programs and networking groups
- Diversity Task Forces or Councils
- Training and Education for both suppliers and future leaders
- Outreach/Trade Show Events
- Online Resources, Information, and Application Materials

Summary highlights include:

Citigroup – In 2005, Citigroup Supplier Diversity broke a new financial industry record, spending \$950 million with diverse suppliers of goods and services. This amount was 19% over the company's goal of \$800 million for that year. These figures do not include additional corporate funds spent on diversity programs, employee development and community outreach.

Lehman Brothers - Its "Diversity & Inclusion" Strategy is a part of the fabric of the firm. Employees at all levels are involved participants in diversity and inclusion business initiatives, networking events, awareness training, mentoring and corporate citizenship.

JP Morgan Chase – In-House Matchmakers/Trade Shows provide prospective minority suppliers with an overview of how to do business with the company and its prime suppliers across multiple product and service groups. Importantly, these events are held in the local markets closest to where decision makers reside. In 2001, the company pioneered the use of virtual technologies and their Virtual Matchmaker/Trade Show bridges the gap between buyers and suppliers by providing an easy-to-use, point-and-click method.

The company also has a Talent Management Process in every one of its business units, where managers review their teams twice a year to identify minority employees with the potential to take on more responsibility, and providing the direction, training and encouragement for growth.

IBM – Recognized supplier diversity as a business initiative in 1968. IBM developed an Executive Diversity Task Force that allows the company's CEO to deputize leaders from different constituencies in order to help them understand what they see as problems or perceptions that, if addressed, can improve the workplace climate and marketplace performance. The company also has a successful mentoring program that has a core belief: in order to mentor a supplier effectively, IBM must understand that company and get to know its entire leadership team.

PepsiCo – Has an extensive and proven track record in promoting diversity across the company. It has been particularly effective in its recruitment and retention programs for minorities. The company has formal recruiting relationships with Historically Black Colleges and Universities (HBCU's), mentoring programs at all levels in the company, and employee networking and affinity groups. The company also believes that its success will come through extensive outreach programs throughout the community. These programs in high schools, community centers and malls across the country, not only promote careers with the company, but build greater product recognition and loyalty.

²⁴ This information is based upon survey conducted by the Council of Urban Professionals, public information, corporate annual reports and corporate websites.

SECTION III: THE ROAD AHEAD FOR NEW YORK STATE GOVERNMENT — THE SPITZER-PATERSON PLAN

In 2007, newly elected Governor Elliot Spitzer and Lt. Governor Paterson announced a minority business enterprise plan that calls for reforms in five critical areas:

Leadership at the Executive Level – Under the plan, an executive order will be issued to ensure equal opportunity for minority and women-owned businesses. This order will outline a commitment supporting MWBE's in New York State and establish guiding principles for MBE procurement utilization.

Further, this order will assist MBE business development growth by urging compliance with the existing provision of Article 15-A for New York State agencies and authorities.

The administration will establish an Executive Leadership Council (ELC), which will be comprised of representatives from agencies and authorities with the largest budgets. The ELC will issue report cards monitoring individual agencies and their utilizations of MBEs.

Community Benefit Agreements will be created to leverage the benefits of development for the surrounding communities. Paterson has credited the southeast Queens community for demanding that its neighborhoods benefit from construction of the AirTran Terminal in Jamaica Station, which sparked the creation of a Community Oversight Committee and led to MWBEs receiving about \$49.3 million in contracts, \$10.6 million of which went to MBEs in the surrounding communities.

Capacity Building – A major emphasis of the Spitzer-Paterson Plan will be to increase access for firms to bid on and complete projects. The plan calls for replicating a highly successful Mentor Protégé Program established by the New York City School Construction Authority, providing job training for MBE firms on school construction contracts under \$1 million. The program teaches management and technical skills, and provides partnerships and mentorship opportunities with larger, more experienced firms.

Further, the new administration plans on working with banks, bonding companies and major corporations to build the competitive capacity of MBE suppliers. It will create solutions to capital access issues through innovative programs that mirror, for instance, the Illinois Capital Access Program, which encourages financial institutions to make loans to small and new businesses that do not qualify under conventional lending policies.

Market Opportunities – The plan will ensure that the New York State DMWBE will maximize procurement for qualified MBEs by improving access to information regarding contract opportunities. Paterson has said that the administration will broaden the scope of the MBE program to encompass banking, insurance and the sales of securities and bonds.

The plan calls for using technology to help minority firms discover business opportunities. The State Division will improve its online, searchable database of certified MWBE firms for easier use and downloading by agencies, contractors and corporate America. Additionally, the Division will provide procurement directors with a list of capable firms eligible to compete for contracts with their agencies.

Paterson also wants to explore ways to increase opportunities for MBEs in any real estate development deals receiving state subsidies. Currently, certain projects receiving state funding through the Dormitory Authority and Housing Finance Agency are not required to ensure MBE participation.

Effective Management Systems – New York State’s MBE program will develop a customer service-oriented delivery model and implement a system that provides transparency, monitoring, accountability and enforcement. Measures will be implemented to end bureaucratic inefficiencies such as certification delays and problems accessing information. Further, the state’s certification process must be simplified and made more efficient.

Generating Disparity Studies – Under the new administration, New York State will undertake a series of disparity studies to measure actual MBE procurement rates. Many states and local governments already have commissioned such examinations following a United States Supreme Court decision to provide the factual predicate to set reasonable goals. Paterson said this research and analysis will allow New York State to create the factual predicates for setting reasonable goals based on the number of firms, capacity of firms and the market opportunity.

The Spitzer Administration recognizes the shortcoming of the State’s MBE program and seeks to make the Empire State a leader in this important area of economic development. Increased levels of commitment to minority contracting will help the State economy grow, increase employment, inspire future generations of successful entrepreneurs and encourage minority men and women to serve the citizens of New York as business and governmental leaders.

Minority business development isn’t just about doing business in New York, Paterson has said. “It’s about the way New York sees itself... If you don’t have shoes, it doesn’t matter if the playing field is level. If you’re not allowed on the field, it doesn’t matter if the game starts on time. So we need to level the playing field while making sure all the players are allowed to play. Then, and only then can market competition, reveal merit and the best firms can win.”²⁵

Case Study: Maryland Spends Over 20% with Minority Suppliers

Maryland Governor Robert Ehrlich released a report in 2006 that showed a considerable increase in payments on state contracts awarded to women and minority-owned businesses. According to the report, MBE business participation in state contracts jumped from 15.6% in fiscal year 2003 to 21%, an increase of almost \$400 million in only two years. The report also showed that \$954 million of the State’s fiscal year 2005 total procurement of \$4.5 billion was awarded to Minority Business Enterprises.

Governor Ehrlich noted that his administration “made a commitment to expand opportunities for women-owned and minority businesses,” adding that “supporting our small and minority business community is a proactive way to further strengthen and grow our economy.”²⁶ According to the report, every MBE subgroup received higher awards in fiscal year 2005. For example, state awards to African American-owned businesses increased by 19.5% and awards to women-owned businesses increased 32% from fiscal year 2004.²⁷

25 Spitzer-Paterson Campaign Office, Press Release, “Paterson: New York State Must Strengthen Investment in Minority- and Women-Owned Businesses,” 19 September 2006.

26 State of Maryland, Governor’s Office Press Release, “Maryland Makes Commitment to Small and Minority Business Community,” 5 May 2006.

27 Ibid.

SECTION IV: RECOMMENDATIONS FROM THE COUNCIL OF URBAN PROFESSIONALS INSTITUTE

To enhance the success of the Spitzer-Paterson Plan, the Council of Urban Professionals makes the following recommendations:

- 1) Commit to becoming a leading state in MBE supplier participation and minority leadership within agencies by increasing diverse leadership and achieving a five-year goal of 15% spending with minority contractors (from the current average of 3%);
- 2) Commit \$2 billion to investment funds headquartered in New York state that focus on investing in minority businesses and providing technical assistance for their growth and development;
- 3) Focus on larger scale opportunities for MBEs that result in contracts of over \$100 million by encouraging the state's current leading suppliers to partner, joint venture and carve out opportunities for MBEs;
- 4) Create specific industry clusters to take advantage of the sectors where New York has a significant amount of minority talent. For example, New York state should have meaningful MBEs in financial services and professional services (including everything from investment banks, private equity firms, hedge funds, investment firms, real estate firms and law firms);
- 5) Withhold funding from state agencies that are not in compliance with their targeted MBE spending level at the end of each year;
- 6) Partner with the National Minority Supplier Development Council (NMSDC) – NY/NJ Chapter and enable MBEs to be deemed certified with the State if they have been certified by NMSDC (which is the standard used by other states and the substantial majority of US corporations); and
- 7) Require an annual audit by the state comptroller's office on MBE utilization and hire a third party consulting firm to do a benchmark study on the State's diversity effort relative to New York corporations and comparable American states and cities.

In closing, the Council of Urban Professionals believes we have the opportunity to enhance our commitment to economic diversity across the state of New York. Government and corporate investments in minority business enterprises will result in an enhanced business climate and in stronger communities for all New Yorkers. The Council of Urban Professionals offer these recommendations to encourage New York state government to meet its obligations to enforce supplier diversity legislation and expand the opportunities for minority-owned businesses.

Methodology

The report is the result of a five-month investigation of Minority Business Enterprises (MBE) and leadership diversity in New York State. The study included review and analysis of both corporate and government sectors in the Empire State to determine the success or failure of each sector's commitment to diversity and identify those steps that either promoted or hindered participation.

Central to the study was an in-depth survey that was developed and sent to the diversity and/or information officers of New York State's 25 largest corporations. The survey was developed as an open interview with set questions as points of departure to explore and expand on the specific issues raised including MBE utilization, minorities in corporate leadership, and specific programs devoted to building diversity in the workplace. Follow up interviews were conducted with several firms that were also identified nationally as leaders in diversity. Additional information was provided through corporate websites and various business publications that provided information on employee diversity programs, diverse leadership, rankings, honors and awards providing information utilized in follow-up interviews.

Information relating to New York State government was compiled from multiple sources, including public materials and interviews. The legislative history of Article 15-A was reviewed along with other legislation that has been offered in the Legislature since the enactment of the program in 1988. Interviews with staff and elected officials were also conducted. Additional resources included government reports, agency websites, and public records concerning minority-business enterprises.

Finally, when both sectors were analyzed a cross comparison of both corporate and government sectors was developed with follow-up interviews in writing the critical review and developing the recommendations proposed.

Note: New York State has, for the most part, counted women-owned business enterprises (WBE) along with minority-owned business enterprises (MBE), and minority women-owned enterprises (MWE) when presenting information on certification and contracts. This grouping is identified as MWBE. In presenting statistics in this fashion, the WBE rates helped raise the overall participation and distribution rates of the program.

In researching and compiling the data for this report, every attempt was made to break-out the MBE numbers from the overall MWBE reporting to provide the most accurate picture of diversity in New York State. By definition, MBE includes male and female business owners who are African American, Latino, Native American, Asian Pacific and Subcontinent Asian Americans. Minority business status requires 51% or greater ownership by minorities as well as management and control of daily business operations, with experience or technical expertise directly related to the primary product or service of the business.

APPENDIX A: WHAT IS ARTICLE 15-A?

In July 1988, Article 15-A was enacted to promote equality of economic opportunities for business enterprises owned by minority groups and women and to eradicate barriers to their participation in State contracts. Article 15-A created the Division of Minority and Women's Business Development (Division) within the Governor's office.

Article 15-A is comprised of nine sections.²⁸ The first section provides definitions of specifically what constitutes a "Minority or Women-Owned Business Enterprise (MWBE)." The legislation provides that an MWBE is one where: (1) at least 51% owned and controlled by the minority members and/or women; (2) the minority and/or women ownership interest, is real, substantial and continuing; (3) the minority and/or women ownership has and exercises the authority to independently control the day-to-day decisions; and (4) independently owned, operated and authorized to do business in New York State.

Businesses eligible to participate in the program must be owned and operated by women and/or minority group members who are citizens of the United States or permanent resident aliens and can demonstrate membership in one of the following groups: Black persons having origins in any of the Black African racial groups; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; Native American or Alaskan native persons having in any of the original peoples of North America; Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

The legislation defines a contractor as an individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the awarding of a state contract or a proposed party to a state contract. A state contract is defined as a written agreement or purchase order instrument providing for a total expenditure of more than \$25,000 by a contracting agency in return for labor, services, supplies and/or materials, or providing for a total expenditure of more than \$100,000 by a contracting agency or by the owner of a state-assisted housing project in return for the acquisition, construction, demolition, replacement, major repair, renovation or improvements of real property. The term "services" does not include banking relationships, the issuance or insurance policies or contracts, or other contracts for the sale of bonds, notes or other securities.

The legislation created a Division of Minority and Women's Business Development that administers, coordinates, and implements a statewide program to assist the development of MWBEs and facilitate their access to state contracting opportunities, and promotes equal employment opportunities. Through the process of certification, this agency is responsible for verifying minority and women-ownership and control of firms participating in the program.

The powers and responsibilities of the Director are to: (1) assist state agencies in their efforts to award a "fair share" of contracts to MWBEs; (2) develop standardized forms and reporting documents for purpose of implementing Article 15-A; (3) conduct educational programs to facilitate access to assistance under the program; (4) periodically review agency practices and procedures to determine compliance

28 Empire State Development, Division of Minority and Women's Business Development, *Summary of Article 15-A of the Executive Law*, 2000.

with program requirements; (5) report annually to the Governor and Legislature; (6) prepare and maintain an updated directory of certified minority and women-owned firms; (7) appoint independent hearing officers to preside over certification appeal hearings; and (8) file complaints for violations in regard to equal employment opportunities.

This provision further authorizes the Director to provide necessary technical assistance to the businesses (applicants included) to ensure that they benefit from business development programs. This would include a review of bonding and paperwork requirements imposed by contracting agencies that may be burdensome to MWBEs. The Director may, either independently or in conjunction with other state agencies, develop a clearinghouse of information regarding services available to assist business owners.

The legislation provides that state agencies and the Director of the Division of Minority and Women's Business Development must act to ensure and promote equal employment on state contracted projects. State agencies must include the following contract provisions in all state contracts in regard to work performed within the state: (1) Prohibition against discrimination in employment; (2) Solicitation of statement of nondiscrimination from unions and employment agencies; (3) Nondiscrimination clause in employment solicitations and advertisements; (4) Application of similar clauses in all subcontracts except those, which (1) see unrelated to work on the state contract and (2) duplicate or conflict with federal Equal Employment Opportunities law.

State agencies are also charged with monitoring contractor compliance with the law. In determining compliance with state equal employment requirements, these agencies shall waive application of state equal employment provisions where the duplicate or conflict with corresponding federal laws. Where a contractor fails or refuses to comply with equal employment requirements, state agencies may recommend corrective action to the Director.

The Director promulgates rules and regulations applicable to equal employment of minority group members and women on state contracts. Under these regulations, contractors must submit a plan of efforts to use minority group members and women after bid opening and prior to the award of the contract. Contractors and subcontractors may also be required to submit periodic compliance reports on their equal employment activities.

The Director was given the authority to promulgate rules and regulations to ensure that minority and women-owned firms are awarded a "fair share" of state contracts. These rules: (1) Require contractors to submit a minority and women-owned enterprise ("MWBE") utilization plan for each of their contracts; (2) Require agencies to review these utilization plans for compliance and notify contractors of deficiencies; (3) Allow contractors time to correct the noted deficiency and/or request a complete or partial waiver of compliance with goal requirements; agencies must evaluate "good faith" attempts to comply in deciding whether to grant or deny waiver requests; (4) Grant contractors a right to submit a complaint to the Director when an agency fails or refuses to issue a requested waiver, and similarly, allow agencies to submit a complaint to the Director for contractor noncompliance; (5) State that failure to correct noted deficiencies in a utilization plan is grounds for disqualifying a bid or proposal, and that the contractor is entitled to a hearing on the record on the disqualification. The decision rendered as to the disqualification is reviewable pursuant to Article 78; (6) Allow the Director to first attempt to resolve non-compliance complaints before referring the complaint to arbitration; (7) Require agencies to include an arbitration consent clause in bid specification; and (8) Provide that the Federal law(s) apply where there is a conflict or duplication on the issue of MWBE obligations.

One of the main components of the program was to require the Division of Minority and Women's Business Development to conduct a certification program and to prepare a directory of certified minority and women-owned firms. The Division has promulgated rules and regulations specifying criteria for approval, denial and revocation of certification. Appeals of certification determination will be heard by independent hearing officers, if requested by the applicant within thirty (30) business days of notice of a denial decision. After hearing the appeal, the independent hearing officer will issue a recommended order (decision). The Director will issue a final order (decision) within thirty (30) day accepting or modifying the recommend order. The Director's order will represent the final determination on the application but may be appealed under Article 78.

The legislation also addressed compliance by state all state agencies have the following responsibilities: (1) To monitor contracts and recommend corrective action to the Director where appropriate; (2) To comply with rules and regulations promulgated by the Director; (3) To make available copies of the directory of certified minority and women-owned firms to prospective bidders and to contractors; (4) To report activities undertaken to promote MWBE contract participation and employment of minorities and women to the Director; and (5) To generally provide such information and assistance as necessary to carry out the intent of the statute.

The legislation provided for enforcement of the provisions by requiring the Director to take the following actions to promote participation by minority and women-owned firms on state contracts: (1) attempt to resolve complaints made by either a contractor denied a waiver, or an agency against a contractor for noncompliance; (2) refer unresolved complaints for recommendations; (3) adopt, reject or modify arbitration determination; the Directory may not, however, impose a new greater sanction, penalty or fine than that recommended by the arbitration(s).

APPENDIX B: ACHIEVEMENTS/MILESTONES IN DIVERSITY **NEW YORK STATE'S LEADING CORPORATIONS**²⁹

All rankings are for 2006, unless otherwise noted.

<u>Corporation</u>	<u>Achievement/Milestone</u>
Citigroup	#27 – DiversityInc Top 50 Companies for Diversity #9 – Top 10 Companies for Recruitment & Retention #2 – Top 10 Companies for Latinos
International Business Machines	Billion Dollar Roundtable Member First IT company to spend \$1 billion with diverse-owned businesses (2000).
J.P. Morgan Chase & Company	#11 – DiversityInc Top 50 Companies for Diversity #3 – Top 10 Companies for Supplier Diversity #6 – Top 10 Companies for Latinos
Verizon Communications	Billion Dollar Roundtable Member #1 – DiversityInc Top 50 Companies for Diversity #1 – Top 10 Companies for Recruitment & Retention #8 – Top 10 Companies for African Americans #9 – Top 10 Companies for Latinos
Altria Group	#1 – DiversityInc Top 50 Companies for Diversity (2005) #1 – Top 10 Companies for Recruitment & Retention (2005) #2 – Top 10 Companies for African Americans (2005)
Morgan Stanley	47% of new hires were minorities in 2005
Pfizer	Named one of 25 Top Vendors for Latino entrepreneurs by Hispanic Magazine in 2003
Merrill Lynch	#44 – DiversityInc Top 50 Companies for Diversity
MetLife	Honored by Hispanic Magazine as one of top companies in U.S. for creating business and job opportunities for Hispanic Americans (2003)
Time Warner	Subsidiaries HBO #5 & Turner Broadcasting #7 DiversityInc Top 50 Companies for Diversity Turner Broadcasting also: #9 – Top 10 Companies for African Americans HBO also #6 – Top 10 Companies for Recruitment & Retention
Goldman Sachs Group	Company's Preferred Investment Group is preferred provider of investment capital to ethnic minority businesses and urban real estate ventures.
PepsiCo	#18 – DiversityInc Top 50 Companies for Diversity

²⁹ *DiversityInc.com*, various "Top" lists, rankings, analysis and data found on their website. Additional information obtained from *DiversityBusiness.com*, *MBE Magazine*, *Minority Business News USA*, and corporate websites' diverse-supplier and/or diversity pages.

APPENDIX C: DIVERSITY IN NEW YORK STATE GOVERNMENT LEADERSHIP BRANCHES OF GOVERNMENT*³⁰

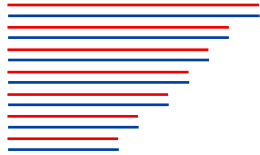
<u>Branch of Government</u>	<u>Diversity in Leadership %</u>
EXECUTIVE & STATE DEPARTMENTS	
Governor's Office	4%
Departments, Divisions & Commissions	8%
LEGISLATIVE	
New York Representatives in United States Senate	0%
New York Representatives in United States Congress	21%
New York State Senate	19%
New York State Assembly	21%
Officers of New York State Senate	9%
Officers of New York State Assembly	11%
JUDICIAL	
Unified Court System	9%
Court of Appeals	0%

Notes: Minority commissioner-level employees decreased by 50% from 6 in 1994 to 3 in 2006.

In the end of 2006, Governor George Pataki chose not re-appoint Associate Judge George Bundy Smith, the sole African American on the Court of Appeals, allowing him to serve an additional year beyond mandatory retirement age. Governor Eliot Spitzer recently nominated State Supreme Court Justice Theodore T. Jones, Jr., an African American to fill a vacancy created by the retirement of Justice Albert M. Rosenblatt on December 31, 2006.

** African American and Latinos serving as the top elected official, appointed official, or senior staff or advisor, as of December 31, 2006*

30 These figures were based upon information from *The New York Red Book*, 98th Edition, 2005-2006; *The New York Statistical Yearbook*, 2005, 2006; and departmental or agency websites and annual reports. *The NYS Legislative Reference Guide*, 2006, was also a very useful resource.



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CUP's Mission

The Council of Urban Professionals (CUP) is an organization that provides a forum for progressive idea-generation, education, and advocacy on issues that affect multi-ethnic professionals and their communities. It also encourages the development of high-potential minorities interested in public service and public affairs. CUP seeks to project a unified voice into the public arena that reflects the unique experience of urban professionals

Issues

CUP actively addresses the issues that most dramatically impact its members and community...

- MWBE Participation
- Board Access
- Education Reform
- Political Action

Upcoming Events

CUP frequently hosts membership programming such as...

- Candidate Receptions
- VIP receptions
- Platform & policy breakfasts
- Presidential Series
- Leadership Summit
- Annual Gala

CUP Members

Members of CUP include numerous Executive-level professionals in Corporate America, Wall Street, Private Business, Non-Profit, and Elected Politics who share a vested interest in focusing on the issues mentioned above to work towards a fair and equitable marketplace

Joining CUP

General membership benefits

- Direct involvement in CUP-related policy activities and programming initiatives
- VIP Access to all Educational and Fundraising Events
- Access to candidates and elected officials at CUP events
- Business enhancement opportunities

Past CUP Programming

In addition to several issue-focused programs, CUP has recently hosted events with Senator Hillary Clinton, DNC Chair and former Governor Howard Dean, Al Sharpton, former Governor Tom Vilsack, former Governor Mark Warner and many other candidates at the state and local levels

For More Information Contact:

Jacques-Philippe Piverger
CUP Membership Chair
jacques@thesoleilgroup.com

Associate membership is also available



Capitol Hill
Research Center

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Capitol Hill Research Center
90 State Street, Suite 1009, Albany, New York 12207
(518) 463-8644*