



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 14, 2018

Honorable Crystal D. Peoples-Stokes
New York State Assembly
LOB 625
Albany, NY 12248

Dear Assemblywoman Peoples-Stokes:

I want to thank you for sponsoring the Omnibus Procurement Reform proposal (A.6355-A/S.3984-A). As you are aware, this bill puts in place systemic procurement reforms and restores sensible checks and balances to the contracting process which were removed in 2011 and 2012. I believe this proposal, which received widespread bipartisan support and has now passed the Senate, restores trust in our procurement process and can help prevent billions of dollars in potential fraud, waste and abuse.

While my Office has previously met with you and your staff to provide information and address questions, I understand you remain concerned that this bill would negatively impact contract opportunities for minority- and women-owned businesses (MWBs). I am writing to assure you that nothing in this proposal would change current protections for MWBs. To the contrary, restoring OSC's independent oversight in the contracting process helps ensure a level playing field for all vendors, especially those that have historically been shut out of the process. Specifically, there are several areas where opportunities for MWBs are enhanced through this legislation:

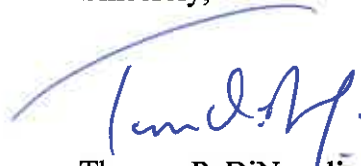
- **Restore independent oversight for SUNY, CUNY and OGS centralized contracts.** In addition to ensuring competition for billions of dollars in State spending, our oversight of SUNY and SUCF construction and engineering contracts is especially important since construction is a major area where MWBs benefit from the State's business, and engineering is one of the areas where the State has the greatest disparity to address. OGS's centralized contracts – a multi-billion dollar portfolio – are increasingly less competitive, and segments of procurements are bundled together, which favors large companies at the expense of New York's MWBs and small businesses.
- **Prohibit the use of not-for-profits to bypass procurement laws.** We now know that SUNY's affiliated not-for-profits have been used to bypass procurement rules and manipulate the contracting process in various ways, allowing business to be directed to preferred contractors. SUNY's affiliated not-for-profits also handle a great deal of construction and engineering work that is not currently subject to the State laws that protect MWBs and other businesses (Article 15-A of the Executive law and Article 11 of the State Finance Law). This legislation would return this contracting activity to entities that are subject to these important procurement protections.

- **Require State authorities to follow standard procurement rules.** The rules for procurement and contract oversight are not the same for State agencies and authorities. State authorities can adopt their own internal guidelines and do not have to follow the requirements clearly set out in law for agencies. Following uniform requirements will not only assure competition, fairness and best value for taxpayers, it is another way to protect our MWBEs and ensure the allocation of those dollars are subject to existing law.
- **Require State Comptroller review of SUNY Research Foundation contracts of \$1 million or more.** This is another major area of spending with the potential to benefit MWBEs. Information from the SUNY Research Foundation IRS Form 990 from 2016 indicates they received revenue of more than \$1.1 billion that year. Without independent oversight, it remains unclear how much effort is made to ensure MWBEs are a part of any procurement process undertaken by the Foundation.

Some have argued that contract reviews by my Office are not necessary and are too slow, and that our post-audit authority should be sufficient. Here are the facts: in calendar year 2017, we reviewed almost 21,000 transactions totaling \$88.3 billion. On average, these contracts were approved within 7.5 days. This modest investment in time helps prevent problems before a contract becomes effective, ensuring a contract is done properly and is in the best interests of the state from the outset. Auditing after the fact is simply too late to impact the process.

Since 2011, more than \$30 billion in contracts have been authorized without OSC review. As our audits and recent scandals have both shown, the lack of independent oversight can lead to fraud, waste and abuse and an uneven playing field for vendors, including MWBEs. I would be happy to address any further concerns you may have as I believe it is important for the Assembly to join the Senate in enacting this critical reform legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom DiNapoli", with a large, sweeping flourish above it.

Thomas P. DiNapoli
State Comptroller

cc: Hon. Carl E. Heastie, Speaker