

## Trials and TRIBULATIONS

### Boosting New York State's certified minority and women-owned business enterprise program

New York State has certified thousands of minority- and women-owned business enterprises (MWBEs) since the certification program began in 1988. The major benefits for New York businesses that become certified as minority- or women-owned are contract opportunities with various state agencies, capital support, membership in the MWBE directory and, in some cases, technical assistance. The MWBE program is operated by Empire State Development Corporation, which is the economic development arm for New York State.

Pursuant to Executive Law Article 15-A, to qualify as a women- or minority-owned business enterprise, the applicant must be able to certify that at least 51 percent of the company is owned by women or minority members. In addition, the applicant must certify that the ownership is "real, substantial and continuing, and the minority members and/or women must exercise the authority to independently control the day-to-day business decisions." The applicant must also certify that it has been active and operating independently for at least one year.

The mission of the MWBE program has always been clear: to provide equality of economic opportunity for businesses owned by minority groups and women, who are historically marginalized groups. The certification application process and program, however, have had a rocky history. Within the first few years of the program's existence, only a few hundred women- and minority-owned businesses were certified. Additionally, the program was



By **LAURA MYERS**  
Daily Record  
Columnist

preliminarily enjoined in 1990 due to constitutional challenges, although the program resumed with re-issued regulations in 1992.

Furthermore, there were numerous complaints about the burdensome application process and extensive criticism that the New

York State agencies charged with using MWBEs failed to properly set goals, communicate, report results and provide project oversight.

As a result, in 2006 the New York State Department of Economic Development commissioned a disparity study to track the program's success and to determine what changes should be implemented to improve the state policies affecting MWBEs. The study's findings, which were released in 2010, indicated that the application process was taking up to a year and that MWBEs were being woefully underutilized by state agencies. Study recommendations included streamlining the application process, providing better agency communication and stricter reporting requirements.

Since taking office, Gov. Andrew Cuomo has made increasing the number of certified MWBEs a priority. Since 2011, New York has certified at least 4,300 MWBEs and recertified 3,600 MWBEs.

Additionally, a second disparity study was completed in 2016 for the purpose of evaluating the participation of MWBEs in

government contracting compared to the availability of MWBEs in the marketplace. The results found that while "MWBE participation in state contracting has increased significantly since the 2010 Study, MWBE utilization is disproportionately lower than MWBE availability in every category of state contracting." In other words, there is still significant work to be done.

In response, Cuomo's office has pledged to certify another 2,000 firms within the two years and has set a goal of 30 percent MWBE participation in state contracts.

This subject became of interest to me as my law firm, The Wolford Law Firm LLP, has recently added three female equity partners — including Victoria Gleason, Molly Shepard and me — in addition to founding partner Michael Wolford. As the firm is now a majority woman-owned business, we have decided to begin the Woman-owned Business Enterprise (WBE) certification process. I have recently discovered that there are, in fact, only three law firms in Rochester currently certified as a New York WBE, and only one law firm currently certified as a Minority Owned Business Enterprise (MBE). I found these statistics surprising, but am hopeful that the most recent set of goals from the Governor's Office will increase both the number of MWBE applications granted, as well as the serious consideration of these firms during the state bidding process.

*Laura Myers is a partner at the Wolford Law Firm LLP, where she practices in the areas of general, business and employment litigation, as well as alternative dispute resolution.*