

WRITTEN TESTIMONY New York City Council Joint Contracts Committee and MWBE Task Force Hearing January 29, 2020

Oversight - MWBEs in NYC - Building on Successes, Overcoming Challenges, and Expanding Opportunities.

Submitted on behalf of Nonprofit New York

Dear Councilmember Cornegy and Councilmember Kallos,

We appreciate the opportunity to submit written testimony to the Committee on behalf of Nonprofit New York and our 1,600 nonprofit members regarding New York City's Minority and Women-Owned Business Enterprise (MWBE) program. Nonprofit New York works to strengthen and unite the nonprofit sector, working with more than 2,200 nonprofit organizations in the New York City area. We provide the education and resources to keep nonprofits well managed, and advocacy to strengthen the entire nonprofit sector. At Nonprofit New York, we are guided by our Declaration of Nonprofit Rights, the rights nonprofits need to thrive and serve our communities well. These include: 1) a right to sustainable financial resources; 2) a right to engage in advocacy and share our expertise; 3) a right to champion equity and an equitable workforce; and 4) a right to be powerful forces for change.

New York City is home to close to 47,000 nonprofits. These organizations provide incredible value to our city. Nonprofits are promoting arts and culture¹, a clean environment, advocating on behalf of marginalized communities, providing spiritual nourishment, fulfilling the government's statutorily required services², and trying to solve some of society's largest challenges. In addition to doing work with the mission of benefiting the public, nonprofits employ 18% of the private workforce in New York City³ - contributing to the economy and the tax base.

Over the past few years, Nonprofit New York has looked into the feasibility of certifying nonprofits as MWBEs in order to support the leadership of minority-led organizations. Nonprofit New York has recently held a series of conversations with member organizations who might benefit from being certified as MWBEs. **Our current recommendation to City Council is to introduce and pass legislation that would conduct a feasibility study for certifying nonprofits as MWBEs**, to allow the Council time to consider whether the MWBE program would be applicable to nonprofit organizations, or another policy alternative should be advanced that prioritizes contracting and business-operations

¹ New York State Arts and Cultural Affairs Law.

² New York State Social Services Law articles 1 through 11.

³ New York State Office of the Comptroller. (July 2019). *Nonprofit Organizations in New York State: Profile of Employment and Wages*. Retrieved from <https://www.osc.state.ny.us/reports/economic/nonprofits-in-nys-2019.pdf>

support for minority-led, women-led, and other marginalized-led (such as LGBTQ) nonprofit organizations.

Background and benefit for nonprofit organizations

The nonprofit sector has a racial leadership gap, and minority-led organizations often struggle to compete for resources.⁴ Nonprofit New York has heard through stakeholder roundtables and from our membership that the organization should advocate that nonprofits be eligible for the MWBE certification⁵ the government track and report how resources are going towards communities of color. If nonprofits are similarly categorized as MWBEs, nonprofits that are minority-led may benefit from contracting targets and the resources and support available to MWBE vendors. Additionally, the government can more easily track what contracts and funding are going towards communities of color as well as women-led organizations.

Specific organizations that have expressed they would benefit from MWBE certification are the Knowledge House, which empowers and sustains a talent pipeline of technologists, entrepreneurs, and digital leaders in the Bronx who uplift their communities out of poverty, and S.O.U.L. Sisters Leadership Collective, which supports new leaders that have “lived and breathed” the inequalities of our legal, educational, and economic systems. The Knowledge House, in addition to building workforce capacity for young people, also has in-house technology and digital skills that could be applicable to MWBE vendor contracts. S.O.U.L. Sisters Leadership Collective has a Youth Entrepreneurship program for young women and gender non-conforming youth, mostly of color, mentored by formerly incarcerated women and/or people of color entrepreneurs. S.O.U.L. Sisters would like to explore the possibility of certifying their young entrepreneurs as MWBEs through the organization.

The nonprofit sector’s diversity challenge has garnered increasing government attention, particularly in the arts and cultural sector. The city recently released a cultural plan that specifically attaches funding to increase racial and disability diversity within cultural institutions funded by the city.⁶ Nonprofit New York feels there is a unique opportunity to advocate for minority-led nonprofits to be certified for preferential contracting.

Models outside New York

Kentucky

Kentucky offers MWBE certifications for nonprofits controlled by minorities or women as well as for-profits owned by minorities or women. Nonprofits applying for certification must submit a supplemental application. This application seeks to determine who “controls” the nonprofit by assessing the organization’s board, how employees and directors are compensated, and how compensation is distributed across gender and ethnicity. While Kentucky allows nonprofits to be certified, Nonprofit New York’s understanding from an analysis by Covington & Burling LLP in 2017 is that no nonprofit has applied for certification.

⁴ For a fuller discussion on the sector’s diversity challenges, please see the appendix.

⁵ In addition, stakeholders have mentioned that the program should also include LGBTQ and other minority classifications.

⁶ New York City Department of Cultural Affairs. Diversity & Equity in New York City’s Cultural Workforce. (2019). Retrieved from <https://www1.nyc.gov/site/diversity/index.page#what>

Create NYC: A cultural plan for everyone. (2018). Retrieved from https://createnyc.cityofnewyork.us/wp-content/uploads/2019/08/CreateNYC_Cultural_Plan.pdf

Massachusetts

Massachusetts has a separate certification program for nonprofits than for-profits. Nonprofits in Massachusetts that are certified as MWBEs have the same procurement benefits as for-profit counterparts.⁷ Nonprofits are eligible if 51% of its Board of Directors and voting membership are women and/or minority groups, the same Board and membership control the organization's daily and long-term operations, the organization regularly and actively engages in business activity, and is independent of non-eligible persons or organizations.

Indiana

Indiana also offers a separate certification program for MWBE nonprofit organizations. Indiana's program only permits nonprofits to be MWBE certified when they perform a scope of work that no for-profit certified firm provides.⁸ Indiana explicitly includes nonprofits in the definition of business enterprise and qualified corporations.⁹ Indiana considers a nonprofit "owned and controlled" by women or minorities when women or minorities make up a majority of the Board of Directors.

Legislative options

To pursue a change in the way New York State and New York City certify MWBEs, the City and State may be able to make an administrative change through new regulations and guidance. Alternatively, Article 15-A of the Executive Law could be amended to allow not-for-profits to become certified on the state level, and Section 6-129 of the Administrative Code in the city-level. However, new pending city legislation would create an Office of Nonprofit Services,¹⁰ which may be able to create a program similar to MWBEs specifically for nonprofits.

Again, we appreciate the opportunity to submit this testimony and we are willing to meet to discuss these recommendations. Nonprofit New York looks forward to continuing to work with City Council to promote equity within New York City's vibrant nonprofit sector.

Thank you,



Chai Jindasurat
Policy Director

⁷ Supplier Diversity Office Nonprofit Certification: Apply for certification as a non-profit organization. Retrieved from <https://www.mass.gov/how-to/apply-for-certification-as-a-non-profit-organization>

⁸ M/WBE Non-Profit Certification Policy, Indiana Department of Administration. Retrieved from https://www.in.gov/idoa/mwbe/files/NonProfit_Policy_11.pdf

⁹ Indiana Code 4-13-16.5. Retrieved from <https://www.in.gov/idoa/files/ch16.5.html>

¹⁰ Intro [1784-2019](#) (Councilmember Farah Louis).

Appendix

Diversity Challenges in the Nonprofit Sector

Based on survey responses from Nonprofit New York and NYC Service's report *What Lies Beneath: The State of NYC Nonprofit Board Diversity, Equity, and Inclusion*¹¹, a majority of New York City nonprofit CEOs/EDs and board members are white, between the ages of 46 and 64, cisgender, and heterosexual. A majority of respondents also said they do not believe their board reflects the diversity of their constituents. A report from BoardSource in 2017 found that people of color comprised only 10% of CEOs, 10% of Board Chairs, and 16% of Board members, but make up 40% of the working population.¹² Building Movement Project's (BMP) report, *Race to Lead: Confronting the Nonprofit Racial Leadership Gap*¹³ discovered that EDs/CEOs of color were more likely to experience leadership challenges like inadequate salary¹⁴; lack of relationship with funding sources¹⁵; and being called on the represent one's entire community¹⁶ (53% leaders of color vs. 23% white leaders). Nonprofits hire inequitably, leaders of color are vastly underrepresented (and underinvested in) in the sector¹⁷, and more are leaving every day.¹⁸ Leaders of color who do make it to a CEO position are often undermined and unsupported.¹⁹ Research by Fund the People found challenges for immigrants, including that senior leaders born outside the U.S. were significantly more likely to say their ability to succeed was hindered by funders' "wait and see" practice.²⁰ BMP also found that women of color experienced both subtle and blatant bias that negatively impacted their career aspirations, and were passed over for others with comparable or even inferior credentials. Further, having an advanced degree had no impact for women of color and women of color with high educational degrees were more likely to be in support roles and earn less than white counterparts with less training and education.²¹

BMP released a special report with the same data from *Race to Lead*, *Working at the Intersections: LGBTQ Nonprofit Staff and the Racial Leadership Gap* which found that LGBTQ people of color reported significantly more challenges in almost every area of their career as opposed to straight people of color and both LGBTQ and straight white people.²² Respondents reported anti-LGBTQ bias in nonprofit spaces, and LGBTQ organizations were perceived to have a race problem.²³ Funders for LGBTQ Issues has been leading efforts to understand homophobic, biphobic, and transphobic

¹¹ Nonprofit New York (formerly NPCC) and NYC Service. (2018). *What Lies Beneath: The State of NYC Nonprofit Board Diversity, Equity, and Inclusion*. Retrieved from https://gallery.mailchimp.com/e3163e2ee79e21b79cf36982c/files/4af5a3c8-3046-4bbf-a9da-037df2482641/Nonprofit_Board_DEI_Report.pdf

¹² BoardSource. (2017). *Leading with Intent: 2017 Index of Nonprofit Board Practices*.

¹³ Thomas-Breitfeld, S., and Kunreuther, F. (2017). Building Movement Project, *Race to Lead: Confronting the Nonprofit Racial Leadership Gap*. Retrieved from: https://www.buildingmovement.org/reports/entry/race_to_lead

¹⁴ 49% of leaders of color reported experiencing this problem versus 34% of white leaders. *Id.*

¹⁵ 49% leaders of color vs. 33% white leaders. *Id.*

¹⁶ 53% leaders of color vs. 23% white leaders. *Id.*

¹⁷ Thomas-Breitfeld, S., and Kunreuther, F. *Ibid.*

¹⁸ See, Vu Le, *Why More and More Executive Directors of Color Are Leaving Their Positions, and What We Need To Do About It*, at: <https://nonprofitaf.com/2019/06/why-more-and-more-executive-directors-of-color-are-leaving-their-positions-and-what-we-need-to-do-about-it/>

¹⁹ See, Building Movement Project, *Race to Lead: Confronting the Nonprofit Racial Leadership Gap* (2017) at: http://www.buildingmovement.org/pdf/Racetolead_NonprofitRacialLeadershipGap.pdf.

²⁰ Fund the People. (2018). *Talen Justice Report*. Retrieved from <http://fundthepeople.org/toolkit/tji/report/>

²¹ Thomas-Breitfeld, S., and Kunreuther, F. *Op. Cit.*

²² Thomas-Breitfeld, S., and Kunreuther, F., Building Movement Project. (October 2017). *Working at the Intersections: LGBTQ Nonprofit Staff and the Racial Leadership Gap*. Retrieved from <http://racetolead.org/lgbtq/>

²³ Thomas-Breitfeld, S., and Kunreuther, F., Building Movement Project. (October 2017). *Working at the Intersections: LGBTQ Nonprofit Staff and the Racial Leadership Gap*. Retrieved from <http://racetolead.org/lgbtq/>

inequities within philanthropy. Their report, *The Philanthropic Closet*, found that LGBTQ people are more likely to be out in the corporate sector than the philanthropic sector, even within foundations with a social justice or LGBTQ focus.²⁴ These resources highlight inequities across race, gender, sexual orientation, and gender identity within the nonprofit sector. These inequities are not exhaustive.

²⁴ Funders for LGBTQ Issues (October 2018). *The Philanthropic Closet*. Retrieved from: <https://lgbtfunders.org/research-item/the-philanthropic-closet-lgbtq-people-in-philanthropy/>