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ALASKA ADVISORY COMMITTEE  
TO THE  
UNITED STATES COMMISSION ON CIVIL RIGHTS  
NOVEMBER 6, 1987  
ANCHORAGE, ALASKA

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Meet.  
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P R O C E E D I N G S

MR. ALEX: This meeting of the Alaska Advisory Committee to the United States Commission on Civil Right will now come to order.

We are convened here today to gather information on the status of State and Municipal programs for increasing the participation of minorities and women in the governmental contracting process.

I am Daniel Alex, Chairperson of the Advisory Committee. The Advisory Committee receives information and makes recommendations to the Commission in areas which the Committee, or any of its Subcommittees is authorized to study.

Other members of the committee in attendance in the meeting are, Charles Elder, Gilbert Guitierrez, Linda Hawthorne, Dove Kull, Mitch Schapira, Rosalee Walker and myself. Arliss Sturgulewski will be here later. Thelma Buchholdt is in Washington D.C. so will not be here. Also we have John F. Dulles, II, from the Commission's Western Regional office in Los Angeles. John.

This consultation is being held pursuant to Federal rules applicable to State Advisory Committees and regulations promulgated by the U. S. Commission on Civil Rights.

The Commission on Civil Rights is an independent agency of the United States Government established by Congress in 1957 and directed to:

1           NUMBER 1: Investigate complaints alleging that  
2 citizens are being deprived of their right to vote by reason of  
3 their race, color, religion, sex, age, handicap, or national  
4 origin, or by reason of fraudulent practices.

5           NUMBER 2: Study and collect information  
6 concerning legal developments constituting discrimination, or a  
7 denial of equal protection of the laws under the constitution  
8 because of race, color, religion, sex, age, handicap, or national  
9 origin, or in the administration of justice.

10          NUMBER 3: Appraise Federal laws and policies  
11 with respect to discrimination, or denial of equal protection of  
12 laws.

13          NUMBER 4: Serve as a national clearinghouse for  
14 information about discrimination; and .....

15          NUMBER 5: Submit reports, findings, and  
16 recommendations to the President and the Congress.

17               I would like to emphasize that this is a  
18 consultation and not an adversary proceeding. Individuals have  
19 been invited to come and share with the Committee information  
20 relative to the subject of today's inquiry. Each person who will  
21 participate has voluntarily agreed to meet with the Committee.

22               Since this is a public meeting, the press and the  
23 radio and the television stations, as well as individuals are  
24 welcome. Persons meeting with the committee, however, may  
25 specifically request that they not be televised. In this case we

1 will comply with their wishes.

2 We are concerned that no defamatory material be  
3 presented at this meeting. In the unlikely event that this  
4 situation should develop, it will be necessary for me to call  
5 this to the attention of the persons making these statements and  
6 request that they desist in their action. Such information will  
7 be stricken from the record if necessary. If the comments a  
8 person is offering, however, are of sufficient importance, the  
9 Committee will hear the information. In that event, the persons  
10 against whom the allegations are made will have ample opportunity  
11 to respond by making statements before the Committee, or  
12 submitting written statement if they desire.

13 Every effort has been made to invite persons who  
14 are knowledgeable in the area to be dealt with here today. In  
15 our attempt to get a well-balanced picture about minority and  
16 women's business enterprises as they relate to the State of Alaska  
17 and to the Municipality of Anchorage, we have invited key public  
18 officials to share information with the Committee and exchange  
19 ideas and perspectives.

20 In addition, we have allocated time this  
21 afternoon at 4:00 p.m. to hear from anyone who wishes to share  
22 information with the Committee about the issues directly under the  
23 Advisory Committee consideration. At that time each person, or  
24 organization will have five minutes to speak to the Committee and  
25 may submit additional information in writing. Those wishing to

1 participate in the open session must contact Commission staff  
2 before 4:00 p.m. today.

3 Let us proceed with the first panelist on the  
4 agenda and I don't know that they're here.

5 MR. GUITIERREZ: Yeah, they're here.

6 MR. ALEX: Oh, yeah.

7 MR. GUITIERREZ: Can I make a recommendation .....

8 MR. ALEX: Sure.

9 MR. GUITIERREZ: ..... to speak up a little bit  
10 more?

11 MR. ALEX: Sure.

12 MR. GUITIERREZ: I can't hear you and I'm sitting  
13 next to you.

14 MR. ALEX: Ray Price is here?

15 MR. GUITIERREZ: Yes.

16 MR. ALEX: Ray Price. Okay. We have Ray Price  
17 the special assistant to the Governor. One of the things, I guess  
18 we all have name tags so you'll be able to tell who we are, but  
19 Ray, you're on. Something before you get going, if you have a  
20 prepared statement, would like it summarized, we'd like to be able  
21 to have an opportunity to ask questions.

22 MR. PRICE: Okay. Well, Mr. Chair, I do not have  
23 prepared statements, or a prepared statement. I'm here for a  
24 couple of reasons, one, I was invited which I was pleased to be  
25 invited, and the other is because the topic is one that is very

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1 close to me personally, as well as to the Governor. And what I'd  
2 like to do is to maybe give the Committee an update on where the  
3 Cowper Administration is in regards to Civil Rights and then be  
4 prepared to answer any questions the Committee might have.

5 MR. ALEX: Okay.

6 MS. WALKER: Mr. Chairman?

7 MR. ALEX: Yes.

8 MS. WALKER: Mr. Price, actually we would like to  
9 restrict it to the WMBE (ph) program rather than just Civil Rights  
10 in general.

11 MR. PRICE: Okay. I'm aware of that.

12 MS. WALKER: Because of time constraints.

13 MR. PRICE: Right. I'm aware of that.

14 MS. WALKER: Thank you.

15 MR. ALEX: Go ahead.

16 MR. PRICE: Mr. Chair and members of the  
17 Committee, since December of last year I have been engaged in a  
18 number of programs relating to minority business developments --  
19 minority and women business developments.

20 Specifically I have co-authored a reorganization  
21 plan for all Equal Opportunity programs state-wide which includes  
22 minority and women business enterprise specifically as it relates  
23 to the Department of Transportation and the Department of  
24 Administration. I'll address the Department of Administration  
25 first.

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1           As you all know the Department of Administration  
2 has what we consider to be a very cumbersome process for letting  
3 contracts, be they for procurement, or personal services. In  
4 addition to that these procedures do not include aggressive  
5 programs to enhance the participation of minorities and women.  
6 To help combat that situation the Cowper Administration followed  
7 up on an action that started in the previous administration which  
8 was to seek out and obtain a Federal grant for minority and  
9 business development.

10           We received that grant in January of this year.  
11 It is housed and administered out of the Department of  
12 Administration. The purpose of that grant is to work directly  
13 with the Department of Administration in the area of procurement  
14 and personal service contracting.

15           The program is headed by Nils Chodray (ph) who  
16 has a long history of involvement in both minority and female  
17 issues as well as economic development.

18           The program today has submitted two quarterly  
19 reports to the Federal government. They've indicated that they're  
20 extremely pleased with the progress to date. We're currently  
21 working on a policy statement and a program for the department  
22 heads not only in the Department of Administration, but in 16  
23 departments to assist them in their contracting activities in  
24 terms of making the atmosphere a lot more conducive to minorities  
25 and women participating.

1                   We expect that this session, or the following  
2 session, Legislative session, we will be presenting some  
3 legislation in that regard.

4                   For the Department of Transportation,  
5 (indiscernible) will be having a panel discussion on that. I can  
6 tell you that in regards to the reorganization plan as relates to  
7 minority and business enterprise originally the proposal -- the  
8 reorganization proposal addressed that issue and requested that --  
9 or laid out rather that the -- the transfer of that program from  
10 the Department of Transportation into the Governor's office in  
11 addition to other Equal Opportunity programs in the State.

12                   As of Monday of this week we have finally come to  
13 a conclusion as to what scope the reorganization will take. We  
14 will be transferring from the Department of Transportation into  
15 the Governor's office DOT's internal EEO office and we will leave  
16 in the Department of Transportation for an unspecified length of  
17 time the certification process and the contract compliance  
18 process.

19                   In addition to that the proposal outlined a number  
20 of proactive activities and programs and services that could be  
21 provided to minority and women business enterprise. The  
22 Department of Transportation has agreed to take a look at those  
23 suggestions that were made in the proposal. I've agreed to work  
24 with them on these proposals -- on these programs and we expect  
25 to have a fairly aggressive program in the Department of



1 Transportation as it relates to minority and women business  
2 enterprise.

3                   Anyone have any questions, I'd be more than happy  
4 to answer those.

5                   MR. ALEX: Okay. Questions? Yes, Arliss.

6                   MS. STURGULEWSKI: Mr. Chairman, if I may. Thank  
7 you very much. I appreciate the work that you're doing and you've  
8 had a good track record so I think we'll see some things. Would  
9 it be possible for you to make available to us the work paper, or  
10 is that an internal document?

11                   MR. PRICE: No, it's a public document I've  
12 circulated all over the State already.

13                   MS. STURGULEWSKI: Fine. But I'd appreciate  
14 knowing -- am I correct that-- was it you that was involved in getting  
15 out the publication dealing with the minority firms that had been  
16 qualified by the State, or was that strictly a DOT, their  
17 directory of firms that qualified?

18                   MR. PRICE: Yeah, I believe that's a DOT project.

19                   MS. STURGULEWSKI: Yeah. Would like to point out  
20 to you that I've had some calls from the business community which  
21 includes the minority firms. I think you should -- they should,  
22 and I've passed that along to the Commissioner, take a look about  
23 how long names are retained. For instance, there were a lot of  
24 firms from Outside the State of Alaska and I think that minority  
25 firms certainly within the State should be of a very major concern.

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1 And it may simply be that the process that's followed, that perhaps  
2 needs a bit of adjustment so that we're not listing everybody. I  
3 realize that, you know, once people are qualified .....

4 MR. PRICE: Um-hum.

5 MS. STURGULEWSKI: ..... that perhaps they have  
6 to stay on that list, but it dilutes it, I think, to have a lot  
7 of Outside firms listed.

8 MR. PRICE: In response to that, Senator, we've  
9 looked at that and that is a concern as it is in other areas in --  
10 regarding contracting. The -- one of the problems we have in  
11 dealing with Federal dollars is that we cannot restrict the  
12 participation of Outside minority firms when it comes to Federal  
13 contracting.

14 MS. STURGULEWSKI: Mr. Chairman, in no way do I --  
15 I -- I totally agree with that and that's as it should be, but we  
16 do not have to advertise for the total United States of America  
17 either.

18 MR. PRICE: Right. I understand.

19 MS. STURGULEWSKI: I understand that.

20 MR. ALEX: Further questions? Yes, Rosalee.

21 MS. WALKER: Yes, thank you, Mr. Chairman.

22 Mr. Price, that document, the EEO plan, has it been approved,  
23 accepted by the Governor himself?

24 MR. PRICE: Yes, it has.

25 MS. WALKER: All right. Now we know that most of

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1 the minority businesses -- minority and women businesses are  
2 relatively small compared to the .....

3 MR. PRICE: That's correct.

4 MS. WALKER: ..... others in this State and they  
5 need some assistance prior to certification in many cases and  
6 some of the positions in the Department of Commerce that did  
7 offer this type of assistance were removed. Can you tell us how  
8 that's going to be picked up? Where will that assistance come  
9 from now?

10 MR. PRICE: Well, at this point I can't tell you  
11 that. The reason I can't tell you that is under my plan, in terms  
12 of the reorganization, I have specific ways in which we were going  
13 to address that in terms of technical assistance and so forth.  
14 DOT at this point has some resources to accomplish that task. And,  
15 as I stated, we just finished on Monday coming up with a  
16 compromised plan, or an amended plan and the details of that has  
17 not been worked out yet. I do have some specific ideas however,  
18 in terms of how to make that happen.

19 MS. WALKER: One other questions, please.

20 MR. ALEX: Sure.

21 MS. WALKER: It's my understanding from what you  
22 said that certification in contracting will be left in DOT.

23 MR. PRICE: Certification and compliance.

24 MS. WALKER: Compliance. All right. And so what  
25 does that leave for the EEO to be doing?

1 MR. PRICE: The internal EEO, which involves  
2 protecting groups being hired and promoted in the Department of  
3 Transportation, in addition to providing all of the Federal  
4 requirements regarding statistical data for the Department in  
5 terms of how they hire and recruit women and minorities.

6 MS. WALKER: And how will that be communicated to  
7 DOT in terms of the certification process and compliance?

8 MR. PRICE: Well .....

9 MS. WALKER: I mean, we know that agencies have  
10 a history of turf business and the right-hand never knows what the  
11 left-hand is doing and I wondered how you're going to get these  
12 all together? They have to work together if it's going to work  
13 at all.

14 MR. PRICE: I understand that. I understand that.

15 MS. WALKER: Um-hum.

16 MR. PRICE: And we actually have a dual conduit,  
17 if you will, to make that happen. One being the Director of EEO,  
18 or the new office of Equal Opportunity, I should say, and myself,  
19 who as you probably know, I'm the EEO liaison for the Governor  
20 and oversight officer, So we plan to make sure that we have a good  
21 working relationship between the Department of Transportation and  
22 the new office of Equal Opportunity.

23 MS. WALKER: Thank you, Mr. Chairman.

24 MR. ALEX: Okay. Further questions? Yes, Charles.

25 MR. ELDER: Mr. Chairman. Mr. Price, of course,

1 we don't have the details for (indiscernible - away from  
2 microphone) .....

3 MR. PRICE: Right.

4 MR. ELDER: ..... but I have a simple question.  
5 Do you see any inconsistency between the program that you're  
6 working on and developing in respect to discrimination with the  
7 proposed Alaska hire laws?

8 MR. PRICE: That's a good question. If I  
9 understand your question, do I see any discrimination in our  
10 program as it relates to Alaska hire?

11 MR. ELDER: I guess that's a fair statement, yeah.

12 MR. PRICE: Okay. Well, as you know that's a  
13 real delicate subject. In terms of whether or not our program  
14 would be discriminatory my answer to that is I would have to say  
15 no, until it's challenged and proven. Otherwise, I would have to  
16 say no it's not discriminatory. There are some precedents .....

17 MR. ELDER: Well, Mr. Price, I was asking your  
18 opinion?

19 MR. PRICE: Oh, okay. Okay. Well, let me  
20 qualify my opinion then. There are some precedents in the Lower  
21 48 in terms of upholding actions taken to alleviate past  
22 discrimination and some of the criteria that's used that the  
23 courts have looked at has basically been, one, has there been  
24 discrimination in the past and if it has is that discrimination  
25 prevalent today. And are the programs designed to rectify that

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1 problem on a set time frame rather than being perpetual and will  
2 it have enough flexibility to allow the participants to not -- I'm  
3 trying to find -- this is a real touchy area here. If it has enough  
4 flexibility and where it's not as rigid to where people can't  
5 comply with the requirements set forth by the program, so we feel  
6 that if we cover those bases that any programs that we put in  
7 place won't be discriminatory.

8 MR. ELDER: Thank you, sir.

9 MR. ALEX: Further questions?

10 MS. STURGULEWSKI: Mr. Chairman?

11 MR. ALEX: Yes, Arliss.

12 MS. STURGULEWSKI: A program is as -- I guess, the  
13 effectiveness is determined a lot by the pool of contractors that  
14 you deal with and their success. Do you deal with organizations  
15 like the -- you know, the business community, the general  
16 contractors, the oil companies in any kind of a training program  
17 or are these pretty much are we dealing with mandatory programs,  
18 but not have much outreach to the firms who are really going to  
19 make the program work?

20 MR. PRICE: Well, in the past I -- you know, I'd  
21 have to say that I'm not aware of any aggressive programs like  
22 you just described. In fact, that's one area that I think is  
23 extremely important if we are going to have successful programs.  
24 It's my opinion, if I may, that too many times have we developed  
25 programs and tried to force-feed the business community. And I'm

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1 of the opinion that what we need to do is develop these programs  
2 in conjunction with the business communities.

3 MS. STURGULEWSKI: Have they been involved --  
4 Mr. Chairman, if I may. Have they been involved in the  
5 preparation of the document?

6 MR. PRICE: Yes. I met with a number of business  
7 people including the Associated General Contractors, Bill Snyder.  
8 And, I have to say that I spent a lot of time traveling throughout  
9 the State meeting with the various organizations and business  
10 people across the State.

11 MS. STURGULEWSKI: Thank you.

12 MR. ELDER: Mr. Chairman?

13 MR. ALEX: Yes, Charlie.

14 MR. ELDER: And does that include conferring  
15 with organized labor?

16 MR. PRICE: Yes.

17 MR. ALEX: Further questions.

18 MR. DULLES: Dan?

19 MR. ALEX: Yes, John.

20 MR. DULLES: Ask you just one question.

21 MR. PRICE: Sure.

22 MR. DULLES: Mr. Price, the WMBE program which is  
23 administered by the Department of Transportation, is that program  
24 state agency wide or is it restricted to contracts that are  
25 funded or channeled through the Department of Transportation?

1 What I'm trying to get at is do you have a state-wide program that  
2 would effect all contracts regardless of the nature of the funding,  
3 regardless of funding source that they would be applicable to  
4 every State agency? Are we talking about a comprehensive program  
5 or are we talking strictly about a program that is generated as a  
6 result of the Federal requirements under the Department of  
7 Transportation?

8 MR. PRICE: Okay. Currently the State has no  
9 program. The State does not have a program state-wide to address  
10 women and minority business enterprise development. The Federal  
11 programs that are administered by the Department of Transportation,  
12 as you well know, is operated by DOT and is -- has goals and so  
13 forth. The program that I mentioned previously, the minorities  
14 business development agency grant that we receive from the  
15 Federal government is designed to facilitate that state-wide  
16 through all departments, but when it come to State -- pure State  
17 dollars the State has no program.

18 MR. DULLES: Would that require State legislation  
19 to put that in place, or can .....

20 MR. PRICE: Possibly.

21 MR. DULLES: ..... that be done administratively?

22 MR. PRICE: We're looking at that now. We  
23 suspect that as we get into it and if we want the program to stand  
24 the test of time it may require some legislation to solidify it.

25 MR. DULLES: And that is being considered?

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1 MR. PRICE: Yes.

2 MR. DULLES: Thank you.

3 MR. ALEX: Thank you. Further questions from the  
4 Commission? Thank you, Ray. I see we have Bob Poe and  
5 Ed Ramirez here from the State of Alaska, Department of  
6 Transportation and Public Facilities for the next panel and  
7 you're welcome to come up to the table.

8 MR. POE: We would also like to introduce  
9 Vertis Williams (ph) who is a certifying officer for DOTPF  
10 (indiscernible) section.

11 MR. ALEX: Thank you.

12 MR. POE: Well, first of all thank you,  
13 Mr. Chairman, I appreciate the opportunity to appear before you  
14 all. As I understood the format, first, you wanted some comments  
15 from us on how our involvement with the MBE program, internal and  
16 external EEO programs and so forth have been and .....

17 MR. ELDER: Bob, we're having a little  
18 technical problem here.

19 MR. POE: Oh, I'm sorry.

20 COURT REPORTER: I know, I just want to know your  
21 name.

22 MR. POE: Oh, my name is Robert Poe. I'm sorry.  
23 I'm deputy commissioner, Department of Transportation and to my  
24 right is Ed Ramirez. He's the MBE coordinator, Department of  
25 Transportation.

1 MR. ALEX: I'll try to go and make sure that  
2 that's clearly understood.

3 COURT REPORTER: Thank you.

4 MR. POE: Okay. So I understand that we have the  
5 opportunity to talk to you about our program and also to talk to  
6 you about some of the concerns we have in dealing with the  
7 program, implementing it, dealing with Federal agencies, that sort  
8 of thing, so with your permission I've prepared a few remarks and  
9 I might go into those and then I'd be happy to answer any  
10 questions you all would have.

11 MR. ALEX: Sounds good.

12 MR. POE: Okay. We -- under my part of the  
13 organization, we deal with the minority business, or DBE program  
14 today under the new Surface (ph) Transportation Act. External  
15 EEO which is to enforce contractors who are working under Federal  
16 programs to enforce their efforts towards Civil Rights affirmative  
17 action and also internally to the department those efforts. I'll  
18 speak mostly to those external functions because they deal with  
19 the Federal side.

20 One thing that we find is that the program is not  
21 standardized. That is, the requirements are not standardized  
22 across all Federal agencies and if I could offer some examples.  
23 Right now under DOTFHWA we have one program under the Surface  
24 Transportation Act we have a combined goal based on the DBE  
25 that has combined the WBE and the MBE goals together. They

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1 have -- they're probably the most rigorous in terms of defining  
2 requiemments for the program, making sure that they're enforced  
3 and so forth. The FAA is a lot more lax on that.

4 We also run into a situation where BIA comes into  
5 play. We'll have potential candidates for an MBE situation.  
6 They want to be certified as a minority business enterprise and  
7 they'll say well, I have BIA certification already, so shouldn't  
8 I just be able to walk in and get certification under the FHWA  
9 program. And I'd love to tell that person, yes, but the answer  
10 is often no, because the requirements that are set out by FHWA  
11 are quite a bit more rigorous than there are by BIA.

12 Another thing that we run into is how FHWA, or  
13 DOT and FHWA interpret their requirements across their entire  
14 department. We have a situation right now where we have a letter  
15 from the General Counsel of FHWA which has determined that no  
16 wholly owned subsidiary of a Native Corporation can be an MBE.  
17 Startling revelation to me.

18 In the same token, I have a memo from Mr. Barnhart  
19 who says that they certainly are. I find a little conflict there  
20 and certainly that conflict is a difficult thing to enforce in an  
21 effective manner outside with the contractors we work with and  
22 with the minority and women's business enterprises that want to  
23 work with us.

24 Another problem we have is in terms of the  
25 requirements across all 50 states. I've been doing some testimony

1 on this this week. I just appeared before the Associated General  
2 Contractors convention yesterday and received about a half hour  
3 of extreme verbal abuse on the program. One of the -- one of  
4 the -- I don't mean to make light of it, but it is a -- it can be  
5 a pretty brutal situation.

6 One of the things that they'll talk to us about  
7 is how the requirements are applied across the 50 states. As an  
8 example, in Alaska we're trying to certify firms in the area that  
9 they're qualified to do. So for instance, I'll give you an  
10 example. I think it was Northway Natives Association, there are  
11 categories that you can be certified in and they're certified in  
12 several, maybe 20 different categories.

13 One category that does not exist is project  
14 management. We had a firm that was using them for project  
15 management and that was disallowed in meeting the goals, but  
16 getting to the real argument in there, several states don't  
17 enforce this work category area. That is, if you're qualified  
18 for striping, or brush cutting, or concrete work, or what have  
19 you that doesn't mean you're qualified to do something very  
20 different than that, say surveying. If you're qualified for  
21 concrete doesn't mean you're qualified for construction surveying,  
22 as an example.

23 Well, we enforce that pretty strictly. That is,  
24 you've got to come in and demonstrate the ability to do the job;  
25 demonstrate that the individual, or individuals who own the

1 company and are qualifying under the requirements of the  
2 certification can perform a commercial, useful function in that  
3 specific area. Well, that's not across all states, so the AGC  
4 which is across all states certainly makes us well aware that that  
5 is not applied equally and they say, well, they don't do it in  
6 this state, so why are you all doing it. I should be able to hire  
7 this minority business enterprise and have them do whatever I want  
8 them to do. It's up to me. I have the contract. If they don't  
9 perform it's my -- I'm the one who is going to be in trouble. I'm  
10 the one who is going to be having to make that up. Yet FHWA is  
11 very certain that we should enforce that certification and we do  
12 our best. We do our level best to do that, but it would help an  
13 awful lot if they were consistent across the whole country  
14 especially in -- against groups like the Associated General  
15 Contractors.

16 And I'll tell you I have a bent (ph) on this. I  
17 really believe if they spent half the time complying that they do  
18 complaining they would have a lot less trouble, but nevertheless,  
19 they seem much more apt to argue.

20 One of the things that would help us a lot -- I  
21 noticed -- we had a meeting with FHWA, I think it was about four,  
22 or five months ago. The regional director came up and so forth  
23 to talk to us about our program. I noted that just on this  
24 regional visit they probably had as many people as we had working  
25 on the program watching us work on the program.

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1           It would be nice if, for instance -- one of the  
2 reasons that Ed is on board and Ed, you know, I think has made a  
3 lot of improvements in the last three and a half months that he's  
4 been on, a lot of improvements. I would say comparable to the  
5 last five years with the State Department of Transportation in  
6 terms of improvements.

7           One of the things that we're really focusing on  
8 is not just being a bureaucratic organization that just says yeah  
9 you're qualified, or no, you're not and out the door and we're  
10 not going to use our brains at all in this process, we're trying  
11 to educate the public on what it takes to be qualified, what the  
12 rules are, what the logic is and I'll get to logic in a minute,  
13 but what the rules are, what it takes to be qualified, offer  
14 assistance in doing that, offering assistance to contractors in  
15 better understanding it so that that marriage can work much better,  
16 but that outreach program takes people, takes money and, of  
17 course, the more people we get interested in this and the more  
18 people we make qualified that buries us with more applications.  
19 And then, we have not enough people to do the work and so forth,  
20 so I think if, on one hand, the Federal government is very  
21 committed to making this happen, to making it work, to encouraging  
22 minority and women business enterprises to succeed, to become  
23 viable enterprises in the future that we -- if we could see more  
24 funding in the supportive services area it would be an awfully  
25 big help to us, so I put my pitch out on that right now.

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1           One of the other things we run into -- and I'll  
2 go through my list of complaints and then like I'd said I'll be  
3 happy to answer any questions and also turn it over to any -- any  
4 points Ed had. We went over this together this morning.

5           Simplifying the paper work would be an awfully  
6 big help. One of the problems that comes up is recertification.  
7 Hey, I went through all this stuff before, you know, why do I have  
8 to file all this additional paper work to just have you reiterate  
9 the fact that I am qualified -- that my firm is qualified.

10           One problem we have is, of course, DOT hasn't  
11 always done the same quality job over the years so some of the  
12 firms that were certified in the past may have been inappropriately  
13 certified and we have to look at them. And we do that. We try  
14 very carefully to make sure that if we've got some bad ones out  
15 there that we take care of that.

16           If a contractor calls us and says there's a sham  
17 over here, this is just a front operation and really this big  
18 construction company is really financing that company and is doing  
19 everything to make that work for them, we want to know about it  
20 and we really try to look into that. But, for those legitimate  
21 companies that really should be certified and recertified on a  
22 regular basis a simplification of that process would help quite a  
23 bit.

24           I know you probably hear that all the time and  
25 with respect to the Federal government streamlining the paper work

1 but -- and sometimes the paper work -- to streamline the paper  
2 work is bigger than the paper work you started to streamline in  
3 the first place.

4               Personally one of the problems that I have with  
5 the Federal programs is that they really often times never have  
6 to face the impact of their programs.

7               As an example, yesterday at the AGC I didn't see  
8 any FHWA people there. Not a one of them. They didn't have the  
9 budget to come up. We had the budget to come up. They didn't  
10 have the budget to come up. I kind of think that all managers  
11 make resource allocation decisions and I think that might have  
12 been a convenient choice on their part. But they can be real  
13 hard nosed about, you know, what it takes and, oh, you know,  
14 their -- they've got religion about the whole thing, but they're  
15 not out there trying to explain it to the people that are affected  
16 by it.

17              And so, here we have this big budget and they're  
18 watching over us diligently, but I think that they would bring  
19 a lot more realism to their programs if they were out there, if  
20 they were forced to.

21              I'm kind of harping back to a little legislative  
22 intent we had in DOT this year. One legislator from the bush  
23 thought it would be a good idea if all the top management had to  
24 replace -- when people from the bush went on vacation if we had  
25 to go out to the bush locations to work there and understand a

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1 little bit more about what problems they face and I could see that  
2 legislator's point of view. Maybe the same could reciprocate on  
3 the Federal agency standpoint. It would help if they got out and  
4 saw it and worked with it and really answered the questions.  
5 When they have been in front of them they don't answer the  
6 questions. They just say, well, that's the rules and I can't  
7 think anything beyond that often times, so you know, I really  
8 think that that would help a lot.

9                   Getting back to this dealing with the folks that  
10 are really affected by it, when I came onto this and I -- you  
11 know, I'm admittedly very new to minority business enterprise,  
12 DBE, external EEO, but I really made a full fledged effort to get  
13 a handle on it, to understand it, to understand the logic behind  
14 where we were going and I've been at this about nine months. The  
15 guidelines are very vague.

16                   Okay. They say -- see if I can give you some  
17 examples. Well, we could go into a myriad of examples. They  
18 offer no examples of what does qualify, what doesn't qualify.  
19 Oh, yeah, there are cases. We could go and dig up jillions of  
20 cases, but there's no publication that tells you what the program  
21 is about, how it works, what is a qualifying organization, what  
22 isn't. There are no training programs. If, say Ed didn't know  
23 about this already and didn't get, you know, sort of the baptism  
24 of fire there's no course he could go to learn about this  
25 stuff. There's no outreach program from the Federal program that

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1 says, hey, how do you enforce this program.

2 What they do say is, oh, this State has a good  
3 program, or that State has a good program. Call them. Find out  
4 about that. What is this a random process. You know, it would  
5 help if there were real guidelines as to how to get this done.  
6 Where is your interpretation allowed and where isn't it.

7 What they do tell you is after you make a choice  
8 they'll be happy to second guess you after the fact. After you've  
9 certified a firm and a contractor has taken on the contract and  
10 he's engaged several subcontractors to do the job, they'll be  
11 happy to tell you that firm didn't qualify, but nothing up front  
12 to prevent all of that heartache in the beginning. So, I guess  
13 something that really lays out what those requirements are.

14 Now also these guidelines I have to personally  
15 object to some of them and I'll explain why. WBE interpretations  
16 are extremely discriminatory in my opinion. If I take on a --  
17 if I look at a women's business enterprise application, if the  
18 husband has anything to do with that business and he has any  
19 skills related to that business at all then it's a front. I have  
20 to be completely chauvinistic about that. But where you bend over  
21 18 ways to find where she does exert operational control.

22 The logic is she's just a wife. She couldn't  
23 possibly run that company and it happens all the time. If we get  
24 a case and she's got two years in the business and he's got eight  
25 and she might be the brains behind the organization, she might

1 make all the financing deals, all the bids, organize the company,  
2 keep that thing running, and if any of you all have run companies  
3 you know that that business knowledge is as critical to a  
4 business as long term success as is knowing how to pour concrete.  
5 We can't certify her. That's a family owned business. There's  
6 no way around that.

7 Native interpretations are discriminatory and I  
8 think insensitive to Alaska's unique considerations. Just this  
9 conflict that we have right now where the General Counsel for  
10 FHWA interprets on some very loose interpretations of the SBA  
11 working in that Surface Transportation Act have decided that if  
12 a Native individual owns a company, owns 51 percent, exerts  
13 operational control, has a commercial, useful function in that  
14 business then that's a certifiable DBE.

15 If a Native Corporation owns it even if they have  
16 a shareholder, or a Native running that company that's not  
17 certifiable under their current interpretation. But we've not  
18 acted on this. We've got an AG's opinion that says that's  
19 highly questionable and I've got Barnhart's letter which says they  
20 are. He was talking about something else, but the last  
21 paragraph says they are and it's pretty clear. So, we've got some  
22 problems there.

23 There is also a wide variance of opinions so to  
24 what's the right way to go, or not (ph). Like take this Native  
25 interpretation again. I don't think the local FHWA -- now they're

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1 probably not going to stand before this Committee and tell you  
2 this, but I don't think they support that opinion. The Regional  
3 folks do. D.C. does, but I don't know how many of those folks  
4 have ever been to Alaska. So, that's kind of difficult to deal  
5 with and -- and once again, they can have all this randomness of  
6 opinions but the person, or the people who are going to be  
7 dealing with the human beings effected is going to be us, and  
8 that's a very difficult situation to be in to make it the positive  
9 thing it ought to be. It becomes a big negative thing.

10 Sometimes, too, we run into -- for -- let's say  
11 for instance, external EEO, we have to run compliance reviews on  
12 those firms. We've had a very hard time meeting our goals this  
13 year. Two things entered into it. One is we were supposed to  
14 look at 10 companies and we have only a limited staff to do that.

15 The second is that we have a four month  
16 construction season and the idea is is that you're going to try  
17 to look at them somewhere in the peak of their operation so that  
18 you can really see who they've hired and who they haven't hired.  
19 And if you don't get that compliance review out by 30 days after  
20 it was done they won't accept it.

21 So now, we've got to do 10 companies with a  
22 limited staff over four months and do a good job at it. They'll  
23 second guess whether it met the qualifications or not, which  
24 aren't laid out as to what a good compliance review is and isn't.  
25 It's just that they'll know it when they see it. And none of that

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1 is acceptable.

2 I mean, we didn't make the dates because of our  
3 construction season and so forth. That's a problem for us and  
4 it's a unique problem to Alaska because, well, the ground is going  
5 to be frozen in two more weeks and construction will stop.

6 And finally, I guess -- and this is maybe an  
7 advantage I offer because I didn't come in with any preconceived  
8 notions or know very much about the program when I walked in the  
9 door, maybe I was -- what do I want to say, naive, but I believe  
10 that the program was intended to make minorities and women -- to  
11 give them the opportunity to break into businesses that they  
12 didn't have the opportunity to get into before, because of one  
13 thing or another, especially in the construction industry where  
14 it was a very white, male oriented kind of a thing.

15 Now, you get kind of a chicken in the egg issue  
16 here. If you hadn't done all the work before, if you aren't all  
17 ready qualified to go out and start that business, you're not  
18 qualified for certification.

19 In other words, if you've only done, say, a year  
20 of striping and you worked for a bunch of other people and you've  
21 never run a company like that before, they might question whether  
22 you really know how to do the work you're trying to be certified  
23 for.

24 Now, an intelligent business person would hire  
25 other people that have that knowledge and they'd use 'em to get

1 that job done. Oh, no, that's a front, can't do that.

2 Same way if, for instance, in making a minority  
3 business enterprise, or a women's business enterprise work it  
4 requires good business knowledge to do it, we can't count that.  
5 If you're going to run a trucking company, but what you do mainly  
6 is you work out the bids, the scheduling, you work out the leases  
7 for the trucks, all of the business things that make or break a  
8 business, that doesn't count. You've got to go out and drive a  
9 truck. And those causes problems 'cause I don't think that  
10 really results in the end in a minority, or women's business  
11 enterprise really becomming successful.

12 You stop a lot of people before they ever get that  
13 extra competitive edge because the rules are you've got to all  
14 ready know how to do it.

15 Now if you've got to know all ready how to do it,  
16 and you haven't had an opportunity because you've been  
17 discriminated against, I'm not sure what to do. So, it's kind of  
18 a chicken and the egg problem.

19 That sort of ends my remarks. Thanks.

20 MR. ALEX: Okay. We have question. Yes, Charlie.

21 MS. WALKER: Thank you, Mr. Chairman. Wait a  
22 minute. I'm going to ask my two little questions 'cause I have to  
23 catch a plane.

24 MR. ALEX: Okay.

25 MR. ELDER: I yield to the airplane any day.

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1 MS. WALKER: Thank you, Charlie Elder. Bob, I  
2 can sympathize and empathize with you on the Federal Regs portion  
3 of it. Aren't there some State Regs added on top of that or  
4 don't we have some that we add to what we get from the Federal?

5 MR. POE: Not really. Not really.

6 MS. WALKER: None at all?

7 MR. POE: No. No.

8 MS. WALKER: Okay.

9 MR. POE: Do you have some examples in mind.  
10 'cause I don't think we do.

11 MS. WALKER: Yeah. I don't have time that's why  
12 I'm -- .....

13 MR. POE: Okay. I'll be happy to talk .....

14 MS. WALKER: ..... I asked the question, but .....

15 MR. POE: ..... about it later, but I don't think  
16 we do. I mean .....

17 MS. WALKER: Okay.

18 MR. POE: ..... to my knowledge we don't.

19 MS. WALKER: All right. The other one -- the  
20 other question that I wanted to ask publicly right now 'cause  
21 you'll hear from me again.

22 MR. POE: Right.

23 MS. WALKER: Now you mentioned the staff training  
24 and so forth.

25 MR. POE: Um-hum.

1 MS. WALKER: The State does not have any  
2 provision for your staff training?

3 MR. POE: Well, no, we do and we work on -- in  
4 fact one of the things Ed's going to do is work out programs in  
5 terms of training of other folks and we do send them to training  
6 courses and conferences and that sort of thing. Sure, we have  
7 money for that.

8 MS. WALKER: Well, how stable is it? What I'm  
9 saying is now everytime the administration changes all of the top  
10 brass changes .....

11 MR. POE: Um-hum.

12 MS. WALKER: ..... everything else changes, so  
13 you get in a new group in here. Now these businesses, hopefully,  
14 will stay there .....

15 MR. POE: Um-hum. Um-hum.

16 MS. WALKER: ..... year -- the following year no  
17 matter who is in the office. Hopefully the business is going to  
18 stay there, but they're going to have to deal with a fresh new  
19 face every time the administration changes. Oh yeah.

20 MR. POE: The on- -- that's true, sure. I'm not  
21 arguing that.

22 MS. WALKER: And this fresh new face has fresh  
23 new ideas every time the administration changes, so where does that  
24 put the individual? Is there any kind of a .....

25 MR. POE: Continuity?



1 MS. WALKER: Yes.

2 MR. POE: Yeah, there certainly is. The only  
3 face that changed was me. I mean, Ed was brought on new. We  
4 created the position to make that happen, but the only new face  
5 is me.

6 MS. WALKER: No, this is this time, but I'm  
7 talking about .....

8 MR. POE: Well, I can't speak to any other time.  
9 I can only speak to what I'm responsible for, but the only new  
10 face was me and actually what I confronted was nothing but  
11 complaints. Nobody liked the program at all in any way, shape, or  
12 form and what we've really tried to do is be responsive to  
13 changing, so you know, I would hope that the new face in this  
14 situation is a positive, not a negative. You're certainly going  
15 to have that. That's the beauty of government, or the terror of  
16 government, but that's the way it is.

17 There is continuity though. The overwhelming  
18 majority of that MBE and EEO staff are classified positions. They  
19 stay year after year. The certification listing that we have  
20 carries over year after year. All the people that work for Ed are  
21 classified, so really there isn't that huge changeover that they  
22 have to face new people all the time.

23 Yes, I will give you the point that if an  
24 administration comes in that's not positive towards this program  
25 they could say, hey, you know, you guys lay off that, or you take

1 care of the AGC first and you worry about that program later, or  
2 what have you. Those certainly aren't my orders.

3 MS. WALKER: One more question, Mr. Chairman.

4 MR. ALEX: Yes.

5 MS. WALKER: Is not DOT the largest recipient of  
6 Federal funds in the State?

7 MR. POE: I would imagine so, sure.

8 MS. WALKER: Okay. Now how -- what is the  
9 administrations feelings -- well, I shouldn't say administration.  
10 What is your feelings about the EEO taking part of your  
11 responsibilities .....

12 (Fire alarm off)

13 MR. ALEX: We will be in recess until the fire  
14 alarm or whatever it is goes away.

15 (Off Record)

16 (On Record)

17 MR. ALEX: Okay. Since we have a time schedule  
18 and we need to move along I'm sure that there are other questions  
19 and I think, Charlie, you had some questions that you'd like to  
20 ask.

21 MR. ELDER: Yeah. Mr. Poe, I am a little -- I'm  
22 interested in your comments relating to your inability to get  
23 certain Federal requirements satisfied because of the short  
24 construction season, lack of help and all that .....

25 MR. POE: Um-hum, um-hum. Sure.

1 MR. ELDER: .... other crap we've heard from DOT  
2 for years. What -- how do you define the construction season as  
3 three months?

4 MR. POE: Four months.

5 MR. ELDER: Four.

6 MR. POE: Well, because that's what we really  
7 experienced in terms of letting contracts and actual work. Now  
8 here's the thing, what they want you to do when you pick the  
9 companies is to try to get them during peak season. That is when  
10 their employment is the highest. And that happens in a very  
11 short picture of time. If you want to get representative projects.

12 Now, I won't sit here and argue that we don't have  
13 work going on beyond that window, but the lion's share where the  
14 really hiring goes on, where the real opportunities for  
15 affirmative action happen is during that short period of time.  
16 That's reality. That's what we do in terms of letting contracts  
17 out, in terms of getting bid work ready. We had to hit that  
18 narrow construction season, and maybe I'd offer the reason you  
19 hear that from DOT regularly is that's the truth.

20 MR. ELDER: Well, I understand the window very  
21 well, but I don't see that that prevents you from meeting Federal  
22 requirements.

23 MR. POE: Well, what prevents us is we have three  
24 people, really two and a half people that do it. They've got 10  
25 companies to do. There's no specifications on what a satisfactory

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1 compliance review looks like and you have to have that done and  
2 into them within 30 days of doing it. Now we just get buried with  
3 the paper work. The best way to understand it would be to try  
4 one yourself.

5 MR. ELDER: I have.

6 MR. POE: Okay.

7 MR. ELDER: And we did it.

8 MR. POE: Well, as I understand it right now we're  
9 not able to.

10 MR. ELDER: Right.

11 MR. POE: I have to admit I haven't done it.

12 MR. ELDER: Okay. Now .....

13 MR. POE: But that's the best as I understand  
14 right now and it -- I worked out .....

15 MR. ELDER: You're identifying -- you're putting  
16 too much weight on the peak season, I think.

17 MR. POE: Well, I sat down with Willy Harris the  
18 Regional FHWA director in the MBE area and Civil Rights area and  
19 they do, they want 10 projects during that peak area. Now, they  
20 offer a little bit of flexibility. You know, you get 'em maybe  
21 during start-up a little bit more than at the top of the curve in  
22 terms of the employment population for that particular job, but  
23 it really happens in a narrow window.

24 Now we--after that conversation with them which  
25 was about two weeks ago, we are looking at ways that we can

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1 stagger it and things like that, and so we are trying to comply.  
2 And I didn't come under the delusion that because I told you that  
3 it was hard for us that you were going to wave your wand and  
4 things were going to get easier for us, so we are trying to  
5 stagger it. I've looked at scheduling ways that we can pull it  
6 off, but I think also there needs to be some realism relative to  
7 Alaska's construction season and relative to other states. And I  
8 don't think that there's that appreciation.

9 I know down South that they get tired of us always  
10 saying Alaska is different, but facts are Alaska is different.

11 So .....

12 MR. ALEX: All right. Gil, you had. Then Arliss.

13 MR. GUITIERREZ: I just got -- you laid out a  
14 list of things that were very difficult to deal with. I was  
15 wondering what kinds of positive things, or easy things are you  
16 guys taking on right now and actually developing things (ph)  
17 meanwhile (ph)?

18 MR. POE: Okay. Ed, would you like to tell 'em?

19 MR. RAMIREZ: Well, one of the things that I'm  
20 focusing on, or different -- or -- that I'm focusing on -- on  
21 what I'm doing for the DBWB (ph) program is I feel that educating  
22 the public is very important in the program.

23 I believe that in the past there has not been  
24 this public relations, this opportunity for the director or his  
25 staff to go out into the community and say, hey, let's have a

1 workshop, let's have a seminar, let's have some newsletters out,  
2 do something to educate the public as to how the program is run.

3 A lot of times we have a lot of people that call,  
4 that send in applications that know nothing about the program and  
5 that's just an overabundance of more and more and more paper work  
6 because people, especially people from bush areas, or even in  
7 Anchorage, Fairbanks, you know, the -- the -- where you have the  
8 most of the population, they come in thinking that they can --  
9 they own 51 percent of the company, they feel that they can --  
10 they'll be certified. That is not the case and the reason is  
11 that they don't know what the program is all about and that's my  
12 number one focus, is going out into the community throughout the  
13 State, throughout the bush areas and holding seminars, workshops,  
14 sending out newsletters to the primes, to the subcontractors,  
15 handbooks, anything that will educate them on what the program  
16 is all about. And that hasn't been done in the past and -- and I'm  
17 really going to be working towards that end.

18 MR. ALEX: Arliss.

19 MR. ELDER: Mr. Chairman?

20 MR. ALEX: All right, Charlie.

21 MR. ELDER: Ed, how long have you been with the  
22 Department?

23 MR. RAMIREZ: I've been there about three and a  
24 half months, three and a half months there.

25 MR. ELDER: Thank you.

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1 MR. ALEX: Yeah, Arliss.

2 MS. STURGULEWSKI: Thank you, Mr. Chairman --  
3 Mr. Commissioner. It's kind of interesting, I am a great note  
4 taker and I came out with about eight, or nine things all pretty  
5 specific, coordination among Federal programs, guidelines,  
6 differences between region/local people and so on. As Mr. Ramirez  
7 has said, my question is going to be very much like Gil's  
8 obviously. Okay. You've got all that kind of a problem. What's  
9 going to happen?

10 Now, the program that Mr. Ramirez is talking about  
11 which sounds excellant should better educate people so that  
12 perhaps you'll cut down some of your paper work. You'll not have  
13 perhaps quite as many false expectations, but those things do  
14 absolutely nothing really, or do very little toward the one  
15 through eight, or one through nine of the problems that you're  
16 facing on the Federal level. And we have seen time and time again  
17 over the years a program that has caused great controversy with  
18 the very people out there which is the contracting community that  
19 has to make the bloody thing work whether you're a subcontractor  
20 who happens to be a minority firm or not.

21 So I guess the question would be what happens on  
22 the other end? You can educate, but you're still going to have  
23 that problem of you taking steps, say, to certify, getting a  
24 person on the job, having the Feds come along and say, hey, that  
25 person doesn't qualify. So, you're not really addressing some of

1 those endemic problems that make the programs not work. Okay.  
2 So, something has to be done there. If you've got a problem in  
3 Alaska, 49 other states probably have a problem too, and is there  
4 some kind of a concerted approach that goes from your very  
5 worthy effort in education to some of those endemic problems,  
6 'cause that's what you focused on, Bob, every single one, you  
7 know?

8 MR. POE: Sure. Sure. Well, and actually after  
9 talking to Mr. Dulles that's what I understood was sort of the  
10 topic today, rather than to present the program.

11 MS. STURGULEWSKI: Sure. No, but we'd like some  
12 solutions, too.

13 MR. POE: Sure. I think -- let me propose some  
14 solutions. I think for one -- I think the Federal program ought  
15 to do exactly what Ed's doing. We're going to try to lay out to  
16 folks who don't understand the program why the program exists,  
17 what it's there for, what it takes to qualify, what services  
18 exists to help you qualify. We're trying to make the process of  
19 certification a more due process sort of situation. A lot of the  
20 complaints -- all the appeals go to me, I got a lot of complaints,  
21 they never talk to me. They never ask me more than just the  
22 basics. If they'd ever ask me about these things, you'd know  
23 I'd be certified, that sort of thing. So, I think that if the  
24 Federal government set out and said, okay, let's stop talking  
25 about the issue, let's lay out what the requirements are.

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1 Now, they'll tell you the requirements are laid  
2 out, but I don't really think they are. Let's show examples.  
3 Let's prepare a course that every supportive services manager in  
4 a DOT across the state has to go to and to learn what it is that  
5 they're going to set up as a national standard to do it. Let's  
6 put some funds to that. If you want to manage .....

7 Let me give an example. One of my responsibilities  
8 is to clean up the accounting situation at DOT. Okay. Now --  
9 and that's moving along quite well.

10 One of the major -- and this don't sound very  
11 major, but one of the major things I did, is I said, hey, guys  
12 we have only one accounting system, that's the State accounting  
13 system. I don't care what's on the back of your envelope, those  
14 numbers are the only numbers that are right. If they're wrong,  
15 let's fix them, but don't tell me that your envelope is right  
16 and the numbers are wrong. So they said, well, I don't know how  
17 to use that accounting system. It cost the State 14 million  
18 dollars for the contractor when he cut the budget, what they cut  
19 was training.

20 The very first -- second day on the job we  
21 developed a training course for that accounting system. I don't  
22 expect those people to get their act together in accounting if  
23 they don't know how to use the tool. If I want to provide a  
24 consistency of knowledge across all of these organizations in DOT  
25 I've got to train them. So one, let's have a program that sets

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1 out the requirements and may -- brings everybody up to level.

2           Instead of comparing States and having everybody  
3 go through this complaint stuff, let's provided some consistency.  
4 Let's spell out in writing, in writing, let me underline that --  
5 in writing what it takes to do that.

6           I have a very difficult time getting them to put  
7 down what they say to me in a meeting down on a letter. For one,  
8 I think that would help a lot.

9           Two is, I think that FHWA and FAA and BIA and the  
10 other Federal organizations should get together as we're trying  
11 to do. We're not there yet, but there's been talk of a consortium  
12 effort which I believe Mr. Casey is going to speak to later on,  
13 where we're trying to coordinate DOT and the Municipality of  
14 Anchorage and City and Borough of Juneau and we will be working  
15 on that this next year to see if we can do something along those  
16 lines. Well, it might make sense if BIA and FAA and FHWA sat  
17 down and said, hey, let's make this program consistent across all  
18 agencies.

19           Paper work, let's take a look at maybe some of our  
20 model programs. Say -- I hear oftentimes, what is it, Maryland,  
21 the State of Maryland is offered as a good example. I think  
22 Oregon is oftentimes, Washington. Let's look at what those folks  
23 do and we're trying to, but it might help if on a state-wide -- or  
24 on a U. S.-wide level they did that sort of thing.

25           And when we're doing outreach, those folks, those

1 contractors you mentioned, Senator, that are trying to deal with  
2 the situation, and really are. I mean, 85, 90 percent of those  
3 folks are going their best to deal with it. Maybe it would make  
4 sense -- they know it's a Federal program. Maybe it would make  
5 sence if the Federal Government also went out and tried to do some  
6 outreach to those folks and tried to explain the program and why  
7 and answered those questions directly.

8                   What I find myself in a situation doing, is  
9 saying, well, the FHWA tells me such and such. And they say,  
10 well, rah -- rah -- rah -- rah, rah, you know, you should fix  
11 that. I don't know how to fix that. I think maybe if they heard  
12 it and they tried to deal with it and maybe took proactive action  
13 to fix that, that might be a positive.

14                   I think there are a lot of things that they could  
15 do. I think most of them require just facing up to what you're  
16 trying to do in the program and taking some proactive measures to  
17 cause that to happen. Does that pretty much answer the question,  
18 or .....

19                   MS. STURGULEWSKI: Well, Mr. Chairman. You know,  
20 it's a classic case of a circular kind of nondecision making  
21 and -- .....

22                   MR. POE: Yeah, a lot of pointing.

23                   MS. STURGULEWSKI: .... and so I just sit here  
24 and I -- internally I just get all tensed up, because if that's  
25 all we ever do is go around; we have all of the anger among

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1 groups that oughtn't to be angry at each other. ACG and the  
2 minority contractors should not be fighting. Obviously it becomes  
3 even more distressed when the construction dollars are down, but  
4 it doesn't do any good either for us to say that's the problem  
5 over there unless we can engage ourselves in finding an answer.  
6 And I would hope .....

7 MR. POE: Well, and Senator .....

8 MS. STURGULEWSKI: ..... we can point out, you  
9 know, some of those things to the Federal agencies. And that's the  
10 whole reason behind the Region 10 approach is to coordinate  
11 problems. And so something is breaking down if everybody is going  
12 out and doing their little thing, but not addressing some of those  
13 problems.

14 MR. POE: And Senator, if I could just add, the  
15 actions we've taken with Ed's program which we're -- and Ed and I  
16 went over the work plan today and, you know, we're -- and .....

17 MS. STURGULEWSKI: Very -- very positive it's  
18 sounds (ph).

19 MR. POE: And they are and they're really starting  
20 to happen. And one of the tests that I use is when I first walked  
21 into the job I had on average 10 complaints a week, you know,  
22 phone calls, calls from legislators, or something on appeals on  
23 MBE certifications. People who felt they got a raw deal. I have  
24 maybe one, two a month now. But -- and so we are trying to take  
25 action and we're not saying we're not going to do the program

1 because there are these problems. But when I spoke with  
2 Mr. Dulles on the phone my understanding was that this was an  
3 opportunity to express our concerns about how it works with the  
4 Federal government and -- and that one of the purposes of this  
5 Committee was to communicate back some of those concerns, so  
6 that's really why I came in with such a negative bent. I don't  
7 usually do that, but I understood I -- this was an opportunity  
8 to air problems and that's what I tried to do.

9 MS. STURGULEWSKI: Mr. Chairman?

10 MR. ALEX: Yes.

11 MS. STURGULEWSKI: Just one final thing in  
12 response, but if we can also have those positive things so if we  
13 can help you help yourself that's -- .....

14 MR. POE: Sure.

15 MS. STURGULEWSKI: ..... that's great.

16 MR. POE: Sure.

17 MR. ALEX: Gil?

18 MR. GUITIERREZ: I just have one more question  
19 here. As I understand it then the way the Feds interpreted the  
20 rules and regulations is very narrow, and the way the State  
21 interprets it is attempting to expand those so that they can  
22 implement a program, is that what I hear you saying?

23 MR. POE: Not exactly. (Simultaneous - speech) --  
24 Yeah, we -- we're trying. Okay. We -- but see we're working  
25 with a very narrow line and that's that line that you push where

1 they won't come back later and say that firm shouldn't have been  
2 certified. So as an example, let's say there's a situation where  
3 we're concerned about operational control, but we believe the  
4 person really is doing it and has the background and so forth,  
5 then we would ask to go back in six months and revisit that  
6 company. So what we'll do is take a risk and say we'll go with  
7 you for six months, but we want to go back and look at it and  
8 make sure that you're -- you are exerting operational control.  
9 That somebody else isn't exercising undue control in your company.

10 I've been bruised a little bit about that. I  
11 mean, folks have come back and said that guy didn't know what he  
12 was doing, you know, and he shouldn't be doing that. That's a  
13 risky proposition, but I really believe we've got to try, where  
14 you think the risk is justified, to help folks become viable  
15 enterprises.

16 On the other hand, we don't want a situation  
17 where after the job is done and they've used that minority  
18 business contractor, that that contractor will be disallowed for  
19 goal making and we'll get in a suite with a contractor and the  
20 contractor who acted in good faith is in a bad way too. So it's --  
21 we're working on that line, but it's not an easy one to push.

22 MR. GUITIERREZ: The other question I guess is  
23 how are goals set up now? I mean, what kind of .....

24 MR. RAMIREZ: Goals are set by funding source. In  
25 other words, the contract itself. How much of a contract do you

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1 set aside for goals. It's by funding source. The availability  
2 of the minority contractors. Usually the goals are set a little  
3 higher in the urban areas more so than in the bush areas because  
4 of the availability of DBE's, WBE's out there. Most of the time  
5 the jobs in the bush areas are not as high as the urban areas,  
6 so you can't set goals high in the bush areas like you do in the  
7 urban areas. There's no way, because it would cost a  
8 subcontractor to take equipment and everything that he needs to  
9 get the job done, it would cost him more than what he would be  
10 making in the bush areas. So, for that reason the goals were set  
11 lower in the bush areas than they are in say, Fairbanks,  
12 Anchorage, Kenai peninsula. But we always get complaints, you know,  
13 especially from the AGC, saying your goals are too high. And then  
14 we get it from the other side, the sub is saying the goals are  
15 too low.

16 MR. POE: Or now that the DBE goal is combined,  
17 minority business enterprises say don't include those women in  
18 there. And we won't -- you know, and we won't get our 10 percent.  
19 We'll only get, you know, some other percent. And then I get  
20 letters from women's groups that say make ours higher. You know,  
21 everybody wants the opportunity if they can and, you know, so we --  
22 we're right now doing our best to meet the 12 percent combined.

23 MR. ALEX: Yeah. John?

24 MR. DULLES: Would one constructive suggestion be  
25 to bring in all of these various affected parties into the

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1 decision making process? This gets back to Gil's question, how  
2 are the goals set, not how does Ed set them, or Bob Poe set them,  
3 but isn't there some means by which you could broaden that  
4 decisionmaking basis so therefore AGC, the unions, the  
5 subcontractors, the various organizations would all have a role  
6 in setting the specific goals for each individual project? So  
7 you'd involve them in the process and therefore they would buy  
8 into it and therefore they would participate in the operation of  
9 the program. Is that worth some consideration?

10 MR. POE: Well, I was listening to it as you said  
11 it and the first thing I envisioned is 300 projects or so and we  
12 go through this every time we have a project, you know, and like  
13 I say they all happen very quickly.

14 On the other hand, I could envision some board  
15 that sets the goal.

16 MR. DULLES: Some advisory committee?

17 MR. POE: Yeah. Yeah, I think that might have  
18 some merit. I'd be certainly willing to look at it. It's the  
19 first I've heard of an idea like that and I think I'd be happy to  
20 look at that. Yeah.

21 MR. ALEX: Further questions? I -- I -- actually  
22 I've saved a question or two. One of the things that I'd heard  
23 and, you know, I heard this several times over the summer, is that  
24 something that is an actual practice is something called bid  
25 shopping. And prime contractors practice bid shopping and, you



1 you, what if anything do you know about it and how can that be  
2 solved?

3 MR. POE: They do practice bid shopping. Every  
4 contractor does, whether it's minority subs, or non-minority subs.  
5 They're going to see who will give them the best price.

6 The one thing that can be done about this is that  
7 you don't allow bid shopping after the award is made. In other  
8 words, if you shopped up to making your bid then that's what  
9 you're tied to.

10 Now, there was action on the procurement bill. I  
11 believe there was some additional action last session, and  
12 certainly there was lobbying to make that length of time that  
13 bids could still be sought after the award and AGC wanted to push  
14 that as long as possible and other folks wanted to push it as  
15 tight as possible. I believe it's -- is it three days now?

16 MS. STURGULEWSKI: Seventy-two hours it seems to  
17 me. There was .....

18 MR. POE: Seventy-two hours, yeah. Yeah.

19 MS. STURGULEWSKI: Excuse me, Mr. Chairman. But  
20 there was a lot of debate about that and there needs to be some  
21 time, because you may have, you know, contacted a number before,  
22 but many people want that longer. And I think that one of the  
23 worse cases we ever saw went on literally for weeks and it  
24 happened to be an out of the country contractor. I think you  
25 perhaps know the job I'm talking about. And there were just --

1 it was so man -- the public was so riled up about that that it  
2 was addressed legislatively. But I don't know whether that  
3 provision has gone into effect because we put aside the conditions  
4 of that particular legislation, so is that in effect, or not?

5 MR. POE: No. No, Senator .....

6 MS. STURGULEWSKI: I don't -- I don't think it is.  
7 I think I'm correct.

8 MR. POE: ..... you're correct. It's not in  
9 effect until January. And at that time .....

10 MS. STURGULEWSKI: Yeah.

11 MR. POE: ..... those procurement regulations  
12 go into effect. And so that is one action that can take place.

13 We also -- in fact I went up to Fairbanks to  
14 visit with a group of Black contractors who wanted to bring up  
15 some of their issues, and one that they brought up was bid shopping.

16 Another that will happen is you'll call up for  
17 the bid and then what they'll do is they'll show up and then you  
18 use some device to say you're not qualified to do the work and  
19 you send them home. And that way you say you made a good faith  
20 effort, but there just weren't any subs, minority firms that  
21 could do it. And so you say I made a good faith effort to meet  
22 my goal, but he didn't have the right equipment and he wasn't  
23 qualified to do the job and so forth. And really that takes --  
24 that's where staff comes into play to really get out there and  
25 watch the jobs. Ed does a lot of site visits and that's the kind

1 of stuff we watch for and we'll be watching for this next  
2 construction season heavily, but that's another device that's  
3 used.

4 MR. ALEX: Further questions? Yeah, John?

5 MR. DULLES: Could you for the record provide us  
6 with a copy of your work plan?

7 MR. POE: Um-hum.

8 MR. DULLES: Your current MBE program, some  
9 statistics that would reflect your success in meeting goals and  
10 other documentation.

11 MR. POE: Sure. And certainly, Mr. Dulles .....

12 MR. DULLES: You can send them to us if you like.

13 MR. POE: .....you know, FHWA requires regular  
14 reporting on that, and so does FAA. So there's a heap of  
15 documentation available with them and we'd be happy to provide,  
16 you know, what we have, but we -- we provide the Federal  
17 government regularly all that stuff. And the work plan would be  
18 a good start and then maybe you could tell us specifically what  
19 you wanted to see then.

20 I mean, I'm not being resistant, it's just .....

21 MR. DULLES: Well, the troubling portion of all  
22 of this frankly to me is it's very clear that this is nothing  
23 but administering a federally initiated programs; that there's  
24 very little that's really meaningful with respect to State  
25 initiatives. You're responding to a Federal program and there's

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1 a great deal of hands on management from the Federal government.  
2 Maybe second guessing and it -- what it's doing is basically  
3 making this nothing but a compliance problem for the State of  
4 Alaska, as opposed to a State initiative to try to assist minority  
5 and women businesses. Not -- that's -- in other words that the  
6 genesis of this is really Federal law and Federal regulation and  
7 that is frustrating and it's disappointing, 'cause that's not  
8 where the emphasis ought to be.

9 MR. POE: I'd offer to you too, though, that in  
10 Alaska we have a very important State initiative that focuses on  
11 hiring Alaskans. And we have some problems that we're not able  
12 to deal with at all on the Federal side and actually we were  
13 working hard to deal with a complex set of problems and we do  
14 have State support of this. You know, I have support from the  
15 highest level to follow up on it. What I talked to you about,  
16 though, is how it was to deal with the Federal requirements of  
17 this. This is something that the Federal government set up and  
18 we're trying to follow the rules. We get the money from them.

19 MR. DULLES: Is there some way of bringing them  
20 into the process so that in -- .....

21 MR. POE: They're in the process every day.

22 MR. DULLES: ..... in setting up -- no, no, no,  
23 between you and the Federal highway people, it's on a daily  
24 basis. Open up the process.

25 MR. POE: It all ready is. We speak with

1 Bob Ruby all the time.

2 MR. DULLES: Hold a work shop, hold a training  
3 session, bring the Federal people in so that they are required  
4 and forced to respond to the questions and the concerns and the  
5 inquiries of the contractors and of the business community.

6 MR. POE: Well, we -- in our outreach we  
7 certainly plan to do that and, for instance, as an example, we  
8 offered a proposal to the FHWA to ask one of their members to be  
9 a member of the certification review team, sit on every single  
10 case and certify. They said that wouldn't be appropriate and  
11 they wouldn't have time.

12 MR. ALEX: Any further questions?

13 MR. POE: Thank you very much, appreciate the  
14 opportunity.

15 MR. ALEX: Thank you, Bob, Ed.

16 MR. RAMIREZ: Thank you.

17 MR. ALEX: Up next is Vince Casey, Director of  
18 Equal Opportunity Program, Municipality of Anchorage. Because  
19 we have a court reporter we'd like you to -- you know, when you  
20 start off to state your name and position, Vince?

21 MR. CASEY: Thank you. My name is Vince Casey  
22 and I'm the manager of the Office of Equal Opportunity for the  
23 Municipality of Anchorage. And to my right is Sharon Roberds of  
24 the same office, who is the statistician.

25 If I may, I would just like to briefly point out

1 what I think are the important points of the Municipality of  
2 Anchorage's minority and women's business enterprise program.

3 We do have an ordinance and regulation that  
4 indicates how the program will be set up and who is responsible  
5 for it and who will set the goals. I brought copies of the  
6 ordinance and regulations as well.

7 I think probably the most important component of  
8 the program is certification. And I didn't get to hear all the  
9 previous presentation, and I don't want to duplicate too much of  
10 that, but we do adhere to the Federal regulations as strictly as  
11 we can. And I must say initially when the program was started  
12 out some years ago, that anyone applying was granted certification  
13 recognition as a minority, or women owned business.

14 And then in 1985, I believe it was, when I came  
15 aboard, and the Mayor called me one day and said, I have not seen  
16 minority subcontractors on that particular project across the  
17 street. And I said, well, it's interesting you should call and  
18 say that, Mr. Mayor, because the business that you're looking at  
19 down there now is supposed to be Black owned, but you and I know  
20 that the person down there with the white hair is the owner. But  
21 they are certified in our directory and so I cannot criticize the  
22 prime contractor for not hiring minority contractors.

23 And so at that point we went about auditing our  
24 directory of certified businesses and we have just about completed  
25 that. It's been taking quite some time because also each year

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1 our staff has been reduced.

2 When we certify businesses we list them in a  
3 directory the same as the State does and we make this directory  
4 available to the prime contractors and whomever wishes to have it.

5 I'll skip onto goal setting now. Certainly the  
6 plan that the Federal government requires us to submit, and we  
7 have to indicate what our overall goal is each year, once you  
8 submit the plan you just update the goals annually.

9 Our goals at the time are 10 percent minority and  
10 three percent of women.

11 Our ordinance gives the minority business  
12 enterprise officer the responsibility to establish those goals  
13 overall for the year, as well as goals for individual projects.

14 In establishing goals we have the estimating  
15 engineers to identify the scope of work and the components of  
16 the project, be it a construction, or an RFP, and list in this  
17 particular section right here, the possibly subcontracting  
18 opportunities. And over in this column the dollar amount of that  
19 particular component.

20 Then they submit that to our office. It's  
21 treated as confidential information and we compare those  
22 components to the minority and women subcontractors that we  
23 have certified to see if we have them that can provide those  
24 services, or products that they say are possibly subcontracted.

25 Once we do that, then we determine whether we're

1 going to have 10 percent minority, three percent women goals.  
2 Sometimes I've set as high as 15 percent minority and five  
3 percent. Sometimes I have higher women's goals than I do  
4 minority goals because of those opportunities available.  
5 Sometimes there are no opportunities available and that's the  
6 reason we have higher than 10/3 when the opportunity is available  
7 to try to reach our overall goal.

8               Once we establish the goals, we weekly mail out  
9 a newsletter to each business that's listed in the directory  
10 listing the contracting opportunities that are coming out of  
11 purchasing, those that have goals established to them, or  
12 attached to them, as well as those that do not have goals.

13               Once the bids are submitted, the contractor, the  
14 low bidder, I should say, now has three Municipal work days to  
15 submit our form, what we call the NBE-5, and on this they name  
16 the subcontractor they're going to use, the total dollar amount  
17 that they are going to pay them for that work, and whether or not  
18 they're a local contractor, and the work that they're supposed to  
19 perform, and indicate whether or not -- or which they're using  
20 them towards, their minority goal, or their women's goal.

21               Once we receive that, we used to pretty much  
22 contact all of those listed subcontractors to confirm that  
23 commitment and the dollar figure. In the beginning we found out  
24 that a lot of them had not even been contacted, and so that caused  
25 primary -- prime contractors to start cleaning up their acts.



1 But we also at that time decided because minorities and women  
2 said that they were bid shopping them, we made it a requirement  
3 that they submit this as part of the bid, and we did that for a  
4 year and a half. And, as I said, our staff has continuously been  
5 cut and we started having a lot of litigation and we weren't able  
6 to keep up, and so we did acquiesce and go back to the three days.

7 To be frank with you, that has not worked out too  
8 well, because there are other components of the government that  
9 are supposed to help us enforce that, and that three days has not  
10 necessarily been enforced the way it should have been -- should  
11 be.

12 When prime contractors do not meet the goal  
13 established, or set on the project, then they're required to show  
14 us in writing how they did go about seeking minority and women  
15 subcontractors. And, if they demonstrate what we call good faith  
16 effort, then we can go ahead and approve that bid, even though they  
17 did not meet the goals.

18 We have on several occasions found that they did  
19 not demonstrate a good faith effort. We've gone to court, I  
20 think, four times and won the first three cases and lost the  
21 fourth one and that's the only one that made the paper, so it was  
22 a little embarrassing and .....

23 In reaching this stage of the program we had  
24 thought we were being considerate because we had prime contractors  
25 who reported to us that minorities and women business had

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1 misrepresented themselves as being certified. I felt that I was  
2 being very fair by allowing them to replace them with certified  
3 businesses, but the judge interpreted that I was not being  
4 consistent and was arbitrary and capricious and so we didn't make  
5 it.

6           There are other extenuating circumstances. I  
7 held up a five million dollar contract for two months because of  
8 one of the subcontractors who was related to the prime  
9 contractors. The validation of one of their certification said  
10 that one of their parents was a minority and we called the State  
11 in the Lower 48 where they were certified and the records on file  
12 in the State document's office indicated that both parents were  
13 non-minority. But the Federal agency that was funding 75 percent  
14 of this project for some reason some time had certified this  
15 outfit and we're not too concerned about them meeting our 10/3  
16 goal, and so we did acquiesce to a seven percent minority, and I  
17 think two. or three percent women's participation goal.

18           I've told you how we contact the subcontractors  
19 to verify their dollar amount and participation. At the end of  
20 the year we contact the contractors and see if they -- you know,  
21 when the project is through, if they did get the dollar amount  
22 and did get to perform. And, sometimes we have found that they  
23 didn't even get to perform. It was given to someone else and  
24 that's a violation of our ordinance.

25           What we're trying to implement at this time, and

1 since we're having a change of administration I don't know if  
2 we'll be successful, we're trying to require that the project  
3 manager be the monitoring force and that the primes be required  
4 to submit their utilization reports of minority and women to the  
5 project manager who will then forward it onto our office. If it's  
6 satisfactory we're trying to get the -- I forget the name of the  
7 form that the departments have to sign off to release progress  
8 payments, or final payment, we're trying to get our office as part  
9 of the sign off process there. And if they have not met these  
10 requirements, then we would not sign off. And we think this is --  
11 you know, it could be effective, and because we've been reduced in  
12 staff, it also would be efficient.

13 That's kind of what I think I wanted to say about  
14 the program. You wanted some suggestions, I've just made a few  
15 here. I think that there ought to be some -- you're talking about  
16 education, some kind of government assistance, and I didn't say  
17 which level, to assist minorities and women with bonding and  
18 insurance problems.

19 Our plan, the Municipality of Anchorage, says  
20 that the Municipality will break down projects which will enhance  
21 opportunities for minorities and women to bid, because we do not  
22 require a performance and payment bond if the project is  
23 estimated 100,000 dollars or under, but the Municipality is not  
24 doing that. It's making bigger projects, you know, and I'm not  
25 ratting, I'm just telling you the facts.

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1                   Number three, I think that we should -- we being  
2 the government, should monitor and pass on positive remarks when  
3 they're due about the performance of minority and the women  
4 contractors, because we're not in a position to say whether or  
5 not an individual business can produce, or perform. However, we  
6 know that prime contractors are.

7                   I also think that there should be some monitoring  
8 because I'm sure that there are prime contractors who harass  
9 minority and women businesses and make them have to redo their  
10 work, which is quite expensive, and they don't make any money when  
11 they get the bid.

12                   I've seen prime contractors get a bid and give it  
13 to a non-minority contractor who couldn't get bonding and  
14 insurance, and I've told them, you know, they can do the something  
15 for minorities, and that's what the program is about.

16                   I think Mr. Poe and Mr. Ramirez mentioned that we  
17 had been negotiating with them to try to coordinate what we do  
18 so we wouldn't be duplicating one another's effort because we  
19 feel that it would be more efficient use of the taxpayers dollars  
20 and better service to the businesses as well.

21                   My final remark is that if I could convince  
22 minority and women businesses, they would band together and hire  
23 a business agent who would be their advocate, because many of  
24 them know of violations but are afraid to report them because  
25 they are fearful that they will be drummed out of business.

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1 MR. ALEX: Gil?

2 MR. GUITIERREZ: Mr. Casey, I was wondering, we  
3 know that the funds come from the feds through the State  
4 Department of Transportation to the project. How do the funds  
5 from the city move so that you could more-or-less figure out how  
6 much the project is going to be? Could you explain that? I'm  
7 not sure exactly -- I mean, I know you set goals, but I'm not  
8 sure exactly how the process .....

9 MR. CASEY: This confidential information form,  
10 we require the department that's going to be sending advertising  
11 and invitation to bid on a project to tell us the estimated  
12 dollar amount of that project. And also, as I've mentioned, the  
13 components that could possibly be subcontracted.

14 MR. GUITIERREZ: Okay. But what if -- let's say  
15 you're -- we build a lot of roads around Anchorage. Do those  
16 monies come from the Federal Highway Administration, or do they  
17 come from the city coffers, or .....

18 MR. CASEY: We require them to identify where  
19 they come from. Some of it comes from Federal money and so forth.  
20 Those, as I said, projects under 100,000 we do not require  
21 performance and payment bond, so we historically have not set  
22 goals on those unless Federal funds are involved. Then we do try  
23 to set goals on those under 100,000.

24 MR. ALEX: Yes, Mitch.

25 MR. SCHAPIRA: Sir, you've recommended that some

1 level of government get involved in making bonds available for  
2 minorities and women's businesses. Have you found that -- or are  
3 there statistics to support the notion that there is a pattern of  
4 discrimination by bonding agencies when it comes to bonding  
5 women and minority businesses?

6 MR. CASEY: Well, I certainly don't have any  
7 money or staff to go out and do a study. I guess historically  
8 it's happened. I've also had personnel who have worked for me  
9 who have previously worked for bonding agencies and have reported  
10 to me that they practice discrimination. That's the best answer  
11 I can give you.

12 I didn't say that I felt that government should --  
13 I didn't quite -- I -- I said that they should provide some  
14 assistance in helping them get insurance and bonding.

15 MR. SCHAPIRA: Thank you.

16 MR. ALEX: Questions? Further questions?

17 MS. STURGULEWSKI: Mr. Chairman?

18 MR. ALEX: Yes, Arliss.

19 MS. STURGULEWSKI: I guess this is a comment in  
20 response to the last question. That issue of bonding and  
21 insurance has engendered a lot of legislative looking over the  
22 years and unfortunately most of the bonds are equivalent almost  
23 to cash bonds. You've got to have money before you get a bond  
24 and if you've got the money, you know -- I mean, it's circular.  
25 And the discussion has kind of come down at the end saying that

1 if you assist people who -- again getting back to that question  
2 of having experience and all the rest, and they don't have it and  
3 yet you're allowing them to get into the business you may be  
4 doing more of a disservice, so it's very, very difficult to  
5 reach from that point of view of saying minimizing their -- the  
6 need for bonds and so on. So I -- I don't know, maybe education  
7 in how to go about it, how to present financial statements, the  
8 kind of things that is somewhat available through the State. The  
9 Small Business Development Corporation and so on, may fulfill that.  
10 So, it may be working with other agencies to help people get the  
11 kind of knowledge that they need in small businesses.

12 I guess my question to you, Vince, would be  
13 in spite of the problems and so on, do you feel you're effective  
14 in getting minority businesses get a part of the pie?

15 MR. CASEY: I felt that I was. I'd like to go  
16 back to your remarks about bonding if I could first.

17 I think that what it takes is strong leadership.  
18 As I said before, prime contractors are assisting -- non-minority  
19 prime contractors are assisting non-minority subcontractors  
20 starting up in business by providing them bonding and .....

21 MS. STURGULEWSKI: Um-hum. Bonding -- umbrella  
22 bonding.

23 MR. CASEY: ..... insurance -- and insurance. Yes.

24 MS. STURGULEWSKI: Yeah.

25 MR. CASEY: And they can do the same thing for

1 minorities .....

2 MS. STURGULEWSKI: You bet.

3 MR. CASEY: ..... if they want to, but even --  
4 let's say that one wanted to, they probably are fearful that  
5 they are going to be chastised by their peers. And so when I  
6 say strong leadership, I mean like Brant Rictors (ph) who brought  
7 Jackie Robinson into baseball, et cetera.

8 As far as being effective in assisting minorities  
9 with getting contracting opportunities, yes, and I said, up to  
10 a point. I think that -- as I look back now I think it was more  
11 effective when we required them to -- them being the bidders, to  
12 submit the names of the minority and women subcontractors that  
13 they were going to use as part of the bid.

14 MS. STURGULEWSKI: Um-hum.

15 MR. CASEY: There are -- there were some problems  
16 there because there are some minorities and women who said I know  
17 you've got to have a minority, or women, and so here's my bid,  
18 which in some cases would be much higher than it should be. So  
19 it is a two way problem. There is some education required, you  
20 know.

21 But the problem is to make it more effective, we  
22 need more staff and more paper work. We should require prime  
23 contractors to share all of their subcontracts with us and then  
24 we could compare their subcontracts with non-minorities, with  
25 those with minorities and women and I think that would be quite



1 enlightening.

2 MR. ALEX: Yes, John.

3 MR. DULLES: Have you had the same history of  
4 problems dealing with the Federal government that Mr. Poe  
5 indicated the DOT at the State level has had? You heard his  
6 comments. What is your comparable experience?

7 MR. CASEY: I wasn't too smart, I was sitting in  
8 the back and I couldn't hear that well. Would you briefly .....

9 MR. DULLES: Oh, well. He was quite critical of  
10 the Federal government's administration of the MBE program. I  
11 just wondered what your experience was dealing with the Federal  
12 agencies that you report to, or that you deal with?

13 MR. CASEY: Well, they have not policed us perhaps  
14 as much as they have the State. I guess I look at the politicians  
15 being more of a problem than I do the Federal government. The  
16 regs that we received just this week, combining women and  
17 minority goals as one, certainly is detrimental to minorities  
18 because part of the problem as I mentioned in certification is  
19 that so many non-minority businesses decided out of love that  
20 they would give the business to their non-minority wives. And  
21 those non-minority women that are certified now can be used  
22 towards meeting the total goal. And there's no portion for  
23 minorities to get. And it's the result -- you know, I heard  
24 somebody talking about the -- we did have some meetings going  
25 with ACG representatives for minority and women contractors here.

1 There's an AGC conference going on right now that we wanted to  
2 attend. We were making progress because they told them, you know,  
3 what they need to do is sit down and come to come agreement about  
4 how we go about meeting the goal and how we go about validating  
5 good faith effort.

6 Well, on a National level AGC is against their  
7 program. And I have a tape where a gentleman came and said they  
8 were taking out full page ads against the program, and so this  
9 change in the goal setting and so forth is the result of that.

10 MR. DULLES: Does this mean that a municipality  
11 can meet its goals by hiring exclusively non-minorities and still  
12 meet its DBE goals?

13 MR. CASEY: Towards those -- the municipality, or  
14 State, either one, towards those DOT funded projects, but that's  
15 one of the things that I have consistently said, you know, that  
16 we should on non-federally assisted projects continue to have  
17 minority and women goals and that's what we're doing thus far.

18 MR. DULLES: So the city does have its own  
19 ordinances .....

20 MR. CASEY: Yes.

21 MR. DULLES: ..... so that your program is  
22 applicable to all programs, or all contracts under the  
23 Municipality?

24 MR. CASEY: Yes.

25 MR. DULLES: Regardless of funding source?

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1 MR. CASEY: Yes. You know, it's -- and we talked  
2 about education and this year -- this past year we've had -- we've  
3 tried to get into the RFP because historically, you know, like I  
4 said, minorities and women can't do that and -- and just today I  
5 convinced a utility. You know, I said, we have some minorities  
6 that consistently after we advertise with no goals say that there  
7 are subcontracting opportunities. And I said because I don't  
8 know that they're there and you don't know that they're there  
9 doesn't mean that they're not there. And so what we agreed to do  
10 today is to require the bidders to identify subcontracting  
11 opportunities as part of the bid and once we get that, if they  
12 do identify some, then we will set a goal and negotiate that into  
13 the contract.

14 I think there are a lot of ways to get the job  
15 done if people want to do it and you hang in there.

16 MR. DULLES: And then finally on certification,  
17 Mr. Ramirez is certifying, you're certifiying, the City of Juneau  
18 is certifying. Is there a cross certification process, or how  
19 does it work? Do they have to separately apply for each  
20 different .....

21 MR. CASEY: Well -- yes, because I think each -- .....

22 MR. DULLES: ..... level of .....

23 MR. CASEY: ..... each certification unit some  
24 times gets more information than the other and perhaps will deny  
25 certification because of that information while another government

1 certify and so I that's the reason we don't have an on going  
2 reciprocity situation.

3 MR. DULLES: Well, would that be a good thing to  
4 have?

5 MR. CASEY: Yes, if everybody certified the same  
6 was.

7 MR. DULLES: But that's not likely to be achieved  
8 any time soon from what you're .....

9 MR. CASEY: Well, I -- I think that we're getting  
10 much closer to it.

11 MR. ALEX: Further questions? I have a question.

12 MR. CASEY: Okay.

13 MR. ALEX: Back a number of months ago it was  
14 reported in the paper that the ombudsmen had cited the  
15 Municipality for deletion of minority portions on the performing  
16 arts center. Do you have anything to speak on in that issue?

17 MR. CASEY: Well, the performing arts center has  
18 been a problem for everyone. There were some contracts that they  
19 did delete the goals. You know, you just have to acknowledge when  
20 you're working with government, you're working with politicians.  
21 I didn't believe that the Assembly would approve negotiating  
22 contracts. Once that was approved then I didn't know who was  
23 contracting and -- or anything, and so there were no goals set.  
24 You know, we didn't have any idea what dollar amount and so forth.  
25 And supposedly the officials responsible for that were reporting

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1 that they were meeting minority goals, but they weren't checking  
2 with us to see if those so called minority businesses were  
3 certified and some of them weren't, because I would get calls  
4 from other businesses that someone we had denied certification  
5 was there working as a minority business, and so it -- it was a  
6 problem. Is a problem.

7 MR. ALEX: Any further questions. No, I guess,  
8 we're done. Well, thank you, Vince. And I think one thing we  
9 probably ought to do since we -- this morning we had a little  
10 problem with continuity -- people wanting a little bit of break  
11 I think right now would be an opportunity to take about a 10  
12 minute break.

13 (Off Record)

14 (On Record)

15 MR. ALEX: Why don't we get going again. Okay.  
16 We have Don Barlow from the NAACP and we'd like to invite him up.  
17 We are expecting Earlene Caress from the Alaska Association of  
18 Subcontractors, but in the meantime we'll go with Don. Don,  
19 welcome.

20 MR. BARLOW: Upon being officially notified of the  
21 conducting of this particular hearing, I felt somewhat excited by  
22 idea in that I have been recently made more aware of on going  
23 concerns relative to MBE and WBE.

24 The concerns which I believe are not new concerns,  
25 but reoccurring concerns really aren't the concerns that I

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1 heard voiced today from various officials.

2           The concerns that I've heard I will now make  
3 reference to, education, informing, perhaps assisting various  
4 MBE's to acquire bonding which is, I believe, important and at  
5 times a problem, really aren't the major hurdles as I am of the  
6 opinion of and have been made aware of by qualified individuals  
7 who desire to participate in acquiring not only contracts, but  
8 employment.

9           Now I understand the employment component would  
10 be addressed by EEO, yet I do see a correlation between the  
11 Federal monies which are being directed and made available for  
12 use and the need to insure that there are minorities involved in  
13 those processes.

14           But relative to the MBE, WBE, I think it's  
15 important to note that there is a large -- there are significant  
16 numbers of qualified people who are being denied opportunity to  
17 participate. I'm not so sure that it's a result of a complex  
18 structure of regulations, or a lack of ability to understand those  
19 regulations, as much as it is a less than honest attempt to  
20 involved those individuals.

21           The term good intention, or good faith effort has  
22 been used earlier this afternoon. That is highly suggestive of  
23 a number of things and it comes down to your personal  
24 interpretation of that. Yet I find the suggestion of that  
25 offensive in that I'm not convinced that honest effort and good

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1 intents are good enough, especially if -- if when Federal monies  
2 are directed and made available for specific usages that  
3 complying should be waived in the name of good intent, but no  
4 comers, so to speak.

5 I am aware of one project where the statement was  
6 made that minority contractors tend to shy away from projects of  
7 this magnitude in terms of the size of the project. We were  
8 talking an extremely large contract worth millions of dollars.  
9 I'm of the opinion that the reason there were no contractors  
10 involved in that particular project was not because of them  
11 wanting an ability, but being denied the opportunity.

12 Certainly as the local president of the NAACP it  
13 would be our desire and intent to begin monitoring more closely  
14 many of the various processes. The State of Alaska has suggested  
15 that they are suffering from a reduction in staff and if indeed  
16 the lack of staff presents a problem in terms of them monitoring  
17 effectively the compliance with those monies then perhaps there  
18 should be a moratorium on the monies until there is a  
19 corresponding staff support in place.

20 I only suggest that because I realize how  
21 important the State as well as local economies are at this point  
22 in terms of those Federal monies. Yet beyond that of the general  
23 contractors and those select few who may actually land the  
24 contracts are those which ultimately work on those job sites.

25 It's my hope and desire that from the testimony

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1 you've received here today that you will be able to see through  
2 the rhetoric and actually see the actual need.

3 Enforcement has been less than aggressive.  
4 Compliance has been without a doubt less than acceptable. The --  
5 if you will, the monitoring at times comes after the fact, after  
6 the jobs are already -- you know, everyone's packed up, headed  
7 back home, there's no additional money to be attained and to  
8 simply find out afterwards that, yeah, they were in violation,  
9 but there's nothing we can do now, it seems that I believe there  
10 is much which can occur.

11 Again referring to the State programs wherein  
12 there are 10 major projects which are monitored I believe that  
13 there is far enough advance notification of those projects  
14 wherein the bid process should occur in such a fashion to where  
15 prior to the actual prime being landed that compliance -- one  
16 should be able to know up front whether or not compliance is  
17 being met as opposed to wondering after the fact.

18 The climatic considerations was another point  
19 alluded to and I do't know, again, I found it rather difficult  
20 to actually sit through and wonder really the real intent and  
21 purpose behind some of the testimony being offered.

22 The percentage of prospective contractors who lack  
23 program familiarity I think is very low. I don't think it's high  
24 too suggest that that's why there is a low amount of participation.

25 Additionally, I believe there are significant



1 percentages of certified contractos which simply again are not  
2 being extended, if you will, equal access, or opportunity.

3 In closing I would hope that from this hearing  
4 you will be able to not only apply measures within the State, but  
5 as you suggested on a regional basis develope some type of  
6 continunity wherein there is a functional model as opposed to a  
7 model representative of however many states there may be within  
8 the region.

9 I can assure you that we will take a more  
10 aggressive approach to the monitoring and perhaps even establish  
11 more effective communication and contact with the various  
12 organizations which are tasked with not only approving and setting  
13 percentage compliance factors, but to be involved with them as  
14 much as the system will allow our participation to be involved  
15 with them in setting those goals. And I hope that some good can  
16 come from what you guys are doing here today.

17 That concludes my comments.

18 MS. STURGULEWSKI: Mr. Chairman?

19 MR. ALEX: Yes.

20 MS. STURGULEWSKI: I appreciate your comments,  
21 Mr. Barlow, and I would hope that you--both with the State and  
22 with Mr. Casey, that you would follow though and see if there is  
23 some kind of an on going way that you can assure yourself that  
24 things are working, or not working. In other words, that you get  
25 those statistics, 'cause I think that consistency in hammering at

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1 the system if often the only way that things get done. I know I  
2 as an elected official certainly -- if I keep getting phone calls  
3 I'll get around to it.

4 But one of the things that I think might be useful  
5 we're always doing, all of us, buck passing and I don't want to  
6 do that with you in this regard. We as an advisory committee to  
7 the U. S. Commission on Civil Rights have a fairly limited and  
8 well defined ability to either act, or not act and I'd like to  
9 turn -- Mr. Dulles, I'm going to ask a question of you.

10 Mr. Dulles, what exactly can we do as a result of  
11 this hearing? We have listened. It has been of great interest to  
12 us. We have learned some things in terms of inconsistencies in  
13 the Federal program, some difficulties that Mr. Casey and others  
14 are facing with their program, some suggestions from them in terms  
15 of increased education, getting into the system, they're own  
16 bureaucratic system, some suggested changes that are going to be  
17 forthcoming in the State. So here we are, we've learned that and  
18 that's fine, but what can we do about it?

19 Can we, for example, at the end of this meeting  
20 say that we wish this compiled as a report of a public hearing  
21 and send it forth to the Commission? Can we ask that it be made  
22 available to a number of Federal agencies? That copies can be  
23 made available obviously to all of the people that came and took  
24 time? What is the most effective thing that we can do and what  
25 are we limited to do?

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1 MR. DULLES: We had a brief discussion, Senator,  
2 on this this morning in terms of the process and Mr. Schapira  
3 came up with what I thought was an excellent suggestion. We are  
4 obtaining a full transcript of these proceedings. That  
5 transcript should be available within two, to three weeks. We  
6 are going to send individual copies of the transcript to the  
7 Advisory Committee members, then ask you within a reasonable  
8 period of time to provide staff in our regional office with what  
9 you feel to be the most important issues, or information coming  
10 out of this little hearing.

11 Based on that we will put together a report in  
12 your behalf, on behalf of the Alaska Advisory Committee. It will  
13 be your report and it will be submitted to the National  
14 Commission, the U. S. Commission on Civil Rights.

15 In that document you may wish to make specific  
16 findings and recommendations. You may ask the Commission on Civil  
17 Rights to communicate with other departments of the Federal  
18 Government, with the President, with the Congress, it will be up  
19 to them whether they follow through, but you are not limited in  
20 terms of advice and recommendations to the U. S. Commission on  
21 Civil Rights.

22 But in a strictly legal sense this Advisory  
23 Committee is limited to advising the United States Commission on  
24 Civil Rights.

25 Now as a by product of that, of course, the

1 transcript will be available to other interested parties and we  
2 will do everything that we can to assist in making the information  
3 available to the community at large, but just in a narrow sense,  
4 why, this Committee is limited to advising the U. S. Commission  
5 on Civil Rights, but you are not limited in terms of what that  
6 advise might be. And so there will be a report generated from  
7 this meeting and eventually once it is gotten into the hands of  
8 the Commissioners it will be made public as well.

9 MS. STURGULEWSKI: Mr. Chairman?

10 MR. ALEX: Yes.

11 MS. STURGULEWSKI: I just -- you know, Mr. Barlow,  
12 I wanted -- I knew that would be the answer because we have many  
13 times wanted to react in pretty forceful ways and as you perhaps  
14 know a little bit of the history of the -- what's happened to the  
15 U. S. Commission on Civil Rights in terms of funding and  
16 continuity and ability to do reports, but I would hope -- I was  
17 unfortunately not able to be here this morning that following  
18 Mr. Schapira's suggestions that we to the maximum disseminate this  
19 information, or request that it do, but I didn't want you to go  
20 away feeling, well, now I've told that group and everything is  
21 going to be okay, 'cause we'll do what we can.

22 MR. BARLOW: Um-hum. Okay. Thank you. May I  
23 ask a question of Mr. Alex then?

24 MR. ALEX: Sure.

25 MR. BARLOW: Since you're the Chairman of the

1 Alaska contingent, will you, or is it your intent to make copies  
2 of the findings? Will you provide copies to various effected  
3 groups, or concerned parties?

4 MR. ALEX: Can I say that I think that that was  
5 the answer to the question. Once we made it available to the  
6 Commission, you know, that's a matter of public document and can  
7 be distributed to the participants and interested parties.

8 One thing I do want to just add to the process of  
9 law and understanding of law. Back a number of years ago I was  
10 involved with the -- first involved with the implementation of the  
11 Alaska Native Claims Settlement Act. Back then I was a little  
12 naive about government and law and assumed that once a law was  
13 passed that the government would enforce it.

14 One of the first things I realized shortly  
15 thereafter in 1973 was that the United States Government was the  
16 worse one for implementing a law passed by the Congress. And that  
17 what was diligence on my part and the parts of other people with  
18 similar interests what we did is we -- we made the government  
19 comply with the law.

20 I know that some times they pass laws without any  
21 funding and that all it is is window dressing and unless somebody  
22 is, you know, diligently monitoring -- and that's why I'm  
23 bringing it up, the monitoring is part of the process of getting  
24 the laws implemented.

25 One of the things that is possible with monitoring

1 is to expose the actual discrimination. In the case of actual  
2 discrimination, repeated discrimination and then something can be  
3 done about it. We can report it to the Commission, the Commission  
4 can report it to the respective federal agency responsible for  
5 enforcement, but the part -- a very important part of that  
6 process though is monitoring. And diligence in pursuing, you  
7 know, the implementations of the laws that exist to protect  
8 Civil Rights.

9 I did have .....

10 MR. SCHAPIRA: Mr. Chairman?

11 MR. ALEX: Yes, Mitch.

12 MR. SCHAPIRA: I'd like to ask Mr. Barlow a few  
13 questions if I may. You've heard previous speakers talk about  
14 problems in discriminatory practices in the bonding industry. In  
15 your capacity as the local chairman of the NAACP do you care to  
16 comment on whether or not this is a problem that you're aware of  
17 in our community?

18 MR. BARLOW: It is a problem. I don't know if it  
19 is in terms of looking at a number of other problems if that is  
20 the number one problem. Certainly there are individuals which  
21 have difficulty in obtaining bond without a doubt there.

22 MR. SCHAPIRA: Well, is that because of  
23 discriminatory practices, or is it because of a past history that  
24 has excluded them from the industry and therefore they don't have  
25 the capital, or they don't have the technical background?

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1 MR. BARLOW: I would say it's a combination of  
2 the first two factors you alluded to and with emphasis I don't  
3 believe the last statement made relative to a lack of ability  
4 comes into play.

5 Mr. Casey, I think, said quite well the fact that  
6 there are, if you will, umbrella type of situations which occur.  
7 Similar opportunities are not extended to MBE's, WBE's though  
8 they exist for others. That perhaps is nothing which can be  
9 monitored, or, if you will, controlled by an agency. And as you  
10 have already stated I believe that there is probably historical  
11 place as well.

12 Discrimination again, that is something which in  
13 terms of case law one would have to look at and with a specific  
14 focus in mind. I suspect that in certain instances that probably  
15 does occur.

16 MR. SCHAPIRA: In the realm of those  
17 discriminatory practices some times people discriminate by  
18 accepting stereotypical views of people and making judgements that  
19 are well intentioned, but influenced by stereotypes and  
20 prejudice as compared to other individuals who, you know, believe  
21 in the separation of the races, or -- and so forth.

22 Now you indicated before that there was some of  
23 that stereotyping going on in that you gave an example of, I guess,  
24 a prime contractor stating that it seems that minority businesses  
25 were afraid of the big projects, or something like that.

1                   Regarding the latter type -- the other type of  
2 prejudice, not the buying of stereotypes, but rather the  
3 intentional separation and exclusion, are you aware of instances  
4 of that type of prejudice in the insurance industry and bonding  
5 industry?

6                   MR. BARLOW: Certainly issues such as that have  
7 been brought to our attention and legally there have been cases  
8 which have been presented and are being pursued relative to that.  
9 And it's unfortunate that there are instances wherein just based  
10 on race, or sex a person, or firm may be eliminated from further  
11 consideration.

12                   I think we're mature enough to acknowledge that  
13 that does exists, not that that makes it acceptable, but that it  
14 does exists and it must be properly addressed.

15                   MR. SCHAPIRA: A final question for you,  
16 Mr. Barlow, is this, the speakers who preceded you talked about  
17 the difficulties which arise from the fact that there are no  
18 standard procedures for the certification of minority owned  
19 businesses, or businesses owned by women, et cetera. Do you have  
20 any suggestion for how your organization can participate in  
21 establishing standardized procedures for the certification of  
22 minority owned businesses?

23                   MR. BARLOW: Well, certainly I believe  
24 participation could occur not only from our organization, but  
25 many others which share an equal concern. That participation



1 could very well manifest itself in the form of public hearings,  
2 forums, wherein the issues are raised, the constructs are  
3 presented and from there recommendations are developed. I don't  
4 believe it's a foreign process. I'm convinced that there is a  
5 need for some type of mechanism and I would not attempt to  
6 identify that without actually deliberating on it. There are  
7 processes probably available wherein a community agency can work  
8 together and develop a viable program certification.

9 MR. SCHAPIRA: As the chairman of the local  
10 chapter of the NAACP can I have your assurances that your  
11 organization is willing to work with local and State organizations  
12 to develop standarized and consistent processes for certifying  
13 minority owned businesses?

14 MR. BARLOW: Without a doubt. We have a standing  
15 labor and industry subcommittee which has not been as active as  
16 it needs to be, but soon will become much more active and  
17 certainly that assurance is there and that involvement will  
18 follow.

19 MR. SCHAPIRA: And I -- can I assume that the  
20 national association also has a labor and practices committee  
21 that would have expertise that could be brought to bear on this  
22 problem?

23 MR. BARLOW: Exactly, your assumption is correct.  
24 Our local model is an adaption of the national, um-hum.

25 MR. SCHAPIRA: Thank you.

1 MR. ALEX: Okay. I have one question just  
2 generically, are you familiar with any activities that -- with  
3 regards to discrimination that might be of interest to this  
4 Advisory Commission?

5 MR. BARLOW: Well, I think we have -- those  
6 activities have already been addressed in terms of the major  
7 issue of the contracts. Beyond that and without delving into  
8 specifics the general category, of course, would be maligning of  
9 contracts and that has been the reoccurring concern and again  
10 not just from an MBE, but I believe from WBE as well. And again,  
11 the concerns are from those which are qualified, competent and  
12 willing to participate yet for whatever reason -- and I think we  
13 could probably begin to identify those reason relatively easy.

14 MR. ALEX: Okay. Thank you.

15 MR. BARLOW: Okay. Um-hum.

16 MR. ALEX: I see we have Earlene here from the  
17 Alaska Association of Subcontractors. Do you want to come  
18 forward?

19 MS. CARESS: Mr. Chairman, I'm sorry I didn't  
20 attend earlier and I left my notes, because being a small business  
21 person they're at my office and I ended up in the car.

22 UNIDENTIFIED VOICE: State you name.

23 MS. CARESS: Okay. I'm Earlene Caress and I'm  
24 from the Associated Subcontractors of Alaska. And do you want me  
25 to go into some of the background that we went into before? Go

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1 through the whole .....

2 MR. ALEX: Yes.

3 MS. CARESS: ASA was formed about a year ago for  
4 the promotion and education and understanding of contractual  
5 procedures on the subcontractor level.

6 Now a subcontractor is a second tiered from a  
7 principal owner and what we did is we decided that there were  
8 some concerns that we as a group needed to address.

9 General contractors had their organization to  
10 where they could address directly the owners. Suppliers had  
11 their own organization. They're below us and they could address  
12 the situation, so we decided that maybe perhaps being in the  
13 middle between all of this that we would get together and find  
14 out what we need to do too.

15 Basically it's a group of people from about  
16 every type of subcontracting you can come into contact with. It  
17 is mechanical, electrical, fabrication. It's considered some  
18 small general contractors who do specific -- what you would  
19 refer to as a general. He may do a lot of different fields within  
20 that, but he's just not a very large individual. You have people  
21 who have one truck, one employee, themselves, all the way up to  
22 an employer that we have, 35, so it's kind of a large range and  
23 group of individuals.

24 Within this group there is all women owned, all  
25 types of ownership at that level. We have the Native contractors

1 as an associate member. We have many -- probably you'll see us in  
2 a lot of these different groups. This group, however, I  
3 represent as a subcontractor not as a WBE, so that kind of -- I'm  
4 on the other side of the fence on this.

5 Basically I'll repeat a little bit what I talked  
6 about before that the association feels very strongly that  
7 whatever program is put into being if it's handled correctly in a  
8 clear, concise manner it helps everybody. It's not a feeling  
9 that by any type of preferential treatment on a subcontractor  
10 because he does have a minority backing that would harm him.  
11 There is absolutely none of that.

12 What we do feel very strongly about is no matter  
13 what program you people have, or whatever it is if it's handled  
14 correctly and enforced it's good for all of us.

15 The one reason why we do stand behind -- and this  
16 is a selfcentered attitude, is is that through a situation like  
17 today, I'm here talking to you because you're listening. I can  
18 come here as a subcontractor and I finally have a way out. By  
19 telling you our problems as subcontractors it's even greater in  
20 the minority or WBE sector. So it's kind of handy to be able to  
21 tell you from our side what's going on.

22 Do you want me to go into anymore about the  
23 subcontractor's association as such? Do you care for more?

24 MR. SCHAPIRA: I think I'm interested in you  
25 addressing .....

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1 MS. STURGULEWSKI: Your problems.

2 MR. SCHAPIRA: ..... the problems.

3 MS. CARESS: Okay. Basically in dealing with any  
4 of the programs from a government situation on the subcontractor  
5 level, first of all I'd like to explain what a subcontractor is  
6 and who he does and what he is all about.

7 Five years ago when you talked about a general  
8 contractor you were talking about a gentleman who in your own  
9 mind's eye you would think would be a very large employer, very --  
10 more affluent. I mean, he was the one that had some money backing  
11 him.

12 In this time and over the last five years it has  
13 gotten to where a general contractor may be one individual. He  
14 basically has gone down to a project manager. The 98 percent of  
15 all their work now is subcontracted out to subcontractors. The  
16 reason for this .....

17 MR. SCHAPIRA: Is that an accurate percentage, or  
18 is that .....

19 MS. CARESS: Yes, it's .....

20 MR. SCHAPIRA: ..... a figure of speech?

21 MS. CARESS: ..... 98 percent of -- if you look  
22 at the base employment on going through the reports, the  
23 certified payroll on a government, find out what is the difference  
24 between what a general is submitting under his own payroll and  
25 what he submits for his subs. It's over 98 percent. So you can

1 see that a great deal of work is spread out among what we refer  
2 to as a subcontractor.

3 A subcontractor is sitting what they call in a  
4 second tiered level from a general. In other words, some times a  
5 general contractor can meet his goals by the use of subcontractors  
6 and as -- as a portion of his goals. He's going to have to if  
7 he's not -- if he's not employing anybody he's going to have to  
8 use then the subcontract.

9 Some of the problems that we have seen as sub- --  
10 subcontractors dealing with some of the programs where you're  
11 trying to obtain goals is, number 1, when a goal is set by an  
12 owner and saying that they want three percent WBE, 25 percent  
13 NBE, or whatever and they say there isn't enough bids, or there  
14 aren't enough reactions out of the community in these areas to  
15 qualify on the bidding. I think the problem right there gets to  
16 be nobody ever asked us why.

17 Sitting in the situation we're sitting into (sic)  
18 we have to be in a very arbitrating situation. We only obtain  
19 our jobs from general contractors, period. They are our bread and  
20 butter. However, we are their bank. In other words, we front all  
21 of your projects. You all pay the owner and we still wait to get  
22 payment which I'm sure you've heard this all the way through  
23 there.

24 But getting in -- I'm trying to hit areas that I  
25 know other people haven't talked about. But on the subcontractor

1 level a lot of subcontractors no longer can afford the privilege  
2 of subcontracting with some of the generals who get the jobs.

3 In other words, if a contractor is not going to  
4 pay its sub in a prompt manner can you afford to do the job. My  
5 accounts receivable on the whole, 120 day aged, normal. It's very  
6 difficult to explain this to your banker when you're telling him  
7 that you need a working capital loan and he says, well, if you'd  
8 only sit on your accounts you'd probably be better off. But  
9 that's not the way real life is.

10 Even when a general says, which they always say,  
11 we will pay you when you (sic) get paid. I'm a steel fabricator  
12 and that means I buy my materials, pay my men up to a certain  
13 period of time. I bill them. I wait till their next billing  
14 cycle. They bill whoever they do and then they retain the money.  
15 The funny part about that is I will pay you when I get paid. How  
16 do we know when they get paid?

17 If you don't know, or if they have a reputation  
18 in the sublevel as not being prompt at all you may not bid with  
19 them. And I think that I have found more people this year on the  
20 sublevel that has finally said, even though you are my bread and  
21 butter I can't afford it. I just -- I'd rather -- you know, you  
22 can only do so much for cost and then after a while you've got to  
23 do something else.

24 So basically on these programs, does anybody ever  
25 come back when a goal isn't reached. Does anybody go back and do

1 a survey of the subs in some way that they can re- -- you know,  
2 say what they mean without getting in trouble with anybody and  
3 say I can't bid with him because I don't get paid.

4 Or two, when you let a bid and you say, yeah, you  
5 get a bid for \$100,000.00 by the time you get paid does anybody  
6 find out it may be only \$70,000.00. Why? Well, we have change  
7 orders, we have deletions to contracts. We have all sorts of  
8 things that it's really a very normal course of business, but  
9 sometimes it's not quite normal.

10 You can get bid and end up going all the way  
11 through until you think -- and then all of a sudden you find out,  
12 no, we're sorry, we're not going to use you on this portion.

13 The third problem is, I'm a steel erection and  
14 fabrication. I cannot handle a job of \$750,000.00 worth of  
15 project. I can't front it, so when they get it out and they say,  
16 gee, nobody came forward to bid on this project.

17 Unfortunately in the State of Alaska a  
18 subcontractor even though it is the largest employment base in the  
19 construction industry it is the most long term and it basically  
20 has the most economic benefit back to a community, we can't do  
21 anything because we sit in the second position as far as loans,  
22 banking, anything is concerned.

23 An owner can sell a -- I mean, a contractor can  
24 sell a project to a bank because they are directly dealing with  
25 an owner. You step off of that ownership and a bank says no. So



1 by our own economic problem up here, you've got the problem you  
2 can't front a job on a sublevel. You can't grow. You can't do  
3 any thing at that point. It's a very slow process to get -- to  
4 move ahead on a subcontracting level.

5 But I think if -- if when you're talking about  
6 goals that you come back and after you've established all of  
7 this you find out why and where are the people that you  
8 supposedly have ready to be able to bid on these projects and I  
9 think that right in itself would answer a lot of your problems  
10 when people talk about a program not working. It may be working  
11 fine, but you may be missing the other side of it that perhaps  
12 there is some problem why we can't bid and -- and do the job.

13 Is there any other questions, or that? I can get  
14 into the manufacturing and all the things that we did before, so  
15 it's whatever.

16 MR. ALEX: Do you have questions?

17 MS. STURGULEWSKI: Mr. Chairman?

18 MR. ALEX: Arliss.

19 MS. STURGULEWSKI: You know, just to make an  
20 observation. I think that information is very useful. It has not  
21 been presented and wasn't something I thought about. We -- we  
22 talk about people getting in, getting qualified, problems of  
23 compliance, lack of staff, but not in a sense going back. The  
24 kind of thing that's the toughest for us to do and it's really a  
25 performance evaluation. You've got to -- you've got a program,

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1 but does that program work really and that step is -- is -- well,  
2 I remember when I chaired legislative budget and audit, we did  
3 performance evaluations that unfortunately have not been carried  
4 on in terms of the permanent fund and in terms of Alaska housing,  
5 in terms of AIDA, to see whether they meet their overall  
6 legislative goals. And I don't think we're doing that kind of  
7 evaluation to say if that program really is working.

8 MS. CARESS: I think that's been the .....

9 MS. STURGULEWSKI: Yeah.

10 MS. CARESS: You know, when you talk about what  
11 DOT requirements are, that's set by somebody. The judgement of  
12 whether you feel a person is qualified is only done by qualified  
13 people and an enforcement of those rules. Those are very simple.  
14 But I think your evaluation, some of the things that come from  
15 the other side when I see the goals weren't met and I talk to  
16 people say, well, you know, it's not that side of it. The side  
17 that you're not hearing is is why aren't we bidding on them. Not  
18 to assume that it isn't working at that point. There are some of  
19 us who have managed to get through all of the qualifications and  
20 whatever else that we need to do, but we can't -- we're still  
21 caught.

22 MR. ALEX: Mitch.

23 MR. SCHAPIRA: In your association of  
24 subcontractors what percentage of sub -- of companies are  
25 minority, or women owned?

1 MS. CARESS: We have approximately 35 and -- and  
2 that kind of a .....

3 MR. SCHAPIRA: Is that a percent?

4 MS. CARESS: Yeah. And it's kind of a loose one  
5 because a lot of the times within -- if you have a corporation  
6 and the owner happens to be a minority we would not know that,  
7 but if they did stipulate on their application that they were we  
8 noted it, but other than that -- so there are a lot more out  
9 there than that.

10 MR. SCHAPIRA: Do you have any suggestions for  
11 what steps could be taken to standardized the definitions, or  
12 qualifications for minority owned business and women owned  
13 business?

14 MS. CARESS: You mean just a straight, what I  
15 would considering a qualifying?

16 MR. SCHAPIRA: Well, a previous speakers have  
17 identified a problem in that the DOT may have one standard, the  
18 FAA may have another, the BIA yet a third, et cetera and it  
19 appears to me from today's forum that the problem is -- that one  
20 problem is standardizing these procedures. If you were going to  
21 make a recommendation to the United States Civil Rights  
22 Commission and know that the Secretary of Transportation and Labor  
23 were going to listen to you as we all do know that, what  
24 recommendation would you make about standardizing that?

25 MS. CARESS: I can't make a comment other than the

1 comment that if DOT sets a standard and the State of Alaska  
2 chooses to work under the DOT, then that is the standard we'll go  
3 by.

4 The problem that you run into is being in -- in  
5 reality living in the State of Alaska is what you said, that if  
6 we're going to go by DOT standards we should go for them for  
7 everything, or we should have two separate types. We shouldn't  
8 have the Municipality and the State and the State DOT any  
9 different. If we're going to go standard, let's take what the  
10 Federal has for your DOT projects and either decide that that is  
11 what the State itself should go for, or the State should have its  
12 own set of recommendations. Any my recommendations would be a  
13 lot different than DOTs, that's for sure.

14 MR. SCHAPIRA: And how so? And how so?

15 MS. CARESS: One of the problems you get into and  
16 I can see why they did it, was the actual -- in my type of work,  
17 okay. Mind you, I have a welding/fabrication/erection business,  
18 I also have a degree in accounting and computer science so that  
19 puts me on, you know, the one side. I am also a certified  
20 welder which doesn't mean anything because there are 621 positions  
21 and I'm only certified in 210 for whatever good that does us all,  
22 but one of the problems is that they do require me the actual  
23 field supervision and actuality to do the work.

24 Now field supervision to a certain extent is true,  
25 but I have a job going in Juneau, one in Fairbanks and one here,

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1 I can't be in all three places at the same time. I hopefully  
2 have employed two individuals to do that, but they don't like  
3 that. They like that you be on that job and in the supervision  
4 field.

5 The other problem that you get into is if you  
6 decide to increase -- let's say I want to increase my  
7 certification by getting into an area that is closely related.  
8 In other words, I'm going to have to diversify to exist. I'm  
9 going to have to and I -- you know, the State of Alaska is  
10 realizing that too, if I care to divert where is my expertise  
11 going to come from. Do I go out and hire it? Do I buy it? If I  
12 buy it it's not DOT. I have to be able to do it myself.

13 Now in the corporation I have right now I have 23  
14 employees. In that 23 employees there are people that do make  
15 decisions. Yes, they have a limit, but they do make decisions.  
16 I can't do it all. So if you're going to go DOT you're always --  
17 you're restricting that individual from growing. You're hampering  
18 him from being able to rely on expertise.

19 Of course, you can get a lot of abuses. You know,  
20 by saying, hey, I'll front you, you go it. I don't know how to  
21 solve that one, but I do know you are restricting the growth.

22 There are some people that I have talked to that  
23 like I said in this -- everybody talks about the economy. It  
24 really has been no different for a subcontractor. The State is  
25 just finally waking up to what -- something we realized for a long

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1 time what's been going on, but you have to diversify. You're  
2 always trying to more into an area that you feel isn't covered  
3 and I'll guarantee you there's no way I can diverse anymore right  
4 now without having to hire that personnel in. So you're going to  
5 restrict us -- a minority enterprise to a DOT standard in size  
6 and growth potential. By restricting him you will always keep in  
7 under the contract level of about 25,000. So if you're asking  
8 for a subcontractor to grow, or a contractor to do this and  
9 develop their expeditise and develop a corporation and have a  
10 growth potential and a profit pre- -- you can't do it.

11 You've told him you cannot do it. You will  
12 always stay in this ball game. Then you get right round robin.  
13 What -- one of your contracts break down to 20, or 25,000. So  
14 it's -- you know, it's -- I -- it's a selflimiting program all  
15 the way around.

16 For me to stay -- to do the jobs I can do with  
17 required DOT absolute by the letter of the law I could do no more  
18 than about 250,000 a year gross. That would be my max. And I  
19 can't live off of 250,000. So you've hampered his growth, you've  
20 offered him something, you've offered it in too big of a chunk.  
21 He's not big enough to take it.

22 MR. SCHAPIRA: Would one solution be to some how  
23 recognize the utilization of outside experts who are minorities  
24 and women as part of the compliance with the requirement of -- or  
25 in lieu of minority ownership, or .....

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1 MS. CARESS: Again, now you're getting into the  
2 point of a judgement. You're making a judgement on my business.  
3 Maybe that expertise isn't available, you know, that -- that's  
4 the whole problem. If you -- you know, if you're going to cut  
5 the program and get it so it holds those main regulations, you're,  
6 you know -- by hiring an expertise if -- I would have to go to  
7 try to find an expertise in that field would be very difficult.  
8 I don't get many women welders in the door.

9 MR. ALEX: Gil.

10 MR. GUITIERREZ: You mentioned one time, or the  
11 last meeting kind of briefly that you had done some research  
12 regarding contracting over a period of time. Could we have a  
13 copy of that and (indiscernible - interrupted) .....

14 MS. CARESS: I'm sorry, I didn't bring it, but  
15 I'd be happy -- anybody -- what I did is I took a -- being if --  
16 being a manufacturer in the State of Alaska I decided I wasn't  
17 making it and I think the first thing you have to do is you have  
18 to go in house and find out what you're doing. When I went in  
19 house and I found out, you know, my billable hours were higher  
20 than national average, everything was higher. Why, you know,  
21 what's going wrong. I decided to find out where my competition  
22 was and where -- and what -- what good it was deriving. How they  
23 were making it when I wasn't.

24 My major competition comes from outside the  
25 State. This competition that comes from outside the State is

1 able through its direct cost associated with it doing business  
2 are a great deal different than mine both in insurance, workmen's  
3 comp especially, unemployment, for my direct expenses, utilities,  
4 property tax and interstate transportation brings my cost of  
5 doing a job 47 percent higher than what it costs an individual  
6 to do this in Washington State, or Oregon State.

7 When I did a study of all of this I wanted to  
8 find out if it was all construction people were idiots, bad  
9 managers. There is 100 percent turn on Alaskan based general  
10 contractors over an 18 month period.

11 What I mean by that Alaskan, is I hung the title  
12 of owner being residing in the State of Alaska. That was just  
13 the priority. I didn't mean his agent for six months and I didn't  
14 mean his Box office. I said the owners resided.

15 When I did this I found over an 18 month period  
16 that a contractor might break into the market at about 50,000. He  
17 increases until he hits about 250,000. Then all of a sudden he's  
18 no longer. When you have a turn of 100 percent on anything no one  
19 is that bad. Ninty-eight percent -- national average is 94  
20 percent of all construction businesses will fail, but not 100  
21 percent in 18 months. So that's what created the need for me to  
22 find out.

23 You know, I don't like to be classified as a bad  
24 business person. I really try very hard at this and when I found  
25 out that just in my own area 47 percent higher costs. And now



1 I'm faced besides 47 percent cost, I've got another additional  
2 cost coming up of workmen's comp that's going to be increasing.  
3 The City says they will increase my property taxes. I know that  
4 the Municipal Light and Power has a 20 percent increase. I'm a  
5 heavy utility users.

6 I have decided now this is the last thing as far  
7 as all of us manufacturers -- I am the only one left. HCI Steel  
8 Products had a beautiful -- two factory buildings, one in Wasilla,  
9 one in Anchorage area, they shut down and moved to Kent,  
10 Washington. Alaska Steel's fabrication shop is located in  
11 Washington. Where are all of your millwork truss. Alaska Truss  
12 and Mill, all the millwork manufacturing plants, your United  
13 Lumber, SBS, Budget and that, where are they? They're gone.

14 Look at the trouble Mat-Su Maid is in. Everybody  
15 tells you it's got to be cheaper to send milk from Mat-Su to  
16 Anchorage than it is a bottle of milk up from Seattle and I can  
17 prove that it costs me more to ship from Anchorage -- well, it's  
18 actually 3.5 times more to ship from Anchorage to Barrow than it  
19 does out of Seattle. I can ship cheaper out of Seattle to Homer  
20 than Sea- -- or they can ship cheaper than I can to Homer, Seattle  
21 can. Because we have no interstate transportation.

22 If I want to make something here to send to  
23 southeast I have to ship it to Seattle and have Seattle ship it  
24 to Juneau. And they double duty me on the way out too. So  
25 these types of costs that are built in to me as a con- -- you

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1 know, where I'm trying to get a dollar off of a competitive bid.

2 Why do they use me? Why am I still in business?

3 Because Number 1 thank God plans aren't perfect and they've got  
4 alterations. Because I am what they call the cleanup person. But  
5 this is the base of employment when you're talking about the  
6 construction industry. It's not the general contractor who does  
7 the employing. It's us subs. It's us subs who the banks don't  
8 like because we don't have a contract with the owner. So that  
9 was kind of the gist of the study. It -- it's kind of  
10 comprehensive, but it's all based in statistical evidence, 'cause  
11 I have to find out why.

12 MS. STURGULEWSKI: General contractors is shifting  
13 all the costs, isn't he, workmen's comp .....

14 MS. CARESS: What he did -- right.

15 MS. STURGULEWSKI: Um-hum.

16 MS. CARESS: What they do now is -- five years  
17 ago a general contractor basically had a large core group of  
18 individuals that worked on an on going basis for him and this  
19 became kind of hard for him because he would have to front the  
20 project. Now you can go out and get subs. They front your  
21 project literally. We all front it and we're looking at --  
22 especially on a manufacturing like I am now I'm looking at 100,  
23 probably 190 days. Now that is not full payment.

24 Now comes the good part, you get the one to two  
25 percent retainage until the project is approved. That could be a

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1 year away. And then that's -- you know, it's -- it's a round  
2 robin problem.

3 MS. STURGULEWSKI: Sure, no good accounts  
4 receivable after that all happens.

5 MS. CARESS: Most people think that anything in  
6 that column isn't worth a whole lot. You can talk about your  
7 protections back against the general back against the owner if  
8 you have enough money and enough -- if you can hold out long  
9 enough you'll make it, but I'm sure there are people sitting in  
10 this room right now that if you don't have a contract that hasn't  
11 been paid for that's from a Federal government and you're a  
12 contractor and you hadn't done any Federal work, so .....

13 MR. ALEX: Further questions?

14 MS. STURGULEWSKI: Good testimony.

15 MR. GUITIERREZ: No, I just need a copy of that.

16 MS. CARESS: I'll be happy to. If you'll give me  
17 your card or something and I'll be happy to get you something.

18 MR. GUITIERREZ: Send it to John.

19 MS. CARESS: Okay.

20 MR. GUITIERREZ: Thank you.

21 MS. CARESS: Thank you.

22 MR. ALEX: Thank you. Now we're going to go into  
23 an open session. We're a little bit late, but then Earlene  
24 started a little bit late and then we had Don Barlow come ahead  
25 as part of the open session, so we're not into open session. I

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1 understand that we have Janet Bradley here and Francis Gallela.  
2 They both want to address the Commission and Willie Overstreet.  
3 Since we have -- since I had -- unless -- yes (indiscernible  
4 conversation away from microphone) .....

5 Yeah, this is an open session now and I think we  
6 can start off with Janet. Could you state your name for the .....

7 MS. BRADLEY: Yes, for the record my name is  
8 Janet Bradley. I'm the executive director of the Alaska State  
9 Commission for Human Rights and with me here today I'm pleased  
10 to introduce -- although she needs no introduction to many of you,  
11 our newly appointed Commissioner Katie Hurley of Wasilla.

12 Thank you very much, Chairman Alex, and members of  
13 the Commission and Mr. Dulles. Thank you very much for inviting  
14 me here today. I won't take your time with repeating some of the  
15 problems that you've already heard here today. I would like  
16 especially to tell you how much I have learned from listening to  
17 some of the testimony that's been offered here.

18 But I would like to at least state so that all of  
19 us understand that the State Human Rights Commission has no  
20 responsibility in the area of contract compliance. I know all of  
21 you know that, but sometimes many people who are involved even on  
22 the Civil Rights Commissions do not understand the delineation of  
23 responsibility within State government.

24 However, the concern for MBE, FBE and affirmative  
25 action among state contractors and subcontractors has been very

1 much at the Commission's core of concern since 1978. And in fact,  
2 we entered into litigation in 1982 as a result of the failure of  
3 compliance with a predetermination settlement, which was concluded  
4 between the State Human Rights Commission and the State Department  
5 of Transportation and Public Facilities. That litigation was  
6 settled out of court. And that settlement agreement is no  
7 longer in effect. That is to say the course of compliance with  
8 that out of court settlement has now expired.

9               Nevertheless, the State Human Rights Commission  
10 remains concerned about the problems that you've heard hear today  
11 because we also hear them. We hear them through complaints which  
12 are filed in our office under a section of our statute which  
13 prohibits unlawful practices of discrimination by the state or  
14 its political subdivision.

15               With respect to bonding, I know that is one of  
16 the issues we've heard mentioned today, it would be jurisdictional,  
17 a jurisdictional cause of action for a minority or a female or a  
18 member of the protected class to allege that they were denied  
19 bonding by financial institutions. To the best of my knowledge  
20 we do not see those types of complaints; therefore, I would  
21 conclude that the bonding problems are less associated with  
22 discrimination, and more associated with the kinds of problems  
23 that the previous speaker just identified.

24               With respect to where the Commission is at this  
25 point in its concern I would like to quote from our annual report

1 which I think says pretty well what the commissioners feel about  
2 this problem in state government. And we're going to limit our  
3 concerns to what happens in state government because that is  
4 where the focus of our action has been. Commissioner -- then  
5 Commissioner then Chair Person Virgie King wrote in our annual  
6 report "The Commission believes that minority/female business  
7 enterprise and affirmative requirements for state contractors  
8 are major items of unfinished business in our state. While we  
9 are mindful of the budget deficit and the need for cost (ph)  
10 containment in state government these matters demand attention to  
11 resolve the Commission's lingering concerns for equal opportunity  
12 in affirmative action in state government. The Commission has  
13 proposed the formation of a task force to study those concerns  
14 and the assignment of civil rights responsibilities within state  
15 government."

16 Now, this report was submitted to the Legislature  
17 shortly after the turn of the year in early 1987. Subsequent to  
18 that time as you heard described, Ray Price, special assistant  
19 to the Governor has gone forward and has solicited comments and  
20 has put together a plan. Mr. Price in June met with our  
21 commissioners in Fairbanks and described that plan. And we  
22 have been continuing to work with him on the implementation.

23 Overall, if I can summarize the Commission's  
24 concerns, we believe that a state office of contract compliance  
25 is required. And we believe that that state office of contract

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1 compliance should be an oversight office. That is, separate and  
2 apart from the contracting agency. That is the subsistence of  
3 the Commission's position. And we are still eager to see  
4 that happen. We are very concerned because we hear the same  
5 problems that you've heard here today. And I know this is a  
6 difficult time in state government. I know everyone is strapped,  
7 but we feel that there still can be some progress. Therefore, I  
8 would urge you to the extent that it is possible to focus  
9 attention on the state level. I don't know how successful you  
10 might be at the federal level because of the many opportunities  
11 for the bureaucracy to intervene, but certainly at the state level  
12 you hav the capability of using your authority and using your  
13 status as the Advisory Commission to get behind efforts to  
14 effect the creation of that office here in Alaska.

15 The Human Rights Commission would be very  
16 interested in working with you and working with the community  
17 to see that happen. I'd be glad to answer any questions that  
18 you might have. And then, I'm sure that Commissioner Hurley  
19 would like to add her comments.

20 MR. GUITIERREZ: I have a question.

21 MR. ALEX: Go ahead.

22 MR. GUITIERREZ: I'm interested in the idea of  
23 a contract compliance program. Given the Statute 1880 and the  
24 idea that your agency can do studies or even do some, you  
25 know, bigger studies, what do they call that, more than

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1 individual studies of discrimination, class actions .....

2 MS. BRADLEY: You're talking about directors  
3 (indiscernible) class action complaints.

4 MR. GUITIERREZ: Right. Directors charges.  
5 Wouldn't that contract compliance office kind of fit under your  
6 organization as an enforcement agency?

7 MS. BRADLEY: That's a really complex question,  
8 Gil, if I may call you that. I know that Ray Price in creating  
9 his plan collected models from all over the country. With respect  
10 to the Human Rights Commission's position we are somewhat  
11 reluctant to see an additional responsibility of that magnitude  
12 given to us. And we have always felt that it was very difficult  
13 for us to get the budget that was required to do those things  
14 that are mandated by law. So, we have not welcomed the idea of  
15 accepting additional responsibility.

16 Let me also say that the problem has been  
17 magnified over the last five years because as a result of the move  
18 of the Office of EEO from the Department of Administration into  
19 to the office of the Governor we now have three civil rights  
20 agencies within the office of the Governor. And those agencies  
21 include the Women's Commission, The State Human Rights Commission,  
22 and the Office of Equal Opportunity. It is perceived by many,  
23 including members of the Legislature, that our duties overlap  
24 and that we have duplication of effort. And we are constantly  
25 trying to get the information out to the public what it is that

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1 we do, how we complement the work of the Women's Commission, and  
2 how the Office of Equal Opportunity is separate and apart and has  
3 a different mission from us.

4 So, to answer your question directly we are not  
5 seeking that responsibility. We're seeking the resolution of  
6 the problem, we believe that a separate office is necessary.

7 MR. GUITIERREZ: That, of course, brings about  
8 more funding and a different kind of a package program.

9 MS. BRADLEY: That's true. And of course,  
10 whether it's funded through our agency or whether it's funded  
11 through the Office of EEO, or a separate office, whatever the  
12 final plan looks like, the need is there. And while I think  
13 that there can be some economies through merger of programs  
14 sometimes merger of programs results in just the opposite, that  
15 there's not a clear delineation of authority. It imposes conflict  
16 situations. And in fact, what it does instead of creating two  
17 programs it destroys two programs.

18 MR. ALEX: Further questions? Katy.

19 MS. HURLEY: Thank you. I just wanted to say  
20 listening to Senator Sturgulewski I had a lot of empathy for  
21 her position because it seems to me that we have heard these  
22 same things over and over again. Four years ago when I was  
23 with the Women's Commission we met with contractors and with  
24 the unions regarding women getting into -- getting contracts  
25 and so forth. And I guess I feel that what we need to do is put

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1 the pressure on the administration to make this a priority. That  
2 not do we necessarily need to have more funding, but the funds  
3 need to be channeled so that this is priority, this is something  
4 that is funded. And, with the numbers and numbers of staff that  
5 you have in DOT it certainly seems to me that that small amount  
6 of money could be found. And it's just a matter of somebody  
7 saying this is important and this is where we ought to spend  
8 the dollars. And I certainly hope that even though you are an  
9 Advisory Committee Commission that you will use your good  
10 influence because I do feel that to what for it to happen  
11 on the federal level is going to -- it's not going to happen to  
12 help the people here.

13 And one more thing before I forget it, I'm sorry  
14 that there wasn't more publicity about this meeting because I  
15 know that when I was in the Legislature I had a lot of minority  
16 businesses calling me to find out, you know, why they couldn't  
17 get certified. And I think they would be here with their cases,  
18 especially women who are owning 51 percent of a business where  
19 they are with their husband, which seems to be a real tough nut  
20 to crack. And also having it in the middle of the day always  
21 hurts people who are in small businesses who can't take the time  
22 to come. And if you could ask for people to send in, you know,  
23 instances of feeling of being left out maybe that would help  
24 your record and get more because I know that there are a lot of  
25 people. But, it's very discouraging, I'm sure, because when I

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1 look back over the years, and it's not just four years, it's lik  
2 10 - 15 years of seeing this very -- it's so difficult for  
3 minorities and especially for women to be recognized because  
4 of the finance. And I really appreciate what the subcontractor  
5 said about the attitude of banks and the fact that they are the  
6 last people to be paid, and how can you survive.

7 And we should be able to as especially the  
8 legislators, I think, could put the pressure on the administration.  
9 And we'll do -- I'll do what I can to back you up.

10 MS. BRADLEY: If I could say something on the  
11 point of women being denied certification. I have had several  
12 persons speak to me privately, not through the process of the  
13 Human Rights Commission, but I advised these women of their rights  
14 under our statute to file complaints about the denial of  
15 certification. But, there does seem to be a problem there .....

16 UNIDENTIFIED VOICE: File complaints with who?

17 MS. BRADLEY: With us. If an individual is denied  
18 certification they have the right to come and say, I believe this  
19 was the result of discrimination, that the standards that were  
20 applied to me were unfair, had an adverse impact on me as a  
21 women, as a Native, et cetera, et cetera, as a Black, and that  
22 I've been denied certification unfairly. We would accept  
23 such a complaint.

24 Three such individuals have spoken to me at  
25 meetings just like this where I've been attending, have taken

1 me aside and described their problems, and I've advised these  
2 individuals of their rights. What it sounds like based on  
3 what I've also heard here today is that either the standards are  
4 being more strictly applied to some individuals, or there's been  
5 a change because many of the female business enterprises who had  
6 certification have lost certification. And I don't know what the  
7 change has been.

8                   The other thing that I find quite interesting  
9 is when I hear the state officials from DOT discuss how they  
10 need procedures I am wondering what amount of discretion they  
11 have in determining how to apply the standards, which, I believe,  
12 are federal regulations. So, I don't know, that leads me to  
13 wonder whether -- I'll just leave -- I'll just stop at that, it  
14 leaves me to wonder.

15                   MR. SCHAPIRA: These individuals who you advised  
16 to file complaints did they, in fact, file complaints?

17                   MS. BRADLEY: Not to the best of my knowledge to  
18 date. This was in the month of August. I attended several small  
19 business meetings. And I try to go to those meetings to stay  
20 in touch with this very question. And I did pick up three  
21 individuals, one as an Alaska Native, one was a Black women,  
22 and one was a white woman. So, I don't know whether it's race  
23 and sex or just sex.

24                   MR. ALEX: Did you have a question?

25                   MR. GUITIERREZ: No, I just had a comment. In

1 backing up now, we're talking about a compliance agency at the  
2 state level when I've always assumed that the feds were going  
3 to be the compliance agency. And in a sense they were neutral  
4 because we get into state packages now. We have a lot of  
5 powerful general contractors or prime contractors out there that  
6 would, you know, just lobby against anything like that it seems  
7 to me, but I like the idea of a state compliance agency.

8                   You're right. I think we ought to advertise these  
9 a lot more. There was a lady that wanted to be here, but she  
10 says, well, I never got a formal invitation, so I wasn't sure  
11 what to do about the job or how to leave work. But, basically  
12 that's the only comment I wanted to make on that compliance  
13 thing.

14                   MR. ALEX: Any further questions?

15                   MR. SCHAPIRA: Mr. Chairman?

16                   MR. ALEX: Yes, Mitch.

17                   MR. SCHAPIRA: Well, I have a question for  
18 Mr. Dulles. Would it be possible for us to solicit comments  
19 along the lines suggested by the Commissioner? And if so, what  
20 mechanism could we use? Apparently there are numerous instances  
21 of people being confronted with arbitrated (ph) decisions about  
22 their certification.

23                   MR. DULLES: I'd have to turn that back really on  
24 you. In other words, our staff is limited as it is, and as  
25 unfamiliar with the state as we are, we'd have to be to a large

1 extent reliant on this Advisory Committee in terms of what groups  
2 or organizations need to be contacted or, you know, where we  
3 would go to solicit those kinds of information. We have to be  
4 very, very careful, Mitch, because if we solicit individual  
5 complaints there is, historically and undeniably, an expectation  
6 of some rectifying action, some resolution. So, that's why  
7 we have to be extremely careful that those individuals or  
8 businesses understand the purposes of what they're being asked  
9 to do, if I'm making myself clear, since we do not process  
10 individual complaints of discrimination. That is not within the  
11 purview of the Civil Rights Commission. And we are limited to  
12 referring those complaints to appropriate other federal agencies.

13 We just have to be very, very careful that any  
14 testimony that we elicit that it is understood what the purpose  
15 of that is. And that is strictly to add to the record that we've  
16 developed today. But, it can be done, but you know, it's  
17 going to have to be really .....

18 MR. SCHAPIRA: Could it be done through news .....

19 MR. DULLES: ..... through the Advisory Committee.

20 MR. SCHAPIRA: Could the solicitation of that  
21 type of information be accomplished through newspaper  
22 advertisements or in trade journals? Maybe I should ask the  
23 Commissioner.

24 MS. HURLEY: If I may comment, Mr. Chairman. I  
25 feel that you as the Chair could make a statement about this

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1 meeting, and in that statement ask or say that you realize  
2 that the meeting was held in only four hours, and that you know  
3 that there are people out there who may have comments. They  
4 don't need to be necessarily complaints. You know, you might  
5 assume that you might get something positive .....

6 MR. DULLES: Well, let's just not rely on the  
7 news media .....

8 MS. HURLEY: No, but .....

9 MR. DULLES: ..... because we sent out .....

10 MS. HURLEY: But, I mean, like for instance,  
11 the .....

12 MR. DULLES: ..... press releases throughout the  
13 state.

14 MS. HURLEY: ..... subcontractor association  
15 person who's here and the -- Mr. Barlow from NAACP, and I  
16 certainly would contact the few people have called me and check  
17 and ask them if they feel -- I think it's important to let  
18 them know that just a letter would do it, that it doesn't have  
19 to be a complicated, you know, legal type of document. And I  
20 think you might get some really good back-up or changing an  
21 combining and making this a simpler operation.

22 My feeling is that laws should be made to help  
23 people and not to put constraints on them to make life more  
24 difficult. And .....

25 MR. ALEX: I've got a question. When do we think we might  
be able to, I mean barring not getting any funding, when do

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1 we thinkg we might be able to have another meeting?

2 MR. DULLES: I don't know. I guess we could  
3 tentatively talk about some time in the spring.

4 MR. ALEX: I look at it, you know, I don't think  
5 that there's going to be any huge resolution to the problems  
6 that we've been addressing. And it would appear appropriate  
7 that when we have our next meeting that there be a continuation  
8 of this, and that I think, certainly, there's enough  
9 people around that understand that this is a subject that we've  
10 been discussing. We're looking for, you know, actual -- you  
11 know, looking for, you know, the actual discrimination in the  
12 process. We're looking for solutions. And so, what we might  
13 do is tentatively state, you know, for the people in attendance  
14 that we're planning some time in the spring. And that this  
15 still is an active issue.

16 MR. DULLES: Generally what we do in a meeting  
17 like this is we keep the record open for, at least, two or three  
18 weeks. If there's some way that the Advisory Committee to assist  
19 us and that is back in Los Angeles, in contacting, maybe the  
20 Commission can help us, contacting key organizations or business  
21 groups or Civil Rights organizations, and soliciting additional  
22 testimony to be put in writing and to be mailed in our office.  
23 Then, that could be made a part of the record and they could be  
24 exhibits. And that could be included as a part of this program.

25 But, what I'm saying is we would need -- clearly



1 would need assistance within the state of Alaska because we  
2 really won't be in a position to do that or even know who should  
3 be contacted. I mean that's part of the problem that's being, you  
4 know, the resources that are available at the regional level for  
5 these kinds of efforts. And we can work towards that. We  
6 have other witnesses.

7 MR. ALEX: I was just thinking, the Human Rights  
8 Commission has probably a list of people that might want .....

9 MR. DULLES: That's the first thing I did when  
10 I called Ms. Bradley's office yesterday .....

11 MS. BRADLEY: Right.

12 MR. DULLES: ..... was to ask if we could get a  
13 list of Civil Rights organizations in the state of Alaska, so  
14 that next time we'll at least be able to, for sure, contact  
15 each and every one of those in .....

16 MS. BRADLEY: Well, I think we need ....

17 MR. DULLES: ..... anything that we might do.

18 MS. BRADLEY: ..... to be more specific than Civil  
19 Rights organizations, but I'll be happy to work with you. And I,  
20 personally, will contact those individuals that spoke to me and  
21 see if they are willing to come forward with their testimony.  
22 However, remember that these individuals may not wish to go public  
23 with their names because of the fear or retaliation.

24 MR. DULLES: And we cannot protect those  
25 individuals.

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1 MS. BRADLEY: I want to thank you very much. I  
2 know there are other people .....

3 MR. ALEX: Okay.

4 MS. BRADLEY: Thank you.

5 MR. ALEX: We had Louie and Winston here since  
6 this morning. I mean these two gentlemen were here since this  
7 morning, so if we could proceed. Do you mind .....

8 MR. OVERSTREET: Good afternoon, gentlemen, Alex.  
9 For the record, my name is Everett Louis Overstreet. I'm here  
10 today as a representative of the Alaska Black Caucus. I serve  
11 on its board of directors, formerly as its president. And  
12 Janet, I don't have that kind of fear.

13 MS. BRADLEY: (Inaudible) .....

14 MR. OVERSTREET: Right. I want to briefly touch  
15 on the history, on an audit that was conducted by the Legislature,  
16 a comment on the proposed plan, and a comment on the Cowper  
17 administration in this regard.

18 It was our organization in 1978 that brought  
19 this problem to the attention of the Human Rights Commission. It  
20 was based on the fact that the Public Works acts of 1977, and I  
21 know people don't like to use this word, had a quota set aside  
22 of 10 percent. That was not a goal or a time table, it was  
23 required that all minority/female businesses receive 10 percent  
24 of all those Public Works money. That fear was based on the  
25 fact that Alaska had not had a significant program or had in place

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1 any kind of capability of monitoring how those monies were  
2 utilized.

3 As it turned out, our fear was realized. It  
4 didn't happen. And subsequently, some of the issues that  
5 Ms. Bradley talked about happened. But, also for the record it  
6 should be indicated that those goals and time tables that were  
7 contained in that settlement agreement were never realized.  
8 They didn't even come close.

9 Now, the Legislature conducted an audit in 1985  
10 or '86, Senator, you can correct me, and they identified that  
11 the problems existed in DOT could not just be pointed to as gross  
12 incompetence, but there was significant misrepresentation. And  
13 no action has been taken place today to correct that. The young  
14 lady who was reporting those figures to the federal government  
15 purposely misrepresented what the participation of those were.  
16 So, you'll have to excuse me there .....

17 But, I want to point out a couple of things in  
18 terms of how our organization approached the problem. We were  
19 never suggesting that unqualified persons or businesses receive  
20 anything. Our concern was that we create a climate where  
21 opportunity would exist. And within that climate just document  
22 what the activities that took place in that climate and submit  
23 an accurate report in that regard so we could accurately work  
24 on the problems. So, -- but, with the failure of the young  
25 lady who worked on that, who was working in that department

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1 for a number years, and I understand she may still be involved,  
2 that was never the case, to continually be misrepresenting --  
3 misrepresentations in terms of the actual participation levels.

4 What they were doing is taking what the  
5 contractor, prime contractor, promised to do and reporting that  
6 as gospel. There was not any close-out in what the actual bid  
7 estimates of those people they say they were going to do business  
8 with.

9 Now, on a proposed plan, I know that, Arliss  
10 you want and Frances and Winston want to talk). I -- in a word  
11 the plan stinks. And I say that advisedly 'cause Bob Poe and  
12 Ray Price are good friends of mine, but there's no way in the  
13 world what they're proposing will work. You could -- if, indeed,  
14 it should be a situation of physician heal thyself. The  
15 Department of Transportation employs thousands of people, yet  
16 in the nine or 10 months that the Cowper administration has been  
17 in power they have not appointed one Black in that department,  
18 period. If they wanted to say they were serious about employment  
19 opportunities at their level, which would be a sign of good faith  
20 to the contractors that were doing business with the state, then  
21 that would happen. Before the record that has not happened, and  
22 I don't think this plan will work as proposed.

23 And I would certainly support Mrs. Bradley's  
24 recommendation that contract compliance oversight be separated  
25 out of that department and put in a central office that reports

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1 directly to the Governor. And that's basically the end of my  
2 comments. I will entertain questions.

3 MR. ALEX: Questions?

4 MR. DULLES: What is the percentage of Blacks  
5 of the staff of the Department? Do you have any .....

6 MR. OVERSTREET: Zero. The one guy that was  
7 there before Cowper took over they asked for his resignation.  
8 So, he's no longer there. He left the state. In fact, the Cowper  
9 administration has only appointed one Black person, and that was  
10 Ray Price. And I don't think that was race specific because  
11 Ray was Cowper's campaign manager here in Anchorage. So, it  
12 doesn't have anything to do with opportunity. Physical  
13 pay-off (ph).

14 MR. DULLES: You're talking about at the  
15 executive levels .....

16 MR. OVERSTREET: Yes, I am.

17 MR. DULLES: ..... or senior levels (ph)?

18 MR. OVERSTREET: Right.

19 MR. SCHAPIRA: You support the formation of  
20 separate contract compliance office. Where in the state  
21 government would you locate it?

22 MR. OVERSTREET: Governor's office.

23 MR. SCHAPIRA: Not withstanding the fact that  
24 your statements about the Governor could hardly be interpreted  
25 as very favorable.

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1 MR. OVERSTREET: That's true. And I hope they  
2 report it back to him.

3 MS. STURGULEWSKI: I'm sure they will.

4 MR. SCHAPIRA: On that you can rest assured.

5 MR. ALEX: Any further questions or comments?

6 MS. STRUGULEWSKI: Mr. Chairman?

7 MR. ALEX: Yes.

8 MS. STURGULEWSKI: To the point and succinct.  
9 What more can you say?

10 MR. ALEX: Thank you.

11 MS. STURGULEWSKI: Louie definitely is. Louis,  
12 excuse me. Mr. Overstreet, sir.

13 MR. OVERSTREET: Thank you very much for the  
14 opportunity.

15 MR. ALEX: We have Francis Gallela, Project  
16 Director, Minority Business Development Center.

17 MR. GALLELA: Thank you, Chairman Alex. My name  
18 is Francis Gallela. I'm the director of the Alaska Minority  
19 Business Development Center. It's operated by Community  
20 Enterprise Development Corporation. And we are funded by the  
21 Department of Commerce, Minority Business Development Agency.  
22 We've been in existence for approximately five years. And if  
23 there is a problem or type of problem that minority firms have in  
24 the state of Alaska we usually hear about it. It usually comes  
25 across my desk, and usually dozens of examples come across my

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1 desk. And I could talk to you about lots of different problems  
2 that minority business persons have, but because we're' limited  
3 in time -- and I want to thank Louie for being brief and succinct,  
4 I'm just going to mention a few of them. And I'm going to hit a  
5 couple that were hit before, but I want to give you a little  
6 more indepth explanation of some of the problems and give you  
7 some -- hopefully, give you some solutions.

8 First of all, the certification problem. The  
9 certification problem is not exaggerated. And the people who have  
10 testified have not blown it out of proportion. Certification  
11 problem as practiced by State DOT is an extreme problem. It's  
12 a problem because there's structural bias in the way the  
13 regulations are written.

14 The regulations are biased against women, against  
15 Native Alaskans, and against Blacks who are innovative  
16 entrepreneurs, against Hispanics who are innovative entrepreneurs.  
17 And I say it's structurally biased because I can't believe that  
18 everybody in DOT is interpretatively biased against these minority  
19 business persons.

20 Ideally, if you were to take the regulations and  
21 the interpretation of regulations apart and look at what is the  
22 ideal example of a business that DOT wants to certify, what you'd  
23 come up with is small owner-operated construction or janitorial.  
24 The regulations .....

25 MS. STURGULEWSKI: I'm sorry, construction .....

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1 MR. GALLELA: Construction or janitorial.

2 MS. STRUGULEWKS: Oh, I'm sorry. Thanks.

3 MR. GALLELA: The regulations are not written  
4 to take into account the full spectrum of entrepreneurial  
5 activities and innovativeness that Blacks, Hispanics, Natives and  
6 women are currently engaged in. It's a question of bureaucrats  
7 being handed a set of regulations which simply cannot do  
8 the job, and hamstring them.

9 Now, is DOT aware of this, and are the individuals  
10 aware of this? Absolutely, yes. They are absolutely aware of  
11 the fact that by regulation they cannot recognize what are  
12 de facto bonafide minority firms. And this was brought home to  
13 me during a session that I had with the Department of Highway  
14 individuals from Washington, D.C. and Department of Highway  
15 individuals -- federal Department of Highway individuals stationed  
16 in Juneau.

17 And, it was a frustrating kind of confrontation  
18 because we would cite case after case of individuals, bonafide  
19 minority, minority individuals, minority businesses wanting to  
20 expand as was stated by one of your earlier speakers, wanting to  
21 expand into areas that they, themselves, did not have personal  
22 expertise in, but like any other good business person in this  
23 country could go out and purchase, that is hire someone with the  
24 expertise in order get into this new kind of enterprise.

25 By regulation the DOT cannot recognize that new

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1 capability as being a part of the minority firm, and therefore,  
2 that minority firm cannot use that new capability to bid on  
3 DOT contracts. This is ludicrous. And we said this. And DOT  
4 says, yes, we know, but that is the regulation.

5           Where's the problem? Is the problem in the  
6 legislation? No. The problem is in the writing of the regulations  
7 which sits in DOT. And this where you can have an effect. And  
8 the Human Rights Commission absolutely can have an effect because  
9 you can affect the cabinet level or you can suggest or recommend  
10 to the cabinet level. The ex-secretary of Department of  
11 Transportation, Elizabeth Dole, did not see fit to change the  
12 regulations for reasons we don't have to go into. The new  
13 secretary, hopefully, can make that change. And hopefully, in  
14 your recommendations -- and you might have to have staff help  
15 on this, you might want to go to individuals who testified here  
16 today, you might want to go to Louie and the ladies that  
17 testified before us, and you might want to come to me for some  
18 real actual language and cases on how to structure a suggestion  
19 or recommendations. And I, for one, would be happy to do this.

20           Let me get into a couple of more items on the  
21 discrimination that is very important. First of all, before I  
22 get off of DOT .....

23           MR. SCHAPIRA: I notice you're paging through your  
24 notes there and it's obvious that you're being considerate of the  
25 fact that we're pressed for time. I want to mention, if I may,

1 that if you like, you can submit your comments that you have  
2 obviously written out and they can be made a part of the record,  
3 too. So, .....

4 MR. GALLELA: I appreciate that. I'm having a  
5 rough time understanding them myself. My letter was  
6 notifying me this meeting was mailed yesterday, and I got it in  
7 late mail this afternoon. And I thank the Post Office for that.  
8 If I were trying to cover a check with a deposit I know they  
9 would not be that expeditious. So, I just have rough notes  
10 down here today, but I just want to cover two more areas and  
11 I'm going to .....

12 MR. SCHAPIRA: Okay. But that offer to  
13 submit written testimony, as you heard earlier, that our  
14 testimony will remain open for a couple of weeks. And I sense  
15 that you have a lot to say that's right on.

16 MR. GALLELA: Okay. Let me give you two more.

17 State DOT interpretation of Federal DOT regs.  
18 The State DOT gives me the impression that they feel they must  
19 religiously accept what the Federal DOT says. I can't buy that.  
20 I can't buy that Senator Stevens would allow the Department of  
21 Transportation to take every highway dollar out of the  
22 State of Alaska if we, that is the State of Alaska, were to more  
23 liberally and more accurately interpret the regulations.

24 Additionally, the State of Alaska has its own  
25 money that it dispenses on all kinds of construction funds and

1 dispenses through DOT. There is no reason why we have to  
2 adhere to any kind of DOT Federal regulations in dispensing that  
3 money to minority firms or qualifying different types of firms  
4 as minority firms to receive state monies.

5 Now, let me get down to one case in point that's  
6 particularly bothersome to me. And I fought this battle with DOT  
7 for all kinds of firms. As I said, female, Hispanic, Black,  
8 female Black, Native, et cetera. When that particular  
9 bothers me is it seems that Federal DOT is wholesale writing  
10 off all of the Native firms in the state of Alaska.

11 And I'm going to read a quick letter to you  
12 and then I will give this portion to the Commission so you can  
13 peruse it at your leisure. This letter is from the Alaska  
14 Division of the Federal Highway Administration dated September  
15 16, '87 signed by Robert Rudy who's in Juneau, Alaska, but he's  
16 with the Federal Highways Department. It's addressed to Pat Borden  
17 Civil Rights Coordinator, Alaska DOT/PF Juneau. Dear  
18 Miss Borden: Your July 8 letter requested a determination  
19 of businesses owned by Native corporations are eligible for the  
20 DBE program under the 1987 Surface Transportation Act. Enclosed  
21 is a response from our headquarters and region office stating  
22 firms which are wholly owned subsidiaries of Native Corporations  
23 are not eligible.

24 That, to me, flies in the face of common logic.  
25 If Natives are, in fact, minorities then by definition, by

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1 jura (ph), by legislation they are minorities according to federal  
2 legislation. A business owned by them is a minority owned  
3 business. But, the rationale that they've come up with is a  
4 convoluted piece of logic utilizing SBA legislation and  
5 selectively using the Surface Transportation legislation to  
6 come up with an opinion that, I think, has been done with mirrors  
7 because they wanted what they -- what -- they wanted the end  
8 result. And I will give this to you so you can research  
9 the three letters and the copy of the legislation -- excuse me --  
10 regulations attached to see that the -- the findings that they  
11 have are really on thin ice, I think. And I think you can do  
12 something about it, at least suggestive-wise, at least  
13 recommendation-wise because they're clearly writing off our  
14 large minority in the state of Alaska and writing off a lot of  
15 businesses and causing a lot of my clients a lot of trouble.

16 I'm going to conclude by saying that I feel  
17 really strongly about economic rights as a part of civil rights  
18 because denial of economic rights means a denial of economic  
19 power. That helps ensure de facto denial of all other civil  
20 rights. And I'm going to leave my business card also with the  
21 Commission so that I make sure that I get invited hopefully in a  
22 very timely manner to the rest of the hearings that you may  
23 have in the future. And I'll include a couple of copies of the  
24 letter and the back-u information that I was referring to.

25 And I appreciate this time to talk with you and

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1 give you my comments. And I hope I've been brief enough.

2 MS. STURGULEWSKI: Francis, thank you very much.  
3 And I would be most grateful, and I'm sure the Commission would  
4 if you felt you could dash off a bit of a letter that could add  
5 some, perhaps some specifics. I think your testimony is right on.

6 Were all the comments you were making about  
7 the underlying law and the regulations dealing with the U.S.  
8 Department of Transportation and not the state regulations?

9 MR. GALLELA: Yes. The comments -- when ever I  
10 said regulations I was referring to Federal regulations .....

11 MS. STURGULEWSKI: Okay.

12 MR. GALLELA: And obviously our people use them,  
13 as I said, religiously.

14 MS. STURGULEWSKI: I had never really been aware  
15 until today with your comments and the comments of Ms. Bradley  
16 about the fact that here we have a program geared to keeping  
17 you small, weak and ineffective. I find that bizarre and feel I  
18 should have been on top of that and aware. I simply was not.

19 To say that you can't grow in the way corporations  
20 and businesses grow is insane.

21 MR. GALLELA: Well, it is insane, but .....

22 MS. STURGULEWSKI: Yeah. But .....

23 MR. GALLELA: ..... it's in regulation.

24 MS. STURGULEWSKI: ..... that's something, I think,  
25 that among the points that we pick out I think that we really

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1 ought to pick that one out as a major topic. And it's something  
2 that we can talk to our congressional delegation and others,  
3 you know, or individually we can certainly do that.

4 MR. SCHAPIRA: Mr. Chairman?

5 MR. ALEX: Yes.

6 MR. SCHAPIRA: On a national level would you  
7 support the recommendation that the Federal DOT require each  
8 state to promulgate regulations for the certification of minority  
9 businesses, and then the Federal DOT accepts those certifications?  
10 See, because I don't -- I take it you weren't here for the  
11 whole session, .....

12 MR. GALLELA: No.

13 MR. SCHAPIRA: ..... but earlier speakers talked  
14 about the problem that they could be certified under these set of  
15 regs, not certified under FAA regs, certified under BIA regs  
16 but not certified under DOT -- U.S. DOT regs. So, the suggestion  
17 has been for, you know, uniform certification procedures.

18 MR. GALLELA: I think that in answer to your  
19 question I think DOT should solicit comments from the states  
20 proposed regulations and use those to make a set of regulations  
21 that will apply for all federal agencies. I know that all federal  
22 agencies don't agree on certification. I'd like to see that  
23 standardized and I'd like to see it liberalized in light of what  
24 is the new economic reality of what businesses and minority  
25 business persons are doing.

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1           On a statewide basis it's unreal how you have to  
2 be certified by the Municipality, by DOT, and then maybe by the  
3 Department of Administration also. And I certainly would like to  
4 see the State get its act together and have a common certification  
5 process. And why the Municipality of Anchorage can't buy  
6 into it I have no idea.

7           MR. ALEX: Would you characterize the requirements  
8 for all the various certifications as, you know, may be a portion  
9 of active discrimination?

10          MR. GALLELA: I didn't understand that, Mr. Alex.

11          MR. ALEX: I said would you characterize the  
12 requirement for all the certification to be a form of  
13 discrimination?

14          MR. GALLELA: If I were a proponent or advocate of  
15 the various conspiracy theories running around I certainly would  
16 say yes to that because even if it weren't an active conspiracy  
17 like Senator Sturgulewski said, you know, it's insane the way  
18 the regs are written, you know, I think it's, at least, a de facto  
19 bias and a de facto discrimination. It absolutely is discrimination  
20 because it, in fact, holds you down or holds you back. It does  
21 not give you your economic rights that you should have. So,  
22 in answer to your question yes, de facto it's true.

23          MR. ALEX: Further questions?

24          MR. DULLES: Let me just ask you; the source of  
25 a lot of these problems enter in Federal regulations, not in the

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1 statute, but in the way that they are interpreted or in the  
2 regulatory process of the Federal Department of Transportation,  
3 is that right?

4 MR. GALLELA: I think that's true given my  
5 experience. And you know, I have to admit I'm not an attorney  
6 and I didn't read the regulations, but given my experience in  
7 working with DOT, et cetera, that's what I see. It's in the  
8 regulation process itself.

9 MR. DULLES: Okay. At what point can you  
10 delineate between just passing the buck to the federal government  
11 and putting some burden on the State of Alaska for addressing  
12 and dealing with the problem at the state level, you see, because  
13 you get into that, well, if the Feds don't clean their house,  
14 then there's nothing we can do. And given the realities of,  
15 you know, of circumstances at the federal level it's unlikely  
16 that there's going to be a timely resolution. Is there something  
17 that can be done at the state level, politically or otherwise, to  
18 really expedite the process and get something done that will have  
19 some meaningful and positive impact on the state?

20 MR. GALLELA: I understand the question. It's a  
21 very big dilemma, but being an extremely independent Alaskan  
22 and entrepreneur myself my stand is, and I've tried to talk with  
23 State DOT about this, is we should not be the tail that the dog  
24 in Washington, D.C. is wagging. What we should be is standing  
25 on our own two feet saying this is how we interpret the

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1 regulations. These are our particular circumstances in Alaska.  
2 And these firms are, in fact, minority firms, and this is the way  
3 we see it. And instead of reaching back to D.C. for  
4 interpretations, judgments, rulings, advice, et cetera as DOT  
5 always does. I think DOT/PF here in the state has to take a  
6 much stronger stance. And I think it takes the Governor to put  
7 some backbone into it and say we don't have to go back for  
8 everything, and we don't need readings and rulings on every new  
9 case that we have, you know, you are the interpreters of this  
10 and you are making policy for this state.

11 MR. ALEX: Further questions? Yes.

12 MS. HURLEY: Mr. Chairman, that's exactly why  
13 we fought for statehood and that's what makes me angry that we  
14 always are still going back to the Feds instead of saying, hey,  
15 we are a state and we should stand up to you. We're not --  
16 we're right behind, Mr. -- I think we should do it. And I'm  
17 going to do my little bit from the Human Rights Commission to  
18 start .....

19 MR. GALLELA: Thank you.

20 MR. ALEX: Thank you. I had a question for  
21 Arlene while Winston is coming up. One of the things that you  
22 said that was a problem was that as a subcontractor you didn't  
23 have a contract with the owner. Is that what something that you  
24 said?

25 MS. STURGULEWSKI: That's correct.

1 MR. ALEX: Just a little suggestion. And I may be  
2 practicing law without a license, but couldn't you, as a  
3 subcontractor and your subcontractors in your contract with the  
4 prime contractor put in a little clause that says this is, in  
5 fact, a contract with the owner?

6 MS. STURGULEWSKI: You're kind of like asking the  
7 child to go to the teacher and correct the teacher. The problem  
8 gets to be as I said, when you're in a sub level like I  
9 said the general is -- you're at his discretion whether he uses  
10 you or not. It can be a matter of economics for him, it can be a  
11 matter of a goal setting or whatever else. The problem gets  
12 to be there is I have been totally unsuccessful in changing any  
13 portion of the AGC general contract to a subcontractors in 10  
14 years. If I were a general I would not change it either. I would  
15 leave the retention in. I would leave all of it in. But I am  
16 at his, more or less, mercy. I mean I have -- if I want to work  
17 I have no other work except through them. I -- they, you  
18 know .....

19 MR. ALEX: The reason for the question because  
20 I -- you know -- I thought that might be the answer. And it  
21 would seem like that -- one of the possible solutions may  
22 be a state regulation that says, in fact, you know, a subcontract  
23 with a general is a contract with the owners, so, you know .....

24 MS. STURGULEWSKI: What that does do is it allows  
25 you to be able to sell your receivable or -- you know, at this

1 point in time you are -- you don't have anything to sell to hock  
2 to be able to support the project which you want to.

3 MR. ALEX: Okay. Winston, sorry about that. For  
4 the record you can .....

5 MR. HENDERSON: Okay. Chairman Alex, Commission,  
6 my name is Winston Henderson. I'm speaking today as a small  
7 business owner and a concerned citizen. I know we're short on  
8 time so I'll be extremely brief. There are a couple of  
9 observations that I'd like to share with you.

10 One, primarily, is a comment on the perception  
11 in the MBE community in general regarding DOT. And that is as  
12 Mr. Dulles referred to that there's no state initiative at all  
13 in wanting to do anything beyond what is minimally required of  
14 them in terms of meeting any MBE requirements. And that  
15 the State -- DOT, in particular, is being forced kicking and  
16 screaming to meet the very minimal requirements, and that they,  
17 in fact, bend over backwards to complicate the entire picture and  
18 make it as difficult as possible. And I would also hope to see  
19 stronger leadership from the Governor's office and the Legislature,  
20 and hopefully, create better climate and passing that climate  
21 down to DOT to improve their performance.

22 I'm somewhat disappointed today that DOT was not  
23 required to produce more hard statistics and evidence and  
24 testimony regarding their past performance over the last two or  
25 three years, and to talk in more detail on how they intended to

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1 correct that dismal record. I'm encouraged to see Bob Poe come  
2 on board at DOT. We know him to be a sincere and earnest  
3 individual, and hope that he will bring about some change there.  
4 But, we would also like to see Bob helped along by a more forceful  
5 presence from the federal government, from FHA in terms of  
6 overseeing how their funds, in fact, are spent here in the state.  
7 Also, hopefully, we would like to see a stronger presence coming  
8 from the Legislature.

9           There were concerns expressed regarding  
10 certification problems. And we know those exist, but I think that  
11 that is getting a disproportionate amount of attention today.  
12 That if, in fact, you focus on making work available to MBE's that  
13 the certification problems tend to solve themselves. If, in fact,  
14 you're able to, in fact, get 10 percent of the federal dollars  
15 into MBE hands out into the contracting community, then suddenly  
16 you're expanding the whole realm of opportunity that's available  
17 and more and more people are able to clearly become certified.

18           There are already a large number of minority and  
19 women owned businesses that are clearly certifiable, that are  
20 clearly capable of owning, operating and managing businesses.  
21 So, aside from those that you have questions regarding  
22 certification it's a much more important issue to get work to  
23 those that are able to function now and to keep those businesses  
24 viable and alive. If, in fact, the State wanted to be more  
25 helpful in those areas we would want to see more programs that

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1 would assist new business owners with estimating, bidding  
2 procedures, bonding, and financial assistance.

3           Clearly it's been demonstrated that there are  
4 any number of minority individuals who are capable of performing  
5 the work on these contracts. Certainly there have been many  
6 instances where minority businesses who have been unable to  
7 obtain work as prime contractors have ended up doing those very  
8 jobs as subcontractors and making nothing on the project. And  
9 certainly that's something that needs to be addressed. If we can  
10 also see some teeth put into the MBE program in terms of  
11 enforcement of the regulations that exist now, again, the speaker  
12 on subcontracting talked about a lot of the problems that small  
13 businesses and minority businesses face once they get a contract.  
14 One, they may not receive the amount of a contract dollar amount  
15 that was initially reported, or payment is often several weeks,  
16 if not months behind. Also, there's a problem with being able  
17 to get on a job and perform efficiently.

18           If, as a painting contractor, you get a project  
19 and you need to paint 10,000 square feet a day to be profitable,  
20 and yet the prime contractor is piece mealing this out to you at  
21 1,000 square feet a day so that you're setting up for half days  
22 and mobilizing and demobilizing and your project ends up  
23 getting stretched out two or three times your length, of  
24 course, you're not going to succeed. Of course, you can't make  
25 any money. And these are problems that are not being addressed.

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1                   Finally, again, we would want to see much more  
2 involvement from FHA on overseeing how their funds are spent here  
3 in the state. It would be our preference to see the Legislature  
4 and the Governor's office take a very strong and clear position  
5 and not force the federal government to have to look over their  
6 shoulders. We're not at all optimistic that that will happen  
7 given the recent and longer track record, but that would certainly  
8 be ideal. That concludes my comments.

9                   MR. ALEX: Questions?

10                  MS. STURGULEWSKI: Mr. Chairman?

11                  MR. ALEX: Yes.

12                  MS. STURGULEWSKI: I'd like to kind of explore  
13 a little bit the legislative role that you might see. I can  
14 remember a lot of debate when the old office was moved and it's  
15 kind of been moved around with different administrations and sort  
16 of ends up the same. And it's been difficult to get things  
17 through if there's not been a strong commitment on the part of  
18 the administration to it. And I just wondered what -- the  
19 problems with DOT, I've been in the Legislature since -- started  
20 in '79. And we started hammering on DOT, and Bob Poe referred  
21 to the horrible, horrible problems. Those have been evident  
22 for all the years of the tremendous growth and -- and working as  
23 the Human Rights Commission did to get a settlement. But, to  
24 try to get -- there's been oversight and threats and anger and  
25 all the rest of it, and I've been part of that. And it's always

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1 the same. So, I'm not sure, you know, I'd like to respond,  
2 but what are those things that the Legislature can be about? I'd  
3 love to have those specifics.

4 MR. HENDERSON: Well, I certainly find it  
5 frustrating coming from your position, certainly if .....

6 MS. STURGULEWSKI: Yeah.

7 MR. HENDERSON: ..... you as a Legislator feel  
8 unable to wield any pressure on DOT what .....

9 MS. STURGULEWSKI: Oh, Lord. We've tried.

10 MR. HENDERSON: ..... does that say to the citizens  
11 out here?

12 MS. STURGULEWSKI: Yeah. Yeah. I was just  
13 wondering, you know, Mr. Henderson, if there were specifics that  
14 you saw that we could do because there has been a real effort  
15 as late as, you know, '85 -'86 with ongoing legislative audit  
16 reports that people are shocked, and you call in the Commissioner,  
17 and it stays the same.

18 MR. HENDERSON: I think one specific thing that is  
19 possible from both the Legislature and FHA, and it would probably  
20 be painful for the State, is to send down a strong edict that if,  
21 in fact, you're not meeting these set goals, then we're going  
22 to look at holding funding on future projects or projects in  
23 works. And I think you would be pleasantly surprised were that  
24 to happen how quickly the problems would clear up.

25 MS. STURGULEWSKI: I don't want to get into a  
debate, I appreciate that, but when they're so fouled up what

1 you're doing is further delay in meeting requirements of the  
2 federal government to get the funding, and you hurt -- the people  
3 get hurt by the programs .....

4 MR. HENDERSON: I agree. It would be very painful,  
5 but I also strongly stress that that is one way to get them  
6 really moving.

7 MR. SCHAPIRA: You strongly favor the use of  
8 quotas, is that correct?

9 MR. HENDERSON: I have mixed feelings on quotas.  
10 However, I look at the establishment of quotas for Alaska hire.  
11 There are quotas for Alaska products. So, I guess it depends on  
12 whose quota it is, and that kind of determines whether it's  
13 seen in a negative light. I think that quotas are necessary  
14 initially to open markets up and to provide opportunities. I  
15 don't think that they have to be an unending situation if, in  
16 fact, the State or whomever is running the program goes into it  
17 with clear, concise ideas on what they want to accomplish and  
18 how they intend to accomplish these goals so that it's not just  
19 an open ended program.

20 Yes, I do favor quotas in this instance.

21 MR. SCHAPIRA: And I take it that your endorsement  
22 of quotas is contingent upon the notion that they are temporary  
23 measures aimed at opening markets, that at the outset they are  
24 limited in duration, and that they have escape clauses for  
25 instances where through no one's fault, through no operation of

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1 prejudice, through no mendacity, they can't be met, is that  
2 correct?

3 MR. HENDERSON: Certainly. And I would add to  
4 that list that they are being managed in a fashion meant to assist  
5 those taking advantage of the quotas to succeed ultimately, and  
6 to graduate away from the need of them.

7 MR. ALEX: In other words, would you say that the  
8 intent of the MBEWBE laws are not being met?

9 MR. HENDERSON: Oh, I think that's very clear just  
10 looking at the record, that's very evident.

11 MR. DULLES: Well, let me ask this question because  
12 the federal highway people and DOT people when I asked them if  
13 they're meeting their goal, well, the 10 percent goal is being  
14 exceeded, that it's 11.7 percent of all these federal contracts  
15 are going to MBE's. And for women, I think, the goal is 2 percent,  
16 and it's 2.9 percent that's actually being awarded though. The  
17 record that they provide indicates that they're exceeding their  
18 goals. Based on everything we've heard today how -- how are  
19 they able to establish such an excellent track record  
20 (indiscernible - interrupted) .....

21 MR. HENDERSON: I have questions on their record  
22 keeping. And I would certainly want to see their documentation  
23 very closely. I'd like to examine the documentation very closely.

24 MR. DULLES: Well, there needs to be  
25 accountability.

MR. HENDERSON: Certainly.

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1 MR. DULLES: So, if they're saying it's 11.7  
2 percent, then they ought to be able to demonstrate who's getting  
3 the contracts and how it's working so that they're able to succeed  
4 in meeting their goal.

5 MR. ALEX: I was just thinking an agency that  
6 doesn't know whether it has three billion dollars or not hardly  
7 can be trusted to go and give an accurate figure with respect to  
8 goals.

9 MR. HENDERSON: I think, again, what we're  
10 really talking about here is attitude, and whether or not there's  
11 a sincere desire to see these programs succeed. I think the best  
12 measure on the success of the program would be that it ultimately  
13 would not be needed again. And I don't see that as being any  
14 where near a goal that this administration has.

15 MR. GUITIERREZ: Mr. Chairman?

16 MR. ALEX: Yes.

17 MR. GUITIERREZ: I just have a comment for you,  
18 John. It appears like, you know, DOT does has some contracts out  
19 in the Bush. They're primarily Native villages. They do  
20 contract out clearing airports and roads. And it may be that  
21 those minority businesses out there, those individuals, although  
22 they're not businesses they're individuals, obscure (ph) the  
23 statistics because, you see, in terms of a construction project  
24 in town it would have to be very clearly laid out prior to the  
25 bidding process, it seems to me .....

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1 MR. HENDERSON: I have another concern along  
2 those same lines. I believe that Native firms should certainly  
3 receive all the benefits of an MBE program. However, I have  
4 concerns that a multi-million dollar Native corporation who  
5 forms a joint venture, 51 percent joint venture with a non-Native  
6 firm, say a concrete company, and that concrete company, in  
7 turn, as a minority business does three million dollars  
8 worth of business on a project, and suddenly, you now have  
9 inflated MBE numbers when, in fact, that concrete firm may not  
10 be operated by or may not employ a single Native or other  
11 minority. And I have real problems with that type of situation.

12 MR. SCHAPIRA: Well, wouldn't the award of that  
13 contract enure to the benefit of a large number of individuals  
14 of minority status, namely the shareholders in that minority  
15 corporation?

16 MR. HENDERSON: I wouldn't say that that is not  
17 the case, but I believe in defining minority businesses. Typically  
18 there's a definition there about owned and operated. And I  
19 think that there should be some participation from that minority  
20 owner rather than to form a joint venture without having any  
21 participation at all.

22 MR. SCHAPIRA: Well, in the example that you  
23 gave the wholly owned subsidiary of a Native corporation that  
24 co-ventures with a .....

25 MR. HENDERSON: This was not a wholly owned

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1 situation, but a 51 percent joint venture .....

2 MR. SCHAPIRA: Okay. Better yet then.

3 MR. HENDERSON: There's a distinction there.

4 MR. SCHAPIRA: In that case isn't it possible  
5 that the revenue from that and the income that that contract  
6 generates in that co-venture or joint venture generates will be  
7 used to -- for educational purposes, illimosinary (ph) purposes  
8 or whatever to the benefit of minority members to help integrate  
9 them into the business community?

10 MR. HENDERSON: Anything is possible, but my  
11 concern rests primarily with minority business development. If  
12 we're talking about helping businesses to develop, I think there  
13 may be times when that concern takes precedent over stockholders  
14 or shareholders of a corporation; however, I think we're looking --  
15 possibly looking at a different situation if you have a fully  
16 owned subsidiary.

17 MR. SCHAPIRA: And elaborate on that if you would  
18 kindly.

19 MR. HENDERSON: I think at that point perhaps  
20 the corporation begins to exercise much more control, much more  
21 legitimate control and participation with the subsidiary than  
22 exists in a joint venture situation where it may not be a true  
23 minority business, but merely a joining for convenience sake  
24 to exploit the MBE laws (ph).

25 MR. DULLES: A fronting, so to speak.

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1 MR. HENDERSON: That's true.

2 MR. DULLES: Is what you seem to be describing.

3 MS. STURGULEWSKI: A fronting is what it was. A  
4 fronting (ph).

5 MR. ALEX: I was just thinking back, I was just  
6 going to say before you leave one of the things, you know, the  
7 record will be open for a couple of weeks. So, if you have people  
8 that want to submit something for the record we could send it off  
9 to John down in California.

10 MS. BRADLEY: Yes, I was thinking as I was sitting  
11 here I was thinking about one of, I think, what is a success  
12 story in state government. And that would be the contracts  
13 through the Alaska State Power Authority. And I will be in  
14 touch with their lawyer who used to be our lawyer at the Human  
15 Rights Commission to see if she can gather some information,  
16 and talk about what strategies they used. They were operating  
17 from an administrative order. And they had in place MBE. And  
18 they had requirements that seemed to work well for them. And  
19 I think that would be a model that, perhaps, we could look at.

20 The other piece of information I was thinking of  
21 submitting to you was a memorandum of advice from Sara  
22 Cavisharro (ph) concerning MBE and the legal requirements to --  
23 in a case where there would be litigation against a program.  
24 So, I'll try to gather some information for your use and  
25 information.

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1 MR. HENDERSON: Thanks very much.

2 MR. ALEX: I want to just add some comment with  
3 respect to this DBE thing. I, you know, hear MBE, WE, and DBE, and  
4 my interpretation of that and without having looked at the  
5 regulation, it would appear DBE stands for disadvantage. And  
6 I think if you're talking about a multi-million subsidiary  
7 you're hardly disadvantaged.

8 MR. HENDERSON: I would agree with you 100  
9 percent.

10 MR. ALEX: Yeah. I think that there's a  
11 distinction there. And the reason DBE designation, at least in  
12 my own view, is that, you know, here's a -- you know, here's a  
13 regulation that is intended to get disadvantaged people and  
14 businesses into the business world. And it isn't intended for  
15 multi-million dollar subsidiaries which cannot be classed as  
16 disadvantaged.

17 MR. SCHAPIRA: Isn't it true, Mr. Chairman, that  
18 they can be classified as disadvantaged in the sense that they  
19 haven't had access to courses in management, and that they have  
20 to rely on outside consultants heavily, and they don't have  
21 established contacts in the old boy network (ph) because of past  
22 discriminatory acts? Money is a great thing, but it doesn't  
23 compensate for everything else.

24 MR. HENDERSON: I think those are real concerns,  
25 but in the real world of how MBE programs are handled now you

1 see the inflated numbers that get generated by large multi-million  
2 dollar corporations doing multi-million dollar projects. In fact,  
3 penalizing legitimate small minority businesses. If, in fact,  
4 Department of Transportation can say we've exceeded our goal  
5 because we had a million dollars worth of concrete work performed  
6 by a large firm, then why bother to hire all of these other small  
7 firms, which, in fact, are owner-operated and are attempting to  
8 function?

9 Certainly, I would not like to see .....

10 MR. SCHAPIRA: That's a very well taken point.

11 MR. HENDERSON: ..... any business penalized, but  
12 the way that the numbers are going to be manipulated, and given  
13 the attitude of those who are operating the MBE program it makes  
14 it difficult.

15 MR. ALEX: Further questions? Any comments?

16 MR. DULLES: Is there an association or an  
17 organization of MBE's in this state?

18 MR. HENDERSON: At one time there was an association  
19 of minority contractors. I'm sure it's still in existence,  
20 although the number of minority contractors is shrinking rapidly  
21 just as the number of contractors in general are shrinking  
22 rapidly, much more so because of, of course, the MBE situation.

23 MR. DULLES: It just appears to me that maybe,  
24 you know, you could exercise a little bit more leverage if you  
25 were somehow organized into an interest group, if you know

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1 what I'm saying. I mean the AGC is over here at the Convention  
2 Center and they're influencing a lot of things. They're state  
3 people up here meeting with them all the time. And obviously,  
4 minority businesses may not have that kind of clout 'cause they  
5 don't have that kind of money, but at least through an  
6 organization with some agendas .....

7 MR. HENDERSON: You're correct .....

8 MR. DULLES: ..... (indiscernible - interrupted)  
9 a political process that you could avail yourselves of.

10 MR. HENDERSON: You're correct. Minority  
11 businesses do not have that type of economic power now. And  
12 as Mr. Overstreet stated earlier, a suit was brought against  
13 DOT some years ago to attempt to bring more pressure to bear.  
14 And of course, that has not resulted in any significant  
15 improvement.

16 MR. ALEX: One of the things that I said earlier  
17 was monitoring, you know, monitoring was part of the process of  
18 getting relief. I assume that your group is monitoring DOT,  
19 you know, on this -- on these matters?

20 MR. HENDERSON: Unofficially, yes, we do. We try to get  
21 access to their numbers on MBE usage, which have not been  
22 typically available or very well compiled. We also informally try  
23 to network with other minority businesses to be aware of any  
24 opportunities that are coming up, or if any other businesses are  
25 getting contracts on any state work.

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1 MR. ALEX: Mitch.

2 MR. SCHAPIRA: Would it be fair to say that  
3 following up on Chairman Alex's comments and your own thoughts on  
4 the thing, that one recommendation that you would make if the  
5 Secretary of Transportation were to consult you for your  
6 recommendation would be that better reporting techniques be  
7 developed to look behind just the label minority business,  
8 and to look at and -- and the creation of different  
9 classifications, developing minority businesses, merging  
10 minority businesses, and et cetera?

11 MR. HENDERSON: I think that would be helpful.  
12 It would probably be far more complicated at this stage of  
13 development than would be practical. I could see that being  
14 the next phase of MBE usage as we got more businesses involved  
15 in the MBE program and it began to run a lot smoother. But,  
16 at this point we're at square one.

17 MR. ALEX: Thank you. Further questions?  
18 Comments?

19 MR. SCHAPIRA: Thanks a lot. We appreciate  
20 your .....

21 MR. HENDERSON: Thank you.

22 MR. ALEX: I'm going to make a closing statement  
23 here. The focus of today's proceeding has been the civil  
24 rights issues relating to state and municipal efforts designed  
25 to promote participation of minority and women's business

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1 enterprises in governmental contracting. As a first step in  
2 the Advisory Committee study today we have heard from public  
3 and private groups, and organizations as well as individuals  
4 knowledgeable of the study area. We will review the transcript  
5 of the meeting and talk with additional individuals and groups,  
6 and will submit our findings and recommendations to the  
7 Commission in Washington, D.C., and to our state leaders for  
8 their consideration.

9 The Advisory Committee would like to thank  
10 all those who have participated here.

11 MR. SCHAPIRA: Chairman Alex, I'd like to address  
12 the next step. There was some discussion earlier about what  
13 is our timetable. And I think Mr. Dulles was correct in saying  
14 that this problem probably won't be solved by the springtime.  
15 But, my concern is that another problem may come up between now  
16 and the springtime that will demand our attention at that time.

17 And I'd like to achieve some closure on this.  
18 Therefore, what I would propose along the lines that we  
19 discussed before lunch is that a report be circulated, a draft  
20 report, and that those people who feel that they could sign on  
21 to the draft report do so, and those people who have dissenting  
22 comments or separate comments if they would like to add,  
23 prepare those, and then after that draft is circulated and  
24 returned to Mr. Dulles his staff can prepare a final report, and  
25 that thereafter it could be forwarded up to the Commission.

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1 And I don't .....

2 MR. ALEX: Procedurally, I don't -- I think that's  
3 a very good plan of action.

4 MS. STURGULEWSKI: I'd second that if it's  
5 appropriate.

6 MR. ALEX: Okay. Any objections?

7 MS. STURGULEWSKI: Mr. Chairman?

8 MR. ALEX: Yes.

9 MS. STURGULEWSKI: Before that I would hope  
10 that when this comes to us that we would be asked by -- so that  
11 we could all have our memories jogged and so on, to have some  
12 suggestions from the committee members as to who they would like  
13 the U.S. Commission on Civil Rights to distribute the report to.  
14 In other words, if we feel it particularly goes to the Department  
15 of Transportation, Department of Commerce, Congressional --  
16 certain Congressional leaders, certain state officials, I think  
17 that would be very useful to Mr. Dulles in, perhaps, drafting a  
18 cover letter to the Commission.

19 MR. SCHAPIRA: That would be part of our  
20 recommendations to the U.S. Commission, I agree.

21 MS. STURGULEWSKI: Does that sound .....

22 Mr. ALEX: Okay.

23 MR. DULLES: I have no problems with the process.  
24 What you're not going to like is the timetable.

25 MS. STURGULEWSKI: Of course not.

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1 MR. DULLES: It's not going to be expeditious.  
2 And I would be less than fair and candid if I told you otherwise.

3 MR. ALEX: Okay. Do we have .....

4 MR. DULLES: We have forms going back to at least  
5 last June, which we have transcripts on, which reports have not  
6 yet been developed on. And that is we simply, absolutely do not  
7 have the research writers, we don't have editors, we don't even  
8 have at this point a secretary in our office. So, I'm just  
9 being very, very upfront up with you.

10 MS. STURGULEWSKI: Sure.

11 MR. DULLES: The process I have no problems  
12 with, but unless somehow we can prevail on someone somewhere to  
13 get additional resources to support these Advisory Committee  
14 functions you're going to find that the process is not going to  
15 be timely. And that's unfortunate, but it's -- at least right  
16 now that's the reality. And I don't know what -- you know --  
17 what we can do about it.

18 MS. STURGULEWSKI: What's the budget for the next  
19 year, Mr. Dulles.

20 MR. DULLES: We don't -- well, we're under a  
21 continuing resolution, .....

22 MS. STURGULEWSKI: All right.

23 MR. DULLES: ..... which runs out next week,  
24 November the 10th. So, we'll either go out of business or we  
25 will receive some kind of a negotiated settlement between the

1 House and the Senate. And right now the speculation is that it  
2 will be 5.95 million, which will represent an additional cut on  
3 top of the 40 percent cut that we took last year. The Commission  
4 dropped from 12 -- from a possibly 12 million to 7.6 million. We  
5 closed seven of our 10 regional offices. And at that 7.6 million  
6 that's what we've been operating on. And if we get funded for  
7 this coming year, for the current fiscal year, the likelihood  
8 is that it will not -- well, I can almost assure you it will  
9 not be above 5.95 million dollars, which is an additional  
10 cut of -- I don't have the percentage right at hand, but .....

11 MR. SCHAPIRA: I think you can be assured  
12 you'd get the bill from the Court Reporter before the 10th.

13 MR. ALEX: Is there any way no -- .....

14 (Simultaneous conversation)

15 MR. ALEX: I was going to say the motion had  
16 passed, you know, on the process.

17 MR. DULLES: On the process I have, you know,  
18 but at least I'm on record here in terms of what our situation  
19 is .....

20 MR. ALEX: Yes.

21 MR. DULLES: ..... plus, Gil wants to write  
22 another report.

23 MR. ALEX: Okay.

24 MR. GUITIERREZ: I don't have any problem  
25 tentatively doing that. I mean I'm tentatively saying I can do

1 that. I can do that, you know, on my own time. I don't have any  
2 problem with that. What we'll do is let's wait until the  
3 transcripts come back. We'll talk to each other through Dan or  
4 we can each other. If we can kind of just put it together for me,  
5 then let me review it and make a decision. I don't see a problem.

6 MR. DULLES: There might be a way creative .....

7 MR. GUITIERREZ: I think it's possible.

8 MR. DULLES: ..... way of doing it more quickly.

9 MS. STURGULEWSKI: Sure. Sure.

10 MR. DULLES: But it's going to depend on help  
11 from you. I'll be -- you know -- I've just .....

12 MS. STURGULEWSKI: Yeah.

13 MR. DULLES: ..... got to be honest .....

14 MS. STURGULEWSKI: If we've got the deal where --  
15 I mean among those groups .....

16 MR. DULLES: If everybody has a transcript .....

17 MS. STURGULEWSKI: Yeah.

18 MR. DULLES: ..... and we can get some comments  
19 and some notes, and maybe with some help from one or two Advisory  
20 Committees .....

21 MS. STURGULEWSKI: Yes.

22 MR. DULLES: ..... put something together, maybe  
23 we can short cut it, but .....

24 MR. SCHAPIRA: And I suspect strongly that Janet  
25 will be very helpful, too, and will make her services -- she's

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1 a very helpful person generally.

2 MR. GUITIERREZ: That may be very -- that may be  
3 a good way of looking at it, because they certainly do have .....

4 MS. STURGULEWSKI: We will not die and go away .....

5 MR. GUITIERREZ: ..... typing support. Right.

6 MS. STURGULEWSKI: ..... today.

7 MR. ALEX: Do we have any other closing statements  
8 before we adjourn?

9 MR. DULLES: I want to thank the members of the  
10 Committee. You're all volunteers. And it's been a long day. I  
11 think it's been a very, very good meeting, but -- we certainly  
12 commend you because this is the really the part of the Commission,  
13 I think, that is right now the most valued by the Congress is  
14 the State Advisory Committee network.

15 MR. SCHAPIRA: At these rates how could they  
16 complain?

17 MR. DULLES: That's -- I was going to conclude by  
18 saying they've got a pretty good deal. Don't submit a bill  
19 for your consultant services. But, I do appreciate very, very  
20 much your interest and your service on the Committee.

21 MR. ALEX: Any further comments? Okay. This  
22 meeting is adjourned.

23 (END OF PROCEEDINGS)

24 \* \* \* \* \*

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