ACEC New York is the premier association representing the consulting engineering profession in New York State with over 270 member firms. Our membership reflects the composition of the State’s consulting engineering community and the diversity therein. ACEC New York Member firms practice all professional engineering disciplines in all regions of the state. Since the inception of the program, ACEC New York has worked to support the State’s MWBE program and has made recommendations on how to improve it.

The MWBE program’s intent is implemented by Executive Law section 313, which sets specific numerical goals for State agencies in procuring a host of goods and services, including engineering services. These goal numbers are at the heart of the State’s MWBE program and are derived from a disparity study. The disparity study is intended to, among other things, “determine whether there is a disparity between the number of qualified minority- and women-owned businesses ready, willing and able to perform state contracts for commodities, services and construction, and the number of such contractors actually engaged to perform such contracts, and to determine what changes, if any, should be made to state policies affecting minority- and women-owned business enterprises.”

The most recent disparity study, which was to be delivered to the Governor and Legislature on August 15, 2016 (and was made available in July 2017), reportedly identifies disparities in the state procurement system.

In anticipation of this updated disparity study, ACEC New York undertook a close examination of its membership, as well as the consulting engineering industry in the State. Because engineering is a licensed profession, it is regulated by the New York State Department of Education’s Office of the Professions.

No engineer can practice in New York without a license, and with few exceptions, no firm can practice without a Certificate of Authorization granted by the State Department of Education. Accordingly, the data on engineers and other licensed professionals is accurate and completely available in New York as compared to non-regulated industries.

Given that accurate and complete data is so readily available, we are surprised at the difference in numbers between that which was provided via the State education website and the Mason Tillman study numbers. Further, within that data, the breakdown of minority-owned firms also has little resemblance to what is reflected in our membership and the State Education Department’s data.
ACEC New York provided this information, as well as links to supporting data, to Mason Tillman Associates at the start of this process. In addition to providing this information, ACEC New York (both its Albany and New York City offices) participated in anecdotal data collection sessions. The 2016 study suggests a much higher MWBE firm capacity than is supported by ACEC New York analysis and State Education Department records.

These differences are all the more confounding in light of the fact that throughout the process, ACEC New York attempted to initiate dialogue with Mason Tillman and Empire State Development regarding the consulting engineering industry and the data being used to develop the study. Despite this repeated outreach, we did not receive any substantive replies to these requests, and to date, the source of the data about establishing the conclusions of the study remains unknown.

The lack of transparency regarding the data underpinning the study, as well as the difference between the conclusions of ACEC New York's report, which used 100% of the data available and the conclusions of the state's report provided by Mason Tillman (2016 disparity study), invites questions about the structure, design and methodology of the Mason Tillman study.

If this program is to be successful, the underlying data must be accurate, and the program's regulations need to address the unique needs of both the MWBE community and the typically larger non-MWBE firms that often employ smaller firms as subcontractors. One of the best practices identified in ACEC New York's MWBE white paper (attached) is having an overall program goal with specific project goals that are market-driven. Further, use compliance as an evaluative, not punitive, tool. Bringing lawyers and additional appeals into the process will delay work, increase costs and encourage the use of MWBE firms for narrowly tailored work solely to meet goals while providing limited opportunities for growth. Finally, program compliance should be consistent across all agencies. Having different requirements, waiver procedures or processes, and reporting procedures makes all firms susceptible to unintended oversights. A single process will also be more efficient for public owners.

As noted previously, ACEC New York has worked to support this program as well as providing other support and encouragement to bring more women and minorities into the engineering profession. We look forward to working with all stakeholders to bring about a fair and transparent program.