

Panel # 1 – LEGAL LANDSCAPE

Disclaimer to reader: This document contains the comments provided by participants at the Minority Business Development Agency Summit held on July 6 – 7, 2009 at the Hyatt Regency Washington on Capitol Hill. Participants provided input on strategy, enforcement mechanisms, and legislation that may assist minority entrepreneurs in the future. Note-takers memorialized the comments made at each of the tables. These materials are being provided in raw data format and are for informational purposes only. The views expressed herein are those of the participants and do not necessarily reflect those of MBDA or of the U.S. Department of Commerce.

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Panel Name: *LEGAL LANDSCAPE*

Table Number: 1

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- * Develop a better uniform set of criteria to set goals for state DOT DBE goals.**
- * Improve enforcement and sanctions for agencies not meeting goals.**
- * More visible senior executive commitment to MBE inclusion**
- * Elevate the authority of OSDBUs to sanction**

b. At a State/Local Level:

- * Use more current data to set goals. Some states are using census data that is twenty years old.**
- * Ensure states allow and track second tier spend**

c. In partnership with the Private Sector:

- * Require prime contractors to report on second tier spend**
- * Share best practices with the public sector**

d. In partnership with Academia:

- * Conduct research to identify the artificial barriers to entry: bonding, and bidding requirements.**

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 2

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- ensure fed/state supports the fight against discrimination
- Congress needs documentation to prove discrimination is still a problem (i.e. disparity studies, etc.)
- identify discriminatory actions on the system (i.e. slow pay as it affects small business which tend to be MBEs)
- improve contracting/payment processes
- availability measure reports only consider the bidding companies, the court didn't say that, they should measure discrimination as MBEs are not bidding as they don't see results and are believers that they won't get contracts (disparity studies)
- enforce the current law (MBE goals), i.e. accountability (replace people), on the side of contractors, they should be punished if they don't reach goals i.e. not being allowed to bid for "X" number of years
- discrimination goes unreported
- establish definition of what is considered discrimination, sometimes regulations are not perceived as discrimination practices, give something back to people who present their cases
- who collects the information about discrimination practices? Congress, Justice representatives?

b. At a State/Local Level:

c. In partnership with the Private Sector:

- consolidate MBE advocate organizations to reach size and increase impact, supporting legislature changes (\$)
- NMSDC could be this advocate or collect contributions for MBEs legal representations
- department of commerce should be the one facilitating a meeting of MBE advocate organizations, in order to avoid confrontation among each organizations' agendas

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

- NMSDC has 5% of national MBEs registered
- SBA stopping SDB certifications is making harder to track and advocate for MBEs' participation
- review size restrictions for certifications

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Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- "CEO of the government" (President of the United States) needs to make a statement of the need and the administration's support and commitment to minority business development.
- Funding of disparity studies across government.
- Feds need to work with the state levels to monitor how contracts are being distributed and held accountable to give contracts to minority business.
- Do better at defining the "problem" or "challenge."

b. At a State/Local Level:

- Work towards the education of all elected officials on minority business issues (all levels of government).
- The states need to be legislated to "care." Reporting to the fed level - accountabilities.
- Get the states to do what they are already asked to do...monitoring and accountability.
- What is it that is being measured at the local level?
- States need to provide a record of who received contracts at the state level specifically for the stimulus.
- Reduce the cost for both corporations and minority businesses by reducing the # of certifications - reduces cost to government to CCR.
- Unbundle contracts at the state level. It will funnel more opportunities for minority businesses.

c. In partnership with the Private Sector:

d. In partnership with Academia:

- Partnership with Kellogg and Tuck or create other scholarships/programs to prepare minority entrepreneurs.

e. In partnership with Community-Based Organizations:

f. Any other comments:

- Change in paradigm - the problem is a capacity issue. Minority businesses are only prepared to do what they are actually prepared to do.
- Promote minority businesses - one size does not fit all.
- Larger mentoring programs, for example larger MBE's - mentor the smaller ones.

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Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

general discussion:

- **most important the enforcement of existing laws, creating new laws is a long draw out process, there are already laws in existence.**
- **there is not enforcement, need recording mechanisms, no way for us on the ground to record the clear violations of these problems**
- **recording what actually happens at the ground level, a methodology to record these problems**
- **enforcing the laws**
- **create justifications for the laws example: bundling of government contracts,**
- **it is not realistic to put together a legal team to attack a problem at the individual level, need a recording and enforcing agency**
- **those that are qualified are not bidding on the programs, need to count the people who do not bid, like unemployment**
- **are you going to bid, if you are not, why not? question on the application, to get better records of available firms**
- **cash flow issue, don't have the extra money to fight the "low head" battle**
- **a separate payment chain for small businesses, example department of Transportation: DOT has a separate payment stream, DOT provides the direct loan to the bidder**
- **other agencies can model that, an agency can suggest if there are solutions to these problems**
- **evaluation of federal government employees: that those who run the procurement programs look at the level of minority businesses used, could lose your bonus if you did not meet**

- right minority business level.
- equate it to dollars, has to be enough, bonuses
- all these contract provisions exist, need to hold them accountable, tie their annual evaluation to the existing goals

Policy Recommendations

1. The performance evaluation process of federal employees includes evaluation criteria for minority business factors when calculating their bonuses.
2. An expedited payment schedule for minority payment, like the DOT best practice model
3. Clear reporting chains for infractions of minority contracting laws, like a better business bureau for government
4. Tracked criteria for large contractors and their previous minority subcontractor goals; when a large prime contractor applies for a new contract they should be held accountable for their previous subcontracting goals. This is already in play in some places but not enforced.

a. At a Federal Level:

b. At a State/Local Level:

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 5

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- Need to establish standards for disparity studies
- Problem with the fundamental challenge problem itself - how the organization sets up the award of the contract. Look at the award principles, open to as many as possible; does not always have to be the lowest bidder; avoid language that sets up for challenges
- Federal government should provide effective training for the award process that eliminates the potential challenge
- A pool of areas to take into consideration for awards
- Formal written process to follow to avoid the inconsistency in the federal award process
- What is the real intent of the law? Clean up the laws that create confusion Understand the intent.
- For federal dollars, comply with federal laws

b. At a State/Local Level:

- Legislative protection
- What is the real intent of the law? Clean up the laws that create confusion Understand the intent.
- We have to move the complacency of the voting public that moves the economic status
- Is it time to change the basis for justification of discrimination to economic prosperity of the nation.
- Compelling arguments for growth of the economy and creation of jobs. We should have a program based on future growth.
- We have to have companies ready, able and willing to perform at any level.

- We need to invest, create a pool of requirements as to what is required - structured developmental assistance
- Move this perception of preference along
- Disparity studies: Notion of transparency - needs to be statewide through state and local government
- What is the strategy behind success outside of numbers

c. In partnership with the Private Sector:

- In the history of the world no single entity alone will be successful. All of the energy and resource has to be behind this movement.
- MBEs feel programs are put in place but there is no follow through.
- What kind of notifications? What kind of landscape is created? What are the MBEs bringing to the table for access.
- MBEs cannot be complacent, you have to figure out what you need to do and follow through.
- We need to help the MBEs understand their responsibilities.

d. In partnership with Academia:

- As an academic institution, if you are getting state and federal money, there should be accountability, and not necessarily on minority enrollment rather than just geographic needs.
- We have educated the rest of the world, but are refusing to educate our own women and minorities
- Besides the SAT Scores, what other criteria do you need to help them gain access to education.

e. In partnership with Community-Based Organizations:

- If they are getting Federal and state funds they should be accountable; do outreach and networking to educate the MBEs

f. Any other comments:

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Table Number: 6

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Have each Federal Agency meet its percentage and have them accountable for those minority-owned businesses.**
- **Have minority businesses get the deal.**
- **Have the legislators accountable on what they are doing to enforce the accomplishments through a report card type method. Locate those legislators that can produce the results.**
- **THave access to real opportunities.**
- **Understand what the Federal Agencies need to get minority businessees involved in the process so minorities get involved.**
- **Provide a way to communicate how minorities can get involved from respective Federal Agencies such as improving sole business sought communications.**
- **Provide uniformity from the Federal Agencies to qualify for their respective program. There is conflicting information from the same Federal agency on the same program.**
- **There should be consequences for noncompliance.**

- **Have the Federal representatives have business background.**
- **Clarity, uniformity from the Federal source.**

b. At a State/Local Level:

- **Have the state representatives have business background.**
- **A state liaison to connect with an entrepreneurial advisory board or MBDA and SBA.**
- **Have minority businesses get the deal.**

c. In partnership with the Private Sector:

- **Enforce minority goals when Federal funds are involved.**
- **Corporations do not seem to be following Federal guidelines.**
- **Provide consequences if minority goals are not met.**

d. In partnership with Academia:

- **Similar to Federal, State, and Local levels.**

e. In partnership with Community-Based Organizations:

- **Similar to Federal, State, and Local levels.**

f. Any other comments:

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Table Number: 7

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Need a report card on Prime/Sub Contractors**
- **Need a list of MBEs who could do work**
- **A Marshall Plan for minorities be implemented**

b. At a State/Local Level:

- **Need a report card on Prime/Sub Contractors**
- **Need a list to MBE who could do work**
- **A Marshall Plan for minorities be implemented**
- **Need the President to make [minority business] a priority and to make a statement of minority participation contracting goals**
- **Increase the capabilities and resources of minority businesses**

c. In partnership with the Private Sector:

- **Need a report card on Prime/Sub Contractors**
- **Need a list of MBEs who could do work**
- **A Marshall Plan for minorities be implemented**

- d. In partnership with Academia:**
- e. In partnership with Community-Based Organizations:**
- f. Any other comments:**

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Table Number: 8

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Try to get an adjustment of the federal size standards (i.e. increase it) that determine whether you are a small business across the board. The net worth standards should also be increased.**
- **We need Congress to weigh in and talk about which programs are important. Is the 8a program important? It's now taking a backseat to "Hub zone" because of GAO's recommendations. The recommendation is to make sure all programs are equal and ensure parity among the various programs.**
- **We also have to get the executive order from the president to say that there will be minority participation across the board.**
- **Abolishing waivers regarding corporations not using minority businesses.**

b. At a State/Local Level:

- **Enforce federal certification requirements whenever contractual funds are being transferred from the federal level to the state level without waivers.**
- **Make sure there's accountability of local and state officials.**
- **Make sure local and state governments have money to conduct disparity studies. Make sure there's a general fund or allocation for these studies. These studies should include discrimination as part of their study.**

c. In partnership with the Private Sector:

- **Require documentation of minority businesses that solicit loans. Should especially apply to any banks that have sought stimulus help/funding.**

- **Apply Housing Mortgage Disclosure Act to all financial institutions.**
- **Are there requirements on the private sector's government contracts (in terms of Tier 2 activity)? SBA 295 says you need to disclose everything -- except explicitly "minority," which is placed under the umbrella of "small disadvantaged." Needs its own category.**
- **You need to have a minority certification; do away with the 8a.**

d. In partnership with Academia:

- **Academia should be involved in the research for the disparity studies.**
- **Require academia to teach supply chain diversity. Also need to start teaching entrepreneurship, even at the high school level. "Youth initiative."**
- **Start researching discrimination cases.**

e. In partnership with Community-Based Organizations:

- **Need to start persuading/lobbying congressional leaders on behalf of MBEs. The more your state senators/Congress members know you, the bigger your relationship becomes.**
- **Education and outreach with local community groups, also churches. The most political talks you're going to have outside of your church are in your barber shops and beauty shops.**

f. Any other comments:

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Table Number: 9

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level: (5-6 recommendations)

- **Need more enforcement and compliance on legislation already made**
- **Need more enforcement to pay back money (i.e. Ask for money back)**
- **MBEs have homework to do**
- **Unless it is law, people will circumvent systems**
- **Disparity studies (you already know results) they will show discrimination**
- **Same conversations over and over**
- **Need to define consequences!**
- **Align with disparity study results**
- **Nothing gets done**
- **Small percentages of goals met**
- **Need company to review the study**
- **Companies need to provide methodology**
- **New York example, excluded Asians specifically (local law 129)**
- **Need Accountability and standards**
- **Example, Federal Transportation Advisory Board**
- **Which disparity study will meet goals**
- **Do more do diligence**
- **Review methodology of study and firms conducting study**
- **Alignment with Federal and State**
- **Eight or ten firms conduct the study (more oversight)**
- **Asians not included in studies**
- **Asians not categorized as minority**
- **Need more case studies**

- **Include Asian Americans in disparity studies**
- **Inclusion within report**
- **Asians are marginalized from participation**
- **Laws, enforcement, compliance, clarity of communication**
- **Communication is most important**
- **Government removes barriers**
- **Understanding of consequences**
- **Full government support**
- **The recently passed American Recovery Act and Troubled Asset Relief Program (totaling approximately 1.5 trillion Dollars) made no mention of "minority business."**

b. At a State/Local Level:

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 10

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **SBA has regulations that need to be addressed because they are not helpful to emerging minority businesses (ex. audit due by end of calendar year)**
- **Write to local Congressman. Form unity groups amongst minority businesses. Must get out of habit of not collaborating or working with our small/minority businesses. Must utilize small business organizations already in place, and help the smallest businesses to connect with what's going on in Washington. Bring together small businesses and local bodies to draft letters to be sent.**
- **There must be a collaborative effort in which grassroots organizations are connected with what is going on in Washington. The smallest of minority businesses need to have their voices heard, but also must have information from Washington communicated back to them.**
- **Minority businesses must hold up to their end of the bargain and put up the money/resources to make their problem/issues/concerns heard throughout society and government. (Public Awareness). Do not suggest financing a campaign, however, they should finance marketing a change in initiative. Two approaches: Write to your local congressman, but also market your initiative to your local community to gather support.**
- **Restore Minority Business Enterprise Investment Corporations, and give them additional resources to**

restore debt to equity. This give small businesses the opportunity to look good in front of lending institutions.

b. At a State/Local Level:

- **Economic inclusion subsidies used mostly in construction, allowing subsidies to end once construction is complete, should be extended to work beyond building construction. For example, electric sub-contracting, IT issues, etc.**
- **Include procurement reporting to state/local authorities after contracts have been awarded, not just job creation.**

c. In partnership with the Private Sector:

- **Needs to be more collaboration between small businesses and attorneys**

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 11

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Provide standard measures for collection of evidence of discrimination across the country to develop statistics to support that the outcomes for minority businesses are different than for non-minority businesses**
- **There should be a unified certification process across government agencies where all of the criteria are the same and that the database be used**
- **There is a need to collect anecdotal stories**
- **We should create a systematic way to collect data to support a disparity study**
- **Talk to NERA on how to measure discrimination in credit**
- **MBDA serves as a clearinghouse for evidence of discrimination during the next 60-90 days to address the Supreme Court Roth case**
- **Require enforcement of prime contractors' performance on minority subcontracting**
- **MBDA Knowledge Management Group to use existing data to support collection of evidence**
- **MBDA should report on "best practices" for disparity studies**

b. At a State/Local Level:

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 12

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Change qualifying criteria for the 8(a) program; federal buyers use the program.**
- **No way of tracking goals; how much value goes to minority business.**
- **Create measureable outcomes within the 8(a) mentoring program.**
- **Change the language; re-enforce the laws.**
- **Standardize minority participation requirements throughout federal, state and local entities.**
- **Be proactive in following through with the interpretation of the regulations and laws; legislation is not clear.**

b. At a State/Local Level:

- **MBDA should be given the power to mentor the inclusion of minorities in state programs.**
- **Streamline the certification of minority businesses.**
- **Work with MBDA to craft legislation to include contracts to MBEs and lower discrimination.**
- **Empower the local Centers to address the discrimination discrepancies.**
- **Integrate reporting systems; advocate in each state on economic development; planning commission.**
- **Have Centers document cases of discrimination against minority businesses.**

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 14

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- 1. local city government tried to find what the discrimination is. We need an understanding of what discrimination means. We need a set of tools that identify discriminatory actions.**
- 2. Competency levels. No experience because they have no access. Focus on competency not capacity.**
- 3. No process in place on the numbers if there are discrimination reports. How do we make businesses bigger? Where do they get the SGI firms. Problem is with bonding.**
- 4. Educating the legislature about the problems we are facing today. Projects bonded. Sovereign immunity. Clients can't compete for larger clients. Need communication. The impact that will happen if we stay at this rate. Show the facts.**

- 5. Need a common database for taking information to compete across all sectors that include minority businesses (government which includes state, local and private sector).**

- 6. Congress needs to require all federal agencies to submit quarterly reports to measure the agencies minority participation (buy), number of contractors both prime and second tier, for goals and actual performance. Needs to include grants and contracts.**

- 7. How many MBS actually bid? The enforcement of the small business plan. Focus on measuring discrimination as well as results.**

b. At a State/Local Level:

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 13

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Monitor and Enforce the laws and rules that already exist**
- **Need to maintain the integrity of the program such as 8A, Federal Hub zone, etc. Don't dilute the 8A program with modifications. For example - Discussion on putting in non-ethnic minorities into 8A.**
- **Need clarification GAO rules with regards to Hub zone, ...giving priority to Hub Zone over others**
- **Need to establish a clear process for small businesses/MBEs to win federal prime contracts.**

b. At a State/Local Level:

- **Not allowing outside companies to come in to do the disparity studies. Want local organizations such as MBDA, NSMBDC, local chambers of commerce, etc that have the knowledge of discriminations and real issues. Second benefit would be that the local organizations can create programs to help solve the problems**
- **Who is monitoring the plan that is already put in place?**

c. In partnership with the Private Sector:

- **NSMSDC should do more corporate level MBE Business Summit.**

d. In partnership with Academia:

- **Teach MBEs know how to sell! Better market and sell their business.**
 - **MBDA should partner with local universities at a reasonable price for quality professional development programs.**
- e. **In partnership with Community-Based Organizations:**
- **Stop all the in-fighting between various ethnic organizations and actually partner with each other.**
- f. **Any other comments:**

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Table Number: 15

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Need good law analysis. Need to have more than disparity studies, analysis of effective programs. Are these programs serving their purpose?**
- **Need effective measurements for programs and accountability for programs.**
- **Show benefits of participation of minority businesses in the economy.**
- **A disparity study that doesn't focus on utilization, but on availability.**
- **Educate and train MBEs on the importance of collaboration. Don't battle for the 5% when you leave 95% for the others.**
- **A nationally-organized advocacy group is needed.**

b. At a State/Local Level:

- **City/regional studies can be limited because of size/scope. What about global competitiveness? Public contracting is a distraction to the global marketplace where there is more money.**
- **Ethnic minorities in MD are organized on the state level. Need top-level support and organization.**
- **Enforcement is critical to the state/local level.**
- **Need a common process for all state set-aside programs, certifications, etc. Better coordination from state to local level. Meetings on a quarterly, semi-annual or annual basis between all of the levels of government for common goals.**
- **Need to help build capacity.**

c. In partnership with the Private Sector:

- **Private sector shows success in using MBEs when the public sector has encouragement.**
- **Private sector can help build capacity for MBEs so that they are able to better compete.**
- **Diversity training for corporate America**
- **Build champions in corporate America as examples. Use corporate social responsibility.**

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

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Table Number: 16

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Specify studies on minority business growth.**
- **Slow payment for minority businesses that receive contracts from federal government agencies.**
- **Get rid of programs that are not benefiting the small minority businesses.**
- **Minority businesses are receiving a much smaller share of contracts than major corporations.**
- **Legislation requests changes benefit most minority businesses.**
- **Prepare and position minority businesses to bid on contracts that are coming up.**

b. At a State/Local Level:

- **Slow payment for minority businesses that receive contracts from state and local government agencies.**
- **Minority businesses are receiving a much smaller share of contracts than major corporations.**
- **Legislation requests changes benefit most minority businesses.**
- **Prepare and position minority businesses to bid on contracts that are coming up.**

c. In partnership with the Private Sector:

- **Legislation requests changes benefit most minority businesses.**
- **Cut back on red tape for small businesses to get certification as a minority business.**

d. In partnership with Academia:

- **Legislation requests changes benefit most minority businesses.**

- **Provide extra training for minority businesses on contracts and bid process.**
- **Build relationships**

e. **In partnership with Community-Based Organizations:**

f. **Any other comments:**

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Table Number: 17

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Need to get teaming arrangements together. Perhaps have a database where 2 or more small businesses get together and team up.**
- **Once a contract is set aside for minority contract, it cannot be removed from being set aside.**
- **unify rules for teaming rules across the agencies**
- **then when you do have a minority company win, you cannot have majority being protected**
- **size standards must be addressed**
- **size standards too low**
- **have a 3 tier priority, small medium large MBE firms**
- **are not remaining current with what the private sector is getting**
- **outdated size standard, must be addressed routinely**
- **continue to advocate change in size standards**
- **monitoring of state and local government contracting -- lobby leadership in Congress on this subject matter**

b. At a State/Local Level:

- **The legal challenge: In California, state law against minority set aside programs, proposition 209, which makes it illegal to make a mandatory goal for a minority contractor, so what need to do is to find a race neutral program. Unless the citizens change proposition 209, that is the law there. Policy at city level, only 5% go to minority, which is low.**
- **Establish a local small business procurement program that is race neutral**

c. In partnership with the Private Sector:

- **Need to partner with private sector b/c big businesses are bumping out small businesses to make sure private sector includes minorities in the contract**
- **Business roundtable - NMSDC, chambers of commerce, trade associations**

d. In partnership with Academia:

- **do a disparity study**
- **what is the baseline for minority businesses?**
- **need national databases of minority businesses**

e. In partnership with Community-Based Organizations:

f. Any other comments:

- **make a compelling government business - if we don't have competent minority businesses in 40 years, then lots of problems**
- **get a non race based reason**
- **get a federal law to preempt the California law**

Panel discussion points:

- **civil rights without economic power is a losing situation**
- **attacks in courts and legislatures**
- **If a program takes race into consideration (i.e., for a contract) if that program goes to court, program faces strict scrutiny**
- **strong basis in that strong govt. interest (remedy discrimination is the only basis recognized in court)**
- **Congress must build "robust legislative record" of discrimination**
- **no way to make any program "litigation proof"**
- **Dr. Bangs talked about finding sympathetic plaintiffs, and about building a record of discrimination (differential impact, or outright discrimination).**
- **slow payment is a big discrimination program today**

- **not breaking large contracts to small parts, that MBEs can handle is another discrimination problem**
- **Mr. Wilfong (91st Black CPA in USA) spoke about programmatic part.**
- **Small biz has to be a lot larger than it used to be in order to win government contracts**
- **If we think programs are not good, then we should end those programs**
- **Sara said to improve the programs that are bad, we need to build a record.**
- **minority firms receive much smaller shares of govt contracts than they deserve**
- **Need to have high expectations in Congress**
Demand that disparity studies measure discrimination. If you only measure bidders, that is not correct, due to de facto discrimination, minority firms have stopped bidding

Panel Number: 1

Panel Name: *LEGAL LANDSCAPE*

Table Number: 18

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

Civil Rights w/o economic power - problem exists

a. At a Federal Level:

**Notes: Discrimination problems
disparity study should seek to include discrimination
Accountability and oversight
White House Conference of Business
Media outreach efforts to engage public interest**

Ideas:

Include access and usage of wide range of social media networks

Report:

- Collaborate w/ various groups to lobby Congress. This would include trade groups/ minority business entities and other stakeholders.**
- Present evidence based research - show a need using current and projected statistics**

b. At a State/Local Level:

Notes:

Advocate for bundling contracts

|

c. In partnership with the Private Sector:

d. In partnership with Academia:

Notes: Congress work to restore provision of minority serving institutions

Report:

- **Minority Serving Institutions such as HBCU's, Tribal Colleges, Hispanic Serving Institutes need to have Technical assistance and business goals restored by Congress. Override Rothe decision findings 10 USC Section 2323 unconstitutional**
- **MSI's and HBCU's, MSI need to be recognized as eligible organization and HUBZONE criteria through legislative change**

e. In partnership with Community-Based Organizations:

Notes:

Education

identify high profile discrimination and present to congress

Panel Number: 1

Panel Name: *LEGAL LANDSCAPE*

Table Number: 19

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **If the way to seize contract opportunities is to deal with companies of size and scale, why do we have restrictions based on size; why not have standards based on MBE or net worth;**
- **Amend Regulations B for Federal Reserve Board which does not allow for tracking commercial loans based on race, sex and gender. Historical data shows that information on MBEs establishes that minority firms are good investments.**
- **To have rules currently relaxed by American Recovery Act to be made permanent**
- **Relax Bundling contracting rules allowing more small businesses and MBEs to participate**

b. At a State/Local Level:

- **Mentor Protégé Program should have goals and be accountable rather than just educational;**
- **Mentors should be identifying MBEs that will meet their criteria for future projects.**
- **Revise goals for set-aside to make them higher**
- **Establish legal framework for accountability and accessibility for Federal, state and local governments and prime contractor who are responsible for meeting the diversity goals;**
- **Require extended time frame for "good faith" efforts to identify MBEs**

c. In partnership with the Private Sector:

Enforcement of multi-national companies to comply with diversity goals

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments:

Panel Number: 1

Panel Name: *LEGAL LANDSCAPE*

Table Number: 20

Given the current court challenges to programs targeted for minority-owned businesses, what actions can be put in place to support the growth and expansion of minority-owned businesses in the 21st century? (Please provide answers from (a) through (f).)

a. At a Federal Level:

- **Current Programs Should Have Substance** - Let's get some substance in these programs. If it's a bad program let's end it. If we are going to do it, let's make it work.
- **Tweak the Law** - Government contract that has percentage of set asides and doesn't make it...then the percentage that doesn't go to minorities should go back to the Government. The goals of minority set asides should become "mandates" that have some type of enforceability. Define what a "good faith effort is" and a contingency if the law doesn't work. Good faith effort needs timely effort and consequences.
- **Awareness and Communication** - We need to have more awareness and give good ideas through the summit and we should give good ideas to Greg Willis.
- **Business Development Expense** - We need this law back (advance payments) which went away in 1986.
- **Working Together** - We should get together to fight the groups that are fighting against minority programs.
- **SBA Loans to Minority Businesses** - Administration should make direct funds to make funds (through SBA) the available to minority businesses.

b. At a State/Local Level:

c. In partnership with the Private Sector:

d. In partnership with Academia:

e. In partnership with Community-Based Organizations:

f. Any other comments: