

**Comments on the Department of Commerce’s Proposed Business Diversity Principles
Initiatives**

Brandee Anderson
Senior Advisor to the Deputy Secretary
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

**Re: DOC Draft Business Diversity Principles
88 FR 83382 DOC Docket No. 231121-0276**

Dear Ms. Anderson:

Lawyers for Civil Rights (LCR) writes to provide comments on the above-referenced Business Diversity Principles proposed by the U.S. Department of Commerce (DOC). In the current climate, as diversity, equity, inclusion, and accessibility (DEIA) efforts are threatened, it is critical to deepen and expand the federal government’s efforts to eradicate racial inequity in the workplace and in business practices.

Lawyers for Civil Rights works with communities of color and immigrants to fight discrimination and foster equity through creative and courageous legal advocacy, education, and economic empowerment. In partnership with law firms and community allies, we provide free, life-changing legal support to individuals, families, and small businesses. Through our BizGrow Project, we provide free legal assistance, business support, and technical assistance to minority, immigrant, and women business owners—ensuring they encounter fewer obstacles and more opportunities.

DOC’s proposed Business Diversity Principles suggest six fundamental ideas to increase DEIA work: Executive Leadership, Organizational Strategy, Workforce Development, Human Resources, Business Opportunities, and Community Investment. This comment focuses on Executive Leadership and Business Opportunities.

Executive Leadership Principle: Diversity Equity and Inclusion Policies Work

Research unequivocally reinforces the need for diversity in the private sector. The first Business Diversity Principle appropriately focuses on the need for more diversity in C-suite positions, which has overwhelming data backing up why it is so crucial. For example, a [study](#) by the Centre for the New Economy and Society shows that “[e]thnically diverse companies and gender diverse companies are 36% and 25% more likely, respectively, to financially outperform (from a total return to shareholders perspective) organizations that are of average diversity in their industry.” The study goes on to detail the many ways that diversity furthers business goals; it “can help teams focus more on facts, process those facts more carefully and generate more creativity and innovation when the broader organization is inclusive and equitable.”¹

¹ Global Parity Alliance: Diversity, Equity and Inclusion Lighthouses 2023, World Economic Forum, https://www3.weforum.org/docs/WEF_Global_Parity_Alliance_2023.pdf, Pg 7

A recent [McKinsey & Company study likewise](#) shows that “[c]ompanies with more than 30 percent women on their executive teams are significantly more likely to outperform those with between 10 and 30 percent women, and these companies in turn are more likely to outperform those with fewer or no women executives.”² Similarly, a [Boston Consulting Group study](#) recently confirmed that “[c]ompanies that reported above-average diversity on their management teams also reported innovation revenue that was 19 percentage points higher than that of companies with below-average leadership diversity.”³ The main takeaway from decades of research is that diversity increases innovation, a key barometer in today’s ever-evolving landscape. Diversity is not only vital in making America a more equitable country, but it is key to our economic success.

For this reason, Lawyers for Civil Rights urges the DOC to not only highlight the need to increase executive leadership in the private sector but also show how vital it is for these companies’ futures. Without concrete examples and data on the importance of DEIA initiatives the private sector will do little to counteract ingrained institutionalized racism that threatens to create a stagnant private sector. DOC must reinforce, through data, that lack of diversity hurts the private sector’s bottom line.

Business Opportunities Principle: More Concrete Solutions Necessary

As the [Business Diversity Principles](#) articulate, creating “an inclusive supply chain that expands opportunities for entrepreneurs from underserved communities at all levels, from food service to construction to financial and consulting services”⁴ is necessary. While this is true across all sectors, it is particularly important for federal contractors, which employ 1 in 5 American workers. Federal contracting is a vital resource to the private sector, accounting for [\\$694 billion](#) in spending in 2022 alone.⁵ However, large scale federal and state level procurement contracts continue to lag behind in the use of diverse businesses, particularly minority business enterprises (MBEs).

[Since 1965](#) federal contracting has required a higher standard, working to ensure people of color have equal opportunity in training, hiring, and promotion.⁶ However, 59% of executives at federally contracted businesses are white men, even though they constitute only 34% of the workforce.⁷ And alarmingly, governmental contracting with MBEs and other small businesses is

² McKinsey & Company, “[Diversity Wins](#)”, May 2020, Pg 3.

³ <https://www.bcg.com/publications/2018/how-diverse-leadership-teams-boost-innovation>

⁴ <https://www.commerce.gov/sites/default/files/2023-11/Business-Diversity-Principles.pdf>

⁵ <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2022#:~:text=In%20Fiscal%20Year%202022%2C%20the,federal%20government%20spends%20contracting%20dollars.>

⁶ Executive Order 11246; see also

https://www.oeod.uci.edu/policies/aa_history.php#:~:text=11246%20in%201965,-,Executive%20Order%2011246,receiving%20federal%20contracts%20and%20subcontracts.

⁷ <https://revealnews.org/article/diversity-data-top-federal-jobs/>

on the decline. [Between 2005 and 2019](#) there was a 79% drop in small businesses entering the procurement marketplace.⁸

One of the leading causes of this decline is the size and scale of many federal and state level contracts, which exclude small business owners from participation. The overwhelming majority of minority business are small, with over 90% of all [minority-owned](#) small businesses employing fewer than 20 people; Black-owned business are four times more likely to have revenue under \$100,000 compared to white-owned businesses.⁹

There are several avenues to increase MBE contracting at the federal, state, and municipal level that are effective. First and foremost, breaking up large government contracts into smaller and more accessible components would greatly increase small businesses' ability to compete for contracts. Leaving these procurement dollars to large corporations does a tremendous disservice to the economy, which thrives on increased diversity. The proposed Business Diversity Principles should specifically call for breaking up large contracts.

Sheltered market programs, which set aside contracts for competition among underrepresented businesses, also have a proven track record of successfully diversifying procurement. Race-conscious measures, supported by facts showing their need, are also a critical means of promoting diversity.¹⁰ The proposed Business Diversity Principles should highlight both sheltered market programs and the continuing need for race-conscious steps.

These are just a few of the several procurement solutions that were published in a [Policy Report](#) released by Lawyers for Civil Rights and MassINC with support from Eastern Bank.

Better Government Oversight on Federal Contracts

Subcontracting is often the best way for small businesses to work on large scale contracts. Unfortunately, however, even when private companies collaborate with MBEs to complete federal contracts, oversight by government agencies is often lax.

For example, in 2022, Lawyers for Civil Rights sent a letter on behalf of Colette Phillips Communications to the Federal Aviation Administration (FAA) requesting an investigation into JCDecaux and Massport for discrimination and failure to enforce and oversee FAA policies. Over the nine years of the federal contract between JCDecaux and Massport, JCDecaux only managed to reach their contractual goal of 10% of airport advertisement revenue going to minority-owned business once. Colette Phillips Communication thought their partnership with JCDecaux was going to be the next step for their business and the bridge to larger and more profitable contracts. They put tremendous effort, time, and resources into securing this federal contract and yet due to a lack of oversight and the discriminatory practices by JCDecaux, Colette

⁸ <https://www.forbes.com/sites/forbesbusinesscouncil/2022/01/05/lack-of-diversity-in-government-contracts-a-way-forward/?sh=28054ad610a2>

⁹ <https://www.thirdway.org/report/vital-signs-the-health-of-minority-owned-small-businesses>

¹⁰ <https://massincmain.wpenginepowered.com/wp-content/uploads/2022/07/Empowering-Cities-to-Accelerate-Equitable-Growth-1.pdf> Pg 5

Phillips Communication, a Black woman-owned business, was barely able to make any profit from this contract. Meanwhile, JCDecaux raked in millions.

These types of stories are unfortunately common among subcontracted businesses working with large private sector companies, yet there has been little response from the federal government. The proposed Business Diversity Principles should stress the importance of meaningful collaboration that utilizes the resources available at large private sector corporations to truly benefit MBE subcontractors and joint venture partners. DOC should also call for more proactive federal and state oversight. Enforcing the laws on the books and holding bad actors accountable will go a long way toward showing the federal government prioritizes the issues highlighted in the Business Diversity Principles.

Conclusion

The Business Diversity Principles provide a critical opportunity to advance diversity principles with the private sector. A strong private sector is buoyed by governmental action, and framing the discussion of these Principles around proven research and effective strategies needs to be at the forefront of the conversation. The Principles should also emphasize the need for governmental procurement policies that actively promote participation by MBEs and other small businesses and that strengthen existing oversight mechanisms.