

## Victoria Malaszecki – Testimony

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My name is Victoria Malaszecki, and I am the President & CEO of Envision Consultants, Ltd. My company is certified as a small woman-owned disadvantaged business enterprise (DBE) in my home state of New Jersey and nine other states. We are headquartered in Mullica Hill, New Jersey and have an office in Philadelphia, Pennsylvania. On December 4, 1994, Envision was incorporated and is now approaching 27 years in business with forty-seven employees and anticipate closing the year at \$7.3 M in revenue. We work in the Architectural, Engineering and Construction (AEC) Industry providing Program and Construction Management services specializing in Project Controls, Public Outreach and Technology Services. Our market sectors include Aviation, Bridges, General Buildings, Educational K-12, Higher Education, Highway, Rail, Transit, Water/Wastewater and Technology. I am honored to be here today to share my story as it relates to “Identifying Discrimination in Federal Passenger Rail Contracting”.

As a young girl my mother told me I could be anything I wanted to be when I grew up. She was my world, my best friend, my mentor, my inspiration. My world was rocked when she died - I was 15 years old. The youngest of five children and the mistake coming 10 years later after the youngest of their four children. My father did not understand me, I always asked too many questions. I was always debating both him and my brother. During high school there was no girls’ soccer team and my father would not allow me to play on the boys’ team. He turned to alcohol after she died and did not know what to do with a teenage girl. He told me not to go to college as “You will just grow up and get married and have children like your sister.” My father died one week after my high school graduation. At his funeral friends and family told me his was proud of me going to college. I was the first one in my family to attend college and obtain degree(s).

In preparing for today I realized that I have become desensitized to the systemic discrimination that happens daily to me based on my gender. I thought that because I have worked hard, started from nothing, raised a family and am running a successful business that I am respected. That was the message to young girls in the 1980’s: you can have it all-- marriage, motherhood and a career. But I am wrong. It is 2021 and I thought I was respected and equal to a man, but the cold hard reality is that I am not. I have to prove myself everyday to owners, clients and most disheartening a few employees who have come and gone. “Disadvantaged” is not the best term since I put myself through college, with no healthcare, no parents, \$25,000 dollars to my name and a mortgage to pay on my parents’ home after they died. I made it. Not really. I am constantly proving myself. So many times, when in a conversation with a few people and introductions are made I am asked what my background is, my education but a man is not.

Additionally, I have come a long way from the beginning to the firm’s present success. Almost put out of business by a large prime (outstanding invoices for over one year) and moved the operations in my

home to meet payroll and cut costs. To this day I don't know how I survived that year, but I did. I could have thrown in the towel were it not for my family supporting me.

Similarly, there is the analogy in the medical profession that the doctor needs to role play and be the patient for empathy and understanding. I would suggest that the same role playing should be incorporated into the orientation for all employees in the AEC industry. Empathy and understanding at all levels that the women and minority firms being utilized on projects are real and are responsible for the livelihoods of their employees (payroll, medical benefits, PTO). "Just because you have to use them" doesn't mean that the business is not as real as yours.

For instance, a project manager for a Prime (firm who has the contractual relationship with the owner) should understand that the invoice sitting in his bin should be processed efficiently, the accounting department should understand why they are calling for payment. Since I am not allowed to call the Owner (at times that language is written in the contract) we are making collection calls to the Prime. Recently, I contacted the Owner since my CFO, also a woman, was getting nowhere with the collection calls. I was sent a high priority email from the male VP citing the contract terms. In a follow up conversation with the male VP, I highlighted that there was no such clause in his contract and that I simply inquired if payment was made since we were out 8 months. In the end and two months after my inquiry both firms were in fact paid for the outstanding invoices. This email was sent to my team and his team putting my firm in its place. You see I am not supposed to be a Prime. I am to stay in my lane as a subcontractor. As he was about to renew his contract for the fourth and final year, I suggested that the remaining budget in my contract be utilized for his other subcontractor and Envision will no longer be his subcontractor.

Most importantly, I have encountered countless lessons and obstacles that required me to have the patience, strength, and persistence to learn and grow. I would not be here today if it was not for the statutory requirements for woman owned businesses. Business is business and the certifications do not guarantee work, but they level the playing field allowing me to be in the game. Unfortunately, my 27 years of experience in the rail business has taught me that I am not welcomed or respected without proving myself in each and every opportunity.

Before I get into my examples, I would like to share with you the typical experiences I have experienced as a woman business owner. The discrimination that continues daily is systemic, ingrained and so subtle that it is overlooked. The anger, hostility and hate from men when confronted by me is, I believe, grounded in disrespect. Open hostility to me privately and in front of other women but not in front of other men. What is most concerning to me today is recognizing this hostility and disrespect to women on my management team. As I continue to grow, I am blending the skill sets amongst generations but have noticed that I must incorporate annual training in this area of discrimination that is not sexual. I never would have thought that this is what is needed for workplace culture and necessary for young women just entering the workforce.

Specifically, a man will question me on a decision but will not question another man even if it is the same decision. The AEC industry continues to be male dominated at all levels. I am constantly having to prove myself in all aspects of business operations, when many of the men I'm working with only

need to be knowledgeable in one aspect. If I question a man or challenge a man, I've been told I'm confrontational, I don't know what I'm talking about, or flat out I'm wrong. When in fact most of the time I'm right and it is very hard for a man to come back and admit that he was incorrect, and I was right. Why are we on the battlefield? Why are we competing based on gender?

Yet this behavior is not all men. I have a male mentor who is a business owner, who shares his experiences and insights and we attempt to have lunch on an annual basis. At a Women in Transportation Seminar (WTS) event we were casually speaking about a situation I encountered and his response to me was "Vicki, you are teaching me things now that I have never encountered. I'm learning from you."

To illustrate the issue that women and minority firms experience with procurement is due to the privity of the prime contract, are not allowed to have access to procurement, accounting, engineering, or any division of the owner. There is the exception of the EEO office. This leaves us powerless and without intelligence of the solicitation on the street to streamline our teaming efforts. If there is a conflict or inequity, then we can file a complaint. If I ever filed a complaint, I would never get work again.

When I team on pursuits there is a conversation, an agreement on scope of services, a cost proposal and company information. 99% of the time I never receive a copy of the team proposal for our records. There is a general lack of communication to inform us of a win or loss. Many times, it is an afterthought on the Prime's part and we are asked to start work without an executed contract. I don't allow working without a contract or notice to proceed anymore. Too many times the dollar values assigned to my firm in a winning proposal never result in any revenue to my firm.

In 2006 I sat down with a Project Manager (PM) for a large new contract. We discussed staffing and between the time of bidding and winning, one of my employees was reassigned. He thought I was doing a 'bait and switch' which I was not. He told me what the rate should be, said find someone, and stated, "A mom could do it." Being a 'Mom', I did not sign the contract since if this man showed this level of disrespect to the female president of the company, how would he treat a female employee of mine working side by side in a trailer on a construction project site. When I reached out to another large firm who also was a subcontractor on this same contract, and spoke to that firm's vice president, his response was, "Calm down Norma Rae." In the end, this contract come up unexpectedly prior to COVID and after delays in any signed contract or Notice to Proceed, I rechecked the contract and it included an old overhead (OH) rate. The current PM is a woman and the contract manager wondered why I never had a subcontract – then I remembered the above. Prior to signing I explained to her that since I do not have a contract, I should not be held to an OH in 2006 when times and the firm were different. She in turn then submitted the latest OH for themselves and all subconsultants and we proceeded to meet our deliverables. I do not believe I would have had a similar experience if the PM had been a male.

I'm asked, 'What can you do for me?' If I cannot meet with the owners, agency representatives and I cannot speak with them what can I do for them. In the beginning, I could not even get owner references. As I grew in experience, I have asked, and we have a few now. The only way I have been able to

strengthen my network has been by leading a variety of professional organizations. This has provided the opportunity to meet and get to know clients who would never get to know me because of my subcontractor status. This adds a burden to DBE's trying to establish themselves and growing their portfolio of services.

Sometimes, my company will pass on pursuing certain contracts. If I say 'pass' on a pursuit, the response comes back 'why?' Why do I need to explain my decision? This is not a question asked of male-owned firms.

I have many specific examples of discrimination that I've faced over my career that I can recall in detail.

I hired a senior manager from a firm who at the time was our biggest client. I was told to go meet with the President of the firm, a male, and make amends so that our firms can continue to work together. I knew within two months that this new hire was not going to last as he did not want to take direction from me, undermined my decisions, and created a toxic work environment. Why do I need to make amends when someone joins my firm, when the firm will hire an employee from another competitor and then the two will joint venture contracts together? Why the double standard?

Another time, I spoke with a male Prime contractor regarding a contract for my firm. He said to me, "During the negotiations, we negotiated your employees' rate with the Agency PM." I responded that I did not negotiate this rate nor am I going to take a 15 dollar an hour hit on his direct rate. The PM went to my lead (male) and discussed with him the situation to see if he could get around this. My employee sent him back to me.

In September 2014, I was awarded a Prime contract with the FTA as the managing partner of a JV. I teamed with another woman owned firm. Shortly after award the owner of the other firm wanted out of the contract. The FTA Contracting Officer, a woman, walked me through what I needed to do to dissolve the agreement. The FTA had the confidence in awarding the contract solely to Envision. I am extremely grateful to the FTA in having the confidence for us to be a Prime, it has been a large learning curve but I and my team now understand all aspects of being a Federal Contractor and were successful in receiving our second Prime Award with the FTA in 2019.

During the last quarter of 2012, a solicitation DTRT5714D30008 was placed on the street, and I teamed with three large Prime Contractors to bid on the work. Two of the three firms I had worked with in the past, one I had never worked with before. Two firms were successful and awarded the contract. The third firm, the one I had never worked with before never informed me of their success or failure in securing a contract. I spent time (and therefore money) with the firm upfront to put together components of their bid proposal and then never heard from them again despite numerous attempts to contact the firm.

On another occasion, a Prime firm was awarded a contract to do program management oversight. The cost proposal submission included information that Envision would participate in up to \$1,043, 964 of contract work (Indefinite Delivery Indefinite Quantity). A letter from the agency to the Prime stated "In accordance with FAR Clause 52.244-2, entitled "Subcontracts" (OCT 2010), consent cannot be

granted for any of your proposed subcontractors.” The Prime responded, “In the case of Envision and any other subcontractors listed in this proposal, these firms have been subcontractors to [us] on other federal contracts. Typically, [we] have worked with all the firms on a cost-reimbursement, time-and-materials, or labor-hour type basis.” I never received a subcontract to execute.

At another time, a Prime firm was also awarded a contract to do Program Management Oversight. Project amount to Envision \$507,475 (IDIQ contract) from cost proposal submission. The Prime received the same letter as stated above. I received an executed contract and one task for \$6,873.00; however never received notice to proceed to perform work and never billed. I remember this solicitation well and even contacted agency procurement for guidance to no avail. I provided the necessary supporting documentation in both cases. Federal Acquisition Regulations and federal government and agency-specific contract clauses were being thrown around and I was unable to get clarity. Since the Primes are engineers, not auditors, they also did not understand what the Agency was requesting, and expected me to simply know the answer. The Agency procurement made this complicated, cumbersome, time consuming and intimidating without understanding the rationale. When reaching out for help why is a man in procurement not asked to provide an explanation? I was not a new business; I was mature and experienced with an audited overhead statement.

To further exemplify the treatment I’ve been faced with, in 2012, I teamed with a joint venture pursuit with two male-owned firms and completed all the necessary proposal documents, including a cost proposal for public outreach services. Envision’s portion of the cost proposal was \$1,164,240. At the time of contract review for execution, I was informed that Envision would only be performing services for one location as the contract was across multiple states, including New Jersey. Envision was not assigned New Jersey but Philadelphia as the joint venture spread the work to local firms. The JV did not share their plan to spread out the work with multiple additional vendors with me at the time of the proposal. We only received three task orders for a total of \$99,072.18 over two years, and I was left out of the rest of the process.

2012 was the first solicitation we teamed on for the FRA and to date I have not been invited to join subsequent teams for solicitations from this agency for the same scope of work since that time.

If there is no incentive to utilize firms like mine, they will not be utilized. The large firms will pursue on their own and keep the work to themselves. As a business owner I made the decision not to search or pursue teaming opportunities in this arena after my experiences in 2012-2014. If the arena opens to include and incorporate small woman and minority owned businesses like other agencies of government, such as the Federal Transit Administration and the Federal Highways Administration, I would pursue additional contracts.

As Envision continues to grow, we will need to take on more Prime Contracts. If one agency of the government has confidence in my firm to be a Prime, then we should be able to compete for Prime Contracts with another agency. This would open another door to compete nationally for challenging projects that will have a social and economic impact.

I was told years ago by a male agency procurement official “You are not allowed to attend the pre-proposal meeting, only the Primes can attend.” On the other hand, FTA reaches out to and includes DBEs intentionally for pre-proposal conferences, so DBEs can learn firsthand FTA’s expectations and large firms can make contacts with potential sub-DBE’s or joint venture opportunities.

I do not have the luxury of staff positions solely for business development as a large firm does. Large firms have professionals who are employed full time with access to procurement staff and face to face meetings. In all my years of being in business, I have had five face to face meetings with an agency representative, none of which were with procurement. Why? Agencies will not meet with the small businesses. I refer to the importance of these meetings as ‘intelligence’. The large firm has the resources to mine the solicitation, meet and greet the agency, and establish a team. Firms like mine do not have this access unless they hire these types of professionals whose salaries can be higher than the owner, risking the woman and DBE certification.

In conclusion, my story told above identifies that discrimination against women exists in this industry and that there is a need for establishing small woman and minority goals in Federal Passenger Rail Contracting. Unless there are goals established during procurement small woman and minority firms will not be utilized. Envision has pursued only two procurements outlined above in Federal Passenger Rail Contracting in 27 years of doing business. The large private national and global firms will continue to strengthen and dominate this market via mergers and acquisitions. Thus, performing practically 100% of the work to maintain their business interests respectively. The small woman and minority owned businesses still struggle to exist. With only a few large players winning and performing the work, more and more conflicts of interest will arise. This is an opportunity for small woman and minority owned firms to pursue, partner and team in other capacities with large firms only if the agency is ready to procure with a small woman or minority owned firm.