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Testimony on the US DOT DBE Program

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Opening Remarks

Mr. Chairman and members of the Transportation & Infrastructure Committee, let me first say thank you for conducting hearings on this very critical issue.

It is an honor to be here today to represent the Conference Of Minority Transportation Officials (COMTO). Our organization is celebrating thirty-eight (38) years of service, as a voice for the transportation community and today we are the only multi-modal association for minorities in all of the transportation industry. Because of the legacy of inequity of employment and business for minorities within the industry, our mission - which is as relevant today as ever - remains constant - to level the playing field in transportation for individuals, businesses and communities of color.

Our ever-increasing membership spans thirty-nine (39) urban cities across the United States and includes individuals, public transit agencies, airports, state DOTs, private businesses, academic institutions, other not-for-profit organizations and last, but certainly not least, small and disadvantaged business enterprises on whose behalf I speak today. I am pleased that several of our member DBE firms and supporters have traveled from around the country to be with us today.

As you know, COMTO has been at the forefront of this issue for quite some time.

COMTO's advocacy on behalf of DBEs has received national recognition:

- We were awarded the Department of Transportation's DBE Advocate of the Year in 2006.
- We partnered with the DOT and published a CD on DBE methodology for federal grantees.
- For the last 2 years, we have conducted Title VI training workshops across the country on behalf of the DOT. The training components in these workshops includes information on DBE goal setting, the certification process and fraud detection, to name a few
- We also are a member of the DOT DBE Roundtable, which meets on a quarterly basis at the DOT HQ.

When the Wahlberg Amendment threatened the DBE program in 2007, it was COMTO that made our voices heard throughout the U.S. and here on Capital Hill to thwart what could

have resulted in a chilling effect on the DBE community. The amendment would have systematically denied access to competition for DBE firms. Our chapters across the country petitioned their congressional representatives, and we met with Congressman Olver to ensure the voices of the DBE community were heard. We were effective. We thank Chairman Olver for his great support.

As a voice for the industry, collaboration is a key part of our strategy. We partner with other national industry organizations and stakeholders including the Airport Minority Advisory Council, American Public Transit Association, American State Highway & Transportation Officials, Transportation Equity Network, and the Women's Transportation Seminar to ensure and advocate access and opportunities for the small and disadvantaged business enterprise.

Earlier this month in partnership with Patton Boggs law firm, COMTO hosted a very well received, Transportation Summit, to develop strategies and recommendations for the new administration to discuss strategies for a ready-to-go and sustainable workforce. It was an excellent session and our summit white paper will be available to you in the next few days.

Just as with employment in the transportation industry, we believe redressing past and ongoing discrimination, with regard to contracting and business opportunities for minority and women owned firms is still a critical issue, as well as for veteran and service-disabled veterans.

Why DBE Program is Relevant Today?

Congress enacted the DOT DBE program to address the problem of discrimination against businesses owned by minorities and women in federally-supported transportation contracting. Over the years, the program has helped provide opportunities to thousands of businesses. Unfortunately, despite advances, more than two decades later, discrimination is still a serious problem. Disparity and other studies have documented well the ongoing problems faced by DBEs, including the:

- use of antiquated “old boy networks,”
- exclusion of DBEs from business opportunities,
- discrimination in credit lending, bonding and insurance,
- attempts to induce DBEs to act fraudulently as “fronts;”
- and discriminatory application of procurement and contracting rules.

Mr. Chairman, as both you, Majority Whip Clyburn and other members of Congress have shared with the COMTO Membership during our annual Transportation Braintrust, the battle that was fought to include the DBE Provision in the TEA-21 legislation was no less fierce over 10 years ago, than it is today. In 1998, the program's inclusion was the topic of very strong debates in both the House & Senate - both had amendments on the floor to either dismantle or neutralize the DBE Program. In the House, the amendment failed by a vote of 194-225. The program goals remained intact and charged doing all of the following:

- remedy past and current discrimination against disadvantaged business enterprises

- ensure a "level playing field" in which DBEs can compete fairly for DOT-assisted contracts,
- improve the flexibility and efficiency of the DBE program, and
- reduce burdens on small businesses.

Most of the opponents of the DBE program in Congress claimed that the DBE Program was an unconstitutional, illegal and racist program compromised of set asides and quotas. Contrary to these comments, the DOT DBE Program has proven to be a constitutional and legal program compromised of flexible, aspirational goals.

The landmark case *Adarand v. Mineta*, finally ended when the US. Supreme Court concluded that the DBE program is constitutional as long as the strict scrutiny standard was achieved. There have been other federal cases as well, that have upheld the facial constitutionality of the DBE programs.

So, I don't believe I need to spend much time arguing that the program is still relevant and that the playing field is still not level; but I would rather take a few minutes to offer solutions and briefly outline necessary and crucial improvements to the existing program.

Problems With the Current DBE Program

Earlier this week, I held a teleconference with a number of our DBE members and talked with other stakeholders and transportation professionals who have (or had in the past) the responsibility for running state DBE programs. I also visited with a Senior Partner at Booz Allen Hamilton, a COMTO business member, strong DBE advocate and as you know, one of the country's largest consulting firms. The overlying theme of these discussions was consistent regarding necessary and crucial improvements to the existing program. There were six (6) reverberating issues:

1. Need more specific language in the RFPs (issued by federal grantees) to ensure the integrity of "good faith efforts." Currently there are no teeth in "good faith efforts" and there is far too much inconsistency from agency to agency. For COMTO and its members, challenges remain in the process of goal setting, the DBE certification process, DBE eligibility requirements, and the usefulness of the UCPs in terms of streamlining and opening up more potential opportunities for contracts in federally funded transportation projects across the country.

COMTO recommends that the DBE program is supported with increased federally-funded vigilance, including education, training, outreach, compliance, and enforcement mechanisms, which would be steadfastly evident and achieved in more measurable ways.

2. Uniform Certification Program (UCP): The DOT DBE program was a catalyst for the establishment of Unified Certification Programs (UCP) in each state across the country. The UCP was designed to help facilitate and streamline certification of disadvantaged businesses through a 'one-stop shop' concept. As of 2008, all 50 states had established

UCPs. However, there is currently no national database or central repository for this vital data.

COMTO recommends that Congress exercise greater oversight regarding compliance with this program reform. Further, to enhance best practices and consistent results, **COMTO recommends** that Congress require greater reciprocity of DBE certifications nationally. Further we encourage DOT to collaborate even more closely with other federal agencies such as the Small Business Administration, Department Of Labor and the Department of Veterans Affairs.

3. Cumbersome and Time Consuming Certification Process: As noted above, while some progress has been made with regard to DBE program certification, additional efforts to streamline the process are needed to reduce unwarranted burdens on DBE firms or applicants, and on certification officials. The current DBE eligibility and certification process is often unnecessarily cumbersome and burdensome. Even though the DOT DBE program is governed by a single set of federal rules, the information requested by one certifying entity is, far too often, not the same information required by another (both as to content and form of the information).

COMTO recommends that Congress, require by statute, that all certification officials undergo formal, structured training and be tested and accredited. In this way, Congress can promote the consistent and fair interpretation and application of program eligibility rules. **COMTO further recommends** the establishment of a technology-based, unified DBE certification process that is clearly standardized with compliance reviews, to ensure consistency throughout the participating entities and national outreach.

Mr. Chairman, COMTO applauds the mandatory certification training provisions included in H.R. 915 the Federal Aviation Administration Reauthorization Act. We urge you to include similar provisions in the surface transportation programs as well.

4. Need for More Aggressive and Consistent Compliance Monitoring of the DBE Program: **COMTO recommends** that Congress mandate the General Accounting Office (GAO) to commission a report on the current status of the Department of Transportation DBE/ACDBE program and to provide the critical information necessary to understand its impact when implemented, according to its mission, as was completed in June of 2001. COMTO welcomes the opportunity to support this effort.
5. Ongoing Congressional Oversight: Regarding the ongoing problem of discrimination in the transportation industry, **COMTO recommends** that Congress reauthorize the DOT DBE programs (in those instances where reauthorization is required) and retain the minimum national aspirational 10% DBE/ACDBE participation goal. **COMTO further recommends** that the DBE participation goal be made applicable not only to federally-funded transportation projects, but also to all programs or projects authorized by SAFETEA-LU and the AIP program (including, for example, airport projects funded with federally-approved “passenger facility charges”). Additionally, **COMTO recommends** funding for the establishment, maintenance and monitoring of a national

DBE/ACDBE program to ensure its success. This inclusive initiative will require additional compliance requirements and there will be a need to allocate funding to perform the required tasks.

6. Development of a National Mentor-Protégé Program. **COMTO recommends** the creation of outreach opportunities in collaboration with federally-funded transportation entities to connect prime contractors with DBE firms across the country. **COMTO further recommends** the creation of a web-based DBE opportunity clearing house, where transportation agencies post potential opportunities for DBE firms. COMTO is taking the lead with this effort and will discuss further with Secretary LaHood when we meet for our initial strategy session on April 1st.

COMTO Disadvantaged Business Enterprises-The Golden Nuggets

During President Obama's transition,, I had the opportunity to serve in the transition process on the DOT Agency Review Team and saw first-hand that what this nation is faced with is about more than bricks and mortar, concrete and steel.

This issue is more than just contracts, constructions and costs; it is clearly about the future of our nation's workforce. This is about people.....this is about jobs. Too often we forget that the golden nuggets of our industry are the people who participate in the DBE program and the thousands upon thousands of others who work for the DBE firms. DBEs are the force that will spur the stimulus projects.

COMTO DBEs firms touch the full spectrum of projects, offering everything from engineering services to advanced technologies to traffic engineering; to professional services for legal, real estate and capital investments. They are suppliers that provide goods and services to the industry. They run the gamut from the very established business to the start-ups which are poised to partner in a mentor-protégé relationship. We have, as members, the only minority owned manufacturer of heavy-duty brakes and clutches for trucks, buses, trains and power equipment (based in Miami, FL); we have the only minority owned railway engineering services firm (based in Jacksonville, FL) and we have one of the largest minority owned firms whose primary business is to lay track.

So, we must take into consideration that our reason for being here is not just a DBE issue – this is also a workforce issue. As we all know, small businesses hire 70% of the workforce. DBEs are the engines of our economy in transportation, now more than ever before.

Last week, I was in St. Louis facilitating stakeholder meetings on behalf of the Missouri DOT for the new Mississippi River Bridge. Construction of the bridge is scheduled to begin in the fall. There were probably 150 people in attendance – most of them principals or employees of DBEs from both sides of the Mississippi River – St. Louis, MO and East St. Louis, IL, which has an unemployment rate of 14.9%.

Stakeholders.....the people who live and work on both sides of the river – wanting to contribute to the building of something new and exciting in their community; wanting a fair

chance to play their part to help our economy recover; wanting some of the business and some of the jobs of building that bridge that will impact their community, wanting to employ their families and the people in their community.

In the St. Louis region, there is a group known as Gamaliel Foundation – which is a consortium of 400 faith based organizations. Members of Gamaliel are quick to tell you that President Barack Obama learned and perfected his community activism through Gamaliel. They have been at the forefront in both Missouri and Illinois advocating for a level playing field for DBEs, as well as for women, minorities and the economically disadvantaged looking to be employed in the heavy highway construction industry. DBEs employ the people in their community. If you want the community to take pride in ownership, let them take part in the building process. Let them contribute to their own livable community.

An effective DBE program makes it easy to support the economic recovery program. Recently Secretary LaHood said:

In a very short time, your cities will be humming with construction workers, engineers, maintenance crews and many others. You'll see roads repaved, interchanges improved and bus and rail systems repaired, upgraded and expanded.

Well, I submit to you and the members of this committee, Mr. Chairman, that along with that melodious hum, needs to be the sweet chorus of our nation's DBE firms and then we can add the harmonies of a DBE firm's project manager, and the civil engineer, and the carpenter, and the administrative staff....

That's what will enhance the humming that Secretary LaHood referred to – the continued investment of human capital. With the kind of chorus I am describing, we can enhance our nation's infrastructure, decrease discrimination and harness the power of ALL our nation's people and businesses to get our economy back on track. The members of COMTO stand ready to do our part.

Conclusion

Collectively, we all – COMTO, our members, the Congress, both the private and public sector and our DBEs – have a tremendous responsibility to facilitate change in an industry that does not always benefit those from whom it benefits.

To dismantle or neutralize the existing DBE program will result in a very chilling effect against minorities and women who have been demonstratively under-represented in federally funded transportation contracts across this country.

In closing, allow me to share a quote from President Barack Obama:

Our economic dependence depended on individual initiative. It depended on a belief in the free market; but it has also depended on our sense of mutual regard for each other, the idea that everybody has a stake in the country, that we're all in it together and everybody's got a shot at opportunity.

Mr. Chairman, COMTO applauds the efforts of the T&I Committee to protect the DBE program and we support your efforts to advance inclusiveness in transportation.

Thank you for the opportunity to testify here today. I would be happy to take any questions you might have.