



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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November 4, 2021

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on “Does Discrimination Exist in Federal Passenger Rail Contracting?”

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Tuesday, November 9, 2021, at 11:00 a.m. EDT in 2167 Rayburn House Office Building and via Zoom to hold a hearing titled “Does Discrimination Exist in Federal Passenger Rail Contracting?” The Subcommittee will hear testimony from witnesses from Janus Materials, GW Peoples Contracting Company, Envision Consultants, the PACO Group, Somat Engineering, and Dikita Engineering. The hearing will offer a chance to examine whether discrimination is present in federal passenger rail contracting.

BACKGROUND

The U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program was established to address discrimination against minority and women-owned businesses.¹ The DBE program seeks to ensure those businesses are provided equal opportunities to compete for certain USDOT funded contracts administered by the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), the Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA).² Currently, no such program exists for funds administered by the Federal Railroad Administration (FRA).

¹ USDOT Office of Civil Rights. *Disadvantaged Business Enterprise (DBE) Program*. US Department of Transportation. Retrieved October 27, 2021, from <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

² 49 CFR 26.3.

First established by federal regulation in 1980 as a minority and women’s business enterprise program, the DBE program was later statutorily authorized for highway and transit transportation programs in 1983 by the *Surface Transportation Assistance Act of 1982* (P.L. 97-424) to aid small businesses owned and operated by minorities facing historic and continuing discriminatory barriers to participation in the highways and transit programs.³

DBE programs for women-owned businesses and the FAA’s airport DBE program were primarily implemented by regulation until Congress enacted the *Surface Transportation and Uniform Relocation Assistance Act of 1987* (P.L. 100-17) and the *Airport and Airway Safety and Capacity Expansion Act of 1987* (P.L. 100-223). These laws expanded the statutory authorization for highway, transit, and airport construction DBE programs to include women-controlled small businesses and codified the airport DBE program, respectively. *The Airport and Airway Safety and Capacity Expansion Act* also established a separate Airport Concession Disadvantaged Business Enterprise (ACDBE) Program administered by the FAA for airport concessions and related contracts.⁴ The highway and transit DBE program, the airport concession DBE program, and the airport construction DBE program are implemented pursuant to regulations established under 49 CFR part 26.

Congress has regularly reauthorized the DBE program for highways and transit in successive surface transportation reauthorization bills, most recently with the enactment of the *Fixing America’s Surface Transportation (FAST) Act* (P.L. 114-94). H.R. 3684, the *Infrastructure Investment and Jobs Act*, reauthorized the surface DBE program.⁵

I. What is a DBE?

For highways and transit and airport construction DBE program eligibility purposes, a DBE is defined as a small, for-profit business where socially and economically disadvantaged individuals (1) own at least 51 percent of the economic interests of the entity, and (2) control and manage the business operations of the firm.⁶ A firm and its minority and/or women owners seeking certification as a DBE must meet: (1) an ownership and control test, (2) a personal net worth test, and (3) a size standard test, requirements for which are described in regulation.⁷

Under statute, “socially disadvantaged” refers to individuals or groups facing historic and ongoing discrimination, such as racial or ethnic prejudice or cultural bias due to membership in a particular group.⁸ Consistent with USDOT implementing regulations, minorities and women are presumed to be socially disadvantaged.⁹ Others may qualify as socially disadvantaged on a case-by-case basis.¹⁰

³ USDOT Office of Civil Rights. *Disadvantaged Business Enterprise (DBE) Program*.

⁴ Since the *Airport and Airway Safety and Capacity Expansion Act* P.L. 100-223 codified the airport construction DBE program and the ACDBE program, these programs do not require statutory reauthorization in the same manner as highway and transit DBE programs.

⁵ In this memo, “surface” refers to highways and transit.

⁶ 49 CFR 26.5.

⁷ 49 CFR 26; 49 CFR 23.

⁸ 13 CFR 124.103.

⁹ 49 CFR 26.67(a) and (b).

¹⁰ 49 CFR 26.67(d).

To be regarded as economically disadvantaged, an individual must, among other things, have a personal net worth that does not exceed \$1.32 million, excluding the equity in the individual's primary residence and the value of their ownership interest in the firm seeking certification.¹¹

To meet size standards for DBE eligibility and be regarded as a small business in the surface transportation sector, a business must meet the qualifications of a small business defined by the Small Business Administration (SBA) in accordance with the North American Industry Classification System (NAICS) codes relevant to the business and as defined by the annual gross receipts or employee number caps outlined for each industry code.¹² In addition, the small business must not have average annual gross receipts over the firm's previous three fiscal years in excess of \$23.98 million, regardless of the relevant NAICS code qualification.¹³

II. A DBE Program at FRA

Currently, FRA does not have specific statutory authority to administer a DBE program, unlike most other USDOT agencies. To authorize an FRA-administered DBE program, Congress must determine that there is need for such policy. Section 11310 of the 2015 *FAST Act* required FRA to conduct a disparity and availability study which will inform Congress of this need.

This Subcommittee hearing will allow for Members to hear from six minority business leaders, each testifying to their personal experiences of discrimination on the basis of race or sex when working within the federally-funded passenger rail space.

¹¹ 49 CFR 26.67(a).

¹² 49 CFR 26.65(a).

¹³ 49 CFR 26.65(b).

WITNESS LIST

Mr. Ken Canty
President and CEO
Janus Materials

Mr. Melvin Clark
Chairman and CEO
GW Peoples Contracting Company

Ms. Victoria Malaszecki
President and CEO
Envision Consultants

Mr. Francisco Otero
President and CEO
PACO Group

Mr. Gnanadesikan “Ram” Ramanujam
President and CEO
Somat Engineering

Ms. Evalynn Williams
President
Dikita Engineering