

STATEMENT OF GARY D. GAYTON, DEPUTY ADMINISTRATOR OF THE URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE TASK FORCE ON MINORITY ENTERPRISE, HOUSE SMALL BUSINESS COMMITTEE, SUBCOMMITTEE ON GENERAL OVERSIGHT AND MINORITY ENTERPRISE JUNE 14, 1979

Mr. Chairman, Members of the Task Force.

I am Gary Gayton, Deputy Administrator of the Urban Mass Transportation Administration of the Department of Transportation. From July 1977 to April 1979, I was Secretary Adams's special assistant, primarily responsible for advising the Secretary on minority business enterprise. With me today are Dr. Robert Fairman, Deputy Assistant Secretary for Administration, Kenneth Bolton, Director of the Minority Business Resource Center of the Federal Railroad Administration, and John G. Wofford, Deputy General Counsel.

The Department of Transportation appreciates the opportunity to appear before you today to discuss our minority business enterprise program and our implementation of Public Law 95-507. I hope that this testimony will help to clarify the Department's commitment to increasing the utilization of minority business enterprises in our direct and financially-assisted contracts. It has been and continues to be the

policy of the Department to encourage and increase the participation of these firms in our contracts and programs. We recognize that these entrepreneurs have been traditionally underrepresented as owners and managers of American businesses. To overcome this underutilization, the Department has taken a number of affirmative steps which I would like to describe to you today.

The Department's direct contracting with MBEs has been increasing since fiscal year 1976. MBEs received approximately 4.7% of the dollar value of total direct contracts by the Department in FY 1976. This figure increased to 7.0% in FY 1977, 10.0% in FY 1978, and 10.3% for the first half of FY 1979.

The success in our financial assistance programs has been more difficult to measure since DOT, like other Departments, has not kept complete statistics on MBE participation in this program. We have been aware that this area, even more than the direct procurement area, needs to be improved. Some significant progress has been made. For example, UMTA financial assistance recipients nearly tripled their contracting to MBEs from FY 1977 to FY 1978. Under the guidance of FHWA, state highway departments increased their contracting

to MBEs from FY 1977 to FY 1978. Under the guidance of FHWA, state highway departments increased their contracting to MBEs from \$70 million to \$123 million between FY 1977 and FY 1978, exceeding the FY 1978 goal of \$100 million. FRA, through the Minority Business Resource Center, increased railroad contracts to MBEs from 1% in calendar year 1976 to 5.8% in calendar year 1979. The Department set a 15% goal for MBE participation on the Northeast Corridor Improvement Project of FRA, and is currently achieving 19%. AMTRAK has committed itself to a \$26 million goal for MBE participation in FY 1979, while Conrail has agreed to a \$100 million goal.

In addition to the work of the MBRC the Department has made a number of specific MBE outreach and technical assistance efforts. For instance, we have sponsored several studies to identify minority contractors and their problems, and methods of resolving them. We have also sponsored a series of workshops involving every State in the nation, an undertaking in which the Office of Minority Business Enterprise, Department of Commerce, was our partner. And, for the past 3 years, we have made funds available in every State for training minority construction contractors to stimulate their participation in our projects.

When Secretary Adams came to the Department in 1977, he recognized the need for greater direction in the MBE program. The Secretary told me when he asked me to come to Washington

in July 1977 that he was committed to increasing MBE participation and that I should do everything possible to that end. He authorized the use of set-asides for MBEs in the Northeast Corridor Improvement Project, pursuant to his authority under Section 905 of the 4R Act to take affirmative action to assure that played a meaningful part in that major rail revitalization program. In March 1978 he signed DOT Order 4000.7A, a greatly strengthened and expanded revision to the previous DOT MBE Order. This Order covers both the Department's direct and assisted contracting. It charges the Assistant Secretary for Administration with program responsibility and the Director of Civil with review responsibility. The order sets forth procedures for the screening of DOT procurements for MBE potential, requires MBE goals and MBE subcontracting programs, and allows the use of competitive MBE set-asides. In the financial assistance area, it requires applicants to have an approved MBE affirmative action program, including goals, as a condition of receipt of DOT financial assistance.

The Order requires the Department's operating elements to prepare implementing plans. These plans were submitted to the Office of the Secretary last summer. Upon review of these draft plans, we determined that a single implementing document for the entire Department would be more easily administered and more easily complied with by the public.

The Notice of Proposed Rulemaking, entitled Participation by Minority Business Enterprises in Contracts and Programs Funded by the Department of Transportation, which appeared in the Federal Register on May 17, 1979, is this single implementing document. With the issuance of this NPRM, DOT has proposed a uniform, department-wide MBE program covering contracts let directly by the Department and those let under its financial assistance programs.

The NPRM was conceived and initially drafted prior to the passage of Public Law 95-907. When Public Law 95-507 was signed by the President in October, DOT re-examined its proposed rule and made major changes to comply with the new statute. We amended our definition of MBE, which had previously been one based solely on race and sex, to comply more closely with the definition in P.L. 95-507. We changed our dollar thresholds for requiring subcontracting plans to make identical to those in P.L. 95507. We revised the components of our subcontracting plan to comport to those in the new legislation. We also redrafted our MBE commitment clause to reflect the clause set forth in P.L. 95-507.

Our proposed regulation does not address the Office of Small and Disadvantaged Business Utilization required by P.L. 95-507 . The Department is currently taking steps to implement

that aspect of the legislation. DOT's Office of Small and Disadvantaged Business Utilization will comply fully with Public Law 95-507 and the OFPP policy guidance issued pursuant to that statute. The primary function of the office will be to implement Sections 8 and 15 of the Small Business Act for the entire Department. This office will be the policy and program review office for the Department's small and disadvantaged business programs in the direct procurement process and will promote small and disadvantaged business.

In its implementation of the statute and the OFPP policy guidance, the Department is faced with two organizational problems. These problems require careful consideration to ensure that the Office of Small and Disadvantaged Business Utilization will be effective. First, the Director's functions will overlap with the responsibilities of the Assistant Secretary for Administration with respect to procurement. Although the Director of the Office of Small and Disadvantaged Business Utilization will be responsible for Departmental small and disadvantaged business policy in procurement, the Office of the Assistant Secretary for Administration will continue to have overall responsibility for Departmental procurement policy. The responsibilities and functions of these two offices must be clearly stated in order to avoid duplication and confusion.

Second, there is a statutory requirement for the Director to exercise supervisory authority over operational procurement personnel. The Department has 9 Departmental elements and 53 procurement centers. This complex organizational structure requires that the lines of functional supervision and monitoring responsibility for small and minority business procurement personnel be carefully developed.

With the establishment of the Office of Small and Disadvantaged Business Utilization, the position of special assistant for minority business enterprise matters will be eliminated. Retention of this function would be duplicative once the new office is established. A new SES position of Director of the Office reporting directly to the Deputy Secretary will be set up.

Procurement support for the Office in the Departmental elements will be provided by redescribing existing positions to perform a collateral duty of supporting the Office of Small and Disadvantaged Business Utilization. In each of the procurement offices to which the SBA has assigned a technical representative, one position will be allocated out of existing resources to serve as a "small business technical advisor" with a principal duty of assisting the SBA representative. Procurement personnel supporting the Office of Small and

Disadvantaged Business Utilization will take administrative supervision from their normal supervisors in the operating elements and they will take functional supervision from the Office of Small and Disadvantaged Business Utilization. The Office of Small and Disadvantaged Business Utilization will evaluate these personnel periodically in their performance of functions associated with Sections 8 and 15 of the Small Business Act, as amended.

The option which we are pursuing is two-phased. We will first establish an office consisting of a Director and staff of up to five people to handle procurement, administrative, and outreach efforts. After this core group is well established, we intend to incorporate the Minority Business Resource Center with its 17 spaces into the office.

We feel that this option, when fully executed, will provide the new office with the benefits of experienced staff and organization and high level authority and responsibility necessary for its success. This option will also avoid the duplication of effort that would occur with both a Minority Business Resource Center and an Office of Small and Disadvantaged Business Utilization.

The provisions of DOT's NPRM on minority business enterprise which I described previously implement in part a variety of statutes, which are not identical. The Department is committed to adopting a uniform, department-wide MBE program.

The statutes which the NPRM implements, in addition to 95-507, are as follows:

- (1) Sections 905 and 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 which require the Secretary to take affirmative action to assist MBEs in the programs set up by that Act. Section 905 prohibits discrimination on the basis of race, color, national origin, or sex. Section 906 creates a Minority Business Resource Center to design and conduct programs to encourage, promote, and assist MBEs to secure contracts funded by that Act. FRA's implementing regulations, which were issued several years ago, prohibit discrimination in contracting on the basis of race, color, national origin, or sex and require recipients to develop affirmative action programs to this end.
- (2) Section 30 of the Airport and Airway Development Act of 1970, as amended, which requires the Federal Aviation Administration to take affirmative action to assure that no person is discriminated against on the grounds of race, creed, color, national origin, or sex in any program funded by that Act.

- (3) Section 19 of the Urban Mass Transportation Act of 1964, as amended, which requires the Urban Mass Transportation Administration to take similar steps.
- (4) The NPRM also implements Executive Order 11625 which establishes the Government's commitment to support minority business enterprises in its contracting and grant programs and requires Federal executive agencies to develop comprehensive plans and program to encourage MBE utilization.

- (5) One day after our NPRM was published, the President signed Executive Order 12138 creating a national women's business enterprise policy and requiring each Federal agency to take affirmative action in direct contracting and financial assistance. Our proposed regulations, when finalized, will be our implementation of this Executive Order as well.

Because of these several separate authorities in the area of financial assistance and the large number of DOT dollars which flow under our financial assistance programs, the major focus of the MBE NPRM is in that area. The NPRM attempts to provide for a consistent program across all operating elements in the Department in order that recipients and contractors can deal with the Department on a predictable and uniform basis.

In his urban policy statement of March 1978, President Carter cited DOT's efforts in the financial assistance area, as set forth in DOT Order 4000.7A, as a model for the entire Federal government. At the heart of our MBE program in the grants area is a requirement that grant applicants set MBE goals and develop affirmative action plans for the utilization of MBEs as a condition of receipt of grants. No DOT funds for major grants are authorized until the Department has received from the applicant and approved a specific commitment for MBE utilization and a plan for achieving that commitment.

Our proposed rule would set up a recordkeeping system for tracking MBE participation in both the financial assistance and direct contract programs.

Our NPRM also establishes a detailed MBE certification procedure to be conducted by the Department in the direct contract area and by grantees in the financial assistance area. This procedure is an effort by the Department to insure that our program benefits firms owned and controlled by socially- and economically-disadvantaged persons in fact as well as on paper. Our NPRM also mandates separate goals for minority firms and female firms so that both disadvantaged

groups will benefit without adversely affecting each other. Goals for female-owned firms will be over and above those for minority-owned firms. Lastly, the NPRM establishes a complaint, compliance, and enforcement mechanism which will enable us to proceed uniformly and with due process in insuring compliance with our regulation. The comment period on the NPRM closes on July 16, 1979 and we look forward to receiving public comment on our proposals.

In summary, Mr. Chairman, the Department of Transportation has been and remains committed to the utilization of MBEs in our programs. We are striving to implement as effectively as possible the MBE mandates established by Congress and the President.

This completes my prepared testimony. Again I appreciate this opportunity to discuss this matter with you today on behalf of the Department. Mr. Bolton also has a brief prepared statement he would like to read. The panel would then be happy to answer any questions which the Task Force has.

Thank you.