

STATEMENT OF ALFRED A. DELLIBOVI  
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BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES, ON WEDNESDAY, OCTOBER 1, 1986

Madame Chairwoman and members of the Subcommittee, my name is Alfred A. DelliBovi. Accompanying me is Mr. Robert Owens, the Director of the Office of Civil Rights of the Urban Mass Transportation Administration (UMTA). I am pleased to have this opportunity to appear before you to discuss the implementation of section 105(f) of the Surface Transportation Assistance Act of 1982 (STAA). As you are aware, this provision requires that unless the Secretary determines otherwise, not less than 10 percent of the funds authorized to be appropriated under the STAA be expended with small business concerns owned and operated by socially and economically disadvantaged individuals.

Recognizing your concerns, we are going to focus on the implementation of this provision by UMTA recipients. I would note that as a matter of policy we believe it is properly the recipient's responsibility, in the first instance, to ensure its own compliance with section 105(f). UMTA reviews the recipient's Disadvantaged Business Enterprises (DBE)/Women's Business Enterprises (WBE) program, including the recipient's overall goals, as a precondition to UMTA's award of financial assistance. Following program approval, UMTA relies upon ongoing reporting of DBE/WBE participation, on-site reviews, and reviews of the recipient's procurement system to ensure compliance.

Actions Taken to Implement Section 105(f)

As our Region II Administrator stated to the Subcommittee last year, a basic step in UMTA's administration of section 105(f) is our review of grantees' DBE programs to assure that all applicable components are included. This review includes an annual evaluation of the grantees' overall DBE goals to assure that DBEs have maximum opportunity to participate in UMTA-assisted projects. The annual evaluation considers, among other things, the grantees' previous efforts and the projected levels of activity. If from these reviews we find serious deficiencies in the DBE program, UMTA would not approve any pending grant applications and could withhold funds under existing grants.

UMTA continues to emphasize on-site reviews. We have issued policy guidance to ensure that the regional offices will increase on-site reviews to the maximum extent feasible, particularly as part of the major review we do every three years. UMTA has also emphasized to grant recipients that they should ensure that DBEs and WBEs actually fulfill all contractual obligations, meet program eligibility requirements, and perform commercially useful functions. We have particularly emphasized procedures to identify "fronts" and to eliminate such firms from program participation. UMTA intends to issue additional policy guidance soon to the UMTA

regional offices stating that recipients should increase field monitoring of DBE and WBE firms.

As we noted in our testimony last year, throughout the fiscal year UMTA monitors grantees' efforts to use DBEs by reviewing their Progress Reports. These reports have been computerized in UMTA Headquarters to analyze data regarding each recipient's most current utilization of DBEs. Data from these reports have been expanded to cover the following areas: ethnicity of firms; dollars awarded; number of contracts or subcontracts; and type of contract or subcontract, such as professional services or construction. The information from these progress reports shows that from fiscal year 1983 to fiscal year 1985, UMTA recipients, in the aggregate, have exceeded the 10 percent DBE goal of section 105(f). Recipients required to submit a DBE/WBE program have reported the following overall rate of participation: fiscal year 1983, 14.3 percent; fiscal year 1984, 14.9 percent; and fiscal year 1985, 14.2 percent. Based on the level of participation in these years, UMTA anticipates its recipients, in the aggregate, once again to exceed the 10 percent DBE goal in fiscal year 1986.

Finally, we have found that the technical assistance that UMTA provides to assure implementation of section 105(f) continues to be very helpful to our recipients. UMTA regional personnel have conducted meetings, conferences, and training seminars with recipients' personnel to discuss all aspects of the DBE/WBE program. Specific areas of the program that have been emphasized

include: the need to accurately report DBE/WBE accomplishments so that only Federal funds are counted in assessing such participation; the procedures that must be implemented to request an exemption from the "20 percent" rule that applies to supplies; and the need to carefully certify the eligibility of DBEs and WBEs.

#### Removing Barriers to DBE Participation

The enhancement of the ability of DBEs to compete effectively for contracting opportunities made possible by UMTA funds, and their ability to become long-term participants in the transit marketplace, is a major goal of UMTA's section 20 Human Resources Program. Projects under this program will reduce barriers to full DBE participation by improving access to capital markets, providing technical and managerial assistance, and assisting in business development. For example, a new section 20 program initiative matches DBEs with prime contractors in fields where DBE participation has historically been limited. These contractors are major corporations who do business on a regular basis with several UMTA grantees. By having these contractors work with DBES, we hope to bring about changes in transit contracting patterns. Another example is UMTA's Demonstration Bonding Program. The purpose of this program is to leverage bonding for DBEs through public/private partnerships. This will assist in addressing a major problem confronting DBEs -- the lack of access to bonding --and will enable participating DBEs to develop the track records necessary to compete for transit contract

opportunities on an equal footing with more established firms. A third section 20 project will offer a sophisticated workshop and seminar series to DBEs and WBEs. This series, which is scheduled to take place in eight cities, covers marketing, business administration, and engineering concerns, and will affect over 1,000 businesses nationwide.

We have used section 20 projects to further the objectives of section 105(f) and to revitalize the spirit of entrepreneurship in the country as a whole. I promise you that UMTA will continue to seek to dismantle the barriers which have precluded full DBE participation in the American economic system and to take steps to assure that DBEs are full partners in all aspects of transit contracting in the years to come.

#### Certifications of Firms

The DOT Minority Business Enterprise regulation requires each recipient to determine the eligibility of firms as DBEs and WBEs. The accountability of the individual recipient for the integrity of its own program is very important. However, we also recognize the potential value of a statewide or regional certification process. UMTA is actively pursuing expansion of voluntary consortia among regional recipients, such as that which currently exists in the San Francisco Bay area, to improve the certification process. This approach should provide an opportunity to assure a higher quality review of eligibility. We must, however, emphasize the need for close scrutiny of such statewide and regional

certification procedures to better enable recipients to rely on these certifications.

As I noted earlier, UMTA's policy guidance for the regions has emphasized procedures to identify "fronts," to reduce, if not eliminate, the certification of nonqualifying firms.

#### Compliance/Enforcement

Our agency uses the following procedures to ensure compliance:

(1) making certain appropriate grant contract language commits recipients to meeting goals; (2) closely monitoring DBE progress reports to determine how well a grantee is meeting its goals; and (3) conducting, as necessary, on-site reviews of grantees. In addition, we continue to encourage our recipients to perform field inspections of DBEs/WBES to ensure compliance with the certification procedures and to assure that they are performing commercially useful functions.

If a grantee has failed to meet its DBE goal, which could lead to non-compliance, the grantee is required to submit an explanation for non-attainment to UMTA. If the explanation is unsatisfactory, that is, if circumstances were not beyond the grantee's control and the DBE goal could have been attained, UMTA may take several actions. These include: not approving pending grant applications; requiring the recipient to take remedial action; and, as necessary, requiring the recipient to raise the next year's DBE goal, assuming sufficient contracting opportunities are

available for DBEs. The recipient's failure to take remedial action may result in suspension or termination of UMTA funds.

I know you have particular concerns about compliance in the New York City area. We have found that the issues raised in New York are similar to those encountered elsewhere. For example, on occasion the prime contractor allegedly fails to pay the DBE or WBE for work performed. In attempting to help resolve such situations, UMTA works directly with recipients, since we do not have a direct contractual relationship with the prime or sub-contractors. It is the recipient and the prime who have a direct contractual relationship. Our role is to work with the recipient to review a situation to assure that no discrimination has taken place against a DBE or WBE. In addition, we expect a recipient to take the necessary and appropriate action required to resolve the issue. These steps have been taken with our recipients in the New York City area.

Madame Chairwoman, that concludes my prepared statement. At this time, Mr. Owens and I will be happy to answer any questions you may have.