STATEMENT OF STEVEN A. DIAZ
CHIEF COUNSEL
URBAN MASS TRANSPORTATION ADMINISTRATION
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Mr. Chairman, my name is Steven A. Diaz. I am the Chief Counsel of the Urban Mass Transportation Administration (UMTA), an agency of the United States Department of Transportation. My appearance here today is in response to your July 27, 1990, letter to our agency requesting its participation in these field hearings on the UMTA grant management process. Appearing with me today is Renee Marler, Counsel for Region IX which has jurisdiction over a number of States including California.

DESCRIPTION OF UMTA'S GRANT PROGRAM

UMTA is the principal source of Federal financial assistance for public mass transportation in the nation. Since its beginning in 1964, UMTA has provided $59.6 billion in funding to public transit systems throughout the nation. Each year, UMTA provides funds to about 450 urban mass transit systems using UMTA's formula and discretionary grant programs. In addition, UMTA provides funding to non-urban rural communities through a series of programs administered through the States.

Formula Grant Program

Under the Urban Mass Transportation Act of 1964, as amended (UMT Act), Section 9 formula funds, which come from the general fund, are apportioned to urbanized areas using a formula based on population density and other factors associated with transit service and ridership. Grants under this formula program provide financial assistance for capital, operating and planning projects.

Discretionary Program

UMTA's Section 3 program is one of the largest discretionary grant programs in the Federal government. In FY 1990, Congress provided UMTA with $1.3 billion in budget authority for discretionary grants. Funds for the Section 3 program come entirely from the Federal motor fuel tax. The purpose of the Section 3 program is to assist in the funding of high priority projects, or extraordinary projects, for which the costs exceed the level of available Section 9 formula funds as well as local resources.

The Section 3 program is comprised of three categories:

- Bus - The acquisition of buses and ancillary equipment and the construction of bus facilities.
- Rail Modernization - Limited to the traditional ""old rail cities" (i.e., Boston, New York, Philadelphia, N.E. New Jersey, Pittsburgh, Cleveland, San Francisco and Chicago).
- New Starts - Funding for new rail projects. Eligible projects are subjected to a rigorous planning process including alternatives analysis.

SCOPE OF REGION IX GRANTS

Region IX is responsible for grants in several states, including California. The regional staff deals with 88 grantees, annually awarding about 100 grants obligating about $500 million in Federal funds. There are over 400 active grants, with total obligations of about $3.8 billion, of which $1.1 billion has yet to be disbursed.

The largest grants are awarded to regional transit agencies in Los Angeles, the Bay Area, San Diego, Sacramento and Honolulu. Active grants to 15 grantees in the Los Angeles-Long Beach Urbanized Area amount to approximately $2 billion in obligations, or about 53 percent of the total. Of this amount, grants for construction of the Metro Rail subway in Los Angeles account for $1 billion. Active grants to 12 grantees in the San Francisco-Oakland and San Jose Urbanized Areas amount to another $1.3 billion.

DOCUMENTATION OF THE USE OF UMTA FUNDS

Federal regulations (see 49 CFR Part 18) require grantees to provide UMTA with considerable documentation on their use of Federal funds. This documentation, provided through narrative reports (both project and financial), is provided to UMTA on a quarterly basis, as well as through other reports on significant issues related to projects.

UMTA grantees are responsible for administration and management of the Federal grant in compliance with the terms and conditions of the grant agreement and requirements of applicable UMTA circulars and regulations. UMTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with UMTA requirements.

UMTA receives information from grantees at an appropriate level of reporting detail. This will assure that UMTA has the information needed to manage its overall program and to respond fully to specific requests from Congressional committees, auditors and the general public.

The information UMTA needs for program forecasting, management and reporting is furnished by the grantee through quarterly narrative progress reports about significant events, relevant grant activities and any changes to or variance in the grant schedule or budget. At a minimum, each quarterly progress report provides the following information:

(a) A discussion of budget or schedule changes not requiring UMTA approval.

(b) A comparison of scheduled activities and budgeted expenditures with actual accomplishments for the reporting period. Reports should be specific and include information on present status; completion dates for specification preparation; bid solicitations; resolution of protests; and contract awards. Also completion and acceptance of equipment and construction or other work should be discussed.

(c) Reasons why any scheduled milestones or completion dates were not met, identifying problem areas and discussion by the grantee on how the problems will be solved.

(d) A list of all outstanding claims exceeding $100,000 and all claims settled during the reporting period.

UMTA also receives from grantees quarterly financial status reports which are used to monitor project funds. This is to report the status of funds used for all non-construction and construction projects based on the required supporting documentation maintained by the grantee under an adequate accounting system that produces information which objectively discloses financial aspects of events or transactions.

Other reports required of the grantee by UMTA in its oversight role include the Disadvantaged Business Enterprise (DBE) Quarterly Progress Report required by the U.S. Department of Transportation's DBE regulation, and reports of significant events. These latter reports are to be issued when unforeseen events that affect the schedule, cost, capacity, usefulness or purpose of the project occur. In these situations, the grantee should report the event immediately to UMTA, and then reflect it in the next quarterly progress report as well. The quarterly report is due within 30 days after the end of each calendar quarter. Payments to grantees may be withheld when reports are not submitted on time.

UMTA PROJECT OVERSIGHT

With respect to UMTA's oversight jurisdiction or responsibility, it is important to note that UMTA is not a regulatory agency. Specifically, local agencies are responsible for determining service levels and fare structures, and all other

matters relating to the day-to-day operations of a transit system.

Our oversight responsibilities are spelled out in our authorizing legislation. Specifically, Section 3 of the UMT Act requires that no grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have the technical capacity to carry out the proposed project. Section 9 of the UMT Act requires each recipient of funds made available under this section to annually certify to UMTA that it has or will have the technical capacity to carry out the proposed Program of Projects. This determination is made using several formal and informal methods including:

- Day to day contact and information meetings between the grantee and UMTA staff;
- Grantee requests for guidance;
- Annual and special audits;
- Progress and financial status reports;
- Third party contracting activity;
- Quarterly project review meetings; and,
- Triennial reviews.

The Quarterly Project Review Meetings (QPRM) deserve further discussion. QPRM's are an important technique UMTA uses for overseeing and managing the work of its larger grantees. These meetings, which are held four times a year, are attended by UMTA Regional Managers and staff, Grantee General Manager and staff, project management oversight contractors, and, if the issues to be discussed warrant, UMTA Headquarters representatives. The meetings are a forum for management briefings, verbal status reports, discussions of accomplishments or problems that have arisen over the last quarter and proposals for action to be taken on significant problems. These face to face discussions provide a recurring, structured opportunity for direct communication on problems and issues and often draws out information that is not apparent from the written quarterly progress reports. Action items highlighted during the QPRM's are monitored during the quarter, and are the subject of follow-up discussions during subsequent meetings.

STRENGTHENING OF OVERSIGHT ACTIVITIES

In response to internal and external examinations revealing the need for increased grants management oversight within the agency, UMTA has taken a number of actions to strengthen and improve performance.

I. PROJECT MANAGEMENT OVERSIGHT

In 1989, UMTA issued final regulations implementing the Project Management Oversight (PMO) program mandated by Section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). This section permits UMTA to use up to 0.5 percent of the funds made available in each fiscal year under its capital grants programs for PMO of major capital projects.

Beginning in 1983, UMTA reviewed the way in which it provided oversight of one of its principal functional areas - construction of major capital projects by recipients of its funds. After examining a number of other Federal oversight programs, UMTA determined that a definite need existed to increase its independent oversight of projects utilizing large amounts of Federal funding. As a result, UMTA developed a national project management oversight program for major capital projects using independent contractors. Under the program, UMTA assigned independent contractors, paid by and reporting directly to UMTA, to perform project management oversight functions on certain major capital projects. This arrangement allowed UMTA to more carefully monitor certain major capital projects without increasing its staff. The 1987 STURAA subsequently provided specific authorization for this program and provided it with an assured source of funding.

The program has two parts. First, there is project management oversight which is designed primarily to aid UMTA in its role of ensuring the successful implementation of Federally funded projects. UMTA normally would contract for PMO services during the grant application process, although it is possible for UMTA to make the determination that a project is "major" at a later date, and contract for PMO services at that time. Second, there is the project management plan (PMP) required of all major capital projects as a condition of receiving Federal assistance. The PMP is designed to enhance a grantee's planning and implementation efforts, as well as to assist UMTA's grant application analysis efforts. Although the PMP is required to be submitted during the grant review process, the actual due date can vary as the result of a number of factors including the fact that UMTA may not have made the determination that the project is a "major capital" one. UMTA considers the PMP to be a dynamic document reflecting the various stages of a project's development. As such, it is necessary for the grantee to submit periodic updates as needed - and appropriate - to reflect the changing conditions of the project.

UMTA currently has a stable of 12 contractors retained through the competitive procurement process who carry out PMO activities which now involve work on some 33 different projects. A provision in UMTA's Fiscal Year 1990 appropriation law assists the agency in this effort by amending the statutory project management oversight language to allow UMTA to expand the use of those funds to pay contractors to perform procurement, safety, and

financial management audits of our grantees. We are pleased with the way the program is working, and with the enactment of that provision because we believe it will enable us to better perform our ongoing oversight functions.

Let me point out in this connection that most PMO projects involve new rail starts. In the 1987 reauthorization of the transit program, Congress mandated that UMTA fund only those new start projects that the Secretary found to be cost-effective and supported by an acceptable degree of local financial commitment. Unfortunately, the 1990 DOT appropriations act prohibits us from a final regulation that would implement the Congressional mandate, and it appears that the prohibition will be reiterated in our 1991 appropriations bill now pending in Congress. We urge Congress to allow us to issue our final rule so that the 1987 law may be implemented.

II. THIRD PARTY CONTRACT ACTIVITY

The UMT Act contemplates multiple roles by UMTA in grantee procurements. For example, Sections 3 and 9 require use of competitive procurements; prohibit use of exclusionary, discriminatory specifications; require compliance with Buy America provisions; ensure procurement procedures are fair and competitive, etc. These responsibilities are carried out through UMTA's Third Party Contracting Activity (TPCA) whose purpose is to ensure that funds appropriated under the UMT Act are expended in the most efficient and effective manner consistent with principles of maximum free and open competition and other statutory requirements.

UMTA's Third Party Contracting Activity consists of three principal elements:

A. Guidance and Technical Assistance

Guidance to Grantees: technical assistance by way of oral advice is provided by both headquarters and field personnel. In addition, policy and procedures are issued in the UMTA Directives System. UMTA Circular 4220.1B, Third-Party Contracting Guidelines, dated May 5, 1988, serves as the principal vehicle for establishing minimum requirements applicable to all grantee procurement systems. In addition, UMTA has developed a Handbook For Third-Party Contracting, that describes in lay terms the fundamental principles of contracting with Federal funds and explains in general the major do's and don'ts. The Handbook was recently tested in field training and, following final revisions, will be made available as an aid to all our grantees this fiscal year.

Third Party Contract Review. UMTA has identified certain categories of contract action which are particularly susceptible to abuse and therefore requiring special oversight. Included in this category are sole source contracts and single bid awards.

UMTA has a system in place whereby selected contracts of this type are required to be submitted to UMTA for review. In turn, UMTA has established a Third Party Contract Review Board which serves to provide UMTA program managers with advice and assistance as requested.

Systems and Procedures. As part of its Technical Assistance to grantees, UMTA performs limited reviews of both individual contract actions as well as broader reviews of grantee systems and procedures.

B. Training

Procurement training for both UMTA and grantee staffs is provided through a combination of in-house and contract training in both the fundamentals of government contracting as well as specialized courses in particular areas where a special need has been identified as in the areas of negotiation and cost/price analysis.

C. Oversight

Beyond the provision of technical assistance and training, UMTA has a duty to monitor the ways in which grantees expend UMTA assistance in carrying out authorized program activities. Traditional oversight activities include financial audits, operational audits, and other program and administrative reviews.

Self-Certification. UMTA Circular 4220.1B requires recipients operating 100 or more buses to self-certify that their procurement systems meet the minimum requirements of the Circular. Operators of smaller systems are permitted, but not required, to self-certify. Self-Certification includes provision of a system description outlining the basic elements of the grantee procurement process. This summary is reviewed by UMTA staff as part of the triennial review activity and for other monitoring purposes.

Procurement System Reviews. Section 9(i) of the UMT Act provides that recipients may request the Secretary approve their procurement system. Approval is binding until withdrawn for all expenditures under Section 9. In addition to these "Certification Reviews", UMTA periodically initiates its own in-depth reviews of recipient procurement systems in response to a variety of stimuli including OIG audits, Congressional inquiries, public complaints, triennial review findings, etc.

UMTA is reviewing proposals for a contract similar to the PMO contract (multiple awards, work to be authorized by task order) to conduct reviews of grantees' contracting systems. It is expected that work under this contract will begin in October 1990, and continue through September, 1995. Reviews will be of two types: General Purpose Reviews, which will follow a published annual

schedule and be conducted according to a structured protocol, and Special Purpose Reviews, which will be scheduled as needed, and structured according to the purpose for which the review is being conducted.

Special Studies. In addition to procurement systems reviews, the contractor would occasionally be tasked with performance of special studies of particular contacting issues.

Responsibility and authority over third party contracting matters is disbursed throughout the agency according to delegations of statutory authority under different sections of the UMT Act. There is virtually no program office in UMTA that does not have substantial responsibility for TPC. The TPCA has been identified by UMTA as an integral subsystem of an overall UMTA Management Oversight Activity necessary to fulfil the requirements of the UMT Act, as well as the Federal Managers' Financial Management Integrity Act. As such, increased staffing and contract resources have been budgeted for this activity over the next several fiscal years.

III. TRIENNIAL REVIEW

In the 1982 Surface Transportation Assistance Act, Congress established a new Section 9 formula block grant program, and provided that compliance would be through self-certification by grantees. Section 9 of the UMT Act also requires, however, that the Secretary shall, not less than once every three years, perform a full review and evaluation of the performance of a recipient in carrying out the recipient's program, with specific reference to compliance with statutory and administrative requirements, and consistency of actual program activities with the proposed program of projects. The review consists of 19 specific program areas.

It is important to note that the triennial review is not an audit, but rather a practical and reasonable approach to maintain a non-intrusive, credible stewardship of the grant program. It was deliberately developed to be a general look behind the self-certifications that accompany the Section 9 grant application. Absent compelling evidence that a problem exists, there is no reason for the triennial review to probe beyond routinely available records. This is the work of auditors and should be left to the auditors during the A-128 audit, the OIG or the GAO.

Some contend that the triennial review should be more comprehensive. For example, GAO recently recommended that we expand the triennial review to include certain tests of a recipient's procurements to determine that proper procedures were being followed, that UMTA expand its safety review, and that it expand its review of private enterprise participation.

UMTA welcomes any recommendations that may improve our performance of the program in accordance with the agency's policies and within the scope of the definition of the triennial

review. We do have concern, however, with recommendations, such as the GAO's, that would change the scope and direction of the triennial review beyond that which was ever intended, and beyond UMTA's resources, capabilities or legislative authority. In this connection, we believe our current process is carrying out the program in accordance with the statute.

Given the staff levels at our regional offices, several regions were experiencing difficulty in meeting their triennial review schedule demands. To alleviate this condition, UMTA has entered into a Memorandum of Understanding with the Department of Transportation's Transportation Systems Center (TSC) to provide contractor services as a supplement to UMTA staff reviews. Thus, approximately 33 triennial reviews for Fiscal Year 1990 will be conducted by TSC. We expect the popularity of choosing the option of contracting out some of the more difficult reviews (largest recipients) to grow among our regional offices who perform about 150 reviews each year.

UMTA believes that contracting will enhance the entire program and provide an opportunity to raise the level of documentation which we have found is lacking in our regional offices. Documentation of the triennial review has been emphasized throughout the contracting process and is a stated deliverable in the work statement. Because 1990 is the conclusion of the second cycle of the triennial reviews, we believe that this is an appropriate time to revisit the program. Thus, UMTA has asked TSC to focus on the Triennial Review Order which contains the process we follow in conducting the reviews with an eye towards maintaining sensitivity to the critiques that the reviews be more substantive.

IV. FINANCIAL CAPACITY

UMTA is actively considering a plan to provide, through a competitively procured contractor, extended financial management oversight of grantee projects by having the ability to perform financial reviews of those projects where potential problems have been noted. Under consideration are two procurements totaling $400,000 from Project Management Oversight funds.

On several occasions in the past, financial problems have arisen at grantee organizations that required UMTA staff to preform on-site financial reviews of the grantee's operations. By their very nature, these reviews have been time-sensitive, requiring immediate action on the part of the agency to ensure that Federal funds were being adequately protected. Since UMTA has no specific audit capacity, these financial reviews have been conducted by Accounting Division staff in the Office of Budget and Policy. Since Accounting Division staff have other full-time duties, it is extremely difficult to provide adequate staff on short notice to conduct these reviews. The planned procurement would provide the necessary capability through a contract with a certified public accounting firm to perform the service.

However, these reviews are not intended to be comprehensive audits but, rather, an effective and timely assessment of the reported or suspected problems, and to ensure that the grantee has adequate control over the Federal funds disbursed to them. Requests for comprehensive audits, if needed, could then be made to the OIG.

Let me conclude by emphasizing that UMTA takes very seriously its responsibility for identifying internal control weaknesses, and is aggressively pursuing corrective actions to strengthen its oversight capabilities for grant management. We look forward to working with the GAO and your subcommittee as we seek further improvements in our grants management system.

This concludes my statement and I would be pleased to respond to any questions you may have.