



August 20, 2013

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

RE: OIG Report ZA-2013-072

Dear Secretary Foxx:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), and the collective 5,000 (individual, business and private agency) members of the Conference of Minority Transportation Officials (COMTO), we write to comment on the response to the Department of Transportation Inspector General's (IG) report ZA-2013-072, *Weaknesses in the Department's Disadvantaged Business Enterprise Program Limit Achievement of its Objectives*, issued April 23, 2013.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

About COMTO

The mission of COMTO is to ensure a level playing field and maximum participation in the transportation industry for minority individuals, businesses, and communities of color through advocacy, information sharing, training, education, and professional development. COMTO has thirty-nine (39) chapters throughout the United States. Members include individuals, transportation agencies, academic institutions, industry non-profits and Historically Underutilized Businesses (HUBs). From highways and roads to mass transit systems; from subways to rail systems; and from port authorities to airports, COMTO members represent every facet of the transportation industry.

General Comment

APTA and COMTO appreciate the IG's efforts to ensure the Department's Disadvantaged Business Enterprise (DBE) program functions fairly and efficiently. While we agree with the IG's recommendation to centralize program oversight in a single office within the Office of the Secretary (OST), we do not believe the report provides a full picture of the program, its strengths, or

weaknesses. Moreover, we believe the most valuable program modification necessary to ensure the future success of the program and satisfy the IG's concerns – nationwide certification of qualified DBE firms – has been lost among the criticism of the Department's efforts.

Centralizing Program Administration and Oversight

We agree with the IG's concern over fragmented program administration and oversight. Spreading program responsibilities among three separate, independent entities within the Department has proven highly ineffective. The results appear uncoordinated, at best, and suggest the individual offices work at cross purposes. The lack of coherent guidance for states, public agencies, DBE and non-DBE firms stems from this lack of unified purpose and unified command.

We believe this situation can only be corrected through assignment of full program responsibilities to a single office within OST. While the other offices will certainly play important roles in crafting policies, effective oversight, and efficient program administration, one office must be designated to coordinate those efforts and ensure consistency in all aspects of the program.

The Need for Effective Outreach

While the IG may have contacted a number of states and individual businesses, the sample does not appear to be representative. The Department's concerns over the representative nature of the sample are well founded and we note that the IG failed to contact either of our organizations or other associations that could have provided strong support to the IG efforts. APTA is the preeminent association in the public transportation community, comprised of states, transit agencies tasked with day-to-day operation of DBE programs, and contractors large and small, including DBE firms and prime contractors that provide many business opportunities to those DBE firms. COMTO is the preeminent representative of the DBE community across the entire spectrum of transportation modes, and likewise counts among its members DBE firms, non-DBE firms, and public agencies. The IG's failure to take advantage of our broad memberships weakens the value of the findings and recommendations substantially.

In acting to improve the DBE program in light of the IG findings and recommendations, we urge the Department to engage both of our organizations to ensure modifications to the program are substantive and useful. We stand ready to assist in drafting program improvements and implementing those improvements through our members.

The Need for Nationwide Certification

The current certification process has proven counter-productive. Different states apply different standards, do not honor certifications by other states, and are unable, in many cases, to provide timely review of certification requests. Moreover, the need to obtain individual certifications to be active in multiple states forces DBE firms into a Hobson's choice. They can either limit the growth of their businesses, virtually ensuring continued dependence on DBE and other programs, or they can employ full time staff to maintain multiple certifications, adding to their fixed costs. With DBEs geographically limited, prime contractors and project sponsors are limited in their ability to contract with the DBE firms, and those firms remain disadvantaged as a byproduct of the very program designed to level the playing field.

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The Department's most recent updates to uniform certification requirements, as well as those that protect DBE firms from unilateral termination without cause, while well intended, were not effective. A lack of training and outreach on the changes resulted in states and agencies not able or properly trained to apply those updates.

We believe the Department must institute a single, nationwide certification system to ensure the success of the DBE program and the firms it is designed to assist.

We appreciate the opportunity to assist the Department in reacting to the IG's findings in a strong, productive way and would be happy to provide any additional information necessary to complete this process. For additional information, please contact James LaRusch, APTA's chief counsel and vice president-corporate affairs, at (202) 496-4808 or jlarsch@apta.com or Julie Cunningham, COMTO President/CEO at (202) 857-8064 or jcunningham@comto.org.

Sincerely yours,



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