

The Honorable Donald Payne, Jr., Chair
House T&I Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on
“Identifying Discrimination in Federal Passenger Rail Contracting”
November 9, 2021

My name is Melvin E. Clark, Jr. I am the Owner, Chairman and Chief Executive Officer of G. W. Peoples Contracting Co., Inc. (GWP). We are the only national contracting company that specializes in heavy rail construction, maintenance, repair, rehabilitation, and track demolition. I am also a long-time, active member of COMTO, the Conference of Minority Transportation Officials; however, the views I express in this testimony are my own and should not be construed as representing any official position of COMTO.

I want to thank Chairman Donald Payne, Jr. Chair of the Transportation & Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials, Ranking Member Rick Crawford, and the other Members of the Subcommittee for the opportunity to discuss key concerns and experiences of minority-owned – and more specifically, Black-owned – businesses seeking to opportunities funded by programs funneled through the Federal Railroad Administration. I believe this to be a historic event and that it sets significant precedent since this is the first hearing of its kind dedicated to identifying the pervasive racial discrimination in FRA-funded infrastructure contracting and minority business participation.

Before I begin, I do want to recognize the efforts of Deputy Administrator Amit Bose who, since his appointment, has been very aggressive in facilitating meetings between the private sector and quasi-public railroad trade associations and representatives of minority businesses groups. I understand these have been productive and hopefully will lead to further conversations and teaming opportunities. Also, the FRA has successfully negotiated state agency agreements that provide opportunities for small and minority businesses. However, I understand that, unfortunately, those agreements are facing backlash from groups who oppose the negotiated goals, most notably in California.

As you may know, I have been in the heavy rail industry for going on forty-years. I first began my legal career with a prominent Pittsburgh law firm, as a corporate and labor attorney, prior to joining the Tax Division of the U.S. Department of Justice. Following the passenger of the Reagan Administration’s Surface Transportation Act, in 1983, with my father’s support, I founded Metroplex Corporation, the nation’s first minority-owned

railroad construction company which I grew into a nationally-known and widely-respected leader in its field. The company won multi-million dollar contracts for prestigious transit projects across the country, including the Alameda LRT Corridor in Los Angeles (\$65 million), the Bay Area Rapid Transit Project in San Francisco (\$35 million) and the New Jersey Transit Project in Camden (\$50 million). During this time, Metroplex signed the first SBA-sanctioned mentor-protégé agreement with the fledging company, G. W. Peoples Contracting.

In 2011, I was able to acquire full control of G. W. Peoples. GWP can now boast a successful turnaround, producing over \$22 million in annual sales. GWP was the DBE rail contractor for the Chicago Transit Authority's (CTA) rehabilitation of the Dan Ryan Red Line, a \$425 million project to upgrade 10.2 miles of the CTA system where GWP was able to ensure that over **70% of its workforce on the project was minority (men and women).** (We hire from the chronically unemployed: people who look like us.) GWP also built the Atlanta Downtown Streetcar Line and the downtown rail line through the Central Business District of Dallas. Importantly, I must point out that these were all Federal Transit Administration (FTA) funded projects.

Therefore, I do want to begin by being perfectly and adamantly clear about my position: the Federal Railroad Administration, the only major USDOT agency exempted, must implement a program to set goals for participation of disadvantaged business enterprises, i.e., a robust, efficient, and effective DBE program.

Again, while we do appreciate that the FRA is facilitating face-to-face discussions in order to give the pseudo-private railroads and large contractors a chance to engage with DBE and MBEs, I understand that the agenda for the majority-owned firms is to try to avoid goals on contracts or projects funded through FRA. However, good faith and cordial chats have not been enough in the past and they will no longer fly for companies like mine and individuals like myself who have faced – and faced down -- overt racial discrimination throughout my railroad career. To put it bluntly, if they don't have to, they won't.

The role of the Federal Railroad Administration is to focus is on **maintaining current rail services and infrastructure (maintenance and repair)**, strategically **expanding, and improving the rail network (new construction and upgrades)** to accommodate growing travel and freight demand and providing leadership in national and regional system planning and development (**transit-oriented development and workforce skills training**).

I believe it is important to define what I mean when I refer to FRA funded projects. I have learned that the Federal Railroad Administration itself has been working aggressively to be inclusive of small, minority and women owned business within its own agency,

including through Buy America rules, administrative and general management consulting, supplies and services, and information technology equipment, services, and software.

But the FRA's authority and responsibility, as noted above in the above paragraph, go beyond its own agency to the entire nation and all public funds dispersed through its budget. The agency needs to be cognizant of the systemic discriminatory practices and the racial and cultural implications attached to these funds.

I am referring to high-profile, labor-intensive projects, including building and construction. According to a 2016 report published by the Minority Business Development Agency (MBDA), a federal agency established during the Nixon Administration and requiring annual reauthorization, minority business owners have historically been systemically excluded from securing often lucrative federal contracts for **infrastructure work** (emphasis added), such as building bridges and highways. I would add railroads to that list, and I must point out that it's particularly telling that, having reviewed the MBDA website and its publications, rail infrastructure is so glaringly absent from MBDA studies on minority business.

I believe the reason may be that it has been an extraordinarily unwelcome space for minority-owned businesses and that racial inequities were so institutionalized that even the only federal agency whose mission is solely dedicated to the growth and competitiveness of minority business enterprises, seemed resigned to the inherent procurement disparities in the railroad construction industry.

However, we believe that the FRA procurement minority disparity study, mandated by the FAST Act and currently close to conclusion, will result in the predictable conclusion: to reiterate, **racial discrimination is real and minority business owners have historically and systematically been excluded from securing lucrative federal contracts for rail infrastructure work.**

I have spent decades meeting with and proselytizing to half a dozen Administrations, continually making the argument that USDOT needed to address the contracting playing field at FRA, skewed towards large and majority-owned firms, by implementing DBE goals for FRA funds. Although many beneficiaries of FRA's programs will argue that they are private entities and that DBE goals should not apply, we believe this to be disingenuous rationalization. Federal rail grants, guaranteed credit and loan programs, highway-rail crossing safety projects, mean that hundreds of millions of dollars are funneled into state and local rail agency coffers. FRA does not pull this money out of the air: these funds come from minority taxpayers and fees from minority transportation users. In fact, according to data from the National Minority Suppliers Development Council (NMSDC), minority-owned businesses contribute close to \$49 billion in local,

state, and federal tax revenues. It is only fair that recipients of those tax dollars should be accountable to the minority business community.

GWP has been -- literally and figuratively -- both breaking ground and laying the groundwork for future minority entrepreneurs to pursue transportation construction as a start-up option. But the opportunities have not been built and they have not come.

I point out again that GWP continues to be the only Black company in this particular construction niche, and we have found the position a hard row to hoe. It is an absurd set of circumstances considering the fact that the DBE program is nearly 40 years old, established during the Reagan Administration by the Surface Transportation Act of 1983, for transit and highways. Despite the revolutionary shifts in social, cultural, racial, and ethnic demographics in the U.S. between now and the last millennium, minority business has made so little progress making inroads into the railroad contracting arena. This is in the face of the impressive strides made in DBE participation percentages in the transit and highway sectors -- both of which have implemented robust DBE programs. I believe this can only be attributed to the racial bias infused in the procurement processes.

As I stated, I have been in the rail construction industry for four decades. Over that period. I have been an active member in the National Railroad Construction and Maintenance Association, Inc. (NRC) and the Association of General Contractors (AGC), the latter of which we were members of the Diversity & Inclusion Task Force. We have attended networking events for the Railway Engineering-Maintenance Suppliers Association, Inc. (REMSA), the American Short Line and Regional Railroad Association (ASLRRA) and the National Railroad Passenger Corporation (AMTRAK). We have been part of many conversations with the Association of American Railroads (AAR); yet the only diversity in their vocabulary on the AAR website relates to diversification of services in the context of profit.

Most railroad and contracting trade organizations basically exist to protect the interests of majority-owned firms. Each has stated for the public record that they strongly oppose goals for FRA funds. This is particularly ironic since they all insist that they do not receive any public funds. If that were truly the case and they do not receive FRA money, why would it impact them if there was an FRA DBE program? At most, they should be indifferent.

At one of the organizations, I served on its legislative committee. One of the goals of that committee was to lobby for eliminating the DBE program altogether at USDOT. Thankfully, I was present during a strategy meeting, and I was aggressive enough to successfully thwart an overt effort to try to terminate the program. However, the

organization's official position continues to be opposition to – if not termination of – minority business participation goals.

Forty-years of effort and struggle against the monolithic, i.e., large, powerful, and intractable “private” railroads, for barely a mere sliver of the massive contracting pie: this has been my experience.

According to sources, Chicago is North America's largest rail hub, and remains unsurpassed in the total number of passenger and freight trains that converge on any city on the continent. Chicago is also a major hub for Amtrak, with dozens of different lines terminating at the city's Union Station. The city has the second largest Black population in the country. One would think this location would be ripe for heavy rail construction opportunities. Indeed, GWP established an office in the city, and achieved significant success working with the Chicago Transit Authority (CTA), the city's light rail system, where we received kudos for our work and our employment recruitment efforts. However, the heavy rail passenger side offered a completely different scenario.

While I credit the Chicago Region Environmental and Transportation Efficiency (CREATE) agency and its member heavy railroads who have worked hard and been successful in meeting and exceeding its D/MBE goals in Chicago, there have been few to no opportunities in passenger railroad track construction.

Despite public support for GWP in Chicago where our transit workforce on trackwork reflected the neighborhoods and the ridership of color, GWP has not been successful in the heavy passenger rail market. The private railroads reserve the high-profile, higher-profit and labor-intense work for themselves. While I do not intend to disparage micro-businesses, trucking firms, materials suppliers, IT services, consulting or even Caucasian-women owned (WBE) businesses, meeting goals in this manner may not produce the job creation nor the necessary fuel for economic growth for underserved communities intended by the program's crafters.

To be more specific, in Chicago, a project called the Englewood Flyover, a \$93 million system of bridges to carry the METRA Rock Island rail line over the Norfolk Southern/Amtrak line, went through the heart of the South Side of Chicago. Local protests over the clear racial discrimination were held when the public learned that African-American-owned firms received \$112,000 while white-owned firms received \$90.5 million, the difference made up of Hispanic and Asian-owned firms. Ultimately, I understand the amount awarded to minority firms was \$4 million, including Black, Hispanic, and Asian, a mere pittance; however, none went to minority track construction contractors. That \$93 million was FRA funds, and although GWP worked hard to get CREATE, Norfolk Southern and Amtrak to see the racial inequity in this scenario, since NS and Amtrak had no

obligation to meet a minority-participation goal, they paid little more than lip-service to minority businesses and to the minority community. This is not just bad business practices; it translates into outright racially discriminatory practices.

Some, but not all, “private” rail construction contracts are bid publicly and over the years, we have worked to stay on top of the pipeline of projects: we have tried to follow the money and to stay ahead of the game on rail construction jobs. As is typical in the industry, we have attended pre-bids and site visits in advance of submitting proposals. However, we found ourselves in that very unwelcoming space: once GWP identified itself as a DBE/MBE, we were advised in no uncertain terms to leave and that if we ever mentioned the phrase (DBE/MBE) again, our representatives would be escorted out.

As GWP became known in the industry and our national reputation grew, we were viewed as competitors, not partners, and shunned for this reason, which simply added insult to injury. GWP was left off solicitation lists even when we were registered, pre-qualified vendors. On the few occasions when we have been able to submit a bid, the only feedback we receive is who the successful bidder is. We are unable to find out where we placed in the bid results in order to conduct post-mortem benchmarking. We would learn later, usually through our Caucasian employees with long careers in the industry and access to this information through the “old boys” network, what the true bid results were. Put simply, lowest bidder, best value and diversity/inclusion components are not always priority factors in making awards.

Again, mind you, this was in the heavy rail sector. Although we managed to perform small, heavy rail industrial jobs because of contacts our employees had nurtured throughout their careers, GWP found success and truly established its reputation in the transit, light-rail industry (FTA) where opportunities (DBE goals) were made available and where we could compete more equitably on the playing field.

As background, GWP was founded and incorporated in Western Pennsylvania and owned for forty-years by individuals of Caucasian descent. It had established a strong reputation in that region until its owner passed away. At that point, GWP came under African-American ownership, continuing the firm’s mission as a track construction contractor, and became an 8(a) and certified DBE two years later. The industry is a small community and Mr. George Peoples and later Dr. John Verna, the two previous owners, were readily recognized and warmly welcomed by their peers. However, that all reversed after the change in ownership. When GWP’s Black owner began showing up at pre-bid meetings and site visits, the entire dynamics in the meeting room changed to palpable tension and it was as if a heavy curtain had fallen: GWP was blacked-out and blacklisted, so to speak. Indeed, it almost WAS “curtains” for GWP until we became certified 8(a)

when we were able to find work as a prime contractor, including on federally-funded Defense Department and Corps of Engineers projects, set aside for 8(a) firms. Although majority firms continued to respond to the term “minority-owned” as though there was a bad smell, they held their noses and did attempt to team with us on these lucrative jobs: finally, they needed us. That program leveled the playing field, at least during our nine-year tenure as an 8(a).

Over the past decade, there have been several high-speed passenger rail projects in the works, including Brightline (Miami to Orlando, FL), and Brightline West (formerly known as Xpress West, Las Vegas to Victorville, CA). At one point, the two projects were candidates for federal rail grants and loans, and USDOT, as a condition of those funds, insisted on DBE/MBE participation. In fact, the owner of Xpress West approached me to assist in developing a minority-business program. GWP was actively courted as a subcontractor on both these multi-billion dollar projects. That was until a change in Administrations led to a removal of that condition. Once the owners of these project learned that goals would no longer be applied, i.e., once those goals went away, GWP was sent away. We had devoted an extraordinary amount of time and effort into putting our proposals together, but afterward, we were simply and unceremoniously ghosted: no one responded to our proposals, and no one returned our calls.

In closing, I do want to again say, unequivocally, **minority business owners have historically and systematically been discriminated against by being excluded from opportunities to secure lucrative federal contracts for rail infrastructure work.** I know you have heard this before, but a DBE program in the Federal Railroad Administration would mean millions of dollars for the minority business community and thousands of jobs for the minority community.

As Congress grows close to passing a comprehensive infrastructure bill, we have the opportunity at this point in history to right an egregious long-term wrong. We look forward to the Subcommittee and the FRA doing the right thing.

As Chairman/CEO of G. W. Peoples, I thank you for your hard work on this important issue. I appreciate your time and attention, and for providing me and other minority business owners the opportunity to share our experiences of discrimination in federal passenger rail contracting. I will make myself available for any follow up questions or additional information, as requested.

Melvin E. Clark, Jr.

Chairman/Chief Executive Officer

G. W. Peoples Contracting Co., Inc. (GWP)

Rail and Transit Track Construction, Rehabilitation & Maintenance

DBE/MBE/SBE-certified