

Statement of
Kenneth B. Canty
To the
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
UNITES STATES HOUSE OF REPRESENTATIVES
On the Subject of
“Identifying Discrimination in Federal Passenger Rail Contracting”
November 9, 2021

Good Morning Mr. Chairman and members of this subcommittee. My name is Kenneth B. Canty and I am President of **JANUS MATERIALS**. **JANUS**, by using a process we have coined “sustainable structural demolition and repurposing”, deploys material to combat climate change through net zero carbon solutions. I am also President of **AMC CIVIL CORPORATION** and **FREELAND CONSTRUCTION**. I have been involved with the Heavy Civil Infrastructure Field since 1995, when I was hired as an engineering intern by Parsons Brinkerhoff to work on design of what became the Central Artery / Third Harbor Tunnel Project, also known as the “Big Dig”. From a very young age, my life dream was to work on bridges. This moved from being a dream to a reality due to the experiences I had with my father, a World War 2 Veteran, as he would take me with him as a 6 year old child on the long drives from Boston to Baltimore to see his then ailing mother. This trip would take us over the George Washington Bridge, and over the New Jersey Turnpike to the Delaware Memorial Bridges. It was these occurrences that inspired me to be a bridge engineer as I would beg my dad to take routes that were out of the way like the Bay Bridge in Annapolis, in order for me to check off my list long span bridges that I hadn’t crossed yet.

I received a Civil Engineering Degree from the University of Massachusetts/Amherst in 1997 and was hired by a large General Contractor, Modern Continental Construction, in 1998 and continued to work on what would become the largest infrastructure project of the 20th century. From here I went on to Charleston, SC to assist in the construction of the United States’ largest cable stayed bridge over the Cooper River in Charleston, SC, and then was hired on by the same team I worked for in Boston to dismantle the old existing truss bridges that crossed the same river.

I was able to use these unique sets of experiences and qualifications to purchase my first business, Freeland Construction. In short order, using the opening that the Small Business Administration's 8(a) Program provided, I was able to grow the company from 5 employees to over 50 employees in 4 years. We developed an acute vision and goal to utilize these Federal Contracts for facets of the Department of Defense, Agriculture, Homeland Security, and General Services Administration, to name a few, to gain experience so that we could qualify for work with the Railroads. As the railroads have very high barriers of entry, and rightfully so, due to the extremely dangerous work it is and the impact it has on the traveling public, we made sure we had more than enough past performance, working capital, and qualified personnel, to approach the National Railroad Passenger Corporation, also known as AMTRAK. We approached Amtrak in October of 2011 and were awarded our first contract in 2014 to reconstruct railroad stations in Gainesville, GA; Staunton, VA, Prince, WV; Camden, SC; and Charlotte, NC. Our success with Amtrak allowed us to travel the country pursuing work in North Dakota, Texas, Florida, Connecticut, and Washington, DC.

I must point out to the committee that my path was very different than others as I was able to use an established program that provides a path for a protected class of citizens. Furthermore, the work I was doing for Amtrak still existed in the framework of what we in the industry refer to as "vertical work", which is a place where many black contractors can succeed. However, my end goal remains "horizontal work" which consists of bridges, tunnels and other larger assets of infrastructure that hardly any black contractors can get into. These projects, while inherently more risky, provide much higher margins, less competition, and more market stability with Heavy Infrastructure being more adequately funded by Congress.

I submit to this subcommittee, that there is a concerted, coordinated effort by Large Prime Contractors, and sometimes in conjunction with Owners, to keep Minority Contractors, particularly Black Contractors, out of the Federally Funded infrastructure industry. While others testifying today have certainly documented these actions, I would like to focus on my unfortunate experiences as a Heavy Civil Contractor and examples of discrimination whose ultimate purpose is to keep us out of the infrastructure industry. It is no coincidence that there is a dearth of Minority Contractors who are players in the Rail Industry. The majority of these minority contractors are taken out before they can even qualify to work for the Railroads, and usually under the auspices of the USDOT DBE program that States and Commonwealths are responsible for overseeing and enacting. There are challenges with the current DBE program's implementation - and I will outline below my experience with a firm that touts its ability to include DBE's - but the barrier of entry without the DBE program is too great.

I fully realize, and accept, that certain Prime Contractors do not want this conversation to be had. I also understand that I am likely to suffer an extreme backlash from these Large Primes Contractors and maybe even Owners for coming

before this Committee and Subcommittee. I accept this risk no matter what the cost. I stand before you knowing that this committee is the only body that can enact positive change for not only the Minority Business Community, but also for the United States as a whole. With the infrastructure issues in our country being past critical, it is going to take not just Large Businesses, but also small and minority businesses, to work together to enact these solutions that Congress and this Administration is funding through the historic Infrastructure Investment and Jobs Act Bill. The biggest issue from my viewpoint is not just passing the bill, but ensuring that there are enough companies to actually do the work. To this end, small and minority businesses are critical to achieve the needed work force.

Too often, not only are Prime Contractors not punished for the behavior I will showcase below, but they are rewarded with hundreds of Millions of dollars in more work with absolutely no regard for the Black Owned firms, and lives, that they have destroyed. I have experienced this behavior on no less than three separate contracts, ranging from working for the US Army Corps of Engineers Charleston District (Fort Jackson, SC), to PCL / South Carolina Department of Transportation (Pee Dee River Bridge, Georgetown, SC), to most recently Skanska USA and Florida Department of Transportation for the 3 Mile Bridge in Pensacola, Florida. Due to time constraints, I will present the treatment I had at the hands of Skanska, as I believe they are one of the worst offenders in the business. Skanska is also one of the largest recipients of FRA funded work in the USA, and would correspondingly be one of the largest contractors to participate in a future Federal Railroad Disadvantaged Business Enterprise Program. In order to understand what very well would happen with this new potential program, one reasonably must look at past actions. Without accountability and corrective action, these bad actors will never change their behavior.

Skanska – 3 Mile Bridge Construction Discriminatory Actions Against AMC CIVIL, Vendors and Suppliers

I am an African American and the principal owner and operator of AMC Corp, a small and disadvantaged business that employs predominantly minority employees conducting demolition on civil projects. My firm was subcontracted to Skanska USA Civil Southeast, Inc. on an FDOT-owned, FHWA-assisted project in Pensacola, Florida. Though I previously worked for other divisions of Skanska, this was my first subcontract with Skanska Southeast and in Florida. Beginning in early 2020, I began to suspect that I was being subjected to racial discrimination by Skanska. First, I was not provided with sufficient information to appropriately bid the work. As an African American engineer and owner of a business, I was ignored and disrespected by Skanska Management when I raised legitimate questions about site conditions affecting some of the work we were to perform and in meetings. Instead of addressing the concerns I raised, Skanska failed to timely submit the matter to FDOT and insisted that AMC expend far more time and financial resources than allocated in the contract for certain portions of work; refused to pay for the work

completed; delayed, interfered with, refused to allow us to perform the more profitable work in our contract; and Skanska personnel vandalized AMC's equipment, rendering it inoperable, all of which destroyed AMC's planned cashflow under the contract. Skanska then claimed AMC was in default on the contract for the delays and financial condition that it had caused. I made a complaint of race discrimination to FDOT regarding this behavior by Skanska, but FDOT took no action to remedy Skanska's discrimination. After my complaint, Skanska refused to pursue AMC's claim regarding the site conditions and gave AMC a notice of default.. The discrimination and retaliation by Skanska and FDOT culminated in and caused the termination of AMC's subcontract on or about April 27, 2020. Skanska requested FDOT's approval of the termination and FDOT failed to take any action to stop the termination.

I believe that my treatment on this project is the result of my race, black, and that my subsequent termination was due to both my race and in retaliation for having voiced complaints about Skanska. We were the only African American firm on site during the execution of our contract. As this is a federally-assisted project, these constitute violations by both Skanska and FDOT of Title VI of the Civil Rights Act of 1964.

Examples of Intimidation and Discrimination

- 1) After mobilization on November 19, 2019 our rented skid steer ignition code was erased out of the cab of the equipment. One of our tool boxes was locked without our knowledge and we had to drill the lock out of the toolbox. We originally thought these were pranks as we were the new guys on site.
- 2) Sinking of Crew Boat - We left site on 2/6/2020 due to bad weather. Our crew boat was brought in, and tied off per the report in Exhibit A. As there was forecasted to be bad weather that night, we secured the vessel properly. When we came in the next morning, we found our crew boat sunk. After further investigation it was discovered that an Underwater Mechanix vessel (contract divers to Skanska) had been tied to our boat in such a way that would cause our boat to sink. Please see Exhibit A for Photographs and Report.
- 3) Sabotage of our LaBounty UP-70 Muncher on March 17, 2020. Please see Exhibit B. We believe this was done in order to slow down our progress. As the video shows, the alleged suspect was already on the site and based on his familiarity of the site, appears to be a Skanska employee.
- 4) The Albert Pike Tugboat Interrupting our work Flow - Please See Exhibit C. While we were working in the channel, every time a vessel would come by we would have to take our divers out of the water. There were more than a few instances that the Albert Pike would transit by with no cargo in tow, back and forth from one side of the bridge to another, so the only purpose of the movement appeared to be to interfere with our work and slow us down in completing the work. The name of this Tug Boat (named for a Confederate general reputed to be a high-ranking member of the Ku Klux Klan) was

- painted over after we left in order to hide its identity during the most recent racial civil unrest.
- 5) Animosity by senior Skanska Staff towards myself and other employees. Please See Exhibit D. Several times I was demeaned and treated with hostility that I felt was based on my race by Senior Skanska Staff. Numerous witnesses can attest to that behavior.

 - 6) Retaliation due to Reporting the above Incidents to FDOT – After we experienced the allegations as described above, Skanska on or about March 30, 2020, took action to not use our participation for DBE Credit in order to justify terminating our contract. Please see correspondence between Skanska and FDOT. We have also included police reports from our Connex being broken into after we were terminated as well as all correspondence detailing why we believe that Skanska was operating in this way. See Exhibit D.

Mr. Chairman, I am sure you are aware that Skanska, while maybe inadvertently, is being rewarded for their behavior by receiving an award from New Jersey Transit, for 1.5 Billion Dollars for the construction of the North Portal Bridge. Why would anyone think that the behavior they have displayed on other work involving Disadvantaged Contractors would not rear its ugly head on this extremely important piece of infrastructure?

I also would finally like to point out that the cost of these discriminatory actions are not only harmful to my firm, they have also been devastating to Majority Owned Firms as well. These firms not only include TK Towing (Morgan City, LA), but Also Cashman Equipment (Braintree, MA), International Power Products (Acton, ME), Cowin Equipment (Pensacola, Florida), Urban Advisers (Charlotte, NC) and a host of other small businesses throughout the Mid Atlantic Region and Gulf Coast. Because of the discriminatory behavior that my firm experienced, these firms who worked for AMC Civil on this project suffered greatly as well.

Lastly, the financial toll to myself because of this behavior has been beyond devastating. I am fighting to not lose my residence, am struggling with providing care for my two children who are on the Autism Spectrum, and in the midst of a pandemic my wife has had to go back to work being a grocer versus raise our children in order to keep food on the table. I have lost the majority of my employees, and have not been able to make a payroll in sometime. Additionally, the ability to procure work with the passage of the infrastructure bill is greatly at risk because of not being able to be on a firm personal and professional financial footing.

Thank You,

Kenneth B. Canty

