

## WRITTEN TESTIMONY

My name is Francisco Otero, I am the founder, President & CEO of the PACO Group, Inc. (PACO). PACO is a minority owned and certified Disadvantaged Business Enterprise (DBE) that provides Program & Construction Management consulting services. I started my company in 1989 and our headquarters is located in New York City and we also maintain a regional office in Miami, Florida. My company specializes in providing Project Controls and related services nationally to Federal, State, local and municipal government agencies involved in the design and construction of infrastructure and transportation projects and programs. My company functions typically as an extension of the agencies' staff, helping to protect their interest during the planning, design, bid/award and construction phases of a project. Our services are intended to provide independent oversight support to the Agency by monitoring and tracking the project's costs, schedule, and quality performance. The specific services we offer include: Construction Schedule Management, Independent Cost Estimating, Project Cost Control, Document/Records Management, Claims Management, Risk Assessment, Value Engineering, Asset Management, Operational Analysis, Office Engineering, and Construction Inspection services.

I serve on several civic and industry boards and have received many awards during my career. For over 20 years I have been an active member and have also served on the Board of the American Public Transportation Association (APTA), an international trade organization whose mission is to advocate, strengthen and improve public transportation. I also served a six-year term on the Board of Directors of the National Transit Cooperative Research Board. Additionally, I have a leadership role in numerous minority industry organizations including the Conference of Minority Transportation Officials (COMTO) and Latinos In Transit (LIT), where I advocate for leveling the playing field by providing meaningful procurement opportunities that enable capacity building for minority businesses. I am a Fellow at Rutgers University and Pontifical Javeriana University (Colombia, S.A.) where I am an invited guest lecturer teaching Configuration Management to the graduate and undergrad engineering students. I possess a Bachelor of Science degree, have written various "white papers" and made numerous presentations on Configuration Management.

I was born and raised in Spanish Harlem (aka El Barrio) which is in the upper east side of Manhattan in New York City. My parents were first generation immigrants from Puerto Rico. This was a predominantly Puerto Rican neighborhood and even though we were very poor my parents were always able to provide for us. My first experience with discrimination was when I started my career working at a Fortune 500 company. I observed after a while that all the supervisors, managers, and executives were white and mostly men. I did not at the time think anything of it until I had been working there long enough to inquire about promotional opportunities. I truly felt that I had paid my dues and I was qualified and merited a promotion based on my work performance. However, no promotional opportunity was ever afforded to me. I was shocked by this experience and learned a hard lesson about this so-called "glass

ceiling” since I had grown up believing that one is judged by their abilities and not the color of one’s skin. After working there for several years, I decided to leave and take a chance to be in control of my own destiny. I started my company with the hope of finding a niche in the highly competitive construction industry. However, I soon learned that as a minority owned business, I would continue to confront challenges and discrimination. This experience had a profound influence and committed me to wanting to build a diverse and inclusive organization. This philosophy is a principal part of my company’s core values and is consistently practiced in our recruitment and talent acquisition policy. In fact, we currently employ 50 full-time employees and 80% of our company’s leadership team and approximately 65% of the overall staff is comprised of minorities and women.

My personal business experience is that it is almost impossible to compete with majority prime firms on federally funded projects due to their size, resources and financial capabilities. I can honestly and emphatically attest to the fact that had it not been for the FTA federally mandated DBE program, my company probably would not have been able to get started, much less survive, for the past 31 plus years. If you require proof, just look at the private sector of the construction industry where no DBE goals exist and you will barely find any meaningful minority firms participation. The DBE program provided my company the opportunity to subcontract with majority firms on federally funded FTA construction projects and has been the lifeline for contracting opportunities. As a matter of fact, the FTA DBE program has enabled my company to participate on numerous high profile mega projects including: Puerto Rico’s Tren Urbano Heavy Rail System; New Jersey Transit’s Hudson/Bergen Light Rail System; New Jersey Transit’s Southern NJ Light Rail System; New York City/Long Island Railroad’s Eastside Access Program; New York City Transit’s Second Avenue Subway System; New Jersey Transit’s Sandy Recovery Program; New York City’s Transit Sandy Recovery Program; Port Authority of NY&NJ’s Sandy Recovery Program; Washington Metropolitan Area Transit Authority’s Dulles Extension.

One would think that the impressive resume of successful projects that my company has compiled over the years would be adequate testimonial demonstrating the depth of our experience, capabilities and qualifications. Unfortunately, that has not been the case! DBE firms are relegated to seeking subcontracting with majority firms and our teaming success, in large part, depends on the majority firm’s willingness and corporate culture toward diversity and inclusion. For the record, I do not expect any contract opportunity to be handed to me nor do I feel any sense of entitlement. I freely and willingly embrace competing for work, I just expect the competition to be fair and that it provides a level playing field. I must admit that I do have a serious problem with and find completely unacceptable when I am treated disrespectfully, rudely and dismissively by majority firms. I have on several occasions had a majority firm come right out and tell me that they wish the DBE program would go away so that they would not have to bother teaming with minority firms. That they would prefer being able to subcontract with whoever they want and not be forced to subcontract with a DBE firm. They have gone so far as to state that all DBEs are lazy, that the quality of our work is inferior, etc.. All very stereotypical attitudes and beliefs held by some, not all, majority firms and their employees.

Another example of discrimination practice that I have personally experienced is at the Agencies' pre-bid conference. The pre-bid meeting is arranged by the Agency and is intended to provide an overview of the project and answer questions that prospective bidders may have regarding the Request for Proposal (RFP). These pre-bid meetings also serve as a networking opportunity for DBEs to meet with majority prime firms for potential teaming. The Agency also addresses the DBE goal requirements for the project. I have occasionally witnessed the majority firms strongly opposing and questioning the Agency's representative as to the need for DBE goals. The tone of their remarks are very racially charged and quite clearly expressing their disapproval of the DBE program and goals. I have heard them state "we can't guarantee the quality or schedule of the project if you force us to subcontract 25-35% to DBEs". They start making all kinds of excuses why the Agency should lower the DBE goal or eliminate it. So imagine approaching these majority firms to discuss subcontracting on this project after just witnessing their openly bigoted beliefs towards DBEs. Unfortunately, these procurements wind up being a "shotgun marriage" and I have found these teaming arrangements rarely turn out well for the DBE. The majority firm will do anything to make the relationship miserable to force the DBE to want to cancel their subcontract relationship. A common practice by some majority firms is holding back payments to DBEs to the point that we are in a serious cash flow situation. The majority firm will claim that they have not yet been paid by the client when in fact they have. They also refuse to adhere to the contract's terms and conditions regarding prompt payment. If the DBE complains to the Agency, this causes an even greater conflict in the relationship.

In my opinion ideally, the DBE program should not only provide subcontracting opportunities but should also foster capacity building for DBE firms by providing meaningful participation. Obviously for this to work it requires a true partnership between the majority prime firm and the DBE that includes a mentoring-type relationship. The goal being that over time the DBE will build the capacity and be able to grow sufficiently to eventually prime opportunities or become an attractive joint venture teaming partner to majority firms. Hopefully some day, majority firms will come to the conclusion that embracing diversity and inclusion benefits us all.

In conclusion, recognizing that the small business sector is the economic engine driving the nation's economy, it is important that DBEs can competitively participate on FRA federally funded railroad projects. The roles and opportunities that the FRA projects can provide will vary from track construction, to engineering/design, to procurement of supplies that are intended to strengthen our rail system nationally. This would mean millions of dollars for minority businesses and thousands of jobs for the minority communities. PACO is ready, willing, and able to participate in FRA projects once the DBE program is implemented. I strongly encourage the Congressional Committee to establish an FRA DBE program so that minority owned firms have the opportunity to participate on these federal projects as well.