

**FIELD HEARING IN CALIFORNIA: LAND OF OPPORTUNITY—PURSUING THE ENTREPRENEURIAL AMERICAN DREAM**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CONTRACTING AND  
WORKFORCE  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS

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## LAND OF OPPORTUNITY: PURSUING THE ENTREPRENEURIAL AMERICAN DREAM

MONDAY, OCTOBER 17, 2011

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:41 p.m., in Richard H. Chambers Courthouse, 125 South Grand Avenue, Hon. Mick Mulvaney (chairman of the Subcommittee) presiding.

Present: Representatives Mulvaney and Chu.

Also Present: Representative Napolitano.

Chairman MULVANEY. I'm going to call this meeting of the Small Business Committee Contracting and Workforce Subcommittee to order. And before we begin today, we have been gracious enough to be joined by Mayor Bill Bogaard from Pasadena, who is going to welcome everybody to the meeting.

Mayor.

Mayor BOGAARD. Mr. Chairman, Congress member Chu, on behalf of the great city and community of Pasadena, I want to extend a cordial welcome to you.

Pasadena is a city that recognizes important business. We are anxious to cooperate with the workings of government at the state level and the Federal level at all times, and so it is a special privilege to have this opportunity to come to this hearing. We don't have hearings conducted by Congressional members in Pasadena every day, so we are proud of that and I am happy to be here and welcome you both and wish you the very, very best.

I am here today in the—I am with Dr. Sandra Thomas, who is the chair of the Altadina Town Council, and from our Pasadena City staff a deputy and director of business development, Ruth Martinez is here. She is here to observe and, of course, if questions came up about the specifics of City Hall in this regard and in regard to business development, she would be available while she is here to answer questions.

Chairman MULVANEY. Mayor, thank you very much. As a member of Congress from a very, very rural, small area in South Carolina who has only, I think, been to California twice in my life for a combined 15 hours, this has been a really neat experience to be here in this wonderful town that I have seen for so long on television and to drive by all the things today that I grew up with watching on TV, to actually be here, and especially in this fabulous building. What a wonderful facility this is. It is really an honor, really and truly an honor to be here, and I cannot thank Ranking

Member Chu enough for suggesting that we do this, because it was her suggestion that we come here.

I am looking forward to a wonderful hearing today. Thank you both for being gracious hosts on your own part, but also on the part of your entire city. Thank you for being here.

Mayor BOGAARD. Thank you, sir. Good luck today.

Chairman MULVANEY. All right. We can go ahead and begin the hearing. As Chairman of this Subcommittee, one of our key responsibilities is to look at the current state of small business ownership in the United States of America. Ms. Chu and I have been conducting a series of hearings on this Subcommittee in Washington during the course of the year, focusing almost entirely on trying to figure out ways to allow the government in general, and specifically the Small Business Administration, to help encourage small business growth.

I am pleased to be here for this opportunity to learn about the challenges that small businesses in this community face. While I represent the Fifth District of South Carolina, which is some 2,400 miles away and, if you leave it to United Airlines, about six different flights and four rental cars, there are certainly common themes that I think unite us.

One of the founding principles that allows our country to be successful is the spirit of entrepreneurship. Each year, thousands of people come to the United States seeking a better life for themselves and their families. The reason they do that is because of the economic opportunity provided here and the knowledge that no matter what your background, you can start a business. I started four myself. My father started several. I come from a family of small business people.

While the path to success is not always easy, it remains achievable to all who are willing to put in the hard work to build a business. We are all familiar with the many anecdotes of people pulling themselves up literally by their bootstraps and turning a simple idea into a successful business. In fact, these stories are the very fabric of our nation.

Just a few weeks ago we were reminded of this possibility of success when we mourned the passing of Steve Jobs at Apple, an entrepreneur who took an idea that started literally in a garage and turned it into one of the most well-known businesses and brands the world has ever known. This story reinforces the true greatness of this country, that no matter what your background or hurdles are, if you have an idea and a drive for success, you have the opportunity to succeed.

While it takes a lot of hard work and, I can assure you, often some luck on the part of business owners for a business to be successful, as policymakers we need to make sure that the path for success is not more difficult than it needs to be. A vital part of this success is working to remove obstacles that stand in the way of business ownership. In my view, prospective business owners should be encouraged to start a business and should not be scared away by the vast sea of regulations that do nothing but add more costs and burdens to business owners. Rather, we need a system that encourages entrepreneurs to take risks, to encourage individ-

uals to do what the Lord made them do or put them on this earth for, which is to be productive.

I am pleased that we are joined here by witnesses who are working every day to provide their communities with a leg-up when it comes to starting a business and turning a dream into reality. Many of the folks here are going beyond merely running their own business, because they want to make sure their communities thrive.

With that, I will thank our witnesses in advance for being here and I will turn now to Ranking Member Judy Chu for her opening comments.

Ms. CHU. Thank you so much, Chairman Mulvaney.

I would like to welcome everyone here, and also I hope that you can join us later where we are going to have a little reception with coffee and cookies.

And I really want to thank Chairman Mulvaney for flying all the way here from South Carolina. He has moved mountains to be here. Yes, he had an airplane flight. That was cancelled, and they forced him to drive four hours to the next available airport in order to be here on time. He got here, and then they lost his luggage. So I really have to thank Chairman Mulvaney for——

Chairman MULVANEY. I apologize for not having time. [Laughter.]

Ms. CHU. He has tolerated a lot, and yet he is still in such a good mood. So it is really amazing.

Well, I am so glad to have this hearing here today because our area certainly is a unique area, and it is one that has been shaped by immigrants. Since our nation's founding, generation after generation of immigrants have arrived on our shores. They have built our nation, created economic opportunities and enriched our communities.

Over the course of our history, entrepreneurship and immigration have been inextricably linked with newly-arrived immigrants launching small enterprises that form the backbone of our economy.

In recent years the trend has grown more pronounced, not less. During the last 14 years, the percentage of immigrant-owned businesses has doubled and now makes up about 29 percent of all U.S. firms. Immigrants as a whole are 30 percent more likely to go into business for themselves than non-immigrants. Here in California, one-quarter of all business income is generated by immigrant businesses.

It is clear from these facts that even in the current economic climate, America remains the land for those hoping to pursue a better life through entrepreneurship. Starting a new business is not a get-rich-quick scheme for many. In fact, it means no vacations, long work days, and some lean years in the beginning. Our nation's entrepreneurs and small business owners are some of the hardest working people in America.

I know this firsthand because my grandfather came to this country with nothing, but he decided to make something of his life anyway. He opened up a small Chinese restaurant in Watts and worked day and night and night and day, and he used that very expensive labor, his sons, and finally he was able to make ends

meet. And now, two generations later, his granddaughter can become a member of Congress.

I am so proud to represent a district that has many immigrant entrepreneurs who are pursuing the American dream, just like my grandfather. We visited two of them today before this hearing, Glomar Professional Baseball Bats, and Huy Fong Foods. Glomar is an Hispanic business cornering the market with the professional grade bats that are sold locally to the L.A. Dodgers. Huy Fong Foods is an Asian business spicing up everyday foods with their Asian chili sauce across the country. In fact, it is in the cafeteria of the House of Representatives.

In order to continually foster entrepreneurship and build upon the economic benefits of new businesses, several initiatives were established as Small Business Administration offices. The Office of Entrepreneurial Development Overseas is aimed at meeting the needs of our country's entrepreneurs, and there are three main programs within it: first, the Small Business Development Centers; secondly, the Women Business Centers; and third, the Entrepreneurship Education.

SBDCs are one of the main sources for small business entrepreneurs. They provide individual assistance to small businesses based on their needs. Women Business Centers do similar work but cater to the unique needs of women business owners. Finally, we also have Entrepreneurship Education, whose leading resource is the SCORE Program that matches seasoned business owners with new business owners for counseling and advice.

While these programs are very successful at helping small business owners, there are many small business owners from my district that tell me they don't know about these great resources. But even if they do know what SBA can offer, there may be cultural barriers preventing them from seeking help. In many Asian Pacific American cultures, for example, seeking assistance from the government can carry a stigma that may be hard to overcome. On top of that, some business owners might have limited English proficiency and may not understand all the forms they are being asked to fill out.

Entrepreneurship steadily rose from 2006 through 2009, but flattened dramatically during the recession. This poses a problem for the long-term health of our economy, and that is why we should be doing all that we can to leverage the new ideas and drive of the immigrant community to improve the economy. In fact, according to the Coffin Index of Entrepreneurial Activity, Latinos and Asians have the two highest rates of entrepreneurship from 1996 to 2010. Businesses started by immigrants are also a growing segment of our small businesses, growing from 14 percent in 1996 to 29 percent in 2010.

We need the spirit of entrepreneurship and self-reliance now more than ever. If our economy is to grow again, we will need small businesses and their job-creating power to be operating at maximum capacity. Immigrant-owned start-ups can be particularly beneficial. These entrepreneurs bring their operations to more economically distressed areas where real estate can be more affordable.



Bringing new businesses, be they storefronts or small manufacturers, to traditionally disadvantaged neighborhoods not only creates local jobs but also generates additional commerce and economic activity.

While immigrant entrepreneurs play an enormous role in our communities and economy, they also face unique hurdles to entrepreneurship. A recently arrived immigrant in the United States is less likely to have the credit history or collateral necessary for obtaining financing from a bank. Similarly, they may not have the networks in place to quickly raise equity or venture capital.

Often, immigrants looking to launch their own enterprise may be less experienced than a serial entrepreneur who has operated businesses in the past. Their lack of management experience, in addition to potential language barriers, can present difficulties. Any previous business experience can be negated by cultural differences in the regulatory processes, both local and Federal, which may differ substantially from those in the immigrant's home country.

And so that is why I have convened this field hearing with the help of Chairman Mulvaney, to hear from experts in the area and to get their feedback on these programs. We need to know what works, what doesn't work, and what needs to be changed. With a sluggish economy, it is absolutely critical that programs like these succeed and are successful in meeting the needs of all of our country's entrepreneurs.

Thank you, and I yield back.

Chairman MULVANEY. Thank you, Ms. Chu.

We are going to go ahead and set the first panel now, please. If Mr. Martinez, Ms. Tang, Mr. Torres, and Ms. Chang would come to the front table?

Folks, just a couple of housekeeping matters before I introduce you and take your testimony. Traditionally, how we will do this is that each of you will give your testimony at one time, and then we will save questions to the end. So it will not be Mr. Martinez and then question/answer, Ms. Tang, question/answer. All four of you speak and then we will run through our questions together at the end. Oftentimes, the testimony of one witness will lead to good questions from the testimony of another. So it does help.

So Mr. Martinez is our first witness here today. He is a small business owner and a SCORE counselor working here in the Los Angeles area. Mr. Martinez became a SCORE counselor two years ago and has counseled hundreds of business owners and prospective business owners on how to start a small business. Most importantly, working with the SCORE Program, Mr. Martinez has done so on a volunteer basis, meaning he has taken time out of his schedule not only today but every day to help other folks experience what it is like to run a small business.

Mr. Martinez, thank you for being here today.

I will yield now to Ms. Chu to introduce our other three witnesses.

Ms. CHU. Thank you, Mr. Chairman.

I would like to start by introducing Ms. America Tang. She is the CEO of Ace Fence Company and has owned and managed Ace Fence Company, which is a small specialty construction company, for the past 23 years. She has actively participated in the running

of this firm on a daily basis. Ace Fence currently has 60 employees and is active in the building and design of chain link fence, ornamental iron fence, metal beam guard rails and handrails for public works projects in the Southern California area. Gross sales for Ace range from \$10 million to \$13 million per year.

America Tang has also founded the Lending Hope Foundation, a California non-profit organization that aims to reduce poverty worldwide through education and capital. Free business workshops are provided in small cities, currently in Peru, with the assistance of the mayors of each city, and upon successful graduation from the program candidates are given a microloan to start their businesses.

Our next witness is Jesse Torres, the President of Pan American Bank. Headquartered in East Los Angeles, California, Pan American Bank is California's oldest Latino-owned bank. Pan American Bank's mission is to transform and empower Latino communities through banking relationships built on trust, service, respect, communication, and guidance. Pan American Bank was founded in 1964 by former U.S. Treasurer Romana Acosta Banuelos.

Next is Yusa Chang, who is the Vice President and Chief Operating Officer at PACE, the Pacific Asian Consortium in Employment. Ms. Chang's background spans more than two decades of diversified and practical experience in developing and administering projects in community-based and non-profit settings. She has played a lead role in PACE's growth into making it one of the largest local non-profits benefiting all the diverse communities of Los Angeles. PACE is one of the leading community development corporations in the L.A. area. They provide job training and employment services. They operate a Head Start center. They assist people with financial literacy. They have weatherization and energy conservation programs.

With all of this, PACE still manages to operate a woman's business center, and they are an SBA certified micro lender.

Thank you all for being here today, and I look forward to hearing your testimony.

Chairman MULVANEY. Thank you.

Before we begin, just a few rules as I discussed beforehand. Technically there is a five-minute rule. You see the timer in front of you. It will be green for the first four minutes, yellow for the last minute, and then it will become this annoying red after the five minutes runs. But I am from South Carolina, and we have been accused from time to time of talking slower than the rest of the country, although I think it is all relative, that they talk a lot faster than we do. So saying anything in five minutes is difficult. Please, do take your time. Do not feel the need to rush. Until you hear me lightly tapping the gavel, please feel free to continue. As long as you don't go more than 10 minutes, we are not going to throw you out of the room.

So, Mr. Martinez, please begin.

**STATEMENTS OF MANUEL MARTINEZ, PRESIDENT ELECT, SCORE LA, LOS ANGELES, CALIFORNIA; AMERICA TANG, CEO, ACE FENCE COMPANY, LA PUENTE, CALIFORNIA; JESSE TORRES, PRESIDENT, PAN AMERICAN BANK, LOS ANGELES, CALIFORNIA; AND YUSA CHANG, VICE PRESIDENT AND CHIEF OPERATING OFFICER, PACIFIC ASIAN CONSORTIUM IN EMPLOYMENT (PACE), LOS ANGELES, CALIFORNIA**

**STATEMENT OF MANUEL MARTINEZ**

Mr. MARTINEZ. Thank you. Good morning, Small Business Committee members. My name is Manuel Martinez. I am a lifelong entrepreneur and a small business mentor. I am also the President of the Greater Los Angeles SCORE chapter. SCORE is an SBA-sponsored organization, and it offers business workshops as well as face-to-face, over the phone, and online mentoring sessions to striving entrepreneurs and current small business owners. Just in the past 12 months, we have mentored 6,288 small business owners and held 187 workshops with 4,677 attendees. According to the latest Census data, there is over a million small businesses here in the L.A. County or the County of Los Angeles. As you can see with the minimal amount of resources available to our organization, we were only able to reach about 1.09 percent of all small business operating in the Greater L.A. area.

I am here today to ask you to continue to support the efforts of the Small Business Administration, SCORE, and all other technical resources available to small business owners today.

Special attention should be given to the following programs, I believe. Number one is high school students graduating and not graduating from high school that need or have that spirit of wanting to become entrepreneurs. The second is I believe that we need to have entrepreneurship programs for people that are just getting laid off from work. As you know, there are hundreds, millions out there right now. And lastly, we need to support, take those assistance programs that are already available for struggling small business owners.

Speaking as an advocate for all striving entrepreneurs who will be detrimentally affected by not having your support in Congress, I also have personal experience being an entrepreneur. You see, I am one of the most fortunate individuals in America because I made my business work and became very successful at it. However, it was not easy. I made a lot of mistakes along the way in my life as a business owner.

As I remember the event that changed my future, I was 16 years old and I experienced my father being laid off from his job, over 20-year-old job and how it affected our whole family for about two years. I remember when he was unemployed, he used to take me and my little brother over to pick up cardboard and recyclables just to put food on the table on a daily basis. That was the moment I promised to myself, that was a promise that I made to myself, that I would never, never, never, never, never let anyone or any company lay me off work. So if I had not experienced when that event happened to me back then, I probably would have quit being an entrepreneur and I would have settled for a job.

As of today I have started many, many businesses, created, built and sold a number of them too, and a lot of them failed too, not every one was successful, and I'm currently working on three new small projects.

I'm telling this story not to say that anybody can be an entrepreneur, but rather to gain your support for all striving entrepreneurs in America today. Thank you.

[The prepared statement of Mr. Martinez follows:]

Chairman MULVANEY. Ms. Tang.

#### STATEMENT OF AMERICA TANG

Ms. TANG. Chairman Mulvaney and Congresswoman Chu, thank you for inviting me today to participate in this great program that I believe is very much needed in the crisis times like right now.

My name is America Tang. I am the CEO of a construction company called Ace Fence Company. We're located right here in La Puente, California, and we've been around for 23 years. Our company does about 90 percent of public works construction. Throughout the years, we have had the honor and the privilege to participate in the construction of landmarks such as the 34 miles of median fencing alongside the 105 Freeway back in 1993, construction of the Metro Blue Line fencing in 2001, and many other prominent public projects in the Southern California area.

I am of Chinese descent but born in Lima, Peru. Therefore, I can speak three languages—English, Spanish, Chinese/Cantonese. My family immigrated to Los Angeles in 1974, a move that turned out to be a blessing for myself and my entire family because the multi-cultural environment of this great City of Los Angeles allowed us the full usage of all of our diverse cultural backgrounds and enabled us to pursue the American dream.

When I purchased the Ace Fence Company from the retiring owner back in 1988, one of the first moves I made was to start participating in the bidding on public works construction. I found out that the California Department of Transportation, Cal Trans, offered the certification program for minority- and women-owned companies. I applied, in fact, in 1989, and it did take a good nine months before obtaining approval, but this certification opened the doors for my company in areas that were completely shut down to us and pretty much forbidden before.

In 1990 we were the low bidders of the yard fencing for the Metro Red Line in downtown Los Angeles. It would have been impossible for us to obtain the bond necessary to back up the project if not for the Transit Bond Guarantee Program, which I think was established at that time by the Metropolitan Transportation Authority, and it was opened to all the companies that were certified as a woman-owned company, SBE, MBE, and DBE.

Ace Fence used this bonding program to help us bond four of our largest projects during the years of 1990 and '93, bonds ranging from a quarter-million to \$2.5 million. The last \$2.5 million is the construction of the fencing that I mentioned above, the one for the 105 Century Freeway.

The Century Freeway project was a challenge as it represented a very large contract amount, and therefore Ace Fence not only needed to find a surety bond to issue the payment and performance

bonds, but we also needed financing to help us cash flow the project. Ace Fence obtained a half a million dollar loan from the Department of Transportation Office of Small and Disadvantaged Business Utilization. This project was the successful one that propelled our company to its next level, and since then we have participated in innumerable high-profile projects from Cal Trans, the MTA, L.A. Unified, Department of Airports, City of L.A., and many other cities in the Los Angeles and surrounding areas.

There is no question that the SBA and its program designed to help small businesses, women and minorities, works. Ace Fence is an example of it. But the economic turnaround in the past few years has had its impact also on us. In 2009, we had 85 employees who worked an average of 2,000 man hours per week. This past week, just last week, October 14 of 2011, we are down to an average of 60 employees and clocking in about 1,200 man hours per week.

The U.S. Government supposedly have poured in money into new projects in the construction industry to invigorate the infrastructure of our country, to provide new jobs, to help our depleted economy. But somehow we felt that the process for some reason is just too slow, and in practice the intended effect still has not trickled down to the small companies like myself. So we are expecting an increase in our sales but instead, while already keeping the same staff as far as the fixed overhead, we have the same amount of salespeople, we're deriving only about 20 percent less from our gross sales right now.

So for the first time in 20 years in my industry, we declared a net loss last year, and our year-to-date figures are still negative, and we're already talking about October of this year.

In my personal experience I believe that the SBA has created some real good programs to effectively help the small business community, who, after all, is the backbone of our country's economy. But there is a failure to communicate to the general public existence of these programs. And I personally found out about the programs when I was already in the business, and when I started bidding on the public projects I found out about the certification as a minority, about a bonding program and the loan availability for the small companies like myself.

In 2009, the Surety Bond Guarantee Program was raised from \$2 million to \$5 million. I'm talking about a program from the SBA. But for some reason, even me that I'm already actively involved in the industry, I did not know about this increase in the bonding until about maybe just a few months before. For example, if we would have heard about this back then in 2009, I'm sure that my company would have bid on a lot more projects, and those projects, we would have been executing them and building them as of right now, and that would have avoided having to lay off between 20 to 25 people in the last six months.

So in a certain way, you know, I think there is still this gap where information is not coming down to the right people.

In our current economic situation, timing is the essence. We do not have the luxury to sit back and let things move and take their time as if we're in a regular business, because these are not times for regular business. The government must act quickly, and by

quickly it means to start dropping the bureaucracy, excess paperwork, and streamline the process for our program to actually work and to reach its intended population, and not just the few who has the time to do the research and find the bits and pieces of information, which most people probably won't know how to or won't have the time to.

Companies are registered, so it's easy for the SBA to actually find all these—you know, the emails of these firms, and maybe just doing some massive emails from time to time, it would provide a lot and help and become a more effective program.

I know you will say that we can access Internet and find all this information, but I think if the SBA, you want to have a real impact, create new jobs quickly, what better way than making sure that every dollar allocated for the program is used immediately? I do not have the latest records, but I was reading that back in 2009 the SBA total lending was down by 41 percent, that by July of 2009 there were only 3,900 loans versus 6,700 loans the year before in the same period of time. Now, these statistics are speaking for itself.

The program, which is a life saver for thousands of businesses, is failing to successfully reach its intended public, probably due to excessive requirements and, again, bureaucracy.

One of the weak points for any small business, and right now I'm sure even the large business, has always been cash flow. In my industry specifically, as a subcontractor, we have always been the underdog, the one who forks out the funds immediately but get paid at the end. The biggest problem is that the system is flawed in the sense that even though we are supposed to get paid by law within 10 days of the general contractors getting paid, this seldom happens. Especially in hard times like now, general contractors are still, they're using their funds and they will hold it for themselves as long as possible.

So the subcontractors don't get paid until maybe 60 days to 180 days, 180 days, and I repeat that, and many of the cases are even longer than that. And they will use all kinds of excuses for us not to get paid. Among all the institutions, Cal Trans is one of the few that has an open website for the public where people like me, subcontractors, can log in and find out what items has been already paid to the general. For all the other entities, no information is available from the owners to the subcontractors since their contract is only with the general contractor.

The SBA should protect its members, most of all, vulnerable members like ourselves, which in many aspects have major problems with the cash flow, by mandating that the companies that do business with the SBA firms will allow them full access to vital and pertinent information such as payment records from the owners to them, to any company that has delivered material or done work for the project.

The SBA is definitely a powerful engine for opportunities. It has already come a long way from the 1980s, when the system was in its infancy. The programs offered by the SBA has personally helped my company grow, and without these programs I'm sure that Ace Fence would still be only doing commercial and residential fencing.

The spirit of entrepreneurship is very much alive, and more so now when scores of unemployed individuals will be seeking to start their own businesses as the only alternative to finding a job again. I commend the efforts of this committee for understanding the urgency and the demands of our current predicament, and I'm very optimistic that together we will find the solution to keep this beautiful country as the land of opportunities. Thank you.

[The prepared statement of Ms. Tang follows:]

Chairman MULVANEY. Thank you, Ms. Tang.

Mr. Torres.

#### STATEMENT OF JESSE TORRES

Mr. TORRES. Good afternoon, Mr. Chairman and members of the Committee. As the President and Chief Executive Officer of Pan American Bank in East Los Angeles, I am pleased to be here to testify before the Subcommittee on Contracting and the Workforce.

Pan American Bank is an example of the American Dream. While the fact that Pan American Bank is California's oldest Latino-owned bank and the second oldest Latino-owned bank in the United States is an impressive feat, particularly in today's banking environment, it is the story of its founder that is most impressive and reflective of the values of our great nation.

Pan American Bank was founded by and is majority-owned by Romana Acosta Banuelos. Mrs. Banuelos, born in the small and poor mining town of Miami, Arizona in 1925, is the daughter of Mexican immigrants. In 1933, as part of a repatriation initiative, Mrs. Banuelos and her family were relocated to Mexico. While Mrs. Banuelos did not at the time understand the reasons for her relocation, she knew she would one day return to the United States. Mrs. Banuelos returned to the United States as a young woman in the early 1940s.

Mrs. Banuelos was born a United States citizen. However, her upbringing was consistent with that of an immigrant. When Mrs. Banuelos relocated to Los Angeles, she quickly found employment as a dishwasher during the day and as a tortilla maker from midnight to 6:00 a.m. After several years, Mrs. Banuelos saved \$500, enough seed capital to start her own tortilla company. Mrs. Banuelos purchased a tortilla machine, a fan and a corn grinder. With the assistance of her aunt, Mrs. Banuelos made \$36 on the first day of business in 1949. After many long days and many long years, Mrs. Banuelos' immigrant work ethic evolved the two-person business into Ramona's Mexican Food Products, a company that for decades has employed hundreds of Angelinos.

In 1963, with significant business and financial success, Mrs. Banuelos joined an effort to establish Pan American Bank in order to help struggling Latino consumers and small business owners in her neighborhood. Pan American Bank opened its doors in 1964. Mrs. Banuelos' success in the food and banking industries resulted in her successful appointment as the first Latina United States Treasurer, serving from 1971 to 1974.

While some in the past have criticized Mrs. Banuelos' decision to locate and headquarter Pan American Bank in economically-challenged East Los Angeles, others call her a true visionary who for 47 years has provided culturally relevant financial services, sup-

ported local “mom and pop” immigrant-owned businesses, provided “living wage” jobs for East Los Angeles residents, and has provided immigrants and their children with an example of what is possible in the United States. Today, Mrs. Banuelos is a vibrant 86 years old.

In June 2009, Mrs. Banuelos brought me to Pan American Bank to assume her decades-old role as Chief Executive. Upon my arrival at Pan American Bank, Mrs. Banuelos stressed the importance of staying true to the mission of Pan American Bank, to play a vital role in the transformation and empowerment of the underserved immigrant communities served by the Bank. Of particular concern was the ongoing support of the family-owned businesses that dominate these communities but that have been largely ignored by mainstream financial institutions.

Serving the small businesses that populate immigrant communities such as East Los Angeles is not an easy feat. While every small business at some point can benefit from financial, technical, or other assistance, significant challenges exist. Such challenges include but are not limited to a distrust of financial institutions, a lack of understanding regarding licensing requirements, a lack of knowledge regarding the availability of technical and other assistance, and a lack of time needed to obtain the necessary knowledge.

All of these challenges are further complicated by the language barrier that exists within the predominantly Spanish-speaking community of East Los Angeles.

An additional barrier from a banker’s point of view is the regulatory challenges. As many of these small businesses possess non-traditional credit profiles, regulators at the field office level struggle many times to understand these businesses, which results in regulatory challenges for the financial institutions.

In an effort to serve the needs of Pan American Bank’s small business community, the Bank has recently implemented several programs apart from its traditional products and services. First, in 2010, Pan American Bank partnered with non-profit EastLA Works. Under the partnership, the Bank provides free office space to EastLA Works. EastLA Works visits with family-owned businesses in East Los Angeles for the purpose of providing free Business Improvement Plans. The Business Improvement Plans are roadmaps to improved operations and profitability.

The key to EastLA Works’ program is its focus on visiting the small business owners at their place of business rather than requiring them to make office visits. This is a crucial element as most of these family-owned business owners cannot leave their place of business without having to temporarily close the business. In addition to the Business Improvement Plans, EastLA Works also provides on-site training related to Quick Books and other small business applications, as well as training related to social network marketing, direct mail marketing, and licensing requirements.

Due to the socioeconomic challenges of Pan American Bank’s service area, the Bank also employs graduate students from the Community Organization Planning and Administration Program at the USC Graduate School of Social Work. These individuals include among their responsibilities the performance of surveys and needs



assessments with consumers, small businesses and other community stakeholders. Among other things, the social workers assist the Bank in bridging the divide that stands between the Bank and the small business community.

In October 2011, Pan American Bank entered into a Memorandum of Understanding with the Small Business Development Center. The Small Business Development Center will maintain a presence at Pan American Bank. Similar to the Bank's arrangement with EastLA Works, the Small Business Development Center will receive free office space in order to permit the Small Business Development Center to establish a presence in East Los Angeles and surrounding communities. The Small Business Development Center will develop and deliver culturally relevant technical and other assistance to East Los Angeles small business owners.

Mr. Chairman, Pan American Bank is very proud of its history in serving the largely immigrant small business community of East Los Angeles. Our work over the years has enabled immigrant entrepreneurs to experience firsthand the same American Dream experienced by Mrs. Banuelos. Apart from supporting their immediate families, immigrant entrepreneurs also provide living wage jobs for other members of the community. In Mrs. Banuelos' case and other similarly situated small businesses, the businesses provide financial support for hundreds of families.

Just as Pan American Bank has sought creative and innovative solutions to meeting the needs of its local small business community, so too must this Committee continue to support traditional and non-traditional efforts that encourage the work of organizations such as EastLA Works and the Small Business Development Center. In communities such as East Los Angeles, it is the small businesses that are owned and operated by immigrants that will act as the engine that keeps America working. Pan American Bank will continue to do its part to serve the largely immigrant small business community of East Los Angeles. However, as one of Los Angeles County's smallest banks, our efforts reflect a drop in a large bucket that must be filled through continued Committee support and outreach.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions at this time.

[The prepared statement of Mr. Torres follows:]

Chairman MULVANEY. Thank you, Mr. Torres. We will hold the questions until the very end.

Ms. Chang. Would you please make sure the microphone is on.

#### **STATEMENT OF YUSA CHANG**

Ms. CHANG. Yes. Hello? Okay, thanks.

Chairman Mulvaney and Ranking Member Chu, thank you so much for this opportunity to testify. My name is Yusa Chang. I represent a non-profit community development corporation called PACE, an acronym for Pacific Asian Consortium in Employment. PACE was established 35 years ago to improve the economic conditions of the emerging Asian and other immigrant communities.

PACE receives both Federal and private grants and operates six major lines of services. But today I would like to talk PACE's Business Development Center. This center was established 18 years

ago, right after the 1992 Los Angeles riots, with the goal of assisting small businesses with recovering. We have since then assisted close to 24,000 entrepreneurs and small businesses. We receive public and private financial support, including the Small Business Administration. Our current SBA grants support the operation of a Women's Business Center and a PRIME-funded project in the San Gabriel Valley. Last year, we became an SBA microlender. We are also in the process of being certified as a CDFI entity so that we can bring even more capital to our community.

In the Center's 18-year history, we helped to create and sustain over 10,000 businesses and 14,000 jobs. We have also helped these businesses in accessing \$43 million in capital. I can tell you from experience that these programs are a very good investment for our community.

I just want to share with you a few success stories of entrepreneurs that we assisted. One, a political asylee from China operating a Dollar Store created several jobs after receiving a \$10,000 loan from PACE. Two, the daughter of a Vietnamese refugee started a food truck business selling Vietnamese eggrolls and noodles. Three, a son of an immigrant from China created his own line of high fashion for men. And four, an immigrant from Mexico opened her second hair salon after borrowing \$5,000 from PACE and put a few of her family members to work. Similar stories of these can be repeated hundreds of times.

But with every success story, there are many others that are still struggling. I will just tell you one story in the interest of time. Mr. Chung, we call him a "mad scientist." He is an inventor in the clean energy field. He has many patents under his belt. He recently developed a prototype machine that can convert solid waste into fertilizer in one hour instead of over several months. This small prototype can reduce eight tons of solid waste a day. He has received a tremendous amount of interest from companies across the nation, as well as overseas. But he lost the equity of his home and faced bad credit. He was in no position to finance the production of this machine. He can potentially create jobs, but he needs help.

There are thousands of people like Mr. Chung out there in the same predicament. So here are my two recommendations.

Number one, not only to keep the current SBA programs alive but further invest in them. Small business start-ups and small business expansion is the job creation engine, particularly in this economic climate where millions of Americans are out of work. Our government and large corporations cannot create enough jobs at the rate that we need them. But there are thousands of aspiring entrepreneurs who have the will and can create jobs, so let's help them.

We ask that you strongly support and augment these following SBA programs: SBA Women's Business Center, SBA Microloan Program, and make permanent the Community Advantage initiative, and initiate a credit building/credit counseling program for small businesses. We also strongly support the expansion of the Small Business Investment companies, or SBIC program, that makes financial assistance available to the ethnic minority communities.

And number two, we need to be flexible in collateral requirement in small business lending for those business owners who lost their home equity but are still reliable and still have very good business models. So I recommend that we expand SBA loan guarantee programs to keep the credit flowing.

We are in an unusual time. We need a game changer. We need our elected officials to stand up for small businesses. We need you to increase the size and flexibility of these programs in order to ensure that all Americans with the hardworking entrepreneurial spirit have access to the American Dream. Thank you very much.

[The prepared statement of Ms. Chang follows:]

Chairman MULVANEY. Thank you, Ms. Chang.

As is my practice, I will yield to my Ranking Member for her questions first.

Ms. CHU. Well, let's start with Ms. Chang. As a business development and technical assistance provider for businesses in the L.A. area, can you tell me more about the businesses that come to PACE for assistance and the barriers that they face?

Ms. CHANG. Most of the businesses that we work with are start-ups or what we call micro enterprises, and they are usually about 1 to 5 employees, with annual sales of under half-a-million dollars. They are usually sole proprietors and owner operators, and most of our clients are from the immigrant communities.

The barriers with them we see is mostly, of course, language and culture barriers. For simple things like how to get a permit, the zoning process, or even where to file a business license, and a lot of times because they are limited in their language proficiency, they tend to stay within their own or the ethnic enclave.

So let's say for a restaurant, they just tend to market to only their own ethnic communities, but potentially they could market to other communities. They could expand their business a lot more. So those are the barriers that we see for the clients that we work with.

Ms. CHU. And your staff speak many languages, right? And they are able to help them through these kinds of issues?

Ms. CHANG. Yes. Every one of our business counselors are multilingual in English and another language, English to Mandarin, Cantonese, Vietnamese, Cambodian, even French.

Ms. CHU. And you provide a microloan program.

Ms. CHANG. Yes.

Ms. CHU. In the past SBA said that their standard 7A loan programs are cheaper and more effective than the microloan program in helping low-income and small-dollar borrowers. Ms. Chang, do you agree with that assessment, or does this program, the microloan program, continue to fill an important void in the credit markets?

Ms. CHANG. 7A or other larger loan programs are probably cheaper to operate, but there is huge segment of market that those programs are not touching, particularly the kind of clients that we work with. The way I understand those loans, they are really larger than over half-a-million or three-quarters of a million dollars, or even multi-million dollars. But the kind of loan programs that we work with are the microloans, and those are the huge gap and void that these loans are not meeting the demands.

So we see a great need for microloans. There is definitely a huge market for it, and we definitely need a continuation of that.

Ms. CHU. Can you give an example of a microloan that helped, and how small are the loans that you provide?

Ms. CHANG. Our microloans are typically from \$5,000 up to about \$40,000, so it is relatively small. Of course, it is very labor intensive. We spend the same amount of time packaging these loans compared to a multi-million-dollar loan, and then we have to provide a lot of technical assistance. So it is definitely a lot more labor intensive, but that is the hole or that is the only avenues for a lot of clients that we work with.

Ms. CHU. And are there other SBA loan programs that meet the needs of San Gabriel entrepreneurs?

Ms. CHANG. There's another program the SBA I think just unveiled in the last year or so. It's called Community Advantage. That's kind of replacing the formal Community Express programs, and these programs are made to be available to non-profit community corporations like ours, and that's for loans up to \$250,000, with a guarantee I think—don't quote me exactly—up to about 75 percent. Again, we see—so this is different products. Our current products is microloans, about \$5,000 to \$40,000. We see another level of loans that is not quite available in the market. It is up to \$250,000. So that is the product that will develop the capacity to address.

Ms. CHU. Excellent.

Mr. Torres, let me ask, I understand that your bank does not offer SBA-guaranteed loans, but does operate a small business lending program. What are the differences between your small business loan program and SBA's?

Mr. TORRES. Yes, that is accurate. The main difference is just the flexibility in the process. Many of our clients in East Los Angeles lack a certain amount of sophistication relative to the application for a small business loan. Items such as cash flow projections and other similar documentation is something that escapes many of them. And as a result, in order for us to adequately meet the needs of that community, we need to be able to work within the scope of where they are.

What this means is we get to know these clients in different ways. In our community, we have served customers for more than 40 years, and so we know their businesses pretty well. If they are restaurants, we have eaten there for decades. If they are retailers, we have purchased there for decades and we know their business cycle. We know their strengths. We know their weaknesses. We break bread with them on a very regular basis.

And so we rely on the more traditional metrics for credit than the SBA process requires, and that flexibility, quite honestly, is what ensures that a lot of these folks do get funded. In an ideal world, having an SBA product in every business would be great. But these folks, because they are largely immigrant, at least in the first generation here, lack a lot of the expertise that is needed to get them past the process.

So we do originate, as a result, loans. We will go as high as \$150,000, \$200,000. The nice thing about our community is that they don't need a lot of funding. Their needs are fairly modest.

Anywhere from \$50,000 to \$100,000 is more than sufficient working capital for the majority of these small businesses.

Ms. CHU. Have you thought about being an SBA lender, or is the—

Mr. TORRES. We have, we have. You know, we are a very small organization, and the problem in a sense with SBA is that it has become sort of a micro-industry. There is a certain amount of expertise that is required to make these loans, and what you see around town is you see banks buying teams of SBA underwriters and funders, and as a result these teams are paid a premium.

For a bank of our size, it really makes it difficult for us to make up those costs that are associated with these premiums. We would really have to make a whole lot of loans, many more loans than our capital would permit us to do. So it really becomes a difficult situation for us. As a result, we go the non-traditional route of a non-SBA portfolio.

Ms. CHU. Well, I was interested in hearing that you are sharing space with a local SBDC, and I am really interested in this because the San Gabriel Valley lost its SBD center and now we have to send people to Long Beach, and there is a huge void there in my opinion.

Did you have an SBDC center that was nearby, or what brought you to this generous offer to share space?

Mr. TORRES. Right. No. Well, in fact, you are absolutely right that the nearest was Long Beach, and as I said in my remarks, it is very difficult for these small business owners to get out of their shop and come and seek the technical assistance. It is tough enough for them to go to the next town over, much less 10 miles up the road. So we are—our mission—we live our mission, and our mission is to empower and transform this community. So we are constantly looking for new approaches to serve these customers.

So we reached out to the SBDC, asking them if they would consider something similar to what we had with EastLA Works, and I think we caught them at exactly the right time, and they came on-site. They took a look around and they said we would love to partner with you. This will open up a tremendous opportunity for our local small business, not only those in East L.A. but those in the San Gabriel Valley in general by way of their technical assistance. We have space that they will be able to use for classes for a number of services.

So I am extremely excited about the opportunity that this is going to bring. They have committed to providing these services in a culturally relevant meeting in Spanish, coming from the immigrant point of view. So this is something that we currently don't have that can really be a game changer for the small business community in East L.A. It will, in a sense, give them the tools to enable them to compete for the same bank loans on the same terms as what I would consider the more sophisticated small business owners.

Ms. CHU. How long did it take to get this process going? Because some are saying that it could take as long as three years to get an SBDC running.

Mr. TORRES. You know, we are very entrepreneurial as a bank, and as most entrepreneurs know, time is money. And so basically

what we said is if we are going to make this happen, this needs to happen tomorrow. So the process took probably three months from the point we originated conversations to the point we signed an MOU. So like I said, I think we hit them at exactly the right time, and we brought them—we forced them to show up. We showed them the space, and within two weeks of them visiting our location we had a draft MOU in hand, and it probably took another three or four weeks to get them to sign off on it. So we were able to move rather quickly.

But again, we are East L.A., and despite what others may believe, in my opinion East L.A. is the center of the universe. And so we have a tremendous amount of opportunity. We have a tremendous buying and purchasing power. We have tremendous opportunity for investment. And so I wasn't surprised that they snapped up the opportunity to come into East L.A.

Ms. CHU. And they usually require a match. Was your office space the match, or are there funds from elsewhere?

Mr. TORRES. For the space? So they—that detail is being worked out specifically. We have the MOU in hand, and it is signed. So I believe that they are figuring out—they are finalizing their matching piece. But they wanted to get their fee, their boots on the ground as quickly as possible to start working this.

I have to give credit to the local director, a fellow by the name of—in Spanish we call him a toquio—Jesse Torres, who is a regional, the local executive director of the SBDC in Long Beach. His name is also Jesse Torres. So my toquio there, he really wanted to get something moving, and he has been with the agency for maybe two months. And so he has been very aggressive in making sure that we put something in place because he wants to make sure that we start putting the SBDC resources to bear in the eastern part of the county as soon as possible. So it is very, very exciting for us.

Ms. CHU. Very, very wonderful that you have been able to do this.

Chairman MULVANEY. We have a special guest here is what we are talking about. I am sorry to interrupt the questions, but Ms. Chu would like to introduce her colleague and good friend, also here from the San Gabriel Valley.

Ms. CHU. Yes. We are joined by Congress member Grace Napolitano. I am so happy to see that she is here. I know that she has had a lot of interest in small business and that she will add a great deal to this very important conversation. So welcome, Congress member Napolitano.

Ms. NAPOLITANO. Thank you so very much. I am sorry I am late. I was on the phone with Lieutenant Governor Gavin Newsom on international trade. So this is right down the alley of being able to expand the manufacturing export, not necessarily import, export. And unfortunately, state, county, cities and state don't talk to each other, and that is what he is attempting to do. So later on if you want to, I took some notes.

But thank you very much for allowing me to be here. This is of great interest. We need to find markets. We don't need to import any more. We need to find markets so that we can expand our

manufacturing base. With that, I look forward to the witnesses' testimony. Thank you.

Ms. CHU. Well, they did testify. Now I am in the middle of asking questions, and then feel free to make comments and ask questions.

But I would like to turn to Ms. America Tang now. Let me ask this. You have had quite a success story. Do you think businesses in the San Gabriel Valley know about the resources SBA has to offer, and why or why not?

Ms. TANG. In my experience, I haven't heard too much about these SBA programs, so I really believe that there is not enough information passed on—I don't know why—in the form of maybe pamphlets or—I know that we got representatives, they are at both sides of me right now who are actually doing that, and it is their job for the past many years. But for some reason, you know, I come from a family of business people. It is not only I, but my brother is the owner of Hanfore Realty. My sister and her husband owns Battery Technology, which is another \$30 million company, which is fairly large. We would have taken advantage of programs like this, but we didn't because we really didn't know about them.

So for some reason or the other, our businesses were started just like Mr. Jobs in the garage of our houses and using our own resources, using credit cards, and that is how we started our business 20 to 30 years ago.

You know, I know that maybe precisely that is the reason we are having this subcommittee, to try to see the ways that we can get this information, which is really great programs that should be more available to the majority of the public that needs it. But for some reason it is not getting down to where it is really needed. Maybe the resources are limited. That is very possible. But to me, we have the email right now. I think it would be such a powerful thing to just compile the information of all of these companies like myself who have already been in business and just keep us informed of new projects or new programs that are coming from the SBA.

Ace Fence, despite the fact that we have been in the industry, 23 years, I am still an SBA company. We haven't been able to grow beyond it. We still are very limited in many of the resources, if we are going to compare them with the large firms. So there are things that programs like SCORE I'm sure we could take advantage of, and programs from Mrs. Chang where it is set to help the Pacific community. I will acknowledge that there are many areas that I would be very happy to participate in. I am already receiving, of course, the benefits of the SBA. But what I am saying is that when I started a business, I really didn't know about them and I started just finding out about the SBA as I grew my business.

And it is thanks to programs like the SBA that I am where I am, because I took advantage of these loans, the loan that helped me build the fence at the Century Freeway, and right now the certification of being a woman-owned company, a minority-owned company, a SBE company, and a small business; all those certifications are definitely a plus to help me continue getting the jobs, because our businesses do nothing but public works mostly. They are based

on bidding, and the invitations to bid have continually come to our office thanks to the fact that we are certified as a minority.

So definitely this is a program that more people should be aware of and more participant on. But yet, in actuality, being in the industry already all these years, I haven't seen that many other Asian firms, a few of them maybe, but not too many that are in the public works. And for them to participate, they need to know about the availability of all these resources, know that they are there. But somehow, I don't know why they are not being used, possibly because of cultural issues like you have mentioned before, that they are not used to going to the government for help because the Asian communities I think were more self-sufficient individuals, and in China I don't think they have that many business loans for small businesses. So maybe out of tradition, out of cultural habits, they have not really resorted to using programs like the SBA.

But yet they are there, and I do believe that a lot has to do with having the chance to reach out and tell the whole public; to say "Here we are, how can we help?"

Ms. CHU. And how could the SBA improve its outreach to businesses like yours?

Ms. TANG. In the way to help directly to me, I was thinking just the fact that I am already in the industry for so long, you know, you should still maintain a forum of these programs. A good example that I talked about earlier is that the bonding program issue. The bonding capacity by the SBA increased the back-up from \$2 million all the way to \$5 million. But I did not know about this increase for some reason, even though I am in the industry. If I would have known about this back in 2009 when the change happened, I would be the first to jump in and start bidding on larger projects and participate on them in such a way that today, in 2011, I would already maybe have enough jobs to maintain my regular crew.

So instead I went from 85 employees down to 60 maybe because of miscommunication and the fact that I did not get that information passed down to me.

You know, and the funny thing is I even asked my insurance agents, the ones that sell me the bonds, and they work with thousands of contractors, so they are specialized in construction, and somehow they also didn't know about this until I told them. I said could you look into this for me? I heard that the bonding capacity has gone from \$2 to \$5 million, but we didn't know about this. That is when he started reading on it and started telling me, oh, you are absolutely right, we can put you in that program. I should have been in that program two years ago and avoid having to let go 25 employees of mine that I have had for 20 years, and now they are unemployed because I don't have enough jobs to support them.

So I definitely want to stress the point for the SBA to compile a big information database of emails, and hire a couple of students, interns, and put them to send emails out, massive emails. It doesn't have to be sent only once. Send them two, three times, whatever it takes for the general public to get to know about your programs.

Ms. CHU. Okay. Well, thank you.



Mr. Martinez, SCORE is dedicated to educating entrepreneurs, and you have counseling and then train small business owners. So you must know from personal experience, since you are president of SCORE, and I guess you do SCORE counseling yourself?

Mr. MARTINEZ. Correct.

Ms. CHU. Could you tell us from your experience with these business owners, what are the typical challenges they face, and how do you help them?

Mr. MARTINEZ. Well, the typical challenge that our clients face is basically just how to get started. A large percentage of the kinds that we get in our office is people who have an idea to open a business, and where do they go from there. I think the best way I can kind of summarize it to you is with a quick story.

I had a gentleman come in about three weeks ago who wanted to open a restaurant, and my first question that I asked him was have you been in the restaurant business before, and he said yeah, and I say what capacity, and he said, well, I have been a waiter and kind of in the kitchen. So I said, well, you know, what you need to do is what I do when I want to open a business, is you need to go back to the restaurant and get to a management level, or become the best employee that the restaurant has, because when you do that, the owner of that restaurant will give you all the information that you need. And therefore, you need to spend enough time doing that so when you do open a business, guess what, you are 100 percent ready, you know exactly what to do.

So the challenges that I see, a lot of people when they come into our office, is just the challenge of how to get started, not much of where do I get the money. Yes, a lot of them do come with that, but a lot of them come with the need for marketing and experience, sales experience. We get a lot of practitioners who come into our office wanting to open a business, but they have never been business owners in the past. So therefore, they have a hard time understanding what it takes to open a business.

Like, for example, we do a financial literacy class or how to audit your financials, and we go from—we create a fictitious business from beginning to end, and we let the attendees know that at the end, when we complete the financial plan, they are \$250,000 in the hole just to open the business itself. So the challenges that we see, that I see personally, it is a lot of folks that want to start their own business or they already started, they just need the marketing sales experience, or they need that information to get going.

Ms. CHU. And how long do you work with them?

Mr. MARTINEZ. We work for as long as they want. We don't have a time limit. We have had individuals who we have taken from beginning to end. We have individuals who come just for a one-time session, and I think that is what our expertise is. We have experts not just here in L.A. but throughout the country where somebody comes to us and they have a specific issue, like I was talking to Mrs. Rays before, and she says she might have an issue, just a small one that she needs help with, and I mentioned to her we don't have someone in our office that can help you, just give you the wisdom, the knowledge, information that you need. We have somebody across the nation because we have 13,000 volunteers that can answer that question for you.

We have been in the hole. We know how to get out of it. So we can definitely give you a hand up, help get you out of it.

Ms. CHU. Well, that sounds really great. I understand that SCORE has mentored 6,220 small business owners and held 187 workshops, but that it is still 1 percent of all businesses that are small businesses operating in the greater Los Angeles area.

Mr. MARTINEZ. That is right.

Ms. CHU. What do you need to be able to have an even greater reach?

Mr. MARTINEZ. Honestly, we need to get more people in our community involved, especially in the minority communities. One of the biggest challenges that I have had, and I have only been a president for the last two weeks or so, but one of the biggest challenges that I have is finding individuals that want to give back. And I was having a conversation with another gentleman at one of our lunches that we had, and I basically told him the reality is that within the minority communities, we are probably 15 or 20 years away still from seeing actually individuals that have been successful in business raise their hands and say, yes, I want to help.

So my recommendation to him was let's just go out there and see what we can find and get the one or two that want to give their time and efforts and experience and knowledge and wisdom, and let's team up with them, let's see what we can do.

Ms. CHU. Okay, thank you.

Chairman MULVANEY. Thank you, Ms. Chu.

Ms. Napolitano, it is our custom on this subcommittee, since I am a tried and true southerner, to let the ladies go first. So if you have some questions or some comments, you are welcome to go.

Ms. NAPOLITANO. How sweet of you.

I don't know if I am on. Can everybody hear me?

Chairman MULVANEY. Yes.

Ms. NAPOLITANO. I am not sure what—well, you can hear me. Okay. Logistics.

Lots of questions, and I just barely have started going through some of the testimony, and I already have about 10 questions, but I will limit myself to Mr. Martinez because I sat on a subcommittee now for six years on small business, so I went through a lot of this with them. And then at the state level I also did a lot on international trade and small business. In fact, I am still a micro-business owner.

But I did go to SBA, and they assigned a SCORE person to me before we had a restaurant, and let me tell you, I am glad that you are talking the way you are talking, because at that time they said what is your business plan? I don't know. So you have got to understand from people that have no experience and, like you say, coming in brand new, off the street with the ideas and the passion that will make things work, but how do we get them from point A to B?

Have you considered going to the community colleges and asking them to set up classes to help entrepreneurs that you are dealing with go in and begin to talk to actual businesses that can give first-hand information and begin to make sense of what they are going to need? Because one person tells you, but you are missing out on

some of the things that somebody else can tell you. That is one thing.

And then you must be dealing a lot with individual companies that might have product for export, and have you been able to communicate those to, say, Commerce or State Department, the State of California, to be able to find assistance for them to be able to get certified? Let me tell you, when I did small business, certification was a process that took many people 15 years, and even then they could not get the 8A certification. I mean, they got it maybe, but they weren't getting any ability to get projects like you have. You have been lucky. But at the Federal level, it is a whole different ballgame.

So how do we bring all those resources? And sure, while you are at it, and to any of you, how do you get the cities to do the permitting at a one-stop shop, the state to work with the cities to be able to allow waivers or not exemptions necessarily to bring more business to California instead of having the states come into California and taking our businesses because they are either right-to-work states or they have incentives that they provide for the businesses? Have you maybe gone to the county to find out how everybody can sit at the table and be able to format what are the regs that are out there that are prohibiting—that are not prohibiting—that are, unfortunately, roadblocks for business? Because it takes the same amount of time to go after one permit if you had a one-stop shop and you would be able to have the city, the county, the state at one point, be able then to facilitate the ones that are duplicative, not only in money but in time, and time is money for business.

Mr. MARTINEZ. That is correct. And to try to answer all those questions—

Ms. NAPOLITANO. Like I said, I have a million of them.

Mr. MARTINEZ. There are about 10 of them there, but I will try to do my best that I can. First of all, with the communities, as a matter of fact, one of the directives this year with our original director which is here, Blake Welch, one of his directives for this year is to actually go out there and get involved with the community colleges, and also the universities to see how we can spur that entrepreneurship spirit. And if the communities or the community colleges don't have that program, to get involved with them and actually create an entrepreneurship program.

One of my goals in life which I think is a lifetime goal that I really have talked about over the last few years, it is about a program that I started about a year-and-a-half ago. It is called the Academy of Entrepreneurship Leadership, and I was talking to Jesse about it before we got started. But basically what I am doing with that, I am taking high school students like myself, because I saw myself in that, and that is where I came from, I am taking high school students that otherwise have graduated from college or really not college but high school, are now going to graduate, but they really have that entrepreneurship spirit, they want to do something with their lives.

So basically what I have done is I have brought them on board to my academy and asked them to give me a three-year commitment, and what I do with them is that I find out where they are at as far as personality and what would be best for them—

Ms. NAPOLITANO. Can I stop you? Because I don't want to run into a lot of time.

Mr. MARTINEZ. Yes, sure.

Ms. NAPOLITANO. One of the community colleges is Reondo, and in conjunction with the COGs, the Councils of Government, they identified what the business community needed in terms of training of personnel, and then they set up a class. So then they had a market of people to go and do it. That is something that we have not really looked at.

Mr. MARTINEZ. No.

Ms. NAPOLITANO. And that is something that needs to happen because the community can tell you what they need, versus us going out there and setting classes up and saying, okay, come and get it, and then where are they going to be employed?

Mr. MARTINEZ. Right. No, my program runs a little bit different where I see what the need of the individual is, and then I go and I team them up with that industry. We find them a job in that industry for three years, working in that industry, find out exactly what it is to be successful in industry, and during those three years we take them through a whole mentoring program where we teach them management skills, sell skills, marketing skills, everything.

Ms. NAPOLITANO. That's very laudable, but we need this for business. And while those youngsters may be coming up in the business world, right now California and the rest of the nation is suffering from budget woes.

Mr. MARTINEZ. That is correct, and I agree fully with you, Ms. Napolitano. Like I said, we have a directive this year to get involved with the community colleges, get involved with the universities and see how we can spur that entrepreneurial spirit and help any ways we can.

As far as exports, when we have individuals who come to our office to get help for import/exports, we have actually experts on our staff here in California, here in L.A., that as soon as somebody comes in and they talk about import/export, we direct them to them, and that individual walks them through the whole process of what they need to do. And we also have a workshop that teaches import/export to individuals that want to get involved with that.

So the resources are there, definitely, yes.

Ms. NAPOLITANO. Again, to the point of Ms. Tang is we cannot, do not, and have not been able to get the information to the people that need the information. We don't use everything that is available to us to communicate, whether it is the new technology, whether it is the Net, or whether it is videoconference, or whether it is the cable, which you have the free access cable in every city.

Mr. MARTINEZ. Right.

Ms. NAPOLITANO. All those things, we have not put them together.

Mr. MARTINEZ. You know, one of the things, Ms. Napolitano, that I learned when I was in business is that I needed to go and do it myself. If I didn't have the resources, I would get in my car and go find the resources. If I need to find out about bonding or whatever the issue might be, I would go out and find it myself. It is true, yeah, we need to communicate better, and to be honest with you and completely frank with you, the only thing that can improve

that is the resources that we have available. And unfortunately, the resources that we have available will only get us to that 1.09 percent of being able to reach the small business community.

Ms. NAPOLITANO. As you understand, I'm sure, Chairman Mulvaney and my colleague understand that when Washington resources are being cut more and more.

Mr. MARTINEZ. That is correct.

Ms. NAPOLITANO. And the state, of course, is in financial woe, so no help. So what do we do to be able to get out of the box and be able to get these things done? Now, if I may, if you will indulge me for just a second, I was in a conversation with Lieutenant Governor Gavin Newsom a little while ago in regard to trade, as I mentioned, and he is looking at the permitting process. How do we cut down the red tape?

Second, streamlining with the counties and the cities. In other words, have the counties, cities and county government also involved in this. They are doing six pilots, one of them starting in Riverside, international trade. They are going to open a new office in China, the first state office since the Davis Administration, and they are looking at the manufacturing component. Those are just a few of the highlights that I garnered from the conversation.

So there is great need, and I think hopefully we will be able to partner with the state, Madam Chair, to be able to get a lot of these things passed on to not just the new entrepreneurs but also the ones that have business and who want to expand and go into other countries with a product that they make.

And thank you so very much for being so indulgent.

Chairman MULVANEY. Happy to do it. Thank you, Ms. Napolitano, for joining us. It is a pleasure to meet you. There are 435 of us in Congress, so it takes a while to meet everybody.

Let me go about it a little bit differently. Instead of going one by one, I want to deal with topics and have each of you check in on just a couple of global topics I have heard discussed here today. One of them, the first one is access. Ms. Napolitano was mentioning it. Ms. Tang, you talked about it a couple of times, access to the information.

Does anybody here use the SBA website? Mr. Martinez, good. You have to. Ms. Chang, you have. But Mr. Torres, Ms. Tang, you have not had a chance to use it? It is a tremendous, a tremendous asset that we have available to us. But again, everywhere I go and I have these meetings, I ask that question and half is above average for folks who have actually been aware of it.

Ms. Tang, I did a series of small business workshops in my district, put together a tremendous body of information. The SBA came up from the state capitol. We had four or five people on this panel. I had 40 people at most at a meeting where I thought I would have 500. It is just very difficult to get that word out there that this particular service is available.

So often it seems with the Federal Government, the difficulty we have is this overlap of services. We have all of these entities doing the same thing. I think we are up to 47 different job training programs now. But in this particular circumstance with small business, there is this giant gap that nobody even knows that we do this. So it is up to us, I think, to do a little bit about that.

Sharing something else with you folks, I didn't hear the 8A program mentioned at all. I don't know if you are familiar with it. Mr. Martinez is. But I know, Ms. Tang, your business would qualify for it. Ms. Chang, yours may well. There is a series of programs available to especially women-owned businesses where you can compete on a non-competitive bid basis. There are certain restrictions on that, but you don't have to bid. You have to have a track record. You have to be established as a certified 8A provider, but there is a wealth of programs out there that folks are simply not taking advantage of. The last one would be the mentorship program that I think one of you—I read the testimony before, and one of you has participated in that before. Was it you, Mr. Martinez?

Mr. MARTINEZ. Which mentorship program?

Chairman MULVANEY. The SBA mentorship program.

Mr. MARTINEZ. Oh, no.

Chairman MULVANEY. So you have done your own. The SBA has its own mentorship protégé program where large businesses will come down and teach small businesses how to do government contracting. In fact, there are incentives in place for large businesses to do exactly that. So I encourage you to put that in front of your customers, your clients, your colleagues, your neighbors as well. But we are learning firsthand in South Carolina. Boeing has already signed up a tremendous number of very, very small businesses doing very small levels of work that they are ready to do, subassembly a lot of time, but it is a great way not only to expand that small business but also to train those small businesses in the intricacies of complex contracting. Contracting with Boeing is probably more complex than contracting with the Federal Government, believe it or not.

Let me ask this, then, and move on to the questions I have on a different topic, which is micro-credit. Mr. Torres, you said that you don't do SBA loans but you said you do your own. You effectively are doing what we try to get folks to do. Why don't you do SBA loans, and what would it take in your experience, what could we change—and really, at the end of the day, that is why we are here. What could we change to make it better so that you could provide it?

Mr. TORRES. Sure, and as I had said earlier, the biggest issue for us is just our size. So for us to bring on a capable SBA team, the expense related to, in a sense, buying that team, and banks compete for teams of individuals to—

Chairman MULVANEY. Why does it take a team to do it?

Mr. TORRES. Because it is a highly technical area of lending. I mean, there are a lot of specific rules and regulations that if you do not dot the proper I or cross the proper T, the guarantee is not there. And so it takes a very specific expertise and someone that is very experienced, and this knowledge base is not very widespread in our community. And where it is widespread, it lies resident within a larger organization. So it becomes very expensive for banks of our size to obtain that expertise.

Now, we can develop it. We can home-grow it. We can take existing resources or bring in new resources and educate them in that process, and that is something that we have talked about for in the coming years, taking our existing credit folks and putting them

through a rigorous training program, but that is a process that also takes a significant amount of time because they need to go through the entire program.

So getting to your question, what can the SBA do, I would say if the SBA can develop a program where they can take either junior credit administrators or some folks that have been in the credit industry for a while and put them through a comprehensive certification program where they can become competent, that would probably go a long way in doing this.

Our biggest fear as an industry relative to, let's say, SBA, is the loss of that guarantee, obviously. If we do something along the way and there's a default and someone says, ah, I see in the file when we do a post-mortem review, you did not dot this I, cross that T, sorry, and we have pulled it from you, now we are stuck with a much bigger loss than anticipated.

So as a small bank, that tends to be the hurdle for us. Certainly I think the education piece, the outreach piece, putting the money out there to take these smaller banks that can afford to buy these teams and just getting their folks and educating them, and perhaps even—and this is a perfect tie-in to the community college piece—why not take these kids that are in community college that normally get these AA degrees or certificate programs, and make them SBA qualified or SBA credentialed so that they can go straight into those same communities that they are living in and start working in that business? That is a lifetime opportunity for them, it is not overly expensive for the institution, and it takes the resources of the SBA and puts them to good use.

Chairman MULVANEY. Ms. Chang's testimony rung particularly true with me. I had a Small Business loan one time. I was a young lawyer, I had just started practicing, and I had a flood in my office, and I ended up with a small business disaster loan. It was outrageously easy. Your point is an excellent one, which is that it is almost as difficult to make a microloan as it is to make a massive loan, and maybe that is one of the places we can look at as well, not only figuring out a way to do a training program to certify your bankers and so forth and train them so that you don't have to go off and add this team just to do it, but also to change the process so that micro-lending is easier, or at least it is proportional to the value. There is no reason to spend 100 pages of documents on a \$100,000 loan when you can spend 100 pages of documents and do a \$100 million loan. So that is something that I will take away from here.

Mr. Martinez, give me a feel, of these folks that you have talked to, if we want to go back, if micro-lending is one of the things we take back to Washington, is that the kind of thing that you see on a day-to-day basis that really would have an impact? Do you get a feel for the percentage, the volume of traffic that you see that could benefit from those loans, say, under \$100,000 or under \$50,000?

Mr. MARTINEZ. I would say yes, definitely. We do get a large percentage of clients that come in and are business ready, ready to receive that microloan. Because they don't have the experience, maybe they don't have the business plan put together or something is missing where they are not able to apply for that loan. I know

there are many organizations here in the L.A. County, San Bernardino County, and the Empire County, there is a tremendous amount of resources. Again, they are out there. The only problem that we have is that for some reason they haven't heard about it yet. But, yes, there is a large percentage that would benefit tremendously from that, micro-lending.

Chairman MULVANEY. I get that impression as well, because most small businesses are not looking for a million or \$2 million. They are looking for \$50,000—

Mr. MARTINEZ. No. I mean, the individuals that come in, they are asking for \$20,000, \$25,000. And by asking questions, looking at their background, see where they are with their business plan, I usually refer—I say to them do what I did, which is what? Use my credit cards, use my savings, ask friends, ask family, and get the business going. Get it going for two years. Once it is running, we will help you throughout the whole two years. Once you have been in business for two years, you will be ready for an SBA loan.

And the only reason why you need an SBA loan, not to survive, but you need an SBA loan to expand, which a lot of people look at it differently.

Chairman MULVANEY. That's an excellent point. That's an excellent point. That is a message that needs to get out there to the small business communities, and that is that this is maybe not designed to help you start from scratch. In fact, maybe it makes it too easy for you to try and start from scratch.

Mr. MARTINEZ. That is right.

Chairman MULVANEY. You don't learn the value of the money unless it is your money and your mother's money and your neighbor's money, but it can help you to expand.

Mr. MARTINEZ. Most definitely, most definitely.

Chairman MULVANEY. So maybe we will take a look at, then, possibly changing some of the qualifiers, some of the categories in terms of treating loans to existing companies differently than treating loans to brand new start-up companies.

Mr. MARTINEZ. That would help, yes.

Chairman MULVANEY. That might be something worth it to look at.

Exports is something else that everybody here has mentioned off and on. Ms. Napolitano I think specifically mentioned it. I will tell you, I will tell my colleagues, the Small Business Administration is available to you to help promote this specifically. There are specific areas within the SBA that are set up to help small businesses export. Mrs. Chu and I have been heavily involved in the committee in Washington on trying to drive small businesses to export. Less than 1 percent of the small businesses nationwide export at all, and 95 percent of the ones that do export to only one country. There is a tremendous untapped market for us in small business, but it is so often the case, as with other things we have heard here today, that it just doesn't occur to people to seek those markets. They are looking here in East Los Angeles, they are looking in South Carolina, they are looking where they live, as opposed to thinking globally in terms of where their markets are.

By the way, and I share this with my colleagues as well, there are a couple of different organizations that will come to your dis-



strict and put on symposia on how to export into specific regions. We just had a series of meetings in my district led by the U.S. Chamber specifically encouraging people to export into the Middle East, tremendous growth opportunities there as well. So those things do exist, and again, targeted specifically at small businesses.

Mrs. Tang, you mentioned something that is near and dear to my heart. I have had many careers. I get bored very, very easily, and in addition to running a law firm and running a restaurant, I also ran a construction and a real estate business. And you mentioned the criticalness of getting paid quicker.

Ms. TANG. Yes.

Chairman MULVANEY. We are looking at that. One of the things—and you don't often hear this from conservative right-wing extremists from South Carolina like myself, but I give the President tremendous credit for specifically mentioning those things in his jobs bill, the idea of paying small business, paying contractors in 15 days instead of 30 days. This makes a big difference where we come from.

Ms. TANG. Oh, yes.

Chairman MULVANEY. What we need to make sure of, however, and you sort of hit on it, is we need to make sure that while that changes at the owner-contractor level, it also needs to change at the contractor to subcontractor and second-tier subcontractor level.

Ms. TANG. Exactly.

Chairman MULVANEY. Otherwise all it does is we are providing the float to the big business but not the small business that come down.

Ms. TANG. Exactly.

Chairman MULVANEY. So you were spot-on on that. And I know that I haven't raised a lot of questions here because really, for me, and I will say this by way of closing today, the value here, we love the opportunity to sit and ask you questions. It is extraordinarily helpful. But what we are trying to get, and the reason that we are here, and the reason this is important, is we need those stories. We need the story of the Chinese asylum seeker who took \$10,000, now hires a bunch of people. We need the stories about the food truck with the immigrant who grew it into a business.

We have to go back and raise the level of dialogue on this particular issue, and having the stories from you and from your colleagues and from your neighbors are what allow us to do it. I can go back now, Mr. Torres, and tell these folks, look, I was talking to a banker in California, and he said if you can make it easier to do microloans and we can get this down to three or four pages, he could open the floodgates on this thing and it could really, really help.

So often we get stuck in the policy and we don't have those first-hand stories to tell. Ms. Tang, I will always tell the story from now on about driving in. It is my first experience in driving in Southern California. I came when I was 9, thankfully, and someone else drove, and then I came a couple of months ago and they provided a driver for me. But I did it by myself today, which is a real interesting experience. But it is nice to know that it is your fences on 105. [Laughter.]

Chairman MULVANEY. And Mr. Martinez, I will tell you that the story that you tell makes me pause because my father and I went through the exact same situation in 1975 when he lost his job and decided that that was the last time that anybody was going to lay him off, that if he was going to lose his job, he was going to lose it because he wasn't any good at it, not because somebody else made that decision for him, and he has been a small business person ever since.

You talk a lot about high school dropouts and trying to teach them, and I wonder if we had, how many of those folks who dropped out of high school had fathers and mothers telling them the same stories. My fear is it is probably not enough, and if they had their parents telling them that story, they would stay in school a lot longer. I know that I did.

We try and raise the level of dialogue. This is a very small group. You may be sitting in the back of this room, you may be sitting up front going was this worthwhile or was this a complete waste of time? Let me tell you how it works. This is a tremendously valuable tool.

What will happen inevitably from here today is that the media is here. There are folks taking pictures. There are folks who write articles in journals that you have never heard of before. I don't know if PACE has a magazine or not, but my guess is there may be a Hispanic Banker Magazine that only you truly appreciate the value of, Mr. Torres. This story will be written in those magazines, and they will be talked about on blogs, and someone at some conference someplace in Nebraska will say, you know, I read about this hearing in California about what we can do to help micro-credit, or what we can do to help pay people faster, and it will become a dialogue, and then people will start talking to their Congressman, and then we will have another hearing on it, and then finally we will have a chance to actually do something about it.

I can say this with experience because I have only been here nine months, but we have already started to see it with the 3 percent withholding rule, something that I knew nothing about eight months ago, and at the risk of being presumptuous, my guess is you knew nothing about it eight months ago, but maybe you did.

It is something that is arcane and it means something only to small business owners who do large government contracts. But because of the hearings that Mrs. Chu and I have been able to have this year, because of that process of percolating up information, a bill is getting ready to be passed by the U.S. House of Representatives—in fact, I think it passed out of Ways and Means the day before we left—to change the way that the government pays small business people on their government contracts. This is a dramatic change for the better. It would not have happened in a top-down type of process. It happened because people took the time to do what you folks are doing today.

And hopefully, if you start to see progress in the next couple of months on things like micro-credit, exports, paying small business faster, reaching out to specialized programs perhaps for folks who haven't graduated high school who have a whole other level of issues, not only do they not understand business, they don't understand the basics that go into business. You have to teach them

math first before you can teach them how to do accounting for their products. But I can assure you this, and I will say this to wrap things up——

Ms. CHU. Will the gentleman yield before——

Chairman MULVANEY. Yes, ma'am. Absolutely. Always to my senior.

Ms. NAPOLITANO. Just as you are talking, it brings back my six years that I sat on Small Business when I first got to Congress. And at that time, SBA brought in the banks who purportedly were helping small business, and let me tell you, the story was dismal about the amount of small business loans they were giving out. Now, I am talking about six years ago.

Now, whether this changed or not, that is something that we need to ensure will happen because we were told that a business bank would rather do a large loan than a small one because it takes the same amount of time, the same amount of money to do it, and of course you have the team of experts that need to be able to push it through.

Well, years ago the Arrowhead Credit Union was able to begin putting such a team together and be able to get permission from SBA to do small business loans at the local level because they know their businesses, and that was very, very successful. Maybe we need to look at helping SBA be more in contact with the credit unions because they can do the microloans that the banks cannot take the time, nor do they have the ability to do all of the things that they need to do. But they had an expert team developed where the credit unions sent in their customers to the Arrowhead Credit Union.

The other issue, Mr. Chairman, immigration, because as you can see, you have minorities from other countries that run into issues with immigration being able to get—whether it is the owners being able to get legalized—now, these are people who are bringing businesses in. And you talk about a story, I have had in my district some people who own used car lots netting—grossing, I am sorry, \$400,000 a month, netting. And because their attorney who was incorporating didn't do the work with immigration, they became undocumented. Do you think we were able to help them for years?

So we need to be able to find a way to be able to help the businesses who are bringing, and not the ones who are going through the paper mill, to be able to come here to the United States and try to become businesses supposedly, but are not necessarily the true type of business we would like to have.

There are pitfalls, and we need to be sure that the businesses that come in understand what the letters of credit—if you send merchandise abroad, how are you going to collect your money if that country does not recognize our justice system or rule of law? In other words, you owe us, you pay us.

So those are all things that I am certain people want to learn about, new entrepreneurships. These ladies and gentlemen already know because they had the businesses. But if you are talking entrepreneurship, these are pitfalls that we need to ensure that come to the front, that they acknowledge and get information so they avoid them, or at least know what they are getting into. I am glad

to learn about the U.S. Chamber doing an export seminar next month, so look forward to talking to you.

And thank you again for allowing me. Thank you for the invitation.

Chairman MULVANEY. You are welcome, Ms. Napolitano.

Ms. Chu, would you like to say anything before we close?

Ms. CHU. Well, I want to thank you for having this hearing here. This hearing meant a lot to me. You know, I have been an elected official here in the San Gabriel Valley for 26 years, and I know that small business is the engine of the San Gabriel Valley. And if we can make it successful, the San Gabriel Valley will be successful.

So I was really anxious to have a hearing here that reflected the issues that we are dealing with in Washington, D.C., but it was even more valuable to hear from your very own words what you are facing and how the programs of Washington, D.C. are or are not helping you. So I appreciate it. We will take these suggestions, these experiences that you have had back to Washington, D.C., and we will try to make things better.

I want to thank Congress member Grace Napolitano for being here. She has been such an advocate here in the San Gabriel Valley and in Los Angeles County.

And I especially want to thank our chairman, Congress member Mulvaney, for making this monumental effort. He has been so gracious in having this SBA hearing, but then to overcome these incredible obstacles he had just in getting here, I thank you so much.

Chairman MULVANEY. I will see how I feel tomorrow, that's for sure.

Listen, thank you, ladies, for doing this. Thank you for participating. Thank you folks especially for doing this. I can assure you one thing, that this was worthwhile for me. I have three 11-year-old children that I haven't seen in the last couple of days, but this is what we do, and this was worth coming across the country to get this information and to get these stories because it is what we need to try and change things.

Ms. Chu and I have one of the luxuries in Congress. We actually function when we participate in a committee that gets along. This is a bipartisan effort. We are not here with Republican and Democrat. We are here as the protectors and the voice of small business. I think we have sent out more bipartisan bills out of our committee this year than perhaps all the rest of them put together. We are making strides for small business, and I appreciate you all participating in that process.

With that, I will ask that there be five days for members to revise and extend their remarks. There are no objections to that, so we will do that. And with that—yes, ma'am?

Ms. CHU. Just to invite everybody to a little reception of cookies and coffee afterwards.

Chairman MULVANEY. Cookies and coffee it is. Coffee would be really good right now. [Laughter.]

We stand adjourned. Thank you, folks.

[Whereupon, at 4:23 p.m., the Subcommittee was adjourned.]

**Testimony for Public Hearing  
The House Committee on Small Business  
October 17, 2011**

**Manuel R. Martinez  
330 N. Brand Blvd Suite 190  
Glendale, CA 91203**

*Land of Opportunity: Pursuing the Entrepreneurial American Dream*

Good Afternoon Small Business Committee Members. My name is Manuel Martinez and I am a life long Entrepreneur and small business Mentor. I am also the President of the Greater Los Angeles Score Chapter. Score of Greater Los Angeles is an SBA sponsored organization that offers business workshops as well as face to face, over the phone and online mentoring sessions to striving entrepreneurs and current small business owners.

Just in the past 12 months alone we have mentored 6,288 small business owners and held 187 workshops with 4,677 attendees. According to the latest census data there is are over 1 million small businesses operating in the county of Los Angeles. As you can see with the minimal amount of resources available to our organization, we were only able to reach about 1.09% of all small business operating in the Greater Los Angeles area.

I am here today to ask you to continue to support the efforts of The Small Business Administration, Score and all other technical assistance programs available to small business owners today.

Special attention should be given to the following programs:

- High School Kids Graduating or Not Graduating with Entrepreneurship programs
- Entrepreneurship programs for people just being laid off from their jobs
- Entrepreneurship programs for struggling small business owners

While I am speaking as an advocate for all striving entrepreneurs who will be detrimentally affected by not having the your support in Congress, I also have personal experience being an an striving entrepreneur. You see, I am one of the more fortunate individuals in America because I made my business work and become successful. However it was not easy, I made a lot of mistakes along the way in my life as a business owner. As I remember the event that change my whole future, I was 16 years and experienced my Father been laid off from his 20 year old job and how it effected our whole family for about two years. I remember when he was unemployed he use to take me and my brother with him to collect cardboard and plastic recyclables just to put food on the table on a daily basis. That was the moment I promised to my self that I was never going to let any one or any company laid me off. If I had not experienced that event with my Father been laid off I probably would of quit being an entrepreneur and would of settle for job. As of today I have started, created, built and sold a number of business and currently working on three new small businesses.

I tell you my story, not to say that any one can be an entrepreneur, but rather to gain your support for all striving entrepreneurs in America Today.

Thank you for your time and consideration.

Sincerely,

Manuel R. Martinez



## ACE FENCE COMPANY

727 N. Glendora Avenue, La Puente, CA 91744  
 Tel: (626) 333-0727 Fax: (626) 333-7843  
 Contractors License No. 801674

Statement of America Tang – CEO of Ace Fence Co.

“Land of Opportunity: Pursuing the Entrepreneurial American Dream”

Monday Oct. 17, 2011

My name is America Tang, I am the CEO of a construction company specialized in Fencing. I have been the owner for the past 23 years. Our company does 90% of Public Works Construction and throughout the years we have had the honor and the privilege of participating in the construction of landmarks such as the 34 miles median fencing in the 105 Century Freeway in Los Angeles back in 1993, construction of the Metro Blue Line fencing in 2001 and many other prominent Public projects in the Southern CA. Area.

I am of Chinese Descent, but born in Lima, Peru, therefore I can speak three languages: English, Spanish and Chinese Cantonese. My family immigrated to Los Angeles in 1974, a move that turn out to be a blessing for myself and my entire family because the Multi-cultural environment of this great City allowed us the full usage of all of our diverse cultural background and enabled us to pursue the “American Dream.”

When I purchased Ace Fence Co. from the retiring owner in 1988, one of the first moves I made was to start participating in the bidding of Public Projects. I found out that the California Department of Transportation (Cal Trans) offered a Certification Program for Minorities and Women Owned Companies. I applied in 1989 and it did take a good 9 months before obtaining approval, but this Certification opened the doors finally to an area that was completely closed and forbidden to us before.

In 1990 we were the low bidders for the Yard Fencing for the Metro Red Line in downtown L.A. it would have been impossible for us to obtain the bond necessary to backup this project if not for the Transit Bond Guarantee Program offered to companies that are Certified as a SBE, WBE, MBE or DBE. This was a new program established by the Metropolitan Transit Authority. Ace Fence used this Bonding program to help us bond 4 of our largest projects during the years of 1990 to 1993, bonds from \$50,000 to \$2,500,000. This last \$2,500,000 is the construction of the fencing at the 105 Century Fwy. I mentioned above.

The Century Fwy. Project was a challenge as it represented a very large contract amount and therefore Ace Fence not only needed to find a Surety Bond to issue the Payment and Performance Bonds, but we also needed financing to help us cash flow the project. Ace Fence obtained a \$500,000 loan from the Department of Transportation Office of Small and Disadvantaged Business Utilization. This project was a successful one that propelled our company to its next level and since then we have participated in

numerable high profile projects from Cal Trans, MTA, L.A. Unified Schools, Dept. of Airports, City of L.A. and many other Cities in the Los Angeles and surrounding areas.

There is no question that the SBA and its program designed to help Small Businesses, Women and Minorities works. Ace Fence is an example of it. But the economic turnaround in the past few years has had its impact also on us. In 2009 we had 85 employees and worked an average of 2000 man hours per week. This past week of October 14, 2011 we were down to an average of 60 employees and clocking in only 1200 man hours for the week.

The American Recovery & Reinvestment Act of 2009 is supposed to pour in many new projects into the construction industry to invigorate the infrastructure of our country and provide new jobs to help our depleted economy, but somehow the process is very slow and in practice the intended effect still has not trickled down to the small companies yet. We were expecting an increase in our sales, but instead, even while keeping my overhead staff the same, with the same amount of salespeople, we are deriving a reduction of 15%-20% in our gross sales. For the first time in 20 years in this industry, we declared a Net Loss in our Financial Statement as of Year end 2010 and our figures to date are still in the negative.

In my personal experience I believe that SBA has created some real good programs to effectively help the Small business community, who after all, is the backbone of our country's economy, but there is a failure to communicate to the general public the existence of many of these programs. I personally found out about the programs only when I was already in the business and after already bidding in many projects I started finding out the existence of a Certification program, and a Bonding Program and a Loan program. The ARRA of 2009 raised the Surety Bond Guarantee Program of the SBA from 2 Million to 5 Million (up to \$10 million in some projects), but I did not know about this until the middle of 2011 or I would have started bidding more aggressively back in 2009 to insure enough projects for our firm for 2010 and 2011.

In our current economic situation timing is of the essence, we do not have the luxury to sit back and let things move and take their time as if it were regular business. These are not times for regular business, the government must act quickly and by quickly it means to start dropping the bureaucracy, the excess paperwork and streamline the process for your program to actually reach the major population and not just the few who really took the time to do a lot of research and finding bits and pieces of information which most people won't know how to do or won't have the time to do it.

Companies are registered. Why not do mass emails around the country to tell us what programs are available through the SBA. I know you will say that we can access the internet and find out, but I think if the SBA wants to have a real impact and create new jobs quickly, what better way than making sure that every dollar allocated to the program is used immediately. I do not have the latest records, but in 2009 the SBA total Lending was down by 41%, by July of 2009 there were only 3900 loans vs. 6700 loans the year before for the same period of time. These statistics speak for itself. The program which is a life saver for thousands of businesses is failing to successfully reach its intended public probably due to excessive requirements and again bureaucracy.



One of the weak points for any Small business and right now I am sure even the large Business is always Cash Flow. In my industry specifically, as a Subcontractor we have always been the underdog, the one to fork out the funds immediately and get paid the last. The biggest problem is that the system is flawed in the sense that even though we are supposed to get paid, by law, within 10 days of the General contractor getting paid, this seldom happens. Especially in hard times like now, the General Contractors will use the paid funds for themselves and then pay us, the Subcontractors, anywhere from 60 to 180 days later using all kinds of excuses. Among all the Institutions, Cal Trans is one of the few that has an open Website to the Public where the Subcontractor can log in and find out what items has been already paid to the General. For all the other entities, no information is available from the Owners to the Subcontractor since their contract is only with the General. The SBA should protect its members, most of us very much vulnerable in many aspects and most of all the cash flow, by mandating the companies that do business with a SBA firm to allow them full access to vital and pertinent information, such as payment records from the Owners to them, to any company who has delivered material or done work for the project.

The SBA is a definitely a powerful engine for opportunities and it has already come a long way from the 1980s when the system was in its infancy. The programs offered by the SBA has personally help my company grow and without these programs I am sure Ace Fence would still be doing only commercial and residential fencing.

The spirit of entrepreneurship is very much alive and more so now when scores of unemployed individuals will be seeking to start their own business as the only alternative to finding a job again. I commend the efforts of this Committee for understanding the urgency and demands of our current predicament and I am very optimistic that together we will find the solution to keep this beautiful country as the "Land of Opportunity."

**TESTIMONY OF  
JESSE TORRES, PRESIDENT AND CHIEF EXECUTIVE OFFICER  
PAN AMERICAN BANK  
BEFORE THE  
HOUSE COMMITTEE ON SMALL BUSINESS  
SUBCOMMITTEE ON CONTRACTING AND THE WORKFORCE  
OCTOBER 17, 2011**

Good Afternoon, Mr. Chairman and Members of the Committee. As the President and Chief Executive Officer of Pan American Bank in East Los Angeles, I am pleased to be here to testify before the Subcommittee on Contracting and the Workforce.

Pan American Bank is an example of the American Dream. While the fact that Pan American Bank is California's oldest Latino-owned bank and the second oldest Latino-owned bank in the United States is an impressive feat – particularly in today's banking environment - it is the story of its founder that is most impressive and reflective of the values of our great nation.

Pan American Bank was founded by and is majority-owned by Romana Acosta Banuelos. Mrs. Banuelos, born in the small and poor mining town of Miami, Arizona in 1925, is the daughter of Mexican immigrants. In 1933, as part of a repatriation initiative, Mrs. Banuelos and her family were relocated to Mexico. While Mrs. Banuelos did not at the time understand the reasons for her relocation, she knew she would one day return to the United States. Mrs. Banuelos returned to the United States as a young woman in the early 1940s.

Mrs. Banuelos was born a United States citizen. However, her upbringing was consistent with that of an immigrant. When Mrs. Banuelos relocated to Los Angeles she quickly found employment as a dishwasher during the day and as a tortilla maker from midnight to 6 a.m. After several years, Mrs. Banuelos saved \$500 – enough seed capital to start her own tortilla company. Mrs. Banuelos purchased a tortilla machine, a fan and a corn grinder. With the assistance of her aunt, Mrs. Banuelos made \$36 on the first day of business in 1949! After many long days and many long years, Mrs. Banuelos' immigrant work ethic evolved the two-person business into Ramona's Mexican Food Products, a company that for decades has employed hundreds on Angelenos. In 1963, with significant business and financial success, Mrs. Banuelos joined an effort to establish Pan American Bank in order to help struggling Latino consumers and small business owners in her neighborhood. Pan American Bank opened its doors in 1964. Mrs. Banuelos' success in the food and banking industries resulted in her successful appointment as the first Latina United States Treasurer, serving from 1971 to 1974.

While some have in the past criticized Mrs. Banuelos' decision to locate and headquarter Pan American Bank in economically-challenged East Los Angeles, others call her a true visionary who for 47 years has provided culturally relevant financial services, supported local "mom and pop" immigrant-owned businesses, provided "living wage" jobs for East Los Angeles residents and has provided immigrants and their children with an example of what is possible in the United States. Today Mrs. Banuelos is a vibrant 86 years old.

In June 2009, Mrs. Banuelos brought me to Pan American Bank to assume her decades-old role as Chief Executive. Upon my arrival at Pan American Bank, Mrs. Banuelos stressed the importance of staying true to the mission of Pan American Bank – to play a vital role in the transformation and empowerment of the underserved immigrant communities served by the Bank. Of particular concern was the ongoing support of the family-owned businesses that dominate these communities but that have been largely ignored by mainstream financial institutions.

Serving the small businesses that populate immigrant communities such as East Los Angeles is not an easy feat. While every small business at some point can benefit from financial, technical or other assistance, significant challenges exist. Such challenges include but are not limited to a distrust of financial institutions, a lack of understanding regarding licensing requirements, a lack of knowledge regarding the availability of technical and other assistance and a lack of time needed to obtain the necessary knowledge. All of these challenges are further complicated by the language barrier that exists within the predominantly Spanish-speaking community of East Los Angeles. An additional barrier from a banker's point of view is the regulatory challenges. As many of these small businesses possess non-traditional credit profiles, regulators at the field office level struggle many times to understand these businesses which results in regulatory challenges for financial institutions.

In an effort to serve the needs of Pan American Bank's small business community, the Bank has recently implemented several programs apart from its traditional products and services. First, in 2010, Pan American Bank partnered with nonprofit EastLA Works. Under the partnership the Bank provides free office space to EastLA Works. EastLA Works visits with family-owned businesses in East Los Angeles for the purpose of providing free Business Improvement Plans. The Business Improvement Plans are roadmaps to improved operations and profitability. The key to EastLA Works' program is its focus on visiting the small business owners at their place of business rather than requiring them to make office visits. This is a crucial element as most of these family-owned business owners cannot leave their place of business without having to temporarily close the business. In addition to the Business Improvement Plans, EastLA Works also provides on-site training related to Quick Books and other small business applications as well as training related to social network marketing, direct mail marketing and licensing requirements.

Due to the socio-economic challenges of Pan American Bank's service area, the Bank also employs graduate students from the Community Organization, Planning and Administration (COPA) program of the USC Graduate School of Social Work. These individuals include among their responsibilities the performance of surveys and needs assessments with consumers, small businesses and other community stakeholders. Among other things, the social workers assist the Bank in bridging the divide that stands between the Bank and the small business community.

In October 2011, Pan American Bank entered into a Memorandum of Understanding with the Small Business Development Center. The Small Business Development Center will maintain a presence at Pan American Bank. Similar to the Bank's arrangement with EastLA Works, the Small Business Development Center will receive free office space in order to permit the Small

Business Development Center to establish a presence in East Los Angeles and surrounding communities. The Small Business Development Center will develop and deliver culturally relevant technical and other assistance to East Los Angeles small business owners.

#### CONCLUSION

Mr. Chairman, Pan American Bank is very proud of its history in serving the largely immigrant small business community of East Los Angeles. Our work over the years has enabled immigrant entrepreneurs to experience first-hand the same American Dream experienced by Mrs. Banuelos. Apart from supporting their immediate families, immigrant entrepreneurs also provide living wage jobs for other members of the community. In Mrs. Banuelos case and other similarly situated small businesses, the businesses provide financial support for hundreds of families. Just as Pan American Bank has sought creative and innovative solutions to meeting the needs of its local small business community, so too must this Committee continue to support traditional and non-traditional efforts that encourage the work of organizations such as EastLA Works and the Small Business Development Center. In communities such as East Los Angeles it is the small businesses that are owned and operated by immigrants that will act as the engine that keeps America working. Pan American Bank will continue to do its part to serve the largely immigrant small business community of East Los Angeles. However, as one of Los Angeles County's smallest banks, our efforts reflect a drop in a large bucket that must be filled through continued Committee support and outreach.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions at this time.

**WRITTEN TESTIMONY SUBMITTED BY YUSA CHANG**  
**FOR THE CONGRESSIONAL SUBCOMMITTEE ON CONTRACTING AND WORKFORCE**  
**OCTOBER 17, 2011**

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Chairman Mulvaney and Ranking Member Chu,

Thank you for this opportunity to testify in front of this very distinguished subcommittee. My name is Yusa Chang. I am the Chief Operating Officer of a non-profit community development corporation called PACE, an acronym for Pacific Asian Consortium in Employment. PACE was established 35 years ago to improve the economic conditions of the emerging Asian and other immigrant communities. I am testifying today on behalf of PACE and the Asian and other immigrant business communities that we work with.

In today's testimony, I will first share with you the story of PACE and our work. I will tell you how we have put our SBA contracts to work in the community and their impact. I will share with you stories of our small business clients, their successes, their struggles and their hopes. And I will conclude my testimony by asking for you to continue supporting these programs that are so deeply needed during this unprecedented time of economic hardship.

So let me begin by briefly summarizing what PACE does. PACE receives both federal grants and private grants and operates 6 major lines of services. They are workforce development, energy conservation, early childhood education, housing services, financial education, and small business assistance which include making loans in sizes ranging from \$5,000 to \$40,000. Our services are concentrated in Los Angeles County, especially the San Gabriel Valley which has one of the largest populations of Asian immigrants in the nation. PACE has over 450 full-time employees. Last year, we assisted over 62,000 Los Angeles County residents. And just this past week PACE had its annual diversity job fair and entrepreneur resources pavilion where we brought together close to 50 employers, bankers, government agencies with over 1,000 job seekers and aspiring entrepreneurs.

But let me talk a little more about our Business Development Center (BDC). PACE BDC was established 18 years ago right after the 1992 Los Angeles Riots with the goal of assisting small businesses in our neighborhood with recovering. PACE Business Development Center has since then assisted close to 24,000 entrepreneurs to create their own jobs, jobs for others, and other small businesses to sustain, thrive, and/or grow. Nearly all of our clients are from the ethnic minority and immigrant communities. They include recent immigrants from Asia, Latin America, Africa, and Eastern Europe—as well as refugees and political asylees. Our business counselors

are all bi-lingual in English and either Spanish or one of five major Asian languages. Our Business Development Center is supported with funds from government agencies, local banks, and even foundations . We also have received support from the Small Business Administration to help our communities. Our current SBA grants support the operation of a Woman Business Center, a business technical assistance center serving the San Gabriel Valley, and PRIME that serves low-income microenterprises. Last year, we became an SBA micro-lender and with the support of local banks that provided loan loss reserve, we have started making loans to small businesses. We are also in the process of being certified as a CDFI entity so that we can bring even more capital to the communities that we serve.

In the 18 years history of our Business Development Center, we helped to create and sustained over 10,000 businesses and created 14,000 jobs. We have also helped these businesses in accessing \$43 million in capital for their small businesses. I can tell you from experience that these programs are a very good investment for our community.

PACE has numerous stories of client successes and how these grants, especially SBA grants, have impacted our community. But let me just share with you just a few of them.

- A political asylee from China operating a Dollar Store created several jobs after receiving a \$10,000 loan and technical assistance from PACE.
- The daughter of a Vietnamese refugee started a food truck business selling Vietnamese eggrolls and noodles.
- A son of an immigrant from China created his own line of high fashion for men.
- An artist from China opened his own art gallery, after working for many years in labor work, he never gave up his artist dream.
- An immigrant from Mexico opened her second hair salon after borrowing \$5,000 from PACE and put a few of her family members to work.

Similar stories of these can be repeated hundreds of time.

But with every success story, there are many others that are still struggling. For example:

Mr. Wong (not his real name) once operated a successful trucking business. In 2009, his business slowed down along with the economy. He had used his home equity line of credit (or HELOC) to finance his working capital, but suddenly he found that he no longer had this equity because of the severe devaluation in home prices. Unable to modify his mortgage, he ended up losing his home, his trucking business, and his ability to support his family.

Mr. Chung, we call him a “mad scientist”. He is an inventor in the clean energy field. He has many patents under his belt. He recently developed a prototype machine that can convert solid waste into fertilizer in one hour instead of over several months. This small prototype can

reduce 8 tons of solid waste a day. He has received a tremendous amount of interest from companies across the nation as well as overseas. But he too lost the equity of his home and facing bad credit, he was in no position to finance the production of this machine. This mad scientist needs help. He can potentially create many jobs.

And there are thousands of people like Mr. Wong and Mr. Chung out there in the same predicament.

So here are my two recommendations.

- **NUMBER ONE** – Not only should we keep the current SBA programs alive but we should further invest in them—actually double, triple or even quadruple their budget. Small business start-ups and small business expansion IS the job creation engine, particularly in this economic climate where millions of Americans are out of work. Our government and large corporations cannot create enough jobs at the rate that we need them. But there are thousands of aspiring entrepreneurs who have the will and can create their jobs. So let's help them. These programs are not a handout. These program foster a unique collaboration between the government and the entrepreneurial driven American citizens.

We ask that you strongly support and augment these following SBA programs: SBA Women Business Center, SBA Microloan program, make permanent the Community Advantage initiative, and initiate a credit building/credit counseling program for small businesses. We also strongly support the expansion of the Small Business Investment Program (or SBIC) that makes financial assistance available to the ethnic minority communities.

- **NUMBER TWO** – We need to be flexible in collateral requirement in small business lending. Before the 2008 home mortgage crisis, the home equity line of credit (HELOC) and home equity loan provided easy access to capitals for small business owners. But since equity disappeared from our homes, so is the borrowing ability of small business owners. It is estimated that more than half of the wealth which accumulated over decades has been wiped out through the loss of home equity and businesses. But the majority of these business operators are still good, decent people and still have viable business models. So I recommend that we expand SBA loan guarantee programs to keep the credit flowing. We should also work with banks as our partners to see how we can be more flexible with the collateral requirement to make more business lending possible.

I know this may sound risky. But we are in an unusual time – at least in our lifetime. To really make a “Game Change” we need our elected officials to stand up for small business. We need you to increase the size and flexibility of these programs in order to ensure that all Americans with the hardworking entrepreneurial spirit have access to the American Dream..

Thank you very much for this opportunity to testify.



Dear Chairman Mulvaney and Ranking Member Chu,

It was a pleasure to tour your group through the new 655,000 square foot Huy Fong Headquarters and Manufacturing Facility in Irwindale on Monday.

As we discussed, we would like to bring to your attention the importance of the SBA 504 Loan Program to small businesses in Southern California and the San Gabriel Valley in particular. Seventh Street Development has developed millions of square feet of business parks over the years with many of these aimed at smaller businesses who want to own their own facility. The SBA loan program has been a vital factor in allowing small business to finance buildings and equipment.

As part of the recent stimulus, SBA 504 fees were lowered from 2.65% to 0.65%. This reduction helped small businesses by lowering the costs of purchasing a building and equipment and stimulated them to invest in a down economy. As of October 1, 2011, the fees for SBA 504 loans have been raised from 0.65% to 2.65% and the SBA Guarantee Fee has increased from 0.749 to 0.9375. (I have attached a flyer from an SBA lender that highlights these changes.) We are concerned these fee increases will give small businesses second thoughts about investing in what is still a weak recovery for the Nation and for California in particular.

In the current economy, there are few ways better to stimulate small business growth and investment than the SBA 504 program. We would appreciate your consideration of a return of SBA fees back to the levels they were at the start of the year.

Thank you for your consideration and for your concern for small business.

Craig Furniss  
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**THE HIGH-SPEED RAIL PROJECT  
IN  
CALIFORNIA**

**A Civil Rights Position Paper**

**August 5, 2010**

**Presented by:**

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## **THE HIGH-SPEED RAIL PROJECT IN CALIFORNIA**

### **A Civil Rights Position Paper**

#### **ISSUE**

The United States Department of Transportation (USDOT), Federal Rail Administration (FRA) awarded California a \$2.25 billion grant for the State's High Speed Rail Project through President Obama's American Recovery and Reinvestment Act (ARRA). While the grant is great for California, it appears to have little benefits for Disadvantaged Business Enterprises (DBEs) including small businesses. The benefits of the Stimulus grant will be minimal to communities of color since the inclusion of minority and women owned businesses is less than 1% of this Federalized project.

Title VI, 42, United States Code § 2000d et seq, was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, sex, color, and national origin in programs and activities receiving federal financial assistance.

**Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.**

As a recipient of USDOT federally assisted funds, California has several disparity studies that provide the evidence of disparity and inference of discrimination of DBEs and minority and women-owned (MBE/WBE) firms on USDOT federally assisted projects.

The FRA is under the authority of USDOT, the \$2.25 billion grant to California is federal financial assistance and as such FRA and its funding source is required to comply with Title VI. The FRA does not have statutory authority for a DBE program, however; they have established a statement to "encourage" contractors to utilize DBEs on FRA funded contracts.

California has the evidence that without a formal DBE program that includes race-conscious measures (individual DBE contract goals on contracts) the "encouragement" to engage DBEs on the contract will result in no DBE participation. When California recipients of USDOT funds suspended their DBE race-conscious program while disparity studies were completed, each recipient "encouraged" prime contractors to voluntarily utilize DBEs on their bids. The result was a "nose-dive" of DBE participation. A good example of the "nose-dive" result is the California Department of Transportation (Caltrans). Caltrans, who has an aggressive DBE Program, suspended its DBE race-conscious program and "encouraged" prime contractors to meet the overall 10.5% DBE goal. In 2004, prior to suspending the DBE race-conscious program, Caltrans was attaining 10% DBE participation. Immediately after suspending the race-conscious program and enacting race-neutral measures, the DBE Program participation "nose-dived" to less than 3% DBE participation with African American firms obtaining nothing. This same result is evidenced for FTA and FAA recipients in California.

That is what “encourage” does when no formal goals and requirements are placed on federally assisted contracts.

USDOT cannot ignore the evidence as presented in the recent and current California disparity studies. USDOT cannot ignore its authority to pursue a “Presidential Executive Order” to establish emergency regulations to incorporate the existing 49 Code of Federal Regulations Part 26 (49CFRPart 26) onto FRA funded contracts. USDOT cannot ignore Title VI and Simple Justice in its requirement to at a minimum establish a policy in the interim of formal regulations to require DBE participation in FRA funded projects.

**THEESIS (OBJECTIVE)**

- The High-Speed Rail Project (HSRP) in California must be brought under the U.S. DOT-DBE Program with specific, significant achievable goals (such as DOT DBE goal of 13.5% in California). The American Recovery and Reinvestment Act (ARRA) and 49 CFR Part 26 states that a recipient of federally assisted USDOT funds must implement a DBE Program with a minimum goal of 10 percent and a higher goal where there is evidence for such a goal. California has a minimum DBE goal of 13.5%.
- The High-Speed Rail Project (HSRP) in California must establish firm, fixed goals (not an aspirational goal as currently exists) for small business participation. The HSRP must set a firm 25% Goal for small businesses and a 5% Disabled Veteran Business Enterprise goal for all California funded HSRP activities.

**BACKGROUND**

The High-Speed Rail system in California will be the first of its kind in the United States and the largest public works project in the nation. It is also the largest environmental review in U.S. history according to California High-Speed Rail Authority Chairman Curt Pringle. The 800 mile project, expected to begin revenue service in 2020 will, connect Sacramento at the northern part of California, through the San Francisco-Oakland Bay Area, to Central California at Fresno, Bakersfield, south to The Inland Empire, Greater Los Angeles area and then on to San Diego at the southern tip of the State. The Phase One section from San Francisco to Anaheim is scheduled to begin initial revenue service in 2020. The cost of the system is \$45 Billion, estimated by the Authority as of 2009:

**FUNDING SOURCES SUMMARY - - Year of Expenditure (YOE) in \$M**

Federal Grants	\$17,000	to	\$19,000
State Grants			\$9,000
Local Grants	\$4,000	to	\$5,000
Private Funding	\$10,000	to	\$12,000
Total Range	\$40,000	to	\$45,000

### U.S. DOT AND FEDERAL AGENCIES

The U.S. Department of Transportation (DOT) has oversight and funding responsibilities to 10 agencies, but only four of the agencies will be addressed. These are the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA) and Federal Rail Administration (FRA). The following are the funding authorizations for each agency:

- Federal highway (FHWA) funds are authorized under Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy (SAFETEA-LU).
- The Federal Transit Administration (FTA) funds are authorized under SAFETEA-LU and provide stewardship to transportation systems that typically include buses, subways, light rail, commuter rail, streetcars, monorail, passenger ferry boats, inclined railways or people movers.
- Federal Highway (FHWA) funds are authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and Titles I, III and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)
- The Federal Transit Administration (FTA) funds are authorized by Titles I, III, V and VI of ISTEA and provide stewardship to transportation systems that typically include buses, subways, light rail, commuter rail, streetcars, monorail, passenger ferry boats, inclined railways or people movers.
- Federal Aviation Administration (FAA) – Airport funds are authorized by 49 U.S.C. 47101, et. seq.
- The Federal Rail Administration (FRA) receives its High-Speed Rail funding through the High-Speed Ground Transportation Act of 1965. The Rail Passenger Service Act of 1970 supported the development of the nation's intercity rail passenger system and continuing support of rail freight programs. The Passenger Rail Investment and Improvement Act of 2008 created new railroad investment programs, reauthorized Amtrak for five years and affirmed Federal Government involvement in developing the nation's intercity passenger rail system. This included providing guidance and analysis of intercity passenger rail services and high-speed rail (HSR).

### THE LAW

The 1964 Civil Rights Act and the extension by the Commission on Civil Rights specifically developed the DBE program to prevent discrimination in "Federally assisted programs" and is the basis for the U.S. DOT DBE program. (Please see *Civil Rights History* in attachment #1). Federal agencies, FHWA, FTA, FAA and subsequently their recipients of Federal Government funds i.e., Airports, Bay Area Rapid Transit (BART), L.A. Metropolitan Transportation Authority (MTA) etc, agree to abide by certain requirements upon accepting Federal Government funds (even if only one (1) dollar of Federal Government funds is accepted). One of the specified conditions is the administration/implementation of the DBE Program.

### **THE DBE GOAL**

Unfortunately for California disadvantaged businesses, the FRA was never included under 49 CFR Part 26 and therefore does not have to develop or administer a DBE program. The FRA office of Civil Rights states that it “fully supports” the objectives of the DBE program and all FRA’s grantees are required to *avoid discrimination in contracting*. This language is posted on the DOT website under Disadvantaged Business Enterprise. A small business specialist is assigned to the FRA Office of Civil Rights in Washington, DC. Perhaps USDOT should establish a temporary policy for establishing a DBE Program until a more formal regulatory or Presidential Order is established.

### **APAC POSITION**

The Associated Professionals and Contractors (APAC) is an organization of small, disadvantaged, minority, women and disabled veteran business associations in California. **APAC, feels that the State of California and the Federal Railroad Administration’s response to the DBE community is totally unacceptable because it does not require DBE goals. We strongly urge our elected Federal Government officials, U.S. Congresspersons, U.S. Senators and the U.S. House of Representative’s Transportation and Infrastructure Committee (*see attachment #2*) to immediately adopt the statutory requirements under 49 CFR, Part 26, (DBE Program) and mandate its implementation with the California High-Speed Rail Project.**

There is no reason why the High-Speed Rail cannot be placed under 49 CFR, Part 26. It would not be setting precedence. The program is already developed, utilized and has been successful for many years. The Civil Rights Act of 1964 and the various disparity studies conducted throughout the state clearly show there continues to be discrimination against small-, disadvantaged-, minority- and women-owned business enterprises in California. Caltrans has not met its race-conscious or race-neutral goals in the past five years even with ample pools of qualified small, minority and women owned businesses. It is offensive to the ethnic minorities in California (constituting 50% of the State’s demographic population) to not have a meaningful and inclusive DBE program – especially in a State where we are the majority tax payers.

### **STATE OF CALIFORNIA AND HIGH- SPEED RAIL AUTHORITY**

The nine-member High-Speed Rail Authority (HSRA) was created by California in 1996 and charged with the development and implementation of intercity high-speed rail service. (*Attachment #3 lists appointed board members and their term expiration dates.*)

In November 2008, voters approved the Safe, Reliable, High-Speed Passenger Train Bond Act for the 21<sup>st</sup> Century (Proposition 1A), providing \$9 billion from the sale of general obligation bonds for planning, engineering and construction of the network and an additional \$950 million in general obligation bonds for capital improvements to intercity, urban and commuter rail systems connecting to it. The Authority is to administer the \$9 billion, while the California Transportation Commission is to allocate the \$950 million for construction of connecting systems to the high-speed rail network.

**THE HIGH SPEED RAIL PROJECT**

The Authority divided the project into a planning stage and an implementation stage.

**The Planning Stage:**

The Program EIR/EIS documents were approved by the Authority and the FRA in 2005 and 2008. The remaining tasks to be completed in the planning stage are:

- Bay Area to Central Valley Program Environmental Impact Statement (EIR/EIS), and Conceptual Engineering
- Draft High Speed Train (HST) Section Project EIR/EIS, 15% Design-Preliminary Engineering
- Final HST Section Project EIR/EIS, 30% Design- Preliminary Engineering
- Approval of Notices of Determination (NODs)/Records of Decision (RODs)

The California High Speed Rail Authority has awarded contracts for the planning stage of the project. The Program Management Team, led by Parsons Brinkerhoff, is providing day-to-day management of the program. Contracts have been awarded on a regional basis for developing engineering, planning and environmental data, and for preparing one or more project site-specific Environmental Impact Report/Environmental Impact Statement(s) (EIR/EIS).

There are nine major contracts, totaling \$757.9 million. These account for 98.6 percent of the value of Authority contracts active as of December 31, 2009. All the major contracts defined as over \$20 million, are for architectural and engineering services.

The following table lists regions and contractors awarded contracts.

**Program Management Contract**

\$199M

Parsons Brinkerhoff, Quade &amp; Douglas

**Regional Contracts****Primes (only 5 different entities)**

\$55M	San Francisco to San Jose	HNTB Corporation
\$55M	San Jose to Merced	Parsons
\$83M	Sacramento to Fresno	AECOM
\$120M	Fresno to Palmdale	Hatch, Mott, MacDonald, URS & ARUP a JV
\$74M	Palmdale to Los Angeles	Hatch, Mott, MacDonald, URS & ARUP a JV
\$21M	Los Angeles to Anaheim	STV Incorporated
\$95M	Los Angeles to San Diego	HNTB Corporation
\$55M	Altamont Corridor	AECOM



**The Implementation Stage: Procurement, Right-of-Way and Construction**

In the implementation stage, tasks are:

- Procurement Documents-Design/Build Contracts
- Permitting
- Land Acquisition and Right-of-Way Preservation
- Design and Construction
- Testing, Commissioning and Training

**CALIFORNIA LAWS**

The following laws in California have negatively impacted, small-, minority- and women-owned business enterprises and further eroded the small business foundation in California.

- **Executive Order PRO 1: 268 Small Business** California Governor Grey Davis, issued the first Small Business Executive Order on June, 4, 2001, thereby setting an “Aspirational Goal” of 25% for small businesses in contracting with the State of California. Governor Schwarzenegger re-issued the Small Business Executive Order, annually. Since this was not a statutory goal, most State agencies never fully met these goals. The agencies that met the 25% small business goal have met them with predominantly non-minority- and women-owned businesses. It is estimated that only 10% of the 25% goal has actually been awarded to minority- and women-owned business enterprises (M/WBE).
- **Proposition 209 “Anti Affirmative Action”** was passed by California voters in November, 1996. The law made minority- (15%) and women-owned (5%) business enterprise, “race-conscious” goals in California contracting, unlawful (illegal). The only fixed goal in California was the Disabled Veteran’s 3% Goal because it was not a race-conscious goal. Proposition 209 has had devastating effects on small-, minority-, and women-owned firms. Prior to Proposition 209, minority- and women-owned businesses were awarded 20% of the State’s contracts. After 209, minority- and women-owned businesses have been awarded approximately 3.5% of the State’s contracts, annually.
- **Proposition 209 Implementation by Caltrans** – Following Proposition 209, Caltrans immediately dropped the 15% Minority- and 5% Women-owned Business Enterprise Goals in California transportation contracts.
- **2005 Race-Neutral Goals in California** The Caltrans DBE Program went into a Race-Neutral Mode, because the May 9, 2005 9<sup>th</sup> Circuit Court decision, Washington v Western States, stated agencies had to conduct a disparity study to demonstrate discrimination against minorities and women. The disparity study was conducted by a Colorado firm, and demonstrated disparity against women and all ethnic groups, except for Hispanics and Sub-Continent Asians.

**THE ISSUE**

There is no significant participation of small-, minority- and women-owned business enterprises in the High-Speed Rail Project. If the State of California wants to continue receiving Federal and ARRA funds they must establish a (DBE) Program. To continue receiving State and local funds, the HSRA must implement and enforce the 25% small business goal. California has the evidence of disparity and inference of discrimination through its multiple disparity studies.

**APAC'S POSITION WITH THE CA LEGISLATURE AND HRSA**

APAC believes the State of California and HRSA are in violation of Title VI of the Civil Rights Act because they have no DBE Program on this project

APAC recommends HRSA retroactively mandate (to the greatest extent possible) minority-disabled veteran-, and women-owned business goals with the five primes awarded contracts on this project.

APAC recommends in phases/sections of the project where there are no Federal Government funds, that the Legislature and HRSA must mandate minority-, women-owned, and small business enterprise goals (not the current, unenforceable, 25% aspirational goal)

APAC will be championing a bill (D-Fiona Ma, San Francisco) to establish SBE, DVBE and WBE Goals on the HRSA for all future expenditures. APAC requests support on the bill(s).

APAC requests pursuant to the California Public Records Act, Government Code Section 6250. et seq., that the State of California and the High-Speed Rail Authority disclose the solicitation and award process of the large engineering firms that currently have the contracts. APAC believes that the public at large was not well informed of the contracts and hence, had no opportunity to participate on the teams. Governor Schwarzenegger assured California citizens there would be transparency within the State's business activities. We are now requesting disclosure of the transparency applied on these contracts.

**CONCLUSION**

**The Federal Government has a compelling interest in ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination with the transportation contracting industry.**

*See City of Richmond v J.A. Croson Co., 488U.S. 469,492 (1989) as cited in Western States Paving v. WSDOT*

The Richmond v Croson Co. decision (cited above) clearly defines the legal and moral obligation(s) the Federal Government, State of California Legislature, and High Speed Rail Authority (HRSA) have in ensuring small-, minority-, disabled veteran-, and women-owned businesses strategically participate in this long term, highly visible, Federal Government and State of California publicly funded project. Over 50% of California taxpayers are ethnic minorities (people of color) and women. It is unconscionable, unacceptable and unlawful that HRSA so blatantly ignored this large, tax paying and voting constituency group in California when developing, and awarding contracts for the High Speed Rail Project.

Attachment #1

### **CIVIL RIGHTS HISTORY**

The Civil Rights Act of 1964 was a landmark piece of legislation in the United States that outlawed unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public. It prohibited discrimination in public facilities, government, housing and employment, invalidating the Jim Crow Laws that existed in the Southern States.

The 1964 Civil Rights Act and the extension of the Commission on Civil Rights to prevent discrimination in federally assisted programs is the basis for the United States Department of Transportation's (USDOT) Disadvantaged Business Enterprise program.

The United States Department of Transportation (USDOT) has the responsibility of ensuring that firms competing for USDOT assisted contracts are not disadvantaged by unlawful discrimination. For eighteen years, USDOT's most important tool for meeting this responsibility has been its Disadvantaged Business Enterprise (DBE) Program. This program began in 1980. Originally, the program was a minority/women's business enterprise program established by regulation under the authority of Title VI of the Civil Rights Act of 1964 and other nondiscrimination statutes that apply to DOT financial assistance programs.

In 1983, Congress enacted and President Ronald Reagan signed the first statutory DBE provision. This statute applied primarily to small firms owned and controlled by minorities in the Department's highway and transit programs. Firms owned and controlled by women, and the Department's Airport Program, remained under the original 1980 regulatory provisions. In 1987 Congress enacted and President Reagan signed, statutes expanding the program to airports and to women-owned firms. In 1991 (for highway and transit programs) and 1992 (for airport programs). Congress enacted and President George W. Bush signed statutes reauthorizing the expanded DBE program. After each statutory amendment and at other times to resolve program issues, the Department amended part 23. The result has become a patchwork quilt of a regulation. The Department's desire to improve program administration and make the rule more unified has led to several proposed rulemaking category changes. The U.S. Supreme Court's June 1995 decision in *Adarand vs. Peña* stipulated that the Department must establish a narrowly tailored affirmative action program. Congress has continued to reauthorize the DBE program throughout the years.

Attachment #2

**Federal Transportation and Infrastructure Committee****California Representatives**

<u>Representative</u>	<u>Representing</u>
Congressman Robert Filner	51 <sup>st</sup> Congressional District, San Diego Southern half of San Diego County
Congresswoman Grace F. Napolitano	38th Congressional District, Los Angeles; Southeast LA, San Gabriel Valley, Norwalk and Santa Fe Springs
Congresswoman Laura A. Richardson	37 <sup>th</sup> Congressional District, Los Angeles; City of Los Angeles, Carson, Compton, Long Beach and Signal Hill
Congressman Gary G. Miller	42 <sup>nd</sup> Congressional District, Southern CA; Brea, Diamond Bar, Mission Viejo, Chino

Attachment #3

**California High-Speed Rail Authority**  
**\*Board Members**

The Board members are appointed by the Governor and the Legislature

5 members appointed by the Governor  
 2 members appointed by the State Senate, and  
 2 members appointed by the State Assembly

<u>Chairman:</u>	Curt Pringle	Appointed by Governor	Term expires 12/31/10
<u>Vice Chair:</u>	Tom Umberg	Appointed by Speaker of The Assembly	Term expires 12/31/11
<u>Board Members:</u>			
	David Crane	Appointed by Governor	Term expires 12/31/12
	Rod Diridon Sr.	Appointed by Governor	Term expires 12/31/09 Extended to?
	Richard Katz	Appointed by Governor	Term expires 12/31/11
	Lynn Schenk	Appointed by Governor	Term expires 12/31/04 ?
	Fran Florez	Appointed by Senate Pro Tempore	Term expires 12/31/10
	The Honorable Judge Quentin L. Kopp	Appointed by Senate President Pro Tempore	Term expires 12/31/10
	Russ Burns	Appointed by Speaker of Assembly	Term expires 12/31/13
<u>Chief Executive Officer:</u>	Roelof van Ark		

\*Authority members serve for terms of four years. There no limit on the number of terms they may serve. The Authority elects a chair from among its members who serves for one year.

Fwd: Title VI Complaint - Status?

Page 1 of 2

**From:** Fred Jordan <frederickjordan@aol.com>  
**To:** DLaCome <DLaCome@aol.com>  
**Subject:** Fwd: Title VI Complaint - Status?  
**Date:** Mon, Nov 29, 2010 9:40 pm

---

-----Original Message-----

**From:** Oren Sellstrom <osellstrom@lccr.com>  
**To:** Eddy Lau <transpacificaeotec@sbcglobal.net>; Diana LaCome <dlaCome@aol.com>  
**Cc:** frederickjordan@aol.com; frederickjordan1@yahoo.com  
**Sent:** Wed, Nov 24, 2010 9:11 am  
**Subject:** RE: Title VI Complaint - Status?

Hello, all. Some questions for you this morning, if you have not already begun your Thanksgiving break:

- 1) Our current thinking is to file and do a telephonic press conference on Wed 12/1 at 2:30. We would need 2-3 APAC members to participate. We would also schedule an internal strategy call for the day before (Tues 11/30). Would APAC members be available if we went with this schedule? Who?
- 2) Is anyone from APAC planning to attend the CHSRA Board meeting in Sacto on 12/2?
- 3) We will need APAC to sign a retainer with LCCR for this work. I haven't prepared it yet and it will be very straightforward (that we will file a Title VI complaint on APAC's behalf and there will be no fees or costs to APAC). I don't know what APAC's internal processes are though, so wanted to make sure to give you the heads-up that we will need to get something signed before filing.

Let me know your thoughts. Thanks.

Oren Sellstrom  
 Associate Director Programs and Policy  
 Lawyers' Committee for Civil Rights  
 131 Stuart Street, Suite 400  
 San Francisco, CA 94105  
 (415) 543-9697 ext. 204  
 (415) 543-0296 (fax)

---

**From:** Eddy Lau [<mailto:transpacificaeotec@sbcglobal.net>]  
**Sent:** Thursday, November 18, 2010 1:27 PM  
**To:** Oren Sellstrom; Diana LaCome  
**Cc:** frederickjordan@aol.com; frederickjordan1@yahoo.com  
**Subject:** Re: Title VI Complaint - Status?

Ms. LaCome,

This just came from the e-mail correspondence between Counselor Sellstrom and Commissioner Jordan:

"Thanks, Fred.

I have been meaning to get back to you on the Title VI complaint. For various reasons, it has taken us longer

<http://mail.aol.com/32945-111/aol-6/en-us/mail/PrintMessage.aspx>

11/29/2010

LAWYERS' COMMITTEE FOR  
**CIVIL RIGHTS**  
 OF THE SAN FRANCISCO BAY AREA

**BOARD OF DIRECTORS***Co-Chairs*

James M. Finberg  
 Nancy E. Harris  
 Michael I. Begett  
 Harry B. Bremont  
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 Charles S. Crompton, III  
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Lateefah Simon

*Director of Litigation*

Robert Rubin

*Associate Director*

of Litigation  
 Oren Sellstrom

*Director of Policy*

and Programs  
 Philip Hwang

*Managing Director*

Soma Gonzales

*Director of Development*

and Communications  
 Bilan Mesfin

100  
 100  
 San Francisco, CA 94105  
 TEL: 415 543 9444  
 FAX: 415 543 0296  
 E MAIL: info@lccr.com  
 WEBSITE: www.lccr.com

December 8, 2010

Secretary Ray LaHood  
 U.S. Department of Transportation  
 Departmental Office of Civil Rights  
 External Civil Rights Programs Division (S-33)  
 1200 New Jersey Ave, SE  
 Washington, DC 20590

The Honorable Joseph C. Szabo  
 Administrator  
 Federal Railroad Administration  
 Office of Civil Rights  
 1200 New Jersey Ave, S.E.  
 Mail Stop 5  
 Washington, DC 20590

The Honorable Peter M. Rogoff  
 Administrator  
 Federal Transit Administration  
 Office of Civil Rights  
 East Building, 5<sup>th</sup> Floor - TCR  
 1200 New Jersey Ave, SE  
 Washington, DC 20590

Dear Secretary LaHood and Administrators Szabo and Rogoff:

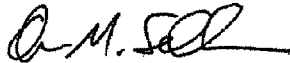
Enclosed please find a copy of our Title VI complaint filed with the United States Department of Transportation against the California High-Speed Rail Authority for its lack of minority-owned business participation in the development of the high-speed rail. Title VI of the Civil Rights of 1964, 42 U.S.C. § 2000d *et seq.*, prohibits discrimination in federally assisted programs on account of race, color, or national origin. The complaint requests immediate termination of funding to the project until a full compliance review is undertaken. This complaint falls within the jurisdiction of the Department of Transportation because both the Federal Railroad Administration and the Federal Transit Administration are funding portions of the project.

The Lawyers' Committee for Civil Rights is a non-profit civil rights organization that has provided free legal assistance to clients throughout the San Francisco Bay Area in the areas of race, poverty and immigration since 1968.

California High-Speed Rail Title VI Complaint  
December 8, 2010  
Page 2

For further information, please contact me at (415) 543-9444, ext. 204.

Sincerely,



LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
Oren M. Sellstrom  
Counsel for Complainant Associated Professional and Contractors

Cc: The Honorable Barbara Boxer, U.S. Senate  
The Honorable Dianne Feinstein, U.S. Senate  
The Honorable Nancy Pelosi, U.S. House of Representatives  
The Honorable Barbara Lee, U.S. House of Representatives  
The Honorable Jackie Speier, U.S. House of Representatives  
The Honorable Michael Honda, U.S. House of Representatives  
The Honorable Gwen Moore, U.S. House of Representatives  
The Honorable Jerry Brown, California Governor  
The Honorable Mark Leno, California State Senate  
The Honorable Fiona Ma, California State Assembly  
Joseph Austin, USDOT Departmental Office of Civil Rights  
Rosanne Goodwill, Federal Railroad Administration  
Christine Stoneman, U.S. Department of Justice  
Peter Gray, U.S. Department of Justice  
Congressional Asian Pacific American Caucus  
Congressional Black Caucus  
Congressional Hispanic Caucus  
U.S. Senate Committee on Commerce, Science & Transportation  
U.S. Senate Subcommittee on Surface Transportation and Merchant Marine  
Infrastructure, Safety, and Security  
U.S. House Committee on Transportation and Infrastructure  
U.S. House Subcommittee on Railroads, Pipelines, and Hazardous Materials



OREN M. SELLSTROM (CA SBN 161074)  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
131 Steuart Street, Suite 400  
San Francisco, California 94105  
Telephone: (415) 534-9444  
Facsimile: (415) 534-0296  
osellstrom@lccr.com

*Attorney for Complainant*  
ASSOCIATED PROFESSIONALS AND CONTRACTORS

**BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION**

ASSOCIATED PROFESSIONALS  
AND CONTRACTORS, a non-profit  
corporation,

Complainant,

v.

CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY,

Respondent.

**COMPLAINT UNDER TITLE VI  
OF THE CIVIL RIGHTS ACT OF 1964**

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*Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000), *cert. dismissed sub nom. Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) (per curiam) ..... 7

*Elston v. Talladega County Bd. Of Educ.*, 997 F.2d 1394 (11th Cir. 1993) ..... 12

*Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985)..... 12

*Grove City College v. Bell*, 465 U.S. 555 (1984) ..... 10

*Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582 (1983) ..... 10

*Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984) ..... 12

*Lau v. Nichols*, 414 U.S. 563 (1974) ..... 10

*U.S. Dept. of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597 (1986).....11, 14

**STATUTES AND REGULATIONS**

49 C.F.R. § 21.5(b)(2)(i), (iv) (2010) ..... 10

49 C.F.R. § 21.5(b)(7) (2010) ..... 10

49 C.F.R. § 21.7(a)(1) (2010) ..... 12

49 C.F.R. § 21.7(b) (2010) ..... 11

49 C.F.R. § 21.11(b) (2010) ..... 9

49 C.F.R. § 21.23(b) (2010) ..... 12

49 C.F.R. pt. 21 app. C(a)(1)(x) (2010) ..... 11

CAL. GOV'T CODE § 6253 (2010) ..... 4

Cal. Exec. Order No. S-02-06 (Mar. 29, 2006) ..... 6

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d *et seq.* ..... *passim*

**INDEX OF EXHIBITS**

Memorandum from United States Attorney General Holder to Heads of  
Executive Departments and Agencies Providing Federal Financial Assistance,  
Dated Sept. 27, 2010..... Exhibit A

CHSRA Small Business Reports from R. Weninger, Procurement Officer, to  
Department of General Services Reports Coordinator, Dated July 21, 2007,  
Aug. 11, 2008, Aug. 6, 2009, Aug. 5, 2010..... Exhibit B

CHSRA Ethnicity, Race and Gender Reports .....Exhibit C

CHSRA Improvement Plan Outline for Small Business FY 07/08 and  
FY 08/09..... Exhibit D

CHSRA Questions and Written Responses for RFQs HSR08-03,  
HSR08-04 and HSR08-05 .....Exhibit E

1           **I. INTRODUCTION**

2           California is in the process of constructing a high-speed rail system, with massive financial  
3 assistance from the federal government. The project is expected to cost in excess of \$43 billion,  
4 making it the country's largest public infrastructure project.<sup>1</sup> The federal government is anticipated to  
5 fund nearly half of the project, with \$3.05 billion in federal stimulus funds already awarded,<sup>2</sup> and an  
6 additional \$15-17 billion expected to be awarded before project completion.<sup>3</sup>

7           Yet as this enormous public works project gets underway, it has become apparent that the state  
8 agency responsible for its oversight is largely excluding minority-owned businesses from the  
9 contracting opportunities that the project brings. Through a restrictive procurement system and a  
10 *laissez-faire* attitude, the California High-Speed Rail Authority ("CHSRA") is funneling nearly all  
11 contracting dollars to large majority-owned firms. CHSRA's practices are in direct violation of Title VI  
12 of the Civil Rights Act of 1964 and its implementing regulations, which prohibit federal funding  
13 recipients from engaging in unjustified practices that exclude minorities.  
14

15           As the United States Attorney General has recently reiterated in the context of the federal  
16 stimulus funds, "it is imperative that federal agencies ensure that grant recipients do not discriminate."<sup>4</sup>  
17 Complainant, an association of minority business organizations throughout the State, accordingly  
18 hereby asks the United States Department of Transportation ("USDOT") to halt further award or  
19 disbursement of federal funds to California's high-speed rail project, until contracting opportunities are  
20

21  
22  
23 <sup>1</sup> California High-Speed Rail Authority, High-Speed Rail Benefits California's Economy (2010)  
<http://cahighspeedrail.ca.gov> (follow "California Benefits" hyperlink) (last visited Nov. 29, 2010).

24 <sup>2</sup> See *id.* (noting federal award of \$2.34 billion for high-speed rail); see also Press Release, California High-Speed Rail  
25 Authority, California High-Speed Rail Awarded \$715 Million (Oct. 28, 2010),  
[http://cahighspeedrail.ca.gov/pr\\_715\\_Million.aspx](http://cahighspeedrail.ca.gov/pr_715_Million.aspx) (noting federal award of \$715 million for high-speed rail) (last  
26 visited 11/12/10) (hereinafter CHSRA Award).

27 <sup>3</sup> California High-Speed Rail Authority, Fact Sheet: December 2009 Business Plan Report to the Legislature, at 1  
(2009), <http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=702> (hereinafter CHSRA Fact Sheet).

28 <sup>4</sup> Memorandum from Attorney General Holder to Heads of Executive Departments and Agencies Providing Federal  
Financial Assistance (Sept. 27, 2010), [http://www.usda.gov/documents/ARRA\\_Non-Discrimination\\_Statement\\_2.pdf](http://www.usda.gov/documents/ARRA_Non-Discrimination_Statement_2.pdf).  
See Ex. A at 1.

1 made available to all businesses on an equal basis. With billions of dollars of future contracting dollars  
2 still at stake, immediate federal intervention is critical.

### 3 4 **I. FACTUAL BACKGROUND**

#### 5 **A. Overview of the California High-Speed Rail Project and Its Funding**

6 Across the nation, many states are beginning to construct high-speed rail systems to reduce  
7 dependence on fuel-powered modes of transportation, such as automobiles and airplanes. Because of  
8 the perceived convenience and positive environmental impact of these high-speed trains, more states  
9 are looking to use them to transport people from one urban area to the next.<sup>5</sup> Massive amounts of  
10 federal funding, especially American Recovery and Reinvestment Act ("ARRA") or stimulus funds,  
11 have been allocated to begin building these rail systems.<sup>6</sup> At the same time, railway stations are being  
12 renovated and expanded to accommodate the trains. See *infra* at 11.

13  
14 In California, the state agency responsible for oversight of the rail project is the California High-  
15 Speed Rail Authority ("CHSRA"). According to CHSRA, the high-speed rail will travel through  
16 fourteen regions throughout the State of California and cover over 800 miles from Sacramento to San  
17 Diego.<sup>7</sup> The CHSRA boasts that the electrically-powered train will reach speeds of up to 220 miles per  
18 hour and will transport travelers from San Francisco to Los Angeles in under three hours.<sup>8</sup> The project  
19  
20  
21

22 <sup>5</sup> See, e.g., Florida High Speed Rail, <http://www.floridahighspeedrail.org> (Florida is on track to build a fully  
23 functioning high-speed rail by 2015 that will run from Tampa to Orlando) (last visited Nov. 18, 2010); Southeast  
24 High-Speed Rail Corridor, <http://www.sehst.org> (this railway will begin in Washington, D.C. with stops along the way  
25 in Virginia, North Carolina, South Carolina and Georgia until reaching Jacksonville, Florida) (last visited Nov. 18,  
26 2010).

27 <sup>6</sup> Michael Cooper, *Slice of Stimulus Package Will Go To Faster Trains*, N.Y. TIMES, Feb. 19, 2009, at A14, available  
28 at <http://www.nytimes.com/2009/02/20/us/20rail.html> (noting \$8 billion investment in high-speed rail in stimulus  
package).

<sup>7</sup> California High-Speed Rail Authority, Proposed Route Map,  
[http://cahighspeedrail.ca.gov/Proposed\\_Route\\_Planner.aspx](http://cahighspeedrail.ca.gov/Proposed_Route_Planner.aspx) (last visited Oct. 5, 2010) (hereinafter Proposed Route  
Map).

<sup>8</sup> California High-Speed Rail Authority, Project Vision and Scope,  
[http://www.cahighspeedrail.ca.gov/project\\_vision.aspx](http://www.cahighspeedrail.ca.gov/project_vision.aspx) (last visited Oct. 8, 2010).

1 includes twenty-four terminals along the route in cities such as: San Jose, Fresno, Bakersfield,  
2 Burbank, Anaheim, Escondido, San Fernando and San Diego.<sup>9</sup>

3 The project is hugely expensive. In total, the cost of the high-speed rail is expected to  
4 approach \$45 billion, almost half of which is projected to be from the federal government.<sup>10</sup> The  
5 source of the funding will likely be a combination of additional ARRA funds, federal loan programs  
6 and appropriations through the transportation budget.<sup>11</sup> As of October 2010, the high-speed rail has  
7 received \$3.05 billion in federal awards.<sup>12</sup> Over the course of the project, the federal government is  
8 expected to award at least \$15-17 billion.<sup>13</sup> On November 15, 2010, Transportation Secretary Ray  
9 LaHood committed to reallocate money for high-speed rails to states with projects underway if other  
10 states reject the funds, meaning that California's project may receive even more federal funding.<sup>14</sup>

11 Additional federal money has been specifically allocated to renovate and expand numerous  
12 existing stations along the route to avoid the excess cost of building new stations and for the  
13 convenience of riders who already use the stations. For example, \$16 million was recently awarded to  
14 expand the Caltrain commuter train station at 4<sup>th</sup> and King Streets in San Francisco, which will serve  
15 the San Francisco to San Jose corridor.<sup>15</sup>

16 Local funding will also contribute to the construction of the rail totaling approximately \$4-5  
17 billion,<sup>16</sup> and private funds in excess of \$10 billion are expected to play a major role in funding the  
18 project.<sup>17</sup> However, by far the largest single source of funding will be federal taxpayer dollars.

22 <sup>9</sup> Proposed Routes Map, *supra* note 7.

23 <sup>10</sup> CHSRA Fact Sheet, *supra* note 3.

24 <sup>11</sup> *Id.*

25 <sup>12</sup> California High-Speed Rail Authority, High-Speed Rail Benefits California's Economy (2010)  
26 <http://cahighspeedrail.ca.gov> (follow "California Benefits" hyperlink) (noting federal award of \$2.34 billion for high-  
27 speed rail) (last visited 11/12/10); *see also* CHSRA Award, *supra* note 2.

28 <sup>13</sup> CHSRA Fact Sheet, *supra* note 3, at 1.

<sup>14</sup> Michael D. Bolden, *State Projects Will Drive Funding for High-Speed Rail*, WASH. POST, Nov. 15, 2010, available  
at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/15/AR2010111506968.html>.

<sup>15</sup> CHSRA Award, *supra* note 12.

<sup>16</sup> CHSRA Fact Sheet, *supra* note 3, at 2.

<sup>17</sup> *Id.*

1           **B.       CHSRA's Contracting**

2           As with most public works projects, the work on California's high-speed rail is being  
3 performed largely by private companies with whom CHSRA contracts. The project thus has the  
4 potential to provide enormous benefit to a wide cross-section of California businesses and local  
5 communities through which the train runs – but only if CHSRA is required to take the steps that federal  
6 law requires to ensure a fully open and competitive procurement system. Unfortunately, CHSRA's  
7 contracting to date appears to be largely funneled into an "old boys" network, with little minority  
8 business participation. This is not surprising, since CHSRA has done virtually nothing to ensure equal  
9 opportunity for such businesses.  
10

11           For example, Complainant's analysis of the ten largest program management and design team  
12 contract awards, worth hundreds of millions of dollars cumulatively, indicates that of the 134 prime  
13 and subcontractors participating, only approximately 12 are minority-owned firms.<sup>18</sup> This includes  
14 those with exceedingly small subconsulting contracts in comparison with overall contracting dollars,  
15 such as a minority-owned business with a \$100,000 subconsulting contract on a \$75 million prime  
16 contract. On October 25, 2010, Complainant's counsel filed a Public Records Act request with  
17 CHSRA, asking the agency to provide information that would demonstrate just how low dollar  
18 participation by minority-owned firms is on these large design contracts. Despite statutory  
19 requirements that a response be provided within ten days, *see* CAL. GOV'T CODE § 6253, and multiple  
20 follow-up calls and e-mails, the agency has refused to divulge this information.  
21

22           Other publicly available information, however, paints the same grim picture as that found by  
23 Complainant. For example, under a state Executive Order, CHSRA is mandated to take necessary  
24 steps to ensure that procurement and contracting practices are implemented in order to meet or exceed  
25

26  
27 <sup>18</sup> Federal agencies certify qualified minority-owned firms as Disadvantaged Business Enterprises ("DBE"). *See*  
28 [http://www.dot.ca.gov/hq/hsp/find\\_certified.htm](http://www.dot.ca.gov/hq/hsp/find_certified.htm) (listing DBEs certified through California Department of



1 a state-wide small business goal of 25 percent.<sup>19</sup> Since many minority-owned businesses are small  
 2 businesses, adherence to these small business mandates would undoubtedly lead to greater minority  
 3 business participation. Yet over the past 6 fiscal years (FY 2004-2005 through FY 2009-2010), only a  
 4 paltry 3.54 percent of contracting dollars have gone to small or micro-businesses. See Ex. B.

Fiscal Year (FY)	Total Contract \$	Small Business/ Micro-Business \$
2004-05	\$18,755	\$1,184
2005-06	\$8,512	\$3,263
2006-07	\$332,187,900	\$7,976,173
2007-08	\$2,187,823	\$24,239
2008-09	\$169,025,908	\$5,359,981
2009-10	\$18,460,848	\$5,118,018
<b>TOTAL</b>	<b>\$521,889,746</b>	<b>\$18,482,858</b> <b>(3.54%)</b>

Source: Exhibit B, CHSRA Annual Contracting Activity Reports.

18 The Ethnicity, Race and Gender ("ERG") Reports that state agencies submit to the Department of  
 19 General Services with their small business reports are designed to reflect how many of these small  
 20 business contracting opportunities are extended to minority- and women-owned businesses, yet  
 21 CHSRA has left these reports entirely blank for the last four years. See Ex. C. On its forms each year,  
 22 CHSRA has simply stated "Our agency does not have a system to track this information. However, we  
 23 are developing a system to track it in future contracts if the voluntary information is reported," or "No  
 24 information provided." See Ex. C at 1, 4.

27 Transportation). Complainant's analysis is based on cross-checking firms listed on CHSRA's materials as companies  
 28 that have received contracts with the DBE database.

1           These small business reports buttress what Complainants have found: that minority-owned  
 2 businesses have received a vanishingly small percentage of CHSRA's contracts. Moreover, the reports  
 3 demonstrate CHSRA's lackadaisical attitude towards ensuring an open and competitive procurement  
 4 system. Each year that CHSRA failed to meet its small business goal, it was required by Executive  
 5 Order to develop a plan for enhancing contracting opportunities for small businesses.<sup>20</sup> Given the  
 6 disproportionate number of minority-owned businesses that are also small, an aggressive approach to  
 7 ensuring small business participation would have opened many opportunities for minority-owned  
 8 businesses. Yet despite the failure year-after-year to even approach the 25% goal, CHSRA's corrective  
 9 "plans" typically consisted of only a few boilerplate sentences. For example, CHSRA's plan for 2007-  
 10 2008 was as follows: "The department will inform all employees involved with contracts to be aware  
 11 of the 25% [small business] participation goal for the 07/08 fiscal year...." and "Our department will  
 12 include the following language in contract bid advertisements: 'The State encourages Small Businesses  
 13 to apply.'" See Ex. D at 1. Unsurprisingly, the goals were not met in the subsequent year either. And  
 14 upon failing to meet the goals again, CHSRA simply recycled the *exact same boilerplate language* for  
 15 the next year's corrective "plan." See Ex. D at 2.

18           Meanwhile, minority-owned businesses continued to be shut out of contracting opportunities,  
 19 even when exceedingly simple steps could have helped alleviate the problem. For example, in July  
 20 2008, CHSRA sent out several Requests for Qualifications ("RFQ") for northern California  
 21 environmental and engineering contracts. Minority-owned business owners specifically notified  
 22 CHSRA that they were interested in participating as subconsultants and asked CHSRA to provide a list  
 23 of expected prime consultants, "so we can offer them our services and discuss teaming, or offer to  
 24

25 <sup>19</sup> Cal. Exec. Order No. S-02-06 (Mar. 29, 2006), <http://gov.ca.gov/executive-order/556>.

26 <sup>20</sup> *Id.* ("State agencies, departments, boards and commissions that have not achieved the small business participation  
 27 goal must submit an Implementation and Corrective Action Plan to the DGS. The DGS will share these plans with the  
 28 California Small Business Advocate and together they will explore ways, including Memorandums of Understanding,  
 to work with departments to improve performance.")

1 provide our services to their firms." See Ex. E at 2. CHSRA's response was singularly unhelpful: the  
 2 agency provided a list of firms that had requested the RFQ from one source (the State Contracts  
 3 Register), yet omitted any firm that had "downloaded the RFQs from the Authority's website,  
 4 contacted the Authority staff directly, or took hard copies at CHSRA board meetings." See Ex. E at 2.  
 5 When minority-owned firms asked if CHSRA at least maintained some document where minority-  
 6 owned firms could let primes know of their interest and availability, CHSRA responded with a blunt  
 7 one-word answer: "No." See Ex. E at 2.

9 As study after study have shown, this kind of *laissez faire* attitude towards minority business  
 10 inclusion means that contracts simply end up in the hands of large majority firms and those in their  
 11 networks.<sup>21</sup> By contrast, simple steps can be undertaken to break down discriminatory barriers. Efforts  
 12 that other public agencies routinely take to ensure equity include:

- 13 • Aggressive outreach to minority-owned firms to inform them of upcoming contracting  
 14 opportunities to ensure that contracts are not simply funneled into the "old boys" network;
- 15 • Clear and enforceable mandates to prime contractors to ensure that they notify a wide range of  
 16 subcontractors and subconsultants about contracting opportunities;
- 17 • Mechanisms such as formal pre-bid and pre-submittal meetings that primes are required to  
 18 attend, to ensure that prospective subconsultants know which primes plan to bid;

21 <sup>21</sup> See, e.g., *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1174 (10th Cir. 2000), *cert. dismissed sub nom.*  
 22 *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) (per curiam) ("The Meaning and Significance for Minority  
 23 Business of the Supreme Court Decision in the City of Richmond v. J.A. Croson: Hearing Before the Legislative &  
 24 Nat'l Sec. Subcomm. of the House Comm. on Gov't Operations, 100th Cong. 111 (1990) ("The Significance of  
 25 *Croson*") (statement of Manuel Rodriguez, President, R&D Development, Inc., specializing in mechanical  
 26 construction, and past president and founder of the National Hispanic Association of Construction Enterprises) ("Few  
 27 [minorities] today have families from whom they can inherit a construction business."); see also Minority Business  
 28 Development Program Reform Act of 1987: Hearings on S. 1993 & H.R. 1807 Before the Senate Comm. on Small  
 Bus., 100th Cong. 127 (1988) (statement of Parren Mitchell, Chairman, Minority Business Enterprise Legal Defense  
 and Education Fund) (noting the "harsh reality" of the "old-boy network" that prevents minority-owned firms from  
 breaking into the private sector); H.R. Rep. No. 103-870 15 & n.36 (1994) (discussing evidence of the discriminatory  
 exclusion of minority firms from business networks); The Compelling Interest, 61 Fed. Reg. at 26,057 & nn.82-83  
 (citing studies explaining minorities' exclusion from the construction trades as a result of the lack of familial  
 connections").

- 1 • Vigilant adherence to small business contracting requirements;
- 2 • Unbundling large contracts to facilitate a diverse pool of contractor participation;
- 3 • Open and transparent systems that allow community members, advocates, and the media to
- 4 track where contract dollars are going and monitor minority business inclusion;
- 5 • Leadership from the top that emphasizes the importance of full inclusion, holds agency staff
- 6 accountable for meeting contracting goals, monitors progress, and demands change where data
- 7 shows inequities.
- 8

9 By contrast, CHSRA has utterly failed in this regard, ignoring both direct pleas from minority-  
 10 owned businesses and mandates that require them to do more. The result is all too predictable: a closed  
 11 contracting system with virtually no minority-business participation.

## 12 13 **II. JURISDICTIONAL FACTS**

### 14 **A. Complainants**

15 Associated Professionals and Contractors ("APAC") is a non-profit organization founded to  
 16 encourage, develop, and support Disadvantaged Business Enterprises ("DBEs") and other businesses  
 17 traditionally excluded from equal opportunity. APAC is based in Oakland and draws its membership  
 18 from throughout the State. Members include trade associations, businesses, and individuals. APAC  
 19 and its members have continually raised concerns about the lack of minority business participation on  
 20 the high-speed rail project with CHSRA, as well as with state and federal legislative leaders. To date,  
 21 however, there has been little progress.

### 22 **B. Timeliness**

23 As with any application for federal funding, the recipient, CHSRA, is required to submit an  
 24 assurance that it will comply with all requirements for funding. See 49 CFR § 21.7. Importantly, the  
 25 recipient is expected to adhere to all regulations, such as the non-discrimination requirements  
 26  
 27  
 28

1 mandated by Title VI, throughout the duration of the project in which federal funds are used. *Id.* The  
 2 Complaint here is particularly timely, in that federal ARRA funds have been disbursed to the high-  
 3 speed rail project as recently as October 2010, which is within the applicable 180 day period to bring a  
 4 claim.<sup>22</sup> See 49 C.F.R. § 21.11(b).

### 6 III. LEGAL ANALYSIS

#### 7 A. Title VI of the Civil Rights Act of 1964

8 Discrimination against minority populations is prohibited under Title VI of the Civil Rights Act  
 9 of 1964, which provides:

10 No person in the United States shall, on the ground of race, color, or national origin,  
 11 be excluded from participation in, be denied the benefits of, or be subjected to  
 12 discrimination under any program or activity receiving federal financial assistance.  
 13 42 U.S.C. § 2000d. As the U.S. Department of Justice has recounted, “[i]n calling for its enactment,  
 14 President John F. Kennedy identified ‘simple justice’ as the justification for Title VI:

15 Simple justice requires that public funds, to which all taxpayers of all races contribute,  
 16 not be spent in any fashion which encourages, entrenches, subsidizes, or results in  
 17 racial discrimination. Direct discrimination by Federal, State, or local governments is  
 18 prohibited by the Constitution. But indirect discrimination, through the use of Federal  
 19 funds, is just as invidious; and it should not be necessary to resort to the courts to  
 20 prevent each individual violation.

21 CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. II (2001).<sup>23</sup>

22 While Title VI prohibits intentional discrimination, most federal agencies have promulgated regulations  
 23 that further prohibit actions by recipients that have an impermissible discriminatory *impact* on minority  
 24 populations. For example, federal Department of Transportation regulations provide:

25 A recipient, in determining the types of services ... or other benefits ... which will be  
 26 provided under any such program, or the class of persons to whom, or the situations in  
 27 which, such services, financial aid, other benefits, or facilities will be provided under

28 <sup>22</sup> CHSRA Award, *supra* note 2.

<sup>23</sup> Citing H.R. Misc. DOC. No. 124, 88th CONG., 1ST SESS. 3, 12 (1963); S. REP. NO. 100-64, at 2 (1987), *reprinted in*  
 1988 U.S.C.C.A.N. 3, 4.

1 any such program ... may not, directly or through contractual or other arrangements,  
 2 utilize criteria or methods of administration which have the effect of subjecting  
 3 persons to discrimination because of their race, color, or national origin, or have the  
 effect of defeating or substantially impairing accomplishment of the objectives of the  
 program with respect to individuals of a particular race, color, or national origin.

4 49 CFR § 21.5(b)(2)(i), (iv) (emphasis added).<sup>24</sup>

5 Moreover, the USDOT has mandated that applicants or recipients take affirmative steps to  
 6 overcome past practices that may have excluded minorities:  
 7

8 Where prior discriminatory practice or usage tends, on the grounds of race, color, or  
 national origin to exclude individuals from participation in, to deny them the benefits  
 9 of, or to subject them to discrimination under any program or activity to which this  
 part applies, the applicant or recipient must take affirmative action to remove or  
 10 overcome the effects of the prior discriminatory practice or usage. Even in the absence  
 of prior discriminatory practice or usage, a recipient in administering a program or  
 11 activity to which this part applies, is expected to take affirmative action to assure that  
 12 no person is excluded from participation in or denied the benefits of the program or  
 activity on the grounds of race, color, or national origin.

13 49 CFR § 21.5(b)(7) (emphasis added).

14 By design, Title VI's reach is extremely broad. It specifically covers not only the particular  
 15 items funded by federal dollars, but all of the operations of any entity receiving federal assistance.<sup>25</sup>

16 When the U.S. Supreme Court construed this coverage in a limited way, Congress quickly stepped in to  
 17 re-affirm Title VI's "institution-wide coverage," since "eliminating discrimination from institutions  
 18 which receive federal financial assistance [can] only be accomplished if the civil rights statutes [are]  
 19 given the broadest interpretation."<sup>26</sup> The types of activities covered are likewise exceedingly far-  
 20  
 21

22 <sup>24</sup> Lau v. Nichols, 414 U.S. 563, 568 (1974) (noting "discrimination is barred which has that effect even though no  
 23 purposeful design is present..."); see also Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 593 (1983) (noting,  
 "Under these circumstances, it must be concluded that Title VI reaches unintentional, disparate-impact discrimination  
 as well as deliberate racial discrimination.").

24 <sup>25</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. VII, §D (2001),  
[http://www.justice.gov/crt/grants\\_statutes/legalman.php](http://www.justice.gov/crt/grants_statutes/legalman.php) (hereinafter DOJ TITLE VI MANUAL).

25 <sup>26</sup> In 1984 the Supreme Court decided Grove City College v. Bell, which severely limited the application of Title VI.  
 26 465 U.S. 555 (1984). In response, Congress swiftly enacting the Civil Rights Restoration Act of 1987 ("CRRRA"). As  
 explained in the Department of Justice Title VI Manual, "the CRRRA was passed to restore broad interpretations,  
 consistent with original congressional intent, and to reverse the Supreme Court's narrow ruling in Grove City." DOJ  
 27 TITLE VI MANUAL, *supra* note 25, at CH. VIII, § § B, C. Civil Rights Restoration Act of 1987, S. Rep. No. 64, 100<sup>th</sup>  
 Cong. § 5 (1st Sess. 1987) (stating, "The legislative history of the statutes in question shows Congress intended  
 28

1 reaching, and the regulations specifically cite a recipient's contracting as an example of an activity that  
2 falls within Title VI's purview. 49 CFR pt. 21 app. C(a)(1)(x).

3 An agency such as CHSRA is bound by the prohibitions of Title VI in all its activities from the  
4 moment it agrees to accept federal funds. In order to receive federal funding, applicants must sign  
5 assurances of compliance with federal laws and regulations. 49 CFR § 21.7(b). In *U.S. Dep't. of*  
6 *Transportation v. Paralyzed Veterans of America*, the Supreme Court held, "Under [Title VI],  
7 Congress enters into an arrangement in the nature of a contract with the recipients of the funds: the  
8 recipient's acceptance of the funds triggers coverage under the nondiscrimination provision." 477 U.S.  
9 597, 605 (1986).

10 Moreover, the high-speed rail will utilize twenty-four proposed stops along its route.<sup>27</sup> Most of  
11 these terminals are already in use by other trains: Transbay Terminal (San Francisco); Millbrae/San  
12 Francisco Airport; San Jose Diridon; Gilroy; Sylmar; Union Station and San Diego Santa Fe Depot.<sup>28</sup>  
13 Further, the trains that use these stations – Caltrain, Bay Area Rapid Transit ("BART"), Santa Clara  
14 Lightrail and Metrolink – already receive federal funding through the Federal Transit Administration  
15 and thus are covered by Title VI.<sup>29</sup> In accordance with the DOT regulations, any assistance extended to  
16 any part of a facility, even one that is already in existence and being renovated or expanded such as the  
17 current train terminals, is considered a part of the project and is therefore covered under Title VI. 49  
18  
19  
20  
21

22 institution-wide coverage. In enacting the four civil rights statutes, Congress intended that each be broadly interpreted  
23 to provide effective remedies against discrimination. The debates emphasized both the anticipated breadth of coverage  
24 as well as the important and fundamental aims these statutes would achieve. This was clear not only in connection  
25 with Title VI, but also with the other civil rights statutes which were modeled on Title VI with respect to both  
26 language and intended effect. . . . It was understood at the outset that the task of eliminating discrimination from  
27 institutions which receive federal financial assistance could only be accomplished if the civil rights statutes were given  
28 the broadest interpretation.<sup>30</sup>

<sup>27</sup> California High-Speed Rail Authority, Interactive Map, [http://cahighspeedrail.ca.gov/trip\\_planner.aspx](http://cahighspeedrail.ca.gov/trip_planner.aspx) (last visited Oct. 8, 2010).

<sup>28</sup> *Id.*

<sup>29</sup> Caltrain, <http://www.caltrain.com> (Caltrain is a commuter train between San Francisco and Santa Clara); Bay Area Rapid Transit, <http://www.bart.gov/> (BART provides service throughout the East Bay to the San Francisco peninsula); Santa Clara Valley Transportation Authority, [http://www.vta.org/services/light\\_rail\\_services.html](http://www.vta.org/services/light_rail_services.html) (lightrail service

1 CFR § 21.23(b). "In the case where the assistance is sought for the construction of a facility or part of  
2 a facility, the assurance shall in any event extend to the entire facility and to facilities operated in  
3 connection therewith." 49 CFR § 21.7(a)(1).

4 **B. CHSRA Is In Violation of Title VI and its Implementing Regulations.**

5 As the Department of Justice has counseled:

6 To establish discrimination under a disparate impact scheme, the investigating agency  
7 must first ascertain whether the recipient utilized a facially neutral practice that had a  
8 disproportionate impact on a group protected by Title VI. *Larry P. v. Riles*, 793 F.2d  
9 969, 982; *Elston*, 997 F.2d at 1407 (citing *Georgia State Conference of Branches of*  
10 *NAACP v. Georgia*, 775 F.2d 1403, 1417 (11<sup>th</sup> Cir. 1985)). The agency must show a  
causal connection between the facially neutral policy and the disproportionate and  
adverse impact on a protected Title VI group.

11 CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, TITLE VI LEGAL MANUAL, CH. VIII, § B (2001).

12 Here, these elements are easily met. As the statistics cited above demonstrate, CHSRA's  
13 contracting system, while facially neutral, has a disproportionate impact on minority-owned  
14 businesses. To date, there has been virtually no minority business participation on CHSRA contracts.  
15 In the face of these numbers, CHSRA appears to fall back on the much-used and often-discredited  
16 excuse that minority businesses are simply not available to do the work. For example, in FY 2006-  
17 2007, when over \$332 million was contracted, CHSRA claimed that its failure to achieve even 3%  
18 participation by small or micro-businesses was "due to the highly specialized field of high-speed rail  
19 systems...." See Ex. B at 1.

20  
21 Complainant knows this to be untrue, as many of its members are highly qualified to do  
22 CHSRA work, and have been for years. Nearly thirty years ago, Transportation Secretary William  
23 Coleman initiated the Northeast Corridor Project, a railroad construction project members of  
24 Complainant organization worked on between Washington, D.C. and Boston, Massachusetts, which  
25

26  
27 provided from Silicon Valley to San Jose); Metrolink, <http://www.metrolinktrains.com/> (commuter train service from  
28 Los Angeles County to San Diego County) (last visited Nov. 3, 2010).



1 achieved a 15 percent participation goal for minority- and women-owned businesses.<sup>30</sup> More recently,  
 2 in a similar context, the California Department of Transportation (“Caltrans”) asserted that it did not  
 3 have adequate information about minority- and women-owned business availability to do  
 4 transportation work. Yet when it commissioned a study to examine this question, it came up with a  
 5 minimum level of at least 13.5% availability; other experts who have examined the question have  
 6 pinned the number as high as 28.76%.<sup>31</sup> While Caltrans’ contracting is not co-extensive with  
 7 CHSRA’s, there is substantial overlap, particularly in terms of the relevant industries involved. As  
 8 Caltrans has found, minority-owned civil engineers, structural engineers, land surveyors, and other  
 9 professionals – many of the same industries that CHSRA contracts with – are available in great  
 10 numbers in California.<sup>32</sup>

11  
 12 Nor can there be any doubt that CHSRA’s contracting system is the cause of their abysmally  
 13 low minority-business participation. Numerous studies at the federal and state levels have  
 14 demonstrated over and over again that the sort of “business as usual” policies that CHSRA engages in  
 15 result in under-utilization of minority-owned businesses. *See supra* at 7 & n.21. In order to justify this  
 16 exclusion, CHSRA must show a “substantial legitimate justification” for its practices, which it cannot  
 17 do.<sup>33</sup> There is no reason why simple steps such as outlined above cannot be taken to ensure an open  
 18 and fair procurement system.<sup>34</sup> *See supra* at 7-8.

21 <sup>30</sup> Louis S. Thompson, Federal Railroad Administration, Associate Administrator for Intercity Programs, The  
 22 Northeast Corridor Improvement Project, Address at the Eighteenth Henry M. Shaw Lecture in Civil Engineering at  
 23 North Carolina State University 21 (Nov. 10, 1982), available at [http://www.teaassoc.com/documents/northeast-](http://www.teaassoc.com/documents/northeast-corridor.pdf)  
 24 [corridor.pdf](http://www.teaassoc.com/documents/northeast-corridor.pdf).

25 <sup>31</sup> BBC RESEARCH AND CONSULTING, AVAILABILITY AND DISPARITY STUDY at section II, page 10 (2007),  
 26 [http://www.dot.ca.gov/hq/bep/study/Avail\\_Disparity\\_Study\\_Final\\_Rpt.pdf](http://www.dot.ca.gov/hq/bep/study/Avail_Disparity_Study_Final_Rpt.pdf) (hereinafter DISPARITY STUDY) (finding  
 27 13.5% DBE availability); Reply to Report of Plaintiff’s Expert by Dr. Jon Wainwright Supporting Defendants at 36,  
 28 Associated General Contractors of America v. California Department of Transportation, No. 2:09-CV-01622  
 (E.D.C.A. Oct. 28, 2010) (on file with counsel) (suggesting much higher DBE availability).

<sup>32</sup> DISPARITY STUDY, *supra* note 31, at app. C, at 3-4 (listing all subindustries included in Caltrans study, including  
 various types of engineering services, construction management, transportation consultants, etc.).

<sup>33</sup> DOJ TITLE VI MANUAL, *supra* note 25, at Ch. VIII, § B.

<sup>34</sup> Even if CHSRA were able to show a legitimate justification (which it cannot), it would still be in violation of Title  
 VI if there are “equally effective alternative practices” that would result in greater equity. *See id.*

1 In its response to a recent Public Records Act request, CHSRA insinuated that it is not covered  
 2 by these federal prohibitions because it had not yet actually received any of the federal dollars it has  
 3 been awarded. This cramped interpretation is at odds with the broad reach of Title VI. As the U.S.  
 4 Department of Justice ("DOJ") has stated in a Title VI compliance manual, "It is important to note that  
 5 by signing an assurance, the recipient is committing itself to complying with the nondiscrimination  
 6 mandates. Even without a written assurance, courts describe obligations under nondiscrimination laws  
 7 as similar to a contract..."<sup>35</sup> Thus, as a recipient of the federal funding award of \$3.05 billion, it is  
 8 undisputable that the CHSRA is prohibited from discriminating on the basis of race under federal law.

9 Complainants are not the first to flag CHSRA's non-compliance with federal law. A California  
 10 State Auditor Report issued in April 2010 contains an entire section entitled "The Authority Lacks  
 11 Systems To Comply With State Law And Federal Grant Requirements."<sup>36</sup> The Audit details how  
 12 CHSRA lacks the systems necessary to comply with federal requirements. While the Audit does not  
 13 specifically identify Title VI, it notes that "[n]oncompliance with grant provisions could jeopardize  
 14 [CHSRA's] ability to receive those funds and to compete for future grants – both of which are essential  
 15 given its heavy planned reliance on federal funds."<sup>37</sup> A subsequent audit turned up similar problems,  
 16 concluding that CHSRA "is not fully prepared to distribute and monitor ARRA [federal stimulus]  
 17 funds."<sup>38</sup> Among gaps noted are that "policies and procedures to ensure the appropriate expenditure of  
 18 ARRA funds have not been detailed..."<sup>39</sup>

23 <sup>35</sup> DOJ TITLE VI MANUAL, *supra* note 25, at CH. VI, § B (citing *Paralyzed Veterans*, 477 U.S. at 605).

24 <sup>36</sup> CALIFORNIA STATE AUDITOR, BUREAU OF STATE AUDITS, HIGH-SPEED RAIL AUTHORITY: IT RISKS DELAYS OR AN  
 INCOMPLETE SYSTEM BECAUSE OF INADEQUATE PLANNING, WEAK OVERSIGHT, AND LAX CONTRACT MANAGEMENT  
 25 28 (Apr. 2010), <http://www.bsa.ca.gov/pdfs/reports/2009-106.pdf>.

26 <sup>37</sup> *Id.* at 29.

27 <sup>38</sup> INSPECTOR GENERAL LAURA CHICK, STATE OF CALIFORNIA OFFICE OF THE INSPECTOR GENERAL, FINAL REVIEW  
 REPORT – REVIEW OF THE CALIFORNIA HIGH SPEED RAIL AUTHORITY 4 (Oct. 2010),  
[http://www.inspectorgeneral.ca.gov/res/docs/pdf/Final%20Report%20High%20Speed%20Rail%20with%20Cover%20](http://www.inspectorgeneral.ca.gov/res/docs/pdf/Final%20Report%20High%20Speed%20Rail%20with%20Cover%20Letter.pdf)  
 Letter.pdf.

28 <sup>39</sup> *Id.*

1 In sum, CHSRA's procurement system disproportionately excludes minority-owned  
2 businesses, and there is no justification for this exclusion.

3  
4  
5 **V. RELIEF REQUESTED**

6 Complainant's request is simple: that USDOT stop providing federal funds to CHSRA until  
7 CHSRA brings its contracting practices in line with federal civil rights laws. Just as Title VI's  
8 coverage is broad, so too are the remedies available to federal agencies awarding federal funds.  
9 Complainant respectfully requests that USDOT open a formal investigation of CHSRA's contracting  
10 practices; immediately attempt to secure the agency's voluntary compliance with federal civil rights  
11 laws; and suspend any further federal disbursements until compliance is complete.<sup>40</sup>

12  
13 There are numerous ways in which CHSRA can and must open up its procurement practices.  
14 *See supra* at 7-8. USDOT can also facilitate CHSRA's actions by bringing the entire high-speed rail  
15 project under the FTA's federal Disadvantaged Business Enterprise (DBE) program. USDOT is  
16 providing federal financial assistance to CHSRA through both the Federal Transit Administration  
17 (primarily for expanding existing rail stations) and through the Federal Railroad Administration  
18 (primarily for the rail lines themselves). The federal DBE program, which requires federal funding  
19 recipients to undertake specific measures to ensure DBE participation, applies to FTA but not FRA.  
20 Given that both these agencies are under the auspices of USDOT, USDOT should not let bureaucratic  
21 hurdles thwart goals of contracting equity. Rather, the entire high-speed rail project should be brought  
22 under the FTA's DBE program.  
23  
24  
25  
26

27 <sup>40</sup> Complainant and their counsel request that the investigating agency contact them upon initiating the investigation, as  
28 they can provide additional background information and suggest specific areas for investigation and inquiry.

# **EXHIBIT A**



**Office of the Attorney General**

Washington, D.C. 20530

September 27, 2010

**MEMORANDUM: FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES  
PROVIDING FEDERAL FINANCIAL ASSISTANCE**

**FROM:**  THE ATTORNEY GENERAL

**SUBJECT:** Enforcement of Nondiscrimination Laws in Programs and Activities that  
Receive American Recovery and Reinvestment Act Funding

Since the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the federal government has distributed a large number of federal grants as part of the effort to stimulate the American economy. The federal government has an ongoing responsibility to ensure that all Americans receive the benefit of programs and activities that receive federal financial assistance.<sup>1</sup>

Pursuant to Executive Order 12250, the Department of Justice (DOJ) has taken a number of steps to ensure that federal agencies are effectively fulfilling their obligation to enforce statutes that prohibit discrimination in programs or activities that receive Recovery Act funds. Under the Executive Order, DOJ is charged with ensuring the consistent and effective enforcement of Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin, including with respect to language access for limited English proficient persons), Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability), Title IX of the Education Amendments Act of 1972 (prohibiting gender discrimination in education and training programs), and a variety of program-specific statutes that prohibit discrimination in federally funded programs.

Because these prohibitions apply to recipients of Recovery Act funding, it is imperative that federal agencies ensure that grant recipients do not discriminate. Indeed, on April 3, 2009, the Office of Management and Budget issued Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, stating that "agencies should encourage recipients to implement best practices for ensuring that all individuals – regardless of race, gender, age, and national origin – benefit from the Recovery Act."

<sup>1</sup> This Memorandum does not extend to federal contracting, which is not covered under Executive Order 12250. However, federal contractors receiving Recovery Act funds may be covered by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Veterans Readjustment Act of 1974 (VEVRAA). The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces these and other requirements related to federal contract compliance. See [http://www.doi.gov/ofcc/arra\\_web.html](http://www.doi.gov/ofcc/arra_web.html).

Memorandum from the Attorney General  
 Subject: Enforcement of Nondiscrimination Laws in Programs that Receive Recovery Act Funding

Page 2

Federal agencies have done an outstanding job delivering funds to recipients as quickly as possible, in order to achieve the Recovery Act's purpose of further stimulating the economy and creating jobs. There are, however, steps that federal agencies can take to encourage nondiscrimination in Recovery Act funded programs. As an initial step, federal agencies should examine their current practices for ensuring nondiscrimination in Recovery Act funded programs, and evaluate whether these are effective at detecting and deterring discriminatory conduct. As they oversee and distribute funds, agencies should examine their practices to ensure that the benefits of these economic stimulus programs are distributed in a nondiscriminatory manner. Specifically, agencies should take necessary steps to ensure that this money is spent in a manner that does not exclude, or otherwise discriminate against, any individual in violation of Title VI, Title IX, or Section 504. None of these efforts will require new regulatory initiatives. Existing regulations that permit agencies to enforce Title VI, Title IX, and Section 504 should let us do the job. Federal agencies should consider the following approaches:

- Federal funding agencies should post prominent notices on their websites concerning the applicability of Title VI, Title IX, and Section 504 to projects funded by the Recovery Act.
- Federal agencies should require recipients to adhere to the terms of their civil rights assurances and other agreements, including any provisions pertaining to the collection and analysis of racial and ethnic data.
- Federal agencies should utilize readily available data, such as census data, through demographic mapping and other technologies, to identify situations in which racially or ethnically identifiable communities may be harmed by, or excluded from the benefits of, a Recovery Act funded project. Such circumstances may warrant pre- or post-award compliance reviews or technical assistance to applicants and recipients of Recovery Act funding.

Pursuant to the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.412, I have delegated to the Civil Rights Division my authority to promulgate directives to federal agencies to ensure that federal agencies carry out their responsibilities to vigorously enforce these statutes. I have instructed the Civil Rights Division to utilize its oversight authority fully and to assist agencies in achieving nondiscrimination. This may include information sharing, training, targeted partnerships, and the provision of technical assistance on data collection and other topics pertinent to civil rights enforcement.

In the coming weeks, staff in the Civil Rights Division's Federal Coordination and Compliance Section (FCS) will reach out to their agency counterparts to discuss current practices for enforcing the prohibitions of Title VI, Title IX, and Section 504. I urge you to share periodically with FCS any initiatives for enforcing grant-related civil rights laws or new approaches that you have adopted, as well as any substantial Recovery Act case developments. Moreover, in accordance with the Guidelines for the Enforcement of Title VI, 28 C.F.R. § 50.3, and the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.407(d), you should discuss with

Memorandum from the Attorney General

Page 3

Subject: Enforcement of Nondiscrimination Laws in Programs that Receive Recovery Act Funding

FCS any potential refusals and terminations of assistance or formal enforcement actions under consideration.

I look forward to working with you to further strengthen and improve enforcement of civil rights laws throughout the nation. The economic stimulus initiative presents us with a unique opportunity and obligation to ensure that federal dollars are spent in a manner that is consistent with our nation's civil rights laws. Thank you for your continued partnership in this critically important endeavor.

If you have any questions, please call Christine Stoneman, Special Legal Counsel in the Federal Coordination and Compliance Section of the Civil Rights Division at (202) 616-6744.

# **EXHIBIT B**



Ridge Cubitts L. Kopp, Chairman  
 Owen Flornas, Vice-Chair  
 Joe Andrews  
 Jill Crane  
 David DeWitt  
 Patrick Lindsey  
 Kurt Pringle  
 John Roberts  
 A. (Terry) Stapleton



ARNOLD SCHWARZENEGGER  
 GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

July 31, 2007

Ron Wright, DGS Reports Coordinator  
 Department of General Services  
 Procurement Division, Office of Small Business & DVBE Services  
 707 Third Street - Room 1-400  
 West Sacramento, CA 95605

Dear Mr. Wright:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2006-07 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
2005-06	\$8,512	\$3,263	38.33%	\$329	3.87%
2004-05	\$18,755	\$1,184	6.3%	\$2,823	15.05%
Trend					

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has become challenging over the last year and neither the DVBE or SB goals were met for the Authority. Therefore, a DVBE and SB improvement plan is included with the enclosed reports; it details some of the specifics relating to the specialized contracts awarded in this fiscal year.

The 2006-07 Ethnicity, Race and Gender Report and the 2006-07 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger  
 Procurement Officer

Enclosures

Jedgo Quirin L. Kone, Chairman  
 Fern Flores, Vice-Chair  
 David Crane  
 Rod Collins, Sr.  
 R. Kirk Lindsey  
 Curt Pringle  
 Lynn Roberts  
 Y. J. (Tony) Stappleton  
 Tim Urbberg  
 \*past chair



ARNOLD SCHWARZENEGGER  
 GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 11, 2008

Ron Wright, DGS Reports Coordinator  
 Department of General Services  
 Procurement Division, Office of Small Business & DVBE Services  
 707 Third Street - Room 1-400  
 West Sacramento, CA 95605

Dear Mr. Wright:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2007-08 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
2005-06	\$8,512	\$3,263	38.33%	\$329	3.87%
Trend			decrease		increase

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have specialized fields of experience. Achieving the goal for SB/DVBE has become challenging over the last couple of years and the SB goal was not met for the Authority. Therefore, an SB improvement plan is included with the enclosed reports; it details some of the specifics relating to specialized contracts.

The 2007-08 Ethnicity, Race and Gender Report and the 2007-08 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger  
 Procurement Officer

Judge Quentin L. Hogg, Chairman  
 Fran Flores, Vice-Chair  
 Dianne Andrews  
 David Cowie  
 Rod Driscoll  
 R. Kirk Lindsey  
 Curt Paegele  
 Lynn Stohrer  
 T.J. (Tom) Stapleton



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 6, 2009

Alex Mora, DGS Reports Coordinator  
 Department of General Services  
 Procurement Division, Office of Small Business & DVBE Services  
 707 Third Street - Room 1-400  
 West Sacramento, CA 95605

Dear Mr. Mora:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2008-09 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2008-09	\$169,025,908	\$5,359,981	3.17%	\$5,367,091	3.18%
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$332,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
Trend			increase		increase

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. However, due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has become challenging over the last year and the SB goals were not met for the Authority. Therefore, a SB improvement plan is included with the enclosed reports; it details some of the specifics relating to the specialized contracts awarded in this fiscal year.

The 2008-09 Ethnicity, Race and Gender Report and the 2008-09 Consulting Services report are attached.

Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger  
 Procurement Officer

Enclosures

Curt Pringle, Chairman  
 Tom Urbani, Vice-Chair  
 Russell Burns  
 David Crane  
 Rod Orfano, Sr.  
 Fran Peters\*  
 Richard Katz  
 Judge Quentin L. Kopp\*  
 Lynn Bohank  
 \*past chair



ARNOLD SCHWARZENEGGER  
 GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

August 5, 2010

Tanya Little, DGS Reports Manager  
 Department of General Services  
 Procurement Division, Office of Small Business & DVBE Services  
 707 Third Street - Room 1-400  
 West Sacramento, CA 95605

Dear Ms. Little:

The California High-Speed Rail Authority has enclosed its Fiscal Year (FY) 2009-10 Contracting Activity Reports. These reports cover the contracts for the Authority.

The following information relates to our small business (SB) participation (including Microbusiness (MB) and DVBE participation for the last three fiscal years (rounded to the nearest dollar):

Fiscal Year (FY)	Total Contract \$	SB/MB \$	SB/MB %	DVBE \$	DVBE %
2009-10	\$18,460,848	\$5,118,018	27.72%	\$1,304,777	7.07%
2007-08	\$2,187,823	\$24,239	0.39%	\$60,043	3.12%
2006-07	\$32,187,900	\$7,976,173	2.40%	\$7,604,618	2.29%
Trend					

Over the last three years the Authority's mission and funding has grown in response to the goal of developing a high-speed rail system in California. Due to the highly specialized field of high-speed rail systems, many of the service contracts have been awarded to businesses with worldwide offices or companies that have experience with high-speed rail. Achieving the goal for SB/DVBE has been challenging, but the DVBE and SB goals were met for the Authority this past year.

The 2006-07 Ethnicity, Race and Gender Report and the 2006-07 Consulting Services report are attached.

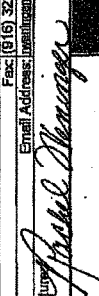
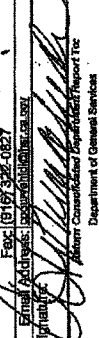
Please contact my office at (916) 324-9456 if there are any questions

Rachel Weninger  
 Procurement Officer

Enclosures

# **EXHIBIT C**

Ethnicity, Race and Gender (ERG) Report

Fiscal Year: 06/07		Agency: California High-Speed Rail Authority		Department:	
Ethnicity Classifications		Goods Column A	Services Column B	Construction Column C	Totals Column D
P	Asian-Indian	\$	\$	\$	\$
a	Black	\$	\$	\$	\$
r	Hispanic	\$	\$	\$	\$
t	Native American	\$	\$	\$	\$
	Pacific Asian	\$	\$	\$	\$
1	Other	\$	\$	\$	\$
	TOTALS	\$	\$	\$	\$
<b>Race Classifications</b>					
P	American Indian or Alaska Native	\$	\$	\$	\$
a	Asian	\$	\$	\$	\$
r	Black or African American	\$	\$	\$	\$
t	Native Hawaiian or Other Pacific Islander	\$	\$	\$	\$
2	White	\$	\$	\$	\$
	Other	\$	\$	\$	\$
	TOTALS	\$	\$	\$	\$
<b>Gender</b>					
P	Female	\$	\$	\$	\$
r	Male	\$	\$	\$	\$
t	TOTALS	\$	\$	\$	\$
3. Comments on any discrepancies between the data in this report and the data in the ERG Form (rev. June 2006) should be provided in this space.					
Prepared By:		Approved By:			
Name: Rachel Waininger		Name: Carole Hourvahl			
Title: Staff Services Analyst		Title: Deputy Director			
Telephone: (916) 324-6456		Telephone: (916) 322-2422			
Fac: (916) 322-0827		Fac: (916) 322-0827			
Email Address: rwaininger@hst.ra.ca.gov		Email Address: chourvahl@hst.ra.ca.gov			
Signature: 		Signature: 			

Department of General Services  
Procurement Division, Reports Coordinator  
707 3rd Street, 1st Floor, Room 400, MS 2-4  
West Sacramento, CA 95605

Ethnicity, Race and Gender (ERG) Report

Fiscal Year: 08/07		Agency: California High-Speed Rail Authority		Department: All Contracts	
Ethnicity Classifications	Goods Column A	Services Column B	Construction Column C	Totals Column D	
Asian-Indian \$					
Black \$					
Hispanic \$					
Native American \$					
Pacific Asian \$					
Other \$					
<b>TOTALS \$</b>					
Race Classifications	Goods Column A	Services Column B	Construction Column C	Totals Column D	
American Indian or Alaska Native \$					
Asian \$					
Black or African American \$					
Native Hawaiian or Other Pacific Islander \$					
White \$					
Other \$					
<b>TOTALS \$</b>					
Gender	Goods Column A	Services Column B	Construction Column C	Totals Column D	
Female \$					
Male \$					
<b>TOTALS \$</b>					
<p>3 Comments Our agency does not have a system to track this information. However, we are developing a system to track it in future contracts if the voluntary information is reported.</p>					
<p>Prepared By: Rachal Wenginger                  Name: Rachal Wenginger                  Title: Staff Services Analyst                  Telephone: (916) 324-6456                  Fax: (916) 322-0827                  Email Address: <a href="mailto:rwenginger@hira.ca.gov">rwenginger@hira.ca.gov</a></p>					
<p>Approved By: Camie Prouvehd                  Name: Camie Prouvehd                  Title: Deputy Director                  Telephone: (916) 322-1422                  Fax: (916) 322-0827                  Email Address: <a href="mailto:cprouvehd@hira.ca.gov">cprouvehd@hira.ca.gov</a></p>					
<p>4 Signatures: <i>[Signature]</i></p>					

Return Completed Department Report To:  
 Department of General Services  
 Procurement Division, Reports Coordinator  
 707 3rd Street, 1st Floor, Room 400, MS 2-1  
 Wood, Sacramento, CA 95895





Ethnicity, Race and Gender (ERG) Report

(Use June 2008)

Agency		Department																																																		
CA High Speed Rail Authority		All Contracts																																																		
Fiscal Year	Goods Column A	Services Column B	Construction Column C	Totals Column D																																																
2008/2010																																																				
<b>Ethnicity Classifications</b>																																																				
1	American Indian	\$	\$	\$																																																
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6	Other	\$	\$	\$																																																
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Comments: No information provided																																																				
<table border="0"> <tr> <td>Prepared By</td> <td>Name</td> <td>Approved By</td> <td>Name</td> </tr> <tr> <td></td> <td>Rachel Wenger</td> <td></td> <td>Vivian Jenek</td> </tr> <tr> <td></td> <td>Title</td> <td></td> <td>Title</td> </tr> <tr> <td></td> <td>ESA</td> <td></td> <td>Business and Procurement Officer</td> </tr> <tr> <td></td> <td>Telephone</td> <td></td> <td>Telephone</td> </tr> <tr> <td></td> <td>818-324-4458</td> <td></td> <td>818-324-4558</td> </tr> <tr> <td></td> <td>Fax</td> <td></td> <td>Fax</td> </tr> <tr> <td></td> <td>818-322-1827</td> <td></td> <td>818-322-0227</td> </tr> <tr> <td></td> <td>Email Address</td> <td></td> <td>Email Address</td> </tr> <tr> <td></td> <td>jenek@calstate.ca.gov</td> <td></td> <td>jenek@calstate.ca.gov</td> </tr> <tr> <td></td> <td>Signature</td> <td></td> <td>Signature</td> </tr> <tr> <td></td> <td><i>[Signature]</i></td> <td></td> <td><i>[Signature]</i></td> </tr> </table>					Prepared By	Name	Approved By	Name		Rachel Wenger		Vivian Jenek		Title		Title		ESA		Business and Procurement Officer		Telephone		Telephone		818-324-4458		818-324-4558		Fax		Fax		818-322-1827		818-322-0227		Email Address		Email Address		jenek@calstate.ca.gov		jenek@calstate.ca.gov		Signature		Signature		<i>[Signature]</i>		<i>[Signature]</i>
Prepared By	Name	Approved By	Name																																																	
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	West Sacramento, CA 95605																																																			
<p>ERG Form (Rev. June 2008)</p> <p>Important Note: The data contained herein was submitted voluntarily; therefore it may not accurately reflect the departments' overall contracting and purchasing activity.</p>																																																				

# **EXHIBIT D**

**Improvement Plan Outline for Small Business  
FY 07/08**

Prepared by: California High-Speed Rail Authority

- I. **Summary of Small Business Participation**  
*The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.*
  
- II. **Explain Why the Participation Goal Was Not Achieved**  
*In the 06/07 fiscal year the department did not require 25% participation from SB/MBs for several large scale contracts. The department awarded several large contract dollars for services that required businesses to have staff throughout the State and World to complete the requirements of the contract. For example the department required a Program Management that had a large staff which works throughout the State to handle the development of a statewide high-speed rail system.*
  
- III. **Plan to Enhance Contracting Opportunities for Small Business**
  - A. **Policy**  
*The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent.*
  
  - B. **Collaborative Efforts**  
*The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 07/08 fiscal year.*
  
  - C. **Contracting Practices**  
*Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.*
  
- IV. **Planning and Advocacy**  
*The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.*
  
- V. **Monitor and Continuously Improve**  
*The department will look quarterly at the awarded contracts during the 07/08 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.*

**Improvement Plan Outline for Small Business  
FY 08/09**

**Prepared by: California High-Speed Rail Authority**

- I. **Summary of Small Business Participation**  
*The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.*
  
- II. **Explain Why the Participation Goal Was Not Achieved**  
*In the 07/08 fiscal year the department did not require 25% participation from SB/MBs for sole-sourced and specialized contracts. The department awarded several large contract dollars for services that required businesses to have expertise in fields that are not common area. For example the department required legal counsel in Public/Private Partnerships and obtained services from a large law firm with experience and knowledge in that field. There were no SBs that had the level of expertise needed to fulfill our agency's requirement.*
  
- III. **Plan to Enhance Contracting Opportunities for Small Business**
  - A. **Policy**  
*The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent.*
  
  - B. **Collaborative Efforts**  
*The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 08/09 fiscal year.*
  
  - C. **Contracting Practices**  
*Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.*
  
- IV. **Planning and Advocacy**  
*The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.*
  
- V. **Monitor and Continuously Improve**  
*The department will look quarterly at the awarded contracts during the 08/09 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.*

**Improvement Plan Outline for Small Business  
FY 08/09**

**Prepared by: California High-Speed Rail Authority**

- I. **Summary of Small Business Participation**  
*The department's purchasing officer is required to make an effort to find and use SB/MBs for purchases and services. The purchasing officer promotes the use of SB/MBs in the selection criteria for multiple bids. The department had over 25% SB participation for contracts that relation to services and goods used in the daily operation of the agency. However, there was less than 25% SB participation in statewide contracts specific to the development of a high-speed rail system.*
  
- II. **Explain Why the Participation Goal Was Not Achieved**  
*In the 08/09 fiscal year the department did not require 25% participation from SB/MBs for several large scale contracts. The department awarded several large contract dollars for services that required businesses to have staff throughout the State and World to complete the requirements of the contract. For example the department required three Environmental/Engineering contracts that required large companies that had specialization in transportation environmental work and could handle the development of a statewide high-speed rail system.*
  
- III. **Plan to Enhance Contracting Opportunities for Small Business**
  - A. **Policy**  
*The department will actively promote the use of SBs in purchasing and contracting activities toward achieving a participation goal in excess of 25 percent. Contracts will be advertised in the new Bidsync system that has more resources for Small Business to connect with large vendors as sub-contractors on contracts.*
  
  - B. **Collaborative Efforts**  
*The department will inform all employees involved with contracts to be aware of the 25% SB participation goal for the 08/09 fiscal year.*
  
  - C. **Contracting Practices**  
*Our department will include the following language in contract bid advertisements: "The State encourages Small Businesses to apply." Our department will continue to look for products and services being supplied by SBs.*

**IV. Planning and Advocacy**

*The department will search for SBs for bids on services and goods and SBs will be encouraged to apply for contracts with the agency.*

**V. Monitor and Continuously Improve**

*The department will look quarterly at the awarded contracts during the 08/09 fiscal year to determine if the SB participation is being met. If the 25% is not reached, the department will determine what measures need to be taken to increase SB participation.*

# **EXHIBIT E**

**California High-Speed Rail Authority  
Questions and Written Responses  
For  
RFQs HSR08-03, HSR08-04, & HSR08-05**

Q1) Is it permissible to include appendices that are not part of the official SOQ and therefore outside the 60-page limit?

**A1) Yes.**

Q2) Do the subconsultant transmittal letters and DVBE forms count within the 60-page SOQ limit? If no, is it permissible to include this information as part of an appendix that is outside of the 60-page SOQ limit?

**A2) No. Yes it is permissible to include the DVBE forms as part of an appendix.**

Q3) What are the schedule expectations for completion of preliminary engineering and environmental review (leading to one or more RODs) for the 3 corridors?

**A3) The timeline for the completion of the preliminary engineering and the environmental review (leading to the ROD) is 36 months from the issuance of the NOI/NOP.**

Q4) What are the Authority's funding expectations for the 3 corridors in the 2008-2009 timeframe, so that appropriate workplans can be developed?

**A4) At this time, without a state budget for the 2008/09 fiscal year, it is difficult to accurately answer this question. Most likely the contracts for all three corridors will not be fully executed until early October, followed by a period of mobilizing the teams, leaving approximately 6 months to begin the preliminary engineering and environmental work.**

Q5) For 03 Altamont Corridor: Assuming Proposition 1 is passed by the voters, what are the Authority's expectations regarding bond fund availability to the Altamont Corridor for engineering and environmental review, with respect to the \$9 billion for the high speed train program and \$950 million for regional projects that provide connectivity?

**A5) If Proposition 1, in its current form, passes the Authority will continue the planning efforts in this corridor as described in the Bay Area – Central Valley Program EIR/EIS utilizing proceeds from the \$9 billion bond measure. The \$950 million regional funds have been allocated by formula and will be administered by the CTC.**



Q6) Acumen is a DBE. We provide strategic planning and project control services and other transportation consulting needs. Since there is no formal pre-bid meeting or sign in sheet, can you provide a list of expected consultants one might expect to go after this RFQ so we can offer them our services and discuss teaming, or offer to provide our services to their firms?

**A6) Lists of those that requested the RFQs from the State Contracts Register as of July 21, 2008 are provided as an attachment. Please note however, these lists do not include those that downloaded the RFQs from the Authority's website, contacted the Authority staff directly, or took hard copies at CHSRA board meetings.**

Q7) Is there a list that we could post our services for this RFP as a DBE professional services firm?

**A7) No.**

Q8) If there is not a list for DBE's, can one be created and posted? We would suggest the website or reference to a link.

**A8) Firms can post advertisements directly to the RFQ announcements on the California State Contract Register (<http://www.cscr.das.ca.gov/cscr/>).**

Q9) The RFQ states that there is a 60 page limit not including resumes. Since the transmittal letters (for both prime and subconsultants) are not part of the technical qualifications, could they please also be excluded from the 60 page count?

**A9) Yes.**

Q10) Can we assume that the tab dividers will not count as pages in the 60 page count?

**A10) Yes.**

Q11) Can we exclude the DVBE Standard Form 840 from the 60 page count limitation?

**A11) Yes.**

Q12) Will a one-page *Table of Contents* count towards the 60 page count?

**A12) No.**

Q13) Page 1 of the RFQ states the RFQ number as **Number HSR08-03**, and this same number (**HSR08-0003**) is affixed in the upper right-hand corner of the RFQ pages, however, on page 3 under "SOQ Package Submittal Instructions", it states that the SOQ must be submitted in a sealed package labeled as follows: **RFQ Number HSR08-0001**. Can you please clarify and advise as to which number is the correct number to be used for this submission?

**A13) The correct contract number to be used for this submission is HSR08-03.**

Q14) What are the specific requirements and documentation needed to satisfy the Financial Responsibility criteria?

**A14) Firms proposing on the RFQs are required to carry professional liability insurance and should provide evidence of at least \$5 million in professional liability insurance. Firms should also provide a copy of their certified overhead statement and present their last two years of certified financial statements.**

Q15) Can the Financial Responsibility portion of the SOQ be excluded from the 60 page count?

**A15) Yes.**

## CALIFORNIA HIGH SPEED RAIL- SPEAKING POINTS

### STATE OF CALIFORNIA – SPEAKING POINTS

#### **Background:**

California's small and disadvantaged businesses are comprised of architecture, engineering, planning, construction, training, public relation, wholesale, supplier, retail and other service providing firms. These firms comprise the broad experience needed to successfully deliver the California High Speed Rail.

California small and disadvantaged businesses are the backbone of California's private sector work force. These small businesses provide nearly most of the private sector jobs. Small and disadvantaged businesses:

- Comprise over 1 million businesses enterprises
- Employ more than 6.8 million people (98%) according to the Governor's Executive Order
- Spend more per-dollar within California than large businesses
- Utilize local banking
- Perform local hires

These are the small businesses that President Obama and Congress continually speak of and whose ARRA funds were earmarked to assist in stimulating new jobs

Since Proposition 209 (Anti-Affirmative Action Bill) passed by voters in 1996, California's goals for minority and women contracting were completely dropped. As a result small businesses:

- Decreased in numbers by approximately 40% of these firms ceased to exist within the subsequent 10 years (1996-2006)
- California currently has a 5% Disabled Veteran Business Enterprise Goal
- California has a 25% "aspirational" Goal for California Government Agencies due to a Governor's Executive Order that is signed annually by the Governor.
- APAC file complaint against CHSRA with USDOT on December 8, 2010 accusing CHSRA discriminatory against SBE/DBE/MBE.
- FRA (Federal Rail Administration) had agreed with APAC's complaint and responded to APAC's complaint by requiring CHSRA to implement the following SBE program:

**Required Action by CHSRA**

As a result of our investigation, we are requiring the Authority to take the following actions:

1. The CHSRA must specify which officer is responsible for its DBE program. The officer must have direct, unfettered access to the CEO of the CHSRA and sufficient resources to discharge the duties of the position. This person must be identified in writing to the FRA within 60 days of the date of this letter.
2. The CHSRA must conduct an availability and disparity study. This study must be completed no later than one year from the date of this letter and be submitted to the FRA. The CHSRA may use information from relevant existing transportation services' disparity studies as part of this effort, with approval from the FRA. The CHSRA may use information from the National Cooperative Highway Research Program (NCHRP) Report 644, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* and NCHRP Synthesis 416, *Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs*. Both of these documents are available at the Transportation Research Board's website <http://www.trb.org/Main/Home.aspx>.
3. The CHSRA must establish, maintain and make available to interested persons a directory identifying all firms eligible to participate as small and/or disadvantaged businesses in its program. This directory shall be developed within 60 days from the issuance of this letter and its development shall be confirmed in writing to the FRA. In the listing for each firm, the directory must include the firm's address, phone number, and the types of work the firm has been certified to perform as a small and/or disadvantaged business. The directory must be updated at least annually and made available to contractors and the public on request and published on CHSRA's website.
4. The CHSRA must establish a small and disadvantaged business development program (BDP) within 60 days from the issuance of this letter to assist firms in gaining the ability to compete successfully in the marketplace. The CHSRA has the option of creating this BDP separately or as a "mentor-protégé" program, in which another firm is the principal source of business development assistance.
5. The CHSRA must establish a Business Advisory Council within 60 days of the issuance of this letter to better communicate issues and concerns of the small and disadvantaged businesses to the CHSRA Board.

## **DID YOU KNOW?**

- 1. THE CALIFORNIA HIGH SPEED RAIL PROJECT IS ONE OF THE MOST RACIST PROJECTS IN AMERICA AND HAS A TITLE VI RACIAL DISCRIMINATION COMPLAINT FOR EXCLUDING MINORITY FIRMS FILED WITH THE US SECRETARY OF TRANSPORTATION and US DEPT. OF JUSTICE**
- 2. THE PROJECT HAS LESS THAT 4% SMALL BUSINESS PARTICIPATION IN VIOLATION OF THE 25% SMALL BUSINESS PARTICIPATION PER THE GOVERNOR'S EXECUTIVE ORDER**
- 3. THE PROJECT HAS VIOLATED PUBLIC DISCLOSURE, PUBLIC ADVERTISING AND AWARDED PROJECTS EXCLUSIVELY TO DESIGN FIRMS WITHOUT THE KNOWLEDGE OF THE DESIGN INDUSTRY.**
- 4. MAJOR STIMULUS FUNDS ARE BEING AWARDED THAT WILL BENEFIT PRIMARILY INTERNATIONAL FIRMS AND FOREIGN COUNTRIES WITH LITTLE BENEFIT GOING TO THE COMMUNITIES THAT ARE SUPPOSED TO BE STIMULATED**

### **Problem**

The United States is currently in the worst economic crisis since the largest and deepest economic failure of the 20<sup>th</sup> Century-The Great Depression of 1929-1939. American taxpayers are increasingly frustrated with President Obama and elected officials due to increasing unemployment figures, loss of jobs to outsourcing in many third-world countries and lack of new jobs being created on American soil.

The California High Speed Rail (CHSR) Project, being built with massive federal tax- payer dollars, is expected to exceed \$46 Billion which includes \$3.05 Billion in federal stimulus funds already awarded.

The Project is intended to be good for the U.S. economy by stimulating job creation for American Workers. Already there is little impact with this Project and is actually having (or will have) on Small, Disadvantaged Business Enterprises (DBEs), Women (WBE) or Disabled Veteran Business Enterprises (DVBE). It is unknown the impact the Project has or will have on the millions of unemployed people in California..

Where does “Buy America” fit in this Project? Will this project be a repeat of the San Francisco/Oakland Bay Bridge where most of the manufacturing and construction services are outsourced and performed by foreign countries?

The Federal Rail Authority (FRA) is part of the U.S. Department of Transportation (DOT) but is not required to comply with 49 Code of Federal Regulations (CFR) Part 26- the Disadvantaged Business Enterprise (DBE) Program as was required years ago ( approximately 1978) with the Northwest Corridor Amtrak High Speed Rail Project between Washington and Boston. This is a major loophole to the detriment of minority businesses and American workers and will do little to stimulate the California economy. It will literally take an *Act of Congress* or a *Presidential Executive Order* to right this wrong. 49 CFR must be added to the ISTEA Re-authorization in 2011.

Although FRA is not under CFR Part 26, it must comply with Title VI – Civil Rights Act of 1964.

- The CHSR- is the largest public works infrastructure project in the nation
- The CHSR has largely excluded minority and women owned businesses from contracting opportunities
- The CHSR has contracted out to 134 large majority-owned firms – most are out-of-state and out-of-the country. Only 12 are small and micro businesses for a total of \$18, 482,858 (3.54%) of \$521,889,746 (96.46%) dollars contracted to large firms. To date, CHSR has reported “0” dollars to minority businesses (DBEs) for the last 4 years (2006-2010) according to California Department of General Services.
- As of October 2010, the CHSR has received \$3.05 Billion in federal funds
- The Federal Stimulus Funds are earmarked for stimulation of jobs at the local level. How the contracts are awarded to-date stimulating the local economies in California? How many jobs have been created with these funds?
- The CHSR is in direct violation of Title VI of the 1964 Civil Rights Act and its regulations which prohibit discrimination against minorities in public contracting
- The CHSR is in direct violation of Title VI of the 1964 Civil Rights Act and its regulations on Environmental Justice which mandate that the benefits and adverse impacts of transportation investments be shared fairly and equitably among all affected communities including low income and minority communities. Participation includes involvement by individuals in the planning and construction phases of the project. In CHSR’s case, the Hispanic/Latino Community (36% of California’s population) will be the most impacted due to the 800 miles (Sacramento to San Diego) cutting through the state’s heavy Hispanic populated areas of Central California..
- The United States Attorney General in a September 27, 2010 memo reiterated that federal agencies ensure that grant recipients (Department of Transportation (DOT) and Federal Rail Administration (FRA in CHSR’s case) do not discriminate”

**Associated Professionals and Contractors (APAC), Inc.**

- APAC is a California non-profit 501 (c)6 business association (Incorporated in August of 2010)
- Members of APAC's Coalition include trade associations, human care organizations, grass roots advocates, businesses and individuals throughout California
- APAC is outraged at the blatant discrimination of minorities in the CHSR Project. and will pursue all avenues to expose the CHSR's prejudicial contracting practices
- APAC filed a Complaint with the U.S. Department of Transportation (DOT) against the California High Speed Rail for violation of Title VI – Civil Rights Violations.
- APAC's Complaint asks for an immediate stop funding to the CHSR.
- APAC's Complaint asks for a thorough investigation of the CHSR regarding Title VI Violations
- APAC demands transparency in all of CHSR Project contracting



U.S. Department  
of Transportation

1200 New Jersey Ave., SE  
Washington, D.C. 20590

**Federal Railroad  
Administration**

September 15, 2011

Fedex Number: 7975 1456 4875

Roelof van Ark  
Chief Executive Officer  
California High-Speed Rail Authority  
925 L. Street  
Suite 1425  
Sacramento, CA 95814

Re: DOT Complaint Number: 2011-0065  
Associated Professionals and Contractors v. California High-Speed Rail Authority

Dear Mr. van Ark:

This is the final decision with respect to the above referenced complaint filed on December 8, 2010, against the California High Speed Rail Authority (CHSRA or Authority). In the complaint, the Associated Professionals and Contractors (APAC) alleged discrimination by the CHSRA for its "lack of minority-owned business participation in the development of the high-speed rail." The Federal Railroad Administration (FRA), Office of Civil Rights (OCR) of the U.S. Department of Transportation (DOT), has now completed its investigation. This letter is to inform you of the results of our investigation.

#### **Allegation**

"California is in the process of constructing a high-speed rail system, with massive financial assistance from the federal government. The project is expected to cost in excess of \$43 billion, making it the country's largest public infrastructure project. The federal government is anticipated to fund nearly half of the project, with \$3.05 billion in federal stimulus funds already awarded, and an additional \$15-17 billion expected to be awarded before project completion. Yet as this enormous public works project gets underway, it has become apparent that the state agency responsible for its oversight is largely excluding minority-owned businesses from the contracting opportunities that the project brings. Through a restrictive procurement system and a *laissez-faire* attitude, the California High-Speed Rail Authority ("CHSRA") is funneling nearly all contracting dollars to large majority-owned firms. CHSRA's practices are in direct violation of Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibit federal funding recipients from engaging in unjustified practices that exclude minorities."<sup>1</sup>

<sup>1</sup> Complaint, APAC v. CHSRA, page 1.



**Jurisdiction**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, prohibits discrimination on the basis of race, color and national origin in Federally-funded programs and activities. The DOT and its operating administrations enforce Title VI and investigate complaints against recipients of financial assistance from DOT. The CHSRA is a recipient of Federal financial assistance from DOT through FRA and, therefore, Title VI applies to its federally funded programs and activities and the FRA has jurisdiction over it. *See* 49 C.F.R. Part 21.

**The Complainant**

The Complainant is the Associated Professionals and Contractors, a non-profit organization founded to "encourage, develop and support Disadvantaged Business Enterprises ("DBEs") and other businesses traditionally excluded from equal opportunity."<sup>2</sup> The Complainant is represented by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. More than eighty individual businesses provided information during our investigation.

**The Recipient**

The CHSRA is the California state agency established to develop and implement high-speed intercity rail service. *See* California High-Speed Rail Act (S.B. 1420, Chapter 796 of the California Statutes of 1996).

**Background**

Our investigators reviewed information and data provided by the Complainant, the CHSRA and the California Department of General Services (DGS), Procurement Division. In an effort to clarify information provided in documentation sent by the Complainant, FRA investigators also interviewed representatives from nine firms. We also used information gathered from conversations held with representatives from CHSRA ancillary to the complaint (while providing technical assistance).

**Factual Analysis**

According to DOT's records, FRA entered into two cooperative/grant agreements with the CHSRA in 2002 and 2003. Cooperative agreement number DTFRDV-02-II-60026 was for the preparation of environmental documentation for the California statewide high-speed rail system. Cooperative agreement number DTFRDV-03-II-60032 was for the final environmental impact report/environmental impact statement, implementation planning and public outreach for the California high-speed train system. These cooperative agreements provided funds in the amount of \$2.5 million and were expended during the period of 2002 through 2006. Each grant had the

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<sup>2</sup> Complaint, APAC v. CHSRA, page 8, II Jurisdictional Facts, A. Complainants.

following clause related to small business utilization:

**Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.**

FRA encourages the Grantee to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. Part 26) in carrying out the Project.

In implementing its High-Speed Intercity Passenger Rail Program (HSIPR) as authorized by the Passenger Rail Investment and Improvement Act of 2008, FRA has entered into two additional cooperative agreements with the CHSRA. Agreement Number, FR-HSR-0009-10-01-00, was executed on September 23, 2010, and amended on December 29, 2010 (FR-HSR-0009-10-01-01) and again on August 8, 2011 (FR-HSR-0009-10-01-02). Agreement Number, FR-HSR-0037-11-01-00, was executed on June 9, 2011. The original cooperative agreement covers funds appropriated in the American Recovery and Reinvestment Act of 2009 and the second addresses a portion of the funds appropriated in the FY 2010 Department of Transportation Appropriations Act that have been allocated to the CHSRA.

The original cooperative agreement, FR-HSR-0009-10-01-00, between FRA and CHSRA contained a clause in Section 11, Paragraph g, which is identical to the clause in the 2002 and 2003 cooperative agreements above.

This clause was revised in amendment number 2 to the cooperative agreement and now states:

- 1) The Grantee agrees to (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.
- 2) An example of a best practice under (b) above would be to incorporate key elements of the Department's Disadvantaged Business Enterprise (DBE) program (See 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a grantee, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is continuing to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal.

- 3) The Grantee must provide FRA a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of this Agreement. If the Grantee is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

This cooperative agreement addresses implementation of the high-speed rail program, principally environmental assessment work and construction of a segment of the system in the Central Valley of California, assuming environmental approvals are secured. The period of performance is August 17, 2010 through December 31, 2012, with the provision that funds can be expended for activities back to February 2009. According to the FRA Grant Manager, CHSRA has not expended funds retroactively. This agreement was amended on December 29, 2010 to extend the period of performance to September 30, 2017.

The second cooperative agreement (FR-HSR-0037-11-01-00) also contains the updated Section 11. Paragraph g. This second agreement addresses the development of positive train control in the San Francisco to San Jose section of the high-speed rail system and has a performance period of August 1, 2011, through August 31, 2012.

On October 13, 2010, the Director, OCR, sent a letter to all High Speed Rail program grantees, including CHSRA, congratulating their entry into the High-Speed Intercity Passenger Rail Program. In the letter, the Director asked for information related to how the grantee would comply with the agreement section concerning small business. On December 17, 2010, CHSRA responded saying that the Authority operates under State of California contracting laws for Small Business Enterprise (SBE) and Disabled Veterans Business Enterprise (DVBE) participation. The Deputy Chief Executive Officer stated that CHSRA was operating under the goals of 3% for DVBE per California Public Contract Code § 10115(c) and 25% for SBE under Governor Schwarzenegger's Executive Order #S-02-06. She said the contracting agent, DGS, oversees implementation of the goals.

In this same letter, CHSRA committed to:

1. Develop a formal policy regarding responsibility to promote diverse business involvement.
2. Develop a process to engage and promote participation by all sectors of business to include small business and disadvantaged business enterprise.
3. Work with California Department of Transportation (Caltrans) and DGS to develop a Business Advisory Council.
4. Work with DGS and Department of Commerce's (DOC) Minority Business Development Agency (MBDA) to have outreach strategy.
5. Develop an integrated tracking mechanism.

In January 2011, the FRA OCR asked for information related to the demonstrated efforts made by the grantees to reach out to DBEs and small businesses concerning the high-speed rail program. Grantees were asked to provide a brief narrative describing the project and current

state of progress, including contract award amounts to small and disadvantaged businesses expressed in dollars and as a percentage against the total awards and contract dollars (payments) made to the reported contractors. On March 4, 2011, the Deputy Chief Executive Officer of CHSRA replied that CHSRA was developing outreach strategies and was working with other agencies to give small businesses access to prime contractors. She again reiterated that CHSRA was following the State of California guidelines for contracts with small businesses and disabled veterans business enterprise. CHSRA said that they only began tracking DBE participation upon receipt of federal funds. The attachment to the letter listed the supplier diversity goals for 2010 as 20% for small businesses and 5% for DVBES. CHSRA stated that in CY 2010 it achieved a 6.9% (\$89,903,687) for small businesses and DBEs and that the total percentage for all special small business and veteran programs was 12.87% (\$167,740,238).

The Complainant provided information it gathered related to small business utilization by CHSRA over the prior six fiscal years. APAC states that only 3.54 percent of contracting dollars have gone to small or micro businesses during that time frame. In the February 22, 2011, letter signed by Deputy Attorney General Steven Green from the State of California responding to the allegations in the complaint, Mr. Green states that the complaint "focuses on perceived DBE deficiencies in the Authority's contracting during many prior years before federal funding..."<sup>1</sup> It now appears that the information provided by the State of California is not entirely correct as FRA and CHSRA entered into cooperative agreements during the 2002-2006 time frames involving \$2.5 million in federal funding. Using the documentation CHSRA provided to the complainant referencing those time frames, it appears that from 2004-2007, CHSRA expended \$332,215,167. Of that, \$7,980,620 went to Small Business/Micro Business. This equates to 2.4 percent of the expenditures. During the same time frame, CHSRA made reports to the DGS that reflect how many of these small/micro business contracts went to minority and women owned businesses. The reports were blank with statements ranging from "No information provided" to "the agency does not have a system to track the information" to "we are developing a system to track this in the future."

The Complainant alleges that the CHSRA's contracting approach, while facially neutral, has a disparate impact on minority-owned businesses. The Complainant points to several factors in support of its claim, the first of which is that the CHSRA did not conduct adequate outreach and consequently, many businesses were unaware of bidding opportunities until it was too late to act. A large number of the Complainant firms alleged that they never heard of CHSRA contracting opportunities at the time they were put out for bid or learned so late in the process that they could not compete in a meaningful way. The Complainant also points out that the proposed design contracts were not unbundled into smaller packages that small and disadvantaged businesses would be equipped to handle as prime contractors. Of the small and disadvantaged businesses that worked on the project so far, a few have reported experiencing prime contractors that have failed to make payments to subcontractors in a timely fashion and a moving target of expectations and time tables.

Of the 80 firms that provided information to the Complainant, most of the firms never heard of or saw any advertisement on contracting opportunities with the CHSRA. Thirty-one of these firms provided written information about their experiences with the CHSRA. The information

<sup>1</sup> February 22, 2011, letter from California DOJ to Calvin Gibson, page 2, second paragraph.

reflected the experiences of those firms in three categories: those that never heard or saw any opportunities, those that heard of contracting opportunities but were unsuccessful in securing work and those that secured work on a contract but experienced difficulties or concerns.

Of the thirty-one firms that provided written information, FRA OCR staff interviewed representatives from nine small and minority businesses about their specific experiences. Of these nine firms, only three secured work on a contract. Of the other six, either they never heard of any contracting opportunities or did hear of contracting opportunities but were unable to secure any work on any of the contracts. The representatives stated that the CHSRA did not do any outreach to small businesses until after the complaint was filed. They also said that the CHSRA did not use the same procurement processes that other state agencies used – such as advertising opportunities on BizSync or posting future opportunities on their website. Some of the representatives felt that the CHSRA participation in the Small Business Conference that was held in Los Angeles in April 2011 was too late. They said that the prime contractor firms set their teams together far in advance of a request for quote (RFQ) coming out and by the time the RFQ comes out, it is too late for small businesses to get on a team.

A number of the representatives said that when they approached the CHSRA about the issue, they were told that CHSRA could not do any outreach, especially to small businesses, because CHSRA was too small and does not have staff for that. One of the representatives pointed out that at a conference held in Los Angeles in April 2011, the Chief Executive Officer attended and gave a presentation, but did not stay around after his presentation to hear any of the comments made by the community members or small businesses. The representatives said this was one more example where the CHSRA does not seem to care about small and disadvantaged businesses. Another representative said the Chief Executive Officer gave a presentation at the Hispanic Chamber of Commerce in May 2011, and when asked how many small Hispanic businesses were working on the CHSRA contracts, the Chief Executive Officer said he didn't know, but stated that the CHSRA had not spent any federal money yet.

Some of the representatives expressed concern that the large firms selected as prime contractors were not headquartered in California or even in the United States. They said if this money being invested in High-Speed Rail was to stimulate the United States economy, it appears that this is going overseas and not helping the local economy. One representative said that the CHSRA has said this is a high-tech thing and that small businesses cannot do the work nor do they have the expertise to do the work. This representative said that many of these small businesses have worked on other rail projects in California – like BART and Metro Rail or throughout the country – like the Northeast Corridor project, so this assumption by CHSRA was unwarranted.

Of the three firms that secured work on a contract, each reported experiencing problems. The first firm was a minority/woman-owned firm that provides civil and environmental engineering and construction management services. The firm was only successful in obtaining a small subcontract on one of the teams because someone at the prime contractor knew the representative personally. The firm completed the whole process with the prime contractor that submitted information for two segments. One of the segments won, but the representative is concerned that their firm will not receive any more work as the person at the prime contractor that knew of the minority/woman-owned firm, has since left the prime firm. Their firm has been told to hold off

until fiscal year 2013 before they will do any more work. During the firm's participation on the contract, payments were extremely slow. As of May 2011, they had not been paid since September 2010 and they were told that it was because the federal budget was not passed.

The second firm that received work on a contract was a subcontractor 3 or 4 tier from the prime contractor. It is a small environmental firm that has worked on rail projects since the early 1980s. The representative said that once they started the contract, the prime contractor kept changing the schedule and deadlines. The representative said the firm was completing the work assigned to it when the prime contractor brought in a larger firm (another prime firm) to "help" their firm but the larger firm ended up taking over the job. The prime contractor did not fire their firm but gave the work to the other prime firm who still has not finished the job years later. The representative said that the prime contractor is still using their name and certification on the contract but the firm is not doing any work. The representative also said that the firm was not paid on time or at all. When the representative went to CHSRA about the lack of payments, CHSRA said it was an issue between their firm and the prime contractor. They were told by the Project Management Team (PMT) to continue working on the job even if there was no money or they were going to be taken off the job. The representative said that if there was a problem with getting money from the state, then the prime contractor should stop all work until the money issue was resolved. The representative also said that the CHSRA was blaming overruns on the small businesses but the real reason was mismanagement by the PMT and all the changes to the work. According to the representative, the company that replaced their firm on the project had been sanctioned by a rail company and another rail company is currently in the process of sanctioning them. The representative stated that because of the lack of payments and delay in payments, the firm is on the brink of going out of business.

The third firm was a subcontractor on the contract and had hired 4 subcontractors including the second firm listed above. The representative said that the Project Management Company went through seven PMTs from January 2007 to December 2009. They said that the project changed and was constantly a moving target, work stopped and started, there were "unbelievable" deadlines that were alleged to be to comply with federal funding and the firm's employees were harassed by the current PMT. It became clear that this firm then became the scapegoat on the project. The PMT told them they did not know what they were doing and that they were bringing in another firm to help them. That firm (another prime contractor) came in and took over everything. However, that new firm still has not met the deadlines that their firm was told were essential. During the firm's time on the contract, it was not paid on time or at all. The firm's owner had to drain her retirement account and insurance policy, rack up credit card debt and borrow from family members to keep the business afloat. The representative said their firm and the employees that work for the firm individually supported the project of high-speed rail in California, but they were slapped in the face when the PMT posted a letter on the Project Management's website (that all companies on the project could see) that lambasted the firm and their lack of work. The representative said they have contacted their lawyer about the lies in the letter. Additionally, the representative said that since their work on the project, the reputation of the firm has been tarnished with the city planners they worked with because of all the changes made on the project. The representative said that the CHSRA and the prime contractors connected with the project do not have a clear understanding of how non-payment and slow payment affects the small businesses that work on the projects.

During the conversation on June 10, 2011, a staff member of the FRA OCR was called by the CHSRA Outreach Coordinator and asked to participate in a meeting that included the procurement person and a contractor. The meeting was on developing the process for small businesses. During the meeting, the FRA staff member was questioned about the requirements for a DBE program and reminded that California has Proposition 209 which prohibits race-conscious small business programs and goals. The FRA staff member mentioned that OCR was still waiting for their plan. The CHSRA stated they were unaware of any requirement to submit a plan. The FRA staff member also mentioned the requirement and goal for small business utilization attached to the Governor's Executive Order (EO) and they said that the EO does not apply to them. However, according to the December 17, 2010, letter signed by the Deputy Chief Executive Officer, the CHSRA is operating under the State of California contracting laws for Small Business Enterprise and Disabled Veterans Business Enterprise (to include the Executive Order #S-02-06 which has a 25% goal for small business utilization. Again, in the March 4, 2011, letter, the Deputy Chief Executive Officer stated that the CHSRA follows the guidelines of the State of California for contracting for SBE and DVBEs. It appears that there is a disconnect between the official statement and the actual understanding of CHSRA's responsibilities as it relates to small businesses.

FRA recognizes the specific California constitutional provision that prohibits state action that involves any preferential treatment based upon race or gender. Article I, Section 31 of the California Constitution, adopted through the 1996 passage of Proposition 209, prohibits the State from classifying individuals by race or gender, including utilizing such classifications in the awarding of public contracts. *Coalition for Economic Equity v. Wilson*, 110 F.3d 1431, 1440 (9th Cir. April 08, 1997), opinion amended and superseded on denial of rehearing *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir. Apr 08, 1997), as amended on denial of rehearing and rehearing en banc (Aug 21, 1997), as amended (Aug 26, 1997), stay denied, *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, (9th Cir. Aug 26, 1997) and stay denied *Coalition For Economic Equity v. Wilson*, 521 U.S. 1141, (Sep 04, 1997) and cert denied *Coalition For Economic Equity v. Wilson*, 522 U.S. 963 (Nov 03, 1997); *Ht-Voltage Wire Works, Inc. v. City of San Jose*, 12 P.3d 1068, 1070-71 (Cal. 2000). The full effects of this provision applied during the period prior to CHSRA receiving Federal funds and to activities carried out solely with state funds. However, section 31(h) provides an exception for Federal funding eligibility, though it only applies when Federal funds are contingent on complying with a race conscious requirement.

The CHSRA stated in its correspondence to FRA in February 2011 through the California Attorney General, that it was integrating DBEs into the tracking system to monitor compliance with existing California laws concerning small business and disabled veterans business enterprises. The CHSRA also indicated that it was developing by-laws and working with the Caltrans, DGS and considering working with the California Small Business Roundtable to develop a Business Advisory Council to better communicate issues and concerns of the small and disadvantaged business communities to the CHSRA Board.

In the same February 2011 correspondence, the CHSRA, stated that it was "working with DGS and the Minority Business Development Agency of the U.S. Department of Commerce to

develop an outreach strategy so that small businesses have access to larger prime contractors and such contractors gain access to the expertise of smaller businesses, including conducting events for this purpose throughout the state. In addition, the Authority will provide training for existing contractors in the goals and requirements for small business participation.”<sup>4</sup> At the conclusion of the investigation, the CHSRA had not provided any specific plan or information related to their processes and procedures; however, a plan has now been provided.

### Legal Analysis

Title VI prohibits discrimination on the basis of race, color, or national origin in connection with a program or activity that receives federal financial assistance. Complainant’s basis for seeking relief under Title VI is based on the alleged disparate impact of CHSRA’s procurement system, which complainants claim “disproportionately excludes minority-owned businesses” with no legitimate justification.

To establish discrimination under a disparate impact scheme, an investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI. *Larry P. v. Riles*, 793 F.2d 969 (9<sup>th</sup> Cir. 1981). The agency must show a causal connection between the facially neutral policy and the disproportionate and adverse impact on a protected group.

Complainants concede that the CHSRA’s procurement system is facially neutral. Complainants allege that there has been “virtually no minority business participation on CHSRA contracts. The FRA investigation established that there was some participation by minority subcontractors, albeit at a very low rate. Some of the subcontractors reported problems with management practices and prompt payment.

No one has attempted to do an availability study to establish the availability of minority and woman-owned contractors. In the absence of accurate current availability data, there is no data from which we can conclude that the CHSRA’s contracting practices have a disparate impact on women-owned and minority-owned contractors. The FRA investigation also established that CHSRA unquestionably has had little commitment to collecting accurate statistics on the amount of contract dollars it awards to women-owned and minority owned contractors.

Absent an availability study, it is not possible for us to establish a violation of Title VI. However continued business practices such as those employed by the CHSRA in implementing the project coupled with a failure to complete, in a timely fashion, formulation of a coherent policy for small and disadvantaged business utilization and inclusion could potentially result in a violation in the future. Our concern is that by the time a future complaint was investigated, many opportunities for small and disadvantaged business participation will have been foreclosed. Because of this, we are requiring the CHSRA take action in accordance with the existing cooperative agreement between FRA and CHSRA as a condition of receiving continuing Federal funds.

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<sup>4</sup> February 22, 2011, letter from Deputy Attorney General Steven Green, page 3, second paragraph



### Required Action by CHSRA

As a result of our investigation, we are requiring the Authority to take the following actions:

1. The CHSRA must specify which officer is responsible for its DBE program. The officer must have direct, unfettered access to the CEO of the CHSRA and sufficient resources to discharge the duties of the position. This person must be identified in writing to the FRA within 60 days of the date of this letter.
2. The CHSRA must conduct an availability and disparity study. This study must be completed no later than one year from the date of this letter and be submitted to the FRA. The CHSRA may use information from relevant existing transportation services' disparity studies as part of this effort, with approval from the FRA. The CHSRA may use information from the National Cooperative Highway Research Program (NCHRP) Report 644, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program* and NCHRP Synthesis 416, *Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs*. Both of these documents are available at the Transportation Research Board's website <http://www.trb.org/Main/Home.aspx>.
3. The CHSRA must establish, maintain and make available to interested persons a directory identifying all firms eligible to participate as small and/or disadvantaged businesses in its program. This directory shall be developed within 60 days from the issuance of this letter and its development shall be confirmed in writing to the FRA. In the listing for each firm, the directory must include the firm's address, phone number, and the types of work the firm has been certified to perform as a small and/or disadvantaged business. The directory must be updated at least annually and made available to contractors and the public on request and published on CHSRA's website.
4. The CHSRA must establish a small and disadvantaged business development program (BDP) within 60 days from the issuance of this letter to assist firms in gaining the ability to compete successfully in the marketplace. The CHSRA has the option of creating this BDP separately or as a "mentor-protégé" program, in which another firm is the principal source of business development assistance.
5. The CHSRA must establish a Business Advisory Council within 60 days of the issuance of this letter to better communicate issues and concerns of the small and disadvantaged businesses to the CHSRA Board.

Rather than provide comments on the draft plan submitted by CHSRA, it must file within 60 days from the issuance of this letter a revised comprehensive plan to comply with Section 11, Paragraph g, of the cooperative agreement between FRA and CHSRA. The plan should address how the CHSRA will comply with the updated clause included in the cooperative agreements and must also address:

- Prompt payment of subcontractors by prime contractors and timely resolution of the payment issues.

- Alternative acquisition strategies and procurement structures to facilitate the ability of consortia or joint ventures consisting of small businesses to compete for and perform prime contractor contracts.
- The methodology to set goals for small and disadvantaged business utilization.
- The methodology to set goals for high-speed rail vehicle manufacturers.
- The process for assuring that when CHSRA has established an overall contract goal for small and disadvantaged business participation, it awards every contract only to a bidder/offeror that makes good faith efforts to meet it. The plan must describe how CHSRA will determine that a bidder/offeror has made a good faith effort.
- Replacement of a small and disadvantaged business as a subcontractor by the prime contractor as alleged by the Complainant representatives.
- The methodology to count small and disadvantaged business participation toward the goal.
- Certification standards and procedures. FRA encourages CHSRA to work with the California Uniform Certification Program (UCP) concerning certification matters.
- The methodology for resolving disputes concerning the implementation of the plan.
- Plans to publicize RFQs and its deadlines and where to publish announcements.
- How to ensure that small businesses are aware of the opportunities in sufficient time to submit a meaningful bid.

The CHSRA should consider 49 C.F.R. Part 26 in developing its plan. The Authority will provide the FRA Office of Civil Rights quarterly updates on these actions.

#### **Conclusion**

We are committed to resolving this matter in a productive and amicable manner. Please call Ms. Rosanne Goodwill at (202) 493-6010 if you have any questions.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected under Title VI. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

**We would like to thank your staff for being cooperative and helpful during this investigation. I am looking forward to working with you to resolve these matters expeditiously.**

**Sincerely,**

A handwritten signature in cursive script that reads "Calvin Gibson".

**Calvin Gibson  
Director  
Office of Civil Rights**

**cc: Oren Sellstrom  
Steven Green**



Asian Pacific Islander  
SMALL BUSINESS PROGRAM

www.apisbp.org

October 21, 2011

The Honorable Mick Mulvaney  
Chair, Subcommittee on Contracting and Workforce  
House Small Business Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Judy Chu  
Ranking Member, Subcommittee on Contracting and Workforce  
House Small Business Committee  
U.S. House of Representatives  
Washington, DC 20515

Re: Small Business Committee Hearing  
"Land of Opportunity: Pursuing the Entrepreneurial American Dream"

Dear Representatives Mulvaney and Chu,

Thank you for holding the Small Business Committee Hearing in Pasadena on October 17, 2011. As Rep. Chu so well knows, the San Gabriel Valley is a very appropriate location as it is the gateway to the United States for so many people who are pursuing the American dream. The testimony that we heard provided compelling stories of the needs of entrepreneurs and the efforts to meet those needs.

The Asian Pacific Islander Small Business Program provides technical assistance to entrepreneurs interested in starting, maintaining or expanding their small and micro businesses. We focus on serving low-income entrepreneurs, particularly those from Asia. We provide one-on-one consulting, training and workshops in Japanese, Korean, Tagalog, Thai and several Chinese dialects. For the last 7 years we've operated a U.S. Small Business Administration Women's Business Center (WBC) through which we target our services to women entrepreneurs. We help underserved entrepreneurs throughout Los Angeles County. We perform at a very high level, as evidenced by our selection by the SBA from over a hundred WBCs across the country for the sole 2011 National Women's Business Center of Excellence Award.

It's our experience that technical assistance for New American entrepreneurs is a critical component in helping them achieve their American Dream. Studies have shown that 80% of small businesses that receive training and technical assistance from groups such as ours are still in business after five years. This compares to an overall five-year business survival rate of less than 50%.

I believe your colleagues on the House Appropriations Committee understand this. I'd like to specifically thank Congresswoman Jo Ann Emerson, Chair, and Congressman José E. Serrano Ranking Member, of the

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Subcommittee on Financial Services and General Government, House Appropriations Committee, for their support for the SBA and in particular the Program for Investment in Micro-Entrepreneurs (PRIME). The PRIME program specifically targets low-income entrepreneurs and microenterprises, and as such is an important vehicle to provide technical assistance to New Americans. Your colleagues approved \$5 million in funds for this program in FY2012, yet the Senate Appropriations Committee allocated zero dollars for this program.

I am requesting that you also support funding for the PRIME Program, as it is vital to supporting entrepreneurship and job creation in this country, particularly for New Americans.

Thank you again for holding the committee hearing in Pasadena and for this opportunity to share our experience with you.

Sincerely,

Ronald M. Fong  
Director

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