



## 2021-2022 Legislative Initiatives

**COMTO** was established to ensure opportunities and to provide maximum participation in all the modes of the transportation industry for minority individuals, veterans, people with disabilities and certified Disadvantaged/Minority and Women-Owned Business Enterprises (D/M/WBEs) through leadership training, professional development, scholarship and internship funding, political advocacy, partnership building and networking opportunities.

The members of our 34 **COMTO** chapters across the country are individuals, students, transportation agencies, corporations, labor unions, academic institutions, industry non-profits and Historically Underutilized Businesses (HUBs). We are the presidents and chief executive officers who determine the direction of major transportation systems and the mechanics and operators who ensure the safe passage of millions of transportation riders every day. In short, **COMTO** actively advocates on behalf of hundreds of thousands of people in the U.S. who are transportation professionals, contractors, laborers and customers.

### Legislative Message

#### U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program

**Changes/Efficiencies/Goals Increase** – **COMTO** would like to see a revitalization of the USDOT Office of Small and Disadvantaged Business Utilization (OSDBU) and the USDOT Departmental Office of Civil Rights.

- **Improvements and Efficiencies** – **COMTO** would like to see closer oversight by DBE officers to avoid fraudulent front companies, through more vigorous training programs for certification and compliance officers. We would like to include a stronger, clearer definition of “good faith efforts” and fewer opportunities to seek waivers from DBE goals by majority-owned firms. We recommend improved electronic application submission and allow information sharing between agencies to expand reciprocity between those agencies. The Surface Transportation Act of 1982 set DBE participation goals on federally-funded projects at 10%. That has not changed in almost 40 years. Although local transit jurisdictions do have flexibility to adjust that goal depending on the demographics of the region, **COMTO** would recommend a change in the regulation to increase DBE/MBE/WBE participation goals to 40%. We believe it is also important to apply not just project goals but also to implement specific goals in under-utilized trades and businesses.
- **Small Disadvantaged Business Size Standards** – **COMTO** supports action that would conform the Department of Transportation’s DBE Size Standard with the Small Business Administration Standards. Since the Federal Aviation Administration (FAA) Reauthorization of 2018 already included language that applied SBA size standards to FAA funded projects, a simple and straightforward amendment to the CFR would correct the anomaly in current law that discriminates against Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) DBEs. This is a simple fix to a big problem: in the interest of fairness and consistency and the survival of small minority owned businesses, the USDOT should use the FAA’s model and use SBA’s size standards when making determinations with regard to small business status. We believe the three-year average revenue ceiling for USDOT small business – now at \$26.29 million -- should sync with the ceiling of SBA – \$39.5 million, with increases and inflationary adjustments accordingly.
- **Increase DBE Personal Net Worth (PNW) Ceiling** – Like the DBE/SBE ceiling, current PNW levels discourage DBE growth, quashes successful graduation rates and limits bonding and insurance opportunities. DBE firms are caught in a Catch-22: at the PNW ceiling of \$1.32 million currently in effect and unchanged for several years, owners cannot obtain the bonding necessary to respond competitively to bids on large transportation construction projects. And if they do obtain the net worth to secure the requisite bonding, those firms’ owners immediately become ineligible for the DBE program. It is just common sense to set a PNW grounded in reality and adjusted for inflation, and in recognition of the



challenges small and minority businesses face in the bonding and sureties' market. In addition, current policy disincentivizes business owners from saving for retirement; therefore, we would like to see exclusion of restricted 401(k) retirement savings from the personal net worth calculation.

**Federal Railroad Administration (FRA) DBE Program** – COMTO respectfully requests implementation, via legislative or executive order, that FRA immediately implement a DBE program using the FHWA/FTA/FAA model. We advocate for consistency within the USDOT and the establishment of DBE participation goals on projects funded through the FRA and on monies funneled by FRA to state rail agencies – including High Speed Rail projects. When the DBE program was established as part of the Surface Transportation Act of 1982, the FRA funds were not made subject to DBE goals. The legislative history of this decision may be murky, but the consequences of this unfair policy are crystal clear. For the past 40 years, the FRA has dispensed taxpayer funds – including government-guaranteed loans – to public and private rail projects, with recipients having little accountability to minority communities and no consideration given to small and minority businesses. Again, this would appear to be a simple fix to a serious problem. An FRA DBE program would provide opportunities for new DBE start-ups, would mean millions of dollars for minority businesses, and would provide thousands of jobs for minority communities.

**DBE/SBE Mentor Protégé Program** – COMTO supports an incentivized USDOT-sanctioned program that would provide quantifiable benefits – rather than simply good-will – for majority-owned firms to mentor small, minority companies, e.g., tax credits and/or “points/credits” on bid evaluations if a mentor-protégé program is in place. Launching a DBE graduation and mentorship program would provide technical assistance in business finance, marketing, accounting, proposal writing, and navigating public procurement systems to small and mid-size businesses.

**Local Hiring Initiatives** – COMTO strongly supports language that would immediately restore the Local Hire Pilot Program established by the USDOT under President Obama; and canceled early in the Trump administration. We would like to see expansion of the program, based on data from the Pilot Program that empirically shows that projects using a local hire preference did not lower competition or increase bid prices. To the contrary, they strengthened local communities by helping to create good local jobs, increasing opportunities and greater equity for people of color, women, veterans, and others facing barriers to employment. COMTO is pleased to know that rebuilding America through racial and economic equity and incentivizing job creation through local hiring and job creation, particularly through infrastructure, is a priority for the Biden Administration.

**Safety Protocols for Front Line Transportation Workers and Public Transit Users** – One of the Nation's biggest and most immediate priorities is our response to COVID-19 particularly on how we measure racial equity. Many transit-dependent residents and commuters in the service sector and other lower salaried jobs, who are disproportionately minority and women, are forced to continue to use public transit throughout the pandemic. Similarly, front-line transit and transportation workers come from similar demographics and are disparately impacted by dangers of contact with COVID-19. We believe safeguards and protocols should be in place to protect these workers who ensure continued operation of the transportation systems and represent the communities and ridership served by public transit.

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