

Constructing Denver's New Airport: Are Minorities and Women Benefiting?

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**United States Commission on Civil Rights
Clearinghouse Publication 97**

July 1992

**A Summary Report of a Forum Held in Denver,
Colorado, June 21-22, 1991**

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Acknowledgments

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Introduction

In response to numerous citizen complaints, the United States Commission on Civil Rights held a forum in Denver on June 21–22, 1991. The purpose was to gather information about alleged discrimination against minorities and women in obtaining economic contracts and employment opportunities at the multibillion dollar Denver International Airport under construction. Because of their deep concern, a group of Denver citizens, including the Chairperson of the Commission's Colorado Advisory Committee, suggested that the Commission conduct such a forum.

Specifically, the Commission's Rocky Mountain Regional Office received complaints from Denver-area residents that minority- and women-owned construction firms had been discriminated against when they attempted to win contracts to help build the airport. It was also charged that minorities and women accounted for only a small percentage of the workers hired to construct the facility.

Denver government officials and others, however, expressed pride in their efforts on behalf of minorities and women seeking contracts and jobs at the new airport. Denver-area news media had been highlighting the controversy for months.

The statistics presented in table 1 show that minorities account for a sizable proportion of the population of both the City of Denver and the State of Colorado.¹

¹Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990. U.S. Department of Commerce, Bureau of the Census, Bulletin No. CB 91–100, Mar. 11, 1991, table 2. Population Distribution for the 10 Largest Incorporated Places in Colorado, by Race and Hispanic Origin: 1990, U.S. Department of Commerce, Bureau of the Census, Bulletin Number CB 91–88, Mar. 11, 1991, table 2.

TABLE I
Population Distribution by Race and Hispanic Origin, 1990 Census

	Denver		Colorado	
Asian, Pacific Islander	11,005	2.4%	59,862	18%
Black	60,046	12.8%	133,146	40%
Hispanic*	107,382	22.9%	424,302	129%
American Indian, Eskimo, Aleut	5,381	1.2%	27,776	09%
White	337,198	72.0%	2,905,474	882%
Other**	53,980	11.5%	168,136	5.1%
Totals	467,610		3,294,394	

* Hispanic persons may be of any race. Because they appear under several classifications, percentage totals exceed 100 percent.

** The category "Other" includes persons from mixed racial/ethnic backgrounds.

It is estimated that as many as 10,000 jobs will be generated before the new airport is ready to serve passengers in 1993. Businesses are competing for multimillion dollar contracts to construct the airport and for the right to operate concessions once the facility is in operation.

The scope of the project is extraordinary; for example, it is estimated that during construction 100 million tons of dirt will be excavated, enough to empty a ditch 10 feet wide and 10 feet deep from Denver to Boston. The facility will be the world's largest airport, covering enough square miles to contain both the Chicago O'Hare and the Dallas/Fort Worth airports. The Federal Government is contributing approximately \$500 million toward the construction costs, and the city is selling bonds to finance the remainder. Part of the work is funded exclusively by the City of Denver, part is funded exclusively by the Federal Government, and part is jointly funded.

A host of Federal, State, and city agencies is responsible for implementing the regulations and ordinances governing equal opportunity and nondiscrimination in all aspects of building and operating the new airport, including training, recruiting, and hiring workers; purchasing materials and equipment; and developing and certifying minority, women, and disadvantaged business enterprises.

The forum focusing on this complex project was not a judicial or an adversarial proceeding, but rather was intended to provide the Commissioners with an overview of the situation based on the information,

perspectives, and recommendations presented by the participants. Special efforts were made to include knowledgeable persons with a wide variety of responsibilities, experiences, and viewpoints. The 40 people²

²Commission Chairman Arthur A. Fletcher and Dr. Gwendolyn A. Thomas, Chairperson of the Colorado Advisory Committee, opened the forum. Other presenters were Penfield Tate III, administrative assistant, Office of the Mayor of the City and County of Denver; Mary A. DeGroot and Hiawatha Davis, Denver City Council; Theresa M. Donahue, director of research and legislation, Office of the City Auditor; Robert Miller, a director of Associated General Contractors of Colorado (AGCC); Shari Bathe, director of education and safety, AGCC; Charles Madison, statewide plan coordinator for the Colorado plan, AGCC; Jill English, Northeast Women's Center; Alice Daly, Mi Casa Resource Center; Gregory Kellam Scott, vice president and general counsel, Commercial Energies; John Garcia, president, Hispanic Public Affairs Committee; David Retland, president, Colorado Black Contractors Alliance; Derek Walker, Jay Walker Company; Vince McDonald, president, Blackington and Decker Company; Tom Jenkins, acting president and chief executive officer, Urban League of Metropolitan Denver; Jay R. Lower, executive director, Colorado Contractors Association, Inc.; Robert Greene, director of employment and training, Colorado AFL-CIO; Paul Richard, coordinator, apprentice outreach program, Colorado AFL-CIO; Judi Williams, assistant, Colorado AFL-CIO; Robert H. Russell, II, president, Sam Carey Bar Association; Richard Daniels, chief financial officer and board member, Colorado Black Chamber of Commerce; Benita A. Duran, project manager, New Airport Employment Office; Ann White, employment representative, New Airport Employment Office; David Ford, assistant project manager, New Airport Employment Office; Dave Bennow, Denver Job Service Veterans Unit; William R. Roberts, deputy mayor and manager, Denver Department of Public Works; Alexis Holdman, director, Denver Office of Contract Compliance; Clement H. Monge, manager, Civil Rights Office, Northwest Mountain Region, Federal Aviation Administration (FAA); June C. Radtke, acting district director, Office of Federal Contract Compliance Programs (OFCCP), Denver District Office, U.S. Department of Labor (DOL); Bernice Robles, regional quality auditor, OFCCP, DOL; Clayton W. Gibson, supervisory business opportunity specialist, Small Business Administration (SBA); Chris Chavez, business opportunity specialist, SBA; Jim Graham, manager, Fernandez and Associates; and John Dickover, senior contracting officer, Northwest Mountain Region, FAA.

An open session was held to hear from concerned individuals not specifically invited to the forum, but who wished to make statements relevant to the topic. These individuals were: Oscar Parra, Lawrence Lewis, Jeanie Farmer, Adelaida Gonzales, Tom Dodd, Freddy Brown, Dennis Tolz, Ron Bryant, Nathaniel Watson, Michaelangelo Trujillo, William Parson, Darcy Wilson, and Edna Mosley. The
(continued...)

who spoke at this 2-day meeting did so voluntarily. The forum was open to the public and to the news media.

The Commission has been granted broad jurisdictional authority in several areas, including studying and collecting information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; appraising Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of these same factors, or in the administration of justice; and serving as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of these factors.

The purposes of the Denver forum were to identify the major issues concerning possible discrimination that fall within the Commission's mandate and to obtain a preliminary assessment of the economic and employment opportunities for minorities and women at the new Denver airport.

This report does not contain verified data concerning civil rights compliance or related problems at the airport. The Commission staff did not conduct its own investigation of the charges. The report is simply a summary of information provided by presenters at the forum. This information points to possible areas where equal opportunity is lacking and calls attention to efforts designed to promote it. The report can serve as the basis for further discussion and investigation. Then a more comprehensive assessment can be made of the effectiveness of Federal, State, and city laws regarding nondiscrimination, and the degree to which such laws are being implemented.

The importance of the issues that surfaced and the information presented at the Commission's forum regarding opportunities for minorities and women extends far beyond Denver. The situation exemplifies concerns emerging in the construction industry nationwide.

Dr. Gwendolyn Thomas, Chairperson of the Colorado Advisory Committee, summarized the meaning of the airport construction:

²(...continued)

official record of the forum was held open until July 7, 1991, for those individuals wishing to submit written statements and other information.

This is an extremely important issue in our State, and it is crucial at this stage of planning and construction that those of us citizens who have historically been denied equal economic and employment opportunities be assured that they will be included as full partners.

The Commission will continue to monitor the issues raised during its Denver forum. The substance of this report will help inform the Commission's national study of racial and ethnic tensions and support ongoing efforts to monitor enforcement of civil rights laws by the U.S. Department of Labor, U.S. Department of Transportation, and other affected agencies.

Doors of Opportunity: How Open?

We are pleased to report that while our efforts are not perfect, substantial progress has been made.

Penfield Tate III, Office of the Mayor of Denver

...it depends on the people who are responsible for carrying it out as to how well we're going to do as a city.

Hiawatha Davis, Denver City Council

Two days of presentations clearly demonstrated that the intense controversy surrounding construction of the new Denver International Airport focused not so much on terminals, runways, and control towers themselves as on doors: specifically, on the doors of economic and employment opportunities to allow minorities and women to help build and operate the airport.

Minorities and women in Denver did not call for new ordinances, regulations, and policies as the solution to the serious problems they saw. Rather, they called for more aggressive, more effective enforcement of ordinances, regulations, and policies already in place. The Commission noted this important distinction.

Minorities and women who spoke at the forum raised a serious matter when they charged that officials responsible for contracts and jobs at the new airport lacked the will necessary to keep the doors of opportunity wide open. City Councilman Hiawatha Davis captured some of this widespread discontent when he said it was not enough for the Denver City Council to do its part for equal opportunity. "No matter how hard we fight on city council to adopt ordinances to require equal opportunity, it really comes down to the people who are responsible for carrying it out as to how well we're going to do as a city," Davis said.

Commission Chairman Arthur A. Fletcher summed up his frustrations on this issue of will when he told one higher ranking Denver official:

I think Denver knows what to do. Based on the ordinances and based on the process they seem to have put in place in some areas, they know what to do. I think the issue is going to come out to be, “Do they have the will to do it?” And from what I’ve heard the last 2 days, there’s anywhere from a flat-out, “No, they do not have the will to do it,” to a great big question mark. They can do it when it seems to be their advantage to do it, and then when it’s not clearly to their advantage to do it, they don’t get it done.”

Defending the Record

People with the power to open the doors of opportunity, primarily officials representing the City of Denver and various agencies of the United States Government, in addition to some speaking for union and contractor associations, defended their record. They contended that the doors of opportunity had been swung open to welcome minorities and women to participate in the jobs and contracts offered by this multibillion dollar project. Those defending the system presented statistics on job referrals and contract awards to support their claims. They also acknowledged some shortcomings. Nevertheless, their overriding message was clear: We have succeeded, not perfectly, but we have succeeded.

The Commission heard that the doors of opportunity are open from such people as the:

- Administrative assistant with the Office of the Mayor of Denver
- Deputy mayor and manager of the Denver Department of Public Works
- Director of the Denver Office of Contract Compliance
- Project manager for the New Airport Employment Office
- Associate director of aviation, New Denver Airport Construction Office
- Officials with three Federal agencies—the Federal Aviation Administration, the U.S. Department of Labor, and the Small Business Administration
- Officials with the Colorado AFL-CIO, the Associated General Contractors of Colorado, and the Colorado Contractors Association.

Other forum participants, however, presented a different viewpoint. This group included minority businessmen and women speaking for

themselves as individuals and representatives of such organizations as the:

- National Association for the Advancement of Colored People
- Sam Carey Bar Association, an affiliation of black attorneys
- Urban League of Metropolitan Denver
- Colorado Black Chamber of Commerce
- Coalition for Non-Traditional Employment for Women
- Hispanic Public Affairs Committee
- Colorado Black Contractors Alliance.

Minorities and women received support for their charges from one Denver city official, a representative from the Office of the Auditor, who cited the office's findings about widespread deficiencies in the city's compliance process from 1987 to 1989. Based on comments at the forum, it was apparent that minorities and women wanted the job referral system and contract award process dramatically overhauled.

Justified or not, the comments of many who spoke at the forum suggested that minorities and women had developed a serious mistrust of the officials in charge of dispensing jobs and contracts at the new Denver International Airport. The distrust did not happen overnight; it is deeply rooted in the community's past. It reflected a widespread sense that officials were resisting, that they were holding the doors of opportunity shut, and that they did not want change.

The controversy surrounding the airport did not take place in a vacuum. Rather, it was conducted within a context that included, among other elements, an important United States Supreme Court decision, special programs for minority-owned and women-owned businesses, and three major initiatives launched by the Denver government. The key points of that court ruling, the programs for business, and the major initiatives are discussed in the remainder of this section.

Supreme Court Decision

The Commission fully recognized that Denver officials faced a somewhat different situation in the wake of the U.S. Supreme Court ruling in the case of *City of Richmond v. J.A. Croson Co.*¹ (hereafter *Croson*). The Court decided that ordinances establishing minority set-aside efforts without sufficiently identifying the discrimination to be

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

remedied, and without adequately justifying the remedies selected, were in violation of the equal protection clause of the 14th amendment to the U.S. Constitution.

Specifically, the Court ruled invalid a City of Richmond set-aside plan requiring that minority contractors do 30 percent of the dollar amount of the subcontracting work in all city contracts. This was the first case in which a majority of the Court held that a race-conscious set-aside program at a State or local level would be judged by a "strict scrutiny standard."

In response to the decision, Denver officials, like their counterparts in other cities, had to revise their minority business enterprise and women business enterprise programs designed to help minorities and women obtain contracts. So in 1989 the city enacted an interim program in order to comply with the Supreme Court guidelines. Later, the mayor proposed and in September 1990 the Denver City Council approved a new ordinance that serves as the basis for the current goals for minorities and women.²

Ordinance 513 established a new city agency, the Office of Contract Compliance, to handle the work previously done through the affirmative action program of the Department of Public Works. The ordinance was intended to promote the best interests of Denver by helping to eradicate "the lingering effects of past discrimination and to prevent the City's own spending decisions from reinforcing and perpetuating the exclusionary effects of past discrimination."

The "Denver Disparity Study" completed for the Department of Public Works in 1990 provided much of the factual underpinnings for the new ordinance affecting women- and minority-owned businesses.³ That final report uncovered evidence of discrimination against minority- and women-owned enterprises in the construction, reconstruction, remodeling, professional design, and construction services industries. This discrimination involved both the public and private sectors.

The study was completed to comply with the *Croson* requirement that affirmative action programs undertaken by cities have as a justification the past conduct of the city. At the very least, they must show that the

²Denver, Colo., Ordinance 513 (Sept. 4, 1990).

³City and County of Denver, Colo., Disparity Study, June 22, 1990.

city has “essentially become a ‘passive participant’ in the system of racial exclusion practices by elements of the local construction industry.”⁴

Federal and Other Programs for Businesses

The City and County of Denver, through the Department of Public Works’ Affirmative Action Office, operates programs designed to provide minority-owned, women-owned, and disadvantaged-owned businesses an opportunity to participate in public works contracts. Because some of these programs rely heavily on Federal funding, they are required to be monitored by the Federal agencies involved.

One such agency, the Department of Transportation (DOT), provides funds to construct public works projects, such as airports, throughout the United States. By providing funds for the construction of the new Denver International Airport, DOT’s Federal Aviation Administration (FAA) is legally obligated to enforce Title VI⁵ of the Civil Rights Act of 1964.

Title VI, of the Civil Rights Act of 1964, prohibits companies or organizations that receive Federal financial assistance,⁶ such as grants,

⁴488 U.S. 720 (1989).

⁵Civil Rights Act of 1964 (Pub. L. No. 88-352; 78 Stat. 241) Compilation of Civil Rights Law by Committee on the Judiciary of the House of Representatives. The act states in part:

Sec. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. . . .

⁶Federal Assisted Programs: 49 C.F.R. 21.23 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964. Federal assistance includes: (1) Grants and loans of Federal funds; (2) The grant or donation of Federal property and interests in

(continued...)

loans, or contracts (other than contracts of insurance or guaranty),⁷ from discriminating based upon race, color, or national origin.

Under Title VI, the DOT/FAA is required to conduct and monitor compliance reviews and investigate individual complaints. DOT has an Office of Civil Rights located in the Office of the Secretary, and each major component within DOT also has its own Office of Civil Rights. These offices have primary responsibility for Title VI enforcement.

Components within DOT are called “modal administrations”⁸ and include the following: Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration (formerly Urban Mass Transit Administration, UMTA), Maritime Administration, National Highway Traffic Safety Administration, U.S. Coast Guard, and the Research and Special Programs Administration.

Each of these Offices of Civil Rights (OCR) is involved in the implementation of DOT’s internal Title VI Order 1000.12.⁹ This means

⁶(...continued)

property; (3) The detail of Federal personnel; (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) Any Federal agreement; arrangement, or other contract which has as one of its purposes the provision of assistance.

⁷42 U.S.C. 2000d §§ 601 & 602.

⁸“Modal administration” is DOT language referring to its various operating components which are in many respects like a small Federal agency inside the larger umbrella of DOT.

⁹This is an internal DOT order implementing the Title VI program. The order establishes the uniform minimum responsibilities of each operating element of this Department in implementing and enforcing the Title VI program, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from this Department.

The order states the purpose of the Title VI program of each operating element is to ensure (1) that each applicant for or recipient of Federal financial assistance is, and will continue to be, in compliance with Title VI, and (2) that the program or
(continued...)

that each modal administration's OCR staff should be involved in conducting compliance reviews of federally assisted programs and activities funded through grants, loans, and contracts and in investigating complaints filed against recipients of DOT's Federal financial assistance. Therefore, funds made available through the Federal Aviation Administration by means of grants, loans or contracts to an airport should trigger routine reviews of the recipients' compliance with Title VI. Responsibility for assuring compliance is with each modal administration.

DOT's modal administrations also have a special emphasis program dealing with minority business opportunities called the disadvantaged business enterprise program (DBE).¹⁰ DOT's regulations governing the operation of the DBE program are separate and apart from Title VI regulations.¹¹ Disadvantaged business enterprise, or DBE, means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.¹²

⁹(...continued)

activity for which Federal financial assistance is sought is consistent with the operating element's Title VI program. In this latter regard, the objective is to ensure among other things that: (1) the benefits and services of the program or activity are made available to, and are fairly and adequately distributed among, beneficiaries without regard to race, color, or national origin; (2) the location of existing or proposed facilities and the provision of services involved in the program or activity will not deny access to any person on the basis of prohibited discrimination; and (3) persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.

¹⁰Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223, 101 Stat. 1486. "Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available under subsection (a) in a fiscal year beginning after September 30, 1987, shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals."

¹¹49 C.F.R. Part 23.5(f).

¹²*Id.*

Under this special program, compliance reviews are done to determine violations of DBE regulations. Two primary areas reviewed are:¹³ (a) to determine whether applicants or recipients of Federal financial assistance discriminate against any business organization in the award of any contract because of the race, color, or national origin of its managers, employees, or owners; and (b) to determine whether applicants and recipients have taken affirmative action to ensure that minority businesses are afforded a fair and representative opportunity to do business.

Another major Federal agency charged with enforcing civil rights laws related to the construction of Denver's new airport is the Department of Labor, Office of Federal Contract Compliance Programs (DOL/OFCCP). The DOL/OFCCP is part of the Employment Standards Administration of the U.S. Department of Labor. Under Executive Order 11246,¹⁴ the DOL/OFCCP is given overall responsibility for coordinating and enforcing civil rights compliance by Federal contractors.

Executive Order 11246 places two major requirements on those who contract with the Federal Government: (a) to refrain from discrimination based on race, creed, color, sex, or national origin; and (b) to have an affirmative action program for minority and female protected group members. It provides the basis for Federal policy requiring nondiscrimination and affirmative action by Federal contractors.

¹³Department of Transportation Order 1000.12, 1-19-77, Chap. II, pp. II-1 to II-3.

¹⁴Executive Order 11246 creates equal employment opportunity and states, in part: "It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice. . . . Further, the Secretary of Labor shall be responsible for the administration of Parts II (Nondiscrimination in Employment by Government Contractors and Subcontractors) and III (Nondiscrimination Provisions in Federally Assisted Construction Contracts) of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof." This Executive order was issued by President Lyndon B. Johnson on Sept. 24, 1965.

The DOL/OFCCP implementing regulation is 41 C.F.R. chapter 60.¹⁵ The DOL/OFCCP has jurisdiction over all contractors and subcontractors with a Federal contract of \$50,000 or more and 50 or more employees¹⁶ and all Federal and federally assisted construction contracts (grants, contract, subcontract loans, insurance, or guarantees) in excess of \$10,000.¹⁷

The requirements of Title VI, the DBE program, and Executive Order 11246 are enforced through various means. For example, agencies receive and investigate employment discrimination complaints. They initiate compliance reviews to determine whether employers and institutions are complying with equal employment requirements. When the agencies find violations, they negotiate agreements to correct them, monitor compliance with the agreements, and initiate enforcement proceedings if negotiations fail. Enforcement may involve litigation to obtain court-ordered remedies or administrative proceedings to terminate Federal contracts.

In addition, agencies provide technical assistance to employers and the public to promote voluntary compliance with equal employment opportunity requirements and thus reduce the need for enforcement action. Finally, Federal agencies must coordinate their equal employment enforcement activities to avoid unnecessary inconsistency or duplication.¹⁸

Denver's minority and women business enterprises program (MBE and WBE) is governed by city ordinance. Goals committees provide advice about specific targets for MBE and WBE participation in the contracts. Specifically, ordinance 513 stipulates that 16 percent of the dollars spent for construction, reconstruction, and remodeling should go to MBEs and 12 percent to WBEs. The goals are based on availability and capacity of minority and women firms.

Companies bidding on projects are required either to meet the established goals or demonstrate that they have made a "good faith

¹⁵41 C.F.R. 60-1.1. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to Title VI of the Civil Rights Act of 1964.

¹⁶41 C.F.R. 60-1.40.

¹⁷41 C.F.R. 60-4.1.

¹⁸U.S. Commission on Civil Rights, *Federal Enforcement of Equal Employment Requirements* (Clearinghouse Publication 93, July 1987), p. 2.

effort” and explain why the goals could not be achieved. Contractors are required to maintain accepted goals for the duration of the contract.

Three Major Initiatives

In addition to the DBE, MBE, and WBE programs, Denver’s approach to equal opportunity issues also included three key initiatives. Penfield Tate III, speaking on behalf of then-Mayor Federico Peña, said the city had been working with local minority and women chambers of commerce and with local minority and women contractor associations in an effort to maintain their participation in the new airport opportunities. “We are pleased to report that while our efforts are not perfect, substantial progress has been made,” Tate told the Commission.

Three specific city initiatives, Tate said, were intended to create the additional opportunities:

(1) *Contractor/Mentor Program*: This initiative pairs a minority- or woman-owned business with a majority-owned one to give the MBEs or WBEs some needed experience. It is also intended to address the fact that many MBEs and WBEs had great difficulty in bidding successfully for the huge multimillion dollar contracts.

“Many of the barriers,” Tate said, “have nothing to do with ethnicity or gender of the principals of the firm, but are in fact barriers created by the sheer size and scope of some of the airport contracts.” Many smaller companies, Tate said, lacked the experience to compete effectively for the larger contracts. To give them experience, the contractor/mentor program pairs MBEs and WBEs with majority-owned firms. Seven majority-owned firms and seven MBEs and WBEs were enrolled in the program at the time of the Commission’s forum. Evaluations made at that time, according to Tate, indicated that the program was succeeding.

(2) *Preapprenticeship Program*: This program takes local residents not qualified for union or nonunion apprenticeship programs and provides them with the minimal training and skills they need to enroll in the established apprenticeship programs. It had been determined, Tate said, that many people interested in construction jobs at the airport did not have the experience necessary for finding work. The city had been working with contractors to identify ways to increase the representation of minorities and women in their work force and in their apprenticeship programs.

(3) *Contractor Bonding Program*: The bonding requirement had been a major obstacle in the path of MBEs and WBEs seeking construction

and design contracts at the new airport, according to Tate. These firms often lacked sufficient working capital or collateral to obtain bonding to compete effectively. As a result, the city established a pool of \$5 million to be available to help contractors meet the bonding requirements. The new airport was setting aside that amount from bond proceeds to fund the revolving pool of dollars. Tate told the Commission that this program would be fully implemented shortly.

Program Audit for 1987–1989

The audit of those programs indicates that there are, however, serious weaknesses in them.

*Theresa A. Donahue, Denver's
Office of the Auditor*

...we enacted our new ordinance which I think addressed many of the concerns that were noted in their report.

*Alexis Holdman, Denver's
Office of Contract Compliance*

The Commission forum did not mark the first time that the Denver government had been the target of sharp criticism for its oversight of affirmative action efforts. An audit of the Denver Department of Public Works' affirmative action programs covering the years 1987–1989 cited numerous deficiencies in the compliance record on behalf of women and minorities.¹ That audit, conducted by the Denver Office of the Auditor and submitted in 1990, made extensive findings and proposed 46 recommendations to deal with various shortcomings.

Work at the new Denver airport had not begun in 1989, the final year reviewed for the audit. Yet, the Commission wanted to know more about the findings and recommendations because the Department of Public Works is responsible for overseeing the operation of the Denver airport. Unfortunately, the Commission was unable to get a clear answer to its central question about the audit: specifically, which of the 46

¹Office of the Auditor, City and County of Denver, Program Audit for Years 1987, 1988, 1989, Part I (August 1990) (hereafter referred to as City and County of Denver Program Audit).

recommendations had been implemented since the release of the auditor's report.

Commission Chairman Arthur A. Fletcher said of the audit findings:

That's pretty devastating, though, for an outside organization like mine to come in and have somebody hand us a report that identifies 46 areas in which there needs to be anything from mild to considerable improvement in the management of that office [the Denver Office of Contract Compliance].

Chairman Fletcher asked Alexis Holdman, director of the Denver Office of Contract Compliance, "Have you talked to those folks who did the audit?" Holdman answered, "Not recently," and Fletcher followed up by asking, "When was the last time?" Holdman said, "Probably around the time that we enacted our new ordinance, which I think addressed many of the concerns that were noted in the report."

Fletcher also asked Holdman, "Are you saying that the 46 recommendations have been taken care of?" Holdman said, "I can't respond to all 46 without looking at all 46 and addressing them item by item. But I would say that there are a considerable number of their concerns that were addressed by the ordinance."

William R. Roberts, deputy mayor and manager of the Denver Department of Public Works, cautioned the Commission that in attempting to understand the audit, it was imperative to understand Denver's political divisions. In Denver, the auditor is elected separately from the mayor, who has a cabinet to oversee daily operations of the city. Given this political division, the city attorney advised that the auditor had no responsibility to audit the affirmative action programs in the Department of Public Works.

Nevertheless, Roberts said, his department had successfully dealt with some of the problems cited in the audit. Roberts did not specify which items had been corrected, and he said he did not believe all of them had yet been corrected.

Theresa M. Donahue, director of research and legislation for the Office of the Auditor, explained the audit findings and recommendations to the Commission, but said she did not know which problems cited in the 1990 report had since been resolved. In her closing remarks, Donahue added:

let me emphasize that the audit findings reflect the city's programs in 1987 through 1989. The Department of Pubic Works chose not to respond to the

report and no followup audit has been done. So I cannot tell you if, and how, the program and achievements have changed since that time.

Audit Background

When the review was conducted, the Denver Office of Affirmative Action was in the Department of Public Works, but was later moved to the mayor's office. The name was changed to the Office of Contract Compliance. The audit was conducted at the request of Wellington Webb, who was then auditor. Webb was elected Mayor of Denver shortly after the Commission held its forum in mid-1991.

The Office of Contract Compliance is required to:

- enforce the city's minority and women business enterprise program and the equal opportunity law as it relates to construction and professional services contractors doing business with the city
- enforce the federally mandated disadvantaged business enterprise program governing federally assisted contracts at the airport, including leasing contracts
- determine if construction contractors bidding on the project had made good faith efforts to achieve the city's equal employment opportunity (EEO) goals before any contract is awarded
- enforce the law on a continuing basis once the contract is awarded.

The audit acknowledged that the Department of Public Works' job was made more difficult by the Supreme Court's *Croson* decision, which required significant changes in the program. The analysis found, however, among other things, that:²

- The city had failed to have a Federal Aviation Administration-approved affirmative action plan in place from September 1988 through 1989, although failure to do so could jeopardize the city's receipt of airport improvement program grants.
- The city had not enforced the equal employment opportunity requirements and programs governing employment by city construction contractors.
- It appeared that there had been mixed results in efforts to achieve established minority, women, and disadvantaged business enterprise goals. It was impossible to determine whether the goals were achieved, because figures on the actual participation of these businesses were not

²City and County of Denver Program Audit, Executive Summary.

maintained by the Affirmative Action Office. The audit characterized this as a serious deficiency.

- The good faith effort process required for firms not meeting established project goals was criticized by MBE, WBE, and DBE contractors interviewed for the audit. Minority and women business owners described the process as completely ineffective, because the city had not ensured that prime contractors give them adequate notification of projects. Therefore, they were unable to submit bids. The audit found that some majority contractors regarded the cost of complying with the process as too high.

Donahue, who conducted the audit, told the Commission that it was important to understand the city's goals for 1987-1989, and then determine if the goals for women- and minority-owned business participation were reached. The goals and achievements represented the percentage of construction and professional services contract dollars going to MBE, WBE, or DBE firms.

From January 1987 to June 1988, Denver's annual construction and professional services goals were 30 percent of the dollars going for MBEs and 6 percent of the dollars going for WBEs. From July 1988 through April 1989, those goals were changed to 25 percent MBE and 12 percent WBE construction goals, and to 20 percent and 15 percent, respectively, for MBE and WBE professional services goals. No annual goals were in place from May through December 1989 because the city had legal concerns following the U.S. Supreme Court's *Crosson* decision.

Individual project goals, however, had been set for the FAA program from 1987 through March 1989. In April 1989, the goals were reduced to 14 percent for DBE construction and 16 percent for DBE professional services contracts. Because the city did not have a current FAA-approved plan in place from October 1988 through 1989, those annual goals were not FAA-approved goals.

Record on Meeting Goals

Based on information in the audit, Donahue said:³

- In 1987 and 1988 for city-funded projects, the city met or exceeded its MBE goal for professional services contracts, but fell substantially short of the MBE construction goals.

³Ibid., p. 36.

- In 1989, when annual goals were not in place, the MBE participation dropped significantly both in the professional services and construction areas.

- WBE construction goals were exceeded in 1987 and 1988, while professional services goals were not achieved either year.

- In 1989, the city greatly exceeded its goals on FAA-funded construction and professional services contracts.

Donahue emphasized, however, that the figures might be misleading. The city's data on participation were based on commitments made by prime contractors when the city gave them the notice to proceed with a project. Donahue described several problems: (a) The data did not reflect change orders in construction contracts, although the audit indicated that change orders raised the total construction contract dollars by more than 20 percent and professional services contracts by 18 percent; (b) the data included contracts never carried out; and (c) there was no standard procedure for verifying that prime contractors paid the subcontractors and suppliers the amount promised.

Distribution Among Minority Firms

The program audit examined how dollars were distributed among minorities owning construction and professional services firms and found:⁴

- Black- and Hispanic-owned firms each received 41 percent of the MBE dollars in the FAA program going to minority firms in 1989. Blacks received \$5.597 million and Hispanics received \$5.618 million out of the MBE total of \$13.523 million.

- Asian American firms were paid 22–28 percent of the dollars awarded to minorities in city-funded contracts in 1987, 1988, and 1989, and 17 percent of the 1989 FAA program dollars.

- American Indian firms received virtually no contracts.

The audit also determined that a large portion of the MBE and WBE dollars spent on city-funded projects were going to only a few firms:⁵

- In 1989, for example, one WBE received more than half the dollars that went to such WBE firms.

⁴Ibid., pp. 41, 42.

⁵Ibid., p. 28.

- In 1989, 4 of the 58 MBE firms that received city dollars accounted for more than half the MBE dollars.

Good Faith Efforts

In Denver, a firm cannot be awarded a public works contract unless it meets the individual MBE or WBE goal, or shows that it had made a good faith effort to do so. In examining city-funded contracts, Donahue said, it was determined, based on a review of randomly selected contracts, that the goals were not achieved in 52 percent of the contracts reviewed for 1987–1989, including 83 percent of the 1989 contracts.

Documentation concerning good faith efforts provided by firms awarded contracts varied greatly. Most of the MBE and DBE owners interviewed indicated that they had encountered problems with the good faith effort process. For example: They were not notified of contracts within their areas of expertise. Sometimes a notice of concrete work was sent to roofers. The notices, even when appropriate, frequently arrived 1 or 2 days before the deadline or even after the deadline had passed. “They might have been called by the prime contractor the day before the deadline asking if they planned to bid, but they would have to decline because they did not have time to prepare a bid at that point,” Donahue said.

Part of the problem, Donahue informed the Commissioners, stemmed from the vague language contained in Denver’s own “good faith” requirements about what constituted adequate and timely notice to MBE and WBE firms. Overall, she found widespread dissatisfaction with the “good faith effort” process, even among majority firms. More specific guidelines would help everyone better understand the requirements. “There really aren’t guidelines, specific written guidelines laid out as to how you show that you have in fact met that good faith standard,” Donahue said.

Equal Employment Opportunity Goals

The equal employment opportunity goals established in 1982 were still in force at the time of the audit. These goals were: for minorities, 21.7 to 23.5 percent for each trade, and for women, 6.9 percent in each trade. The audit sought to determine if the EEO goals were met.

Based on a survey of randomly selected contracts, 33 percent of the contractors met both minority and women employment goals in 1987 and

1988, and 45 percent met both in 1989.⁶ The measure used to determine compliance was the overall percentage of minorities and women, without regard to their employment by trade; the women employees, for example, may have been largely clerical workers, rather than in the building trades.

The goals were not established by racial and ethnic categories, but this breakdown was examined in the program audit for informational purposes for randomly selected contracts. This analysis determined that nonwhite females represented only 0.9 percent of the employees in 1987, 1.5 percent in 1988, and 1.2 percent in 1989; while from 1987 to 1989, nonwhite, non-Hispanic male employees accounted for less than 5 percent each year.⁷ Hispanic males, however, accounted for 37.6 percent of the contractors' work forces in 1987, 43.8 percent in 1988, and 23.7 percent in 1989.

⁶Ibid., p. 34.

⁷Ibid., p. 35.

Equal Employment Opportunity

Additionally, this week our office was recognized by FAA for our accomplishments in our DBE program, including having the best certification system in the region.

*Alexis Holdman, Denver
Office of Contract Compliance*

Let me ask the question again, “How do you know what’s happening at the airport?”

Commission Chairman Arthur A. Fletcher

Despite repeated questioning, the Commission was unable to obtain detailed statistics about enforcement efforts to ensure compliance with equal opportunity requirements at the Denver International Airport. Federal and local offices were involved in various aspects of the project, but no one was collecting statistics on the overall situation.

The statistics that were kept often had only marginal value for the Commission’s investigation of opportunities for minorities and women at the airport. The Federal Office of Contract Compliance Programs, for example, collected statistics on contractors for the seven-county Denver area. The Commission, however, needed very precise information about the contractors’ work at the airport. Areawide data were too general to be fully useful.

The Commission heard optimistic assessments of the situation at the airport, but only incomplete data were presented in support of those assessments. At the same time, minorities and women were expressing deep dissatisfaction. They demanded more aggressive enforcement efforts to ensure compliance with equal opportunity requirements.

The Commission also wanted to see more compelling evidence than was presented that those responsible for monitoring compliance had taken a very assertive, proactive approach to their work.

Lack of Incentive

Part of the problem, according to several speakers, stemmed from the fact that managers and administrators in the city administration lacked strong incentives to enforce compliance. Those responsible, City Councilman Hiawatha Davis said, should be denied raises and promotions when they do not insist on full compliance. Instead, in Denver, these people had advanced in their careers. "Now, those supervisors and those managers are still moving up the ladder," Davis said. "They are still, in fact, able to look at their files and their personnel records, and there are no letters of reprimand and no disciplinary action."

No one, Davis said, was really in charge of trying to assure that firms receiving contracts made solid affirmative action efforts on behalf of minorities and women. The fragmentation problem, Davis added, was also serious. "We don't have a comprehensive, unified approach and strategy. We don't have an organization that has the capability to really manage and enforce all these laws."

John Garcia, president of the Hispanic Public Affairs Committee, voiced similar criticisms. For 3 or 4 years, Garcia said, members of his organization had met with the mayor, airport officials, and other city officials to explain their concerns, but had accomplished nothing. "There was always a very defensive posture on their part of saying to us that if we were more competitive, we would receive some of the action," Garcia said. Such statements were made repeatedly by these officials, and Hispanics naturally took offense, Garcia recalled.

The affirmative action effort in place in Denver, Garcia said, was flawed. "You can fudge it all over the place," he claimed, leaving much room for interpretation to the people who will decide who receives contracts, jobs, and concessions.

The 30 percent goal for DBEs, Garcia said, was realistic, but its effect was to create a backlash among decision-makers determined to interpret the ordinances to suit themselves.

Like Davis and Garcia, Richard Daniels, chief financial officer and board member of the Colorado Black Chamber of Commerce, also traced much of the problem to career employees working for the City of Denver. These people, Daniels charged, worked from the assumption that providing opportunities and contracts to the minority community was contrary to the city's best interests.

That was the situation, Daniels claimed, although the mayor had issued a memorandum in 1990 announcing that he wanted the City

Council and the city to take steps to resolve the problems involved in institutionalized racism in Denver. Despite that memorandum, however, not much had changed, Daniels said.

Social Programs

The airport director, Daniels told the Commission, had operated as if the goals for providing business to minority entrepreneurs were merely social programs “and following that concept, they aren’t warranted within the framework of a project such as the airport.” Daniels said the mistaken idea that minorities view the airport construction as a source of social programs was unfortunate. “Again, the sad part is that it’s stupid and it doesn’t make sense. It’s not to the benefit of the City of Denver,” Davis said.

Commission Chairman Arthur A. Fletcher said he shared Daniels’ concern:

You touched on a sensitive nerve where I’m concerned with respect to this attitude about affirmative action, employment opportunities for minorities, as well as business opportunities for minorities, being considered by important decision-makers as social programs.

Later in the forum, William E. Smith, associate director of aviation, New Denver Airport Construction Office, was asked by a Commissioner to comment on the charge that the airport director considered such requirements to be welfare programs. Smith answered, “He certainly hasn’t advised me of same. He’s told me to make sure that we did the best we could do. And he pushes us on that.”

Local and Federal Roles

Because funding for the new airport construction comes from varied sources, both local and Federal offices have been charged with monitoring how well businesses comply with the equal employment opportunity provisions of their contracts for work there. At the local level, the Denver Office of Contract Compliance monitors compliance with Denver’s ordinance 513.¹ At the Federal level, the Department of Labor’s Office of Federal Contract Compliance Programs monitors compliance by contractors with contracts of \$10,000 or more that are

¹Denver, Colo., Ordinance 513 (Sept. 4, 1990).

fully or partially federally funded. The Federal Aviation Administration monitors compliance with the requirements of the agency's equal employment opportunity programs and the Department of Transportation's disadvantaged business enterprise program. Officials monitoring compliance at the city and Federal levels told the Commission that the programs were working well.

Denver Office of Contract Compliance

The Denver Office of Contract Compliance is responsible for implementing and monitoring the utilization and performance of the disadvantaged business enterprises, minority business enterprises and women business enterprises programs. Alexis Holdman, director of the office, said the monitoring included:

- reviewing documents for accurate goals
- attending prebid meetings to inform potential bidders of OCC project requirements
- evaluating good faith efforts
- monitoring payments and work force composition
- conducting site visits to determine if contractors are performing work
- acting as a liaison or advocate for DBEs, MBEs, and WBEs.

Holdman reported that the Denver Office of Contract Compliance, in conjunction with airport officials, had instituted a number of procedures to ensure that DBEs had an equitable opportunity to participate, including: publication of solicitations in newspapers approximately 10 days before prebid, preproposal meetings, and approximately 20 days prior to bid opening or proposal submission; identification of the project goals; and distribution of five sets of plans to minority and women organizations.

Many other positive steps have been taken, according to Holdman, who said that "the programs and procedures have been successfully refined and improved to meet the ever-changing needs of minority, women, and disadvantaged businesses." Holdman also said that it was important to note that the Denver airport project is leading the Northwest Mountain Region in terms of accomplishments for the Federal Aviation Administration. "Additionally," she pointed out, "this week, our office was recognized by FAA for our accomplishments in our DBE program, including having the best certification system in the region."

The City and County of Denver, Holdman said, measured its DBE performance by FAA's evaluation, and the last FAA compliance audit report had shown the city to be in compliance. That report was completed in 1989.

One Commissioner asked Holdman to identify the major weaknesses that hampered the ability of her office to monitor compliance concerning the use of minorities and women. Holdman responded that, given the size of her staff, it was impossible to be on the work site 24 hours a day. However, the Denver Office of Contract Compliance staff monitored certified payrolls and visited the work sites to see who was performing work. In terms of the DBE program, Holdman said, her office had found 100 percent compliance.

The Commission also wanted to know what could be done to improve the operations of the Office of Contract Compliance or to upgrade the office's image. Holdman answered that she did not see a problem with image. She would not recommend any changes, except perhaps to publish more information about what the office does because there is some misperception about the role of her office. Holdman added that she did not see any confusion inside the city government about the role of the Office of Contract Compliance, but acknowledged that perhaps some existed in the community.

The Commission also wanted information about the enforcement mechanisms used by Holdman's office to persuade recalcitrant contractors to comply. Holdman reported that only once or twice during her 2 1/2 years in office had payment been denied to a noncomplying contractor through the Department of Public Works.

Federal Role in Contract Compliance

The Federal role in compliance was described by June Radtke, acting district director for the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), with the Denver District Office.

Rather than being rigid and inflexible in dealing with contractors, Radtke said, OFCCP emphasized communication and as a result, contractors cooperated. "What I mean," Radtke said, "is that if we find a violation, the contractors realize that the liability will cease as soon as they agree to a remedy." In cases of noncompliance, violations are resolved by means of a letter of commitment, a conciliation agreement, or in rare instances, administrative enforcement, Radtke said.

Performance is reviewed on a geographical basis. The new airport is located in the Denver Standard Metropolitan Statistical Area. The goals for this area were 13.8 percent for minorities in each craft and 6.9 percent for women in each craft, based on how a contractor was performing in a seven-county area surrounding Denver.

At the time of the forum, Radtke said, four of the major contractors at the airport had been reviewed, and the majority of the subcontractors had either been reviewed or were on the review forecast. As each new contract is awarded, individual contractors are added to the “forecast” list.

The office also convened meetings of contractors and subcontractors and invited community-based organizations and Federal contracting officers to attend. Radtke said:

The community-based organizations have been very responsive and they serve as panelists. In many cases, they are able to say, “I have two women carpenters; I have this minority person who is just very good in this trade, has so many years experience.” And we match the skill of the person with the job.

Radtke, however, cited a number of additional steps that could be taken locally to improve the process, including:

- Contractors should do an employment-needs assessment upon being awarded a contract and recruit as soon as possible; this is better than waiting until the day someone is needed and expecting to find a qualified minority or woman.
- Community-based organizations should develop a system to keep track of what happens when they send a person to the job site. Did the person arrive there? Was he or she interviewed?

People referred for positions have the right to file a complaint if they are not interviewed or given an opportunity for consideration. The Office of Federal Contract Compliance Programs takes systemic discrimination complaints from women and minorities as a class, but none had been received in the area of construction. Complaints from individuals go to the Colorado Civil Rights Commission.²

²Written statement of June Radtke, Acting District Director, U.S. Department of Labor, Office of Federal Contract Compliance, June 21, 1991 (on file at the U.S. Commission on Civil Rights).

“We are looking to uncover an affected class of women who are not being considered in the construction industry,” Radtke said. “We don’t find their applications.” More interest, she said, must be stimulated among women to seek employment in the construction industry. Women and minorities sometimes have difficulty getting transportation to the airport, she noted, and some do not have driver’s licenses. Radtke also said that her office was involved in an initiative with other organizations to promote the employment of women in nontraditional jobs.

Commissioner Esther G. Buckley wanted to know how Radtke could present such a positive view of the situation when Jill English, speaking for a coalition of 14 community-based organizations, had described a series of serious problems. Buckley asked Radtke: “Are you aware that yesterday we had a coalition of community-based organizations that came in and said only one person out of the people they have referred have been hired. Are you aware of that?” Buckley then added:

What we were specifically told was that under this particular coalition of 14 community-based organizations, they have made referrals for employment and only one person has been hired under these 14 community-based organizations and that one hire was a janitor.

Radtke answered:

As far as that information is concerned, I can’t validate that. I can only give you the report we received from the local Job Service Office, which, in fact, is like a clearinghouse. They all interact under the Job Link program and we had shown for the second quarter of ’91, a total of, and this is collectively for the Denver District Office of the State of Colorado, we had 326 minorities hired, 439 Caucasians, 146 veterans, 51 handicapped, and 162 females. But those are total placements. That does not mean they were all in construction.

Radtke said no complaints had reached her office from people who had been rejected for jobs, but she acknowledged that the system had deficiencies and that the available information was incomplete. Radtke several times cited the need for a tracking system. “If you have a client and you’re sending them out to a contractor, you need to follow up and see what’s happening,” Radtke noted.

Commission Chairman Fletcher asked Radtke for specific figures related to the new airport construction, but was told only that her statistics referred to the State of Colorado, not to the airport. “Let me

ask the question again, ‘How do you know what’s happening at the airport?’” Fletcher said.

Radtke’s answer pointed out one of several gaps in the available information: “Well, actually, on the airport itself, we haven’t been keeping that because our office has responsibility for the geographic area, which includes the seven counties, not the airport alone. So we’ve been doing our reviews based on our regulations which cover compliance in the seven counties.”

Commission Chairman Fletcher said, “So, you don’t look where the opportunities are?”

Noting that construction at the airport was about half completed, Fletcher said:

One of the reasons we’re here is we’re curious to know, can we play a better second half than we played the first half, and, right now, the first half looks like we haven’t scored a point. We haven’t even gotten to the 50-yard line. So I’m curious to know, when is your office going to take advantage of your proactive posture and find out what’s going on out there [at the airport] so that the necessary actions can be taken to improve, to play a better second half?

Radtke responded, “We’re reviewing those contractors on the airport along with all their other work which could be statewide, if union, or it could be standard metropolitan statistical area-wide, if nonunion.”

Her comments indicated the need to collect data specifically for the airport.

Airport Contracts and Subcontracts

When we talk \$2.4 billion, and you start adding it up, we're dealing with a lot of contractors, a lot of subcontractors, a lot of prime contractors.

*William E. Smith, New Denver Airport
Construction Office*

Instead of a \$30 million, instead of a \$40 million, or \$50 million project, they should have it in a \$3 million, \$2 million, \$5 million project. . . .

*David Retland, Colorado Black Contractors
Alliance*

Just as they insisted on receiving a fair share of the jobs being created at the new airport, minorities and women also wanted a fair share of the contracts for construction, professional services, and concessions. The Commission, however, heard repeated complaints that minorities and women were being discriminated against in the awarding of contracts.

A positive assessment of the situation concerning contract awards was presented to the Commission by officials representing the New Denver Airport Construction Office, the Federal Aviation Administration, and the Small Business Administration.

Several problems concerned minorities and women—for example, multimillion dollar contracts written for such large amounts that small minority- and women-owned firms could not hope to win them, good faith effort requirements that sounded excellent in theory but had not worked that well in fact, questionable changes in the percentage goals set for minorities and women, a well-intentioned mentor program that had not led to contracts for minority businesses, black attorneys who were not being awarded professional services contracts for legal services, and

no clear indication that minorities and women would do well in obtaining contracts for concessions once the airport is operating.

Size of Contracts

Representatives for minority groups urged that large multimillion dollar construction contracts—\$30–\$200 million—be broken into smaller packages more within the financial range of DBEs, MBEs, and WBEs. Speaking for the Colorado Black Contractors Alliance, David Retland made the case that minority participation would increase with smaller contracts:

Instead of a \$30 million, instead of a \$40 million or \$50 million project they should have it in a \$3 million, \$2 million, \$5 million project because they can't pool that specific task out of that contract and contract it out.

Of the 30 contractors in the Colorado Black Contractors Alliance, none had the capacity to bid on \$30 million projects and, according to Retland, "that's how the construction arena systematically excludes minority participation." As a result of these huge multimillion contracts, the airport construction was being done by majority-owned firms.

Jay Lower, executive director of the Colorado Contractors Association, said his organization shared the concern that the big contracts excluded minorities.

Clement Monge, a Federal Aviation Administration official, told the Commission that his agency continued to recommend that Denver break up the projects into smaller awards to give DBEs a greater opportunity to participate as prime contractors. This step should distribute participation more evenly. The smaller packages would make it easier for small and disadvantaged businesses to obtain the necessary bonding and financing.

In defending the city's record on the size of the contracts, Smith said efforts had been made to break up the contracts to create as much small business participation as possible:

We broke our design contracts into 70 different contracts. The easiest thing for us would have been one big contract, one big construction company. We would have been in Heaven, because we wouldn't have had much to do. But we also wound up with between 80 and 90 construction contracts, through those 70 design contracts.

Good Faith Requirements

Subcontractor Nathaniel Watson charged that majority-owned businesses subverted the system in two important ways—by refusing to make available to the public information about the value of winning bids and by undermining the good faith effort requirement. Ron Bryant, speaking for Watson, said the subcontractor had submitted bids to general contractors for work, but had never been told why he did not win:

He's not able to find out through a city government or the general contractors what was the dollar value of the bid for his competitors who are beating him. Since these are public funds, I'm a little bit concerned about that.

When Watson asked the city for information about the winning bids, Bryant said, he was told, "We're too busy to tell you that and the general contractor is too busy to supply us with the information.' Personally, I think that is unacceptable." Losing bidders ought to be able to get that information so they can factor it into their "lessons-learned file" to be used in the next bid, Bryant said. This would help taxpayers as well as the subcontractors.

Watson also told the Commission that as a subcontractor, he spent a great deal of money to prepare bids for construction work, only to find that being the lowest bidder was not always good enough. Watson said, "The way a general contractor gets his contract is bidding low, being the lowest bidder. The subcontractor doesn't get his jobs by bidding low. If they like you, they might let you work for them. It's a possibility that you might be chosen to do a job. And we don't think that's fair. We think that, if you are a low bidder, we think that you should get the job if you're qualified to get it."

General contractors, he charged, sometimes abuse the good faith effort requirement, using black-operated businesses only to obtain the contract and then dropping them from the project.

William R. Roberts, head of the Denver Department of Public Works, said the department demonstrated its determination to insist on good faith efforts by contractors by denying a contract for more than \$25 million because the contractor's good faith efforts had not been good enough. When it was decided that the second bidder had not met the requirements either, his department selected a third contractor. As a result, Roberts said, that case had sent the message that his department would insist on a good faith effort. If a bidder was unable to meet the goals, it must

have clearly demonstrated a good faith effort to include minorities and women.

David Retland, president of the Colorado Black Contractors Alliance, however, said majority contractors were able to satisfy the good faith requirement simply by putting an advertisement in the newspaper, taking a couple of phone calls in response, and recording the times and dates. That is not good enough, he claimed.

Minority small businessman William Parson said that letters about good faith did not help anyone; they merely provided a convenient excuse for failure. Repeated failures had shown that words, letters, and good faith could not be trusted. “We want the City of Denver to honor their good faith,” Parson said. “For the damage has reached much deeper than all of us put together could probably concede.”

Setting Goals

The Construction Goals Committee was created to help minorities and women obtain contracts by providing advice on goals. Its nine members include three each from women-owned, minority-owned, and majority-owned businesses.

The committee votes to approve a specific percentage goal for minorities and women, but according to committee member Darcy Wilson, the targeted goals were sometimes lowered in response to pressure from those who thought the goals had been set too high. This, she said, was counterproductive to what the Construction Goals Committee hoped to achieve.

The goals committee in Denver, however, merely provides advice on setting appropriate goals. Ultimate decision-making power rests with the city administration.

Another problem has been that the Construction Goals Committee worked from an outdated list of firms. “We don’t know who’s certified and what area they’re certified in, because we’re using something that is 2 months old,” she added.

William Parson, an officer with Stanmar Inc., a small business, said the goal-setting process had been diverted from its original purpose, which was to help minority-owned and women-owned businesses. Parson cited one case in which a project carried a goal of 20 percent for MBEs and 12 percent for WBEs. By the time the project was released for bids, however, the figures had been lowered to zero for both

minorities and women by the director of the Office of Contract Compliance. Parson added:

There are nine members of the goals committee, and, with one stroke of a pen, one person can eliminate all that effort put in to set these goals. Decreased opportunities is counterproductive to . . .the intent of the law.

Mentor Program

The mentor program, one of the three major initiatives launched by the city, came under pointed attack from businessmen. The idea behind the mentor program was to pair a smaller minority- or woman-owned business with a larger majority-owned one.

Vince McDonald of the Blackington and Decker construction company said he had seen the problems with the mentor program while serving as a member of the mentor program steering committee. Although the program has definite advantages if it works properly, McDonald said, serious problems had arisen. The program, for example, had not been funded, and if he, on behalf of the minority-owned firm, went to the majority-owned business for information, he might not get it. Despite the city's efforts, McDonald said he did not know of a single contract that had come out of the mentor program; it had given out a great deal of valuable information, but no contracts.

Businessman Derek Walker said that majority-owned contracting companies invested far more in a project than did the minority-owned firm. Under these financing arrangements, he observed, control would not be divided 50-50 because it would not be good business practice from the majority owner's point of view. So majority owners, for the most part, were not knocking on the doors of minority and women business enterprises for joint ventures. Only if government made joint venturing attractive would the majority firms be interested; otherwise they would continue business as usual, which meant making a profit and driving the competition out of business, he charged.

Walker said it appeared that in 95 percent of the mentor program pairings, the majority-owned firms had maintained profit and management control to the extent that the program could be construed as a "front." About 5 percent of the pairings, he said, had been useful vehicles to help minority firms gain valuable experience, but "those scenarios are few and far between." The minority-owned enterprise might receive some payment as a result of the pairings, he continued, but

rarely did the companies learn how to manage a contract or understand the nuances of meeting everyday obligations.

City Councilman Hiawatha Davis said the mentor program was a good approach in principle, but it needed refinement. Davis cited one case in which the business marriage deteriorated because neither the majority nor the minority participant had much to say, even from the outset, about whether they were compatible for this type of project. Ultimately, both firms went out of business.

Black Attorneys

Black attorneys, despite their qualifications in real estate construction contract work, had not received any legal business in conjunction with construction of the new airport, according to Robert H. Russell II. As president of the Sam Carey Bar Association, an affiliate of the American Bar Association, Russell represented 174 black attorneys.

Eight black attorneys had actively sought legal work relating to land acquisition and the solicitation of bids for the new airport construction but with no success. "This situation," Russell said, "is even more troublesome than the situation at Denver Stapleton Airport." During the expansion at Stapleton in the 1980s, two of seven black attorneys who applied to do legal work did obtain contracts. The inescapable conclusion, Russell contended, was that those responsible for hiring outside legal counsel for work associated with the airport were aware of qualified black attorneys who had worked for the city in the past on airport construction matters. Yet despite that awareness, these decision-makers had turned aside the requests of black attorneys to do legal work.

Black Businesswomen

Jeanie Farmer, president of Colorado Black Women for Political Action, reported that black women were eager to find business opportunities. Farmer reported that she had seen evidence of this interest while serving as chairman of the board of the Five Points Business Support Office, which provides technical support to minority businesses.

Since its opening in March 1989, 273 business people had visited the office seeking assistance. Farmer said:

People who have dreams and visions of starting their own businesses, people who already have existing businesses, they want to expand or grow and need some assistance in developing business plans and so forth. And I can also share

with you that more than 50 percent of that 200-plus number have been black women.

Concessions

Compared to construction contracts and jobs, relatively little discussion focused on concessions. Alexis Holdman, director of Denver's Office of Contract Compliance, said the two major concessions at Stapleton International Airport were maintaining 30 percent DBE participation as required. She also said that despite its efforts, the city had been unable to get DBE participation in the car rental concessions. "We probably have three or four set-asides available if we could find someone to come in and meet their requirements," Holdman reported. "They could have had a counter; but we could not find someone. Ice cream and other concessions are DBE participation."

Plans for concessions at the new airport were still being developed. The goal, however, was to develop a concessions policy that would integrate DBE firms into the whole process and ensure that they had the locations and number of spaces needed to succeed. William R. Roberts, head of the Denver Department of Public Works, said that in the past 5 years, efforts had been made to help minorities get concessions. When he started in 1972, there were none.

Positive Assessment

The most detailed defense of the construction award record came from William E. Smith, associate director of aviation for the New Denver Airport Construction Office. Smith presented a positive assessment of DBE, MBE, and WBE participation in construction and design contracts awarded—a sizable \$110 million (22 percent) of the \$505 million awarded to that point.

Many of the projects in the early phases of construction, according to Smith, were large ones—for example, the \$84 million train system being built by AAG Westinghouse. Yet minorities and women accounted for more than 30 percent of the participation in the project.

Smith emphasized that much of the work had involved major excavation projects required to construct an airport of such enormous size. "We've been doing dirt work," he explained. "Dirt work doesn't have a lot of subcontractors in it. It keeps our percentages low. These are big earthmovers." These \$30-\$40 million airport projects required large earthmoving equipment.

As construction of the airport terminal got underway, however, many more subcontractors, the DBE, MBE, and WBE firms, would be providing electrical wires, faucets, trash barrels, and other items. Smith predicted this would increase the participation of minorities and women. The smaller projects included erecting fencing around the perimeter and smaller roadways. About 10 of these projects were scheduled to be set aside for DBEs. Some design work, too, would be set aside. So generally, minorities and women would do better as the airport is finished, Smith said.

Asked how he reconciled these numbers with the charge made by some people that little headway had been made by minorities, Smith answered that he did not know the rationale used by the critics, but he said he was relying on accurate figures that accounted for every dollar spent.

FAA Involvement

Clement Monge, civil rights officer for the Northwest Mountain Region of the FAA, said the primary purpose of the DBE program was to maximize opportunities for DBE firms in FAA-assisted contracts and leasing arrangements:

We are very conscious of the amount of FAA work which the new Denver airport will generate and we are doing our best to plan for the maximum minority DBE participation in our contracting effort. We worked closely with the Small Business Administration in the past and we plan to continue to do so in the future.

Among its activities, the FAA reviews annual DBE goals, reviews the merits of contractors' good faith efforts to meet specific contract goals, and audits and performs onsite reviews to determine compliance.

As part of the process, prior to the award of a contract, the lowest bidder must present the names and addresses of the DBE firms that will participate in the project and the dollar amount of that participation by each DBE firm. According to Monge, the Northwest Mountain Region had a good track record in terms of achieving participation by disadvantaged business enterprises. (His office is active in the States of Colorado, Idaho, Montana, Wyoming, Utah, and Washington.)

For fiscal year 1990, which reflected spending on the new Denver International Airport, total DBE participation was \$221 million, or an 18 percent DBE participation rate. Since the DBE participation total was

only \$91 million in fiscal year 1989, minority participation obviously had increased substantially, Monge said. According to his latest information, Denver had achieved an annual goal of 18 percent.

According to Monge, the new airport construction carries tremendous potential for substantial DBE participation. Over the next 9 years, FAA anticipates providing approximately \$500 million for development of the facility.

To increase DBE participation, Monge said he had attempted to make the airport sponsors aware of their obligation under the DBE program and to inform the DBE community of any FAA-assisted opportunities. This had included on-the-spot training sessions for employees involved in implementing the programs.

In summary, Monge said he believed the City and County of Denver had been implementing the disadvantaged business enterprises program in good faith.

SBA Involvement

Clay Gibson, the Small Business Administration (SBA) official responsible for the minority small business program in Colorado, discussed the 8(a) program started in 1968. This contracting and business development program was launched with the aim of helping small companies owned by socially and economically disadvantaged persons obtain Federal Government contracts and other assistance in developing their businesses.

Commission Chairman Arthur A. Fletcher asked how many people had been put to work through the 8(a) program, noting that these data could be used to help justify the existence of this program for small companies. Gibson said he did not track that information. Fletcher responded, "I would suggest that would be helpful right now when there's so many complaints about government set-aside programs for minorities and others."

In his three States, Gibson said, SBA was doing about \$20 million in contracting with FAA at various sites. SBA had worked to identify competitive set-aside projects that represented a major portion of the airport construction program—including a \$12 million radar approach control facility—and was working with FAA on a \$5–\$8 million fiber optic cable duct bank contract. It appeared this project would be designated as a set-aside project.

Asked if 8(a) loans were being made to firms in Colorado, Gibson said SBA had never received an 8(a) application for such a loan and that he did not know why there had not been any loans.

Jim Graham, a manager with Fernandez and Associates, a Hispanic-owned firm based in Denver, told the Commission that the Small Business Administration's program had helped his company provide needed management and technical assistance to small minority- and women-owned businesses.

New Airport Employment Office

The NAEO [New Airport Employment Office] may not be the total solution, but it is part of the solution.

Benita Duran, New Airport Employment Office

In summary, our experience and research verify that women, minorities and low income people are not getting their fair share of the employment opportunities at the airport.

Jill English, Coalition for Non-Traditional Employment for Women

The statistical data presented at the forum were much too incomplete to permit the Commission to obtain a detailed picture of the job referral/employee hiring record at the Denver International Airport. This was a serious concern.

The fragmented nature of the responsibility for statistical record keeping also raised the unanswered question of how those in charge could know precisely what was occurring in terms of referrals and employment. The Commission learned, for example, that the total data were not available at any single place in a consistent manner. Different offices keep track of the statistics in different ways. Apples in one office could be oranges in another. Often, needed information was not available at all.

The New Airport Employment Office (NAEO) had no system in place to track its records and see if a hired worker was employed at the new airport for a few days or a long time. Percentages sometimes seemed encouraging until the Commission learned the low absolute number upon which those percentages were based. Some statistics were clear enough to raise red flags about possible major problems—for example, data that less than 4 percent of the onsite work force at the airport were women.

The presentation of Benita Duran, NAEO project manager, generated numerous questions from the Commission. Duran called the NAEO one of the most misunderstood projects associated with the building of the new airport. “You’ve heard from some people who don’t understand how our project works and what we’ve set out to do,” she declared. Its activities reflect those of a referral service, not of a hiring or personnel office, for construction contractors.

The NAEO was designed as a partnership effort of State and local entities—the Mayor’s Office of Employment and Training, the Governor’s Job Training Office, the Colorado Department of Labor and Employment Job Service, the Adams County Employment Center, and the U.S. Department of Labor. Instead of having each of the five partners launch a job recruitment effort, they decided to join forces under one office with the goal of providing an efficient, cost-effective service.

Duran said funding is derived from several sources, including 39 percent from Job Training Partnership Act (JTPA) dollars under the Economic Dislocation and Worker Adjustment Assistance Act (Title III of JTPA). Her office is responsible for serving people who have been dislocated and lost their jobs due to changes in the economy, and need either retraining or job placement assistance to move into new employment. The NAEO serves both JTPA-eligible and noneligible people. Other funding is provided through the Colorado Department of Labor’s Job Service and the City and County of Denver.

The job applicant database at the time of her presentation consisted of 21.5 percent (946) Adams County residents and 26 percent (1,140) Denver County residents. The remainder came from other areas, including the surrounding counties. The NAEO, Duran said, encouraged employment of minorities and women at the new airport and focused its outreach efforts on serving Denver and Adams County residents.

The NAEO role is to send qualified applicants to the contractors for potential hiring. The construction companies use the office to help meet their affirmative action needs, while also getting qualified workers. The office’s referrals, according to Duran, had been hired in numerous capacities, including heavy equipment operators, carpenters, laborers, cement masons, and mechanics.

Her office, while providing a job referral service for the contractors, also required the contractors, in their bid documents, to register with the NAEO prior to beginning work on site, Duran said. She emphasized, however, that contractors were not required to use NAEO for applicant

referrals. A construction contractor could bring its own work force to the job site, or contractors could hire from the unions. "So we don't have control over the total work force there," Duran said. "We only have control over the people we can refer to jobs that ultimately we would like to see the contractor hire."

The office also referred minorities and women to job training programs and apprenticeships, but it did not provide direct training. The no-cost employment services provided by the NAEO included:

- applicant outreach and recruitment
- applicant screening and referrals
- job order listing and advertising
- mandatory job listing
- veterans preference job listing
- job information phone line
- apprenticeship and training information and coordination

Yet despite its many services, Duran continued, the NAEO did not control direct hiring, which was done by the contractors. The NAEO simply strived to match qualified, job-ready workers with available work opportunities and to ensure that job opportunities are provided to all people. Duran presented the following statistics as of June 1991 to illustrate what her office had accomplished for minority and women job seekers:

- Of the 4,390 currently active applicants, 37.3 percent (1,636) were minorities and 6.9 percent (303) were women.
- Of the 526 referrals from this database, 45.4 percent (239) were minorities and 16.5 percent (87) were women.
- Of the 188 hired at the new airport from NAEO referrals, 37.2 percent (70) were minorities and 10.6 percent (20) were women.

These numbers, according to Duran, indicated that minorities and women had netted a substantial share of the new positions filled by the new airport construction contractors. "The NAEO," Duran said summing up, "may not be the total solution, but it is part of the solution."

Commission Vice Chairperson Charles Pei Wang strongly encouraged Duran to share the information available from the New Airport Employment Office. In response, Duran acknowledged, "We're not capturing all the data in one place in one consistent way." The Denver Department of Public Works, her office, and others each tracked data in its own way.

As a result, the New Airport Employment Office had been charged by the mayor with setting up a master work force computer tracking system. The goal is to input all contractor payroll reports into this system to make information available by race and ethnic breakdown, residency, wage rates, and other variables.

Commissioner Esther G. Buckley pursued another aspect of the gap in information collection, asking Duran, "Is there any way that you can track and see for what kind of period of time people were employed? Are they employed for 8 or 9 days or are they employed for a long time?"

Duran answered, "Right now, we don't have the tracking mechanism in place to do that."

Serving Two Masters

Duran was asked what conflicts had arisen because her office serves two customers—construction contractors and people looking for jobs. One conflict, she said, related to the different expectations of the two sets of customers. "We're being asked by the construction contractors to deliver qualified workers," she said. "In conflict with that are applicants who wonder why they're not getting a job today or yesterday on that site." Many times, Duran observed, job applicants lacked the experience and skill level demanded by the position. One of the dirt-moving companies, for instance, required that its heavy equipment operators have a minimum of 5 years of experience, something most job seekers did not have.

Commissioner Russell G. Redenbaugh said the Commission had heard complaints about a pattern in which some minorities and women met the skill qualifications but still were not hired. Duran said that construction firms can hire from many sources, not just her office, including responses to advertisements in the newspaper and word-of-mouth referrals. The NAEO report for May 31, 1991, showed that those referred by the office who eventually obtained jobs at the new airport accounted for only 12.7 percent, 177 of 1,393, of the onsite new airport work force.

Redenbaugh also remarked to Duran, "Actually, some of the data presented to us yesterday show that the rates of hiring of women and minorities actually referred were really quite good, but that the absolute level of referrals were extremely low. [As of May 31, 1991, the NAEO reported 4,860 active applicants, 496 referrals, and 177 workers hired

from those referrals, out of the total onsite airport work force of 1,393.] Would you comment on that?"

Duran said, "All I can reflect upon are the numbers that we have to share with you which show a high number of women and minorities who have been referred by our office and also the activity that has been directed towards getting women and minorities trained and into training programs and into these jobs."

Commissioner Redenbaugh then asked Duran, "Do you think there's some disagreement in the data?" Duran acknowledged, "Yes, there must be."

Commissioner Buckley said Duran had described the New Airport Employment Office as an advocate for local employment. Yet of approximately 1,500 workers then on the airport job site, the data indicated that 60 percent were not local residents. "Can you justify or explain how you can continue to say you are meeting your responsibilities in this project?" Commissioner Buckley asked Duran.

Duran answered that construction contractors were not required to use her office to hire.

Commissioner Redenbaugh put the same question about hiring nonlocal residents to Jay Lower, executive director of the Colorado Contractors Association. "With the shortage [of skilled workers] so demonstrable, why are so many qualified blacks, Hispanics, and women not getting hired?" Redenbaugh asked. Lower said he could not answer the question.

Lower, however, cited one case in which a contractor desperately needed some trained craft workers, "but our man on staff has just literally gone everywhere that he can think of to find the skilled individuals, and he's having trouble doing that."

Widespread Dissatisfaction

Despite Duran's optimistic interpretation of the job referral statistics and the overall performance of the New Airport Employment Office, other speakers, representing minority and women organizations, expressed serious reservations. Their own statistics presented a negative picture of the meaning behind the numbers.

Probably the sharpest criticisms of the referral process came from Tom Jenkins, president and CEO of the Urban League of Metropolitan Denver, and Jill English, an officer with the Northeast Women's Center and coordinator of programs for the Coalition for Non-Traditional

Employment of Women. Although they differed somewhat in their specific criticisms of the performance of the New Airport Employment Office, the two agreed that the system had been ineffective in placing minorities and women in jobs at the new airport.

Jenkins said his office had actively recruited blacks to refer to the office, only to receive complaints that the referrals were not leading to jobs. For this reason, Urban League officials began to question the process. Jenkins presented the following statistics to support his claim:¹

- As of July 31, 1990, 6,000 applications had been submitted to the NAEO, but only 1,932 had been processed.

- Blacks submitted 22 percent of the applications (429), but only 0.5 percent of them (25) had been referred by the office for jobs at the new airport, and only 11 of those had been hired.

- Statistically, 44 percent of those black applicants had found jobs, but, Jenkins said, “with a one-half percent referral rate, the new airport will be the old airport before equitable opportunities were achieved.”

Jenkins also said he was concerned about the accuracy of the numbers provided by city officials when undocumented reports reaching the Urban League Office show that blacks and women each accounted for only 3 percent of new employees hired at the airport.

“The referring process,” Jenkins contended, “is primarily a tool, a charade to infer that there is a process.” Clearly, he said, the contractors were making the hiring decisions. The breakdown was occurring at the selection point, Jenkins said, because decision-makers there had full discretion to do as they please.

Unless the situation turned around, Jenkins predicted, by 1993, when the airport will be employing its largest number of workers, black participation will be minuscule. One way to cope with the problem, he said, was to have onsite monitoring at the airport, with reporting done directly to the Urban League, not the city.

Jobs for Women

English, speaking for 14 metro-Denver area agencies that provide employment and training services for women, called for quick steps to reverse the lack of minority and women hiring. “It is our fear,” English

¹ Tom Jenkins, president and CEO of the Urban League of Metropolitan Denver, and Benita Duran, head of the New Airport Employment Office, cited job referrals statistics from different periods.

said, "that unless immediate action is taken, Denver will complete a new airport, without ever training and employing the people who could benefit most from this opportunity."

It was apparent, according to English, that the system in place had been ineffective in creating equal economic and employment opportunities at the new airport. People, she continued, wanted these jobs because they paid higher than average wages.

Although NAEO statistics as of May 31, 1991, showed that 29.4 percent (410 of 1,393) of the onsite work force were minorities, only 3.2 percent (44 of 1,393) were women, English said.

Commissioner Redenbaugh said that this 3.2 percent figure indicated that minorities had been more successful than women in getting airport jobs. "It appears that there's something wrong in the process when there's that kind of disparity," Commissioner Redenbaugh declared.

From January 31 to May 31, 1991, English continued, 25 New Airport Employment Office referrals were hired at the new airport. Yet during this same period, the total work force at the airport increased by 956, from 437 to 1,393. The NAEO new hires had increased by 16 percent, "and that's our best case scenario," English added, while the total airport work force increased by 221 percent.

English also emphasized that only one client from the 14 agencies in her coalition had been hired at the new airport as a result of the efforts of the New Airport Employment Office. "And that wasn't as an apprentice," English said. "It wasn't as a laborer; it was as a janitor."

The coalition, English said, had three major areas of concern:

- the apparent lack of direction and an operating plan to give minorities and women access to employment and training opportunities
- the need for a partnership approach involving the community groups that provide employment and training services to minorities and women
- the need to revise a cumbersome application and referral process that limits access, discourages full participation, and results in minimal hiring and the loss of training opportunities for this population

Elaborating on these three concerns, English said that without a plan, it would be impossible to advocate, critique, and provide feedback regarding the vision and strategy of the process and community involvement in it. A well-conceived plan, English said, would alert

coalition members to upcoming employment opportunities and then support their efforts to identify the training programs that would raise skill levels in the time frame needed. Without a road map it is almost impossible to track and evaluate outcomes, English said. “Credibility and respect for the process is definitely being negatively impacted. Members view the system as ineffective, nonresponsive, and inefficient. Unfortunately, everyone involved within this scenario loses, with the client being the most at risk.”

Regarding the second concern, partnership development, English claimed that the current process did not encourage comment, criticism, or feedback by coalition members. Information was presented with an attitude that did not promote participation or flexibility.

As for the third concern, the referral and application process, English said clients were discouraged because the number of people submitting applications for employment was so large.

As a result of the many weaknesses in the system, English said, women and minorities seeking jobs at the airport have developed negative attitudes towards the system. “Credibility and advocacy for the processes has been lost,” according to English. “Even when pertinent information is given to the community, it is possible that it is not taken seriously and therefore is dismissed.” English proposed a series of steps to revise the job referral system:

- creation of a comprehensive plan
- development of hiring and training requirements for all airport contractors consistent with the plan
- external monitoring of the hiring process at the airport
- creation of a broadly based group to solve transportation problems
- development of strategies to invite open communication and promote partnerships
- making available a calendar presenting information on contracts and jobs

English concluded:

In summary, our experience and research verify that women, minorities and low-income people are not getting their fair share of the employment opportunities at the airport. Of greatest concern to us is the abysmal hiring statistics for women—3.7 percent of the [new airport] work force is simply unacceptable.

English specifically challenged the Commission to review the overall affirmative action policies and contracting procedures used in airport hiring.

Job Training

We have given meaningful employment to people who were a drain on society, and are now contributing to society.

Jay Lower, Colorado Contractors Association

And to date, and I have grown up in Colorado, I have never seen an AGCC [Associated General Contractors of Colorado] or a union attend any job fair or job fest.

Businessman Derek Walker

The demand for skilled workers in the Denver area is heavy, yet the training programs required to meet that demand are inadequate. This heavy demand is generated not only by the new airport but also by a 50 mile tollway project estimated to provide 17,000 construction jobs over 4 to 5 years.

The Commission heard predictions that before the airport is completed, a worker shortage is expected for every construction craft. Representatives from the Associated General Contractors (AGC), the Colorado AFL-CIO, and the Colorado Contractors Association described for the Commission the training programs being used in the Denver area.

Referring to the many thousands of workers needed to construct the airport and tollway, Commissioner Russell G. Redenbaugh remarked to Jay Lower, executive director of the Colorado Contractors Association, "Your training program that you mentioned with such pride seems quite modest by comparison to these numbers." Lower replied, "It is." But the program, Lower continued, must start somewhere.

Instead of training just six new workers at a time, Commissioner Redenbaugh said, Lower's organization should try to train a few dozen

at a time. “It looks like that would be a great service to your members,” Redenbaugh stated.

Hiring Decisions

The Commission also sought clarification of Lower’s comment about the role of employers in hiring decisions. Commissioner Redenbaugh said, “You mentioned twice the importance of leaving the hiring decision to the employer. Could you speak to that recommendation in light of what we are beginning to see here, which is a pattern of violation of Title VI of the Civil Rights Act in certain hiring decisions?”

Lower explained that he certainly was not suggesting that employers violate any civil rights laws in making hiring decisions. Within the rules and regulations, however, Lower said, employers should have decision-making power.

Commission Chairman Arthur A. Fletcher said he did not have any problem with Lower’s explanation. But Chairman Fletcher stressed that he was concerned by the idea that a contractor could be paid with tax dollars, some of them provided by women and minorities, and then deny those same women and minorities an opportunity to work.

Fletcher said, “And that’s the problem that I’m finding with government contractors. They want to use tax dollars to go into business and to run their business, but they don’t want to hire the people who pay the tax dollars.”

Derek Walker, who has a small business, charged that the Associated General Contractors of Colorado (AGCC) and the unions had worked together against the best interests of minorities. The AGCC, Walker claimed, was operated for majority-owned companies and that the unions did 95 percent of their work for these companies. Walker added:

And to date, and I have grown up in Colorado, I have never seen an AGCC or a union attend any job fair or job fest. So I submit they are not out banging down doors trying to equally reflect employment for the community, or for the State, or for the area. They reflect their AGCC constituents, which are majority contractors. So, it’s difficult to expect an organization like that to employ 50 percent minority or women.

Walker also said that the airport management reflected the desires of the contractors and the unions.

Impact of Building Cycle

The Commission heard a different viewpoint from Robert Miller, representing the AGCC. Miller said the construction work force expands and contracts in response to the building cycle. Given the sheer magnitude of the Denver airport, the construction project demands many skilled craftsmen. Yet a sizable number of those workers, Miller said, had retired or moved out of the area when the huge building “boom” of the early 1980s was followed by a depressed construction economy in Colorado.

This same point was echoed by others, including Lower, who said the industry confronts an interesting situation in which qualified help was not available, although the economy was down. Lower added:

But it is a realization that because qualified help, in order to survive, in order to put food on their table and to provide for their families, left Colorado. You and I would have done the same, if we had been faced with the same options.

This is all part of what he called the “peaks and valleys” of the construction industry. The goal, Lower said, must be to attract these people back to Colorado from other States.

Plan for Coordinated Training

The Associated General Contractors of Colorado is a statewide organization representing both general contractors and subcontractors, and both union and nonunion firms. It is actively involved in training. Training is done under the Colorado Statewide Construction Affirmative Action Plan, a joint effort sponsored by organized labor and signatory contractors.¹ The plan, which is approved by the Office of Federal Contract Compliance Programs, had served the construction industry well for many years in Colorado, Miller said.

The plan’s fundamental aim is to attract minorities and women into apprenticeship programs. A statewide comparison completed by the staff

¹The Colorado Statewide Construction Plan was promulgated under the provisions of Executive Order 11246, as amended, and under its implementing rules and regulations, 41 C.F.R. 60-4.5, covering hometown plans. The plan also covers the provisions of 41 C.F.R. 60-250 and 41 C.F.R. 60-741, as amended. Coverage under the Colorado Statewide Construction Plan does not exempt contractors from fulfilling other contractual obligations set forth by other Federal, State, or local agencies, or obligations required by other Federal regulations.

for the Colorado plan showed that although the number of construction work hours in Colorado declined by 6 percent from 1987 to 1990, the number of women's work hours increased by 40 percent; work hours for blacks increased by 100 percent; Asian work hours increased by 25 percent; Native American work hours increased by 22 percent; and Hispanic work hours declined by 2 percent.

These dramatic improvements overall, Miller said, could be traced to three factors: aggressive recruitment efforts by AFL-CIO employment offices, cooperation from community-based organizations that understood that there is a place to refer people and that jobs and apprenticeship programs were available, and renewed commitment from labor unions and management groups to meet the objectives spelled out in the Colorado plan.

Statewide, Miller said, figures from the 1980 U.S. census indicated that blacks represented 3.2 percent of the Colorado population, approximately 3.3 percent of the Colorado work force and 2.6 percent of the skilled trades, while Hispanics accounted for 10.2 percent of the population, 13.5 percent of the Colorado work force, and 9 percent of the skilled trades. Despite these numbers, Miller warned that it was unlikely that the training programs would produce fully trained workers before the airport is completed. The airport will be built in less time than the training program requires to train construction workers to the journeyman level. Because construction in Colorado had been declining for 5 years, Miller emphasized, there had been little opportunity to provide employment for training purposes to any great number of construction trainees of any gender, race, or national origin.

The AGCC is also involved in another training program: the Construction Industry Training Council of Colorado (CITCC), operated by four construction industry associations. The program trains workers in five skilled craft areas and works with community-based organizations, as well as with the New Airport Employment Office, to attract qualified minorities and women. Miller acknowledged, however, that while the Colorado plan and CITCC programs contain affirmative action outreach components, neither would assure the use of any predictable number of minorities and women in the construction work force at the airport.

Commission Chairman Fletcher said to Miller:

I kept hearing you talk about the percentages instead of raw numbers. More importantly, I kept hearing you say that we don't have the numbers. I am curious to know why doesn't the Associated General Contractors want to know

what it's doing? . . . You were saying we really don't have the raw numbers of minorities and women that are in this, that or the other program and it sounds to me like you are saying you really don't want to know.

Union Role in Training

Robert Greene, director of employment and training at the Colorado AFL-CIO, said his organization and the Colorado Building and Construction Trades Council were quite proud of their affirmative action programs and wholeheartedly endorsed efforts to train and employ minorities and women in the construction industry.

Colorado AFL-CIO apprenticeship outreach statistics as of June 12, 1991, showed that over the past 2 years, more than 246 people had been placed in union construction apprenticeship programs, 68 percent of whom were minorities and/or women. Some of them were working in the airport construction.

Like Miller, Greene emphasized that since the project was launched, minorities and women were working substantially more hours in the unionized sector of the construction industry, even while total work hours in construction in Colorado were down more than 6 percent. This effort, he claimed, was a true affirmative action program.

Special Problems for Women

Judi Williams, an assistant in the apprenticeship outreach program, said one part of the apprenticeship effort was aimed at the specific needs of women—the Women in Construction Support Program. Men placed in apprenticeship programs had been invited to share their insights with the women participants.

Thirty percent of the women participating were AFDC recipients and/or food stamp recipients. Williams estimated that 80 percent of the women were single heads of households and therefore solely responsible for their children. Naturally, child care was a major concern. Greene said the real problem arose when the women had to attend related training classes two or three nights a week. Some programs were beginning to hire child care staff for the class sites.

Jay Lower, executive director of the Colorado Contractors Association, said his organization was still trying to determine how to help single mothers who were interested in the industry address their child care needs. Mothers were understandably concerned and asked themselves, "What's happening to my baby while I'm gone? What

happens in an emergency?” Dialogue was needed to find a solution to the problem, Lower said.

In one training program, women on welfare learned how to be heavy equipment operators or carpenters. In exchange for taking training, the women were provided summer jobs. They then returned to school the following term for additional training. Six of the 22 people who participated in this program graduated. Lower said, “We have given meaningful employment to people who previously were a drain on society and are now contributing to society.”

Transportation is also a problem for women because the airport is located a long distance from Metropolitan Denver. Paul Wishard, coordinator of the apprenticeship outreach program for the Colorado AFL-CIO, noted that economically disadvantaged workers lacked the money needed to purchase an automobile.

The transportation problem for women also surfaced during discussion about the performance of the New Airport Employment Office (NAEO). Benita Duran, head of the NAEO, said, “We’re proud of an agreement with the RTD to develop a pilot 6-month transportation program to the new airport site.” The new bus transportation schedule, according to Duran, should help women and minorities work there. Duran reported that she was excited by this first step in providing better access to public transportation to the airport.

Jill English, representing the coalition for Non-Traditional Employment for Women, however, said transportation was a problem for clients, many of whom must rely on public transportation. Because of the times that buses were scheduled to run, women could not arrange flexible hours or work overtime.

Special Problems

Well that [friction between blacks and Hispanics] may be a sad commentary, but that's a fact of life in Denver, and if anyone tells you different, they're not telling the truth.

David Retland, Colorado Black Contractors Alliance

I think there were many others who were reluctant, or are reluctant, to come to testify for fear of retaliation.

Edna Mosley, Citizens Concerned About Minorities in Aurora

The Commission conducted its Denver forum to gather as much information as possible about job and contract opportunities at the airport. Yet some minorities decided not to come and express their views in this open setting out of fear of retribution. Comments from minorities about possible penalties for speaking out coincided with what Commission Chairman Arthur A. Fletcher said he had seen in Denver.

A second special problem also indicated the strained atmosphere in which minorities functioned in Denver. Blacks and Hispanics had been unable to work together in a close, united effort to solve their mutual problems—in this case, to obtain more jobs and contracts at the Denver International Airport.

Fear of Retaliation

Edna Mosley, representing Citizens Concerned About Minorities in Aurora, said that over the past several years, the Economic Development Committee in her organization had talked with many minority contrac-

tors, some of whom had spoken at the Commission's Denver hearing. Mosley added, however:

I think that there are many others who were reluctant, or are reluctant, to come to testify for fear of retaliation, for fear that any possible opportunity that they might have had to get a contract would be diminished as a result of offering public testimony.

William Parson, employed at Stanmar, Inc., a WBE/MBE mechanical supply company, acknowledged that he had not filed a complaint out of concern about the ramifications. "You get a lot of undue pressure," Parson said. "And sometimes, it's like you just go along with things hoping that a crumb may fall that you can grab off the floor or something, you know."

Tom Dodd, an insurance company executive, said that he had seen the same forces at work:

there are a lot of people who get run over, and run over and run over by the likes of the City of Denver. But they don't raise their voice to correct the problem because the city's always saying, "If you'd just calm down, we'll give you a piece of the next one." That's bunk. That's the "good-ole-boys" club, whether it's racial, political or what have you.

Commission Chairman Fletcher said he had met in private homes with minorities who did not want to be seen discussing their concerns with him for fear of severe retaliation or of seeing what little hope they might have to obtain a contract in the future disappear. Several people, he reported, first agreed to speak at the forum, but dropped out at the last minute. Chairman Fletcher told City Council President Mary DeGroot:

There is an intimidating environment out there to the degree that folk who think they really have something to offer here have decided that, in their own economic interests and future, somehow they've tried to scuffle through and muddle through as best they can, as opposed to appearing here and saying what they felt needed to be said for fear of retaliation. You and your members on the City Council ought to know that.

Black-Hispanic Friction

By sometimes being in competition, rather than in cooperation with each other, blacks and Hispanics created their own barriers to progress in Denver.

Gwendolyn Thomas, chair of the People of Color Coalition, said that her organization was formed about 3 years earlier to bring together the Urban League, National Association for the Advancement of Colored People, the Colorado Black Round Table, the Black Chamber of Commerce, the Asian Chamber of Commerce, the Colorado Office of Indian Affairs, the Hispanic Chamber of Commerce, and other leading minority organizations. The groups tried to work together on shared problems in education and economic development.

The coalition lobbied the Denver mayor until he set up meetings in his office with them and representatives from the prime contractor for the project. As a result of the meetings, the prime contractor agreed that 31 percent of the workers hired for the convention center construction in Denver would be minorities. That decision, Thomas said, ultimately led to the breakup of the organization.

The agreement was fulfilled and 31 percent of the people hired were minorities, but most of those minorities were Hispanics. “[I]t was certainly an embarrassment to me that I had sat across the table and negotiated for this 31 percent and no African-Americans benefited from those negotiations. . . .” Thomas said. But it is possible, she believes, to reconstruct the coalition. “I think that it would simply take someone to assume the initiative in order to get it done,” she added.

David Retland, president of the Black Contractors Alliance, said tight funding and great competition for contracts had combined to make Hispanics and blacks work against each other. Unless the city really opens its contracting doors, he said, the groups would not work together. When it was suggested that his analysis reflected a sad commentary on Denver, Retland said, “Well that might be a sad commentary, but that’s a fact of life in Denver, and if anyone tells you different, they’re not telling the truth.”

Oscar Parra, an architect, told the Commission that airport officials have been very open minded about hiring minority architectural firms. His problem, Parra said, was with the black-owned architectural businesses that had denied him work:

Myself, I have been here asking for 8 years, for only one project. Do you think that this black architect is going to help me out? This is a farce. A farce that we are claiming that the whites are discriminating against us. What about another minority discriminating against us? Larger firms. In Denver, he said, blacks discriminate against Hispanics and Hispanics discriminate against blacks.

Summary

Speakers at the Commission's forum in Denver presented two diametrically opposed views concerning business and job opportunities for minorities and women at the city's new airport.

On one side, defending the record, were those in power, especially high-ranking officials in the administration of Federico Peña, who was mayor at the time. (He has since been succeeded by Wellington Webb.) These people were responsible for ensuring that jobs and contracts at the new Denver airport were dispensed equitably. They contended that contractors had complied with the requirements relating to women and minority participation at the mega-airport and that goals were being achieved.

Typical of the positive interpretation of the record were the comments of Penfield Tate III, speaking for the mayor, and Benita A. Duran, head of the New Airport Employment Office. Tate told the Commission, "We are pleased to report that while our efforts are not perfect, substantial progress has been made." Duran said, "The NAEO may not be the total solution, but it is part of the solution."

The record was also lauded by representatives from the Federal Aviation Administration, the United States Department of Labor, and the Small Business Administration. Alexis Holdman, director of Denver's Office of Contract Compliance, informed the Commission that her office had been recognized by FAA for its accomplishments in the disadvantaged business enterprises program, including having the best certification record in the region.

Duran and other city officials presented statistics on such important indicators as the number of minorities and women referred for jobs at the airport and the millions of dollars of contracts awarded to minority- and women-owned firms.

Responding to a program audit that cited serious deficiencies in the city's compliance record for 1987-1989, administration officials said many of the problems had been corrected and that the audit's findings were now largely irrelevant.

Despite the defense of the record, however, a number of blacks, Hispanics, and women presented a sharply different analysis of opportunities at the new Denver International Airport. They claimed that discrimination and unequal opportunity existed in hiring practices and in the awarding of contracts connected with the new airport construction. Their call was not for new ordinances and new programs, but instead for effective enforcement of ordinances and programs already in place. As they saw it, the system was frequently undermined by officials who wanted to give the appearance, but never the real substance, of change.

The percentage goals for participation by minority- and women-owned businesses, for example, were not questioned. Yet the Commission heard criticism that the Construction Goals Committee had been unable to function properly because the goals proposed by the committee members for minorities and women were sometimes lowered by city officials. Similarly, the referral process was criticized. The Commission was also told that the good faith effort requirement was being undermined.

Minorities and women continued to believe that truly equal opportunity will not be achieved until those in power change their attitude. This deep concern about the attitudes of responsible officials surfaced with the claim that some minorities had decided not to appear at the forum because they feared retaliation—specifically, that by publicly expressing their criticisms they would jeopardize any chance for a future contract.

When the forum ended, the Commission had heard the key arguments on both sides of the controversy. Looming over the debate was the question of what more, if anything, needed to be done to assure equal opportunity for minorities and women seeking jobs and contracts at the new airport. The Commission also hoped to learn some lessons from the Denver experience that can be applied to other major construction projects throughout the country.

A new mayor has assumed office since the Commission's forum was conducted in Denver. It remains to be seen what will be the full range of the changes in policy and procedures made by his administration to address the concerns raised. Thorough investigations by other Federal and State agencies with oversight responsibilities linked to the construction of the new Denver airport may be required. Such investigations could provide the kind of substantive and detailed information that can substantiate various claims and allegations made by the participants.

Still, on the basis of the limited information received at the forum, certain actions are warranted on the part of city officials, enforcement

agencies, contractors, and community organizations to address obvious problem areas highlighted by participants in this forum. Initiatives could also be taken to reinforce and support programs and efforts that have been put in place to assure equal opportunity for all.

At a minimum, it is clear that those responsible for overseeing construction of the new airport have a serious credibility problem with many minorities and women. The problem can be traced, in part, to inadequate communication, but it cannot be addressed solely by better public relations.

Fundamental to the successful resolution of the related issues is a much wider and more timely dissemination of essential information about contracting and jobs at the new airport.

There is also a pressing need for those in charge to gather more compelling evidence to substantiate their optimistic interpretation of the equal opportunity record. Only then can they demonstrate that Denver-area women and minorities are receiving their fair share of the employment and contract opportunities at the airport.

