
Final Report

BGPAA Disparity Study

Burbank-Glendale-Pasadena Airport Authority

Final Report

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BGPAA Disparity Study Draft Report

Prepared for

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CHAPTER ES.

Executive Summary

The U.S. Department of Transportation (USDOT) requires agencies such as the Burbank-Glendale-Pasadena Airport Authority to implement the Federal Disadvantaged Business Enterprise (DBE) Program in order to receive USDOT funds. Local agencies must tailor implementation of the Program to their unique markets.

Groups throughout the country have made legal challenges to how state and local agencies have implemented the Federal DBE Program. The Authority engaged a team led by BBC Research & Consulting (BBC) to prepare this disparity study, which focuses on participation of minority- and women-owned firms, including DBEs, in BGPAA's contracts as well as conditions for minority- and women-owned firms within the local marketplace.

The disparity study report will assist the Authority in making decisions concerning future implementation of the Federal DBE Program. This Executive Summary briefly answers the following questions:

1. What is the Federal DBE Program?
2. How has BGPAA implemented the Federal DBE Program?
3. Why did BGPAA undertake the disparity study?
4. What does a disparity study include?
5. Who performed the disparity study?
6. What are the key results of the disparity study?
7. What proportion of firms available for BGPAA contracts are MBEs and WBEs?
8. What share of BGPAA contract dollars might be expected to go to MBEs and WBEs?
9. What share of BGPAA contract dollars did go to MBEs and WBEs?
10. Was there a disparity between the utilization and availability of MBEs and WBEs on BGPAA contracts?
11. What are conditions for minorities and women within the Los Angeles area marketplace?
12. How can BGPAA use study results when setting an overall goal for DBE participation?
13. How can BGPAA use study results to project the portion of its overall DBE goal to be met through neutral means?
14. Can BGPAA consider use of race- and gender-conscious measures such as DBE contract goals?
15. If the Authority determines that it will use DBE contract goals, which racial/ethnic/gender groups of DBEs might be considered eligible for that program?
16. What are BGPAA's next steps?

1. What is the Federal DBE Program?

The federal government requires state and local governments to implement the Federal DBE Program if they receive U.S. Department of Transportation (USDOT) funds for transportation projects, including those funded by the Federal Aviation Administration (FAA).¹ Because Burbank-Glendale-Pasadena Airport Authority² operates Bob Hope Airport and receives a certain level of FAA funds, it must implement the Federal DBE Program.

The Federal DBE Program is intended to ensure nondiscrimination in the award and administration of USDOT-assisted contracts, remedy past and current discrimination against disadvantaged business enterprises, and ensure a “level playing field” in which those firms can compete fairly for USDOT-funded contracts.³ Federal regulations (49 CFR Part 26) guide how state and local governments implement the Federal DBE Program.

- Firms can only be certified as DBEs if they meet criteria for social and economic disadvantage. In the Federal DBE Program, minority- and women-owned firms are presumed to be socially disadvantaged. Certification criteria for economic disadvantage include business revenue and personal net worth of the business owner. In California, agencies including the California Department of Transportation and Los Angeles County Metropolitan Transportation Authority certify firms as DBEs.
- Agencies develop overall goals for utilization of DBEs in their USDOT-funded contracts. An agency expresses its overall DBE goal as a percentage of contract dollars that might be expected to go to DBEs absent the effects of discrimination.
- Under certain circumstances, the Federal DBE Program allows local agencies to apply DBE contract goals to individual USDOT-funded contracts.
- The Federal DBE Program lists the minority groups (as well as women) presumed to be socially disadvantaged and eligible to participate in measures such as DBE contract goals. However, in compliance with federal regulations, some state and local agencies limit participation in race- and gender-conscious elements of the Program to certain racial, ethnic or gender groups. To do so requires a waiver from USDOT that allows the agency to set contract goals for “Underutilized DBEs” (UDBEs), rather than DBEs as a whole.

¹ 49 CFR Section 26.21.

² The Burbank-Glendale-Pasadena Airport Authority is a separate government agency created under a joint powers agreement between the three cities of Burbank, Glendale and Pasadena for the sole purpose of owning and operating the Bob Hope Airport. “BGPAA” and “Authority” are used interchangeably in this report when referring to the Burbank-Glendale-Pasadena Airport Authority.

³ http://osdbuweb.dot.gov/DBEProgram/Whats_DBE_program.cfm.

The Federal DBE Program only applies to contracts that are USDOT-funded. In some states, airports and other transportation agencies operate programs to encourage participation of minority- and women-owned businesses in their locally-funded contracts. Since Proposition 209 was passed by California voters and became effective in the late 1990s, government agencies in California are prohibited from implementing race and gender preferences related to non-federally-funded contracts.

Airports receiving FAA funds are also required to implement the Federal Airport Concessions Disadvantaged Business (ACDBE) Program related to their airport concessions operations. The Authority retained BBC to examine the Federal DBE Program and not its implementation of the Federal ACDBE Program.

2. How has BGPAA implemented the Federal DBE Program?

BGPAA has implemented some version of a Federal DBE Program since the 1980s. It sets overall goals for DBE participation in its FAA-funded contracts — its overall three-year DBE goal for FY 2011-FY 2013 is 13 percent — and regularly reports DBE participation to the Federal Aviation Administration. BGPAA has a number of initiatives that encourage utilization of small businesses (including DBEs) in prime contracts and subcontracts at the Airport.

Until mid-2006, BGPAA set DBE contract goals on individual FAA-funded contracts. Prime contractors bidding on a contract would need to meet the DBE participation goal for that contract or show good faith efforts to do so. For the reasons explained below, the Authority discontinued use of DBE contract goals in 2006 and has operated an entirely race- and gender-neutral program since that time.

3. Why did BGPAA undertake the disparity study?

Many state and local transportation agencies conduct disparity studies to assist them in future implementation of the Federal DBE Program.

Throughout the country, a number of non-minority contractors and other groups have filed lawsuits challenging the constitutionality of the Federal DBE Program, or the constitutionality of state and local governments' implementation of the Program. In a 2005 ruling in *Western States Paving v. Washington State DOT*, the Ninth Circuit Court of Appeals found that the Federal DBE Program was constitutional, but that the Washington State Department of Transportation failed to show its implementation of the Federal DBE Program to be narrowly tailored.

- The court held that state and local governments are responsible for determining whether or not there is discrimination in the government's transportation contracting industry, and for developing narrowly tailored measures if a need exists, in order to comply with the Federal DBE Program.
- Narrow tailoring of the program includes each state or local government evaluating conditions within its own contracting markets and implementing the Federal DBE Program in a way that pertains to those local conditions.

After *Western States Paving*, the USDOT advised state and local agencies that any use of race- or gender-conscious remedies as part of the Federal DBE Program must be based on evidence the recipient has concerning discrimination affecting the government's transportation contracting industry:⁴

- The state or local agency determines whether or not there is evidence of discrimination in its transportation contracting industry.
- The USDOT recommends the use of disparity studies to examine whether or not there is evidence of discrimination and how remedies might be narrowly tailored.
- The USDOT suggests consideration of both statistical and anecdotal evidence. "Disparity analysis," or comparisons of DBE utilization with the relative availability of DBEs to perform the work, is an important part of the statistical information.
- Evidence must be considered for individual racial, ethnic and gender groups.

State and local governments in the Ninth Circuit discontinued implementing race- and gender-conscious elements of the Federal DBE Program after the *Western States Paving* decision and subsequent guidance from USDOT. BGPAA and many other agencies initiated disparity studies. (Chapter 1 and Appendix A present much more background concerning legal issues.)

Study results will help BGPAA make decisions concerning Program implementation and ensure that it is in compliance with guidance from USDOT and the courts.

4. What does a disparity study include?

Disparity studies typically include analyses of whether there is a disparity between the *utilization* and *availability* of minority- and women-owned firms (MBEs and WBEs).

- "Utilization" refers to the percentage of an agency's contract dollars that went to MBEs and WBEs during a certain period of time.
- "Availability" refers to the percentage of contract dollars that one might expect to go to MBEs and WBEs given the relative number of MBEs and WBEs available to perform specific types and sizes of prime contracts and subcontracts.

Only some minority- and women-owned firms are certified as DBEs. BBC included both certified and non-certified minority- and women-owned firms in the utilization and availability results so that the disparity analysis would identify any potential barriers related to race, ethnicity or gender of the business owner. For purposes of this study, "minority" follows the definitions from the Federal DBE Program: African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans. To further isolate the possible effects of gender, "WBEs" refers to white women-owned firms in this disparity study.

⁴ Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation*, available at <http://www.osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/WesternStatesPavingCompanyCaseQA.cfm>. (January 2006).

To perform the utilization analysis, the BBC study team compiled and analyzed data on 753 FAA- and locally-funded prime contracts and subcontracts totaling \$120 million that BGPAA awarded from 2005 through 2009. The study team examined the types of work involved, size of the contract or subcontract and year of the contract.

In the availability analysis, the study team analyzed data from telephone interviews completed with 1,582 firms doing business in relevant subindustries within the Los Angeles area. Only firms qualified and interested in working with local transportation agencies were included in the availability analysis.

BBC compared utilization of MBEs and WBEs on BGPAA contracts with the dollars those firms might be expected to receive based on MBE/WBE availability for those types and sizes of prime contracts and subcontracts.

The BBC study team also analyzed Authority contracting processes, local marketplace conditions and potential business assistance programs. As part of those analyses, the study team developed statistical models, compiled and analyzed bids on BGPAA contracts, and conducted in-depth personal interviews with local business owners and other individuals knowledgeable about local conditions.

BGPAA made a draft of this report available for public review and comment before BBC produced a final report. The Authority also held a public forum at BGPAA offices.

5. Who performed the disparity study?

BBC is a Denver-based economic research firm that is one of the leading disparity study consultants in the United States, having conducted disparity studies for more than 70 government agencies since 1989. The disparity study team included:

- **Keen Independent Research LLC**, a Denver-based research firm. Keen Independent Research co-directed the disparity study.
- **Holland & Knight LLP (H&K)**, a national law firm. H&K conducted the legal analysis that provided the basis for the study and also analyzed qualitative information from business owners and trade associations provided through in-depth personal interviews and testimony at public forums.
- **GCAP Services**, a DBE consulting firm with offices in Costa Mesa and Citrus Heights, California. GCAP Services assisted in collection of BGPAA contract and bidding data.
- **Customer Research International (CRI)**, a minority-owned telephone survey firm in San Marcos, Texas. Under BBC's direction, CRI conducted telephone interviews with firms in the Los Angeles area.

Chapter 1 of the report provides more information about the study team.

6. What are the key results of the disparity study?

Information from the disparity study can help BGPAA set an overall DBE goal and design the programs it will use when implementing the Federal DBE Program.

Overall DBE goal. Study results suggest that BGPAA consider a higher overall goal for DBE participation than its current DBE goal (13%). The “base figure” analysis conducted in the disparity study indicates a goal of 19.3 percent DBE participation in the Authority’s FAA-funded contracts. One of the reasons the disparity study identified a higher DBE goal is that BBC also counted as DBEs those minority- and women-owned firms that could potentially be certified.

Once an agency selects a base figure, it must consider other factors before setting an overall DBE goal. BBC’s analysis indicates that BGPAA might consider an overall DBE goal between 14 percent and 28 percent. Chapter 8 of the report explains this analysis.

Measures used to meet the overall DBE goal. The Federal DBE Program requires agencies to meet the maximum feasible portion of the overall DBE goal through race- and gender-neutral means. “Neutral means” refers to any policies or programs that benefit all small businesses, not exclusively minority- or women-owned firms or DBEs.

If BGPAA determines that it cannot meet its overall DBE goal solely through neutral measures, the Federal DBE Program requires that it consider use of DBE contract goals to help meet its overall DBE goal. Study results to review when making this determination include the following.

- Since August 2006, BGPAA has solely used neutral means and has fallen considerably short of its annual goals for DBE participation.
- BBC identified substantial disparities between the utilization of minority-owned firms in BGPAA contracts and what might be expected based upon the availability analysis (substantial disparities for each racial and ethnic group in the Federal DBE Program). Minority-owned firms were underutilized in BGPAA contracts even when the DBE contract goals program was in place.
- However, there were no disparities, overall, for white women-owned firms. White women-owned firms received a larger percentage of BGPAA contracts than what might be expected from BBC’s availability analysis, even without the DBE contract goals program.

The Authority makes the determination as to whether it will use DBE contract goals. The information in the disparity study indicates that the Authority might need to consider using a combination of neutral means and DBE contract goals to meet its overall DBE goal. If so, the Authority might consider applying to FAA for a waiver in order to include DBEs owned by minorities as eligible for the DBE contract goals.

7. What proportion of firms available for BGPAA contracts are MBEs and WBEs?

BBC developed a database of about 1,500 firms indicating qualifications and interest in local transportation agency contracts in the Los Angeles area. The study team conducted telephone interviews to collect information on the qualifications and interest of firms in local transportation agency work as well as the types and sizes of contracts and subcontracts they perform. BBC completed some of these interviews in the BGPAA study and some interviews as part of other disparity studies in the Los Angeles area.

Minorities and women owned 40 percent of the firms counted as potentially available for BGPAA contracts. Most MBE/WBEs in the Los Angeles area are not certified as DBEs. Chapter 4 and Appendix C of this report discuss the availability analysis in detail.

8. What share of BGPAA contract dollars might be expected to go to MBEs and WBEs?

BBC developed overall estimates of the BGPAA contract dollars that might be expected to go to minority- and women-owned firms based on analysis of the specific type and size of each BGPAA prime contract and subcontract and the relative number of minority- and women-owned firms available for that work. BBC reviewed 753 BGPAA prime contracts and subcontracts in the availability analysis. To then determine an overall availability figure, BBC weighted availability results for each contract element based on the dollars of the prime contract or subcontract.

Using the data and methodology described above, one might expect 29.6 percent of the BGPAA contract dollars examined in the disparity study to go to minority- and women-owned firms. Figure ES-1 shows overall availability results by group. These values serve as benchmarks to evaluate the actual percentage of BGPAA contract dollars going to minority- and women-owned firms from 2005 through 2009.

The dollar-weighted availability figures are lower than what is indicated from a simple “headcount” of minority-, women- and majority-owned firms because relatively few of the firms available for BGPAA’s largest prime contracts are MBEs or WBEs.

Figure ES-1.
Dollar-weighted availability of firms for BGPAA contracts, 2005–2009, by race, ethnicity and gender

Source: BBC Research & Consulting from Availability Database.

Race, ethnicity and gender	Utilization benchmark (availability %)
African American-owned	3.6 %
Asian-Pacific American-owned	5.1
Subcontinent Asian American-owned	0.4
Hispanic American-owned	11.1
Native American-owned	<u>1.0</u>
Total MBE	21.2 %
WBE (white women-owned)	<u>8.4</u>
Total MBE/WBE	29.6 %

Chapter 4 provides more information about the availability analysis. Appendix B discusses study team collection of BGPAA contract data and Appendices C and D provide more information about how BBC compiled information about businesses availability.

9. What share of BGPAA contract dollars did go to MBEs and WBEs?

Of the \$120 million in combined FAA- and locally-funded contract dollars examined for 2005–2009, minority- and women-owned firms received \$20.7 million, or 17.2 percent. Firms certified as DBEs obtained 4.1 percent of total contract dollars.

Figure ES-2.
MBE/WBE and DBE share of prime contract/subcontract dollars for BGPAA FAA- and locally-funded contracts, 2005–2009

Note:

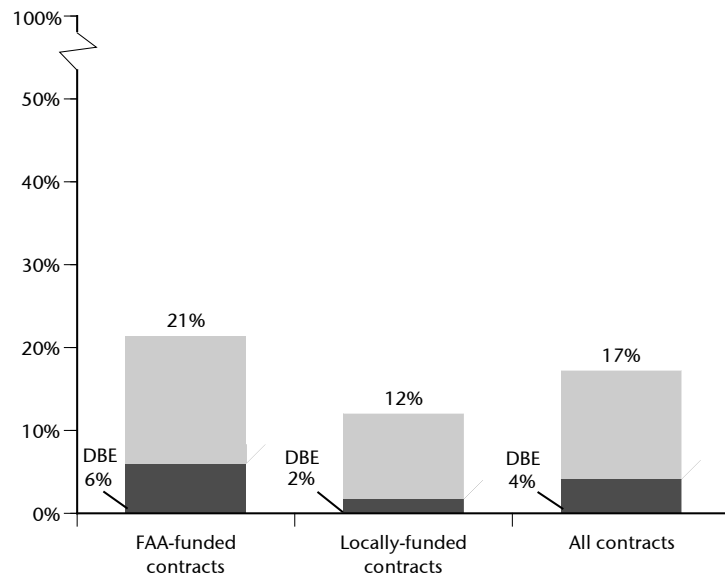
Certified DBE utilization.

Number of contracts/subcontracts analyzed is 276 for FAA-funded contracts, 477 for locally-funded contracts and 753 for all contracts.

For more detail and results by group, see Figures J-3, J-4 and J-2 in Appendix J.

Source:

BBC Research & Consulting from data on BGPAA contracts.



White women-owned firms received 9.1 percent of combined FAA- and locally-funded contract dollars, accounted for more than one-half of total MBE/WBE utilization for these contracts. About 8.2 percent of BGPAA contract dollars went to minority-owned firms. The MBE group receiving the most BGPAA contract dollars was Hispanic-owned firms (3.2%). African American-owned firms (2.3%) and Asian-Pacific American-owned businesses (2.4%) accounted for most of the other MBE utilization.

As shown in Figure ES-2, a small share of dollars going to MBE/WBEs went to firms that were DBE-certified. The Authority operated a DBE contract goals program only for its FAA-funded contracts, and just for the January 2005 through July 2006 portion of the study period.

10. Was there a disparity between utilization and availability of MBEs and WBEs on BGPAA contracts?

BBC compared the Authority's actual utilization of minority- and women-owned firms with the share of contract dollars that those firms might be expected to receive based on their availability for specific BGPAA prime contracts and subcontracts.

- Overall MBE/WBE utilization of 17.2 percent was substantially less than what might be expected from the availability analysis (29.6%).
- Utilization of minority-owned firms (8.2%) was substantially less than what might be expected based on the availability of MBEs for that work (21.2%). BBC identified substantial disparities for each MBE group.

- Utilization of white women-owned firms (9.1%) exceeded what might be expected based on the availability of WBEs for that work (8.2%). Utilization of WBEs exceeded availability even on contracts where the DBE contract goals program did not apply.

Chapter 6 of the report presents detailed results from the disparity analysis.

11. What are conditions for minorities and women within the local marketplace?

The BBC study team examined entry and advancement, business ownership, access to business credit, business success and other conditions within the local construction and engineering marketplace. The following information is based upon data for the local marketplace and results of in-depth interviews and public testimony provided by business owners and other individuals knowledgeable about local marketplace conditions.

Entry and advancement. BBC identified quantitative evidence of barriers in entry and advancement for minorities and women in the Los Angeles area construction and engineering industries. There is some qualitative evidence of a discriminatory work environment for minorities and women in the local marketplace.

Although the effects were not readily quantified, any race or gender discrimination in employment and advancement in the local construction and engineering industries may negatively affect the current availability of minority- and women-owned firms in the local marketplace.

Business ownership. There is evidence of disparities in the ownership of construction and engineering firms by minorities and women in the Los Angeles area marketplace. There is some qualitative evidence of greater barriers to business ownership for minorities and women. The study quantified the effect of disparities in business ownership rates on the current availability of minority- and women-owned construction and engineering firms in the local marketplace.

Access to capital. The study team identified quantitative evidence of barriers in access to capital for certain minority groups and women in the local marketplace and the Pacific region after controlling for certain neutral factors. Some individuals interviewed as part of the BGPAA study and other BBC disparity studies in Southern California indicated that minority- and women-owned firms do not have the same access to capital and bonding as majority-owned firms. Other interviewees reported that barriers due to race and gender were once in place but have eroded over time.

It appears that any barriers to financing, bonding and insurance place minority- and women-owned firms at a disadvantage when competing within the local marketplace. There is qualitative evidence that such barriers affect contract opportunities for small businesses, including minority- and women-owned firms.

Business success. BBC's statistical models identified some evidence that minority- and women-owned firms do not have the same success in the local marketplace as majority-owned firms. Many interviewees reported disadvantages affecting the success of minority- and women-owned business in the local marketplace. Some individuals said that certain disadvantages are due to race and gender discrimination; others said that they did not think discrimination affected business success.

Chapter 2 of the report identifies the relevant geographic market area for the disparity study. Chapter 3 summarizes quantitative and qualitative information about the local marketplace. Appendices E through I and Appendix K provide detailed analyses.

12. How can BGPAA use study results when setting an overall goal for DBE participation?

The Federal DBE Program outlines how agencies are to set overall goals for DBE participation in their USDOT-funded contracts (49 CFR Section 26.45). Steps include establishing a “base figure” after considering firms available for an agency’s USDOT-funded work, and then considering a “step 2 adjustment.” The BBC disparity study considered both the base figure and possible step 2 adjustment for a future ODOT overall annual goal.

Base figure. The “base figure” analysis conducted in the disparity study indicates a goal of 19.3 percent DBE participation in the Authority’s FAA-funded contracts.

Step 2 adjustment. Once an agency selects a base figure for its overall DBE goal, the Federal DBE Program requires agencies to consider other factors before setting an overall DBE goal. These factors include level of past DBE participation in agency contracts and information concerning the opportunities for DBEs to form, grow and compete.

BBC’s analysis of these factors indicates that BGPAA might consider an overall DBE goal between 14 percent and 28 percent. The Authority could also set its overall DBE goal at the level of the base figure (19.3% based on the disparity study) as long as it explains how it considered other factors. Chapter 8 of the report presents this analysis.

13. How can BGPAA use study results to project the portion of its overall DBE goal to be met through neutral means?

The Federal DBE Program requires agencies to meet the maximum feasible portion of the overall DBE goal through race- and gender-neutral means. This requirement has been a long-standing component of the Program, but 2011 additions to the Federal DBE Program include more specific requirements for local agencies to develop and implement plans to facilitate competition by small businesses. These plans must be submitted to USDOT by February 28, 2012. Chapter 9 of the report reviews a number of small business program examples for BGPAA consideration.

If an agency projects that it cannot meet its overall DBE goal solely through neutral means, the Federal DBE Program requires that the agency consider use of DBE contract goals to help meet its overall DBE goal. Each agency must project the portion of the goal to be met through neutral means and any portion to be met through race-conscious programs.

As BGPAA makes this determination, important considerations include the following.

- Since August 2006, BGPAA has solely used neutral means and has fallen considerably short of its annual goals for DBE participation. The Authority set an overall annual goal for DBE participation between 13 and 15 percent from FY 2006 through FY 2010. BGPAA’s measurements of DBE utilization indicated 9.7 percent DBE participation over this time, and fell substantially below the annual goal in four of the five years.

- According to BBC's analyses, DBEs obtained 6 percent of the FAA-funded contract dollars that the Authority awarded from January 2005 through December 2009, again much lower than the Authority's overall DBE goals.
- DBEs received 3 percent of BGPAA contract dollars when the DBE contract goals program did not apply based on BBC's analysis.
- BBC identified substantial disparities between actual utilization of minority-owned firms in BGPAA contracts and what might be expected based upon the availability analysis (for each racial and ethnic group in the Federal DBE Program). Minority-owned firms were underutilized in FAA-funded contracts when the DBE contract goals program was in place. Even among small contracts, minority-owned firms were underutilized.
- However, white women-owned firms received a large percentage of BGPAA contracts compared with what might be expected from BBC's availability analysis, even without operation of the DBE contract goals program.
- There are additional race-neutral programs that BGPAA should consider implementing, as reviewed in Chapter 9.

14. Can BGPAA consider use of race- and gender-conscious measures such as DBE contract goals?

This information suggests that the Authority might need to use a combination of neutral means and DBE contract goals to meet its overall DBE goal (perhaps with more than one-half of the participation coming from neutral means as discussed in Chapter 9).

Certain stronger race-conscious measures identified in the Federal DBE Program are permissible under extreme circumstances, but they are not appropriate for BGPAA implementation at this time.

15. If the Authority determines that it will use DBE contract goals, which racial/ethnic/gender groups of DBEs might be considered eligible for that program?

The Authority must make a determination whether it will use DBE contract goals as part of its implementation of the Federal DBE Program. If it uses DBE contract goals, it must also determine which racial/ethnic/gender groups will be eligible for the program. The following information may be useful in that event.

- BBC analysis identified disparities for minority-owned firms (for each racial/ethnic group) in BGPAA contracts. However, utilization of white women-owned firms in BGPAA contracts exceeded what might be expected from the availability analysis.
- If it chooses to utilize DBE contract goals as one method of attaining its overall DBE goal, the Authority should consider applying to FAA for a waiver in order to include DBEs owned by minorities as eligible for the DBE contract goals. These groups appear

to meet the definition of “underutilized DBEs” (UDBEs). Firms owned by minority women would be included as UDBEs, but firms owned by white women would not.

- BGPAA would operate the program so that UDBEs could be used to meet DBE goals on a contract. DBEs owned by white women would still participate in the neutral measures implemented by the Authority and be counted towards meeting BGPAA’s overall DBE goal.
- The Authority would monitor utilization of white women-owned firms in BGPAA contracts to determine if they should be included as UDBEs at a future date.
- The Authority would set contract goals, which would be individually determined for each FAA-funded contract and could be higher or lower than BGPAA’s overall DBE goal. The Authority would not establish a DBE contract goal for any FAA-funded contract not suitable for the contract goals program (for example, a contract with little or no subcontracting opportunities or where there was little or no availability of UDBEs for that work).

16. What are BGPAA’s next steps?

The disparity study is an independent analysis of information related to the Authority’s implementation of the Federal DBE Program. BGPAA should review report results and other relevant information when making decisions concerning its implementation of the Federal DBE Program. Chapter 10 of the report provides additional guidance concerning Program components.

Going forward, BGPAA will need to closely monitor whether it is successful in removing barriers to MBE/WBE and DBE participation in its contracts. It should expand its utilization data collection and reporting to include MBE/WBE and DBE participation for both FAA- and locally-funded contracts.

USDOT periodically revises components of the Federal DBE Program and issues guidance concerning implementation of the Program. In addition, new court decisions provide insights as to proper implementation of the Federal DBE Program. BGPAA should closely follow such developments.

CHAPTER 1.

Introduction

The Burbank-Glendale-Pasadena Airport Authority (BGPAA or the “Authority”) operates Bob Hope Airport in Burbank, California. The Authority is a local government agency created by the cities of Burbank, Glendale and Pasadena, which appoint its commissioners.

Because the Authority receives funds from the U.S. Department of Transportation (USDOT), it must implement the Federal Disadvantaged Business Enterprise (DBE) Program. In 2010, the Authority retained BBC Research & Consulting to provide information to help it implement the Program. The USDOT recommends that agencies implementing the Federal DBE Program conduct disparity studies to provide such information.

- Some of the information most useful in setting overall DBE goals and fine-tuning implementation requires the types of research developed in a disparity study;
- When challenged in court, state and local agencies that have successfully defended their implementation of the Federal DBE Program relied on the types of information developed in a disparity study;
- A disparity study often provides insights into improving contract opportunities for local small businesses; and
- An independent, objective review of minority- and women-owned business participation in an agency’s contracting is valuable to agency leadership and outside groups that may be monitoring the agency’s practices.

The analysis is referred to as a “disparity study” because it examines whether there is a disparity between an agency’s actual utilization of minority- and women-owned firms and what would be expected based on availability of minority- and women-owned firms to perform this work. The study incorporates other quantitative and qualitative information beyond the disparity analysis. The BBC disparity study is the first such study that the Authority has commissioned.

In Chapter 1, the study team:

- A. Provides background and study scope;
- B. Introduces the BBC study team;
- C. Outlines the Federal DBE Program; and
- D. Briefly discusses the legal framework for the study.

A. Background and Study Scope

Federal regulations governing airport and other state and local agency implementation of the Federal DBE Program are set forth in Title 49 of the Code of Federal Regulations (CFR) Part 26.¹ The Authority must develop and submit to the Federal Aviation Administration (FAA) a three-year overall aspirational DBE goal which, depending on the evidence available, may be achieved using race- and gender-neutral means, race- and gender-conscious means, or a combination of these measures.²

Until August 2006, the Authority included race- and gender-based measures such as DBE contract goals in its implementation of the Federal DBE Program. BGPAA changed its implementation of the Federal DBE Program in response to a May 2005 Ninth Circuit Court of Appeals decision which ruled that the Washington State Department of Transportation's implementation of the Federal DBE Program was unconstitutional.³ This court decision affected airports and other state and local agencies implementing the Federal DBE Program in western states including California (discussed later in Chapter 1 and explored in detail in Appendix A).

The disparity study provides information to assist the Authority as it:

1. Establishes an overall aspirational goal for DBE participation in its FAA-funded contracts;
2. Estimates the portion of its overall aspirational DBE goal to be met through race- and gender-neutral means and any portion to be met through race- and gender-conscious means;
3. Chooses the specific measures it will apply when implementing the Program; and
4. Identifies specific race/ethnic/gender groups of DBEs eligible for DBE contract goals if it determines that it will implement race-conscious measures.

The information is also useful to BGPAA as it seeks to ensure fairness across all of its contracting and procurement, including non-FAA-funded contracts.

USDOT also requires the Authority and many other airports to implement the Federal Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program. This program, which pertains to concessions operations at an airport, was not a subject of this disparity study.

¹ Title 49 of the Code of Federal Regulations (CFR) Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

² 49 CFR Sections 26.45, 26.51.

³ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005)

Analyses performed in the disparity study. Disparity studies typically include analyses of whether there is a disparity between the *utilization* and *availability* of minority- and women-owned firms (MBE/WBEs).

- “Utilization” typically refers to the percentage of contract dollars (including subcontracts) that went to MBEs and WBEs during the study period. (Percentage of *dollars* has been accepted in courts as an appropriate way of examining utilization.)
- “Availability” refers to the percentage of contract dollars that one might expect to go to MBEs and WBEs given the number of MBEs and WBEs (relative to all firms) available for specific types and sizes of prime contracts and subcontracts. Understanding firms “ready, willing and able” to perform an agency’s contract or subcontract is an important component of the availability analysis.

The BBC study team includes both certified and non-certified MBEs and WBEs in the utilization and availability results so that the disparity analysis would pertain to any potential barriers related to race, ethnicity or gender of the business owner.⁴ Overall utilization and availability of minority-owned firms is disaggregated by minority groups defined within the Federal DBE Program.⁵

Utilization analysis. BBC analyzed the utilization of minority- and women-owned firms on construction, engineering-related services, and goods and services contracts that BGPAA awarded from January 2005 through December 2009. These data include purchase orders, blanket purchase orders and contract change orders. The study team also analyzed subcontracts on Authority contracts.

BBC separated BGPAA contracts into those that were federally-funded (in whole or in part) and those that were solely funded through non-federal sources.

The study team identified the race/ethnicity/gender ownership of firms receiving BGPAA contracts and subcontracts through sources including the California Unified Certification Program (CUCP) and interviews with owners and managers of those businesses. BBC reports utilization in two ways (a) the percentage of BGPAA contract dollars going to certified DBEs and (b) the percentage going to all minority- and women-owned firms whether or not they were DBE-certified.

The study team did not examine types of purchases that mostly went to out-of-state firms. Case law related to MBE/WBE programs requires disparity analyses to focus on the “relevant geographic market area.”⁶ However, BBC did include utilization of out-of-state firms in its analysis of construction, engineering, and goods and services made primarily within the Los Angeles area.

⁴ If the disparity analysis were conducted based only on currently certified DBEs, conclusions could not be drawn about the effectiveness or need for programs to assist minority- and women-owned firms.

⁵ To further isolate the possible effects of race/ethnicity versus gender, “WBEs” refers to white women-owned firms in the disparity study. Firms owned by minority women are included in the utilization and availability results for minority-owned firms.

⁶ See, e.g., *Croson*, 448 U.S. at 509; 49 C.F.R § 26.35; *Rothe*, 545 F.3d at 1041-1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995.

Race/ethnic/gender groups examined in the study. Disadvantaged business enterprises (DBEs) are defined in the Federal DBE Program.⁷ A DBE is a small business owned and controlled by one or more individuals who are socially and economically disadvantaged. The Federal DBE Program specifies the race, ethnic and gender groups that can be presumed to be disadvantaged as long as they do not exceed firm revenue and personal net worth limits:

- Black Americans (or “African Americans” in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.

There is a gross receipts limit (not more than \$22,410,000 average over three years, and lower limits for certain lines of business) and a personal net worth limit (\$1.32 million, not including equity in the business and in primary personal residence) that firms and firm owners must fall below to be able to be certified as a DBE.⁸ White male-owned firms can also meet the federal certification requirements and be certified as DBEs. (Few DBEs are white male-owned firms.)

In this study:

- The term “DBEs” refers to disadvantaged business enterprises according to the federal definitions in 49 CFR Part 26 that have been certified as such.
- “MBEs” and “WBEs” are firms owned and controlled by minorities or women, according to the race/ethnicity definitions listed above, regardless of whether they are certified or meet the revenue and net worth requirements for certification.
- BBC’s term “potentially-certified DBEs” refers to all minority- and women-owned firms whether or not they are currently DBE-certified except for those whose applications for DBE certification were denied or that graduated from the DBE Program according to California Unified Certification Program officials.

Use of relevant information from BBC disparity studies in California. Some of the quantitative and qualitative information examined in this study was collected as part of disparity studies BBC conducted for (a) the California Department of Transportation in 2007, (b) a consortium of five local transportation agencies in Southern California that included the Los Angeles County Metropolitan Transportation Authority, and (c) the San Diego County Regional Airport Authority. These studies were completed between 2007 and 2010.

The U.S. District Court for the Eastern District of California reviewed methodology and the information included in BBC’s 2007 disparity study for Caltrans in the case of *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*. As

⁷ 49 CFR Section 26.5.

⁸ 49 CFR Subpart D.

discussed in more detail later in Chapter 1 and in Appendix A, the Court favorably reviewed the methodology and the quantitative and qualitative information BBC provided in the Caltrans disparity study. In the disparity study for BGPAA, BBC applied a very similar methodology and built upon the information in the Caltrans study.

BBC also completed a disparity study for the California Department of Transportation Study in fall 2012, after preparation of the draft BGPAA disparity study. BGPAA should independently review this document, as it was not completed in time to include in this disparity study report.

Information from local trade associations and businesses, public input and public comment. The study team conducted in-depth personal interviews with 18 local trade associations and business owners and managers as part of the BGPAA disparity study. The study team also reviewed information from interviews and public hearings with about 170 other business owners and managers, trade association representatives and other knowledgeable individuals in Southern California conducted as part of other BBC disparity studies.

The Authority also made extensive efforts to solicit public input on disparity study results before completing the study. BGPAA made the draft disparity study report available for public review and input in September and October 2012, closing the public comment period on November 2, 2012. On October 25, 2012, the Authority held a public forum open to any interested individuals or groups.

Presentation of results in the study. Each chapter in the report provides the documentation and results necessary to help BGPAA make future decisions concerning its implementation of the Federal DBE Program.

- **Chapter 2** discusses how the study team collected BGPAA contract data and then defined the geographic area and subindustries that are the focus of the study.
- **Chapter 3** presents information on local marketplace conditions. The study team examined whether there is any evidence of barriers for minorities and women to enter, advance within and start businesses in the Los Angeles area. BBC also analyzed access to business credit, insurance and bonding; different measures of business success; access to prime contract and subcontract opportunities; and other issues potentially affecting minorities and women in the local marketplace. Quantitative and qualitative information was included in this assessment, including results of interviews with local business owners and managers.
- **Chapter 4** presents information related to the relative availability of minority- and women-owned firms for Authority contracts and subcontracts. BBC estimated availability based on analysis of contract and subcontract opportunities and on information collected through telephone interviews on the availability of local businesses to perform that work. Chapter 4 also presents information on BGPAA's "base figure" for its overall DBE goal.
- **Chapter 5** examines the utilization of DBEs and minority- and women-owned firms on BGPAA contracts.

- **Chapter 6** compares utilization of minority- and women-owned firms with what might be expected given the availability of firms to perform that work (disparity analysis).
- **Chapter 7** explores possible reasons for any disparities in the utilization of minority- and women-owned firms in BGPAA contracts.
- **Chapter 8** provides information for BGPAA to use in setting a three-year overall DBE goal, including consideration of a “step 2 adjustment.”
- **Chapter 9** information will be helpful to BGPAA when it determines the percentage of its overall DBE goal to be met through neutral means.
- **Chapter 10** presents other information related to BGPAA implementation of the Federal DBE Program. It also considers additional ways for BGPAA to improve small business access to its locally-funded contracts.

In addition to the chapters described above, 11 report appendices provide supporting information concerning study methodology and results.

B. Study Team

The BBC study team included five firms:

- **BBC Research & Consulting (BBC)**, a Denver-based economic and policy research firm (prime consultant). BBC has overall responsibility for this study and performed most of the required quantitative analyses.
- **Keen Independent Research LLC**, a Denver-based economic and market research firm that specializes in disparity studies. Keen Independent Research co-directed the study, authored portions of the final report and attended a public forum concerning the report.
- **Holland & Knight LLP (H&K)**, a national law firm with offices throughout the country, including Los Angeles. H&K conducted the legal analysis that provides the basis for this study and also analyzed anecdotal information collected through in-depth personal interviews of business owners and trade associations.
- **GCAP Services**, a research firm with offices in Costa Mesa and Citrus Heights, California. GCAP helped to compile hard copy contract data at BGPAA offices. GCAP has worked with BBC on seven disparity studies throughout California. GCAP is a minority-owned firm.
- **Customer Research International (CRI)**, a national telephone survey firm based in San Marcos, Texas. CRI performed telephone interviews with owners and managers of local businesses as part of the availability analysis. CRI performed similar services on BBC disparity studies in California and other states. CRI is a minority-owned firm.

Each of these team members has extensive experience with airports, transit agencies and state departments of transportation implementing the Federal DBE Program. In addition to the Caltrans disparity study, team members have worked together on a number of disparity studies in California. Several team members have helped in successfully defending programs in court.

C. Federal DBE Program

Because the Burbank-Glendale-Pasadena Airport Authority is a primary airport and has received FAA funds authorized for airport development after January 1988, it must comply with federal regulations and implement the Federal DBE Program. The Authority has been implementing some version of a Federal DBE Program for more than 20 years.

After enactment of the Transportation Equity Act for the 21st Century (TEA-21) in 1998, USDOT established a new Federal DBE Program to be implemented by federal aid recipients. It was most recently revised in early 2011. USDOT requires airports such as BGPAA to implement the Federal DBE Program in order to receive federal transportation funds.

Federal regulations in 49 CFR Part 26 guide how state and local governments implement the Federal DBE Program. If necessary, under the federal regulations, the Program allows state and local agencies to use DBE contract goals, which BGPAA once set on certain FAA-funded contracts. When awarding those contracts, in accordance with federal regulations, the Authority considered whether or not a bidder met the DBE contract goal or showed good faith efforts to do so. In response to the Ninth Circuit's decision in *Western State Paving* and direction from USDOT, BGPAA discontinued its use of DBE contract goals and adopted a solely race- and gender-neutral implementation of the Federal DBE Program in August 2006.

Key elements of the Federal DBE Program include the following.

Setting an overall goal for DBE participation. BGPAA must develop an overall three-year goal for DBE participation in its FAA-funded contracts. The Federal DBE Program sets forth the steps an agency must follow in establishing its goal, including development of a “base figure” and consideration of possible “step 2” adjustments to the goal.⁹

BGPAA's overall goal for DBE participation is aspirational — the Authority does not need to meet the goal and failure to do so does not automatically cause any USDOT penalties.

Establishing the portion of the overall DBE goal to be met through neutral means.

Regulations governing implementation of the Federal DBE Program allow for state and local governments to implement the program without the use or with limited use of race- or gender-based measures such as DBE contract goals. According to program regulations 49 CFR Section 26.51, a state or local agency must meet the maximum feasible portion of its overall goal for DBE participation through “race-neutral means.” Race-neutral program measures include removing barriers to participation of firms in general or promoting use of small or emerging businesses (see 49 CFR Section 26.51(b) for more examples of race-neutral program measures). If an agency can meet its goal solely through race-neutral means, it must not use race-conscious program elements. Some state and local agencies implement the Federal DBE Program solely through neutral measures and without the use of DBE contract goals.

⁹ 49 CFR Section 26.45.

The Federal DBE Program requires that every three years an agency projects the portion of its overall DBE goal that it will meet through neutral measures and the portion, if any, that it will meet through any race-conscious measures such as DBE contract goals. USDOT has outlined a number of factors for an agency to consider when making that determination.¹⁰

Determining whether all racial/ethnic/gender groups will be eligible for race or gender-conscious elements of the Federal DBE Program. USDOT provides a waiver provision if an agency determines that it does not need to include certain race/ethnic/gender groups in the race- or gender-conscious portions of the Federal DBE Program.

For example, in recent years Caltrans set contract goals for “Underutilized DBEs” (UDBEs), which does not include all DBE groups. Caltrans has counted the participation of all DBEs toward its overall goal, but only UDBEs can be used to meet individual contract goals. Caltrans determined which DBE groups were UDBEs in part by examining disparity analysis results by race/ethnic/gender group.

Promoting DBE participation as prime contractors. The Federal DBE Program calls for agencies to remove any barriers to DBE participation as prime contractors, but does not require agencies to implement programs that give preference to DBE primes. Quotas are prohibited, but under extreme circumstances, an agency can request USDOT approval to use preference programs related to prime contractors. Small business preference programs, including reserving contracts on which only small businesses can bid, are allowable under the Federal DBE Program.

Promoting MBE/WBE participation as subcontractors. Subject to USDOT approval, an agency can decide that it will use DBE contract goals as part of its implementation of the Federal DBE Program. The process of setting DBE contract goals and requiring bidders to meet them or show good faith efforts to do so is similar to the process BGPAA followed prior to the *Western States Paving* decision.

Although agencies are required to implement the Federal DBE Program in order to receive USDOT funds, different groups have challenged that implementation in court. State transportation departments in California, Illinois, Minnesota and Nebraska successfully defended their implementation of the Federal DBE Program, as has a local transit agency in New Jersey. The Washington State Department of Transportation was not able to successfully defend its implementation of the Federal DBE Program. The end of Chapter 1 and Appendix A review those legal cases in detail.

¹⁰ See: USDOT Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program, at <http://osdbu.dot.gov/dbeprogram/tips.cfm>

D. Legal Framework

U.S. Supreme Court decisions, other court rulings, California state law and USDOT guidance help to form the legal framework for this disparity study.

1989 U.S. Supreme Court decision in *City of Richmond v. J.A. Croson Company*. The U.S. Supreme Court has established that government programs including race-conscious elements must meet the “strict scrutiny” standard of constitutional review.¹¹ The key U.S. Supreme Court case pertaining to state and local government programs is the 1989 decision in *City of Richmond v. J.A. Croson Company*.¹²

The strict scrutiny standard is extremely difficult for a government entity to meet — it presents the highest threshold for evaluating the legality of race-conscious programs short of prohibiting them altogether. Under the strict scrutiny standard, a governmental entity must:

- Have a *compelling governmental interest* in remedying past identified discrimination; and
- Show that any program adopted is *narrowly tailored* to achieve the goal of remedying the identified discrimination. There are a number of factors a court considers when determining whether a program is narrowly tailored.

A government agency must meet both components of the strict scrutiny standard to have a valid race-conscious program; a program that fails either one is unconstitutional.

1995 U.S. Supreme Court decision in *Adarand*. In its 1995 decision in *Adarand Constructors Inc. v. Peña*, the U.S. Supreme Court ruled the same strict scrutiny standard of review it had applied to state and local programs also applied to federal race-conscious programs.¹³

Even with the strict scrutiny standard of review, the Federal DBE Program, on its face, has been held to be constitutional in legal challenges to date (see *Northern Contracting, Inc. v. Illinois DOT*,¹⁴ *Sherbrooke Turf, Inc. v. Minn DOT and Gross Seed v. Nebraska Department of Roads*,¹⁵ *Western States Paving Co. v. Washington State DOT*,¹⁶ *Adarand Constructors, Inc. v. Slater*¹⁷ and *Geod Corporation v. New Jersey Transit Corp*¹⁸).

1997 implementation of Proposition 209. Proposition 209 was passed by California voters in 1996 and became effective on August 28, 1997.¹⁹ Proposition 209 precludes government agencies in

¹¹ Certain Federal Courts of Appeal apply “intermediate scrutiny” to gender-conscious governmental programs. See, e.g., *Equality Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Dade County*, 122 F.3d at 908; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994).

¹² *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

¹³ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

¹⁴ 473 F.3d 715 (7th Cir. 2007).

¹⁵ 345 F.3d 964 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

¹⁶ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

¹⁷ *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000) *cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta*, 532 U.S. 941, 534 U.S. 103 (2001).

¹⁸ F.Supp. 2d ___, 2010 WL 4193051 (D. N.J. October 19, 2010).

¹⁹ California Constitution, Article 1, Section 31.

the state from implementing race and gender preferences related to non-federally-funded contracts. Proposition 209 does not prohibit action that must be taken to establish or maintain eligibility for a federal program, and thus permits continued implementation of federally-required programs.²⁰ Therefore, Proposition 209 does not preclude the Authority's implementation of the Federal DBE Program.

2005 Ninth Circuit Court of Appeals decision in *Western States Paving*. In a 2005 ruling in *Western States Paving v. Washington State DOT*, the Ninth Circuit Court of Appeals found that the Federal DBE Program was constitutional, but that the Washington State Department of Transportation failed to show its implementation of the Federal DBE Program to be narrowly tailored.

- The court held that state and local governments are responsible for determining whether or not there is discrimination in the government's transportation contracting industry, and for developing narrowly tailored measures if a need exists, in order to comply with the Federal DBE Program.
- Narrow tailoring of the program depends on each state or local government evaluating conditions within its own contracting markets and implementing the Federal DBE Program in a way that pertains to those local conditions.

Subsequent guidance from USDOT. After *Western States Paving*, the USDOT advised state and local agencies that any use of race- or gender-conscious remedies as part of its DBE program must be based on evidence the recipient has concerning discrimination affecting the government's transportation contracting industry:²¹

- The state or local agency determines whether or not there is evidence of discrimination in its transportation contracting industry.
- The USDOT recommends the use of disparity studies to examine whether or not there is evidence of discrimination and how remedies might be narrowly tailored.
- The USDOT suggests consideration of both statistical and anecdotal evidence. "Disparity analysis," or comparisons of DBE utilization with the relative availability of DBEs to perform the work, is an important part of the statistical information.
- Evidence must be considered for individual racial, ethnic and gender groups.

State and local governments in the Ninth Circuit discontinued implementing race- and gender-conscious elements of the Federal DBE Program after the *Western States Paving* decision and subsequent guidance from USDOT, and many initiated disparity studies.

²⁰ Proposition 209 expressly provides that: "[N]othing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State."

²¹ U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, *Western States Paving Company Case Q&A* (January 12, 2006), available at <http://www.osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/WesternStatesPavingCompanyCaseQA.cfm>.

2011 U.S. District Court decision in *Associated General Contractors of America, San Diego Chapter vs. California Department of Transportation, et al.* In its 2011 ruling in *Associated General Contractors of America, San Diego Chapter vs. California Department of Transportation, et al.*,²² the U.S District Court for the Eastern District of California held that the California Department of Transportation’s implementation of the Federal DBE Program was constitutional. BBC’s 2007 disparity study for Caltrans was a key component of the evidence the court considered in that case.

Appendix A provides in-depth analysis of relevant legal decisions.

Summary. BBC’s disparity study for the Authority reflects provisions in 49 CFR Part 26, *Western States Paving* and other court decisions, and guidance from USDOT, and also considers recommendations for disparity studies by the U.S. Commission on Civil Rights and suggestions that critics of disparity studies have made. The study builds upon the information compiled in recent disparity studies conducted in California, especially in Southern California. It represents one of the most comprehensive analyses of agency contracting, availability of minority- and women-owned firms and marketplace conditions conducted to date.

²² U.S.D.C., E.D.Cal, Civil Action No. S-09-1662, Slip Opinion (E.D. Cal. April 20, 2011).

CHAPTER 2.

Types and Locations of BGPAA Contracts

The BBC study team collected and analyzed information concerning BGPAA contract and subcontracts awarded from January 2005 through December 2009. Chapter 2 describes:

- A. Collection and analysis of prime contract and subcontract data;
- B. Contracts included in the study; and
- C. The geographic distribution of firms receiving BGPAA contract dollars.

Appendix B provides further explanation of the data collection process.

A. Collection and Analysis of Prime Contract and Subcontract Data

BBC examined prime contracts and subcontracts for BGPAA procurements awarded from January 1, 2005 through December 31, 2009. (Note that “procurements” and “contracts” are often used interchangeably in this report.) The close of 2009 was selected as the end of the study period as BBC initiated the study in early 2010.

Data sources. BBC used several information sources to compile contract, subcontract, change order and vendor data, as described in Appendix B. Most of the information concerning BGPAA construction and engineering-related services contracts came from hard copy records the study team collected from Purchasing Department files. Most of the information concerning goods and services procurements came from data maintained by the BGPAA Accounting Department.

The BBC study team also collected available BGPAA information concerning subcontracts on construction and engineering-related agreements. (Subcontracting on BGPAA goods and services contracts is very limited and not examined in the study.) Because the Authority’s data for subcontracts was incomplete, BBC also requested subcontract information from the prime contractors awarded BGPAA construction and professional service contracts (see Appendix B).

Authority contract records were used to determine whether or not the contract was FAA-funded.¹ BBC determined contract size based on dollars at time of contract award. The time period for each contract was based on the date of contract award.

Total number of procurements examined in the initial data collection. BBC identified more than 800 BGPAA procurements within the study period. These procurements totaled over \$141 million. About \$68 million of the total procurement dollars were awarded to FAA-funded procurements, representing 66 contracts. About \$73 million were locally-funded procurements, representing 736 contracts. BBC also collected information for 352 subcontracts totaling over \$48 million in subcontractor procurements.

¹ One or more dollars of FAA funding caused the Authority to treat a contract as FAA-funded.

Only a portion of these procurements were suitable for inclusion in the utilization and disparity analyses, as described below. Appendix B provides additional information about the study team’s efforts to collect prime contract and subcontract data.

Determination of contract amounts performed by the subcontractors and the prime contractor. For each construction and engineering contract, BBC examined dollars awarded to subcontractors and retained by the prime contractor.

- The value of each subcontract was based on the dollar amounts committed to the subcontractor at time of award, or, if those data were not available BBC used information from prompt payment reports and payment invoices.
- If a contract involved subcontracting, BBC calculated the dollars going to the prime contractor by subtracting the dollars listed for subcontractors and suppliers from the total contract amount.

B. Contracts Included in the Study

BBC examined BGPAA utilization of minority- and women-owned firms within three general types of work: (a) construction, (b) engineering-related services, and (c) goods and services.

Contracts included in the utilization and disparity analyses. The disparity study focuses on “transportation-related contracts” — those procurements involving the planning, design, building, maintenance or repair of transportation infrastructure at BGPAA. The following types of contracts were included in BBC’s utilization and disparity analyses based on analysis of the contracts and firms receiving the contracts:

1. The firm completing the work was a for-profit business and worked within a subindustry mostly comprised of for-profit businesses;
2. The contract was for construction, engineering, or goods and services, and not for a type of purchase typically excluded from disparity studies; and
3. The subindustry reflected a local market (i.e., not made from a national or international market). As described later in this chapter, the Los Angeles area is the relevant local market area for BGPAA contracts. Contracts with firms outside this market area were still included in the utilization and disparity analyses as long as the subindustry primarily had a local market orientation.

For each contract and subcontract, the study team researched whether the firm was a for-profit business and identified the subindustry that characterized its primary line of business. “Electrical work” (included under construction) and “cleaning and janitorial services” (a type of goods and services) are two examples of subindustries examined in the disparity study. BBC identified the subindustry based on the primary line of work for the contractor or vendor and in some cases from agency contract descriptions.

Contracts not included in the utilization and disparity analyses. For different reasons, some BGPAA contracts were not appropriate for inclusion in the utilization and disparity analyses.

Contracts with government agencies and non-profit organizations. Two BGPAA contracts representing about \$67,000 were with government agencies or non-profit organizations and were properly excluded from the utilization and disparity analyses as these firms have no ownership based on race/ethnicity or gender.

Contracts that reflected a national market. Four contracts and three subcontracts representing about \$1.5 million were excluded from the analyses because they were in subindustries that reflected a national market (aircraft arresting device systems and conveyor systems).

Contracts in regulated industries or in other fields not typically included in a disparity study. About 350 contracts representing about \$16 million were not included in the analyses as they were for utilities, waste management, broadcast and communications services, or other industries that are government-regulated industries (often regulated monopolies). An additional 13 subcontracts totaling under \$5 million were not studied for this reason.

Contracts that could not be classified into a subindustry. Twenty four procurements representing about \$500,000 and 12 subcontracts representing \$100,000 were excluded from the study because they could not be classified into a subindustry.

Contract dollars by subindustry. Figure 2-1 presents combined prime contract and subcontract dollars for each of the 16 subindustries included in BBC's analyses. Figure C-1 in Appendix C of this report provides more detailed descriptions of each subindustry.

As shown in Figure 2-1, \$67 million in FAA-funded contracts and nearly \$53 million in locally-funded contracts were examined in the utilization and disparity analyses, for a total of nearly \$120 million in contracts during the five-year study period. (Locally-funded contracts are those with no FAA funding.) Construction work accounted for more than \$100 million of these contracts, and \$16 million was for engineering-related services (including planning, environmental and testing services contracts). Goods and services contracts relevant to the disparity study amounted to \$1.4 million during the study period.

Figure 2-1.
Dollars of BGPAA prime contracts and subcontracts for subindustries examined in disparity study, 2005-2009

Sub-industry/procurement area	Funding source (in thousands)		
	FAA	Non-FAA	Total
Construction			
Heavy construction	\$26,606	\$10,212	\$36,818
Building construction	13,760	23,015	36,775
Electrical work	2,519	9,225	11,744
Other construction	3,928	4,071	7,999
Construction materials	4,936	1,594	6,530
Soundproofing	1,253	141	1,393
Trucking	999	68	1,067
Wrecking and demolition	296	159	455
Water, sewer and utility lines	<u>0</u>	<u>86</u>	<u>86</u>
Construction total	\$54,296	\$48,571	\$102,867
Engineering-related services			
Engineering	\$5,963	\$2,320	\$8,283
Testing and laboratory services	6,194	65	6,260
Environmental and planning services	616	278	894
Construction management	<u>0</u>	<u>241</u>	<u>241</u>
Professional services total	\$12,774	\$2,904	\$15,677
Goods and services			
Security services	\$0	\$665	\$665
Cleaning and janitorial services	14	409	423
Communications equipment	<u>0</u>	<u>354</u>	<u>354</u>
Goods and services total	\$14	\$1,428	\$1,441
Total	\$67,083	\$52,902	\$119,985

Source: BBC Research & Consulting.

C. Geographic Distribution of Contract and Subcontract Dollars

In a disparity study, analysis of local marketplace conditions and the availability of firms to perform contracts and subcontracts focuses on the “relevant geographic market area” for agency contracting. As mentioned previously in this chapter, the types of purchases BGPAA makes from a national market were not included in the disparity study analyses. Examining the remaining contracts, 84 percent of BGPAA contract dollars went to firms located in the Los Angeles area.² The same percentage of contract dollars went to local firms when limiting the analysis to FAA-funded contracts. Firms located in Central or Northern California without Southern California offices received a relatively small dollar volume of Airport construction, engineering, and goods and services contract or subcontract dollars. Therefore, the availability analysis examined firms with locations in the Los Angeles area.

The quantitative analyses of marketplace conditions in Chapter 3 also focus on the Los Angeles area. Although a small percentage of BGPAA contract dollars for 2005 through 2009 went to firms in San

² The Los Angeles area is the U.S. Census Bureau-defined Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area.

Diego County, past BBC disparity studies examining Southern California firms concluded that many businesses in San Diego and other communities in San Diego County seek work in the Los Angeles area. For this reason, the BGPAA study includes qualitative information collected from in-depth interviews and public forum testimony for San Diego-based as well as Los Angeles area businesses, trade association representatives and others.

Figure 2-2 shows the counties included in the Los Angeles area.

Figure 2-2.
Local market area – Los Angeles area



Source: BBC Research & Consulting.

CHAPTER 3.

Conditions for Minorities and Women in the Local Marketplace

Federal courts have found that Congress “spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry.”¹ Congress found that discrimination had impeded the formation and expansion of qualified minority business enterprises.

BBC examined whether barriers for minority- and women-owned firms found on a national level also appear in the Los Angeles area construction and engineering industries. Such barriers could affect MBE/WBE availability and utilization for BGPAA contacts.² BBC examined the local marketplace primarily in four areas:

- A. Entry and advancement;
- B. Business ownership;
- C. Access to capital; and
- D. Success of businesses.

Chapter 3 concludes with a summary of the marketplace information.

Appendices E through H present quantitative information concerning the Los Angeles area, and Appendix K presents qualitative information collected through in-depth personal interviews with Southern California business owners, trade association representatives and others as well as testimony from public forums.³ The information includes quantitative and qualitative analyses of the construction, engineering, and goods and services industries, with a focus on the construction and engineering-related services as those industries account for most BGPAA contract dollars.

A. Entry and Advancement

BBC examined the representation of minorities and women in the Los Angeles construction and engineering workforce relative to all industries. In addition, the study team compared the advancement of minorities and women into supervisory or managerial roles to the advancement of non-Hispanic whites and males. As discussed in Appendix E, a number of studies throughout the

¹ *Sherbrooke Turf, Inc.*, 345 F.3d at 970, (citing *Adarand Constructors, Inc.*, 228 F.3d at 1167 – 76 (10th Cir. 2001)); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005) at 992.

² As in other sections of the report, the term “MBE/WBEs” refers to minority business enterprises and women business enterprises, whether or not they are certified as MBEs, WBEs or DBEs. Disadvantaged business enterprises (DBEs) are a subset of MBE/WBEs in this report.

³ Qualitative information comes from in-depth interviews performed with Southern California businesses in the Caltrans, Availability and Disparity Study, the Southern California Regional Disparity Study, and the San Diego County Regional Airport Authority disparity study, as well as the public forums conducted as part of these studies.

United States have taken the position that race and gender discrimination has affected the employment and advancement of certain groups in the construction and engineering industry.

Quantitative information about entry and advancement in construction. Quantitative analysis of the Los Angeles area marketplace — based primarily on data from the 2000 U.S. Census and the 2009 American Community Survey (ACS) — shows that certain minority groups and women appear to be underrepresented in the construction industry compared to all industries considered together. In addition, some of those groups appear to face barriers regarding advancement to supervisory or managerial positions (see Appendix E). Analysis of the Los Angeles construction industry revealed patterns of entry and advancement that were similar to those found for California and the United States as a whole.

- Only 2.5 percent of the local construction industry was made up of African Americans in 2009, compared to 6.9 percent of the entire local workforce. Eight percent of Los Angeles area construction workers in 2009 were women, less than one-fifth of the representation of women across all industries (45%).
- Representation of minorities in certain construction trades including electricians, equipment operators and sheet metal workers was much lower than other trades. Relatively few women worked as roofers, drywall installers, masons, carpenters or iron and steel workers.
- Among construction workers, minorities and women were less likely than non-Hispanic whites and men to advance to the level of first-line supervisor. In addition, relatively few minorities working in the local construction industry reached the level of manager.

Quantitative information about entry and advancement in engineering. BBC also used 2000 U.S. Census data and 2009 ACS data to examine employment and advancement for different racial/ethnic/gender groups in the Los Angeles engineering industry. Certain race/ethnic groups were underrepresented in the industry, particularly in supervisory and managerial roles.

As four-year college degree in engineering is an important qualification in that industry, education is an important factor for entry and advancement in the engineering industry. Barriers to education appear to affect employment and advancement opportunities in the engineering industry for African Americans, Hispanic Americans and Native Americans.

After accounting for college education, however, there were disparities in the number of certain minority groups and women working in engineering in the Los Angeles area.

Qualitative information about entry and advancement. In-depth interviews with Southern California businesses and trade associations provided information about barriers that minorities and women may face regarding entry and advancement in the local construction and engineering industries. The BBC study team also examined testimony provided as a part of public forums conducted in Southern California. The following provides examples from the in-depth analysis contained in Appendix K.

A number of interviewees reported a discriminatory work environment for minorities and women in Southern California:

- Some interviewees reported that they were made to feel unwelcome in the local industry. For example, one interviewee representing a white woman-owned firm reported that she started her own construction firm because the firm that she worked for previously made clear to her its stance that “a woman should [not] be in management.”
- Other interviewees reported instances of racial slurs, sexist comments and sexual harassment, race-related graffiti on work sites, and other incidents affecting women and minorities. For example, an interviewee representing a white male-owned firm stated that he is aware of rampant, race-related graffiti being present on some of his work sites. He referred to the construction industry as a “jungle environment.” There were also examples indicating that some non-minorities and men did not want to work with minorities or women or would not respect a minority or woman in a supervisory position.
- Some interviewees reported that their race or gender had once prevented them from being a part of industry-related groups such as unions and trade associations. Other minority and female interviewees as well as some white men indicated that there was probably discrimination but could not identify specific examples.

Some business owners reported that they have not experienced specific, recent instances of discriminatory behavior in the local industry:

- Some interviewees described experiences of discriminatory behavior that occurred in the past that they no longer saw today. For example, an interviewee representing a Hispanic American male-owned firm said that when his father started the firm 30 years ago he experienced discrimination. He went on to say that there are such a large number of Hispanic Americans in the industry today that discriminating against them would be akin to discriminating against the entire industry — it would be too impractical.
- Other interviewees reported that society has overcome discrimination based on race and gender, leading to increased opportunity for MBE/WBE firms. For example, an interviewee representing a local trade association indicated that racism and sexism are not as problematic as they were in the past. With regard to racism, she said, “We’ve come a long way.” With regard to sexism, she commented, “Twenty years ago ... there was a different pay scale [for men and women], but I believe those days are gone.”

Effects of entry and advancement barriers on the local marketplace. The barriers that certain minority groups and women appear to face entering and advancing within the local construction and engineering industries may have substantial effects on business outcomes for minority- and women-owned firms.

- Typically, employment and advancement are preconditions to business ownership in the construction and engineering industries. Because disparities exist in entry and advancement for certain race/ethnic/gender groups, certain barriers may have prevented

some minority- and women-owned businesses from ever forming, reducing overall MBE/WBE availability in the local marketplace. The nature of entry and advancement data makes it difficult to quantify the effect that associated barriers may have had on MBE/WBE availability during the study period.

- Quantitative and qualitative evidence suggests that certain minority groups and women are underrepresented in the local construction and engineering industries, particularly in supervisory and managerial roles. Such underrepresentation may perpetuate beliefs and stereotypical attitudes that firms owned by those groups — for example, African Americans and women — may not be as qualified as majority-owned firms. Those beliefs may make it more difficult for MBE/WBEs to win work in the Los Angeles area, including work with BGPAA and other public organizations.

B. Business Ownership

Prior studies have found that race, ethnicity and gender affect opportunities for business ownership, even after accounting for other factors. Figure 3-1 summarizes how courts have used those studies when considering implementation of the Federal DBE Program in other states.

BBC examined whether there are disparities in business ownership for minorities and women in the Los Angeles area workforce compared to non-Hispanic white males. The study team developed regression models of business ownership rates using 2000 Census data. The models identified disparities for certain minority groups and women after accounting for personal characteristics including education, age and ability to speak English. For groups exhibiting statistically significant disparities, BBC compared actual business ownership rates with simulated rates if those groups, based on personal characteristics, owned businesses at the same rate as similarly-situated non-Hispanic white males. Appendix F provides details about BBC's quantitative analyses of business ownership rates in the Los Angeles area marketplace.

Figure 3-1. Use of regression models of business ownership in defense of the Federal DBE Program

State and federal courts have considered disparities in business ownership rates when reviewing implementation of the Federal DBE Program, particularly when considering DBE participation goals. For example, disparity studies in California, Minnesota and Illinois used regression models to analyze the impact of race/ethnicity/ gender on business ownership in the combined construction and engineering industry. Results from those models helped determine whether race- and gender-based disparities exist after statistically controlling for other personal characteristics. Those analyses, which were based on 2000 Census data, were included in materials submitted to courts in subsequent litigation concerning implementation of the Federal DBE Program. BBC used the same sources of data and similar regression models to analyze business ownership in the Los Angeles area.

Quantitative information about business ownership in construction. Quantitative analysis of the Los Angeles construction industry revealed statistically significant disparities in business ownership for several racial/ethnic/gender groups after accounting for various neutral factors such as age, ability to speak English and education. These results are based on BBC’s statistical models of business ownership using 2000 Census of Population data and 2009 American Community Survey data. Because the 2000 dataset was considerably larger, the results below are based on these data.

Compared to non-Hispanic whites and non-Hispanic white males, BBC observed significant disparities in business ownership rates for:

- African Americans;
- Subcontinent Asian Americans;
- Hispanic Americans;
- Native Americans; and
- Women.

For each of the minority groups above, Figure 3-2 compares observed business ownership rates to simulated business ownership rates if those groups owned construction businesses at the same rate as similarly-situated non-Hispanics whites (i.e., “benchmark business ownership rate”). The study team also generated similar simulations for non-Hispanic white women compared to non-Hispanic white men.

The study team calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate (and then multiplying by 100). A value of 100 would indicate “parity” in business ownership rates; a small index indicates a large disparity. Results indicate that:

- Compared to similarly-situated non-Hispanic whites, there were disparities in business ownership rates for African Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans working in the Los Angeles construction industry.
- There was also a disparity for non-Hispanic white women compared to non-Hispanic white men.

Figure 3-2.
Comparison of actual business ownership rates to simulated rates
for Los Angeles area construction workers, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
African American	20.5%	25.3%	81
Subcontinent Asian American	13.2%	32.6%	41
Hispanic American	14.1%	23.1%	61
Native American	21.3%	27.2%	78
White female	20.6%	28.6%	72

Source: BBC Research & Consulting from statistical models of 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Quantitative information about business ownership in engineering. BBC also identified disparities in business ownership in the engineering industry:

- Minorities working in the Los Angeles area engineering industry were self-employed at substantially lower rates than non-Hispanic whites in both 2000 and 2009 (statistically significant differences).
- In 2000 and in 2009, women working in the Los Angeles engineering industry also had substantially lower self-employment rates than men (statistically significant differences).

BBC used regression models to investigate the presence of race/ethnicity and gender disparities in business ownership in the engineering industry after accounting for the effects of neutral factors. Analyses for 2000 (for the state with Los Angeles area indicator variables) identified statistically significant disparities for minorities and women.

Figure 3-3 compares actual business ownership rates for these groups to simulated benchmark business ownership rates if individuals in these groups owned businesses at the same rate as similarly-situated non-Hispanics whites and non-Hispanic white males. Results indicate that:

- Minorities working in the engineering industry owned businesses at a lower rate than similarly situated non-Hispanic whites.
- White women in the engineering industry owned businesses at a lower rate than similarly situated non-Hispanic white men.

Figure 3-3.
Comparison of actual business ownership rates to simulated rates
for Los Angeles area workers in the engineering industry, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Minority	10.7%	14.2%	75
White female	11.1%	17.2%	64

Source: BBC Research & Consulting from statistical models of 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Qualitative information about business ownership. In-depth interviews with Southern California businesses and trade associations as well as testimony provided as part of public forums held in Southern California indicated some evidence that race and gender discrimination contributed to unfavorable conditions to form and successfully operate a business. Some of these barriers pertain to opportunities for advancement as an employee to be in a position to successfully start a business. Barriers accessing capital to start a business could also depress business ownership rates. Any disadvantages in operating a business could reduce the relative number of minority- and women-owned firms. Examples of each type of barrier are discussed in other parts of Chapter 3. Appendix K provides much more detailed analysis of the qualitative information examined in this study.

Some representatives of minority- and women-owned firms interviewed reported that, today, it was not any more difficult for minorities and women than non-minorities and men to start and successfully operate businesses. Appendix K contains these results as well.

Effects of business ownership barriers on the local marketplace. There is evidence of disparities in the ownership of construction and engineering firms by minorities and women in the Los Angeles marketplace. There is some qualitative evidence of greater barriers to business ownership for minorities and women.

Chapter 8 of this report quantifies the effect of disparities in business ownership rates on the availability of MBE/WBEs for BGPAA construction and engineering contracts.

C. Access to Capital

Access to capital is one of the factors researchers have examined when studying business formation and success. As discussed in Appendix G, if discrimination exists in capital markets, minorities and women may have difficulty acquiring the capital necessary to start, operate or expand businesses. BBC also examined whether bonding and insurance present a barrier to contract opportunities for minority- and women-owned businesses.

Quantitative information about access to capital. There is evidence that minorities and women face certain disadvantages in accessing capital necessary to start and expand businesses, based upon analysis of 2000, 2007 and 2009 U.S. Census Bureau data; 2006 and 2009 HMDA data; and the 1998 and 2003 SSBF data.

BBC first examines homeownership and mortgage lending, as home equity can be an important source of capital to start and expand businesses.

- Home equity is an important source of funds for business start-up and growth. Fewer African Americans, Hispanic Americans and Native Americans in the Los Angeles area and California own homes than non-Hispanic whites, and those who do own homes tend to have lower home values.
- African Americans, Asian Americans, Hispanic Americans and Native Americans applying for home mortgages in the Los Angeles area are more likely than non-minorities to have their applications denied.
- African American, Hispanic American and Native American mortgage borrowers in the Los Angeles area are more likely to have subprime loans.

The study team also analyzed data from the Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF), the most comprehensive national source of credit characteristics of small firms (those with fewer than 500 employees). Data are provided by Census Division. The Pacific Census Division (referred to below as the Pacific region) contains California, along with Alaska, Washington, Oregon and Hawaii.⁴

⁴ The Census Division is the greatest level of geographic detail available for SSBF data, and 2003 remains the most recent information as the survey was discontinued after that year.

- Minority- and women-owned firms in the Pacific region are more likely to forgo applying for loans due to fear of denial.
- Based on a regression analysis using 1998 SSBF data, African American and Hispanic American business owners are more likely to be denied a loan in the U.S., even after controlling for neutral factors.
- Data indicate that minority- and women-owned firms receiving business loans obtain smaller loans than majority-owned firms. There is some evidence that African American- and Hispanic American-owned firms receiving business loans pay higher interest rates on those loans.

Qualitative information about access to capital. In-depth interviews and public hearing testimony indicate that access to financing is a barrier to doing business in both the private and public sectors (see Appendix K):

- Many of the firms interviewed as part of the BGPAA disparity study indicated that access to financing was a barrier for small businesses, especially when starting and first growing. A number of business owners and managers interviewed in the BGPAA study observed that barriers to financing had worsened.
 - The co-owner of a construction firm said, “The banks are really tough right now. I’ve been talking to my banker ... and he said most of the contractors he works with have lost their line of credit.”
 - The technical director of a white woman-owned engineering firm said, “I think right now the barrier [associated with financing] is universal. In the current economy ... they’ve raised the bar on qualifications. It’s almost like you have to not have to have the money in order for them to approve you. It’s very difficult. ... We’ve actually not been able to get any funding in the last year. We’ve had to do our funding through credit cards.”
- Some of the firms interviewed in the BGPAA disparity study said that financing continued to present a barrier to expanding their work or pursuing specific contracts at BGPAA. Barriers to financing, especially when combined with slow payment on contracts, presented a significant barrier. (Some firms identified slow payment as an issue at the Authority.)

Interviewees in the BGPAA study and other disparity studies had different opinions on whether race or gender affected access to financing.

- Most interviewees in the disparity studies indicated that financing is a barrier for all small businesses, regardless of race or gender. For example, one interviewee, representing an Asian American male-owned firm, explained that credit is extremely tight in the current market and particularly so for small firms that are not well established. Regarding credit for small firms, he asked rhetorically, “If I am a bank, would I loan money to [someone] with no experience?”

- Some interviewees indicated that financing (and bonding) was a particular problem for minorities and women in the past but that access had improved, sometimes through government programs. For example, an interviewee representing an African American male-owned firm stated that his race affected his firm’s ability to get financing and bonding “a long time ago,” but that now it has “opened up” so that he does not have any problems. He feels that the change occurred gradually over time.
- Other interviewees reported that issues related to financing disproportionately affect minority- and woman-owned firms. For example, an interviewee representing a female-owned construction business stated, “I think minorities and women have a much harder time getting capital, getting bonding and getting insurance ... women are still asked to have their husbands sign at the bank, which floors me after 33 years [in business].”
- A few minority and women interviewees reported that their MBE/WBE status helped them obtain loans or qualify for bonds. For example, one interviewee, representing a Hispanic male-owned firm, stated that his firm “wouldn’t have been able to get credit at all without the DBE program.”

Qualitative information about bonding and insurance. Bonding and insurance requirements at BGPAA and other public sector agencies can present a barrier to firms potentially bidding on contracts.

- Some interviewees reported that bonding and insurance requirements in the public sector dissuade firms from pursuing public sector work — at least as prime contractors. For example, an interviewee representing a white male-owned firm stated that all public sector work requires bonds — contractors cannot work on public projects without obtaining a significant bond. He went on to say that if prime contractors do not carry MBE/WBE subcontractors under their bonds, it becomes a major issue for those subcontractors.
- A construction firm owner interviewed in the BGPAA study said that he prefers working in the private sector because “bonding has become very stringent right now, and there’s not as big of [a] bonding requirement in the private sector.”

Some of the individuals interviewed in the BGPAA study and other disparity studies indicated that bonding and insurance were greater barriers for minority- and women-owned firms. Other interviewees did not.

- A project manager of a WBE-certified construction firm interviewed in the BGPAA study stated that there is discrimination in obtaining financing, bonding, materials and supplies and other products or services. He said, “It’s all a perceived risk thing. They don’t really look at the business. They see MBE or WBE, and there’s some preconceived thing that they’re small and ineffective, that they’re only there to satisfy someone’s check box.”

- The president of the Southern California Chapter of the National Association of Minority Contractors, also interviewed in the BGPAA study, said that bonding presents a significant barrier to its members, but is related to “dollars” not race, ethnicity, or gender.
- A number of interviewees linked access to bonding with access to capital. If a firm had difficulty obtaining credit it would have difficulty obtaining bonds.

Effects of barriers in access to capital, bonding and insurance on the local marketplace.

Small businesses do not have the same access to capital, bonding and insurance as larger businesses. Minority- and women-owned firms tend to be small businesses, so these barriers have a disproportionate effect on MBEs and WBEs.

In addition, there is quantitative evidence of barriers in access to capital for certain minority groups and women in the local marketplace and the Pacific region after controlling for certain other factors. Some individuals interviewed as part of the BGPAA study and other BBC disparity studies in Southern California indicate that minority- and women-owned firms do not have the same access to capital and bonding as majority-owned firms. Other interviewees indicated that barriers due to race and gender were once in place but have eroded over time (sometimes because of government efforts).

It appears that barriers to financing, bonding and insurance place minority- and women-owned firms at a disadvantage when competing within the local marketplace. There is qualitative evidence that such barriers affect opportunities for small minority- and women-owned firms to compete for BGPAA contracts.

D. Success of Businesses

BBC examined the success of minority- and women-owned firms in the local transportation contracting industry. Appendix H presents detailed results.

Telephone survey results BBC conducted telephone interviews with firms in transportation-related subindustries in the Los Angeles area.

Construction. Telephone interviews with more than 900 firms in the Los Angeles area construction industry indicated the following:

- MBEs and WBEs in the construction industry were more likely to be small businesses than majority-owned firms.
- MBE/WBE construction firms were substantially less likely than majority-owned firms to have bid as prime contractors.
- MBE/WBEs pursuing public sector work were less likely than majority-owned firms to report receiving such work.
- Minority- and women-owned construction firms were less likely than majority-owned firms to have received a large contract (contracts or subcontracts over \$1 million).

Engineering. The BBC study team compiled telephone survey results from more than 500 Los Angeles area firms in the engineering industry.

- MBEs and WBEs in the engineering industry were more likely to be small businesses than majority-owned firms.
- Compared with majority-owned firms, MBEs pursuing private sector contracts were less likely to be awarded such work.
- Minority- and women-owned firms in the engineering industry were less likely than majority-owned firms to have received a large contract or subcontract.

Goods and services. BBC's availability interviews from the BGPAA study and past studies in Southern California pertained to a small number of subindustries within the local goods and services industry. Interview results indicate that MBE/WBEs were more likely to be small businesses than majority-owned firms. They were less likely than majority-owned firms to have bid on public sector contracts. MBEs bidding on public sector work were less likely to have received a contract than majority-owned firms. When examining the largest contracts received, those contracts tended to be smaller for MBE/WBEs than majority-owned firms.

Bid capacity. Some recent legal cases regarding race- and gender-conscious contracting programs have considered the issue of the "relative capacity" of firms included in an availability analysis.⁵ One approach to account for differing capacity between types of firms is to examine relatively small contracts, a technique noted in *Rothe*. In addition to examining small contracts, BBC directly measured bid capacity in its availability analysis.

Measurement of bid capacity. "Bid capacity" for a firm is measured as the largest contract or subcontract the firm bid on or performed in California within the five years preceding when BBC interviewed the firm. BBC uses bid capacity as one factor in determining whether a firm would be available to bid on specific prime contracts and subcontracts.

Assessment of possible disparities in bid capacity of MBE/WBEs and majority-owned firms. The availability analysis produced a database of 1,582 firms potentially available for Burbank-Glendale-Pasadena Airport Authority work.⁶ The following analysis of bid capacity relies on the results of availability interviews.

One factor that affects bid capacity is the industry specializations of firms. Some industry segments, such as construction of water, sewer and utility lines, involve larger projects. Other segments, such as cleaning and janitorial services, involve smaller-scale assignments. One way of controlling for variation in bid capacities in different subindustries is to assess whether a firm has a bid capacity above or below the median level of firms in a particular subindustry. BBC then tested whether minority- and women-owned firms bid on larger or smaller contracts or subcontracts compared with other firms in the same subindustry.

⁵ See, for example, the decision of the United States Court of appeals for the Federal Circuit in *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

⁶ See Appendix D for further description of the survey sample and process.

Although there were differences in bid capacity between MBE and majority-owned construction firms after controlling for construction subindustry, BBC's regression analyses found that age of firm explained much of these differences (no statistically-significant difference in bid capacity for MBEs after controlling for both subindustry and firm age). Similarly, there were no statistically significant disparities in bid capacity after accounting for industry specialization and firm age among businesses in the Los Angeles area engineering and goods and services industries.

Appendix H explains the regression analyses and provides additional results.

Business closures, expansions and contractions. A 2010 Small Business Administration report investigated business dynamics and whether minority-owned companies were more likely to close than other firms. The SBA reported on establishment death rates between 2002 and 2006 across sectors of the economy.⁷ The SBA report examined patterns in each state but not in individual metropolitan areas. The 2010 SBA study also examined the relative number of California businesses expanding and contracting that were not publicly held companies.

Results for California include:

- Among groups examined, African American-owned firms were the most likely to close and the least likely to expand.
- Hispanic American-owned businesses were more likely to close than white-owned firms. These firms were also more likely to expand than white-owned firms.

Overall, minority-owned firms were less likely to contract than white-owned firms. Appendix H presents additional information concerning rates of business closure, expansion and contraction.

Business earnings/receipts reported in U.S. Census data. BBC also examined annual receipts and business earnings from the U.S. Census Bureau.

- Analysis of 2007 data indicate that, in the Los Angeles area, mean receipts for minority- and women-owned firms were lower compared to that of all firms in both the construction and the professional, scientific and technical services industries.
- Regression analyses using Census data for earnings of business owners in the Los Angeles area indicate some evidence of statistically significant disparities in earnings for the following groups after taking account of neutral factors:
 - Hispanic American construction business owners;
 - Native American construction business owners; and
 - Female construction business owners and female engineering business owners.

⁷ Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

Qualitative information related to success in the local marketplace. Many individuals believe that there are disadvantages for minority- and women-owned firms in the local marketplace that affect the success of those firms.

- Some interviewees indicated that they have experienced racial or gender stereotyping “first-hand.” Others reported hearing of such experiences for minorities and women in the local industry. For example, an interviewee representing a local trade organization said that some of the personnel at public agencies believe that MBE/WBE firms are less qualified than large, well-established firms and that their participation generates additional costs. He said that many of those people believe there are “no good MBEs out there.” He remarked, “These individuals should be open to accepting that there are, in fact, good [MBE/WBE] firms and that their utilization does not increase costs.”
- When asked if his firm has been discriminated against based on the owner’s ethnicity, one interviewee, representing an African American male-owned firm, said: “To be honest with you, of course I have been discriminated against. [Prime contractors] will give you the contract, but in order to keep it I have to put the white person out there to be the front man.” He continued, “Once they find out it is a black man behind the operation they will unfairly terminate the contract.”
- Many interviewees indicated that it is more difficult for minority- and women-owned firms to “break into” the local industry because of issues related to race/ethnicity or gender. For example, an interviewee representing a female-owned firm reported that it is difficult for her firm to develop relationships with prime contractors, precisely because her firm is female-owned. She said that there have been instances when she has had to bring a male employee from her company to meetings with prime contractors so that they would treat her with more respect. She indicated that there is a general aversion to women in the construction industry.
- Some MBE/WBE interviewees reported that prime contractors using them for public sector work do not use them on private sector work.
- Some interviewees suggested that it might be difficult for a minority- or woman-owned subcontractor to “break in” with a prime contractor, but once they do so and show good work, the prime contractor will use them again. For example, one interviewee, representing a public works trade organization, said that pre-existing relationships between prime contractors and subcontractors is the most important factor in subcontractors getting work: “Some primes might have sub opportunities and [our organization] will then post the opportunity or work to get the appropriate team together. But putting together a team is mostly about relationships and trust.”

A number of interviewees reported barriers to success that affect small firms but none that are particular to minority- and women-owned firms. For example, an interviewee representing an African American male-owned firm commented that “the discrimination that continues today has nothing to do with race ... we got rid of the racist system, and now we’ve got a system of cronyism. And all of us are not cronies.”

Effects of barriers to success of minority- and women-owned firms. Census data and survey data show that minority- and women-owned firms have lower revenue than majority-owned firms. In addition:

- Statistical models indicated some evidence of disparities in business earnings for Hispanic American, Native American and female construction business owners in the Los Angeles area. Models indicated disparities in business earnings for female engineering business owners as well.
- There is some evidence that African American- and Hispanic American-owned businesses in California were more likely to close than non-minority-owned firms.
- Information from interviews and public testimony in Southern California indicates disadvantages for minority- and women-owned firms that some believe are in part due to race and gender discrimination. Other interviewees report that these disadvantages were not a result of discrimination.

Summary

BBC identified quantitative evidence of barriers in entry and advancement for minorities and women in the Los Angeles area construction and engineering industries. There is some qualitative evidence of a discriminatory work environment for minorities and women in the local marketplace. Although the effects were not readily quantified, any race or gender discrimination in employment and advancement in the local construction and engineering industries may negatively affect the current availability of minority- and women-owned firms in the local marketplace.

There are disparities in the ownership of construction and engineering firms by minorities and women in the Los Angeles area marketplace. There is also some qualitative evidence of greater barriers to business ownership for minorities and women. The study quantified the effect of disparities in business ownership rates on the current availability of minority- and women-owned construction and engineering firms in the local marketplace.

The study team identified quantitative evidence of barriers in access to capital for certain minority groups and women in the local marketplace and the Pacific region after controlling for certain neutral factors. Some interviewees indicated that minority- and women-owned firms do not have the same access to capital and bonding as majority-owned firms. Others indicated that barriers due to race and gender were once in place but have eroded over time.

Census data and survey data show that minority- and women-owned firms have lower revenue than majority-owned firms. In addition, BBC's statistical models identified some evidence that minority- and women-owned firms do not have the same success in the local marketplace as majority-owned firms after controlling for neutral factors. There is some evidence that African American- and Hispanic American-owned businesses were more likely to close than non-minority-owned firms.

Many interviewees reported disadvantages affecting the success of minority- and women-owned business in the local marketplace. Some individuals said that certain disadvantages are due to race and gender discrimination.

CHAPTER 4.

Analysis of MBE/WBE/DBE Availability

BBC analyzed the relative availability of minority- and women-owned firms that are ready, willing and able to perform BGPAA prime contracts and subcontracts. Chapter 4 contains six parts:

- A. Purpose of the availability analysis and definitions of MBEs, WBEs and potential DBEs;
- B. Information on firms available for BGPAA work;
- C. Number of minority-, women- and majority-owned firms included in the availability database;
- D. Calculation of MBE/WBE availability as inputs to the disparity analysis;
- E. Base figure for overall goal for DBE participation in FAA-funded contracts; and
- F. Implications for any DBE contract goals.

Appendices C and D provide supporting information.

A. Purpose of the Availability Analysis and Definition of MBEs, WBEs and Potential DBEs

BBC developed information on the availability of minority-, women- and majority-owned firms for BGPAA contracts as an input for the disparity analysis and for developing a base figure for the Authority's overall goal for DBE participation.

Input for the disparity analysis. In the disparity analysis, BBC compares the percentage of BGPAA contract dollars going to MBEs and WBEs (for each racial/ethnic/gender group) to the percentage of dollars that might be expected to go to MBE/WBEs given their relative availability for specific types and sizes of BGPAA prime contracts and subcontracts.

- In the disparity study, the actual percentage of dollars going to MBEs and WBEs is referred to as *utilization*.
- The percentage of dollars that might be expected to go to MBEs and WBEs is referred to as *availability*.
- The disparity analysis compares *utilization* and *availability* to identify whether there was a disparity between the dollars actually going to MBEs and WBEs and what might be expected based upon the availability analysis

BBC examined the availability of minority-, women- and majority-owned firms for each BGPAA prime contract and subcontract to calculate the availability benchmarks for use in the disparity analysis, as explained later in this chapter.

Definition of MBEs and WBEs. As discussed in Chapter 1, the disparity study follows the definitions of specific minority groups contained in 49 CFR Part 26. Utilization and availability are separately examined for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and white women-owned firms.

The availability benchmarks for the disparity analysis count firms as minority- and women-owned regardless of whether they are or could be certified as DBEs. Most minority- and women-owned firms doing business in the Los Angeles area are not currently certified.¹ BBC used the same methodology to count firms owned by minorities and women as MBEs and WBEs in both the utilization and the availability analyses.

Definition of majority-owned firms. “Majority-owned firms” in the disparity study are businesses that are not owned by minorities or women. In the utilization analysis, dollars not going to MBEs and WBEs go to majority-owned firms. In the availability database used to develop availability benchmarks, each firm is coded as minority-, women- or majority-owned.

Majority-owned firms include any white male-owned firms certified as disadvantaged business enterprises.

Definition of DBEs. Disadvantaged business enterprises (DBEs) are businesses that are certified as such in California (which means that they are certified as being below revenue and personal net worth limits included in 49 CFR Part 26). Because implementation of the Federal DBE Program requires BGPAA to track DBE utilization, BBC reports certain utilization data for DBE-certified firms. It is not proper to compare utilization and availability of DBEs however.

Inputs for the base figure analysis related to the overall DBE goal. When establishing its overall goal for DBE participation in its FAA-funded contracts, BGPAA must begin by calculating a “base figure” for the relative availability of DBEs.² The Final Rule effective February 28, 2011 and USDOT “Tips for Goal-Setting” explain that minority- and women-owned firms that are not currently certified but might be should be counted as DBEs in the base figure, however, firms that have been decertified or appear that they will soon graduate from the DBE Program should not be counted as DBEs in the base figure calculation.

¹ Of the 637 MBE/WBE firms included in the availability database, 180, or about 28 percent, had DBE certification.

² 49 CFR Section 26.45 (c).

Definition of potential DBEs. BBC’s analysis of the base figure is the same as determining MBE/WBE availability benchmarks for the disparity analysis, except that firms are grouped into two sets: “potential DBEs” and all other firms. A small number of minority- and women-owned firms are not counted as “potential DBEs” in the base figure analysis — firms for which DBE certification has been denied, that graduated from the DBE Program, or that appear to be too large to be eligible for DBE certification (and are not currently certified). Figure 4-1 provides further explanation of the firms that were counted as potential DBEs when calculating the base figure for the BGPAA overall DBE goal.

Definition of “all other firms” in the base figure calculations. In the base figure analysis, all firms that are not “potential DBEs” are categorized as “all other firms.” This includes all majority-owned firms that are not DBE certified (which is nearly all majority-owned firms) and those minority- and women-owned firms that are not currently DBE-certified and have been denied DBE certification, graduated from the DBE Program or appear to be too large for DBE certification.

B. Information about Firms Available for BGPAA Work

BBC’s availability analysis focused on specific construction, engineering, goods and other services subindustries in the Los Angeles area (the five-county region described in Chapter 2). Chapter 2 discusses BBC’s identification of specific subindustries for inclusion in the availability analysis, and selection of the Los Angeles area as the relevant market area for BGPAA contracting.

Sources of availability data. Many of the firms BBC included in the BGPAA availability database were identified and interviewed by telephone in disparity studies that BBC previously completed in Southern California.³ The availability interviews in those past studies identified firms available to perform transportation-related work for local government agencies (separate from state agencies).

As part of the BGPAA disparity study, the BBC study team conducted additional telephone interviews with owners and managers of Los Angeles area firms to build a more complete database of firms potentially available for BGPAA contracts.

The methodology for identifying firms for availability interviews, performing the interviews (including interview questions), following up with initial non-respondents, and analyzing the data

Figure 4-1. Definitions of potential DBEs

To formulate the overall DBE goal, BBC included all minority- and women-owned firms as potential DBEs except for firms that had recently graduated from the DBE Program, firms that had applied for certification with the State of California and been denied, and firms that appeared to have annual revenue so high as to preclude their certification as DBEs. At the time of this study, the overall revenue limit was \$22,410,000 (three-year average for gross receipts). There were also lower revenue limits for specific subindustries according to SBA small business size standards. Only a few minority- and women-owned firms appeared to exceed these revenue limits based upon information they provided in the availability survey.

Firm owners must also meet USDOT personal net worth limits. Personal net worth of the owners of firms was not available as part of this study and thus was not considered when determining potential DBE status.

³ Interviews conducted with businesses in the Los Angeles area includes those from the Caltrans Availability and Disparity Study completed in 2007, the Southern California Regional Disparity Study (interviews conducted in 2008 and 2009), and the disparity study for the San Diego County Regional Airport Authority (interviews conducted in 2008 and 2009).

was consistent for each of the previous BBC disparity studies in Southern California, including the additional BGPAA availability interviews. For example, the source of the initial list of business establishments contacted in the interviews (Dun & Bradstreet) and the firm conducting the interviews (Customer Research International) were the same as in each of the previous studies.

Sources of information in developing the availability database for the BGPAA study are explained in detail in Appendix C.

Information collected in availability interviews. In each of the above disparity studies (including the BGPAA study), BBC worked with Customer Research International (CRI) to conduct telephone interviews with the owners or managers of the identified business establishments. Interview topics included:

- Whether the organization was a subsidiary or branch of another company;
- Whether the organization was a private business (and not a public agency or not-for-profit organization);
- Primary line of work;
- Qualifications and interest in work for state and local government agencies;
- Qualifications and interest in work as a prime contractor and as a subcontractor;
- The largest contract or subcontract bid on or performed in the previous five years;
- How long the firm has been in business; and
- Race/ethnicity/gender of firm ownership.

Appendix C provides an example of a telephone survey instrument. Firm representatives were also offered the option of answering questions that were e-mailed or faxed if they preferred not to complete an interview over the phone.

C. Number of Minority-, Women- and Majority-owned Firms in the BGPAA Availability Database

A useful starting point in the availability analysis is to simply count the number of minority-, women- and majority-owned firms in the availability database for the BGPAA disparity study.

Total number of firms included in the availability database. The availability database for the BGPAA study totaled 1,582 firms after screening for qualifications and interest in work with government agencies and firm location. The fundamental availability criteria for inclusion in the database were:

- Performance of work related to transportation contracting (in the lines of business pertinent to this study);
- Indication of qualifications and interest in performing work for local agencies in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Past performance or bidding on work (in the public or private sector); and
- An office in the Los Angeles area.

The types of information above were gathered from the availability interviews with firm owners and managers.

Minority-, women- and majority-owned firms in the availability database. Figure 4-2 provides race/ethnicity/gender information for the firms in the availability database for BGPAA contracts and subcontracts. Of the 1,582 firms counted as potentially available, 637 (40%) were minority- or women-owned. A smaller portion of those firms were certified as DBEs.

Figure 4-2.
MBE/WBEs as a percentage of firms available for BGPAA contracts and subcontracts, by race, ethnicity and gender

Race, ethnicity and gender	Total MBE/WBE		Certified MBE/WBE	
	Number of firms	Percent of firms	Number of firms	Percent of firms
African American-owned	65	4.1 %	27	1.7 %
Asian-Pacific American-owned	100	6.3	38	2.4
Subcontinent Asian American-owned	30	1.9	10	0.6
Hispanic American-owned	223	14.1	59	3.7
Native American-owned	<u>27</u>	<u>1.7</u>	<u>5</u>	<u>0.3</u>
Total MBE	445	28.1 %	139	8.8 %
WBE (white women-owned)	<u>192</u>	<u>12.1</u>	<u>41</u>	<u>2.6</u>
Total MBE/WBE	637	40.3 %	180	11.4 %
Total other firms	<u>945</u>	<u>59.7</u>		
Total firms	1,582	100.0 %		

Source: BBC Research & Consulting from Availability Database.

The data in Figure 4-2 reflect a simple count of firms, with no analysis of a firm’s availability for specific types and sizes of BGPAA contracts. Thus, the percentages shown in Figure 4-2 are presented for informational purposes and are not the measures of MBE and WBE availability used as benchmarks in the disparity analysis. Additional analyses were required to develop these availability benchmarks, as described below.

Database designed to provide availability figures, not to identify every firm available for BGPAA contracts. The availability database is suitable for producing statistically reliable availability benchmarks for use in determining whether there were disparities in BGPAA’s utilization of MBEs and WBEs and for calculating a base figure for the overall DBE goal. This methodology has been accepted in federal court, including the favorable review of a BBC disparity study for Caltrans by the Federal District Court in *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*⁴

The availability data allow BBC to develop a representative depiction of firms qualified and interested in local transportation agency work, but it should not be considered an exhaustive list of every minority-, woman- and majority-owned firm that could participate in a BGPAA contract. Reasons for this are further discussed in Appendix D.

⁴ U.S.D.C., E.D. Cal, Civil Action No. S-09-1662, Slip Opinion (E.D. Cal. April 20, 2011).

D. Calculation of MBE/WBE Availability as Inputs to the Disparity Analysis

After developing the availability database, BBC analyzed that information to developed dollar-weighted availability benchmarks for use in the disparity analysis.

Purpose. The availability analysis calculates the percentage of contract dollars that might be expected to go to MBE/WBEs given the availability of minority-, women- and majority-owned firms for the specific types and sizes of a particular set of BGPAA prime contracts and subcontracts.

Steps to calculating availability. For any given BGPAA prime contract, subcontract or other procurement (collectively referred to here as “contract elements”), only a subset of the 1,582 firms in the availability database were counted as potentially available for that work.

As described below, BBC first examined the characteristics of the specific contract element, including type of work involved, contract size and contract date. BBC then identified firms in the availability database that performed work of that type and size and in that role (as a prime contractor or subcontractor), and were in business in the year the contract was awarded. This is a bottom up, contract-by-contract approach to determining availability measures specific to particular sets of BGPAA contracts. The example in Figure 4-3 shows how BBC calculated availability for a subcontract on a specific BGPAA project.

1. For each of the more than 700 BGPAA prime contracts and subcontracts, BBC determined the type of work, contract role (prime/sub) and size of the work.
2. BBC then identified firms in the availability database that reported they:
 - Are qualified and interested in performing that role (prime or subcontractor) for the specific type of work, for local governments;
 - Have bid on or performed work of that size;
 - Were in business in the year the contract was awarded.
3. BBC counted the number of MBEs (by race/ethnicity), WBEs and majority-owned firms among all firms in the database available for that specific type of work.

Figure 4-3. Example of an availability calculation for a BGPAA subcontract

On a BGPAA contract issued in 2008, the prime contractor awarded a subcontract for electrical work for \$1,200. To determine the overall availability of minority- and women-owned firms for this subcontract, the study team identified firms in the availability database that:

- a. Were in business in 2008;
- b. Indicated that they performed electrical work;
- c. Reported bidding on work of similar size or greater in the past; and
- d. Reported qualifications and interest in working as a subcontractor on local government agency projects.

The study team found 129 firms in the availability database that met these criteria. Of those firms, 43 were minority- or women-owned. Because one-third of the firms available for this subcontract were minority- or women-owned, MBE/WBE availability for this contract element was 33.3 percent.

This process was completed for all prime contract and subcontracts included in the disparity analysis, weighting the results for each contract element by the dollars for that prime contract or subcontract.

4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element (e.g., the percentage of firms counted as available for a contract that are MBEs and WBEs).

This process was repeated for each prime contract and subcontract.

5. BBC weighted the relative availability for each prime contract and subcontract by the dollars of work corresponding to each contract element.
 - For MBEs (for each race/ethnic group) and for WBEs, BBC multiplied percentage availability for each BGPAA contract element by the dollars associated with the contract element;
 - Added the results across contract elements; and
 - Divided by total dollars for all BGPAA contract elements to produce a dollar-weighted estimate of overall availability for MBE/WBEs and for each MBE/WBE group.

Results for BGPAA FAA- and locally-funded contracts. Overall, MBE/WBE availability is 29.6 percent for BGPAA contracts. Figure 4-4 shows complete results, including availability for BGPAA contracts by race/ethnic group. These values serve as benchmarks to evaluate the actual percentage of BGPAA contract dollars going to MBEs and WBEs from 2005 through 2009.

Figure 4-4.
Dollar-weighted availability of firms for BGPAA contracts, 2005–2009, by race, ethnicity and gender

Note: See Figure J-2 in Appendix J.
Source: BBC Research & Consulting from Availability Database.

Race, ethnicity and gender	Utilization benchmark (availability %)
African American-owned	3.6 %
Asian-Pacific American-owned	5.1
Subcontinent Asian American-owned	0.4
Hispanic American-owned	11.1
Native American-owned	1.0
Total MBE	21.2 %
WBE (white women-owned)	8.4
Total MBE/WBE	29.6 %

Unique availability benchmark for each set of contracts. BBC did not just conduct a disparity analysis for all BGPAA contracts, but also performed analyses for subsets of contracts (e.g., separating FAA- and locally-funded contracts, construction contracts and other contracts, prime contracts and subcontracts). Therefore, BBC needed to determine availability benchmarks for each set of BGPAA contracts and subcontracts examined in the disparity analysis. A number of tables in Appendix J report MBE/WBE availability and disparity analysis results for subsets of BGPAA contracts and subcontracts. MBE/WBE availability varies from 24 percent to about 47 percent depending upon the work examined. In general:

- MBE/WBE availability is greater for small BGPAA contract elements;
- MBE/WBE availability is greater for subcontracts; and
- MBE/WBE availability is about the same for FAA-funded contracts (29.4%) as for locally-funded contracts (29.9%).

Availability benchmarks improve upon what would be derived from a simple “headcount” of firms. The availability benchmark for BGPAA contracts identified above (29.6%) is lower than the percentage of firms in the availability database that are MBE/WBEs (40%). There are a number of reasons why the overall availability benchmark is lower than what might be calculated by just counting MBEs and WBEs and dividing the sum by the total number of firms in the availability database. The most important reasons are:

- The availability analysis considered *specialization of work* involved in BGPAA contracts;
- BBC considered a firm’s qualifications and interest in *prime contract* work and *subcontract* work when determining availability for a BGPAA contract element;
- The availability analysis considered *size of contracts* that firms have bid on when counting firms as available for a contract element; and
- BBC *dollar-weighted results* of the contract-by-contract availability analyses when determining an overall availability figure.

Specialization of work. USDOT suggests considering the availability of firms based on their ability to perform specific types of work. The example USDOT gives in “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” is as follows: If 90 percent of an agency’s contracting dollars is spent on heavy construction and 10 percent on trucking, the agency would calculate the percentage of heavy construction firms that are MBEs or WBEs and the percentage of trucking firms that are MBEs or WBEs, and weight the first figure by 90 percent and the second figure by 10 percent when calculating overall MBE/WBE availability.⁵ BBC examines 15 different areas of specialization (“subindustries”) in the BGPAA disparity study.

Qualifications and interest in prime contractor and subcontractor work. BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* and as a *subcontractor*. In BBC’s availability analysis for BGPAA construction and engineering contracts:

- Only firms reporting that they are qualified and interested in prime contracts are counted as available for prime contracts;
- Only firms reporting qualifications and interest in subcontracts are counted as available for these contract elements;
- Firms reporting qualifications and interest in both contract roles can be counted as available for either role.

As BGPAA did not identify any subcontracts on its goods and services contracts, the availability analysis did not include examination of contract role for these types of procurements.

⁵ Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program, <http://osdbu.dot.gov/?TabId=133>.

Consideration of the size of contracts and subcontracts. BBC considered the size of contracts or subcontracts that a firm had bid on in the previous five years (referred to as “bid capacity”) when determining whether to count that firm as available for a BGPAA contract or subcontract of a certain size. When counting available firms for a prime contract or subcontract, BBC considered whether a firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element.

This is the same approach that BBC used in the Caltrans disparity study that was favorably reviewed in *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*. BBC’s approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).⁶

Dollar-weighting results. BBC examined availability contract-by-contract and subcontract-by-subcontract, and then dollar-weighted the results for each specific set of contracts. In calculating overall availability, the availability results for a large prime contract or subcontract contribute more to the overall calculation than small contract elements.

This is the same approach that BBC used in the Caltrans disparity study that was favorably reviewed in the case cited above. “Tips for Goal-Setting” also suggests a dollar-weighted approach to determining availability.

The effect of considering bid capacity and then dollar-weighting availability results is lower availability figures for MBEs and WBEs than if BBC had simply used a simple “head count” of MBEs, WBEs and majority-owned to determine availability.

Availability benchmarks are determined for MBE/WBEs and not just certified DBEs.

Analysis of utilization and availability of minority- and women-owned firms (by race, ethnicity and gender) allows one to analyze whether there are disparities affecting minority- and women-owned firms. In other words, the possibility that race or gender discrimination affects utilization of firms is analyzed by comparing outcomes for firms based on the race/ethnicity/gender of their ownership, not certification status. Firms may be discriminated against because of the race or gender of the business owner regardless of whether that owner has applied for DBE certification.

Furthermore, analysis of whether firms face disadvantages based on the race/ethnicity/gender of the firm owner counts the most successful, highest-revenue minority- and women-owned firms in the statistics for all minority- and women-owned firms. A disparity analysis focusing on DBEs would improperly compare outcomes for certified DBEs (by definition, “economically disadvantaged” minority- and women-owned firms) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women). One might find disparities for any group of firms for which membership is limited to low-revenue firms.⁷

⁶ *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

⁷ An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the statistics for minorities, any comparison of wages between minorities and non-minorities would likely show disparities in wage levels.

Finally, 49 CFR Part 26 allows certification of white male-owned firms as DBEs. Disparity analysis based on DBEs is not purely an analysis of disparities by race/ethnicity and gender.

The courts that have reviewed utilization and availability analyses have accepted analyses based on race/ethnicity/gender ownership and not certification status.

Coding of minority women-owned firms. In the BGPAA disparity study, BBC combines firms owned by minority women and firms owned by minority men into “minority-owned firms.” “WBEs” are firms owned by white women. Figure 4-5 discusses BBC rationale for that classification.

Figure 4-5.
Coding of firms owned by minority women

Firms owned by minority women present a data coding challenge in both the availability analysis and the utilization analysis. BBC considered four options for coding firms owned by minority women:

- a. Coding these firms as both minority- and women-owned;
- b. Creating a unique group of minority female-owned firms;
- c. Grouping minority female-owned firms with all women-owned firms; and
- d. Grouping minority female-owned firms with the relevant racial/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each racial/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis because some minority groups had utilization and availability so low that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former – to group African American women-owned firms with all African American-owned firms, etc. “WBE” in this report refers to white women-owned firms. Any evidence of discrimination against white women-owned firms should, in general, be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives the BGPAA information to answer questions that often arise pertaining to utilization of white women-owned firms, such as whether a disproportionate share of work goes to firms owned by white women compared with firms owned by minorities.

E. Base Figure for Overall Goal for DBE Participation in FAA-funded Contracts

Establishing the base figure is the first step in calculating an overall annual goal for DBE participation in BGPAA FAA-funded contracts. BBC calculated the base figure using the same availability database and approach for determining MBE/WBE availability as described above, except that calculations were specific to “potential DBEs.” This methodology is consistent with court-reviewed methodologies in states including California, Illinois and Minnesota, instructions in the 2011 revisions to the Federal DBE Program, and USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program.”⁸

⁸ USDOT Tips for Goals Setting in the Disadvantaged Business Enterprise Program.
<http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

As Figure 4-1 explained, BBC counted firms as potential DBEs if they were certified as DBEs in California or were minority- and women-owned and did not have DBE certification applications denied, had graduated from the DBE Program or appeared to be too large to meet the revenue limits for DBE certification (overall or for the specific subindustry).

Base figure. BBC’s availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs might be expected to receive 19.3 percent of prime contract and subcontract dollars for BGPAA FAA-funded transportation contracts.

The Authority should consider 19.3 percent as the base figure for its overall goal for DBE participation if the distribution of FAA-funded contracts for the time period covered by the goal is expected to be similar to FAA-funded contracts from 2005 through 2009.⁹

Calculation of base figure if mix of FAA-funded contracts will differ in the future.

Figure 4-6 presents the construction and engineering components of the base figure for the overall DBE goal. The base figure reflects a weight of 82 percent for construction and 18 percent for engineering based on dollars of FAA-funded contracts for 2005 through 2009 examined in the availability analysis. If the dollars of FAA-funded construction contracts as compared with FAA-funded professional service contracts varies in the future, BGPAA may wish to apply different weights to the base figure data for each set of contracts when calculating a base figure.

There is no goods and services component for the base figure as BGPAA did not identify any FAA-funded goods and services contracts that were included in the disparity analysis. All of the goods and services procurements included in the utilization and availability analyses were identified as locally-funded.

Figure 4-6.
Construction and engineering components of base figure for BGPAA FAA-funded transportation contracts

Note:
Weights are based dollars of FAA-funded contracts for 2005–2009.

Source:
BBC Research & Consulting.

Potential DBEs	Utilization benchmark (availability %)		
	Construction	Engineering	Total
African American-owned	2.8 %	1.9 %	2.7 %
Asian-Pacific American-owned	2.7	4.4	3.0
Subcontinent Asian American-owned	0.2	1.7	0.4
Hispanic American-owned	7.6	2.8	6.7
Native American-owned	0.7	0.3	0.6
WBE (white women-owned)	<u>5.2</u>	<u>9.1</u>	<u>5.9</u>
Total potential DBEs	19.2 %	20.2 %	19.3 %
Sector weight	82 %	18 %	

The 19.3 percent base figure presented in Figure 4-5 is somewhat higher than the overall DBE goals the Authority has adopted since 2005, which have been in the range of 13 to 15 percent. Its overall DBE goal for 2011-2013 is 13 percent.

Additional steps before determining the overall annual DBE goal. BGPAA must consider whether to make a “step 2” adjustment to the base figure before determining a final overall DBE

⁹ Construction contracts constituted 82% of the FAA-funded contract dollars in the study period and engineering and related professional services contracts represented 18% of FAA-funded contract dollars.

goal. The step 2 adjustment can be upward or downward. Chapter 8 of the report presents information the Authority should consider in choosing whether to make such an adjustment.

F. Implications for any DBE Contract Goals

If BGPAA chooses to utilize DBE contract goals in the future, the Authority might use the availability database, the current DBE directory at that time, a newly-developed bidders list and/or other information to examine the availability of DBEs to participate in that contract. If it utilized DBE contract goals, BGPAA should:

- Set goals on a contract-by-contract basis given the unique attributes of a contract and the availability of DBEs to perform that work.
- Set DBE contract goals only on FAA-funded contracts.
- Only set DBE contract goals on contracts that have meaningful subcontracting opportunities.
- Retain flexibility in how prime contractors could comply with the contract goals program, including showing good faith efforts to meet the contract goal.

The Federal DBE Program provides BGPAA some flexibility in how it set goals. Some contract goals might be higher than the overall DBE goal and some might be lower. There may be FAA-funded contracts where setting a DBE contract goal would not be appropriate.

CHAPTER 5.

BGPAA Utilization of Minority- and Women-owned Firms

In Chapter 5, BBC examines participation of minority- and women-owned firms in BGPAA contracts. The disparity analyses that follow in Chapter 6 compare utilization results with the availability benchmarks introduced in Chapter 4.

Chapter 5 is organized in four parts:

- A. Overview of the utilization analysis;
- B. MBE/WBE and DBE utilization in BGPAA contracts;
- C. MBE/WBE and DBE utilization in BGPAA FAA-funded contracts from January 2005 through July 2006; and
- D. MBE/WBE and DBE utilization in BGPAA construction, engineering-related services, and goods and services contracts.

Figure 5-1. Defining and measuring “utilization”

“Utilization” of minority- and women-owned firms refers to the share of contract dollars going to MBEs and WBEs. BBC reports results for both certified DBEs (firms certified as disadvantaged business enterprises in the year of the specific contract) and for all minority- and women-owned firms. BBC also examines results by racial/ethnic/gender group.

Utilization is expressed as a percentage of prime contract and subcontract *dollars*. (“Prime contract dollars” are total contract dollars less the money identified as going to subcontractors.) For example, WBE utilization of 5 percent means that 5 percent of the contract dollars examined went to white women-owned firms. Expressed another way, 5 cents of every contract dollar went to WBEs.

Information concerning utilization of minority- and women-owned firms is useful on its own, but is even more instructive when compared with a benchmark for the level of utilization expected given relative availability of minority- and women-owned firms for a particular set of contracts. BBC introduces this “disparity analysis” in the next chapter of the report (see Chapter 6).

A. Overview of the Utilization Analysis

BBC examined utilization of minority- and women-owned firms as prime contractors and subcontractors in BGPAA transportation-related contracts from January 2005 through December 2009 (the “study period”). The Authority set DBE goals on some of its FAA-funded contracts awarded between January 2005 and July 2006, but did not apply any race- or gender-based programs for later FAA-funded contracts or any locally-funded contracts.

Definition of utilization. As outlined in Figure 5-1, “utilization” of minority- and women-owned firms refers to the percentage of contract dollars going to MBE/WBEs. If MBE/WBEs were awarded \$10 million in prime contracts and subcontracts out of a total of \$100 million in contract dollars, MBE/WBE utilization would be 10 percent. In each contract, BBC separated dollars going to subcontractors from the dollars retained by the prime contractor.

Differences between BGPAA and BBC Utilization Analyses. BBC’s analysis of MBE/WBE utilization goes beyond what the Authority currently reports to the FAA, as explained below.

BBC identified minority- and women-owned businesses in addition to firms certified as DBEs. The Authority’s utilization reports it prepares for the FAA pertain to DBEs, as USDOT regulations require state and local agencies to report participation of DBEs on USDOT-funded contracts.

BGPAA does not track utilization of other firms owned by minorities and women, nor does it track DBE utilization on non-USDOT-funded contracts.

In addition to counting certified DBEs in the utilization statistics, BBC examined minority- and women-owned firms that may have once been DBE-certified as well as MBE/WBEs that have never been DBE-certified. BBC identified race/gender ownership through a number of methods, including telephone interviews with owners and managers of utilized firms, as described in Appendix B. BBC provided ownership information for utilized firms for BGPAA staff review before preparing the utilization analysis.

BBC also examined utilization for firms certified as DBEs. Although firms owned by a socially and economically disadvantaged white man can and have received DBE certification in California, BBC identified no white male-owned DBEs receiving an Authority prime contract or subcontract during the study period. Therefore, Chapter 5 results for DBE participation in Authority contracts are a subset of overall MBE/WBE utilization — all utilized DBE firms are minority- or women-owned.

BBC had more comprehensive data on subcontracts. BGPAA’s reports to FAA contain information on DBE subcontractors. As discussed in Chapter 2 and Appendix B, BBC compiled additional subcontract data as part of the disparity study. BBC deducted subcontract dollars from the contract total to identify dollars retained by the prime contractor.

BBC examined more dollars of BGPAA FAA-funded contracts. For the 2005 through 2009 study period, BBC examined \$67 million in FAA-funded contracts (based on awards). BGPAA DBE participation reports for FY 2006 through FY 2010 indicated \$36 million in FAA-funded contracts (also based on awards).

The disparity study also examined locally-funded contracts. BGPAA prepares DBE utilization reports for its FAA-funded contracts, not locally-funded contracts (contracts solely funded through non-USDOT sources). In addition to analyzing FAA-funded contracts, BBC examined MBE/WBE and DBE participation in BGPAA locally-funded contracts.

B. MBE/WBE and DBE Utilization in BGPAA Contracts

Figure 5-2 presents MBE/WBE and DBE utilization as a percentage of BGPAA contract dollars on FAA- and locally-funded contracts, and combined contracts. Utilization in these figures includes prime- and subcontractor participation.¹

- Each bar in the graph indicates the percentage of overall contract dollars going to minority- and women-owned firms (the statistic shown on the top of the bar). The total for MBE/WBEs includes the share going to certified DBEs.
- The dark shading in the bottom portion of the bar presents the share of overall contract dollars going to DBEs alone. This portion is a subset of total MBE/WBE utilization.
- The difference between DBE utilization and total MBE/WBE utilization corresponds to the participation of MBE/WBEs that were not certified as DBEs.

¹ When calculating prime contractor utilization, BBC counts dollars retained by the prime contractor (total dollars less subcontract dollars for the contract). In this way, addition of prime contractor and subcontractor utilization for a contract equals the contract amount.

FAA-funded contracts. BBC examined 51 BGPAA FAA-funded transportation construction and engineering contracts from 2005 through 2009. BBC was able to obtain data for 225 subcontracts associated with these contracts. In total, BBC identified \$67 million for these 276 contract elements.

As shown in Figure 5-2, minority- and women-owned firms obtained 21 percent of the dollars of FAA-funded contracts from 2005 through 2009. DBE utilization for these contracts was 6 percent. (By comparison, BGPAA reported 9.7 percent DBE utilization for FY 2006 through FY 2010.)

Locally-funded contracts. For the 2005 through 2009 study period, BBC analyzed 379 BGPAA transportation-related contracts that were not FAA-funded (referred to as “locally-funded” here). BBC was able to obtain data on 98 subcontracts associated with these contracts. Locally-funded contracts for 2005–2009 totaled \$53 million.

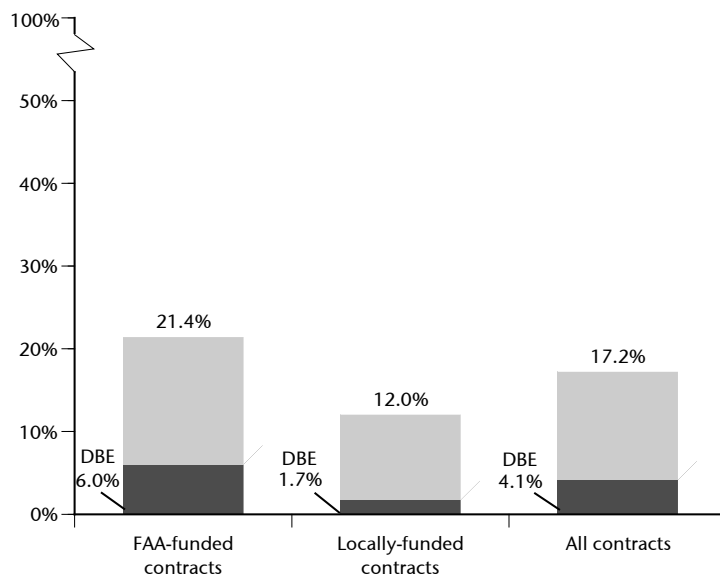
MBE/WBEs (including DBEs) received a much smaller percentage of locally-funded contract dollars — 12 percent — than FAA-funded contract dollars (21%). The share of contract dollars going to DBEs was 1.7 percent.

Combined contracts. Of the \$120 million in combined FAA- and locally-funded contract dollars examined for 2005–2009, MBE/WBEs received \$20.7 million, or 17.2 percent. DBEs obtained 4.1 percent of total contract dollars (amounting to \$4.9 million).

Figure 5-2.
MBE/WBE and DBE share of prime contract/subcontract dollars for BGPAA FAA- and locally-funded contracts, 2005–2009

Note:
 Certified DBE utilization.
 Number of contracts/subcontracts analyzed is 276 for FAA-funded contracts, 477 for locally-funded contracts and 753 for all contracts.
 For more detail and results by group, see Figures J-3, J-4 and J-2 in Appendix J.

Source:
 BBC Research & Consulting from data on BGPAA contracts.



Utilization by MBE/WBE group. Figure 5-3 details utilization for firms owned by individual racial/ethnic/gender groups (top half of the figure) and for just DBEs (bottom half of the figure). As noted previously, DBE utilization is a subset of total MBE/WBE utilization.

Combined results for FAA- and locally-funded contracts are shown in the right-most columns of Figure 5-3. White women-owned firms received 9.1 percent of combined FAA- and locally-funded contract dollars, accounted for more than one-half of total MBE/WBE utilization for these contracts. The MBE group receiving the most BGPAA contract dollars was Hispanic-owned firms (3.2%). African American-owned firms (2.3%) and Asian-Pacific American-owned businesses (2.4%) accounted for most of the other MBE utilization. Subcontinent Asian American-owned firms received 0.3 percent of total contract dollars. One business identified as Native American-owned received a \$2,000 procurement (utilization percentage for Native American-owned firms rounded to 0.0%).

For WBEs and African American-, Asian-Pacific American- and Subcontinent Asian American-owned firms, utilization was higher for BGPAA's FAA-funded contracts than its locally-funded contracts. However, utilization of Hispanic American-owned firms was much higher for locally-funded contracts (primarily in goods and services contracts).

Figure 5-3.
MBE/WBE and DBE share of prime/subcontract dollars for BGPAA contracts, by race/ethnicity/gender, July 2005–2009

	FAA-funded contracts		Locally-funded contracts		Total	
	\$ in thousands	Percent	\$ in thousands	Percent	\$ in thousands	Percent
MBE/WBEs						
African American-owned	\$2,161	3.2 %	\$650	1.2 %	\$2,812	2.3 %
Asian-Pacific American-owned	2,757	4.1	92	0.2	2,849	2.4
Subcontinent Asian American-owned	320	0.5	0	0.0	320	0.3
Hispanic American-owned	1,044	1.6	2,809	5.3	3,853	3.2
Native American-owned	0	0.0	2	0.0	2	0.0
WBE (white women-owned)	8,085	12.1	2,776	5.2	10,861	9.1
Total MBE/WBE	\$14,368	21.4 %	\$6,329	12.0 %	\$20,697	17.2 %
Majority-owned	52,715	78.6	46,573	88.0	102,130	82.8
Total	\$67,083	100.0 %	\$52,902	100.0 %	\$119,985	100.0 %
DBEs						
African American-owned	\$1,853	2.8 %	\$67	0.1 %	\$1,920	1.6 %
Asian-Pacific American-owned	19	0.0	71	0.1	91	0.1
Subcontinent Asian American-owned	320	0.5	0	0.0	320	0.3
Hispanic American-owned	1,037	1.5	491	0.5	1,528	1.3
Native American-owned	0	0.0	2	0.0	2	0.0
WBE (white women-owned)	818	1.2	250	0.5	1,068	0.9
White male-owned DBE	0	0.0	0	0.0	0	0.0
Total DBE	\$4,047	6.0 %	\$881	1.7 %	\$4,929	4.1 %
Non-DBE	63,036	94.0	52,021	98.3	115,056	95.9
Total	\$67,083	100.0 %	\$52,902	100.0 %	\$119,985	100.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding. Number of contracts/subcontracts analyzed is 276 for FAA-funded contracts, 477 for locally-funded contracts and 753 for total contracts.

For more detail and dollars by group, see Figures J-3, J-4 and J-2 in Appendix J.

Source: BBC Research & Consulting from data on BGPAA contracts.

C. MBE/WBE and DBE Utilization in FAA-funded Contracts from 2005 Through July 2006

BGPAA suspended any application of DBE contract goals for FAA-funded contracts in August 2006. It is instructive to examine MBE/WBE and DBE participation for FAA-funded contracts for 2005 through July 2006, prior to suspension of DBE contract goals.

FAA-funded contracts when DBE contract goals program applied. There were 16 FAA-funded contracts totaling \$19 million in the DBE contract goals program time period.

Figure 5-4 examines MBE/WBE and DBE utilization for these contracts. During this time, 19.8 percent of the FAA-funded contracts went to MBE/WBEs. DBE utilization was 10.3 percent — more than one-half of the contract dollars going to MBE/WBEs went to firms certified as DBEs.

Other contracts. BBC also calculated MBE/WBE and DBE utilization for the combination of FAA-funded contracts after suspension of DBE contract goals (August 2006-December 2009) and locally-funded contracts (for 2005-2009). Combined, these contracts totaled \$101 million.

DBE participation (3.0%) was considerably lower than what BBC identified for the FAA-funded contracts from 2005 through July 2006. MBE/WBE utilization was 16.8 percent, three percentage points lower than FAA-funded contracts when the DBE contract goals program was in place.

Figure 5-4.
MBE/WBE and DBE share of prime contract/subcontract dollars for BGPAA FAA-funded contracts during the DBE contract goals period compared with all other contracts

Note:

Certified DBE utilization.

Number of contracts/subcontracts analyzed is 77 for

FAA-funded contracts for January 2005-July 2006.

Number of contracts/subcontracts analyzed is 676 for

FAA-funded contracts for August 2006-December 2009

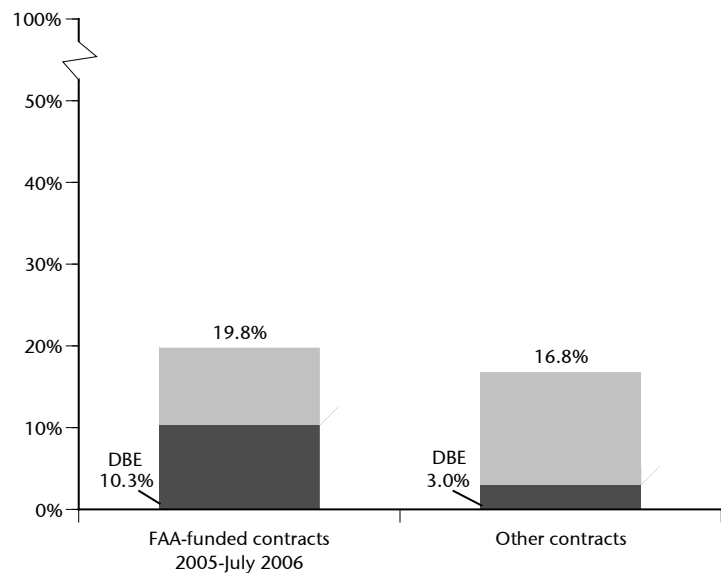
and locally-funded contracts for 2005-2009.

For more detail and results by group, see Figures J-15

and J-23 in Appendix J.

Source:

BBC Research & Consulting from data on BGPAA contracts.



D. MBE/WBE and DBE Utilization in BGPAA Construction, Engineering-related Services, and Goods and Services Contracts

Figure 5-5 presents information for BGPAA construction, engineering, and goods and services contracts examined in the disparity study. As with previous figures in Chapter 5, MBE/WBE and DBE participation results include prime contractor and subcontractor participation (although there were no subcontracts identified for goods and services procurements).

Construction contracts. BBC examined 277 contracts for \$104 million related to construction for 2005–2009 (including some procurements that BGPAA awarded as purchase orders). BBC was able to compile information for 308 related subcontracts.

MBE/WBE utilization on Authority construction contracts was 18.3 percent, including 4.1 percent of contract dollars that went to DBEs.

Engineering-related contracts. BBC analyzed 85 BGPAA engineering contracts for about \$15 million for the 2005–2009 study period. Fifteen subcontracts were identified for these contracts.

MBE/WBE utilization for BGPAA engineering contracts was 8.7 percent, less than one-half of the MBE/WBE participation in BGPAA construction contracts. DBE participation was 4.6 percent.

Goods and services contracts. For 2005 through 2009, BBC identified 68 BGPAA goods and services procurements totaling \$1.4 million that were within the subindustries examined in the disparity study. There appeared to be no subcontracts involved in these procurements based upon the information provided by the Authority. All of these purchases were locally-funded.

Nearly one-third of the goods and services contract dollars examined in the disparity study went to MBE/WBEs. None of the MBE/WBEs receiving goods and services contracts were DBE-certified.

In fact, MBE/WBEs received 53 out of the 68 goods and services contracts examined, with most going to one Hispanic American-owned firm. WBEs received three procurements.

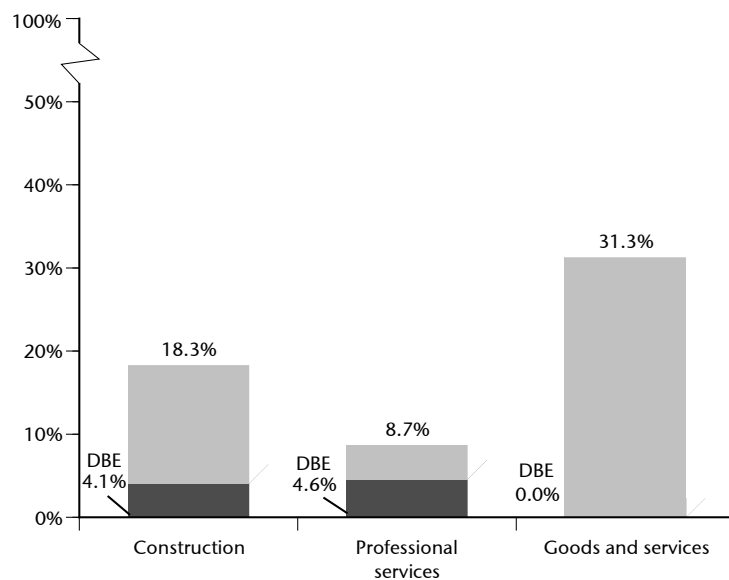
Figure 5-5.
MBE/WBE and DBE share of prime contract/subcontract dollars for BGPAA construction, engineering, and goods and services contracts, 2005–2009

Note:

Certified DBE utilization. Number of contracts/subcontracts analyzed is 585 for construction contracts, 98 for engineering contracts and 68 for goods and services contracts. For more detail and results by group, see Figures J-5, J-6 and J-7 in Appendix J.

Source:

BBC Research & Consulting from data on BGPAA contracts.



CHAPTER 6.

Disparity Analysis for BGPAA Contracts

Chapter 5 reported the share of BGPAA contract dollars going to MBE/WBEs. Disparity analysis compares MBE/WBE utilization to the availability benchmarks for each racial/ethnic/gender group introduced in Chapter 4. The analysis identifies whether or not minority- and women-owned firms were underutilized in BGPAA contracts.

Chapter 6 presents BBC's disparity analysis in seven parts:

- A. Overview of disparity analysis methodology;
- B. Overall disparity results for BGPAA contracts;
- C. Results for FAA-funded and locally-funded contracts;
- D. Results for FAA-funded contracts when DBE contract goals program applied;
- E. Results for construction and engineering contracts;
- F. Analysis of statistical significance; and
- G. Summary.

A. Overview of Disparity Analysis Methodology

BBC compared actual utilization of MBE/WBEs (as a percentage of contract dollars) with the share of contract dollars that might be expected to go to MBE/WBEs based on BBC's availability analysis. The following discussion also refers to "expected share of contract dollars" as a "benchmark" or simply "availability." BBC calculated a unique benchmark for each MBE/WBE group, for each set of BGPAA contracts.

Both the actual utilization and the benchmark are expressed as a percentage of the dollars involved in those contracts. They are expressed in terms that are directly comparable (e.g., 5% actual utilization compared with a benchmark of 4%).

Figure 6-1. Calculation of disparity indices

The disparity index provides a straightforward way of assessing how closely actual utilization of an MBE/WBE group matches what might be expected given the relative availability of that MBE/WBE group for the work involved in a specific set of contracts. An index of "100" indicates an exact match between actual and expected utilization for that group (also referred to as "parity"). In BBC's disparity analysis, a disparity index is calculated for each MBE/WBE group for each set of contracts examined. One can directly compare an index for one group to another group, and between sets of contracts.

BBC calculates the disparity index for a particular group through the following formula:

$$\frac{\% \text{ actual utilization}}{\% \text{ availability}} \times 100$$

For example, if actual utilization of WBEs in a set of BGPAA contracts was 2% and the availability benchmark was 10% for those contracts, the index would be $2\% \div 10\%$, which is then multiplied by 100 to derive an index of 20. In this example, WBEs would have received 20 cents for every dollar expected to go to WBEs based on the availability benchmark.

To help compare results between groups or across sets of contracts, BBC calculates a disparity index, as described in Figure 6-1. An index of “100” indicates a level of actual utilization that exactly matches what might be expected from the availability analysis. An index less than 100 may indicate a disparity between utilization and availability.

Example of a disparity analysis table. Disparity results presented in Chapters 6 and 7 are based on detailed disparity tables in Appendix J. Each table reports results for a different set of BGPAA contracts. One of the disparity tables in Appendix J, Figure J-2, provides results for all contracts examined in the disparity analysis — combined FAA-funded and locally-funded construction, engineering, and goods and services contracts that BGPAA awarded for 2005–2009.

Appendix J contains similar tables for different sets of contracts, including those that separate results for FAA- and locally-funded contracts; prime contracts and subcontracts; construction, engineering, and goods and services contracts; and small contracts. Note that the parameters for the set of contracts being examined are reported in the heading of each table in Appendix J.

Because each of the Appendix J disparity tables uses the same calculations and format for presenting results, a review of Figure J-2 provides an introduction to each of these tables. Figure J-2 from Appendix J is replicated as Figure 6-2 on the following page.

Utilization. Each of the disparity tables includes the same columns and rows:

- Column (a) notes the number of prime contracts and subcontracts in the set of contracting data under examination (in Figure 6-2, 753 total contracts and subcontracts).
- Column (b) identifies the dollars examined in the set of contract elements. Dollars are reported in thousands. This disparity table examines contract dollars totaling approximately \$120 million. Because “prime contract dollars” refers to the dollars retained by the prime contractor after deducting subcontract dollars, the combined prime/subcontract analyses equals the total contract amounts.
- Column (c) provides utilization dollars by group after pro-rating any money going to firms identified as MBEs for which specific race/ethnicity information was not available. In the BGPAA disparity analysis, there were no contract elements for which race/ethnicity of an MBE firm could not be determined.
- Column (d) portrays relative utilization on a percentage basis. Each percentage in column (d) is calculated by dividing dollars going to a group in column (c) by the total dollars in the set of contracts or subcontracts as shown in row (1) of column (c).

Figure 6-2 includes separate rows for each firm type:

- “All firms” in row (1) pertains to combined majority-, minority- and women-owned firms.
- Row (2) presents results for minority- and women-owned firms combined (whether or not they are certified as MBEs, WBEs or DBEs).
- Row (3) pertains to “WBEs,” which are white women-owned firms.
- Row (4) pertains to “MBEs,” or all minority-owned firms.

Figure 6-2.
MBE/WBE utilization, availability and disparity analysis for prime contracts/subcontracts
on FAA- and locally-funded construction, engineering, and goods and services contracts, 2005–2009

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	753	\$119,985	\$119,985				
(2) MBE/WBE	217	\$20,697	\$20,697	17.2	29.6	-12.3	58.3
(3) WBE	70	\$10,861	\$10,861	9.1	8.4	0.7	108.2
(4) MBE	147	\$9,836	\$9,836	8.2	21.2	-13.0	38.6
(5) African American-owned	31	\$2,812	\$2,812	2.3	3.6	-1.2	66.0
(6) Asian-Pacific American-owned	16	\$2,849	\$2,849	2.4	5.1	-2.7	47.0
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.3	0.4	-0.2	59.5
(8) Hispanic American-owned	85	\$3,853	\$3,853	3.2	11.1	-7.9	28.8
(9) Native American-owned	1	\$2	\$2	0.0	1.0	-1.0	0.1
(10) Unknown MBE	0	\$0					
(11) DBE-certified	64	\$4,929	\$4,929	4.1			
(12) Woman-owned DBE	16	\$1,068	\$1,068	0.9			
(13) Minority-owned DBE	48	\$3,861	\$3,861	3.2			
(14) African American-owned DBE	12	\$1,920	\$1,920	1.6			
(15) Asian-Pacific American-owned DBE	8	\$91	\$91	0.1			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.3			
(17) Hispanic American-owned DBE	13	\$1,528	\$1,528	1.3			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Data for individual minority groups are shown in subsequent rows. Combined, those utilization dollars add up to the total for MBEs (in some cases, numbers may not perfectly add due to rounding).

The bottom half of Figure 6-2 reports utilization for firms that were certified as DBEs. BBC included a row for white male-owned DBEs, though no such DBE-certified firms appeared to have received BGPAA contracts or subcontracts examined in this study. DBE utilization data reported in the bottom half of Figure 6-2 were prepared independently from the Authority's DBE participation reports and thus do not match DBE utilization presented in those reports (for a discussion of differences, see Chapter 5).

Figure 6-3.
Definition of “substantial disparity”

Some courts deem a disparity index below 80 as “substantial” and accepted as evidence of adverse impact. See e.g., *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994). See Appendix A for additional discussion.

Utilization benchmark (availability). BBC developed estimates of the share of contract dollars that might be expected to go to each racial/ethnic/gender group given their relative availability for that work following the procedures described in Chapter 4. These availability results, represented as a percentage of contract dollars, provide a benchmark against which to compare relative utilization for a specific group. BBC separately calculated benchmarks for each group specific to each set of contracts examined in the study.

Column (e) of Figure 6-2 reports the availability benchmark for each group for BGPAA’s combined FAA- and locally-funded construction, engineering, and goods and services contracts. Based on the types of work involved in the prime contracts and subcontracts included in the Figure 6-2 analysis, plus the sizes of the contract elements when they were awarded, BBC estimated that 29.6 percent of BGPAA contract dollars from 2005 through 2009 might be expected to go to minority- and women-owned firms. This result can be found in row (2) of column (e) in Figure 6-2.

Differences between utilization and availability. The next step in analyzing whether there was a disparity between the relative utilization of a particular group and its relative availability is to subtract percentage utilization from percentage availability. For example, as reported in row (2), column (f) of Figure 6-2, MBE/WBE utilization was 12 percentage points below the benchmark based on MBE/WBE availability.

It is sometimes difficult to interpret absolute differences between percentage utilization and a benchmark, especially when the percentages are relatively small. Therefore, BBC also calculated a “disparity index,” which divides percentage utilization by percentage availability and multiplies the result by 100. An index of “100” means that there is “parity” between relative utilization and availability for a particular group. An index below 100, particularly below 80, may indicate a substantial disparity, as discussed in Figure 6-3 above.

Column (g) provides the disparity index for each group. For example, the disparity index of 58 for MBE/WBEs shown in row (2) of column (g) means that utilization of MBE/WBEs in BGPAA contracts during the study period was much lower than what would be expected from the availability analysis. The disparity index of 108 for just WBEs shown in row (3) of column (g) indicates no underutilization of white women-owned firms.¹

Results when disparity indices are very large or when availability is zero. BBC applied the following rules when the disparity indices calculated were exceedingly large or could not be calculated because no firms were identified as available for the contracts under examination:

- When BBC’s calculations showed a disparity index exceeding 200, BBC reported an index of “200+.” This level of disparity index means that utilization was more than twice as much as might be expected based on the availability analysis.
- When there was no utilization and 0 percent availability for a particular group for a set of contracts, BBC reported “parity” between utilization and availability (indicated by a disparity index of “100”).
- When BBC identified utilization for a group but 0 percent availability (which could occur for many reasons, including the fact that one or more utilized firms were out of business by the time of BBC’s availability survey), BBC reported a disparity index of “200+.”

The DBE utilization statistics at the bottom of Figure 6-2 are provided as reference. BBC did not conduct disparity analyses for just certified DBEs for the reasons described in Chapter 4.

B. Overall Disparity Results for BGPAA Contracts

BBC created graphs from the detailed disparity tables to summarize results, as shown below.

Graphs showing disparity indices. BBC created graphs using disparity indices from column (g) in the Appendix J disparity tables. Figure 6-4 uses the information from Figure 6-2.

- The line down the center of the graph shows an index of 100, which indicates “parity” between utilization and availability for a particular group.
- Indices under 100 indicate a disparity between utilization and availability.
- The graph ends at a disparity index of 200 even though, in some cases, disparity indices in BBC’s analysis exceed 200.
- For reference, a line is also drawn at an index of 80. Some courts use 80 as a threshold for what may indicate a substantial disparity, as discussed in Figure 6-3.

¹ Note that all percentages in the disparity tables were rounded to the nearest tenth of 1 percent after making all calculations. Percentages correctly add and subtract, even though the rounding may make actual sums appear to differ by one tenth of 1 percent. In addition, the disparity index is derived from the detailed data for percentage utilization and availability before any rounding.

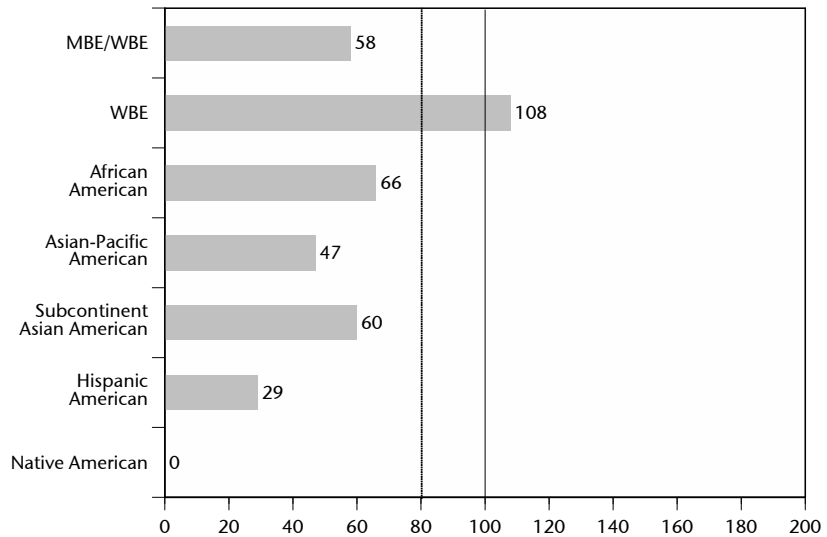
Results for combined BGPAA contracts. Figure 6-4 shows disparity indices below 80 for each MBE group when analyzing the combined FAA- and locally-funded BGPAA contracts. There were substantial disparities between actual utilization and what might be expected based on the availability analysis for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

The disparity index for WBEs — 108 — indicates that white women-owned firms received more BGPAA contract dollars from 2005 through 2009 than what might be expected based upon the availability analysis.

Figure 6-4.
Disparity indices for
MBE/WBE utilization as
prime contractors and
subcontractors on FAA-
and locally-funded BGPAA
construction,
engineering, and goods
and services contracts,
2005–2009

Note:
 Number of contracts/subcontracts analyzed is 753.
 For more detail, see Figure J-2 in Appendix J (which is the same as Figure 6-2).

Source:
 BBC Research & Consulting.



Interpretation of results. The disparity analysis indicated substantial disparities for each MBE group when examining BGPAA prime contracts and subcontracts as a whole. As noted in Figure 6-3, some courts deem a disparity index below 80 as “substantial.”

When examining whether there are disparities in BGPAA contracting for individual MBE groups, the overall results in Figure 6-4 are most instructive. It is difficult to interpret disparity results for individual MBE groups for small subsets of BGPAA contracts. The following review of subsets of BGPAA contracts focuses on results for MBEs as a whole.

It is also important to note that BGPAA operated a DBE contract goals program for FAA-funded contracts during the first 19 months of the 2005–2009 study period. Therefore, the disparities for MBEs identified in Figure 6-4 occurred even with the DBE contract goals program applied to some contracts. In the following analyses, BBC also researched whether the DBE contract goals program increased WBE utilization above what might be expected based on the availability analysis.

C. Results for FAA-funded and Locally-funded Contracts

BBC also separately analyzed results for FAA-funded and locally-funded contracts. The disparity analysis examined \$67 million of FAA-funded contracts and \$53 million in locally-funded contracts from 2005 through 2009. Figure 6-5 compares disparity results for locally-funded contracts (lighter bars in Figure 6-5) with the results for FAA-funded contracts (darker bars in Figure 6-5). Figure 6-5 presents results for WBEs and for MBEs, combining individual MBE groups. Additional detail for MBE groups is provided in Figures J-3 and J-4 in Appendix J, although the cautions discussed above apply when examining results by MBE group for subsets of contracts.

FAA-funded contracts. MBE/WBE utilization on FAA-funded contracts was 21.4 percent, which is less than the 29.4 percent that might be expected based on the availability analysis for FAA-funded contracts. The disparity index for MBE/WBEs was 73.

As with combined BGPAA contracts, utilization of WBEs on FAA funded contracts exceeded availability (disparity index of 151). Utilization of MBEs was substantially below what might be expected based upon availability (disparity index of 44). Figure J-3 in Appendix J provides detailed results.

Locally-funded contracts. MBE/WBE utilization on locally-funded contracts (12.0%) was also less than what might be expected based upon the availability analysis for locally-funded contracts (29.9%). The disparity index was 40. There were disparities for WBEs and for MBEs. As shown in Figure J-4 in Appendix J, there were substantial disparities for each MBE group.

Figure 6-5.
Disparity indices for MBE/WBE utilization on FAA- contracts and on locally-funded contracts, 2005–2009

Note:

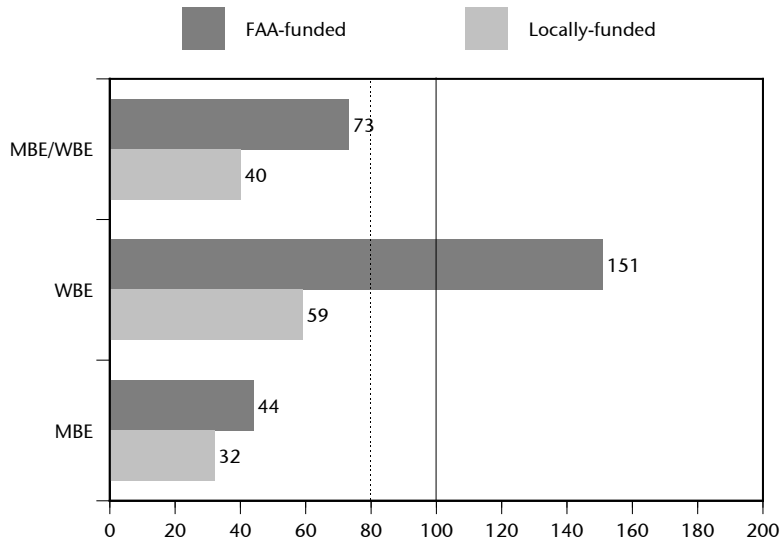
Includes utilization as prime contractors and subcontractors on construction, engineering, and goods and services contracts.

Number of contracts/subcontracts analyzed is 276 for FAA-funded and 477 for locally-funded contracts.

For more detail, see Figures J-3 and J-4 in Appendix J.

Source:

BBC Research & Consulting.



D. Results for FAA-funded Contracts When Contract Goals Program Applied

BGPAA suspended use of DBE contract goals on FAA-funded contracts after July 2006. BBC examined disparity results for FAA-funded contracts from January 2005 through July 2006. These results can be compared with disparity indices for other contracts (i.e., August 2006 through December 2009 FAA-funded contracts and all 2005–2009 locally-funded contracts).

FAA-funded contracts when DBE contract goals program applied. There were 16 FAA-funded contracts totaling \$19 million in the DBE contract goals program time period. With subcontracts, there were 77 contract elements that were examined in the disparity analysis.

Utilization of MBE/WBEs on FAA-funded contracts for the DBE contract goals program time period (19.8%) was below what might be expected from the availability analysis for these contracts (29.6%). The disparity index was 67 for MBE/WBEs. These results suggest that the DBE contract goals program did not eliminate disparities in the utilization of minority- and women-owned firms on FAA-funded contracts during the time the program was in place. The disparity index of 67 for MBE/WBEs when the DBE contract goals program was in effect was about the same as the index of 73 for all FAA-funded contracts from 2005 through 2009.

There were disparities for WBEs (disparity index of 38) and MBEs (disparity index of 76) for FAA-funded contracts during the DBE contract goals period, as illustrated in Figure 6-6.

Other contracts. BBC also compared utilization and availability for all other BGPAA contracts, combining FAA-funded contracts after suspension of the DBE contract goals program with all locally-funded contracts. MBE/WBE utilization on these contracts (16.8%) was lower than found for FAA-funded contracts during the contract goals program period (19.8%). The disparity index for MBE/WBEs for the non-goals period contracts was 57, which indicates more of a disparity than found for FAA-funded contracts during the goals period.

Disparity results for WBEs and MBEs differ, however. For WBEs, utilization (10.3%) exceeded what might be expected based upon availability for those contracts (8.6%). The disparity index for WBEs was 119. There is no evidence of disparities in the overall utilization of white women-owned firms in BGPAA contracts that did not fall under the DBE contract goals program. MBE utilization (6.5%) was less than one-third of what might be expected based upon availability for those contracts (21.0%). The disparity index was 31.

Figure 6-6.
Disparity indices for
MBE/WBE utilization on FAA-
contracts 2005–July 2006
and all other contracts

Note:

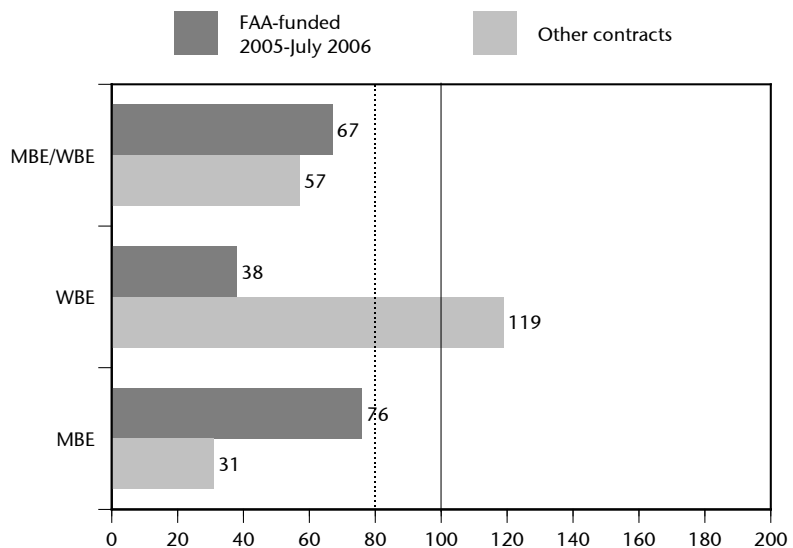
Includes utilization as prime contractors and subcontractors on construction, engineering, and goods and services contracts.

Number of contracts/subcontracts analyzed is 77 for FAA-funded contracts from January 2005 through July 2006.

Number of contracts/subcontracts is 676 for combined FAA-funded contracts from August 2006 through 2009 and locally-funded contracts for 2005 through 2009.

For more detail, see Figures J-15 and J-23 in Appendix J.

Source:
 BBC Research & Consulting.



E. Disparity Results for Construction and Engineering Contracts

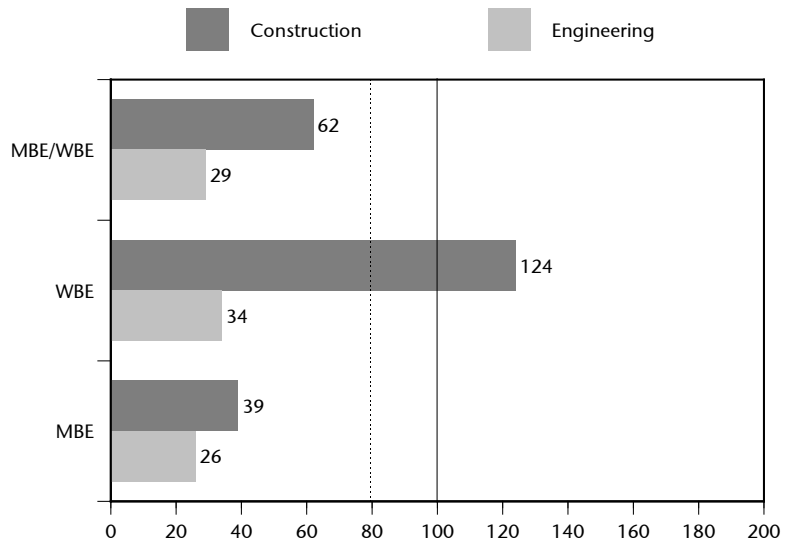
Figure 6-7 separates disparity results for construction and engineering-related contracts.

Construction contracts. More than \$103 million of the \$120 million in BGPAA contract dollars examined in the disparity analysis was for construction. MBE/WBE utilization was 18.3 percent, substantially below what might be expected from the availability analysis for BGPAA construction contracts (29.3%). The disparity index for MBE/WBEs was 62, indicating a substantial disparity.

However, Figure 6-7 shows that WBE utilization exceeded availability for BGPAA construction contracts (disparity index of 124). The disparity index for MBEs was 39.

Engineering contracts. Figure 6-7 also shows disparity results for BGPAA engineering-related contracts. About 8.7 percent of the dollars on engineering-related contracts went to MBE/WBEs, which was below what might be expected from the availability analysis (30.0%). The disparity index for MBE/WBEs was 29, with similar results for WBEs and MBEs.

Figure 6-7.
Disparity indices for
MBE/WBE utilization on
construction and
engineering-related
contracts 2005–2009



Note:

Includes utilization as prime contractors and subcontractors on FAA- and locally-funded contracts.

Number of contracts/subcontracts analyzed is 585 for construction contracts and 100 for engineering-related contracts.

For more detail, see Figures J-5 and J-6 in Appendix J.

Source:

BBC Research & Consulting.

Goods and services contracts. MBE/WBE utilization for the goods and services contracts examined in the disparity study was 31 percent, much higher than for BGPAA construction and engineering contracts. Because of the relatively small dollar volume of goods and services contracts examined in the disparity analysis (just \$1.4 million) and the fact that all such procurements appear to be locally-funded, they are not separately examined here. Figure J-7 in Appendix J presents pertinent disparity results.

F. Analysis of Statistical Significance of Disparities

Statistical significance relates to the degree to which a researcher can reject “random chance” as a cause of an observed difference.

Data sampling. Random chance in data sampling is the factor that researchers consider most in determining statistical significance of results. However, BBC attempted to contact every firm in the Los Angeles area that Dun & Bradstreet identified as doing business within relevant subindustries (as described in Chapter 4), mitigating many of the concerns associated with random chance in data sampling as it relates to BBC’s availability analysis.

The utilization analysis also approaches a “population” of contracts. Therefore, any disparity found when comparing overall utilization with availability might be considered “statistically significant.”

Random chance in prime contract and subcontract awards. There were many opportunities in the sets of prime contracts and subcontracts that BBC analyzed for minority- and women-owned firms to be awarded work. Some contract elements exceeded \$1 million and others only involved a few thousand dollars.

Monte Carlo analysis is a useful tool to use for statistical significance testing because there were many individual chances at winning work with BGPAA from 2005 through 2009, each with a different monetary payoff. BBC’s application of the Monte Carlo simulation is described in Figure 6-8.

BBC identified disparities overall for MBEs but not WBEs, so the Monte Carlo simulation focused on utilization of minority-owned firms compared with all other firms. Because of the number of contract elements in the BGPAA disparity analysis and the relatively small benchmarks for individual MBE groups, the statistical significance of disparities was tested for MBEs overall.

Figure 6-8. Application of Monte Carlo simulation

The Monte Carlo technique was applied as follows:

Each “run” of the Monte Carlo simulation starts by examining an individual contract element (a prime contract or subcontract).

BBC’s availability database provides information on individual firms “available” for that contract element based on type of work, prime versus subcontract role, size of the prime contract or subcontract, and year the contract was awarded.

In each Monte Carlo simulation run, a firm is randomly selected to “receive” that contract element from the pool of available firms identified as available for that contract element. For example, the odds of a woman-owned firm receiving that contract element are equal to the number of women-owned firms available for that work divided by the total number of firms available for that contract element. Each firm in BBC’s availability database identified as available for a particular contract element was assumed to have the same chance of being awarded that prime contract or subcontract as every other firm identified as available for that work.

The Monte Carlo simulation run repeats the above process for all other contract elements in the set. The output of a single Monte Carlo simulation for all contracts in the set represents simulated utilization of minority- and women-owned firms for that set of contract elements.

The Monte Carlo simulation is then repeated 1 million times for each set of contracts. The combined output from all 1 million simulation runs represents a probability distribution of the overall utilization of minority- and women-owned firms if contracts were awarded randomly based on the relative availability of Los Angeles area firms working in relevant subindustries.

Out of 1 million simulation runs, 682 (less than 0.1%) produced a result that was equal to or below observed 8.2 percent MBE utilization identified for BGPAA contracts. The difference between utilization and availability for MBEs is statistically significant at the 95 percent confidence level.

Therefore, the disparities identified for BGPAA contracts could not be easily replicated by chance in the procurement process.

Figure 6-9.
Statistical significance of
disparities in overall MBE
utilization on BGPAA
contracts, 2005–2009

Source: BBC Research & Consulting.

	All contracts 2005-2009
Disparity index	39
Number of simulation runs out of 1 million that replicated observed disparity	682
Probability of observing disparity occurring due to "chance"	<0.1%
Reject chance in awards of contracts as a cause of disparity	Yes

G. Summary

The disparity analysis indicates substantial underutilization of minority-owned firms in BGPAA contracts. There were substantial disparities between the utilization and availability of African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

Overall, there were no disparities in the participation of WBEs on BGPAA contracts.

Using additional disparity analyses and other research, Chapter 7 of the report further explores why disparities may be occurring for MBEs in BGPAA contracting.

Chapter 7.

Exploration of Possible Causes of Any Disparities

Four key questions emerge from disparities in MBE/WBE utilization on BGPAA contracts identified in Chapter 6:

- A. What accounts for the relatively high utilization of WBEs on BGPAA contracts?
- B. What are disparity results for prime contracts and subcontracts?
- C. What more can be learned about overall disparities for BGPAA prime contracts?
- D. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results?
- E. Do BGPAA contracting policies and procedures make it more difficult for MBE/WBEs to bid on Authority contracts?

Answers to these questions may be important as the Authority considers how much of its overall annual aspirational goal for DBE participation can be met through race- and gender-neutral means and what program elements may be needed.

A. What accounts for the relatively high utilization of WBEs on BGPAA contracts?

One \$5.4 million subcontract on a BGPAA FAA-funded construction contract went to a firm identified as white woman-owned. This subcontract accounts for much of the \$11 million in WBE utilization on Airport contracts. The firm was not DBE-certified and DBE contract goals did not apply to the contract as it occurred after the DBE contract goals program was suspended.

B. What are disparity results for prime contracts and subcontracts?

BBC examined several questions concerning the disparities identified for Authority contracts:

- 1. Are there different results for prime contracts and subcontracts?
- 2. What accounts for the relatively high utilization of WBEs on BGPAA contracts?
- 3. Are the different results for subcontracts between FAA-funded contracts when the DBE contract goals program was in effect?

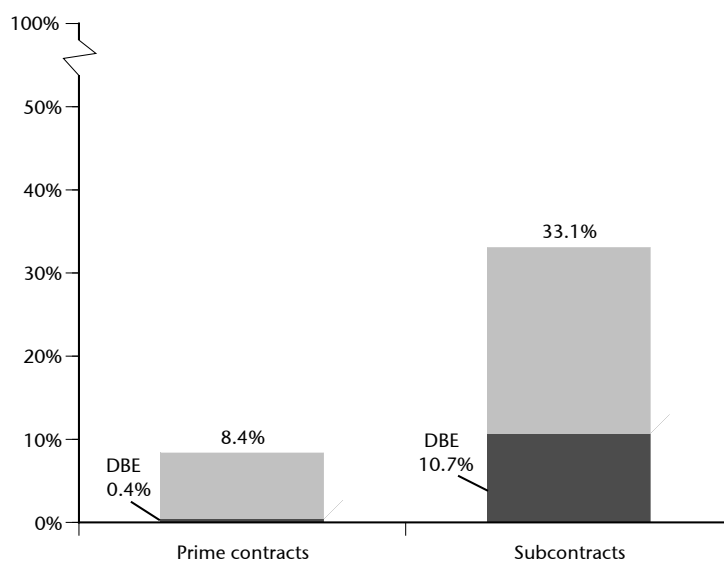
1. Are there different results for prime contracts and subcontracts? MBE/WBEs received a much larger percentage of subcontract dollars on BGPAA projects (33%) compared with the MBE/WBE share of dollars going to prime contractors (8%). Figure 7-1 compares utilization results for prime contract dollars and subcontract dollars. (The data for prime contractors include contractors and vendors receiving BGPAA contracts on which there was no subcontracting.)

DBEs received \$4.6 million in BGPAA subcontract dollars, equal to 11 percent of the subcontract dollars included in the disparity analysis. About \$0.3 million out of the \$77 million in prime contract dollars examined went to DBEs (DBE utilization of 0.4%). Therefore, DBE participation on BGPAA contracts was almost entirely as subcontractors.

Figure 7-1.
MBE/WBE and DBE share of
prime contract and subcontract
dollars, 2005–2009

Note:
 Number of contracts/subcontracts analyzed is 430 for prime contracts and 323 for subcontracts.
 For more detail and results by group see Figures J-8 and J-12 in Appendix J.

Source:
 BBC Research & Consulting from data on BGPAA contracts.



Lower MBE/WBE utilization in Authority prime contracts compared with subcontracts is only partially explained by lower availability of MBE/WBEs for BGPAA prime contracts. The availability analysis indicated that MBE/WBEs might be expected to receive 26 percent of BGPAA prime contract dollars and 35 percent of subcontract dollars.

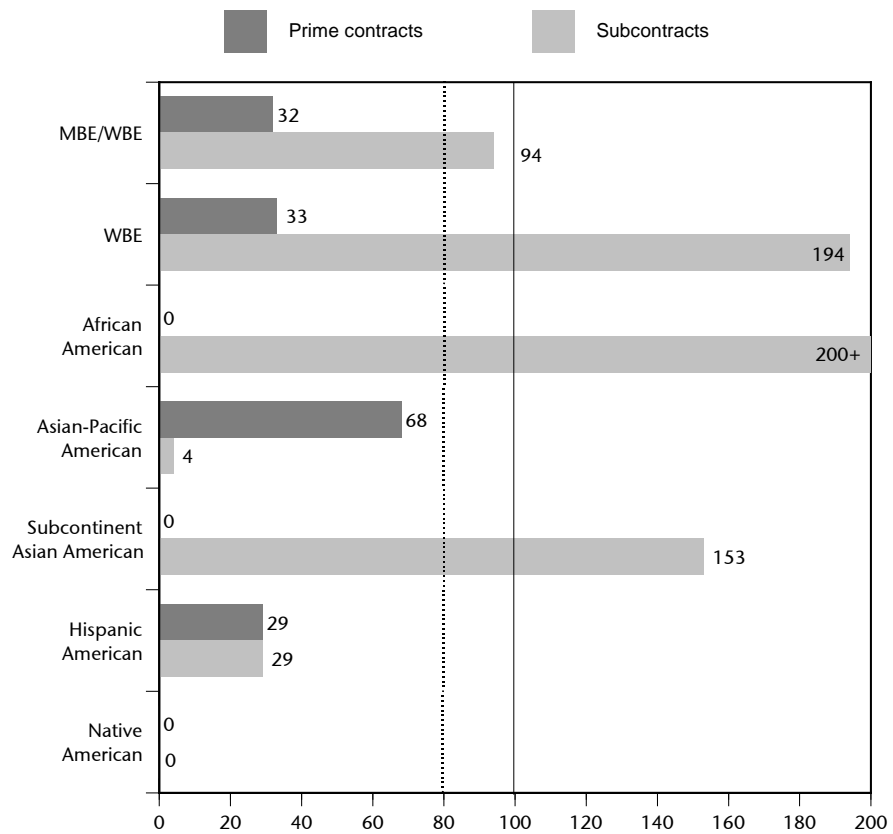
Because 33 percent of subcontract dollars went to MBE/WBEs, overall utilization of minority- and women-owned firms as subcontractors was very close to the 35 percent expected from the availability analysis. For subcontracts, utilization of WBEs was nearly double what might be expected from the availability analysis (disparity index of 194). There were substantial disparities in the utilization of Asian-Pacific American-, Hispanic American- and Native American-owned firms as subcontractors on Authority contracts.

There was a substantial disparity in MBE/WBE utilization on prime contracts (disparity index of 32). Substantial disparities were evident for BGPAA prime contracts for WBEs and each MBE group, as shown in Figure 7-2.

Figure 7-2.
Disparity indices for
MBE/WBE utilization
as prime contractors
and subcontractors,
2005–2009

Note:
 Number of contracts/
 subcontracts analyzed is 430 for
 prime contracts and 323 for
 subcontracts.
 For more detail see Figures J-8
 and J-12 in Appendix J

Source:
 BBC Research & Consulting.



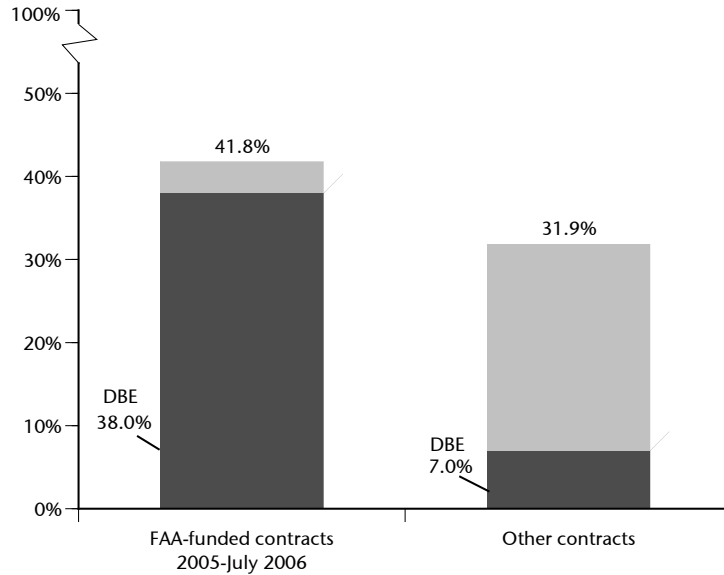
3. Are there different results for subcontracts between FAA-funded contracts during the DBE contract goals program and other contracts? As shown in Figure 7-3, MBE/WBEs received 42 percent of subcontract dollars for FAA-funded contracts during the time period when BGPAA set DBE contract goals. Nearly all of the MBE/WBE subcontract dollars went to DBEs.

On other BGPAA contracts, MBE/WBEs obtained about 32 percent of subcontract dollars. DBEs received 7 percent of subcontract dollars on these other contracts.

Figure 7-3.
MBE/WBE and DBE share of subcontract dollars for BGPAA FAA-funded contracts during the DBE contract goals period compared with all other contracts

Note:
 Number of subcontracts analyzed is 61 for the FAA-funded contracts from January 2005 through July 2006 and 262 for all other contracts.
 For more detail and results by group see Figures J-26 and J-27 in Appendix J.

Source:
 BBC Research & Consulting from data on BGPAA contracts.



There was no overall disparity in the utilization of MBE/WBEs as subcontractors on FAA-funded contracts when the DBE contract goals program was in place. The disparity index for MBE/WBEs for these subcontracts was 108.

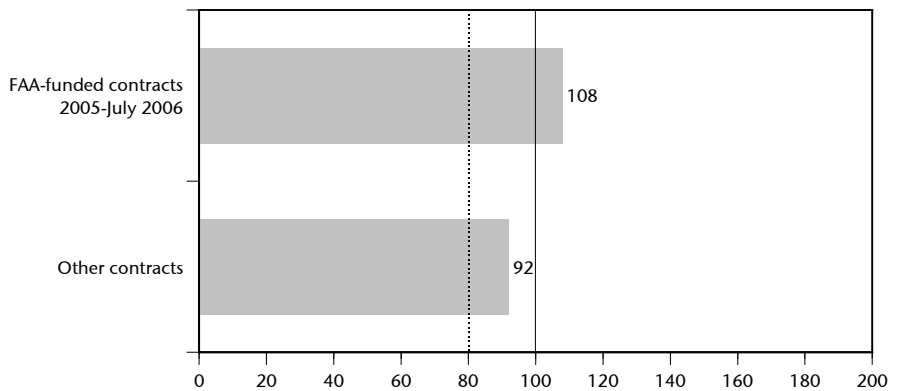
For other contracts, utilization of MBE/WBEs as subcontracts (31.9%) was also close to what might be expected from the availability analysis (34.8%). Figure 7-4 shows a disparity index of 92 for MBE/WBEs for these subcontracts.

Figure 7-4.
Disparity indices for MBE/WBE utilization as subcontractors on BGPAA FAA-funded contracts during the DBE contract goals period and all other contracts

Note:
 Number of subcontracts analyzed is 61 for the FAA-funded contracts from January 2005 through July 2006 and 262 for all other contracts.

For more detail and results by group see Figures J-26 and J-27 in Appendix J.

Source:
 BBC Research & Consulting.



However, results differed markedly for WBEs and MBEs, as shown in Figure J-27 in Appendix J. White women-owned firms received 22.7 percent of subcontract dollars, more than twice what might be expected from the availability analysis. MBEs obtained 9.3 percent of subcontract dollars, resulting in a disparity index of 38.

C. What more can be learned about overall disparities for BGPAA prime contracts?

1. Do results differ for construction and engineering prime contracts?
2. Are there disparities for prime contractors for small BGPAA contracts?

1. Do results vary between construction and engineering prime contracts? Figure 7-5 presents DBE and total MBE/WBE share of the construction and engineering prime contract dollars examined in the disparity analysis. (Results for goods and services contracts were discussed in Chapter 5.)

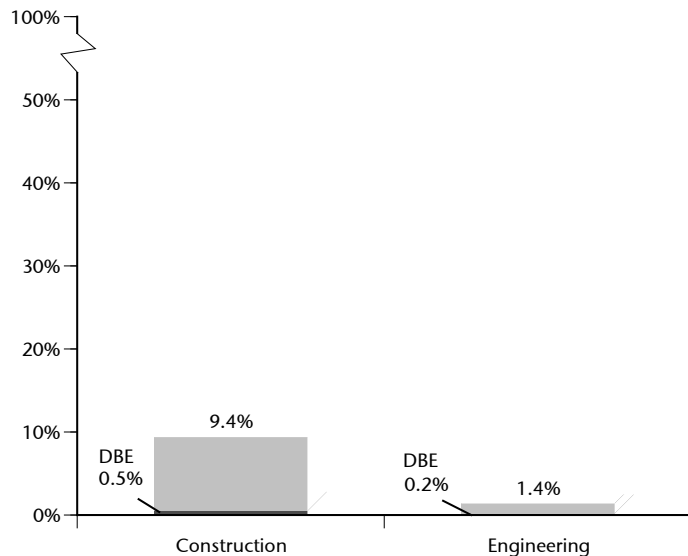
Forty of the 277 construction contracts examined in the disparity analysis went to MBE/WBEs. Of these 40 contracts, DBEs received 9. MBE/WBEs received 9.4 percent of prime contract dollars on BGPAA construction contracts (DBEs received 0.5%).

Of the 85 engineering-related contracts included in the disparity analysis, 14 went to MBE/WBEs (4 to DBEs). MBE/WBEs obtained 1.4 percent of prime contract dollars for engineering contracts.

Figure 7-5.
MBE/WBE and DBE share of prime contract dollars for BGPAA construction and engineering contracts, 2005–2009

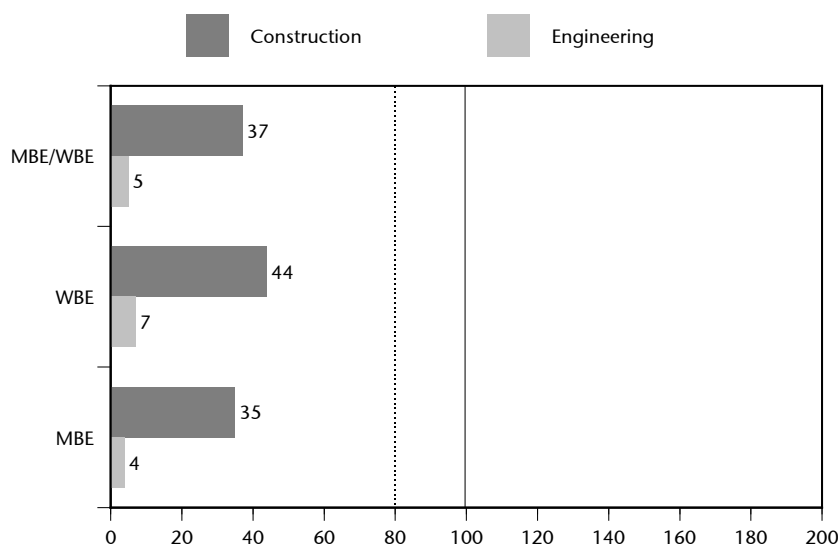
Note:
Certified DBE utilization. Number of contracts analyzed is 277 for construction contracts and 85 for engineering contracts.
For more detail and results by group, see Figures J-9 and J-10 in Appendix J.

Source:
BBC Research & Consulting from data on BGPAA contracts.



There were disparities between MBE/WBE utilization and what might be expected based upon the availability analysis for both construction and engineering prime contracts. The disparity index for MBE/WBEs for construction prime contracts was 37 and the index for engineering-related prime contracts was 5. There were disparities for WBEs and for MBEs for each set of prime contracts. Utilization was less than availability for each MBE group for construction contracts (see Figure J-9 in Appendix J) and for engineering contracts (see Figure J-10).

Figure 7-6.
Disparity indices for MBE/WBE utilization as prime contractors on construction and engineering-related contracts, 2005–2009



Note:
 Includes utilization as prime contractors and subcontractors on FAA- and locally-funded contracts.
 Number of contracts analyzed is 277 for construction contracts and 85 for engineering-related contracts.
 For more detail, see Figures J-9 and J-10 in Appendix J.

Source:
 BBC Research & Consulting.

Disparity results for goods and services contracts are discussed in Chapter 6 — as no subcontracts were identified for goods and services contracts, results for prime contracts are the same as the results for total dollars.

2. Are there disparities for prime contractors for small BGPAA contracts? Many business owners and other individuals the study team interviewed in Southern California reported that small firms — including MBE/WBE firms — face barriers when attempting to bid as primes on larger contracts. For a more in-depth look at how contract size affects MBE/WBE utilization, the study team analyzed MBE/WBE utilization as prime contractors on:

- Construction contracts with a total value less than \$1 million; and
- Engineering-related prime contracts of less than \$100,000.

Only two goods and services contracts examined in the disparity analysis were \$100,000 or more in size, so BBC did not separately analyze small goods and services contracts. (Neither of these contracts went to MBE/WBEs.)

Figure 7-7 examines the share of prime contract dollars going to DBEs and MBE/WBEs on larger and small construction, engineering, and goods and services contracts.

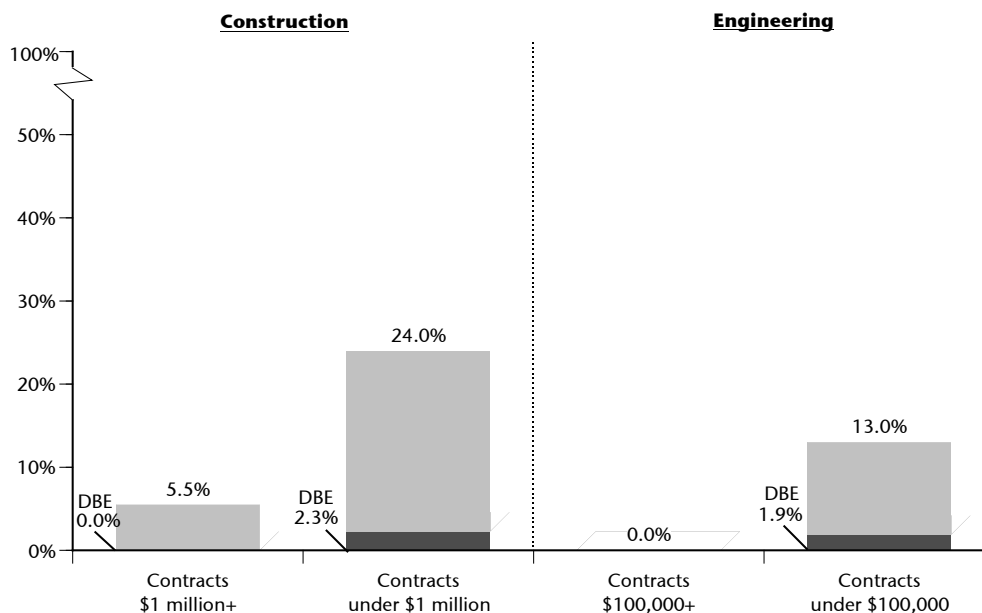
MBE/WBE utilization as prime contractors on large and small construction contracts. BBC identified 28 construction contracts of \$1 million or more during the study period. MBE/WBEs obtained five of these large contracts and received 5.5 percent of the prime contract dollars. DBEs did not obtain any of these large construction contracts.

There were 249 construction contracts of less than \$1 million examined in the disparity study (including construction-related work BGPAA awarded through purchase orders and contracts that involved no subcontracting). Thirty-five small contracts went to MBE/WBEs (nine to DBEs). MBE/WBEs received about one-quarter of the prime contract dollars on small construction contracts. DBEs received 2.3 percent of the prime contract dollars.

MBE/WBE utilization as prime consultants on large and small engineering-related contracts. Of the 14 engineering-related contracts of \$100,000 or more examined in the disparity analysis, none of the prime consultants were MBE/WBEs.

MBE/WBEs received 13 percent of the prime consultant contract dollars on engineering-related contracts of less than \$100,000. DBEs obtained 1.9 percent of these contract dollars. There were 71 small engineering-related contracts examined in the disparity analysis.

Figure 7-7.
MBE/WBE and DBE share of construction and engineering prime contract dollars by contract size, 2005–2009



Note: Number of construction contracts analyzed is 28 for large contracts and 249 for small contracts. Number of engineering-related contracts analyzed is 14 for large contracts and 71 for small contracts.

For more detail and results by group see Figures J-9, J-10, J-20 and J-21 in Appendix J.

Source: BBC Research & Consulting from data on BGPAA contracts.

Disparity analysis for small contracts. Figure 7-8 presents disparity indices when examining prime contract dollars for construction contracts under \$1 million and engineering contracts of less than \$100,000.

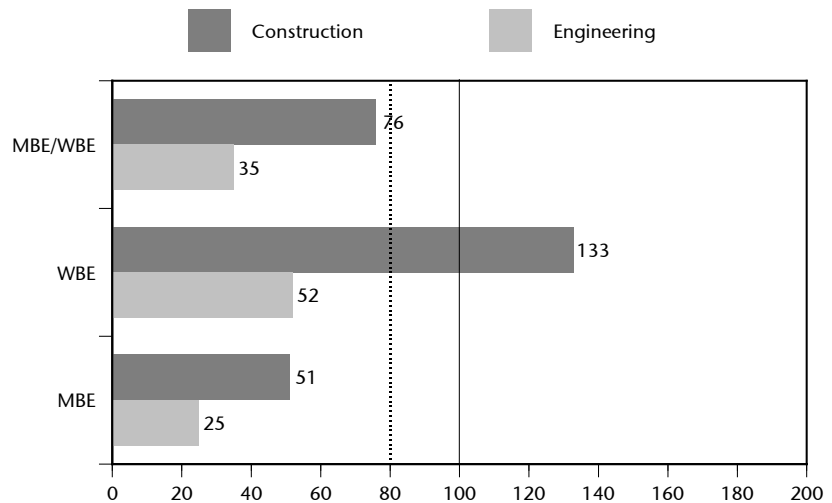
There was a substantial disparity in the utilization of MBE/WBEs as prime contractors on small construction contracts (disparity index of 76). Utilization of WBEs exceeded what might be expected from the availability analysis for these contracts (disparity index of 133). MBEs received about one-half of the prime contract dollars that might be expected from the availability analysis for these small contracts. Figure J-20 in Appendix J provides detailed results.

There were substantial disparities for MBEs and WBEs when examining prime consultant utilization on small engineering-related contracts. Figure J-21 in Appendix J presents detailed results for small engineering prime contracts.

Figure 7-8.
Disparity indices for MBE/WBE utilization as prime contractors on small construction and engineering contracts, 2005–2009

Note:
 Number of contracts analyzed is 249 for construction contracts less than \$1 million and 71 for engineering-related contracts less than \$100,000.
 For more detail and results by group see Figures J-20 and J-21 in Appendix J.

Source:
 BBC Research & Consulting.



D. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results?

BBC examined MBE/WBE participation in the bid process and analyzed Authority bidding procedures to determine if BGPAA contracting processes present barriers for MBE/WBEs.

The study team examined case studies of the bidding process for past construction contracts at BGPAA. As case study data were only available for construction contracts, the analysis did not include engineering or goods and services procurements.

The study team was able to collect bid and firm information for 49 of 58 BGPAA construction agreements executed within the study period. In total, BBC examined 223 bids for these contracts.

Relative number of bids from MBE/WBEs. MBE/WBEs submitted 49 (22%) of the 223 bids:

- Thirty five bids (16%) came from MBEs, with nearly all of those bids coming from Asian-Pacific American- or Hispanic American-owned firms; and
- Fourteen bids (6%) came from WBEs.

BBC compared proportion of bids from MBEs and WBEs with the share of firms available for prime construction contracts for local transportation agencies in the Los Angeles area that were MBEs (24%) and WBEs (10%), based upon BBC's availability database.¹ The number of bids from MBEs and WBEs was smaller than might be expected from the availability data.

Success of bids. BBC examined successful bids as a percentage of submitted bids. Twenty percent of bids from majority-owned firms were winning bids, somewhat lower than the 29 percent of MBE/WBE bids that were winning bids. There is no evidence from analysis of bids that MBE/WBE bidders were less likely to be successful than majority-owned firms.

Were a large number of bids deemed non-responsive? Only one bid in the case study analysis was deemed non-responsive. BGPAA determined that it did not have a valid bid bond.

Size of contracts. MBE/WBEs bid on and won smaller construction contracts than majority-owned firms.

- MBE/WBEs submitted 22 percent of the bids.
- An MBE/WBE bid was more likely to be a winning bid than a bid from a majority-owned firm.
- However, MBE/WBEs were awarded only 10 percent of prime construction contract dollars among the contracts analyzed.²

The difference between share of bids and share of contract dollars for MBE/WBEs is because minority- and women-owned firms were less likely to submit bids on contracts worth \$1 million or more. These data confirm that size of contract appears to be a substantial barrier for MBE/WBEs potentially bidding as prime contractors on BGPAA construction contract.

¹ Of the 527 firms identified as available for local transportation agency prime contracts, 128 were minority-owned and 52 were white women-owned.

² MBEs were awarded 8 percent of prime construction dollars, and WBEs were awarded 2 percent of contract dollars. These percentages differ slightly from the results in Figure 7-5 and Figure J-17, which examine a larger number of construction contracts.

E. Do BGPAA contracting policies and procedures make it more difficult for MBE/WBEs to bid on Authority contracts?

BBC examined different aspects of BGPAA procurement processes. As part of the BGPAA study, the study team interviewed a number of business owners and managers as well as other individuals knowledgeable about Authority contracting. BBC reports perceptions and suggestions from these interviews (Appendix K provides additional detail).

Competitive bidding and sole-source contracting. BBC examined whether the Authority typically sole-sourced contracts or fostered competition in its contracting.

Competitive bidding. BGPAA must publically advertise procurements of \$100,000 or more. For procurements less than \$100,000, BGPAA can use an informal procurement process. Even for smaller procurements, the Authority typically solicits quotes, bids or proposals (depending on the type of procurement) from at least three qualified vendors.

Sole sourcing contracts. The Authority executes sole-source purchasing when it is determined, after good faith review, that there is only one source for the required supply, service or construction item. BGPAA purchasing agents must provide justification and obtain approval for any use of sole source. Some of the firms familiar with BGPAA had obtained sole source contracts, including MBE/WBEs. BBC was unable to quantify the extent to which sole-source contracting is used.

Methods to notify potential bidders of contract opportunities. BBC reviewed policies and procedures the Authority uses to notify potential bidders of a bid or proposal opportunity.

BGPAA policies require all procurements of \$100,000 to be publically advertised, as explained below.

Advertisement in newspapers. BGPAA advertises opportunities in general circulation newspapers and minority-focused newspapers. Examples include the *Los Angeles Times*, *Dodge News*, the local Burbank Glendale Pasadena newspaper, *LA Sentinel*, the Armenian newspaper in Glendale, *La Opinion*, the *Wave* in Compton and a variety of other minority-specific newspapers. The BGPAA circulates advertisements over a period of two weeks.

Posting of contract opportunities on BGPAA website. The Authority also posts contract opportunities on its website and encourages firms to download project requirements, plans and specifications. Plans and specifications are available for download on the Authority's website as a part of the bid package.³

Some of the firms the study team interviewed knew that the Authority posted bid opportunities on its website and had favorable comments about this practice. A manager of a WBE contractor said that on-line registration was very useful. Another contractor said that the Authority's website is "easy to use," and his experience with the website has been positive.

Other interviewees reported that they were not aware that the Authority's used its website to post bid notifications.

³ Hard copy plans and specifications are available at the Authority administrative building in the Construction and Engineering Department. Third-party organizations also publish or make available BGPAA plans.

Direct notification of potential bidders. In addition to the public advertisements, BGPAA will directly notify contractors of bidding opportunities if they have previously expressed an interest in specific work types. Contractors interested in receiving bid notices can register on BGPAA’s website. The Purchasing Department also maintains a vendor list of businesses that are currently conducting work or have conducted work in the past for the Authority.

The study team interviewed a number of firms that were knowledgeable about BGPAA contracting. Many, including a number of minority- and women-owned firms, had positive comments about BGPAA efforts to notify firms of bidding opportunities. Several firms indicated the Authority calls them about job opportunities.

Some businesses, including MBEs and WBEs, were not pleased with the Authority’s bid notification.

- A manager of one MBE/WBE firm said that “there’s no notification method” concerning jobs with the Authority, so “you have to search for it.”
- A manager of a DBE company stated that he does not remember how the Authority notified potential bidders of business opportunities. He stated that “the L.A. Airport has a system” for notifying potential bidders about requests for proposals every time the City of Los Angeles releases a new request for proposal. He said that to his knowledge, the Authority does not have that system, but it would be “very beneficial” if it did. He recommended that the Authority could improve its communications concerning available work, not only work with the Authority but also with private entities that work at the airport, so that companies may learn about opportunities there.
- The president of the Southern California Chapter of the National Association of Minority Contractors said that his members have missed opportunities to bid on Authority projects and other public sector projects because they have not been notified of the opportunities to bid. He was not aware of job opportunities being made available on the BGPAA website and said that his members are not sure where to go to learn about Authority job opportunities.

Summary of bid notification. It appears that BGPAA has processes in place to inform potential bidders of contract opportunities, but that it may have not performed sufficient outreach to communicate the existence of these methods and how they can be used.

Time provided to respond to bids. Construction and professional service opportunities are required to be open for a minimum of 30 days. Study team interviews with local firms did not identify complaints about the length of time BGPAA provides to submit a bid or proposal.

Contract specifications. BBC reviewed whether BGPAA contract specifications, including bonding and insurance, presented barriers to MBE/WBEs and other small businesses. The study also examined BGPAA experience and other requirements for its contractors.

Restrictive contract specifications. A few interviewees in the BGPAA disparity study had negative comments about how the Authority writes contract specifications. For example, the executive director of the Young Black Contractors Association said that the Authority seems to write contract specifications for particular firms and that his organization has expressed this concern to the

Authority. He said, “What we said to them is that the specifications that are written ... are written [for a particular firm] to get the job. ... That’s a no-no.”

Licensing. BGPAA requires all contractors to hold construction licenses in accordance with the California Contractors State License Board (CSLB). CSLB issues licenses for the following classifications:

- Class “A” – General Engineering Contractor;
- Class “B” – General Building Contractor; and
- Class “C” – Specialty Contractor.

In general, firms interviewed as part of the BGPAA disparity study did not report difficulties with licensing requirements.

Bonding requirements. BGPAA requires bid bonds and payment and performance bonds on its construction contracts. Very small repair jobs do not require bonding. Bonding requirements for public works projects are established in state law.

Chapter 3 (and Appendix K) provides considerable qualitative information that indicates bonding is a barrier for small contractors. Many firms interviewed in the BGPAA study reported bonding to be a barrier. One contractor noted that the Authority’s bonding requirements are no different from other public agencies.

Insurance requirements. Somewhat high levels of business insurance are required to work on BGPAA contracts, especially if the work is on the runway or taxiway.

- \$2 million of general liability and automobile coverage is required for firms working on airport grounds outside of the perimeter of the airport;
- \$5 million of general liability and automobile coverage for firms working inside of the airport perimeter fence but not on the runway or taxiway; and
- \$10 million of general liability and automotive coverage for those firms working inside of the perimeter fence and on the runway or taxiway.
- In addition to general liability and automobile coverage requirements, professional service consultants performing design work are also required to hold a minimum of \$5 million in error and omission coverage.

Some interviewees with experience at the Authority commented that obtaining insurance is a challenge and a barrier for smaller firms. A principal of an engineering firm said that \$5 million and \$10 million in professional liability insurance is not available for a small business, so these requirements are effectively excluding small businesses from proposing.

One contractor said that he could obtain insurance, but that it was expensive. As his only customer requiring such a high level insurance was the Authority, the company had to “watch to make sure that the value of [its] work” with the Authority is sufficient to justify the cost of the insurance because the

cost of the insurance “is based on [the company’s] gross sales,” not just its work with the Authority. He had to be sure that the income generated at the Authority justified the cost of insurance.

Experience requirements. BGPAA requires that firms have at least two years of work experience for the specific type of work for which they are submitting a bid. The Authority also requires firms to have two years of public contracting experience. Although these requirements are minimal, they might present barriers to new firms and businesses that have not been successful in obtaining public sector contracts.

Several firms that the study team interviewed about BGPAA contracting processes commented on the Authority’s prequalification process and other qualifications requirements. Interviewees generally had positive comments about the Authority’s prequalification and experience requirements.

Methods of determining contract award. The Authority uses a low bid procurement method and a qualifications-based selection process.

Low bid method to award construction and other non-engineering contracts. The Authority awards most non-professional services contracts based on the lowest responsive, responsible bid. Out of the 223 bids BBC examined in the case studies of BGPAA construction bidding, only one was found by the Authority to be non-responsive. It appears that low-bid is the determining factor for most BGPAA non-professional services contracts, at least for construction.

A number of contractors interviewed indicated that bidding is very competitive and that low bid may mean that qualified firms do not win BGPAA work. For example:

- The president of an 8A-certified engineering firm said, “The biggest problem with the public sector is with the lowest qualified bid. It’s exactly that; you’re getting the lowest qualified person to do the work. Frequently the people are incompetent.” He said that “Sometimes firms will be asked if they included everything in the bid, and they will immediately say yes without looking. Then if they left out a substantial portion of the project, they’re given a major change order, which will bring them above the next lower bidder. These are the types of pitfalls you have in the public sector because of the method of bidding.”
- A manager of a WBE contractor said that there is a lot of competition in the public sector. He said, “Right now, a barrier is that a lot of people are hungry, so when you go to the pre-bid meeting, they’re packed. I guess that’s a good thing for the public sector, but it’s not a good thing for each individual [firm].”
- One contractor stated that in the Authority’s bidding process, the “low number gets the job, and it’s bonded work.” He added that bid competition has increased significantly recently, but when he sees “projects going to 10, 20, 30 percent below your cost, you know that person is probably not prepared [for] that project, but they’re awarded the project, and it’s bonded, ... but generally you don’t see that contractor again.” He stated that the number of bidders has doubled within the last couple of years. He said where between five and seven contractors were bidding before, now he is seeing “15 to 20 contractors bidding.” He said that the Authority has “pushed to try to keep the work local,” but “low numbers still rule.”

- A manager of a WBE construction firm, said, “I wish we could change the bid process in itself because it’s a low bid dollar process, and that isn’t always best for the Airport Some of these bids are too low, and when they’re too low, they’re going to take shortcuts Maybe there should be a minimum on bids, or the process should be changed from low dollar to true evaluation of the package and contractor experience.”

However, a manager of an MBE/WBE-certified equipment supplier and installer was suspicious of contracting processes that did not award based upon price:

- Referring to other public sector clients, he said, “Now they’ve gone to a criteria-based bidding system where it’s all weighted. So, they’ll weigh points to your price, they’ll weigh points to your presentation, they’ll weigh points to your installation, procedures and practices, and they’ll break them down into multiple areas. And then ... they go into committee on it ... and they’ll assign points to you. They’ll give you ... 20 points for this, 10 points ... and at the end, who has the most points wins the bid. ... It’s not as apples to apples as it used to be.” He said that the Los Angeles Airport is using this more weighted system, and he commented that he thinks the new bidding system is intended to allow the public entity “to rule [a company] out and ... take somebody who has a higher bid because they have more points in other areas,” especially when the entity “may not like the way” the company with the lower bid would “actually put the project together.”

Qualifications-based awards. Depending on the project funding source, BGPAA uses a qualification based evaluation system or a combination of qualifications- and price-based evaluation system for professional services. For federally-funded projects, BGPAA is required to select consultants on the basis of their qualifications and experience with fees negotiated following the selection of the most qualified firm. To select consultants for locally-funded contracts, the Authority evaluates firms based on both qualifications and price.

The Authority uses a Request for Qualifications (RFQ) process to solicit and award federally-funded consultant contracts. Prior to receiving and evaluating consultant qualifications, BGPAA develops a list of selection criteria and assigns rating factors for each. This evaluation criterion is included in the RFQ. Firm qualifications are evaluated by a panel within BGPAA.⁴ Typical evaluation criteria for both federal and non-federal BGPAA projects include the following:

- Capability to perform all material testing and/or resident engineer in-house;
- Recent extensive airport, highway and building experience;
- Southern California office;
- Key personnel qualifications and background;
- Familiarity with Authority and procedures;
- Previous similar projects at other airports;
- Number of years in business, size of firm and length of time local office open;

⁴ The BGPAA evaluation panel is typically a minimum of three representatives with knowledge and expertise in the critical aspects of the project.

- Insurance coverage;
- Willingness to execute standard BGPAA Agreement; and
- Sample project evaluation.

Based on a tabulation of scores, the selection committee typically selects three consultants with the highest evaluation score to be considered for the Authority's short-list. BGPAA then requests a project proposal from each of the short-listed firms by issuing a Request for Proposal (RFP) to each consultant. Interviews are typically conducted with each of the short-listed firms, however they are not required.

Once all evaluation data are collected including the statement of qualifications, work scope and interview scores, if necessary, BGPAA will rank the qualified consultants in order of preference, initiate price negotiations with the top-ranked firm and award the contract.

The Authority typically awards locally-funded consultant contracts based on firm qualifications and proposed price. BGPAA projects use an RFP process for solicitation and award of contracts. In addition to qualifications, firms are asked to provide a detailed work-scope and proposed hourly fees and project price at the time of initial submission. BGPAA selects the qualified proposer that offers the best value for the project. Federally-funded and non-federally-funded projects differ only in that non-federally funded projects include price in the proposal evaluations. Other evaluation steps are the same.

Some engineering firms familiar with BGPAA criticized its processes for awarding consultant contracts. For example, a principal at an engineering firm reported that its experience bidding with the Authority has been "[n]ot good and getting worse." He said that in California professional service providers are supposed to be selected on the basis of qualifications, and contractors who construct things are supposed to be selected on the basis of price. He stated that the Authority is more and more frequently selecting professional service providers on the basis of price alone, and the low bid gets the project. He recommended that the Authority pick a firm based on qualifications and not open the fee until the firm is selected.

BBC sought to conduct case studies of past BGPAA professional services contract evaluations, but files for past evaluations were not available. Even so, the study team's experience suggests that consideration of price may increase, not decrease, small businesses' opportunities to win professional services contracts.

Complaints of unfair bidding practices. In conducting interviews with local businesses as part of the BGPAA study, the study team identified some complaints of unfair bidding practices at the Authority.

- The owner of an MBE firm explained that the Airport will "have us bid a job. We designed the job, we bid the job, and then they go get other bids, and the person that's the low bidder doesn't even know what to put in. Then they'll come to us and ask if they can take a picture [of their design] so they can sell it to the firm that won." He reported multiple experiences of this nature at the Authority.

- One contractor reported, “The people who run the [a certain Airport Authority program] are infamous for collecting all the bids then throwing them all out and rebidding the whole project. It’s not fair. Let’s say the first firm has a problem with their bid, then it should go to the second firm, but instead, they’ll declare everyone non-responsive and throw every bid out. This saves the Airport a bunch of money, because they know all the firms are just going to browbeat each other over money. All that does is hurt firms like ours.”

BBC did not identify such practices in the case studies of BGPAA construction contracts, however.

Authority feedback to contractors about their bids. The Authority does not have an established policy to provide feedback to bidders and proposers. However, when requested, BGPAA offers oral feedback to unsuccessful bidders and proposers. Some firms interested in BGPAA work indicated that the Authority does not give sufficient feedback to unsuccessful bidders. A manager of a construction firm said, “When we do federal and military work, we usually get tons of feedback on a bid. In regard to the Airport, nothing ever filters back to us. There’s zero feedback and zero reasons why [we didn’t win the bid]. We don’t know why we’re not being used.”

Complaint procedure. Currently, BGPAA does not have a formal complaint procedure in place. The Authority did not receive any formal complaints during the study period. One contractor reported that a complaint or grievance procedures would be useful for bidders.

BGPAA methods to encourage subcontracting and procedures for informing potential subcontractors of Airport projects. The Authority has no formal programs that encourage subcontracting on Airport projects. It makes some efforts to inform potential subcontractors of contract opportunities.

Prime contractor minimum. Prime contractors for BGPAA construction and construction-related professional services are required to perform at least 20 percent of the proposed project work. No more than 80 percent of the project can be subcontracted out to a third party. This 20 percent minimum requirement is less than BBC has found for other public agencies that have a minimum.

Pre-bid meetings. Pre-bid meetings and pre-proposal conferences are one way of introducing potential subcontractors to prime contractors bidding on a project. Pre-bid meeting requirements at the Authority differ based on the type of project. For federally-funded projects, including the residential acoustic treatment program, pre-bid meetings are mandatory. For all other bid opportunities pre-bid meetings are optional.

A number of subcontractors and subconsultants interviewed in the BGPAA study, including MBE/WBEs, said these meetings are critical to providing subcontracting opportunities with prime contractors. Some firms were unaware of whether the Authority held pre-bid meetings and only knew of BGPAA opportunities if primes directly contacted them. The president of the Southern California Chapter of the National Association of Minority Contractors said there is no way for its members to know which primes have expressed an interest in a project unless the primes contact them directly.

DBE Directory. Most firms working with BGPAA were not aware if the Authority made a DBE Directory available to prime contractors and others interested in identifying DBEs. The Authority does not provide a link to a DBE Directory on its website.

Working at BGPAA after winning a contract. BBC reviewed interviewees' comments about working on Authority contracts as a prime contractor and subcontractor.

Experience working with Authority staff. Most interviewees that had won contracts or subcontracts at the Airport had favorable comments about working with the Authority.

- A principal at an engineering firm described his experience with officials and staff at the Authority as “fine.” A manager of a DBE firm reported that his experience dealing with officials and staff at the Authority was “really very good.” He reported that the company “received a lot of help from the Burbank staff” related to understanding particular aspects of a project and said that others benefited from this assistance as well.
- Some interviewees said that any problems on contracts are quickly and easily resolved at the Authority. A manager of an MBE/WBE firm said, “We don’t have to jump through a lot of hoops. If we run into any kind of roadblocks on the projects, we get a pretty much immediate resolution.” He said that the Authority “is a small enough entity right now that there are people who are able to make decisions ... within a week” regarding small design questions or modifications, unlike at the Los Angeles Airport where such decisions may take six months or more.
- Another manager said that staff and officials with the Authority have “been very good to work with [and] extremely helpful and available.”

A few firms reported mixed or negative perceptions about the ease of doing business with the Authority.

- One interviewee noted that points of contact have been an issue. “One month it will be one person, and the next month it will be someone else, so we never know who to contact if we have any issues.”
- A WBE firm reported it had difficulties with some BGPAA inspectors. “We had to work through the inspectors, and a lot of times [how] they do things is different from the way you normally do things. They have different ways of doing things. ... A lot of the inspectors don’t know what they’re inspecting, so it makes it difficult.”
- An owner of a DBE firm reported that when the company began working with the Authority, the experience “was very positive,” but when the Airport Authority went through a “staff upheaval,” the company no longer had “a relationship with the new people, so it was different.”
- The president of the Southern California Chapter of the National Association of Minority Contractors said that its members’ experiences with BGPAA staff have been “entertaining.” He said, “Well, I mean they meet you, you know and a nice smile and a warm handshake, [but] you know at the end of the day there is no contract.”

Prompt payment. BGPAA’s prompt payment requirements for construction and professional services are in accordance with the California State law. BGPAA is required to make progress payments to prime contractor within 30 days of receipt of the request for payment. Prime contractors are required to pay to subcontractors no later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing.

Some interviewees who had worked with the Authority had positive comments about prompt payment while others were critical. Negative comments included the following.

- A manager of a WBE contractor said that the firm has experienced difficulties related to payment by the Authority. He said, “The contractor performs the work, but the Airport won’t close the work so [the contractor] can get paid. They hold the retention, and the contractor is losing money every day.” He said, “My average Burbank Airport payment, from the day I deliver to the day I get paid, is 120 days It costs me to do these jobs.”
- An owner of an MBE firm said, “We ran into a problem one time, but they corrected...” When asked how the Authority compares to other public sector work in timely payment, the owner said, “it’s fair. On a scale of 1 to 10, it’s about a six-and-a-half.”
- A principal at an engineering firm indicated payment problems at the Authority, especially for non-construction firms. He said that there is a different payment process for engineers and other contractors, and the firm’s average payment window is usually “a little over 90” days. He stated, “You know, the public sector can pay their contractors within 30 days, but they find it difficult to pay engineers within 60 to 90 days.” He said that the law requires the Authority to pay contractors “within 30 days,” and “[c]ontractors will ... stop work if they don’t get paid,” so payment is made on time. He said that the problem with slow payment is with the Authority and is not the result of the prime taking too long to pay the subcontractor. He said that the prime usually pays a subcontractor within 5 or 10 days of receiving payment from the Airport Authority.
- The president of the Southern California Chapter of the National Association of Minority Contractors said that payment by the Authority is “slow ... slow to very slow.”

Overall impression of work opportunities at BGPAA. A few comments from trade associations indicated negative overall impressions of work opportunities for minority contractors at BGPAA.

- The executive director of the Young Black Contractors Association said that his organization recently walked out of a meeting with the Authority and expressed disappointment over an experience with a project manager because “we asked him who was doing a project over there and he couldn’t or wouldn’t answer.” He said that the Authority’s general message to minority contractors is that they are doing all they can do to help. He said the Authority told minority contractors that “We’re going to do the best we can to help.” He said that he does not believe that the message is genuine.
- The president of the Southern California Chapter of the National Association of Minority Contractors stated that his members have not been successful bidding on Authority projects. He said, “Yeah, we’ve made a lot of attempts; you know we’re

aggressively pursuing [the Airport Authority], but there's too many loop holes ... good faith is one of them." He said, "I mean [the members are] invited to bid, but from my personal experience, they get the bids too late; you know the bid could be out for three months, but they won't notify us until maybe a week before and then they can say that we were non-responsive and then we would respond back that we can't bid this project. We let them know that there's not enough notice." He said, "I find that people who have [worked for the Airport Authority] ... only get the small portions of work. They'll be like a major project but there will be like minorities getting a small little side.... They'll give you a couple of crumbs but you know, but you won't get a piece of the lion's share." He said these experiences with the Authority projects are recent.

Summary of the review of BGPAA procurement policies and procedures. Study team review of BGPAA's procurement processes identified barriers such as bonding and insurance requirements. A number of firms and trade associations criticized what they saw as a lack of commitment of BGPAA to utilize minority- and women-owned firms. Some firms reported slow payment while others did not.

Although the Authority might enhance its outreach to communicate procurement methods and bid opportunities, and closely review the timing of its payments to contractors and vendors, its policies and procedures appear to be similar to most other public agencies in California.

CHAPTER 8.

Overall Annual DBE Goal

As part of implementing the Federal DBE Program, BGPAA must set an overall goal for DBE participation in FAA-funded contracts. The Final Rule, which made certain changes to the Federal DBE Program effective February 28, 2011, requires the overall goal to pertain to a three-year period. BGPAA set an overall DBE goal of 13 percent for FY 2011 through FY 2013.

Federal regulations (49 CFR Part 26.45) outline a two-step process for setting the overall goal:

- Step 1: Establishing a base figure; and
- Step 2: Making any needed adjustment to the base figure.

Step 1: Establishing a Base Figure

As presented in the Chapter 4 availability analysis, minority- and women-owned firms currently or potentially certified as DBEs would be expected to receive 19.3 percent of prime contract and subcontract dollars for BGPAA's FAA-funded contracts based on their relative availability for that work.

- BGPAA should consider 19.3 percent as the base figure for its overall goal for DBE participation if the types of FAA-funded contracts for the time periods covered by future goals will be similar to FAA-funded contracts from 2005 through 2009. If the mix of work between construction- and engineering-related procurements will differ in the future, BGPAA can apply new weights to develop a new base figure. (As shown in Figure 8-1, the current weight is 82 percent for construction contracts and 18 percent for engineering-related contracts.)
- BGPAA must develop its goal for DBE participation by including all DBE groups, and should not subdivide the goal by DBE group.¹ (The data BBC presents by DBE group is to document how the overall DBE goal might be calculated.)
- The 19.3 percent base figure is higher than the 13 percent overall DBE goal BGPAA established for FY 2011 through FY 2013. BGPAA only included certified DBEs in its base figure calculations. BBC also counted minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified.² BBC also had more detailed information concerning available firms and performed a more sophisticated contract-by-contract analysis of availability.

¹ See 49 CFR Section 26.45 (h).

² Consistent with USDOT guidance, as discussed in Chapter 4.

Figure 8-1 summarizes the base figure information first presented in Chapter 4.

Figure 8-1.
Calculation of base figure for overall DBE goal

Potential DBEs	Utilization benchmark (availability %)		
	Construction	Engineering	Total
African American-owned	2.8 %	1.9 %	2.7 %
Asian-Pacific American-owned	2.7	4.4	3.0
Subcontinent Asian American-owned	0.2	1.7	0.4
Hispanic American-owned	7.6	2.8	6.7
Native American-owned	0.7	0.3	0.6
WBE (white women-owned)	<u>5.2</u>	<u>9.1</u>	<u>5.9</u>
Total potential DBEs	19.2 %	20.2 %	19.3 %
Sector weight	82 %	18 %	

Note: Weights are based dollars of FAA-funded contracts for 2005–2009.

Source: BBC Research & Consulting.

Step 2: Making Any Needed Adjustment to the Base Figure

BGPAA can make upward or downward adjustments to the base figure as it determines its overall DBE goal. It does not have to make a step 2 adjustment as long as it considers appropriate factors and explains its decision.

The Federal DBE Program outlines factors that recipients of USDOT funds must consider when assessing whether to make a “step 2” adjustment to the base figure:³

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant data.

BBC completed an analysis of each of the step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information BBC examined was not as easily quantifiable, but is still relevant as BGPAA assesses whether or not to make a step 2 adjustment.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT Tips for Goal Setting suggests that agencies examine data on past participation of DBEs on USDOT-funded contracts, and choose the median level of annual participation for the years examined as the measure of past participation. “Your goal setting process will be more accurate if you use the median (instead of the average or mean) of your past

³ 49 CFR Section 26.45.

participation to make your adjustment because the process of determining the median excludes all outliers (abnormally high or abnormally low) past participation percentages.”⁴

Median annual DBE participation in BGPAA’s DBE participation reports to FAA for FY 2006 through FY 2010 was 8.7 percent.⁵ BBC’s independent analysis of 2005 through 2009 FAA-funded contracts indicates 6.0 percent DBE utilization (based on aggregate utilization over this period, not median utilization for the five years). The two approaches yield similar estimates of past DBE participation in FAA-funded contracts. Figure 8-2 presents these estimates.

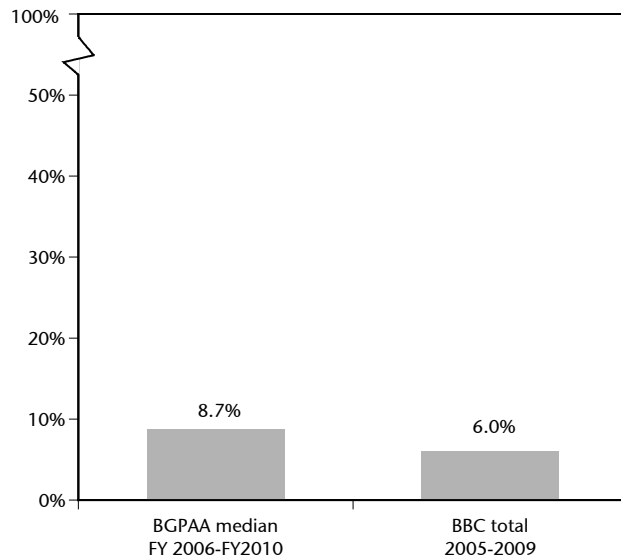
Figure 8-2.
Estimates of DBE participation
on FAA-funded contracts

Note:

Number of FAA-funded contracts/subcontracts analyzed by BBC is 276. For more detail, see Figure J-3 in Appendix J.

Source:

BBC Research & Consulting from BGPAA’s DBE participation reports and BGPAA contract data.



2. Information related to employment, self-employment, education, training and unions. Chapter 3 of the report summarizes information concerning local marketplace conditions for minorities and women. Detailed quantitative analyses of the Los Angeles area marketplace are presented in Appendices E through H. Appendix K provides qualitative information on the Southern California marketplace. BBC’s analysis suggests that there are certain barriers affecting entry, advancement and business ownership for minorities and women in the Los Angeles area construction and engineering industries:

- Taken together, this information suggests that barriers to employment, self-employment and education exist for certain minority groups and women in the Los Angeles area.
- It follows that such barriers have affected the relative availability of minority- and women-owned firms to perform BGPAA work.

It may not be possible to properly quantify the extent to which barriers to employment, education and training may have depressed the relative number of minority- and women-owned firms in the local industry. However, the effect of disparities in self-employment on relative availability can be quantified, as discussed below.

⁴ Section III (A)(5)(c) in USDOT. Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

⁵ Beginning with FY 2006 and ending in FY 2010, BGPAA reported DBE dollars awarded as a percentage of total dollars awarded for FAA-funded contracts of 41.3%, 4.8%, 9.9%, 1.6% and 8.7%.

Quantitative information on self-employment. Through regression models, BBC investigated whether race/ethnicity/gender influenced rates of business ownership among Los Angeles area workers after accounting for the effects of several neutral factors.⁶ Chapter 3 of the report summarizes BBC’s analyses and Appendix F provides detailed results of the regression models.

BBC identified statistically significant disparities in business ownership rates for certain minority groups and for women working in the Los Angeles area construction industry. There were also statistically significant disparities in business ownership rates for minorities and women working in the Los Angeles area engineering industry. BBC calculated the impact on the base figure if minority groups (and women) owned businesses at the same rates as similarly situated non-minorities (and men). These “but for” calculations are presented in Figure 8-3. BBC’s calculations include the same categories of contracts used when determining the base figure (i.e., construction and engineering). BBC made separate “but for” calculations for construction and engineering, and then weighted them based on BGPAA’s dollars of FAA-funded contracts for those types of procurements.

- Within construction and engineering, BBC calculated potential base figure adjustments only for those groups for which regression analyses showed statistically significant disparities in business ownership. Thus, for construction, BBC calculated potential availability adjustments for African Americans, Subcontinent Asian Americans, Hispanic Americans, Native Americans and white women. For engineering, BBC calculated potential adjustments for minorities and white women.

The columns of Figure 8-3 represent the following:

- a. **Current availability.** Column (a) shows the current availability of potential DBEs as presented in Chapter 4.
- b. **Disparity indices for business ownership.** Column (b) presents disparity indices in business ownership for the different race/ethnic/gender groups. See Chapter 3 and Appendix F for an explanation of the regression models from which BBC formulated these disparity indices.
- c. **Availability after initial adjustment.** Column (c) presents initial availability estimates after adjusting for statistically significant disparities in business ownership. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. **Availability after scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the estimates equals 100 percent. BBC re-scaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) and multiplying by 100. For example, for African American-owned construction firms, the calculation is $(3.5\% \div 107.4\%) \times 100 = 3.2\%$.

⁶ BBC examined U.S. Census data on business ownership rates using methods similar to analyses examined in the court cases involving state departments of transportation in California, Illinois and Minnesota. At the time of this report, the most extensive data on business ownership come from the 2000 Census. The analyses of these data provide the highest level of accuracy and detail and are the focus of this summary.

e. **Components of goal.** Column (e) shows the component of the total goal attributed to the adjusted MBE/WBE availability in each procurement area. BBC calculated each component by taking the total DBE availability estimate shown under “Total small minority and female” in column (d) and multiplying it by the proportion of total FAA-funded contract dollars for construction and engineering (82% for construction and 18% for engineering-related contracts). The study team took the 12.4 percent shown under “Total small minority and female” in column (d) for construction and multiplied it by 82 percent for a result of 23.6 percent. The column (d) figure for engineering (26.7%) was multiplied by its weight of 18 percent for a result of 4.8 percent. The values in column (e) were then summed to equal the total adjusted DBE availability (last row of Figure 8-3). The sum is 28.4 percent.

From the calculations in Figure 8-3, as described above, the potential step 2 adjustment indicates an overall goal of 28.4 percent.

Figure 8-3.
Potential adjustment to base figure for overall DBE goal

Business ownership	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of goal**
Construction					
African American	2.8 %	81	3.5 %	3.2 %	
Asian-Pacific American	2.7	no adjustment	2.7	2.5	
Subcontinent Asian American	0.2	41	0.5	0.5	
Hispanic American	7.6	64	11.9	11.1	
Native American	0.7	78	0.9	0.8	
White women	5.2	72	<u>7.2</u>	<u>6.7</u>	
Total small minority and female	19.2 %		26.6 %	24.8 %	23.6 %
Majority and large MBE/WBE	<u>80.8</u>		<u>80.8</u>	<u>75.2</u>	
Total firms	100.0 %		107.4 %	100.0 %	
Engineering					
Minority	11.1 %	75	14.8 %	13.6 %	
White women	<u>9.1</u>	64	<u>14.2</u>	<u>13.1</u>	
Total small minority and female	20.2 %		29.0 %	26.7 %	4.8 %
Majority and large MBE/WBE	<u>79.8</u>		<u>79.8</u>	<u>73.3</u>	
Total firms	100.0 %		108.8 %	100.0 %	
Total small minority and female after adjustments and weighting					28.4 %

Note: * Initial adjustment is calculated as current availability divided by the disparity index.
 ** Components of goal calculated as value after adjustment and scaling to 100% multiplied by percentage of total FWA-funded contract dollars in that category (construction is 82%, engineering is 18%).
 *** Small minority and female firms includes those firms that BBC surveyed and who reported annual revenues below the Federal DBE revenue caps. MBE/WBE firms reporting annual revenues over DBE limits are not included in this total. Totals also do not include firms that have applied for DBE certification and been denied and firms that have graduated from the Federal DBE Program.

Source: BBC Research & Consulting.

3. Statistical disparities in the ability of DBEs to get financing, bonding and insurance.

BBC analyzed access to financing, bonding and insurance. There is evidence that minority- and women-owned firms do not have the same access to capital as majority-owned firms. Any barriers in access to capital, bonding and insurance would affect the opportunities for minorities and women to form and successfully operate construction, engineering and related firms.

- As discussed in Chapter 3, because firms typically must have working capital, bonding and insurance to be awarded and perform BGPAA construction prime contracts, any greater barriers to obtaining these business inputs for minorities and women would place these firms at a disadvantage in obtaining Authority construction contracts.
- Similarly, if minority- and women-owned engineering and related firms face disadvantages obtaining financing and insurance, they may have disadvantages obtaining BGPAA engineering-related contracts. Insurance is a requirement for obtaining Authority work and sufficient working capital is a practical necessity to perform BGPAA contracts.

Unequal access to financing, bonding and insurance may adversely affect the current availability of minority- and women-owned firms to perform BGPAA work, which adds to the evidence for an upward Step 2 adjustment. However, the impact on the base figure could not be explicitly quantified. Chapter 3 summarizes this information, Appendix G presents detailed quantitative analyses and Appendix K reviews relevant qualitative information.

4. Other relevant data. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make a step 2 adjustment to the base figure.⁷ One factor BBC examined was the relative success of minority- and women-owned firms in the local transportation contracting industry. There is evidence of disparities for certain groups of minority- and women-owned firms. Chapter 3 summarizes this information, Appendix H presents detailed quantitative analyses and Appendix K provides a review of qualitative information collected as part of the study. As with access to financing, bonding and insurance, quantification of how these factors affect the base figure was not possible.

Summary of information for step 2 analysis. BBC’s in-depth analysis of each factor outlined in the Federal DBE Program suggests that BGPAA consider one of the following options concerning a step 2 adjustment.

Option 1 – making an upward adjustment. Over the long-term, there are reasons that the Authority might consider a higher overall goal than the 19.3 percent base figure.

- If BGPAA were to make an upward adjustment, it might consider the 28.4 percent figure for DBE participation after adjusting current availability for business ownership rates to reflect “your determination of the level of DBE participation you would expect absent the effects of discrimination.”⁸ Figure 8-3, earlier in this chapter, presents these calculations.

⁷ 49 CFR Section 26.45.

⁸ 49 CFR Section 26.45 (b).

- Analyses of access to capital and other factors summarized above also support an overall goal higher than 19.3 percent.
- As emphasized in the USDOT Tips for Goal Setting, “If the evidence suggests that an adjustment is warranted, it is critically important to ensure that there is a rational relationship between the data you are using to make the adjustment and the actual numerical adjustment made.”⁹ The calculations that reflect disparities in business ownership rates appear to provide such a rational relationship.

Option 2 – making a downward step 2 adjustment. As explained above, one factor BGPAA must consider is the volume of work DBEs have performed in recent years. BGPAA DBE participation reports for FY 2006 through FY 2010 indicated median annual DBE participation of 8.7 percent for these years. This level of participation may represent a minimum demonstration of “current capacity of DBEs to perform work,” which is lower than the 19.3 percent base figure. (BBC measured total DBE participation of 6.0 percent for FAA-funded contracts for 2005 through 2009, a figure close to the 8.7 percent median value.)

- USDOT “Tips for Goal-Setting” suggest that the base figure can be averaged with the median past DBE participation to make the step 2 adjustment.
- If BGPAA chose this approach, the 19.3 percent base figure would be averaged with the 8.7 percent median level of past attainment for an adjusted DBE goal of 14 percent.

Option 3 – making no step 2 adjustment. USDOT regulations clearly state that an agency such as BGPAA is required to review a broad range of information when considering whether a step 2 adjustment is necessary. The Authority, however, is not required to make such an adjustment as long as it can explain what factors were considered and why no adjustment is warranted.

After considering marketplace conditions and past DBE participation, BGPAA might adopt the 19.3 percent base figure for its overall goal for DBE participation without making a step 2 adjustment.

- Marketplace conditions, especially the analysis of business ownership, indicate an upward adjustment.
- However, analysis of past DBE participation indicates a downward adjustment.

The Authority’s decision concerning a step 2 adjustment must explain each of the factors considered.

⁹ USDOT. Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

Chapter 9.

Percentage of Overall DBE Goal to be Met Through Neutral Means

The Federal DBE Program requires each local transportation agency to determine whether its overall DBE goal can be met solely through race-neutral measures, or whether race-conscious program elements such as DBE contract goals are also needed. Race-neutral program elements are initiatives that help all businesses or small businesses in general, including DBEs. Agencies must meet the maximum feasible portion of the overall annual DBE goal using race-neutral means.¹

An agency's consideration of neutral measures includes projecting the portion of its overall annual DBE goal that can be met through neutral programs.

- If it determines that it can achieve its annual DBE goal by race-neutral means and that no race-conscious elements are appropriate or required, an agency would submit its program using only race-neutral means for USDOT approval.
- If the agency determines that a combination of neutral and race-conscious measures is needed to meet its overall annual DBE goal, it would project the relative portion of the overall annual DBE goal to be met through neutral and through race-conscious means.

USDOT guidance concerning how transportation agencies should project the neutral/race-conscious division of their overall annual DBE goals includes USDOT Questions and Answers about 49 CFR Part 26² and USDOT "Tips for Goal-Setting."³

In a 2005 ruling in *Western States Paving v. Washington State DOT*, the Ninth Circuit Court of Appeals found that the Washington State Department of Transportation failed to show its implementation of the Federal DBE Program to be narrowly tailored.

- The court held that state and local governments are responsible for determining whether or not there is discrimination in the government's transportation contracting industry, and for developing narrowly tailored measures if a need exists, in order to comply with the Federal DBE Program.
- Narrow tailoring of the program depends on each state or local government evaluating conditions within its own contracting markets and implementing the Federal DBE Program in a way that pertains to those local conditions.

In narrowly tailoring its implementation of the Federal DBE Program to reflect local marketplace conditions, an agency that determines race-conscious measures are necessary also needs to consider

¹ 49 CFR Section 26.5.

² See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>.

³ <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

whether any race-conscious remedies such as DBE contract goals should be restricted to certain DBE groups. Some transportation agencies have obtained waivers from USDOT that allow them to implement contract goals programs that apply to “underutilized” DBEs (UDBEs). UDBEs are specific to each agency requesting a waiver, and would include some but not all of the racial/ethnic/gender groups presumed to be socially disadvantaged under the Federal DBE Program.

- If the agency determines that firms owned by a racial/ethnic/gender group specified in the DBE Program suffer discrimination in the local transportation marketplace, the agency should include that group as eligible for the race-conscious program elements the agency identifies as necessary, such as DBE contract goals.⁴
- If there is insufficient evidence that firms owned by a racial/ethnic/gender group have suffered discrimination in the local marketplace, that group would not be identified as UDBEs.

Based on 49 CFR Part 26 and the above sources, general areas of questions that transportation agencies might ask in performing this analysis include:

- A. Is there evidence of discrimination within the local marketplace for any racial/ethnic/gender group presumed to be socially disadvantaged under the Federal DBE Program? If not, then the agency should only implement neutral remedies and no race-conscious remedies.
- B. What has been the past experience of the agency in meeting its overall annual DBE goal? Does the agency have a history of not meeting or exceeding its overall annual DBE goal?
- C. What has DBE participation been when the agency did not apply contract goals (or other race-conscious remedies)?⁵
- D. What is the extent and effectiveness of race-neutral efforts that the agency could have in place for the next fiscal year? What new neutral efforts are ready for immediate implementation?

Chapter 9 is organized around each of these groups of questions and ends with Part E — Other Considerations.

A. Is there evidence of discrimination within the local marketplace for any racial/ethnic/gender group presumed to be socially disadvantaged under the Federal DBE Program?

After the 2005 Ninth Circuit Court of Appeals decision in *Western States Paving*, the USDOT advised state and local agencies that any use of race- or gender-conscious remedies as part of its DBE

⁴ If there are no DBE groups for which race-conscious programs should apply, BGPAA would project 100 percent race-neutral implementation of the Federal DBE Program.

⁵ USDOT guidance suggests evaluating certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, as prime contractors and subcontractors for agency contracts without DBE goals, and overall utilization for other state, local or private contracting where contract goals are not used.

program must be based on evidence the recipient has concerning discrimination affecting the government's transportation contracting industry:⁶

- The state or local agency determines whether or not there is evidence of discrimination in its transportation contracting industry.
- The USDOT recommends the use of disparity studies to examine whether or not there is evidence of discrimination and how remedies might be narrowly tailored.
- The USDOT suggests consideration of both statistical and anecdotal evidence. "Disparity analysis," or comparisons of DBE utilization with the relative availability of DBEs to perform the work, is an important part of the statistical information.
- Evidence must be considered for individual race, ethnic and gender groups.

Before BGPAA would project that it will meet any portion of its overall DBE goal through race-conscious means, it must have evidence of discrimination in the local marketplace that pertains to individual racial/ethnic/gender groups. Even if it has such evidence, BGPAA must still consider whether it can remedy the effects of that discrimination through neutral means.

Summary of information from analysis of the local marketplace. Chapter 3 summarizes information the study team analyzed concerning the local marketplace. There was some quantitative and qualitative evidence of disadvantages for minorities and women, and minority- and women-owned firms in a number of areas including:

- Entry and advancement in the Los Angeles area construction and engineering industries;
- Ownership of construction and engineering firms by minorities and women in the Los Angeles area marketplace;
- Access to capital for certain minority groups and women; and
- Success of minority- and women-owned firms.

Many individuals in the in-depth interviews and public testimony reviewed in this report reported disadvantages affecting minority- and women-owned business in the local marketplace. Some individuals said that certain disadvantages are due to race and gender discrimination; others did not.

⁶ Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation*, available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm. (January 2006).

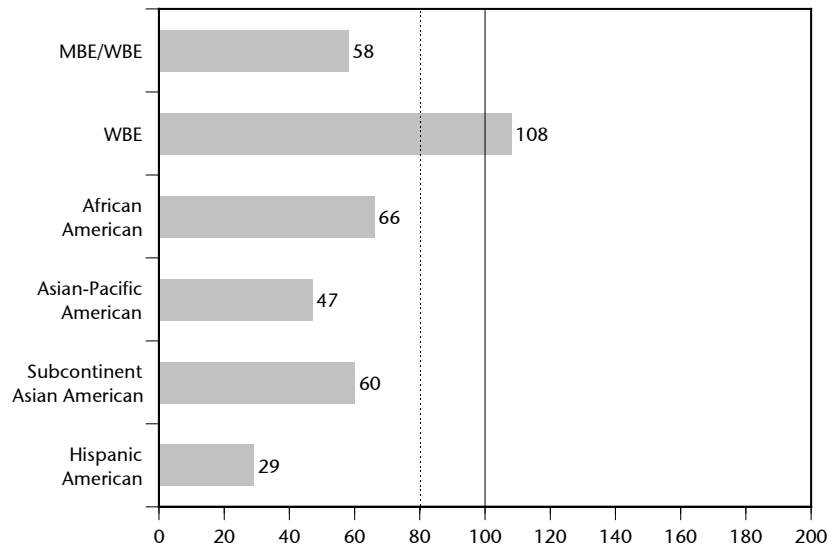
Summary of the disparity analysis for BGPAA contracts. The analyses in Chapter 6 identified substantial disparities in the utilization of African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms on BGPAA contracts, with or without DBE contract goals.

The disparity index for WBEs — 108 — indicates that white women-owned firms received more BGPAA contract dollars from 2005 through 2009 than what might be expected based upon the availability analysis. Further analysis found that the relatively high level of WBE utilization occurred on contracts for which DBE contract goals did not apply.

Figure 9-1.
Disparity indices for
MBE/WBE utilization as
prime contractors and
subcontractors on FAA-
and locally-funded BGPAA
construction,
engineering, and goods
and services contracts,
2005–2009

Note:
 Number of contracts/subcontracts analyzed is 753.
 For more detail, see Figure J-2 in Appendix J (which is the same as Figure 6-2).

Source:
 BBC Research & Consulting.



Implications for projecting the neutral portion of goal. In sum, information from the local marketplace identified evidence of certain barriers for minority- and women-owned firms. There was some evidence of disadvantages for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms and for women-owned businesses.

The disparities identified in BGPAA utilization of African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms provide evidence that barriers in the marketplace, combined with certain barriers in BGPAA contracting, result in substantial underutilization of each minority group in BGPAA contracting. The information discussed here supports using a combination of neutral and race-conscious means to meet the component of the overall goal pertaining to minority-owned firms.

Although the combined statistical and anecdotal evidence may indicate that gender discrimination affects white women-owned firms, BBC did not find a disparity in the utilization of white women-owned firms when examining BGPAA contracts overall, or contracts for which the DBE contract goals program did not apply. If the Authority chooses to meet a portion of its overall DBE goal through race-conscious means, it appears that minority-owned firms would meet the requirements for inclusion as Underutilized DBEs and that white women-owned firms would not. This information indicates that the portion of the overall goal pertaining to white women-owned firms should be attained solely through neutral means.

B. What has been the past experience of the agency in meeting its overall annual DBE goal?

BBC examined the Authority's past experience in meeting its overall annual DBE goal, including whether BGPAA had a history of not meeting or exceeding its overall annual DBE goal.

Past experience. The Authority has set an overall annual goal for DBE participation between 8.3 and 15 percent from FY 2006 through FY 2010. BGPAA's measurements of DBE utilization indicated 9.7 percent DBE participation over this time. DBE utilization exceeded the goal for one of the five years and was substantially below the annual goal in four of the five years. Figure 9-2 presents DBE goals for each year and BGPAA's reported DBE attainment for each year.

Figure 9-2.
BGPAA-reported DBE attainment and annual DBE goal, by fiscal year

Fiscal year	DBE attainment	Annual DBE goal	Difference
2006	41.3 %	15.0 %	26.3 %
2007	4.8	15.0	(10.2)
2008	9.9	13.0	(3.1)
2009	1.6	14.0	(12.4)
2010	8.7	8.3	0.4

Source: BGPAA DBE Participation Reports to FAA, FY 2006 through FY 2010.

BBC independently measured DBE utilization based on more complete information than what was contained in past BGPAA DBE utilization reports (see Chapter 5 of this report). According to BBC's analyses, DBEs obtained 6.0 percent of the FAA-funded contract dollars that the Authority awarded from January 2005 through December 2009. (Of the 6.0 percent DBE participation, 4.8 percent was by firms that were minority-owned.)

Implications for projecting the neutral portion of goal. Based on the above information, it appears that BGPAA fell substantially short of its past overall annual DBE goals, an important factor for BGPAA consideration.

C. What has DBE participation been when BGPAA has not applied contract goals (or other race-conscious remedies)?

DBE participation that is projected to result from neutral programs should be counted as such when projecting the portion of the overall annual DBE goal that could be met through neutral means. Further, any time a DBE wins a prime contract or subcontract through customary competitive purchasing procedures (i.e., the firm is not placed at an advantage because of a DBE goal), that DBE utilization can also be considered as race-neutral participation.

BBC examined results of the utilization and disparity analyses and other research in this study to review participation of DBEs and of minority- and women-owned firms when race-conscious programs did not apply during the study period.

The following discussion presents:

1. DBE participation in BGPAA contracts when the DBE contract goals program did not apply; and
2. Results of the disparity analysis for BGPAA contracts in a neutral environment.

1. DBE participation for BGPAA contracts when the DBE contract goals program did not apply. BBC considered DBE utilization information developed in the disparity study as well as BGPAA DBE participation reports submitted to FAA.

BBC analysis of DBE participation. During the 2005 through 2009 study period for the disparity study, BGPAA operated a DBE contract goals program only for FAA-funded contracts and only from January 2005 through July 2006.

No race- or gender-conscious programs applied to any locally-funded contracts or any FAA-funded contracts from August 2006 through December 2009. BBC examined these combined contracts awarded without DBE contract goals program to determine DBE participation when only neutral programs applied.

BBC also examined the share of prime contract dollars going to DBEs for the FAA- and locally-funded contracts examined in the disparity study. No race-conscious programs applied to BGPAA prime contract awards during the study period.

Results are as follows:

- DBEs received 3.0 percent of BGPAA contract dollars when the DBE contract goals program did not apply (see Figure 5-4 in Chapter 5).⁷
- DBEs obtained less than 1 percent of BGPAA prime contract dollars on FAA- and locally-funded contracts during the study period (utilization was 0.4% as shown in Figure 7-1 in Chapter 7).

BGPAA reports on DBE participation on FAA-funded contracts. BGPAA prepares DBE participation reports for FAA-funded contracts, which BBC examined as well.

- The Authority reported 17.1 percent DBE participation for FY 2005 and 41.3 percent participation for FY 2006. The DBE contract goals program applied for all of FY 2005 and most of FY 2006.
- Beginning in FY 2007, BGPAA reported annual DBE participation as low as 1.6 percent (FY 2009) and as high as 9.9 percent (FY 2008). Median annual DBE participation for the four years after suspension of the DBE contract goals program was 6.8 percent.

⁷ DBE utilization results only include firms certified as DBEs.

Implications for projecting the neutral portion of goal. Considering BBC analysis of DBE participation and BGPAA DBE participation reports when DBE contract goals did not apply (and BGPAA solely used neutral efforts), DBEs obtained a share of BGPAA contract dollars in the range of 0.4 percent (BBC's analysis of BGPAA prime contracts) to 9.9 percent (BGPAA DBE participation report for FAA-funded contracts for FY 2008). Such participation is well below the Authority's past overall DBE goals or what the disparity study identified as a range of a future overall DBE goal.

2. Disparity analysis results for BGPAA contracts when no race- or gender-conscious programs applied. The results discussed above only pertain to utilization of firms certified as DBEs. BBC's disparity analysis provides a comprehensive analysis of the utilization of minority- and women-owned firms, which includes firms potentially certified as DBEs. As the base figure for the overall DBE goal includes both currently and potentially certified DBEs, the disparity analysis may be especially instructive when projecting the portion of the goal to be met through neutral means.

Results of the disparity analysis. In the disparity analysis, BBC compared utilization of minority- and women-owned firms with what might be expected based on the availability analysis for BGPAA contracts when no race- or gender-conscious programs applied (locally-funded contracts for 2005 through 2009 and FAA-funded contracts after July 2006). Chapter 6 presents a detailed discussion of methodology and outcomes from the disparity analysis. Results can be summarized as follows:

- There were substantial disparities between the utilization and availability of minority-owned firms for BGPAA contracts when the DBE contract goals program did not apply (disparity index of 31 as shown in Figure 6-6 in Chapter 6).
- BBC identified substantial disparities for each MBE group: African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms (see Figure J-23 in Appendix J).
- There was no disparity in the utilization of white women-owned firms on these contracts (also see Figure 6-6).

Implications for projecting the neutral portion of goal. BGPAA must determine whether it will meet the entire overall DBE goal through neutral means. If the Authority determines that it will apply race-conscious programs to meet a portion of its overall DBE goal, it should review the disparity results when determining groups for inclusion.

The evidence from the disparity analysis indicates that the Authority not include women-owned DBEs as eligible for any race- or gender-conscious program elements. If so, the Authority might examine the portion of the overall DBE goal pertaining to white women-owned DBEs and conclude that all of that portion of the overall goal would be met through neutral means.

If the Authority chooses to use DBE contract goals limited to minority-owned DBEs, it should consider projecting the neutral portion pertaining to minority-owned DBEs from the disparity index for minority-owned firms when only neutral programs applied, as demonstrated below.

The Authority might use the analytical approach presented in Figure 9-3 on the following page.

- Availability of current and potential DBEs for FAA-funded contracts is 19.3 percent, as shown in Column (a) of Figure 9-2. Of the 19.3 percent figure, 13.4 percentage points refers to minority-owned firms that are DBEs or potentially are DBEs. About 5.9 percentage points of the 19.3 base figure pertains to white women-owned firms that are DBEs or potentially are DBEs.
- Without the DBE contract goals program in place (or any other race-conscious measures), and only using neutral measures, utilization of minority-owned firms on BGPAA contracts was about one-third of what would be expected based on availability for those contracts. The disparity index for minority-owned firms for these contracts, 31, is shown in Column (b) of Figure 9-2.
- In Figure 9-2, BBC multiplied availability of minority-owned DBEs by the disparity index (31) for minority-owned firms to produce a value of 4.2 percentage points. This value is shown in Column (c). The difference between the component of the base figure for minority-owned DBEs and the percentage projected through neutral means would be the part of the base figure projected to be achieved through race-conscious program elements.
- When the DBE contract goals program did not apply (and only using neutral means) BGPAA obtained a level of utilization of white women-owned firms that exceeded what might be expected from the availability analysis for these contracts. There was no disparity, overall, in the utilization of white women-owned firms on BGPAA contracts from 2005 through 2009. Therefore, the Authority might project that it could meet all of the portion of the DBE goal pertaining to white women-owned firms through neutral means. The portion of the overall DBE goal pertaining to white women-owned DBEs is 5.9 percentage points.
- About 4.2 percentage points of the base figure pertaining to minority-owned DBEs might be projected to be achieved through neutral means, as might the 5.9 percentage points of the base figure pertaining to white women-owned DBEs. This sums to 10.1 percent neutral, which means that the balance of the overall DBE goal (9.2 percentage points) might be projected to be achieved through race- and gender-conscious programs, if the Authority chose to use such measures.

Figure 9-3.
An analytical framework to calculating percentage of base figure projected to be achieved through neutral means (if no Step 2 adjustment)

Current and potential DBEs	a. Current availability	b. Disparity index for BGPAA contracts outside program	c. Portion met through neutral
Minority	13.4 %	31	4.2 %
White women	<u>5.9</u>	100+	<u>5.9</u>
Total	19.3 %		10.1 %

Note: Values in Figure 9-3 to be determined by BGPAA when actually projecting the portion of the overall DBE goal to be achieved through neutral means.

Source: BBC Research & Consulting.

A race-neutral projection that 10.1 percentage points of a 19.3 percent overall DBE goal can be achieved through neutral means is higher than the neutral DBE participation that BGPAA has achieved since 2005. As discussed previously in this chapter, median annual DBE participation that BGPAA reported in the four years after suspension of the DBE contract goals program was 6.8 percent. BBC’s analysis of contracts for which the DBE contract goals program did not apply indicated DBE participation of 3.0 percent of FAA-funded contracts.

Figure 9-3 provides an example using the 19.3 percent base figure as the overall DBE goal. As described in Chapter 8, the Authority must assess whether to make a step 2 adjustment when establishing an overall DBE goal. If the Authority were to make an upward or downward step 2 adjustment as described in Chapter 8, it might use a similar analytical framework as presented in Figure 9-3 when projecting the portion of its overall annual DBE goal that would be achieved through neutral means. Two examples are provided below.

Approach to projecting race-neutral and race-conscious portions of overall DBE goal with upward step 2 adjustment. Chapter 8 indicates an overall DBE goal of 28.4 percent if BGPAA made an upward step 2 adjustment to reflect disparities in the rates of business ownership for minorities and women in the Los Angeles area construction and engineering industries.

If the Authority made this upward step 2 adjustment, and chose to achieve this goal through a combination of neutral and race-conscious means, it might project the neutral/race-conscious split through the following steps:

- Of the portion of the overall DBE goal pertaining to minority-owned firms, BGPAA might assume the same 4.2 percentage point achievement through neutral means as shown for minority-owned firms in Figure 9-3.
- Also similar to Figure 9-3, BGPAA might project that the entire portion of the overall DBE goal pertaining to white women-owned firms would be achieved through neutral means.

Of the 28.4 percent overall DBE goal, 15.3 percentage points would be projected to be achieved through race-neutral means. Figure 9-4 provides calculations of race-neutral projections using this approach.

Figure 9-4.

An analytical framework to calculating percentage of base figure projected to be achieved through neutral means (if upward Step 2 adjustment)

Current and potential DBEs	a.	c.
	Overall DBE goal	Portion met through neutral
Minority	17.3 %	4.2 %
White women	<u>11.1</u>	<u>11.1</u>
Total	28.4 %	15.3 %

Note: Values in Figure 9-4 to be determined by BGPAA when actually projecting the portion of the overall DBE goal to be achieved through neutral means.

Source: BBC Research & Consulting.

Projection if downward adjustment. Chapter 8 also explains that BGPAA might select an overall DBE goal of 14 percent if it chose to make a downward step 2 adjustment. Figure 9-5 provides calculations for the neutral projections if BGPAA chose this overall DBE goal.

- Concerning the portion of the overall DBE goal pertaining to minority-owned firms, BGPAA might assume the same 4.2 percentage point achievement through neutral means as used in Figures 9-3 and 9-4.
- Also similar to Figures 9-3 and 9-4, BGPAA might project that the entire portion of the overall DBE goal pertaining to white women-owned firms would be achieved through neutral means.

Using this approach, 8.5 percentage points of the 14.0 percent overall DBE goal would be projected to be achieved through race-neutral means.

Figure 9-5.

An analytical framework to calculating percentage of base figure projected to be achieved through neutral means (if downward Step 2 adjustment)

Current and potential DBEs	a.	c.
	Overall DBE goal	Portion met through neutral
Minority	9.7 %	4.2 %
White women	<u>4.3</u>	<u>4.3</u>
Total	14.0 %	8.5 %

Note: Values in Figure 9-3 to be determined by BGPAA when actually projecting the portion of the overall DBE goal to be achieved through neutral means.

Source: BBC Research & Consulting.

Implications for projecting the neutral portion of goal. BGPAA must determine whether it will meet the entire overall DBE goal through neutral means. If the Authority determines that it will apply race-conscious programs to meet a portion of its overall DBE goal, it should review the above results when determining groups for inclusion.

If the Authority chooses to use DBE contract goals limited to minority-owned DBEs, it might consider projecting the neutral portion pertaining to minority-owned DBEs from the disparity index for minority-owned firms when only neutral efforts applied. Use of disparity study results to project the neutral portion of the overall DBE goal results in somewhat higher projections of neutral attainment than suggested from simply examining past DBE participation.

D. What is the extent of race-neutral efforts that the agency could have in place for the next fiscal year?

Local agencies implementing the Federal DBE Program “must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation.”⁸ The levels of past DBE participation on BGPAA contracts presented in Chapter 9 reflect the effects of neutral efforts that BGPAA had in place in those years.⁹ To narrowly tailor its implementation of the Federal DBE Program, the Authority must also consider whether current effectors are sufficient or whether it can implement additional neutral efforts.¹⁰ If so, BGPAA must assess whether the potential effect of these efforts on DBE participation when making projections of how it will meet the overall DBE goal.

Figure 9-6 lists examples of neutral measures provided in 49 CFR Section 26.52(b). BGPAA already is implementing most of these types of measures or they are provided by other organizations in the Los Angeles area. Based on interviews with staff, the study team learned that BGPAA plans to continue these neutral measures in the future. In addition to BGPAA, many other national and local organizations implement small business development programs in the Los Angeles area.

⁸ 49 CFR Section 26.51 (a).

⁹ In addition to neutral measures implemented by BGPAA, a number of other agencies operated small business assistance programs and other neutral efforts in the Los Angeles area. The levels of MBE/WBE and DBE participation on past BGPAA contracts reflect the combined impact of these programs.

¹⁰ The court reviewing Caltrans’ implementation of the Federal DBE Program concluded that narrow tailoring “does not require exhaustion of every conceivable race-neutral alternative, but it does require serious, good-faith consideration of workable race-neutral alternatives.” *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, U.S.D.C., E.D.Cal, Civil Action No. S-09-1622 (E.D. Cal. April 20, 2011) Slip Opinion Transcript at 45.

Figure 9-6.
Examples of neutral measures listed in 49 CFR Section 26.52(b)

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
3. Providing technical assistance and other services.
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Source: 49 CFR Section 26.51(b)

The Final Rule added Section 26.39 to the Federal DBE Program, requiring that agency implementation of the Program include means of fostering small business. Figure 9-7 lists small business assistance and other neutral programs offered by specific organizations in the greater Los Angeles marketplace.

Figure 9-7.
Examples of small business assistance and other neutral programs available in Southern California

Neutral remedies	
Technical assistance	<p>Technical assistance including small business training is widely available throughout Southern California. Programs primarily provide general information and assistance for business start-ups and growing businesses but also include industry-specific training. Examples range from general support providers such as SCORE to industry-specific training opportunities such as the California Construction Contracting Program located within existing SBD centers across the region.</p> <p>Other programs focus on market development assistance and use of electronic media and technology. These assistance programs are available through organizations such as the Pace Business Development Center and Procurement Technical Assistance Centers throughout the state. More locally focused programs offered include free opportunities provided by Pasadena City College small business entrepreneurial service and training academy (BEST) and the City of Pasadena, Foothill workforce investment board and the Pasadena Chamber of Commerce, Art of Small Business seminar.</p>
Small business finance	<p>Small business financing is available through several local agencies within Southern California. For example, the Pace Business Development Center in Los Angeles supports start-ups with loan package preparation and capital acquisition through financial institutions guaranteed by the SBA. The Southern California Small Business Development Corporation also offers financing assistance with the support of the State of California with offices locally located in Glendale and Los Angeles. Other local organizations including minority and regional chambers provide training and support on how to obtain financing and prepare funding documents.</p>
Bonding programs	<p>Bonding programs offering bonding and finance assistance and training have become more popular. Programs such as the SBA Bond Guarantee Program provide bid, performance and payment bond guarantees for individual contracts. The USDOT Bonding Assistance Program also provides bonding assistance in the form of bonding fee cost reimbursements for DBEs performing transportation work.</p> <p>Local agencies also have bonding programs including the City of Los Angeles Bonding Assistance Program and the Los Angeles World Airports (LAWA) bonding program. These programs offer individual counseling and training in addition to bid, performance and bond guarantees.</p> <p>Training on how to obtain a bond is also provided by a number of different agencies including the Los Angeles Unified School District Small Business Bootcamp and Bond Works Program. The school district's program, prepares contractors to manage cash flow and taxes and provides training on credit worthiness criteria in the bond approval process.</p>
Mentor-protégé programs	<p>The Associated General Contractors (AGC) of California with the Small Business Council and Caltrans have created a joint mentor-protégé program in an effort to increase diversity and develop new and emerging businesses in the construction industry.</p> <p>Calmentor supports mentor-protégé relationships in the architecture and engineering industry.</p> <p>SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for federal contracts.</p> <p>The University of Southern California is starting a mentor-protégé program to assist small businesses develop the capacity to perform as subcontractors and suppliers.</p>

Source: BBC Research & Consulting.

In addition, the Authority can benefit from reviewing the neutral measures the California Department of Transportation considered in its implementation of the Federal DBE Program. Caltrans' implementation of the Program was upheld in federal district court. Figure 9-8 provides a list of these neutral measures.

Figure 9-8.
California Department of Transportation (Caltrans) DBE race-neutral measures

California Department of Transportation DBE Race-Neutral Measures	
<ul style="list-style-type: none"> ● Maintain One-Stop Disadvantaged Business Enterprise (DBE) certification with the California Department of Transportation (Caltrans) and ten other certifying agencies ● Continue paid advertisement in newspapers and trade and focus papers to increase participations for all programs. ● Maintain flowchart of Caltrans advertising, bid opening, awards, and approval on Caltrans program Web sites. ● Continue California Community College Chancellor's Office contract to provide free supportive services and technical assistance to DBEs statewide through ten Small Business Development Centers (SBDCs). ● Continue Monthly Statewide Small Business Council and subcommittee meetings. ● Host District Procurement Fairs. ● Ensure District Small Business Liaisons (DSBLs) continue to conduct business communication, outreach events, and training on "How to do Business with Caltrans." ● Host focused outreach events for small businesses, including DBEs. ● Host project-specific outreach events for small businesses, including DBEs. ● Market State Loan Guarantee Program statewide through the DSBLs and industry partnership agreements. ● Continue contract administration training through the DBE Supportive Services Consultant. ● Outreach and market DBEs for participation in Caltrans emergency contracts. ● Meet routinely with construction and Architectural & Engineering (A&E) prime contractors. ● Increase number of DBE certifications by 500 annually. ● Provide "Look Ahead" information to DBEs for proposed construction and A&E contracting opportunities. ● Develop a Civil Rights Data Management System to capture all business contracting activities. ● Improve communication channels between Caltrans Headquarters (HQ) and Districts for real-time information and decision making. 	<ul style="list-style-type: none"> ● Continue distribution of Caltrans Quick Reference Guide; e.g., Builder's Exchange. ● Consider providing A&E software for small businesses, including DBEs. ● Provide at no cost, Caltrans plans and specification for small businesses, including DBEs statewide. The plans are also available on the Caltrans Web site. ● Market Caltrans opportunities, including working with banks, surety, and insurance companies in their districts. ● Developing a standard "Outreach Marketing Kit" for all Districts to include a procurement fair guide, a mandatory pre-bid guide, a project specific guide, and an outreach guide. ● Standardize/improve HQ/District Web sites, connect to one another, consolidate all contract-type information on one Web site, and redesign Caltrans main Web page to highlight contracting opportunities. ● Cross-train internal staff on functional contract requirements and process. ● Streamline certification process by establishing online DBE Certification applications and Renewals. ● Streamline certification process for firms already certified as Small Business Administration (SBA) 8(a). ● Send periodic e-mail blasts to small businesses, including DBEs, on "Look Ahead" contracting opportunities. ● Producing a compact disc of "How to do Business with Caltrans" and will make it available online to include certification packages and Marketing Kits. ● Explore ways to model certification queries on the Web site after Department of General Services' Web site. ● Implement Mentor-Protégé Program statewide for construction and A&E. ● Maintain Director's Policy on Race-Neutral Measures to include and ensure District training and implementation. ● Propose legislation to raise floor limits for Performance Bonds.

Figure 9-8.
California Department of Transportation (Caltrans) DBE race-neutral measures (continued)

California Department of Transportation DBE Race-Neutral Measures	
<ul style="list-style-type: none"> ● Discuss "On Shore" versus "Off Shore" liability insurance with Department of Insurance to help small businesses. ● Improve access to bid openings by teleconference, Web-based video or Internet. ● Consider small business contract goals and good faith efforts on federal and State-funded contracts. ● Explore administrative enforcement of prompt payment between prime contractors and subcontractors. ● Make more use of the Caltrans Contractor Interest Registry and remove barriers for registration. ● Develop and offer alternatives or creative incentives to encourage DBE certification. ● Balance project delivery (advertising and bid openings) so prime contractors and subcontractors are not overloaded. ● Breakdown A&E contracts into smaller units, including dollars and items of work. ● Recognize prime contractors for hiring small businesses, including DBEs statewide. ● Refer prime contractors who use small businesses, including DBEs statewide, as brokers, while claiming full credit. ● Design and institute measurement standards for all race-neutral measures. ● Explore Performance-Based Accountability to contracting practices. ● Maintain Bidder's List from disparity study findings. ● Improve DBE/Small Business Enterprise cross-registration with other State agencies and departments. ● Report monthly small businesses, including DBE participation, on State and federal-funded contracts, including local agencies, directly into a data management system. ● Assign all bidders an identification number for capturing all businesses that bid Caltrans work. ● Track and circulate DBE usage by District and discuss monthly at Directorate level. ● Provide consistent and accurate data collection of DBE utilization. 	<ul style="list-style-type: none"> ● Explore CHAMPS payment reporting system. ● Explore use of construction management system for data collection. ● Centralize tracking of all race-neutral activities District wide via Civil Rights. ● Appoint staff for data collection, verification, measurement, oversight, technical assistance, and reporting. ● Explore a partnership with Contractor's State License Board to provide an exchange of contractor information, Caltrans DBE certification, and transportation construction opportunities to licensed contractors. ● Mandate utilization data reporting of all small businesses, including DBEs, on all State and federal-aid contracts. ● Consider using small business set-asides; e.g., set aside certain contracts for competition only among small businesses, regardless of race or gender under a race-neutral measure program. ● Recognize prime contractors for using small businesses, including DBEs. ● Improve DBE cross-registration or certification acceptance with other entities, such as the California Public Utilities Commission. ● Collaborate with associations, such as Associated General Contractors and Engineering & Utility Contractors Association, to increase DBE participation. ● Provide a \$250 incentive to prime contractors quarterly for subcontractor reports. ● Request reallocation of Century Freeway Bond Guarantee Program funds (\$4.3 million) for bonding and line of credit guarantees for one of two transportation construction projects in Los Angeles County. ● Implement the SBA Surety Bond Guarantee Program. ● Provide an "Opt-In" feature to the Caltrans Web site to allow subcontractors or suppliers to be considered for providing sub bids without ordering a plan set.

Figure 9-8.
California Department of Transportation (Caltrans) DBE race-neutral measures (continued)

California Department of Transportation DBE Race-Neutral Measures	
<ul style="list-style-type: none"> ● Expand the use of mandatory pre-bid meetings in construction contracts. ● Hold quarterly "Look Ahead" meetings for prime contractors and subcontractors, including DBEs and any interested parties. ● Contact certified small minority- and small women-business enterprises (SMBE/SWBEs) to invite them to apply for DBE certification. 	<ul style="list-style-type: none"> ● Contact all firms applying for SMBE/SWBE certification to invite them to apply for DBE certification. ● Update business preference information in the California Unified Certification Program database of those entities that are "ready, willing, and able" to perform Caltrans work. ● Appoint the Business, Transportation and Housing Agency Small Enterprise Officer to conduct focused outreach and networking sessions statewide.

Source: Source: California Department of Transportation Federal Highway Administration Amended Disadvantage Business Enterprise Goal and Methodology, Federal Fiscal Year 2009.

BBC reviewed current BGPAA neutral programs, other small business programs in the local marketplace, and a broad range of potential neutral measures that BGPAA might consider for future implementation. There may be a number of reasons why certain additional measures are not workable, and there could be neutral remedies other than those discussed here that the Authority might consider.

BBC’s review begins by following the grouping of neutral measures in 49 CFR Section 26.52(b). BBC concludes by reviewing additional examples provided in 49 CFR Section 26.39.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses. Neutral measures that the Airport Authority currently employs include the following.

Solicitations and times for bids. The DBE Liaison Officer (DBELO) works to ensure that the timing between solicitations and presentations of bids are adequate to receive bids and proposals from small businesses including DBEs. The Authority might consider additional efforts to communicate upcoming contract opportunities prior to releasing requests for bids.

Advance notice of BGPAA contracting opportunities. The Authority has hired an independent consultant to outreach to minority- and women-owned firms in the Authority’s three surrounding cities including Burbank, Glendale and Pasadena to encourage firms to pursue work with BGPAA. This outreach is specifically designed around work for the upcoming development of an intermodal bus terminal.

BGPAA might explore other means of providing advance notification of future contracting opportunities through its outreach and website, and possibly a new electronic DBE newsletter.

Quantities and size of contracts. BBC’s disparity analysis found that the size of contract is a barrier for DBEs and other small businesses that might bid on BGPAA work as prime contractors.

As discussed in Chapter 7, \$50 million of the \$62 million in prime contract dollars for BGPAA construction contracts were contracts of \$1 million or more. DBEs obtained 0.5 percent of prime contract dollars for construction contracts of that size.

However, utilization of DBEs as prime contractors was also low for small construction contracts. DBEs only received 2.3 percent of prime contract dollars for construction contracts less than \$1 million, and there were disparities in the utilization of minority-owned firms as prime contractors for these smaller contracts. Therefore, reducing the size of BGPAA construction contracts would not eliminate barriers to obtaining this work, and given the types of work involved, might not be practicable for many contracts.

Size of contract had more of an impact on DBE utilization as prime consultants for engineering-related contracts. Again, most of the prime contract dollars are in larger engineering contracts — \$12 million of the \$13.5 million of prime consultant dollars for BGPAA engineering-related contracts were \$100,000 or more in size. Of the 14 engineering-related contracts of \$100,000 or more examined in the disparity analysis, none of the prime consultants were DBEs (or MBE/WBEs). MBE/WBEs received 13 percent of the prime consultant contract dollars on engineering-related contracts of less than \$100,000. DBEs obtained 1.9 percent of these contract dollars. There were 71 small engineering-related contracts examined in the disparity analysis.

Specifications. The Authority places minimum years of experience requirements on its contracts, which could have a negative effect on new small businesses including minority- and women-owned firms. Because of the requirements and length of the DBE certification process, the requirement that a firm has been in business for two years probably does not affect DBE participation. Even so, the Authority might review the need for this requirement as currently formulated.

Insurance requirements. A number of firms interviewed in the BGPAA disparity study identified general liability and professional liability insurance requirements on BGPAA contracts as barriers to small business participation. The Authority should consider developing a system to routinely review requirements and their application to specific contracts to minimize this barrier.

Delivery schedules. BBC did not identify any changes to BGPAA delivery schedules that would open more opportunities to small businesses. No firms interviewed in the BGPAA study offered comments concerning delivery schedules. The Authority should nevertheless review whether it places unnecessary barriers to small business participation through its delivery schedules.

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing. Many local programs provide bonding and financing assistance to small businesses and DBEs. As described below, BGPAA is considering its own bonding program.

Bonding. California Civil Code sets requirements for bonding on public works projects in the state. These requirements apply to BGPAA, and it is unworkable for BGPAA alone to attempt to change the bonding requirements in state law.

However, the Authority has recognized the barriers presented by these bonding requirements. In 2010, BGPAA held a public roundtable meeting for contractors to discuss the challenges of doing work with the Airport. Contractors reported that bonding requirements presented a barrier to bidding on Authority work. The Authority has limited opportunity to change bonding requirements as they

are specified for public works projects in California statutes. BGPAA is currently in the process of considering the implementation of a bonding assistance program that would be developed and administrated by a consultant.

Small businesses and DBEs in the Los Angeles area can also access programs such as the SBA Bond Guarantee Program that provide bid, performance and payment bond guarantees for individual contracts. The USDOT Bonding Assistance Program also provides bonding assistance in the form of bonding fee cost reimbursements for DBEs performing transportation work.

The City of Los Angeles Bonding Assistance Program and the Los Angeles World Airports (LAWA) bonding program offer individual counseling and training in addition to bid, performance and bond guarantees. Training on how to obtain a bond is also provided by a number of different agencies including the Los Angeles Unified School District Small Business Bootcamp and Bond Works Program. The school district's program prepares contractors to manage cash flow and taxes and provides training on credit worthiness criteria in the bond approval process.

Financing. Several agencies within Southern California focus on small business finance. For example, the Pace Business Development Center in Los Angeles supports start-ups with loan package preparation and capital acquisition through financial institutions guaranteed by the SBA. The Southern California Small Business Development Corporation also offers financing assistance with the support of the State of California. It has offices in Glendale and Los Angeles. Other local organizations including minority and regional chambers provide training and support on how to obtain financing and prepare funding documents.

It may not be workable for the Authority to replicate these existing programs, however it can be a source of referral for these programs when meeting with small businesses and DBEs.

3. Providing technical assistance and other services. The Authority does not provide technical assistance resources to its vendors; instead, BGPAA relies heavily on their community partners to provide these services.

Existing resources. Technical assistance including small business training is widely available throughout Southern California. Programs primarily provide general information and assistance for business start-ups and growing businesses but also include industry-specific training. Examples range from general support providers such as SCORE to industry-specific training opportunities such as the California Construction Contracting Program located within existing SBD centers across the region.

Other programs focus on market development assistance and use of electronic media and technology. These assistance programs are available through organizations such as the Pace Business Development Center and Procurement Technical Assistance Centers throughout the region. Locally-focused programs include those provided by the Pasadena City College small business entrepreneurial service and training academy (BEST) and the City of Pasadena. The Foothill Workforce Investment Board offers small business assistance as does the Pasadena Chamber of Commerce.

BGPAA role in providing assistance. It may not be workable for the Authority to attempt to replicate the broad range of existing programs within the Los Angeles area, but it can be a source of referral to these programs when meeting with small businesses and DBEs.

The Authority should consider developing a directory of small business assistance that it can provide to small businesses interested in BGPAA contracting opportunities. It could also develop a small business assistance page in its website that would provide links to these programs.

The Authority might also consider jointly sponsoring certain local programs led by other organizations.

4. Carrying out information and communications programs on contracting procedures and specific contract opportunities. The Authority makes a concerted effort to inform small businesses, including minority- and women-owned firms and DBEs, of contracting procedures and specific contract opportunities.

Outreach to small businesses including DBEs. BGPAA makes a number of efforts to inform small businesses about contracting in general and the contracting methods the Authority uses. Examples include:

- **BGPAA open house.** The Authority holds open houses to bring together prime contractors and subcontractors interested in future BGPAA projects. Since 2010, BGPAA has hosted five open houses in preparation for the intermodal bus terminal development. These open houses help to introduce subcontractors to the BGPAA contracting process and to encourage prime contractors to meet and utilize new subcontractors, including minority- and women-owned businesses. Prior to 2010, BGPAA did not host open house opportunities.
- **City sponsored job fairs.** Burbank, Glendale and Pasadena regularly host job fairs. BGPAA participates in each city's job fairs by setting up information booths and discussing contracting opportunities at the Authority with the attendees.
- **Membership organizations.** BGPAA is a member of several business organizations including the Burbank Chamber of Commerce and the Sun Valley Chamber of Commerce. The Authority attends meetings and encourages awareness of BGPAA work opportunities when appropriate.
- **One-on-one assistance.** The Authority also provides one-on-one assistance to small businesses and DBEs seeking to learn more about BGPAA contracting procedures.

Even with current outreach efforts, study team interviews with local businesses and trade associations found that many individuals were not aware of BGPAA bidding opportunities and small business assistance efforts. The Authority might explore additional outreach methods. It could also develop a small business/DBE page on its website that explains these efforts. A further outreach opportunity is to develop a DBE electronic newsletter.¹¹

Widespread communication of specific contract opportunities. In addition to the general outreach to small businesses and DBEs, BGPAA has a number of procedures in place to inform potential prime contractors and subcontractors of specific contract opportunities. Methods include public

¹¹ Idaho Transportation Department's DBE newsletter is one example. It can be found at <http://itd.idaho.gov/civil/dbeforms.htm>.

advertisement of procurements of \$100,000 or more, posting contract opportunities on the BGPAA website and direct notification of contractors of bidding opportunities. Chapter 7 explains these methods in detail.

As noted with general outreach, a number of local businesses and trade associations interviewed in the BGPAA study were unaware of how to learn of specific BGPAA contract opportunities. The Authority might review how to improve its website and its ongoing outreach to better communicate its current processes for learning of its requests for bids and proposals.

Bidders list. BGPAA has developed a bidders list that contains the business name and contact information for each firm collecting bid documents from BGPAA's website. This information is collected when an individual or an individual representing a business registers online with BGPAA to access work opportunities.

To comply with 49 CFR Section 26.11 (c), the Authority might consider expanding the depth of information collected and develop additional methods for capturing information on potential bidders. The Federal DBE Program directs transportation agencies to obtain information on the DBE status of the firm, age of the firm, and annual gross receipts of the firm (category data such as "\$500,000 to \$1 million is acceptable). Incorporation of firm information from BBC's availability database might be one way to comply.

Posting a mailing/contact list of firms interested in BGPAA work. The Authority might consider posting its list of firms interested in specific contract opportunities on its website. This might be helpful for subcontractors seeking out prime contractors that are bidding on particular projects (and vice-versa).

Publishing information on bidders/proposers. The Authority might add to its website to include bid tabulations for current and past contracts. BGPAA should also consider posting summary results of each stage of its consultant evaluations. This would provide more information to potential subcontractors about firms bidding as primes on BGPAA contracts. It would also add transparency to the process for selecting contractors, consultants and vendors and may facilitate bidding by firms that are new to BGPAA procurement.

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses. BGPAA does not currently have a supportive services program, however it can refer businesses to the assistance provided by local organizations that specialize in this type of training.

Mentor-protégé programs. A number of mentor-protégé programs are available to businesses in the Los Angeles construction and engineering industries.

- The Associated General Contractors (AGC) of California with the Small Business Council and Caltrans have created a joint mentor-protégé program in an effort to increase diversity and develop new and emerging businesses in the construction industry.

- Calmentor supports mentor-protégé relationships in the architecture and engineering industry.
- SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for federal contracts.
- The University of Southern California is starting a mentor-protégé program to assist small businesses develop the capacity to perform as subcontractors and suppliers.

It may not be workable for the Authority to replicate existing mentor-protégé programs in Southern California. The Authority should consider developing a directory of programs that it can provide to small businesses interested in BGPAA contracting opportunities. It could also post links to these programs on its website.

Other supportive services. The discussion of technical assistance and other sections of this chapter describe a number of other organizations that provide supportive services to minority- and women-owned firms and other small businesses in Southern California.

BGPAA role in providing supportive services. As with other types of technical assistance, it may not be workable for the Authority to replicate mentor-protégé or other supportive services programs, but it can serve as a referral source to these programs.

6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. As described above, the Authority has a number of ongoing efforts to introduce new firms to BGPAA contracting opportunities, and works with small businesses and DBEs individually and in groups to encourage participation in increasingly significant projects such as the intermodal bus terminal development.

As with other types of technical assistance and supportive services, additional BGPAA efforts might best focus on referral of small businesses to programs already in existence in Southern California.

7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low. The availability analysis in the disparity study indicated that 40 percent of the businesses available for local transportation agency contracts in the Los Angeles area were minority- or women-owned. Existence of firms owned by minorities and women appears to be less of an issue than removing barriers to the participation of those firms on BGPAA contracts.

In addition, there is considerable technical assistance in the local marketplace to assist individuals in the process of starting new firms, as discussed above. It may be most workable for BGPAA to be a source of referral to these programs.

8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors. Firms interviewed as part of the BGPAA disparity study were not aware of Authority distribution of the DBE Directory.

The Authority should consider placing a link to the CUCP directory on a new small business/DBE page on its website.

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media. Programs that assist DBEs and other small businesses use emerging technology and conduct business through electronic media are available through organizations such as the Pace Business Development Center and Procurement Technical Assistance Centers throughout the state.

Additional components of a small business program listed in 49 CFR Section 26.39.

There are several other neutral program elements the Authority might consider that are listed in Section 26.39 of the Federal DBE Program.

1. Establishing a race-neutral small business set-aside for prime contracts under a stated amount.

To the extent permitted by law, the Authority might consider employing a sheltered market program for small contracts that are not legally required to be publicly bid. For example, program participants certified as small businesses would be able to compete amongst themselves for contracts as the lowest bidder. A dollar threshold would be established by the Authority and projects under that threshold could be considered for the program.

A sheltered market program may help encourage all small businesses, including minority- and women-owned firms, to compete for smaller BGPAA construction and engineering contracts by limiting the competition to similarly-sized firms. This measure may give businesses access to new prime and subcontracting opportunities. For this program to be workable for BGPAA and its contractors, the Authority would probably need to utilize an existing small business certification system (e.g., the State of California or Los Angeles County systems). As discussed under the small business goals program below, USDOT has provided guidance on certification criteria acceptable under such a program, at least in regard to USDOT-funded contracts.

2. In large contracts, requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

The Authority could consider adding a requirement for larger contracts that involve subcontracting that the prime contractors bidding or proposing on a contract document efforts to specify elements of the contract that are of a size that small businesses, including DBEs, can reasonably perform.

Another method to achieve small business participation as subcontractors are the minimum subcontracting requirement and small business contract goals programs discussed below.

3. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

BBC evaluated a minimum subcontracting requirement and a small business contract goals program that might be considered by the Authority.

Minimum subcontracting requirement. The Authority might consider a measure that would encourage more subcontracting on BGPAA contracts. Even without DBE contract goals, the share of BGPAA subcontract dollars that goes to MBE/WBEs and DBEs is greater than the share of BGPAA prime contracts (see Chapter 7).

BGPAA might consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program.

- For each contract above a certain dollar amount, the Authority would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, BGPAA could set no MSM.
- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.
- The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

An MSM program corresponds to a neutral remedy listed in the Federal DBE Program, which suggests that agencies could promote participation of all small businesses, including MBE/WBEs, by “requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces.”¹²

BGPAA might consider using an MSM program in conjunction with DBE contract goals or on contracts, including those that are locally-funded, on which it does not set DBE contract goals. The Authority would need to consider whether the program described here is legally permitted for the agency.

Small business goals program. The Authority might consider implementing a program to include subcontracting goals for certified small businesses. The Authority might set goals and evaluate contractor compliance using the same processes provided in the Federal DBE Program.

To use such a program, BGPAA could use small business enterprise (SBE) certification provided by the State and/or by Los Angeles County. Transportation agencies such the Los Angeles County Metropolitan Transportation Authority also employ SBE programs.

If the Authority chose to continue to set DBE contract goals, it could test a subcontracting minimum program or a small business subcontracting program in combination with its DBE contract goals. The

¹² 49 CFR Section 26.51 (b) (1).

DBE contract goals would be a race-conscious remedy and the small business goals or MSM would be a neutral remedy.¹³ The Authority could also consider setting small business goals on its locally-funded contracts.

USDOT has considered how a small business program may be appropriately implemented as part of the Federal DBE Program.¹⁴

- The program must be authorized under state law;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- There are no geographic preferences or limitations imposed on the program as applied to USDOT-funded contracts (i.e., no local preference and that small businesses outside Los Angeles County or California could apply for and participate in the program);
- There are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- Steps will be taken to encourage those minority- and women-owned firms eligible for DBE certification to become certified.

BGPAA would need to consider whether the program described here is legally permitted for the Authority.

4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to complete for and perform prime contracts.

Policy statement. The Authority might consider adding a statement to its requests for bids and proposals indicating that it welcomes responses from consortia or joint ventures consisting of small businesses, including DBEs.

In addition, the Authority might consider changes to evaluation factors for professional services contracts discussed below.

Consultant qualifications evaluation system. Related to encouraging responses from joint ventures of small businesses for BGPAA professional services contracts, the Authority might consider changes to its system for selecting consultants.

¹³ For example, if BGPAA decided to implement race-conscious elements, it might set a 30 percent subcontracting minimum on a contract, or a 20 percent goal for small business participation, and on the same contract also set a 1 to 2 percent DBE contract goal that could be met by certain DBE groups. In this example, BGPAA would follow normal procedures for implementing the DBE contract goal, including the good faith efforts portion of the program.

¹⁴ Official Questions and Answers. [http://www.osdbu.dot.gov/DBEProgram/dbeqna.cfm#26.21\(b\)](http://www.osdbu.dot.gov/DBEProgram/dbeqna.cfm#26.21(b)).

BBC was unable to conduct case studies of BGPAA consultant evaluations, so no conclusions concerning application of the evaluation system at the Authority can be reached in this disparity study. However, the study team did review the evaluation criteria the Authority applies.

- The Authority appears to award evaluation points that favor older, larger engineering firms, including “number of years in business, size of firm and length of time local office open.” The Authority might consider changing these evaluation criteria to de-emphasize factors that disadvantage newer, smaller firms.
- One of the changes the Authority could also review is to create an evaluation category that explicitly considers the contract dollars a consultant currently has with BGPAA and to award evaluation points to consultants with less or no current work (and zero points to the proposer with the most current work). BBC has experience with other public agencies that have successfully implemented this addition to the evaluation process. As with other neutral measures, the Authority should consider whether this change would be legally permitted.
- Similar to the State of California’s small business program, the Authority might consider employing small business preferences for certain types of contracts to the extent that law permits. For example, in evaluating proposals for professional services contracts, BGPAA might be able to include 5 evaluation points out of 100 to be awarded based on certified small business status.

This program may be effective in encouraging small consultants, including minority- and women-owned firms, to compete for BGPAA engineering and other professional services contracts. It may also increase small businesses’ chances of being short-listed and then winning BGPAA engineering and other professional services work.

5. Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. The Authority should continue to evaluate when contracts can be divided into multiple, smaller contracts. However, barriers to participation for certain DBE groups appear to span contract size, as discussed in Chapter 7.

Prompt payment of subcontractors (49 CFR Section 26.29). Prompt payment is another neutral remedy identified in the Federal DBE Program.

Prompt payment policy and its implementation. BGPAA has a policy to make progress payments to prime contractor within 30 days of receipt of the request for payment. Prime contractors are required to pay subcontractors, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing. BGPAA’s prompt payment requirements for construction and professional services follow state law and the Federal DBE Program (49 CFR Section 26.29).

The Authority should evaluate how well it is complying with its current prompt pay policy. A number of firms interviewed in the BGPAA disparity study complained of slow payment.

BGPAA could also consider changing its prompt payment policy to require even quicker payment. Some state and local agencies outside California have even shorter requirements than specified in

California state law.¹⁵ BGPAA might consider a policy of payment within 10 or 15 days for satisfactorily completed work.

Monitoring DBE payment. At the conclusion of each construction and professional service project, BGPAA receives a DBE utilization report from the prime contractor. The prime is required to report the dollar amount committed to each DBE firm and the dollar amount actually paid to each DBE firm at the conclusion of the project. BGPAA does not monitor payment to subcontractors throughout the project and there is no consequence if the prime contractor does not assign work to the subcontractor for the total award amount.

In addition, the subcontractor is required to complete a release form confirming payment from the prime for work completed or confirming that payment has not been paid in full for work completed.

Business development programs (49 CFR Section 26.35). Business development programs (BDPs) are efforts to assist DBE-certified firms to develop the capabilities to compete outside of the DBE Program. BGPAA may want to develop a BDP for DBE-certified firms per the federal regulations. Specialized assistance would be tailored to developing firms and firms in transitional stages of development. This program may be especially needed if the Authority chooses to no longer include certain DBE groups in any race-conscious programs.

The assistance that BGPAA would provide to participating DBEs would be specific to the business plan that each firm would develop in conjunction with the Authority. Business plan elements include:

1. An analysis of market potential, competitive environment and other business analyses estimating the participant's prospects for profitable operation;
2. An analysis of the firm's strengths and weaknesses, with particular attention to the means of correcting any financial, managerial, technical or labor conditions that could impede the participant from receiving contracts outside of the DBE program;
3. Specific targets, objectives and goals for the participant's business development during the next two years, using the results of the above analyses;
4. Estimates of contract awards from the DBE program and from other sources that would be needed to meet the objectives and goals for the years that the business plan would cover; and
5. Other information that the participant may require.¹⁶

The business plan and supporting projections for each firm should be updated at least once a year. If it chose to implement business development programs for participating DBEs, BGPAA might consider contracting for these services with a local business assistance provider.

¹⁵ For example, the Illinois State Prompt Payment Act (30 ILCS 540) requires payment of subcontractors within 15 days of receipt of corresponding payment by the state. Also, subcontractors can determine when payments have been made to prime contractors because notice of each payment is electronically posted. See <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=539&ChapAct=30%26nbsp%3BILCS%26nbsp%3B540%2F&ChapterID=7&ChapterName=FINANCE&ActName=State+Prompt+Payment+Act%2E>.

¹⁶ See Appendix C to Part 26.

A firm could participate in a BDP for multiple years. Indicators that a firm would no longer need assistance include meeting objectives related to profitability, sales, net worth, access to bonding and business credit and other firm capabilities. Firms meeting those objectives would then graduate from the program.

BGPAA may also discontinue a firm's participation in the BDP due to a failure of the firm to engage in business practices that would promote its competitiveness within a reasonable period of time.

Other neutral measures for BGPAA consideration. The neutral measures discussed here provide a broad spectrum of programs or actions for the Authority to consider, but is by no means exhaustive. The Authority should review programs that Caltrans and other agencies have implemented and seek additional input from the local small business and DBE business communities.

Implications for projecting the neutral portion of goal. Local agencies implementing the Federal DBE Program are required to seriously consider neutral remedies that can facilitate DBE participation in their contracts. The Authority is not required to implement every conceivable race-neutral alternative, but must exhibit serious, good-faith consideration of workable race-neutral alternatives. Its consideration of those remedies should be reflected in the portion of the overall DBE goal to be achieved through neutral means.

A number of issues arise when a local agency considers the impact of possible new neutral measures:

- When projecting the portion of the overall DBE goal to be achieved through neutral means, USDOT requires local agencies to evaluate the time frame necessary for implementation. Programs that may require years to develop should not be reflected in projections of the impact of neutral remedies for the next fiscal year. The Authority should account for this factor in making its projection.
- In addition, it will be difficult for the Authority to assess the potential impact of additional neutral remedies on DBE participation until it has reviewed them, chosen those for execution, successfully implemented them, and then evaluated their success.

Even so, careful implementation of the Federal DBE Program may call for the Authority to plan for additional development of neutral measures and to project that those effects will have a positive cumulative effect on DBE participation within the next fiscal year.

Implications for locally-funded contracts. Proposition 209 limits BGPAA to neutral programs for its locally-funded contracts. Neutral efforts the Authority adopts related to its FAA-funded contracts should be applied, as possible, to locally-funded contracts. The Authority should also collect data on MBE/WBE and DBE participation on locally-funded contracts to assess the impact of its neutral programs.

Summary

The Authority should review all of the analyses in Chapter 9 and the balance of the disparity study, and any additional information it has available, when determining whether it will meet its overall DBE goal solely through neutral measures, or when projecting the portion of the overall DBE goal to be achieved through neutral efforts. Its specific neutral projection will depend on the level of overall DBE goal it adopts.

CHAPTER 10.

Future Implementation of the Federal DBE Program and Programs for Locally-funded Contracts

Chapter 10 explores further improvements in the Authority's implementation of the Federal DBE Program. Suggestions follow the organization of the Program.

Part A of this section presents this analysis. In Part B of Chapter 10, BBC discusses potential program options for BGPAA's locally-funded contracts.

A. Federal Requirements in Implementing the Federal DBE Program

Regulations in 49 CFR Part 26 and associated guidance, including a sample plan provided by USDOT, provide direction on implementation of the Federal DBE Program. The Authority can build on those program documents and on its current plan.

Plan elements are discussed in the order identified in 49 CFR Part 26. Because only certain portions of the Federal DBE Program are discussed below, the Authority should refer to the complete federal regulations when considering its implementation of the Program.

Reporting to USDOT — 49 CFR 26.11 (b). The Authority must periodically report DBE participation to FAA. BBC's review indicates that BGPAA may need to further review the completeness and accuracy of its future participation reports. Additional recommendations are provided under 49 CFR 26.55 below.

Bidders list — 49 CFR Section 26.11 (c). As part of its implementation of the Federal DBE Program, the Authority must develop a bidders list of firms that are available for its contracts.

Meeting the federal requirements. The bidders list must include the following information about each available firm:

- Name;
- Address;
- DBE status;
- Age; and
- Annual gross receipts.

The regulations state that one option for developing the bidders list is to conduct a survey of firms. BBC's availability interviews collected all of the above information for local firms available for many areas of BGPAA construction, engineering, and goods and services prime contracts and subcontracts. BBC recommends that the Authority incorporate the availability database into its bidders list per 49 CFR Section 16.11 (c).

BGPAA's DBE Program states that it will develop a bidders list for the purpose of calculating overall goals. BBC recommends that BGPAA consider the availability information developed in this disparity study to establish its overall DBE goal. If the Authority chooses to use a DBE contract goals program in the future, Information from a bidders list might be useful in setting goals for individual contracts.

Posting a mailing/contact list of firms interested in BGPAA work. The Authority might consider posting its list of firms interested in specific contract opportunities on its website. This might be helpful for subcontractors seeking out prime contractors that are bidding on particular projects (and vice-versa).

Maintaining comprehensive vendor data. In order to effectively track future utilization of minority- and women-owned firms as prime contractors and subcontractors, BGPAA will need to improve the information it collects on the ownership status of firms with which it does business. Not only should BGPAA collect information on a firm's DBE status, but it should obtain information on the race/ethnicity/gender ownership of the firm. Firm information that BBC collected as part of the disparity study can be a start toward improving the Authority's vendor data.

Publishing information on bidders/proposers. The Authority might add to its website to include bid tabulations for current and past contracts. BGPAA should also consider posting summary results of each stage of its consultant evaluations.

Prompt payment mechanisms — 49 CFR Section 26.29. BGPAA's prompt payment requirements for construction and professional services are in accordance with the California State law. BGPAA is required to make progress payments to prime contractor within 30 days of receipt of the request for payment. Prime contractors are required to pay to subcontractors, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing.

This provision appears to comply with 49 CFR Section 26.29.

As discussed in Chapter 9, BGPAA may want to consider inclusion of regular review of its compliance with its prompt pay policy into its implementation of the Federal DBE Program. Several business owners and managers interviewed as part of this study identified delayed payments on BGPAA projects (see Appendix K).

BGPAA might also evaluate whether it could implement an even quicker prompt pay policy.

DBE Directory — 49 CFR Section 26.31. Caltrans currently maintains a DBE Directory for DBEs certified in California on its website at http://www.dot.ca.gov/hq/bep/find_certified.htm. BGPAA should consider providing a link to the DBE Directory on the Business Opportunities page of its website.

Overconcentration — 49 CFR Section 26.33. Agencies implementing the Federal DBE Program are required to report and take corrective measures if it finds that DBEs are so over-concentrated in certain types of work as to unduly burden non-DBEs in that type of work. In conducting the disparity analysis, BBC did not identify instances of overconcentration.

Business development programs — 49 CFR Section 26.35. Business development programs (BDPs) are efforts to assist DBE-certified firms to develop the capabilities to compete outside of the DBE Program. BGPAA may want to develop a BDP for DBE-certified firms per the federal regulations. Specialized assistance would be tailored to developing firms and firms in transitional stages of development. This program may be especially needed if the Authority chooses to no longer include certain DBE groups in any race-conscious programs.

Guidance in the Federal DBE Program concerning business development programs is provided in 49 CFR Section 26.35, which is summarized in Chapter 9 of this report.

Mentor-protégé program — 49 CFR Appendix D to Part 26. As part of the BDP or as a separate component of its implementation of the DBE Program, BGPAA might consider supporting local mentor-protégé programs, as discussed in Chapter 9.

Responsibilities for monitoring the performance of other program participants — 49 CFR Section 26.37. The Final Rule effective February 28, 2011 revises requirements for monitoring and enforcement mechanisms to ensure that work committed to a DBE at contract awarded or through modifications to the contract is actually performed by the DBE to which the work was committed. These requirements are outlined in 49 CFR Section 2.37(b).

Fostering small business participation — 49 CFR Section 26.39. The Final Rule effective February 28, 2011 added a requirement for transportation agencies to foster small business participation in their contracting. By February 28, 2012, agencies must submit a plan for fostering small business participation to the FAA, FHWA or FTA, as appropriate.

Chapter 9 discusses potential elements of a small business program.

Prohibition of DBE quotas, and prohibition of set-asides for DBEs unless in limited and extreme circumstances — 49 CFR Section 26.43. The Authority's current DBE Program states that it does not use quotas in any way in the administration of the Federal DBE Program.

Although DBE quotas are prohibited, and set-asides are only to be used in extreme circumstances, the Federal DBE Program does allow for implementation of a small business program for firms bidding or proposing as prime contractors. The State of California operates a program that limits bidding on certain procurements to certified small business enterprises. BGPAA would need to determine that it could implement a small business program under state and local law. BGPAA's implementation of such neutral programs would be consistent with the Federal DBE Program.

Setting overall annual DBE goals — 49 CFR Section 26.45. Chapter 8 of the report uses data and analytical techniques from the disparity study to develop overall annual DBE goals. The Authority should consider adopting that approach as it develops its DBE goals in the future.

On February 3, 2010, USDOT posted a final rule concerning how often agencies that implement the Federal DBE Program are required to submit overall annual DBE goals. Agencies such as BGPAA now only need to develop and submit overall annual DBE goals every three years. That change was effective as of March 5, 2010. BGPAA's current overall DBE goal is effective through FY 2013.

The Federal DBE Program allows agencies to update their overall DBE goals, which the Authority might consider based on the information in this disparity study. BGPAA might consider adjusting its three-year overall goal in order to reflect changed circumstances, per 49 CFR Section 26.45(f)(1)(iii).

Maximum feasible portion of goal met through neutral programs. The Authority must meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. Taking this requirement into consideration, BGPAA should maintain its current neutral efforts and evaluate and consider using other neutral measures discussed in Chapter 9.

BGPAA must project the portion of its overall DBE goal that could be achieved through neutral means. The agency should consider the information and analytical approaches presented in Chapter 9 when making future projections.

Use of DBE contract goals. The Federal DBE Program requires state and local transportation agencies to establish contract goals to meet any portion of its overall DBE goal that they do not project being able to meet using race-neutral means, as noted in 49 CFR 26.51(d). Based on this report and all other information and evidence available to BGPAA, the Authority should consider whether it should utilize contract goals to meet any portion of its overall annual DBE goal that BGPAA does not project being able to meet using race-neutral means. If the Authority determines that it needs to establish contract goals, then it should also evaluate which, if any, DBE groups should be considered eligible to participate in any contract goals it determines are appropriate per the federal regulations to use for its FAA-funded contracts (or other USDOT-funded contracts).

USDOT guidelines on the use of DBE contract goals include the following:

- Contract goals may only be used on contracts that have subcontracting possibilities.
- Agencies are not required to set a contract goal on every FAA-funded contract.
- Over the period covered by the overall DBE goal, an agency must set contract goals so that they will cumulatively result in meeting the portion of the overall goal that agency projects being unable to meet through neutral means.
- An agency's contract goals must provide for participation by all DBE groups eligible for race-conscious measures and must not be subdivided into group-specific goals. This last point is important as BGPAA considers which DBE groups, if any, it determines should be eligible for contract goals (e.g., should be classified as underutilized DBEs or "UDBEs"). If it determines to include specific DBE groups but not others for contract goals, it must submit a waiver request to the FAA.
- BGPAA must maintain and report data on DBE utilization separately for contracts that include and do not include DBE goals.

Analysis of the reasons for not meeting an overall DBE goal — 49 CFR Section 26.47(c).

One addition to the Federal DBE Program made under the Final Rule effective February 28, 2011 requires agencies to do the following if its DBE participation reports for a fiscal year are less than the overall goal for that fiscal year:

1. Analyze in detail the reasons for the difference; and
2. Establish specific steps and milestones to correct the problems identified and to enable the agency to fully meet the goal for the new fiscal year.

The Federal DBE Program requires agencies to prepare DBE utilization reports based on firms actually certified as DBEs. However, BBC's analysis of the overall DBE goal in this study is based upon current *and* potential DBEs.

- One of the reasons that the Authority might fall short of its overall DBE goal is that some minority- and women-owned firms participating in BGPAA's FAA-funded contracts might not be certified as DBEs and will not be counted in its DBE participation reports (and still be counted in the overall DBE goal).
- In order to have the information that allows it to explore this factor, the Authority should collect information on the race/ethnicity/gender ownership of all firms participating in its contracts as prime contractors and subcontractors, not just DBEs.

BBC recommends that BGPAA keep a record of DBE participation on FAA-funded contracts and a separate accounting of MBE/WBE participation during a fiscal year.

Flexible use of any race-conscious measures — 49 CFR Section 26.51(f). The Authority must exercise flexibility in any use of race-conscious measures such as DBE contract goals, as explained in 49 CFR Section 26.51(f)(2). For example, if BGPAA determines that it is exceeding its overall DBE goal in a fiscal year, it must reduce or eliminate any use of DBE contract goals to the extent necessary. If it determines that it will fall short of the overall DBE goal, then it must make appropriate modifications in the use of neutral and/or race-conscious measures to allow it to meet the overall goal.

If, after implementation of any additional neutral remedies, BGPAA observes improvements in utilization for certain racial/ethnic/gender groups on locally-funded contracts (in comparison to the availability of these groups for such contracts), it might then change its projection of how much of the overall annual DBE goal can be achieved through neutral means in future years.

Good faith effort procedures — 49 CFR Section 26.53. Under the Federal DBE Program, bidders do not have to meet the DBE goal to be awarded a contract. The Program requires agencies to also consider bidders that make good faith efforts to meet the contract goal. USDOT has provided guidance for agencies to review good faith efforts, including materials in Appendix A of 49 CFR Part 26. BGPAA's current DBE Program outlines the good faith efforts process that it would use if the Authority were to use DBE contract goals in the future.

However, the Final Rule effective February 28, 2011 updates requirements for good faith efforts procurements when using DBE contract goals. The Authority should review 49 CFR Section 26.53(f).

Counting DBE and MBE/WBE participation — 49 CFR Section 26.55. Section 26.55 of the Federal DBE Program identifies how agencies should count DBE participation. Section 26.11 discussed the Uniform Report of DBE Awards or Commitments and Payments.

In addition to tracking DBE participation, BBC recommends that BGPAA develop procedures and databases to track MBE/WBE participation in FAA- and locally-funded contracts. This will help BGPAA track effectiveness of neutral programs for both FAA- and locally-funded contracts and, if necessary, provide important information behind any shortfalls in annual DBE participation, including preparing utilization reports for all minority- and women-owned firms.¹

- BGPAA should use the BBC database developed as part of this study as a starting point for tracking MBE/WBE utilization.
- Firms doing business with BGPAA as a prime contractor or subcontractor should be required to complete contractor/consultant registration documents, which should include MBE/WBE ownership information.
- BGPAA should collect and report information for prime contractor and subcontractor utilization on both FAA- and locally-funded contracts.
- The Authority should also continue to prepare reports on the participation of certified DBEs in FAA-funded contracts, as required under the Federal DBE Program.

BBC was able to collect subcontractor data for BGPAA contracts through extensive survey efforts. For future studies and evaluation, the Authority should consider improving its subcontract data collection and tracking. Efforts should be made to address the following:

- Collect subcontractor utilization data for firms regardless of race, gender or certification status;
- Collect invoices for prime contractors and subcontractors;
- Establish a training process for all staff who are responsible for managing and entering contract data. Training should convey data entry rules and standards, and ensure consistency in the data entry process; and
- Require firms to report their subcontractors' contact information and awarded dollar amounts at time of contract.

DBE certification — 49 CFR Part 26 Subpart D. BGPAA is a non-certifying member of the California Uniform Certification Program (CUCP). Firms interested in doing business with BGPAA that are seeking DBE certification can be certified from a certifying member of the CUCP. In

¹ Including MBE/WBEs that are self-identified.

Southern California, certifying members are the California Department of Transportation, the City of Los Angeles and the Los Angeles County Metropolitan Transportation Authority. The CUCP is designed to comply with Subpart D of 49 CFR Part 26.

If BGPAA obtains a waiver from FAA to only include certain DBE groups as UDBEs, not all DBEs certified under the CUCP will be eligible for any race-conscious programs such as a contract goals program.

Monitoring changes in the Federal DBE Program. The Federal DBE Program regulations periodically change, and USDOT also issues new guidance concerning implementation of the Program. The Authority should monitor these developments.

Other transportation agencies' implementation of the Federal DBE Program is under review in federal district court. BGPAA should continue to monitor relevant court decisions in these and other cases.

B. Additional Program Options for BGPAA Locally-funded Contracts

The Federal DBE Program does not pertain to locally-funded contracts. In addition, Proposition 209 precludes government agencies in California from implementing race and gender preferences related to non-federally-funded contracts.

BGPAA should consider the following race- and gender-neutral options for its locally-funded contracts.

Reporting. BGPAA should initiate internal reporting of MBE/WBE and DBE utilization on locally-funded contracts using the same methods that it would use for FAA-funded contracts. That practice will allow the Authority to track how well it is addressing the disparities that BBC found for certain MBE/WBE groups in its locally-funded contracts. Monitoring utilization and assessing progress in addressing any disparities for locally-funded contracts will also help BGPAA understand how its neutral programs may be affecting participation in its FAA-funded contracts.

Business development programs. Any BDPs that the Authority establishes for DBE firms — including mentor-protégé programs — would help those firms be more competitive on FAA-funded contracts and on locally-funded contracts.

Neutral programs. BGPAA could consider applying the race-neutral programs identified in Chapter 9 and 10 for its locally-funded contracts.

One program that may be useful on locally-funded contracts, to the extent permitted by state and local law, would be a small business program similar to the State of California Small Business Program, the Los Angeles County SBE Program or the Los Angeles County Metropolitan Transportation Authority Small Business Program. All small business enterprises including small white male-owned firms and small minority- and women-owned firms would be eligible for the program. As with the CUCP for DBE certification, the Authority could utilize existing certification agencies for SBE certification, although it might choose not to limit certification to Los Angeles County firms as is the case with the Los Angeles County SBE Program.

APPENDIX A

Report on Legal Analysis

In this section Holland & Knight LLP analyzes recent cases regarding the Transportation Equity Act for the 21st Century (TEA-21) as amended and reauthorized (“SAFETEA” and “SAFETEA-LU”),¹ the United States Department of Transportation regulations promulgated to implement the TEA-21 known as the Federal Disadvantaged Business Enterprise (“DBE”) Program,² and local minority and women-owned business enterprise (“MBE/WBE”) programs to provide a summary of the legal framework for the disparity study as applicable to the Burbank-Glendale-Pasadena Airport Authority (“the Authority”).

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¹ Pub L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1156; preceded by Pub L. 105-178, Title I, § 1101(b), June 9, 1998, 112 Stat. 107.

² 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (“Federal DBE Program”).

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A. Introduction

This section begins with a review of the landmark United States Supreme Court decision in City of Richmond v. J.A. Croson.³ Croson sets forth the strict scrutiny constitutional analysis applicable in the legal framework for conducting a disparity study. This section also notes the United States Supreme Court decision in Adarand Constructors, Inc. v. Pena,⁴ (“Adarand I”), which applied the strict scrutiny analysis set forth in Croson to federal programs that provide federal assistance to a recipient of federal funds. The Supreme Court’s decision in Adarand I, provides the basis for the legal analysis in connection with the Authority’s participation in the Federal DBE Program.

The legal framework then analyzes and reviews significant recent court decisions that have followed, interpreted, and applied Croson and Adarand I to the present and that are applicable to the Authority’s disparity study and the strict scrutiny analysis. In particular, this analysis reviews the Ninth Circuit decision in Western States Paving Co. v. Washington State DOT⁵, in which the Ninth Circuit held that mere compliance with the Federal DBE Program, absent independent and sufficient state-specific evidence of discrimination in the state’s transportation contracting industry market, did not satisfy the strict scrutiny analysis. In addition, the analysis reviews the recent federal cases that have considered the validity of the Federal DBE Program and a state government agency’s or recipient’s implementation of the DBE program, including Northern Contracting, Inc. v. Illinois DOT,⁶ Sherbrooke Turf, Inc. v. Minn DOT and Gross Seed v. Nebraska Department of Roads,⁷ and Adarand Construction, Inc. v. Slater⁸ (“Adarand VII”), Geod Corporation v. New Jersey Transit Corporation⁹, South Florida Chapter of the A.G.C. v. Broward County, Florida¹⁰, and Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.¹¹

The analyses of Western States Paving Co. and these other recent cases are instructive to the Authority and the disparity study because they are the most recent and significant decisions by federal courts setting forth the legal framework applied to the Federal DBE Program and its implementation by recipients of federal financial assistance governed by 49 CFR Part 26.¹² They also are applicable in terms of the preparation of DBE Programs by the members of the Authority submitted in compliance with the Federal DBE regulations.

Following Western States Paving, it is noteworthy that the USDOT, in particular for agencies in states in the Ninth Circuit Court of Appeals, recommended the use of disparity studies by recipients

³ City of Richmond v. J.A. Croson, 488 U.S. 469 (1989).

⁴ Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).

⁵ Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005).

⁶ 473 F.3d 715 (7th Cir. 2007).

⁷ 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004).

⁸ 228 F.3d 1147 (10th Cir. 2000) (“Adarand VII”).

⁹ 766 F. Supp. 2d 642, 2010 WL 4193051 (D. N.J. October 19, 2010).

¹⁰ 544 F. Supp. 2d 1336 (S.D. Fla. 2008).

¹¹ U.S.D.C., E.D.Cal, Civil Action No. S-09-1622, Slip Opinion (E.D. Cal. April 20, 2011)

¹² See Northern Contracting, Inc. v. Illinois DOT, 473 F.3d 715 (7th Cir. 2007); Western States Paving, 407 F.3d 983 (9th Cir. 2005); Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) (“Adarand VII”).

of Federal financial assistance to examine whether or not there is evidence of discrimination and its effects, and how remedies might be narrowly tailored in developing their DBE Program to comply with the Federal DBE Program.¹³ The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT instructs that recipients should ascertain evidence for discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26. The USDOT's Guidance provides that recipients should consider evidence of discrimination and its effects.¹⁴ The USDOT's "Guidance" is recognized by the federal regulations as "valid and binding, and constitutes the official position of the Department of Transportation"¹⁵ for states in the Ninth Circuit.

B. U.S. Supreme Court Cases

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

In Croson, the U.S. Supreme Court struck down the City of Richmond's "set-aside" program as unconstitutional because it did not satisfy the strict scrutiny analysis applied to "race-based" governmental programs. J.A. Croson Co. ("Croson") challenged the City of Richmond's minority contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more Minority Business Enterprises ("MBE"). In enacting the plan, the City cited past discrimination and an intent to increase minority business participation in construction projects as motivating factors.

The Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the "strict scrutiny" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination and that any program adopted by a local or state government must be "narrowly tailored" to achieve the goal of remedying the identified discrimination.

The Court determined that the plan neither served a "compelling governmental interest" nor offered a "narrowly tailored" remedy to past discrimination. The Court found no "compelling governmental interest" because the City had not provided "a strong basis in evidence for its conclusion that [race-based] remedial action was necessary." The Court held the City presented no direct evidence of any race discrimination on its part in awarding construction contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors. The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the City failed to demonstrate that the plan was "narrowly tailored" for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase minority business participation in city contracting, and because of the over

¹³ Questions and Answers Concerning Response to Western States Paving Company v. Washington State Department of Transportation (January 2006) [hereinafter USDOT Guidance], available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm; see 49 CFR § 26.9.

¹⁴ Id.

¹⁵ Id., 49 C.F.R. § 26.9.

inclusiveness of certain minorities in the “preference” program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.

The Court further found “if the City could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, ... [i]t could take affirmative steps to dismantle such a system.” The Court held that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.” The Supreme Court noted that it did not intend its decision to preclude a state or local government from “taking action to rectify the effects of identified discrimination within its jurisdiction.”

2. Adarand Constructors, Inc. V. Pena (“Adarand I”), 515 U.S. 200 (1995)

In Adarand I, the U.S. Supreme Court extended the holding in Croson and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass a test of strict scrutiny in order to survive constitutional muster. The cases interpreting Adarand I are the most recent and significant decisions by federal courts setting forth the legal framework for disparity studies as well as the predicate constitutional strict scrutiny standard of review, which applies to the implementation of the Federal DBE Program by recipients of federal funds.

C. The Legal Framework Applied to the Federal DBE Program and State and Local Government MBE/WBE Programs

The following provides an analysis for the legal framework focusing on recent key cases regarding the Federal DBE Program and state and local MBE/WBE programs, and their implications for a disparity study. The recent decisions involving the Federal DBE Program are instructive to the Authority and the disparity study because they concern the strict scrutiny analysis and legal framework in this area, and implementation of the DBE Program by recipients of federal financial assistance (like the Authority) based on 49 C.F.R. Part 26.

After the Adarand decision, the U.S. Department of Justice in 1996 conducted a study of evidence on the issue of discrimination in government construction procurement contracts, which Congress relied upon as documenting a compelling governmental interest to have a federal program to remedy the effects of current and past discrimination in the transportation contracting industry for federally-funded contracts.¹⁶ Subsequently, in 1998, Congress passed the Transportation Equity Act for the 21st Century (“TEA-21”), which authorized the United States Department of Transportation to expend funds for federal highway programs for 1998 - 2003. Pub.L. 105-178, Title I, § 1101(b), 112 Stat. 107, 113 (1998). The USDOT promulgated new regulations in 1999 contained at 49 C.F.R. Part 26 to establish the current Federal DBE Program. The TEA-21 was subsequently extended in both 2003 and 2005. The reauthorization of TEA-21 in 2005 was for a five year period from 2005 to 2009. Pub.L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1153-57 (“SAFETEA”).

The Federal DBE Program as amended changed certain requirements for federal aid recipients and accordingly changed how recipients of federal funds implemented the Federal DBE Program for

¹⁶ Appendix-The Compelling Interest for Affirmative Action in Federal Procurement, 61 Fed. Reg. 26,050, 26,051-63 & nn. 1-136 (May 23, 1996) (hereinafter “The Compelling Interest”); see Adarand VII, 228 F.3d at 1167-1176, citing The Compelling Interest.

federally-assisted contracts. The federal government determined that there is a compelling governmental interest for race- and gender-based programs at the national level, and that the program is narrowly tailored because of the federal regulations, including the flexibility in implementation provided to individual federal aid recipients by the regulations. State and local governments are not required to implement race- and gender-based measures where they are not necessary to achieve DBE goals and those goals may be achieved by race- and gender-neutral measures. 49 C.F.R. § 26.51.

The Federal DBE Program established responsibility for implementing the DBE Program to state and local government recipients of federal funds. A recipient of federal financial assistance must set an annual DBE goal specific to conditions in the relevant marketplace. Even though an overall annual 10 percent aspirational goal applies at the federal level, it does not affect the goals established by individual state or local governmental recipients. The new Federal DBE Program outlines certain steps a state or local government recipient can follow in establishing a goal, and USDOT considers and must approve the goal and the recipient's DBE program. The implementation of the Federal DBE Program is substantially in the hands of the state or local government recipient and is set forth in detail in the federal regulations, including 49 C.F.R. § 26.45.

Provided in 49 C.F.R. § 26.45 are instructions as to how recipients of federal funds should set the overall goals for their DBE programs. In summary, the recipient establishes a base figure for relative availability of DBEs. 49 C.F.R. § 26.45(a), (b), (c). This is accomplished by determining the relative number of ready, willing, and able DBEs in the recipient's market. *Id.* Second, the recipient must determine an appropriate adjustment, if any, to the base figure to arrive at the overall goal. *Id.* at § 26.45(d). There are many types of evidence considered when determining if an adjustment is appropriate, according to 49 C.F.R. § 26.45(d). These include, among other types, the current capacity of DBEs to perform work on the recipient's contracts as measured by the volume of work DBEs have performed in recent years. If available, recipients consider evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, such as statistical disparities between the ability of DBEs to obtain financing, bonding, and insurance, as well as data on employment, education, and training. *Id.* This process, based on the federal regulations, aims to establish a goal that reflects a determination of the level of DBE participation one would expect absent the effects of discrimination. 49 C.F.R. § 26.45(b)-(d).

Further, the Federal DBE Program requires state and local government recipients of federal funds to assess how much of the DBE goal can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts. 49 C.F.R. § 26.51.

A state or local government recipient is responsible for seriously considering and determining race- and gender-neutral measures that can be implemented. 49 C.F.R. § 26.51(b). A recipient of federal funds must establish a contract clause requiring prime contractors to promptly pay subcontractors in the Federal DBE Program (42 C.F.R. § 26.29). The Federal DBE Program also established certain record-keeping requirements, including maintaining a bidders list containing data on contractors and subcontractors seeking federally-assisted contracts from the agency (42 C.F.R. § 26.11). There are multiple administrative requirements that recipients must comply with in accordance with the regulations. 49 C.F.R. §§ 26.21-26.37.

Federal aid recipients are to certify DBEs according to their race/gender, size, net worth and other factors related to defining an economically and socially disadvantaged business as outlined in 49 C.F.R. §§ 26.61-26.73.

U.S. DOT New Final Rule, 76 Fed. Reg. 5083 (January 28, 2011).

The United States Department of Transportation promulgated a new Final Rule on January 28, 2011, effective February 28, 2011, 76 Fed. Reg. 5083 (January 28, 2011) amending the Federal DBE Program at 49 C.F.R. Part 26. According to the United States DOT, the Rule increases accountability for recipients with respect to meeting overall goals, modifies and updates certification requirements, adjusts the personal net worth threshold for inflation to \$1.32 million dollars, provides for expedited interstate certification, adds provisions to foster small business participation, provides for additional post-award oversight and monitoring, and addresses other matters. 76 F.R. 5083-5101.

In particular, the new Final Rule provides that a recipient's DBE Program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed and that this mechanism must include a written certification that the recipient has reviewed contracting records and monitored work sites for this purpose. See C.F.R. § 26.37, 76 F.R. at 5097.

In addition, the new Final Rule adds a Section 26.39 to Subpart B to provide for fostering small business participation.¹⁷ The recipient's DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, which must be submitted to the appropriate DOT operating administration for approval by February 28, 2012.¹⁸ The new Final Rule provides a list of "strategies" that may be included as part of the small business program, including establishing a race-neutral small business set-aside for prime contracts under a stated amount; requiring bidders on prime contracts to specify elements or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform; requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform; and to meet the portion of the recipient's overall goal it projects to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform and other strategies.¹⁹ The new Final Rule provides that actively implementing program elements to foster small business participation is a requirement of good faith implementation of the recipient's DBE program.²⁰

The new Final Rule also provides that recipients must take certain specific actions if the awards and commitments shown on its Uniform Report of Awards or Commitments and Payments, at the end of any fiscal year, are less than the overall goal applicable to that fiscal year, in order to be regarded by the DOT as implementing its DBE program in good faith.²¹ The new Final Rule sets out what action the recipient must take in order to be regarded as implementing its DBE program in good faith, including analyzing the reasons for the difference between the overall goal and its awards and

¹⁷ 76 F.R. at 5097, January 28, 2011.

¹⁸ *Id.*

¹⁹ *Id.* at 5097, amending 49 C.F.R. § 26.39(b)(1)-(5).

²⁰ *Id.* at 5097, amending 49 C.F.R. § 26.39(c).

²¹ 76 F.R. at 5098, amending 49 C.F.R. § 26.47(c).

commitments, establishing specific steps and milestones to correct the problems identified, and submitting at the end of the fiscal year a timely analysis and corrective actions to the appropriate operating administration for approval, and additional actions.²² The new Final Rule provides a list of acts or omissions that DOT will regard the recipient as being in non-compliance for failing to implement its DBE program in good faith, including not submitting its analysis and corrective actions, disapproval of its analysis or corrective actions, or if it does not fully implement the corrective actions.²³

The Department states in the new Final Rule with regard to disparity studies and in calculating goals, that it agrees “it is reasonable, in calculating goals and in doing disparity studies, to consider potential DBEs (e.g., firms apparently owned and controlled by minorities or women that have not been certified under the DBE program) as well as certified DBEs. This is consistent with good practice in the field as well as with DOT guidance.”²⁴

The United States DOT in the new Final Rule states that there is a continuing compelling need for the DBE program.²⁵ The DOT concludes that, as court decisions have noted, the DOT’s DBE regulations and the statutes authorizing them, “are supported by a compelling need to address discrimination and its effects.”²⁶ The DOT says that the “basis for the program has been established by Congress and applies on a nationwide basis...”, notes that both the House and Senate FAA Reauthorization Bills contained findings reaffirming the compelling need for the program, and references additional information presented to the House of Representatives in a March 26, 2009 hearing before the Transportation and Infrastructure Committee, and a Department of Justice document entitled “The Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: A Decade Later An Update to the May 23, 1996 Review of Barriers for Minority- and Women-Owned Businesses.”²⁷ This information, the DOT states, “confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.”²⁸

²² *Id.*, amending 49 C.F.R. § 26.47(c)(1)-(5).

²³ *Id.*, amending 49 C.F.R. § 26.47(c)(5).

²⁴ 76 F.R. at 5092.

²⁵ 76 F.R. at 5095.

²⁶ 76 F.R. at 5095.

²⁷ *Id.*

²⁸ *Id.*

Strict Scrutiny Analysis

A race- and ethnicity-based program implemented by a state or local government is subject to the strict scrutiny constitutional analysis.²⁹ The Authority's implementation of the Federal DBE Program also is subject to the strict scrutiny analysis if it utilizes race- and ethnicity-based efforts. The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.³⁰

a. The Compelling Governmental Interest Requirement

The first prong of the strict scrutiny analysis requires a governmental entity to have a “**compelling governmental interest**” in remedying past identified discrimination in order to implement a race- and ethnicity-based program. State and local governments cannot rely on national statistics of discrimination in an industry to draw conclusions about the prevailing market conditions in their own regions.³¹ Rather, state and local governments must measure discrimination in their state or local market however, that is not necessarily confined by the jurisdiction's boundaries.³²

The federal courts have held that, with respect to the Federal DBE Program, recipients of federal funds do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.³³ The federal courts have held that Congress had ample evidence of discrimination in the transportation contracting industry to justify the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 C.F.R. Part 26).³⁴

²⁹ Croson, 448 U.S. at 492-493; Adarand Constructors, Inc. v. Peña (Adarand I), 515 U.S. 200, 227 (1995).

³⁰ Adarand I, 515 U.S. 200, 227 (1995); N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1176.; Associated Gen. Contractors of Ohio, Inc. v. Drabik ("Drabik II"), 214 F.3d 730 (6th Cir. 2000); Eng'g Contractors Ass'n of South Florida, Inc. v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997); Contractors Ass'n of E. Pa. v. City of Philadelphia ("CAEP I"), 6 F.3d 990 (3d Cir. 1993).

³¹ See e.g., Concrete Works, Inc. v. City and County of Denver ("Concrete Works I"), 36 F.3d 1513, 1520 (10th Cir. 1994).

³² Id.

³³ N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1176.

³⁴ Id. In the case of Rothe Dev. Corp. v. U.S. Dept. of Defense, 545 F.3d 1023 (Fed. Cir. 2008), the Federal Circuit Court of Appeals pointed out it had questioned in its earlier decision whether the evidence of discrimination before Congress was in fact so "outdated" so as to provide an insufficient basis in evidence for the Department of Defense program (i.e., whether a compelling interest was satisfied). 413 F.3d 1327 (Fed. Cir. 2005). The Federal Circuit Court of Appeals after its 2005 decision remanded the case to the district court to rule on this issue. Rothe considered the validity of race- and gender-conscious Department of Defense ("DOD") regulations (2006 Reauthorization of the 1207 Program). The decisions in N. Contracting, Sherbrooke Turf, Adarand VII, and Western States Paving held the evidence of discrimination nationwide in transportation contracting was sufficient to find the Federal DBE Program on its face was constitutional. On remand, the district court in Rothe on August 10, 2007 issued its order denying plaintiff Rothe's Motion for Summary Judgment and granting Defendant United States Department of Defense's Cross-Motion for Summary Judgment, holding the 2006 Reauthorization of the 1207 DOD Program constitutional. Rothe Devel. Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007). The district court found the data contained in the Appendix (The Compelling Interest, 61 Fed. Reg. 26050 (1996)), the Urban Institute Report, and the Benchmark Study – relied upon in part by the courts in Sherbrooke Turf, Adarand VII, and Western States Paving in upholding the constitutionality of the Federal DBE Program – was "stale" as applied to and for purposes of the 2006 Reauthorization of the 1207 DOD Program. This district court finding was not appealed or considered by the Federal Circuit Court of Appeals. 545 F.3d 1023, 1037. The Federal Circuit Court of Appeals reversed the district court decision in part and held invalid the DOD Section 1207 program as enacted in 2006. 545 F.3d 1023, 1050. See the discussion of the 2008 Federal Circuit Court of Appeals decision in Rothe below in Section G.

Specifically, the federal courts found Congress “spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry.”³⁵ The evidence found to satisfy the compelling interest standard included numerous congressional investigations and hearings, and outside studies of statistical and anecdotal evidence (e.g., disparity studies).³⁶ The evidentiary basis on which Congress relied to support its finding of discrimination includes:

- **Barriers to minority business formation.** Congress found that discrimination by prime contractors, unions, and lenders has woefully impeded the formation of qualified minority business enterprises in the subcontracting market nationwide, noting the existence of “old boy” networks, from which minority firms have traditionally been excluded, and the race-based denial of access to capital, which affects the formation of minority subcontracting enterprise.³⁷
- **Barriers to competition for existing minority enterprises.** Congress found evidence showing systematic exclusion and discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies precluding minority enterprises from opportunities to bid. When minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. Congress found evidence of the same prime contractor using a minority business enterprise on a government contract not using that minority business enterprise on a private contract, despite being satisfied with that subcontractor’s work. Congress found that informal, racially exclusionary business networks dominate the subcontracting construction industry.³⁸
- **Local disparity studies.** Congress found that local studies throughout the country tend to show a disparity between utilization and availability of minority-owned firms, raising an inference of discrimination.³⁹
- **Results of removing affirmative action programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinued, minority business participation in the relevant market drops sharply or even disappears, which courts have found strongly supports the government’s claim that there are significant barriers to minority competition, raising the specter of discrimination.⁴⁰

³⁵ Sherbrooke Turf, 345 F.3d at 970, (citing Adarand VII, 228 F.3d at 1167 – 76); Western States Paving, 407 F.3d at 992-93.

³⁶ See, e.g., Adarand VII, 228 F.3d at 1167– 76; see also Western States Paving, 407 F.3d at 992 (Congress “explicitly relied upon” the Department of Justice study that “documented the discriminatory hurdles that minorities must overcome to secure federally funded contracts”).

³⁷ Adarand VII, 228 F.3d. at 1168-70; Western States Paving, 407 F.3d at 992.

³⁸ Adarand VII. at 1170-72.

³⁹ Id. at 1172-74.

⁴⁰ Id. at 1174-75.

Burden of proof. Under the strict scrutiny analysis, and to the extent a state or local governmental entity has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a strong basis in evidence (including statistical and anecdotal evidence) to support its remedial action.⁴¹ If the government makes its initial showing, the burden shifts to the challenger to rebut that showing.⁴² The challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of prior discrimination."⁴³

Statistical evidence. Statistical evidence of discrimination is a primary method used to determine whether or not a strong basis in evidence exists to develop, adopt and support a remedial program (i.e., to prove a compelling governmental interest), or in the case of a recipient complying with the Federal DBE Program, to prove narrow tailoring of program implementation at the state recipient level.⁴⁴ "Where gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination."⁴⁵

One form of statistical evidence is the comparison of a government's utilization of MBE/WBEs compared to the relative availability of qualified, willing and able MBE/WBEs.⁴⁶ The federal courts have held that a significant statistical disparity between the utilization and availability of minority- and women-owned firms may raise an inference of discriminatory exclusion.⁴⁷ However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.⁴⁸

Other considerations regarding statistical evidence include:

- **Availability analysis.** A disparity index requires an availability analysis. MBE/WBE and DBE availability measures the relative number of MBE/WBEs and DBEs among all firms ready, willing and able to perform a certain type of work within a particular geographic market area.⁴⁹ There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.⁵⁰ "An analysis is not

⁴¹ See Rothe Development Corp. v. Department of Defense, 545 F.3d 1023, 1036 (Fed. Cir. 2008); N. Contracting, Inc. v. Illinois, 473 F.3d at 715, 721 (7th Cir. 2007) (Federal DBE Program); Western States Paving Co. v. Washington State DOT, 407 F.3d 983, 991 (9th Cir. 2005) (Federal DBE Program); Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964, 969 (8th Cir. 2003) (Federal DBE Program); Adarand Constructors Inc. v. Slater ("Adarand VII"), 228 F.3d 1147, 1166 (10th Cir. 2000) (Federal DBE Program); Eng'g Contractors Ass'n, 122 F.3d at 916; Monterey Mechanical Co. v. Wilson, 125 F.3d 702, 713 (9th Cir. 1997); Hershell Gill Consulting Engineers, Inc. v. Miami Dade County, 333 F. Supp. 2d 1305, 1316 (S.D. Fla. 2004).

⁴² Adarand VII, 228 F.3d at 1166; Eng'g Contractors Ass'n, 122 F.3d at 916.

⁴³ See, e.g., Adarand VII, 228 F.3d at 1166; Eng'g Contractors Ass'n, 122 F.3d at 916; see also Sherbrooke Turf, 345 F.3d at 971; N. Contracting, 473 F.3d at 721.

⁴⁴ See, e.g., Croson, 488 U.S. at 509; N. Contracting, 473 F.3d at 718-19, 723-24; Western States Paving, 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

⁴⁵ Croson, 488 U.S. at 501, quoting Hazelwood School Dist. v. United States, 433 U.S. 299, 307-08 (1977).

⁴⁶ Croson, 448 U.S. at 509; see Rothe, 545 F.3d at 1041-1042; Concrete Works of Colo., Inc. v. City and County of Denver ("Concrete Works II"), 321 F.3d 950, 959 (10th Cir. 2003); Drabik II, 214 F.3d 730, 734-736.

⁴⁷ See, e.g., Croson, 488 U.S. at 509; Rothe, 545 F.3d at 1041; Concrete Works II, 321 F.3d at 970; see Western States Paving, 407 F.3d at 1001.

⁴⁸ Western States Paving, 407 F.3d at 1001.

⁴⁹ See, e.g., Croson, 448 U.S. at 509; 49 C.F.R. § 26.35; Rothe, 545 F.3d at 1041-1042; N. Contracting, 473 F.3d at 718, 722-23; Western States Paving, 407 F.3d at 995.

⁵⁰ Contractors Ass'n of Easton Pennsylvania, Inc. v. City of Philadelphia ("CAEP II"), 91 F.3d 586, 603 (3d Cir. 1996).

devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.”⁵¹

- **Utilization analysis.** Courts have accepted measuring utilization based on the proportion of an agency’s contract dollars going to MBE/WBEs and DBEs.⁵²
- **Disparity index.** An important component of statistical evidence is the “disparity index.”⁵³ A disparity index is defined as the ratio of the percentage utilization to the percentage availability times 100. A disparity index below 80 has been accepted as evidence of adverse impact. This has been referred to as “The Rule of Thumb” or “The 80 percent Rule.”⁵⁴
- **Two standard deviation test.** The standard deviation figure describes the probability that the measured disparity is the result of mere chance. Some courts have held that a statistical disparity corresponding to a standard deviation of less than two is not considered statistically significant.⁵⁵

Anecdotal evidence. Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness’ perspective. Anecdotal evidence of discrimination, standing alone, generally is insufficient to show a systematic pattern of discrimination.⁵⁶ But personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.⁵⁷ It has been held that anecdotal evidence of a local or state government’s institutional practices that exacerbate discriminatory market conditions are often particularly probative.⁵⁸

⁵¹ *Id.*

⁵² See *Eng’g Contractors Ass’n*, 122 F.3d at 912; *N. Contracting*, 473 F.3d at 717-720; *Sherbrooke Turf*, 345 F. 3d at 973.

⁵³ *Eng’g Contractors Ass’n*, 122 F.3d at 914; *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 (5th Cir. 1999); *Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 at 1005 (3rd Cir. 1993).

⁵⁴ See, e.g., *Ricci v. DeStefano*, ___ U.S. ___, 129 S.Ct. 2658, 2678, 2009 WL 1835138 at 18, 77 USLW 4639 (June 29, 2009); *Rothe*, 545 F.3d at 1041; *Eng’g Contractors Ass’n*, 122 F.3d at 914, 923; *Concrete Works I*, 36 F.3d at 1524.

⁵⁵ *Eng’g Contractors Ass’n*, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct.; *Peightal v. Metropolitan Eng’g Contractors Ass’n*, 26 F.3d 1545, 1556 (11th Cir. 1994). The Seventh Circuit Court of Appeals in *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359 (7th Cir. 2001), raised questions as to the use of the standard deviation test alone as a controlling factor in determining the admissibility of statistical evidence to show discrimination. Rather, the Court concluded it is for the judge to say, on the basis of the statistical evidence, whether a particular significance level, in the context of a particular study in a particular case, is too low to make the study worth the consideration of judge or jury. 255 F.3d at 363.

⁵⁶ *Eng’g Contractors Ass’n*, 122 F.3d at 924-25; *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); *O’Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).

⁵⁷ See, e.g., *Eng’g Contractors Ass’n*, 122 F.3d at 925-26; *Concrete Works*, 36 F.3d at 1520; *Contractors Ass’n*, 6 F.3d at 1003; *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

⁵⁸ *Concrete Works I*, 36 F.3d at 1520.

Examples of anecdotal evidence may include:

- Testimony of MBE/WBE or DBE owners regarding whether they face difficulties or barriers;
- Descriptions of instances in which MBE/WBE or DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender or believe they were treated fairly without regard to race, ethnicity, or gender;
- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from MBE/WBE's or DBEs on non-goal projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.⁵⁹

Courts have accepted and recognize that anecdotal evidence is the witness' narrative of incidents told from his or her perspective, including the witness' thoughts, feelings, and perceptions, and thus anecdotal evidence need not be verified.⁶⁰

b. The Narrow Tailoring Requirement

The second prong of the strict scrutiny analysis requires that a race- or ethnicity-based program or legislation implemented to remedy past identified discrimination in the relevant market be “**narrowly tailored**” to reach that objective.

The narrow tailoring requirement has several components and the courts analyze several criteria or factors in determining whether a program or legislation satisfies this requirement including:

- The necessity for the relief and the efficacy of alternative race-, ethnicity-, and gender-neutral remedies;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of a race-, ethnicity-, or gender-conscious remedy on the rights of third parties.⁶¹

The second prong of the strict scrutiny analysis requires the implementation of the Federal DBE Program by recipients of federal funds be “narrowly tailored” to remedy identified discrimination in

⁵⁹ See, Northern Contracting, 2005 WL 2230195, at 13-15 (N.D. Ill. 2005), affirmed, 473 F.3d 715 (7th Cir. 2007); e.g., Concrete Works, 321 F.3d at 989; Adarand VII, 228 F.3d at 1166-76. For additional examples of anecdotal evidence, see Eng'g Contractors Ass'n, 122 F.3d at 924; Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307, 1325 (N.D. Fla. 2004); Concrete Works, 36 F.3d at 1520; Cone Corp. v. Hillsborough County, 908 F.2d 908, 915 (11th Cir. 1990).

⁶⁰ See, e.g., Concrete Works II, 321 F.3d at 989; Eng'g Contractors Ass'n, 122 F.3d at 924-26; Cone Corp., 908 F.2d at 915; Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 at *21, N. 32 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007).

⁶¹ See, e.g., Rothe, 545 F.3d at 1036; Eng'g Contractors Ass'n, 122 F.3d at 927 (internal quotations and citations omitted).

the particular recipient's contracting and procurement market.⁶² The narrow tailoring requirement has several components.

It should be pointed out that in the Northern Contracting decision (2007), the Seventh Circuit Court of Appeals cited its earlier precedent in Milwaukee County Pavers v. Fielder to hold "that a state is insulated from [a narrow tailoring] constitutional attack, absent a showing that the state exceeded its federal authority. IDOT [Illinois DOT] here is acting as an instrument of federal policy and Northern Contracting (NCI) cannot collaterally attack the federal regulations through a challenge to IDOT's program."⁶³ The Seventh Circuit Court of Appeals distinguished both the Ninth Circuit Court of Appeals decision in Western States Paving and the Eighth Circuit Court of Appeals decision in Sherbrooke Turf, relating to an as-applied narrow tailoring analysis.

The Seventh Circuit Court of Appeals held that the state DOT's [Illinois DOT] application of a federally mandated program is limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program.⁶⁴ The Seventh Circuit Court of Appeals analyzed IDOT's compliance with the federal regulations regarding calculation of the availability of DBEs, adjustment of its goal based on local market conditions and its use of race-neutral methods set forth in the federal regulations.⁶⁵ The court held NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 C.F.R. Part 26).⁶⁶ Accordingly, the Seventh Circuit Court of Appeals affirmed the district court's decision upholding the validity of IDOT's DBE program. See the discussion of the Northern Contracting decision below in Section E.

According to Western States Paving, the recipient of federal funds must have independent evidence of discrimination within the recipient's own transportation contracting and procurement marketplace in order to determine whether or not there is the need for race-, ethnicity-, or gender-conscious remedial action.⁶⁷ Thus, the Ninth Circuit held in Western States Paving that mere compliance with the Federal DBE Program does not satisfy strict scrutiny.⁶⁸

In Western States Paving, the court found that even where evidence of discrimination is present in a recipient's market, a narrowly tailored program must apply only to those minority groups who have actually suffered discrimination. Thus, under a race- or ethnicity -conscious program, for each of the minority groups to be included in any race- or ethnicity-conscious elements in a recipient's implementation of the Federal DBE Program, there must be evidence that the minority group suffered discrimination within the recipient's marketplace.

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of the Federal DBE Program, the federal courts, which evaluated state DOT DBE Programs and their implementation of the Federal DBE Program, have held the following factors are pertinent:

⁶² Western States Paving, 407 F.3d at 995-998; Sherbrooke Turf, 345 F.3d at 970-71.

⁶³ 473 F.3d at 722.

⁶⁴ Id. at 722.

⁶⁵ Id. at 723-24.

⁶⁶ Id.

⁶⁷ Western States Paving, 407 F.3d at 997-98, 1002-03.

⁶⁸ Id. at 995-1003. The Seventh Circuit Court of Appeals stated in a footnote that the court in Western States Paving "misread" the decision in Milwaukee County Pavers. 473 F.3d at 722, n. 5.

- Evidence of discrimination or its effects in the state transportation contracting industry;
- Flexibility and duration of a race- or ethnicity-conscious remedy;
- Relationship of any numerical DBE goals to the relevant market;
- Effectiveness of alternative race- and ethnicity-neutral remedies;
- Impact of a race- or ethnicity-conscious remedy on third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.⁶⁹

The Eleventh Circuit described the “the essence of the ‘narrowly tailored’ inquiry [as] the notion that explicitly racial preferences ... must only be a ‘last resort’ option.”⁷⁰ Courts have found that “[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake.”⁷¹

Similarly, the Sixth Circuit Court of Appeals in Associated Gen. Contractors v. Drabik (“Drabik II”), stated: “Adarand teaches that a court called upon to address the question of narrow tailoring must ask, ‘for example, whether there was ‘any consideration of the use of race-neutral means to increase minority business participation’ in government contracting ... or whether the program was appropriately limited such that it ‘will not last longer than the discriminatory effects it is designed to eliminate.’”⁷²

The Supreme Court in Parents Involved in Community Schools v. Seattle School District, 127 S.Ct. 2738, 2760-61 (2007) also found that race- and ethnicity-based measures should be employed as a last resort. The majority opinion stated: “Narrow tailoring requires ‘serious, good faith consideration of workable race-neutral alternatives,’ and yet in Seattle several alternative assignment plans—many of which would not have used express racial classifications—were rejected with little or no consideration.” 127 S.Ct. at 2760-61; see also Grutter v. Bollinger, 539 U.S. 305 (2003). The Court found that the District failed to show it seriously considered race-neutral measures.

The “narrowly tailored” analysis is instructive in terms of developing any potential legislation or programs that involve DBEs implementing the Federal DBE Program, or in connection with determining appropriate remedial measures to achieve legislative objectives.

Race-, ethnicity-, and gender-neutral measures. To the extent a “strong basis in evidence” exists concerning discrimination in a local or state government’s relevant contracting and procurement market, the courts analyze several criteria or factors to determine whether a state’s implementation of

⁶⁹ See, e.g., Western States Paving, 407 F.3d at 998; Sherbrooke Turf, 345 F.3d at 971; Adarand VII, 228 F.3d at 1181; Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services, 140 F.Supp. 2d at 1247-1248.

⁷⁰ Eng’g Contractors Ass’n, 122 F.3d at 926 (internal citations omitted); see also Virdi v. DeKalb County School District, 135 Fed. Appx. 262, 264, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion); Webster v. Fulton County, 51 F. Supp. 2d 1354, 1380 (N.D. Ga. 1999), aff’d per curiam 218 F.3d 1267 (11th Cir. 2000).

⁷¹ See Grutter v. Bollinger, 539 U.S. 306, 339 (2003); Richmond v. J.A. Croson Co., 488 U.S. 469, 509-10 (1989); Western States Paving, 407 F.3d at 993; see also Adarand I, 515 U.S. at 237-38.

⁷² Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”), 214 F.3d 730, 738 (6th Cir. 2000).

a race- or ethnicity-conscious program is necessary and thus narrowly tailored to achieve remedying identified discrimination. One of the key factors discussed above is consideration of race-, ethnicity- and gender-neutral measures.

The courts require that a local or state government seriously consider race-, ethnicity- and gender-neutral efforts to remedy identified discrimination.⁷³ And the courts have held unconstitutional those race- and ethnicity-conscious programs implemented without consideration of race- and ethnicity-neutral alternatives to increase minority business participation in state and local contracting.⁷⁴

The Court in Croson followed by decisions from federal courts of appeal found that local and state governments have at their disposal a “whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”⁷⁵

The federal regulations and the courts require that recipients of federal financial assistance governed by 49 C.F.R. Part 26 implement or seriously consider race-, ethnicity-, and gender-neutral remedies prior to the implementation of race-, ethnicity-, and gender-conscious remedies.⁷⁶ The courts have also found “the regulations require a state to ‘meet the maximum feasible portion of [its] overall goal by using race neutral means.’⁷⁷

Examples of race-, ethnicity-, and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial and financial assistance;
- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;

⁷³ See, e.g., Western States Paving, 407 F.3d at 993; Sherbrooke Turf, 345 F.3d at 972; Adarand VII, 228 F.3d at 1179; Eng'g Contractors Ass'n, 122 F.3d at 927; Coral Constr., 941 F.2d at 923.

⁷⁴ See Croson, 488 U.S. at 507; Drabik I, 214 F.3d at 738 (citations and internal quotations omitted); see also Eng'g Contractors Ass'n, 122 F.3d at 927; Virdi, 135 Fed. Appx. At 268.

⁷⁵ Croson, 488 U.S. at 509-510.

⁷⁶ 49 C.F.R. § 26.51(a) requires recipients of federal funds to “meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation.” See, e.g., Adarand VII, 228 F.3d at 1179; Western States Paving, 407 F.3d at 993; Sherbrooke Turf, 345 F.3d at 972. Additionally, in September of 2005, the United States Commission on Civil Rights (the “Commission”) issued its report entitled “Federal Procurement After Adarand” setting forth its findings pertaining to federal agencies’ compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at <http://www.usccr.gov>. The Commission found that 10 years after the Court’s Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral measures that would effectively redress discrimination. See discussion of USCCR Report at Section G. below.

⁷⁷ See, e.g., Northern Contracting, 473 F.3d at 723 – 724; Western States Paving, 407 F.3d at 993 (citing 49 C.F.R. § 26.51(a)).

- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- “How to do business” seminars;
- Sponsoring networking sessions throughout the state acquaint small firms with large firms;
- Creation and distribution of MBE/WBE and DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.⁷⁸

49 C.F.R. § 26.51(b) provides examples of race-, ethnicity-, and gender-neutral measures that should be seriously considered and utilized. The courts have held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race-, ethnicity-, and gender-neutral alternative, it does “require serious, good faith consideration of workable race-neutral alternatives.”⁷⁹

Additional factors considered under narrow tailoring In addition to the required consideration of the necessity for the relief and the efficacy of alternative remedies (race- and ethnicity-neutral efforts), the courts require evaluation of additional factors as listed above.⁸⁰ For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility;⁸¹ (2) a good faith efforts provisions;⁸² (3) waiver provisions;⁸³ (4) a rational basis for goals;⁸⁴ (5) graduation provisions;⁸⁵ (6) remedies only for groups for which there were findings of discrimination;⁸⁶ (7) sunset provisions;⁸⁷ and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.⁸⁸

⁷⁸ See 49 C.F.R. § 26.51(b); see, e.g., Croson, 488 U.S. at 509-510; N. Contracting, 473 F.3d at 724; Adarand VII, 228 F.3d 1179; 49 C.F.R. § 26.51(b); Eng’g Contractors Ass’n, 122 F.3d at 927-29.

⁷⁹ Western States Paving, 407 F.3d at 993.

⁸⁰ Eng’g Contractors Ass’n, 122 F.3d at 927.

⁸¹ CAEP I, 6 F.3d at 1009; Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality (“AGC of Ca.”), 950 F.2d 1401, 1417 (9th Cir. 1991); Coral Constr. Co. v. King County, 941 F.2d 910, 923 (9th Cir. 1991); Cone Corp. v. Hillsborough County, 908 F.2d 908, 917 (11th Cir. 1990).

⁸² CAEP I, 6 F.3d at 1019; Cone Corp., 908 F.2d at 917.

⁸³ CAEP I, 6 F.3d at 1009; AGC of Ca., 950 F.2d at 1417; Cone Corp., 908 F.2d at 917.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Western States Paving, 407 F.3d at 998; AGC of Ca., 950 F.2d at 1417.

⁸⁷ Peighral, 26 F.3d at 1559.

⁸⁸ Coral Constr., 941 F.2d at 925.

2. Intermediate Scrutiny Analysis.

Certain Federal Courts of Appeal, including the Ninth Circuit Court of Appeals, apply intermediate scrutiny to gender-conscious programs.⁸⁹ The Ninth Circuit and other courts have interpreted this standard to require that gender-based classifications be:

1. Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
2. Substantially related to the achievement of that underlying objective.⁹⁰

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the state actor to present “sufficient probative” evidence in support of its stated rationale for the program.⁹¹

Intermediate scrutiny, as interpreted by the Ninth Circuit and other federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, the intermediate scrutiny standard it has been held does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.⁹² And the Eleventh Circuit has held that “[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort... . Additionally, under intermediate scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”⁹³

3. Proposition 209 and the Federal Program Exception

Proposition 209 was passed by California voters in 1996 and became effective on August 28, 1997.⁹⁴ Proposition 209 amended the state constitution to prohibit discrimination and the use of race or gender preferences in public contracting, public employment and public education, unless required by federal law. Proposition 209 survived several years of legal challenges in both the state and federal courts. In 2000, the California Supreme Court found that a City of San Jose MWBE Program violated Proposition 209.⁹⁵ The court held that the use of participation components (MBE/WBE goals) and outreach components targeted to MBE/WBEs triggered strict scrutiny and were in

⁸⁹ See generally, Western States Paving, 407 F.3d at 990 n. 6; Coral Constr. Co., 941 F.2d at 931-932 (9th Cir. 1991); Equal. Found. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Eng'g Contractors Ass'n, 122 F.3d at 905, 908, 910; Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994); see also U.S. v. Virginia, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”)

⁹⁰ Id.

⁹¹ Id. The Seventh Circuit Court of Appeals, however, in Builders Ass'n of Greater Chicago v. County of Cook, Chicago, did not hold there is a different level of scrutiny for gender discrimination or gender based programs. 256 F.3d 642, 644-45 (7th Cir. 2001). The Court in Builders Ass'n rejected the distinction applied by the Eleventh Circuit in Engineering Contractors.

⁹² Coral Constr. Co., 941 F.2d at 931-932; See Eng'g Contractors Ass'n, 122 F.3d at 910.

⁹³ Id. at 929 (internal citations omitted.)

⁹⁴ California Constitution, Article 1, Section 31.

⁹⁵ Hi-Voltage Wire Works v. City of San Jose, 12 P.3d 1068 (Cal. 2000).

violation of Proposition 209.⁹⁶ The court also held certain outreach components that are not race, ethnicity, or gender based could be valid.⁹⁷

In Connerly v. State Personnel Board, the Governor of California and a taxpayer challenged the constitutionality of MBE/WBE and affirmative action type programs.⁹⁸ The California Court of Appeals found that Proposition 209 overlaps with the principles of equal protection, however, “[t]o the extent the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, Proposition 209 precludes such action.”⁹⁹ The court held the affirmative action type programs were invalid under Proposition 209. The court also determined that targeted outreach programs to women and minorities violated Proposition 209. But the court found that certain outreach programs “designed to broaden the pool of potential applicants without reliance on an impermissible race or gender classification are not constitutionally forbidden.”¹⁰⁰ The court also held as valid certain limited monitoring and reporting requirements, including as to the level of MBE/WBE participation.¹⁰¹

Proposition 209 expressly provides that: “[N]othing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.” California Constitution, Article I, §31(e). In C&C Construction v. Sacramento Municipal Utility District (“SMUD”), the plaintiff argued that SMUD’s race-based DBE program violated Proposition 209.¹⁰² SMUD argued its program fell within the meaning of the federal program exception in Section 31(e).¹⁰³ The court disagreed with SMUD that its race-based program was necessary to maintain federal funding, finding SMUD failed to establish any evidence that a federal program required such a race-based program, or that SMUD would lose federal funding if it did not have a race-based program.¹⁰⁴ The Court of Appeals held that a government entity must have substantial evidence that it will lose federal funding if it does not use race-based remedial measures, and any such race-based remedial measures must be narrowly tailored to minimize race-based discrimination.¹⁰⁵ The court referenced the USDOT regulations in 49 C.F.R. § 21.5(b)(7), as an example of a federal funds program, and stated these regulations require recipients of federal funds to establish programs to remedy past discrimination, but that these programs may be either race-based or race-neutral.¹⁰⁶ The court held that SMUD did

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Connerly v. State Personnel Board, 92 Cal. App. 4th 16, 39 (2001).

⁹⁹ Id. at 42.

¹⁰⁰ Id. at 46.

¹⁰¹ Id. at 53, 63.

¹⁰² C&C Construction v. Sacramento Municipal Utility District (“SMUD”), 122 Cal. App. 4th 284 (3d Dist. C.A. 2004).

¹⁰³ Id. at 291.

¹⁰⁴ Id. at 310. It is noteworthy that prior to Proposition 209, a similar argument was made that an injunction prohibiting the implementation by Los Angeles Metro of its DBE Program would subject Los Angeles Metro to a loss of federal funding. Cornelius v. L.A. County Metro. Transp. Auth., 49 Cal App. 4th 1761, 1769 (1996) (holding that plaintiff satisfied the first element via his claim that the DBE Program violated the equal protection of the law but holding that plaintiff lacked standing).

¹⁰⁵ Id. at 298.

¹⁰⁶ Id.

not prove that it could not remedy past identified discrimination with race-neutral measures, and thus rejected SMUD's argument that it met the federal program exception to Proposition 209.¹⁰⁷

In Coral Construction, Inc. v. the City and County of San Francisco ("Coral Construction"),¹⁰⁸ the Supreme Court of the State of California recently considered an action brought against the City and County of San Francisco for declaratory and injunctive relief from an ordinance establishing an MBE/WBE program, which established race- and gender-based remedies on construction contracts.¹⁰⁹ The Superior Court struck down the MBE/WBE ordinance as violative of California's constitutional amendment (Proposition 209) prohibiting race- and gender-based preferences in public contracting.¹¹⁰ The City and County of San Francisco (the "City") appealed to the California Court of Appeals, which affirmed in part, reversed in part, and remanded the case back to the Superior Court of the City and County of San Francisco.¹¹¹ The Court of Appeals remanded the case for adjudication of the City's claim that the federal equal protection clause required the ordinance.¹¹² The Supreme Court of the State of California granted review, superseding the opinion of the California Court of Appeals.¹¹³

The Court held that section 31 prohibits race- and gender-conscious programs the federal equal clause *permits* but does not *require*.¹¹⁴ The Court stated that section 31 prohibits discrimination and preferential treatment, but poses no obstacle to race- or gender-conscious measures *required* by federal law or the federal Constitution.¹¹⁵ The Court rejected the City's argument that its MBE/WBE ordinance invokes the federal funding exception to section 31 in subdivision (e).¹¹⁶ The Court concluded that the relevant federal regulations do not require racial preferences by the City.¹¹⁷ The Court only addressed the question whether the relevant federal regulations, independently of the federal equal protection clause, required the City's MBE/WBE ordinance.¹¹⁸ The Court held that the federal funding exception under subdivision (e) of section 31 does not exempt the MBE/WBE ordinance from section 31's general prohibition of racial preferences.¹¹⁹

Finally, the Court considered the City's argument that the federal equal protection clause requires the MBE/WBE ordinance as a remedy for the City's own discrimination.¹²⁰ The Court held the California Court of Appeals ruled correctly and affirmed its judgment remanding the case for the limited purpose of adjudicating the issue of whether the federal equal protection clause requires the

¹⁰⁷ Id.

¹⁰⁸ 50 Cal. 4th 315, 235 P.3d 947, 113 Cal.Rptr.3d 279 (S. Ct. Cal. 2010).

¹⁰⁹ 235 P.3d at 952-956.

¹¹⁰ 235 P.3d at 956.

¹¹¹ 235 P.3d at 956.

¹¹² Id.

¹¹³ Id.

¹¹⁴ 235 P.3d at 957.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id. at n. 14.

¹¹⁹ Id. at 962.

¹²⁰ 235 P.3d at 962.

MBE/WBE ordinance as a remedy for the City's own discrimination (that the City has purposefully or intentionally discriminated) under the federal compulsion doctrine.¹²¹

Ongoing Review. The above represents a brief summary of the legal framework pertinent to implementation of MBE/WBE, DBE, or race-, ethnicity-, or gender-neutral programs. Because this is a dynamic area of the law, the framework is subject to ongoing review as the law continues to evolve. The following provides more detailed summaries of key recent decisions.

¹²¹ *Id.*

D. Recent Decisions Involving State or Local Government MBE/WBE Programs and the Federal DBE Program In The Ninth Circuit.

1. Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al., U.S.D.C., E.D.Cal, Civil Action No. S-09-1622, Slip Opinion, (E.D. Cal. April 20, 2011)

This case involved a challenge by the Associated General Contractors of America, San Diego Chapter, Inc. (“AGC”) against the California Department of Transportation (“Caltrans”), to the Disadvantaged Business Enterprise (“DBE”) program adopted by Caltrans implementing the Federal DBE Program at 49 C.F.R. Part 26. The AGC sought an injunction against Caltrans enjoining its use of the DBE program and declaratory relief from the court declaring the Caltrans DBE program to be unconstitutional.

Caltrans’ DBE program set a 13.5 percent DBE goal for its federally-funded contracts. The 13.5 percent goal, as implemented by Caltrans, included utilizing half race-neutral means and half race-conscious means to achieve the goal. Slip Opinion Transcript at 42. Caltrans did not include all minorities in the race-conscious component of its goal, excluding Hispanic males and Subcontinent Asian American males. *Id.* at 42. Accordingly, the race-conscious component of the Caltrans DBE program applied only to African Americans, Native Americans, Asian Pacific Americans, and white women. *Id.*

Caltrans established this goal and its DBE program following a disparity study conducted by BBC Research & Consulting, which included gathering statistical and anecdotal evidence of race and gender disparities in the California construction industry. Slip Opinion Transcript at 42.

The parties filed motions for summary judgment. The district court issued its ruling at the hearing on the motions for summary judgment granting Caltrans’ motion for summary judgment in support of its DBE program and denying the motion for summary judgment filed by the plaintiffs. Slip Opinion Transcript at 54. The court held Caltrans’ DBE program applying and implementing the provisions of the Federal DBE Program is valid and constitutional. *Id.* at 56.

The district court analyzed Caltrans’ implementation of the DBE program under the strict scrutiny doctrine and found the burden of justifying different treatment by ethnicity or gender is on the government. The district court applied the Ninth Circuit Court of Appeals ruling in Western States Paving Company v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005). The court stated that the federal government has a compelling interest “in ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry.” Slip Opinion Transcript at 43, *quoting* Western States Paving, 407 F.3d at 991, *citing* City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989).

The district court pointed out that the Ninth Circuit in Western States Paving and the Tenth Circuit Court of Appeals and the Eighth Circuit Court of Appeals have upheld the facial validity of the Federal DBE Program.

The district court stated that based on Western States Paving, the court is required to look at the Caltrans DBE program itself to see if there is a strong basis in evidence to show that Caltrans is acting

for a proper purpose and if the program itself has been narrowly tailored. Slip Opinion Transcript at 45. The court concluded that narrow tailoring “does not require exhaustion of every conceivable race-neutral alternative, but it does require serious, good-faith consideration of workable race-neutral alternatives.” Slip Opinion Transcript at 45.

The district court identified the issues as whether Caltrans has established a compelling interest supported by a strong basis in evidence for its program, and does Caltrans’ race-conscious program meet the strict scrutiny required. Slip Opinion Transcript at 51-52. The court also phrased the issue as whether the Caltrans DBE program, “which does give preference based on race and sex, whether that program is narrowly tailored to remedy the effects of identified discrimination...”, and whether Caltrans has complied with the Ninth Circuit’s guidance in Western States Paving. Slip Opinion Transcript at 52.

The district court held “that Caltrans has done what the Ninth Circuit has required it to do, what the federal government has required it to do, and that it clearly has implemented a program which is supported by a strong basis in evidence that gives rise to a compelling interest, and that its race-conscious program, the aspect of the program that does implement race-conscious alternatives, it does under a strict-scrutiny standard meet the requirement that it be narrowly tailored as set forth in the case law.” Slip Opinion Transcript at 52.

The court rejected the plaintiff’s arguments that anecdotal evidence failed to identify specific acts of discrimination, finding “there are numerous instances of specific discrimination.” Slip Opinion Transcript at 52. The district court found that after the Western States Paving case, Caltrans went to a racially neutral program, and the evidence showed that the program would not meet the goals of the federally-funded program, and the federal government became concerned about what was going on with Caltrans’ program applying only race-neutral alternatives. *Id.* at 52-53. The court then pointed out that Caltrans engaged in an “extensive disparity study, anecdotal evidence, both of which is what was missing” in the Western States Paving Company case. *Id.* at 53.

The court concluded that Caltrans “did exactly what the Ninth Circuit required” and that Caltrans has gone “as far as is required.” Slip Opinion Transcript at 53.

The court held that as a matter of law, the Caltrans DBE program is, under Western States Paving Company and the Supreme Court cases, “clearly constitutional,” and “narrowly tailored.” Slip Opinion Transcript at 56. The court found there are significant differences between Caltrans’ program and the program in the Western States Paving case. *Id.* at 54-55. In Western States Paving, the court said there were no statistical studies performed to try and establish the discrimination in the highway contracting industry, and that Washington simply compared the proportion of DBE firms in the state with the percentage of contracting funds awarded to DBEs on race-neutral contracts to calculate a disparity. *Id.* at 55.

The district court stated that the Ninth Circuit in Western States Paving found this to be oversimplified and entitled to little weight “because it did not take into account factors that may affect the relative capacity of DBEs to undertake contracting work.” Slip Opinion Transcript at 55. Whereas, the district court held the “disparity study used by Caltrans was much more comprehensive and accounted for this and other factors.” *Id.* at 55. The district noted that the State of Washington did not introduce any anecdotal information. The difference in this case, the district court found, “is that the disparity study includes both extensive statistical evidence, as well as anecdotal evidence

gathered through surveys and public hearings, which support the statistical findings of the underutilization faced by DBEs without the DBE program. Add to that the anecdotal evidence submitted in support of the summary judgment motion as well. And this evidence before the Court clearly supports a finding that this program is constitutional.” *Id.* at 56.

The court held that because “Caltrans’ DBE program is based on substantial statistical and anecdotal evidence of discrimination in the California contracting industry and because the Court finds that it is narrowly tailored, the Court upholds the program as constitutional.” Slip Opinion Transcript at 56.

The decision of the district court has been appealed to the Ninth Circuit Court of Appeals.

2. Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006)

This case out of the Ninth Circuit struck down a state’s implementation of the Federal DBE Program for failure to pass constitutional muster. In Western States, the Ninth Circuit held that the State of Washington’s implementation of the Federal DBE Program was unconstitutional because it did not satisfy the narrow tailoring element of the constitutional test. The Ninth Circuit held that the State must present its own evidence of past discrimination within its own boundaries in order to survive constitutional muster and could not merely rely upon data supplied by Congress. The United States Supreme Court denied certiorari. The analysis in the decision also is instructive in particular as to the application of the narrowly tailored prong of the strict scrutiny test.

Plaintiff Western States Paving Co. (“plaintiff”) was a white male-owned asphalt and paving company. 407 F.3d 983, 987 (9th Cir. 2005). In July of 2000, plaintiff submitted a bid for a project for the City of Vancouver; the project was financed with federal funds provided to the Washington State DOT (“WSDOT”) under the Transportation Act for the 21st Century (“TEA-21”). *Id.*

Congress enacted TEA-21 in 1991 and after multiple renewals, it was set to expire on May 31, 2004. *Id.* at 988. TEA-21 established minimum minority-owned business participation requirements (10%) for certain federally-funded projects. *Id.* The regulations require each state accepting federal transportation funds to implement a DBE program that comports with the TEA-21. *Id.* TEA-21 indicates the 10 percent DBE utilization requirement is “aspirational,” and the statutory goal “does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.” *Id.*

TEA-21 sets forth a two-step process for a state to determine its own DBE utilization goal: (1) the state must calculate the relative availability of DBEs in its local transportation contracting industry (one way to do this is to divide the number of ready, willing and able DBEs in a state by the total number of ready, willing and able firms); and (2) the state is required to “adjust this base figure upward or downward to reflect the proven capacity of DBEs to perform work (as measured by the volume of work allocated to DBEs in recent years) and evidence of discrimination against DBEs obtained from statistical disparity studies.” *Id.* at 989 (citing regulation). A state is also permitted to consider discrimination in the bonding and financing industries and the present effects of past discrimination. *Id.* (citing regulation). TEA-21 requires a generalized, “undifferentiated” minority

goal and a state is prohibited from apportioning their DBE utilization goal among different minority groups (e.g., between Hispanics, blacks, and women). *Id.* at 990 (citing regulation).

“A state must meet the maximum feasible portion of this goal through race- [and gender-] neutral means, including informational and instructional programs targeted toward all small businesses.” *Id.* (citing regulation). Race- and sex-conscious contract goals must be used to achieve any portion of the contract goals not achievable through race- and gender-neutral measures. *Id.* (citing regulation). However, TEA-21 does not require that DBE participation goals be used on every contract or at the same level on every contract in which they are used; rather, the overall effect must be to “obtain that portion of the requisite DBE participation that cannot be achieved through race- [and gender-] neutral means.” *Id.* (citing regulation).

A prime contractor must use “good faith efforts” to satisfy a contract’s DBE utilization goal. *Id.* (citing regulation). However, a state is prohibited from enacting rigid quotas that do not contemplate such good faith efforts. *Id.* (citing regulation).

Under the TEA-21 minority utilization requirements, the City set a goal of 14 percent minority participation on the first project plaintiff bid on; the prime contractor thus rejected plaintiff’s bid in favor of a higher bidding minority-owned subcontracting firm. *Id.* at 987. In September of 2000, plaintiff again submitted a bid on project financed with TEA-21 funds and was again rejected in favor of a higher bidding minority-owned subcontracting firm. *Id.* The prime contractor expressly stated that he rejected plaintiff’s bid due to the minority utilization requirement. *Id.*

Plaintiff filed suit against the WSDOT, Clark County, and the City, challenging the minority preference requirements of TEA-21 as unconstitutional both facially and as applied. *Id.* The district court rejected both of plaintiff’s challenges. The district court held the program was facially constitutional because it found that Congress had identified significant evidence of discrimination in the transportation contracting industry and the TEA-21 was narrowly tailored to remedy such discrimination. *Id.* at 988. The district court rejected the as-applied challenge concluding that Washington’s implementation of the program comported with the federal requirements and the state was not required to demonstrate that its minority preference program independently satisfied strict scrutiny. *Id.* Plaintiff appealed to the Ninth Circuit Court of Appeals. *Id.*

The Ninth Circuit considered whether the TEA-21, which authorizes the use of race- and gender-based preferences in federally-funded transportation contracts, violated equal protection, either on its face or as applied by the State of Washington.

The court applied a strict scrutiny analysis to both the facial and as-applied challenges to TEA-21. *Id.* at 990-91. The court did not apply a separate intermediate scrutiny analysis to the gender-based classifications because it determined that it “would not yield a different result.” *Id.* at 990, n. 6.

Facial challenge (Federal Government). The court first noted that the federal government has a compelling interest in “ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry.” *Id.* at 991, citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492 (1989) and *Adarand Constructors, Inc. v. Slater (“Adarand VII”)*, 228 F.3d 1147, 1176 (10th Cir. 2000). The court found that “[b]oth statistical and anecdotal evidence are relevant in identifying the existence of discrimination.” *Id.* at 991. The court found that although Congress did not have evidence of

discrimination against minorities in every state, such evidence was unnecessary for the enactment of nationwide legislation. *Id.* However, citing both the Eighth and Tenth Circuits, the court found that Congress had ample evidence of discrimination in the transportation contracting industry to justify TEA-21. *Id.* The court also found that because TEA-21 set forth flexible race-conscious measures to be used only when race-neutral efforts were unsuccessful, the program was narrowly tailored and thus satisfied strict scrutiny. *Id.* at 992-93. The court accordingly rejected plaintiff's facial challenge. *Id.*

As-applied challenge (State of Washington). Plaintiff alleged TEA-21 was unconstitutional as-applied because there was no evidence of discrimination in Washington's transportation contracting industry. *Id.* at 995. The State alleged that it was not required to independently demonstrate that its application of TEA-21 satisfied strict scrutiny. *Id.* The United States intervened to defend TEA-21's facial constitutionality, and "unambiguously conceded that TEA-21's race conscious measures can be constitutionally applied only in those states where the effects of discrimination are present." *Id.* at 996; see also *Br. for the United States* at 28 (April 19, 2004) ("DOT's regulations ... are designed to assist States in ensuring that race-conscious remedies are limited to *only* those jurisdictions where discrimination or its effects are a problem and *only* as a last resort when race-neutral relief is insufficient." (emphasis in original)).

The court found that the Eighth Circuit was the only other court to consider an as-applied challenge to TEA-21 in *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964 (8th Cir. 2003), *cert. denied* 124 S. Ct. 2158 (2004). *Id.* at 996. The Eighth Circuit did not require Minnesota and Nebraska to identify a compelling purpose for their programs independent of Congress's nationwide remedial objective. *Id.* However, the Eighth Circuit did consider whether the states' implementation of TEA-21 was narrowly tailored to achieve Congress's remedial objective. *Id.* The Eighth Circuit thus looked to the states' independent evidence of discrimination because "to be narrowly tailored, a *national* program must be limited to those parts of the country where its race-based measures are demonstrably needed." *Id.* (internal citations omitted). The Eighth Circuit relied on the states' statistical analyses of the availability and capacity of DBEs in their local markets conducted by outside consulting firms to conclude that the states satisfied the narrow tailoring requirement. *Id.* at 997.

The court concurred with the Eighth Circuit and found that Washington did not need to demonstrate a compelling interest for its DBE program, independent from the compelling nationwide interest identified by Congress. *Id.* However, the court determined that the district court erred in holding that mere compliance with the federal program satisfied strict scrutiny. *Id.* Rather, the court held that whether Washington's DBE program was narrowly tailored was dependent on the presence or absence of discrimination in Washington's transportation contracting industry. *Id.* at 997-98. "If no such discrimination is present in Washington, then the State's DBE program does not serve a remedial purpose; it instead provides an unconstitutional windfall to minority contractors solely on the basis of their race or sex." *Id.* at 998. The court held that a Sixth Circuit decision to the contrary, *Tennessee Asphalt Co. v. Farris*, 942 F.2d 969, 970 (6th Cir. 1991), misinterpreted earlier case law. *Id.* at 997, n. 9.

The court found that moreover, even where discrimination is present in a state, a program is narrowly tailored only if it applies only to those minority groups who have actually suffered discrimination. *Id.* at 998, citing *Croson*, 488 U.S. at 478. The court also found that in *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 713 (9th Cir. 1997), it had "previously expressed similar

concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination.” Id. In Monterey Mechanical, the court held that “the overly inclusive designation of benefited minority groups was a ‘red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.’” Id., citing Monterey Mechanical, 125 F.3d at 714. The court found that other courts are in accord. Id. at 998-99, citing Builders Ass’n of Greater Chi. v. County of Cook, 256 F.3d 642, 647 (7th Cir. 2001); Associated Gen. Contractors of Ohio, Inc. v. Drabik, 214 F.3d 730, 737 (6th Cir. 2000); O’Donnell Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992). Accordingly, the court found that each of the principal minority groups benefited by Washington’s DBE program must have suffered discrimination within the State. Id. at 999.

The court found that Washington’s program closely tracked the sample USDOT DBE program. Id. WSDOT calculated its DBE participation goal by first calculating the availability of ready, willing and able DBEs in the State (dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory by the total number of transportation contracting firms listed in the Census Bureau’s Washington database, which equaled 11.17%). Id. WSDOT then upwardly adjusted the 11.17 percent base figure to 14 percent “to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs [during a certain time period].” Id. Although DBEs performed 18 percent of work on State projects during the prescribed time period, Washington set the final adjusted figure at 14 percent because TEA-21 reduced the number of eligible DBEs in Washington by imposing more stringent certification requirements. Id. at 999, n. 11. WSDOT did not make an adjustment to account for discriminatory barriers in obtaining bonding and financing. Id. WSDOT similarly did not make any adjustment to reflect present or past discrimination “because it lacked any statistical studies evidencing such discrimination.” Id.

WSDOT then determined that it needed to achieve 5 percent of its 14 percent goal through race-conscious means based on a 9 percent DBE participation rate on state-funded contracts that did not include affirmative action components (i.e., 9% participation could be achieved through race-neutral means). Id. at 1000. The USDOT approved WSDOT goal-setting program and the totality of its 2000 DBE program. Id.

Washington conceded that it did not have statistical studies to establish the existence of past or present discrimination. Id. It argued, however, that it had evidence of discrimination because minority-owned firms had the capacity to perform 14 percent of the State’s transportation contracts in 2000 but received only 9 percent of the subcontracting funds on contracts that did not include an affirmative action’s component. Id. The court found that the State’s methodology was flawed because the 14 percent figure was based on the earlier 18 percent figure, discussed supra, which included contracts with affirmative action components. Id. The court concluded that the 14 percent figure did not accurately reflect the performance capacity of DBEs in a race-neutral market. Id. The court also found the State conceded as much to the district court. Id.

The court held that a disparity between DBE performance on contracts with an affirmative action component and those without “does not provide any evidence of discrimination against DBEs.” Id. The court found that the only evidence upon which Washington could rely was the disparity between the proportion of DBE firms in the State (11.17%) and the percentage of contracts awarded to DBEs

on race-neutral grounds (9%). *Id.* However, the court determined that such evidence was entitled to “little weight” because it did not take into account a multitude of other factors such as firm size. *Id.*

Moreover, the court found that the minimal statistical evidence was insufficient evidence, standing alone, of discrimination in the transportation contracting industry. *Id.* at 1001. The court found that WSDOT did not present any anecdotal evidence. *Id.* The court rejected the State’s argument that the DBE applications themselves constituted evidence of past discrimination because the applications were not properly in the record, and because the applicants were not required to certify that they had been victims of discrimination in the contracting industry. *Id.* Accordingly, the court held that because the State failed to proffer evidence of discrimination within its own transportation contracting market, its DBE program was not narrowly tailored to Congress’s compelling remedial interest. *Id.* at 1002-03.

The court affirmed the district court’s grant on summary judgment to the United States regarding the facial constitutionality of TEA-21, reversed the grant of summary judgment to Washington on the as-applied challenge, and remanded to determine the State’s liability for damages.

The dissent argued that where the State complied with TEA-21 in implementing its DBE program, it was not susceptible to an as-applied challenge.

3. Western States Paving Co. v. Washington DOT, US DOT & FHWA, 2006 WL 1734163 (W.D. Wash. June 23, 2006) (unpublished opinion)

This case was before the district court pursuant to the Ninth Circuit’s remand order in Western States Paving Co. v. Washington DOT, US DOT, and FHWA, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006). In this decision, the district court adjudicated cross Motions for Summary Judgment on plaintiff’s claim for injunction and for damages under 42 U.S.C. §§1981, 1983, and §2000d.

Because the Washington Department of Transportation (“WSDOT”) voluntarily discontinued its DBE program after the Ninth Circuit decision, supra, the district court dismissed plaintiff’s claim for injunctive relief as moot. The court found “it is absolutely clear in this case that WSDOT will not resume or continue the activity the Ninth Circuit found unlawful in Western States,” and cited specifically to the informational letters WSDOT sent to contractors informing them of the termination of the program.

Second, the court dismissed Western States’ claims under 42 U.S.C. §§ 1981, 1983, and 2000d against Clark County and the City of Vancouver holding neither the City or the County acted with the requisite discriminatory intent. The court held the County and the City were merely implementing the WSDOT’s unlawful DBE program and their actions in this respect were involuntary and required no independent activity. The court also noted that the County and the City were not parties to the precise discriminatory actions at issue in the case, which occurred due to the conduct of the “State defendants.” Specifically, the WSDOT — and not the County or the City — developed the DBE program without sufficient anecdotal and statistical and evidence, and improperly relied on the affidavits of contractors seeking DBE certification “who averred that they had been subject to ‘general societal discrimination.’”

Third, the court dismissed plaintiff's 42 U.S.C. §§ 1981 and 1983 claims against WSDOT, finding them barred by the Eleventh Amendment sovereign immunity doctrine. However, the court allowed plaintiff's 42 U.S.C. §2000d claim to proceed against WSDOT because it was not similarly barred. The court held that Congress had conditioned the receipt of federal highway funds on compliance with Title VI (42 U.S.C. § 2000d et seq.) and the waiver of sovereign immunity from claims arising under Title VI. Section 2001 specifically provides that "a State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ... Title VI." The court held that this language put the WSDOT on notice that it faced private causes of action in the event of noncompliance.

The court held that WSDOT's DBE program was not narrowly tailored to serve a compelling government interest. The court stressed that discriminatory intent is an essential element of a plaintiff's claim under Title VI. The WSDOT argued that even if sovereign immunity did not bar plaintiff's §2000d claim, WSDOT could be held liable for damages because there was no evidence that WSDOT staff knew of or consciously considered plaintiff's race when calculating the annual utilization goal. The court held that since the policy was not "facially neutral" — and was in fact "specifically race conscious" — any resulting discrimination was therefore intentional, whether the reason for the classification was benign or its purpose remedial. As such, WSDOT's program was subject to strict scrutiny.

In order for the court to uphold the DBE program as constitutional, WSDOT had to show that the program served a compelling interest and was narrowly tailored to achieve that goal. The court found that the Ninth Circuit had already concluded that the program was not narrowly tailored and the record was devoid of any evidence suggesting that minorities currently suffer or have suffered discrimination in the Washington transportation contracting industry. The court therefore denied WSDOT's Motion for Summary Judgment on the §2000d claim. The remedy available to Western States remains for further adjudication and the case is currently pending.

4. Monterey Mechanical v. Wilson, 125 F.3d 702 (9th Cir. 1997)

This case is instructive in that the Ninth Circuit analyzed and held invalid the enforcement of a MBE/WBE-type program. Although the program at issue utilized the term "goals" as opposed to "quotas," the Ninth Circuit rejected such a distinction, holding "[t]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." The case also is instructive because it found the use of "goals" and the application of "good faith efforts" in connection with achieving goals to trigger strict scrutiny.

Monterey Mechanical Co. (the "plaintiff") submitted the low bid for a construction project for the California Polytechnic State University (the "University"). 125 F.3d 702, 704 (9th Cir. 1994). The University rejected the plaintiff's bid because the plaintiff failed to comply with a state statute requiring prime contractors on such construction projects to subcontract 23 percent of the work to MBE/WBEs or, alternatively, demonstrate good faith outreach efforts. Id. The plaintiff conducted good faith outreach efforts but failed to provide the requisite documentation; the awardee prime contractor did not subcontract any portion of the work to MBE/WBEs but did include documentation of good faith outreach efforts. Id.

Importantly, the University did not conduct a disparity study, and instead argued that because "the 'goal requirements' of the scheme [did] not involve racial or gender quotas, set-asides or

preferences,” the University did not need a disparity study. *Id.* at 705. The plaintiff protested the contract award and sued the University’s trustees, and a number of other individuals (collectively the “defendants”) alleging the state law was violative of the Equal Protection Clause. *Id.* The district court denied the plaintiff’s motion for an interlocutory injunction and the plaintiff appealed to the Ninth Circuit Court of Appeals. *Id.*

The defendants first argued that the statute was constitutional because it treated all general contractors alike, by requiring all to comply with the MBE/WBE participation goals. *Id.* at 708. The court held, however, that a minority or women business enterprise could satisfy the participation goals by allocating the requisite percentage of work to itself. *Id.* at 709. The court held that contrary to the district court’s finding, such a difference was not *de minimis*. *Id.*

The defendant’s also argued that the statute was not subject to strict scrutiny because the statute did not impose rigid quotas, but rather only required good faith outreach efforts. *Id.* at 710. The court rejected the argument finding that although the statute permitted awards to bidders who did not meet the percentage goals, “they are rigid in requiring precisely described and monitored efforts to attain those goals.” *Id.* The court cited its own earlier precedent to hold that “the provisions are not immunized from scrutiny because they purport to establish goals rather than quotas ... [T]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them.” *Id.* at 710-11 (internal citations and quotations omitted). The court found that the statute encouraged set asides and cited Concrete Works of Colorado v. Denver, 36 F.3d 1512 (10th Cir. 1994), as analogous support for the proposition. *Id.* at 711.

The court found that the statute treated contractors differently based upon their race, ethnicity and gender, and although “worded in terms of goals and good faith, the statute imposes mandatory requirements with concreteness.” *Id.* The court also noted that the statute may impose additional compliance expenses upon non-MBE/WBE firms who are required to make good faith outreach efforts (e.g., advertising) to MBE/WBE firms. *Id.* at 712.

The court then conducted strict scrutiny (race), and an intermediate scrutiny (gender) analyses. *Id.* at 712-13. The court found the University presented “no evidence” to justify the race- and gender-based classifications and thus did not consider additional issues of proof. *Id.* at 713. The court found that the statute was not narrowly tailored because the definition of “minority” was overbroad (e.g., inclusion of Aleuts). *Id.* at 714, citing Wygant v. Jackson Board of Education, 476 U.S. 267, 284, n. 13 (1986) and City of Richmond v. J.A. Croson, Co., 488 U.S. 469, 505-06 (1989). The court found “[a] broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional scrutiny.” *Id.* at 714, citing Hopwood v. State of Texas, 78 F.3d 932, 951 (5th Cir. 1996). The court held that the statute violated the Equal Protection Clause.

5. Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity (“AGCC”), 950 F.2d 1401 (9th Cir. 1991)

In Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity (“AGCC”), the Ninth Circuit Court of Appeals denied plaintiffs request for preliminary injunction to enjoin enforcement of the city’s bid preference program. 950 F.2d 1401 (9th Cir. 1991). Although an older case, AGCC is instructive as to the analysis conducted by the Ninth Circuit. The court discussed the utilization of statistical evidence and anecdotal evidence in the context of the strict scrutiny analysis. *Id.* at 1413-18.

The City of San Francisco adopted an ordinance in 1989 providing bid preferences to prime contractors who were members of groups found disadvantaged by previous bidding practices, and specifically provided a 5 percent bid preference for LBEs, WBEs and MBEs. 950 F.2d at 1405. Local MBEs and WBEs were eligible for a 10 percent total bid preference, representing the cumulative total of the five percent preference given LBEs and the 5 percent preference given MBEs and WBEs. Id. The ordinance defined “MBE” as an economically disadvantaged business that was owned and controlled by one or more minority persons, which were defined to include Asian, blacks and Latinos. “WBE” was defined as an economically disadvantaged business that was owned and controlled by one or more women. Economically disadvantaged was defined as a business with average gross annual receipts that did not exceed \$14 million. Id.

The Motion for Preliminary Injunction challenged the constitutionality of the MBE provisions of the 1989 Ordinance insofar as it pertained to Public Works construction contracts. Id. at 1405. The district court denied the Motion for Preliminary Injunction on the AGC’s constitutional claim on the ground that AGC failed to demonstrate a likelihood of success on the merits. Id. at 1412.

The Ninth Circuit Court of Appeals applied the strict scrutiny analysis following the decision of the U.S. Supreme Court in City of Richmond v. Croson. The court stated that according to the U.S. Supreme Court in Croson, a municipality has a compelling interest in redressing, not only discrimination committed by the municipality itself, but also discrimination committed by private parties within the municipalities’ legislative jurisdiction, so long as the municipality in some way perpetuated the discrimination to be remedied by the program. Id. at 1412-13, citing Croson at 488 U.S. at 491-92, 537-38. To satisfy this requirement, “the governmental actor need not be an active perpetrator of such discrimination; passive participation will satisfy this sub-part of strict scrutiny review.” Id. at 1413, quoting Coral Construction Company v. King County, 941 F.2d 910 at 916 (9th Cir. 1991). In addition, the [m]ere infusion of tax dollars into a discriminatory industry may be sufficient governmental involvement to satisfy this prong.” Id. at 1413 quoting Coral Construction, 941 F.2d at 916.

The court pointed out that the City had made detailed findings of prior discrimination in construction and building within its borders, had testimony taken at more than ten public hearings and received numerous written submissions from the public as part of its anecdotal evidence. Id. at 1414. The City Departments continued to discriminate against MBEs and WBEs and continued to operate under the “old boy network” in awarding contracts, thereby disadvantaging MBEs and WBEs. Id. And, the City found that large statistical disparities existed between the percentage of contracts awarded to MBEs and the percentage of available MBEs. 950 F.2d at 1414. The court stated the City also found “discrimination in the private sector against MBEs and WBEs that is manifested in and exacerbated by the City’s procurement practices.” Id. at 1414.

The Ninth Circuit found the study commissioned by the City indicated the existence of large disparities between the award of city contracts to available non-minority businesses and to MBEs. Id. at 1414. Using the City and County of San Francisco as the “relevant market,” the study compared the number of available MBE prime construction contractors in San Francisco with the amount of contract dollars awarded by the City to San Francisco-based MBEs for a particular year. Id. at 1414. The study found that available MBEs received far fewer city contracts in proportion to their numbers than their available non-minority counterparts. Id. Specifically, the study found that with respect to prime construction contracting, disparities between the number of available local Asian-, black- and

Hispanic-owned firms and the number of contracts awarded to such firms were statistically significant and supported an inference of discrimination. *Id.* For example, in prime contracting for construction, although MBE availability was determined to be at 49.5 percent, MBE dollar participation was only 11.1 percent. *Id.* The Ninth Circuit stated that in its decision in Coral Construction, it emphasized that such statistical disparities are “an invaluable tool and demonstrating the discrimination necessary to establish a compelling interest. *Id.* at 1414, citing to Coral Construction, 941 F.2d at 918 and Croson, 488 U.S. at 509.

The court noted that the record documents a vast number of individual accounts of discrimination, which bring “the cold numbers convincingly to life. *Id.* at 1414, quoting Coral Construction, 941 F.2d at 919. These accounts include numerous reports of MBEs being denied contracts despite being the low bidder, MBEs being told they were not qualified although they were later found qualified when evaluated by outside parties, MBEs being refused work even after they were awarded contracts as low bidder, and MBEs being harassed by city personnel to discourage them from bidding on city contracts. *Id.* at 1415. The City pointed to numerous individual accounts of discrimination, that indicate an “old boy network” still exists, and that racial discrimination is still prevalent within the San Francisco construction industry. *Id.* The court found that such a “combination of convincing anecdotal and statistical evidence is potent.” *Id.* at 1415 quoting Coral Construction, 941 F.2d at 919.

The court also stated that the 1989 Ordinance applies only to resident MBEs. The City, therefore, according to the court, appropriately confined its study to the city limits in order to focus on those whom the preference scheme targeted. *Id.* at 1415. The court noted that the statistics relied upon by the City to demonstrate discrimination in its contracting processes considered only MBEs located within the City of San Francisco. *Id.*

The court pointed out the City’s findings were based upon dozens of specific instances of discrimination that are laid out with particularity in the record, as well as the significant statistical disparities in the award of contracts. The court noted that the City must simply demonstrate the existence of past discrimination with specificity, but there is no requirement that the legislative findings specifically detail each and every incidence that the legislative body has relied upon in support of this decision that affirmative action is necessary. *Id.* at 1416.

In its analysis of the “narrowly tailored” requirement, the court focused on three characteristics identified by the decision in Croson as indicative of narrow tailoring. First, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation in public contracting. *Id.* at 1416. Second, the plan should avoid the use of “rigid numerical quotas.” *Id.* According to the Supreme Court, systems that permit waiver in appropriate cases and therefore require some individualized consideration of the applicants pose a lesser danger of offending the Constitution. *Id.* Mechanisms that introduce flexibility into the system also prevent the imposition of a disproportionate burden on a few individuals. *Id.* Third, “an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction. *Id.* at 1416 quoting Coral Construction, 941 F.2d at 922.

The court found that the record showed the City considered, but rejected as not viable, specific race-neutral alternatives including a fund to assist newly established MBEs in meeting bonding requirements. The court stated that “while strict scrutiny requires serious, good faith consideration of

race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative ... however irrational, costly, unreasonable, and unlikely to succeed such alternative may be.” *Id.* at 1417 quoting Coral Construction, 941 F.2d at 923. The court found the City ten years before had attempted to eradicate discrimination in city contracting through passage of a race-neutral ordinance that prohibited city contractors from discriminating against their employees on the basis of race and required contractors to take steps to integrate their work force; and that the City made and continues to make efforts to enforce the anti-discrimination ordinance. *Id.* at 1417. The court stated inclusion of such race-neutral measures is one factor suggesting that an MBE plan is narrowly tailored. *Id.* at 1417.

The court also found that the Ordinance possessed the requisite flexibility. Rather than a rigid quota system, the City adopted a more modest system according to the court, that of bid preferences. *Id.* at 1417. The court pointed out that there were no goals, quotas, or set-asides and moreover, the plan remedies only specifically identified discrimination: the City provides preferences only to those minority groups found to have previously received a lower percentage of specific types of contracts than their availability to perform such work would suggest. *Id.* at 1417.

The court rejected the argument of AGCC that to pass constitutional muster any remedy must provide redress only to specific individuals who have been identified as victims of discrimination. *Id.* at 1417, n. 12. The Ninth Circuit agreed with the district court that an iron-clad requirement limiting any remedy to individuals personally proven to have suffered prior discrimination would render any race-conscious remedy “superfluous,” and would thwart the Supreme Court’s directive in Croson that race-conscious remedies may be permitted in some circumstances. *Id.* at 1417, n. 12. The court also found that the burdens of the bid preferences on those not entitled to them appear “relatively light and well distributed.” *Id.* at 1417. The court stated that the Ordinance was “limited in its geographical scope to the boundaries of the enacting jurisdiction. *Id.* at 1418, quoting Coral Construction, 941 F.2d at 925. The court found that San Francisco had carefully limited the ordinance to benefit only those MBEs located within the City’s borders. *Id.* 1418.

6. Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991)

In Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991), the Ninth Circuit examined the constitutionality of King County, Washington’s minority and women business set-aside program in light of the standard set forth in City of Richmond v. J.A. Croson Co. The court held that although the County presented ample anecdotal evidence of disparate treatment of MBE contractors and subcontractors, the total absence of pre-program enactment statistical evidence was problematic to the compelling government interest component of the strict scrutiny analysis. The court remanded to the district court for a determination of whether the post-program enactment studies constituted a sufficient compelling government interest. Per the narrow tailoring prong of the strict scrutiny test, the court found that although the program included race-neutral alternative measures and was flexible (*i.e.*, included a waiver provision), the over breadth of the program to include MBEs outside of King County was fatal to the narrow tailoring analysis.

The court also remanded on the issue of whether the plaintiffs were entitled to damages under 42 U.S.C. §§ 1981 and 1983, and in particular to determine whether evidence of causation existed. With respect to the WBE program, the court held the plaintiff had standing to challenge the program, and applying the intermediate scrutiny analysis, held the WBE program survived the facial challenge.

In finding the absence of any statistical data in support of the County's MBE Program, the court made it clear that statistical analyses have served and will continue to serve an important role in cases in which the existence of discrimination is a disputed issue. 941 F.2d at 918. The court noted that it has repeatedly approved the use of statistical proof to establish a prima facie case of discrimination. *Id.* The court pointed out that the U.S. Supreme Court in Croson held that where "gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination." *Id.* at 918, quoting Hazelwood School Dist. v. United States, 433 U.S. 299, 307-08, and Croson, 488 U.S. at 501.

The court points out that statistical evidence may not fully account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral. *Id.* at 919. The court noted that the record contained a plethora of anecdotal evidence, but that anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. *Id.* at 919. While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, according to the court, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan. *Id.*

Nonetheless, the court held that the combination of convincing anecdotal and statistical evidence is potent. *Id.* at 919. The court pointed out that individuals who testified about their personal experiences brought the cold numbers of statistics "convincingly to life." *Id.* at 919, quoting International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339 (1977). The court also pointed out that the Eleventh Circuit Court of Appeals, in passing upon a minority set aside program similar to the one in King County, concluded that the testimony regarding complaints of discrimination combined with the gross statistical disparities uncovered by the County studies provided more than enough evidence on the question of prior discrimination and need for racial classification to justify the denial of a Motion for Summary Judgment. *Id.* at 919, citing Cone Corp. v. Hillsborough County, 908 F.2d 908, 916 (11th Cir. 1990).

The court found that the MBE Program of the County could not stand without a proper statistical foundation. *Id.* at 919. The court addressed whether post-enactment studies done by the County of a statistical foundation could be considered by the court in connection with determining the validity of the County MBE Program. The court held that a municipality must have *some* concrete evidence of discrimination in a particular industry before it may adopt a remedial program. *Id.* at 920. However, the court said this requirement of *some* evidence does not mean that a program will be automatically struck down if the evidence before the municipality at the time of enactment does not completely fulfill both prongs of the strict scrutiny test. *Id.* Rather, the court held, the factual predicate for the program should be evaluated based upon all evidence presented to the district court, whether such evidence was adduced before or after enactment of the MBE Program. *Id.* Therefore, the court adopted a rule that a municipality should have before it some evidence of discrimination before adopting a race-conscious program, while allowing post-adoption evidence to be considered in passing on the constitutionality of the program. *Id.*

The court, therefore, remanded the case to the district court for determination of whether the consultant studies that were performed after the enactment of the MBE Program could provide an adequate factual justification to establish a "propelling government interest" for King County's adopting the MBE Program. *Id.* at 922.

The court also found that Croson does not require a showing of active discrimination by the enacting agency, and that passive participation, such as the infusion of tax dollars into a discriminatory industry, suffices. Id. at 922, citing Croson, 488 U.S. at 492. The court pointed out that the Supreme Court in Croson concluded that if the City had evidence before it, that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Id. at 922. The court points out that if the record ultimately supported a finding of systemic discrimination, the County adequately limited its program to those businesses that receive tax dollars, and the program imposed obligations upon only those businesses which voluntarily sought King County tax dollars by contracting with the County. Id.

The court addressed several factors in terms of the narrowly tailored analysis, and found that first, an MBE program should be instituted either after, or in conjunction with, race-neutral means of increasing minority business participation and public contracting. Id. at 922, citing Croson, 488 U.S. at 507. The second characteristic of the narrowly-tailored program, according to the court, is the use of minority utilization goals on a case-by-case basis, rather than upon a system of rigid numerical quotas. Id. Finally, the court stated that an MBE program must be limited in its effective scope to the boundaries of the enacting jurisdiction. Id.

Among the various narrowly tailored requirements, the court held consideration of race-neutral alternatives is among the most important. Id. at 922. Nevertheless, the court stated that while strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every possible such alternative. Id. at 923. The court noted that it does not intend a government entity exhaust *every* alternative, however irrational, costly, unreasonable, and unlikely to succeed such alternative might be. Id. Thus, the court required only that a state exhausts race-neutral measures that the state is authorized to enact, and that have a reasonable possibility of being effective. Id. The court noted in this case the County considered alternatives, but determined that they were not available as a matter of law. Id. The County cannot be required to engage in conduct that may be illegal, nor can it be compelled to expend precious tax dollars on projects where potential for success is marginal at best. Id.

The court noted that King County had adopted some race-neutral measures in conjunction with the MBE Program, for example, hosting one or two training sessions for small businesses, covering such topics as doing business with the government, small business management, and accounting techniques. Id. at 923. In addition, the County provided information on assessing Small Business Assistance Programs. Id. The court found that King County fulfilled its burden of considering race-neutral alternative programs. Id.

A second indicator of program's narrowly tailoring is program flexibility. Id. at 924. The court found that an important means of achieving such flexibility is through use of case-by-case utilization goals, rather than rigid numerical quotas or goals. Id. at 924. The court pointed out that King County used a "percentage preference" method, which is not a quota, and while the preference is locked at five percent, such a fixed preference is not unduly rigid in light of the waiver provisions. The court found that a valid MBE Program should include a waiver system that accounts for both the availability of qualified MBEs and whether the qualified MBEs have suffered from the effects of past discrimination by the County or prime contractors. Id. at 924. The court found that King County's program provided waivers in both instances, including where neither minority nor a woman's business is

available to provide needed goods or services and where available minority and/or women's businesses have given price quotes that are unreasonably high. Id.

The court also pointed out other attributes of the narrowly tailored and flexible MBE program, including a bidder that does not meet planned goals, may nonetheless be awarded the contract by demonstrating a good faith effort to comply. Id. The actual percentages of required MBE participation are determined on a case-by-case basis. Levels of participation may be reduced if the prescribed levels are not feasible, if qualified MBEs are unavailable, or if MBE price quotes are not competitive. Id.

The court concluded that an MBE program must also be limited in its geographical scope to the boundaries of the enacting jurisdiction. Id. at 925. Here the court held that King County's MBE program fails this third portion of "narrowly tailored" requirement. The court found the definition of "minority business" included in the Program indicated that a minority-owned business may qualify for preferential treatment if the business has been discriminated against in the particular geographical areas in which it operates. The court held this definition as overly broad. Id. at 925. The court held that the County should ask the question whether a business has been discriminated against in King County. Id. This determination, according to the court, is not an insurmountable burden for the County, as the rule does not require finding specific instances of discriminatory exclusion for each MBE. Id. Rather, if the County successfully proves malignant discrimination within the King County business community, an MBE would be presumptively eligible for relief if it had previously sought to do business in the County. Id.

In other words, if systemic discrimination in the County is shown, then it is fair to presume that an MBE was victimized by the discrimination. Id. at 925. For the presumption to attach to the MBE, however, it must be established that the MBE is, or attempted to become, an active participant in the County's business community. Id. Because King County's program permitted MBE participation even by MBEs that have no prior contact with King County, the program was overbroad to that extent. Id. Therefore, the court reversed the grant of summary judgment to King County on the MBE program on the basis that it was geographically overbroad.

The court considered the gender-specific aspect of the MBE program. The court determined the degree of judicial scrutiny afforded gender-conscious programs was intermediate scrutiny, rather than strict scrutiny. Id. at 930. Under intermediate scrutiny, gender-based classification must serve an important governmental objective, and there must be a direct, substantial relationship between the objective and the means chosen to accomplish the objective. Id. at 931.

In this case, the court concluded, that King County's WBE preference survived a facial challenge. Id. at 932. The court found that King County had a legitimate and important interest in remedying the many disadvantages that confront women business owners and that the means chosen in the program were substantially related to the objective. Id. The court found the record adequately indicated discrimination against women in the King County construction industry, noting the anecdotal evidence including an affidavit of the president of a consulting engineering firm. Id. at 933. Therefore, the court upheld the WBE portion of the MBE program and affirmed the district court's grant of summary judgment to King County for the WBE program.

Recent California State Court Decisions

7. **Coral Construction, Inc. v. City and County of San Francisco, et. al., 50 Cal. 4th 315, 235 P.3d 947, 113 Cal.Rptr.3d 279 (S. Ct. Cal. 2010)**

In Coral Construction, Inc. v. the City and County of San Francisco (“Coral Construction”), the Supreme Court of the State of California considered an action brought against the City and County of San Francisco for declaratory and injunctive relief from an ordinance establishing an MBE/WBE program, which established race- and gender-based remedies on construction contracts. 235 P.3d at 952-956. The parties filed cross-motions for summary judgment in the Superior Court of the City and County of San Francisco. 235 P.3d at 955-56. The Superior Court struck down the MBE/WBE ordinance as violative of California’s constitutional amendment (Proposition 209) prohibiting race- and gender-based preferences in public contracting. 235 P.3d at 956. The City and County of San Francisco (the “City”) appealed to the California Court of Appeals, which affirmed in part, reversed in part, and remanded the case back to the Superior Court of the City and County of San Francisco. 235 P.3d at 956. The Court of Appeals remanded the case for adjudication of the City’s claim that the federal equal protection clause required the ordinance. Id. The Supreme Court of the State of California granted review, superseding the opinion of the California Court of Appeals. Id.

Political structure doctrine. Article I, section 31 of the California Constitution (“section 31”) prohibits a city awarding public contracts to discriminate or grant preferential treatment based on race or gender. 235 P.3d at 952. The Court stated that the City of San Francisco, “whose public contracting laws expressly violate section 31 challenges its validity under the so-called political structure doctrine, a judicial interpretation of the federal equal protection clause.” 235 P.3d at 952. The Court held that section 31 does not violate the political structure doctrine. Id. The Court also held that section 31 prohibits race- and gender-conscious programs the federal equal clause *permits* but does not *require*. 235 P.3d at 957. The Court stated that section 31 prohibits discrimination and preferential treatment, but poses no obstacle to race- or gender-conscious measures *required by* federal law or the federal Constitution. Id.

The Court, joining with the United States Court of Appeals for the Sixth and Ninth Circuits, concluded that the political structure doctrine does not invalidate state laws that broadly forbid preferences and discrimination based on race, gender and other similar classifications. Id. at 958-9. The Court found that a generally applicable rule forbidding preferences and discrimination not required by equal protection, such as section 31, does not require the same justification as a remedy in which racial preferences are *required by* equal protection as a remedy for discrimination. Id. at 960.

Federal funding exception. The Court also rejected the City’s argument that the MBE/WBE ordinance is unaffected by section 31 because the ordinance falls within the exception set out in subdivision (e) of section 31, which provides the section shall not be interpreted as prohibiting action that must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state. 235 P.3d at 961. The Court rejected the City’s argument that its MBE/WBE ordinance invokes the federal funding exception to section 31 in subdivision (e). Id. The Court concluded that the relevant federal regulations do not require racial preferences by the City. Id. The Court only addressed the question whether the relevant federal regulations, independently of the federal equal protection clause, required the City’s MBE/WBE ordinance. Id. at n. 14.

The Court found that the federal regulations did not compel the City to adopt the MBE/WBE ordinance to avoid a loss of federal funding. *Id.* at 962. The Court made a distinction between regulations that mention race-based remedies which are *permissive* from regulations that *require* race-based remedies. *Id.* The Court held that the federal funding exception under subdivision (e) of section 31 does not exempt the MBE/WBE ordinance from section 31's general prohibition of racial preferences. *Id.* at 962.

Federal compulsion argument. Finally, the Court considered the City's argument that the federal equal protection clause requires the MBE/WBE ordinance as a remedy for the City's own discrimination. 235 P.3d at 962. The Court held the California Court of Appeals ruled correctly and affirmed its judgment remanding the case for the limited purpose of adjudicating the issue of whether the federal equal protection clause requires the MBE/WBE ordinance as a remedy for the City's own discrimination under the federal compulsion doctrine. *Id.*

The Court stated that unlike the political structure and federal funding issues, which it may resolve as questions of law, the federal compulsion claim is largely factual and depends on the evidence supporting the City's decision to adopt race-conscious legislation. *Id.* at 963.

The Court offered certain "comments" to assist the superior court in resolving the federal compulsion issue on remand. 235 P.3d at 963-965. The Court stated that the relevant decisions hold open the possibility that race-conscious measures might be required as a remedy for purposeful discrimination in public contracting. *Id.* at 963. The Court said that the "only possibly compelling governmental interest implicated by the facts of this case is the interest in providing a remedy for purposeful discrimination." *Id.* at 964.

The Court held that for the City to defeat plaintiff's motion for summary judgment, the City must show that triable issues of fact exist on each of the factual predicates for its federal compulsion claim, namely: (1) that the City has purposely or intentionally discriminated against MBEs and WBEs; (2) that the purpose of the City's MBE/WBE ordinance is to provide a remedy for such discrimination; (3) that the ordinance is narrowly tailored to achieve that purpose; and (4) that a race- and gender-conscious remedy is necessary as the only, or at least the most likely, means of rectifying the resulting injury. 235 P.3d at 964. The City, the Court stated, must establish all of these points to establish the federal compulsion doctrine. *Id.*

8. C & C Construction, Inc. v. Sacramento Municipal Utility District ("SMUD"), 122 Cal. App. 4th 284 (2004)

Plaintiff C & C Construction filed a complaint for declaratory and injunctive relief against the Sacramento Municipal Utility District ("SMUD"), alleging SMUD's 1998 Equal Business Opportunity Program violated Section 31 of the California Constitution (Proposition 209). 122 Cal. App. 4th 284, 291 (2004). SMUD argued that although its program utilized race-based "participation goals" and "evaluation credits" in public contracting, its program fell within the exception set forth in Section 31(e) which states: "Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State." *Id.* The case came before the Court of Appeals on the trial court's grant of the plaintiff's motion for summary judgment. The Court of Appeals affirmed, holding SMUD "failed to proffer substantial evidence that its race-based discrimination is necessary to maintain federal funding." *Id.*

SMUD first enacted the challenged program in 1993 after conducting a disparity study. The court found that at the request of SMUD, the disparity study did not incorporate examination of race-neutral remedies that were in place or that might be used to increase opportunities for MBE/WBEs. Id. at 292. The court also found that SMUD did not wish to have the study make proposals or recommendations for changes or improvements in its existing race-neutral proposals. Id. at 292. The disparity study concluded that there were significant statistical disparities in the number of minority businesses awarded contracts when analyzed against the amount of contract dollars awarded. Id. SMUD made a finding that race-neutral and other outreach efforts were not working and determined, based upon the disparity study, to implement race-based remedial action to remedy the effects of past discrimination against certain minority groups. SMUD implemented an affirmative action program setting race-based goals for utilization of minority-owned businesses. Id. at 293.

In November of 1996, the California electorate approved Proposition 209 (Section 31 of the California Constitution). In 1998, the SMUD conducted another disparity study in order to update its data. Id. at 294. The 1998 disparity study revealed some improvement in utilization of minority-owned businesses but found a statistically significant disparity continued to exist among certain subsets of minority contractors in certain areas of SMUD public contracting. Id. Based on the 1998 disparity study, SMUD implemented a revised affirmative action program that (1) provided for a 5 percent price advantage for African American or Hispanic American contractors on certain public contracts; (2) extended evaluation credits to all prime contractors obtaining the 8 percent or more subcontractor goal for utilization of Asian Pacific American or African American subcontractors; (3) had a requirement of outreach efforts by prime contractors to minority-owned businesses on certain public contracts over a certain dollar amount; and (4) had a requirement of documentation of good faith efforts by prime contractors to utilize minority-owned businesses on certain public contracts over a certain dollar amount (Asian Pacific American or African American). Id. at 294-95. Under the program, prime contractors that did not meet the subcontracting goals and the good faith efforts provisions were deemed non-responsive and their bids were rejected. Id. at 295. The program did not cite any federal law or regulation nor did it assert that the program was needed to meet federal requirements. Id. The SMUD Board did make findings, however, related to the receipt of federal funding on certain delineated public projects. Id. at 296.

The plaintiff did not meet the definition of a “Minority-Owned Business Enterprise.” The plaintiff brought suit claiming SMUD’s 1998 affirmative action program violated Section 31 because it granted preferential treatment and discriminated on the basis of race. Id. at 297. On cross-motions for summary judgment, SMUD “conceded” that its affirmative action program violated the general provisions of Section 31(a) but argued that its program fell within the exemption set forth in Section 31(e). Id. The trial court rejected SMUD’s position because it failed to produce any “evidence of express federal contractual conditions, laws, or regulations that made approval of federal funds contingent upon race-based discrimination. Nor did SMUD offer federal legal authority to support the conclusion that failure to use the affirmative action program would result in the loss of federal funds because federal agencies may not terminate funding without an administrative hearing and judicial review.” Id. at 297. The trial court permanently enjoined SMUD from enforcing any portion of its affirmative action program to the extent that it purports to or does grant preferential treatment to any individual on the basis of race, sex, color, ethnicity, or national origin in public contracting. Id. at 297-98.

On appeal, the Court of Appeals considered only whether the affirmative action program fell within the federal funding exemption under Section 31(e). The Court of Appeals first held that while a state governmental agency need not obtain federal adjudication that race-based discrimination is necessary to maintain federal funding, it must have substantial evidence that it will lose federal funding if it does not use race-based remedial measures, and any such race-based remedial measures must be narrowly tailored to minimize race-based discrimination. *Id.* at 298. The Court of Appeals also held that the legislative interpretation of the word “discrimination” must yield to the California Supreme Court’s interpretation of the same in *Hi- Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537 (2000) in which the supreme court held the word “discriminate” as used in Section 31 must be interpreted according to its plain meaning. *Id.*

SMUD argued that the race-based provisions in its affirmative action program were required by federal regulations promulgated by the Departments of Energy, Defense and Transportation. The Court of Appeals examined the cited regulations and determined that while some of them may require affirmative action to remedy the effects of identified past discrimination, none of the cited regulations required race-based affirmative action; rather, most expressly contemplated race-neutral affirmative action. *Id.* at 306-09. The Court of Appeals also rejected SMUD’s argument that its program was necessary to certify that it was in compliance with federal regulations and thus maintain federal funding, because SMUD failed to identify any federal law or regulation that in fact required race-based affirmative action. On these bases, the Court of Appeals affirmed the grant of summary judgment in favor of the plaintiff.

Justice Raye filed a concurring opinion based on his finding there was no evidence that SMUD would lose federal funding. Acting Presiding Justice Blease filed a dissenting opinion concluding that federal DOT regulations required SMUD to implement race-based affirmative action.

9. Connerly v. State Personnel Board, 92 Cal. App. 4th 16 (2001)

In *Connerly v. State Personnel Board*, the Governor of California and a taxpayer challenged the constitutionality of several state affirmative action programs as in violation of Proposition 209 and Equal Protection. The court found that Proposition 209 overlaps with the principles of equal protection, however, “[t]o the extent the federal Constitution would permit, but not require, the State to grant preferential treatment to suspect classes, Proposition 209 precludes such action.” *Id.* at 42. The court held that the affirmative action programs were invalid, but permitted certain outreach programs not targeted to MBE/WBEs and the monitoring, collecting, and reporting of data regarding MBE/WBE participation. The court stated:

It can be seen that Proposition 209 overlaps, but is not synonymous with, the principles of equal protection that we have described in part II. A., ante. Under equal protection principles, all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny. It can be seen that Proposition 209 overlaps, but is not synonymous with, the principles of equal protection that we have described in part II.

A., ante. Under equal protection principles, all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny. Id. at 42.

The Court of Appeals held that “under the equal protection guarantee of California’s Constitution, gender is a suspect classification subject to strict scrutiny review.” 92 Cal. App. 4th 16, 39 (2001), *citing Koire v. Metro Car Wash*, 707 P.2d 195 (Cal. 1985). The court quoted Hi-Voltage Wire Works, Inc. v. City of San Jose, regarding the constitutionality of various outreach measures. The court held that outreach or recruitment efforts designed to “broaden the pool of potential applicants without reliance on an impermissible race or gender classification” are not constitutionally forbidden. Id. at 46. The court further held monitoring programs that collect and report data concerning the participation of women and minorities in the governmental programs do not violate equal protection principles. Id. The court reasoned that “[a]ccurate and up-to-date information is the sine qua non of intelligent, appropriate legislative and administrative action.” Id.

The plaintiffs challenged the statutory provision applicable to the state lottery. Id. at 47. The court found that the provision expressly incorporated racial, ethnic, and gender classifications into the statutory meaning of “socially and economically disadvantaged,” and that individuals from certain race or ethnic backgrounds were presumed disadvantaged. Id. The court held that the absence of any identified past discrimination, the inclusion of groups without particularized consideration as to whether they suffered discrimination, the absence of any attempt to measure recovery by the extent of the injury, and the absence of any geographic or temporal limits to the provision, rendered it unconstitutional and invalid. Id. at 48.

The plaintiffs also challenged the statutory provision applicable to professional bond services. Id. at 49. The court found that the provision established MBE/WBE participation goals and racial and gender classifications. Id. at 50. The provision entitled MBE/WBEs to receive “special notice of the sale or intention to issue bonds.” Id. at 51. This provision, according to the court, was in violation of Proposition 209’s prohibition against the “selective dissemination of information.” Id. The provision further required the awarding department to monitor its adherence to the MBE/WBE goals and to file annual reports stating the level of participation. Id. at 52. Although the defendants argued that there was no penalty for failing to meet the goals, the court held this unconstitutional. Id. The court noted that the provision required bidders to certify their awareness of the MBE/WBE goals and required them to make good faith efforts to achieve those goals. Id. The court noted that despite the lack of penalty for failure to comply, the “economic realities” of the provision “inevitably compel bidders to give preferences based on racial and gender classifications.” Id. Since the court found no prior discrimination in the contracting for professional bond services and no showing that race- or gender-neutral remedies were considered, it held this provision unconstitutional. Id. at 53. The court, however, upheld as valid certain monitoring and reporting requirements as to the level of MBE/WBE participation as serving a compelling government need and not in violation of Proposition 209. Id.

With respect to the plaintiffs’ challenge to the state civil service affirmative action employment provisions, the court held the provisions in violation of equal protection and Proposition 209. Id.

The affirmative action program included goals and timetables to increase utilization regarding the employment of minorities and women. *Id.* at 54. In connection with plaintiff’s challenge to the community college statutory provisions (“an affirmative action employment program”), the court found the program, which sought to have its work force “proportionately reflect the adult population of the state,” to be “unquestionably, a preferential hiring scheme.” *Id.* at 59. The court noted that the program contained “nothing about making inclusive outreach efforts to assure equal opportunity; instead it requires efforts to seek, hire, and promote minorities and women.” *Id.* at 60. Therefore, the court held the program in violation of equal protection and Proposition 209.

Finally, the plaintiffs challenged certain state contracting requirements under the Public Contract Code. The court noted the MBE/WBE participation goal provisions were previously invalidated in *Monterey Mechanical*, but stated that the federal court in that case “did not address whether the reporting requirements in the statutory scheme may be severed and upheld.” *Id.* at 62. In severing and upholding the reporting requirements as valid, the court stated that “the Legislature’s right to obtain accurate and up-to-date information on matters of public concern cannot be disputed.” *Id.* The court held that information concerning participation of MBE/WBEs “can serve a number of important and valid legislative purposes,” including indicating the need for further inquiry to determine whether specific discrimination is occurring, aiding the Legislature in determining whether race- and gender-neutral remedies are needed, and showing that other inclusive outreach efforts are warranted. *Id.* at 63. The court held that “the reporting requirements of the statutory scheme applicable to state contracting can serve a legitimate interest separate from the substantive provisions of the scheme” and they can be “severed mechanically and grammatically” and “functionally” from the “invalid portions of the act.” *Id.*

10. High-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal. 4th 537, 101 Cal. Rptr.2d 653, 12 P.3d 1068 (Cal. 2000)

In *Hi-Voltage Wire Works, Inc. v. City of San Jose*, the California Supreme Court held the City of San Jose’s Nondiscrimination/Non-preferential Treatment Program Applicable to Construction Contracts in Excess of \$50,000 (the “Program”), a goals oriented program requiring utilization of minority and women subcontractors or documentation of best efforts at utilization, violated Article I, Section 31 of the California Constitution as amended by Proposition 209. 12 P.3d 1068 (Cal. 2000).

The Program at issue was adopted after the passage of Proposition 209 and sought to clarify the City’s earlier goals oriented program that was enacted after the City commissioned a disparity study in 1990 that reported a disparity as to the amount of contract dollars awarded to MBE subcontractors. The Program required contractors to fulfill an outreach or a participation requirement and applied to all contractors, including MBEs and WBEs and those not planning to subcontract out any portion of the contract. Hi-Voltage bid on a contract and intended to perform all of the work itself and not hire any subcontractors. It did not comply with the terms of the Program and was deemed a non-responsive bidder. Upon challenge to the Program, the trial court held the Program violated Article I, Section 31. The Court of Appeals affirmed.

In affirming the lower courts and holding the Program unconstitutional, the California Supreme Court looked specifically to Title VII of the Civil Rights Act (“Title VII”) and found that Article I, Section 31 “closely parallels this provision in both language and purpose;” the court thus examined U.S. Supreme Court cases interpreting Title VII.

The court found the Supreme Court’s decision in Steelworkers v. Weber, 443 U.S. 193 (1979) marked a substantial modification in the interpretation and application of Title VII. In Weber and its progeny, the Supreme Court “interpreted Title VII to permit race-conscious action whenever the job category in question is traditionally segregated.” 12 P.3d at 1077 (internal quotations omitted). The court determined its own jurisprudence indicated a “fundamental shift from a staunch anti-discrimination jurisprudence to approval, sometimes endorsement, of remedial race- and sex-conscious government decisionmaking.” Id. at 1081.

In 1996, voters approved Proposition 209, adding Section 31 to Article I of the California Constitution and providing as follows:

- (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The court found the language of the amendment was clear and found nothing in the ballot arguments or legislative analysis to indicate “discriminate” or “preferential treatment” should have any special meaning. The court determined the intent of Proposition 209 was to “reinstitute the interpretation of the Civil Rights Act and equal protection that predated Weber.” The court concluded the Program violated Proposition 209 inasmuch as the participation component is discriminatory against non-MBE/WBEs and the outreach component grants preferential treatment to MBE/WBE’s. Id. at 1084. Specifically, the court found the outreach component “requires contractors to treat MBE/WBE subcontractors more advantageously by providing them notice of bidding opportunities, soliciting their participation, and negotiating for their services, none of which they must do for non-MBE’s/WBE’s.” Id. at 1068. The court concluded that the fact prime contractors were compelled to contact MBE/WBEs violated Proposition 209. Id.

The court did note however that not all outreach efforts are unlawful; rather the court found “voters intended to preserve outreach efforts to disseminate information about public employment, education, and contracting not predicated on an impermissible classification.” Id. at 1085. The court expressed no opinion regarding the scope of such efforts.

Finally, the court also found that federal law did not require a different result as the “federal courts have held Proposition 209 does not conflict with Titles VI, VII, or IX of the Civil Rights Act of 1964.” Id. at 1088.

11. Cornelius v. L.A. County Metro. Transp. Auth., 49 Cal App. 4th 1761 (1996)

The plaintiff engineer brought a suit to enjoin the Los Angeles County Metropolitan Transit Authority’s (“MTA”) implementation of the Federal DBE Program. The trial court held the plaintiff had standing and held the DBE Program did not pass constitutional muster. The court enjoined the MTA’s implementation of the DBE Program. The Court of Appeals reversed, holding the plaintiff did not have standing to challenge the DBE Program.

As a recipient of federal transportation funds, the court found MTA implemented the Federal DBE Program requiring at that time that 10 percent of MTA contracts be awarded to DBEs and requiring

that MTA establish goals for DBE participation on certain prime contracts. The plaintiff was an engineer who worked for a subcontracting firm, Wagner Construction. Wagner was the subcontractor on a bid submitted by PCL Construction Services, Inc. for an MTA project. Although PCL was the lowest bidder, PCL did not achieve the required DBE participation nor did it establish good faith efforts to meet the DBE participation goal; MTA accordingly awarded the contract to the next lowest bidder. PCL filed suit against MTA alleging the DBE Program was unconstitutional, but PCL dropped the lawsuit. The plaintiff engineer then filed suit alleging the same challenge. 49 Cal. App. 4th 1761, 1764-65 (1996).

The trial court ruled that the plaintiff had standing, that the DBE Program was unconstitutional, and enjoined the MTA from administering, enforcing, soliciting bids, or allocating any funds under the DBE Program. *Id.* at 1766. In particular, the court found the evidence of alleged discrimination to be inadequate. MTA appealed arguing the injunction would subject them to a loss of federal funding. The Court of Appeals reversed, holding the plaintiff did not have standing.

The Court of Appeals analyzed both asserted grounds for standing: first, as an individual directly injured by the DBE Program, and second, as a taxpayer. The Court of Appeals held that under Adarand, an individual contractor seeking forward looking relief must show “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” 49 Cal. App. 4th at 1768-69, *citing Adarand*. The Court of Appeals held the plaintiff satisfied the first element via his claim that the DBE Program violated the equal protection of the law. *Id.* at 1769. But the court found the plaintiff was unable to satisfy the second element – that, pursuant to Adarand, “sometime in the relatively near future [he] will bid on another government contract that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors.” *Id.*, *citing Adarand*. Specifically, the court found the plaintiff could not satisfy this requirement because he was not a licensed contractor and therefore unable as a matter of law to bid on MTA contracts and thus suffered no tangible injury. The court held that in order for “a party to show that the future use of the DBE criteria will cause an actual or imminent injury, the party must minimally show it has bid in the past and would continue to bid in the future.” The court denied plaintiff’s first assertion of standing because he failed to meet that standard.

With respect to his claim for taxpayer standing, the plaintiff alleged that his payment of state and local taxes, as well his payment of increased taxes caused by increased contract costs associated with the DBE Program, conferred standing. The court rejected his contention, narrowing the dispositive issue to whether the plaintiff’s payment of state income taxes was sufficient to confer taxpayer standing. The court held it was not, based upon three factors: the tangential relationship of the taxes paid to the policy contested; the ramification of finding of standing; and policy considerations. Because the case came before the court on a motion for summary judgment, and the parties agreed there were no triable issues of material fact, the court reversed and rendered judgment in favor of MTA.

E. Recent Decisions Involving the Federal DBE Program and Federally-Funded Projects in Other Jurisdictions

There are several recent and pending cases involving challenges to the United States Federal DBE Program and its implementation by the states and their governmental entities for federally-funded projects. These cases could have a significant impact on the nature and provisions of contracting and procurement on federally-funded projects, including and relating to the utilization of DBEs. In addition, these cases provide an instructive analysis of the recent application of the strict scrutiny test to MBE/WBE- and DBE-type programs.

1. Northern Contracting, Inc. v. Illinois, 473 F.3d 715 (7th Cir. 2007)

In Northern Contracting, Inc. v. Illinois, the Seventh Circuit affirmed the district court decision upholding the validity and constitutionality of the Illinois Department of Transportation's ("IDOT") DBE Program. Plaintiff Northern Contracting Inc. ("NCI") was a white male-owned construction company specializing in the construction of guardrails and fences for highway construction projects in Illinois. 473 F.3d 715, 717 (7th Cir. 2007). Initially, NCI challenged the constitutionality of both the federal regulations and the Illinois statute implementing these regulations. Id. at 719. The district court granted the USDOT's Motion for Summary Judgment, concluding that the federal government had demonstrated a compelling interest and that TEA-21 was sufficiently narrowly tailored. NCI did not challenge this ruling and thereby forfeited the opportunity to challenge the federal regulations. Id. at 720. NCI also forfeited the argument that IDOT's DBE program did not serve a compelling government interest. Id. The sole issue on appeal to the Seventh Circuit was whether IDOT's program was narrowly tailored. Id.

IDOT typically adopted a new DBE plan each year. Id. at 718. In preparing for Fiscal Year 2005, IDOT retained a consulting firm to determine DBE availability. Id. The consultant first identified the relevant geographic market (Illinois) and the relevant product market (transportation infrastructure construction). Id. The consultant then determined availability of minority- and women-owned firms through analysis of Dun & Bradstreet's Marketplace data. Id. This initial list was corrected for errors in the data by surveying the D&B list. Id. In light of these surveys, the consultant arrived at a DBE availability of 22.77 percent. Id. The consultant then ran a regression analysis on earnings and business information and concluded that in the absence of discrimination, relative DBE availability would be 27.5 percent. Id. IDOT considered this, along with other data, including DBE utilization on IDOT's "zero goal" experiment conducted in 2002 to 2003, in which IDOT did not use DBE goals on 5 percent of its contracts (1.5% utilization) and data of DBE utilization on projects for the Illinois State Toll Highway Authority which does not receive federal funding and whose goals are completely voluntary (1.6% utilization). Id. at 719. On the basis of all of this data, IDOT adopted a 22.77 percent goal for 2005. Id.

Despite the fact the NCI forfeited the argument that IDOT's DBE program did not serve a compelling state interest, the Seventh Circuit briefly addressed the compelling interest prong of the strict scrutiny analysis, noting that IDOT had satisfied its burden. Id. at 720. The court noted that, post-Adarand, two other circuits have held that a state may rely on the federal government's compelling interest in implementing a local DBE plan. Id. at 720-21, citing Western States Paving Co., Inc. v. Washington State DOT, 407 F.3d 983, 987 (9th Cir. 2005), cert. denied, 126 S.Ct. 1332 (Feb. 21, 2006) and Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964, 970 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004). The court stated that NCI had not articulated any reason to

break ranks from the other circuits and explained that “[i]nsofar as the state is merely complying with federal law it is acting as the agent of the federal government If the state does exactly what the statute expects it to do, and the statute is conceded for purposes of litigation to be constitutional, we do not see how the state can be thought to have violated the Constitution.” *Id.* at 721, quoting Milwaukee County Pavers Association v. Fielder, 922 F.2d 419, 423 (7th Cir. 1991). The court did not address whether IDOT had an independent interest that could have survived constitutional scrutiny.

In addressing the narrowly tailored prong with respect to IDOT’s DBE program, the court held that IDOT had complied. *Id.* The court concluded its holding in Milwaukee that a state is insulated from a constitutional attack absent a showing that the state exceeded its federal authority remained applicable. *Id.* at 721-22. The court noted that the Supreme Court in Adarand Constructors v. Peña, 515 U.S. 200 (1995) did not seize the opportunity to overrule that decision, explaining that the Court did not invalidate its conclusion that a challenge to a state’s application of a federally mandated program must be limited to the question of whether the state exceeded its authority. *Id.* at 722.

The court further clarified the Milwaukee opinion in light of the interpretations of the opinions offered in by the Ninth Circuit in Western States and Eighth Circuit in Sherbrooke. *Id.* The court stated that the Ninth Circuit in Western States misread the Milwaukee decision in concluding that Milwaukee did not address the situation of an as-applied challenge to a DBE program. *Id.* at 722, n. 5. Relatedly, the court stated that the Eighth Circuit’s opinion in Sherbrooke (that the Milwaukee decision was compromised by the fact that it was decided under the prior law “when the 10 percent federal set-aside was more mandatory”) was unconvincing since all recipients of federal transportation funds are still required to have compliant DBE programs. *Id.* at 722. Federal law makes more clear now that the compliance could be achieved even with no DBE utilization if that were the result of a good faith use of the process. *Id.* at 722, n. 5. The court stated that IDOT in this case was acting as an instrument of federal policy and NCI’s collateral attack on the federal regulations was impermissible. *Id.* at 722.

The remainder of the court’s opinion addressed the question of whether IDOT exceeded its grant of authority under federal law, and held that all of NCI’s arguments failed. *Id.* First, NCI challenged the method by which the local base figure was calculated, the first step in the goal-setting process. *Id.* NCI argued that the number of registered and prequalified DBEs in Illinois should have simply been counted. *Id.* The court stated that while the federal regulations list several examples of methods for determining the local base figure, *Id.* at 723, these examples are not intended as an exhaustive list. The court pointed out that the fifth item in the list is entitled “Alternative Methods,” and states: “You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designated to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.” *Id.* (citing 49 C.F.R. § 26.45(c)(5)). According to the court, the regulations make clear that “relative availability” means “the availability of ready, willing and able DBEs relative to all business ready, willing, and able to participate” on DOT contracts. *Id.* The court stated NCI pointed to nothing in the federal regulations that indicated that a recipient must so narrowly define the scope of the ready, willing, and available firms to a simple count of the number of registered and prequalified DBEs. *Id.* The court agreed with the district court that the remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net. *Id.*

Second, NCI argued that the IDOT failed to properly adjust its goal based on local market conditions. *Id.* The court noted that the federal regulations do not require any adjustments to the base figure, but simply provide recipients with authority to make such adjustments if necessary. *Id.* According to the court, NCI failed to identify any aspect of the regulations requiring IDOT to separate prime contractor availability from subcontractor availability, and pointed out that the regulations require the local goal to be focused on overall DBE participation. *Id.*

Third, NCI contended that IDOT violated the federal regulations by failing to meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. *Id.* at 723-24. NCI argued that IDOT should have considered DBEs who had won subcontracts on goal projects where the prime contractor did not consider DBE status, instead of only considering DBEs who won contracts on no-goal projects. *Id.* at 724. The court held that while the regulations indicate that where DBEs win subcontracts on goal projects strictly through low bid this can be counted as race-neutral participation, the regulations did not require IDOT to search for this data, for the purpose of calculating past levels of race-neutral DBE participation. *Id.* According to the court, the record indicated that IDOT used nearly all the methods described in the regulations to maximize the portion of the goal that will be achieved through race-neutral means. *Id.*

The court affirmed the decision of the district court upholding the validity of the IDOT DBE program and found that it was narrowly tailored to further a compelling governmental interest. *Id.*

2. Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007)

This decision is the district court's order that was affirmed by the Seventh Circuit Court of Appeals. This decision is instructive in that it is one of the recent cases to address the validity of the Federal DBE Program and local and state governments' implementation of the program as recipients of federal funds. The case also is instructive in that the court set forth a detailed analysis of race-, ethnicity-, and gender-neutral measures as well as evidentiary data required to satisfy constitutional scrutiny.

The district court conducted a trial after denying the parties' Motions for Summary Judgment in Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004), discussed *infra*. The following summarizes the opinion of the district court.

Northern Contracting, Inc. (the "plaintiff"), an Illinois highway contractor, sued the State of Illinois, the Illinois DOT, the United States DOT, and federal and state officials seeking a declaration that federal statutory provisions, the federal implementing regulations ("TEA-21"), the state statute authorizing the DBE program, and the Illinois DBE program itself were unlawful and unconstitutional. 2005 WL 2230195 at *1 (N.D. Ill. Sept. 8, 2005).

Under TEA-21, a recipient of federal funds is required to meet the "maximum feasible portion" of its DBE goal through race-neutral means. *Id.* at *4 (citing regulations). If a recipient projects that it cannot meet its overall DBE goal through race-neutral means, it must establish contract goals to the extent necessary to achieve the overall DBE goal. *Id.* (citing regulation). [The court provided an overview of the pertinent regulations including compliance requirements and qualifications for DBE status.]

Statistical evidence. To calculate its 2005 DBE participation goals, IDOT followed the two-step process set forth in TEA-21: (1) calculation of a base figure for the relative availability of DBEs, and (2) consideration of a possible adjustment of the base figure to reflect the effects of the DBE program and the level of participation that would be expected but for the effects of past and present discrimination. *Id.* at *6. IDOT engaged in a study to calculate its base figure and conduct a custom census to determine whether a more reliable method of calculation existed as opposed to IDOT's previous method of reviewing a bidder's list. *Id.*

In compliance with TEA-21, IDOT used a study to evaluate the base figure using a six-part analysis: (1) the study identified the appropriate and relevant geographic market for IDOT's contracting activity and its prime contractors as the State of Illinois; (2) the study identified the relevant product markets in which IDOT and its prime contractors contract; (3) the study sought to identify all available contractors and subcontractors in the relevant industries within Illinois using Dun & Bradstreet's *Marketplace*; (4) the study collected lists of DBEs from IDOT and twenty other public and private agencies; (5) the study attempted to correct for the possibility that certain businesses listed as DBEs were no longer qualified or, alternatively, businesses not listed as DBEs but qualified as such under the federal regulations; and (6) the study attempted to correct for the possibility that not all DBE businesses were listed in the various directories. *Id.* at *6-7. The study utilized a standard statistical sampling procedure to correct for the latter two biases. *Id.* at *7. The study thus calculated a weighted average base figure of 22.7 percent. *Id.*

IDOT then adjusted the base figure based upon two disparity studies and some reports considering whether the DBE availability figures were artificially low due to the effects of past discrimination. *Id.* at *8. One study examined disparities in earnings and business formation rates as between DBEs and their white male-owned counterparts. *Id.* Another study included a survey reporting that DBEs are rarely utilized in non-goals projects. *Id.*

IDOT considered three reports prepared by expert witnesses. *Id.* at *9. The first report concluded that minority- and women-owned businesses were underutilized relative to their capacity and that such underutilization was due to discrimination. *Id.* The second report concluded, after controlling for relevant variables such as credit worthiness, "that minorities and women are less likely to form businesses, and that when they do form businesses, those businesses achieve lower earnings than did businesses owned by white males." *Id.* The third report, again controlling for relevant variables (education, age, marital status, industry and wealth), concluded that minority- and female-owned businesses formation rates are lower than those of their white male counterparts, and that such businesses engage in a disproportionate amount of government work and contracts as a result of their inability to obtain private sector work. *Id.*

IDOT also conducted a series of public hearings in which a number of DBE owners who testified that they "were rarely, if ever, solicited to bid on projects not subject to disadvantaged-firm hiring goals." *Id.* Additionally, witnesses identified twenty prime contractors in IDOT District 1 alone who rarely or never solicited bids from DBEs on non-goals projects. *Id.* The prime contractors did not respond to IDOT's requests for information concerning their utilization of DBEs. *Id.*

Finally, IDOT reviewed unremediated market data from four different markets (the Illinois State Toll Highway Authority, the Missouri DOT, Cook County's public construction contracts, and a "non-goals" experiment conducted by IDOT between 2001 and 2002), and considered past

utilization of DBEs on IDOT projects. Id. at *11. After analyzing all of the data, the study recommended an upward adjustment to 27.51 percent, however, IDOT decided to maintain its figure at 22.77 percent. Id.

IDOT's representative testified that the DBE program was administered on a "contract-by-contract basis." Id. She testified that DBE goals have no effect on the award of prime contracts but that contracts are awarded exclusively to the "lowest responsible bidder." IDOT also allowed contractors to petition for a waiver of individual contract goals in certain situations (e.g., where the contractor has been unable to meet the goal despite having made reasonable good faith efforts). Id. at *12. Between 2001 and 2004, IDOT received waiver requests on 8.53 percent of its contracts and granted three out of four; IDOT also provided an appeal procedure for a denial from a waiver request. Id.

IDOT implemented a number of race- and gender-neutral measures both in its fiscal year 2005 plan and in response to the district court's earlier summary judgment order, including:

1. A "prompt payment provision" in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments;
2. An extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects);
3. Reviewing the criteria for prequalification to reduce any unnecessary burdens;
4. "Unbundling" large contracts; and
5. Allocating some contracts for bidding only by firms meeting the SBA's definition of small businesses.

Id. (internal citations omitted). IDOT was also in the process of implementing bonding and financing initiatives to assist emerging contractors obtain guaranteed bonding and lines of credit, and establishing a mentor-protégé program. Id.

The court found that IDOT attempted to achieve the "maximum feasible portion" of its overall DBE goal through race- and gender-neutral measures. Id. at *13. The court found that IDOT determined that race- and gender-neutral measures would account for 6.43 percent of its DBE goal, leaving 16.34 percent to be reached using race- and gender-conscious measures. Id.

Anecdotal evidence. A number of DBE owners testified to instances of perceived discrimination and to the barriers they face. Id. The DBE owners also testified to difficulties in obtaining work in the private sector and "unanimously reported that they were rarely invited to bid on such contracts." Id. The DBE owners testified to a reluctance to submit unsolicited bids due to the expense involved and identified specific firms that solicited bids from DBEs for goals projects but not for non-goals projects. Id. A number of the witnesses also testified to specific instances of discrimination in

bidding, on specific contracts, and in the financing and insurance markets. Id. at *13-14. One witness acknowledged that all small firms face difficulties in the financing and insurance markets, but testified that it is especially burdensome for DBEs who “frequently are forced to pay higher insurance rates due to racial and gender discrimination.” Id. at *14. The DBE witnesses also testified they have obstacles in obtaining prompt payment. Id.

The plaintiff called a number of non-DBE business owners who unanimously testified that they solicit business equally from DBEs and non-DBEs on non-goals projects. Id. Some non-DBE firm owners testified that they solicit bids from DBEs on a goals project for work they would otherwise complete themselves absent the goals; others testified that they “occasionally award work to a DBE that was not the low bidder in order to avoid scrutiny from IDOT.” Id. A number of non-DBE firm owners accused of failing to solicit bids from DBEs on non-goals projects, testified and denied the allegations. Id. at *15.

Strict scrutiny. The court applied strict scrutiny to the program as a whole (including the gender-based preferences). Id. at *16. The court, however, set forth a different burden of proof, finding that the government must demonstrate identified discrimination with specificity and must have a “‘strong basis in evidence’ to conclude that remedial action was necessary, *before* it embarks on an affirmative action program ... If the government makes such a showing, the party challenging the affirmative action plan bears the ‘ultimate burden’ of demonstrating the unconstitutionality of the program.” Id. The court held that challenging party’s burden “can only be met by presenting credible evidence to rebut the government’s proffered data.” Id. at *17.

To satisfy strict scrutiny, the court found that IDOT did not need to demonstrate an independent compelling interest; however, as part of the narrowly tailored prong, IDOT needed to show “that there is a demonstrable need for the implementation of the Federal DBE Program within its jurisdiction.” Id. at *16.

The court found that IDOT presented “an abundance” of evidence documenting the disparities between DBEs and non-DBEs in the construction industry. Id. at *17. The plaintiff argued that the study was “erroneous because it failed to limit its DBE availability figures to those firms ... registered and pre-qualified with IDOT.” Id. The plaintiff also alleged the calculations of the DBE utilization rate were incorrect because the data included IDOT subcontracts and prime contracts, despite the fact that the latter are awarded to the lowest bidder as a matter of law. Id. Accordingly, the plaintiff alleged that IDOT’s calculation of DBE availability and utilization rates was incorrect. Id.

The court found that other jurisdictions had utilized the custom census approach without successful challenge. Id. at *18. Additionally, the court found “that the remedial nature of the federal statutes counsels for the casting of a broader net when measuring DBE availability.” Id. at *19. The court found that IDOT presented “an array of statistical studies concluding that DBEs face disproportionate hurdles in the credit, insurance, and bonding markets.” Id. at *21. The court also found that the statistical studies were consistent with the anecdotal evidence. Id. The court did find, however, that “there was no evidence of even a single instance in which a prime contractor failed to award a job to a DBE that offered the low bid. This ... is [also] supported by the statistical data ... which shows that at least at the level of subcontracting, DBEs are generally utilized at a rate in line with their ability.” Id. at *21, n. 31. Additionally, IDOT did not verify the anecdotal testimony of

DBE firm owners who testified to barriers in financing and bonding, however, the court found that such verification was unnecessary. Id. at *21, n. 32.

The court further found:

That such discrimination indirectly affects the ability of DBEs to compete for prime contracts, despite the fact that they are awarded solely on the basis of low bid, cannot be doubted: ‘[E]xperience and size are not race- and gender-neutral variables ... [DBE] construction firms are generally smaller and less experienced *because* of industry discrimination.’

Id. at *21, citing *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003).

The parties stipulated to the fact that DBE utilization goals exceed DBE availability for 2003 and 2004. Id. at *22. IDOT alleged, and the court so found, that the high utilization on goals projects was due to the success of the DBE program, and not to an absence of discrimination. Id. The court found that the statistical disparities coupled with the anecdotal evidence indicated that IDOT’s fiscal year 2005 goal was a “‘plausible lower-bound estimate’ of DBE participation in the absence of discrimination.” Id. The court found that the plaintiff did not present persuasive evidence to contradict or explain IDOT’s data. Id.

The plaintiff argued that even if accepted at face value, IDOT’s marketplace data did not support the imposition of race- and gender-conscious remedies because there was no evidence of direct discrimination by prime contractors. Id. The court found first that IDOT’s indirect evidence of discrimination in the bonding, financing, and insurance markets was sufficient to establish a compelling purpose. Id. Second, the court found:

[M]ore importantly, Plaintiff fails to acknowledge that, in enacting its DBE program, IDOT acted not to remedy its own prior discriminatory practices, but pursuant to federal law, which both authorized and required IDOT to remediate the effects of *private* discrimination on federally-funded highway contracts. This is a fundamental distinction ... [A] state or local government need not independently identify a compelling interest when its actions come in the course of enforcing a federal statute.

Id. at *23. The court distinguished *Builders Ass’n of Greater Chicago v. County of Cook*, 123 F. Supp. 2d 1087 (N.D. Ill. 2000), aff’d 256 F.3d 642 (7th Cir. 2001), noting that the program in that case was not federally-funded. Id. at *23, n. 34.

The court also found that “IDOT has done its best to maximize the portion of its DBE goal” through race- and gender-neutral measures, including anti-discrimination enforcement and small business initiatives. Id. at *24. The anti-discrimination efforts included: an internet website where a DBE can file an administrative complaint if it believes that a prime contractor is discriminating on the basis of race or gender in the award of sub-contracts; and requiring contractors seeking prequalification to maintain and produce solicitation records on all projects, both public and private,

with and without goals, as well as records of the bids received and accepted. *Id.* The small business initiative included: “unbundling” large contracts; allocating some contracts for bidding only by firms meeting the SBA’s definition of small businesses; a “prompt payment provision” in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments; and an extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects). *Id.*

The court found “[s]ignificantly, Plaintiff did not question the efficacy or sincerity of these race- and gender-neutral measures.” *Id.* at *25. Additionally, the court found the DBE program had significant flexibility in that utilized contract-by-contract goal setting (without a fixed DBE participation minimum) and contained waiver provisions. *Id.* The court found that IDOT approved 70 percent of waiver requests although waivers were requested on only 8 percent of all contracts. *Id.*, citing Adarand Constructors, Inc. v. Slater “Adarand VII”, 228 F.3d 1147, 1177 (10th Cir. 2000) (citing for the proposition that flexibility and waiver are critically important).

The court held that IDOT’s DBE plan was narrowly tailored to the goal of remedying the effects of racial and gender discrimination in the construction industry, and was therefore constitutional.

3. Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004)

This is the earlier decision in Northern Contracting, Inc., 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), *see above*, which resulted in the remand of the case to consider the implementation of the Federal DBE Program by the Illinois DOT. This case involves the challenge to the Federal DBE Program. The plaintiff contractor sued the Illinois Department of Transportation and the USDOT challenging the facial constitutionality of the Federal DBE Program (TEA-21 and 49 C.F.R. Part 26) as well as the implementation of the Federal Program by the Illinois Department of Transportation (*i.e.*, the IDOT DBE Program). The court held valid the Federal DBE Program, finding there is a compelling governmental interest and the federal program is narrowly tailored. The court also held there are issues of fact regarding whether Illinois DOT’s (“IDOT”) DBE Program is narrowly tailored to achieve the federal government’s compelling interest. The court denied the Motions for Summary Judgment filed by the plaintiff and by IDOT, finding there were issues of material fact relating to IDOT’s implementation of the Federal DBE Program.

The court in Northern Contracting, held that there is an identified compelling governmental interest for implementing the Federal DBE Program and that the Federal DBE Program is narrowly tailored to further that interest. Therefore, the court granted the Federal defendants’ Motion for Summary Judgment challenging the validity of the Federal DBE Program. In this connection, the district court followed the decisions and analysis in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F. 3d 964 (8th Cir. 2003) and Adarand Constructors, Inc. v. Slater, 228 F. 3d 1147 (10th Cir. 2000) (“Adarand VII”), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941, 534 U.S. 103 (2001). The court held, like these two Courts of Appeals that have addressed this issue, that Congress had a strong basis in evidence to conclude that the DBE Program was necessary to redress private discrimination in federally-assisted highway subcontracting. The court

agreed with the Adarand VII and Sherbrooke Turf courts that the evidence presented to Congress is sufficient to establish a compelling governmental interest, and that the contractors had not met their burden of introducing credible particularized evidence to rebut the Government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market. 2004 WL422704 at *34, citing Adarand VII, 228 F. 3d at 1175.

In addition, the court analyzed the second prong of the strict scrutiny test, whether the government provided sufficient evidence that its program is narrowly tailored. In making this determination, the court looked at several factors, such as the efficacy of alternative remedies; the flexibility and duration of the race-conscious remedies, including the availability of waiver provisions; the relationships between the numerical goals and relevant labor market; the impact of the remedy on third parties; and whether the program is over-or-under-inclusive. The narrow tailoring analysis with regard to the as-applied challenge focused on Illinois' implementation of the Federal DBE Program.

First, the court held that the Federal DBE Program does not mandate the use of race-conscious measures by recipients of federal dollars, but in fact requires only that the goal reflect the recipient's determination of the level of DBE participation it would expect absent the effects of the discrimination. 49 C.F.R. § 26.45(b). The court recognized, as found in the Sherbrooke Turf and Adarand VII cases, that the Federal Regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting, that although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require "serious, good faith consideration of workable race-neutral alternatives." 2004 WL422704 at *36, citing and quoting Sherbrooke Turf, 345 F. 3d at 972, quoting Grutter v. Bollinger, 539 U.S. 306 (2003). The court held that the Federal regulations, which prohibit the use of quotas and severely limit the use of set-asides meet this requirement. The court agreed with the Adarand VII and Sherbrooke Turf courts that the Federal DBE Program does require recipients to make a serious good faith consideration of workable race-neutral alternatives before turning to race-conscious measures.

Second, the court found that because the Federal DBE Program is subject to periodic reauthorization, and requires recipients of Federal dollars to review their programs annually, the Federal DBE scheme is appropriately limited to last no longer than necessary.

Third, the court held that the Federal DBE Program is flexible for many reasons, including that the presumption that women and minority are socially disadvantaged is deemed rebutted if an individual's personal net worth exceeds \$750,000.00, and a firm owned by individual who is not presumptively disadvantaged may nevertheless qualify for such status if the firm can demonstrate that its owners are socially and economically disadvantaged. 49 C.F.R. § 26.67(b)(1)(d). The court found other aspects of the Federal Regulations provide ample flexibility, including recipients may obtain waivers or exemptions from any requirements. Recipients are not required to set a contract goal on every USDOT-assisted contract. If a recipient estimates that it can meet its entire overall goals for a given year through race-neutral means, it must implement the Program without setting contract goals during the year. If during the course of any year in which it is using contract goals a recipient determines that it will exceed its overall goals, it must adjust the use of race-conscious contract goals accordingly. 49 C.F.R. § 26.51(e)(f). Recipients also administering a DBE Program in good faith cannot be penalized for failing to meet their DBE goals, and a recipient may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49

C.F.R. § 26.51(f). Further, a recipient may award a contract to a bidder/offeror that does not meet the DBE Participation goals so long as the bidder has made adequate good faith efforts to meet the goals. 49 C.F.R. § 26.53(a)(2). The regulations also prohibit the use of quotas. 49 C.F.R. § 26.43.

Fourth, the court agreed with the Sherbrooke Turf court's assessment that the Federal DBE Program requires recipients to base DBE goals on the number of ready, willing and able disadvantaged business in the local market, and that this exercise requires recipients to establish realistic goals for DBE participation in the relevant labor markets.

Fifth, the court found that the DBE Program does not impose an unreasonable burden on third parties, including non-DBE subcontractors and taxpayers. The court found that the Federal DBE Program is a limited and properly tailored remedy to cure the effects of prior discrimination, a sharing of the burden by parties such as non-DBEs is not impermissible.

Finally, the court found that the Federal DBE Program was not over-inclusive because the regulations do not provide that every women and every member of a minority group is disadvantaged. Preferences are limited to small businesses with a specific average annual gross receipts over three fiscal years of \$16.6 million or less (at the time of this decision), and businesses whose owners' personal net worth exceed \$750,000.00 are excluded. 49 C.F.R. § 26.67(b)(1). A firm owned by a white male may qualify as social and economically disadvantaged. 49 C.F.R. § 26.67(d).

The court analyzed the constitutionality of the Illinois DBE Program. The court adopted the reasoning of the Eighth Circuit in Sherbrooke Turf, that a recipient's implementation of the Federal DBE Program must be analyzed under the narrow tailoring analysis but not the compelling interest inquiry. Therefore, the court agreed with Sherbrooke Turf that a recipient need not establish a distinct compelling interest before implementing the Federal DBE Program, but did conclude that a recipient's implementation of the Federal DBE Program must be narrowly tailored. The court found that issues of fact remain in terms of the validity of the Illinois DOT's DBE Program as implemented in terms of whether it was narrowly tailored to achieve the Federal Government's compelling interest. The court, therefore, denied the contractor plaintiff's Motion for Summary Judgment and the Illinois DOT's Motion for Summary Judgment.

4. Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

This case is instructive in its analysis of state DOT DBE-type programs and their evidentiary basis and implementation. This case also is instructive in its analysis of the narrowly tailored requirement for state DBE programs. In upholding the challenged Federal DBE Program at issue in this case, the Eighth Circuit emphasized the race-, ethnicity- and gender-neutral elements, the ultimate flexibility of the Program, and the fact the Program was tied closely only to labor markets with identified discrimination.

In Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, the U.S. Court of Appeals for the Eighth Circuit upheld the constitutionality of the Federal DBE Program (49 C.F.R. Part 26). The court held the Federal Program was narrowly tailored to remedy a compelling governmental interest. The court also held the federal regulations governing the states' implementation of the Federal DBE Program were narrowly tailored, and the state DOT's

implementation of the Federal DBE Program was narrowly tailored to serve a compelling government interest.

Sherbrooke and Gross Seed both contended that the Federal DBE Program on its face and as applied in Minnesota and Nebraska violated the Equal Protection component of the Fifth Amendment's Due Process Clause. The Eighth Circuit engaged in a review of the Federal DBE Program and the implementation of the Program by the Minnesota DOT and the Nebraska Department of Roads under a strict scrutiny analysis and held that the Federal DBE Program was valid and constitutional and that the Minnesota DOT's and Nebraska DOR's implementation of the Program also was constitutional and valid. Applying the strict scrutiny analysis, the court first considered whether the Federal DBE Program established a compelling governmental interest, and found that it did. It concluded that Congress had a strong basis in evidence to support its conclusion that race-based measures were necessary for the reasons stated by the Tenth Circuit in Adarand, 228 F. 3d at 1167-76. Although the contractors presented evidence that challenged the data, they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to participation in highway contracts. Thus, the court held they failed to meet their ultimate burden to prove that the DBE Program is unconstitutional on this ground.

Finally, Sherbrooke and Gross Seed argued that the Minnesota DOT and Nebraska DOR must independently satisfy the compelling governmental interest test aspect of strict scrutiny review. The government argued, and the district courts' below agreed, that participating states need not independently meet the strict scrutiny standard because under the DBE Program the state must still comply with the DOT regulations. The Eighth Circuit held that this issue was not addressed by the Tenth Circuit in Adarand. The Eighth Circuit concluded that neither side's position is entirely sound.

The court rejected the contention of the contractors that their facial challenges to the DBE Program must be upheld unless the record before Congress included strong evidence of race discrimination in construction contracting in Minnesota and Nebraska. On the other hand, the court held a valid race-based program must be narrowly tailored, and to be narrowly tailored, a national program must be limited to those parts of the country where its race-based measures are demonstrably needed to the extent that federal government delegates this tailoring function, as a state's implementation becomes relevant to a reviewing court's strict scrutiny. Thus, the court left the question of state implementation to the narrow tailoring analysis.

The court held that a reviewing court applying strict scrutiny must determine if the race-based measure is narrowly tailored, that is, whether the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose. The contractors have the ultimate burden of establishing that the DBE Program is not narrowly tailored. Id. The compelling interest analysis focused on the record before Congress; the narrow-tailoring analysis looks at the roles of the implementing highway construction agencies.

For determining whether a race-conscious remedy is narrowly tailored, the court looked at factors such as the efficacy of alternative remedies, the flexibility and duration of the race-conscious remedy, the relationship of the numerical goals to the relevant labor market, and the impact of the remedy on third parties. Id. Under the DBE Program, a state receiving federal highway funds must, on an

annual basis, submit to DOT an overall goal for DBE participation in its federally-funded highway contracts. See, 49 C.F.R. § 26.45(f)(1). The overall goal “must be based on demonstrable evidence” as to the number of DBEs who are ready, willing, and able to participate as contractors or subcontractors on federally-assisted contracts. 49 C.F.R. § 26.45(b). The number may be adjusted upward to reflect the state’s determination that more DBEs would be participating absent the effects of discrimination, including race-related barriers to entry. See, 49 C.F.R. § 26.45(d).

The state must meet the “maximum feasible portion” of its overall goal by race-neutral means and must submit for approval a projection of the portion it expects to meet through race-neutral means. See, 49 C.F.R. § 26.45(a), (c). If race-neutral means are projected to fall short of achieving the overall goal, the State must give preference to firms it has certified as DBEs. However, such preferences may not include quotas. 49 C.F.R. § 26.45(b). During the course of the year, if a state determines that it will exceed or fall short of its overall goal, it must adjust its use of race-conscious and race-neutral methods “[t]o ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination.” 49 C.F.R. § 26.51(f).

Absent bad faith administration of the program, a state’s failure to achieve its overall goal will not be penalized. See, 49 C.F.R. § 26.47. If the state meets its overall goal for two consecutive years through race-neutral means, it is not required to set an annual goal until it does not meet its prior overall goal for a year. See, 49 C.F.R. § 26.51(f)(3). In addition, DOT may grant an exemption or waiver from any and all requirements of the Program. See, 49 C.F.R. § 26.15(b).

Like the district courts below, the Eighth Circuit concluded that the DOT regulations, on their face, satisfy the Supreme Court’s narrowing tailoring requirements. First, the regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting. 345 F. 3d at 972. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require serious good faith consideration of workable race-neutral alternatives. 345 F. 3d at 971, citing Grutter v. Bollinger, 539 U.S. 306.

Second, the revised DBE program has substantial flexibility. A State may obtain waivers or exemptions from any requirements and is not penalized for a good faith effort to meet its overall goal. In addition, the program limits preferences to small businesses falling beneath an earnings threshold, and any individual whose net worth exceeds \$750,000.00 cannot qualify as economically disadvantaged. See, 49 C.F.R. § 26.67(b). Likewise, the DBE program contains built-in durational limits. 345 F.3d at 972. A State may terminate its DBE program if it meets or exceeds its annual overall goal through race-neutral means for two consecutive years. Id.; 49 C.F.R. § 26.51(f)(3).

Third, the court found, the USDOT has tied the goals for DBE participation to the relevant labor markets. The regulations require states to set overall goals based upon the likely number of minority contractors that would have received federal assisted highway contracts but for the effects of past discrimination. See, 49 C.F.R. § 26.45(c)-(d)(Steps 1 and 2). Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. Id. at 972.

Finally, Congress and DOT have taken significant steps, the court held, to minimize the race-based nature of the DBE Program. Its benefits are directed at all small business owned and controlled by the socially and economically disadvantaged. While TEA-21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy

minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptively disadvantaged that demonstrate actual social and economic disadvantage. Thus, race is made relevant in the Program, but it is not a determinative factor. 345 F. 3d at 973. For these reasons, the court agreed with the district courts that the revised DBE Program is narrowly tailored on its face.

Sherbrooke and Gross Seed also argued that the DBE Program as applied in Minnesota and Nebraska is not narrowly tailored. Under the Federal Program, states set their own goals, based on local market conditions; their goals are not imposed by the federal government nor do recipients have to tie them to any uniform national percentage. 345 F. 3d at 973, citing 64 Fed. Reg. at 5102.

The court analyzed what Minnesota and Nebraska did in connection with their implementation of the Federal DBE Program. Minnesota DOT commissioned a disparity study of the highway contracting market in Minnesota. The study group determined that DBEs made up 11.4 percent of the prime contractors and subcontractors in a highway construction market. Of this number 0.6 percent were minority-owned and 10.8 percent women-owned. Based upon its analysis of business formation statistics, the consultant estimated that the number of participating minority-owned business would be 34 percent higher in a race-neutral market. Therefore, the consultant adjusted its DBE availability figure from 11.4 percent to 11.6 percent. Based on the study, Minnesota DOT adopted an overall goal of 11.6 percent DBE participation for federally-assisted highway projects. Minnesota DOT predicted that it would need to meet 9 percent of that overall goal through race and gender-conscious means, based on the fact DBE participation in State highway contracts dropped from 10.25 percent in 1998 to 2.25 percent in 1999 when its previous DBE Program was suspended by the injunction by the district court in an earlier decision in Sherbrooke. Minnesota DOT required each prime contract bidder to make a good faith effort to subcontract a prescribe portion of the project to DBEs, and determined that portion based on several individualized factors, including the availability of DBEs in the extent of subcontracting opportunities on the project.

The contractor presented evidence attacking the reliability of the data in the study, but it failed to establish that better data were available or that Minnesota DOT was otherwise unreasonable in undertaking this thorough analysis and relying on its results. Id. The precipitous drop in DBE participation when no race-conscious methods were employed, the court concluded, supports Minnesota DOT's conclusion that a substantial portion of its overall goal could not be met with race-neutral measures. Id. On that record, the court agreed with the district court that the revised DBE Program serves a compelling government interest and is narrowly tailored on its face and as applied in Minnesota.

In Nebraska, the Nebraska DOR commissioned a disparity study also to review availability and capability of DBE firms in the Nebraska highway construction market. The availability study found that between 1995 and 1999, when Nebraska followed the mandatory 10 percent set-aside requirement, 9.95 percent of all available and capable firms were DBEs, and DBE firms received 12.7 percent of the contract dollars on federally assisted projects. After apportioning part of this DBE contracting to race-neutral contracting decisions, Nebraska DOR set an overall goal of 9.95 percent DBE participation and predicted that 4.82 percent of this overall goal would have to be achieved by race-and-gender conscious means. The Nebraska DOR required that prime contractors make a good faith effort to allocate a set portion of each contract's funds to DBE subcontractors. The Eighth Circuit concluded that Gross Seed, like Sherbrooke, failed to prove that the DBE Program is not

narrowly tailored as applied in Nebraska. Therefore, the court affirmed the district courts' decisions in Gross Seed and Sherbrooke. (See district court opinions discussed infra).

5. Sherbrooke Turf, Inc. v. Minnesota DOT, 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unpublished opinion), aff'd 345 F.3d 964 (8th Cir. 2003)

Sherbrooke involved a landscaping service contractor owned and operated by Caucasian males. The contractor sued the Minnesota Department of Transportation claiming the Federal DBE provisions of the Transportation Equity Act for the 21st Century ("TEA-21") are unconstitutional. Sherbrooke challenged the "federal affirmative action programs," the USDOT implementing regulations, and the Minnesota DOT's participation in the DBE Program. The United States Department of Transportation and the Federal Highway Administration intervened as Federal defendants in the case. Sherbrooke, 2001 WL 1502841 at *1.

The United States District Court in Sherbrooke relied substantially on the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), in holding that the Federal DBE Program is constitutional. The district court addressed the issue of "random inclusion" of various groups as being within the program in connection with whether the Federal DBE Program is "narrowly tailored." The court held that Congress cannot enact a national program to remedy discrimination without recognizing classes of people whose history has shown them to be subject to discrimination and allowing states to include those people in its DBE Program.

The court held that the Federal DBE Program attempts to avoid the "potentially invidious effects of providing blanket benefits to minorities" in part,

by restricting a state's DBE preference to identified groups actually appearing in the target state. In practice, this means Minnesota can only certify members of one or another group as potential DBEs if they are present in the local market. This minimizes the chance that individuals — simply on the basis of their birth — will benefit from Minnesota's DBE program. If a group is not present in the local market, or if they are found in such small numbers that they cannot be expected to be able to participate in the kinds of construction work TEA-21 covers, that group will not be included in the accounting used to set Minnesota's overall DBE contracting goal.

Sherbrooke, 2001 WL 1502841 at *10 (D. Minn.).

The court rejected plaintiff's claim that the Minnesota DOT must independently demonstrate how its program comports with Croson's strict scrutiny standard. The court held that the "Constitution calls out far different requirements when a state implements a federal affirmative action program, as opposed to those occasions when a state or locality initiates the program." Id. at *11 (emphasis added). The court in a footnote ruled that TEA-21, being a federal program, "relieves the state of any burden to independently carry the strict scrutiny burden." Id. at *11 n. 3. The court held states that establish DBE programs under TEA-21 and 49 C.F.R. Part 26 are implementing a Congressionally-required program and not establishing a local one. As such, the court concluded that the state need not independently prove its DBE program meets the strict scrutiny standard. Id.

6. Gross Seed Co. v. Nebraska Department of Roads, Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), aff'd 345 F. 3d 964 (8th Cir. 2003)

The United States District Court for the District of Nebraska held in Gross Seed Co. v. Nebraska (with the United States DOT and Federal Highway Administration as Interveners), that the Federal DBE Program (codified at 49 C.F.R. Part 26) is constitutional. The court also held that the Nebraska Department of Roads (“NDOR”) DBE Program adopted and implemented solely to comply with the Federal DBE Program is “approved” by the court because the court found that 49 C.F.R. Part 26 and TEA-21 were constitutional.

The court concluded, similar to the court in Sherbrooke Turf, that the State of Nebraska did not need to independently establish that its program met the strict scrutiny requirement because the Federal DBE Program satisfied that requirement, and was therefore constitutional. The court did not engage in a thorough analysis or evaluation of the NDOR Program or its implementation of the Federal DBE Program. The court points out that the NDOR Program is adopted in compliance with the Federal DBE Program, and that the USDOT approved the use of NDOR’s proposed DBE goals for fiscal year 2001, pending completion of USDOT’s review of those goals. Significantly, however, the court in its findings does note that the NDOR established its overall goals for fiscal year 2001 based upon an independent availability/disparity study.

The court upheld the constitutionality of the Federal DBE Program by finding the evidence presented by the federal government and the history of the federal legislation are sufficient to demonstrate that past discrimination does exist “in the construction industry” and that racial and gender discrimination “within the construction industry” is sufficient to demonstrate a compelling interest in individual areas, such as highway construction. The court held that the Federal DBE Program was sufficiently “narrowly tailored” to satisfy strict scrutiny analysis based again on the evidence submitted by the federal government as to the Federal DBE Program.

7. Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta, 532 U.S. 941, 534 U.S. 103 (2001)

This is the Adarand decision by the United States Court of Appeals for the Tenth Circuit, which was on remand from the earlier Supreme Court decision applying the strict scrutiny analysis to any constitutional challenge to the Federal DBE Program. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). The decision of the Tenth Circuit in this case was considered by the United States Supreme Court, after that court granted certiorari to consider certain issues raised on appeal. The Supreme Court subsequently dismissed the writ of certiorari “as improvidently granted” without reaching the merits of the case. The court did not decide the constitutionality of the Federal DBE Program as it applies to state DOTs or local governments.

The Supreme Court held that the Tenth Circuit had not considered the issue before the Supreme Court on certiorari, namely whether a race-based program applicable to direct federal contracting is constitutional. This issue is distinguished from the issue of the constitutionality of the United States DOT DBE Program as it pertains to procurement of federal funds for highway projects let by states, and the implementation of the Federal DBE Program by state DOTs. Therefore, the Supreme Court held it would not reach the merits of a challenge to federal laws relating to direct federal procurement.

Turning to the Tenth Circuit decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), the Tenth Circuit upheld in general the facial constitutionality of the Federal DBE Program. The court found that the federal government had a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of federal funds and in remediating the effects of past discrimination in government contracting, and that the evidence supported the existence of past and present discrimination sufficient to justify the Federal DBE Program. The court also held that the Federal DBE Program is “narrowly tailored,” and therefore upheld the constitutionality of the Federal DBE Program.

It is significant to note that the court in determining the Federal DBE Program is “narrowly tailored” focused on the current regulations, 49 C.F.R. Part 26, and in particular § 26.1(a), (b), and (f). The court pointed out that the federal regulations instruct recipients as follows:

[y]ou must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation, 49 C.F.R. § 26.51(a)(2000); see also 49 C.F.R. § 26.51(f)(2000) (if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting measures), and enumerate a list of race-neutral measures, see 49 C.F.R. § 26.51(b)(2000). The current regulations also outline several race-neutral means available to program recipients including assistance in overcoming bonding and financing obstacles, providing technical assistance, establishing programs to assist start-up firms, and other methods. See 49 C.F.R. § 26.51(b). We therefore are dealing here with revisions that emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized. 228 F.3d at 1178-1179.

In considering whether the Federal DBE Program is narrowly tailored, the court also addressed the argument made by the contractor that the program is over- and under-inclusive for several reasons, including that Congress did not inquire into discrimination against each particular minority racial or ethnic group. The court held that insofar as the scope of inquiry suggested was a particular state’s construction industry alone, this would be at odds with its holding regarding the compelling interest in Congress’s power to enact nationwide legislation. *Id.* at 1185-1186. The court held that because of the “unreliability of racial and ethnic categories and the fact that discrimination commonly occurs based on much broader racial classifications,” extrapolating findings of discrimination against the various ethnic groups “is more a question of nomenclature than of narrow tailoring.” *Id.* The court found that the “Constitution does not erect a barrier to the government’s effort to combat discrimination based on broad racial classifications that might prevent it from enumerating particular ethnic origins falling within such classifications.” *Id.*

Finally, the Tenth Circuit did not specifically address a challenge to the letting of federally-funded construction contracts by state departments of transportation. The court pointed out that plaintiff Adarand “conceded that its challenge in the instant case is to ‘the federal program, implemented by federal officials,’ and not to the letting of federally-funded construction contracts by state agencies.” 228 F.3d at 1187. The court held that it did not have before it a sufficient record to enable it to

evaluate the separate question of Colorado DOT's implementation of race-conscious policies. *Id.* at 1187-1188.

8. Geod Corporation v. New Jersey Transit Corporation, et. al. 746 F. Supp. 2d 642, 2010 WL 4193051 (D. N. J. October 19, 2010)

Plaintiffs, white male owners of Geod Corporation ("Geod"), brought this action against the New Jersey Transit Corporation ("NJT") alleging discriminatory practices by NJT in designing and implementing the Federal DBE program. 746 F. Supp 2d at 644. The Plaintiffs alleged that the NJT's DBE program violated the United States Constitution, 42 U.S.C. § 1981, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) and state law. The district court previously dismissed the Complaint against all Defendants except for NJT and concluded that a genuine issue material fact existed only as to whether the method used by NJT to determine its DBE goals during 2010 were sufficiently narrowly tailored, and thus constitutional. *Id.*

New Jersey Transit Program and Disparity Study

NJT relied on the analysis of consultants for the establishment of their goals for the DBE program. The study established the effects of past discrimination, the district court found, by looking at the disparity and utilization of DBEs compared to their availability in the market. *Id.* at 648. The study used several data sets and averaged the findings in order to calculate this ratio, including: (1) the New Jersey DBE vendor List; (2) a Survey of Minority-Owned Business Enterprises (SMOBE) and a Survey of Women-Owned Enterprises (SWOBE) as determined by the U.S. Census Bureau; and (3) detailed contract files for each racial group. *Id.*

The court found the study determined an average annual utilization of 23 percent for DBEs, and to examine past discrimination, several analyses were run to measure the disparity among DBEs by race. *Id.* at 648. The Study found that all but one category was underutilized among the racial and ethnic groups. *Id.* All groups other than Asian DBEs were found to be underutilized. *Id.*

The court held that the test utilized by the study, "conducted to establish a pattern of discrimination against DBEs, proved that discrimination occurred against DBEs during the pre-qualification process and in the number of contracts that are awarded to DBEs. *Id.* at 649. The court found that DBEs are more likely than non-DBEs to be pre-qualified for small construction contracts, but are less likely to pre-qualify for larger construction projects. *Id.*

For fiscal year 2010, the study consultant followed the "three-step process pursuant to USDOT regulations to establish the NJT DBE goal." *Id.* at 649. First, the consultant determined "the base figure for the relative availability of DBEs in the specific industries and geographical market from which DBE and non-DBE contractors are drawn." *Id.* In determining the base figure, the consultant (1) defined the geographic marketplace, (2) identified "the relevant industries in which NJ Transit contracts," and (3) calculated "the weighted availability measure." *Id.* at 649.

The court found that the study consultant used political jurisdictional methods and virtual methods to pinpoint the location of contracts and/or contractors for NJT, and determined that the geographical market place for NJT contracts included New Jersey, New York and Pennsylvania. *Id.* at 649. The consultant used contract files obtained from NJT and data obtained from Dun & Bradstreet to identify the industries with which NJT contracts in these geographical areas. *Id.* The

consultant then used existing and estimated expenditures in these particular industries to determine weights corresponding to NJT contracting patterns in the different industries for use in the availability analysis. Id.

The availability of DBEs was calculated by using the following data: Unified Certification Program Business Directories for the states of New Jersey, New York and Pennsylvania; NJT Vendor List; Dun & Bradstreet database; 2002 Survey of Small Business Owners; and NJT Pre-Qualification List. Id. at 649-650. The availability rates were then “calculated by comparing the number of ready, willing, and able minority and women-owned firms in the defined geographic marketplace to the total number of ready, willing, and able firms in the same geographic marketplace. Id. The availability rates in each industry were weighed in accordance with NJT expenditures to determine a base figure. Id.

Second, the consultant adjusted the base figure due to evidence of discrimination against DBE prime contractors and disparities in small purchases and construction pre-qualification. Id. at 650. The discrimination analysis examined discrimination in small purchases, discrimination in pre-qualification, two regression analyses, an Essex County disparity study, market discrimination, and previous utilization. Id. at 650.

The Final Recommendations Report noted that there were sizeable differences in the small purchases awards to DBEs and non-DBEs with the awards to DBEs being significantly smaller. Id. at 650. DBEs were also found to be less likely to be pre-qualified for contracts over \$1 million in comparison to similarly situated non-DBEs. Id. The regression analysis using the dummy variable method yielded an average estimate of a discriminatory effect of -28.80 percent. Id. The discrimination regression analysis using the residual difference method showed that on average 12.2 percent of the contract amount disparity awarded to DBEs and non-DBEs was unexplained. Id.

The consultant also considered evidence of discrimination in the local market in accordance with 49 C.F.R. § 26.45(d). The Final Recommendations Report cited in the 2005 Essex County Disparity Study suggested that discrimination in the labor market contributed to the unexplained portion of the self-employment, employment, unemployment, and wage gaps in Essex County, New Jersey. Id. at 650.

The consultant recommended that NJT focus on increasing the number of DBE prime contractors. Because qualitative evidence is difficult to quantify, according to the consultant, only the results from the regression analyses were used to adjust the base goal. Id. The base goal was then adjusted from 19.74 percent to 23.79 percent. Id.

Third, in order to partition the DBE goal by race-neutral and race-conscious methods, the consultant analyzed the share of all DBE contract dollars won with no goals. Id. at 650. He also performed two different regression analyses: one involving predicted DBE contract dollars and DBE receipts if the goal was set at zero. Id. at 651. The second method utilized predicted DBE contract dollars with goals and predicted DBE contract dollars without goals to forecast how much firms with goals would receive had they not included the goals. Id. The consultant averaged his results from all three methods to conclude that the fiscal year 2010 NJT a portion of the race-neutral DBE goal should be 11.94 percent and a portion of the race-conscious DBE goal should be 11.84 percent. Id. at 651.

The district court applied the strict scrutiny standard of review. The district court already decided, in the course of the motions for summary judgment, that compelling interest was satisfied as New Jersey was entitled to adopt the federal government's compelling interest in enacting TEA-21 and its implementing regulations. *Id.* at 652, *citing* Geod v. N.J. Transit Corp., 678 F.Supp.2d 276, 282 (D.N.J. 2009). Therefore, the court limited its analysis to whether NJT's DBE program was narrowly tailored to further that compelling interest in accordance with "its grant of authority under federal law." *Id.* at 652 *citing* Northern Contracting, Inc. v. Illinois Department of Transportation, 473 F. 3d 715, 722 (7th Cir. 2007).

Applying Northern Contracting v. Illinois

The district court clarified its prior ruling in 2009 (*see* 678 F.Supp.2d 276) regarding summary judgment, that the court agreed with the holding in Northern Contracting, Inc. v. Illinois, that "a challenge to a state's application of a federally mandated program must be limited to the question of whether the state exceeded its authority." *Id.* at 652 *quoting* Northern Contracting, 473 F. 3d at 721. The district court in Geod followed the Seventh Circuit explanation that when a state department of transportation is acting as an instrument of federal policy, a plaintiff cannot collaterally attack the federal regulations through a challenge to a state's program. *Id.* at 652, *citing* Northern Contracting, 473 F. 3d at 722. Therefore, the district court held that the inquiry is limited to the question of whether the state department of transportation "exceeded its grant of authority under federal law." *Id.* at 652-653, *quoting* Northern Contracting, 473 F. 3d at 722 and *citing also* Tennessee Asphalt Co. v. Farris, 942 F.2d 969, 975 (6th Cir. 1991).

The district court found that the holding and analysis in Northern Contracting does not contradict the Eighth Circuit's analysis in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F. 3d 964, 970-71 (8th Cir. 2003). *Id.* at 653. The court held that the Eighth Circuit's discussion of whether the DBE programs as implemented by the State of Minnesota and the State of Nebraska were narrowly tailored focused on whether the states were following the USDOT regulations. *Id.* at 653 *citing* Sherbrooke Turf, 345 F. 3d 973-74. Therefore, "only when the state exceeds its federal authority is it susceptible to an as-applied constitutional challenge." *Id.* at 653 *quoting* Western States Paving Co., Inc. v. Washington State Department of Transportation, 407 F. 3d 983 (9th Cir. 2005)(McKay, C.J.)(concurring in part and dissenting in part) and *citing* South Florida Chapter of the Associated General Contractors v. Broward County, 544 F.Supp.2d 1336, 1341 (S.D.Fla.2008).

The court held the initial burden of proof falls on the government, but once the government has presented proof that its affirmative action plan is narrowly tailored, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional. *Id.* at 653.

In analyzing whether NJT's DBE program was constitutionally defective, the district court focused on the basis of plaintiffs' argument that it was not narrowly tailored because it includes in the category of DBEs racial or ethnic groups as to which the plaintiffs alleged NJT had no evidence of past discrimination. *Id.* at 653. The court found that most of plaintiffs' arguments could be summarized as questioning whether NJT presented demonstrable evidence of the availability of ready, willing and able DBEs as required by 49 C.F.R. § 26.45. *Id.* The court held that NJT followed the goal setting process required by the federal regulations. *Id.* The court stated that NJT began this process with the 2002 disparity study that examined past discrimination and found that all

of the groups listed in the regulations were underutilized with the exception of Asians. *Id.* at 654. In calculating the fiscal year 2010 goals, the consultant used contract files and data from Dun & Bradstreet to determine the geographical location corresponding to NJT contracts and then further focused that information by weighting the industries according to NJT's use. *Id.*

The consultant used various methods to calculate the availability of DBEs, including: the UCP Business Directories for the states of New Jersey, New York and Pennsylvania; NJT Vendor List; Dun & Bradstreet database; 2002 Survey of Small Business Owners; and NJT Pre-Qualification List. *Id.* at 654. The court stated that NJT only utilized one of the examples listed in 49 C.F.R. § 26.45(c), the DBE directories method, in formulating the fiscal year 2010 goals. *Id.*

The district court pointed out, however, the regulations state that the "examples are provided as a starting point for your goal setting process and that the examples are not intended as an exhaustive list. *Id.* at 654, *citing* 46 C.F.R. § 26.45(c). The court concluded the regulations clarify that other methods or combinations of methods to determine a base figure may be used. *Id.* at 654.

The court stated that NJT had used these methods in setting goals for prior years as demonstrated by the reports for 2006 and 2009. *Id.* at 654. In addition, the court noted that the Seventh Circuit held that a custom census, the Dun & Bradstreet database, and the Illinois Department of Transportation's list of DBEs were an acceptable combination of methods with which to determine the base figure for TEA-21 purposes. *Id.* at 654, *citing* Northern Contracting, 473 F. 3d at 718.

The district court found that the expert witness for plaintiffs had not convinced the court that the data was faulty, and the testimony at trial did not persuade the court that the data or regression analyses relied upon by NJT were unreliable or that another method would provide more accurate results. *Id.* at 654-655.

The court in discussing step two of the goals setting process pointed out that the data examined by the consultant is listed in the regulations as proper evidence to be used to adjust the base figure. *Id.* at 655, *citing* 49 C.F.R. § 26.45(d). This data included evidence from disparity studies and statistical disparities in the ability of DBEs to get pre-qualification. *Id.* at 655. The consultant stated that evidence of societal discrimination was not used to adjust the base goal and that the adjustment to the goal was based on the discrimination analysis, which controls for size of firm and effect of having a DBE goal. *Id.* at 655.

The district court then analyzed NJT's division of the adjusted goal into race-conscious and race-neutral portions. *Id.* at 655. The court noted that narrowly tailoring does not require exhaustion of every conceivable race-neutral alternative, but instead requires serious, good faith consideration of workable race-neutral alternatives. *Id.* at 655. The court agreed with Western States Paving that only "when race-neutral efforts prove inadequate do these regulations authorize a State to resort to race-conscious measures to achieve the remainder of its DBE utilization goal." *Id.* at 655, *quoting* Western States Paving, 407 F. 3d at 993-94.

The court found that the methods utilized by NJT had been used by it on previous occasions, which were approved by the USDOT. *Id.* at 655. The methods used by NJT, the court found, also complied with the examples listed in 49 C.F.R. § 26.51, including arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE participation; providing pre-qualification assistance; implementing supportive services programs; and

ensuring distribution of DBE directories. *Id.* at 655. The court held that based on these reasons and following the Northern Contracting, Inc. v. Illinois line of cases, NJT's DBE program did not violate the Constitution as it did not exceed its federal authority. *Id.* at 655.

However, the district court also found that even under the Western States Paving Co., Inc. v. Washington State DOT standard, the NJT program still was constitutional. *Id.* at 655. Although the court found that the appropriate inquiry is whether NJT exceeded its federal authority as detailed in Northern Contracting, Inc. v. Illinois, the court also examined the NJT DBE program under Western States Paving Co. v. Washington State DOT. *Id.* at 655-656. The court stated that under Western States Paving, a Court must "undertake an as-applied inquiry into whether [the state's] DBE program is narrowly tailored." *Id.* at 656, *quoting* Western States Paving, 407 F. 3d at 997.

Applying Western States Paving

The district court then analyzed whether the NJT program was narrowly tailored applying Western States Paving. Under the first prong of the narrowly tailoring analysis, a remedial program is only narrowly tailored if its application is limited to those minority groups that have actually suffered discrimination. *Id.* at 656, *citing* Western States Paving, 407 F. 3d at 998. The court acknowledged that according to the 2002 Final Report, the ratios of DBE utilization to DBE availability was 1.31. *Id.* at 656. However, the court found that the Plaintiffs' argument failed as the facts in Western States Paving were distinguishable from those of NJT, because NJT did receive complaints, *i.e.*, anecdotal evidence, of the lack of opportunities for Asian firms. *Id.* at 656. NJT employees testified that Asian firms informally and formally complained of a lack of opportunity to grow and indicated that the DBE program was assisting with this issue. *Id.* In addition, Plaintiff's expert conceded that Asian firms have smaller average contract amounts in comparison to non-DBE firms. *Id.*

The Plaintiff relied solely on the utilization rate as evidence that Asians are not discriminated against in NJT contracting. *Id.* at 656. The court held this was insufficient to overcome the consultant's determination that discrimination did exist against Asians, and thus this group was properly included in the DBE program. *Id.* at 656.

The district court rejected Plaintiffs' argument that the first step of the narrow tailoring analysis was not met because NJT focuses its program on sub-contractors when NJT's expert identified "prime contracting" as the area in which NJT procurements evidence discrimination. *Id.* at 656. The court held that narrow tailoring does not require exhaustion of every conceivable race-neutral alternative but it does require serious, good faith consideration of workable race-neutral alternatives. *Id.* at 656, *citing* Sherbrook Turf, 345 F. 3d at 972 (*quoting* Grutter v. Bollinger, 539 U.S. 306, 339, (2003)). In its efforts to implement race-neutral alternatives, the court found NJT attempted to break larger contracts up in order to make them available to smaller contractors and continues to do so when logistically possible and feasible to the procurement department. *Id.* at 656-657.

The district court found NJT satisfied the third prong of the narrowly tailored analysis, the "relationship of the numerical goals to the relevant labor market." *Id.* at 657. Finally, under the fourth prong, the court addressed the impact on third-parties. *Id.* at 657. The court noted that placing a burden on third parties is not impermissible as long as that burden is minimized. *Id.* at 657, *citing* Western States Paving, 407 F. 3d at 995. The court stated that instances will inevitably occur where non-DBEs will be bypassed for contracts that require DBE goals, however, TEA-21 and its

implementing regulations contain provisions intended to minimize the burden on non-DBEs. *Id.* at 657, *citing* Western States Paving, 407 F. 3d at 994-995.

The court pointed out the Ninth Circuit in Western States Paving found that inclusion of regulations allowing firms that were not presumed to be DBEs to demonstrate that they were socially and economically disadvantaged, and thus qualified for DBE programs, as well as the net worth limitations, were sufficient to minimize the burden on DBEs. *Id.* at 657, *citing* Western States Paving, 407 F. 3d at 955. The court held that the Plaintiffs did not provide evidence that NJT was not complying with implementing regulations designed to minimize harm to third parties. *Id.*

Therefore, even if the district court utilized the as-applied narrow tailoring inquiry set forth in Western States Paving, NJT's DBE program would not be found to violate the Constitution, as the court held it was narrowly tailored to further a compelling governmental interest. *Id.* at 657.

9. Geod Corporation v. New Jersey Transit Corporation, et. seq. 678 F.Supp. 2d 276, 2009 WL 2595607 (D.N.J. August 20, 2009)

Plaintiffs Geod Corporation and its officers, who are white males, sued the New Jersey Transit Corporation ("NJT") and state officials seeking a declaration that NJT's DBE program was unconstitutional and in violation of the United States 5th and 14th Amendment to the United States Constitution and the Constitution of the State of New Jersey, and seeking a permanent injunction against NJT for enforcing or utilizing its DBE program. The NJT's DBE program was implemented in accordance with the Federal DBE Program and the Transportation Equity Act for the 21st century ("TEA-21") and 49 C.F.R. Part 26.

The parties filed cross Motions for Summary Judgment. The plaintiff Geod challenged the constitutionality of NJT's DBE program for multiple reasons, including alleging NJT could not justify establishing a program using race- and sex-based preferences; the NJT's disparity study did not provide a sufficient factual predicate to justify the DBE Program; NJT's statistical evidence did not establish discrimination; NJT did not have anecdotal data evidencing a "strong basis in evidence" of discrimination which justified a race- and sex-based program; NJT's program was not narrowly tailored and over-inclusive; NJT could not show an exceedingly persuasive justification for gender preferences; and that NJT's program was not narrowly tailored because race-neutral alternatives existed. In opposition, NJT filed a Motion for Summary Judgment asserting that its DBE program was narrowly tailored because it fully complied with the requirements of the Federal DBE Program and TEA-21.

Compelling interest. The district court held that states and their agencies are entitled to adopt the federal governments' compelling interest in enacting TEA-21 and its implementing regulations. 2009 WL 2595607 at *4. The court stated that plaintiff's argument that NJT cannot establish the need for its DBE program was a "red herring, which is unsupported." The plaintiff did not question the constitutionality of the compelling interest of the Federal DBE Program. The court held that all states "inherit the federal governments' compelling interest in establishing a DBE program." *Id.*

The court found that establishing a DBE program "is not contingent upon a state agency demonstrating a need for same, as the federal government has already done so." *Id.* The court concluded that this reasoning rendered plaintiff's assertions that NJT's disparity study did not have sufficient factual predicate for establishing its DBE program, and that no exceedingly persuasive

justification was found to support gender based preferences, as without merit. Id. The court held that NJT does not need to justify establishing its DBE program, as it has already been justified by the legislature. Id.

NJT's DBE program as applied. The court noted that both plaintiff's and defendant's arguments were based on an alleged split in the Federal Circuit Courts of Appeal. Plaintiff Geod relies on Western States Paving Company v. Washington State DOT, 407 F.3d 983(9th Cir. 2005) for the proposition that an as-applied challenge to the constitutionality of a particular DBE program requires a demonstration by the recipient of federal funds that the program is narrowly tailored. Id. at *5. In contrast, the NJT relied primarily on Northern Contracting, Inc. v. State of Illinois, 473 F.3d 715 (7th Cir. 2007) for the proposition that if a DBE program complies with TEA-21, it is narrowly tailored. Id.

The court viewed the various Federal Circuit Court of Appeals decisions as fact specific determinations which have lead to the parties distinguishing cases without any substantive difference in the application of law. Id.

The court reviewed the decisions by the Ninth Circuit in Western States Paving and the Seventh Circuit of Northern Contracting. In Western States Paving, the district court stated that the Ninth Circuit held for a DBE program to pass constitutional muster, it must be narrowly tailored; specifically, the recipient of federal funds must evidence past discrimination in the relevant market in order to utilize race conscious DBE goals. Id. at *5. The Ninth Circuit, according to district court, made a fact specific determination as to whether the DBE program complied with TEA-21 in order to decide if the program was narrowly tailored to meet the federal regulation's requirements. The district court stated that the requirement that a recipient must evidence past discrimination "is nothing more than a requirement of the regulation." Id.

The court stated that the Seventh Circuit in Northern Contracting held a recipient must demonstrate that its program is narrowly tailored, and that generally a recipient is insulated from this sort of constitutional attack absent a showing that the state exceeded its federal authority. Id., citing Northern Contracting, 473 F.3d at 721. The district court held that implicit in Northern Contracting is the fact one may challenge the constitutionality of a DBE program, as it is applied, to the extent that the program exceeds its federal authority. Id.

The court, therefore, concluded that it must determine first whether NJT's DBE program complies with TEA-21, then whether NJT exceeded its federal authority in its application of its DBE program. In other words, the district court stated it must determine whether the NJT DBE program complies with TEA-21 in order to determine whether the program, as implemented by NJT, is narrowly tailored. Id.

The court pointed out that the Eighth Circuit Court of Appeals in Sherbrook Turf, Inc. v. Minnesota DOT, 345 F.3d 964 (8th Cir. 2003) found Minnesota's DBE program was narrowly tailored because it was in compliance with TEA-21's requirements. The Eighth Circuit in Sherbrook, according to the district court, analyzed the application of Minnesota's DBE program to ensure compliance with TEA-21's requirements to ensure that the DBE program implemented by Minnesota DOT was narrowly tailored. Id. at *5.

The court held that TEA-21 delegates to each state that accepts federal transportation funds the responsibility of implementing a DBE program that comports with TEA-21. In order to comport with TEA-21, the district court stated a recipient must (1) determine an appropriate DBE participation goal, (2) examine all evidence and evaluate whether an adjustment, if any, is needed to arrive at their goal, and (3) if the adjustment is based on continuing effects of past discrimination, provide demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought. *Id.* at *6, citing Western States Paving Company, 407 F.3d at 983, 988.

Determination of DBE goal. First, the district court stated a recipient of federal funds must determine, at the local level, the figure that would constitute an appropriate DBE involvement goal, based on their relative availability of DBEs. *Id.* at *6, citing 49 C.F.R. § 26.45(c). In this case, the court found that NJT did determine a base figure for the relative availability of DBEs, which accounted for demonstrable evidence of local market conditions and was designed to be rationally related to the relative availability of DBEs. *Id.* The court pointed out that NJT conducted a disparity study; and the disparity study utilized NJT’s DBE lists from fiscal years 1995-1999 and Census Data to determine its base DBE goal. The court noted that the plaintiffs’ argument that the data used in the disparity study were stale, was without merit and had no basis in law. The court found that the disparity study took into account the primary industries, primary geographic market, and race neutral alternatives, then adjusted its goal to encompass these characteristics. *Id.* at *6.

The court stated that the use of DBE directories and Census data are what the legislature intended for state agencies to utilize in making a base DBE goal determination. *Id.* Also, the court stated that “perhaps more importantly, NJT’s DBE goal was approved by the USDOT every year from 2002 until 2008.” *Id.* at *6. Thus, the court found NJT appropriately determined their DBE availability, which was approved by the USDOT, pursuant to 49 C.F.R. § 26.45(c). *Id.* at *6. The court held that NJT demonstrated its overall DBE goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in DOT assisted contracts and reflects its determination of the level of DBE participation it would expect absent the effects of discrimination. *Id.*

Also of significance, the court pointed out that plaintiffs did not provide any evidence that NJT did not set a DBE goal based upon 49 C.F. § 26.45(c). The court thus held that genuine issues of material fact remain only as to whether a reasonable jury may find that the method used by NJT to determine its DBE goal was sufficiently narrowly tailored. *Id.* at *6.

NJT’s adjustment of its DBE goal. The court pointed out that to determine what adjustment to make, the disparity study examined qualitative data such as focus groups on the pre-qualification status of DBEs, working with prime contractors, securing credit, and its effect on DBE participation, as well as procurement officer interviews to analyze, and compare and contrast their relationships with non-DBE vendors and DBE vendors. *Id.* at *7. This qualitative information was then compared to DBE bids and DBE goals for each year in question. NJT’s adjustment to its DBE goal also included an analysis of the overall disparity ratio, as well as, DBE utilization based on race, gender and ethnicity. *Id.* A decomposition analysis was also performed. *Id.*

The court concluded that NJT provided evidence that it, at a minimum, examined the current capacity of DBEs to perform work in its DOT-assisted contracting program, as measured by the

volume of work DBEs have performed in recent years, as well as utilizing the disparity study itself. The court pointed out there were two methods specifically approved by 49 C.F.R. § 26.45(d). *Id.*

The court also found that NJT took into account race neutral measures to ensure that the greatest percentage of DBE participation was achieved through race and gender neutral means. The district court concluded that “critically,” plaintiffs failed to provide evidence of another, more perfect, method that could have been utilized to adjust NJT’s DBE goal. *Id.* at *7. The court held that genuine issues of material fact remain only as to whether NJT’s adjustment to its DBE goal is sufficiently narrowly tailored and thus constitutional. *Id.*

Effects of past discrimination. NJT, the court found, adjusted its DBE goal to account for the effects of past discrimination, noting the disparity study took into account the effects of past discrimination in the pre-qualification process of DBEs. *Id.* at *7. The court quoted the disparity study as stating that it found non-trivial and statistically significant measures of discrimination in contract amounts awarded during the study period. *Id.* at *8.

The court found, however, that what was “gravely critical” about the finding of the past effects of discrimination is that it only took into account six groups including American Indian, Hispanic, Asian, blacks, women and “unknown,” but did not include an analysis of past discrimination for the ethnic group “Iraqi,” which is now a group considered to be a DBE by the NJT. *Id.* Because the disparity report included a category entitled “unknown,” the court held a genuine issue of material fact remains as to whether “Iraqi” is legitimately within NJT’s defined DBE groups and whether a demonstrable finding of discrimination exists for Iraqis. Therefore, the court denied both plaintiffs’ and defendants’ Motions for Summary Judgment as to the constitutionality of NJT’s DBE program.

Qualified immunity and Title VI. The court also held that because the law was not clearly established at the time NJT established its DBE program to comply with TEA-21, the individual state defendants were entitled to qualified immunity and their Motion for Summary Judgment as to the state officials was granted. The court, in addition, held that plaintiff’s Title VI claims were dismissed because the individual defendants were not recipients of federal funds, and that the NJT as an instrumentality of the State of New Jersey is entitled to sovereign immunity. Therefore, the court held that the plaintiff’s claims based on the violation of 42 U.S.C. § 1983 were dismissed and NJT’s Motion for Summary Judgment was granted as to that claim.

10. Klaver Construction, Inc. v. Kansas DOT, 211 F. Supp. 2d 1296 (D. Kan. 2002)

This is another case that involved a challenge to the USDOT Regulations that implement TEA-21 (49 C.F.R. Part 26), in which the plaintiff contractor sought to enjoin the Kansas Department of Transportation (“DOT”) from enforcing its DBE Program on the grounds that it violates the Equal Protection Clause under the Fourteenth Amendment. This case involves a direct constitutional challenge to racial and gender preferences in federally-funded state highway contracts. This case concerned the constitutionality of the Kansas DOT’s implementation of the Federal DBE Program, and the constitutionality of the gender-based policies of the federal government and the race- and gender-based policies of the Kansas DOT. The court granted the federal and state defendants’ (USDOT and Kansas DOT) Motions to Dismiss based on lack of standing. The court held the contractor could not show the specific aspects of the DBE Program that it contends are unconstitutional have caused its alleged injuries.

F. Recent Decisions Involving State or Local Government MBE/WBE Programs in Other Jurisdictions

Recent Decisions in Federal Circuit Courts of Appeal

1. H. B. Rowe Co., Inc. v. W. Lyndo Tippett, NCDOT, et al, 615 F. 3d 233 (4th Cir. 2010)

The State of North Carolina enacted statutory legislation that required prime contractors to engage in good faith efforts to satisfy participation goals for minority and women subcontractors on state-funded projects. (See facts as detailed in the decision of the United States District Court for the Eastern District of North Carolina discussed below.). The plaintiff, a prime contractor, brought this action after being denied a contract because of its failure to demonstrate good faith efforts to meet the participation goals set on a particular contract that it was seeking an award to perform work with NCDOT. Plaintiff asserted that the participation goals violated the Equal Protection Clause and sought injunctive relief and money damages.

After a bench trial, the district court held the challenged statutory scheme constitutional both on its face and as applied, and the plaintiff prime contractor appealed. 615 F. 3d 233 at 236. The Court of Appeals held that the State did not meet its burden of proof in all respects to uphold the validity of the state legislation. But, the Court agreed with the district court that the State produced a strong basis in evidence justifying the statutory scheme on its face, and as applied to African American and Native American subcontractors, and that the State demonstrated that the legislative scheme is narrowly tailored to serve its compelling interest in remedying discrimination against these racial groups. The Court thus affirmed the decision of the district court in part, reversed it in part and remanded for further proceedings consistent with the opinion. Id.

The Court found that the North Carolina statutory scheme “largely mirrored the federal Disadvantaged Business Enterprise (“DBE”) program, with which every state must comply in awarding highway construction contracts that utilize federal funds.” 615 F. 3d 233 at 236. The Court also noted that federal courts of appeal “have uniformly upheld the Federal DBE Program against equal-protection challenges.” Id., at footnote 1, *citing*, Adarand Constructors, Inc. v. Slater, 228 F. 3d 1147 (10th Cir. 2000).

In 2004, the State retained a consultant to prepare and issue a third study of subcontractors employed in North Carolina’s highway construction industry. The study, according to the Court, marshaled evidence to conclude that disparities in the utilization of minority subcontractors persisted. 615 F. 3d 233 at 238. The Court pointed out that in response to the study, the North Carolina General Assembly substantially amended state legislation section 136-28.4 and the new law went into effect in 2006. The new statute modified the previous statutory scheme, according to the Court in five important respects. Id.

First, the amended statute expressly conditions implementation of any participation goals on the findings of the 2004 study. Second, the amended statute eliminates the 5 and 10 percent annual goals that were set in the predecessor statute. 615 F. 3d 233 at 238-239. Instead, as amended, the statute requires the NCDOT to “establish annual aspirational goals, not mandatory goals, ... for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses ... [that] shall not be applied rigidly on specific contracts or projects.” Id. at 239, *quoting*, N.C. Gen.Stat. § 136-28.4(b)(2010). The statute further mandates that the NCDOT set “contract-specific goals or

project-specific goals ... for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization” based on availability, as determined by the study. *Id.*

Third, the amended statute narrowed the definition of “minority” to encompass only those groups that have suffered discrimination. *Id.* at 239. The amended statute replaced a list of defined minorities to any certain groups by defining “minority” as “only those racial or ethnicity classifications identified by [the study] ... that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.” *Id.* at 239 *quoting* section 136-28.4(c)(2)(2010).

Fourth, the amended statute required the Department to reevaluate the Program over time and respond to changing conditions. 615 F. 3d 233 at 239. Accordingly, the NCDOT must conduct a study similar to the 2004 study at least every five years. *Id.* § 136-28.4(b). Finally, the amended statute contained a sunset provision which was set to expire on August 31, 2009, but the General Assembly subsequently extended the sunset provision to August 31, 2010. *Id.* Section 136-28.4(e) (2010).

The Court also noted that the statute required only good faith efforts by the prime contractors to utilize subcontractors, and that the good faith requirement, the Court found, proved permissive in practice: prime contractors satisfied the requirement in 98.5 percent of cases, failing to do so in only 13 of 878 attempts. 615 F. 3d 233 at 239.

Strict scrutiny. The Court stated the strict scrutiny standard was applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically “fatal in fact.” 615 F. 3d 233 at 241. The Court pointed out that “[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.” *Id.* at 241 *quoting* Alexander v. Estep, 95 F. 3d 312, 315 (4th Cir. 1996). In so acting, a governmental entity must demonstrate it had a compelling interest in “remedying the effects of past or present racial discrimination.” *Id.*, *quoting* Shaw v. Hunt, 517 U.S. 899, 909 (1996).

Thus, the Court found that to justify a race-conscious measure, a state must identify that discrimination, public or private, with some specificity, and must have a strong basis in evidence for its conclusion that remedial action is necessary. 615 F. 3d 233 at 241 *quoting*, Croson, 488 U.S. at 504 and Wygant v. Jackson Board of Education, 476 U.S. 267, 277 (1986)(plurality opinion).

The Court significantly noted that: “There is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.” 615 F. 3d 233 at 241, *quoting* Rothe Dev. Corp. v. Department of Defense, 545 F. 3d 1023, 1049 (Fed.Cir. 2008). The Court stated that the sufficiency of the State’s evidence of discrimination “must be evaluated on a case-by-case basis.” *Id.* at 241. (internal quotation marks omitted).

The Court held that a state “need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary. 615 F. 3d 233 at 241, *citing* Concrete Works, 321 F. 3d at 958. “Instead, a state may meet its burden by relying on “a significant statistical disparity” between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its

prime contractors. *Id.* at 241, *citing Croson*, 488 U.S. at 509 (plurality opinion). The Court stated that we “further require that such evidence be ‘corroborated by significant anecdotal evidence of racial discrimination.’” *Id.* at 241, *quoting Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993).

The Court pointed out that those challenging race-based remedial measures must “introduce credible, particularized evidence to rebut” the state’s showing of a strong basis in evidence for the necessity for remedial action. *Id.* at 241-242, *citing Concrete Works*, 321 F. 3d at 959. Challengers may offer a neutral explanation for the state’s evidence, present contrasting statistical data, or demonstrate that the evidence is flawed, insignificant, or not actionable. *Id.* at 242 (citations omitted). However, the Court stated “that mere speculation that the state’s evidence is insufficient or methodologically flawed does not suffice to rebut a state’s showing. *Id.* at 242, *citing Concrete Works*, 321 F. 3d at 991.

The Court held that to satisfy strict scrutiny, the state’s statutory scheme must also be “narrowly tailored” to serve the state’s compelling interest in not financing private discrimination with public funds. 615 F. 3d 233 at 242, *citing Alexander*, 95 F. 3d at 315 (*citing Adarand*, 515 U.S. at 227).

Intermediate scrutiny. The Court held that courts apply “intermediate scrutiny” to statutes that classify on the basis of gender. *Id.* at 242. The Court found that a defender of a statute that classifies on the basis of gender, meets this intermediate scrutiny burden “by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.*, *quoting Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982). The Court noted that intermediate scrutiny requires less of a showing than does “the most exacting” strict scrutiny standard of review. *Id.* at 242. The Court found that its “sister circuits” provide guidance in formulating a governing evidentiary standard for intermediate scrutiny. These courts agree that such a measure “can rest safely on something less than the ‘strong basis in evidence’ required to bear the weight of a race- or ethnicity-conscious program.” *Id.* at 242, *quoting Engineering Contractors*, 122 F. 3d at 909 (other citations omitted).

In defining what constitutes “something less” than a ‘strong basis in evidence,’ the courts, ... also agree that the party defending the statute must ‘present [] sufficient probative evidence in support of its stated rationale for enacting a gender preference, *i.e.*,...the evidence [must be] sufficient to show that the preference rests on evidence-informed analysis rather than on stereotypical generalizations.’” 615 F. 3d 233 at 242 *quoting Engineering Contractors*, 122 F. 3d at 910 and *Concrete Works*, 321 F. 3d at 959. The gender-based measures must be based on “reasoned analysis rather than on the mechanical application of traditional, often inaccurate, assumptions.” *Id.* at 242 *quoting Hogan*, 458 U.S. at 726.

Plaintiff’s burden. The Court found that when a plaintiff alleges that a statute violates the Equal Protection Clause as applied and on its face, the plaintiff bears a heavy burden. In its facial challenge, the Court held that a plaintiff “has a very heavy burden to carry, and must show that [a statutory scheme] cannot operate constitutionally under any circumstance.” *Id.* at 243, *quoting West Virginia v. U.S. Department of Health & Human Services*, 289 F. 3d 281, 292 (4th Cir. 2002).

Statistical evidence. The Court examined the State’s statistical evidence of discrimination in public-sector subcontracting, including its disparity evidence and regression analysis. The Court noted that

the statistical analysis analyzed the difference or disparity between the amount of subcontracting dollars minority- and women-owned businesses actually won in a market and the amount of subcontracting dollars they would be expected to win given their presence in that market. 615 F. 3d 233 at 243. The Court found that the study grounded its analysis in the “disparity index,” which measures the participation of a given racial, ethnic, or gender group engaged in subcontracting. *Id.* In calculating a disparity index, the study divided the percentage of total subcontracting dollars that a particular group won by the percent that group represents in the available labor pool, and multiplied the result by 100. *Id.* The closer the resulting index is to 100, the greater that group’s participation. *Id.*

The Court held that after *Croson*, a number of our sister circuits have recognized the utility of the disparity index in determining statistical disparities in the utilization of minority- and women-owned businesses. *Id.* at 243-244 (Citations to multiple federal circuit court decisions omitted.) The Court also found that generally “courts consider a disparity index lower than 80 as an indication of discrimination.” *Id.* at 244. Accordingly, the study considered only a disparity index lower than 80 as warranting further investigation. *Id.*

The Court pointed out that after calculating the disparity index for each relevant racial or gender group, the consultant tested for the statistical significance of the results by conducting standard deviation analysis through the use of t-tests. The Court noted that standard deviation analysis “describes the probability that the measured disparity is the result of mere chance.” 615 F. 3d 233 at 244, quoting *Eng’g Contractors*, 122 F. 3d at 914. The consultant considered the finding of two standard deviations to demonstrate “with 95 percent certainty that disparity, as represented by either overutilization or underutilization, is actually present.” *Id.*, citing *Eng’g Contractors*, 122 F. 3d at 914.

The study analyzed the participation of minority and women subcontractors in construction contracts awarded and managed from the central Department office in Raleigh, North Carolina. 615 F. 3d 233 at 244. To determine utilization of minority and women subcontractors, the consultant developed a master list of contracts mainly from State-maintained electronic databases and hard copy files; then selected from that list a statistically valid sample of contracts, and calculated the percentage of subcontracting dollars awarded to minority- and women-owned businesses during the 5-year period ending in June 2003. (The study was published in 2004). *Id.* at 244.

The Court found that the use of data for centrally-awarded contracts was sufficient for its analysis. It was noted that data from construction contracts awarded and managed from the department divisions across the state and from preconstruction contracts, which involve work from engineering firms and architectural firms on the design of highways, was incomplete and not accurate. 615 F. 3d 233 at 244, n.6. This data was not relied upon in forming the opinions relating to the study. *Id.* at 244, n. 6.

To estimate availability, which the Court defined as the percentage of a particular group in the relevant market area, the consultant created a vendor list comprising: (1) subcontractors approved by the department to perform subcontract work on state-funded projects, (2) subcontractors that performed such work during the study period, and (3) contractors qualified to perform prime construction work on state-funded contracts. 615 F. 3d 233 at 244. The Court noted that prime construction work on state-funded contracts was included based on the testimony by the consultant

that prime contractors are qualified to perform subcontracting work and often do perform such work. Id. at 245. The Court also noted that the consultant submitted its master list to the Department for verification. Id. at 245.

Based on the utilization and availability figures, the study prepared the disparity analysis comparing the utilization based on the percentage of subcontracting dollars over the five year period, determining the availability in numbers of firms and their percentage of the labor pool, a disparity index which is the percentage of utilization in dollars divided by the percentage of availability multiplied by 100, and a T Value. 615 F. 3d 233 at 245.

The Court concluded that the figures demonstrated prime contractors underutilized all of the minority subcontractor classifications on state-funded construction contracts during the study period. 615 F. 3d 233 245. The disparity index for each group was less than 80 and, thus, the Court found warranted further investigation. Id. The t-test results, however, demonstrated marked underutilization only of African American and Native American subcontractors. Id. For African Americans the t-value fell outside of two standard deviations from the mean and, therefore, was statistically significant at a 95 percent confidence level. Id. The Court found there was at least a 95 percent probability that prime contractors' underutilization of African American subcontractors was *not* the result of mere chance. Id.

For Native American subcontractors, the t-value of 1.41 was significant at a confidence level of approximately 85 percent. 615 F. 3d 233 at 245. The t-values for Hispanic American and Asian American subcontractors, demonstrated significance at a confidence level of approximately 60 percent. The disparity index for women subcontractors found that they were overutilized during the study period. The overutilization was statistically significant at a 95 percent confidence level. Id.

To corroborate the disparity study, the consultant conducted a regression analysis studying the influence of certain company and business characteristics – with a particular focus on owner race and gender – on a firm's gross revenues. 615 F. 3d 233 at 246. The consultant obtained the data from a telephone survey of firms that conducted or attempted to conduct business with the Department. The survey pool consisted of a random sample of such firms. Id.

The consultant used the firms' gross revenues as the dependent variable in the regression analysis to test the effect of other variables, including company age and number of full-time employees, and the owners' years of experience, level of education, race, ethnicity, and gender. 615 F. 3d 233 at 246. The analysis revealed that minority and women ownership universally had a negative effect on revenue, and African American ownership of a firm had the largest negative effect on that firm's gross revenue of all the independent variables included in the regression model. Id. These findings led to the conclusion that for African Americans the disparity in firm revenue was not due to capacity-related or managerial characteristics alone. Id.

The Court rejected the arguments by the plaintiffs attacking the availability estimates. The Court rejected the plaintiff's expert, Dr. George LaNoue, who testified that bidder data – reflecting the number of subcontractors that actually bid on Department subcontracts – estimates availability better than “vendor data.” 615 F. 3d 233 at 246. Dr. LaNoue conceded, however, that the State does not compile bidder data and that bidder data actually reflects skewed availability in the context of a goals program that urges prime contractors to solicit bids from minority and women subcontractors. Id. The Court found that the plaintiff's expert did not demonstrate that the vendor data used in the

study was unreliable, or that the bidder data would have yielded less support for the conclusions reached. In sum, the Court held that the plaintiffs challenge to the availability estimate failed because it could not demonstrate that the 2004 study's availability estimate was inadequate. *Id.* at 246. The Court cited Concrete Works, 321 F. 3d at 991 for the proposition that a challenger cannot meet its burden of proof through conjecture and unsupported criticisms of the state's evidence," and that the plaintiff Rowe presented no viable alternative for determining availability. *Id.* at 246-247, *citing Concrete Works*, 321 F. 3d 991 and Sherbrooke Turf, Inc. v. Minn. Department of Transportation, 345 F. 3d 964, 973 (8th Cir. 2003).

The Court also rejected the plaintiff's argument that minority subcontractors participated on state-funded projects at a level consistent with their availability in the relevant labor pool, based on the state's response that evidence as to the *number* of minority subcontractors working with state-funded projects does not effectively rebut the evidence of discrimination in terms of subcontracting *dollars*. 615 F. 3d 233 at 247. The State pointed to evidence indicating that prime contractors used minority businesses for low-value work in order to comply with the goals, and that African American ownership had a significant negative impact on firm revenue unrelated to firm capacity or experience. *Id.* The Court concluded plaintiff did not offer any contrary evidence. *Id.*

The Court found that the State bolstered its position by presenting evidence that minority subcontractors have the capacity to perform higher-value work. 615 F. 3d 233 at 247. The study concluded, based on a sample of subcontracts and reports of annual firm revenue, that exclusion of minority subcontractors from contracts under \$500,000 was not a function of capacity. *Id.* at 247. Further, the State showed that over 90 percent of the Department's subcontracts were valued at \$500,000 or less, and that capacity constraints do not operate with the same force on subcontracts as they may on prime contracts because subcontracts tend to be relatively small. *Id.* at 247. The Court pointed out that the Court in Rothe II, 545 F. 3d at 1042-45, faulted disparity analyses of total construction dollars, including prime contracts, for failing to account for the relative capacity of firms in that case. *Id.* at 247.

The Court pointed out that in addition to the statistical evidence, the State also presented evidence demonstrating that from 1991 to 1993, during the Program's suspension, prime contractors awarded substantially fewer subcontracting dollars to minority and women subcontractors on state-funded projects. The Court rejected the plaintiff's argument that evidence of a decline in utilization does not raise an inference of discrimination. 615 F. 3d 233 at 247-248. The Court held that the very significant decline in utilization of minority and women-subcontractors – nearly 38 percent – “surely provides a basis for a fact finder to infer that discrimination played some role in prime contractors' reduced utilization of these groups during the suspension.” *Id.* at 248, *citing Adarand v. Slater*, 228 F. 3d at 1174 (finding that evidence of declining minority utilization after a program has been discontinued “strongly supports the government's claim that there are significant barriers to minority competition in the public subcontracting market, raising the specter of racial discrimination.”) The Court found such an inference is particularly compelling for minority-owned businesses because, even during the study period, prime contractors continue to underutilize them on state-funded road projects. *Id.* at 248.

Anecdotal evidence. The State additionally relied on three sources of anecdotal evidence contained in the study: a telephone survey, personal interviews, and focus groups. The Court found the anecdotal evidence showed an informal “good old boy” network of white contractors that

discriminated against minority subcontractors. 615 F. 3d 233 at 248. The Court noted that three-quarters of African American respondents to the telephone survey agreed that an informal network of prime and subcontractors existed in the State, as did the majority of other minorities, that more than half of African American respondents believed the network excluded their companies from bidding or awarding a contract as did many of the other minorities. *Id.* at 248. The Court found that nearly half of nonminority male respondents corroborated the existence of an informal network, however, only 17 percent of them believed that the network excluded their companies from bidding or winning contracts. *Id.*

Anecdotal evidence also showed a large majority of African American respondents reported that double standards in qualifications and performance made it more difficult for them to win bids and contracts, that prime contractors view minority firms as being less competent than nonminority firms, and that nonminority firms change their bids when not required to hire minority firms. 615 F. 3d 233 at 248. In addition, the anecdotal evidence showed African American and Native American respondents believed that prime contractors sometimes dropped minority subcontractors after winning contracts. *Id.* at 248. The Court found that interview and focus-group responses echoed and underscored these reports. *Id.*

The anecdotal evidence indicated that prime contractors already know who they will use on the contract before they solicit bids: that the “good old boy network” affects business because prime contractors just pick up the phone and call their buddies, which excludes others from that market completely; that prime contractors prefer to use other less qualified minority-owned firms to avoid subcontracting with African American-owned firms; and that prime contractors use their preferred subcontractor regardless of the bid price. 615 F. 3d 233 at 248-249. Several minority subcontractors reported that prime contractors do not treat minority firms fairly, pointing to instances in which prime contractors solicited quotes the day before bids were due, did not respond to bids from minority subcontractors, refused to negotiate prices with them, or gave minority subcontractors insufficient information regarding the project. *Id.* at 249.

The Court rejected the plaintiffs’ contention that the anecdotal data was flawed because the study did not verify the anecdotal data and that the consultant oversampled minority subcontractors in collecting the data. The Court stated that the plaintiffs offered no rationale as to why a fact finder could not rely on the State’s “unverified” anecdotal data, and pointed out that a fact finder could very well conclude that anecdotal evidence need not- and indeed cannot-be verified because it “is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perceptions.” 615 F. 3d 233 at 249, *quoting Concrete Works*, 321 F. 3d at 989.

The Court held that anecdotal evidence simply supplements statistical evidence of discrimination. *Id.* at 249. The Court rejected plaintiffs’ argument that the study oversampled representatives from minority groups, and found that surveying more non-minority men would not have advanced the inquiry. *Id.* at 249. It was noted that the samples of the minority groups were randomly selected. *Id.* The Court found the state had compelling anecdotal evidence that minority subcontractors face race-based obstacles to successful bidding. *Id.* at 249.

Strong basis in evidence that the minority participation goals were necessary to remedy discrimination. The Court held that the state presented a “strong basis in evidence” for its conclusion that minority participation goals were necessary to remedy discrimination against

African American and Native American subcontractors.” 615 F. 3d 233 at 250. Therefore, the Court held that the state satisfied the strict scrutiny test. The Court found that the state’s data demonstrated that prime contractors grossly underutilized African American and Native American subcontractors in public sector subcontracting during the study. *Id.* at 250. The Court noted that these findings have particular resonance because since 1983, North Carolina has encouraged minority participation in state-funded highway projects, and yet African American and Native American subcontractors continue to be underutilized on such projects. *Id.* at 250.

In addition, the Court found the disparity index in the study demonstrated statistically significant underutilization of African American subcontractors at a 95 percent confidence level, and of Native American subcontractors at a confidence level of approximately 85 percent. 615 F. 3d 233 at 250. The Court concluded the State bolstered the disparity evidence with regression analysis demonstrating that African American ownership correlated with a significant, negative impact on firm revenue, and demonstrated there was a dramatic decline in the utilization of minority subcontractors during the suspension of the program in the 1990s. *Id.*

Thus, the Court held the State’s evidence showing a gross statistical disparity between the availability of qualified American and Native American subcontractors and the amount of subcontracting dollars they win on public sector contracts established the necessary statistical foundation for upholding the minority participation goals with respect to these groups. 615 F. 3d 233 at 250. The Court then found that the State’s anecdotal evidence of discrimination against these two groups sufficiently supplemented the State’s statistical showing. *Id.* The survey in the study exposed an informal, racially exclusive network that systemically disadvantaged minority subcontractors. *Id.* at 251. The Court held that the State could conclude with good reason that such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action. *Id.* The Court found the anecdotal evidence indicated that racial discrimination is a critical factor underlying the gross statistical disparities presented in the study. *Id.* at 251. Thus, the Court held that the State presented substantial statistical evidence of gross disparity, corroborated by “disturbing” anecdotal evidence.

The Court held in circumstances like these, the Supreme Court has made it abundantly clear a state can remedy a public contracting system that withholds opportunities from minority groups because of their race. 615 F. 3d 233 at 251-252.

Narrowly tailored. The Court then addressed whether the North Carolina statutory scheme was narrowly tailored to achieve the State’s compelling interest in remedying discrimination against African American and Native American subcontractors in public-sector subcontracting. The following factors were considered in determining whether the statutory scheme was narrowly tailored.

Neutral measures. The Court held that narrowly tailoring requires “serious, good faith consideration of workable race-neutral alternatives,” but a state need not “exhaust [] ... every conceivable race-neutral alternative.” 615 F. 3d 233 at 252 *quoting* *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003). The Court found that the study details numerous alternative race-neutral measures aimed at enhancing the development and competitiveness of small or otherwise disadvantaged businesses in North Carolina. *Id.* at 252. The Court pointed out various race-neutral alternatives and measures, including a Small Business Enterprise Program; waiving institutional barriers of bonding and licensing requirements on certain small business contracts of \$500,000 or less; and the Department contracts for support services to assist disadvantaged business enterprises with

bookkeeping and accounting, taxes, marketing, bidding, negotiation, and other aspects of entrepreneurial development. Id. at 252.

The Court found that plaintiff identified no viable race-neutral alternatives that North Carolina had failed to consider and adopt. The Court also found that the State had undertaken most of the race-neutral alternatives identified by the federal Department of Transportation in its regulations governing the Federal DBE Program. 615 F. 3d 233 at 252, *citing* 49 C.F.R. § 26.51(b). The Court concluded that the State gave serious good faith consideration to race-neutral alternatives prior to adopting the statutory scheme. Id.

The Court concluded that despite these race-neutral efforts, the study demonstrated disparities continue to exist in the utilization of African American and Native American subcontractors in state-funded highway construction subcontracting, and that these “persistent disparities indicate the necessity of a race-conscious remedy.” 615 F. 3d 233 at 252.

Duration. The Court agreed with the district court that the program was narrowly tailored in that it set a specific expiration date and required a new disparity study every five years. 615 F. 3d 233 at 253. The Court found that the program’s inherent time limit and provisions requiring regular reevaluation ensure it is carefully designed to endure only until the discriminatory impact has been eliminated. Id. at 253, *citing* Adarand Constructors v. Slater, 228 F. 3d at 1179 (*quoting* United States v. Paradise, 480 U.S. 149, 178 (1987)).

Program’s goals related to percentage of minority subcontractors. The Court concluded that the State had demonstrated that the Program’s participation goals are related to the percentage of minority subcontractors in the relevant markets in the State. 615 F. 3d 233 at 253. The Court found that the Department had taken concrete steps to ensure that these goals accurately reflect the availability of minority-owned businesses on a project-by-project basis. Id.

Flexibility. The Court held that the Program was flexible and thus satisfied this indicator of narrow tailoring. 615 F. 3d 233 at 253. The Program contemplated a waiver of project-specific goals when prime contractors make good faith efforts to meet those goals, and that the good faith efforts essentially require only that the prime contractor solicit and consider bids from minorities. Id. The State does not require or expect the prime contractor to accept any bid from an unqualified bidder, or any bid that is not the lowest bid. Id. The Court found there was a lenient standard and flexibility of the “good faith” requirement, and noted the evidence showed only 13 of 878 good faith submissions failed to demonstrate good faith efforts. Id.

Burden on non-MWBE/DBEs. The Court rejected the two arguments presented by plaintiff that the Program created onerous solicitation and follow-up requirements, finding that there was no need for additional employees dedicated to the task of running the solicitation program to obtain MWBEs, and that there was no evidence to support the claim that plaintiff was required to subcontract millions of dollars of work that it could perform itself for less money. 615 F. 3d 233 at 254. The State offered evidence from the study that prime contractors need not submit subcontract work that they can self-perform. Id.

Overinclusive. The Court found by its own terms the statutory scheme is not overinclusive because it limited relief to only those racial or ethnicity classifications that have been subjected to discrimination in the relevant marketplace and that had been adversely affected in their ability to

obtain contracts with the Department. 615 F. 3d 233 at 254. The Court concluded that in tailoring the remedy this way, the legislature did not randomly include racial groups that may never have suffered from discrimination in the construction industry, but rather, contemplated participation goals only for those groups shown to have suffered discrimination. Id.

In sum, the Court held that the statutory scheme is narrowly tailored to achieve the State's compelling interest in remedying discrimination in public-sector subcontracting against African American and Native American subcontractors. Id. at 254.

Women-owned businesses overutilized. The study's public-sector disparity analysis demonstrated that women-owned businesses won far more than their expected share of subcontracting dollars during the study period. 615 F. 3d 233 at 254. In other words, the Court concluded that prime contractors substantially overutilized women subcontractors on public road construction projects. Id. The Court found the public-sector evidence did not evince the "exceedingly persuasive justification" the Supreme Court requires. Id. at 255.

The Court noted that the State relied heavily on private-sector data from the study attempting to demonstrate that prime contractors significantly underutilized women subcontractors in the general construction industry statewide and in the Charlotte, North Carolina area. 615 F. 3d 233 at 255. However, because the study did not provide a t-test analysis on the private-sector disparity figures to calculate statistical significance, the Court could not determine whether this private underutilization was "the result of mere chance." Id. at 255. The Court found troubling the "evidentiary gap" that there was no evidence indicating the extent to which women-owned businesses competing on public-sector road projects vied for private-sector subcontracts in the general construction industry. Id. at 255. The Court also found that the State did not present any anecdotal evidence indicating that women subcontractors successfully bidding on State contracts faced private-sector discrimination. Id. In addition, the Court found missing any evidence prime contractors that discriminate against women subcontractors in the private sector nevertheless win public-sector contracts. Id.

The Court pointed out that it did not suggest that the proponent of a gender-conscious program "must always tie private discrimination to public action." 615 F. 3d 233 at 255, n. 11. But, the Court held where, as here, there existed substantial probative evidence of overutilization in the relevant public sector, a state must present something more than generalized private-sector data unsupported by compelling anecdotal evidence to justify a gender-conscious program. Id. at 255, n. 11.

Moreover, the Court found the state failed to establish the amount of overlap between general construction and road construction subcontracting. 615 F. 3d 233 at 256. The Court said that the dearth of evidence as to the correlation between public road construction subcontracting and private general construction subcontracting severely limits the private data's probative value in this case. Id.

Thus, the Court held that the State could not overcome the strong evidence of overutilization in the public sector in terms of gender participation goals, and that the proffered private-sector data failed to establish discrimination in the particular field in question. 615 F. 3d 233 at 256. Further, the anecdotal evidence, the Court concluded, indicated that most women subcontractors do not experience discrimination. Id. Thus, the Court held that the State failed to present sufficient evidence to support the Program's current inclusion of women subcontractors in setting participation goals. Id.

Holding. The Court held that the state legislature had crafted legislation that withstood the constitutional scrutiny. 615 F. 3d 233 at 257. The Court concluded that in light of the statutory scheme’s flexibility and responsiveness to the realities of the marketplace, and given the State’s strong evidence of discrimination against African American and Native American subcontractors in public-sector subcontracting, the State’s application of the statute to these groups is constitutional. *Id.* at 257. However, the Court also held that because the State failed to justify its application of the statutory scheme to women, Asian American, and Hispanic American subcontractors, the Court found those applications were not constitutional.

Therefore, the Court affirmed the judgment of the district court with regard to the facial validity of the statute, and with regard to its application to African American and Native American subcontractors. 615 F. 3d 233 at 258. The Court reversed the district court’s judgment insofar as it upheld the constitutionality of the state legislature as applied to women, Asian American and Hispanic American subcontractors. *Id.* The Court thus remanded the case to the district court to fashion an appropriate remedy consistent with the opinion. *Id.*

Concurring opinions. It should be pointed out that there were two concurring opinions by the three Judge panel: one judge concurred in the judgment, and the other judge concurred fully in the majority opinion and the judgment.

2. Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development, 438 F.3d 195 (2d Cir. 2006)

This recent case is instructive in connection with the determination of the groups that may be included in a MBE/WBE-type program, and the standard of analysis utilized to evaluate a local government’s non-inclusion of certain groups. In this case, the Second Circuit Court of Appeals held racial classifications that are challenged as “under-inclusive” (*i.e.*, those that exclude persons from a particular racial classification) are subject to a “rational basis” review, not strict scrutiny.

Plaintiff Luiere, a 70 percent shareholder of Jana-Rock Construction, Inc. (“Jana Rock”) and the “son of a Spanish mother whose parents were born in Spain,” challenged the constitutionality of the State of New York’s definition of “Hispanic” under its local minority-owned business program. 438 F.3d 195, 199-200 (2d Cir. 2006). Under the U.S. Department of Transportation regulations, 49 C.F.R. § 26.5, “Hispanic Americans” are defined as “persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.” *Id.* at 201. Upon proper application, Jana-Rock was certified by the New York Department of Transportation as a Disadvantaged Business Enterprise (“DBE”) under the federal regulations. *Id.*

However, unlike the federal regulations, the State of New York’s local minority-owned business program included in its definition of minorities “Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race.” The definition did not include all persons from, or descendants of persons from, Spain or Portugal. *Id.* Accordingly, Jana-Rock was denied MBE certification under the local program; Jana-Rock filed suit alleging a violation of the Equal Protection Clause. *Id.* at 202-03. The plaintiff conceded that the overall minority-owned business program satisfied the requisite strict scrutiny, but argued that the definition of “Hispanic” was fatally under-inclusive. *Id.* at 205.

The Second Circuit found that the narrow-tailoring prong of the strict scrutiny analysis “allows New York to identify which groups it is prepared to prove are in need of affirmative action without demonstrating that no other groups merit consideration for the program.” *Id.* at 206. The court found that evaluating under-inclusiveness as an element of the strict scrutiny analysis was at odds with the United States Supreme Court decision in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) which required that affirmative action programs be no broader than necessary. *Id.* at 207-08. The court similarly rejected the argument that the state should mirror the federal definition of “Hispanic,” finding that Congress has more leeway than the states to make broader classifications because Congress is making such classifications on the national level. *Id.* at 209.

The court opined — without deciding — that it may be impermissible for New York to simply adopt the “federal USDOT definition of Hispanic without at least making an independent assessment of discrimination against Hispanics of Spanish Origin in New York.” *Id.* Additionally, finding that the plaintiff failed to point to any discriminatory purpose by New York in failing to include persons of Spanish or Portuguese descent, the court determined that the rational basis analysis was appropriate. *Id.* at 213.

The court held that the plaintiff failed the rational basis test for three reasons: (1) because it was not irrational nor did it display animus to exclude persons of Spanish and Portuguese descent from the definition of Hispanic; (2) because the fact the plaintiff could demonstrate evidence of discrimination that he personally had suffered did not render New York’s decision to exclude persons of Spanish and Portuguese descent irrational; and (3) because the fact New York may have relied on Census data including a small percentage of Hispanics of Spanish descent did not mean that it was irrational to conclude that Hispanics of Latin American origin were in greater need of remedial legislation. *Id.* at 213-14. Thus, the Second Circuit affirmed the conclusion that New York had a rational basis for its definition to not include persons of Spanish and Portuguese descent, and thus affirmed the district court decision upholding the constitutionality of the challenged definition.

3. Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc., 460 F.3d 859 (7th Cir. 2006)

In *Rapid Test Products, Inc. v. Durham School Services Inc.*, the Seventh Circuit Court of Appeals held that 42 U.S.C. § 1981 (the federal anti-discrimination law) did not provide an “entitlement” in disadvantaged businesses to receive contracts subject to set aside programs; rather, § 1981 provided a remedy for individuals who were subject to discrimination.

Durham School Services, Inc. (“Durham”), a prime contractor, submitted a bid for and won a contract with an Illinois school district. The contract was subject to a set-aside program reserving some of the subcontracts for disadvantaged business enterprises (a race- and gender-conscious program). Prior to bidding, Durham negotiated with Rapid Test Products, Inc. (“Rapid Test”), made one payment to Rapid Test as an advance, and included Rapid Test in its final bid. Rapid Test believed it had received the subcontract. However, after the school district awarded the contract to Durham, Durham gave the subcontract to one of Rapid Test’s competitor’s, a business owned by an Asian male. The school district agreed to the substitution. Rapid Test brought suit against Durham under 42 U.S.C. § 1981 alleging that Durham discriminated against it because Rapid’s owner was a black woman.

The district court granted summary judgment in favor of Durham holding the parties' dealing had been too indefinite to create a contract. On appeal, the Seventh Circuit Court of Appeals stated that "§ 1981 establishes a rule against discrimination in contracting and does not create any entitlement to be the beneficiary of a contract reserved for firms owned by specified racial, sexual, ethnic, or religious groups. Arguments that a particular set-aside program is a lawful remedy for prior discrimination may or may not prevail if a potential subcontractor claims to have been excluded, but it is to victims of discrimination rather than frustrated beneficiaries that § 1981 assigns the right to litigate."

The court held that if race or sex discrimination is the reason why Durham did not award the subcontract to Rapid Test, then § 1981 provides relief. Having failed to address this issue, the Seventh Circuit Court of Appeals remanded the case to the district court to determine whether Rapid Test had evidence to back up its claim that race and sex discrimination, rather than a nondiscriminatory reason such as inability to perform the services Durham wanted, accounted for Durham's decision to hire Rapid Test's competitor.

4. Virdi v. DeKalb County School District, 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion)

Although it is an unpublished opinion, Virdi v. DeKalb County School District is a recent Eleventh Circuit decision reviewing a challenge to a local government MBE/WBE-type program, which is instructive to the disparity study. In Virdi, the Eleventh Circuit struck down a MBE/WBE goal program that the court held contained racial classifications. The court based its ruling primarily on the failure of the DeKalb County School District (the "District") to seriously consider and implement a race-neutral program and to the infinite duration of the program.

Plaintiff Virdi, an Asian American architect of Indian descent, filed suit against the District, members of the DeKalb County Board of Education (both individually and in their official capacities) (the "Board") and the Superintendent (both individually and in his official capacity) (collectively "defendants") pursuant to 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment alleging that they discriminated against him on the basis of race when awarding architectural contracts. 135 Fed. Appx. 262, 264 (11th Cir. 2005). Virdi also alleged the school district's Minority Vendor Involvement Program was facially unconstitutional. Id.

The district court initially granted the defendants' Motions for Summary Judgment on all of Virdi's claims and the Eleventh Circuit Court of Appeals reversed in part, vacated in part, and remanded. Id. On remand, the district court granted the defendants' Motion for Partial Summary Judgment on the facial challenge, and then granted the defendants' motion for a judgment as a matter of law on the remaining claims at the close of Virdi's case. Id.

In 1989, the Board appointed the Tillman Committee (the "Committee") to study participation of female- and minority-owned businesses with the District. Id. The Committee met with various District departments and a number of minority contractors who claimed they had unsuccessfully attempted to solicit business with the District. Id. Based upon a "general feeling" that minorities were under-represented, the Committee issued the Tillman Report (the "Report") stating "the Committee's impression that '[m]inorities ha[d] not participated in school board purchases and contracting in a ratio reflecting the minority make-up of the community.'" Id. The Report contained no specific evidence of past discrimination nor any factual findings of discrimination. Id.

The Report recommended that the District: (1) Advertise bids and purchasing opportunities in newspapers targeting minorities, (2) conduct periodic seminars to educate minorities on doing business with the District, (3) notify organizations representing minority firms regarding bidding and purchasing opportunities, and (4) publish a “how to” booklet to be made available to any business interested in doing business with the District.

Id. The Report also recommended that the District adopt annual, aspirational participation goals for women- and minority-owned businesses. Id. The Report contained statements indicating the selection process should remain neutral and recommended that the Board adopt a non-discrimination statement. Id.

In 1991, the Board adopted the Report and implemented several of the recommendations, including advertising in the AJC, conducting seminars, and publishing the “how to” booklet. Id. The Board also implemented the Minority Vendor Involvement Program (the “MVP”) which adopted the participation goals set forth in the Report. Id. at 265.

The Board delegated the responsibility of selecting architects to the Superintendent. Id. Virdi sent a letter to the District in October 1991 expressing interest in obtaining architectural contracts. Id. Virdi sent the letter to the District Manager and sent follow-up literature; he re-contacted the District Manager in 1992 and 1993. Id. In August 1994, Virdi sent a letter and a qualifications package to a project manager employed by Heery International. Id. In a follow-up conversation, the project manager allegedly told Virdi that his firm was not selected not based upon his qualifications, but because the “District was only looking for ‘black-owned firms.’” Id. Virdi sent a letter to the project manager requesting confirmation of his statement in writing and the project manager forwarded the letter to the District. Id.

After a series of meetings with District officials, in 1997, Virdi met with the newly hired Executive Director. Id. at 266. Upon request of the Executive Director, Virdi re-submitted his qualifications but was informed that he would be considered only for future projects (Phase III SPLOST projects). Id. Virdi then filed suit before any Phase III SPLOST projects were awarded. Id.

The Eleventh Circuit considered whether the MVP was facially unconstitutional and whether the defendants intentionally discriminated against Virdi on the basis of his race. The court held that strict scrutiny applies to all racial classifications and is not limited to merely set-asides or mandatory quotas; therefore, the MVP was subject to strict scrutiny because it contained racial classifications. Id. at 267. The court first questioned whether the identified government interest was compelling. Id. at 268. However, the court declined to reach that issue because it found the race-based participation goals were not narrowly tailored to achieving the identified government interest. Id.

The court held the MVP was not narrowly tailored for two reasons. Id. First, because no evidence existed that the District considered race-neutral alternatives to “avoid unwitting discrimination.” The court found that “[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake.” Id., citing Grutter v. Bollinger, 539 U.S. 306, 339 (2003), and Richmond v. J.A. Croson Co., 488 U.S. 469, 509-10 (1989). The court found that District could have engaged in any number of equally effective race-neutral alternatives, including using its outreach procedure and tracking the participation and success of minority-owned business as

compared to non-minority-owned businesses. *Id.* at 268, n.8. Accordingly, the court held the MVP was not narrowly tailored. *Id.* at 268.

Second, the court held that the unlimited duration of the MVP's racial goals negated a finding of narrow tailoring. *Id.* "[R]ace conscious ... policies must be limited in time." *Id.*, citing *Grutter*, 539 U.S. at 342, and *Walker v. City of Mesquite, TX*, 169 F.3d 973, 982 (5th Cir. 1999). The court held that because the government interest could have been achieved utilizing race-neutral measures, and because the racial goals were not temporally limited, the MVP could not withstand strict scrutiny and was unconstitutional on its face. *Id.* at 268.

With respect to Virdi's claims of intentional discrimination, the court held that although the MVP was facially unconstitutional, no evidence existed that the MVP or its unconstitutionality caused Virdi to lose a contract that he would have otherwise received. *Id.* Thus, because Virdi failed to establish a causal connection between the unconstitutional aspect of the MVP and his own injuries, the court affirmed the district court's grant of judgment on that issue. *Id.* at 269. Similarly, the court found that Virdi presented insufficient evidence to sustain his claims against the Superintendent for intentional discrimination. *Id.*

The court reversed the district court's order pertaining to the facial constitutionality of the MVP's racial goals, and affirmed the district court's order granting defendants' motion on the issue of intentional discrimination against Virdi. *Id.* at 270.

5. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari)

This case is instructive to the disparity study because it is one of the only recent decisions to uphold the validity of a local government MBE/WBE program. It is significant to note that the Tenth Circuit did not apply the narrowly tailored test and thus did not rule on an application of the narrowly tailored test, instead finding that the plaintiff had waived that challenge in one of the earlier decisions in the case. This case also is one of the only cases to have found private sector marketplace discrimination as a basis to uphold an MBE/WBE-type program.

In *Concrete Works* the United States Court of Appeals for the Tenth Circuit held that the City and County of Denver had a compelling interest in limiting race discrimination in the construction industry, that the City had an important governmental interest in remedying gender discrimination in the construction industry, and found that the City and County of Denver had established a compelling governmental interest to have a race- and gender-based program. In *Concrete Works*, the Court of Appeals did not address the issue of whether the MWBE Ordinance was narrowly tailored because it held the district court was barred under the law of the case doctrine from considering that issue since it was not raised on appeal by the plaintiff construction companies after they had lost that issue on summary judgment in an earlier decision. Therefore, the Court of Appeals did not reach a decision as to narrowly tailoring or consider that issue in the case.

Case history. Plaintiff, Concrete Works of Colorado, Inc. ("CWC") challenged the constitutionality of an "affirmative action" ordinance enacted by the City and County of Denver (hereinafter the "City" or "Denver"). 321 F.3d 950, 954 (10th Cir. 2003). The ordinance established participation

goals for racial minorities and women on certain City construction and professional design projects. Id.

The City enacted an Ordinance No. 513 (“1990 Ordinance”) containing annual goals for MBE/WBE utilization on all competitively bid projects. Id. at 956. A prime contractor could also satisfy the 1990 Ordinance requirements by using “good faith efforts.” Id. In 1996, the City replaced the 1990 Ordinance with Ordinance No. 304 (the “1996 Ordinance”). The district court stated that the 1996 Ordinance differed from the 1990 Ordinance by expanding the definition of covered contracts to include some privately financed contracts on City-owned land; added updated information and findings to the statement of factual support for continuing the program; refined the requirements for W/MBE certification and graduation; mandated the use of MBEs and WBEs on change orders; and expanded sanctions for improper behavior by MBEs, WBEs or majority-owned contractors in failing to perform the affirmative action commitments made on City projects. Id. at 956-57.

The 1996 Ordinance was amended in 1998 by Ordinance No. 948 (the “1998 Ordinance”). The 1998 Ordinance reduced annual percentage goals and prohibited an MBE or a WBE, acting as a bidder, from counting self-performed work toward project goals. Id. at 957.

CWC filed suit challenging the constitutionality of the 1990 Ordinance. Id. The district court conducted a bench trial on the constitutionality of the three ordinances. Id. The district court ruled in favor of CWC and concluded that the ordinances violated the Fourteenth Amendment. Id. The City then appealed to the Tenth Circuit Court of Appeals. Id. The Court of Appeals reversed and remanded. Id. at 954.

The Court of Appeals applied strict scrutiny to race-based measures and intermediate scrutiny to the gender-based measures. Id. at 957-58, 959. The Court of Appeals also cited Richmond v. J.A. Croson Co., for the proposition that a governmental entity “can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment.” 488 U.S. 469, 492 (1989) (plurality opinion). Because “an effort to alleviate the effects of *societal* discrimination is not a compelling interest,” the Court of Appeals held that Denver could demonstrate that its interest is compelling only if it (1) identified the past or present discrimination “with some specificity,” and (2) demonstrated that a “strong basis in evidence” supports its conclusion that remedial action is necessary. Id. at 958, quoting Shaw v. Hunt, 517 U.S. 899, 909-10 (1996).

The court held that Denver could meet its burden without conclusively proving the existence of past or present racial discrimination. Id. Rather, Denver could rely on “empirical evidence that demonstrates ‘a significant statistical disparity between the number of qualified minority contractors ... and the number of such contractors actually engaged by the locality or the locality’s prime contractors.’” Id., quoting Croson, 488 U.S. at 509 (plurality opinion). Furthermore, the Court of Appeals held that Denver could rely on statistical evidence gathered from the six-county Denver Metropolitan Statistical Area (MSA) and could supplement the statistical evidence with anecdotal evidence of public and private discrimination. Id.

The Court of Appeals held that Denver could establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Id. The Court of Appeals held that once Denver met its burden, CWC had to

introduce “credible, particularized evidence to rebut [Denver’s] initial showing of the existence of a compelling interest, which could consist of a neutral explanation for the statistical disparities.” *Id.* (internal citations and quotations omitted). The Court of Appeals held that CWC could also rebut Denver’s statistical evidence “by (1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data.” *Id.* (internal citations and quotations omitted). The Court of Appeals held that the burden of proof at all times remained with CWC to demonstrate the unconstitutionality of the ordinances. *Id.* at 960.

The Court of Appeals held that to meet its burden of demonstrating an important governmental interest per the intermediate scrutiny analysis, Denver must show that the gender-based measures in the ordinances were based on “reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.” *Id.*, quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982).

The studies. Denver presented historical, statistical and anecdotal evidence in support of its MBE/WBE programs. Denver commissioned a number of studies to assess its MBE/WBE programs. *Id.* at 962. The consulting firm hired by Denver utilized disparity indices in part. *Id.* at 962. The 1990 Study also examined MBE and WBE utilization in the overall Denver MSA construction market, both public and private. *Id.* at 963.

The consulting firm also interviewed representatives of MBEs, WBEs, majority-owned construction firms, and government officials. *Id.* Based on this information, the 1990 Study concluded that, despite Denver’s efforts to increase MBE and WBE participation in DPW projects, some Denver employees and private contractors engaged in conduct designed to circumvent the goals program. *Id.* After reviewing the statistical and anecdotal evidence contained in the 1990 Study, the City Council enacted the 1990 Ordinance. *Id.*

After the Tenth Circuit decided *Concrete Works II*, Denver commissioned another study (the “1995 Study”). *Id.* at 963. Using 1987 Census Bureau data, the 1995 Study again examined utilization of MBEs and WBEs in the construction and professional design industries within the Denver MSA. *Id.* The 1995 Study concluded that MBEs and WBEs were more likely to be one-person or family-run businesses. The Study concluded that Hispanic-owned firms were less likely to have paid employees than white-owned firms but that Asian/Native American-owned firms were more likely to have paid employees than white- or other minority-owned firms. To determine whether these factors explained overall market disparities, the 1995 Study used the Census data to calculate disparity indices for all firms in the Denver MSA construction industry and separately calculated disparity indices for firms with paid employees and firms with no paid employees. *Id.* at 964.

The Census Bureau information was also used to examine average revenues per employee for Denver MSA construction firms with paid employees. Hispanic-, Asian-, Native American-, and women-owned firms with paid employees all reported lower revenues per employee than majority-owned firms. The 1995 Study also used 1990 Census data to calculate rates of self-employment within the Denver MSA construction industry. The Study concluded that the disparities in the rates of self-employment for blacks, Hispanics, and women persisted even after controlling for education and length of work experience. The 1995 Study controlled for these variables and reported that blacks

and Hispanics working in the Denver MSA construction industry were less than half as likely to own their own businesses as were whites of comparable education and experience. Id.

In late 1994 and early 1995, a telephone survey of construction firms doing business in the Denver MSA was conducted. Id. at 965. Based on information obtained from the survey, the consultant calculated percentage utilization and percentage availability of MBEs and WBEs. Percentage utilization was calculated from revenue information provided by the responding firms. Percentage availability was calculated based on the number of MBEs and WBEs that responded to the survey question regarding revenues. Using these utilization and availability percentages, the 1995 Study showed disparity indices of 0.64 for MBEs and 0.70 for WBEs in the construction industry. In the professional design industry, disparity indices were 0.67 for MBEs and 0.69 for WBEs. The 1995 Study concluded that the disparity indices obtained from the telephone survey data were more accurate than those obtained from the 1987 Census data because the data obtained from the telephone survey were more recent, had a narrower focus, and included data on C corporations. Additionally, it was possible to calculate disparity indices for professional design firms from the survey data. Id.

In 1997, the City conducted another study to estimate the availability of MBEs and WBEs and to examine, *inter alia*, whether race and gender discrimination limited the participation of MBEs and WBEs in construction projects of the type typically undertaken by the City (the “1997 Study”). Id. at 966. The 1997 Study used geographic and specialization information to calculate MBE/WBE availability. Availability was defined as “the ratio of MBE/WBE firms to the total number of firms in the four-digit SIC codes and geographic market area relevant to the City’s contracts.” Id.

The 1997 Study compared MBE/WBE availability and utilization in the Colorado construction industry. Id. The statewide market was used because necessary information was unavailable for the Denver MSA. Id. at 967. Additionally, data collected in 1987 by the Census Bureau was used because more current data was unavailable. The Study calculated disparity indices for the statewide construction market in Colorado as follows: 0.41 for African American firms, 0.40 for Hispanic firms, 0.14 for Asian and other minorities, and 0.74 for women-owned firms. Id.

The 1997 Study also contained an analysis of whether African Americans, Hispanics, or Asian Americans working in the construction industry are less likely to be self-employed than similarly situated whites. Id. Using data from the Public Use Microdata Samples (“PUMS”) of the 1990 Census of Population and Housing, the Study used a sample of individuals working in the construction industry. The Study concluded that in both Colorado and the Denver MSA, African Americans, Hispanics, and Native Americans working in the construction industry had lower self-employment rates than whites. Asian Americans had higher self-employment rates than whites.

Using the availability figures calculated earlier in the Study, the Study then compared the actual availability of MBE/WBEs in the Denver MSA with the potential availability of MBE/WBEs if they formed businesses at the same rate as whites with the same characteristics. Id. Finally, the Study examined whether self-employed minorities and women in the construction industry have lower earnings than white males with similar characteristics. Id. at 968. Using linear regression analysis, the Study compared business owners with similar years of education, of similar age, doing business in the same geographic area, and having other similar demographic characteristics. Even after controlling for

several factors, the results showed that self-employed African Americans, Hispanics, Native Americans, and women had lower earnings than white males. Id.

The 1997 Study also conducted a mail survey of both MBE/WBEs and non-MBE/WBEs to obtain information on their experiences in the construction industry. Of the MBE/WBEs who responded, 35 percent indicated that they had experienced at least one incident of disparate treatment within the last five years while engaged in business activities. The survey also posed the following question: “How often do prime contractors who use your firm as a subcontractor on public sector projects with [MBE/WBE] goals or requirements ... also use your firm on public sector or private sector projects without [MBE/WBE] goals or requirements?” Fifty-eight percent of minorities and 41 percent of white women who responded to this question indicated they were “seldom or never” used on non-goals projects. Id.

MBE/WBEs were also asked whether the following aspects of procurement made it more difficult or impossible to obtain construction contracts: (1) bonding requirements, (2) insurance requirements, (3) large project size, (4) cost of completing proposals, (5) obtaining working capital, (6) length of notification for bid deadlines, (7) prequalification requirements, and (8) previous dealings with an agency. This question was also asked of non-MBE/WBEs in a separate survey. With one exception, MBE/WBEs considered each aspect of procurement more problematic than non-MBE/WBEs. To determine whether a firm’s size or experience explained the different responses, a regression analysis was conducted that controlled for age of the firm, number of employees, and level of revenues. The results again showed that with the same, single exception, MBE/WBEs had more difficulties than non-MBE/WBEs with the same characteristics. Id. at 968-69.

After the 1997 Study was completed, the City enacted the 1998 Ordinance. The 1998 Ordinance reduced the annual goals to 10 percent for both MBEs and WBEs and eliminated a provision which previously allowed MBE/WBEs to count their own work toward project goals. Id. at 969.

The anecdotal evidence included the testimony of the senior vice-president of a large, majority-owned construction firm who stated that when he worked in Denver, he received credible complaints from minority and women-owned construction firms that they were subject to different work rules than majority-owned firms. Id. He also testified that he frequently observed graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, he stated that he believed, based on his personal experiences, that many majority-owned firms refused to hire minority- or women-owned subcontractors because they believed those firms were not competent. Id.

Several MBE/WBE witnesses testified that they experienced difficulty prequalifying for private sector projects and projects with the City and other governmental entities in Colorado. One individual testified that her company was required to prequalify for a private sector project while no similar requirement was imposed on majority-owned firms. Several others testified that they attempted to prequalify for projects but their applications were denied even though they met the prequalification requirements. Id.

Other MBE/WBEs testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations. Id. There was testimony detailing the difficulties

MBE/WBEs experienced in obtaining lines of credit. One WBE testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations. *Id.*

The court also pointed out anecdotal testimony involving recitations of racially- and gender-motivated harassment experienced by MBE/WBEs at work sites. There was testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of 80 feet. *Id.* at 969-70.

The legal framework applied by the court. The court held that the district court incorrectly believed Denver was required to prove the existence of discrimination. Instead of considering whether Denver had demonstrated strong evidence from which an inference of past or present discrimination could be drawn, the district court analyzed whether Denver's evidence showed that there is pervasive discrimination. *Id.* at 970. The court, quoting *Concrete Works II*, stated that "the Fourteenth Amendment does not require a court to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination." *Id.* at 970, quoting *Concrete Works II*, 36 F.3d 1513, 1522 (10th Cir. 1994). Denver's initial burden was to demonstrate that strong evidence of discrimination supported its conclusion that remedial measures were necessary. Strong evidence is that "approaching a prima facie case of a constitutional or statutory violation," not irrefutable or definitive proof of discrimination. *Id.* at 97, quoting *Croson*, 488 U.S. at 500. The burden of proof at all times remained with the contractor plaintiff to prove by a preponderance of the evidence that Denver's "evidence did not support an inference of prior discrimination and thus a remedial purpose." *Id.*, quoting *Adarand VII*, 228 F.3d at 1176.

Denver, the court held, did introduce evidence of discrimination against each group included in the ordinances. *Id.* at 971. Thus, Denver's evidence did not suffer from the problem discussed by the court in *Croson*. The court held the district court erroneously concluded that Denver must demonstrate that the private firms directly engaged in any discrimination in which Denver passively participates do so intentionally, with the purpose of disadvantaging minorities and women. The *Croson* majority concluded that a "city would have a compelling interest in preventing its tax dollars from assisting [local trade] organizations in maintaining a racially segregated construction market." *Id.* at 971, quoting *Croson*, 488 U.S. 503. Thus, the court held Denver's burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and linked its spending to that discrimination. *Id.*

The court noted the Supreme Court has stated that the inference of discriminatory exclusion can arise from statistical disparities. *Id.*, citing *Croson*, 488 U.S. at 503. Accordingly, it concluded that Denver could meet its burden through the introduction of statistical and anecdotal evidence. To the extent the district court required Denver to introduce additional evidence to show discriminatory motive or intent on the part of private construction firms, the district court erred. Denver, according to the court, was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. *Id.* at 972.

The court found Denver’s statistical and anecdotal evidence relevant because it identifies discrimination in the local construction industry, not simply discrimination in society. The court held the genesis of the identified discrimination is irrelevant and the district court erred when it discounted Denver’s evidence on that basis. *Id.*

The court held the district court erroneously rejected the evidence Denver presented on marketplace discrimination. *Id.* at 973. The court rejected the district court’s erroneous legal conclusion that a municipality may only remedy its own discrimination. The court stated this conclusion is contrary to the holdings in *Concrete Works II* and the plurality opinion in *Croson*. *Id.* The court held it previously recognized in this case that “a municipality has a compelling interest in taking affirmative steps to remedy both public *and private* discrimination specifically identified in its area.” *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added). In *Concrete Works II*, the court stated that “we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination.” *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

The court stated that Denver could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination. *Id.* at 973. Thus, Denver was not required to demonstrate that it is “guilty of prohibited discrimination” to meet its initial burden. *Id.*

Additionally, the court had previously concluded that Denver’s statistical studies, which compared utilization of MBE/WBEs to availability, supported the inference that “local prime contractors” are engaged in racial and gender discrimination. *Id.* at 974, quoting *Concrete Works II*, 36 F.3d at 1529. Thus, the court held Denver’s disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination. *Id.*

The Court’s rejection of CWC’s arguments and the district court findings

Use of marketplace data. The court held the district court, inter alia, erroneously concluded that the disparity studies upon which Denver relied were significantly flawed because they measured discrimination in the overall Denver MSA construction industry, not discrimination by the City itself. *Id.* at 974. The court found that the district court’s conclusion was directly contrary to the holding in *Adarand VII* that evidence of both public and private discrimination in the construction industry is relevant. *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67).

The court held the conclusion reached by the majority in *Croson* that marketplace data are relevant in equal protection challenges to affirmative action programs was consistent with the approach later taken by the court in *Shaw v. Hunt*. *Id.* at 975. In *Shaw*, a majority of the court relied on the majority opinion in *Croson* for the broad proposition that a governmental entity’s “interest in remedying the effects of past or present racial discrimination may in the proper case justify a government’s use of racial distinctions.” *Id.*, quoting *Shaw*, 517 U.S. at 909. The *Shaw* court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The court, however, did set out two conditions that must be met for the governmental entity to show a compelling interest. “First, the discrimination must be identified discrimination.” *Id.* at 976, quoting *Shaw*, 517 U.S. at 910. The City can satisfy this condition by identifying the discrimination, “‘*public or private*, with some specificity.’” *Id.* at 976, citing *Shaw*, 517 U.S. at 910, quoting *Croson*, 488 U.S. at 504 (emphasis added). The governmental entity must also have a “strong basis in evidence to

conclude that remedial action was necessary.” *Id.* Thus, the court concluded Shaw specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality’s burden of producing strong evidence. *Id.* at 976.

In Adarand VII, the court noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation. *Id.*, citing Adarand VII, 228 F.3d at 1166-67 (“[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*” (emphasis added)). Further, the court pointed out in this case it earlier rejected the argument CWC reasserted here that marketplace data are irrelevant and remanded the case to the district court to determine whether Denver could link its public spending to “the Denver MSA evidence of industry-wide discrimination.” *Id.*, quoting Concrete Works II, 36 F.3d at 1529. The court stated that evidence explaining “the Denver government’s role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*” was relevant to Denver’s burden of producing strong evidence. *Id.*, quoting Concrete Works II, 36 F.3d at 1530 (emphasis added).

Consistent with the court’s mandate in Concrete Works II, the City attempted to show at trial that it “indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business.” *Id.* The City can demonstrate that it is a “‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry” by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination. *Id.*, quoting Croson, 488 U.S. at 492.

The court rejected CWC’s argument that the lending discrimination studies and business formation studies presented by Denver were irrelevant. In Adarand VII, the court concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition between MBE/WBEs and majority-owned construction firms shows a “strong link” between a government’s “disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination.” *Id.* at 977, quoting Adarand VII, 228 F.3d at 1167-68. The court found that evidence that private discrimination resulted in barriers to business formation is relevant because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for public construction contracts. The court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the Denver MSA construction industry, studies showing that discriminatory barriers to business formation exist in the Denver construction industry are relevant to the City’s showing that it indirectly participates in industry discrimination. *Id.* at 977.

The City presented evidence of lending discrimination to support its position that MBE/WBEs in the Denver MSA construction industry face discriminatory barriers to business formation. Denver introduced a disparity study prepared in 1996 and sponsored by the Denver Community Reinvestment Alliance, Colorado Capital Initiatives, and the City. The Study ultimately concluded that “despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample were not appreciably different as businesspeople, they were ultimately treated differently by the

lenders on the crucial issue of loan approval or denial.” *Id.* at 977-78. In Adarand VII, the court concluded that this study, among other evidence, “strongly support[ed] an initial showing of discrimination in lending.” *Id.* at 978, quoting, Adarand VII, 228 F.3d at 1170, n. 13 (“Lending discrimination alone of course does not justify action in the construction market. However, the persistence of such discrimination ... supports the assertion that the formation, as well as utilization, of minority-owned construction enterprises has been impeded.”). The City also introduced anecdotal evidence of lending discrimination in the Denver construction industry.

CWC did not present any evidence that undermined the reliability of the lending discrimination evidence but simply repeated the argument, foreclosed by circuit precedent, that it is irrelevant. The court rejected the district court criticism of the evidence because it failed to determine whether the discrimination resulted from discriminatory attitudes or from the neutral application of banking regulations. The court concluded, that discriminatory motive can be inferred from the results shown in disparity studies. The court held the district court’s criticism did not undermine the study’s reliability as an indicator that the City is passively participating in marketplace discrimination. The court noted that, in Adarand VII it took “judicial notice of the obvious causal connection between access to capital and ability to implement public works construction projects.” *Id.* at 978, quoting Adarand VII, 228 F.3d at 1170.

Denver also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The 1990 Study and the 1995 Study both showed that all minority groups in the Denver MSA formed their own construction firms at rates lower than the total population but that women formed construction firms at higher rates. The 1997 Study examined self-employment rates and controlled for gender, marital status, education, availability of capital, and personal/family variables. As discussed, *supra*, the Study concluded that African Americans, Hispanics, and Native Americans working in the construction industry have lower rates of self-employment than similarly situated whites. Asian Americans had higher rates. The 1997 Study also concluded that minority and female business owners in the construction industry, with the exception of Asian American owners, have lower earnings than white male owners. This conclusion was reached after controlling for education, age, marital status, and disabilities. *Id.* at 978.

The court held that the district court’s conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in Adarand VII. “[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion.” *Id.* at 979, quoting Adarand VII, 228 F.3d at 1174.

In sum, the court held the district court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the City’s burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary. *Id.* at 979-80.

Variables WC challenged Denver’s disparity studies as unreliable because the disparities shown in the studies may be attributable to firm size and experience rather than discrimination. Denver countered, however, that a firm’s size has little effect on its qualifications or its ability to provide

construction services and that MBE/WBEs, like all construction firms, can perform most services either by hiring additional employees or by employing subcontractors. CWC responded that elasticity itself is relative to size and experience; MBE/WBEs are less capable of expanding because they are smaller and less experienced. *Id.* at 980.

The court concluded that even if it assumed that MBE/WBEs are less able to expand because of their smaller size and more limited experience, CWC did not respond to Denver's argument and the evidence it presented showing that experience and size are not race- and gender-neutral variables and that MBE/WBE construction firms are generally smaller and less experienced *because* of industry discrimination. *Id.* at 981. The lending discrimination and business formation studies, according to the court, both strongly supported Denver's argument that MBE/WBEs are smaller and less experienced because of marketplace and industry discrimination. In addition, Denver's expert testified that discrimination by banks or bonding companies would reduce a firm's revenue and the number of employees it could hire. *Id.*

Denver also argued its Studies controlled for size and the 1995 Study controlled for experience. It asserted that the 1990 Study measured revenues per employee for construction for MBE/WBEs and concluded that the resulting disparities, "suggest[] that even among firms of the same employment size, industry utilization of MBEs and WBEs was lower than that of non-minority male-owned firms." *Id.* at 982. Similarly, the 1995 Study controlled for size, calculating, *inter alia*, disparity indices for firms with no paid employees which presumably are the same size.

Based on the uncontroverted evidence presented at trial, the court concluded that the district court did not give sufficient weight to Denver's disparity studies because of its erroneous conclusion that the studies failed to adequately control for size and experience. The court held that Denver is permitted to make assumptions about capacity and qualification of MBE/WBEs to perform construction services if it can support those assumptions. The court found the assumptions made in this case were consistent with the evidence presented at trial and supported the City's position that a firm's size does not affect its qualifications, willingness, or ability to perform construction services and that the smaller size and lesser experience of MBE/WBEs are, themselves, the result of industry discrimination. Further, the court pointed out CWC did not conduct its own disparity study using marketplace data and thus did not demonstrate that the disparities shown in Denver's studies would decrease or disappear if the studies controlled for size and experience to CWC's satisfaction. Consequently, the court held CWC's rebuttal evidence was insufficient to meet its burden of discrediting Denver's disparity studies on the issue of size and experience. *Id.* at 982.

Specialization. The district court also faulted Denver's disparity studies because they did not control for firm specialization. The court noted the district court's criticism would be appropriate only if there was evidence that MBE/WBEs are more likely to specialize in certain construction fields. *Id.* at 982.

The court found there was no identified evidence showing that certain construction specializations require skills less likely to be possessed by MBE/WBEs. The court found relevant the testimony of the City's expert, that the data he reviewed showed that MBEs were represented "widely across the different [construction] specializations." *Id.* at 982-83. There was no contrary testimony that aggregation bias caused the disparities shown in Denver's studies. *Id.* at 983.

The court held that CWC failed to demonstrate that the disparities shown in Denver's studies are eliminated when there is control for firm specialization. In contrast, one of the Denver studies, which controlled for SIC-code subspecialty and still showed disparities, provided support for Denver's argument that firm specialization does not explain the disparities. *Id.* at 983.

The court pointed out that disparity studies may make assumptions about availability as long as the same assumptions can be made for all firms. *Id.* at 983.

Utilization of MBE/WBEs on City projects. CWC argued that Denver could not demonstrate a compelling interest because it overutilized MBE/WBEs on City construction projects. This argument, according to the court, was an extension of CWC's argument that Denver could justify the ordinances only by presenting evidence of discrimination by the City itself or by contractors while working on City projects. Because the court concluded that Denver could satisfy its burden by showing that it is an indirect participant in industry discrimination, CWC's argument relating to the utilization of MBE/WBEs on City projects goes only to the weight of Denver's evidence. *Id.* at 984.

Consistent with the court's mandate in *Concrete Works II*, at trial Denver sought to demonstrate that the utilization data from projects subject to the goals program were tainted by the program and "reflect[ed] the intended remedial effect on MBE and WBE utilization." *Id.* at 984, quoting *Concrete Works II*, 36 F.3d at 1526. Denver argued that the non-goals data were the better indicator of past discrimination in public contracting than the data on all City construction projects. *Id.* at 984-85. The court concluded that Denver presented ample evidence to support the conclusion that the evidence showing MBE/WBE utilization on City projects not subject to the ordinances or the goals programs is the better indicator of discrimination in City contracting. *Id.* at 985.

The court rejected CWC's argument that the marketplace data were irrelevant but agreed that the non-goals data were also relevant to Denver's burden. The court noted that Denver did not rely heavily on the non-goals data at trial but focused primarily on the marketplace studies to support its burden. *Id.* at 985.

In sum, the court held Denver demonstrated that the utilization of MBE/WBEs on City projects had been affected by the affirmative action programs that had been in place in one form or another since 1977. Thus, the non-goals data were the better indicator of discrimination in public contracting. The court concluded that, on balance, the non-goals data provided some support for Denver's position that racial and gender discrimination existed in public contracting before the enactment of the ordinances. *Id.* at 987-88.

Anecdotal evidence. The anecdotal evidence, according to the court, included several incidents involving profoundly disturbing behavior on the part of lenders, majority-owned firms, and individual employees. *Id.* at 989. The court found that the anecdotal testimony revealed behavior that was not merely sophomoric or insensitive, but which resulted in real economic or physical harm. While CWC also argued that all new or small contractors have difficulty obtaining credit and that treatment the witnesses characterized as discriminatory is experienced by all contractors, Denver's witnesses specifically testified that they believed the incidents they experienced were motivated by race or gender discrimination. The court found they supported those beliefs with testimony that majority-owned firms were not subject to the same requirements imposed on them. *Id.*

The court held there was no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. The court stated that anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions. *Id.*

After considering Denver's anecdotal evidence, the district court found that the evidence "shows that race, ethnicity and gender affect the construction industry and those who work in it" and that the egregious mistreatment of minority and women employees "had direct financial consequences" on construction firms. *Id.* at 989, quoting *Concrete Works III*, 86 F. Supp. 2d at 1074, 1073. Based on the district court's findings regarding Denver's anecdotal evidence and its review of the record, the court concluded that the anecdotal evidence provided persuasive, un rebutted support for Denver's initial burden. *Id.* at 989-90, citing *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977) (concluding that anecdotal evidence presented in a pattern or practice discrimination case was persuasive because it "brought the cold [statistics] convincingly to life").

Summary. The court held the record contained extensive evidence supporting Denver's position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs. *Id.* at 990. The information available to Denver and upon which the ordinances were predicated, according to the court, indicated that discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination.

To rebut Denver's evidence, the court stated CWC was required to "establish that Denver's evidence did not constitute strong evidence of such discrimination." *Id.* at 991, quoting *Concrete Works II*, 36 F.3d at 1523. CWC could not meet its burden of proof through conjecture and unsupported criticisms of Denver's evidence. Rather, it must present "credible, particularized evidence." *Id.*, quoting *Adarand VII*, 228 F.3d at 1175. The court held that CWC did not meet its burden. CWC *hypothesized* that the disparities shown in the studies on which Denver relies could be explained by any number of factors other than racial discrimination. However, the court found it did not conduct its own marketplace disparity study controlling for the disputed variables and presented no other evidence from which the court could conclude that such variables explain the disparities. *Id.* at 991-92.

Narrow tailoring. Having concluded that Denver demonstrated a compelling interest in the race-based measures and an important governmental interest in the gender-based measures, the court held it must examine whether the ordinances were narrowly tailored to serve the compelling interest and are substantially related to the achievement of the important governmental interest. *Id.* at 992.

The court stated it had previously concluded in its earlier decisions that Denver's program was narrowly tailored. CWC appealed the grant of summary judgment and that appeal culminated in the decision in *Concrete Works II*. The court reversed the grant of summary judgment on the compelling-interest issue and concluded that CWC had waived any challenge to the narrow tailoring conclusion reached by the district court. Because the court found *Concrete Works* did not challenge the district court's conclusion with respect to the second prong of *Croson's* strict scrutiny standard — *i.e.*, that the Ordinance is narrowly tailored to remedy past and present discrimination — the court held it need not address this issue. *Id.* at 992, citing *Concrete Works II*, 36 F.3d at 1531, n. 24.

The court concluded that the district court lacked authority to address the narrow tailoring issue on remand because none of the exceptions to the law of the case doctrine are applicable. The district court's earlier determination that Denver's affirmative-action measures were narrowly tailored is law of the case and binding on the parties.

6. Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services, 140 F.Supp.2d 1232 (W.D. OK. 2001)

Plaintiffs, non-minority contractors, brought this action against the State of Oklahoma challenging minority bid preference provisions in the Oklahoma Minority Business Enterprise Assistance Act ("MBE Act"). The Oklahoma MBE Act established a bid preference program by which certified minority business enterprises are given favorable treatment on competitive bids submitted to the state. 140 F.Supp.2d at 1235–36. Under the MBE Act, the bids of non-minority contractors were raised by 5 percent, placing them at a competitive disadvantage according to the district court. *Id.* at 1235–1236.

The named plaintiffs bid on state contracts in which their bids were increased by 5 percent as they were non-minority business enterprises. Although the plaintiffs actually submitted the lowest dollar bids, once the 5 percent factor was applied, minority bidders became the successful bidders on certain contracts. 140 F.Supp. at 1237.

In determining the constitutionality or validity of the Oklahoma MBE Act, the district court was guided in its analysis by the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 288 F.3d 1147 (10th Cir. 2000) ("Adarand VII"). The district court pointed out that in Adarand VII, the Tenth Circuit found compelling evidence of barriers to both minority business formation and existing minority businesses. *Id.* at 1238. In sum, the district court noted that the Tenth Circuit concluded that the Government had met its burden of presenting a strong basis in evidence sufficient to support its articulated, constitutionally valid, compelling interest. 140 F.Supp. 2d at 1239, citing Adarand VII, 228 F.3d 1147, 1174.

Compelling state interest. The district court, following Adarand VII, applied the strict scrutiny analysis, arising out of the Fourteenth Amendment's Equal Protection Clause, in which a race-based affirmative action program withstands strict scrutiny only if it is narrowly tailored to serve a compelling governmental interest. *Id.* at 1239. The district court pointed out that it is clear from Supreme Court precedent, there may be a compelling interest sufficient to justify race-conscious affirmative action measures. *Id.* The Fourteenth Amendment permits race-conscious programs that seek both to eradicate discrimination by the governmental entity itself and to prevent the governmental entity from becoming a "passive participant" in a system of racial exclusion practiced by private businesses. *Id.* at 1240. Therefore, the district court concluded that both the federal and state governments have a compelling interest assuring that public dollars do not serve to finance the evil of private prejudice. *Id.*

The district court stated that a "mere statistical disparity in the proportion of contracts awarded to a particular group, standing alone, does not demonstrate the evil of private or public racial prejudice." *Id.* Rather, the court held that the "benchmark for judging the adequacy of a state's factual predicate for affirmative action legislation is whether there exists a strong basis in the evidence of the state's conclusion that remedial action was necessary." *Id.* The district court found that the Supreme Court made it clear that the state bears the burden of demonstrating a strong basis in evidence for its

conclusion that remedial action was necessary by proving either that the state itself discriminated in the past or was “a passive participant” in private industry’s discriminatory practices. *Id.* at 1240, citing to *Associated General Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 735 (6th Cir. 2000) and *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 at 486-492 (1989).

With this background, the State of Oklahoma stated that its compelling state interest “is to promote the economy of the State and to ensure that minority business enterprises are given an opportunity to compete for state contracts.” *Id.* at 1240. Thus, the district court found the State admitted that the MBE Act’s bid preference “is not based on past discrimination,” rather, it is based on a desire to “encourag[e] economic development of minority business enterprises which in turn will benefit the State of Oklahoma as a whole.” *Id.* In light of *Adarand VII*, and prevailing Supreme Court case law, the district court found that this articulated interest is not “compelling” in the absence of evidence of past or present racial discrimination. *Id.*

The district court considered testimony presented by Intervenors who participated in the case for the defendants and asserted that the Oklahoma legislature conducted an interim study prior to adoption of the MBE Act, during which testimony and evidence were presented to members of the Oklahoma Legislative Black Caucus and other participating legislators. The study was conducted more than 14 years prior to the case and the Intervenors did not actually offer any of the evidence to the court in this case. The Intervenors submitted an affidavit from the witness who serves as the Title VI Coordinator for the Oklahoma Department of Transportation. The court found that the affidavit from the witness averred in general terms that minority businesses were discriminated against in the awarding of state contracts. The district court found that the Intervenors have not produced — or indeed even described — the evidence of discrimination. *Id.* at 1241. The district court found that it cannot be discerned from the documents which minority businesses were the victims of discrimination, or which racial or ethnic groups were targeted by such alleged discrimination. *Id.*

The court also found that the Intervenors’ evidence did not indicate what discriminatory acts or practices allegedly occurred, or when they occurred. *Id.* The district court stated that the Intervenors did not identify “a single qualified, minority-owned bidder who was excluded from a state contract.” *Id.* The district court, thus, held that broad allegations of “systematic” exclusion of minority businesses were not sufficient to constitute a compelling governmental interest in remedying past or current discrimination. *Id.* at 1242. The district court stated that this was particularly true in light of the “State’s admission here that the State’s governmental interest was not in remedying past discrimination in the state competitive bidding process, but in ‘encouraging economic development of minority business enterprises which in turn will benefit the State of Oklahoma as a whole.’” *Id.* at 1242.

The court found that the State defendants failed to produce any admissible evidence of a single, specific discriminatory act, or any substantial evidence showing a pattern of deliberate exclusion from state contracts of minority-owned businesses. *Id.* at 1241 - 1242, footnote 11.

The district court also noted that the Sixth Circuit Court of Appeals in *Drabik* rejected Ohio’s statistical evidence of underutilization of minority contractors because the evidence did not report the actual use of minority firms; rather, they reported only the use of those minority firms that had gone to the trouble of being certified and listed by the state. *Id.* at 1242, footnote 12. The district court stated that, as in *Drabik*, the evidence presented in support of the Oklahoma MBE Act failed to

account for the possibility that some minority contractors might not register with the state, and the statistics did not account for any contracts awarded to businesses with minority ownership of less than 51 percent, or for contracts performed in large part by minority-owned subcontractors where the prime contractor was not a certified minority-owned business. Id.

The district court found that the MBE Act's minority bidding preference was not predicated upon a finding of discrimination in any particular industry or region of the state, or discrimination against any particular racial or ethnic group. The court stated that there was no evidence offered of actual discrimination, past or present, against the specific racial and ethnic groups to whom the preference was extended, other than an attempt to show a history of discrimination against African Americans. Id. at 1242.

Narrow tailoring. The district court found that even if the State's goals could not be considered "compelling," the State did not show that the MBE Act was narrowly tailored to serve those goals. The court pointed out that the Tenth Circuit in Adarand VII identified six factors the court must consider in determining whether the MBE Act's minority preference provisions were sufficiently narrowly tailored to satisfy equal protection: (1) the availability of race-neutral alternative remedies; (2) limits on the duration of the challenged preference provisions; (3) flexibility of the preference provisions; (4) numerical proportionality; (5) the burden on third parties; and (6) over- or under-inclusiveness. Id. at 1242-1243.

First, in terms of race-neutral alternative remedies, the court found that the evidence offered showed, at most, that nominal efforts were made to assist minority-owned businesses prior to the adoption of the MBE Act's racial preference program. Id. at 1243. The court considered evidence regarding the Minority Assistance Program, but found that to be primarily informational services only, and was not designed to actually assist minorities or other disadvantaged contractors to obtain contracts with the State of Oklahoma. Id. at 1243. In contrast to this "informational" program, the court noted the Tenth Circuit in Adarand VII favorably considered the federal government's use of racially neutral alternatives aimed at disadvantaged businesses, including assistance with obtaining project bonds, assistance with securing capital financing, technical assistance, and other programs designed to assist start-up businesses. Id. at 1243 citing Adarand VII, 228 F.3d at 1178-1179.

The district court found that it does not appear from the evidence that Oklahoma's Minority Assistance Program provided the type of race-neutral relief required by the Tenth Circuit in Adarand VII, in the Supreme Court in the Croson decision, nor does it appear that the Program was racially neutral. Id. at 1243. The court found that the State of Oklahoma did not show any meaningful form of assistance to new or disadvantaged businesses prior to the adoption of the MBE Act, and thus, the court found that the state defendants had not shown that Oklahoma considered race-neutral alternative means to achieve the state's goal prior to adoption of the minority bid preference provisions. Id. at 1243.

In a footnote, the district court pointed out that the Tenth Circuit has recognized racially neutral programs designed to assist all new or financially disadvantaged businesses in obtaining government contracts tend to benefit minority-owned businesses, and can help alleviate the effects of past and present-day discrimination. Id. at 1243, footnote 15 citing Adarand VII.

The court considered the evidence offered of post-enactment efforts by the State to increase minority participation in State contracting. The court found that most of these efforts were directed toward

encouraging the participation of certified minority business enterprises, “and are thus not racially neutral. This evidence fails to demonstrate that the State employed race-neutral alternative measures prior to or after adopting the Minority Business Enterprise Assistance Act.” Id. at 1244. Some of the efforts the court found were directed toward encouraging the participation of certified minority business enterprises and thus not racially neutral, included mailing vendor registration forms to minority vendors, telephoning and mailing letters to minority vendors, providing assistance to vendors in completing registration forms, assuring the vendors received bid information, preparing a minority business directory and distributing it to all state agencies, periodically mailing construction project information to minority vendors, and providing commodity information to minority vendors upon request. Id. at 1244, footnote 16.

In terms of durational limits and flexibility, the court found that the “goal” of 10 percent of the state’s contracts being awarded to certified minority business enterprises had never been reached, or even approached, during the thirteen years since the MBE Act was implemented. Id. at 1244. The court found the defendants offered no evidence that the bid preference was likely to end at any time in the foreseeable future, or that it is otherwise limited in its duration. Id. Unlike the federal programs at issue in Adarand VII, the court stated the Oklahoma MBE Act has no inherent time limit, and no provision for disadvantaged minority-owned businesses to “graduate” from preference eligibility. Id. The court found the MBE Act was not limited to those minority-owned businesses which are shown to be economically disadvantaged. Id.

The court stated that the MBE Act made no attempt to address or remedy any actual, demonstrated past or present racial discrimination, and the MBE Act’s duration was not tied in any way to the eradication of such discrimination. Id. Instead, the court found the MBE Act rests on the “questionable assumption that 10 percent of all state contract dollars should be awarded to certified minority-owned and operated businesses, without any showing that this assumption is reasonable.” Id. at 1244.

By the terms of the MBE Act, the minority preference provisions would continue in place for five years after the goal of 10 percent minority participation was reached, and thus the district court concluded that the MBE Act’s minority preference provisions lacked reasonable durational limits. Id. at 1245.

With regard to the factor of “numerical proportionality” between the MBE Act’s aspirational goal and the number of existing available minority-owned businesses, the court found the MBE Act’s 10 percent goal was not based upon demonstrable evidence of the availability of minority contractors who were either qualified to bid or who were ready, willing and able to become qualified to bid on state contracts. Id. at 1246–1247. The court pointed out that the MBE Act made no attempt to distinguish between the four minority racial groups, so that contracts awarded to members of all of the preferred races were aggregated in determining whether the 10 percent aspirational goal had been reached. Id. at 1246. In addition, the court found the MBE Act aggregated all state contracts for goods and services, so that minority participation was determined by the total number of dollars spent on state contracts. Id.

The court stated that in Adarand VII, the Tenth Circuit rejected the contention that the aspirational goals were required to correspond to an actual finding as to the number of existing minority-owned businesses. Id. at 1246. The court noted that the government submitted evidence in Adarand VII,

that the effects of past discrimination had excluded minorities from entering the construction industry, and that the number of available minority subcontractors reflected that discrimination. *Id.* In light of this evidence, the district court said the Tenth Circuit held that the existing percentage of minority-owned businesses is “not necessarily an absolute cap” on the percentage that a remedial program might legitimately seek to achieve. *Id.* at 1246, citing *Adarand VII*, 228 F.3d at 1181.

Unlike *Adarand VII*, the court found that the Oklahoma State defendants did not offer “substantial evidence” that the minorities given preferential treatment under the MBE Act were prevented, through past discrimination, from entering any particular industry, or that the number of available minority subcontractors in that industry reflects that discrimination. 140 F.Supp.2d at 1246. The court concluded that the Oklahoma State defendants did not offer any evidence of the number of minority-owned businesses doing business in any of the many industries covered by the MBE Act. *Id.* at 1246–1247.

With regard to the impact on third parties factor, the court pointed out the Tenth Circuit in *Adarand VII* stated the mere possibility that innocent parties will share the burden of a remedial program is itself insufficient to warrant the conclusion that the program is not narrowly tailored. *Id.* at 1247. The district court found the MBE Act’s bid preference provisions prevented non-minority businesses from competing on an equal basis with certified minority business enterprises, and that in some instances plaintiffs had been required to lower their intended bids because they knew minority firms were bidding. *Id.* The court pointed out that the 5 percent preference is applicable to *all* contracts awarded under the state’s Central Purchasing Act with no time limitation. *Id.*

In terms of the “under- and over-inclusiveness” factor, the court observed that the MBE Act extended its bidding preference to several racial minority groups without regard to whether each of those groups had suffered from the effects of past or present racial discrimination. *Id.* at 1247. The district court reiterated the Oklahoma State defendants did not offer any evidence at all that the minority racial groups identified in the Act had actually suffered from discrimination. *Id.*

Second, the district court found the MBE Act’s bidding preference extends to all contracts for goods and services awarded under the State’s Central Purchasing Act, without regard to whether members of the preferred minority groups had been the victims of past or present discrimination within that particular industry or trade. *Id.*

Third, the district court noted the preference extends to all businesses certified as minority-owned and controlled, without regard to whether a particular business is economically or socially disadvantaged, or has suffered from the effects of past or present discrimination. *Id.* The court thus found that the factor of over-inclusiveness weighs against a finding that the MBE Act was narrowly tailored. *Id.*

The district court in conclusion found that the Oklahoma MBE Act violated the Constitution’s Fifth Amendment guarantee of equal protection and granted the plaintiffs’ Motion for Summary Judgment.

7. In re City of Memphis, 293 F. 3d 345 (6th Cir. 2002)

This case is instructive to the disparity study in particular based on its holding that a local government may be prohibited from utilizing post-enactment evidence in support of a MBE/WBE-

type program. The United States Court of Appeals for Sixth Circuit held that pre-enactment evidence was required to justify the City of Memphis' MBE/WBE Program. The Sixth Circuit held that a government must have had sufficient evidentiary justification for a racially conscious statute in advance of its passage. The district court had ruled that the City could not introduce the post-enactment study as evidence of a compelling interest to justify its MBE/WBE Program. The Sixth Circuit denied the City's application for an interlocutory appeal on the district court's order and refused to grant the City's request to appeal this issue.

8. Builders Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001)

This case is instructive to the disparity study because of its analysis of the Cook County MBE/WBE program and the evidence used to support that program. The decision emphasizes the need for any race-conscious program to be based upon credible evidence of discrimination by the local government against MBE/WBEs and to be narrowly tailored to remedy only that identified discrimination.

In Builders Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001) the United States Court of Appeals for the Seventh Circuit held the Cook County, Chicago MBE/WBE Program was unconstitutional. The court concluded there was insufficient evidence of a compelling interest. The court held there was no credible evidence that Cook County in the award of construction contracts discriminated against any of the groups "favored" by the Program. The court also found that the Program was not "narrowly tailored" to remedy the wrong sought to be redressed, in part because it was over-inclusive in the definition of minorities. The court noted the list of minorities included groups that have not been subject to discrimination by Cook County.

The court considered as an unresolved issue whether a different, and specifically a more permissive, standard than strict scrutiny is applicable to preferential treatment on the basis of sex, rather than race or ethnicity. 256 F.3d at 644. The court noted that the United States Supreme Court in United States v. Virginia ("VMI"), 518 U.S. 515, 532 and n.6 (1996), held racial discrimination to a stricter standard than sex discrimination, although the court in Cook County stated the difference between the applicable standards has become "vanishingly small." Id. The court pointed out that the Supreme Court said in the VMI case, that "parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive' justification for that action ..." and, realistically, the law can ask no more of race-based remedies either." 256 F.3d at 644, quoting in part VMI, 518 U.S. at 533. The court indicated that the Eleventh Circuit Court of Appeals in the Engineering Contract Association of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895, 910 (11th Cir. 1997) decision created the "paradox that a public agency can provide stronger remedies for sex discrimination than for race discrimination; it is difficult to see what sense that makes." 256 F.3d at 644. But, since Cook County did not argue for a different standard for the minority and women's "set aside programs," the women's program the court determined must clear the same "hurdles" as the minority program." 256 F.3d at 644-645.

The court found that since the ordinance requires prime contractors on public projects to reserve a substantial portion of the subcontracts for minority contractors, which is inapplicable to private projects, it is "to be expected that there would be more soliciting of these contractors on public than on private projects." Id. Therefore, the court did not find persuasive that there was discrimination based on this difference alone. 256 F.3d at 645. The court pointed out the County "conceded that

[it] had no specific evidence of pre-enactment discrimination to support the ordinance.” 256 F.3d at 645 quoting the district court decision, 123 F.Supp. 2d at 1093. The court held that a “public agency must have a strong evidentiary basis for thinking a discriminatory remedy appropriate *before* it adopts the remedy.” 256 F.3d at 645 (emphasis in original).

The court stated that minority enterprises in the construction industry “tend to be subcontractors, moreover, because as the district court found not clearly erroneously, 123 F.Supp. 2d at 1115, they tend to be new and therefore small and relatively untested — factors not shown to be attributable to discrimination by the County.” 256 F.3d at 645. The court held that there was no basis for attributing to the County any discrimination that prime contractors may have engaged in. *Id.* The court noted that “[i]f prime contractors on County projects were discriminating against minorities and this was known to the County, whose funding of the contracts thus knowingly perpetuated the discrimination, the County might be deemed sufficiently complicit ... to be entitled to take remedial action.” *Id.* But, the court found “of that there is no evidence either.” *Id.*

The court stated that if the County had been complicit in discrimination by prime contractors, it found “puzzling” to try to remedy that discrimination by requiring discrimination in favor of minority stockholders, as distinct from employees. 256 F.3d at 646. The court held that even if the record made a case for remedial action of the general sort found in the MWBE ordinance by the County, it would “flunk the constitutional test” by not being carefully designed to achieve the ostensible remedial aim and no more. 256 F.3d at 646. The court held that a state and local government that has discriminated just against blacks may not by way of remedy discriminate in favor of blacks and Asian Americans and women. *Id.* Nor, the court stated, may it discriminate more than is necessary to cure the effects of the earlier discrimination. *Id.* “Nor may it continue the remedy in force indefinitely, with no effort to determine whether, the remedial purpose attained, continued enforcement of the remedy would be a gratuitous discrimination against nonminority persons.” *Id.* The court, therefore, held that the ordinance was not “narrowly tailored” to the wrong that it seeks to correct. *Id.*

The court thus found that the County both failed to establish the premise for a racial remedy, and also that the remedy goes further than is necessary to eliminate the evil against which it is directed. 256 F.3d at 647. The court held that the list of “favored minorities” includes groups that have never been subject to significant discrimination by Cook County. *Id.* The court found it unreasonable to “presume” discrimination against certain groups merely on the basis of having an ancestor who had been born in a particular country. *Id.* Therefore, the court held the ordinance was overinclusive.

The court found that the County did not make any effort to show that, were it not for a history of discrimination, minorities would have 30 percent, and women 10 percent, of County construction contracts. 256 F.3d at 647. The court also rejected the proposition advanced by the County in this case—“that a comparison of the fraction of minority subcontractors on public and private projects established discrimination against minorities by prime contractors on the latter type of project.” 256 F.3d at 647-648.

9. Associated Gen. Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), affirming Case No. C2-98-943, 998 WL 812241 (S.D. Ohio 1998)

This case is instructive to the disparity study based on the analysis applied in finding the evidence insufficient to justify an MBE/WBE program, and the application of the narrowly tailored test. The

Sixth Circuit Court of Appeals enjoined the enforcement of the state MBE program, and in so doing reversed state court precedent finding the program constitutional. This case affirmed a district court decision enjoining the award of a “set-aside” contract based on the State of Ohio’s MBE program with the award of construction contracts. The court held, among other things, that the mere existence of societal discrimination was insufficient to support a racial classification. The court found that the economic data were insufficient and too outdated. The court held the State could not establish a compelling governmental interest and that the statute was not narrowly tailored. The court held, among other things, the statute failed the narrow tailoring test because there was no evidence that the State had considered race-neutral remedies.

The court was mindful of the fact that it was striking down an entire class of programs by declaring the State of Ohio MBE statute in question unconstitutional, and noted that its decision was “not reconcilable” with the Ohio Supreme Court’s decision in Ritchie Produce, 707 N.E.2d 871 (Ohio 1999) (upholding the Ohio State MBE Program).

10. W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999)

This case is instructive to the disparity study because the decision highlights the evidentiary burden imposed by the courts necessary to support a local MBE/WBE program. In addition, the Fifth Circuit permitted the aggrieved contractor to recover lost profits from the City of Jackson, Mississippi due to the City’s enforcement of the MBE/WBE program that the court held was unconstitutional.

The Fifth Circuit, applying strict scrutiny, held that the City of Jackson, Mississippi failed to establish a compelling governmental interest to justify its policy placing 15 percent minority participation goals for City construction contracts. In addition, the court held the evidence upon which the City relied was faulty for several reasons, including because it was restricted to the letting of prime contracts by the City under the City’s Program, and it did not include an analysis of the availability and utilization of qualified minority subcontractors, the relevant statistical pool in the City’s construction projects. Significantly, the court also held that the plaintiff in this case could recover lost profits against the City as damages as a result of being denied a bid award based on the application of the MBE/WBE program.

11. Eng’g Contractors Ass’n of S. Florida v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997)

Engineering Contractors Association of South Florida v. Metropolitan Engineering Contractors Association is a paramount case in the Eleventh Circuit and is instructive to the disparity study. This decision has been cited and applied by the courts in various circuits that have addressed MBE/WBE-type programs or legislation involving local government contracting and procurement.

In Engineering Contractors Association, six trade organizations (the “plaintiffs”) filed suit in the district court for the Southern District of Florida, challenging three affirmative action programs administered by Engineering Contractors Association, Florida, (the “County”) as violative of the Equal Protection Clause. 122 F.3d 895, 900 (11th Cir. 1997). The three affirmative action programs challenged were the Black Business Enterprise program (“BBE”), the Hispanic Business Enterprise program (“HBE”), and the Woman Business Enterprise program, (“WBE”), (collectively “MWBE” programs). Id. The plaintiffs challenged the application of the program to County construction contracts. Id.

For certain classes of construction contracts valued over \$25,000, the County set participation goals of 15 percent for BBEs, 19 percent for HBEs, and 11 percent for WBEs. Id. at 901. The County established five “contract measures” to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County Commission would make the final determination and its decision was appealable to the County Manager. Id. The County reviewed the efficacy of the MWBE programs annually, and reevaluated the continuing viability of the MWBE programs every five years. Id.

In a bench trial, the district court applied strict scrutiny to the BBE and HBE programs and held that the County lacked the requisite “strong basis in evidence” to support the race- and ethnicity-conscious measures. Id. at 902. The district court applied intermediate scrutiny to the WBE program and found that the “County had presented insufficient probative evidence to support its stated rationale for implementing a gender preference.” Id. Therefore, the County had failed to demonstrate a “compelling interest” necessary to support the BBE and HBE programs, and failed to demonstrate an “important interest” necessary to support the WBE program. Id. The district court assumed the existence of a sufficient evidentiary basis to support the existence of the MWBE programs but held the BBE and HBE programs were not narrowly tailored to the interests they purported to serve; the district court held the WBE program was not substantially related to an important government interest. Id. The district court entered a final judgment enjoining the County from continuing to operate the MWBE programs and the County appealed. The Eleventh Circuit Court of Appeals affirmed. Id. at 900, 903.

On appeal, the Eleventh Circuit considered four major issues:

1. Whether the plaintiffs had standing. [The Eleventh Circuit answered this in the affirmative and that portion of the opinion is omitted from this summary];
2. Whether the district court erred in finding the County lacked a “strong basis in evidence” to justify the existence of the BBE and HBE programs;
3. Whether the district court erred in finding the County lacked a “sufficient probative basis in evidence” to justify the existence of the WBE program; and
4. Whether the MWBE programs were narrowly tailored to the interests they were purported to serve.

Id. at 903.

The Eleventh Circuit held that the BBE and HBE programs were subject to the strict scrutiny standard enunciated by the U.S. Supreme Court in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). Id. at 906. Under this standard, “an affirmative action program must be based upon a ‘compelling government interest’ and must be ‘narrowly tailored’ to achieve that interest.” Id. The Eleventh Circuit further noted:

In practice, the interest that is alleged in support of racial preferences is almost always the same — remedying past or present

discrimination. That interest is widely accepted as compelling. As a result, the true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest.

Id. (internal citations omitted).

Therefore, strict scrutiny requires a finding of a “strong basis in evidence” to support the conclusion that remedial action is necessary.” Id., citing Croson, 488 U.S. at 500). The requisite “strong basis in evidence” cannot rest on ‘an amorphous claim of societal discrimination, on simple legislative assurances of good intention, or on congressional findings of discrimination in the national economy.’” Id. at 907, citing Ensley Branch, NAACP v. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994) (citing and applying Croson). However, the Eleventh Circuit found that a governmental entity can “justify affirmative action by demonstrating ‘gross statistical disparities’ between the proportion of minorities hired ... and the proportion of minorities willing and able to do the work ... Anecdotal evidence may also be used to document discrimination, especially if buttressed by relevant statistical evidence.” Id. (internal citations omitted).

Notwithstanding the “exceedingly persuasive justification” language utilized by the Supreme Court in United States v. Virginia, 116 S. Ct. 2264 (1996) (evaluating gender-based government action), the Eleventh Circuit held that the WBE program was subject to traditional intermediate scrutiny. Id. at 908. Under this standard, the government must provide “sufficient probative evidence” of discrimination, which is a lesser standard than the “strong basis in evidence” under strict scrutiny. Id. at 910.

The County provided two types of evidence in support of the MWBE programs: (1) statistical evidence, and (2) non-statistical “anecdotal” evidence. Id. at 911. As an initial matter, the Eleventh Circuit found that in support of the BBE program, the County permissibly relied on substantially “post-enactment” evidence (*i.e.*, evidence based on data related to years following the initial enactment of the BBE program). Id. However, “such evidence carries with it the hazard that the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market.” Id. at 912. A district court should not “speculate about what the data *might* have shown had the BBE program never been enacted.” Id.

The statistical evidence. The County presented five basic categories of statistical evidence: (1) County contracting statistics; (2) County subcontracting statistics; (3) marketplace data statistics; (4) The Wainwright Study; and (5) The Brimmer Study. Id. In summary, the Eleventh Circuit held that the County’s statistical evidence (described more fully below) was subject to more than one interpretation. Id. at 924. The district court found that the evidence was “insufficient to form the requisite strong basis in evidence for implementing a racial or ethnic preference, and that it was insufficiently probative to support the County’s stated rationale for imposing a gender preference.” Id. The district court’s view of the evidence was a permissible one. Id.

County contracting statistics. The County presented a study comparing three factors for County non-procurement construction contracts over two time periods (1981-1991 and 1993): (1) the percentage of bidders that were MWBE firms; (2) the percentage of awardees that were MWBE firms; and (3) the proportion of County contract dollars that had been awarded to MWBE firms. Id. at 912.

The Eleventh Circuit found that notably, for the BBE and HBE statistics, generally there were no “consistently negative disparities between the bidder and awardee percentages. In fact, by 1993, the BBE and HBE bidders are being awarded *more* than their proportionate ‘share’ ... when the bidder percentages are used as the baseline.” Id. at 913. For the WBE statistics, the bidder/awardee statistics were “decidedly mixed” as across the range of County construction contracts. Id.

The County then refined those statistics by adding in the total percentage of annual County construction dollars awarded to MBE/WBEs, by calculating “disparity indices” for each program and classification of construction contract. The Eleventh Circuit explained:

[A] disparity index compares the amount of contract awards a group actually got to the amount we would have expected it to get based on that group’s bidding activity and awardee success rate. More specifically, a disparity index measures the participation of a group in County contracting dollars by dividing that group’s contract dollar percentage by the related bidder or awardee percentage, and multiplying that number by 100 percent.

Id. at 914. “The utility of disparity indices or similar measures ... has been recognized by a number of federal circuit courts.” Id.

The Eleventh Circuit found that “[i]n general ... disparity indices of 80 percent or greater, which are close to full participation, are not considered indications of discrimination.” Id. The Eleventh Circuit noted that “the EEOC’s disparate impact guidelines use the 80 percent test as the boundary line for determining a prima facie case of discrimination.” Id., citing 29 C.F.R. § 1607.4D. In addition, no circuit that has “explicitly endorsed the use of disparity indices [has] indicated that an index of 80 percent or greater might be probative of discrimination.” Id., citing Concrete Works v. City & County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994) (crediting disparity indices ranging from 0% to 3.8%); Contractors Ass’n v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993) (crediting disparity index of 4%).

After calculation of the disparity indices, the County applied a standard deviation analysis to test the statistical significance of the results. Id. at 914. “The standard deviation figure describes the probability that the measured disparity is the result of mere chance.” Id. The Eleventh Circuit had previously recognized “[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance.” Id.

The statistics presented by the County indicated “statistically significant underutilization of BBEs in County construction contracting.” Id. at 916. The results were “less dramatic” for HBEs and mixed as between favorable and unfavorable for WBEs. Id.

The Eleventh Circuit then explained the burden of proof:

[O]nce the proponent of affirmative action introduces its statistical proof as evidence of its remedial purpose, thereby supplying the [district] court with the means for determining that [it] had a firm basis for concluding that remedial action was appropriate, it is

incumbent upon the [plaintiff] to prove their case; they continue to bear the ultimate burden of persuading the [district] court that the [defendant's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently 'narrowly tailored.'

Id. (internal citations omitted).

The Eleventh Circuit noted that a plaintiff has at least three methods to rebut the inference of discrimination with a "neutral explanation" by: "(1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data." Id. (internal quotations and citations omitted). The Eleventh Circuit held that the plaintiffs produced "sufficient evidence to establish a neutral explanation for the disparities." Id.

The plaintiffs alleged that the disparities were "better explained by firm size than by discrimination ... [because] minority and female-owned firms tend to be smaller, and that it stands to reason smaller firms will win smaller contracts." Id. at 916-17. The plaintiffs produced Census data indicating, on average, minority- and female-owned construction firms in Engineering Contractors Association were smaller than non-MBE/WBE firms. Id. at 917. The Eleventh Circuit found that the plaintiff's explanation of the disparities was a "plausible one, in light of the uncontroverted evidence that MBE/WBE construction firms tend to be substantially smaller than non-MBE/WBE firms." Id.

Additionally, the Eleventh Circuit noted that the County's own expert admitted that "firm size plays a significant role in determining which firms win contracts." Id. The expert stated:

The size of the firm has got to be a major determinant because of course some firms are going to be larger, are going to be better prepared, are going to be in a greater natural capacity to be able to work on some of the contracts while others simply by virtue of their small size simply would not be able to do it. Id.

The Eleventh Circuit then summarized:

Because they are bigger, bigger firms have a bigger chance to win bigger contracts. It follows that, all other factors being equal and in a perfectly nondiscriminatory market, one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded than the smaller MWBE firms. Id.

In an anticipation of such an argument, the County conducted a regression analysis to control for firm size. Id. A regression analysis is "a statistical procedure for determining the relationship between a dependent and independent variable, e.g., the dollar value of a contract award and firm size." Id. (internal citations omitted). The purpose of the regression analysis is "to determine whether the relationship between the two variables is statistically meaningful." Id.

The County's regression analysis sought to identify disparities that could not be explained by firm size, and theoretically instead based on another factor, such as discrimination. Id. The County conducted two regression analyses using two different proxies for firm size: (1) total awarded value of all contracts bid on; and (2) largest single contract awarded. Id. The regression analyses accounted for most of the negative disparities regarding MBE/WBE participation in County construction contracts (i.e., most of the unfavorable disparities became statistically insignificant, corresponding to standard deviation values less than two). Id.

Based on an evaluation of the regression analysis, the district court held that the demonstrated disparities were attributable to firm size as opposed to discrimination. Id. at 918. The district court concluded that the few unexplained disparities that remained after regressing for firm size were insufficient to provide the requisite "strong basis in evidence" of discrimination of BBEs and HBEs. Id. The Eleventh Circuit held that this decision was not clearly erroneous. Id.

With respect to the BBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract between 1989-1991. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

With respect to the HBE statistics, one of the regression methods failed to explain the unfavorable disparity for one type of contract between 1989-1991, and both regression methods failed to explain the unfavorable disparity for another type of contract during that same time period. Id. However, by 1993, both regression methods accounted for all of the unfavorable disparities, and one of the disparities for one type of contract was actually favorable for HBEs. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

Finally, with respect to the WBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract in the 1993 period. Id. The regression analysis explained all of the other negative disparities, and in the 1993 period, a disparity for one type of contract was actually favorable to WBEs. Id. The Eleventh Circuit held the district court permissibly found that this evidence was not "sufficiently probative of discrimination." Id.

The County argued that the district court erroneously relied on the disaggregated data (i.e., broken down by contract type) as opposed to the consolidated statistics. Id. at 919. The district court declined to assign dispositive weight to the aggregated data for the BBE statistics for 1989-1991 because (1) the aggregated data for 1993 did not show negative disparities when regressed for firm size, (2) the BBE disaggregated data left only one unexplained negative disparity for one type of contract for 1989-1991 when regressed for firm size, and (3) "the County's own expert testified as to the utility of examining the disaggregated data 'insofar as they reflect different kinds of work, different bidding practices, perhaps a variety of other factors that could make them heterogeneous with one another.'" Id.

Additionally, the district court noted, and the Eleventh Circuit found that "the aggregation of disparity statistics for nonheterogenous data populations can give rise to a statistical phenomenon known as 'Simpson's Paradox,' which leads to illusory disparities in improperly aggregated data that disappear when the data are disaggregated." Id. at 919, n. 4 (internal citations omitted). "Under those circumstances," the Eleventh Circuit held that the district court did not err in assigning less weight to the aggregated data, in finding the aggregated data for BBEs for 1989-1991 did not provide a "strong

basis in evidence” of discrimination, or in finding that the disaggregated data formed an insufficient basis of support for any of the MBE/WBE programs given the applicable constitutional requirements. Id. at 919.

County subcontracting statistics. The County performed a subcontracting study to measure MBE/WBE participation in the County’s subcontracting businesses. For each MBE/WBE category (BBE, HBE, and WBE), “the study compared the proportion of the designated group that filed a subcontractor’s release of lien on a County construction project between 1991 and 1994 with the proportion of sales and receipt dollars that the same group received during the same time period.” Id.

The district court found the statistical evidence insufficient to support the use of race- and ethnicity-conscious measures, noting problems with some of the data measures. Id. at 920.

Most notably, the denominator used in the calculation of the MWBE sales and receipts percentages is based upon the total sales and receipts from all sources for the firm filing a subcontractor’s release of lien with the County. That means, for instance, that if a nationwide non-MWBE company performing 99 percent of its business outside of Dade County filed a single subcontractor’s release of lien with the County during the relevant time frame, all of its sales and receipts for that time frame would be counted in the denominator against which MWBE sales and receipts are compared. As the district court pointed out, that is not a reasonable way to measure Dade County subcontracting participation.

Id. The County’s argument that a strong majority (72%) of the subcontractors were located in Dade County did not render the district court’s decision to fail to credit the study erroneous. Id.

Marketplace data statistics. The County conducted another statistical study “to see what the differences are in the marketplace and what the relationships are in the marketplace.” Id. The study was based on a sample of 568 contractors, from a pool of 10,462 firms, that had filed a “certificate of competency” with Dade County as of January 1995. Id. The selected firms participated in a telephone survey inquiring about the race, ethnicity, and gender of the firm’s owner, and asked for information on the firm’s total sales and receipts from all sources. Id. The County’s expert then studied the data to determine “whether meaningful relationships existed between (1) the race, ethnicity, and gender of the surveyed firm owners, and (2) the reported sales and receipts of that firm. Id. The expert’s hypothesis was that unfavorable disparities may be attributable to marketplace discrimination. The expert performed a regression analysis using the number of employees as a proxy for size. Id.

The Eleventh Circuit first noted that the statistical pool used by the County was substantially larger than the actual number of firms, willing, able, and qualified to do the work as the statistical pool represented all those firms merely licensed as a construction contractor. Id. Although this factor did not render the study meaningless, the district court was entitled to consider that in evaluating the weight of the study. Id. at 921. The Eleventh Circuit quoted the Supreme Court for the following proposition: “[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary

qualifications) may have little probative value.” Id., quoting Croson, 488 U.S. at 501, quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 308 n. 13 (1977).

The Eleventh Circuit found that after regressing for firm size, neither the BBE nor WBE data showed statistically significant unfavorable disparities. Id. Although the marketplace data did reveal unfavorable disparities even after a regression analysis, the district court was not required to assign those disparities controlling weight, especially in light of the dissimilar results of the County Contracting Statistics, discussed supra. Id.

The Wainwright Study. The County also introduced a statistical analysis prepared by Jon Wainwright, analyzing “the personal and financial characteristics of self-employed persons working full-time in the Dade County construction industry, based on data from the 1990 Public Use Microdata Sample database” (derived from the decennial census). Id. The study “(1) compared construction business ownership rates of MBE/WBEs to those of non-MBE/WBEs, and (2) analyzed disparities in personal income between MBE/WBE and non-MBE/WBE business owners.” Id. “The study concluded that blacks, Hispanics, and women are less likely to own construction businesses than similarly situated white males, and MBE/WBEs that do enter the construction business earn less money than similarly situated white males.” Id.

With respect to the first conclusion, Wainwright controlled for “human capital” variables (education, years of labor market experience, marital status, and English proficiency) and “financial capital” variables (interest and dividend income, and home ownership). Id. The analysis indicated that blacks, Hispanics and women enter the construction business at lower rates than would be expected, once numerosity, and identified human and financial capital are controlled for. Id. The disparities for blacks and women (but not Hispanics) were substantial and statistically significant. Id. at 922. The underlying theory of this business ownership component of the study is that any significant disparities remaining after control of variables are due to the ongoing effects of past and present discrimination. Id.

The Eleventh Circuit held, in light of Croson, the district court need not have accepted this theory. Id. The Eleventh Circuit quoted Croson, in which the Supreme Court responded to a similar argument advanced by the plaintiffs in that case: “There are numerous explanations for this dearth of minority participation, including past societal discrimination in education and economic opportunities *as well as both black and white career and entrepreneurial choices. Blacks may be disproportionately attracted to industries other than construction.*” Id., quoting Croson, 488 U.S. at 503. Following the Supreme Court in Croson, the Eleventh Circuit held “the disproportionate attraction of a minority group to non-construction industries does not mean that discrimination in the construction industry is the reason.” Id., quoting Croson, 488 U.S. at 503. Additionally, the district court had evidence that between 1982 and 1987, there was a substantial growth rate of MBE/WBE firms as opposed to non-MBE/WBE firms, which would further negate the proposition that the construction industry was discriminating against minority- and women-owned firms. Id. at 922.

With respect to the personal income component of the Wainwright study, after regression analyses were conducted, only the BBE statistics indicated a statistically significant disparity ratio. Id. at 923. However, the Eleventh Circuit held the district court was not required to assign the disparity controlling weight because the study did not regress for firm size, and in light of the conflicting

statistical evidence in the County Contracting Statistics and Marketplace Data Statistics, discussed supra, which did regress for firm size. Id.

The Brimmer Study. The final study presented by the County was conducted under the supervision of Dr. Andrew F. Brimmer and concerned only black-owned firms. Id. The key component of the study was an analysis of the business receipts of black-owned construction firms for the years of 1977, 1982 and 1987, based on the Census Bureau’s Survey of Minority- and Women-Owned Businesses, produced every five years. Id. The study sought to determine the existence of disparities between sales and receipts of black-owned firms in Dade County compared to the sales and receipts of all construction firms in Dade County. Id.

The study indicated substantial disparities in 1977 and 1987 but not 1982. Id. The County alleged that the absence of disparity in 1982 was due to substantial race-conscious measures for a major construction contract (Metrorail project), and not due to a lack of discrimination in the industry. Id. However, the study made no attempt to filter for the Metrorail project and “complete[ly] fail[ed]” to account for firm size. Id. Accordingly, the Eleventh Circuit found the district court permissibly discounted the results of the Brimmer study. Id. at 924.

Anecdotal evidence In addition, the County presented a substantial amount of anecdotal evidence of perceived discrimination against BBEs, a small amount of similar anecdotal evidence pertaining to WBEs, and no anecdotal evidence pertaining to HBEs. Id. The County presented three basic forms of anecdotal evidence: “(1) the testimony of two County employees responsible for administering the MBE/WBE programs; (2) the testimony, primarily by affidavit, of twenty-three MBE/WBE contractors and subcontractors; and (3) a survey of black-owned construction firms.” Id.

The County employees testified that the decentralized structure of the County construction contracting system affords great discretion to County employees, which in turn creates the opportunity for discrimination to infect the system. Id. They also testified to specific incidents of discrimination, for example, that MBE/WBEs complained of receiving lengthier punch lists than their non-MBE/WBE counterparts. Id. They also testified that MBE/WBEs encounter difficulties in obtaining bonding and financing. Id.

The MBE/WBE contractors and subcontractors testified to numerous incidents of perceived discrimination in the Dade County construction market, including:

Situations in which a project foreman would refuse to deal directly with a black or female firm owner, instead preferring to deal with a white employee; instances in which an MWBE owner knew itself to be the low bidder on a subcontracting project, but was not awarded the job; instances in which a low bid by an MWBE was “shopped” to solicit even lower bids from non-MWBE firms; instances in which an MWBE owner received an invitation to bid on a subcontract within a day of the bid due date, together with a “letter of unavailability” for the MWBE owner to sign in order to obtain a waiver from the County; and instances in which an MWBE subcontractor was hired by a prime contractor, but subsequently was replaced with a non-MWBE subcontractor within days of starting work on the project.

Id. at 924-25.

Finally, the County submitted a study prepared by Dr. Joe E. Feagin, comprised of interviews of 78 certified black-owned construction firms. Id. at 925. The interviewees reported similar instances of perceived discrimination, including: “difficulty in securing bonding and financing; slow payment by general contractors; unfair performance evaluations that were tainted by racial stereotypes; difficulty in obtaining information from the County on contracting processes; and higher prices on equipment and supplies than were being charged to non-MBE/WBE firms.” Id.

The Eleventh Circuit found that numerous black- and some female-owned construction firms in Dade County perceived that they were the victims of discrimination and two County employees also believed that discrimination could taint the County’s construction contracting process. Id. However, such anecdotal evidence is helpful “only when it [is] combined with and reinforced by sufficiently probative statistical evidence.” Id. In her plurality opinion in Croson, Justice O’Connor found that “evidence of a pattern of individual discriminatory acts can, *if supported by appropriate statistical proof*, lend support to a local government’s determination that broader remedial relief is justified.” Id., quoting Croson, 488 U.S. at 509 (emphasis added by the Eleventh Circuit). Accordingly, the Eleventh Circuit held that “anecdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone.” Id. at 925. The Eleventh Circuit also cited to opinions from the Third, Ninth and Tenth Circuits as supporting the same proposition. Id. at 926. The Eleventh Circuit affirmed the decision of the district court enjoining the continued operation of the MBE/WBE programs because they did not rest on a “constitutionally sufficient evidentiary foundation.” Id.

Although the Eleventh Circuit determined that the MBE/WBE program did not survive constitutional muster due to the absence of a sufficient evidentiary foundation, the Eleventh Circuit proceeded with the second prong of the strict scrutiny analysis of determining whether the MBE/WBE programs were narrowly tailored (BBE and HBE programs) or substantially related (WBE program) to the legitimate government interest they purported to serve, *i.e.*, “remedying the effects of present and past discrimination against blacks, Hispanics, and women in the Dade County construction market.” Id.

Narrow tailoring. “The essence of the ‘narrowly tailored’ inquiry is the notion that explicitly racial preferences ... must only be a ‘last resort’ option.” Id., quoting Hayes v. North Side Law Enforcement Officers Ass’n, 10 F.3d 207, 217 (4th Cir. 1993) and citing Croson, 488 U.S. at 519 (Kennedy, J., concurring in part and concurring in the judgment) (“[T]he strict scrutiny standard ... forbids the use of even narrowly drawn racial classifications except as a last resort.”).

The Eleventh Circuit has identified four factors to evaluate whether a race- or ethnicity-conscious affirmative action program is narrowly tailored: (1) “the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties.” Id. at 927, citing Ensley Branch, 31 F.3d at 1569. The four factors provide “a useful analytical structure.” Id. at 927. The Eleventh Circuit focused only on the first factor in the present case “because that is where the County’s MBE/WBE programs are most problematic.” Id.

The Eleventh Circuit

flatly reject[ed] the County’s assertion that ‘given a strong basis in evidence of a race-based problem, a race-based remedy is necessary.’ That is simply not the law. If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem.” *Id.*, citing *Croson*, 488 U.S. at 507 (holding that affirmative action program was not narrowly tailored where “there does not appear to have been any consideration of the use of race-neutral means to increase minority business participation in city contracting”) ... Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications the government may use to treat a race-based problem. Instead, it is the strongest of medicines, with many potential side effects, and must be reserved for those severe cases that are highly resistant to conventional treatment.

Id. at 927.

The Eleventh Circuit held that the County “clearly failed to give serious and good faith consideration to the use of race- and ethnicity-neutral measures.” *Id.* Rather, the determination of the necessity to establish the MWBE programs was based upon a conclusory legislative statement as to its necessity, which in turn was based upon an “equally conclusory analysis” in the Brimmer study, and a report that the SBA only was able to direct 5 percent of SBA financing to black-owned businesses between 1968-1980. *Id.*

The County admitted, and the Eleventh Circuit concluded, that the County failed to give any consideration to any alternative to the HBE affirmative action program. *Id.* at 928. Moreover, the Eleventh Circuit found that the testimony of the County’s own witnesses indicated the viability of race- and ethnicity-neutral measures to remedy many of the problems facing black- and Hispanic-owned construction firms. *Id.* The County employees identified problems, virtually all of which were related to the County’s own processes and procedures, including: “the decentralized County contracting system, which affords a high level of discretion to County employees; the complexity of County contract specifications; difficulty in obtaining bonding; difficulty in obtaining financing; unnecessary bid restrictions; inefficient payment procedures; and insufficient or inefficient exchange of information.” *Id.* The Eleventh Circuit found that the problems facing MBE/WBE contractors were “institutional barriers” to entry facing every new entrant into the construction market, and were perhaps affecting the MBE/WBE contractors disproportionately due to the “institutional youth” of black- and Hispanic-owned construction firms. *Id.* “It follows that those firms should be helped the most by dismantling those barriers, something the County could do at least in substantial part.” *Id.*

The Eleventh Circuit noted that the race- and ethnicity-neutral options available to the County mirrored those available and cited by Justice O’Connor in *Croson*:

[T]he city has at its disposal a whole array of race-neutral measures to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would

open the public contracting market to all those who have suffered the effects of past societal discrimination and neglect ... The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks.

Id., quoting *Croson*, 488 U.S. at 509-10. The Eleventh Circuit found that except for some “half-hearted programs” consisting of “limited technical and financial aid that might benefit BBEs and HBEs,” the County had not “seriously considered” or tried most of the race- and ethnicity-neutral alternatives available. *Id.* at 928. “Most notably ... the County has not taken any action whatsoever to ferret out and respond to instances of discrimination if and when they have occurred in the County’s own contracting process.” *Id.*

The Eleventh Circuit found that the County had taken no steps to “inform, educate, discipline, or penalize” discriminatory misconduct by its own employees. *Id.* at 929. Nor had the County passed any local ordinances expressly prohibiting discrimination by local contractors, subcontractors, suppliers, bankers, or insurers. *Id.* “Instead of turning to race- and ethnicity-conscious remedies as a last resort, the County has turned to them as a first resort.” Accordingly, the Eleventh Circuit held that even if the BBE and HBE programs were supported by the requisite evidentiary foundation, they violated the Equal Protection Clause because they were not narrowly tailored. *Id.*

Substantial relationship. The Eleventh Circuit held that due to the relaxed “substantial relationship” standard for gender-conscious programs, if the WBE program rested upon a sufficient evidentiary foundation, it could pass the substantial relationship requirement. *Id.* However, because it did not rest upon a sufficient evidentiary foundation, the WBE program could not pass constitutional muster. *Id.*

For all of the foregoing reasons, the Eleventh Circuit affirmed the decision of the district court declaring the MBE/WBE programs unconstitutional and enjoining their continued operation.

Recent District Court Decisions

12. H.B. Rowe Corp., Inc. v. W. Lyndo Tippet, North Carolina DOT, et al; 589 F. Supp. 2d 587 (E.D.N.C. 2008), affirmed in part, reversed in part, and remanded, 615 F. 3d 233 (4th Cir. 2010)

In *H.B. Rowe Company v. Tippet, North Carolina Department of Transportation, et al.* (“Rowe”), the United States District Court for the Eastern District of North Carolina, Western Division, heard a challenge to the State of North Carolina Minority Business Enterprise and Woman Business Enterprise Program (“MBE Program” or “WBE Program”), which is a State of North Carolina “affirmative action” program administered by the North Carolina DOT (“NCDOT”). The NCDOT MWBE Program challenged in *Rowe* involves projects funded solely by the State of North Carolina and not funded by the Federal Department of Transportation. 589 F.Supp. 2d 587.

Background. In this case plaintiff, a family-owned road construction business, bid on a NCDOT initiated state-funded project. NCDOT rejected plaintiff’s bid in favor of the next low bid that had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff’s bid was rejected because of plaintiff’s failure to demonstrate “good faith efforts” to obtain pre-designated levels of minority participation on the project.

As a prime contractor, plaintiff Rowe was obligated under the MWBE Program to either obtain participation of specified levels of minority business enterprise and women business enterprise participation as subcontractors, or to demonstrate good faith efforts to do so. For this particular project, NCDOT had set MBE and WBE subcontractor participation goals of 10 percent and 5 percent, respectively. Plaintiff's bid included 6.6 percent WBE participation, but no MBE participation. The bid was rejected after a review of plaintiff's good faith efforts to obtain MBE participation. The next lowest bidder submitted a bid including 3.3 percent MBE participation and 9.3 percent WBE participation, and although not obtaining a specified level of MBE participation, it was determined to have made good faith efforts to do so. (Order of the District Court, dated March 29, 2007).

North Carolina's MWBE Program "largely mirrors" the Federal Disadvantage Business Enterprise ("DBE") Program, which NCDOT is required to comply with in awarding construction contracts that utilize Federal funds. (589 F.Supp. 2d 587; Order of the District Court, dated September 28, 2007). Like the Federal DBE Program, under North Carolina's MWBE Program, the goals for minority and female participation are aspirational rather than mandatory. *Id.* An individual target for MBE participation was set for each project. *Id.*

Historically, NCDOT had engaged in several disparity studies. The most recent study was done in 2004. *Id.* The 2004 study, which followed the study in 1998, concluded that disparities in utilization of MBEs persist and that a basis remains for continuation of the MWBE Program. The new statute as revised was approved in 2006, which modified the previous MBE statute by eliminating the 10 percent and 5 percent goals and establishing a fixed expiration date of 2009.

Plaintiff filed its complaint in this case in 2003 against the NCDOT and individuals associated with the NCDOT, including the Secretary of NCDOT, W. Lyndo Tippett. In its complaint, plaintiff alleged that the MWBE statute for NCDOT was unconstitutional on its face and as applied. 589 F.Supp. 2d 587.

March 29, 2007 Order of the District Court. The matter came before the district court initially on several motions, including the defendants' Motion to Dismiss or for Partial Summary Judgment, defendants' Motion to Dismiss the Claim for Mootness and plaintiff's Motion for Summary Judgment. The court in its October 2007 Order granted in part and denied in part defendants' Motion to Dismiss or for partial summary judgment; denied defendants' Motion to Dismiss the Claim for Mootness; and dismissed without prejudice plaintiff's Motion for Summary Judgment.

The court held the Eleventh Amendment to the United States Constitution bars plaintiff from obtaining any relief against defendant NCDOT, and from obtaining a retrospective damages award against any of the individual defendants in their official capacities. The court ruled that plaintiff's claims for relief against the NCDOT were barred by the Eleventh Amendment, and the NCDOT was dismissed from the case as a defendant. Plaintiff's claims for interest, actual damages, compensatory damages and punitive damages against the individual defendants sued in their official capacities also was held barred by the Eleventh Amendment and were dismissed. But, the court held that plaintiff was entitled to sue for an injunction to prevent state officers from violating a federal law, and under the *Ex Parte Young* exception, plaintiff's claim for declaratory and injunctive relief was permitted to go forward as against the individual defendants who were acting in an official capacity with the NCDOT. The court also held that the individual defendants were entitled to qualified

immunity, and therefore dismissed plaintiff's claim for money damages against the individual defendants in their individual capacities. Order of the District Court, dated March 29, 2007.

Defendants argued that the recent amendment to the MWBE statute rendered plaintiff's claim for declaratory injunctive relief moot. The new MWBE statute adopted in 2006, according to the court, does away with many of the alleged shortcomings argued by the plaintiff in this lawsuit. The court found the amended statute has a sunset date in 2009; specific aspirational participation goals by women and minorities are eliminated; defines "minority" as including only those racial groups which disparity studies identify as subject to underutilization in state road construction contracts; explicitly references the findings of the 2004 Disparity Study and requires similar studies to be conducted at least once every five years; and directs NCDOT to enact regulations targeting discrimination identified in the 2004 and future studies.

The court held, however, that the 2004 Disparity Study and amended MWBE statute do not remedy the primary problem which the plaintiff complained of: the use of remedial race- and gender- based preferences allegedly without valid evidence of past racial and gender discrimination. In that sense, the court held the amended MWBE statute continued to present a live case or controversy, and accordingly denied the defendants' Motion to Dismiss Claim for Mootness as to plaintiff's suit for prospective injunctive relief. Order of the District Court, dated March 29, 2007.

The court also held that since there had been no analysis of the MWBE statute apart from the briefs regarding mootness, plaintiff's pending Motion for Summary Judgment was dismissed without prejudice. Order of the District Court, dated March 29, 2007.

September 28, 2007 Order of the District Court. On September 28, 2007, the district court issued a new order in which it denied both the plaintiff's and the defendants' Motions for Summary Judgment. Plaintiff claimed that the 2004 Disparity Study is the sole basis of the MWBE statute, that the study is flawed, and therefore it does not satisfy the first prong of strict scrutiny review. Plaintiff also argued that the 2004 study tends to prove non-discrimination in the case of women; and finally the MWBE Program fails the second prong of strict scrutiny review in that it is not narrowly tailored.

The court found summary judgment was inappropriate for either party and that there are genuine issues of material fact for trial. The first and foremost issue of material fact, according to the court, was the adequacy of the 2004 Disparity Study as used to justify the MWBE Program. Therefore, because the court found there was a genuine issue of material fact regarding the 2004 Study, summary judgment was denied on this issue.

The court also held there was confusion as to the basis of the MWBE Program, and whether it was based solely on the 2004 Study or also on the 1993 and 1998 Disparity Studies. Therefore, the court held a genuine issue of material fact existed on this issue and denied summary judgment. Order of the District Court, dated September 28, 2007.

December 9, 2008 Order of the District Court (589 F.Supp. 2d 587). The district court on December 9, 2008, after a bench trial, issued an Order that found as a fact and concluded as a matter of law that plaintiff failed to satisfy its burden of proof that the North Carolina Minority and Women's Business Enterprise program, enacted by the state legislature to affect the awarding of contracts and subcontracts in state highway construction, violated the United States Constitution.

Plaintiff, in its complaint filed against the NCDOT alleged that N.C. Gen. St. § 136-28.4 is unconstitutional on its face and as applied, and that the NCDOT while administering the MWBE program violated plaintiff's rights under the federal law and the United States Constitution. Plaintiff requested a declaratory judgment that the MWBE program is invalid and sought actual and punitive damages.

As a prime contractor, plaintiff was obligated under the MWBE program to either obtain participation of specified levels of MBE and WBE subcontractors, or to demonstrate that good faith efforts were made to do so. Following a review of plaintiff's good faith efforts to obtain minority participation on the particular contract that was the subject of plaintiff's bid, the bid was rejected. Plaintiff's bid was rejected in favor of the next lowest bid, which had proposed higher minority participation on the project as part of its bid. According to NCDOT, plaintiff's bid was rejected because of plaintiff's failure to demonstrate good faith efforts to obtain pre-designated levels of minority participation on the project. 589 F.Supp. 2d 587.

North Carolina's MWBE program. The MWBE program was implemented following amendments to N.C. Gen. Stat. §136-28.4. Pursuant to the directives of the statute, the NCDOT promulgated regulations governing administration of the MWBE program. See N.C. Admin. Code tit. 19A, § 2D.1101, et seq. The regulations had been amended several times and provide that NCDOT shall ensure that MBEs and WBEs have the maximum opportunity to participate in the performance of contracts financed with non-Federal funds. N.C. Admin. Code Tit. 19A § 2D.1101.

North Carolina's MWBE program, which affected only highway bids and contracts funded solely with state money, according to the district court, largely mirrored the Federal DBE Program which NCDOT is required to comply with in awarding construction contracts that utilize federal funds. 589 F.Supp. 2d 587. Like the Federal DBE Program, under North Carolina's MWBE program, the targets for minority and female participation were aspirational rather than mandatory, and individual targets for disadvantaged business participation were set for each individual project. N.C. Admin. Code tit. 19A § 2D.1108. In determining what level of MBE and WBE participation was appropriate for each project, NCDOT would take into account "the approximate dollar value of the contract, the geographical location of the proposed work, a number of the eligible funds in the geographical area, and the anticipated value of the items of work to be included in the contract." *Id.* NCDOT would also consider "the annual goals mandated by Congress and the North Carolina General Assembly." *Id.*

A firm could be certified as a MBE or WBE by showing NCDOT that it is "owner controlled by one or more socially and economically disadvantaged individuals." NC Admin. Code tit. 1980, § 2D.1102.

The district court stated the MWBE program did not directly discriminate in favor of minority and women contractors, but rather "encouraged prime contractors to favor MBEs and WBEs in subcontracting before submitting bids to NCDOT." 589 F.Supp. 2d 587. In determining whether the lowest bidder is "responsible," NCDOT would consider whether the bidder obtained the level of certified MBE and WBE participation previously specified in the NCDOT project proposal. If not, NCDOT would consider whether the bidder made good faith efforts to solicit MBE and WBE participation. N.C. Admin. Code tit. 19A§ 2D.1108.

There were multiple studies produced and presented to the North Carolina General Assembly in the years 1993, 1998 and 2004. The 1998 and 2004 studies concluded that disparities in the utilization of minority and women contractors persist, and that there remains a basis for continuation of the MWBE program. The MWBE program as amended after the 2004 study includes provisions that eliminated the 10 percent and 5 percent goals and instead replaced them with contract-specific participation goals created by NCDOT; established a sunset provision that has the statute expiring on August 31, 2009; and provides reliance on a disparity study produced in 2004.

The MWBE program, as it stood at the time of this decision, provides that NCDOT “dictates to prime contractors the express goal of MBE and WBE subcontractors to be used on a given project. However, instead of the state hiring the MBE and WBE subcontractors itself, the NCDOT makes the prime contractor solely responsible for vetting and hiring these subcontractors. If a prime contractor fails to hire the goal amount, it must submit efforts of ‘good faith’ attempts to do so.” 589 F.Supp. 2d 587.

Compelling interest. The district court held that NCDOT established a compelling governmental interest to have the MWBE program. The court noted that the United States Supreme Court in Croson made clear that a state legislature has a compelling interest in eradicating and remedying private discrimination in the private subcontracting inherent in the letting of road construction contracts. 589 F.Supp. 2d 587, citing Croson, 488 U.S. at 492. The district court found that the North Carolina Legislature established it relied upon a strong basis of evidence in concluding that prior race discrimination in North Carolina’s road construction industry existed so as to require remedial action.

The court held that the 2004 Disparity Study demonstrated the existence of previous discrimination in the specific industry and locality at issue. The court stated that disparity ratios provided for in the 2004 Disparity Study highlighted the underutilization of MBEs by prime contractors bidding on state funded highway projects. In addition, the court found that evidence relied upon by the legislature demonstrated a dramatic decline in the utilization of MBEs during the program’s suspension in 1991. The court also found that anecdotal support relied upon by the legislature confirmed and reinforced the general data demonstrating the underutilization of MBEs. The court held that the NCDOT established that, “based upon a clear and strong inference raised by this Study, they concluded minority contractors suffer from the lingering effects of racial discrimination.” 589 F.Supp. 2d 587.

With regard to WBEs, the court applied a different standard of review. The court held the legislative scheme as it relates to MWBEs must serve an important governmental interest and must be substantially related to the achievement of those objectives. The court found that NCDOT established an important governmental interest. The 2004 Disparity Study provided that the average contracts awarded WBEs are significantly smaller than those awarded non-WBEs. The court held that NCDOT established based upon a clear and strong inference raised by the Study, women contractors suffer from past gender discrimination in the road construction industry.

Narrowly tailored. The district court noted that the Fourth Circuit of Appeals lists a number of factors to consider in analyzing a statute for narrow tailoring: (1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant

population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties. 589 F.Supp. 2d 587, quoting Belk v. Charlotte-Mecklenburg Board of Education, 269 F.3d 305, 344 (4th Cir. 2001).

The district court held that the legislative scheme in N.C. Gen. Stat. § 136-28.4 is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts. The district court's analysis focused on narrowly tailoring factors (2) and (4) above, namely the duration of the policy and the flexibility of the policy. With respect to the former, the court held the legislative scheme provides the program be reviewed at least every five years to revisit the issue of utilization of MWBEs in the road construction industry. N.C. Gen. Stat. §136-28.4(b). Further, the legislative scheme includes a sunset provision so that the program will expire on August 31, 2009, unless renewed by an act of the legislature. *Id.* at § 136-28.4(e). The court held these provisions ensured the legislative scheme last no longer than necessary.

The court also found that the legislative scheme enacted by the North Carolina legislature provides flexibility insofar as the participation goals for a given contract or determined on a project by project basis. § 136-28.4(b)(1). Additionally, the court found the legislative scheme in question is not overbroad because the statute applies only to "those racial or ethnicity classifications identified by a study conducted in accordance with this section that had been subjected to discrimination in a relevant marketplace and that had been adversely affected in their ability to obtain contracts with the Department." § 136-28.4(c)(2). The court found that plaintiff failed to provide any evidence that indicates minorities from non-relevant racial groups had been awarded contracts as a result of the statute.

The court held that the legislative scheme is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts, and therefore found that § 136-28.4 is constitutional.

The decision of the district court has been appealed to the United States Court of Appeals for the Fourth Circuit, which appeal is pending at this time.

13. Thomas v. City of Saint Paul, 526 F. Supp. 2d 959 (D. Minn 2007), affirmed, 321 Fed. Appx. 541, 2009 WL 777932 (8th Cir. March 26, 2009) (unpublished opinion), cert. denied, ___ S.Ct. ____, 2009 WL 2496325 (U.S. October 13, 2009).

In Thomas v. City of Saint Paul, the plaintiffs are African American business owners who brought this lawsuit claiming that the City of Saint Paul, Minnesota discriminated against them in awarding publicly-funded contracts. The City moved for summary judgment, which the United States District Court granted and issued an order dismissing the plaintiff's lawsuit in December 2007.

The background of the case involves the adoption by the City of Saint Paul of a Vendor Outreach Program (the "VOP") that was designed to assist minority and other small business owners in competing for City contracts. Plaintiffs were VOP-certified minority business owners. Plaintiffs contended that the City engaged in racially discriminatory illegal conduct in awarding City contracts for publicly-funded projects. Plaintiff Thomas claimed that the City denied him opportunities to work on projects because of his race arguing that the City failed to invite him to bid on certain projects, the City failed to award him contracts and the fact independent developers had not

contracted with his company. 526 F. Supp. 2d at 962. The City contended that Thomas was provided opportunities to bid for the City's work.

Plaintiff Brian Conover owned a trucking firm, and he claimed that none of his bids as a subcontractor, on 22 different projects to various independent developers were accepted. 526 F. Supp. 2d at 962. The court found that after years of discovery, plaintiff Conover offered no admissible evidence to support his claim, had not identified the subcontractors whose bids were accepted, and did not offer any comparison showing the accepted bid and the bid he submitted. *Id.* Plaintiff Conover also complained that he received bidding invitations only a few days before a bid was due, which did not allow him adequate time to prepare a competitive bid. *Id.* The court found, however, he failed to identify any particular project for which he had only a single day of bid, and did not identify any similarly situated person of any race who was afforded a longer period of time in which to submit a bid. *Id.* at 963. Plaintiff Newell claimed he submitted numerous bids on the City's projects all of which were rejected. *Id.* The court found, however, that he provided no specifics about why he did not receive the work. *Id.*

The VOP. Under the VOP, the City sets annual bench marks or levels of participation for the targeted minorities groups. *Id.* at 963. The VOP prohibits quotas and imposes various "good faith" requirements on prime contractors who bid for City projects. *Id.* at 964. In particular, the VOP requires that when a prime contractor rejects a bid from a VOP-certified business, the contractor must give the City its basis for the rejection, and evidence that the rejection was justified. *Id.* The VOP further imposes obligations on the City with respect to vendor contracts. *Id.* The court found the City must seek where possible and lawful to award a portion of vendor contracts to VOP-certified businesses. *Id.* The City contract manager must solicit these bids by phone, advertisement in a local newspaper or other means. Where applicable, the contract manager may assist interested VOP participants in obtaining bonds, lines of credit or insurance required to perform under the contract. *Id.* The VOP ordinance provides that when the contract manager engages in one or more possible outreach efforts, he or she is in compliance with the ordinance. *Id.*

Analysis and Order of the Court. The district court found that the City is entitled to summary judgment because plaintiffs lack standing to bring these claims and that no genuine issue of material fact remains. *Id.* at 965. The court held that the plaintiffs had no standing to challenge the VOP because they failed to show they were deprived of an opportunity to compete, or that their inability to obtain any contract resulted from an act of discrimination. *Id.* The court found they failed to show any instance in which their race was a determinant in the denial of any contract. *Id.* at 966. As a result, the court held plaintiffs failed to demonstrate the City engaged in discriminatory conduct or policy which prevented plaintiffs from competing. *Id.* at 965-966.

The court held that in the absence of any showing of intentional discrimination based on race, the mere fact the City did not award any contracts to plaintiffs does not furnish that causal nexus necessary to establish standing. *Id.* at 966. The court held the law does not require the City to voluntarily adopt "aggressive race-based affirmative action programs" in order to award specific groups publicly-funded contracts. *Id.* at 966. The court found that plaintiffs had failed to show a violation of the VOP ordinance, or any illegal policy or action on the part of the City. *Id.*

The court stated that the plaintiffs must identify a discriminatory policy in effect. *Id.* at 966. The court noted, for example, even assuming the City failed to give plaintiffs more than one day's notice

to enter a bid, such a failure is not, per se, illegal. Id. The court found the plaintiffs offered no evidence that anyone else of any other race received an earlier notice, or that he was given this allegedly tardy notice as a result of his race. Id.

The court concluded that even if plaintiffs may not have been hired as a subcontractor to work for prime contractors receiving City contracts, these were independent developers and the City is not required to defend the alleged bad acts of others. Id. Therefore, the court held plaintiffs had no standing to challenge the VOP. Id. at 966.

Plaintiffs' claims. The court found that even assuming plaintiffs possessed standing, they failed to establish facts which demonstrated a need for a trial, primarily because each theory of recovery is viable only if the City "intentionally" treated plaintiffs unfavorably because of their race. Id. at 967. The court held to establish a prima facie violation of the equal protection clause, there must be state action. Id. Plaintiffs must offer facts and evidence that constitute proof of "racially discriminatory intent or purpose." Id. at 967. Here, the court found that plaintiff failed to allege any single instance showing the City "intentionally" rejected VOP bids based on their race. Id.

The court also found that plaintiffs offered no evidence of a specific time when any one of them submitted the lowest bid for a contract or a subcontract, or showed any case where their bids were rejected on the basis of race. Id. The court held the alleged failure to place minority contractors in a preferred position, without more, is insufficient to support a finding that the City failed to treat them equally based upon their race. Id.

The City rejected the plaintiffs' claims of discrimination because the plaintiffs did not establish by evidence that the City "intentionally" rejected their bid due to race or that the City "intentionally" discriminated against these plaintiffs. Id. at 967-968. The court held that the plaintiffs did not establish a single instance showing the City deprived them of their rights, and the plaintiffs did not produce evidence of a "discriminatory motive." Id. at 968. The court concluded that plaintiffs had failed to show that the City's actions were "racially motivated." Id.

The Eight Circuit Court of Appeals recently affirmed the ruling of the district court. Thomas v. City of Saint Paul, 2009 WL 777932 (8th Cir. March 26, 2009)(unpublished opinion). The Eighth Circuit affirmed based on the decision of the district court and finding no reversible error.

14. Thompson Building Wrecking Co. v. Augusta, Georgia, No. 1:07CV019, 2007 WL 926153 (S.D. Ga. Mar. 14, 2007)(Slip. Op.)

This case considered the validity of the City of Augusta's local minority disadvantaged business enterprise ("DBE") program. The district court enjoined the City from favoring any contract bid on the basis of racial classification and based its decision principally upon the outdated and insufficient data proffered by the City in support of its program. 2007 WL 926153 at *9-10.

The City of Augusta enacted a local DBE program based upon the results of a disparity study completed in 1994. The disparity study examined the disparity in socioeconomic status among races, compared black-owned businesses in Augusta with those in other regions and those owned by other racial groups, examined "Georgia's racist history" in contracting and procurement, and examined certain data related to Augusta's contracting and procurement. Id. at *1-4. The plaintiff contractors and subcontractors challenged the constitutionality of the DBE program and sought to extend a

temporary injunction enjoining the City's implementation of racial preferences in public bidding and procurement.

The City defended the DBE program arguing that it did not utilize racial classifications because it only required vendors to make a "good faith effort" to ensure DBE participation. Id. at *6. The court rejected this argument noting that bidders were required to submit a "Proposed DBE Participation" form and that bids containing DBE participation were treated more favorably than those bids without DBE participation. The court stated: "Because a person's business can qualify for the favorable treatment based on that person's race, while a similarly situated person of another race would not qualify, the program contains a racial classification." Id.

The court noted that the DBE program harmed subcontractors in two ways: first, because prime contractors will discriminate between DBE and non-DBE subcontractors and a bid with a DBE subcontractor would be treated more favorably; and second, because the City would favor a bid containing DBE participation over an equal or even superior bid containing no DBE participation. Id.

The court applied the strict scrutiny standard set forth in Croson and Engineering Contractors Association to determine whether the City had a compelling interest for its program and whether the program was narrowly tailored to that end. The court noted that pursuant to Croson, the City would have a compelling interest in assuring that tax dollars would not perpetuate private prejudice. But, the court found (citing to Croson), that a state or local government must identify that discrimination, "public or private, with some specificity before they may use race-conscious relief." The court cited the Eleventh Circuit's position that "'gross statistical disparities' between the proportion of minorities hired by the public employer and the proportion of minorities hired by the public employer and the proportion of minorities willing and able to work" may justify an affirmative action program. Id. at *7. The court also stated that anecdotal evidence is relevant to the analysis.

The court determined that while the City's disparity study showed some statistical disparities buttressed by anecdotal evidence, the study suffered from multiple issues. Id. at *7-8. Specifically, the court found that those portions of the study examining discrimination outside the area of subcontracting (e.g., socioeconomic status of racial groups in the Augusta area) were irrelevant for purposes of showing a compelling interest. The court also cited the failure of the study to differentiate between different minority races as well as the improper aggregation of race- and gender-based discrimination referred to as Simpson's Paradox.

The court assumed for purposes of its analysis that the City could show a compelling interest but concluded that the program was not narrowly tailored and thus could not satisfy strict scrutiny. The court found that it need look no further beyond the fact of the thirteen-year duration of the program absent further investigation, and the absence of a sunset or expiration provision, to conclude that the DBE program was not narrowly tailored. Id. at *8. Noting that affirmative action is permitted only sparingly, the court found: "[i]t would be impossible for Augusta to argue that, 13 years after last studying the issue, racial discrimination is so rampant in the Augusta contracting industry that the City must affirmatively act to avoid being complicit." Id. The court held in conclusion, that the plaintiffs were "substantially likely to succeed in proving that, when the City requests bids with minority participation and in fact favors bids with such, the plaintiffs will suffer racial discrimination in violation of the Equal Protection Clause." Id. at *9.

In a subsequent Order dated September 5, 2007, the court denied the City's motion to continue plaintiff's Motion for Summary Judgment, denied the City's Rule 12(b)(6) motion to dismiss, and stayed the action for 30 days pending mediation between the parties. Importantly, in this Order, the court reiterated that the female- and locally-owned business components of the program (challenged in plaintiff's Motion for Summary Judgment) would be subject to intermediate scrutiny and rational basis scrutiny, respectively. The court also reiterated its rejection of the City's challenge to the plaintiffs' standing. The court noted that under Adarand, preventing a contractor from competing on an equal footing satisfies the particularized injury prong of standing. And showing that the contractor will sometime in the future bid on a City contract "that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors" satisfies the second requirement that the particularized injury be actual or imminent. Accordingly, the court concluded that the plaintiffs have standing to pursue this action.

15. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F. Supp. 2d 1305 (S.D. Fla. 2004)

The decision in Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, is significant to the disparity study because it applied and followed the Engineering Contractors Association decision in the context of contracting and procurement for goods and services (including architect and engineer services). Many of the other cases focused on construction, and thus Hershell Gill is instructive as to the analysis relating to architect and engineering services. The decision in Hershell Gill also involved a district court in the Eleventh Circuit imposing compensatory and punitive damages upon individual County Commissioners due to the district court's finding of their willful failure to abrogate an unconstitutional MBE/WBE Program. In addition, the case is noteworthy because the district court refused to follow the 2003 Tenth Circuit Court of Appeals decision in Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003). See discussion, *infra*.

Six years after the decision in Engineering Contractors Association, two white male-owned engineering firms (the "plaintiffs") brought suit against Engineering Contractors Association (the "County"), the former County Manager, and various current County Commissioners (the "Commissioners") in their official and personal capacities (collectively the "defendants"), seeking to enjoin the same "participation goals" in the same MWBE program deemed to violate the Fourteenth Amendment in the earlier case. 333 F. Supp. 1305, 1310 (S.D. Fla. 2004). After the Eleventh Circuit's decision in Engineering Contractors Association striking down the MWBE programs as applied to construction contracts, the County enacted a Community Small Business Enterprise (CSBE) program for construction contracts, "but continued to apply racial, ethnic, and gender criteria to its purchases of goods and services in other areas, including its procurement of A&E services." *Id.* at 1311.

The plaintiffs brought suit challenging the Black Business Enterprise (BBE) program, the Hispanic Business Enterprise (HBE) program, and the Women Business Enterprise (WBE) program (collectively "MBE/WBE"). *Id.* The MBE/WBE programs applied to A&E contracts in excess of \$25,000. *Id.* at 1312. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. *Id.* Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. *Id.* The County was required to review the efficacy of the MBE/WBE programs annually, and reevaluated the continuing viability of the MBE/WBE programs every five years. *Id.* at 1313. However, the district court found "the

participation goals for the three MBE/WBE programs challenged ... remained unchanged since 1994.” Id.

In 1998, counsel for plaintiffs contacted the County Commissioners requesting the discontinuation of contract measures on A&E contracts. Id. at 1314. Upon request of the Commissioners, the county manager then made two reports (an original and a follow-up) measuring parity in terms of dollars awarded and dollars paid in the areas of A&E for blacks, Hispanics, and women, and concluded both times that the “County has reached parity for black, Hispanic, and Women-owned firms in the areas of [A&E] services.” The final report further stated “Based on all the analyses that have been performed, the County does not have a basis for the establishment of participation goals which would allow staff to apply contract measures.” Id. at 1315. The district court also found that the Commissioners were informed that “there was even less evidence to support [the MBE/WBE] programs as applied to architects and engineers than there was in contract construction.” Id. Nonetheless, the Commissioners voted to continue the MBE/WBE participation goals at their previous levels. Id.

In May of 2000 (18 months after the lawsuit was filed), the County commissioned Dr. Manuel J. Carvajal, an econometrician, to study architects and engineers in the county. His final report had four parts:

(1) data identification and collection of methodology for displaying the research results; (2) presentation and discussion of tables pertaining to architecture, civil engineering, structural engineering, and awards of contracts in those areas; (3) analysis of the structure and empirical estimates of various sets of regression equations, the calculation of corresponding indices, and an assessment of their importance; and (4) a conclusion that there is discrimination against women and Hispanics — but not against blacks — in the fields of architecture and engineering.

Id. The district court issued a preliminary injunction enjoining the use of the MBE/WBE programs for A&E contracts, pending the United States Supreme Court decisions in Gratz v. Bollinger, 539 U.S. 244 (2003) and Grutter v. Bollinger, 539 U.S. 306 (2003). Id. at 1316.

The court considered whether the MBE/WBE programs were violative of Title VII of the Civil Rights Act, and whether the County and the County Commissioners were liable for compensatory and punitive damages.

The district court found that the Supreme Court decisions in Gratz and Grutter did not alter the constitutional analysis as set forth in Adarand and Croson. Id. at 1317. Accordingly, the race- and ethnicity-based classifications were subject to strict scrutiny, meaning the County must present “a strong basis of evidence” indicating the MBE/WBE program was necessary and that it was narrowly tailored to its purported purpose. Id. at 1316. The gender-based classifications were subject to intermediate scrutiny, requiring the County to show the “gender-based classification serves an important governmental objective, and that it is substantially related to the achievement of that objective.” Id. at 1317 (internal citations omitted). The court found that the proponent of a gender-based affirmative action program must present “sufficient probative evidence” of discrimination. Id. (internal citations omitted). The court found that under the intermediate scrutiny analysis, the County must (1) demonstrate past discrimination against women but not necessarily at the hands of the County, and (2) that the gender-conscious affirmative action program need not be used only as a “last resort.” Id.

The County presented both statistical and anecdotal evidence. Id. at 1318. The statistical evidence consisted of Dr. Carvajal's report, most of which consisted of "post-enactment" evidence. Id. Dr. Carvajal's analysis sought to discover the existence of racial, ethnic and gender disparities in the A&E industry, and then to determine whether any such disparities could be attributed to discrimination. Id. The study used four data sets: three were designed to establish the marketplace availability of firms (architecture, structural engineering, and civil engineering), and the fourth focused on awards issued by the County. Id. Dr. Carvajal used the phone book, a list compiled by infoUSA, and a list of firms registered for technical certification with the County's Department of Public Works to compile a list of the "universe" of firms competing in the market. Id. For the architectural firms only, he also used a list of firms that had been issued an architecture professional license. Id.

Dr. Carvajal then conducted a phone survey of the identified firms. Based on his data, Dr. Carvajal concluded that disparities existed between the percentage of A&E firms owned by blacks, Hispanics, and women, and the percentage of annual business they received. Id. Dr. Carvajal conducted regression analyses "in order to determine the effect a firm owner's gender or race had on certain dependent variables." Id. Dr. Carvajal used the firm's annual volume of business as a dependent variable and determined the disparities were due in each case to the firm's gender and/or ethnic classification. Id. at 1320. He also performed variants to the equations including: (1) using certification rather than survey data for the experience / capacity indicators, (2) with the outliers deleted, (3) with publicly-owned firms deleted, (4) with the dummy variables reversed, and (5) using only currently certified firms." Id. Dr. Carvajal's results remained substantially unchanged. Id.

Based on his analysis of the marketplace data, Dr. Carvajal concluded that the "gross statistical disparities" in the annual business volume for Hispanic- and women-owned firms could be attributed to discrimination; he "did not find sufficient evidence of discrimination against blacks." Id.

The court held that Dr. Carvajal's study constituted neither a "strong basis in evidence" of discrimination necessary to justify race- and ethnicity-conscious measures, nor did it constitute "sufficient probative evidence" necessary to justify the gender-conscious measures. Id. The court made an initial finding that no disparity existed to indicate underutilization of MBE/WBEs in the award of A&E contracts by the County, nor was there underutilization of MBE/WBEs in the contracts they were awarded. Id. The court found that an analysis of the award data indicated, "[i]f anything, the data indicates an overutilization of minority-owned firms by the County in relation to their numbers in the marketplace." Id.

With respect to the marketplace data, the County conceded that there was insufficient evidence of discrimination against blacks to support the BBE program. Id. at 1321. With respect to the marketplace data for Hispanics and women, the court found it "unreliable and inaccurate" for three reasons: (1) the data failed to properly measure the geographic market, (2) the data failed to properly measure the product market, and (3) the marketplace data survey was unreliable. Id. at 1321-25.

The court ruled that it would not follow the Tenth Circuit decision of Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), as the burden of proof enunciated by the Tenth Circuit conflicts with that of the Eleventh Circuit, and the "Tenth Circuit's decision is flawed for the reasons articulated by Justice Scalia in his dissent from the denial of certiorari." Id. at 1325 (internal citations omitted).

The defendant intervenors presented anecdotal evidence pertaining only to discrimination against women in the County's A&E industry. Id. The anecdotal evidence consisted of the testimony of three A&E professional women, "nearly all" of which was related to discrimination in the award of County contracts. Id. at 1326. However, the district court found that the anecdotal evidence contradicted Dr. Carvajal's study indicating that no disparity existed with respect to the award of County A&E contracts. Id.

The court quoted the Eleventh Circuit in Engineering Contractors Association for the proposition "that only in the rare case will anecdotal evidence suffice standing alone." Id. (internal citations omitted). The court held that "[t]his is not one of those rare cases." The district court concluded that the statistical evidence was "unreliable and fail[ed] to establish the existence of discrimination," and the anecdotal evidence was insufficient as it did not even reach the level of anecdotal evidence in Engineering Contractors Association where the County employees themselves testified. Id.

The court made an initial finding that a number of minority groups provided preferential treatment were in fact majorities in the County in terms of population, voting capacity, and representation on the County Commission. Id. at 1326-1329. For purposes only of conducting the strict scrutiny analysis, the court then assumed that Dr. Carvajal's report demonstrated discrimination against Hispanics (note the County had conceded it had insufficient evidence of discrimination against blacks) and sought to determine whether the HBE program was narrowly tailored to remedying that discrimination. Id. at 1330. However, the court found that because the study failed to "identify who is engaging in the discrimination, what form the discrimination might take, at what stage in the process it is taking place, or how the discrimination is accomplished ... it is virtually impossible to narrowly tailor any remedy, and the HBE program fails on this fact alone." Id.

The court found that even after the County Managers informed the Commissioners that the County had reached parity in the A&E industry, the Commissioners declined to enact a CSBE ordinance, a race-neutral measure utilized in the construction industry after Engineering Contractors Association. Id. Instead, the Commissioners voted to continue the HBE program. Id. The court held that the County's failure to even explore a program similar to the CSBE ordinance indicated that the HBE program was not narrowly tailored. Id. at 1331.

The court also found that the County enacted a broad anti-discrimination ordinance imposing harsh penalties for a violation thereof. Id. However, "not a single witness at trial knew of any instance of a complaint being brought under this ordinance concerning the A&E industry," leading the court to conclude that the ordinance was either not being enforced, or no discrimination existed. Id. Under either scenario, the HBE program could not be narrowly tailored. Id.

The court found the waiver provisions in the HBE program inflexible in practice. Id. Additionally, the court found the County had failed to comply with the provisions in the HBE program requiring adjustment of participation goals based on annual studies, because the County had not in fact conducted annual studies for several years. Id. The court found this even "more problematic" because the HBE program did not have a built-in durational limit, and thus blatantly violated Supreme Court jurisprudence requiring that racial and ethnic preferences "must be limited in time." Id. at 1332, citing Grutter, 123 S. Ct. at 2346. For the foregoing reasons, the court concluded the HBE program was not narrowly tailored. Id. at 1332.

With respect to the WBE program, the court found that “the failure of the County to identify who is discriminating and where in the process the discrimination is taking place indicates (though not conclusively) that the WBE program is not substantially related to eliminating that discrimination.” Id. at 1333. The court found that the existence of the anti-discrimination ordinance, the refusal to enact a small business enterprise ordinance, and the inflexibility in setting the participation goals rendered the WBE unable to satisfy the substantial relationship test. Id.

The court held that the County was liable for any compensatory damages. Id. at 1333-34. The court held that the Commissioners had absolute immunity for their legislative actions; however, they were not entitled to qualified immunity for their actions in voting to apply the race-, ethnicity-, and gender-conscious measures of the MBE/WBE programs if their actions violated “clearly established statutory or constitutional rights of which a reasonable person would have known ... Accordingly, the question is whether the state of the law at the time the Commissioners voted to apply [race-, ethnicity-, and gender-conscious measures] gave them ‘fair warning’ that their actions were unconstitutional.” Id. at 1335-36 (internal citations omitted).

The court held that the Commissioners were not entitled to qualified immunity because they “had before them at least three cases that gave them fair warning that their application of the MBE/WBE programs ... were unconstitutional: Croson, Adarand and [Engineering Contractors Association].” Id. at 1137. The court found that the Commissioners voted to apply the contract measures after the Supreme Court decided both Croson and Adarand. Id. Moreover, the Eleventh Circuit had already struck down the construction provisions of the same MBE/WBE programs. Id. Thus, the case law was “clearly established” and gave the Commissioners fair warning that the MBE/WBE programs were unconstitutional. Id.

The court also found the Commissioners had specific information from the County Manager and other internal studies indicating the problems with the MBE/WBE programs and indicating that parity had been achieved. Id. at 1338. Additionally, the Commissioners did not conduct the annual studies mandated by the MBE/WBE ordinance itself. Id. For all the foregoing reasons, the court held the Commissioners were subject to individual liability for any compensatory and punitive damages.

The district court enjoined the County, the Commissioners, and the County Manager from using, or requiring the use of, gender, racial, or ethnic criteria in deciding (1) whether a response to an RFP submitted for A&E work is responsive, (2) whether such a response will be considered, and (3) whether a contract will be awarded to a consultant submitting such a response. The court awarded the plaintiffs \$100 each in nominal damages and reasonable attorneys’ fees and costs, for which it held the County and the Commissioners jointly and severally liable.

16. Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307 (N.D. Fla. 2004)

This case is instructive to the disparity study as to the manner in which district courts within the Eleventh Circuit are interpreting and applying Engineering Contractors Association. It is also instructive in terms of the type of legislation to be considered by the local and state governments as to what the courts consider to be a “race-conscious” program and/or legislation, as well as to the significance of the implementation of the legislation to the analysis.

The plaintiffs, A.G.C. Council, Inc. and the South Florida Chapter of the Associated General Contractors brought this case challenging the constitutionality of certain provisions of a Florida statute (Section 287.09451, *et seq.*). The plaintiffs contended that the statute violated the Equal Protection Clause of the Fourteenth Amendment by instituting race- and gender-conscious “preferences” in order to increase the numeric representation of minority business enterprises (“MBEs”) in certain industries.

According to the court, the Florida Statute enacted race-conscious and gender-conscious remedial programs to ensure minority participation in state contracts for the purchase of commodities and in construction contracts. The State created the Office of Supplier Diversity (“OSD”) to assist MBEs to become suppliers of commodities, services and construction to the state government. The OSD had certain responsibilities, including adopting rules meant to assess whether state agencies have made good faith efforts to solicit business from MBEs, and to monitor whether contractors have made good faith efforts to comply with the objective of greater overall MBE participation.

The statute enumerated measures that contractors should undertake, such as minority-centered recruitment in advertising as a means of advancing the statute’s purpose. The statute provided that each State agency is “encouraged” to spend 21 percent of the monies actually expended for construction contracts, 25 percent of the monies actually expended for architectural and engineering contracts, 24 percent of the monies actually expended for commodities and 50.5 percent of the monies actually expended for contractual services during the fiscal year for the purpose of entering into contracts with certified MBEs. The statute also provided that state agencies are allowed to allocate certain percentages for black Americans, Hispanic Americans and for American women, and the goals are broken down by construction contracts, architectural and engineering contracts, commodities and contractual services.

The State took the position that the spending goals were “precatory.” The court found that the plaintiffs had standing to maintain the action and to pursue prospective relief. The court held that the statute was unconstitutional based on the finding that the spending goals were not narrowly tailored to achieve a governmental interest. The court did not specifically address whether the articulated reasons for the goals contained in the statute had sufficient evidence, but instead found that the articulated reason would, “if true,” constitute a compelling governmental interest necessitating race-conscious remedies. Rather than explore the evidence, the court focused on the narrowly tailored requirement and held that it was not satisfied by the State.

The court found that there was no evidence in the record that the State contemplated race-neutral means to accomplish the objectives set forth in Section 287.09451 *et seq.*, such as “simplification of bidding procedures, relaxation of bonding requirements, training or financial aid for disadvantaged entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination.” Florida A.G.C. Council, 303 F.Supp.2d at 1315, quoting Eng’g Contractors Ass’n, 122 F.3d at 928, quoting Croson, 488 U.S. at 509-10.

The court noted that defendants did not seem to disagree with the report issued by the State of Florida Senate that concluded there was little evidence to support the spending goals outlined in the statute. Rather, the State of Florida argued that the statute is “permissive.” The court, however, held that “there is no distinction between a statute that is precatory versus one that is compulsory when

the challenged statute 'induces an employer to hire with an eye toward meeting ... [a] numerical target.' Florida A.G.C. Council, 303 F.Supp.2d at 1316.

The court found that the State applies pressure to State agencies to meet the legislative objectives of the statute extending beyond simple outreach efforts. The State agencies, according to the court, were required to coordinate their MBE procurement activities with the OSD, which includes adopting a MBE utilization plan. If the State agency deviated from the Utilization Plan in two consecutive and three out of five total fiscal years, then the OSD could review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency met its utilization plan. The court held that based on these factors, although alleged to be "permissive," the statute textually was not.

Therefore, the court found that the statute was not narrowly tailored to serve a compelling governmental interest, and consequently violated the Equal Protection Clause of the Fourteenth Amendment.

17. The Builders Ass'n of Greater Chicago v. The City of Chicago, 298 F. Supp. 2d 725 (N.D. Ill. 2003)

This case is instructive because of the court's focus and analysis on whether the City of Chicago's MBE/WBE program was narrowly tailored. The basis of the court's holding that the program was not narrowly tailored is instructive for any program considered because of the reasons provided as to why the program did not pass muster.

The plaintiff, the Builders Association of Greater Chicago, brought this suit challenging the constitutionality of the City of Chicago's construction Minority- and Women-Owned Business ("MWBE") Program. The court held that the City of Chicago's MWBE program was unconstitutional because it did not satisfy the requirement that it be narrowly tailored to achieve a compelling governmental interest. The court held that it was not narrowly tailored for several reasons, including because there was no "meaningful individualized review" of MBE/WBEs; it had no termination date nor did it have any means for determining a termination; the "graduation" revenue amount for firms to graduate out of the program was very high, \$27,500,000 and in fact very few firms graduated; there was no net worth threshold; and, waivers were rarely or never granted on construction contracts. The court found that the City program was a "rigid numerical quota," a quota related not to the number of available, willing and able firms. Formulistic percentages, the court held, could not survive the strict scrutiny.

The court held that the goals plan did not address issues raised as to discrimination regarding market access and credit. The court found that a goals program does not directly impact prime contractor's selection of subcontractors on non-goals private projects. The court found that a set-aside or goals program does not directly impact difficulties in accessing credit, and does not address discriminatory loan denials or higher interest rates. The court found the City has not sought to attack discrimination by primes directly, "but it could." 298 F.2d 725. "To monitor possible discriminatory conduct it could maintain its certification list and require those contracting with the City to consider unsolicited bids, to maintain bidding records, and to justify rejection of any certified firm submitting the lowest bid. It could also require firms seeking City work to post private jobs above a certain minimum on a website or otherwise provide public notice ..." Id.

The court concluded that other race-neutral means were available to impact credit, high interest rates, and other potential marketplace discrimination. The court pointed to race-neutral means including linked deposits, with the City banking at institutions making loans to startup and smaller firms. Other race-neutral programs referenced included quick pay and contract downsizing; restricting self-performance by prime contractors; a direct loan program; waiver of bonds on contracts under \$100,000; a bank participation loan program; a 2 percent local business preference; outreach programs and technical assistance and workshops; and seminars presented to new construction firms.

The court held that race and ethnicity do matter, but that racial and ethnical classifications are highly suspect, can be used only as a last resort, and cannot be made by some mechanical formulation. Therefore, the court concluded the City's MWBE Program could not stand in its present guise. The court held that the present program was not narrowly tailored to remedy past discrimination and the discrimination demonstrated to now exist.

The court entered an injunction, but delayed the effective date for six months from the date of its Order, December 29, 2003. The court held that the City had a "compelling interest in not having its construction projects slip back to near monopoly domination by white male firms." The court ruled a brief continuation of the program for six months was appropriate "as the City rethinks the many tools of redress it has available." Subsequently, the court declared unconstitutional the City's MWBE Program with respect to construction contracts and permanently enjoined the City from enforcing the Program. 2004 WL 757697 (N.D. Ill 2004).

18. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 218 F. Supp. 2d 749 (D. Md. 2002)

This case is instructive because the court found the Executive Order of the Mayor of the City of Baltimore was precatory in nature (creating no legal obligation or duty) and contained no enforcement mechanism or penalties for noncompliance and imposed no substantial restrictions; the Executive Order announced goals that were found to be aspirational only.

The Associated Utility Contractors of Maryland, Inc. ("AUC") sued the City of Baltimore challenging its ordinance providing for minority and women-owned business enterprise ("MWBE") participation in city contracts. Previously, an earlier City of Baltimore MWBE program was declared unconstitutional. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000). The City adopted a new ordinance that provided for the establishment of MWBE participation goals on a contract-by-contract basis, and made several other changes from the previous MWBE program declared unconstitutional in the earlier case.

In addition, the Mayor of the City of Baltimore issued an Executive Order that announced a goal of awarding 35 percent of all City contracting dollars to MBE/WBEs. The court found this goal of 35 percent participation was aspirational only and the Executive Order contained no enforcement mechanism or penalties for noncompliance. The Executive Order also specified many "noncoercive" outreach measures to be taken by the City agencies relating to increasing participation of MBE/WBEs. These measures were found to be merely aspirational and no enforcement mechanism was provided.

The court addressed in this case only a motion to dismiss filed by the City of Baltimore arguing that the Associated Utility Contractors had no standing. The court denied the motion to dismiss holding

that the association had standing to challenge the new MBE/WBE ordinance, although the court noted that it had significant issues with the AUC having representational standing because of the nature of the MBE/WBE plan and the fact the AUC did not have any of its individual members named in the suit. The court also held that the AUC was entitled to bring an as applied challenge to the Executive Order of the Mayor, but rejected it having standing to bring a facial challenge based on a finding that it imposes no requirement, creates no sanctions, and does not inflict an injury upon any member of the AUC in any concrete way. Therefore, the Executive Order did not create a “case or controversy” in connection with a facial attack. The court found the wording of the Executive Order to be precatory and imposing no substantive restrictions.

After this decision the City of Baltimore and the AUC entered into a settlement agreement and a dismissal with prejudice of the case. An order was issued by the court on October 22, 2003 dismissing the case with prejudice.

19. Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000)

The court held unconstitutional the City of Baltimore’s “affirmative action” program, which had construction subcontracting “set-aside” goals of 20 percent for MBEs and 3 percent for WBEs. The court held there was no data or statistical evidence submitted by the City prior to enactment of the Ordinance. There was no evidence showing a disparity between MBE/WBE availability and utilization in the subcontracting construction market in Baltimore. The court enjoined the City Ordinance.

20. Webster v. Fulton County, 51 F. Supp. 2d 1354 (N.D. Ga. 1999), a’ff’d per curiam 218 F.3d 1267 (11th Cir. 2000)

This case is instructive as it is another instance in which a court has considered, analyzed, and ruled upon a race-, ethnicity- and gender-conscious program, holding the local government MBE/WBE-type program failed to satisfy the strict scrutiny constitutional standard. The case also is instructive in its application of the Engineering Contractors Association case, including to a disparity analysis, the burdens of proof on the local government, and the narrowly tailored prong of the strict scrutiny test.

In this case, plaintiff Webster brought an action challenging the constitutionality of Fulton County’s (the “County”) minority and female business enterprise program (“M/FBE”) program. 51 F. Supp. 2d 1354, 1357 (N.D. Ga. 1999). [The district court first set forth the provisions of the M/FBE program and conducted a standing analysis at 51 F. Supp. 2d at 1356-62].

The court, citing Engineering Contractors Association of S. Florida, Inc. v. Metro. Engineering Contractors Association, 122 F.3d 895 (11th Cir. 1997), held that “[e]xplicit racial preferences may not be used except as a ‘last resort.’” *Id.* at 1362-63. The court then set forth the strict scrutiny standard for evaluating racial and ethnic preferences and the four factors enunciated in Engineering Contractors Association, and the intermediate scrutiny standard for evaluating gender preferences. *Id.* at 1363. The court found that under Engineering Contractors Association, the government could utilize both post-enactment and pre-enactment evidence to meet its burden of a “strong basis in evidence” for strict scrutiny, and “sufficient probative evidence” for intermediate scrutiny. *Id.*

The court found that the defendant bears the initial burden of satisfying the aforementioned evidentiary standard, and the ultimate burden of proof remains with the challenging party to

demonstrate the unconstitutionality of the M/FBE program. Id. at 1364. The court found that the plaintiff has at least three methods “to rebut the inference of discrimination with a neutral explanation: (1) demonstrate that the statistics are flawed; (2) demonstrate that the disparities shown by the statistics are not significant; or (3) present conflicting statistical data.” Id., citing Eng’g Contractors Ass’n, 122 F.3d at 916.

[The district court then set forth the Engineering Contractors Association opinion in detail.]

The court first noted that the Eleventh Circuit has recognized that disparity indices greater than 80 percent are generally not considered indications of discrimination. Id. at 1368, citing Eng’g Contractors Assoc., 122 F.3d at 914. The court then considered the County’s pre-1994 disparity study (the “Brimmer-Marshall Study”) and found that it failed to establish a strong basis in evidence necessary to support the M/FBE program. Id. at 1368.

First, the court found that the study rested on the inaccurate assumption that a statistical showing of underutilization of minorities in the marketplace as a whole was sufficient evidence of discrimination. Id. at 1369. The court cited City of Richmond v. J.A. Croson Co., 488 U.S. 496 (1989) for the proposition that discrimination must be focused on contracting by the entity that is considering the preference program. Id. Because the Brimmer-Marshall Study contained no statistical evidence of discrimination by the County in the award of contracts, the court found the County must show that it was a “passive participant” in discrimination by the private sector. Id. The court found that the County could take remedial action if it had evidence that prime contractors were systematically excluding minority-owned businesses from subcontracting opportunities, or if it had evidence that its spending practices are “exacerbating a pattern of prior discrimination that can be identified with specificity.” Id. However, the court found that the Brimmer-Marshall Study contained no such data. Id.

Second, the Brimmer-Marshall study contained no regression analysis to account for relevant variables, such as firm size. Id. at 1369-70. At trial, Dr. Marshall submitted a follow-up to the earlier disparity study; however, the court found the study had the same flaw in that it did not contain a regression analysis. Id. The court thus concluded that the County failed to present a “strong basis in evidence” of discrimination to justify the County’s racial and ethnic preferences. Id.

The court next considered the County’s post-1994 disparity study. Id. at 1371. The study first sought to determine the availability and utilization of minority- and female-owned firms. Id. The court explained:

Two methods may be used to calculate availability: (1) bid analysis; or (2) bidder analysis. In a bid analysis, the analyst counts the number of bids submitted by minority or female firms over a period of time and divides it by the total number of bids submitted in the same period. In a bidder analysis, the analyst counts the number of minority or female firms submitting bids and divides it by the total number of firms which submitted bids during the same period.

Id. The court found that the information provided in the study was insufficient to establish a firm basis in evidence to support the M/FBE program. Id. at 1371-72. The court also found it significant

to conduct a regression analysis to show whether the disparities were either due to discrimination or other neutral grounds. Id. at 1375-76.

The plaintiff and the County submitted statistical studies of data collected between 1994 to 1997. Id. at 1376. The court found that the data were potentially skewed due to the operation of the M/FBE program. Id. Additionally, the court found that the County's standard deviation analysis yielded non-statistically significant results (noting the Eleventh Circuit has stated that scientists consider a finding of two standard deviations significant). Id. (internal citations omitted).

The court considered the County's anecdotal evidence, and quoted Engineering Contractors Association for the proposition that "[a]necdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone." Id., quoting Eng'g Contractors Ass'n, 122 F.3d at 907. The Brimmer-Marshall Study contained anecdotal evidence. Id. at 1379. Additionally, the County held hearings but after reviewing the tape recordings of the hearings, the court concluded that only two individuals testified to discrimination by the County; one of them complained that the County used the M/FBE program to only benefit African Americans. Id. The court found the most common complaints concerned barriers in bonding, financing, and insurance and slow payment by prime contractors. Id. The court concluded that the anecdotal evidence was insufficient in and of itself to establish a firm basis for the M/FBE program. Id.

The court also applied a narrow tailoring analysis of the M/FBE program. "The Eleventh Circuit has made it clear that the essence of this inquiry is whether racial preferences were adopted only as a 'last resort.'" Id. at 1380, citing Eng'g Contractors Assoc., 122 F.3d at 926. The court cited the Eleventh Circuit's four-part test and concluded that the County's M/FBE program failed on several grounds. First, the court found that a race-based problem does not necessarily require a race-based solution. "If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem." Id., quoting Eng'g Contractors Ass'n, 122 F.3d at 927. The court found that there was no evidence of discrimination by the County. Id. at 1380.

The court found that even though a majority of the Commissioners on the County Board were African American, the County had continued the program for decades. Id. The court held that the County had not seriously considered race-neutral measures:

There is no evidence in the record that any Commissioner has offered a resolution during this period substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity. There is no evidence in the record of any proposal by the staff of Fulton County of substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity. There has been no evidence offered of any debate within the Commission about substituting a program of race-neutral measures as an alternative to numerical set-asides based upon race and ethnicity Id.

The court found that the random inclusion of ethnic and racial groups who had not suffered discrimination by the County also mitigated against a finding of narrow tailoring. Id. The court found that there was no evidence that the County considered race-neutral alternatives as an alternative to race-conscious measures nor that race-neutral measures were initiated and failed. Id. at 1381. The court concluded that because the M/FBE program was not adopted as a last resort, it failed the narrow tailoring test. Id.

Additionally, the court found that there was no substantial relationship between the numerical goals and the relevant market. *Id.* The court rejected the County's argument that its program was permissible because it set "goals" as opposed to "quotas," because the program in Engineering Contractors Association also utilized "goals" and was struck down. *Id.*

Per the M/FBE program's gender-based preferences, the court found that the program was sufficiently flexible to satisfy the substantial relationship prong of the intermediate scrutiny standard. *Id.* at 1383. However, the court held that the County failed to present "sufficient probative evidence" of discrimination necessary to sustain the gender-based preferences portion of the M/FBE program. *Id.*

The court found the County's M/FBE program unconstitutional and entered a permanent injunction in favor of the plaintiff. *Id.* On appeal, the Eleventh Circuit affirmed per curiam, stating only that it affirmed on the basis of the district court's opinion. Webster v. Fulton County, Georgia, 218 F.3d 1267 (11th Cir. 2000).

21. Associated Gen. Contractors v. Drabik, 50 F. Supp. 2d 741 (S.D. Ohio 1999)

In this decision, the district court reaffirmed its earlier holding that the State of Ohio's MBE program of construction contract awards is unconstitutional. The court cited to F. Buddie Contracting v. Cuyahoga Community College, 31 F. Supp. 2d 571 (N.D. Ohio 1998), holding a similar local Ohio program unconstitutional. The court repudiated the Ohio Supreme Court's holding in Ritchey Produce, 707 N.E. 2d 871 (Ohio 1999), which held that the State's MBE program as applied to the state's purchase of non-construction-related goods and services was constitutional. The court found the evidence to be insufficient to justify the MBE program. The court held that the program was not narrowly tailored because there was no evidence that the State had considered a race-neutral alternative.

This opinion underscored that governments must show four factors to demonstrate narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies, (2) flexibility and duration of the relief, (3) relationship of numerical goals to the relevant labor market, and (4) impact of the relief on the rights of third parties. The court held the Ohio MBE program failed to satisfy this test.

22. Phillips & Jordan, Inc. v. Watts, 13 F. Supp. 2d 1308 (N.D. Fla. 1998)

This case is instructive because it addressed a challenge to a state and local government MBE/WBE-type program and considered the requisite evidentiary basis necessary to support the program. In Phillips & Jordan, the district court for the Northern District of Florida held that the Florida Department of Transportation's ("FDOT") program of "setting aside" certain highway maintenance contracts for African American- and Hispanic-owned businesses violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The parties stipulated that the plaintiff, a non-minority business, had been excluded in the past and may be excluded in the future from competing for certain highway maintenance contracts "set aside" for business enterprises owned by Hispanic and African American individuals. The court held that the evidence of statistical disparities was insufficient to support the Florida DOT program.

The district court pointed out that Florida DOT did not claim that it had evidence of intentional discrimination in the award of its contracts. The court stated that the essence of FDOT's claim was

that the two year disparity study provided evidence of a disparity between the proportion of minorities awarded FDOT road maintenance contracts and a portion of the minorities “supposedly willing and able to do road maintenance work,” and that FDOT did not itself engage in any racial or ethnic discrimination, so FDOT must have been a passive participant in “somebody’s” discriminatory practices.

Since it was agreed in the case that FDOT did not discriminate against minority contractors bidding on road maintenance contracts, the court found that the record contained insufficient proof of discrimination. The court found the evidence insufficient to establish acts of discrimination against African American- and Hispanic-owned businesses.

The court raised questions concerning the choice and use of the statistical pool of available firms relied upon by the disparity study. The court expressed concern about whether it was appropriate to use Census data to analyze and determine which firms were available (qualified and/or willing and able) to bid on FDOT road maintenance contracts.

Recent State Court Decisions

23. Cleveland Constr., Inc. v. City of Cincinnati, 169 Ohio App. 3d 627, 864 N.E.2d 116 (2006), cert. denied 128 S. Ct. 379 (U.S. 2007)

On appeal from Cleveland Construction, Inc. v. City of Cincinnati, WL 4880918, Case No. A042683 (Ohio Court of Common Pleas, July 13, 2005 and August 29, 2005) (at Section V(c)(2a.), *infra*), the Ohio Court of Appeals reversed the trial court’s entry of a directed verdict against Cleveland Construction on the issue of lost profits, remanded the case for a new trial on the issue of liability and damages under 42 U.S.C. § 1983, and affirmed the trial court in all other respects. 864 N.E.2d 116, 133 (Ohio App. 2006).

On appeal, both parties below raised multiple enumerations of error with the trial court’s decision. In the decision below, the trial court ruled that the City’s SBE Program created constitutionally impermissible race- and gender-based classifications. (See 2005 Decision, at Section V(c)(2a.), *infra*). In its fourth enumeration of error, the city argued that its SBE Program should not be subject to strict scrutiny (for race-based classification) or intermediate scrutiny (for gender-based classification). The City argued that its SBE Program did not create race- or gender-based classifications because the City merely gathered availability estimates “for information purposes only” and bidders were required only to document their good faith efforts at obtaining minority- and women-owned business participation. The Court of Appeals rejected that argument holding that rigid quotas or set-asides are not a prerequisite to a finding of a racial classification: “[w]here regulations pressure or encourage contractors to hire minority subcontractors, courts must apply strict scrutiny.” 864 N.E.2d at 126. The court noted that in Adarand I, although the challenged regulations did not require contractors to hire minority subcontractors, they offered a financial incentive to do so, and the regulations were thus subject to strict scrutiny. *Id.* at 127, citing Adarand Constructors v. Pena, 515 U.S. 200, 224 (1995).

The Court of Appeals determined that it had to look beyond the SBE Program’s “ostensibly neutral labels such as ‘outreach program’ and ‘participation goals’” to determine whether the SBE Program imposed racial classifications. *Id.* at 127. The court found that under the SBE Program, bidders were required to use good faith efforts to promote opportunities for minority- and women-owned businesses to the extent of their availability as determined by the City, and to submit detailed descriptions of those good faith efforts. The court held that “[w]here the city’s SBE program required

documentation of a bidder's specific efforts to achieve the participation of minority subcontractors to the extent of their availability as predetermined by the city, the program undeniably pressured bidders to implement racial preferences. Therefore, the program's rules must be subject to strict scrutiny." *Id.* at 127. The court held that to the extent the SBE Program pressured contractors to utilize female-owned subcontractors, that portion was subject to intermediate scrutiny. Because the City conceded that its SBE Program could not survive either standard of heightened scrutiny, the court affirmed the trial court's finding holding unconstitutional those portions of the SBE Program causing bidders to use racial- or gender-based preferences. The court also overruled the City's enumeration of error over the trial court's award of prevailing party attorneys' fees to the plaintiff.

The Court of Appeals reversed the trial court's entry of a directed verdict for the city on the plaintiff's claim for lost profit damages. The court confirmed that under Ohio law, a disappointed bidder cannot recover lost profit damages when a municipality violates competitive-bidding laws. But, under 42 U.S.C. § 1983, a disappointed bidder may recover their lost profits as damages; the court cited to *Adarand, W.H. Scott Construction Co. v. Jackson*, and *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla.* in support of that proposition. The court reversed the entry of a directed verdict and remanded to the trial court for a new trial on the issue of Section 1983 liability and damages.

Finally, the Court of Appeals affirmed the trial court's ruling that the named city officials sued in their individual capacities were entitled to qualified immunity. The court determined that due to complex nature of the issues, the city officials could not have reasonably known that their conduct was unconstitutional (required on order to overcome a qualified immunity defense).

The city subsequently applied for certiorari to the United States Supreme Court. The Supreme Court denied certiorari on October 9, 2007. 128 S. Ct. 379 (Oct. 9, 2007).

24. Cleveland Constr., Inc. v. City of Cincinnati, Case No. A042683, WL 4880918 (Ohio Court of Common Pleas, July 13, 2005 and August 29, 2005)

This case is instructive as it addresses the validity of the City of Cincinnati's program involving contracting with MBE/WBEs, information that a city may gather as to MBE/WBE participation, information that a city may track as to MBE/WBE participation, and the type of legislation the local or state governments may consider adopting. *Cleveland Construction, Inc.* (the "plaintiff") challenged the City of Cincinnati's (the "City") Small Business Enterprise Program (the "Program"), and a related SBE Subcontracting Outreach Program which applied to City-funded construction projects valued in excess of \$100,000. Case No. A0402638 (Ohio Common Pleas Court, July 13, 2005) at 5. The Program required prime contractors to subcontract a minimum percentage of their bid (20% or greater on some construction contracts) to qualified available minority subcontractors. *Id.*

The City stipulated that it lacked the necessary factual basis to withstand a strict scrutiny analysis, or even an intermediate scrutiny analysis, of its Program. *Id.* at 10-11. The court then considered whether the Program imposed classifications subject to such analyses. *Id.* The court found that "the law does not prohibit governmental entities from recording statistics relating to race or gender, or from tracking the progress of groups as identified by such categories, or from seeking to ascertain whether any impermissible, discriminatory barriers are hampering the advancement of individuals

within groups as defined by race or gender.” Id. at 12. Accordingly, the court found that the City could use MBE/WBE annual participation goals in conjunction with such a tracking program, and other outreach efforts, as long as such efforts included no “further mechanism to promote or effectuate or encourage others to meet such goals in any particular context.” Id. (internal citations omitted).

However, the court found that where outreach efforts operate as “a *sub rosa* preference — that is, where their administration ‘indisputably pressures’ contractors to hire minority subcontractors — courts must apply strict scrutiny.” Id. at 12-13. The court found that the Program contained a number of race- and gender-classification provisions and “indisputably pressures” contractors to recruit minority subcontractors, including requisite documentation of good faith outreach efforts and potential investigation of recruitment efforts by the Office of Contract Compliance; accordingly, the Program was subject to strict scrutiny. Id. at 13-14. Because the City conceded that the Program could not survive a strict scrutiny analysis, the court found the Program facially unconstitutional and ordered the City to take prompt action to remove all such unconstitutional provisions. Id. at 15. However, the court found the plaintiff was unable to demonstrate that the unconstitutional aspects of the Program caused him to lose the contract award at issue. Id. at 18.

G. Recent Decisions and Authorities Involving Federal Procurement That May Impact MBE/WBE and DBE Programs

1. Rothe Development Corp. v. U.S. Department of Defense, 545 F.3d 1023 (Fed. Cir. 2008)

Although this case does not involve the Federal DBE Program (49 C.F.R. Part 26), it is an analogous case that may impact the legal analysis and law related to the validity of programs implemented by recipients of federal funds, including the Federal DBE Program. Additionally, it underscores the requirement that race-, ethnic- and gender-based programs of any nature must be supported by substantial evidence. In Rothe, an unsuccessful bidder on a federal defense contract brought suit alleging that the application of an evaluation preference, pursuant to a federal statute, to a small disadvantaged bidder (SDB) to whom a contract was awarded, violated the Equal Protection clause of the U.S. Constitution. The federal statute challenged is Section 1207 of the National Defense Authorization Act of 1987 and as reauthorized in 2003. The statute provides a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. 10 U.S.C. § 2323. Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms upwards by 10 percent (the “Price Evaluation Adjustment Program” or “PEA”).

The district court held the federal statute, as reauthorized in 2003, was constitutional on its face. The court held the 5 percent goal and the PEA program as reauthorized in 1992 and applied in 1998 was unconstitutional. The basis of the decision was that Congress considered statistical evidence of discrimination that established a compelling governmental interest in the reauthorization of the statute and PEA program in 2003. Congress had not documented or considered substantial statistical evidence that the DOD discriminated against minority small businesses when it enacted the statute in 1992 and reauthorized it in 1998. The plaintiff appealed the decision.

The Federal Circuit found that the “analysis of the facial constitutionality of an act is limited to evidence before Congress prior to the date of reauthorization.” 413 F.3d 1327 (Fed. Cir. 2005)(affirming in part, vacating in part, and remanding 324 F. Supp. 2d 840 (W.D. Tex. 2004). The court limited its review to whether Congress had sufficient evidence in 1992 to reauthorize the provisions in 1207. The court held that for evidence to be relevant to a strict scrutiny analysis, “the evidence must be proven to have been before Congress prior to enactment of the racial classification.” The Federal Circuit held that the district court erred in relying on the statistical studies without first determining whether the studies were before Congress when it reauthorized section 1207. The Federal Circuit remanded the case and directed the district court to consider whether the data presented was so outdated that it did not provide the requisite strong basis in evidence to support the reauthorization of section 1207.

On August 10, 2007 the Federal District Court for the Western District of Texas in Rothe Development Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007) issued its Order on remand from the Federal Circuit Court of Appeals decision in Rothe, 413 F.3d 1327 (Fed Cir. 2005). The district court upheld the constitutionality of the 2006 Reauthorization of Section 1207 of the National Defense Authorization Act of 1987 (10 USC § 2323), which permits the U.S. Department of Defense to provide preferences in selecting bids submitted by small businesses owned by socially and economically disadvantaged individuals (“SDBs”). The district court found the 2006 Reauthorization of the 1207 Program satisfied strict scrutiny, holding that

Congress had a compelling interest when it reauthorized the 1207 Program in 2006, that there was sufficient statistical and anecdotal evidence before Congress to establish a compelling interest, and that the reauthorization in 2006 was narrowly tailored.

The district court, among its many findings, found certain evidence before Congress was “stale,” that the plaintiff (Rothe) failed to rebut other evidence which was not stale, and that the decisions by the Eighth, Ninth and Tenth Circuits in the decisions in Concrete Works, Adarand Constructors, Sherbrooke Turf and Western States Paving (discussed above and below) were relevant to the evaluation of the facial constitutionality of the 2006 Reauthorization.

2007 Order of the District Court (499 F.Supp. 2d 775). In the Section 1207 Act, Congress set a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. In order to achieve that goal, Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms up to 10 percent (the “Price Evaluation Adjustment Program” or “PEA”) 10 U.S.C. § 2323(e)(3). Rothe, 499 F.Supp.2d. at 782. Plaintiff Rothe did not qualify as an SDB because it was owned by a Caucasian female. Although Rothe was technically the lowest bidder on a DOD contract, its bid was adjusted upward by 10 percent, and a third party, who qualified as a SDB, became the “lowest” bidder and was awarded the contract. Id. Rothe claims that the 1207 Program is facially unconstitutional because it takes race into consideration in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment. Id. at 782-83. The district court’s decision only reviewed the facial constitutionality of the 2006 Reauthorization of the 2007 Program.

The district court initially rejected six legal arguments made by Rothe regarding strict scrutiny review based on the rejection of the same arguments by the Eighth, Ninth, and Tenth Circuit Courts of Appeal in the Sherbrooke Turf, Western States Paving, Concrete Works, Adarand VII cases, and the Federal Circuit Court of Appeal in Rothe. Rothe at 825-833.

The district court discussed and cited the decisions in Adarand VII (2000), Sherbrooke Turf (2003), and Western States Paving (2005), as holding that Congress had a compelling interest in eradicating the economic roots of racial discrimination in highway transportation programs funded by federal monies, and concluding that the evidence cited by the government, particularly that contained in *The Compelling Interest* (a.k.a. the *Appendix*), more than satisfied the government’s burden of production regarding the compelling interest for a race-conscious remedy. Rothe at 827. Because the Urban Institute Report, which presented its analysis of 39 state and local disparity studies, was cross-referenced in the *Appendix*, the district court found the courts in Adarand VII, Sherbrooke Turf, and Western States Paving, also relied on it in support of their compelling interest holding. Id. at 827.

The district court also found that the Tenth Circuit decision in Concrete Works IV, 321 F.3d 950 (10th Cir. 2003), established legal principles that are relevant to the court’s strict scrutiny analysis. First, Rothe’s claims for declaratory judgment on the racial constitutionality of the earlier 1999 and 2002 Reauthorizations were moot. Second, the government can meet its burden of production without conclusively proving the existence of past or present racial discrimination. Third, the government may establish its own compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Fourth, once the government meets its burden of production, Rothe must introduce “credible, particularized”

evidence to rebut the government's initial showing of the existence of a compelling interest. Fifth, Rothe may rebut the government's statistical evidence by giving a race-neutral explanation for the statistical disparities, showing that the statistics are flawed, demonstrating that the disparities shown are not significant or actionable, or presenting contrasting statistical data. Sixth, the government may rely on disparity studies to support its compelling interest, and those studies may control for the effect that pre-existing affirmative action programs have on the statistical analysis. *Id.* at 829-32.

Based on *Concrete Works IV*, the district court did not require the government to conclusively prove that there is pervasive discrimination in the relevant market, that each presumptively disadvantaged group suffered equally from discrimination, or that private firms intentionally and purposefully discriminated against minorities. The court found that the inference of discriminatory exclusion can arise from statistical disparities. *Id.* at 830-31.

The district court held that Congress had a compelling interest in the 2006 Reauthorization of the 1207 Program, which was supported by a strong basis in the evidence. The court relied in significant part upon six state and local disparity studies that were before Congress prior to the 2006 Reauthorization of the 1207 Program. The court based this evidence on its finding that Senator Kennedy had referenced these disparity studies, discussed and summarized findings of the disparity studies, and Representative Cynthia McKinney also cited the same six disparity studies that Senator Kennedy referenced. The court stated that based on the content of the floor debate, it found that these studies were put before Congress prior to the date of the Reauthorization of Section 1207. *Id.* at 838.

The district court found that these six state and local disparity studies analyzed evidence of discrimination from a diverse cross-section of jurisdictions across the United States, and "they constitute prima facie evidence of a nation-wide pattern or practice of discrimination in public and private contracting." *Id.* at 838-39. The court found that the data used in these six disparity studies is not "stale" for purposes of strict scrutiny review. *Id.* at 839. The court disagreed with Rothe's argument that all the data was stale (data in the studies from 1997 through 2002), "because this data was the most current data available at the time that these studies were performed." *Id.* The court found that the governmental entities should be able to rely on the most recently available data so long as that data is reasonably up-to-date. *Id.* The court declined to adopt a "bright-line rule for determining staleness." *Id.*

The court referred to the reliance by the Ninth Circuit and the Eighth Circuit on the *Appendix* to affirm the constitutionality of the United States Department of Transportation MBE [now DBE] Program, and rejected five years as a bright-line rule for considering whether data is "stale." *Id.* at n.86. The court also stated that it "accepts the reasoning of the *Appendix*, which the court found stated that for the most part "the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities." *Id.* at 839, quoting *61 Fed.Reg.* 26042-01, 26061 (1996).

The district court also discussed additional evidence before Congress that it found in Congressional Committee Reports and Hearing Records. *Id.* at 865-71. The court noted SBA Reports that were before Congress prior to the 2006 Reauthorization. *Id.* at 871.

The district court found that the data contained in the *Appendix*, the Benchmark Study, and the Urban Institute Report was “stale,” and the court did not consider those reports as evidence of a compelling interest for the 2006 Reauthorization. *Id.* at 872-75. The court stated that the Eighth, Ninth and Tenth Circuits relied on the *Appendix* to uphold the constitutionality of the Federal DBE Program, citing to the decisions in *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving*. *Id.* at 872. The court pointed out that although it does not rely on the data contained in the *Appendix* to support the 2006 Reauthorization, the fact the Eighth, Ninth, and Tenth Circuits relied on this data to uphold the constitutionality of the Federal DBE Program as recently as 2005, convinced the court that a bright-line staleness rule is inappropriate. *Id.* at 874.

Although the court found that the data contained in the *Appendix*, the Urban Institute Report, and the Benchmark Study was stale for purposes of strict scrutiny review regarding the 2006 Reauthorization, the court found that Rothe introduced no concrete, particularized evidence challenging the reliability of the methodology or the data contained in the six state and local disparity studies, and other evidence before Congress. The court found that Rothe failed to rebut the data, methodology or anecdotal evidence with “concrete, particularized” evidence to the contrary. *Id.* at 875. The district court held that based on the studies, the government had satisfied its burden of producing evidence of discrimination against African Americans, Asian Americans, Hispanic Americans, and Native Americans in the relevant industry sectors. *Id.* at 876.

The district court found that Congress had a compelling interest in reauthorizing the 1207 Program in 2006, which was supported by a strong basis of evidence for remedial action. *Id.* at 877. The court held that the evidence constituted prima facie proof of a nationwide pattern or practice of discrimination in both public and private contracting, that Congress had sufficient evidence of discrimination throughout the United States to justify a nationwide program, and the evidence of discrimination was sufficiently pervasive across racial lines to justify granting a preference to all five purportedly disadvantaged racial groups. *Id.*

The district court also found that the 2006 Reauthorization of the 1207 Program was narrowly tailored and designed to correct present discrimination and to counter the lingering effects of past discrimination. The court held that the government’s involvement in both present discrimination and the lingering effects of past discrimination was so pervasive that the Department of Defense and Department of Air Force had become passive participants in perpetuating it. *Id.* The court stated it was law of the case and could not be disturbed on remand that the Federal Circuit in *Rothe III* had held that the 1207 Program was flexible in application, limited in duration and it did not unduly impact on the rights of third parties. *Id.*, quoting *Rothe III*, 262 F.3d at 1331.

The district court thus conducted a narrowly tailored analysis that reviewed three factors:

1. The efficacy of race-neutral alternatives;
2. Evidence detailing the relationship between the stated numerical goal of 5 percent and the relevant market; and
3. Over- and under-inclusiveness.

Id. The court found that Congress examined the efficacy of race-neutral alternatives prior to the enactment of the 1207 Program in 1986 and that these programs were unsuccessful in remedying the

effects of past and present discrimination in the federal procurement. *Id.* The court concluded that Congress had attempted to address the issues through race-neutral measures, discussed those measures, and found that Congress' adoption of race-conscious provisions were justified by the ineffectiveness of such race-neutral measures in helping minority-owned firms overcome barriers. *Id.* The court found that the government seriously considered and enacted race-neutral alternatives, but these race-neutral programs did not remedy the widespread discrimination that affected the federal procurement sector, and that Congress was not required to implement or exhaust every conceivable race-neutral alternative. *Id.* at 880. Rather, the court found that narrow tailoring requires only "serious, good faith consideration of workable race-neutral alternatives." *Id.*

The district court also found that the 5 percent goal was related to the minority business availability identified in the six state and local disparity studies. *Id.* at 881. The court concluded that the 5 percent goal was aspirational, not mandatory. *Id.* at 882. The court then examined and found that the regulations implementing the 1207 Program were not over-inclusive for several reasons.

November 4, 2008 decision by the Federal Circuit Court of Appeals. On November 4, 2008, the Federal Circuit Court of Appeals reversed the judgment of the district court in part, and remanded with instructions to enter a judgment (1) denying Rothe any relief regarding the facial constitutionality of Section 1207 as enacted in 1999 or 2002, (2) declaring that Section 1207 as enacted in 2006 (10 U.S.C. § 2323) is facially unconstitutional, and (3) enjoining application of Section 1207 (10 U.S.C. § 2323).

The Federal Circuit Court of Appeals held that Section 1207, on its face, as reenacted in 2006, violated the Equal Protection component of the Fifth Amendment right to due process. The court found that because the statute authorized the Department of Defense to afford preferential treatment on the basis of race, the court applied strict scrutiny, and because Congress did not have a "strong basis in evidence" upon which to conclude that the Department of Defense was a passive participant in pervasive, nationwide racial discrimination — at least not on the evidence produced by the Department of Defense and relied on by the district court in this case — Section 1207 failed to meet this strict scrutiny test. 545 F.3d at 1050.

Strict scrutiny framework. The Federal Circuit Court of Appeals recognized that the Supreme Court has held a government may have a compelling interest in remedying the effects of past or present racial discrimination. 545 F.3d at 1036. The court cited the decision in *Croson*, 488 U.S. at 492, that it is "beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." 545 F.3d. at 1036, quoting *Croson*, 488 U.S. at 492.

The court held that before resorting to race-conscious measures, the government must identify the discrimination to be remedied, public or private, with some specificity, and must have a strong basis of evidence upon which to conclude that remedial action is necessary. 545 F.3d at 1036, quoting *Croson*, 488 U.S. at 500, 504. Although the party challenging the statute bears the ultimate burden of persuading the court that it is unconstitutional, the Federal Circuit stated that the government first bears a burden to produce strong evidence supporting the legislature's decision to employ race-conscious action. 545 F.3d at 1036.

Even where there is a compelling interest supported by strong basis in evidence, the court held the statute must be narrowly tailored to further that interest. *Id.* The court noted that a narrow tailoring

analysis commonly involves six factors: (1) the necessity of relief; (2) the efficacy of alternative, race-neutral remedies; (3) the flexibility of relief, including the availability of waiver provisions; (4) the relationship with the stated numerical goal to the relevant labor market; (5) the impact of relief on the rights of third parties; and (6) the overinclusiveness or underinclusiveness of the racial classification. Id.

Compelling interest – strong basis in evidence. The Federal Circuit pointed out that the statistical and anecdotal evidence relied upon by the district court in its ruling below included six disparity studies of state or local contracting. The Federal Circuit also pointed out that the district court found that the data contained in the Appendix, the Urban Institute Report, and the Benchmark Study were stale for purposes of strict scrutiny review of the 2006 Authorization, and therefore, the district court concluded that it would not rely on those three reports as evidence of a compelling interest for the 2006 reauthorization of the 1207 Program. 545 F.3d 1023, citing to Rothe VI, 499 F.Supp. 2d at 875. Since the Department of Defense did not challenge this finding on appeal, the Federal Circuit stated that it would not consider the Appendix, the Urban Institute Report, or the Department of Commerce Benchmark Study, and instead determined whether the evidence relied on by the district court was sufficient to demonstrate a compelling interest. Id.

Six state and local disparity studies. The Federal Circuit found that disparity studies can be relevant to the compelling interest analysis because, as explained by the Supreme Court in Croson, “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by [a] locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.” 545 F.3d at 1037-1038, quoting Croson, 488 U.S.C. at 509. The Federal Circuit also cited to the decision by the Fifth Circuit Court of Appeals in W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999) that given Croson’s emphasis on statistical evidence, other courts considering equal protection challenges to minority-participation programs have looked to disparity indices, or to computations of disparity percentages, in determining whether Croson’s evidentiary burden is satisfied. 545 F.3d at 1038, quoting W.H. Scott, 199 F.3d at 218.

The Federal Circuit noted that a disparity study is a study attempting to measure the difference- or disparity- between the number of contracts or contract dollars actually awarded minority-owned businesses in a particular contract market, on the one hand, and the number of contracts or contract dollars that one would expect to be awarded to minority-owned businesses given their presence in that particular contract market, on the other hand. 545 F.3d at 1037.

Staleness. The Federal Circuit declined to adopt a per se rule that data more than five years old is stale per se, which rejected the argument put forth by Rothe. 545 F.3d at 1038. The court pointed out that the district court noted other circuit courts have relied on studies containing data more than five years old when conducting compelling interest analyses, citing to Western States Paving v. Washington State Department of Transportation, 407 F.3d 983, 992 (9th Cir. 2005) and Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F.3d 964, 970 (8th Cir. 2003)(relying on the Appendix, published in 1996).

The Federal Circuit agreed with the district court that Congress “should be able to rely on the most recently available data so long as that data is reasonably up-to-date.” 545 F.3d at 1039. The Federal Circuit affirmed the district court’s conclusion that the data analyzed in the six disparity studies was

not stale at the relevant time because the disparity studies analyzed data pertained to contracts awarded as recently as 2000 or even 2003, and because Rothe did not point to more recent, available data. *Id.*

Before Congress. The Federal Circuit found that for evidence to be relevant in the strict scrutiny analysis, it “must be proven to have been before Congress prior to enactment of the racial classification.” 545 F.3d at 1039, quoting *Rothe V*, 413 F.3d at 1338. The Federal Circuit had issues with determining whether the six disparity studies were actually before Congress for several reasons, including that there was no indication that these studies were debated or reviewed by members of Congress or by any witnesses, and because Congress made no findings concerning these studies. 545 F.3d at 1039-1040. However, the court determined it need not decide whether the six studies were put before Congress, because the court held in any event that the studies did not provide a substantially probative and broad-based statistical foundation necessary for the strong basis in evidence that must be the predicate for nation-wide, race-conscious action. *Id.* at 1040.

The court did note that findings regarding disparity studies are to be distinguished from formal findings of discrimination by the Department of Defense “which Congress was emphatically not required to make.” *Id.* at 1040, footnote 11 (emphasis in original). The Federal Circuit cited the *Dean v. City of Shreveport* case that the “government need not incriminate itself with a formal finding of discrimination prior to using a race-conscious remedy.” 545 F.3d at 1040, footnote 11 quoting *Dean v. City of Shreveport*, 438 F.3d 448, 445 (5th Cir. 2006).

Methodology. The Federal Circuit found that there were methodological defects in the six disparity studies. The court found that the objections to the parameters used to select the relevant pool of contractors was one of the major defects in the studies. 545 F.3d at 1040-1041.

The court stated that in general, “[a] disparity ratio less than 0.80” — *i.e.*, a finding that a given minority group received less than 80 percent of the expected amount — “indicates a relevant degree of disparity,” and “might support an inference of discrimination.” 545 F.3d at 1041, quoting the district court opinion in *Rothe VI*, 499 F.Supp. 2d at 842; and citing *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 914 (11th Cir. 1997). The court noted that this disparity ratio attempts to calculate a ratio between the expected contract amount of a given race/gender group and the actual contract amount received by that group. 545 F.3d at 1041.

The court considered the availability analysis, or benchmark analysis, which is utilized to ensure that only those minority-owned contractors who are qualified, willing and able to perform the prime contracts at issue are considered when performing the denominator of a disparity ratio. 545 F.3d at 1041. The court cited to an expert used in the case that a “crucial question” in disparity studies is to develop a credible methodology to estimate this benchmark share of contracts minorities would receive in the absence of discrimination and the touchstone for measuring the benchmark is to determine whether the firm is ready, willing, and able to do business with the government. 545 F.3d at 1041-1042.

The court concluded the contention by Rothe, that the six studies misapplied this “touchstone” of *Croson* and erroneously included minority-owned firms that were deemed willing or potentially willing and able, without regard to whether the firm was qualified, was not a defect that substantially undercut the results of four of the six studies, because “the bulk of the businesses considered in these

studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records and bidder lists.” 545 F.3d at 1042. The court noted that with regard to these studies available prime contractors were identified via certification lists, willingness survey of chamber membership and trade association membership lists, public agency and certification lists, utilized prime contractor, bidder lists, county and other government records and other type lists. Id.

The court stated it was less confident in the determination of qualified minority-owned businesses by the two other studies because the availability methodology employed in those studies, the court found, appeared less likely to have weeded out unqualified businesses. Id. However, the court stated it was more troubled by the failure of five of the studies to account officially for potential differences in size, or “relative capacity,” of the business included in those studies. 545 F.3d at 1042-1043.

The court noted that qualified firms may have substantially different capacities and thus might be expected to bring in substantially different amounts of business even in the absence of discrimination. 545 F.3d at 1043. The Federal Circuit referred to the Eleventh Circuit explanation similarly that because firms are bigger, bigger firms have a bigger chance to win bigger contracts, and thus one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded than the smaller MWBE firms. 545 F.3d at 1043 quoting Engineering Contractors Association, 122 F.3d at 917. The court pointed out its issues with the studies accounting for the relative sizes of contracts awarded to minority-owned businesses, but not considering the relative sizes of the businesses themselves. Id. at 1043.

The court noted that the studies measured the availability of minority-owned businesses by the percentage of firms in the market owned by minorities, instead of by the percentage of total marketplace capacity those firms could provide. Id. The court said that for a disparity ratio to have a significant probative value, the same time period and metric (dollars or numbers) should be used in measuring the utilization and availability shares. 545 F.3d at 1044, n. 12.

The court stated that while these parameters relating to the firm size may have ensured that each minority-owned business in the studies met a capacity threshold, these parameters did not account for the relative capacities of businesses to bid for more than one contract at a time, which failure rendered the disparity ratios calculated by the studies substantially less probative on their own, of the likelihood of discrimination. Id. at 1044. The court pointed out that the studies could have accounted for firm size even without changing the disparity ratio methodologies by employing regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it. 545 F.3d at 1044 citing to Engineering Contractors Association, 122 F.3d at 917. The court noted that only one of the studies conducted this type of regression analysis, which included the independent variables of a firm-age of a company, owner education level, number of employees, percent of revenue from the private sector and owner experience for industry groupings. Id. at 1044-1045.

The court stated, to “be clear,” that it did not hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. Id. at 1045. The court said that where the calculated disparity ratios are low enough, the court does not foreclose the possibility that an inference of discrimination might still be permissible for some of the minority groups in some of the studied industries in some of the jurisdictions. Id. The court

recognized that a minority-owned firm's capacity and qualifications may themselves be affected by discrimination. Id. The court held, however, that the defects it noted detracted dramatically from the probative value of the six studies, and in conjunction with their limited geographic coverage, rendered the studies insufficient to form the statistical core of the strong basis and evidence required to uphold the statute. Id.

Geographic coverage. The court pointed out that whereas municipalities must necessarily identify discrimination in the immediate locality to justify a race-based program, the court does not think that Congress needs to have had evidence before it of discrimination in all 50 states in order to justify the 1207 program. Id. The court stressed, however, that in holding the six studies insufficient in this particular case, "we do not necessarily disapprove of decisions by other circuit courts that have relied, directly or indirectly, on municipal disparity studies to establish a federal compelling interest." 545 F.3d at 1046. The court stated in particular, the Appendix relied on by the Ninth and Tenth Circuits in the context of certain race-conscious measures pertaining to federal highway construction, references the Urban Institute Report, which itself analyzed over 50 disparity studies and relied for its conclusions on over 30 of those studies, a far broader basis than the six studies provided in this case. Id.

Anecdotal evidence. The court held that given its holding regarding statistical evidence, it did not review the anecdotal evidence before Congress. The court did point out, however, that there was not evidence presented of a single instance of alleged discrimination by the Department of Defense in the course of awarding a prime contract, or to a single instance of alleged discrimination by a private contractor identified as the recipient of a prime defense contract. 545 F.3d at 1049. The court noted this lack of evidence in the context of the opinion in Croson that if a government has become a passive participant in a system of racial exclusion practiced by elements of the local construction industry, then that government may take affirmative steps to dismantle the exclusionary system. 545 F.3d at 1048, citing Croson, 488 U.S. at 492.

The Federal Circuit pointed out that the Tenth Circuit in Concrete Works noted the City of Denver offered more than dollar amounts to link its spending to private discrimination, but instead provided testimony from minority business owners that general contractors who use them in city construction projects refuse to use them on private projects, with the result that Denver had paid tax dollars to support firms that discriminated against other firms because of their race, ethnicity and gender. 545 F.3d at 1049, quoting Concrete Works, 321 F.3d at 976-977.

In concluding, the court stated that it stressed its holding was grounded in the particular items of evidence offered by the Department of Defense, and "should not be construed as stating blanket rules, for example about the reliability of disparity studies. As the Fifth Circuit has explained, there is no 'precise mathematical formula to assess the quantum of evidence that rises to the Croson 'strong basis in evidence' benchmark.'" 545 F.3d at 1049, quoting W.H. Scott Constr. Co., 199 F.3d at 218 n. 11.

Narrowly tailoring. The Federal Circuit only made two observations about narrowly tailoring, because it held that Congress lacked the evidentiary predicate for a compelling interest. First, it noted that the 1207 Program was flexible in application, limited in duration, and that it did not unduly impact on the rights of third parties. 545 F.3d at 1049. Second, the court held that the absence of strongly probative statistical evidence makes it impossible to evaluate at least one of the other

narrowly tailoring factors. Without solid benchmarks for the minority groups covered by the Section 1207, the court said it could not determine whether the 5 percent goal is reasonably related to the capacity of firms owned by members of those minority groups — *i.e.*, whether that goal is comparable to the share of contracts minorities would receive in the absence of discrimination.” 545 F.3d at 1049-1050.

2. Dynalantic Corp. v. United States Dept. of Defense, 503 F. Supp. 2d 262 (D.D.C. 2007)

Dynalantic Corp. involves a recent challenge to the Department of Defense’s (“DOD”) utilization of the Small Business Administration’s (“SBA”) 8(a) Business Development Program (the “8(a) Program”). In its Order of August 23, 2007, the district court denied both parties’ Motions for Summary Judgment because there was no information in the record regarding the evidence before Congress supporting its 2006 reauthorization of the program in question; the court directed the parties to propose future proceedings to supplement the record. 503 F. Supp. 2d 262, 263 (D.D.C. 2007).

The court first explained that the 8(a) Program sets a goal that no less than 5 percent of total prime federal contract and subcontract awards for each fiscal year be awarded to socially and economically disadvantaged individuals. *Id.* Each federal government agency is required to establish its own goal for contracting but the goals are not mandatory and there is no sanction for failing to meet the goal. Upon application and admission into the 8(a) Program, small businesses owned and controlled by disadvantaged individuals are eligible to receive technological, financial, and practical assistance, and support through preferential award of government contracts. For the past few years, the 8(a) Program was the primary preferential treatment program the DOD used to meet its 5 percent goal. *Id.* at 264.

This case arose from a Navy contract that the DOD decided to award exclusively through the 8(a) Program. The plaintiff owned a small company that would have bid on the contract but for the fact it was not a participant in the 8(a) Program. After multiple judicial proceedings the D.C. Circuit dismissed the plaintiff’s action for lack of standing but granted the plaintiff’s motion to enjoin the contract procurement pending the appeal of the dismissal order. The Navy cancelled the proposed procurement but the D.C. Circuit allowed the plaintiff to circumvent the mootness argument by amending its pleadings to raise a facial challenge to the 8(a) program as administered by the SBA and utilized by the DOD. The D.C. Circuit held the plaintiff had standing because of the plaintiff’s inability to compete for DOD contracts reserved to 8(a) firms, the injury was traceable to the race-conscious component of the 8(a) Program, and the plaintiff’s injury was imminent due to the likelihood the government would in the future try to procure another contract under the 8(a) Program for which the plaintiff was ready, willing, and able to bid. *Id.* at 264-65.

On remand, the plaintiff amended its complaint to challenge the constitutionality of the 8(a) Program and sought an injunction to prevent the military from awarding any contract for military simulators based upon the race of the contractors. *Id.* at 265. The district court first held that the plaintiff’s complaint could be read only as a challenge to the DOD’s implementation of the 8(a) Program [pursuant to 10 U.S.C. § 2323] as opposed to a challenge to the program as a whole. *Id.* at 266. The parties agreed that the 8(a) Program uses race-conscious criteria so the district court concluded it must be analyzed under the strict scrutiny constitutional standard. The court found that in order to evaluate the government’s proffered “compelling government interest,” the court must consider the evidence that Congress considered at the point of authorization or reauthorization to

ensure that it had a strong basis in evidence of discrimination requiring remedial action. The court cited to Western States Paving in support of this proposition. Id. The court concluded that because the DOD program was reauthorized in 2006, the court must consider the evidence before Congress in 2006.

The court cited to the recent Rothe decision as demonstrating that Congress considered significant evidentiary materials in its reauthorization of the DOD program in 2006, including six recently published disparity studies. The court held that because the record before it in the present case did not contain information regarding this 2006 evidence before Congress, it could not rule on the parties' Motions for Summary Judgment. The court denied both motions and directed the parties to propose future proceedings in order to supplement the record. Id. at 267.

3. “Federal Procurement After Adarand” (USCCR Report September, 2005)

In September of 2005, the United States Commission on Civil Rights (the “Commission”) issued its report entitled “Federal Procurement After Adarand” setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at <http://www.usccr.gov>, citing Adarand, 515 U.S. at 237-38. The following is a brief summary of the report.

In 1995, the United States Supreme Court decided Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995), which set forth the constitutional standard for evaluating race-conscious programs in federal contracting. The Commission states in its report that the Court in Adarand held that racial classifications imposed by federal, state and local governments are subject to strict scrutiny and the burden is upon the government entity to show that the racial classification is the least restrictive way to serve a “compelling public interest;” the government program must be narrowly tailored to meet that interest. The Court held that narrow tailoring requires, among other things, that “agencies must first consider race-neutral alternatives before using race conscious measures.” [p. ix]

Scope and methodology of the Commission's report. The purpose of the Commission's study was to examine the race-neutral programs and strategies implemented by agencies to meet the requirements set forth in Adarand. Accordingly, the study considered the following questions:

- Do agencies seriously consider workable race-neutral alternatives, as required by Adarand?
- Do agencies sufficiently promote and participate in race-neutral practices such as mentor-protégé programs, outreach, and financial and technical assistance?
- Do agencies employ and disclose to each other specific best practices for consideration of race-neutral alternatives?
- How do agencies measure the effects of race-neutral programs on federal contracting?
- What race-neutral mechanisms exist to ensure government contracting is not discriminatory?

The Commission's staff conducted background research, reviewing government documents, federal procurement and economic data, federal contracting literature, and pertinent statutes, regulations

and court decisions. The Commission selected seven agencies to study in depth and submitted interrogatories to assess the agencies' procurement methods. The agencies selected for evaluation procure relatively large amounts of goods and services, have high numbers of contracts with small businesses, SDBs, or HUBZone firms, or play a significant support or enforcement role: the Small Business Administration (SBA), and the Departments of Defense (DOD), Transportation (DOT), Education (DOEd), Energy (DOEn), Housing and Urban Development (HUD), and State (DOS).

The report did not evaluate existing disparity studies or assess the validity of data suggesting the persistence of discrimination. It also did not seek to identify whether, or which, aspects of the contracting process disparately affect minority-owned firms.

Findings and recommendations. The Commission concluded that “among other requirements, agencies must consider race-neutral strategies before adopting any that allow eligibility based, even in part, on race.” [p. ix] The Commission further found “that federal agencies have not complied with their constitutional obligation, according to the Supreme Court, to narrowly tailor programs that use racial classifications by considering race-neutral alternatives to redress discrimination.” [p. ix]

The Commission found that “agencies have largely failed to apply the Supreme Court’s requirements, or [the U.S. Department of Justice’s (“DOJ”)] guidelines, to their contracting programs.” [p. 70] The Commission found that agencies “have not seriously considered race-neutral alternatives, relying instead on SBA-run programs, without developing new initiatives or properly assessing the results of existing programs.” [p. 70]

The Commission identified four elements that underlie “serious consideration” of race-neutral efforts, ensure an inclusive and fair race-neutral system, and tailor race-conscious programs to meet a documented need: “Element 1: Standards — Agencies must develop policy, procedures, and statistical standards for evaluating race-neutral alternatives; Element 2: Implementation — Agencies must develop or identify a wide range of race-neutral approaches, rather than relying on only one or two generic government-wide programs; Element 3: Evaluation — Agencies must measure the effectiveness of their chosen procurement strategies based on established empirical standards and benchmarks; Element 4: Communication — Agencies should communicate and coordinate race-neutral practices to ensure maximum efficiency and consistency government-wide.” [p. xi]

The Commission found that “despite the requirements that Adarand imposed, federal agencies fail to consider race-neutral alternatives in the manner required by the Supreme Court’s decision.” [p. xiii] The Commission also concluded that “[a]gencies engage in few race-neutral strategies designed to make federal contracting more inclusive, but do not exert the effort associated with serious consideration that the Equal Protection Clause requires. Moreover, they do not integrate race-neutral strategies into a comprehensive procurement approach for small and disadvantaged businesses.” [p. xiii]

Serious consideration [P. 71]

Finding: Most agencies could not demonstrate that they consider race-neutral alternatives before resorting to race-conscious programs. Due to the lack of specific guidance from the DOJ, “agencies appear to give little thought to their legal obligations and disagree both about what the law requires and about the legal ramifications of their actions.”

Recommendation: Agencies must adopt and follow guidelines to ensure consideration of race-neutral alternatives, which system could include: (1) identifying and evaluating a wide range of alternatives; (2) articulating the underlying facts that demonstrate whether race-neutral plans work; (3) collecting empirical research to evaluate success; (4) ensuring such assessments are based on current, competent and comprehensive data; (5) periodically reviewing race conscious plans to determine their continuing need; and (6) establishing causal relationships before concluding that a race-neutral plan is ineffective. Best practices could include: (1) statistical standards by which agencies would determine when to abandon race race-conscious efforts; (2) ongoing data collection, including racial and ethnic information, by which agencies would assess effectiveness; and (3) policies for reviewing what constitutes disadvantaged status and the continued necessity for strategies to increase inclusiveness.

Antidiscrimination policy and enforcement [P. 72]

Finding: The federal government lacks an appropriate framework for enforcing nondiscrimination in procurement. Limited causes of action are available to contractors and subcontractors, but the most accessible mechanisms are restricted to procedural complaints about bidding processes.

Recommendation: The enactment of legislation expressly prohibiting discrimination based on race, color, religion, sex, national origin, age, and disability, in federal contracting and procurement. Such legislation should include protections for both contractors and subcontractors and establish clear sanctions, remedies and compliance standards. Enforcement authority should be delegated to each agency with contracting capabilities.

Finding: Most agencies do not have policies or procedures to prevent discrimination in contracting. Generally, agencies are either unaware of or confused about whether federal law protects government contractors from discrimination.

Recommendation: The facilitation of agency development and implementation of civil rights enforcement policies for contracting. Agencies must establish strong enforcement systems to provide individuals a means to file and resolve complaints of discriminatory conduct. Agencies must also adopt clear compliance review standards and delegate authority for these functions to a specific, high-level component. Once agencies adopt nondiscrimination policies, they should conduct regular compliance reviews of prime and other large contract recipients, such as state and local agencies. Agencies should widely publicize complaint procedures, include them with bid solicitations, and codify them in acquisition regulations. Civil rights personnel in each agency should work with procurement officers to ensure that contractors understand their rights and responsibilities and implement additional policies upon legislative action.

Finding: Agencies generally employ systems for reviewing compliance with subcontracting goals made at the bidding stage, but do not establish norms for the number of reviews they will conduct, nor the frequency with which they will do so.

Recommendation: Good faith effort policies should be rooted in race-neutral outreach. Agencies should set standards for and carry out regular on-site audits and formal compliance reviews of SDB subcontracting plans to make determinations of contractors' good faith efforts to achieve established goals. Agencies should develop and disseminate clear regulations for what constitutes a good faith effort, specific to individual procurement goals and procedures. Agencies should also require that all

prime contractors be subject to audits, and require prime contractors to demonstrate all measures taken to ensure equal opportunity for SDBs to compete, paying particular attention to contractors that have not achieved goals expressed in their offers.

Ongoing review [P. 73]

Finding: Narrow tailoring requires regular review of race-conscious programs to determine their continued necessity and to ensure that they are focused enough to serve their intended purpose. However, no agency reported policies, procedures, or statistical standards for when to use race-conscious instead of race-neutral strategies, nor had agencies established procedures to reassess presumptions of disadvantage.

Recommendation: Agencies must engage in regular, systematic reviews (perhaps biennial) of race-conscious programs, including those that presume race-based disadvantage. They should develop and document clear policies, standards and justifications for when race-conscious programs are in effect. Agencies should develop and implement standards for the quality of data they collect and use to analyze race-conscious and race-neutral programs and apply these criteria when deciding effectiveness. Agencies should also evaluate whether race-neutral alternatives could reasonably generate the same or similar outcomes, and should implement such alternatives whenever possible.

Data and measurement [P. 73-75]

Finding: Agencies have neither conducted race disparity studies nor collected empirical data to assess the effects of procurement programs on minority-owned firms.

Recommendation: Agencies should conduct regular benchmark studies which should be tailored to each agency's specific contracting needs; and the results of the studies should be used in setting procurement goals.

Finding: The current procurement data does not evaluate the effectiveness or continuing need for race-neutral and/or race-conscious programs.

Recommendation: A task force should determine what data is necessary to implement narrow tailoring and assess whether (1) race-conscious programs are still necessary, and (2) the extent to which race-neutral strategies are effective as an alternative to race-conscious programs.

Finding: Agencies do not assess the effectiveness of individual race-neutral strategies (e.g., whether contract unbundling is a successful race-neutral strategy).

Recommendation: Agencies should measure the success of race-neutral strategies independently so they can determine viability as alternatives to race-conscious measures (e.g., agencies could track the number and dollar value of contracts broken apart, firms to which smaller contracts are awarded, and the effect of such efforts on traditionally excluded firms).

Communication and collaboration [P. 75]

Finding: Agencies do not communicate effectively with each other about efforts to strengthen procurement practices (e.g., there is no exchange of race-neutral best practices).

Recommendation: Agencies should engage in regular meetings with each other to share information and best practices, coordinate outreach, and develop measurement strategies.

Outreach [P. 76]

Finding: Even though agencies engage in outreach efforts, there is little evidence that their efforts to reach small and disadvantaged businesses are successful. They do not produce planning or reporting documents on outreach activities, nor do they apply methods for tracking activities, expenditures, or the number and types of beneficiaries.

Recommendation: Widely broadcast information on the Internet and in popular media is only one of several steps necessary for a comprehensive and effective outreach program. Agencies can use a variety of formats — conferences, meetings, forums, targeted media, Internet, printed materials, ad campaigns, and public service announcements — to reach appropriate audiences. In addition, agencies should capitalize on technological capabilities, such as listservs, text messaging, audio subscription services, and new technologies associated with portable listening devices, to circulate information about contracting opportunities. Agencies should include outreach in budget and planning documents, establish goals for conducting outreach activities, track the events and diversity of the audience, and train staff in outreach strategies and skills.

Conclusion. The Commission found that 10 years after the Supreme Court’s Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral decisions that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail “to engage in the basic activities that are the hallmarks of serious consideration,” including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review.

The Commission found that most federal agencies have not implemented “even the most basic race-neutral strategy to ensure equal access, *i.e.*, the development, dissemination, and enforcement of clear, effective antidiscrimination policies. Significantly, most agencies do not provide clear recourse for contractors who are victims of discrimination or guidelines for enforcement.”

One Commission member, Michael Yaki, filed an extensive Dissenting Statement to the Report. [pp. 79-170]. This Dissenting Statement by Commissioner Yaki was referred to and discussed by the district court in Rothe Development Corp. v. US DOD, 499 F.Supp.2d 775, 864-65 (W.D. Tex. August 10, 2007), **reversed** on appeal, Rothe, 545 F.3d 1023 (Fed.Cir 2008), (*see* discussion of Rothe above at Section VII, 1.). In his dissent, Commissioner Yaki criticized the Majority Opinion, including noting that his statistical data was “*deleted*” from the original version of the draft Majority Opinion that was received by all Commissioners. The district court in Rothe considered the data discussed by Yaki.

Appendix B.

Utilization and Case Study Data Collection

This appendix describes the data collection and review process for BGPAA utilization data and procurement case study data in four parts:

- A. Utilization data for construction, engineering-related services, and goods and services contracts;
- B. Subindustries typically not included in disparity analyses;
- C. BGPAA agency review; and
- D. Contract case study data.

A. Utilization Data Collection

The BBC study team compiled contract, subcontract and vendor data from a number of different sources.

Initial data request. BBC requested the following information for all contracts that the BGPAA awarded during the January 1, 2005 – December 31, 2009 study period:

- Contract number or name;
- Bidders list for the contract;
- Bid tabulations;
- Contract execution date;
- Name of prime contractor or vendor that performed the work;
- Vendor information including all contact information, DBE status, race and gender ownership information;
- Contract amount;
- Change order amount (if applicable);
- Description of work; and
- Funding source (e.g., whether FAA-funded or entirely non-FAA-funded).

BBC requested similar information about subcontracts that were associated with each contract. As described below, most of this information was not available in BGPAA electronic records. BBC used a variety of information sources to compile contract, subcontract and vendor data.

Contract data. A number of sources were important in compiling the BGPAA contract data.

- BGPAA identified contracts executed within the study period from electronic data kept by the BGPAA Purchasing Department. From these data, the Authority developed a list of contract numbers for study period construction, engineering, and goods and services contracts.
- GCAP Services collected available hard copy data for construction and professional service agreements from files maintained by the BGPAA Purchasing Department. This information included contract and change order amounts.
- For goods and services purchase orders and blanket purchase orders, the BGPAA Accounting Department provided the study team the total dollars the Authority paid to each vendor for each purchase order or blanket purchase order through the study period.
- For each contract, the Accounting Department also identified whether or not it was FAA-funded.

Subcontract data. The BBC study team sought names and dollar amounts for subcontractors involved in BGPAA for construction and engineering-related contracts. Based on information provided from BGPAA, there was little or no subcontracting on goods and other services contracts.

After reviewing bid documents and payment invoices maintained in Authority files for construction and engineering-related contracts, BBC determined that additional subcontract information was needed from the prime contractors performing those contracts. BBC submitted a data request to prime contractors on BGPAA construction and engineering contracts and used available BGPAA information to verify the information provided by prime contractors. As described below, BBC determined subcontractors and subcontract amounts from available BGPAA records when the prime contractor performing the contract did not respond to the data request.

Data provided by prime contractors. The study team sent a data request to the prime contractor of every BGPAA construction and engineering-related agreement executed within the study period. Prime contractors were asked to provide the following information for each subcontract:

- Contract number;
- Contract date;
- Project description;
- Name of subcontractor;
- Subcontractor contact information;
- Amount budgeted for each subcontractor;
- Amount paid to date for each subcontractor; and
- The subcontractor work type.

Bid documents. Documents from bid packages were available for some BGPAA construction and engineering contracts that were awarded during the study period. In most cases, they included the following information:

- Contract number;
- Bid date;
- Project description;
- Name of prime contractor;
- Name of subcontractor(s);
- Contract amount; and
- Dollars and/or percentages committed to each firm.

Payment invoices. Hard copy invoices were available for some BGPAA contracts that were awarded during the study period. In most cases, hard copy invoice data included the following information:

- Contract number;
- Contract date;
- Project description;
- Name of prime contractor;
- Prime contractor contact info;
- Name of subcontractor(s);
- Subcontractor(s) contact info; and
- Dollars paid to each subcontractor.

Vendor data. After collecting contract data, BBC obtained information about the vendors that performed work or provided goods to the Authority, including:

- Primary line of work;
- DBE/MBE/WBE status and race/ethnicity/gender of ownership;
- Address and phone number;
- Year in which the firm was established; and
- Firm size.

The study team obtained information about vendors from Dun & Bradstreet, telephone interviews with vendors, the California Unified Certification Program (CUCP) and data from BBC's 2007 Availability and Disparity Study for Caltrans, the 2009 Southern California Regional Disparity Study and the 2010 San Diego County Regional Airport Authority Disparity Study.

In most instances, BBC classified the type of work performed on a contract based on the primary line of work of the firm. As a result, many BGPAA goods and services purchase orders or blanket purchase

orders were classified as a type of construction or engineering-related work for purposes of the disparity study. (BBC often finds small construction- and engineering-related procurements at public agencies to be handled in a similar way to what we found at BGPAA.) Two hundred and seventeen vendors that performed work for the BGPAA under a purchase order or a blanket purchase order had a primary line of work that was construction-related. Likewise, 65 of these vendors had a primary line of work related to engineering-related services. These vendors were analyzed as construction or engineering-related businesses for purposes of the disparity study.

B. Subindustries Typically not Included in Disparity Analyses

The study team identified and excluded procurements from the utilization, availability and disparity analyses that did not involve the planning, design, building, maintenance or repair of transportation infrastructure. For example, firms that provided newspaper services or office furniture were not included in the final analyses. The study team also excluded procurements belonging to one of the following subindustries that BBC does not typically include in a disparity study.

- **Government, not-for-profit organizations or associations**, which represent organizations that are not “owned”;
- **Educational, social or medical services**, which represent markets that are dominated by public and nonprofit organizations;
- **Utilities, waste management and broadcast and communications services**, which typically represent government-regulated industries (often regulated monopolies);
- **Banking and insurance**, which typically represent national or international markets and often involve payments that do not fit the definition of a “procurement”;
- **Real estate transactions**, which typically represent real property purchases or leases;
- **Legal services**, which often include large payments for real property purchases, leases or legal settlements; and
- **Computers, software and publishing**, which are produced and distributed by a single national or international source and are typically subject to copyright laws.

After identifying the primary line of work that each utilized vendor performs, a number of contracts or subcontracts were excluded from the final analyses based upon the above criteria. Most were goods and services purchase orders and blanket purchase orders — of the purchase orders and blanket purchase order awarded by the BGPAA within the study period, 349 were awarded to vendors that have a main line of work that is not typically included in a disparity study. These procurement pieces were excluded from the analyses.

C. BGPAA Agency review

After BBC collected contract, subcontract and firm data, the study team compiled the information into tables submitted to the BGPAA staff for review. BBC used BGPAA feedback to finalize contract and vendor data.

D. Case Study Data

The study team examined case studies of the bidding process for past construction contracts at BGPAA. (As case study data were only available for construction contracts, the analysis did not include engineering or goods and services procurements.) For the case study analysis, the study team attempted to obtain bid and other information from procurement files for all construction agreements executed by the BGPAA within the study period.

For each construction agreement, BBC and GCAP Services attempted to collect information about any firm that bid on the procurement — including bid amounts and contract award when available. Pre-bid conference sign-in sheets and bid tabulations were also compiled.

The study team collected as much information as was available in the procurement files for each agreement. BBC collected certain bid and firm information for 49 of 58 construction agreements executed within the study period.

APPENDIX C.

Collection of Availability Information

The study team analyzed MBE/WBE availability for BGPAA construction, professional services and goods and services contracts and subcontracts. Appendix C expands on the analysis presented in Section 4 by reviewing:

- A. Overall approach; and
- B. Development of the survey instrument.

A. Overall Approach

In the disparity study for the Authority and recent disparity studies for Caltrans, Los Angeles County Metropolitan Transportation Authority, San Diego County Regional Airport Authority and other Southern California transportation agencies, BBC collected information about the firms available to perform transportation contracts through telephone interviews with local business owners and managers. In each study, BBC contracted with Customer Research International (CRI) to conduct these telephone interviews. The business establishments interviewed were those identified in a Dun & Bradstreet (D&B) database as doing work in fields closely related to the types of construction, professional services and goods and services work related to transportation contracts at these agencies. D&B strives to list every company in business — its list of businesses and phone numbers represents the most comprehensive list of business establishments BBC could obtain.

Four sets of telephone interviews examined in the availability analysis for BGPAA. As discussed in Chapter 4, BBC integrated responses from four sets of telephone interviews conducted by Customer Research International (CRI) under BBC's direction.

1. The first set was conducted in 2006 and 2007 with transportation construction and engineering firms for the Caltrans Availability and Disparity Study.
2. In 2008 and 2009, the BBC study team conducted a second group of interviews as part of the Southern California Regional Disparity Study. These interviews were with firms in subindustries important to local transit agency construction, professional services and goods and services contracts that were not included in the Caltrans availability survey.
3. The third set of interviews (in 2008 and 2009) was with Southern California firms in subindustries especially relevant to the San Diego County Regional Airport Authority. Firms in the third set of interviews were in subindustries not specifically examined in the availability analysis in the Caltrans study or the Southern California Regional Disparity Study.

4. The fourth set of interviews was completed in 2011 as part of the BGPAA study. These interviews captured additional sets of firms in subindustries relevant to Authority contracts that were not included in the previous three studies. Each of these additional subindustries pertained to goods or construction materials.

1. Firms interviewed in the Caltrans Availability and Disparity Study. One portion of the BGPAA availability database comes from Los Angeles area transportation construction and engineering firms that BBC contacted as part of the Caltrans Availability and Disparity Study completed in 2007. BBC included businesses from the Caltrans study that (a) had locations in the Los Angeles area, (b) reported working within subindustries relevant to Authority contracts, and (c) indicated that they were available for local government transportation projects. Businesses meeting these criteria were included in the database of companies potentially available for BGPAA work. (As discussed later in Chapter 4, firms had to also meet other criteria to be available for individual Authority prime contracts or subcontracts of certain types, sizes and timeframes.)

2. Firms interviewed in the Southern California Regional Disparity Study. A second portion of the BGPAA availability database is comprised of Los Angeles area transportation construction, engineering, and goods and services firms that BBC contacted as part of the Southern California Regional Disparity Study. BBC conducted availability interviews in 2008 and 2009 in this study for five transportation agencies that included the Los Angeles County Metropolitan Transportation Authority.

The Regional Disparity Study encompassed some types of transportation contracting work relevant to the five transportation agencies that were not a part of the Caltrans availability interviews (e.g., security services). Therefore, firms in certain subindustries not included in the Caltrans study were interviewed in the Regional Disparity Study.

In addition, BBC attempted to identify and contact each firm in the transportation contracting industry in Southern California that Dun & Bradstreet identified as new since the telephone interviews for the Caltrans study.

Results of interviews with firms with locations in the Los Angeles area are included in the availability database for the BGPAA disparity study.

3. Firms interviewed as part of the SDCRAA study. The third part of the availability database for the BGPAA disparity study comes from telephone interviews with Los Angeles area firms performed in the disparity study for the San Diego County Regional Airport Authority (SDCRAA).

Most of the firms included in the availability information for the SDCRAA disparity study were from the previous Caltrans study and the Southern California Regional Disparity Study. However, some subindustries relevant to airport contracts had not been examined in the previous disparity studies (e.g., firms providing sound insulation services). Firms in these additional subindustries were surveyed in the SDCRAA study. These telephone interviews were conducted in 2008 and 2009.

Because the SDCRAA interviews were conducted throughout Southern California, BBC was able to include the availability data collected for Los Angeles area firms in the BGPAA study.

4. Firms interviewed as part of the BGPAA study. Similar to the SDCRAA study, BBC identified some subindustries involved in BGPAA contracts and subcontracts that were not examined in the availability analyses for any of the previous BBC disparity studies discussed above. BBC generated availability information for these subindustries through a new wave of telephone interviews with local firms. As part of the additional availability research in the BGPAA study, the BBC study team successfully contacted 72 firms in the Los Angeles area.

Only firms with locations in the Los Angeles area were included in the availability database. In the availability analysis for the BGPAA study, only firms with locations in the Los Angeles Consolidated Metropolitan Statistical Area were examined, as this is the relevant geographic market area for Authority contracting.¹ Chapter 1 of the report discusses the definition of the relevant geographic market area in more detail.

Number of additional businesses contacted in BGPAA study. In each of the four sets of availability surveys, the BBC study team attempted to contact every listing in relevant industry codes rather than drawing a sample of listings from the D&B database. As part of the BGPAA disparity study, the additional subindustries examined in the availability analysis included 215 business establishments in the Los Angeles area. CRI attempted to reach each of these 215 establishments and was able to complete interviews with 72 firms.² The number of completed interviews with firms was less than the initial number of establishment listings because:

- 68 listings were non-working phone numbers and 15 listings were wrong numbers for the desired businesses;
- Twenty of these business establishments could not be reached after a minimum of five phone calls (call-backs to these business establishments were made at different times of day and different days of the week in order to maximize response);
- Twenty-five of these business establishments could not provide a staff member to answer the survey after a minimum of five phone calls;
- For one of these business establishments, there were no representatives available who could complete the survey in English; and
- Fourteen establishments asked the study team to send the survey via fax or e-mail but did not successfully obtain the fax or e-mail (after multiple attempts) or received the survey but did not return a completed survey to BBC.

Therefore, the interviews do not comprise a complete census of all firms possibly available for BGPAA work. The study team's objective was to develop accurate, unbiased estimates of the relative availability of minority- and women-owned firms (MBE/WBEs) among firms doing business in the Los Angeles area within the lines of work principally involved in BGPAA contracts and subcontracts.

¹ Defined by the U.S. Bureau of the Census as Los Angeles, Orange, San Bernardino, Riverside and Ventura counties.

² A firm can have multiple establishments. In the availability analysis, BBC combined responses from multiple establishments into one response for the firm.

Number of businesses included in the final availability analysis for BGPAA. Of the 72 firms successfully reached in the surveys conducted in the BGPAA study, 29 indicated that they were qualified and interested in local agency contracts and answered other questions such that BBC included the firms in the availability analysis for BGPAA work.

Including firms from each of the other three datasets, and after screening for qualifications and interest in work with government agencies, BBC analyzed MBE/WBE availability for BGPAA contracts and subcontracts from a database of 1,582 firms. The fundamental availability criteria for inclusion were:

- Willingness to perform work related to transportation contracting (in the lines of business pertinent to this study and after combining multiple responses for firms with more than one office);
- Indication of qualifications and interest in performing work for local agencies in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Have performed or bid on work in the past (in the public or private sector); and
- Have an office in the Los Angeles area.

Figure C-1 shows the subindustries examined according to D&B's eight-digit codes after inclusion of the surveys completed for the BGPAA study.

Figure C-1.
Industries included in the availability interviews

Industry code	Industry description	Industry code	Industry description
Construction			
Heavy construction		Construction materials	
1611-0000	Highway and street construction	2951-0000	Asphalt paving mixtures and blocks
1611-0200	Surfacing and paving	2951-0201	Asphalt and asphaltic paving mixtures (not from refineries)
1611-0203	Grading	3089-0322	Windows, plastics
1611-0204	Highway and street paving contractor	3272-0000	Concrete products, nec
1611-9901	General contractor, highway and street construction	3272-0303	Concrete products, precast, nec
1611-9902	Highway and street maintenance	3441-0000	Fabricated structural metal
1629-9902	Earthmoving contractor	3449-0101	Bars, concrete reinforcing: fabricated steel
1771-0000	Concrete work	3669-0200	Transportation signaling devices
1771-0301	Blacktop (asphalt) work	3669-0206	Traffic signals, electric
1795-9901	Concrete breaking for streets and highways	5031-0300	Doors and windows
		7353-0000	Heavy construction equipment rental
Building construction		Electrical work	
1541-0000	Industrial buildings and warehouses	1731-0000	Electrical work
1541-9905	Industrial buildings, new construction, nec	1731-0100	Electric power systems contractors
1541-9908	Prefabricated building erection, industrial	1731-0300	Communications specialization
1541-9909	Renovation, remodeling and repairs: industrial buildings	1731-9903	General electrical contractor
1541-9910	Steel building construction	1731-9904	Lighting contractor
1542-0000	Nonresidential construction, nec		
1542-0100	Commercial and office building contractors	Wrecking and demolition	
1542-0101	Commercial and office building, new construction	1781-0000	Water well drilling
1542-0103	Commercial and office buildings, renovation and repair	1794-0000	Excavation work
1542-9901	Custom builders, non-residential	1794-9901	Excavation and grading, building construction
1542-9902	Design and erection, combined: non-residential	1795-0000	Wrecking and demolition work
1542-9903	Institutional building construction	1795-9902	Demolition, buildings and other structures
1791-0000	Structural steel erection		
7699-2501	Elevators: Inspection, service, and repair	Water, sewer, and utility lines	
Soundproofing		1623-0000	Water, sewer, and utility lines
1742-0200	Acoustical and insulation work	1623-0201	Cable laying construction
1742-0203	Insulation, buildings	1623-0300	Water and sewer line construction
1751-0200	Window and door installation and erection	1623-0302	Sewer line construction
		1623-9906	Underground utilities contractor
Trucking			
4212-0000	Local trucking, without storage		
4213-0000	Trucking, except local		
Professional services			
Engineering		Environmental and planning services	
8711-0000	Engineering services	0781-0201	Landscape architects
8711-0400	Construction and civil engineering	8713-0000	Surveying services
8711-0401	Building construction consultant	8731-0302	Environmental research
8711-0402	Civil engineering	8742-0410	Transportation consultant
8711-0404	Structural engineering	8748-0200	Urban planning and consulting services
8711-9903	Consulting engineer	8748-0204	Traffic consultant
8711-9905	Electrical or electronic engineering	8748-9905	Environmental consultant
8712-0101	Architectural engineering	8999-0700	Earth science services
Testing and laboratory services		Construction management	
7389-0200	Inspection and testing services	8741-9902	Construction management
8734-0000	Testing laboratories		

Figure C-1. (continued)
Industries included in the availability interviews

Industry code	Industry description	Industry code	Industry description
Goods and services			
Cleaning and janitorial services		Security services	
1799-0501	Cleaning building exteriors, nec	7381-0104	Protective services, guard
7349-0102	Building maintenance, except repairs	7381-0105	Security guard service
		7382-0000	Security systems services
Communications equipment			
5065-0200	Communication equipment		

Note: 8-digit SIC codes were developed by Dun & Bradstreet.

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

B. Survey Instrument

The study team drafted a telephone interview guide to collect business information from the additional subindustries surveyed in the BGPAA study. BBC has successfully used similar questionnaires as part of other disparity studies. The basic interview document is provided in Figure C-2 at the end of this appendix. The questionnaire was slightly modified for certain groups of firms based on line of work in order to use the terms commonly employed in those fields.

A fax/email version of the questionnaire was developed for firms that, once contacted, preferred to complete the questionnaire in hard copy format. Those firms returned completed questionnaires to BBC via fax or e-mail.

Interview structure. Questions in each section of the survey were asked of all firms. Interviewers did not know race/ethnicity/gender ownership status when calling a firm. The questionnaires included the following sections.

Identification of purpose. The interviews began by identifying the BGPAA as the survey sponsors and by describing the purpose of the study.

Verification of correct firm name. The interviewer verified that he or she had reached the correct business, and if not, inquired about the correct contact information for that business. When the firm name was not correct, interviewers asked if the respondent knew how to contact the company. The BBC study team followed up with the desired company based on the new contact information (see areas “X” and “Y” of the Availability Questionnaire in Figure C-2).

Goods or services provided. Firms were asked, “First, I want to confirm that your firm does provide goods or construction materials. Is this correct?” Interviewers continued with firms responding “yes” to this question (Question A1).

Verification of for-profit business status. The interviewer also asked whether the organization was a for-profit business as opposed to a government or not-for-profit entity (Question A2). Interviewers continued with firms responding “yes” to this question.

Confirmation of main line of business. Firms were asked to confirm their primary line of business according to D&B records (Question A3). Firms seeking to change or clarify this description were then asked to identify their primary line of business (Question A4). (After the interview was complete, BBC coded the new information on primary line of business into appropriate industry codes.)

Sole location, or multiple locations. Because the study team interviewed business establishments, business owners and managers were asked if they had other locations (Question A5). They were also asked if the establishment was an affiliate or subsidiary of another firm (Question A8). (A discussion of how BBC consolidated this information into a single response for a firm is presented later in this appendix.)

Past bids or work with governments and the private sector. The interviewer inquired about bids or work on past government and private sector projects. This area of questions also asked whether the firm had bid or worked as a prime contractor or as a subcontractor or supplier (Questions B1–B12).

Qualifications and interest in future construction work. Firm representatives were asked about their qualifications and interest in future work for local agencies in California or for contractors doing work for local agencies (Question B13).

Year firm established. Interviewers asked firms to identify the approximate year that the firm was established (Question D1).

Largest contracts. Interviewers asked firms to identify the largest contract or order they had been awarded in California in the past five years. They were also asked about the largest contract or order that they had bid on or submitted quotes for in California in the past five years (Questions D2–D4).

Ownership. Firms were asked whether they were at least 51 percent owned and controlled by women and/or minorities (Questions E1–E3). If firms indicated that they were minority-owned, they were also asked about the race/ethnicity of ownership.

Business background. Several questions collected information on revenues and number of employees (Questions F1–F6). For firms with multiple establishments, the interview also asked about revenue and employee numbers for all locations.

Comments about the marketplace and doing business as a prime or subcontractor. The interview included an open-ended question about the marketplace (Question G1): “Finally, we're asking for general insights on starting and expanding a business in your field or winning work with state or local agencies. Do you have any thoughts to offer on these topics?”

Contact information. The interview concluded by collecting complete contact information for the establishment (Questions H1–H6).

Figure C-2. Interview Instrument [Goods]

Burbank-Glendale-Pasadena Airport Authority Disparity Study Availability Survey Instrument [Insulation & Acoustical Work]

Hello. My name is [*interviewer name*] from CRI. We are calling on behalf of the Burbank-Glendale-Pasadena Airport Authority.

We are developing a list of companies interested in providing insulation and acoustical work to the Airport Authority or to prime contractors working with the Airport Authority. With whom can I speak to get the information we need from your firm?

[AFTER REACHING THE OWNER OR AN APPROPRIATELY SENIOR STAFF MEMBER, THE INTERVIEWER SHOULD RE-INTRODUCE THE PURPOSE OF THE SURVEY AND BEGIN WITH QUESTIONS]

[IF ASKED, THE INFORMATION DEVELOPED IN THESE INTERVIEWS WILL ADD TO EXISTING AIRPORT AUTHORITY DATA ON COMPANIES INTERESTED IN WORKING WITH THE AIRPORT IN THE FUTURE]

X1. I have a few basic questions about your company and the type of work you do. Can you confirm that this is [*firm name*]?

- 1=RIGHT COMPANY – SKIP TO A1
- 2=NOT RIGHT COMPANY – GO TO Y1
- 3=REFUSE TO GIVE INFORMATION – TERMINATE

Y1. Can you give me any information about [*firm name*]?

- 1=Yes, same owner doing business under a different name – SKIP TO Y4
- 2=Yes, can give information about named company – GO TO Y2
- 3=Company bought/sold/changed ownership – SKIP TO Y4
- 4=No, does not have information – TERMINATE
- 5=Refused to give information – TERMINATE

Y1. ENTER NEW NAME

- 1=VERBATIM

Y2. Can you give me the phone number of [*firm name*]?

(ENTER UPDATED PHONE OF NAMED COMPANY)

1=VERBATIM

Y3. Can you give me the complete address or city for [*firm name*]?

INTERVIEWER - RECORD IN THE FOLLOWING FORMAT:

. STREET ADDRESS

. CITY

. STATE

. ZIP

1=VERBATIM

Y4. And what is the new name of the business that used to be [*firm name*]?

(ENTER UPDATED NAME)

1=VERBATIM

Y5. Can you give me the name of the owner or manager of the new business?

(ENTER UPDATED NAME)

1=VERBATIM

Y6. Can I have a telephone number for them?

(ENTER UPDATED PHONE)

1=VERBATIM

Y7. Can you give me the complete address or city for [*new firm name*]?

1=VERBATIM

Y8. Do you work for this new company?

1=YES - CONTINUE

2=NO - TERMINATE

A1. First, I want to confirm that your firm does work related to installing windows, doors, insulation or other soundproofing or acoustical materials. Is this correct?

(NOTE TO INTERVIEWER) – INCLUDES ANY WORK RELATED TO ACOUSTICAL INSULATION AND SOUNDPROOFING FOR RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR PUBLIC BUILDINGS.

(NOTE TO INTERVIEWER) – INCLUDES HAVING DONE WORK OR TRYING TO SELL THIS WORK

1=Yes

2=No - TERMINATE

A2. Let me confirm that [*firm name / new firm name*] is a business, as opposed to a non-profit organization, a foundation or a government office. Is that correct?

1=Yes, a business

2=No, other - TERMINATE

A3. Let me also confirm what kind of business this is. The information we have from Dun & Bradstreet indicates that your main line of business is [*SIC Code description*]. Is this correct?

(NOTE TO INTERVIEWER) - IF ASKED, DUN & BRADSTREET OR D&B, IS A COMPANY THAT COMPILES BUSINESS INFORMATION THROUGHOUT THE COUNTRY

1=Yes – SKIP TO A5

2=No

98=(DON'T KNOW)

99=(REFUSED)

A4. What would you say is the main line of business at [*firm name / new firm name*]?

(ENTER VERBATIM RESPONSE)

1=VERBATIM

A5. Is this the sole location for your business, or do you have offices in other locations?

1=Sole location

2=Have other locations

98=(DON'T KNOW)

99=(REFUSED)

A8. Is your company a subsidiary or affiliate of another firm?

1=Independent – SKIP TO B1

2=Subsidiary or affiliate of another firm

98=(DON'T KNOW) – SKIP TO B1

99=(REFUSED) – SKIP TO B1

A9. What is the name of your parent company?

1=ENTER NAME

98=(DON'T KNOW)

99=(REFUSED)

A9. Enter name of parent company

1=VERBATIM

B1. Next, I have a few questions about your company's role in installing windows, doors, insulation or other soundproofing or acoustical materials. During the past five years, has your company submitted a bid or a price quote for any part of a contract for a public agency in California?

1=Yes

2=No – SKIP TO B3

98= (DON'T KNOW) – SKIP TO B3

99= (REFUSED) – SKIP TO B3

B2. Were those bids or price quotes to work as a prime contractor, a subcontractor, or as a supplier?

1=Prime contractor/consultant

2=Subcontractor/subconsultant

3=Supplier (or manufacturer)

4=Prime and Sub

5=Sub and Supplier

6=Prime and Supplier

7=Prime, Sub, and Supplier

8=Trucker

9=Supplier and Trucker

10=Prime and Trucker

11=Sub and Trucker

12=Prime, Supplier, and Trucker

13=Sub, Supplier, and Trucker

14=Prime, Sub, and Trucker

15=Prime, Sub, Supplier, Trucker

98=(DON'T KNOW)

99=(REFUSED)

B3. During the past five years, has your company received an award for work as a prime contractor or as a subcontractor for any part of a contract for a public agency in California?

1=Yes

2=No – SKIP TO B9

98=(DON'T KNOW) – SKIP TO B9

99=(REFUSED) – SKIP TO B9

B4. Were those awards to work as a prime contractor, a subcontractor, or a supplier?

- | | |
|-------------------------------|----------------------------------|
| 1=Prime contractor/consultant | 9=Supplier and Trucker |
| 2=Subcontractor/subconsultant | 10=Prime and Trucker |
| 3=Supplier (or manufacturer) | 11=Sub and Trucker |
| 4=Prime and Sub | 12=Prime, Supplier, and Trucker |
| 5=Sub and Supplier | 13=Sub, Supplier, and Trucker |
| 6=Prime and Supplier | 14=Prime, Sub, and Trucker |
| 7=Prime, Sub, and Supplier | 15=Prime, Sub, Supplier, Trucker |
| 8=Trucker | 98=(DON'T KNOW) |
| | 99=(REFUSED) |

B9. During the past five years, has your company submitted a bid or a price quote for any part of a private sector contract in California?

- 1=Yes
- 2=No – SKIP TO B11
- 98=(DON'T KNOW) – SKIP TO B11
- 99=(REFUSED) – SKIP TO B11

B10. Were those bids or price quotes to work as a prime contractor, a subcontractor, or a supplier?

- | | |
|-------------------------------|----------------------------------|
| 1=Prime contractor/consultant | 9=Supplier and Trucker |
| 2=Subcontractor/subconsultant | 10=Prime and Trucker |
| 3=Supplier (or manufacturer) | 11=Sub and Trucker |
| 4=Prime and Sub | 12=Prime, Supplier, and Trucker |
| 5=Sub and Supplier | 13=Sub, Supplier, and Trucker |
| 6=Prime and Supplier | 14=Prime, Sub, and Trucker |
| 7=Prime, Sub, and Supplier | 15=Prime, Sub, Supplier, Trucker |
| 8=Trucker | 98=(DON'T KNOW) |
| | 99=(REFUSED) |

B11. During the past five years, has your company received an award for work as a prime contractor or as a subcontractor for any part of a private sector contract in California?

1=Yes

2=No – SKIP TO B13

98=(DON'T KNOW) – SKIP TO B13

99=(REFUSED) – SKIP TO B13

B12. Were those awards to work as a prime contractor, a subcontractor, or a supplier?

1=Prime contractor/consultant

9=Supplier and Trucker

2=Subcontractor/subconsultant

10=Prime and Trucker

3=Supplier (or manufacturer)

11=Sub and Trucker

4=Prime and Sub

12=Prime, Supplier, and Trucker

5=Sub and Supplier

13=Sub, Supplier, and Trucker

6=Prime and Supplier

14=Prime, Sub, and Trucker

7=Prime, Sub, and Supplier

15=Prime, Sub, Supplier, Trucker

8=Trucker

98=(DON'T KNOW)

99=(REFUSED)

B13. Is your company qualified and interested in working with city, county or local agencies in California as a prime contractor?

3=Yes

4=No

98=(DON'T KNOW)

99=(REFUSED)

B14. Is your company qualified and interested in working with city, county or local agencies in California as a subcontractor or supplier?

3=Yes

4=No

98=(DON'T KNOW)

99=(REFUSED)

D1. About what year was your firm established?

(RECORD FOUR-DIGIT YEAR, I.E. '1977')

(9998 = DON'T KNOW)

(9999 = REFUSED)

1=NUMERIC (1600-2008)

D2. In rough dollar terms, what was the largest contract or subcontract your company was awarded in California during the past five years?

(NOTE TO INTERVIEWER: INCLUDES CONTRACTS NOT YET COMPLETE AND CONTRACTS OR SUBCONTRACTS WITH PUBLIC OR PRIVATE SECTOR)

(READ CATEGORIES IF NECESSARY)

1=\$100,000 or less

2=More than \$100,000 to \$500,000

3=More than \$500,000 to \$1 million

4=More than \$1 million to \$2 million

5=More than \$2 million to \$5 million

6=More than \$5 million to \$10 million

7=More than \$10 million to \$20 million

8=More than \$20 million

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)

D3. Was this the largest contract or subcontract that your company bid on or submitted quotes for in California during the past five years?

1=Yes – SKIP TO E1

2=No

98=(DON'T KNOW) – SKIP TO E1

99=(REFUSED) – SKIP TO E1

D4. What was the largest contract or subcontract that your company bid on or submitted quotes for in California during the past five years?

(READ CATEGORIES IF NECESSARY)

1=\$100,000 or less

2=More than \$100,000 to \$500,000

3=More than \$500,000 to \$1 million

4=More than \$1 million to \$2 million

5=More than \$2 million to \$5 million

6=More than \$5 million to \$10 million

7=More than \$10 million to \$20 million

8=More than \$20 million

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)

E1. My next questions are about the ownership of the business. A business is defined as woman-owned if more than half - that is, 51 percent or more - of the ownership and control is by women. By this definition, is [*firm name* / *new firm name*] a woman-owned business?

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

E2. A business is defined as minority-owned if more than half - that is, 51 percent or more - of the ownership and control is African American, Asian, Hispanic, Native American or another minority group. By this definition, is [*firm name* || *new firm name*] a minority-owned business?

1=Yes

2=No – SKIP TO F1

3=(OTHER GROUP - SPECIFY)

98=(DON'T KNOW)

99=(REFUSED)

E2. OTHER GROUP - SPECIFY

1=VERBATIM

E3. Would you say that the minority group ownership is mostly African American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, or Native American?

1=African-American

2=Asian Pacific American (persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia(Kampuchea),Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Common-wealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race)

4=Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)

5=Subcontinent Asian American (persons whose Origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka)

6=(OTHER - SPECIFY)

98=(DON'T KNOW)

99=(REFUSED)

E3. OTHER - SPECIFY

1=VERBATIM

F1. Dun & Bradstreet indicates that your company has about [number] employees working out of just your location. Is that a fairly accurate average thinking about all of 2010?

(NOTE TO INTERVIEWER) - INCLUDES EMPLOYEES WHO WORK AT THAT LOCATION AND THOSE WHO WORK FROM THAT LOCATION

1=Yes – SKIP TO F3

2=No

98=(DON'T KNOW)

99=(REFUSED) – SKIP TO F3

F2. About how many employees did you have working out of just your location, on average, over the course of 2010?

(RECORD NUMBER OF EMPLOYEES)

1=NUMERIC (1-999999999)

F3. Dun & Bradstreet lists the annual gross revenue of your company, just considering your location, to be [dollar amount]. Is that accurate for 2010?

1=Yes – SKIP TO F5

2=No

98=(DON'T KNOW)

99=(REFUSED) – SKIP TO F5

F4. Roughly, what was the gross revenue of your company, just considering your location, in 2010? Would you say . . . (READ LIST)

1=Less than \$200,000

2=\$200,000 - \$499,999

3=\$500,000 - \$999,999

4=\$1 Million - \$2.49 Million

5=\$2.5 Million - \$4.9 Million

6=\$5 Million - \$9.9 Million

7=\$10 Million - \$24.9 Million

8=\$25 Million - \$49.9 Million

9=\$50 Million or more

98=(DON'T KNOW)

99=(REFUSED)

F5. For 2010, about how many employees did you have, on average, for all of your California locations?

1=(ENTER RESPONSE)

98=(DON'T KNOW)

99=(REFUSED)

F5. RECORD NUMBER OF EMPLOYEES

1=VERBATIM

F6. Roughly, what was the gross revenue of your company, for all of your California locations in 2010? Would you say . . . (READ LIST)

1=Less than \$200,000

2=\$200,000 - \$499,999

3=\$500,000 - \$999,999

4=\$1 Million - \$2.49 Million

5=\$2.5 Million - \$4.9 Million

6=\$5 Million - \$9.9 Million

7=\$10 Million - \$24.9 Million

8=\$25 Million - \$49.9 Million

9=\$50 Million or more

98=(DON'T KNOW)

99=(REFUSED)

G1. Finally, we're asking for general insights on starting and expanding a business in your field or winning work as a prime or subcontractor. Do you have any thoughts to offer on these topics?

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97= (NOTHING/NONE/NO COMMENTS)

98= (DON'T KNOW)

99= (REFUSED)

G3. Would you be willing to participate in a follow-up interview about any of these issues?

1=Yes

2=No

98= (DON'T KNOW)

99= (REFUSED)

H1. Just a few last questions. What is your name and position at [*firm name / new firm name*]?

(RECORD FULL NAME)

1=VERBATIM

H2. What is your position?

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

9=(OTHER - SPECIFY)

99=(REFUSED)

H2. OTHER - SPECIFY

1=VERBATIM

H3. For purposes of receiving any Burbank-Glendale-Pasadena Airport Authority materials, is your mailing address [*firm address*]:

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

H4. What mailing address should they use to get any materials to you?

1=VERBATIM

H5. What fax number should they use to get any materials to you?

1=ENTER FAX

97=(NO FAX NUMBER)

98=(DON'T KNOW)

99=(REFUSED)

H5. ENTER FAX NUMBER

1=NUMERIC (1000000000-9999999999)

H6. What e-mail address should they use to get any materials to you?

1=ENTER E-MAIL

97=(NO EMAIL ADDRESS)

98=(DON'T KNOW)

99=(REFUSED)

H6. (RECORD EMAIL ADDRESS) (VERIFY ADDRESS LETTER BY LETTER: EXAMPLE: 'John@CRI-RESEARCH.COM' SHOULD BE VERIFIED AS: J-O-H-N-at-C-R-I-hyphen-R-E-S-E-A-R-C-H-dot-com)

1=VERBATIM

APPENDIX D.

Availability Survey

The study team analyzed MBE/WBE availability for BGPAA construction, professional services and goods and services contracts and subcontracts. Appendix D expands on the analysis presented in Section 4 and Appendix C by explaining:

- A. Analysis of an criteria for available firms; and
- B. Additional considerations.

Criteria to Include Firms as Potentially Available for BGPAA Contracts.

The availability database includes 1,582 firms that meet the criteria to be considered available as prime contractors and/or subcontractors on BGPAA construction, engineering, and goods and services contracts. These fundamental availability criteria include:

- Willingness to perform work related to transportation contracting (in the lines of business pertinent to this study and after combining multiple responses for firms with more than one office);
- Are qualified and interested in performing work for local agencies in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Have performed or bid on work in the past (in the public or private sector); and
- Indicated they have an office in the Los Angeles Metropolitan Area.

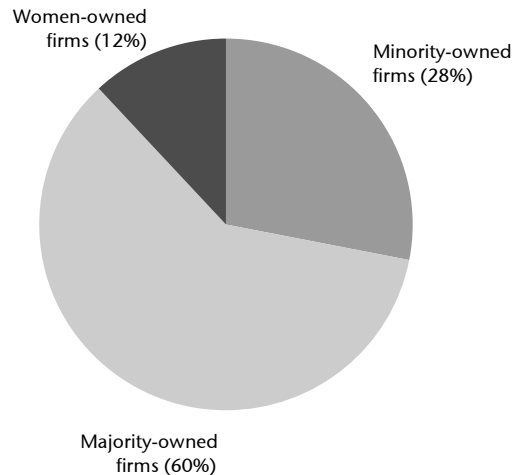
Percentage of Firms Interviewed that are MBE/WBEs

As noted in Appendix C, BBC analyzed MBE/WBE availability for BGPAA contracts and subcontracts from a database of 1,582 firms. Of those firms considered potentially for BGPAA work, 40 percent reported that they were minority- or women-owned (see Figure D-1). As this percentage is based on a simple “headcount” of firms, it is just a starting point for the availability analysis.

Figure D-1.
MBE/WBEs as a share of firms available for BGPAA contracts and subcontracts

Note:
Unweighted.

Source:
BBC Research and Consulting from Availability Interviews.



Determining Availability for Specific BGPAA Contracts and Subcontracts

BBC analyzed the percentage of contract dollars that might be expected to go to MBE/WBEs for specific sets of BGPAA contracts. Firms were counted as available for some prime contracts or subcontracts and not for others depending upon the characteristics of the contract element and the characteristics of the firm.

Information about the BGPAA prime contract or subcontract. For each contract element, the study team identified:

- Contract role (prime contractor or subcontractor);
- Contract size or contract element size;
- Award date for the contract; and
- Work specialty.

Contract role. To be counted as available for a prime contract element, a construction or engineering services-related firm must have indicated that it had bid as a prime contractor within the past five years and that it was qualified and interested in working with local governments as a prime contractor in the future. Similarly, to be counted as available for a subcontract element, a firm must have bid as a subcontractor and express qualifications and interest in future local government work as a subcontractor. Goods and other services firms must have submitted bids and expressed qualifications and interest, but not specifically as a prime contractor or subcontractor.

Contract size. Available firms for subcontract elements were required to have a largest contract status greater than or equal to the size of the contract element. For prime contract elements, available firms needed a largest contract status equal to or greater than the entire contract amount.

Contract date. To be counted as available for a contract element, firms were required to have an establishment date during or before the year in which that prime contract began.

Work specialty. Each contract element was assigned a “work specialty code” based on the main line of work of the firm that actually performed the contract element. BBC determined the work specialty based on the following information:

- Industry code from Dun & Bradstreet;
- Availability or utilization survey response;
- Contract description; and
- Feedback from BGPAA staff.

The majority of contract elements, firms were only counted as available if they were in the same subindustry as the contract element under consideration. In some cases, the subindustry code of a contract element was outside the core areas that were studied in the Availability Survey.

Steps in calculating availability for a set of contracts. For To determine which firms were available for a particular contract element, BBC took the following steps:

1. For each contract element, BBC determined:
 - Type of work;
 - Contract role (prime contract or subcontract);
 - Contract size; and
 - Contract date.
2. BBC then identified firms in the availability database that reported that they:
 - Perform the type of work associated with the contract element;
 - Bid on or performed work in the contract role (prime contractor or subcontractor) associated with the contract element;
 - Have bid on or performed work that matched or exceeded the size of the contract element;
 - Qualifications and interest in doing work for local agencies; and
 - Were in business in the year the contract was awarded.
3. BBC counted the number of MBE/WBEs among all firms available for that specific type of work. For example, there may have been three white women-owned firms, one African American-owned firm and 16 majority-owned firms out of 20 firms available to perform a particular contract element.

4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element. Continuing the above example, if there were three white women-owned firms out of 20 available firms, WBE availability for that contract element would have been 15 percent.
5. BBC weighted the availability for each prime contract and subcontract by the dollars of work corresponding to the contract element. To determine availability for MBE/WBEs overall and for each MBE/WBE group across all BGPAA contract elements in a particular set of contracts, BBC:
 - ▶ Multiplied percentage availability for each group by the dollars associated with a particular contract element, and then repeated that process for all contract elements included in the set;
 - ▶ Added the results across contract elements in the set; and
 - ▶ Divided that sum by the total dollars of all contract elements included in the set to produce dollar-weighted estimates of availability.

BBC used the above contract-by-contract process to determine MBE/WBE availability for each set of contracts and subcontracts examined in the disparity analysis. More than 700 contracts and subcontracts were examined when calculating availability for BGPAA.

E. Additional Considerations

The study team explored several possible limitations in its approach to estimating relative availability. They include:

- Assessing relative MBE/WBE availability and not providing a count of all firms available for BGPAA work;
- Use of D&B as the sample frame;
- Selection of specific industry;
- Non-response bias;
- Language; and
- Reliability of answers to interview questions.

Not providing a count of all firms available for BGPAA work. The purpose of the availability interviews was to estimate the *percentage* of firms available for BGPAA construction, engineering, and goods and services work that were minority- and women-owned and controlled (i.e., “relative” MBE/WBE availability). The interviews provided such information. The interviews do not provide a comprehensive listing of every firm available for BGPAA work and should not be used as such.

The interview approach of measuring relative availability has been approved by federal courts (see, for example, the Seventh Circuit decision on *Northern Contracting*) when considering state

implementation of the Federal DBE Program.¹ Use of a survey is recommended as an approach to measuring availability in the USDOT guidance on goal-setting.²

Use of D&B list. D&B provides the most comprehensive private database of business listings in the United States. Even so, this database does not include all establishments operating in the Los Angeles area:

- **New firms.** There can be a lag between formation of a new business and inclusion in the database. This means that the newest firms are underrepresented in the sample frame. Based on the firms successfully interviewed, newly formed firms are more likely than older firms to be minority- or women-owned, which suggests that MBEs and WBEs might be slightly underrepresented in the final database of interviewed firms.
- **Home-based businesses.** The D&B database is more likely to miss a business working out of the home than a firm with a distinct business office. Small, home-based firms are more likely than large firms to be MBE/WBEs, which again suggests that MBEs and WBEs might be slightly underrepresented in the final availability data set.

Selection of specific industry. Defining an industry based on specific industry codes (e.g., SIC, NAICS or D&B industry codes) is a standard step when analyzing an economic sector. Government and private sector economic data are typically organized according to industry codes. As with any such research, there are limitations when choosing the specific industry codes to define sets of establishments to be interviewed. For example, it was not possible for BBC to include all industries possibly related to construction and construction-related professional services work without interviewing firms in nearly every industry in the Los Angeles area.

A further limitation to the use of D&B codes to classify businesses, or any other work type classification method, is that some codes are imprecise and overlap with other business specialties. Even though BBC used D&B's own 8-digit industry codes, D&B does not maintain a detailed 8-digit code for each firm in its database. When firm owners and managers were asked to identify primary lines of business, they often gave broad answers. For these reasons, BBC collapsed many of the industry codes into broader work categories in the final database of firms available for construction and construction-related professional services work.

Non-response bias. Analysis of non-response bias considers whether firms not successfully interviewed are different from those successfully interviewed and included in the final data set. There are opportunities for non-response bias in any primary research effort. The study team considered the potential for non-response bias due to:

- Research sponsorship; and
- Work specializations.

Research sponsorship and introduction. Interviewers introduced themselves by identifying the BGPAA as interview sponsors in order to encourage firms that performed construction and

¹ *N. Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007)

² USDOT. *Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program* (<http://osdbu.dot.gov/?TabId=133>)

construction-related professional services work to participate in the interview. Firms would be less likely to answer somewhat sensitive business questions asked by an interviewer who was unable to identify the sponsor of the interview. In fact, some firms asked to check with the BGPAA to verify sponsorship prior to participating in the interview.

Analysis of interview refusal rates suggests that sponsorship had a positive effect on response rates. Most of the businesses contacted conducted interviews.

Work specializations. Businesses in highly-mobile fields, such as trucking, may be more difficult to reach than firms more likely to work out of a fixed office (e.g., engineering firms). This suggests that response rates will differ by business specialization.

If all interviewed firms were simply counted to determine relative MBE/WBE availability, this would lead to estimates that relied too heavily on fields that could be easily contacted by telephone. This potential non-response bias is minimal in this study because the availability analysis compares firms within particular work fields before determining an MBE/WBE availability figure. In other words, the potential for trucking firms to be less likely to complete an interview is less important because the number of MBE/WBE trucking firms completing interviews is compared with total number of trucking firms, not all firms across all fields.

Language. BGPAA contracting documents are in English and not other languages. The study team made the decision to only include businesses able to provide a representative who could complete the interview in English in the availability analysis to remove language barriers as a potential explanation for any differences in outcomes observed between MBE/WBEs and majority-owned firms.

Individuals who could not communicate in English well enough to complete the interview and could not locate another individual to answer interview questions in English were not captured in the availability analysis.

Response reliability. Respondents were typically not asked to give absolute figures for difficult questions such as firm revenue. Rather, they were given ranges of dollar figures or employment levels. The study team also prompted them with D&B information for their establishment and asked them to confirm that information or provide more accurate estimates.

BBC explored reliability by analyzing consistency of interview responses for the firm revenues and firm employment questions. BBC found interview responses to these difficult questions to be internally consistent. For example, firms with smaller employee numbers reported revenues consistent with their employment levels.

Summary

“Custom census” approaches to availability that begin with D&B data have been reviewed positively by federal courts. The study team’s methodology for analyzing MBE/WBE availability took the previous custom census approach as a starting point and added several layers of additional screening when determining firms available for BGPAA construction, engineering, and goods and services work.

The study team attempted to complete interviews with all Los Angeles area firms that, according to D&B, have a primary line of business within relevant subindustries. (There was no “sampling” from

a sample frame in preparing the list of firms to be interviewed.) A relatively high proportion of the establishments with working phone numbers were successfully contacted, and 1,582 were considered available.

The availability data allow BBC to develop a representative depiction of firms qualified and interested in local transportation agency work, but it should not be considered an exhaustive list of every minority-, woman- and majority-owned firm that could participate in a BGPAA contract. Reasons for this include the following:

- BBC designed the availability analysis to be independent of any BGPAA or other agency list of companies that perform construction, engineering services, and goods and services contracts. Such lists might be too limiting because certain firms that are qualified and interested in local government work might have been discouraged from such public sector work in the past. It was important to include those firms in the availability database. Because BBC did not use a BGPAA list to develop the availability database, there might be some firms that have worked on BGPAA contracts that were not included in the availability analysis.
- The availability analysis requires data about MBE/WBEs and majority-owned firms on an apples-to-apples basis. Therefore, all firms, regardless of race/ethnicity/gender ownership, must be identified from a consistent source. For example, DBE certification lists could not be used as the source of the availability database when no similar lists exist for non-certified MBE/WBEs or majority-owned firms.
- To conduct availability interviews in the BGPAA study and other studies in California, BBC purchased names and contact information of local firms within specific subindustries identified in Dun & Bradstreet (D&B) Marketplace. The study team then contacted those firms to collect information about those firms for the availability analysis. D&B Marketplace represents the most consistent, comprehensive database of firms that can be used in disparity study research, and its application in availability analysis has been accepted in court decisions. Even though D&B strives to include every firm doing business in the United States in its Marketplace database, it does not capture every company.
- In terms of dollars, most BGPAA contracts and go to firms with locations in the Los Angeles area. Only firms within this area were included in the BGPAA availability analysis, consistent with guidance from relevant case law. In addition, the availability database pertains to firms performing the types of construction, engineering, and goods and services work that comprise most BGPAA prime contract and subcontracts (based on dollars of prime contracts and subcontracts). Therefore, only local businesses and firms that perform work within the core areas of BGPAA contracts are included in the availability database.
- BBC's availability methodology required information from firms that could only be received through interviews. Only businesses that agreed to participate in an interview are included in the availability database.

- In the BGPAA study and previous disparity studies in Southern California, the BBC study team was unable to reach every firm in the D&B Marketplace list, even after repeated attempts to contact an individual at the business who could complete an interview. Only firms that had working phone numbers, answered their phone and made individuals available for an interview are included in the availability database.

Although the approach used to developing the availability database has been favorably considered by courts, the above points are important to remember when considering other uses of the availability database.

APPENDIX E.

Entry and Advancement in Local Construction and Engineering Industries

Appendix E examines entry and advancement of different race/ethnic/gender groups in the local construction and engineering industries. BBC examined data for the Los Angeles Consolidated Metropolitan Statistical Area¹ (referred to as the “Los Angeles area” in this and other appendices). In Appendix E and other marketplace appendices, “engineering” refers to architectural, engineering and related services.²

Several other report appendices analyze other aspects of local marketplace conditions. Appendix F explores business ownership and Appendix H considers the success of businesses. Related to both of these topics, an examination of access to capital can be found in Appendix G. Together, these appendices present quantitative information concerning marketplace conditions in the Los Angeles construction and engineering industries. Appendix I discusses data sources used in these appendices.

Introduction

BBC examined whether there were barriers to formation of minority- and women-owned businesses in the Los Angeles area. The study team presents comparable information for California and the United States. Business ownership often results from individuals entering an industry as an employee and then advancing within that industry. Within this process of entry and advancement in the Los Angeles construction and engineering industries, there may be some barriers that limit opportunities for minorities and women. This appendix uses 1980 and 2000 Census data and 2009 American Community Survey (ACS) data to analyze education, employment and workplace advancement — all factors that influence whether or not individuals form construction or engineering businesses (see Figure E-1 on the following page). Where possible, BBC used these data to examine the construction and engineering industries separately, as entrance requirements and opportunities for advancement often differ across industries.

Construction Industry

BBC first examined the construction industry and how education, training, employment and advancement may affect the number of businesses owned by different race/ethnicity and gender groups in the Los Angeles area.

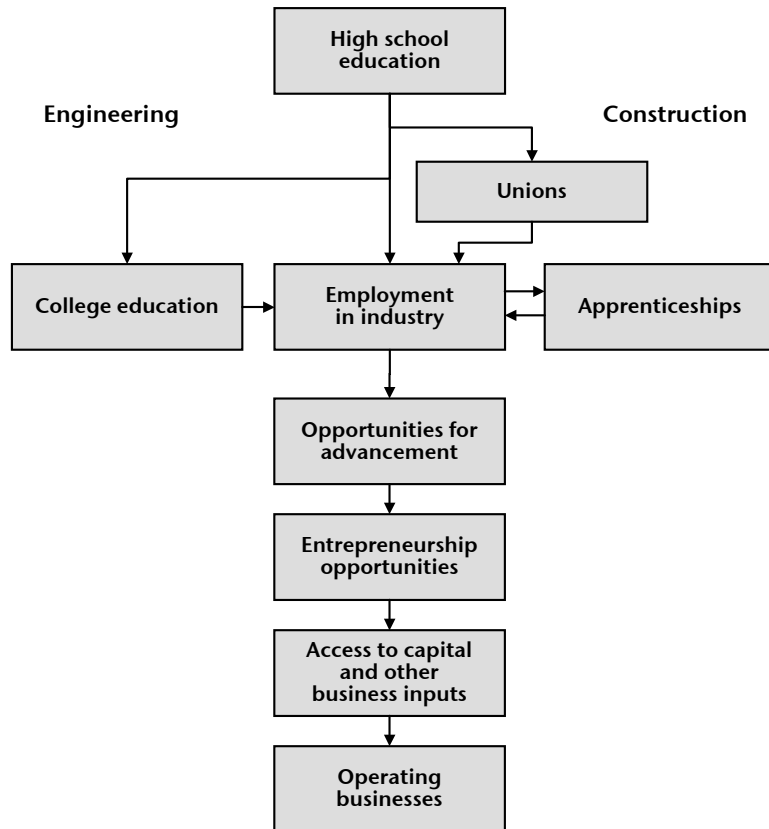
Education. Formal education beyond high school is not a prerequisite for most construction jobs. For this reason, the construction industry often attracts individuals who have lower levels of educational attainment.

¹ Defined by the U.S. Bureau of the Census as Los Angeles, Orange, San Bernardino, Riverside and Ventura counties.

² “Architectural, engineering and related services” was coded under the 1980 and 2000 census industrial classification system as 882 and 729, respectively.

Figure E-1.
Model for studying entry
into the construction and
engineering industries

Source:
 BBC Research & Consulting.



Most construction industry employees in the Los Angeles area do not have a four-year college degree. Based on the 2000 Census, 26 percent of workers in construction were high school graduates with no post-secondary education, and 36 percent had not finished high school. Only 7 percent of those in the construction industry had a four-year college degree or higher, compared to nearly 30 percent of all workers.

Hispanic Americans represented an especially large pool of Los Angeles area workers with no post-secondary education. Figure E-2 shows that in 2000, of all Hispanic American workers 25 and older who worked in the Los Angeles area, only 9 percent held at least a four-year degree. That figure rose to 11 percent in 2009, but was still far below non-Hispanic whites working in the region (46%). The percentage of African American (27%) and Native American (26%) workers in the Los Angeles area with a four-year degree was also substantially lower than that of non-Hispanic whites in 2009.

Based on education requirements of entry level jobs and the limited education beyond high school for many African Americans, Native Americans and Hispanic Americans in the Los Angeles area, one would expect a relatively high representation of these minority groups in the Los Angeles construction industry, especially in entry-level positions.

In contrast, among all workers 25 and older in the Los Angeles area, 53 percent of Asian-Pacific Americans and 74 percent of Subcontinent Asian Americans had four-year college degrees in 2009. Given high educational levels of Asian-Pacific Americans and Subcontinent Asian Americans in California, representation of these groups in construction might be low relative to non-Hispanic whites.

In the Los Angeles area, female workers age 25 or over have more education, on average, than men. Based on 2009 data, 33 percent of female workers age 25 and over had at least a four-year degree, compared to 30 percent of males in the Los Angeles area.

Figure E-2.
Percentage of all workers 25 and older with at least a four-year degree, 2000 and 2009

Note:

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample and 2009 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Los Angeles Metropolitan Area	2000	2009
Race/ethnicity		
African American	23.7 % **	27.4 % **
Asian-Pacific American	48.6 **	53.4 **
Subcontinent Asian American	68.7 **	73.8 **
Hispanic American	9.1 **	11.2 **
Native American	22.0 **	26.3 **
Other minority group	32.8 **	34.5 **
Non-Hispanic white	39.8	45.6
Gender		
Female	29.5 %	33.0 % **
Male	30.3	30.4
California	2000	2009
Race/ethnicity		
African American	23.2 % **	27.4 % **
Asian-Pacific American	46.6 **	50.9 **
Subcontinent Asian American	69.2 **	73.9 **
Hispanic American	10.3 **	11.8 **
Native American	20.5 **	25.5 **
Other minority group	33.8 **	37.0 **
Non-Hispanic white	40.2	44.7
Gender		
Female	31.9 %	35.5 % **
Male	32.8	32.8
United States	2000	2009
Race/ethnicity		
African American	19.1 % **	22.5 % **
Asian-Pacific American	44.9 **	48.5 **
Subcontinent Asian American	68.4 **	74.3 **
Hispanic American	13.4 **	14.8 **
Native American	17.1 **	20.3 **
Other minority group	30.0 **	36.8
Non-Hispanic white	32.5	36.5
Gender		
Female	29.3 % **	33.7 % **
Male	30.2	31.6

Training in construction industry jobs is largely on-the-job and through trade schools and apprenticeship programs. Entry level jobs for workers out of high school are often laborers, helpers or apprentices. More skilled positions in the construction industry may require additional training through a technical or trade school or through an apprenticeship or other employer-provided training program. Apprenticeship programs can be developed by employers, trade associations, trade unions and other groups.

Workers can enter apprenticeship programs from high school or a trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.³ Opportunities for these programs across race/ethnicity are discussed later in this appendix.

Employment. With educational opportunities and attainment for minorities and women as context, the study team examined employment in the construction industry in the Los Angeles area.

Based on 2009 ACS data, 66 percent of people working in the Los Angeles construction industry were minority; in all of California, minorities made up 44 percent of construction industry workers. This represents increases from 2000 for both the Los Angeles area and California.

Almost all the increase in minority construction workers between 2000 and 2009 corresponds to growth in the number of Hispanic Americans working in the industry. Of the people working in construction in the Los Angeles area in 2009:

- 58 percent were Hispanic Americans;
- 3 percent were African Americans;
- 4 percent were Asian-Pacific Americans;
- Less than 1 percent were Native Americans; and
- Less than 1 percent were Subcontinent Asian Americans.

In the Los Angeles area, Hispanic Americans made up a greater share of workers in construction than in the economy as a whole, representing nearly 60 percent of construction workers compared with 42 percent of workers in all industries in the Los Angeles area. In contrast, African Americans, Asian-Pacific Americans and Subcontinent Asian Americans working in the Los Angeles were less likely to work in construction than other industries.

Similarly, Hispanic Americans comprise nearly one-half of workers in the construction industry in California but only about one-third of workers in all industries. African Americans, Asian-Pacific Americans and Subcontinent Asian Americans are underrepresented in the California construction industry.

- The percentage of California construction workers who are African American declined from 2000 to 2009 in both the Los Angeles area and California. Average educational attainment of African Americans is consistent with requirements for construction jobs, so education does not explain the relatively low number of African American workers in this industry. A number of studies throughout the United States have argued that race

³ Bureau of Labor Statistics, U.S. Department of Labor. 2006-07. "Construction." *Career Guide to Industries*. <http://www.bls.gov/oco/cg/cgs003.htm> (accessed February 15, 2007).

discrimination by construction unions has held down employment of African Americans in construction trades.⁴

- Asian-Pacific Americans were 5 percent of the construction workforce and 13 percent of all workers in California in 2009 (similar to the Los Angeles area). The fact that Asian-Pacific Americans are more likely to go to college than other groups may explain part of this difference.
- Relative under-representation of Subcontinent Asian Americans is evident in 2000 and 2009 in both the Los Angeles area and California as a whole.⁵

Overall, these differences in employment patterns are similar to those seen in the construction industry for the nation.

Locally, state-wide and nationally, there are also large differences between the percentage of all workers who are women and the representation of women in the construction industry. In the Los Angeles area in 2009, women represented 45 percent of workers in all industries but only 9 percent of construction workers. This difference was similar for California and the United States. The share of construction workers who are women has remained relatively unchanged between 2000 and 2009.

Figure E-3 on the following page used data from 1980, 2000 and 2009 to compare the demographic composition of the construction industry with the total workforce in the Los Angeles area, California and the United States.

Importance of unions in entering the construction industry. Labor scholars characterize construction as a historically volatile industry sensitive to business cycles, making the presence of labor unions important for stability and job security within the industry.⁶ The temporary nature of construction work results in uncertain job prospects, and the high turnover of laborers presents a disincentive for construction firms to invest in training. Some scholars have claimed that constant turnover has lent itself to informal recruitment practices and nepotism, compelling laborers to tap social networks for training and work. They credit the importance of social networks with the high degree of ethnic segmentation in the construction industry.⁷ Unable to integrate themselves into traditionally white social networks, African Americans faced long-standing historical barriers to entering the industry.⁸

⁴ Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

⁵ Note that Census definitions of race and ethnicity have changed over time, which affects comparability of statistics from one census year to the next. Appendix I discusses how BBC coded data concerning race and ethnicity for each Census and for the 2009 ACS.

⁶ Applebaum, Herbert. 1999. *Construction Workers, U.S.A.* Westport: Greenwood Press.

⁷ Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

⁸ Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41(4): 562-584.

Figure E-3.
Demographics of workers in construction and all industries, 1980, 2000 and 2009

Los Angeles Metropolitan Area						
	Construction			All industries		
	1980 (n=11,054)	2000 (n=21,525)	2009 (n=5,318)	1980 (n=220,916)	2000 (n=363,512)	2009 (n=83,354)
Race/ethnicity						
African American	5.3 % **	3.3 % **	2.5 % **	9.8 %	7.3 %	6.9 %
Asian-Pacific American	2.3 **	3.8 **	4.3 **	5.2	11.0	11.9
Subcontinent Asian American	0.1	0.2 **	0.4 **	0.2	0.8	1.1
Hispanic American	23.3	45.1 **	58.2 **	23.2	34.7	42.4
Native American	0.9 **	1.0 **	0.7	0.6	0.8	0.7
Other minority group	0.3	1.0	0.4	0.2	0.9	0.4
Total minority	32.2 %	54.5 %	66.4 %	39.2 %	55.5 %	63.3 %
Non-Hispanic white	67.8 **	45.5	33.5 **	60.8	44.4	36.7
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	9.1 % **	9.3 % **	8.5 % **	42.5 %	44.9 %	45.0 %
Male	90.9 **	90.7 **	91.5 **	57.5	55.1	55.0
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
California						
	Construction			All industries		
	1980 (n=33,756)	2000 (n=48,798)	2009 (n=11,352)	1980 (n= 580,104)	2000 (n=788,333)	2009 (n=176,332)
Race/ethnicity						
African American	3.6 % **	3.3 % **	2.7 % **	6.8 %	6.3 %	6.0 %
Asian-Pacific American	2.0 **	4.1 **	4.9 **	5.2	11.2	12.5
Subcontinent Asian American	0.2	0.2 **	0.4 **	0.2	1.1	1.6
Hispanic American	16.1	35.0 **	47.0 **	17.0	27.6	34.6
Native American	1.1 **	1.5 **	0.9	0.8	1.1	0.9
Other minority group	0.1	1.0	0.3	0.2	0.9	0.3
Total minority	23.1 %	45.1 %	56.2 %	30.1 %	48.2 %	55.9 %
Non-Hispanic white	76.9 **	54.9 **	43.8 **	69.9	51.8	44.1
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	9.2 % **	9.8 % **	9.0 % **	42.1 %	45.1 %	45.3 %
Male	90.8 **	90.2 **	91.0 **	57.9	54.9	54.7
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
United States						
	Construction			All industries		
	1980 (n=330,464)	2000 (n=480,280)	2009 (n=103,991)	1980 (n=5,287,471)	2000 (n=6,832,970)	2009 (n=1,524,881)
Race/ethnicity						
African American	7.4 % **	6.2 % **	6.0 % **	10.1 %	10.9 %	11.8 %
Asian-Pacific American	0.7 **	1.3 **	1.6 **	1.5	3.4	4.1
Subcontinent Asian American	0.1	0.2 **	0.2 **	0.2	0.7	1.1
Hispanic American	5.9 **	15.0 **	23.5 **	5.7	10.7	14.6
Native American	0.8 **	1.5 **	1.2 **	0.5	1.1	1.0
Other minority group	0.1	0.4	0.3	0.1	0.4	0.2
Total minority	14.9 %	24.5 %	32.7 %	18.1 %	27.2 %	32.7 %
Non-Hispanic white	85.1 **	75.5 **	67.3	81.9	72.8	67.3
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	0.8 % **	9.9 % **	9.1 % **	42.2 %	46.5 %	46.9 %
Male	92.1 **	90.1 **	90.9 **	57.8	53.5	53.1
Total	92.9 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between workers in the construction industry and all industries for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2009 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Construction unions aim to provide a reliable source of labor for employers and preserve job opportunities for workers by formalizing the recruitment process, coordinating training and apprenticeships, enforcing standards of work and mitigating wage competition. The unionized sector of construction would seemingly be the best road for African American and other underrepresented groups into the industry. However, researchers have identified discrimination by trade unions that has historically prevented minorities from obtaining employment in skilled trades.⁹ Past research claims union discrimination took place in a variety of forms including the following.

- Unions have used admissions criteria that adversely affect minorities. Federal courts ruled in the 1970s that standardized testing requirements unfairly disadvantaged minority applicants who had less exposure to testing and that requirements that new union members have relatives in the union perpetuate the effects of past discrimination.¹⁰ Some disparity studies in California in the 1990s revealed that these practices had persisted: admissions testing requirements for union membership were still being used that adversely affected minorities.¹¹ Moreover, applicants who were relatives of union members were often waived from admissions requirements.¹²
- Of those minority individuals who are admitted to unions, a disproportionately low number are admitted into apprenticeship programs coordinated by unions. Apprenticeship programs are important means of producing skilled construction laborers, and the reported exclusion of African Americans from these programs has severely limited their access to skilled occupations in the construction industry.¹³
- While formal training and apprenticeship programs exist within unions, most training of union members takes place informally through social networking. Nepotism characterizes the unionized sector of construction as it does the non-unionized sector, and this favors a white-dominated status quo.¹⁴
- Traditionally white unions have been successful in resisting policies designed to increase African American participation in training programs. The political strength of unions in resisting affirmative action in construction has hindered the advancement of African Americans in the industry.¹⁵

⁹ U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042.

¹⁰ Ibid. See *United States v. Iron Workers Local 86* (1971), *Sims v. Sheet Metal Workers International Association* (1973), and *United States v. International Association of Bridge, Structural and Ornamental Iron Workers* (1971).

¹¹ National Economic Research Association, Inc. 1992. *The Utilization of Minority and Woman-Owned Business Enterprises by Contra Costa County*. 185-186.

¹² BPA Economics, Mason Tillman Associates, and Boasberg and Norton. 1990. *MBE-WBE Disparity Study of the City of San Jose*.

¹³ Applebaum. 1999. *Construction Workers, U.S.A.*

¹⁴ Ibid. 299. A high percentage of skilled workers reported having a father or relative in the same trade. However, the author suggests this may not be indicative of current trends.

¹⁵ Waldinger and Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction."

- Discriminatory practices in employee referral procedures, including apportioning work based on seniority, have precluded minority union members from having the same access to construction work as their white counterparts.¹⁶
- According to testimony from African American union members, even when unions implement meritocratic mechanisms of apportioning employment to laborers, white workers are often allowed to circumvent procedures and receive preference for construction jobs.¹⁷

However, these historical observations may not be indicative of current dynamics in construction unions. For example, the 2007 Current Population Survey (CPS) provides data indicating union membership for African Americans and non-Hispanic whites to be similar.¹⁸ The CPS asked participants “Are you a member of a labor union or of an employee association similar to a union?” CPS data show union membership for African Americans in construction to be 11 percent and non-Hispanic whites to be 12 percent (not a statistically significant difference). On the other hand, only 7 percent of Hispanic Americans are union members based on these national data.

A recent study on the presence of African Americans and Hispanic Americans in apprenticeship programs may help explain the high rates of Hispanics in the construction industry despite low union memberships. Two types of apprenticeship programs are available, joint programs (run by a combination of a union and one or more employers) and non-joint programs (run solely by one or more employers). Using 1989-1995 data from the U.S. Department of Labor, the study found that the probability of an African American being an apprentice in a joint program was 8 percent higher than being in a non-joint program.

On the other hand, Hispanic Americans’ odds of being in non-joint program were 7 percent higher than a joint program.¹⁹ These data suggest that Hispanic Americans may be more likely than African Americans to enter the construction industry without the support of a union. Thus, one reason that Hispanic Americans represent a large portion of the construction workers may be that their participation is less hindered by possible union discrimination.

Another recent study, which used U.S. Department of Labor data in combination with data from the California Apprenticeship Agency from 1995-2003, found that apprenticeship program attrition rates and the occupation students were training for were very different for non-Hispanic whites, African Americans and Hispanic Americans. Non-Hispanics had the lowest attrition rate at 47 percent, African Americans the highest at 70 percent and Hispanic Americans in the middle with an attrition rate of 63 percent. In addition, both African Americans and Hispanic Americans were more likely to enroll in training programs for occupations with lower pay rates and prestige levels.²⁰ This study did

¹⁶ U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042. See *United Steelworkers of America v. Weber* (1979) and *Taylor v. United States Department of Labor* (1982).

¹⁷ Feagin and Imani. 1994. “Racial Barriers to African American Entrepreneurship: An Exploratory Study.” *Social Problems*. 41(4): 562-584.

¹⁸ 2006 Current Population Survey (CPS), U.S. Census Bureau and Bureau of Labor Statistics.

¹⁹ Bilginsoy, Cihan. 2005. “How Unions Affect Minority Representation in Building Trades Apprenticeship Programs.” *Journal of Labor Research*, 57(1).

²⁰ Bilginsoy, Cihan. 2003. “The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs.” *Industrial & Labor Relations Review*, 57(1) 54-67.

not explore causation of the observed variations. However, they could be explained by a variety of factors:

- Students in apprenticeship programs may drop out due to dissatisfaction with the program, training or occupation.²¹
- The expected benefits of staying in the apprenticeship program are less for lower paying occupations.²² Thus, there may be less incentive for apprentices in occupations with lower pay levels to complete long arduous programs. Most programs are between 6,000 and 8,000 hours and last several years.²³
- Unobserved characteristics of the apprentices, such as financial status, previous education, English proficiency, age and a variety of other socioeconomic factors, may limit the ability of an individual to complete the program.

Although the minority and non-minority numbers vary in union membership and union program participation, the causes of these differences and their effects on construction industry employment are unresolved. Research is especially limited on the impact of unions on Asian-Pacific American employment. It is unclear from past studies whether unions presently help or hinder equal opportunity in construction and whether effects in Southern California are different from other parts of the country. In addition, the current research indicates that the effects of unions on entry into the construction industry may be different for different minority groups.

²¹ Bilginsoy. 2003. "The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs." *Industrial & Labor Relations Review*, 57(1) 54-67.

²² Bilginsoy, Cihan. 2007. "Delivering Skills: Apprenticeship Program Sponsorship and Transition from Training." *Industrial Relations*, 46(4): 738-765

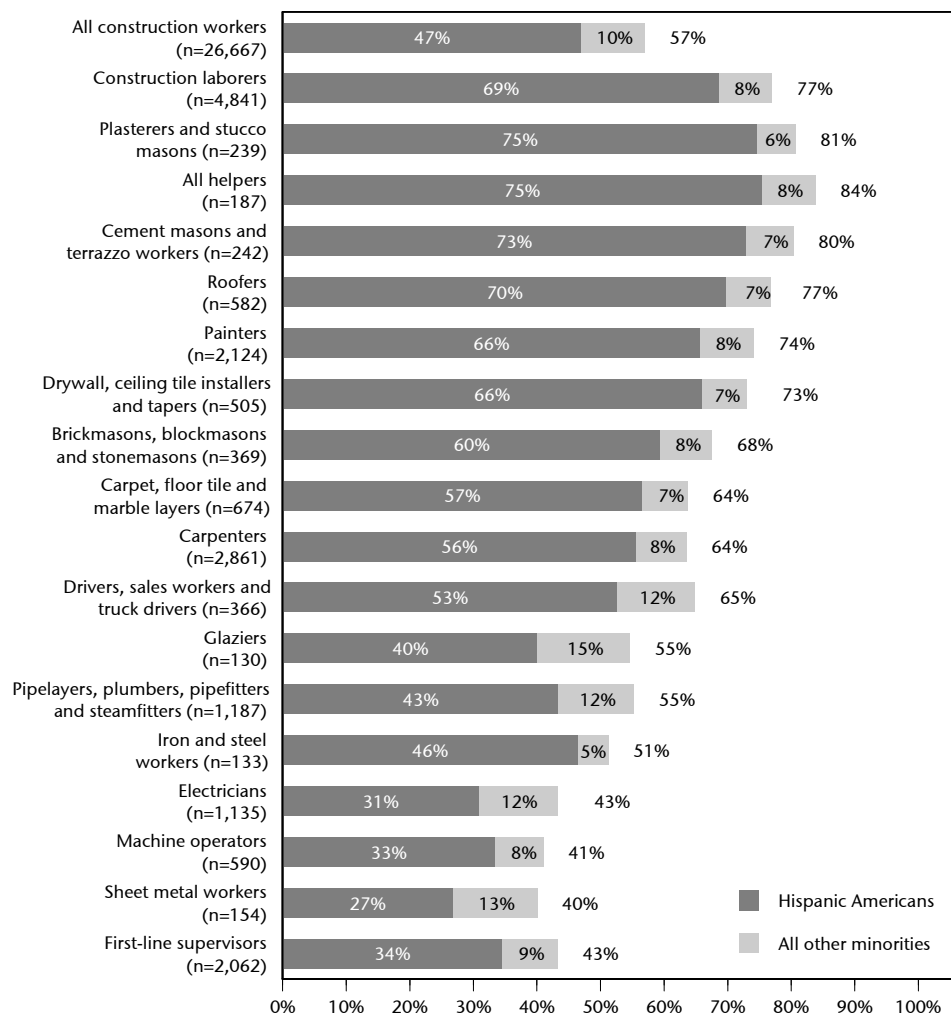
²³ Bilginsoy. 2003. "The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs." *Industrial & Labor Relations Review*, 57(1) 54-67.

Advancement in Construction

To research opportunities for advancement in the Los Angeles construction industry, the study team examined representation of minorities and women in construction occupations defined by the U.S. Bureau of Labor Statistics.²⁴ Full descriptions of construction trades with a large enough sample size for analysis in the 2000 Census and 2009 ACS can be found in Appendix I.

Race and ethnic composition of construction occupations. Figures E-4 and E-5 summarize the race/ethnicity of workers in construction-related occupations, including low-skill occupations such as laborers, higher-skill construction trades and supervisory roles in the Los Angeles area in 2000 and 2009, respectively.

Exhibit E-4.
Minorities as a percentage of selected construction occupations in the Los Angeles area, 2000



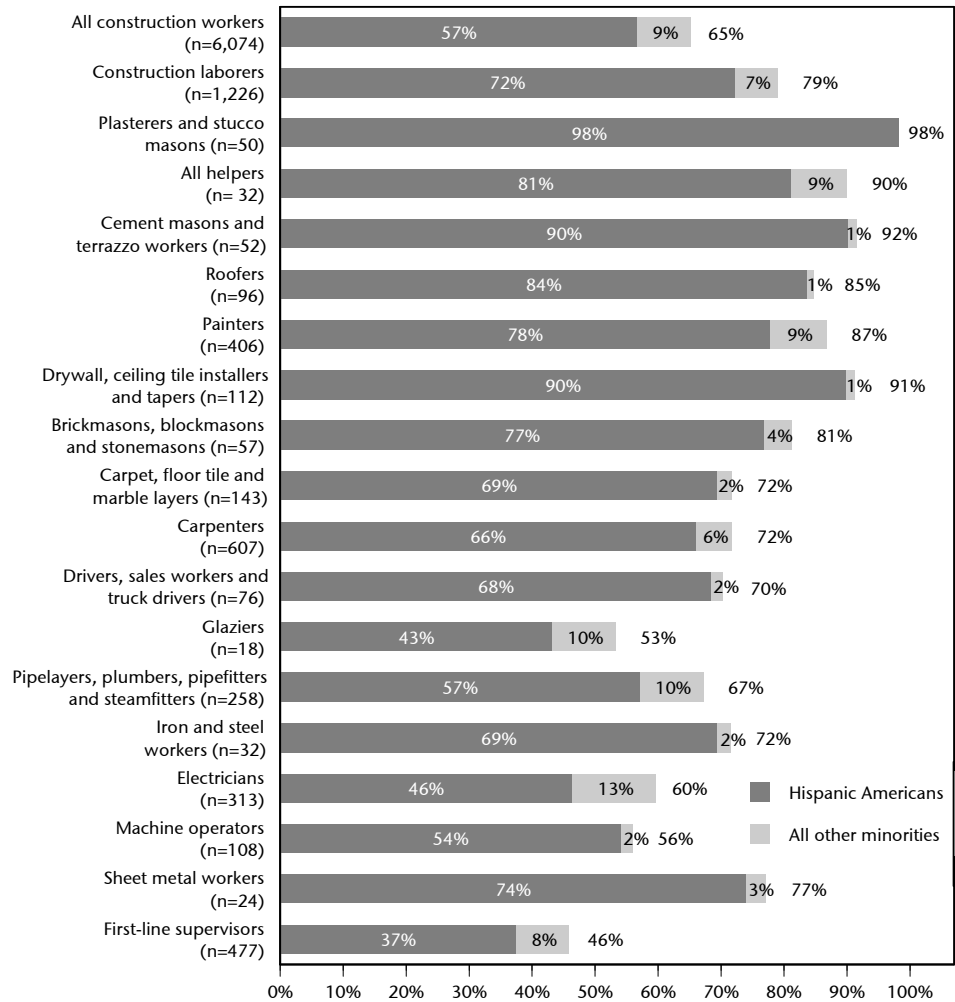
Note: Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

²⁴ Bureau of Labor Statistics, U.S. Department of Labor. 2001. "Standard Occupational Classification Major Groups." http://www.bls.gov/soc/soc_majo.htm (accessed February 15, 2007).

Exhibit E-5.

Minorities as a percentage of selected construction occupations in the Los Angeles area, 2009



Note: Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

Source: BBC Research & Consulting from 2009 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Based on 2000 Census and 2009 ACS data, there are large differences in the racial and ethnic makeup of workers in various trades related to construction in the Los Angeles area. Overall, minorities comprised 57 percent of the construction workforce in 2000 and 65 percent in 2009. In the Los Angeles area, more than one-half of construction workers were Hispanic Americans in 2009. Minorities comprised a relatively large share of the local construction workforce for:

- Construction laborers (77% in 2000 and 79% in 2009);
- Plasterers and stucco masons (81% in 2000 and 98% in 2009);
- Helpers (84% in 2000 and 90% in 2009);
- Cement masons, concrete finishers and terrazzo workers (80% in 2000 and 92% in 2009);

- Roofers (77% in 2000 and 85% in 2009);
- Painters (74% in 2000 and 87% in 2009);
- Drywall, ceiling tile installers, and tapers (73% in 2000 and 91% in 2009);
- Brick, block and stone masons (68% in 2000 and 81% in 2009);
- Carpet, floor tile and marble layers (64% in 2000 and 72% in 2009);
- Carpenters (64% in 2000 and 72% in 2009); and
- Drivers, sales workers and truck drivers (65% in 2000 and 70% in 2009).

Some occupations had a relatively lower representation of minorities:

- Glaziers (55% in 2000 and 53% in 2009); and
- Machine operators (41% in 2000 and 56% in 2009).

For some occupations, the relative number of minority workers increased substantially between 2000 and 2009:

- Minority representation among iron and steel workers grew from 51 percent in 2000 to 72 percent in 2009;
- Minority representation among electricians increased from 43 percent in 2000 to 60 percent in 2009; and
- Minority representation among sheet metal workers grew from 40 percent in 2000 to 77 percent in 2009.

About 43 percent of first-line supervisors of construction workers were minorities in 2000, less than minorities' share for all occupations in construction. Minorities made up a greater share of first-line supervisors (46%) in 2009, although this percentage was still less than the overall representation of minorities among construction workers.

Most of the overall differences for minorities are driven by differences in the representation of Hispanic Americans in these occupations. However, there were some notable exceptions.

In 2000, African Americans were a relatively large share of construction laborers (4.6%) and a relatively small share of first-line supervisors (3.4%) compared with the overall representation of African Americans in the construction industry as a whole (4.0%). Similarly in 2009, representation of African Americans among laborers (3.2%) was higher than among all construction workers (2.8%).

In 2000, Asian-Pacific Americans were a relatively small share of construction laborers (2.3%), cement masons, concrete finishers and terrazzo workers (2.1%), truck drivers (2.4%), iron and steel workers (0.7%) and first-line supervisors (3.1%) compared with the share of all construction workers

who were Asian-Pacific Americans (3.8%). In 2009, Asian-Pacific Americans continued to represent a relatively small share of workers in several construction occupations, representing about 2.5 percent of construction laborers, while still accounting for 4.3 percent of all construction workers.

Women in construction trades. The study team also analyzed the proportion of women in construction related occupations. Overall, fewer than 10 percent of workers in the Los Angeles construction industry were women in 2000 and 2009. Representation of women in the Los Angeles construction workforce declined from 1980 to 2009.

Figures E-6 and E-7 show the representation of women in the Los Angeles construction industry in the occupations defined in Appendix I in 2000 and 2009, respectively. In both years, less than 2 percent of workers were women in the following trades:

- Roofers;
- Drywall, ceiling tile installers and tapers;
- Brick, block and stone masons; and
- Carpenters.

In the 2000 Census, no female respondents in the Los Angeles area reported being employed as a glazier in the construction industry, and in the 2009 ACS none reported their occupation as plasterer or stucco mason, cement mason, terrazzo worker, truck driver, sales workers or glazier.

Among all the individual occupations listed in Figures E-6 and E-7, first-line supervisors, all helpers, drywall, ceiling tile installers and tapers, iron and steel workers, and sheet metal workers show an increase in the representation of women between 2000 and 2009. On the other hand, the following occupations show a decrease in the representation of women in the same time period:

- Construction laborers;
- Roofers;
- Painters;
- Carpet, floor tile and marble layers;
- Carpenters;
- Pipelayers, plumbers, pipefitters, and steamfitters;
- Electricians; and
- Machine operators.

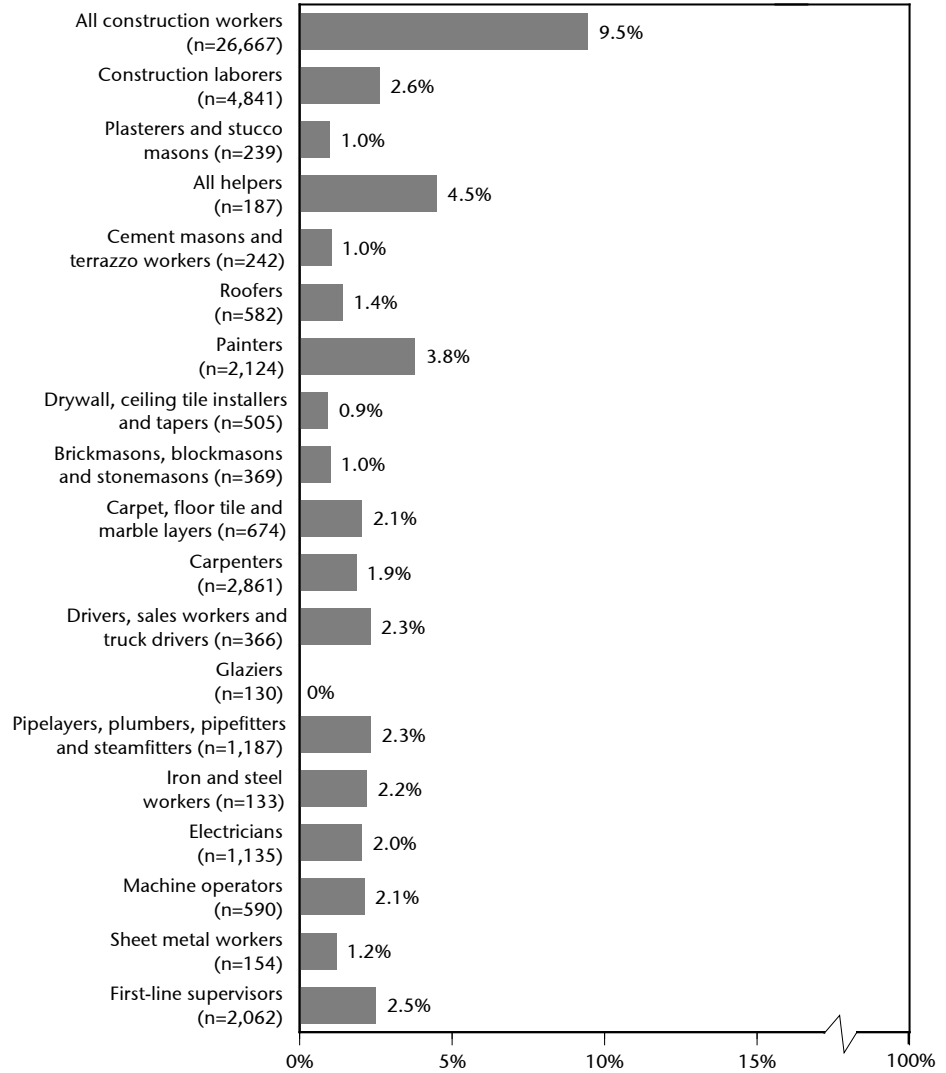
Figure E-6.
Women as a
percentage of
construction
workers in
selected
occupations in the
Los Angeles area,
2000

Note:

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



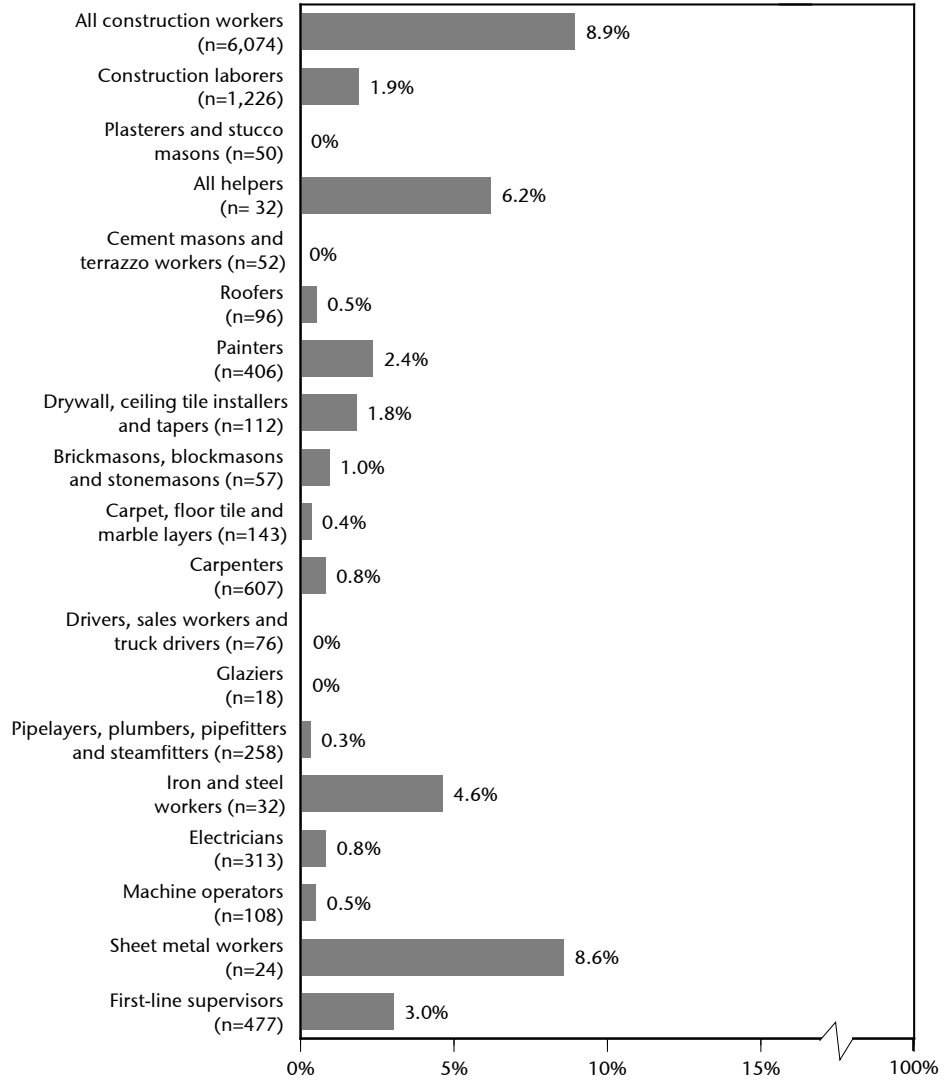
**Figure E-7.
Women as a
percentage of
construction
workers in
selected
occupations in the
Los Angeles area,
2009**

Note:

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

Source:

BBC Research & Consulting from 2009 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Percentage of minorities and women in construction who are managers. To further assess advancement opportunities for minorities and women, the study team examined differences between demographic groups in the proportion of construction workers that were managers in the Los Angeles area, California and the nation.

Figure E-8 shows the percentage of construction workers who reported being a construction manager in 2000 and 2009.

Figure E-8.
Percentage of construction
workers who worked as a
manager, 2000 and 2009

Note:

** Denotes that the difference in proportions between the minority group and non-Hispanic whites (or between females and males) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from the 2000 U.S. Census 5% sample and 2009 ACS Public Use Microdata samples. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Los Angeles Metropolitan Area	2000	2009
Race/ethnicity		
African American	5.7 % **	4.4 % **
Asian-Pacific American	10.4	9.0
Subcontinent Asian American	9.6	15.5
Hispanic American	2.6 **	3.5 **
Native American	10.0	5.4
Other minority	9.6	7.8
Non-Hispanic white	11.5	14.2
Gender		
Female	4.6 % **	8.1 %
Male	7.5	7.4
All individuals	7.2 %	7.4 %
California	2000	2009
Race/ethnicity		
African American	4.9 % **	4.3 % **
Asian-Pacific American	9.3	9.0
Subcontinent Asian American	11.1	21.8 **
Hispanic American	2.4 **	3.3 **
Native American	8.3	9.1
Other minority	8.9	4.3
Non-Hispanic white	11.0	13.3
Gender		
Female	5.0 % **	6.9 %
Male	7.9	8.2
All individuals	7.6 %	8.1 %
United States	2000	2009
Race/ethnicity		
African American	3.1 % **	4.6 % **
Asian-Pacific American	7.4	7.6
Subcontinent Asian American	11.7 **	11.6
Hispanic American	2.5 **	2.7 **
Native American	4.6 **	5.2 **
Other minority	6.2 **	5.5 **
Non-Hispanic white	7.5	9.1
Gender		
Female	4.1 % **	5.2 % **
Male	6.7	7.4
All individuals	6.5 %	7.2 %

In 2009, about 14 percent of non-Hispanic whites in the Los Angeles construction industry were managers. Except for Subcontinent Asian Americans, all minority groups had a smaller proportion of workers that were managers than non-Hispanic whites:

- About 4 percent of African Americans and 5 percent of Native Americans working in the Los Angeles construction industry were managers;

- Less than four percent of Hispanic Americans were managers;
- Nine percent of Asian-Pacific Americans were managers; and
- The percentage of construction workers who were managers decreased for African Americans, Asian-Pacific Americans and Native Americans in the Los Angeles area between 2000 and 2009.

The percentage of non-Hispanic whites in the construction industry who were managers was about the same for California as it was for the Los Angeles area in 2000 and 2009.

The percentage of Subcontinent-Asian American construction industry workers who were managers was higher than any other minority group and non-Hispanic whites in 2009 in the Los Angeles area, California and the nation.

Female construction workers were less likely than their male counterparts to be managers in 2000 in both the Los Angeles area and California. In the Los Angeles area in 2009, the percentage of female construction workers who were managers (8%) was slightly greater than the percentage of males (7%) who were managers.

Engineering Industry

BBC next examined how education and employment may influence the number of potential minority and female entrepreneurs working in the Los Angeles engineering industry.

Education. Based on Census data for 2000, nearly 66 percent of individuals working in the engineering industry in the Los Angeles area had at least a four-year college degree, and about 69 percent of individuals working in engineering in all of California at a four-year degree.

The level of education needed to become an engineer is a barrier for African Americans, Hispanic Americans and Native Americans who might become engineers. In both 2000 and 2009, a small percentage of Hispanic Americans and relatively few African Americans and Native Americans working in the Los Angeles area had a degree from a four-year college.

Figure E-2 on page 3 of this appendix examines the percentage of workers 25 and older who had at least a four-year degree, across all industries in the Los Angeles area, California and the United States in 2000 and 2009. In the Los Angeles area in 2009, only 11 percent of Hispanic American workers 25 and older had a college degree, much lower than what was found for non-Hispanic white workers in this age group (46%). About 27 percent of African American workers and 26 percent of Native American workers in the Los Angeles area had college degrees in 2009. Disparities in educational attainment were similar for the state as well.

All race/ethnicity groups showed an increase in the proportion of workers with degrees from 2000 to 2009. However, the percentage of Hispanic Americans, African Americans and Native Americans who had college degrees was still considerably lower than that of non-Hispanic whites in 2009. In contrast, relatively more Asian-Pacific Americans and Subcontinent Asian Americans had college degrees than non-Hispanic whites in 2009.

Between 2000 and 2009, the percentage of female workers with at least four-year degrees surpassed that of males in the Los Angeles area and California.

Additional indices of high school educational attainment. Because of the importance of college admission as a step in entering the engineering industry, the study team examined additional information on the educational achievement of minority high school students in the Los Angeles area. The California Legislative Black Caucus published a report in early 2007 that included indices of high school achievement for African Americans, Asian Americans, Hispanic Americans and non-Hispanic whites in the Los Angeles area. BBC translated the reported statistics into indices where 100 is the value for non-Hispanic white students. Figures lower than 100 indicate a lower rate for minority students.

For example, only 33.6 percent of African American students in the Los Angeles area had completed necessary courses for admission to a University of California (UC) or California State University (CSU) school in 2004-2005. This was below the rate for non-Hispanic white students (45%). BBC created an “index” for African American student achievement for completion of necessary courses by dividing 33.6 percent by 45 percent, and then multiplying by 100, yielding an index value of “75.” Hispanic American students in the Los Angeles area had an achievement index of 71 when compared with non-Hispanic white students completing courses for UC/CSU entrance.

As shown in Figure E-9, high school achievement indices ranged from 64 to 95 for African American students in the Los Angeles area. The range for Hispanic Americans in the Los Angeles area was from 49 to 95.

Figure E-9.
Indices of high school achievement for African Americans, Asian Americans, Hispanic Americans and non-Hispanic whites in Los Angeles area, 2004-2005 (white=100)

Los Angeles Metropolitan Area	African American	Asian American	Hispanic American	Non-Hispanic white
Completed courses for UC/CSU entrance 2004-2005	75	144	71	100
CAT/6 reading scores (11th Grade)	95	100	95	100
High school exit exam passing rate: English	64	100	63	100
High school exit exam passing rate: math	44	112	49	100
SAT average score	77	100	81	100
High school dropouts: 1 year rate	343	76	281	100
High school dropouts: 4 year rate	327	74	281	100

Note: Data for completed courses for UC/CSU entrance were for 2004-2005. Dates not provided in source for other educational statistics.

Source: BBC Research & Consulting from California Legislative Black Caucus. 2007. The State of Black California, Full Report, Sacramento.

Notable indices for African Americans included:

- Passing the high school exit exam for English at a rate roughly two-thirds that of non-Hispanic white students in the Los Angeles area; and
- Having a high school dropout rate more than three times higher than that of non-Hispanic white students in the Los Angeles area.

The achievement index with the least disparity between African Americans and non-Hispanic whites in Los Angeles areas was reading scores from the standardized achievement test administered to students in the 11th grade.

Hispanic American students in the Los Angeles area, on average, exhibited similar disparities in school achievement as found for African American students. High school dropout rates were lower for Hispanic Americans than for African Americans, but still nearly three times that of non-Hispanic whites.

It appears that disparities in educational achievement in high school or in prior grades are important in explaining the relatively low number of African Americans and Hispanic Americans that have four-year college degrees in the Los Angeles area. There are many studies throughout the nation that consider whether the causes of the disparities in educational outcomes for African American and Hispanic American high school students are affected by discrimination; these are not reviewed here.

Overall, the California Legislative Black Caucus report showed educational outcomes for Asian American students to be similar or better than non-Hispanic whites.

Additional factors affecting college engineering programs in Southern California. Historically, college engineering programs in the United States were slow to open doors to minorities such as African Americans.²⁵ In recent years, California has stood out as having low percentages of African American engineering students. Out of the top 26 engineering schools in the nation in 2002, two are UC campuses in Southern California — UC-Los Angeles (UCLA) and UC-San Diego (UCSD). A 2003 study identified these schools and other UC campuses for the lowest percentages of African American engineering students among the top 26:²⁶

- In fall 2002, at UCLA fewer than 2 percent of engineering enrollments were African American.
- UCSD had no African Americans among its 5,264 engineering students in fall 2002.

Because the enrollment statistics for engineering students were for 2002, most of these students enrolled in college after Proposition 209 had gone into effect. Proposition 209 prohibits California's public colleges from giving preferential treatment to minorities and women in college admissions and financial aid except as part of a federal program. This amendment to the California constitution was passed by voters in 1996 and went into effect in 1998. Many scholars blame Proposition 209 for the

²⁵ Unknown Author. 2003. "Blacks Strive to Build a Bridgehead in Academic Engineering." *The Journal of Blacks in Higher Education*. 41 (Autumn): 98-108, 98.

²⁶ Ibid.

relatively low representation of African American and Hispanic American students at more selective colleges in California.^{27,28}

Following the passing of Proposition 209, admission rates of minority applicants dropped dramatically and in the years following have not entirely recovered. One scholar found that percentages of African American students at UCLA prior to the amendment were nearly double the percentages in 2007.²⁹ A recent article notes that in the case of African Americans, their admission rates at more prestigious UC campuses (including Los Angeles and San Diego) have remained low, but rates at the least selective campuses have grown since Proposition 209.³⁰ Another scholar writes about the effect of Proposition 209 on transfer students and found that African Americans have much lower rates of acceptance while Hispanic Americans experience transfer admission rates similar to non-Hispanic whites.³¹

Asian American applicants were apparently not negatively affected by the amendment. Asian American students accounted for only 11 percent of California high school graduates in 2006, but accounted for 36 percent of all students admitted to the University of California system.³²

To better understand the broader patterns of enrollment by race and ethnicity in the Los Angeles area and nearby Southern California schools, the study team examined total undergraduate African American, Hispanic American and Native American enrollment at three state universities in Southern California in 1995, 2003 and 2007: UCSD, UCLA and San Diego State University (SDSU). Figure E-10 shows these trends.

- Between 1995 and 2003, enrollment of African American students decreased by more than one-third at UCLA and dropped slightly lower in fall 2007. Decreases were also seen at UCSD and SDSU between 1995 and 2003, but the number of African American enrollments rebounded to 1995 levels at UCSD and stabilized at SDSU between 2003 and 2007.
- Slight declines in enrollment of Hispanic Americans also occurred at UCLA from 1995 to 2003 and from 2003 to 2007. However, enrollment of Hispanic Americans increased at the other two campuses.
- Enrollment of Native Americans dropped at all three campuses from 1995 to 2003. Enrollment numbers increased at UCSD and SDSU from 2003 to 2007, but they remained below enrollment counts prior to the passing of Proposition 209.

²⁷ Contreras, Frances. 2003. "The Reconstruction of Merit Post-Proposition 209." *Educational Policy*. 19 (2): 371-395.

²⁸ Karabel, Jerome. 1999. "The Rise and Fall of Affirmative Action at the University of California." *The Journal of Blacks in Higher Education*. 25 (Autumn): 109-112.

²⁹ Unknown Author. 2007. "The Ban on Affirmative Action at the University of California is Now 10 Years Old: The Severe Harm to the Educational Opportunities for African Americans Persists" *The Journal of Blacks in Higher Education*. 56 (Summer): 34-35, 34.

³⁰ Unknown Author. 2006. "Affirmative Action Ban Continues to Inflict Severe Damage on Black Higher Educational Opportunities in California." *The Journal of Blacks in Higher Education*. 51(Spring): 44.

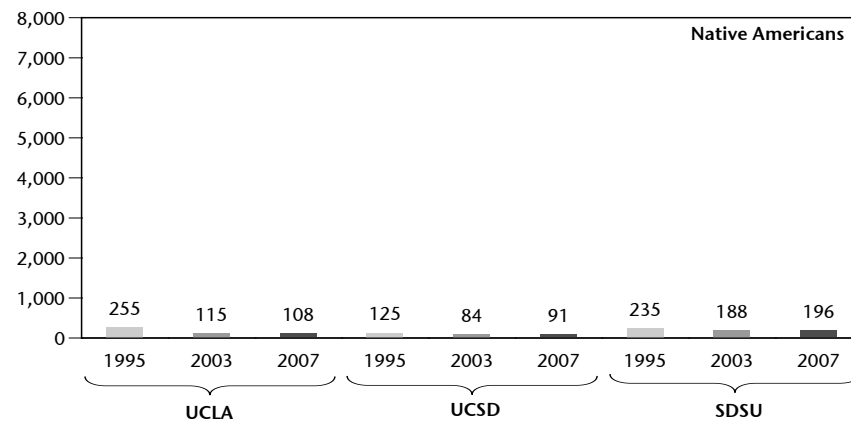
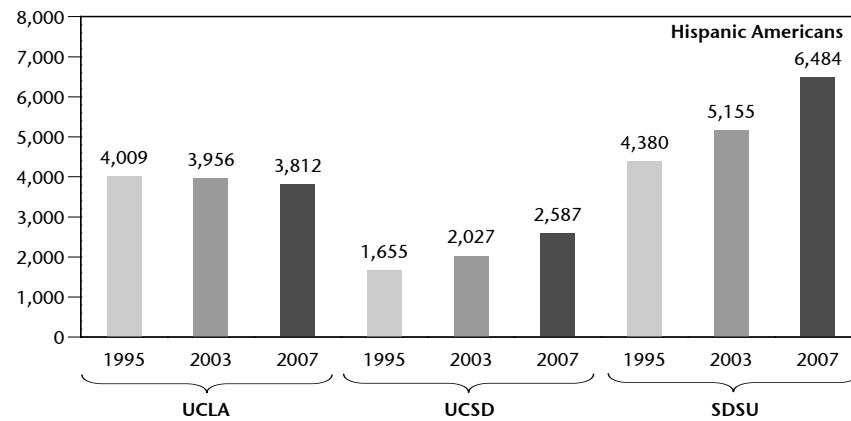
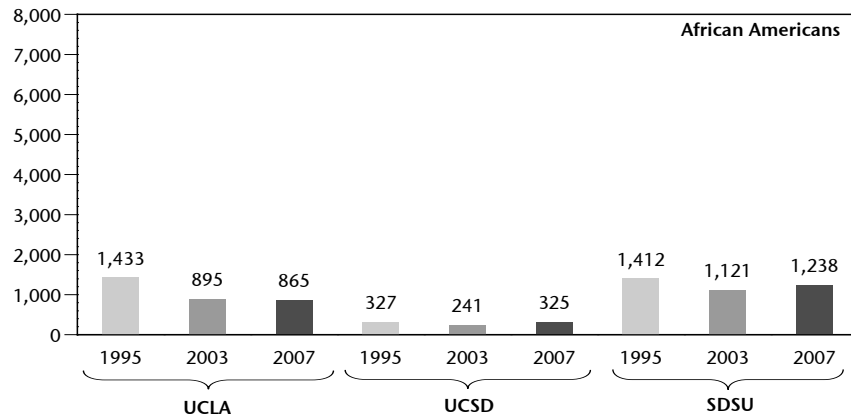
³¹ Unknown Author. 2006. "The Devastating Impact of Proposition 209 on Black Higher Education in California." *The Journal of Blacks in Higher Education*. 59(Spring): 14-15, 14.

³² Unknown Author. 2006. "Affirmative Action Ban Continues to Inflict Severe Damage on Black Higher Educational Opportunities in California." *The Journal of Blacks in Higher Education*. 51(Spring).

The declining enrollment of African American and Hispanic American students between 1995 and 2003 can be attributed to fewer offers of admission from these schools; applications from African American and Hispanic American students actually increased over this period.³³

Figure E-10.
Enrollment of
undergraduates at
selected University of
California campuses and
San Diego State
University, fall 1995,
2003 and 2007

Source:
 UC Office of the President,
 Student Affairs, Admissions,
 available at
<http://www.ucop.edu/sas/index.html>
 and SDSU Office of Analytic
 Studies available at
<http://asir.sdsu.edu/app/>.



³³ Note that total enrollment at UCLA, UC-San Diego and San Diego State University increased by 19 percent, 32 percent and 29 percent respectively between 1995 and 2007.

Employment. The study team also examined the race/ethnicity and gender composition of the engineering industry workforce in the Los Angeles area, California and the United States based on data from 1980, 2000 and 2009. The results are presented in Figure E-11.

In 2009, nearly 47 percent people working as civil engineers in the Los Angeles engineering industry were non-Hispanic whites — a greater percentage than non-Hispanic whites’ representation across all industries in the Los Angeles area. Likewise, the representation of non-Hispanic whites working in the engineering industry in all of California is greater than the percent of non-Hispanic whites working in all industries in California in 2009. Compared to all workers in the Los Angeles area, Asian-Pacific Americans and Subcontinent Asian Americans also had greater representation in the engineering industry than in all industries. These patterns in the Los Angeles area are found in 1980 and 2000 as well, and reflect the trends seen in the nation.

As shown in Figure E-11, African Americans and Hispanic Americans continue to have relatively low representation among civil engineers in the Los Angeles area:

- African Americans made up a small share of civil engineers relative to African Americans’ share of employment in other industries (3.4% compared with 6.9%, respectively, in 2009). This was also true in 1980 and 2000.
- While the rate of Hispanic Americans working in civil engineering substantially increased between 2000 and 2009, they still made up only 21 percent of civil engineers in 2009 but represented 42 percent of the overall the Los Angeles area workforce.

In 2000 and 2009, Native Americans had very little representation among civil engineers in the Los Angeles area. In 1980, no respondents from the Los Angeles area reported being a Native American working as a civil engineer.

In 2009, women represented about 17 percent of civil engineers in the Los Angeles area, an increase from 11percent in 2000 but still below the representation of women among all people with college degrees.

Similar trends are shown across California and the United States workers in the engineering industry.

Figure E-11.
Demographics of civil engineers and workers in all industries, 1980, 2000 and 2009

Los Angeles Metropolitan Area						
	Engineering			All industries		
	1980 (n=500)	2000 (n=757)	2009 (n=183)	1980 (n=220,916)	2000 (n=363,512)	2009 (n=83,354)
Race/ethnicity						
African American	3.8 % **	3.7 % **	3.4 % **	9.8 %	7.3 %	6.9 %
Asian-Pacific American	13.4 % **	21.9 % **	23.6 %	5.2 %	11.0 %	11.9 %
Subcontinent Asian American	2.4 % **	3.3 %	4.3 %	0.2 %	0.8 %	1.1 %
Hispanic American	7.2 % **	10.3 % **	21.0 % **	23.2 %	34.7 %	42.4 %
Native American	0.0 %	0.8 %	0.4 % **	0.6 %	0.8 %	0.7 %
Other minority group	<u>0.0</u>	<u>0.9</u>	<u>0.4</u>	<u>0.2</u>	<u>0.9</u>	<u>0.4</u>
Total minority	26.8 %	40.9 %	53.1 %	39.2 %	55.5 %	63.3 %
Non-Hispanic white	<u>73.2</u> % **	<u>59.1</u> % **	<u>46.9</u> % **	<u>60.8</u> %	<u>44.4</u> %	<u>36.7</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	3.6 % **	11.0 % **	16.6 % **	42.5 %	44.9 %	45.0 %
Male	<u>96.4</u> % **	<u>89.0</u> % **	<u>83.4</u> % **	<u>57.5</u> %	<u>55.1</u> %	<u>55.0</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
California						
	Engineering			All industries		
	1980 (n=1567)	2000 (n=1,952)	2009 (n=478)	1980 (n= 580,104)	2000 (n=788,333)	2009 (n=176,332)
Race/ethnicity						
African American	2.3 % **	3.1 % **	3.5 % **	6.8 %	6.3 %	6.0 %
Asian-Pacific American	11.0 % **	19.5 % **	24.1 % **	5.2 %	11.2 %	12.5 %
Subcontinent Asian American	2.9 % **	2.7 %	4.4 % **	0.2 %	1.1 %	1.6 %
Hispanic American	5.2 % **	8.2 % **	13.7 % **	17.0 %	27.6 %	34.6 %
Native American	0.1 % **	0.8 % **	0.2 % **	0.8 %	1.1 %	0.9 %
Other minority group	<u>0.1</u>	<u>0.9</u>	<u>0.2</u>	<u>0.2</u>	<u>0.9</u>	<u>0.3</u>
Total minority	21.7 %	35.2 %	45.9 %	30.1 %	48.2 %	55.9 %
Non-Hispanic white	<u>78.3</u> % **	<u>64.7</u> % **	<u>54.0</u> % **	<u>69.9</u> %	<u>51.8</u> %	<u>44.1</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	3.4 % **	13.1 % **	12.5 % **	42.1 %	45.1 %	45.3 %
Male	<u>96.6</u> % **	<u>86.9</u> % **	<u>87.5</u> % **	<u>57.9</u> %	<u>54.9</u> %	<u>54.7</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
United States						
	Engineering			All industries		
	1980 (n=10,088)	2000 (n=12,912)	2009 (n=3,352)	1980 (n=5,287,471)	2000 (n=6,832,970)	2009 (n=1,524,881)
Race/ethnicity						
African American	2.5 % **	3.7 % **	4.7 % **	10.1 %	10.9 %	11.8 %
Asian-Pacific American	4.0 % **	6.3 % **	7.4 % **	1.5 %	3.4 %	4.1 %
Subcontinent Asian American	2.0 % **	2.6 % **	3.4 % **	0.2 %	0.7 %	1.1 %
Hispanic American	2.9 % **	4.4 % **	6.2 % **	5.7 %	10.7 %	14.6 %
Native American	0.2 % **	0.8 % **	0.5 % **	0.5 %	1.1 %	1.0 %
Other minority group	<u>0.2</u>	<u>0.4</u>	<u>0.5</u>	<u>0.1</u>	<u>0.4</u>	<u>0.2</u>
Total minority	11.8 %	18.1 %	22.7 %	18.1 %	27.2 %	32.7 %
Non-Hispanic white	<u>88.2</u> % **	<u>81.9</u> % **	<u>77.3</u> % **	<u>81.9</u> %	<u>72.8</u> %	<u>67.3</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %
Gender						
Female	3.0 % **	10.3 % **	12.8 % **	42.2 %	46.5 %	46.9 %
Male	<u>97.0</u> % **	<u>89.7</u> % **	<u>87.2</u> % **	<u>57.8</u> %	<u>53.5</u> %	<u>53.1</u> %
Total	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between civil engineers and workers in all industry groups for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2009 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

The study team also examined the relative number of minorities and women among other engineering occupations in 2000 and 2009 that were not recorded in the 1980 Census. Figure E-12 on the next page gives the demographics of individuals employed as environmental, mining and geological engineers. Figure E-12 also includes the demographics of all workers 25 and older with a college degree.

Relatively few African Americans and Hispanic Americans worked as engineers compared to the population of all workers with college degrees. For example, in the Los Angeles area, African Americans represented about 6 percent of workers with college degrees but only 2 percent of engineers in 2009. Similar results are shown in California and the United States for 2000 and 2009.

Although female representation among engineers in the Los Angeles area increased between 2000 and 2009, women still made up a very small share of engineers compared to all female workers with college degrees. In California and the United States, women were underrepresented among engineers compared to their representation in all workers with college degrees in 2000 and 2009.

Figure E-12.
Demographics of engineers and workers 25 and older with a college degree, 2000 and 2009

Los Angeles Metropolitan Area				
	2000		2009	
	Engineers (n=1,801)	Workers 25 + with a college degree (n=90,710)	Engineers (n=586)	Workers 25 + with a college degree (n=25,046)
Race/ethnicity				
African American	2.5 % **	5.9 %	2.4 % **	5.9 %
Asian-Pacific American	21.1 **	18.4	25.3	21.4
Subcontinent Asian American	2.5	1.9	2.6	2.6
Hispanic American	8.5	9.7	13.5 **	14.3
Native American	0.3	0.6	1.2	0.6
Other minority	<u>1.1</u>	<u>1.1</u>	<u>0.1</u>	<u>0.4</u>
Total minority	36.0 %	37.6 %	45.2 %	45.2 %
Non-Hispanic white	<u>64.0</u>	<u>62.5</u>	<u>54.8</u> **	<u>54.8</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %
Gender				
Female	20.0 % **	44.0 %	24.1 % **	46.8 %
Male	<u>80.0</u> **	<u>56.0</u>	<u>75.9</u> **	<u>53.2</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %
California				
	2000		2009	
	Engineers (n=4,597)	Workers 25 + with a college degree (n=212,702)	Engineers (n=1,380)	Workers 25 + with a college degree (n=56,641)
Race/ethnicity				
African American	2.3 % **	4.5 %	2.3 % **	4.8 %
Asian-Pacific American	17.6 **	16.4	22.1	19.7
Subcontinent Asian American	2.2	2.4	2.9	3.7
Hispanic American	6.1 **	7.9	10.1 **	11.4
Native American	0.5	0.7	0.8	0.6
Other minority group	<u>1.1</u>	<u>0.9</u>	<u>0.1</u>	<u>0.3</u>
Total minority	29.8 %	32.9 %	38.2 %	40.5 %
Non-Hispanic white	<u>70.2</u>	<u>67.1</u>	<u>61.8</u> **	<u>59.4</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %
Gender				
Female	22.5 % **	44.3 %	23.3 % **	47.0 %
Male	<u>77.5</u> **	<u>55.7</u>	<u>76.7</u> **	<u>53.0</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %
United States				
	2000		2009	
	Engineers (n=30,867)	Workers 25 + with a college degree (n=1,631,919)	Engineers (n=10,037)	Workers 25 + with a college degree (n=453,131)
Race/ethnicity				
African American	2.9 % **	6.8 %	3.9 % **	7.9 %
Asian-Pacific American	6.2 **	5.2	7.1 **	6.3
Subcontinent Asian American	2.1 **	1.7	2.6 **	2.5
Hispanic American	3.9 **	4.4	5.8 **	6.3
Native American	0.5	0.6	0.5	0.6
Other minority group	<u>0.5</u>	<u>0.4</u>	<u>0.2</u>	<u>0.3</u>
Total minority	16.0 %	19.1 %	20.1 %	23.9 %
Non-Hispanic white	<u>83.9</u> **	<u>80.9</u>	<u>79.9</u> **	<u>76.0</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %
Gender				
Female	20.4 % **	45.6 %	24.4 % **	48.4 %
Male	<u>79.6</u> **	<u>54.4</u>	<u>75.6</u> **	<u>51.6</u>
Total	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between engineers and workers 25+ with a college degree for the given Census/ACS year is statistically significant at the 95% confidence level.

Engineers are those individuals whose reported occupation was environmental, mining and geological engineer.

Source: BBC Research & Consulting from the 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Summary of Entry and Advancement in the Local Construction and Engineering Industries

BBC's analysis suggests that there are barriers to entry for minorities and women in the construction and engineering industries in the Los Angeles area. For engineering, barriers may begin with education for Hispanic Americans, African Americans and Native Americans. For the construction industry, there appears to be barriers to advancing within the industry and continue through occupational advancement.

- Relatively fewer African Americans worked in the Los Angeles construction industry than what might be expected from representation in the overall workforce.
- Women were represented in the Los Angeles construction industry in particularly low numbers.
- Lack of education appears to be a barrier to entry into the Los Angeles engineering industry for African Americans, Hispanic Americans and Native Americans. Workers in each of these groups were less likely to have a four-year college degree compared to non-Hispanic whites. For African Americans and Hispanic Americans, disparities in educational attainment appear at the high school level, which may affect college opportunities.
- In 1980, 2000 and 2009, there were fewer women than men in the engineering industry in the Los Angeles area, despite the fact that women had comparable or higher levels of educational attainment.

Barriers to advancement in the construction industry may also be an important reason for the relatively low number of minority and female business owners.

- Representation of minorities and women is much lower in certain construction trades compared with others.
- Hispanic Americans were a significantly smaller proportion of managers than all other workers.
- Compared to non-Hispanic whites in the construction industry, African Americans, Asian-Pacific Americans, Hispanic Americans and Native Americans were less likely to be managers.

APPENDIX F.

Business Ownership in the Los Angeles Construction and Engineering Industries

About 24 percent of all workers in the Los Angeles area construction industry were self-employed in 2009. Thirteen percent of worker in the local engineering industry were business owners. Focusing on these two industries, BBC examined business ownership for different race, ethnicity and gender groups in the Los Angeles area.¹ Note that “self-employment” and “business ownership” are used as interchangeable terms in the following discussion.

Business Ownership Rates

Many studies have explored differences at the national level between minority and non-minority business ownership. Although overall self-employment rates have increased for minorities and women over time, a number of studies indicate that gender, ethnicity and race continue to affect opportunities for entrepreneurship.² The extent to which such individual characteristics may limit ownership opportunities differs across industries and from state to state.

BBC used Public Use Microdata Samples (PUMS) from the 1980 and 2000 U.S. Census of Population and the 2009 American Community Survey (ACS) to study business ownership rates in the construction and engineering industries.

Construction industry. Compared to other industries, construction has a large number of business owners. In 2009, 12 percent of workers across all industries were self-employed in the Los Angeles area (in incorporated or unincorporated businesses). About one-quarter of those in the construction industry were business owners.

However, rates of self-employment in the local construction industry vary by race, ethnicity and gender. Figure F-1 shows the percentage of workers who were self-employed in the construction industry by group for 1980, 2000 and 2009. The table also reports corresponding sample sizes for each percentage shown. Results for the Los Angeles area are compared with statistics for the state and the nation.

¹ In the marketplace appendices, the Los Angeles area includes the following five counties (unless otherwise noted): Los Angeles, Orange, Ventura, Riverside and San Bernardino.

² See, for example, Waldinger, Roger and Howard E. Aldrich. 1990. *Ethnicity and Entrepreneurship*. Annual Review of Sociology, 111-135.; Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793.; Fairlie, Robert W. and Alicia M. Robb. 2007. *Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances and Business Human Capital*. Journal of Labor Economics, 25(2), 289-323.; and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation.

Figure F-1.
Percentage of workers in the construction industry who were self-employed,
1980, 2000 and 2009

Los Angeles Metropolitan Area	1980	2000	2009	Sample size		
				1980	2000	2009
Race/ethnicity						
African American	14.1 % **	19.8 % **	22.3 % *	631	682	122
Asian-Pacific American	18.6	29.5	37.6	311	834	275
Subcontinent Asian American	0.0 **	15.9	9.0	27	47	21
Hispanic American	9.8 **	13.6 **	18.2 **	3,296	9,918	2,819
Native American	14.8 **	22.0	39.7	149	227	38
Other race minority	16.7	33.2	19.1	24	207	16
Non-Hispanic white	22.1	27.9	31.1	11,058	9,611	2,027
Gender						
Female	9.4 % **	13.8 % **	15.1 % **	1,465	2,017	512
Male	19.9	22.0	24.4	14,031	19,509	4,806
All individuals	18.9 %	21.2 %	23.6 %	15,496	21,256	5,318
California						
California	1980	2000	2009	Sample size		
				1980	2000	2009
Race/ethnicity						
African American	12.0 % **	14.9 % **	20.1 % **	1,219	1,482	256
Asian-Pacific American	15.2 **	25.8	30.4	690	2,003	601
Subcontinent Asian American	0.0 **	15.5	27.4	51	115	45
Hispanic American	9.9 **	11.8 **	15.8 **	5,430	17,166	4,754
Native American	14.0 **	22.0	33.5	385	798	124
Other race minority	22.0	25.4	16.1 **	50	458	31
Non-Hispanic white	21.9	26.5	29.8	25,931	26,786	5,541
Gender						
Female	10.3 % **	13.7 % **	14.4 % **	3,119	4,840	1,186
Male	20.2	21.6	23.8	30,637	43,968	10,166
All individuals	19.3 %	20.8 %	23.0 %	33,756	48,808	11,352
United States						
United States	1980	2000	2009	Sample size		
				1980	2000	2009
Race/ethnicity						
African American	9.0 % **	15.2 % **	19.6 % **	24,357	26,752	4,927
Asian-Pacific American	10.9 **	21.0 **	25.6	2,360	5,746	1,641
Subcontinent Asian American	4.9 **	17.9 **	20.8 *	244	725	241
Hispanic American	10.6 **	12.2 **	16.3 **	19,590	66,531	18,850
Native American	10.6 **	19.3 **	20.8 **	2,571	7,640	1,484
Other race minority	14.5 **	23.9	17.6 **	248	1,923	207
Non-Hispanic white	19.4	25.4	27.0	281,094	371,152	76,641
Gender						
Female	9.8 % **	16.8 % **	16.8 % **	26,096	46,791	10,643
Male	18.7	23.3	24.6	304,368	433,678	93,528
All individuals	18.0 %	22.6 %	23.9 %	330,464	480,469	103,991

Note: *, ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male groups) for the given Census/ACS year is statistically significant at the 90% or 95% confidence level, respectively.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2009 ACS Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Business ownership rates in 2000. The 2000 U.S. Census of Population provides the largest sample of construction workers of any of the data sets examined. 2000, 28 percent of non-Hispanic whites working in the Los Angeles area construction industry were self-employed. Business ownership rates were lower for African Americans, Hispanic Americans and Native Americans working in the local industry.

- About 14 percent of Hispanic Americans owned construction businesses, less than half the rate for non-Hispanic whites and a statistically significant difference.
- African Americans had a business ownership rate of about 20 percent, a difference from non-Hispanic whites that is statistically significant.
- In the Los Angeles area, 22 percent of Native Americans working in the construction industry were self-employed, substantially lower than the rate for non-Hispanic white rate but not a statistically significant difference due the sample size for Native American workers.

Although Subcontinent Asian Americans owned businesses at a lower rate than non-Hispanic whites in the construction industry, the small sample size of this group for the Los Angeles area makes drawing conclusions from the results difficult. In 2000, Asian-Pacific Americans owned construction businesses at a similar rate to non-Hispanic whites.

Compared with about 22 percent of men, 14 percent of women working in the construction industry in the Los Angeles area were self-employed. This statistically significant difference is consistent with the gender patterns seen in California and the United States.

Changes in business ownership rates since 2000. Compared with 2000, a larger percentage of non-Hispanic whites working in the Los Angeles construction industry in 2009 were self-employed (31%). Although most minority groups also had higher rates of business ownership in 2009 than 2000, ownership rates continued to lag rates for non-Hispanic white construction workers.

- In 2009, a substantially smaller proportion of Hispanic Americans (18%) than non-Hispanic whites were business owners in the Los Angeles area construction industry (a statistically significant difference).
- The business ownership rate for African Americans was about 22 percent, a statistically significant difference from the rate for non-Hispanic whites (at the 90 percent confidence level).

At about 38 percent, the self-employment rate for Asian-Pacific Americans in 2009 was substantially greater than most other racial and ethnic groups, including non-Hispanic whites. A similar percentage of Native Americans in the construction industry reported being self-employed, but interpretation of this result is limited by small sample size s.

Statistically significant differences in business ownership rates between women and men persisted in the local construction industry in 2009.

Engineering industry. BBC also examined business ownership rates in the engineering industry. In this and other marketplace appendices, the engineering industry refers to architectural, engineering and related services. The results in Figure F-2 combine all minority groups when analyzing business ownership rates due to small sample sizes for individual groups.

Business ownership rates in 2000. In 2000, about 20 percent of non-Hispanic whites working in the Los Angeles engineering industry were self-employed. About 11 percent of minorities working in this industry owned businesses in 2000. This difference in minority and non-minority rates of business ownership is statistically significant.

During the same year, approximately 9 percent of women were self-employed compared with 19 percent of men in the local engineering industry.

The differences in engineering business ownership rates in the Los Angeles area were similar to patterns found for both the state and nation.

Changes in business ownership rates since 2000. As shown in Figure F-2, the rate of business ownership rates for minorities and non-minorities working in the Los Angeles engineering industry fell between 2000 and 2009. The rate for minorities was one percentage point lower in 2009 than in 2000, and the rate for non-Hispanic whites fell by five percentage points. Although the difference in business ownership rate between minorities and non-Hispanic whites narrowed over this time period, a substantial difference remained (a statistically significant difference at the 90% confidence level).

Both women and men working in the Los Angeles engineering industry owned businesses at lower rates in 2009 than in 2000, but a statistically significant difference between the two groups persisted.

In the state and the U.S. as a whole, patterns of business ownership in the engineering industry in 2009 were similar to those in the Los Angeles area.

Figure F-2.
Percentage of workers in the engineering industry who were self-employed,
1980, 2000 and 2009

Los Angeles Metropolitan Area	1980	2000	2009	Sample size		
				1980	2000	2009
Race/ethnicity						
Minority	9.0 % **	11.1 % **	10.2 % *	402	1,233	390
Non-Hispanic white	21.0	19.9	14.6	1,460	2,019	521
Gender						
Female	4.6 % **	9.3 % **	6.6 % **	438	835	244
Male	22.6	19.1	14.6	1,424	2,417	667
All individuals	18.4 %	16.6 %	12.6 %	1,862	3,252	911
California						
				Sample size		
				1980	2000	2009
Race/ethnicity						
Minority	10.2 % **	10.4 % **	10.1 % **	734	2,497	750
Non-Hispanic white	20.6	18.5	17.4	3,231	5,422	1,351
Gender						
Female	6.7 % **	9.4 % **	9.0 % **	925	2,187	556
Male	22.3	18.4	16.6	3,040	5,732	1,545
All individuals	18.7 %	15.9 %	14.6 %	3,965	7,919	2,101
United States						
				Sample size		
				1980	2000	2009
Race/ethnicity						
Minority	7.5 % **	7.8 % **	8.5 % **	3,196	9,401	3,049
Non-Hispanic white	15.8	14.2	13.1	25,673	48,823	13,631
Gender						
Female	4.5 % **	7.5 % **	7.6 % **	6,090	15,191	4,492
Male	17.7	15.1	13.9	22,779	43,033	12,188
All individuals	14.9 %	13.2 %	12.2 %	28,869	58,224	16,680

Note: "Minority" includes African Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minority groups. Sample sizes for these race/ethnicity groups were too small to analyze individually. The data presented in this table include all workers in the engineering industry.

*, ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male groups) for the given Census/ACS year is statistically significant at the 90% or 95% confidence level, respectively.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2009 ACS Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Potential causes of differences in business ownership rates. Researchers have examined whether there are disparities in business ownership rates after consideration of other personal characteristics such as education and age. A number of studies have found that disparities in business ownership still exist when accounting for such neutral factors.

- Some studies have concluded that access to financial capital is a strong determinant of business ownership. Researchers have consistently found a positive relationship between start-up capital and business formation, expansion and survival.³ One study found that housing appreciation measured at the MSA level is a positive determinant of becoming self-employed.⁴ Unexplained differences still exist, however, when controlling for these factors.⁵
- Education has a positive effect on the probability of business ownership in most industries. However, findings from multiple studies indicate that minorities are still less likely to own a business than non-minority counterparts with the same levels of education.⁶
- Intergenerational links affect one's likelihood of self-employment. One study found that experience working for a self-employed family member increases the likelihood of business ownership for minority groups.⁷
- Time since immigration and assimilation into American society are important determinants of self-employment, but unexplained differences in minority-business ownership still exist when accounting for these factors.⁸

³ See Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership*. Working paper, Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor); and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation.

⁴ Fairlie, Robert W. and Harry A. Krashinsky. 2006. Liquidity Constraints, Household Wealth and Entrepreneurship Revisited.

⁵ Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership*. Working paper, Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor).

⁶ See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment*. Sociological Perspectives. 79-94.

⁷ See Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses*. Russell Sage Foundation; and Fairlie, Robert W. and Alicia M. Robb. 2007. *Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances and Business Human Capital*. Journal of Labor Economics, 25(2), 289-323.

⁸ See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations*. The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment*. Sociological Perspectives. 79-94.

Race, ethnicity and gender can affect opportunities for business ownership, even when accounting for other personal characteristics such as education, age and familial ties. To further examine this topic, BBC developed multivariate statistical models to explore patterns of business ownership in the Los Angeles area. These models estimate the effect of race/ethnicity and gender on the probability of self-employment while controlling for other potentially influential factors.

Business Ownership Regression Analysis

An extensive body of literature examines whether race- and gender-neutral factors such as access to financial capital, education, age, and family characteristics (e.g., marital status) help explain differences in business ownership. This subject has also been examined in other disparity analyses. For example, prior studies in Minnesota⁹ and Illinois¹⁰ have conducted econometric analyses investigating whether disparities in business ownership among race/ethnicity and gender groups in the combined construction and engineering industry remain after controlling for other personal characteristics. These studies have incorporated probit econometric models using PUMS data from the 2000 Census and have been among materials submitted to courts in subsequent litigation concerning state implementation of the Federal DBE Program.

BBC used similar probit regression models to predict business ownership from multiple independent or “explanatory” variables.¹¹ Independent variables include:

- Personal characteristics potentially linked to the likelihood of business ownership (age, age-squared, marital status, number of children and elderly people in the household, English-speaking ability and disability status);
- Indicators of educational attainment;
- Measures and indicators related to personal financial resources and constraints (home ownership, home value, monthly mortgage payment, dividend and interest income and additional household income from a spouse or unmarried partner); and
- Variables representing the race/ethnicity and gender of the individual.

⁹ National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation.

¹⁰ National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

¹¹ Probit models estimate the effects of multiple independent or “predictor” variables in terms of a single, dichotomous dependent or “outcome” variable — in this case, business ownership. The dependent variable is binary, coded as “1” for individuals in a particular industry who are self-employed; “0” for individuals who are not self-employed. The model enables estimation of the probability that a worker in a given estimation sample is self-employed. The study team excluded observations where the Census Bureau had imputed values for the dependent variable, business ownership.

BBC developed four models using Public Use Microdata Samples (PUMS) data from the 2000 Census and 2009 ACS:

- A probit regression model for the Los Angeles area construction industry in 2000 that included 17,770 observations;
- A probit regression model for the Los Angeles area construction industry in 2009 that included 3,791 observations;
- A probit regression model for the California engineering industry in 2000 that included 7,030 observations; and
- A probit regression model for the California engineering industry in 2009 that included 1,512 observations.

The engineering models differ slightly in form from the two construction models as they examine a larger geographic area. Due to the small sample size for engineering in the Los Angeles area, BBC developed models using observations from California as a whole. Engineering workers from the state are included in the models, and any Los Angeles area effects are analyzed by including control variables for the region. (BBC used a similar approach when analyzing SSBF data on business credit in Appendix G.) The Los Angeles area control variables included an indicator variable for Los Angeles area workers as well as “interaction” terms for minorities and women living in the Los Angeles area.

Results specific to the Los Angeles construction industry. BBC developed probit regression models of business ownership in the Los Angeles area construction industry for 2000 and 2009.

Los Angeles area construction industry in 2000. Figure F-3 presents the coefficients and t-statistics for the 2000 probit model for individuals working in the Los Angeles construction industry.

The model indicates that several neutral factors were important and statistically significant in predicting the probability of business ownership for workers in this industry:

- Older individuals were more likely to be business owners;
- Some level of disability increased the likelihood of being self-employed;
- The value of the home owned by the worker was associated with higher probability of business ownership;
- Greater income from a spouse or partner increased workers’ likelihood of owning a business; and
- Some college education increased the probability of business ownership in 2000.

After controlling for neutral factors in the 2000 data, statistically significant disparities in rates of business ownership remained for African Americans, Hispanic Americans, Subcontinent Asian Americans, Native Americans and women working in the Los Angeles construction industry. Asian-Pacific Americans were the only minority group significantly more likely to own businesses compared to non-Hispanic whites, holding other factors equal.

Figure F-3.
Los Angeles area construction industry business ownership model, 2000

Variable	Coefficient	t-statistic
Constant	-2.5327	-18.02 **
Age	0.0645	9.95 **
Age-squared	-0.0005	-6.17 **
Married	-0.0189	-0.62
Disabled	0.0817	2.13 **
Number of children in household	0.0009	0.08
Number of people over 65 in household	-0.0022	-0.07
Owens home	-0.2049	-5.79 **
Home value (\$000s)	0.0012	10.21 **
Monthly mortgage payment (\$000s)	-0.0077	-0.34
Interest and dividend income (\$000s)	0.0001	0.13
Income of spouse or partner (\$000s)	0.0008	1.98 **
Speaks English well	0.0540	1.32
Less than high school education	-0.0620	-1.75 *
Some college	0.0918	2.96 **
Four-year degree	0.0023	0.05
Advanced degree	-0.0776	-1.01
African American	-0.1647	-2.28 **
Asian-Pacific American	0.1054	1.76 *
Subcontinent Asian American	-0.7433	-2.43 **
Hispanic American	-0.2261	-7.12 **
Native American	-0.2073	-1.86 *
Other race minority	0.2293	1.97 **
Female	-0.5287	-11.48 **

Note: *,** Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

The probit modeling approach allows for simulation of business ownership rates for minorities and females as if they had the same probability of self-employment as similarly situated non-Hispanic whites and males, respectively. To conduct this next step in the analysis, BBC performed a probit regression predicting business ownership using only non-Hispanic white (or non-Hispanic white male) construction workers in the dataset.¹² The study team then applied the coefficients from this version of the model to the mean characteristics of minorities (or women) working in the Los Angeles area construction industry to estimate the probability of business ownership in the absence of any racial/ethnic (or gender) differences in the likelihood of self-employment.

BBC performed these calculations for only those groups where race/ethnicity or gender was a statistically significant negative factor in business ownership (as shown in Figure F-3).

Figure F-4 shows these simulated (“benchmark”) business ownership rates, comparing them to the actual, observed mean probability of business ownership for African Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans and non-Hispanic white women. Similar simulation approaches have been incorporated in other disparity studies reviewed by courts.

¹² This version of the model excludes the race/ethnicity indicator variables since the value for all of those variables would be the same.

Figure F-4.
Comparison of actual business ownership rates to simulated rates
for Los Angeles area construction workers, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
African American	20.5%	25.3%	81
Subcontinent Asian American	13.2%	32.6%	41
Hispanic American	14.1%	23.1%	61
Native American	21.3%	27.2%	78
White female	20.6%	28.6%	72

Note: As the benchmark figure can only be estimated for records with an observed (rather than imputed) dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-1.

Source: BBC Research & Consulting from statistical models of 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Comparing actual, observed mean self-employment rates of African Americans in the Los Angeles construction industry with a benchmark based on business ownership rates of non-Hispanic white construction workers, there were about 81 percent as many African American-owned businesses as would be expected. Hispanic Americans (disparity index of 61), Native Americans (disparity index of 78) and Subcontinent Asian Americans (disparity index of 41) also owned businesses at rates substantially lower than would be expected compared to the average business ownership rates of non-Hispanic white construction workers. To focus on the effects of gender, BBC’s analysis compared actual and predicted rates for non-Hispanic white women —white women working in the local construction industry owned businesses at rates substantially lower than would be expected (disparity index of 72).

Los Angeles area construction industry in 2009. Figure F-5 presents the coefficients and t-statistics from the probit model predicting business ownership in the Los Angeles construction industry in 2009.

From the 2009 model, it appears that many of the same neutral factors important in predicting business ownership in the 2000 model also had an impact in 2009. Increased age, higher home value and higher income of a spouse or partner are associated with a greater likelihood of self-employment. The importance of educational attainment to ownership of a construction business persisted as well, with attainment of a four-year degree as a statistically significant predictor of business ownership in 2009.

After controlling for neutral factors, a statistically significant difference persisted in the rates of business ownership for Hispanic American and for female construction workers. There were also differences for African Americans and Subcontinent Asian Americans, but they were not statistically significant due to limited sample sizes for the 2009 data.

Figure F-5.
Los Angeles area construction industry business ownership model, 2009

Variable	Coefficient	t-statistic
Constant	-1.9622	-5.24 **
Age	0.0472	2.82 **
Age-squared	-0.0003	-1.62
Married	-0.0329	-0.49
Disabled	-0.0325	-0.24
Number of children in household	-0.0069	-0.30
Number of people over 65 in household	0.0397	0.63
Owns home	-0.3082	-3.85 **
Home value (\$000s)	0.0005	3.06 **
Monthly mortgage payment (\$000s)	0.0560	1.63
Interest and dividend income (\$000s)	0.0032	1.02
Income of spouse or partner (\$000s)	0.0020	2.54 *
Speaks English well	0.0333	0.37
Less than high school education	0.0500	0.63
Some college	0.0030	0.05
Four-year degree	-0.2376	-2.35 *
Advanced degree	-0.1280	-0.82
African American	-0.3553	-1.49
Asian-Pacific American	0.2975	2.11
Subcontinent Asian American	-1.0930	-1.44
Hispanic American	-0.2960	-4.17 **
Native American	0.2960	0.78
Other race minority	-0.2714	-0.62
Female	-0.5866	-5.98 **

Note: *,** Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting from 2009 ACS data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Using the same approach as for the 2000 data, the study team used the 2009 results to simulate business ownership rates if minorities and women had the same probability of self-employment as similarly situated non-Hispanic whites and non-Hispanic white males, respectively. Figure F-6 shows actual and simulated (“benchmark”) business ownership rates for Hispanic American and white women construction workers in the Los Angeles area. Again, BBC performed these calculations for only those groups where race/ethnicity or gender was a statistically significant factor in business ownership (as shown in Figure F-5).

In 2009, Hispanic Americans had an actual, observed self-employment rate of about 17 percent, substantially lower than the predicted rate of 33 percent from the study team’s simulation. This translates into a disparity index of 52, which suggests that nearly twice as many Hispanic American construction workers would be business owners if they had the same self-employment rate as similarly situated non-Hispanic whites.

Results for 2009 for women were similar to 2000. Based on the simulation, about 34 percent of white women would own businesses in the construction industry if gender did not have an impact on self-employment. However, the actual 2009 self-employment rate for women was 20 percent (disparity index of 59).

Figure F-6.
Comparison of actual business ownership rates to simulated rates
for Los Angeles area construction workers, 2009

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Hispanic American	17.4%	33.2%	52
White female	20.0%	34.1%	59

Note: As the benchmark figure can only be estimated for records with an observed (rather than imputed) dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-1.

Source: BBC Research & Consulting from statistical models of 2009 ACS data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Results specific to the California engineering industry. BBC developed a separate business ownership model for the engineering industry. Due to small sample sizes for the Los Angeles area, the study team analyzed 2000 Census data and 2009 ACS data for California as a whole. For the same reason, individual minority groups were combined into a single category with a single minority indicator representing any minority group. The models included an indicator variable for the Los Angeles area and interaction terms for minorities and women in the area.

California engineering industry in 2000. Figure F-7 presents the coefficients and t-statistics from the probit model predicting business ownership in the California engineering industry in 2000.

The following neutral factors were statistically significant in predicting business ownership for the engineering industry in California in 2000:

- Older individuals were more likely to be business owners;
- Higher home values (for homeowners) were associated with a greater likelihood of business ownership;
- Higher income of a spouse or partner was associated with higher rates of self-employment;
- Having a four-year or advanced degree increased the likelihood of owning a business; and
- The ability to speak English well was associated with lower rates of self-employment.

After accounting for neutral factors, the California engineering model for 2000 indicated that minorities and women had lower rates of business ownership and that these differences are statistically significant.

Because the indicator variable for the Los Angeles area and the interaction terms for minority- and female-workers in the local area were not statistically significant, state-wide results appear to apply to the Los Angeles area.

Figure F-7.
California engineering industry business ownership model, 2000

Variable	Coefficient	t-statistic
Constant	-2.4259	-7.08 **
Age	0.0441	3.71 **
Age-squared	-0.0001	-1.00
Married	-0.0358	-0.66
Disabled	-0.0502	-0.62
Number of children in household	0.0212	1.00
Number of people over 65 in household	0.0330	0.64
Owns home	-0.2294	-3.40 **
Home value (\$000s)	0.0008	6.27 **
Monthly mortgage payment (\$000s)	0.0027	0.10
Interest and dividend income (\$000s)	0.0016	1.46
Income of spouse or partner (\$000s)	0.0013	2.69 **
Speaks English well	-0.3742	-2.05 **
Less than high school education	-0.1796	-1.02
Some college	0.0076	0.08
Four-year degree	0.2209	2.40 **
Advanced degree	0.1459	1.50
Minority	-0.1942	-2.94 **
Female	-0.2686	-4.02 **
Minority in Greater Los Angeles	-0.0064	-0.07
Female in Greater Los Angeles	-0.0750	-0.73
Greater Los Angeles	0.0745	1.42

Note: ***,** Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

The study team used the same approach for the engineering industry as performed for the construction industry to simulate business ownership rates as if minorities and women had the same probability of self-employment as similarly situated non-Hispanic whites and non-Hispanic white males, respectively. Figure F-8 shows actual and simulated (“benchmark”) business ownership rates for minorities and white women in the California engineering industry.

About three-quarters as many minorities own businesses in the California engineering industry as one would expect based on the model (disparity index of 75). Minorities had an actual, observed self-employment rate of approximately 11 percent and a benchmark business ownership rate of about 14 percent.

The simulation indicates that white women working in the industry own engineering firms at 64 percent of the rate observed for similarly situated white men. In the California engineering industry, about 11 percent of non-Hispanic white women were business owners in 2000 while the benchmark for business ownership was 17 percent.

Consistent with other research, the statistical model indicates that race/ethnicity and gender may affect rates of business ownership in the engineering industry even after controlling for neutral factors.

Figure F-8.
Comparison of actual business ownership rates to simulated rates
for Los Angeles area workers in the engineering industry, 2000

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Minority	10.7%	14.2%	75
White female	11.1%	17.2%	64

Note: As the benchmark figure can only be estimated for records with an observed (rather than imputed) dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-2.

Source: BBC Research & Consulting from statistical models of 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

California engineering industry in 2009. Figure F-9 presents the coefficients and t-statistics from the probit model predicting business ownership in the California engineering industry in 2009.

As with the 2000 model, a number of neutral factors are important in predicting business ownership in the engineering industry in 2009. For example, increased age is associated with a higher likelihood of self-employment and the ability to speak English well is associated with a lower likelihood. However, higher home values and the income of a spouse or partner were no longer statistically significant predictors, and the impact of educational attainment on ownership of a business was not statistically significant.

When holding neutral factors constant, the California engineering model for 2009 indicates that women working in the industry were significantly less likely than men to own businesses. Minorities had substantially lower rates of business ownership than non-minorities, but this effect was not statistically significant, perhaps due to smaller sample sizes for 2009.

As in the 2000 engineering model, the indicator variable for the Los Angeles area and the interaction terms for minority- and female-workers in the local area were not statistically significant. This suggests that the state-wide results are representative of the Los Angeles engineering industry.

Figure F-9.
California engineering industry business ownership model, 2009

Variable	Coefficient	t-statistic
Constant	-1.4014	-1.75
Age	0.0616	2.30 *
Age-squared	-0.0003	-0.99
Married	-0.0350	-0.28
Disabled	0.3490	1.60
Number of children in household	0.0910	1.77
Number of people over 65 in household	0.0523	0.46
Owns home	-0.3481	-2.35 *
Home value (\$000s)	0.0002	2.10
Monthly mortgage payment (\$000s)	0.0146	0.29
Interest and dividend income (\$000s)	0.0012	0.62
Income of spouse or partner (\$000s)	0.0005	0.59
Speaks English well	-1.5708	-3.34 **
Less than high school education	-1.4273	-2.07
Some college	-0.1378	-0.70
Four-year degree	-0.0451	-0.22
Advanced degree	-0.0342	-0.17
Minority	-0.2768	-1.84
Female	-0.2814	-2.24 *
Minority in Greater Los Angeles	0.1664	0.76
Female in Greater Los Angeles	-0.1503	-0.52
Greater Los Angeles	-0.1884	-1.39

Note: ***,** Denote statistical significance at the 90% and 95% confidence levels, respectively.

Source: BBC Research & Consulting from statistical models of 2009 ACS data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

The study team used the same approach as discussed above to simulate business ownership rates if women had the same probability of self-employment as similarly situated non-Hispanic white males. Figure F-10 shows actual and simulated (“benchmark”) business ownership rates in 2009 for white women in the California engineering industry. BBC performed these calculations for women as the impact of gender was statistically significant in the 2009 engineering business ownership model.

Figure F-10.
Comparison of actual business ownership rates to simulated rates for Los Angeles area workers in the engineering industry, 2009

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
White female	9.0%	16.4%	55

Note: As the benchmark figure can only be estimated for records with an observed (rather than imputed) dependent variable, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in Figure F-2.

Source: BBC Research & Consulting from statistical models of 2009 ACS data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

The simulation indicates that white women working in the industry own engineering firms at 55 percent of the rate observed for similarly situated white men. Approximately 9 percent of non-Hispanic white women in the California engineering industry were business owners in 2009 compared with a benchmark business ownership rate of about 16 percent.

Summary of Business Ownership in the Construction and Engineering Industries

Disparities in business ownership were present in the Los Angeles area construction industry:

- In both 2000 and 2009, business ownership rates for African Americans and Hispanic Americans were substantially lower than that of non-Hispanic whites (statistically significant differences). Business ownership rates were lower for other minority groups as well, but differences were not statistically significant in part due to smaller sample sizes for those groups.
- After statistically controlling for a number of neutral factors affecting business ownership, substantially fewer minorities owned firms than would be expected if they owned businesses at the same rate as similarly situated non-minorities. This was true for African Americans, Subcontinent Asian Americans, Hispanic Americans and Native Americans working in the local construction industry in 2000 (statistically significant differences).

There were also large differences for African Americans, Subcontinent Asian Americans and Hispanic Americans in 2009, but only the results for Hispanic Americans were statistically significant in that year (in part due to small sample sizes in the 2009 data).

- In 2000 and in 2009, women working in the local construction industry had substantially lower rates of business ownership than men. Statistically significant disparities persisted for women after controlling for a number of neutral factors.

BBC also identified disparities in business ownership in the engineering industry:

- Minorities working in the Los Angeles area engineering industry were self-employed at substantially lower rates than non-Hispanic whites in both 2000 and 2009 (statistically significant differences).
- In 2000 and in 2009, women working in the engineering industry in the Los Angeles area also had substantially lower self-employment rates than men (statistically significant differences).
- BBC used regression models to investigate the presence of race/ethnicity and gender disparities in business ownership in the engineering industry after accounting for the effects of neutral factors. Analyses for 2000 indicated statistically significant disparities for minorities and women. For 2009, there were large disparities for minorities and women but only the results for women were statistically significant.

APPENDIX G.

Access to Capital for Business Formation and Success

Access to capital is one of the factors researchers have examined when studying business formation and success. If discrimination exists in capital markets, minorities and women may have difficulty acquiring the capital necessary to start, operate or expand businesses.¹ This appendix explores access to business capital, which relates closely to matters discussed in Appendix F and Appendix H.

BBC first examines homeownership and mortgage lending, as home equity can be an important source of capital to start and expand businesses. The appendix then turns to business loans, assessing whether minorities and females experience difficulty acquiring capital.

Homeownership and Mortgage Lending

BBC analyzed homeownership and the mortgage lending industry to explore differences across race/ethnicity and gender that may lead to disparities in access to capital.

Homeownership. Wealth created through homeownership can be an important source of capital to start or expand a business.² Any barriers to homeownership and home equity growth for minorities or women can affect business opportunities by constraining their available funding. Similarly, any barriers to accessing home equity through home mortgages can also affect available capital for new or expanding businesses. In sum:

- A home is a tangible asset that provides borrowing power;³
- Wealth that accrues from housing equity and tax savings from homeownership contributes to capital formation;⁴
- Next to business lines of credit, mortgage loans have traditionally been the second largest loan type for small businesses;⁵ and
- Homeownership is associated with an estimated 30 percent reduction in probability of loan denial for small businesses.⁶

¹ For example, see: Coleman, Susan. 2002. *Small Firm Sources of Debt Capital: A Comparison by Gender, Race and Ethnicity.* University of Hartford.

² The recent (beginning in late 2006) housing and mortgage crisis has substantially impacted the ability of small businesses to secure loans through home equity. A discussion of the consequences to small businesses and MBE/WBEs is provided at the end of this section.

³ Nevin, Allen. 2006. "Homeownership in California: A CBIA Economic Treatise." *California Building Industry Association.* 2.

⁴ Jackman, Mary R. and Robert W. Jackman 1980. "Racial Inequalities in Home Ownership." *Social Forces.* 58. 1221-1234.

⁵ Berger, Allen N. and Gregory F. Udell. 1998. "The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle." *Journal of Banking and Finance.* 22.

Home equity as a source of business capital is especially important in California where, historically, house price appreciation has caused home value to be a substantial portion of many households' wealth.⁷ The study team first analyzed homeownership rates and home values in before considering loan denial and subprime lending.

Homeownership rates. Many studies document past discrimination in the U.S. housing market. The United States has a history of restrictive real estate covenants and property laws that affect the ownership rights of minorities and women.⁸ In the past, for example, a woman's participation in homeownership was secondary to that of her husband and parents.⁹

BBC used 2000 Census, 2007 American Community Survey (ACS) and 2009 ACS data to examine homeownership rates in the Los Angeles area,¹⁰ California and the United States. Figure G-1 presents rates of homeownership for minority groups and non-Hispanic whites.

Approximately two-thirds of non-Hispanic white households owned homes in the Los Angeles area in 2000. Homeownership rates were lower for each minority group than for non-Hispanic white households in the Los Angeles area.

- Approximately 39 percent of African American households were homeowners in 2000;
- About 43 percent of Hispanic American households in the Los Angeles area were homeowners in 2000;
- The homeownership rates in 2000 for Subcontinent Asian Americans and Asian-Pacific Americans were 50 percent and 54 percent, respectively; and
- Native Americans in the Los Angeles area owned homes at a rate of 52 percent.

In each case, the difference between the minority homeownership rate and the rate for non-Hispanic whites is statistically significant. Similar disparities for these groups are found in California as a whole. Generally, rates of homeownership were lower in the Los Angeles area than the nation, in part due to the historically high price of homes.¹¹

Disparities in homeownership rates are also apparent in 2007 and 2009. While homeownership rates rose for nearly all groups between 2000 and 2007 in the Los Angeles area, California and the United States as a whole, homeownership broadly fell between 2007 and 2009 with the economic downturn and depressed housing markets.

⁶ Cavalluzzo, Ken and John Wolken. 2005. "Small Business Loan Turndowns, Personal Wealth and Discrimination." *Journal of Business*. 78:2153-2178.

⁷ Myers, Dowell and Xin Gao. 2004. "Trajectories of Homeownership in California, 1980 to 2000, and 2000 to 2030." *California Housing Futures research program*. Fannie Mae Foundation.

⁸ Ladd, Helen F. 1982. "Equal Credit Opportunity: Women and Mortgage Credit." *The American Economic Review*. 72:166-170.

⁹ Card, Emily. 1980. "Women, Housing Access, and Mortgage Credit." *Signs*. 5:215-219.

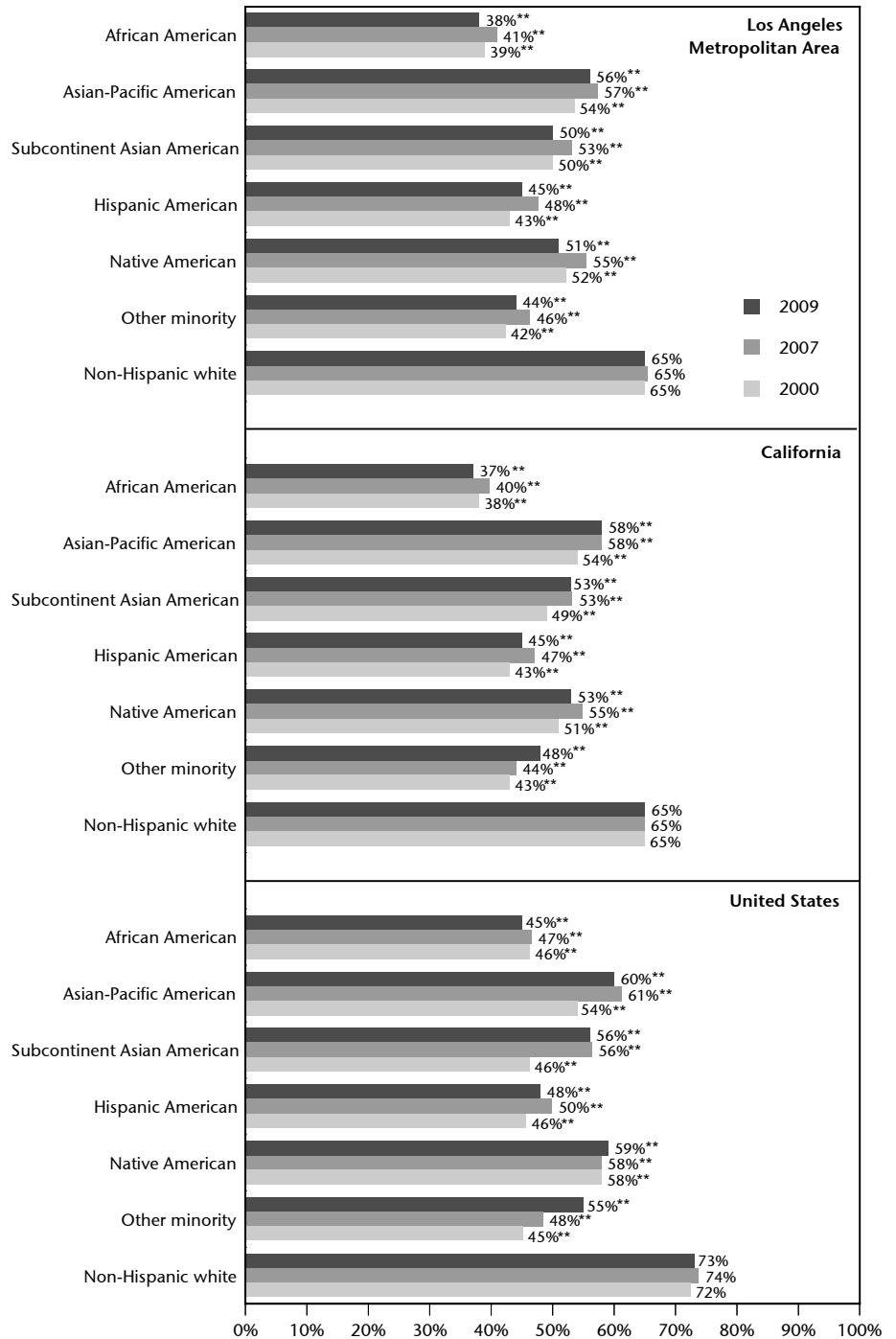
¹⁰ In the marketplace appendices, the Los Angeles area comprises the following five counties (unless otherwise noted): Los Angeles, Orange, Ventura, Riverside and San Bernardino. Collectively, these counties are referred to as the Los Angeles area.

¹¹ Quigley, John M. and Steven Raphael. 2004. "Regulation and the High Cost of Housing in California." *University of California, Berkeley*.

Figure G-1.
Homeownership rates,
2000, 2007, and 2009

Note:
 The sample universe is all households.
 ** Denotes that the difference in proportions from non-Hispanic white for the given year is statistically significant at the 95% confidence level.

Source:
 BBC Research & Consulting from 2000 U.S. Census and 2007 and 2009 ACS data. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Although not presented here, the study team also examined homeownership rates for heads of household working in the construction and engineering industries. Each minority group had a lower rate of home ownership than non-Hispanic whites in these industries in both the Los Angeles area and California as a whole.

Lower rates of homeownership may, to an extent, reflect lower incomes for minorities. This relationship may be self-reinforcing, as low wealth puts individuals at a disadvantage in becoming homeowners, which has historically been an effective path to building wealth. An older study found

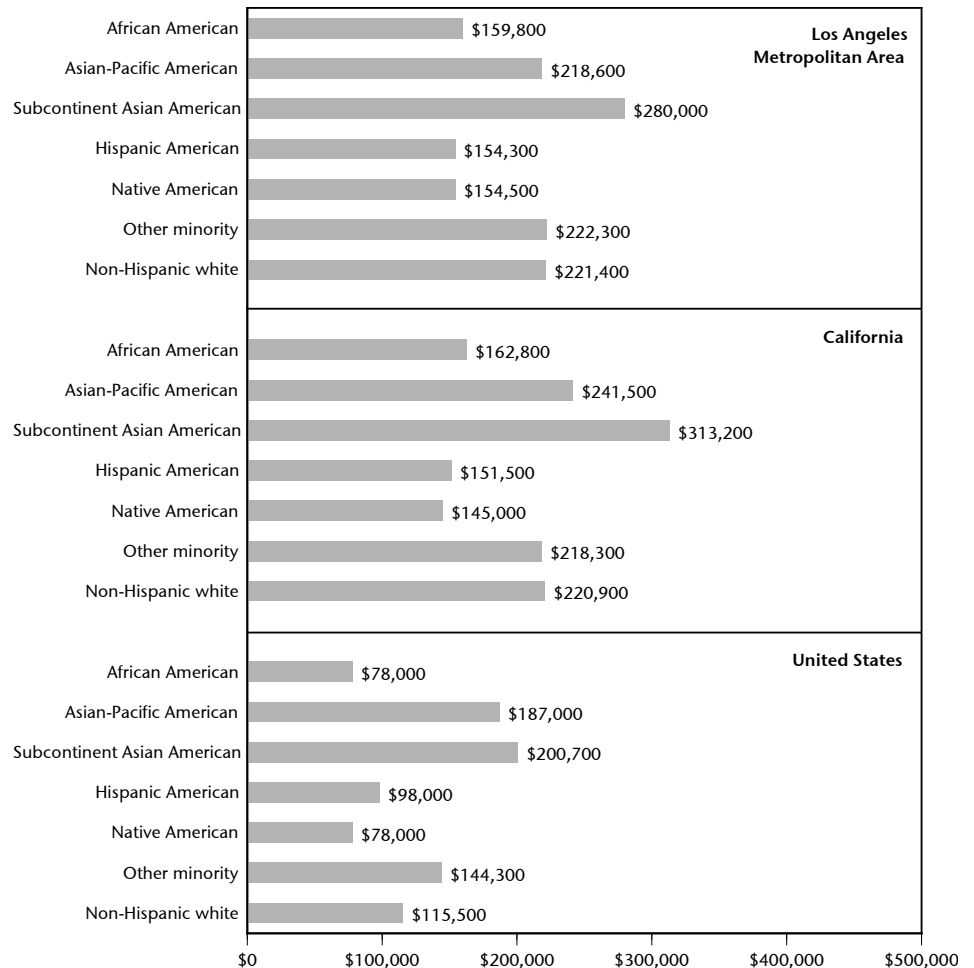
statistically significant results indicating that the probability of homeownership is considerably lower for African Americans than it is for comparable non-Hispanic whites throughout the U.S.¹² A 2001 study in Los Angeles found different results. Controls for types of income indicated that probabilities of homeownership for African American households in South-Central Los Angeles and San Bernardino County were identical to white households.¹³

Home values. Research has found homeownership and home values to be direct determinants of capital available to form or expand businesses.¹⁴ Using 2000 Census and 2007 and 2009 ACS data, BBC compared median home values by racial and ethnic groups. Figure G-2 presents results for 2000 in the Los Angeles area, California and the United States.

**Figure G-2.
Median home value,
2000**

Note:
The sample universe is all owner-occupied housing units.

Source:
BBC Research & Consulting from 2000 U.S. Census data. The raw data extract was obtained through the IPUMS program of the MN Population Center:
<http://usa.ipums.org/usa/>.



For 2000, the median home value of non-Hispanic white homeowners in the Los Angeles area was \$221,400, substantially greater than the median value of homes owned by African Americans (\$159,800), Hispanic Americans (\$154,300) and Native Americans (\$154,500). The median home

12 Jackman. 1980. "Racial Inequalities in Home Ownership."

13 Gabriel, Stuart and Gary Painter. 2001. "Pathways to Homeownership: An Analysis of the Residential Location and Homeownership Choices of Black Households in Los Angeles." USC Finance & Business Econ. Working Paper No. 01-22.

14 Fairlie, Robert W. and Harry A. Krashinsky. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited." IZA Discussion Paper. No. 2201.

value for Asian Pacific Americans (\$218,600) was closer to the value for non-Hispanic whites. Subcontinent Asian Americans, on average, owned homes of greater value than non-Hispanic whites.

The pattern of differences in median home value for minorities compared to non-Hispanic whites in the Los Angeles area was similar to the differences seen in California and the United States as a whole.

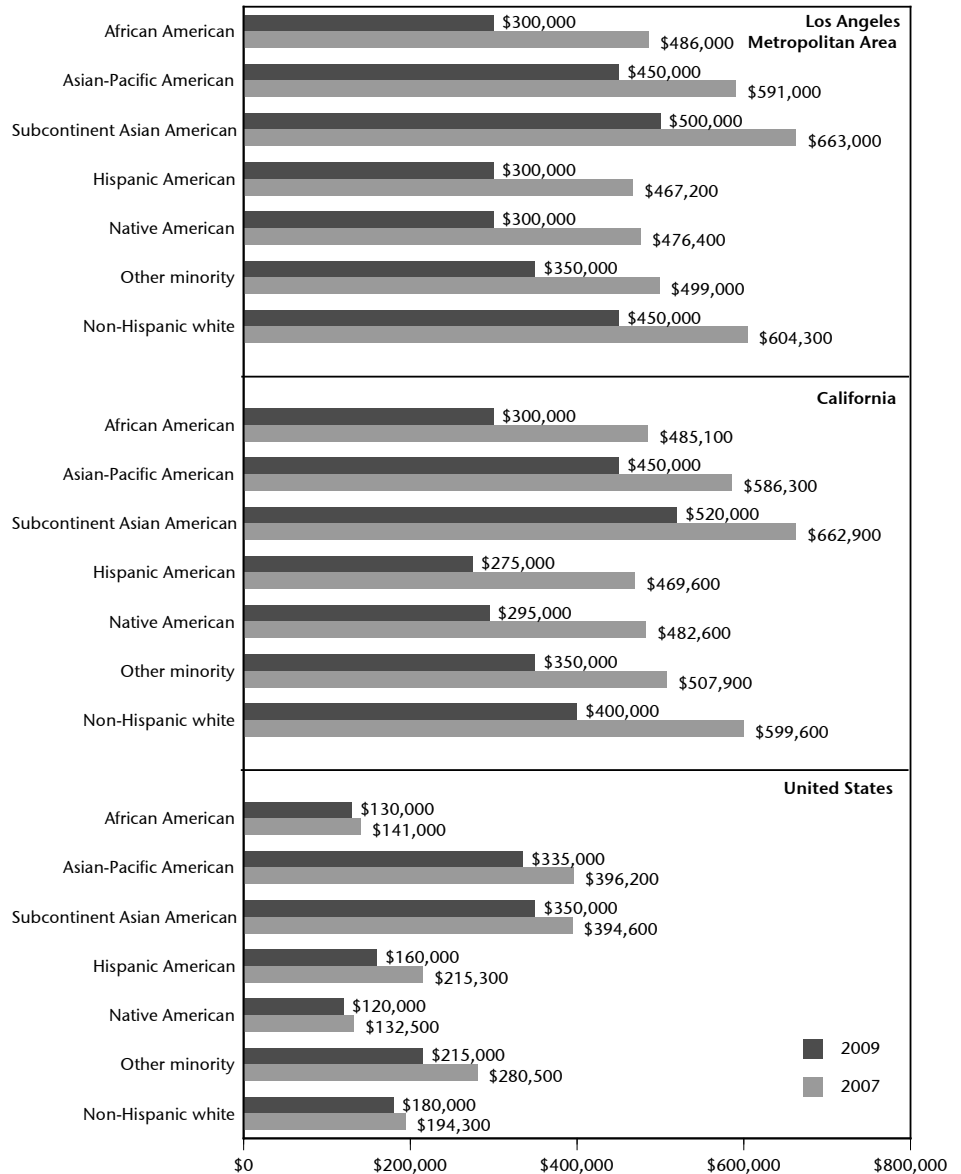
Figure G-3 presents median home values by race/ethnicity groups in the Los Angeles area, California and the U.S. based on 2007 and 2009 ACS data. Similar to the figures for 2000, African Americans, Hispanic Americans and Native Americans had substantially lower median home values than non-Hispanic whites in both the Los Angeles area and California as a whole.

In the United States, median home values for African Americans and Native Americans remained well below values for non-Hispanic whites in 2007 and 2009. The national median value for Hispanic Americans surpassed the value for non-Hispanic whites in 2007, but fell below the median home value for non-Hispanic whites in 2009.

Figure G-3.
Median home value,
2007 and 2009

Note:
 The sample universe is all
 owner-occupied housing units.

Source:
 BBC Research & Consulting from
 2007 and 2009 American
 Community Survey data. The
 raw data extract was obtained
 through the IPUMS program of
 the MN Population Center:
<http://usa.ipums.org/usa/>.



Mortgage lending. Minorities may be denied opportunities to own homes, to purchase more expensive homes or to access equity in their homes if they are discriminated against when applying for home mortgages. BBC explored market conditions for mortgage lending in the Los Angeles area, California, and the nation as a whole.

The best available source of information concerning mortgage lending comes from Home Mortgage Disclosure Act (HMDA) data, which contain information on mortgage loan applications received by financial institutions, savings banks, credit unions and some mortgage companies.¹⁵ These data include information about the location, dollar amount, and types of loans made, as well as race and ethnicity, income, and credit characteristics of all loan applicants. The data are available for home purchases, loan refinances, and home improvement loans.

BBC examined HMDA statistics provided by the Federal Financial Institutions Examination Council (FFIEC) on conventional loan denial rates for high-income borrowers. Conventional loans are loans not insured by a government program; high-income borrowers are those households with 120 percent or more of the U.S. Department of Housing and Urban Development (HUD) area median family income.¹⁶ Loan denial rates are calculated as a share of mortgage loan applications, excluding applications terminated by the potential borrowers.

The following figure (Figure G-4) reports denial rates for 2006 and 2009. Although 2009 was the most recent year for which HMDA data were available, the 2006 data represent a more complete data set from before the recent mortgage crisis. For example, many of the institutions that originated loans in 2006 were no longer in business by the 2009 reporting date for HMDA data.¹⁷ Additionally, the percentage of government-insured loans (and not included in HMDA data) increased dramatically between 2006 and 2009, thus decreasing the proportion of total loans analyzed here.¹⁸

Figure G-4 reports results for the Los Angeles area, California and the U.S. in 2006 and 2009. These data show higher denial rates for minority high-income households than for non-Hispanic white high-income households. Among high-income households applying for mortgages in 2009, 26 percent of African American applicants in the Los Angeles area had their applications denied compared with 15 percent of non-Hispanic white households. Loan denial rates in 2009 were also higher for Native Americans and Hispanic Americans compared to non-Hispanic whites.

¹⁵ Financial institutions were required to report 2009 HMDA data if they had assets of more than \$39 million (\$35 million for 2006), have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in an Metropolitan Statistical Area (or originated five or more home purchase loans in an MSA) and either had more than \$10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

¹⁶ 2009 median family income was about \$61,000 for the United States and \$67,000 for California (in 2009 dollars). Median family income for 2006 was about \$62,000 for the United States and \$69,000 for California (in 2009 dollars). Source: U.S. Census Bureau, 2009 and 2006 American Community Surveys.

¹⁷ According to an article by the Federal Reserve, the volume of reported loan applications and originations fell sharply from 2007 to 2008 after previously falling between 2006 and 2007. See Avery, Brevoort, and Canner, "The 2008 HMDA Data: The Mortgage Market during a Turbulent Year." Available online: <http://www.federalreserve.gov/pubs/bulletin/>.

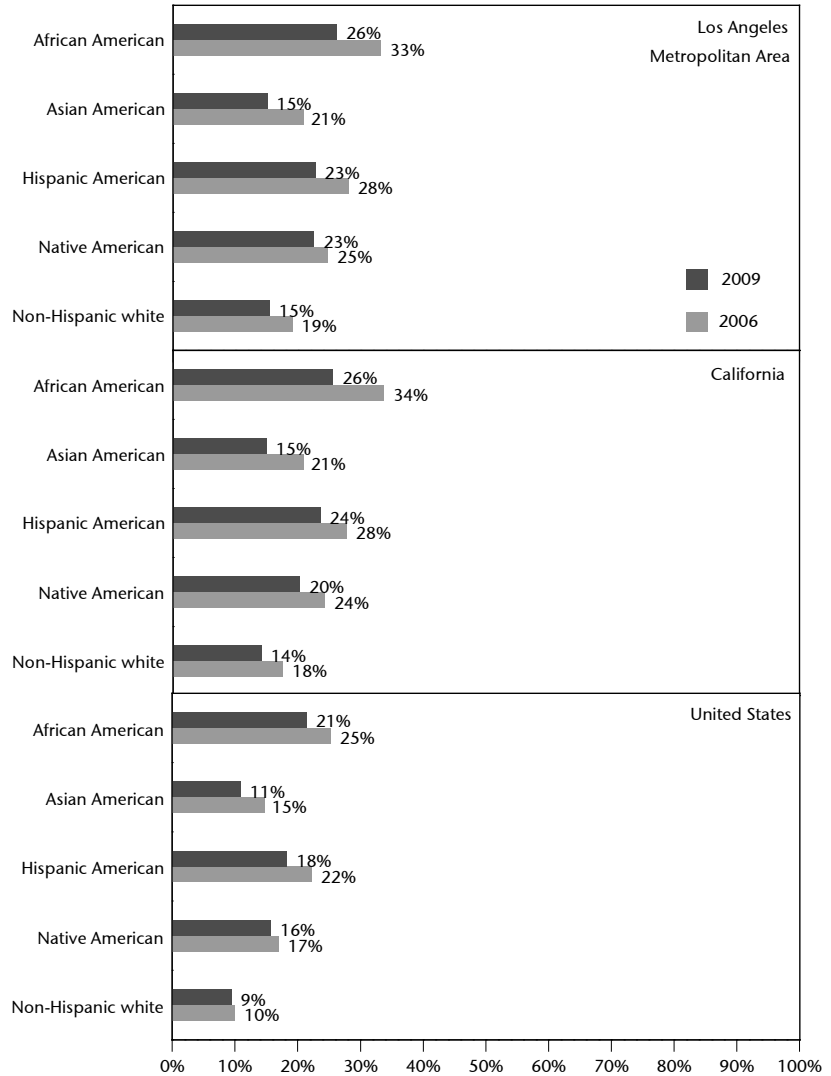
¹⁸ Loans insured by government programs have surged since 2006. In 2006, about 10 percent of first lien home loans were insured by a government program. More than half of home loans were insured by government in 2009. Source: "The 2009 HMDA Data: The Mortgage Market in a Time of Low Interest Rates and Economic Distress," Federal Reserve Bulletin, December 2010, pp A39-A77.

Compared to 2009, the data from 2006 show denial rates higher overall but with similar disparities between minority groups and non-Hispanic whites. Additionally, the patterns of loan denial rates by race and ethnicity in the Los Angeles area mirrored those of California and the United States in both 2006 and 2009.

Figure G-4.
Denial rates of conventional purchase loans to high-income households, 2006 and 2009

Note:
 High-income borrowers are those households with 120% or more than the HUD area median family income (MFI).

Source:
 FFIEC HMDA data 2006 and 2009.



A number of national studies have examined disparities in loan denial rates and loan amounts for minorities in the presence of other influences. Examples include the following:

- A study by the Federal Reserve Bank of Boston is one of the most cited studies of mortgage lending discrimination.¹⁹ It was conducted using the most comprehensive set of credit characteristics ever assembled for a study on mortgage discrimination.²⁰ The study provided persuasive evidence that lenders in the Boston area discriminated against minorities in 1990.²¹
- Using the Federal Reserve Board's 1983 Survey of Consumer Finances and the 1980 Census of Population and Housing data, logit statistical analysis revealed that minority households were one-third as likely to receive conventional loans as non-Hispanic white households after taking into account financial and demographic controls.²²
- Findings from a Midwest study indicate a significant relationship between race and both the number and size of mortgage loans. Data matched on socioeconomic characteristics revealed that African American borrowers across 13 census tracts received significantly less of both compared to their white counterparts.²³

However, other studies have found that differences in preferences for Federal Housing Administration (FHA) loans — mortgage loans that are insured by the government — versus conventional loans among racial and ethnic groups may partly explain disparities found in conventional loan approvals between minorities and non-minorities.²⁴ Several studies have found that, historically, minority borrowers are far more likely to obtain FHA loans than comparable non-Hispanic white borrowers at all income and wealth levels. The insurance on FHA loans protects the lender, but the borrower can be disadvantaged by higher borrowing costs.^{25, 26}

Studies on mortgage loan discrimination specific to Los Angeles area or California as a whole are more limited.

¹⁹ Munnell, Alicia H., Geoffrey Tootell, Lynn Browne and James McEneaney. 1996. "Mortgage Lending in Boston: Interpreting HMDA Data." *The American Economic Review*. 86: 25-53.

²⁰ Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." *The Journal of Economic Perspectives*. 12:41-62.

²¹ Yinger, John. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. New York: Russell Sage Foundation, 71.

²² Canner, Glenn B., Stuart A. Gabriel and J. Michael Woolley. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets." *Southern Economic Journal*. 58:249-262.

²³ Leahy, Peter J. 1985. "Are Racial Factors Important for the Allocation of Mortgage Money?: A Quasi-Experimental Approach to an Aspect of Discrimination." *American Journal of Economics and Sociology*. 44:185-196.

²⁴ Canner. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets."

²⁵ Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. 80.

²⁶ See definition of subprime loans discussed on the following page.

- HMDA data for California revealed disparities in prime and subprime lending for African American, Hispanic American and Native American applicants. Differences extended across all Metropolitan Statistical Areas.²⁷
- An older study using HMDA data and a stepwise regression model accounting for socioeconomic status revealed that measures of ethnicity contribute little explanation to mortgage lending in Sacramento.²⁸
- A recent paired testing approach revealed adverse treatment of African Americans and Hispanics in Los Angeles in specific cases. However, the overall pattern of treatment observed offered little evidence of systemic variation in the treatment of African American and Hispanic American testers relative to non-minority testers in Los Angeles. This study also found increased encouragement for minorities to pursue FHA loans.²⁹

Subprime lending. Loan denial is one of several ways minorities might be discriminated against in the home mortgage market; mortgage-lending discrimination can also occur through higher fees and interest rates. The housing market provides a unique environment for this type of discrimination through fees associated with various loan types.

Until recently, one of the fastest growing segments of the home mortgage industry was subprime lending. From 1994 through 2003, subprime mortgage activity grew by 25 percent per year and accounted for \$330 billion of U.S. mortgages in 2003, up from \$35 billion a decade earlier. In 2006, subprime loans represented about one-fifth of all mortgages in the United States.³⁰

With higher interest rates than prime loans, subprime loans have been typically marketed and sold to customers with blemished or limited credit histories who would not typically qualify for prime loans. Over time, these loans also became available to homeowners who did not want to make a down payment or provide proof of income and assets or wanted to purchase a larger home with a cost above that for which they would qualify from a prime lender.³¹ Because of higher interest rates and additional costs, subprime loans affected homeowners' ability to grow home equity while simultaneously increasing their risk of foreclosure.

Although there is no standard definition of a subprime loan, there are several commonly-used approaches to examining rates of subprime lending. BBC used a "rate-spread method" — in which subprime loans are identified as those with substantially above-average interest rates — to measure

²⁷ Gee, Peter. 2004. *The Price of Credit: Prime and Subprime Lending in California 2004*. The Greenlining Institute.

²⁸ Dingemans, Dennis. 1979. "Redlining and Mortgage Lending in Sacramento." *Annals of the Association of American Geographers*. 69:225-239.

²⁹ Ross, Stephen, Margery Austin Turner, Erin Godfrey and Robin R. Smith. 2005. "Mortgage Lending in Chicago and Los Angeles: A Paired Testing Study of the Pre-Application Process." *University of Connecticut Department of Economics Working Paper Series*.

³⁰ Avery, Brevoort, and Canner, "The 2006 HMDA Data." *Federal Reserve Bulletin*, December 2007, pp. A73-A109.

³¹ Gerardi, Shapiro, and P. Willen. 2008. "Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure." *Federal Reserve Bank of Boston*.

rates of subprime lending in 2006 and 2009.³² These results are presented in Figure G-5 and Figure G-6.

Because lending patterns and borrower motivations differ depending on the type of loan being sought, the study team separately considered home purchase loans and refinance loans. Results from the two methods for identifying patterns in subprime lending did not differ substantially.

Based on 2006 and 2009 HMDA data, Figure G-5 shows the percent of conventional home purchase loans that were subprime in the Los Angeles area, California and the United States. The rates of subprime lending in 2009 were dramatically lower overall than in 2006 due to the collapse of the mortgage lending market in the late 2000s.

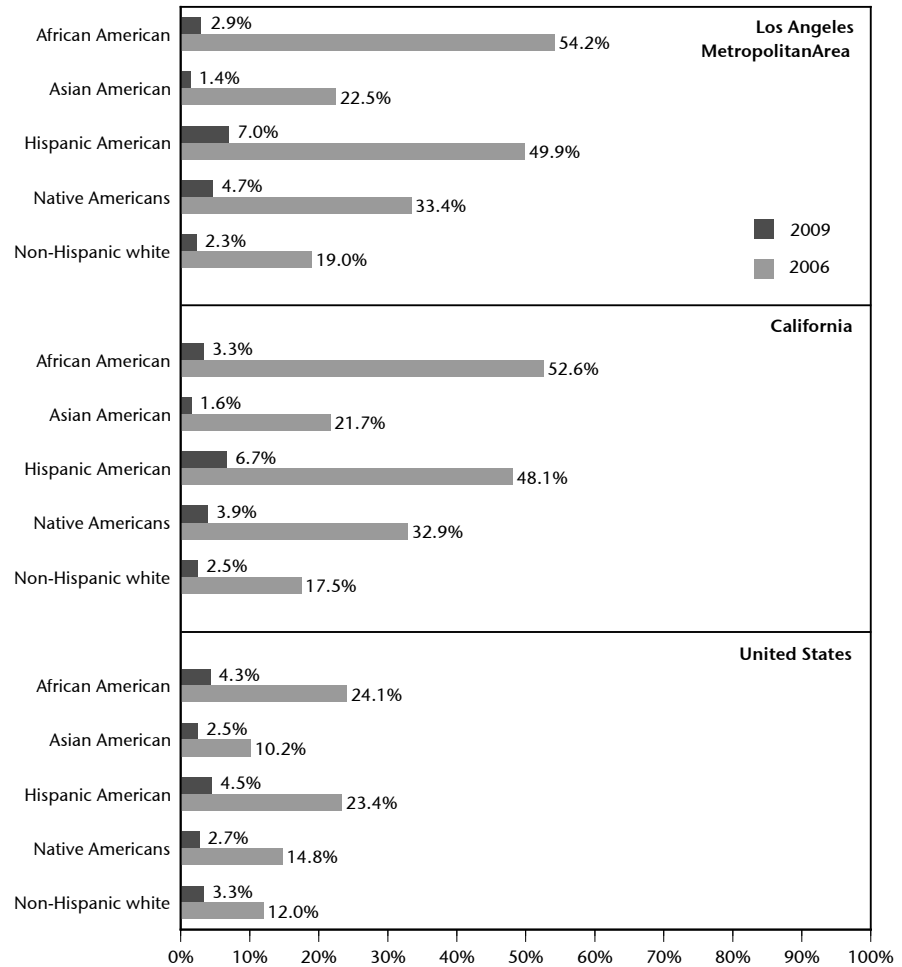
In the Los Angeles area during the two years examined, African American, Hispanic American and Native American borrowers were more likely to receive subprime purchase loans than non-Hispanic whites. For example, in 2006, about 54 percent of conventional home purchase loans issued to African Americans, 50 percent of loans to Hispanic Americans and 33 percent of loans to Native Americans were subprime. In contrast, subprime loans represented only about 19 percent of loans issued to non-Hispanic whites in the Los Angeles area in 2006. These subprime lending patterns were also found in 2009 data. Asian Americans applying for home purchase loans in the Los Angeles area were more likely than non-Hispanic whites to receive subprime loans in 2006 but less likely in 2009.

The lending patterns found in the Los Angeles area were also evident statewide. For the nation as a whole, however, both Asian Americans and Native Americans were less likely than non-Hispanic whites to receive subprime purchase loans in 2009.

³² Prior to October 2009, first lien loans were identified as subprime if they had an APR 3.0 percentage points or greater than the federal treasury security rate of like maturity. As of October 2009, rate spreads in HMDA data were calculated as the difference between APR and Average Prime Offer Rate, with subprime loans defined as 1.5 percentage points of rate spread or more. BBC identified subprime loans according to these measures in the corresponding time periods.

Figure G-5.
Percent of
conventional home
purchase loans that
were subprime,
2006 and 2009

Source:
 FFIEC HMDA data 2006 and
 2009.



Similar to Figure G-5 above, Figure G-6 illustrates the percent of home refinance loans that were subprime in the Los Angeles area, California and the United States. The reduction in overall subprime lending evident in 2009 data extended to refinance loans as well.

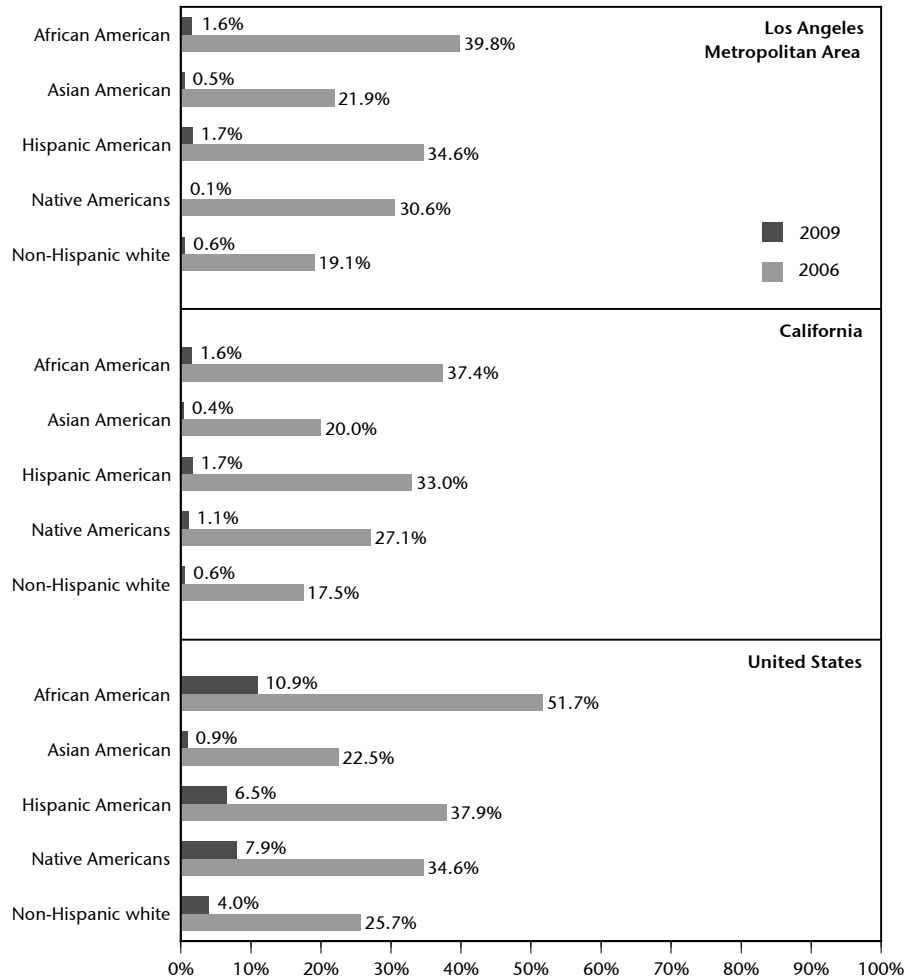
African American and Hispanic American borrowers were more likely to receive subprime refinance loans than non-Hispanic whites in both 2006 and 2009. In 2006, about 40 percent of refinance loans issued to African Americans and 35 percent of loans to Hispanic Americans in the Los Angeles area were subprime. In contrast, subprime loans represented only about 19 percent of refinance loans issued to non-Hispanic whites in the Los Angeles area in 2006.

In 2009, subprime loans made up a much smaller proportion of total conventional home refinance loans in the Los Angeles area across race/ethnic groups. Even so, African American and Hispanic American households receiving refinance loans in 2009 were more likely than non-Hispanic whites to receive a subprime loan. Asian American and Native American households receiving refinance loans in 2009 were less likely to have a subprime loan than non-Hispanic whites.

The patterns found in the Los Angeles area were also largely found in California as a whole. In the United States overall, however, Asian Americans were less likely than non-Hispanic whites to receive subprime refinance loans in both 2006 and 2009.

Figure G-6.
Percent of
conventional
refinancing loans
that were
subprime, 2006
and 2009

Source:
 FFIEC HMDA data 2006 and
 2009.



Some evidence suggests that lenders sought out and offered subprime loans to individuals who often would not be able to pay off the loan,³³ a form of “predatory lending.” Furthermore, some research has found that many recipients of subprime loans — including homeowners in California — could have qualified for prime loans.³⁴

Previous studies of subprime lending suggest that predatory lenders have disproportionately targeted minorities. A 2001 HUD study using 1998 HMDA data found that subprime loans were disproportionately concentrated in black neighborhoods compared to white neighborhoods even after controlling for income.³⁵ For example, borrowers in upper-income black neighborhoods were six times more likely to refinance with a subprime loan than borrowers in upper-income white neighborhoods.

³³ Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001. HUD-Treasury National Predatory Lending Task Force Report. *HUD*; Carr, J. and L. Kolluri. 2001. *Predatory Lending: An Overview*. *Fannie Mae Foundation*; and California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, 2008. “Paying More for the American Dream.”

³⁴ Freddie Mac. 1996, September. “Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families.” *Freddie Mac*. (accessed February 5, 2007); and Lanzerotti. 2006. “Homeownership at High Cost: Foreclosure Risk and High Cost Loans in California.” *Federal Reserve Bank of San Francisco*.

³⁵ Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001.

Historically, differences in types of loans awarded to minorities have also been attributed to steering by real estate agents, who serve as an information filter.³⁶ Some studies claim that real estate brokers provide different levels of assistance and different information on loans to minorities and non-minorities.³⁷ This “steering” can shape the perception by minority borrowers of the availability of loans.

Lessons from the recent mortgage lending crisis. The turmoil in the housing market since late 2006 has been far-reaching, resulting in the loss of home equity, decreased demand for housing and increased rates of foreclosure.³⁸ Much of the blame has been placed on risky practices in the mortgage industry including substantial increases in subprime lending.

As discussed above, subprime mortgages increased at an extraordinary rate between the mid-1990s and mid-2000s. These high-cost loans increased from 8 percent of originations in 2003 to 20 percent in both 2005 and 2006.³⁹ In 2005, subprime loans represented about 28 percent of all loans originated in the Riverside Metropolitan Statistical Area, and 21 percent of the Los Angeles Metropolitan Statistical Area.⁴⁰ The preponderance of subprime lending is important as households repaying subprime loans have a higher likelihood of delinquency or foreclosure. A 2008 study released from the Federal Reserve Bank of Boston found, “homeownerships that begin with a subprime purchase mortgage end up in foreclosure almost 20 percent of the time, or more than 6 times as often as experiences that begin with prime purchase mortgages.”⁴¹

In California, homeowners with delinquencies of 60 days or greater rose from about 52,500 per month in the first quarter of 2007 to about 171,000 per month in the first quarter of 2008.⁴² By the first quarter of 2010, the number of delinquent loans increased to over 536,000 per month.⁴³ Furthermore, many homeowners, especially those with subprime loans, lost equity in their homes. In December 2010, the proportion of residential properties in California with negative equity (a mortgage worth more than the value of the home) was 32 percent, one of the highest rates in the country.⁴⁴ In the last quarter of 2008, California led the country with a monthly average of 43,000 borrowers falling into negative equity. In total, California lost over \$1.2 trillion in residential property values in 2008 which accounts for more than half of the national decline in housing values from 2007 to 2008.⁴⁵ Due to the higher rate of subprime mortgages among minority homeowners,

³⁶ Kantor, Amy C. and John D. Nystuen. 1982. “De Facto Redlining a Geographic View.” *Economic Geography*. 4:309-328.

³⁷ Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. 78–79.

³⁸ Joint Center for Housing Studies of Harvard University. 2008. “The State of the Nation’s Housing.”

³⁹ Joint Center for Housing Studies of Harvard University. 2008. “The State of the Nation’s Housing.”

⁴⁰ Mayer, Chris and Karen Perce. “Subprime Mortgage: Who, Where and to Whom?” *Division of Research and Statistics and Monetary Affairs*. Available online at: “<http://www.federalreserve.gov/Pubs/FEDS/2008/200829/200829abs.html>.”

⁴¹ Gerardi, Shapiro, and P. Willen. 2008. “Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure.” *Federal Reserve Bank of Boston*.

⁴² Olson, John. 2008. *Understanding the Foreclosure Crisis in California*. *Federal Reserve Bank of San Francisco*.

⁴³ HOPE NOW. 2011. *State Loss Mitigation Data (December 2010)*. Available online: “[http://www.hopenow.com/industry-data/State%20Loss%20Mitigation%20Data%20\(December\)%202-3-2011.pdf](http://www.hopenow.com/industry-data/State%20Loss%20Mitigation%20Data%20(December)%202-3-2011.pdf)”

⁴⁴ CoreLogic. March 8, 2011. CoreLogic Negative Equity press release.

⁴⁵ First American CoreLogic. 2008. *First American CoreLogic and Loan Performance Home Price Index Analytics*.

these homeowners have reportedly been disproportionately affected in terms of foreclosures and loss of home equity.⁴⁶

These problems facing the housing industry substantially impact the ability to secure capital through home mortgages to start or expand a small business. This issue has been highlighted in statements made by members of the Board of Governors of the Federal Reserve System to the U.S. Senate and U.S. House of Representatives:

- On April 16, 2008, Frederic Mishkin informed the U.S. Senate Committee on Small Business and Entrepreneurship that “one of the most important concerns about the future prospects for small business access to credit is that many small businesses use real estate assets to secure their loans. Looking forward, continuing declines in the value of their real estate assets clearly have the potential to substantially affect the ability of those small businesses to borrow. Indeed, anecdotal stories to this effect have already appeared in the press.”⁴⁷
- On November 20, 2008, Randall Kroszner told the U.S. House of Representatives Committee on Small Business that “small business and household finances are, in practice, very closely intertwined. [T]he most recent Survey of Small Business Finances (SSBF) indicated that about 15 percent of the total value of small business loans in 2003 was collateralized by ‘personal’ real estate. Because the condition of household balance sheets can be relevant to the ability of some small businesses to obtain credit, the fact that declining house prices have weakened household balance-sheet positions suggests that the housing market crisis has likely had an adverse impact on the volume and price of credit that small businesses are able to raise over and above the effects of the broader credit market turmoil.”⁴⁸

Federal Reserve Chairman Ben Bernanke recognized the reality of these concerns in a speech titled “Restoring the Flow of Credit to Small Businesses” on July 12, 2010.⁴⁹ Bernanke indicated that small businesses have had difficulty accessing credit and pointed to the declining value of real estate as one of the primary obstacles.

Furthermore, the National Federation of Independent Business (NFIB) conducted a national survey of 751 small businesses⁵⁰ in late-2009 to investigate how the recession impacted access to capital.⁵¹ NFIB concluded that “falling real estate values (residential and commercial) severely limit small

⁴⁶ California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, 2008. “Paying More for the American Dream.”

⁴⁷ Mishkin, Frederic. 2008. “Statement of Frederic S. Mishkin, Member, Board of Governors of the Federal Reserve System before the Committee on Small Business and Entrepreneurship, U.S. Senate on April 16.”

⁴⁸ Kroszner, Randall. 2008. “Effects of the financial crisis on small business.” *Testimony before the Committee on Small Business, U.S. House of Representative on November 20.*

⁴⁹ Bernanke, Ben. 2010. Restoring the Flow of Credit to Small Businesses. *Presented at the Federal Reserve Meeting Series: Addressing the Financing Needs of Small Businesses on July 12.*

⁵⁰ The study defined a small business as a business employing no less than one individual in addition to the owner(s) and no more than 250.

⁵¹ National Federation of Independent Business (NFIB). 2010. Small Business Credit in a Deep Recession.

business owner capacity to borrow and strains currently outstanding credit relationships.” Survey results indicated that 95 percent of small business employers owned real estate and 13 percent held upside-down property.⁵²

Opportunities to obtain business capital through home mortgages appear to be limited especially for homeowners with little home equity. Furthermore, the increasing rates of default and foreclosure, especially for homeowners with subprime loans, reflect shrinking access to capital available through these loans. These consequences are likely to have a disproportionate impact on minorities in terms of both homeownership and the ability to secure capital for business start-up and growth.

Redlining. Redlining refers to mortgage lending discrimination against geographic areas associated with high lender risk. These areas are often racially determined, such as African American or mixed race neighborhoods.⁵³ This practice can perpetuate problems in already poor neighborhoods.⁵⁴

For example, the City of East Palo Alto sued a California lender for redlining and having loan practices that discriminated against people in low income or minority communities. Evidence included loan officers telling applicants that the bank simply did not lend in East Palo Alto or in specific minority neighborhoods.⁵⁵ The bank provided cash and a revolving loan fund in order to settle the lawsuit.

Most quantitative studies have failed to find strong evidence in support of geographic dimensions of lender decisions. Studies in Columbus, Ohio; Boston, Massachusetts; and Houston, Texas found that racial differences in loan denial had little to do with the racial composition of a neighborhood, but rather the individual characteristics of the borrower.⁵⁶ Some studies found the race of an applicant to be a factor in loan denials, but not the racial makeup of the neighborhood.

Studies of redlining have primarily focused on the geographic aspect of lender decisions; however, redlining can also include the practice of restricting credit flows to minority neighborhoods through procedures that are not observable in actual loan decisions. Examples include branch placement, advertising and other pre-application procedures.⁵⁷ These practices can deter minorities from starting businesses. Locations of financial institutions are important to small business start up because local

⁵² Upside-down is defined as a mortgage that is worth more than the appraised value of the house.

⁵³ Holloway, Steven R. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.” *Annals of the Association of American Geographers*. 88:252-276.

⁵⁴ Ladd, Helen F. 1998. “Evidence on Discrimination in Mortgage Lending.” *The Journal of Economic Perspectives*. 12:41-62.

⁵⁵ “California bank pays \$206,000 and establishes \$7 million credit line for city to settle redlining suit.” *National Fair Housing Advocate Online*. http://www.fairhousing.com/index.cfm?method=page.display&pagename=advocate_october02_page5 (accessed February 8, 2007).

⁵⁶ See Holloway. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.”; Tootell. 1996. “Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?”; and Holmes, Andrew and Paul Horvitz. 1994. “Mortgage Redlining: Race, Risk, and Demand.” *The Journal of Finance*. 49:81-99.

⁵⁷ Yinger, John. 1995. “Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.” Russell Sage Foundation. New York. 78-79.

banking sectors often finance local business.⁵⁸ Redlining practices would deny this capital resource to minorities.

Gender discrimination in mortgage lending. Relatively little information is available on sex-based discrimination in mortgage lending markets. Historically, lending practices overtly discriminated against women by requiring information on marital and childbearing status. Risk associated with women of childbearing age and unmarried women resulted in “income discounting,” limiting the availability of loans to women.⁵⁹

The Equal Credit Opportunity Act (ECOA) in 1973 suspended these discriminatory lending practices. A study in California that used regression analysis explored discrimination against married and single women in 16 metropolitan areas from 1977 to 1978 revealed little evidence of sex discrimination in the state. Certain barriers have continued after 1973, however. For example, there is some evidence that lenders under-appraised property for female borrowers.⁶⁰

Steering by real estate agents. A number of researchers have found that discrimination by real estate agents contributes to residential segregation of minorities. One such practice is “steering” of prospective homebuyers toward particular neighborhoods and away from others because of their race or ethnicity (a practice that has been prohibited by law for many decades). A 2005 study found such practices in Los Angeles and other cities throughout the country.⁶¹

Access to Business Capital

Barriers to capital markets can have significant impacts on small business formation and expansion. For example, during Caltrans public hearings held in spring 2006, “discrimination in obtaining loans due to race and gender” was identified as an issue for businesses.⁶² In addition, several studies have found evidence that start-up capital is important for business profits, longevity and other outcomes.⁶³

- The amount of start-up capital is positively associated with small business sales and other outcomes;⁶⁴
- Limited access to capital has limited the size of African American-owned businesses;⁶⁵ and

⁵⁸ Holloway. 1998. “Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio.”

⁵⁹ Card. 1980. “Women, Housing Access, and Mortgage Credit.”

⁶⁰ Ladd, Helen F. 1982. “Equal Credit Opportunity: Women and Mortgage Credit.” *The American Economic Review*. 72:166-170.

⁶¹ Galster, George and Erin Godfrey. 2005. “Racial Steering by Real Estate Agents in the U.S. in 2000.” *Journal of the American Planning Association*. 71:251-268.

⁶² Caltrans Public Hearing Testimony and Related Documents. Examined and summarized by GCAP Services.

⁶³ For examples see Fairlie. 2006. “Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited;” and Grown, Caren and Timothy Bates. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.” Center for Economic Studies, U.S. Bureau of the Census.

⁶⁴ See Fairlie, Robert W. and Harry A. Krashinsky. 2006. “Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited”; and Grown. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.”

⁶⁵ Grown. 1991. “Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies.”

- Weak financial capital was identified as a significant reason that more African American-owned firms than non-Hispanic white-owned firms closed over a four-year period.⁶⁶

Bank loans are one of the largest sources of debt capital for small businesses.⁶⁷ Discrimination in the application and approval processes of these loans and other credit resources could be detrimental to the success of minority- and women-owned businesses. Previous studies have addressed race/ethnicity and gender discrimination in capital markets by evaluating:

- Loan denial rates;
- Loan values;
- Interest rates;
- Individual assumptions that loan applications will be rejected;
- Sources of capital; and
- Relationships between start-up capital and business survival.

To examine the role of race/ethnicity and gender in capital markets, the study team analyzed data from the Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF), the most comprehensive national source of credit characteristics of small firms (those with fewer than 500 employees). The survey contains information on loan denial and interest rates, as well as anecdotal information from firms. Sample weights are applied to provide representative estimates. The samples from 1998 and 2003 contain records for 3,521 and 4,240 firms, respectively.

The SSBF records the geographic location of the firm by Census Division, not city, county or state. The Pacific Census Division (referred to below as the Pacific region) contains California, along with Alaska, Washington, Oregon and Hawaii. This is the greatest level of geographic detail available for SSBF data, and 2003 remains the most recent information as the survey was discontinued after that year.

Loan denial rates. Figure G-7 shows loan denial rates from the 1998 and 2003 SSBFs for the Pacific region and the United States. National SSBF data for 1998 reveal the following:

- African American-owned businesses experienced higher rates of denial compared to all other racial and ethnic groups;
- African American-, Hispanic American- and Asian American-owned firms had a loan denial rate considerably above that of non-Hispanic white male-owned firms (in each case a statistically significant difference); and

⁶⁶ Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

⁶⁷ Data from the 1998 SSBF indicates that 70 percent of loans to small business are from commercial banks. This result is present across all gender, race and ethnic groups with the exception of African Americans, whose rate of lending from commercial banks is even greater than other minorities. See Blanchard, Lloyd, Bo Zhao and John Yinger. 2005. "Do Credit Market Barriers Exist for Minority and Woman Entrepreneurs." *Center for Policy Research, Syracuse University*.

- A larger proportion of women-owned firms than male-owned firms were denied business loans.

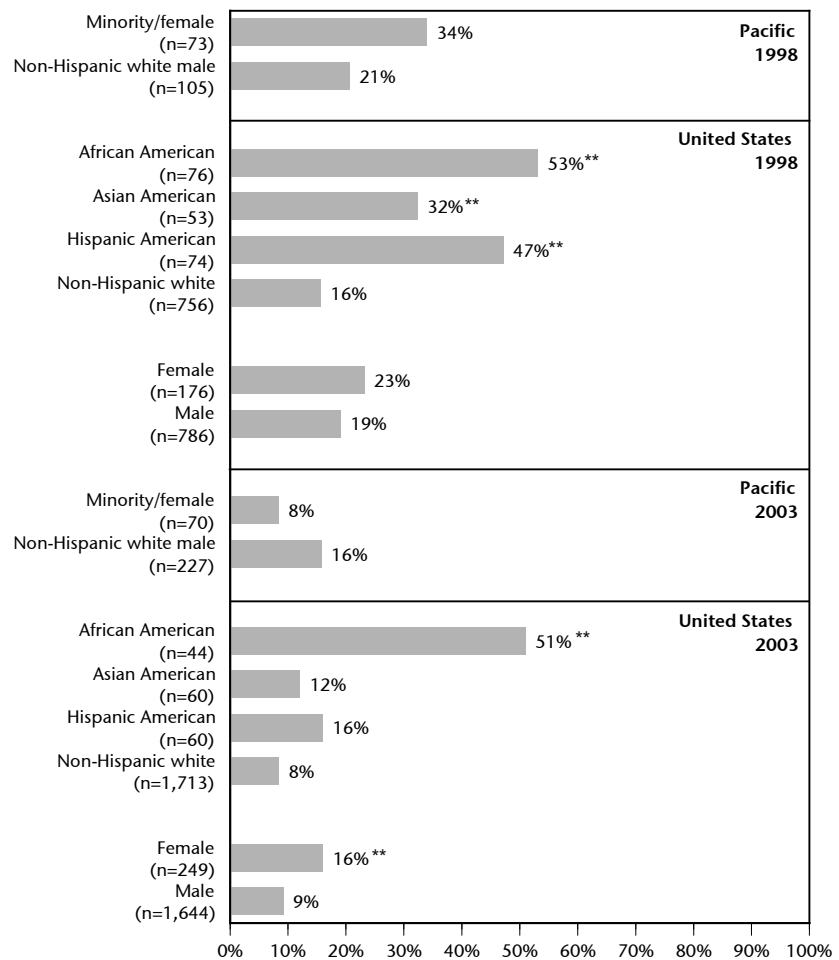
Measured against rates of loan denial for non-Hispanic white- and male-owned firms in 2003, loan denial rates were higher for minority- and women-owned firms in the United States. The loan denial rate for African American-owned firms in 2003 was substantially higher than rates for other groups (51%).

Loan denial statistics on individual minority groups in the Pacific region are not reported in Figure G-7 due to small sample sizes. However, about 34 percent of minority- and women-owned firms in the Pacific region reported being denied loans in 1998, a larger proportion than the 21 percent of non-Hispanic white male-owned firms that were denied. In contrast, according to the 2003 SSBF data, a smaller share of minority- and female-owned firms in the Pacific region were denied loans compared to non-Hispanic white male-owned firms.

Figure G-7.
Business loan denial rates, 1998 and 2003

Note:
** Denotes that the difference in proportion from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Regression analyses of loan denial rates. A number of studies have investigated whether disparities in loan denial rates for different race/ethnicity and gender groups exist after controlling for other factors that affect loan approvals. Findings from these studies include:

- Commercial banks are less likely to loan to African American-owned firms than to non-Hispanic white-owned firms after controlling for other factors.⁶⁸
- African American, Hispanic American and Asian American men are more likely to be denied a loan than non-Hispanic white men. However, African American borrowers are more likely to apply for a loan.⁶⁹
- Disparities in loan denial rates between African American-owned and non-Hispanic white-owned firms tend to decrease with increasing competitiveness of lender markets. A similar phenomenon is observed when considering differences in loan denial rates between male- and female-owned firms.⁷⁰
- The probability of loan denial decreases with greater personal wealth. However, controlling for personal wealth does not resolve the large differences in denial rates across African American-, Hispanic American-, Asian American-, and non-Hispanic white-owned firms. Specifically, information on personal wealth explained some differences for Hispanic- and Asian American-owned firms compared to non-Hispanic whites, but almost none for African American-owned firms.⁷¹
- Loan denial rates are significantly higher for African American-owned firms than non-Hispanic white-owned firms in the presence of several other factors such as creditworthiness and other characteristics. This result is largely insensitive to specification of the model. Consistent evidence on loan denial rates and other indicators of discrimination in credit markets was not found for other minorities and women.⁷²
- Women-owned businesses are no less likely to apply for or to be approved for loans in comparison to firms owned by men.⁷³

BBC regression model for the 1998 SSBF. The study team conducted its own analysis of the 1998 SSBF by developing a model to explore the relationships between loan denial and race/ethnicity and gender of firm ownership while controlling for other factors.⁷⁴ As discussed above, there is extensive literature on business loan denials that provides the theoretical basis for the regression models. Many studies have used probit econometric models to investigate the effects of various owner, firm and loan

⁶⁸ Cavalluzzo, Ken, Linda Cavalluzzo and John Wolken. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey." *Journal of Business*. 75: 641-679.

⁶⁹ Coleman, Susan. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances." *The Journal of Business and Entrepreneurship*. 151-166.

⁷⁰ Cavalluzzo, 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

⁷¹ Cavalluzzo, Ken and John Wolken. 2002. "Small Business Turndowns, Personal Wealth and Discrimination." *FEDS Working Paper No. 2002-35*.

⁷² Blanchflower, David G., Phillip B. Levine and David J. Zimmerman. 2003. "Discrimination in the Small Business Credit Market." *The Review of Economics and Statistics*. 85:930-943.

⁷³ Coleman. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances."

⁷⁴ BBC performed the regression analysis using the 1998 SSBF — as opposed to the 2003 SSBF — to capitalize on oversampling of minority-owned businesses in the national dataset in 1998 (not done in 2003).

characteristics, including the race and gender of the ownership, on the likelihood of being denied a loan. The standard model includes three general categories of variables including:

- The owner's demographic characteristics (including race and gender), credit and resources (11 variables);
- The firm's characteristics, credit and financial health (29 variables); and
- The environment in which the firm and lender operate and characteristics of the loan (19 variables).⁷⁵

After excluding a small number of observations where the loan outcome was imputed, the national sample included 931 firms that had applied for a loan during the three years preceding the survey. The Pacific region included 171 such firms.

Given the relatively small sample size and the large number of variables, the study team did not develop a model based on firms located in the Pacific region. Instead, all U.S. firms are included in the model and any Pacific region effects are estimated by including regional control variables — an approach commonly used in other studies that analyze these data.⁷⁶ The regional variables include an indicator variable for firms located in the Pacific region and interaction variables that represent firms owned by minorities or women and are located in the Pacific region.

Figure G-8 presents the coefficients and t-statistics from the probit model predicting loan denials. The results from the model indicate that a number of neutral factors affect the probability of loan denial with statistical significance:

- Older business owners are more likely to be denied loans;
- Having a four-year degree lowers the probability of loan denial;
- Increased equity in the business owner's home — if he or she is a homeowner — reduces the likelihood of loan denial;
- Business owners who filed for bankruptcy in the past seven years or have had a judgment against them are more likely to be denied a loan;
- Family-owned businesses are more likely to be denied;
- Businesses with an existing line of credit, an existing mortgage, or existing vehicle or equipment loans are less likely to be denied a loan. However, firms with outstanding loans from stockholders are more likely to be denied;

⁷⁵ See, for example, Blanchard, Lloyd; Zao, Bo and John Yinger. 2005. "Do Credit Barriers Exist for Minority and Women Entrepreneurs?" *Center for Policy Research, Syracuse University*.

⁷⁶ Blanchflower, David G.; Levine, Phillip B. and David J. Zimmerman. 2003. "Discrimination in the Small-Business Credit Market." *The Review of Economics and Statistics*. 85(4): 930-943; NERA Economic Consulting. 2008. "Race, Sex, and Business Enterprise: Evidence from the City of Austin." *Prepared for the City of Austin, Texas*; and CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization." *Prepared for Santa Clara Valley Transportation Authority*.

- Firms that have been delinquent in business transactions or that filed for bankruptcy in the past seven years have a higher probability of being denied a loan;
- Being in the construction or engineering industry increases the likelihood of loan denial;
- Firms in highly concentrated industry segments (as measured by the Herfindahl index) are more likely to be denied; and
- Business mortgage applications and vehicle and equipment loan applications are less likely to be denied than other types of business loans.

Even after controlling for neutral influences, firms owned by African Americans and Hispanic Americans were more likely to have their loans denied than other firms (both statistically significant differences). The indicator variable for the Pacific region and the interaction terms for Pacific region and minority- and women-ownership are not statistically significant. This result implies that the probabilities of loan denials for minority- and women-owned firms within the Pacific region are not statistically different from the U.S. as a whole.

Figure G-8.
Likelihood of business loan denial (probit regression) in the U.S. in the 1998 SSBF,
Dependent variable: loan denial

Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic	Variable	Coefficient	t-statistic
Race/ethnicity and gender			Firm's characteristics, credit and financial health			Firm and lender environment and loan characteristics		
Constant	-5.901834	-4.59 **	D&B credit score = moderate risk	0.751698	1.50	Partnership	0.065837	0.19
African American	1.147015	4.41 **	D&B credit score = average risk	0.776498	1.55	S corporation	-0.275278	-1.17
Asian American	0.342745	0.80	D&B credit score = significant risk	0.511792	1.00	C corporation	-0.298310	-1.07
Hispanic American	1.086194	4.68 **	D&B credit score = high risk	0.469423	0.85	Construction industry	0.552832	2.01 **
Female	-0.047219	-0.24	Total employees	-0.001487	-0.48	Manufacturing industry	0.293527	1.11
Pacific region	0.157391	0.63	Percent of business owned by principal	-0.003396	-0.74	Transportation, communications and utilities industry	0.418079	0.93
African American in Pacific region	-0.665632	-1.10	Family-owned business	0.806781	2.63 **	Finance, insurance and real estate industries	-0.047970	-0.13
Asian American in Pacific region	0.016462	0.03	Firm purchased	-0.296028	-1.47 *	Engineering industry	0.656266	1.82 *
Hispanic American in Pacific region	0.119294	0.25	Firm inherited	-0.045901	-0.13	Other industry	0.310062	1.58
Female in Pacific region	0.218200	0.56	Firm age	-0.013492	-1.23	Herfindahl index = .10 to .18	2.366303	4.52 **
Owner's characteristics, credit and resources			Firm has checking account	0.291959	0.88	Herfindahl index = .18 or above	2.667912	5.05 **
Age	0.007337	0.92	Firm has savings account	-0.268816	-1.53	Located in MSA	0.190705	1.04
Owner experience	0.010275	0.93	Firm has line of credit	-0.935108	-4.95 **	Sales market local only	0.191879	1.20
Less than high school education	0.090054	0.25	Existing capital leases	-0.089363	-0.46	Loan amount	0.000000	0.00
Some college	-0.147203	-0.71	Existing mortgage for business	-0.334783	-1.57 *	Capital lease application	-0.171244	-0.49
Four-year degree	-0.554377	-2.52 **	Existing vehicle loans	-0.540121	-2.91 **	Business mortgage application	-0.846545	-2.97 **
Advanced degree	-0.436286	-1.75 *	Existing equipment loans	-0.600107	-2.82 **	Vehicle loan application	-1.112551	-3.72 **
Bankruptcy in past 7 years	1.496524	2.66 **	Existing loans from stockholders	0.587765	2.89 **	Equipment loan application	-0.768501	-2.68 **
Judgment against in past 3 years	1.057841	3.27 **	Other existing loans	-0.108275	-0.54	Loan for other purposes	-0.304385	-1.51
Log of net worth excluding home	-0.027334	-0.48	Firm used trade credit in past year	-0.230761	-1.41			
Owner has negative net worth	-0.451254	-0.64	Log of total sales in prior year	-0.013200	-0.20			
			Negative sales in prior year	0.190337	0.23			
			Log of cost of doing business in prior year	0.019601	0.37			
			Log of total assets	0.029251	0.41			
			Negative total assets	-0.193784	-0.22			
			Log of total equity	0.095306	1.27			
			Negative total equity	0.959581	1.24			
			Firm bankruptcy in past 7 years	0.744926	1.39			
			Firm delinquency in business transactions	1.218895	6.65 **			

Note: * Statistically significant at 90% confidence level.
 ** Statistically significant at 95% confidence level.

Source: BBC Research & Consulting analysis of 1998 SSBF data.

The study team simulated loan approval rates for those minority groups with statistically significant disparities (African Americans and Hispanic Americans) by comparing observed approval rates with simulated rates. The study team simulated the rates by inputting observed variables for those minorities into a probit model developed for non-Hispanic white male-owned firms that includes the affects of a business being in the Pacific region.⁷⁷ Figure G-9 shows these simulated loan approval rates in comparison to the actual approval rates observed in the 1998 SSBF.

Figure G-9.
Comparison of actual loan approval rates to simulated loan approval rates, 1998

Group	Loan approval rates		Disparity index (100 = parity)
	Actual	Benchmark	
African American	46.4%	76.8%	60
Hispanic American	53.7%	75.9%	71

Note: Actual approval rates presented here and denial rates in Figure G-7 do not sum to 100% because some observations were dropped in the probit regression.

Source: BBC Research & Consulting analysis of 1998 NSSBF data.

Based on 1998 SSBF data, the observed loan approval rate was 46 percent for African American-owned firms that applied for loans. Model results show that African American-owned firms would have an approval rate of about 77 percent if they were approved at the same rate as similarly situated firms owned by non-Hispanic whites. In this same environment, about 76 percent of Hispanic American-owned firms would be approved for loans; however, the actual loan approval rate for Hispanic American-owned firms was 54 percent.

Other researchers' analyses of the 2003 SSBF. Summary statistics from the 2003 SSBF of loan denial rates by race and ethnicity are presented at the beginning of this section. While these data are the most recent information collected from small businesses, the study team selected the data from the 1998 SSBF to conduct the econometric analysis to capitalize on the over-sampling of minority-owned business in the 1998 SSBF (not done in the 2003 SSBF).⁷⁸

However, other recent studies elected to incorporate the 2003 SSBF into the analysis, while at the same time acknowledging the drawbacks of these data. In a study prepared for the City of Austin, Texas, NERA Economic Consulting (NERA) presented results from models using the 1993, 1998 and 2003 SSBFs, while focusing the analysis on the 1993 data. NERA investigated factors influencing loan denial rates using a probit econometric model. At a national level, their results using the 1998 SSBF are consistent with BBC's findings. When using the 2003 SSBF data, however, they find that loan denial rates for Hispanic-owned firms are not significantly different from rates for non-Hispanic white-owned firms.⁷⁹

⁷⁷ The approval rate is equal to one minus the denial rate.

⁷⁸ In the 1998 data, 7.3 percent of the firms surveyed were owned by Hispanic Americans, however in 2003 that number dropped to 4 percent. Numbers dropped from 7.7 percent to 2.8 percent and 5.7 percent to 4.2 percent for African American-owned and Asian American-owned firms, respectively. This decrease in minority samples impacts the precision of econometric analysis used to investigate disparities in loan denial rates for minority groups.

⁷⁹ National Economic Research Associates, Inc., 2008. "Race, Sex, and Business Enterprise: Evidence from the City of Austin." *Prepared for the City of Austin, Texas.*

Charles River Associates (CRA) also incorporated the 2003 SSBF in a study prepared for the Santa Clara Valley Transportation Authority (also located in the Pacific region). Combining data from the 1998 and 2003 SSBFs “to increase precision of estimates,” the CRA study reveals possible disparities in loan denial by race/ethnicity and gender using a probit econometric model and controlling for other factors. Figure G-10 shows a summary of their findings.

Figure G-10.
Likelihood of loan denial:
Findings from 2007 CRA study
using 1998 and 2003 SSBF data

	Statistical significance	Likelihood of loan denial
African American	Yes	Higher
Asian American	Yes	Higher
Hispanic American	Yes	Higher
Female	No	N/A

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history, use of financial services and loan application characteristics.

While the study does not find differences in the likelihood of loan denial for female-owned business at a national level, the results indicate that female-owned firms have a lower likelihood of denial in the Pacific region.

Source:

CRA International. 2007. “Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization.” Prepared for Santa Clara Valley Transportation Authority.

Consistent with BBC’s findings, CRA’s results indicate that African American- and Hispanic-owned firms have higher probabilities of loan denial. However, they also find that Asian-owned firms are more likely to be denied loans. CRA’s results indicate that female-owned firms in the Pacific region are less likely to be denied loans.⁸⁰

Applying for loans. Fear of loan denial can be a barrier to capital markets as it prevents small businesses from applying for needed loans and thus can help explain differences in business outcomes. An examination of this fear provides insight into minority business owners’ perceptions of the small business lending market. Using data from the 1998 and 2003 SSBF, Figure G-11 shows results the proportion of firms that reported needing credit but did not apply for fear of denial.

In 1998 and 2003, minority- and women-owned firms were more likely than non-Hispanic white male-owned firms to forgo applying for loans due to fear of denial, both in the Pacific region and nationally. In 1998, for example, about 31 percent of minority- and women-owned firms in the Pacific region indicated that they had not applied for loans for this reason, compared to 25 percent of non-Hispanic white male-owned firms.

At the national level in 1998 and 2003, disparities were greatest for African American- and Hispanic American-owned business.

⁸⁰ CRA International. 2007. “Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization.” Prepared for Santa Clara Valley Transportation Authority.

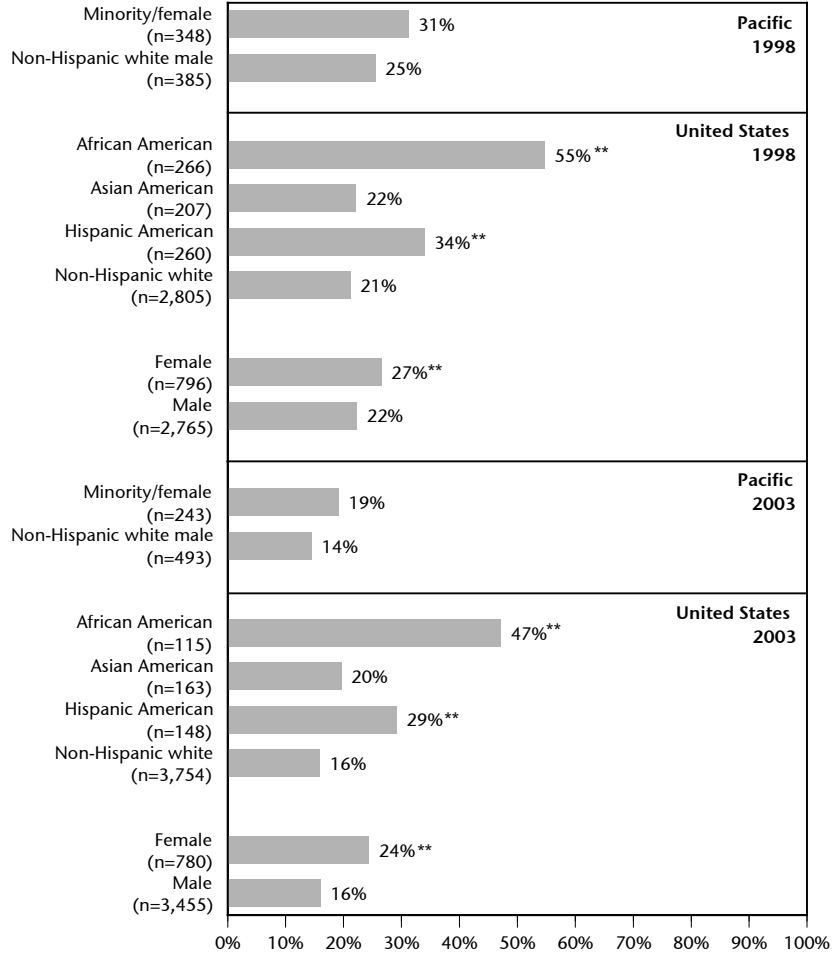
Figure G-11.
Firms that needed loans
but did not apply due to
fear of denial, 1998 and
2003

Note:

** Denotes that the difference in proportions from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



In its study for the Santa Clara Valley Transportation Authority, CRA used an econometric model to investigate firms that did not apply for loans for fear of denial. The model explored whether differences between race/ethnicity and gender groups exist after controlling for other factors. As explained above, CRA based its analysis on combined data from the 1998 and 2003 SSBFs. Figure G-12 presents a summary of their findings.

Figure G-12.
Fear of loan denial:
Findings from 2007 CRA study
using 1998 and 2003 SSBF data

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, personal financial history, business financial history and use of financial services.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization." Prepared for Santa Clara Valley Transportation Authority.

	Statistical significance	Likelihood of not applying for a loan due to fear of denial
African American	Yes	Higher
Asian American	No	N/A
Hispanic American	Yes	Higher
Female	No	N/A

Results from CRA's model indicate that African American- and Hispanic American-owned businesses are more likely to not apply out of fear of being denied. In addition, results for firms located in the Pacific region do not differ significantly from national results.⁸¹

Other studies have identified factors that influence the decision to apply for a loan, such as firm size, firm age, owner age and educational attainment. Controlling for these factors can help in determining whether race and ethnicity explain fear of loan denial. Findings indicate:

- African American- and Hispanic American-owners are significantly less likely to apply for loans.⁸²
- After controlling for educational attainment, there were no significant differences in loan application rates between non-Hispanic white, African American, Hispanic American and Asian American men.⁸³
- African American-owned firms are more likely than other firms to report being seriously concerned with credit markets and are less likely to apply for credit in fear of denial.⁸⁴

Loan values. The study team also considered average loan values for firms that received loans. Results from the 1998 and 2003 SSBFs for mean loan values awarded by racial and ethnic group are presented in Figure G-13. Comparing loan amounts for non-Hispanic white male-owned firms to minority- and women-owned firms indicates the following:

- In both 1998 and 2003, minority- and women-owned firms in the Pacific region received loans that amounted to less, on average, than loan amounts awarded to non-Hispanic white male-owned firms.
- In 2003, national results show that minority- and women-owned firms received loans that were on average less than half the average loan amount received by non-Hispanic white male-owned firms (statistically significant difference). However, the 1998 data suggests that minority- and women-owned firms in the U.S. received loans with slightly higher value, on average, than those received by non-Hispanic white males.

⁸¹ CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. *Prepared for Santa Clara Valley Transportation Authority.*

⁸² Cavalluzzo, 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

⁸³ Coleman, Susan. 2004. "Access to Debt Capital for Small Women- and Minority-Owned Firms: Does Educational Attainment Have an Impact?" *Journal of Developmental Entrepreneurship*. 9:127-144.

⁸⁴ Blanchflower et al., 2003. Discrimination in the Small Business Credit Market.

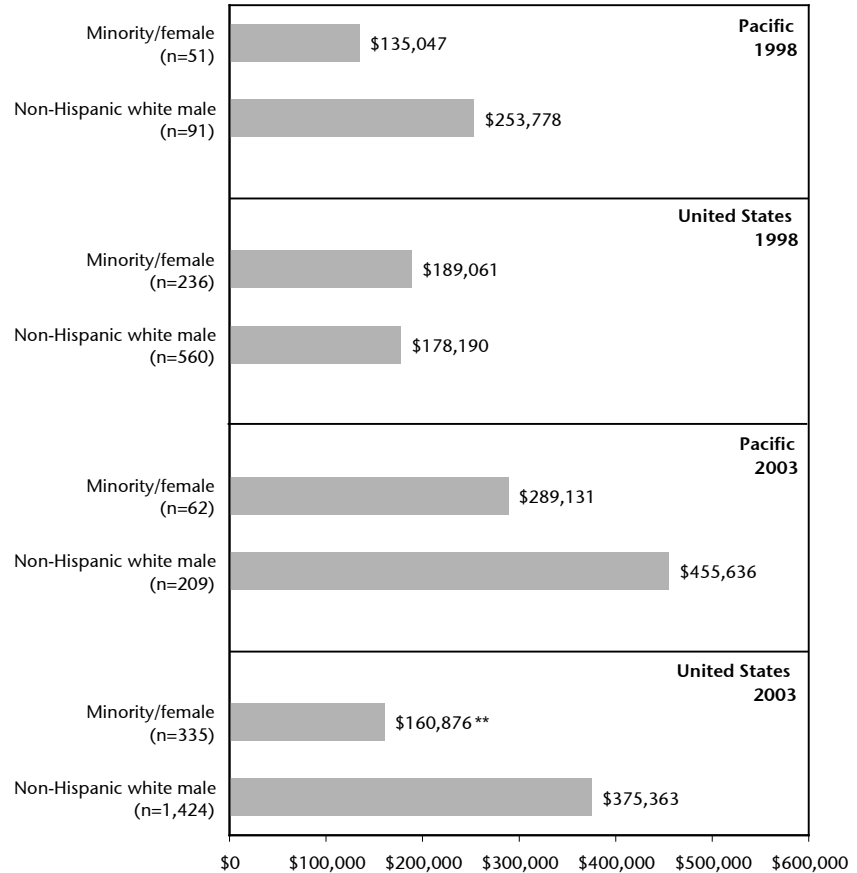
Figure G-13.
Mean value of approved
business loans, 1998
and 2003

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Previous national studies have found that African American-owned firms received substantially lower loan amounts than their non-Hispanic white counterparts with similar characteristics. Examination of construction companies in the United States revealed that African American-owned firms received smaller loans than firms with otherwise identical traits.⁸⁵

Interest rates. Based on 1998 and 2003 SSBF data, Figure G-14 presents the average interest rates on commercial loans by the race and ethnicity of firm ownership. In 1998, on average, minority- and women-owned firms in the Pacific region received loans with similar interest rates compared to loans received by non-Hispanic white male-owned firms. However, in 2003, the average interest rate on loans obtained by minority- and women-owned firms was about 1.6 percentage points higher than the mean interest rate for non-Hispanic white-owned firms.

The overall pattern in the Pacific region was similar to that found in the United States in both years examined by the study team. In 2003 but not in 1998, minority- and female-owned firms received loans with higher interest compared to non-Hispanic white-owned firms.

⁸⁵ Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

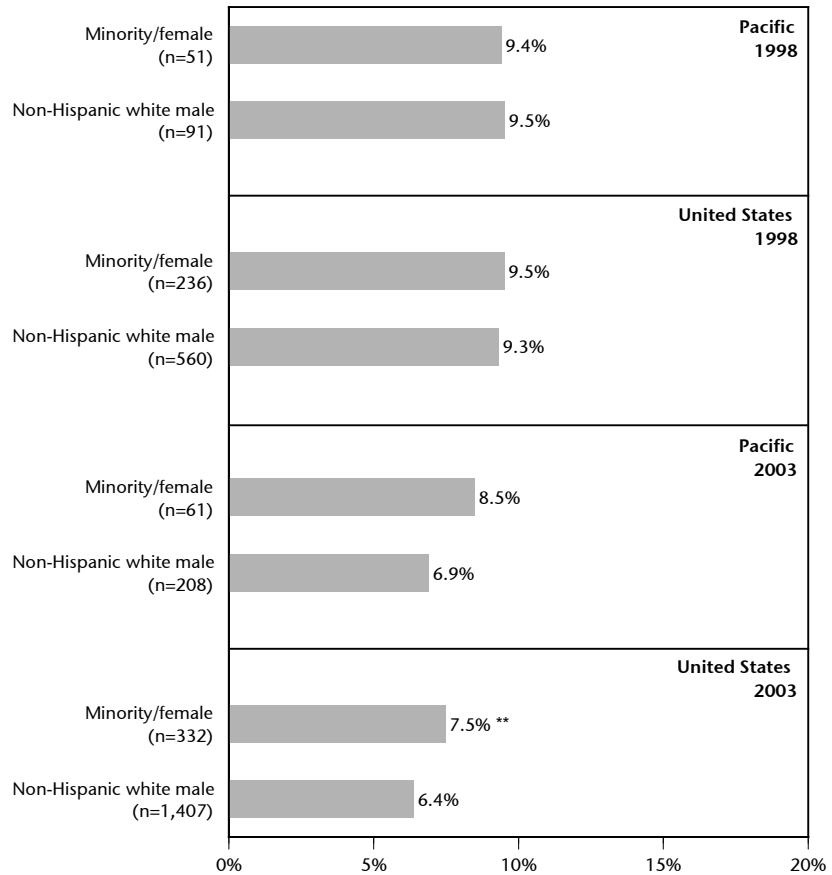
Figure G-14.
Mean interest rate for
business loans, 1998
and 2003

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.



Previous studies have investigated differences in interest rates across race/ethnicity and gender while controlling for factors such as individual credit history, firm credit history and Dun and Bradstreet credit scores. Findings from these studies include:

- Hispanic-owned firms had significantly higher interest rates for lines of credit in places with less credit market competition. However, no evidence was found that African American- or female-owned firms received different rates.⁸⁶
- Among a sample of firms with no past credit problems, African American-owned firms paid significantly higher interest rates on approved loans.⁸⁷

The CRA study also investigated differences in interest rates by race/ethnicity and gender using a linear econometric model and controlling for other factors that may impact interest rates. Results are summarized in Figure G-15.

⁸⁶ Cavalluzzo. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

⁸⁷ Blanchflower. 2003. "Discrimination in the Small Business Credit Market."

Figure G-15.
Differences in interest rates:
Findings from 2007 CRA study using 1998 and
2003 SSBF data

	Statistical significance	Comparison of interest rates
African American	Yes	Higher
Asian American	No	N/A
Hispanic American	Yes	Higher
Female	No	N/A

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history and use of financial services.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

On a national level, African American- and Hispanic American-owned firms pay a higher interest rate than non-minority-owned firms even after controlling for other factors. CRA did not find any additional differences for firms located in the Pacific region.⁸⁸

Other factors affecting capital markets. Ethnic banking sectors may also affect the availability of loans to different minority groups. For example, one study found strength in the ethnic banking sector influences credit accessibility in ethnic communities in Los Angeles. A strong Asian American bank sector helped Asian American communities transition to successful business environments, and a lack of strong banking sectors in African American communities could hinder development of African American businesses.⁸⁹

Summary of Analysis of Access to Capital for Business Formation and Success

There is evidence that minorities and women continue to face certain disadvantages in accessing capital necessary to start and expand businesses, based upon analysis of 2000, 2007 and 2009 U.S. Census Bureau data; 2006 and 2009 HMDA data; and the 1998 and 2003 SSBF data.

- Home equity is an important source of funds for business start-up and growth. Relatively fewer African Americans, Hispanic Americans and Native Americans in the Los Angeles area and California own homes than non-Hispanic whites, and those who do own homes tend to have lower home values.
- African Americans, Asian Americans, Hispanic Americans and Native Americans applying for home mortgages in the Los Angeles are more likely than non-minorities to have their applications denied.
- African American, Hispanic American and Native American mortgage borrowers in the Los Angeles area are more likely to have subprime loans.
- Minority- and women-owned firms in the Pacific region are more likely to forgo applying for loans due to fear of denial.

⁸⁸ CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

⁸⁹ Dymski, Gary and Lisa Mohanty. 1999. "Credit and Banking Structure: Asian and African-American Experience in Los Angeles." *The American Economic Review*. 89:362-366.

- Based on a regression analysis using 1998 SSBF data, African American and Hispanic American business owners are more likely to be denied a loan in the U.S., even after controlling for neutral factors. The regression analysis indicated that national results were relevant to the Pacific region.
- Data indicate that minority- and women-owned firms receiving business loans obtain smaller loans than majority-owned firms. There is some evidence that African American- and Hispanic American-owned firms receiving business loans pay higher interest rates on those loans.

APPENDIX H.

Success of Businesses in the Los Angeles Area Construction, Professional Services, and Goods and Services Industries

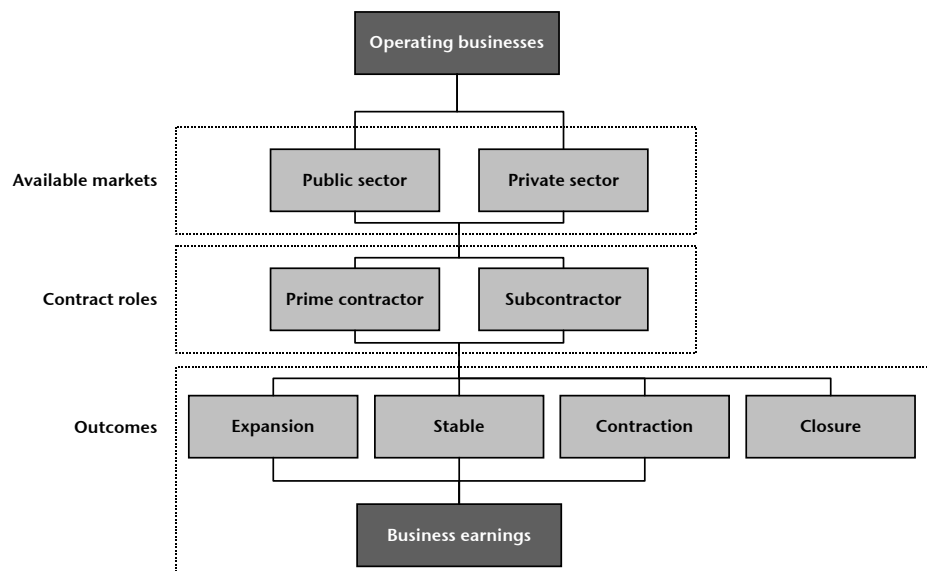
BBC examined the success of minority and women-owned firms (MBE/WBEs), assessing whether business outcomes for those firms differ from those of majority-owned firms (i.e., firms not owned by minorities or women) in the construction, professional services, and goods and services industries. In this and other marketplace appendices, the professional services industry focuses on architectural, engineering and related services. BBC researched outcomes for MBE/WBEs and majority-owned businesses in terms of:

- Participation in public versus private sector markets;
- Participation as prime contractors and subcontracts;
- Sizes of contracts bid on and performed;
- Businesses discontinuing operations;
- Businesses expanding or contracting;
- Business receipts and earnings; and
- Size distribution of gross revenue.

Figure H-1 provides a framework for the analysis.

Figure H-1.
Business success

Source:
BBC Research &
Consulting.



The study team begins this section by examining data collected from interviews with Los Angeles area businesses as part of BBC's availability analysis. Those data included information about firms' involvement on public and/or private sector work, including:

- Whether firms had bid on and won contracts in study industries and the size of those projects; and
- Whether firms had worked as prime contractors, subcontractors or both.

After examining data from the availability analysis, the study team then turns to federal data for the Los Angeles area, California and the nation concerning business closures, expansion and contraction.¹ Using those data and information collected from availability interviews, BBC concludes this appendix with an analysis of business earnings.

Markets and Contract Roles

As part of the availability analysis in the BGPAA disparity study and prior studies completed in California, the study team performed telephone interviews with construction, engineering and goods and services firms in the Los Angeles metropolitan area. Results provide information on public and private sector work, prime and subcontracts, and past bidding success. The study team also examined data on the largest contract that each firm was awarded. Appendix C describes the interview methodology in detail.

Results examined here pertain to businesses with Los Angeles metropolitan area locations that reported working within the local construction, engineering, or goods and services industries.

- Because of the relatively small number of firms representing specific minority groups, BBC reports results from the availability interviews in aggregate for MBEs ("MBE," regardless of whether they are certified as such).
- Responses for white women-owned firms are shown as "WBE." Results for minority women-owned firms are reported under MBE.
- "Majority-owned firms" are all firms not owned or controlled by minorities or women.

Public sector versus private sector work. BBC examined whether minority- and women-owned firms involved in construction, professional services and goods and services work were less likely to work in the private sector than the public sector.

¹ In the marketplace appendices, the Los Angeles area comprises the following five counties (unless otherwise noted): Los Angeles, Orange, Ventura, Riverside and San Bernardino. Collectively, these counties are referred to as the Los Angeles area.

The study team separately examined responses for firms in construction, engineering, and goods and services industries. Results indicate whether a firm had pursued public or private sector work.^{2,3}

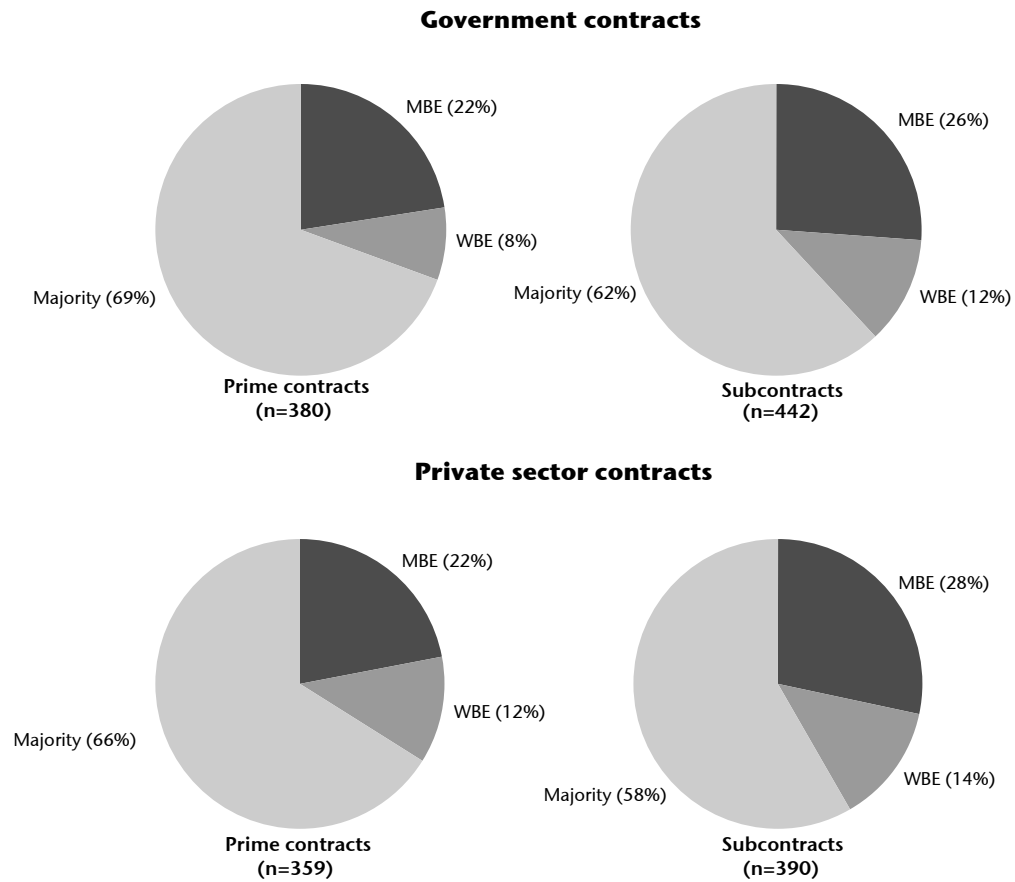
Construction industry. The pie charts in Figure H-2 show the share of firms competing for public and private sector prime contracts and subcontracts that are minority-, women- and majority-owned, based on responses from availability interviews. For example, of the 380 construction industry firms that reported bidding on public sector prime contracts in the previous five years, 69 percent were majority-owned, 22 percent were MBEs and 8 percent were WBEs. Figure H-2 demonstrates that:

- MBE/WBEs were roughly one-third of the firms competing for prime contracts.
- Minority-owned firms were a large share of the firms competing for public and private sector prime contracts. Compared with public sector prime contracts, relatively more of the firms competing for private sector prime contracts were WBEs.
- MBE/WBEs comprise a greater share of firms competing for subcontracts than for prime contracts, with little difference between public and private sector subcontracts.

² A firm was deemed to have performed or bid on public sector work if it answered “yes” to either of the following questions: (a) “Next, I have a few questions about your company’s role in installing windows, doors, insulation or other soundproofing or acoustical materials. During the past five years, has your company submitted a bid or a price quote for any part of a contract for a public agency in California?”; or (b) “During the past five years, has your company received an award for work as a prime contractor or as a subcontractor for any part of a contract for a public agency in California?”

³ A firm was deemed to have performed or bid on private sector work if it answered “yes” to either of the following questions: (a) “During the past five years, has your company submitted a bid or a price quote for any part of a private sector contract in California?”; or (b) “During the past five years, has your company received an award for work as a prime contractor or as a subcontractor for any part of a private sector contract in California?”

Figure H-2.
Representation of minority- and women-owned businesses among Los Angeles area construction industry firms bidding on public sector and private sector work

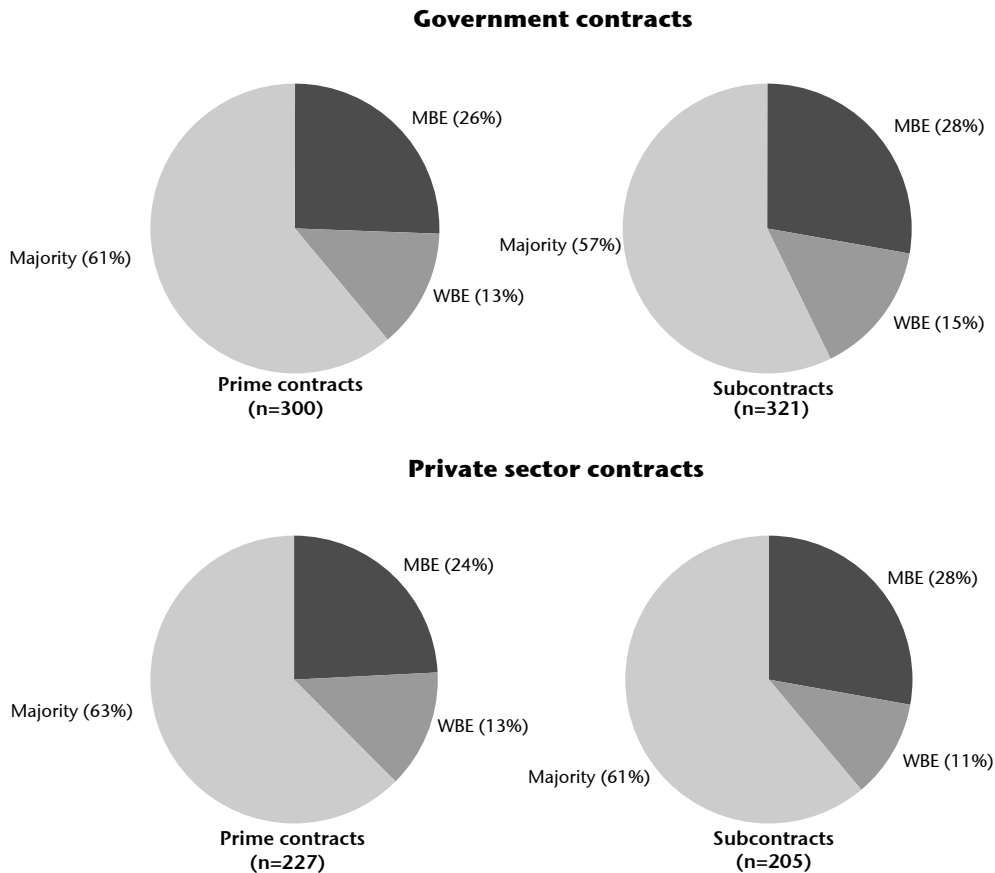


Note: "WBE" is white women-owned firms.
 Total may not add to 100 percent due to rounding.
 Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Engineering industry. As with construction firms, the study team analyzed the relative number of minority-, women- and majority-owned engineering-related firms competing for government and private sector prime contracts and subcontracts, based on responses from availability interviews.

- Compared with the construction industry, a larger share of the firms competing for public sector prime contracts are MBE/WBEs (39%, as shown in Figure H-3). MBE/WBEs comprise a slightly smaller share of engineering industry firms competing for private sector prime contracts.
- MBE/WBEs are a larger share of firms competing for subcontracts.
- MBE/WBEs comprise a smaller share of engineering-related businesses competing for private sector work.

Figure H-3.
Representation of minority- and women-owned businesses among Los Angeles area engineering industry firms bidding on public sector and private sector work



Note: "WBE" is white women-owned firms.
Total may not add to 100 percent due to rounding.

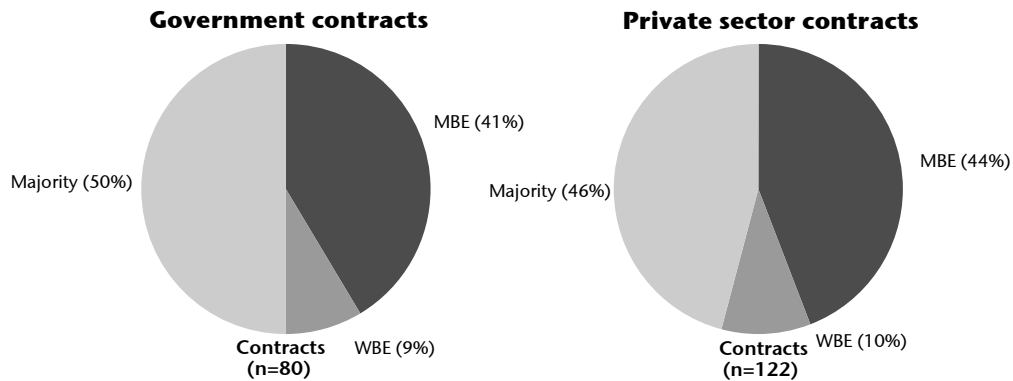
Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Goods and services industry. The study team also surveyed segments of the Los Angeles goods and services industry.

- As shown in Figure H-4, MBE/WBEs comprise a slightly larger share of goods and services firms competing for private sector contracting work than for public sector contracting work (54% for the private sector versus 50% for the public sector).
- In both the public and the private sector, MBEs comprise the majority of MBE/WBEs competing for goods subindustry work.

The goods and services analysis does not separately report the share of goods firms that bid as prime contractors and subcontractors, because subcontracting opportunities are not typically available for goods and services contracts.

Figure H-4.
Share of goods and services industry firms bidding on public sector and private sector work in Los Angeles in the previous five years



Note: "WBE" is white women-owned firms.
 Total may not add to 100 percent due to rounding.

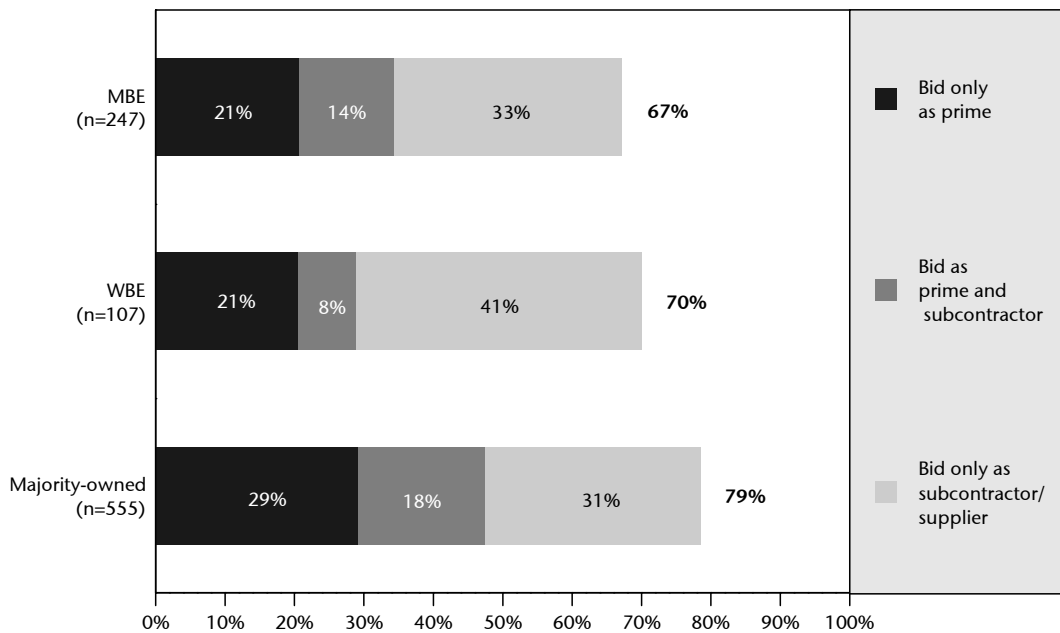
Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Bidding as prime contractors and subcontractors/suppliers. Figures H-4 through H-6 present the share of majority-, minority- and women-owned firms that bid on public sector or private sector work within the past five years. For the construction and engineering industries, the figures indicate what percentage of firms bid as a prime contractor, a subcontractor or as both. Results are reported separately for each industry. The following analysis draws from availability interview data.

Construction industry. Figure H-5 examines the share of majority-, minority and women-owned construction firms that reported bidding on public sector work as a prime contractor, a subcontractor or as both.

- Nearly 80 percent of majority-owned construction firms that reported being qualified and interested in future construction work had bid on public sector work as a prime contractor or a subcontractor in the previous five years (including submitting price quotes). About 30 percent had bid only as a prime contractor and a similar percentage had bid only as a subcontractor.
- Over two-thirds (70%) of WBEs reported bidding on past public sector work, as shown in Figure H-5. A relatively smaller share of WBEs (21%) than majority-owned firms reported bidding only as a prime contractor. A greater share of WBEs (41%) than majority-owned firms had bid only as a subcontractor on public sector construction work in the past five years.
- Compared to majority owned firms (47%), a smaller share of MBEs (35%) and WBEs (29%) reported bidding as a prime on construction work within the past five years.

Figure H-5.
Percent of construction firms that reported submitting a bid for any part of a public sector project in the previous five years



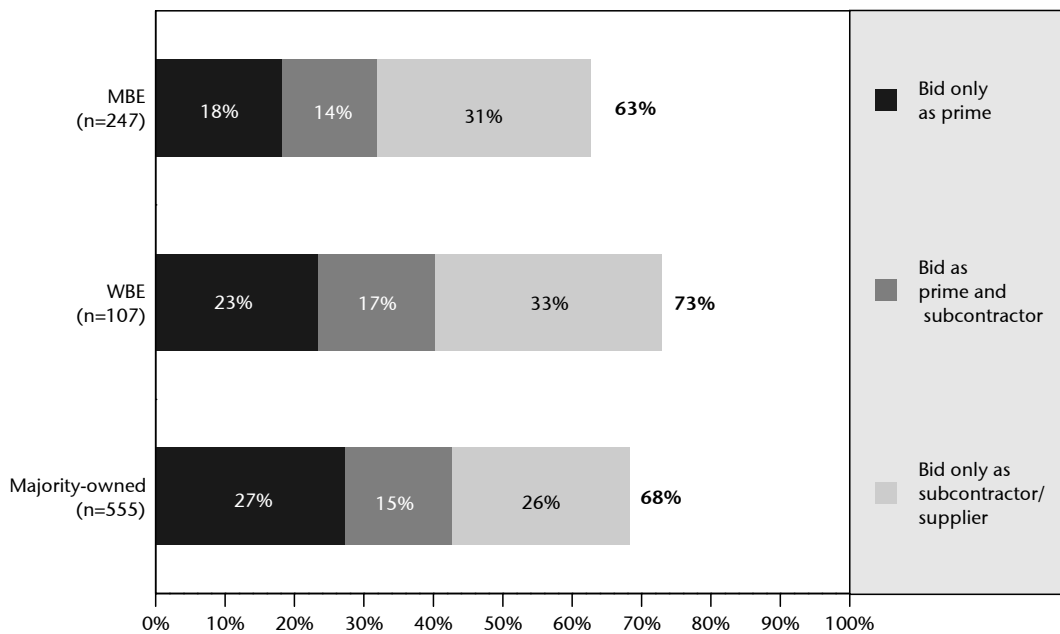
Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

The study team also asked firm owners and managers if the firm had bid on a private sector construction project in the past five years. The proportion of construction firms that bid as prime contractors or as subcontractors on private sector work in the past five years was highest for WBEs and lowest for MBEs (see Figure H-6).

- Only 63 percent of MBEs reported submitting bid or price quotes for private sector work in the previous five years compared to 68 percent of majority-owned firms. However, nearly three-quarters of WBEs reported submitting bids on private sector work.
- The share of majority-owned construction firms (27%) that bid only as a prime contractor was higher than MBEs (18%) and WBEs (23%).
- The proportion of MBEs (31%) and WBEs (33%) that reported bidding only a subcontractor or supplier was great than the share of majority-owned firms (26%) that bid only as a subcontractor.

Figure H-6.
Percent of construction firms that reported submitting a bid for any part of a private sector project in the previous five years



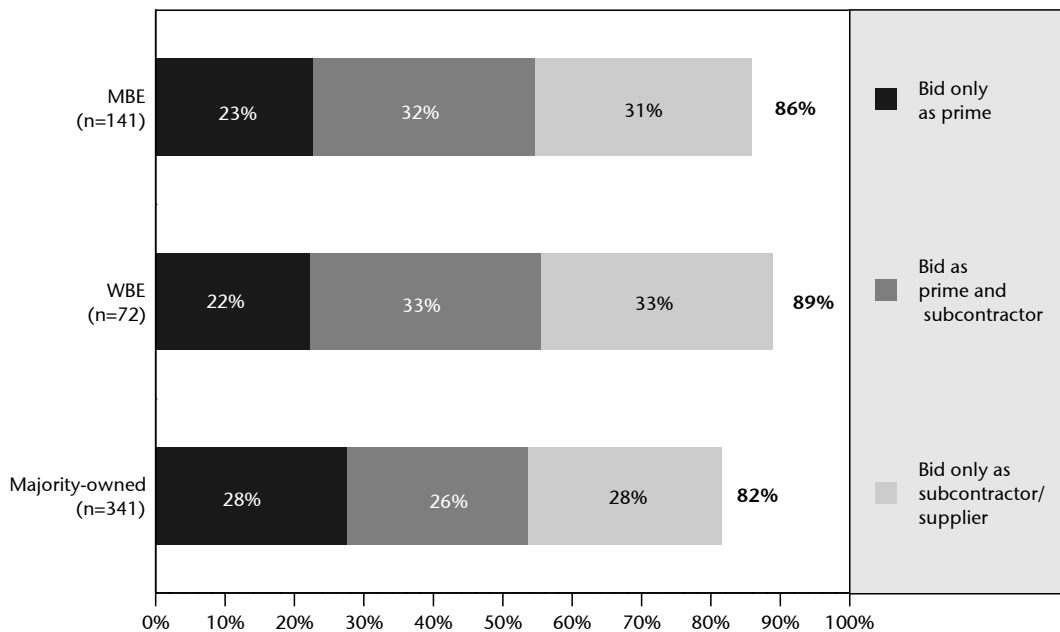
Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Engineering industry. Figures H-7 and H-8 examine prime contract versus subcontract bidding on engineering-related firms, based on data from the availability interviews.

- A greater percentage of minority- and women-owned firms reported bidding on public sector contracts than majority-owned firms.
- About the same percentage of MBEs, WBEs and majority-owned firms bid on public sector work as a prime contractor.
- MBE/WBEs were more likely than majority-owned firms to have bid on subcontracts on public sector contracts.

Figure H-7.
Percent of engineering industry firms that reported
Submitting a bid for any part of a public sector project in the previous five years



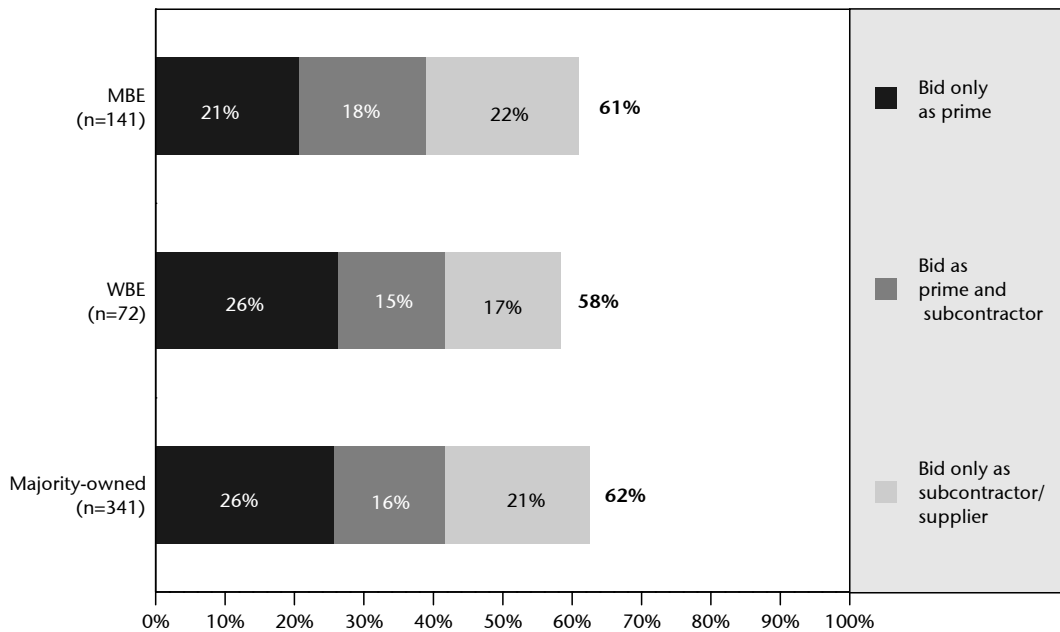
Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Figure H-8 presents results for engineering industry firms bidding on private sector work.

- WBEs were somewhat less likely to have bid on private sector work than majority-owned firms (58% compared with 62%).
- Minority-owned firms were more likely than majority-owned firms to have bid as a subcontractor.

Figure H-8.
Percent of engineering industry firms that reported
Submitting a bid for any part of a private sector project in the previous five years



Note: "WBE" is white women-owned firms.

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

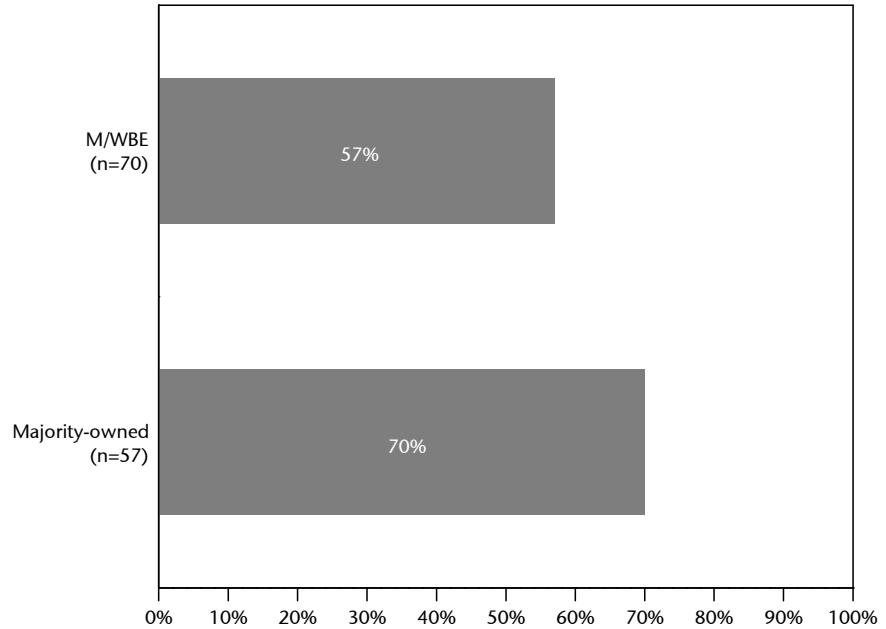
Goods and services industry. The availability database also included certain types of Los Angeles area goods and services firms. Figure H-9 examines the relative number of MBE/WBEs and majority-owned firms that reported bidding on public sector work. The goods and services analysis does not separately report the share of firms that bid as prime contractors and subcontractors because subcontracting opportunities are not typically available for goods and services contracts. Responses for MBEs and WBEs were combined due to the relatively small number of respondents (57 MBEs and 13 WBEs).

Figure H-9 shows that about 57 percent of MBE/WBEs had bid on public sector goods and services contracts within the previous five years compared with 70 percent of majority-owned firms.

Figure H-9.
Percent of goods and services firms that reported submitting a bid for any part of a public sector project in the past five years

Note:
“WBE” is white women-owned firms.

Source:
BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

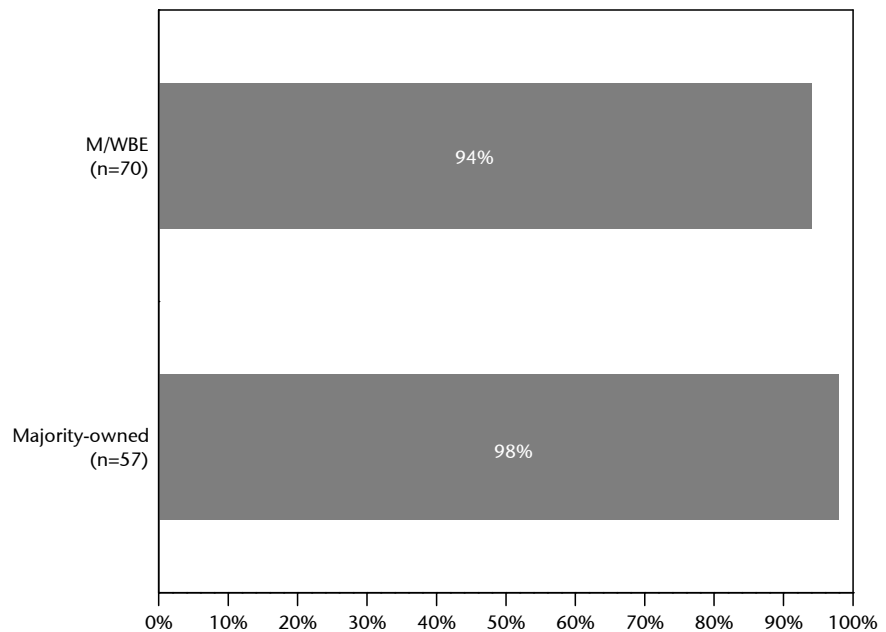


The study team also asked firm owners and managers if their firms had bid on a private sector goods contract in the past five years. Nearly all MBE/WBEs and majority-owned goods and services firms indicated that they had bid on private sector contracts, as shown in Figure H-10.

Figure H-10.
Percent of goods and services firms that reported submitting a bid for any part of a private sector project in the past five years

Note:
“WBE” is white women-owned firms.

Source:
BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.



Success in pursuing public and private sector work. In the availability interviews, firms competing for public sector work were also asked if they had been awarded any public sector contracts (including both prime contracts and subcontracts). The analyses below examine responses for MBEs, WBEs and majority-owned firms in the Los Angeles area.

Construction industry. When asked to consider the previous five years, 74 percent of MBE and 72 percent of WBE construction firms bidding on public sector work reported that they had been successful in obtaining some work, less than found for majority-owned construction firms that (82%).

A disparity in success in competing for private sector work was also found between MBEs and majority-owned firms (69% for MBEs compared with 81% for majority-owned firms).

Engineering industry. As with construction firms, engineering industry firms competing for public sector and private sector work were asked if they had received any such work in the previous five years. Three-quarters of WBEs and 76 percent of MBEs indicated that they had received some public sector work. The same share of majority-owned firms (76%) said that they had received public work.

About 76 percent of MBEs and 83 percent of WBEs reported receiving at least some private sector work. A similar share of majority-owned firms (80%) reported receiving private sector work.

Goods and services industry. In the availability surveys, goods and services firms competing for public sector and private sector contracts were also asked if they had received any such work in the previous five years.

- About 76 percent of MBEs bidding on public sector contracts indicated that they had received some public sector contracts.
- About 93 percent of majority-owned firms bidding on public sector contracts indicated that they had received public contracts.
- All of the WBEs surveyed that reported bidding on public sector contracts or subcontracts had been successful in receiving at least some contracts.

When asked whether they had received private sector work in the past five years, all of the WBEs and majority-owned firms that had pursued such work indicated that they had received some work. A smaller share of MBEs (91%) bidding on private sector work said that they had received such work.

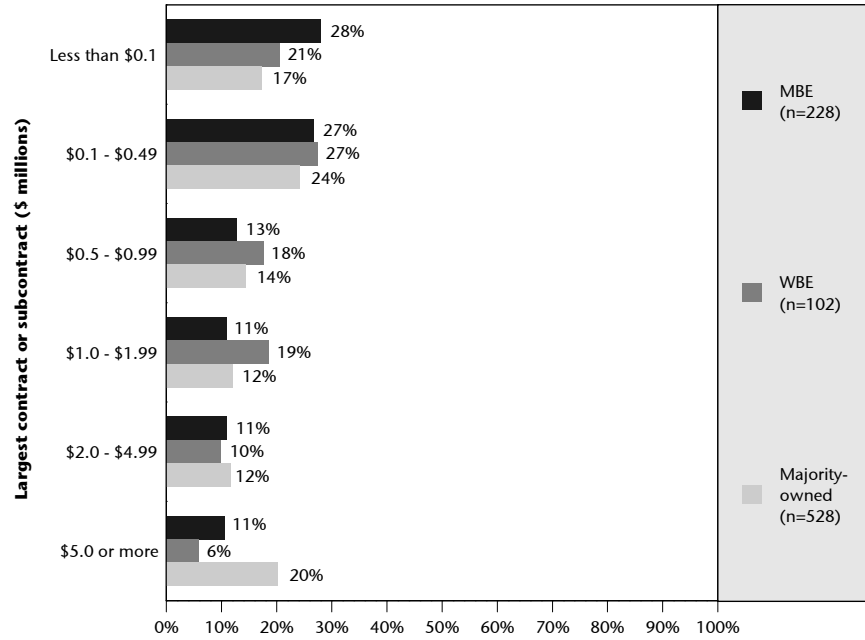
Largest contract. As part of the availability interviews, the study team asked firms to identify the largest contract each firm was awarded in the previous five years.

Construction industry. Among construction firms in the availability interviews, 44 percent of majority-owned firms reported that the largest contract they received was worth \$1 million or more (Figure H-11). A smaller share of MBEs (33%) and WBEs (35%) reported that they had received a contract of that size. Twenty percent of majority-owned firms received work worth \$5 million or more. Only 11 percent of MBEs and 6 percent of WBEs were awarded contracts of \$5 million or more.

Figure H-11.
Largest contract or subcontract that the company received in the previous five years, construction firms

Note:
 "WBE" is white women-owned firms.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

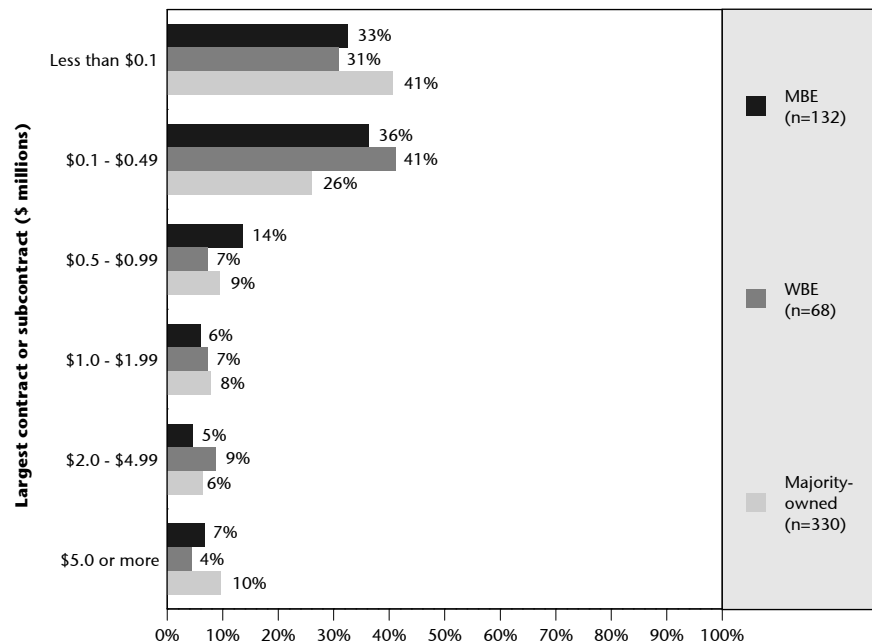


Engineering industry. Among surveyed firms in the Los Angeles engineering industry, a larger share of majority-owned firms (10%) than MBEs (7%) and WBEs (4%) reported that the largest contract that they received was worth \$5 million or more. Nearly 25 percent of majority-owned firms reported receiving contracts worth \$1 million or more, a greater share than MBEs (18%) and WBEs (20%). Figure H-12 presents these results.

Figure H-12.
Largest contract or subcontract that the company received in the previous five years, engineering firms

Note:
 "WBE" is white women-owned firms.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.



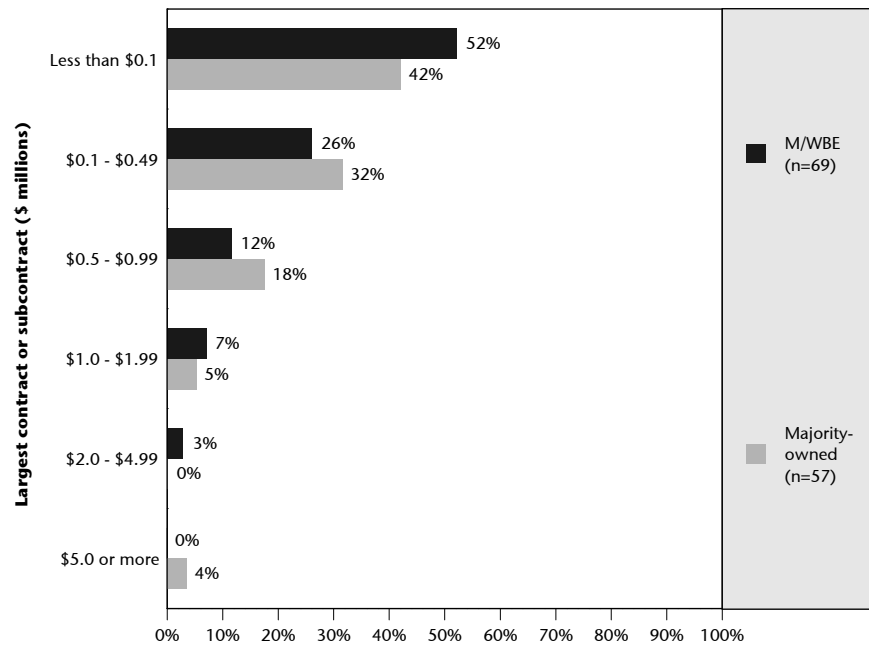
Goods and services industry. Information concerning largest contracts was also collected for goods and services firms interviewed in the availability survey. Results are shown in Figure H-13. As with other analyses of goods and services firms, BBC combined results for MBEs and WBEs.

- For more than one-half of MBE/WBE goods and services firms, the largest contract was less than \$100,000. Only 48 percent of MBE/WBEs reported receiving contracts of \$100,000 or more compared with 58 percent of majority-owned firms.
- Four percent of majority-owned firms said their largest contract was for \$5 million or more, while no MBEs or WBEs in the goods and services industry reported receiving a contract of that size.

Figure H-13.
Largest contract or subcontract that the company received in the previous five years, goods and services firms

Note:
 “WBE” is white women-owned firms.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.



Summary of public versus private sector and prime versus subcontracting analyses.

The availability interviews revealed some similarities and differences between MBE/WBEs and majority-owned firms related to public versus private sector work.

Construction industry. Availability interview results for firms in the construction industry found little indication that MBE/WBEs are less likely to have pursued work in the private sector than the public sector. However, MBE/WBEs were substantially less likely than majority-owned firms to have bid as prime contractors.

MBE/WBEs pursuing public sector work were less likely than majority-owned firms to report receiving such work. The same apparent disparities in bidding success were evident for MBEs for private sector work.

Minority- and women-owned construction firms were less likely than majority-owned firms to have received a large contract (contracts or subcontracts over \$1 million or over \$5 million).

Engineering industry. Availability interviews indicated that MBE/WBEs were slightly less likely to bid on private sector work than public sector work. Compared with majority-owned firms, MBEs pursuing private sector contracts were less likely to be awarded such work. Minority- and women-owned firms in the engineering industry were less likely than majority-owned firms to have received a large contract or subcontract.

Goods and services industry. BBC's availability interviews from the BGPAA study and past studies in Southern California pertained to a small number of subindustries within the local goods and services industry.

Interview results indicate that MBE/WBEs were less likely than majority-owned firms to have bid on public sector contracts. MBEs bidding on public sector work were less likely to have received a contract than majority-owned firms. When examining the largest contracts received, those contracts tended to be smaller for MBE/WBEs than majority-owned firms.

Bid Capacity

Some recent legal cases regarding race- and gender-conscious contracting programs have considered the issue of the "relative capacity" of firms included in an availability analysis.⁴ One approach to account for differing capacity between types of firms is to examine relatively small contracts, a technique noted in *Rothe*. In addition to examining small contracts, BBC directly measured bid capacity in its availability analysis.

Measurement of bid capacity. "Bid capacity" for a firm is measured as the largest contract or subcontract the firm bid on or performed in California within the five years preceding when BBC interviewed the firm. BBC uses bid capacity as one factor in determining whether a firm would be available to bid on specific prime contracts and subcontracts.

Assessment of possible disparities in bid capacity of MBE/WBEs and majority-owned firms. The availability analysis produced a database of 1,582 firms potentially available for Burbank-Glendale-Pasadena Airport Authority work.⁵ The following analysis of bid capacity relies on the results of availability interviews.

One factor that affects bid capacity is the industry specializations of firms. Some industry segments, such as construction of water, sewer and utility lines, involve larger projects. Other segments, such as cleaning and janitorial services, involve smaller-scale assignments. One way of controlling for variation in bid capacities in different subindustries is to assess whether a firm has a bid capacity above or below the median level of firms in a particular subindustry. BBC can then test whether minority- and women-owned firms bid on larger or smaller contracts or subcontracts compared with other firms in the same subindustry.

Figure H-14 indicates the median bid capacity among Los Angeles-based firms in each of the 17 industry segments within the construction, engineering, and goods and services subindustries

⁴ See, for example, the decision of the United States Court of appeals for the Federal Circuit in *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

⁵ See Appendix D for further description of the survey sample and process.

included in the disparity study. Note that the survey questions regarding the largest project that firms had bid on or been awarded captured data in dollar ranges rather than in specific dollar amounts.

Figure H-14.
Median bid capacity by subindustry

Subindustry	Median Bid Capacity
Building construction	\$1 million to \$2.5 million
Cleaning and janitorial services	Less than \$200,000
Construction management	\$2.5 million
Construction materials	\$200,000 to \$500,000
Electrical work	\$200,000 to \$500,000
Engineering	\$200,000 to \$500,000
Environmental and planning services	\$200,000 to \$500,000
Excavation	\$200,000 to \$500,000
Highway and street construction	\$500,000 to \$1 million
Other construction	\$500,000 to \$1 million
Other goods	\$500,000
Security services	\$200,000 to \$500,000
Soundproofing	\$500,000 to \$1 million
Testing and laboratory services	\$200,000 to \$500,000
Trucking	\$200,000 to \$500,000
Water, sewer and utility lines	\$1 million to \$2.5 million

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

In BBC's availability calculations, firms with bid capacities above the median for their industry segments are counted as available for larger projects (as well as being counted as available for smaller assignments). Thus, these firms figure more prominently in the availability analysis than firms with smaller bid capacities. An initial question is whether minority and women-owned firms are as likely as majority-owned firms to have above-median bid capacity for their industry segment. Figure H-15 compares the proportions of firms with above-median bid capacity by ownership.

Figure H-15.
Proportion of firms with above-median bid capacity by ownership

Firm ownership	Proportion with above-median bid capacity		
	Construction (n=247)	Engineering (n=141)	Goods and Services (n=57)
African American	29.7 %	38.9 %	40.0 %
Asian-Pacific American	46.3	33.3	25.0
Subcontinent Asian American	16.7	40.0	50.0
Hispanic American	33.6	37.0	35.5
Native American	35.3	16.7	50.0
Female	41.1	34.7	23.1
Majority-owned	<u>45.1</u>	<u>36.4</u>	<u>35.1</u>
All firms	41.8 %	35.9 %	34.6 %

Source: BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Construction industry. The results shown in Figure H-15 indicate that the proportion of majority-owned firms that have an above-median bid capacity (45%) is higher than the share for each MBE/WBE group except for Asian-Pacific American owner firms.

Engineering industry. Figure H-15 shows that about 36 percent of majority-owned firms have an above-median bid capacity. Except for Native American-owned firms, the share of MBE/WBEs with an above-median bid capacity was similar to that of majority-owned firms.

Goods and services industry. The third column of Figure H-15 presents the share of goods and services firms with above-median bid capacity for their subindustry. It is difficult to identify any meaningful differences between MBE/WBEs and majority-owned firms, as sample sizes are small.

Regression analysis. BBC considered whether neutral factors account for differences among groups in the probability of having above-median bid capacity.

There are a number of variables from the availability interviews that may be correlated with bid capacity — for example, annual revenue, number of employees and whether a firm has multiple establishments in Los Angeles. However, the direction of causation for these variables is unclear. Do firms have greater bid capacity because they have more employees, or do they have more employees because they bid on and win larger projects?

After considering the array of variables from the availability interviews, the study team determined that the age of firms was the neutral factor that might best explain differences in bid capacity within a subindustry while being truly external to that capacity. Theoretically, the longer firms are in business, the larger the contracts or subcontracts they might pursue.

To test this hypothesis, the study team conducted separate logistic regression analyses for the construction, engineering, and goods and services industries to determine whether bid capacity could be at least partly explained by the age of the firm and whether minority- and women-owned firms differ from majority-owned firms of similar ages (after also controlling for subindustry).

Construction industry. The results for the Los Angeles construction industry are shown in Figure H-16. The results of the logistic regression indicated the following:

- The age of the firm was a statistically significant predictor of having above-median bid capacity. The older a firm, the more likely it is to have an above-median bid capacity.
- Minority or female ownership did not have a statistically significant effect on having above-average bid capacity for firms in the construction industry.

Figure H-16.
Los Angeles available construction industry bid capacity model

Note:
 ** Denotes statistical significance at the 95% confidence level.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Variable	Coefficient	Z-Statistic
Constant	-0.74	-5.22 **
Age of firm	0.19	4.73 **
Minority	-0.29	-1.77
Female	-0.10	-0.47

Engineering industry. Figure H-17 presents regression results for bid capacity among firms in the Los Angeles engineering industry. The logistic regression model for the industry indicated:

- The age of the firm was a statistically significant predictor of having above-average bid capacity for engineering firms. The older a firm, the more likely it is to have an above-median bid capacity.
- Neither minority nor female ownership had a statistically significant effect on having above-median bid capacity for firms in the engineering industry after controlling for subindustry and firm age.

Figure H-17.
Los Angeles available professional services industry bid capacity model

Note:
 ** Denotes statistical significance at the 95% confidence level.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Variable	Coefficient	Z-Statistic
Constant	-1.36	-6.94 **
Age of firm	0.03	4.75 **
Minority	0.19	0.86
Female	0.17	0.61

Goods and services industry. The results for the Los Angeles goods industry are shown in Figure H-18.

- The age of the firm was not a significant predictor of having above-median bid capacity; and
- MBE/WBE ownership was not a significant predictor of having above-average bid capacity for firms in the goods and services industry.

Figure H-18.
Los Angeles available goods and services industry bid capacity model

Note:
 ** Denotes statistical significance at the 95% confidence level.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

Variable	Coefficient	Z-Statistic
Constant	-1.16	-2.80 **
Age of firm	0.03	2.06 **
Minority	0.16	0.38
Female	-0.63	-0.93

Summary of bid capacity analysis. Although there appear to be differences in bid capacity between MBE and majority-owned construction firms after controlling for construction subindustry, BBC’s regression analyses found that age of firm explained much of these differences. There were no

statistically significant disparities in bid capacity after accounting for industry specialization and firm age among firms surveyed in the Los Angeles construction, engineering, and goods and services industries.

Business Closures, Expansions and Contractions

Having examined different markets for work, Appendix H now turns to an examination of different businesses outcomes, including closure, expansion and contraction. BBC used U.S. Small Business Administration (SBA) data to examine outcomes for minority- and women-owned firms in California and the nation. The SBA analyses pertain to minority-owned businesses, by demographic group, in comparison with all firms.

Business closure. High rates of business failures may reflect adverse business conditions faced by minority business owners.

Rates of business closures in California. A 2006 report by the Discrimination Research Center (DRC) analyzed the effects of California's Proposition 209 on DBE survival and utilization. Voter passage of Proposition 209 was one of the factors that led to elimination of race- and gender-conscious project goals for state-funded contracts as well as local agency contracts that were not subject to the Federal DBE Program. The DRC report argues that Proposition 209 led to a sharp decrease in the utilization of DBE firms and in the DBE share of overall contract dollars, resulting in the closure of many of these firms.⁶

DRC's study tracked DBEs that were in business throughout California in 1996 to assess the net effect of Proposition 209.

- Of the 3,269 construction firms registered with Caltrans as DBEs in 1996, 1,005 remained in operation in 2006, a survival rate of 32 percent.
- The survival rate among African American-owned construction firms registered as DBE's in 1996 was the lowest of all groups at 27 percent.

The report does not, however, provide a comparable statistic for the number of non-DBE firms that have closed since Proposition 209 was approved.

A 2010 Small Business Administration report investigated business dynamics and whether minority-owned companies were more likely to close than other firms. By matching data from business owners who responded to the 2002 U.S. Census Bureau Survey of Business Owners (SBO) to data from the Census Bureau's 1989-2006 Business Information Tracking Series, the SBA reported on establishment death rates between 2002 and 2006 across sectors of the economy.⁷ The SBA report examined patterns in each state but not in individual metropolitan areas.

Figure H-19 illustrates that 42 percent of African American-owned businesses operating in California in 2002 had closed by the end of 2006, a higher rate than that of other groups. Hispanic American-

⁶ Discrimination Research Center. 2006. "Free to Compete?: Measuring the Impact of Proposition 209 on Minority Business Enterprises." Berkeley: 20-21.

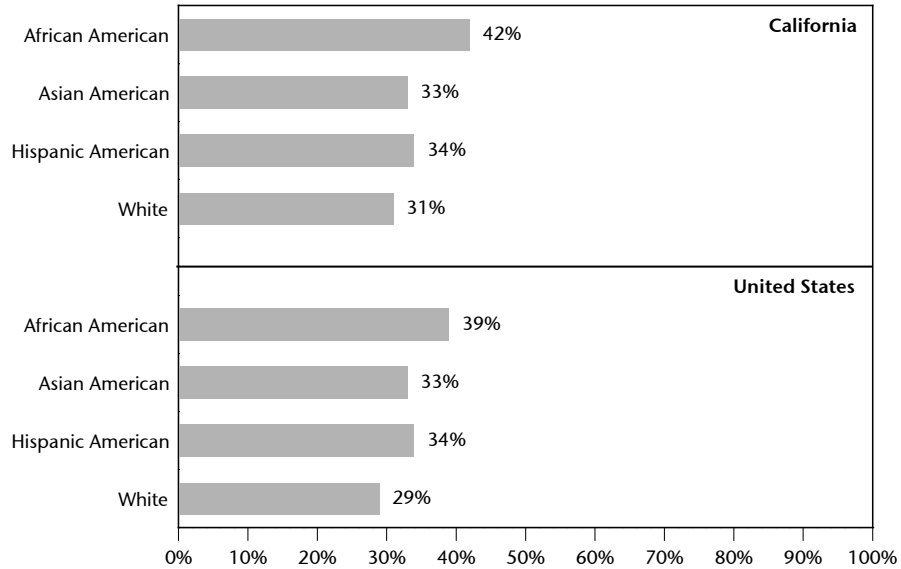
⁷ Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

and Asian American-owned firms also had closure rates higher than for whites during this time period. Disparities in closure rates for African American-owned firms, compared to white-owned firms, appear to have been similar in California and in the United States during the same time period.

Figure H-19.
Rates of business closure, 2002-2006, California and the U.S.

Note:
 Data refer only to non-publicly held businesses only. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:
 Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



Rates of business closures by industry. The SBA analysis also examined national firm closure rates by race/ethnicity for 21 industry classifications. Figure H-20 compares national rates of firm closure for two of these industry classifications: construction and professional, scientific and technical services (which includes engineering). Closure rates for all industries by race/ethnicity are also shown for comparison.

African American-owned businesses operating in 2002 had the highest rate of closure by 2006 in the construction industry, and their closure rate in construction was higher than the African American closure rate overall. Compared to white firms, Hispanic American-owned businesses in the United States were more likely to have closed in both the construction and professional, scientific and technical services industries. Asian American-owned professional, scientific and technical services businesses open in 2002 were more likely than white firms to close by 2006.

The study team could not examine whether these patterns also existed in California or the Los Angeles area, as the SBA analysis by industry was not available for individual states.

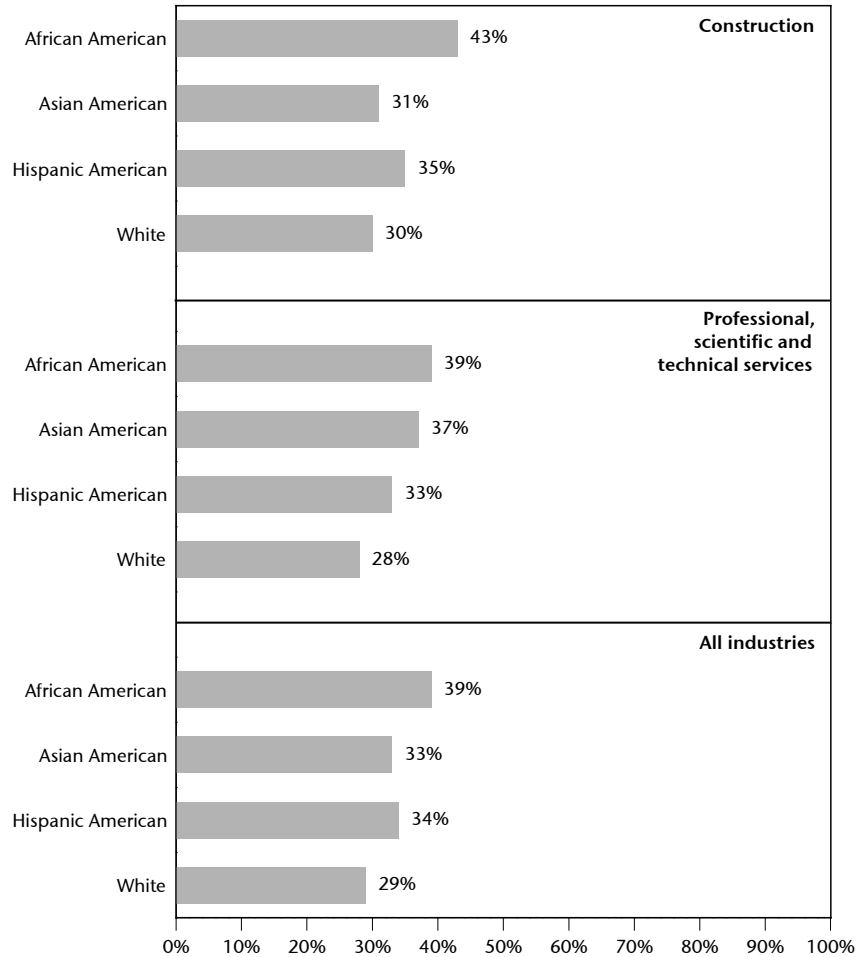
Figure H-20.
Rates of business
closure, 2002-2006,
construction;
professional, scientific
and technical services;
and all industries in the
U.S.

Note:

Data refer only to non-publicly held businesses. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



Successful versus unsuccessful closures. Not all firm closures can be interpreted as a business “failure.” Firms may also close when an owner retires or a more profitable business alternative emerges, both of which represent successful closures.

The 1992 Characteristics of Business Owners (CBO) Survey is one of the few Census Bureau sources to classify firm closures (by race/ethnicity) into successful and unsuccessful subsets.⁸ The CBO survey, completed in 1996, asked owners of businesses that had closed between 1992 and 1995 the question, “Which item below describes the status of this business at the time the decision was made to cease operations?” Only the responses “successful” and “unsuccessful” were permitted. A firm that reported to be unsuccessful at time of closure was understood to have failed. Figure H-21 shows comparative data for the proportion of firms that closed for failure in the U.S. between 1992 and 1995.^{9,10} Failure rates are shown for all businesses and for the construction and professional, scientific and technical services industries.

⁸ CBO data from the 1997 and 2002 Economic Censuses do not include statistics on successful and unsuccessful closure. To date, the 1992 CBO is the only U.S. Census dataset that includes such statistics.

⁹ All CBO data should be interpreted with caution as firms that did not respond to the survey cannot be assumed to have the same characteristics of ones that did. Holmes, Thomas J. and James Schmitz. 1996. “Nonresponse Bias and Business Turnover Rates: The Case of the Characteristics of Business Owners Survey.” *Journal of Business & Economic Statistics*. 14(2): 231-241. This report does not include CBO data on overall firm closure rates because firms not responding to the survey were found to be much more likely to have closed than ones that did.

According to the CBO, African American-owned firms were the most likely to report being “unsuccessful” at the time in which their business closed. About 77 percent of the African Americans who had owned and closed a business reported an unsuccessful business or business status. In contrast, only 61 percent of non-minority men who had owned a business said that the business was unsuccessful at time of closing. Differences in the successful versus unsuccessful closing of firms were only somewhat narrower for other groups:

- About 71 percent of Hispanic Americans who had owned and closed businesses reported the business to be unsuccessful at time of closing, a substantial difference from the result for all firms.
- About 73 percent of other minorities who had owned and closed firms reported the business to be unsuccessful, also higher than the rate for all firms.

The difference in successful versus unsuccessful closure rates for women-owned businesses was similar to that of all businesses.

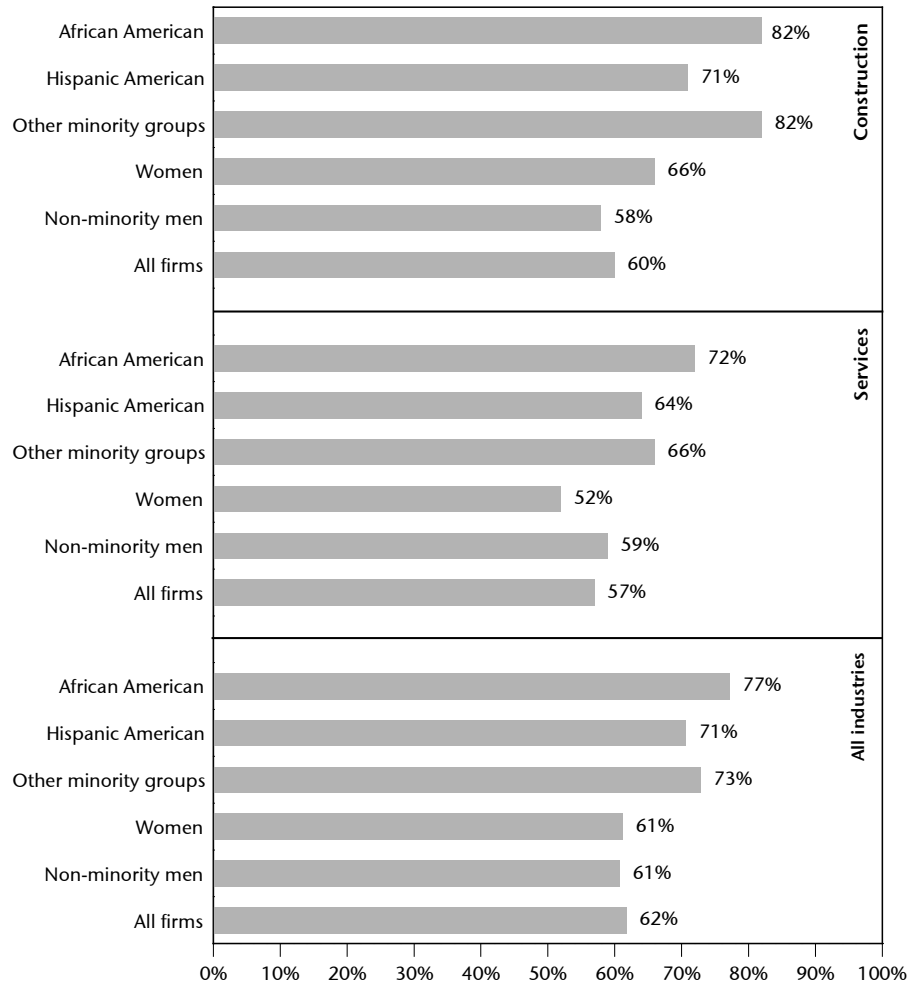
In the construction industry, African American- and Hispanic American-owned businesses were more likely to report an unsuccessful closure than all firms, as were businesses owned by other minorities. Women-owned businesses were also more likely to report an unsuccessful closure compared to the average for all businesses in the construction industry.

The pattern was similar in the services industry with one exception: women-owned businesses were less likely to report an unsuccessful closure than the average for all businesses in this industry: about 57 percent of all firms but only 52 percent of women-owned businesses reported unsuccessful closure.

¹⁰ This study includes CBO data on firm success because there is no compelling reason to believe that closed firms responding to the survey would have reported different rates of success/failure than those closed firms that did not respond to the survey. Headd, Brian. U.S. Small Business Administration, Office of Advocacy. 2000. *Business Success: Factors leading to surviving and closing successfully*. Washington D.C.: 12.

**Figure H-21.
Comparative
“failure” rates for
firms that closed
between 1992 and
1995 in the U.S.**

Source:
U.S. Census Bureau, 1996
Characteristics of Business
Owners Survey (CBO).



Reasons for differences in failure rates. Several researchers have offered explanations for higher rates of successful closure among non-Hispanic white-owned firms and higher rates of failure among minority- and women-owned businesses:

- Minority business failure is largely due to barriers in access to capital. Regression analysis has identified initial capitalization as the most significant factor in determining firm viability. Because African American-owned businesses secure smaller amounts of debt equity in the form of loans, they are more liable to fail. Difficulty in accessing capital is found to be particularly acute for minority firms in the construction industry.¹¹
- Prior work experience in a family member’s business or similar experiences are found to be strong determinants of business viability. Because African American business owners are much less likely to have such experience, their firms are less likely to survive.¹²

¹¹ Bates, Timothy and Caren Grown. 1991. “Commercial Lending Practices and the Development of Black-Owned Construction Companies.” Center for Economic Studies, U.S. Census Bureau.

¹² Robb, A. and Fairlie, R. 2005. “Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital.” University of California, Santa Cruz.

Similar research has been conducted for women-owned businesses, which found gender gaps in the likelihood of business survival.¹³

- Level of education is found to be a strong determinant in business survival. Educational attainment explains a significant portion of the gap in firm closure rates between African Americans and non-minority firms.¹⁴
- Non-minority business owners have the opportunity to pursue a wider array of business activities, which increases their likelihood of closing successful businesses to pursue more profitable business alternatives. Minority business owners, especially those who do not speak English, have limited employment options and are less likely to close a successful business.¹⁵
- The possession of greater initial capital and the generally higher levels of education among Asian Americans determine the high rate of survival of Asian American-owned firms compared to other minority-owned firms.¹⁶

In sum, data suggest that closure rates for African American- and Hispanic American-owned firms in California are higher than for other firms. Based on national results for the construction and professional, scientific and technical services industries, African American-owned firms had higher rates of closure in study industries than other firms.

National data indicate that African Americans, Hispanic Americans and other minorities who owned and closed firms are more likely than all firms to have done so because the firm was unsuccessful. Several studies have examined why business failure rates are higher for firms owned by certain minority groups at the national level.

Comparative rates of expansion and contraction. Comparative rates of expansion and contraction of minority-owned and majority-owned businesses are also useful indicators of the success of minority-owned businesses. Again, only some of the data available for the nation are also available at the state level, and none is available for the Los Angeles area.

Expansion. The 2010 SBA study of minority business dynamics from 2002-2006 referenced above also examined the relative number of California businesses expanding and contracting that were not publicly held companies.

Figure H-22 compares the percentage of businesses that increased their total employment between 2002 and 2006. According to the SBA study, approximately 28 percent of white-owned California businesses expanded. Compared to white-owned companies, African American-owned businesses were slightly less likely to expand (26%) during the 2002-2006 time period. Asian American-owned

¹³ Fairlie, R. and A. Robb. 2009. "Gender Differences in Business Performance: Evidence from the Characteristics of Business Owners Survey." University of California, Santa Cruz.

¹⁴ Ibid. 24.

¹⁵ Bates, Timothy. 2002. "Analysis of Young Small Firms That Have Closed: Delineating Successful from Unsuccessful Closures." Center for Economic Studies, U.S. Census Bureau.

¹⁶ Bates, Timothy. 1993. "Determinants of Survival and Profitability Among Asian Immigrant-Owned Small Businesses." Center for Economic Studies, U.S. Census Bureau.

and Hispanic American-owned businesses were more likely to expand than white-owned firms. The results were similar when considering the nation as a whole.¹⁷

Figure H-22.
Percentage of firms
expanding, 2002-
2006

Note:

Data refer only to non-publicly held businesses. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

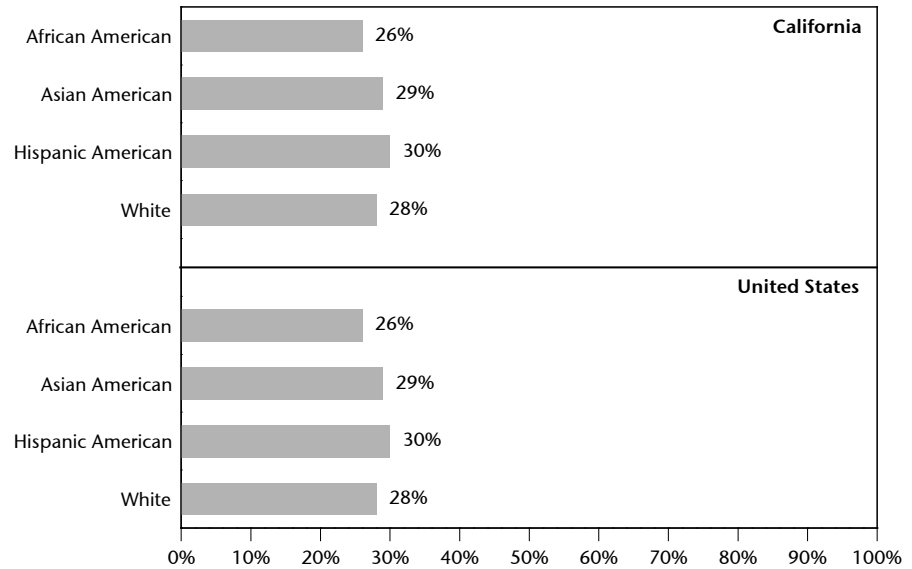


Figure H-23 illustrates the percentage of firms expanding in the construction and professional, scientific and technical services industries in the United States. The 2010 SBA study did not separately report results for firms in individual industries at the state or local level. Nationally, the patterns evident for individual industries were similar to those observed for all industries:

- African American-owned construction and professional, scientific and technical services businesses in 2002 were less likely to have expanded by 2006 than white-owned firms.
- Hispanic American- and Asian American-owned companies in both industries were slightly more likely to have expanded than white-owned businesses.

¹⁷ Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

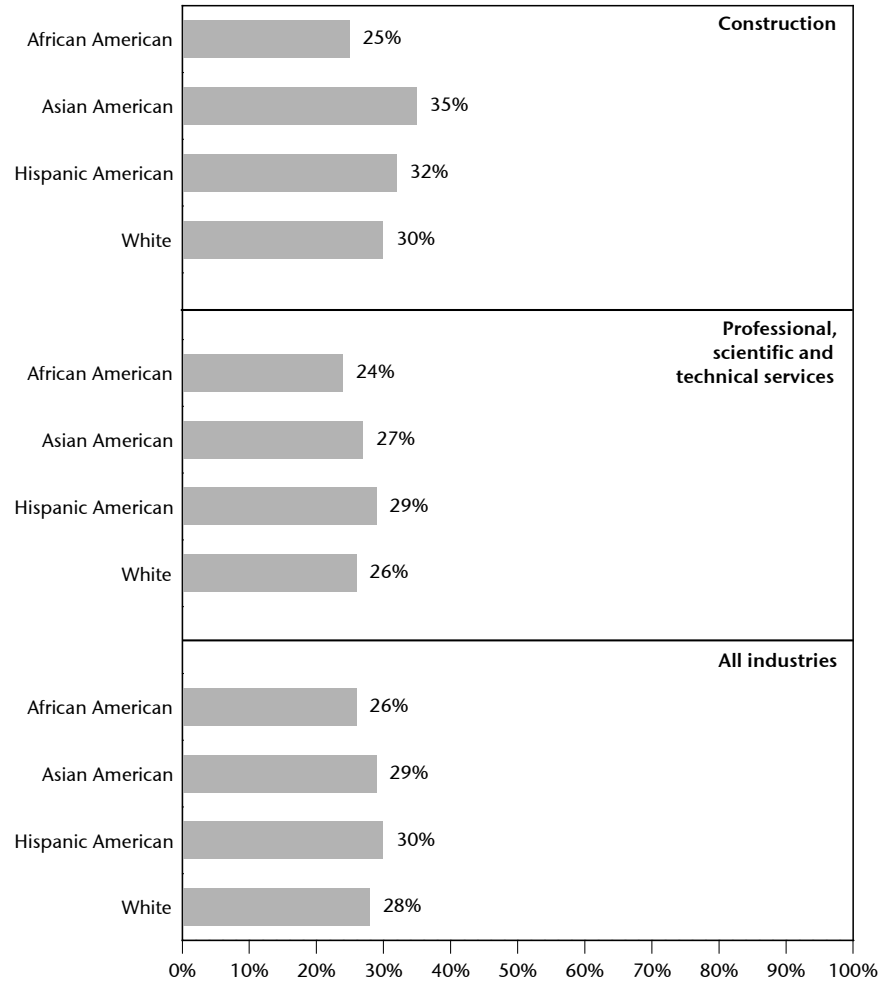
Figure H-23.
Percentage of firms
expanding, 2002-
2006, U.S.
construction;
professional,
scientific and
technical services;
and all industries

Note:

Data refer only to non-publicly held businesses. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2010.
 "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



Contraction. Figure H-24 shows the percentage of businesses operating in 2002 that reduced their employment between 2002 and 2006. As with the analysis of expanding firms, these data track the activity of companies that are not publicly held. In both California and the United States as a whole, African American-, Asian American- and Hispanic American-owned businesses were less likely to have contracted during 2002-2006 than white-owned businesses.

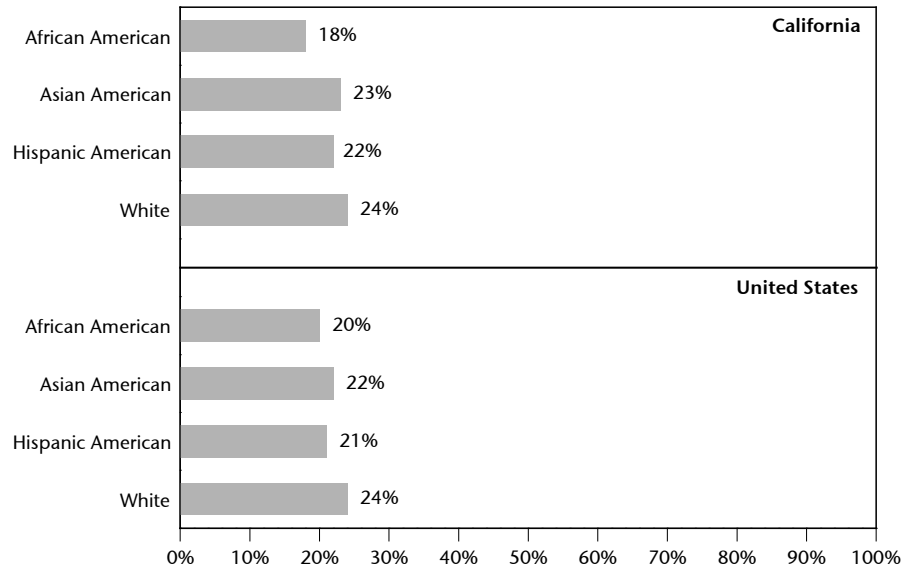
Figure H-24.
Percentage of firms
contracting, 2002-
2006

Note:

Data refer only to non-publicly held businesses. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



The SBA study did not report state-specific results relating to contraction in individual industries. However, Figure H-25 shows the share of businesses decreasing employment for the construction and professional, scientific and technical services industries at the national level.

Compared to white-owned construction firms in the United States, a similar or smaller percentage of minority-owned construction and professional, scientific and technical services businesses operating in 2002 contracted between 2002 and 2006.

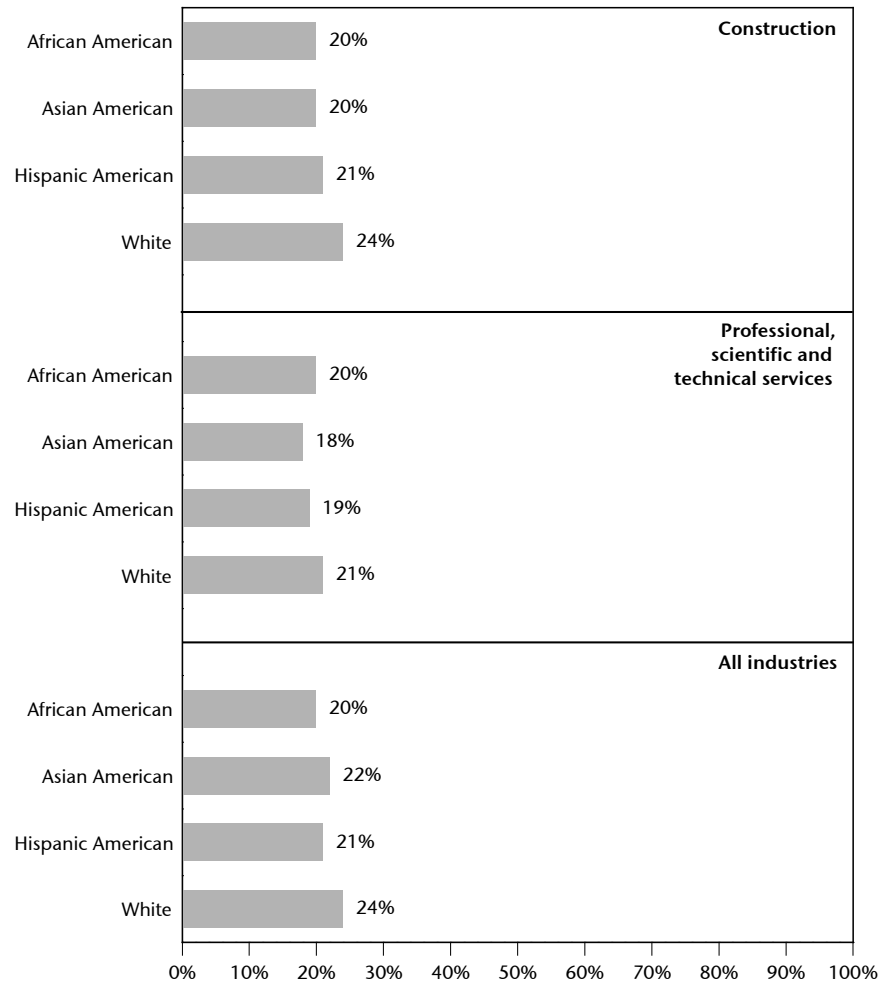
**Figure H-25.
Rates of business
contraction, 2002-
2006, U.S.
construction;
professional,
scientific and
technical services;
and all industries**

Note:

Data refer only to non-publicly held businesses. As sample sizes are not reported, statistical significance of these results cannot be determined; however, statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



Summary of analysis of business closures, expansions and contractions. Between 2002 and 2006, the SBA study found that 29 percent of American businesses operating in 2002 (not publicly held) had expanded employment, 24 percent had contracted employment, and 30 percent had closed. In California:

- Among groups examined, African American-owned firms were the most likely to close and the least likely to expand.
- Hispanic American-owned businesses were more likely to close than white-owned firms. These firms were also more likely to expand than white-owned firms.

Overall, minority-owned firms were less likely to contract than white-owned firms.

Business Earnings/Receipts

Annual receipts and business earnings are also an indicator of the success of a business. The study team examined:

- Business receipts data published by the U.S. Census Bureau;

- Data on business earnings for business owners from the 2000 Census and 2009 American Community Survey (ACS); and
- Annual revenue data for firms in the Los Angeles area construction, engineering, and goods and services industries collected as part of BBC availability interviews.

Business receipts from 2007 Survey of Business Owners. BBC examined receipts for firms in Los Angeles area, California and the U.S. using data from the 2007 Survey of Business Owners (SBO), conducted by the U.S. Census Bureau. BBC also analyzed receipts for firms in individual industries. The SBO separately reports business receipts for employer firms (i.e., those with paid employees other than the business owner and family members) and for all firms.¹⁸

Receipts for all firms. Figure H-26 presents 2007 mean annual receipts for employer and non-employer firms, by race/ethnicity and gender. The SBO data for firms across all industries in the Los Angeles area indicate that average receipts for minority- and women-owned businesses were much lower than the average for all firms, with some groups faring worse than others.

Businesses owned by African Americans had average receipts that were approximately 36 percent of the average for all firms in 2007. At about \$109,000, average receipts for Native American-owned firms were about one-quarter the average for all firms (\$433,000). Hispanic American-owned firms had about one-third the average receipts of all firms. Asian American-owned firms had higher average receipts than other minority groups in 2007, although still below the average for all firms. Average receipts for women-owned firms were 44 percent of the average for all firms.

As shown in Figure H-26, disparities in business receipts for minority- and women-owned businesses compared to all firms in the Los Angeles area are broadly consistent with those seen in California and the United States as a whole. However, disparities in average receipts between African American-owned firms and all firms were larger in the U.S. than either California or the Los Angeles area. This was also true for women-owned firms.

Consistent with the results shown in Figure H-26, a recent SBA study (2007) found similar differences when examining firms in all industries across the U.S.¹⁹

¹⁸ We use “all firms” to denote SBO data used in this analysis; the data include incorporated and unincorporated firms, but not publicly-traded companies or other firms not classifiable by race/ethnicity and gender.

¹⁹ Lowrey, Ying. 2007. *Minorities in Business: A Demographic Review of Minority Business Ownership*. Office of Economic Research, Office of Advocacy, U.S. Small Business Administration.

Figure H-26.
Mean annual receipts
(thousands) for all firms, by
race/ethnicity and gender
of owners, 2007

Note:

Includes employer and non-employer firms.
 Does not include publicly-traded companies
 or other firms not classifiable by
 race/ethnicity and gender.

Source:

2007 Survey of Business Owners, part of the
 U.S. Census Bureau's 2007 Economic
 Census.

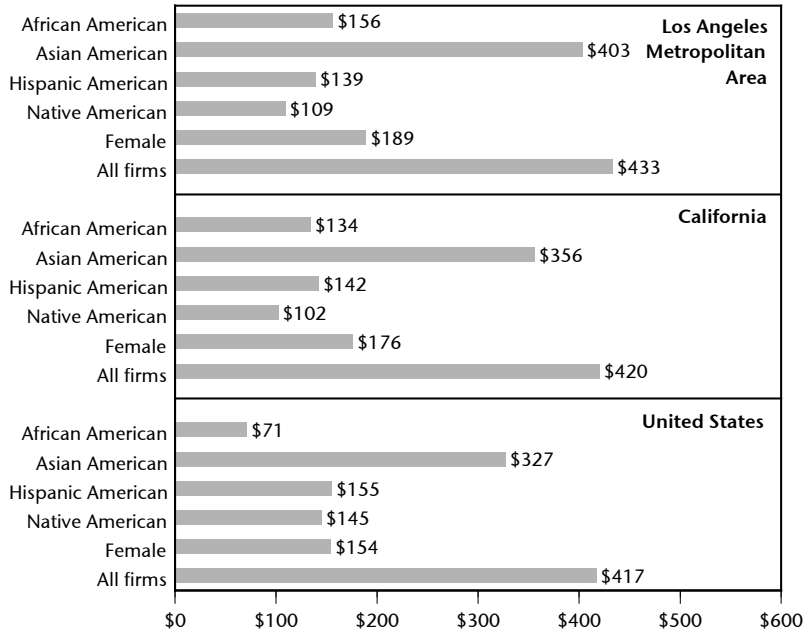


Figure H-27 (below) shows mean annual earnings in 2007 for employer firms in the Los Angeles area, California and the United States. Minority- and women-owned employer firms had substantially lower average business receipts than all employer firms in the Los Angeles area, the state and the nation.

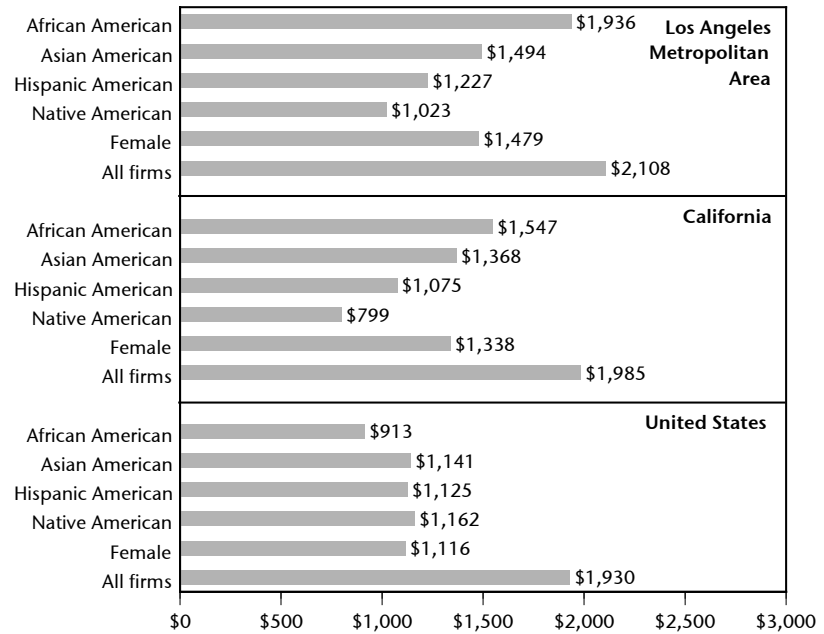
The 2007 mean annual receipts for African American- and Asian American-owned employer firms in the Los Angeles area were greater than firms owned by other minority groups but still below the average for all firms (\$2,108,000). Native American-owned firms had the lowest average receipts at less than half of the average for all firms in the Los Angeles area.

At approximately \$1,479,000, women-owned employer firms averaged about 70 percent of the mean annual receipts for all firms in the Los Angeles area and California.

Figure H-27.
Mean annual receipts
(thousands) for employer
firms, by race/ethnicity
and gender of owners,
2007

Note:
 Includes only employer firms. Does not
 include publicly-traded companies or
 other firms not classifiable by
 race/ethnicity and gender.

Source:
 2007 Survey of Business Owners, part of
 the U.S. Census Bureau's 2007 Economic
 Census.



Receipts by industry. The study team also analyzed SBO data for firms in the construction industry and the professional, scientific and technical services industry. Figure H-28 presents mean annual receipts in 2007 for all firms (employer and non-employer firms combined) and for just employer firms, by racial, ethnic and gender group. Results are presented for the Los Angeles area, California and the United States.

Figure H-28.
Mean annual receipts (thousands) for firms in the construction and professional, scientific and technical services industries, by race/ethnicity and gender of owners, 2007

	All firms		Employer firms	
	Construction	Professional, scientific & technical services	Construction	Professional, scientific & technical services
Los Angeles Metropolitan Area				
African American	\$122	\$80	\$1,093	\$651
Asian American	368	122	1,824	603
Hispanic American	179	99	1,405	637
Native American	160	77	1,274	NA
Female	450	111	2,466	661
All firms	\$550	\$204	\$2,348	\$952
California				
African American	NA	\$88	NA	\$717
Asian American	303	147	1,616	783
Hispanic American	202	108	1,146	691
Native American	169	73	1,110	NA
Female	485	106	2,179	643
All firms	\$601	\$205	\$2,175	\$977
United States				
African American	\$105	\$77	\$1,021	\$707
Asian American	264	198	1,518	941
Hispanic American	167	121	1,083	693
Native American	224	108	1,357	629
Female	361	98	1,626	543
All firms	\$447	\$201	\$1,789	\$863

Notes: Does not include publicly-traded companies or other firms not classifiable by race/ethnicity and gender.
 "NA" denotes that data were not available at the time of publication and are subject to revision.

Source: 2007 Survey of Business Owners, part of the U.S. Census Bureau's 2007 Economic Census.

In the Los Angeles area construction industry, average 2007 receipts for minority- and women-owned firms were lower than the average for all firms. Results for all firms (including employer and non-employer firms) indicate:

- African American-owned construction firms in the Los Angeles area had average receipts that were about 20 percent of the average for all firms.
- Hispanic American-owned construction firms had approximately 30 percent the average receipts of all construction companies.
- Native American-owned construction firms had average receipts that were 27 percent of the average for all firms.

- Asian American-owned construction firms had the highest average receipts relative to other minority groups, but were about 60 percent of the average for all construction companies in the Los Angeles area.
- Average receipts for women-owned construction firms in the Los Angeles area were about three-quarters of the average for all firms.

The study team found lower than average receipts for minority- and women-owned construction firms when considering all firms and only employer firms in the Los Angeles area. This pattern was also evident in the state and national data.

In the Los Angeles professional, scientific and technical services industry, minority- owned firms had lower average receipts than all firms. Results for all firms (including employer and non-employer firms) in this industry show:

- Average receipts for firms owned by African Americans were about \$80,000, less than 40 percent of the average for all firms.
- Native American-owned firms had average receipts of \$77,000, less than 40 percent of the average for all firms.
- Asian American-owned businesses had average receipts of \$122,000, still substantially less than the average for all companies.
- Hispanic American-owned firms had average receipts that were less than half of the average for all companies (\$99,000 versus \$204,000 for all firms).
- Women-owned firms' average receipts were also substantially below all firms.

An examination of employer firms in professional, scientific and technical services yielded similar results: minority- and women-owned firms had between 60 percent and 70 percent of the average annual receipts in the Los Angeles area in 2007.

Business earnings for business owners. In order to assess the success of self-employed minorities and women in the study industries, BBC examined earnings using Public Use Microdata Samples (PUMS) from the 2000 U.S. Census and 2009 ACS. BBC analyzed incorporated and unincorporated business owners, age 16 and over, who reported positive business earnings.

Construction business owner earnings in 1999. Figure H-29 shows average earnings in 1999 for business owners in the construction industry in the Los Angeles area, California and the United States. The following results are based on the 2000 Census, in which individuals were asked to give their business income for the previous year:

- On average, Hispanic American construction business owners in the Los Angeles area earned about \$24,600, substantially less than the \$40,000 average for non-Hispanic white construction business owners (a statistically significant difference).

- Mean annual earnings for female construction business owners in the Los Angeles area (about \$28,000) were less in 1999, on average, than male business owner earnings (\$35,000), and the difference was statistically significant.
- African American and Asian American owners of construction businesses also had lower business earnings than non-Hispanic whites, but differences were not statistically significant in part due to small sample sizes. Differences for African Americans were statistically significant for California as a whole.
- Nationally, Native American construction business owners earned substantially less than non-Hispanic whites and the difference was statistically significant. However, data for the Los Angeles area show Native American business owners earning more than non-Hispanic whites.

Figure H-29.
Mean annual
business owner
earnings in the
construction
industry, 1999

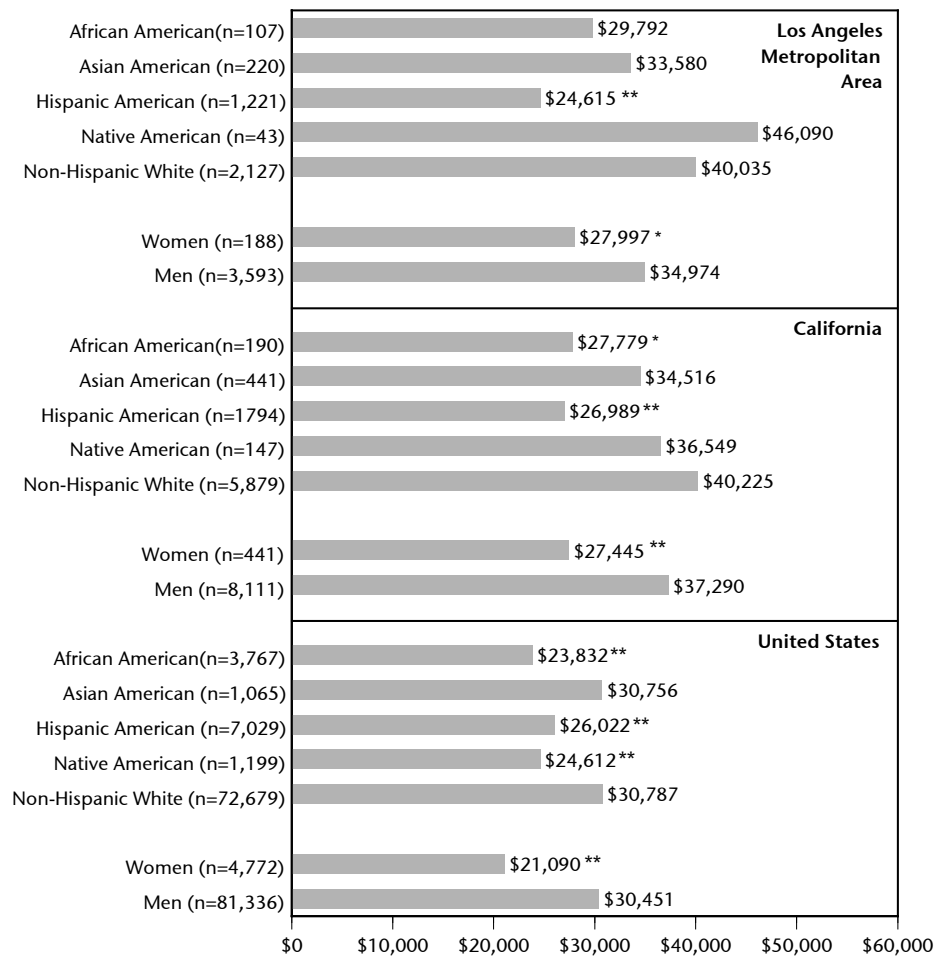
Note:

The sample universe is business owners age 16 and over who reported positive earnings. All amounts in 1999 dollars.

*,** Denotes statistically significant differences from non-Hispanic whites (for minority groups) or from men (for women) at the 90% and 95% confidence level, respectively.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Construction business owner earnings in 2008-2009. The 2009 ACS also reports business owner earnings. Due to the way each year's ACS survey is conducted, earnings for business owners reported in the 2009 sample are for the previous 12 months between 2008 and 2009.²⁰ However, all dollar amounts are given in 2009 dollars.

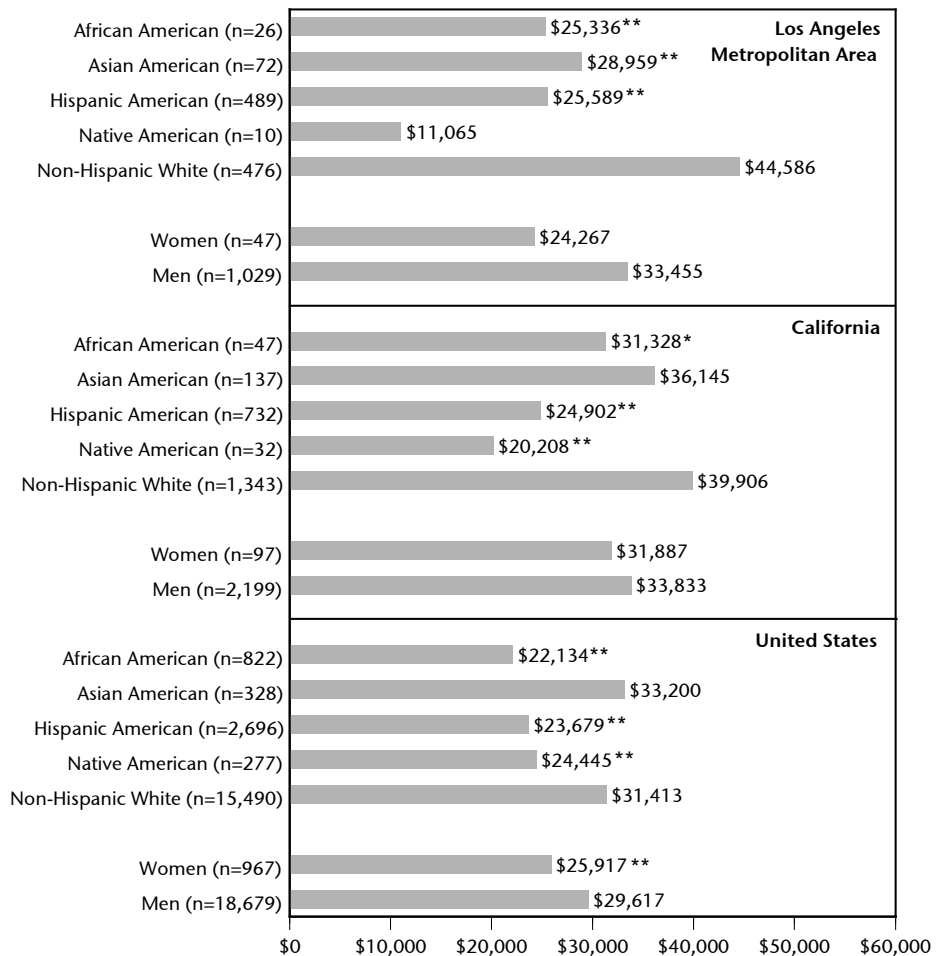
Figure H-30 shows business earnings in 2008 and 2009 for owners in the construction industry in the Los Angeles area, California and the United States. Similar to 2000, there were large, statistically significant disparities in earnings for minority business owners compared to non-Hispanic white business owners. In the Los Angeles area, differences between minority and non-minority earnings were more pronounced in 2009, and the differences were statistically significant. (Native American business owners, however, had a very small sample in the 2009 ACS data and caution should be taken in interpreting the results.)

The differences in 2008-2009 business earnings for male and female construction business owners in the Los Angeles area appear to be larger than in 2000, but the small number of female construction firm owners in the 2008-2009 sample resulted in a difference that is not statistically significant.

Figure H-30.
Mean annual
business owner
earnings in the
construction
industry, 2008-
2009

Note:
 The sample universe is business owners age 16 and over who reported positive earnings. All amounts in 2009 dollars.
 *,** Denotes statistically significant differences from non-Hispanic whites (for minority groups) or from men (for women) at the 90% and 95% confidence level, respectively.

Source:
 BBC Research & Consulting from 2009 ACS 1% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



²⁰ For example, if a business owner completed the survey on January 1, 2009, the figures for the previous 12 months would reference January 1, 2008 to December 31, 2008. Similarly, a business owner completing the survey December 31, 2009 would reference amounts since January 1, 2009. All other days will include earnings in both 2008 and 2009.

Engineering business owner earnings in 1999. As with the construction industry, Figure H-31 shows average earnings in 1999 for business owners in the engineering industry in the Los Angeles area, California and the United States. Due to small sample sizes for individual race and ethnicity groups in the engineering industry, BBC grouped all business owners belonging to any minority group. Again, the following results are based on the 2000 Census, in which individuals were asked to give their business income for the previous year:

- On average, minority engineering business owners in the Los Angeles area earned about \$41,000 in 1999, less than the \$47,000 earned by non-Hispanic white engineering business owners (not a statistically significant difference).
- Mean annual earnings for female engineering business owners in the Los Angeles area in 1999 (\$38,000) were less, on average, than male business owner earnings (\$47,000), but the difference was not statistically significant.

Figure H-31 illustrates these results below.

**Figure H-31.
Mean annual
business owner
earnings in the
engineering
industry, 1999**

Note:

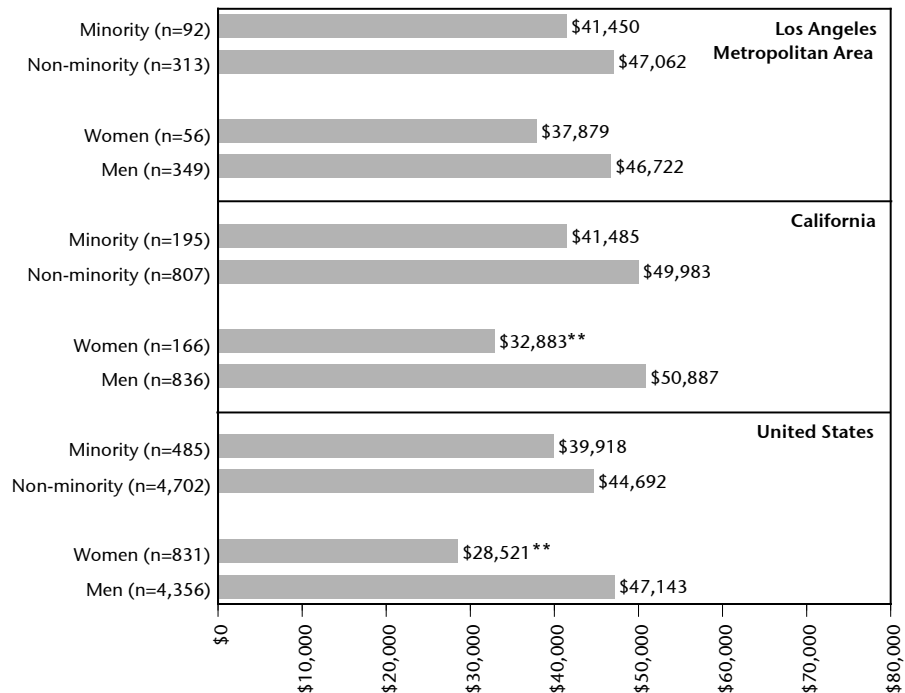
The sample universe is business owners age 16 and over who reported positive earnings. "Minority" includes African Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minority groups.

Sample sizes for these race/ethnicity groups were too small to analyze individually. All amounts in 1999 dollars.

*,** Denotes statistically significant differences from non-Hispanic whites (for minority groups) or from men (for women) at the 90% and 95% confidence level, respectively.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Engineering business owner earnings in 2008-2009. As noted above, earnings for business owners reported in the 2009 sample are for the previous 12 months between 2008 and 2009. All dollar amounts are given in 2009 dollars. The number of engineering firms included in the Los Angeles area data was too small to analyze, so BBC's analysis focuses on California. Due to small sample sizes for individual race and ethnicity groups in the engineering industry, BBC categorized all business owners belonging to any minority group into a single category for minorities.

Figure H-32) shows lower business earnings in 2008 and 2009 for minority and female owners in the engineering industry in California and the United States. The difference in business earnings for women was statistically significant.

Differences in 2008-2009 business earnings for male and female business owners in the Los Angeles area were not statistically significant, but at the California and U.S. geographic level, the differences were statistically significant. In 2008-2009, women engineering business owners in California as a whole earned less than half as much as their male counterparts, on average.

Figure H-32.
Mean annual business owner earnings in the engineering industry, 2008-2009

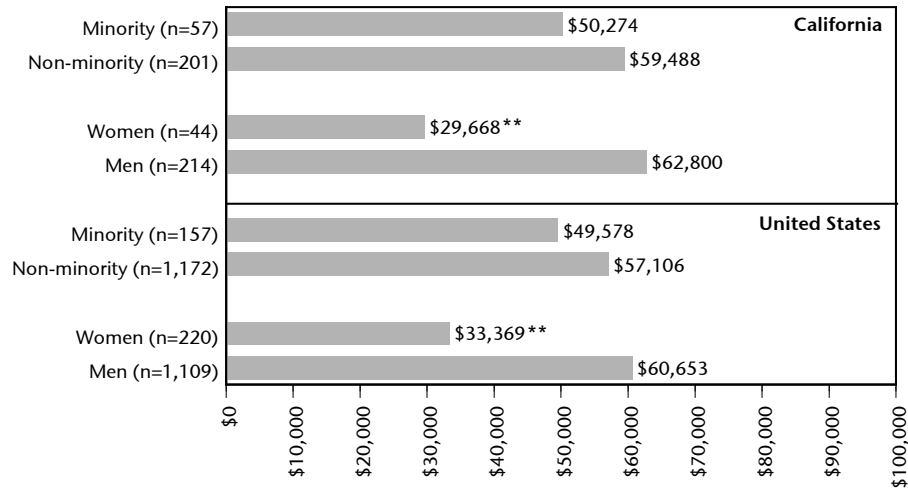
Note:
 The sample universe is business owners age 16 and over who reported positive earnings. "Minority" includes African Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans and other minority groups. Sample sizes for these race/ethnicity groups were too small to analyze individually.

All amounts in 2009 dollars.

*,** Denotes statistically significant differences from non-Hispanic whites (for minority groups) or from men (for women) at the 90% and 95% confidence level, respectively.

Source:

BBC Research & Consulting from 2009 ACS 1% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Regression analysis of business earnings. Differences in business owner earnings may be at least partially attributable to neutral factors such as age, marital status or educational attainment. BBC performed regression analysis using 2000 Census and 2009 ACS data to examine whether disparities in business earnings for 1999 and for 2008-2009 remained after controlling for certain neutral factors.

BBC applied an ordinary least squares (OLS) regression to the data, and the model was very similar to those reviewed by the courts after other disparity studies.²¹ The dependent variable in this model is the natural logarithm of business earnings. Business owners reporting zero or negative business earnings were excluded, as were observations for which the Census Bureau had imputed the value of

²¹ For example, National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation; and National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

business earnings. Along with variables for the race, ethnicity and gender of business owners, the model also included available measures from the PUMS data considered likely to affect earnings potential, including age, age-squared, marital status, ability to speak English well, disability condition and educational attainment.

For the construction industry, the study team developed two models:

- A model for business owner earnings in 1999 for the Greater Los Angeles construction industry that included 2,716 observations; and
- A model for business owner earnings in 2008-2009 for the Los Angeles area construction industry that included 804 observations.

Due to small sample sizes, BBC used slightly different models when examining business owner earnings in the engineering industry. The models used data at the California state level and included separate terms to control for the effect of business location in the Los Angeles area. These terms included an indicator variable for location in the Los Angeles area and interaction variables that indicated minority or female business owners in the local area. This approach is similar to that used by other researchers.

BBC created the following models for the engineering industry:

- A model for business owner earnings in 1999 for California as a whole that included 784 observations; and
- A model for business owner earnings in 2008-2009 for California as a whole that included 230 observations.

Construction industry in the Los Angeles area — 1999. Figure H-33 shows the results of the OLS model for 1999 earnings in the Los Angeles area construction industry. The model indicates that some neutral factors are statistically significant in predicting the earnings of business owners in the construction industry:

- Older business owners had greater earnings (but age had less of an effect for the oldest individuals) as did married business owners and those who spoke English well; and
- Construction business owners who were disabled and business owners who did not attain at least a high school education had lower earnings, on average.

After holding neutral factors equal, a statistically significant disparity remains for Hispanic American business owners in the Los Angeles area construction industry in 1999. The disparity in business owner earnings for women also persisted.

Figure H-33.
Los Angeles area construction business owner earnings model, 1999

Variable	Coefficient	t-statistic
Constant	7.466	21.36 **
Age	0.107	6.83 **
Age-squared	-0.001	-7.19 **
Married	0.404	7.32 **
Speaks English well	0.233	3.10 **
Disabled	-0.206	-2.84 **
Less than high school	-0.274	-3.81 **
Some college	-0.011	-0.17
Four-year degree	-0.164	-1.31
Advanced degree	0.097	0.59
African American	-0.105	-0.62
Asian American	-0.032	-0.34
Hispanic American	-0.279	-3.98 **
Native American	-0.115	-0.28
Female	-0.364	-2.94 **

Note: **, * Denotes statistical significance at the 90% and 95% confidence level, respectively.
 Source: BBC Research & Consulting from 2000 Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Construction industry in Los Angeles — 2008 and 2009. Figure H-34 illustrates the results of the OLS model for 2008 and 2009 earnings in the Los Angeles area construction industry. As in the model for 1999 earnings, this model indicates that some neutral factors are statistically significant in predicting the earnings of business owners in the construction industry:

- Older business owners had greater earnings (but age has less of an effect for the oldest individuals), as did married business owners;
- Construction business owners with greater educational attainment (such as a 4-year degree or an advanced degree) also had greater earnings; and
- As with 1999 earnings, disabled business owners had lower earnings in the Los Angeles area construction industry, on average.

After holding neutral factors equal, a statistically significant disparity was observed for Native American business owner earnings in the Los Angeles construction industry. The small sample size for Native American construction business owners (as shown in Figure H-25) suggests caution when interpreting these results, however. Differences in mean business earnings for women and men in 2008 and 2009 were not statistically significant, holding other factors equal.

Figure H-34.
Los Angeles area construction business owner earnings model, 2008-2009

Variable	Coefficient	t-statistic
Constant	6.013	8.79 **
Age	0.150	5.15 **
Age-squared	-0.002	-4.96 **
Married	0.389	2.97 **
Speaks English well	0.242	1.67
Disabled	-1.234	-2.91 **
Less than high school	-0.209	-1.74
Some college	0.112	0.71
Four-year degree	0.528	2.20 *
Advanced degree	0.543	2.50 *
African American	-0.106	-0.25
Asian American	-0.075	-0.51
Hispanic American	-0.119	-0.75
Native American	-1.279	-3.03 **
Female	-0.539	-1.60

Note: **, * Denotes statistical significance at the 90% and 95% confidence level, respectively.
 Source: BBC Research & Consulting from 2009 ACS 1% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Engineering industry in California – 1999. Figure H-35 presents the results of the OLS model of business owner earnings specific to the California engineering industry in 1999. A number of neutral factors are statistically significant in explaining business earnings in the California engineering industry:

- As in the construction models, older business owners had greater earnings, but this marginal effect declined for the oldest individuals; and
- Business owners who were married tended to have greater business earnings.

After accounting for neutral factors, the model indicates that female business owners earned less on average than men in the engineering industry (statistically significant difference). The model did not indicate a statistically significant difference in business earnings for minorities in the California engineering industry.

The small effect of the indicator variable for firm location in the Los Angeles area and the interaction terms for female business owners in the area suggest that statewide results apply to the local area.

Figure H-35.
California engineering industry business owner earnings model, 1999

Variable	Coefficient	t-statistic
Constant	7.140	7.21 **
Age	0.107	4.13 **
Age-squared	-0.001	-4.90 **
Married	0.240	1.86 *
Speaks English well	0.736	1.12
Disabled	-0.465	-1.47
Less than high school	0.361	0.64
Some college	0.049	0.14
Four-year degree	0.224	0.66
Advanced degree	0.263	0.74
Minority	-0.211	-1.30
Female	-0.587	-4.12 **
In Greater Los Angeles	-0.031	-0.22
Minority in Greater Los Angeles	0.185	0.82
Female in Greater Los Angeles	0.086	0.36

Note: **, * Denotes statistical significance at the 90% and 95% confidence level, respectively.
 Source: BBC Research & Consulting from 2000 Census 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Engineering industry in California – 2008 and 2009. Figure H-36 presents the results of the OLS model of business owner earnings specific to the California engineering industry for 2008 and 2009. Educational attainment was the only statistically significant factor in explaining business earnings in the California engineering industry.

After accounting for neutral factors, the model did not indicate a statistically significant difference in business earnings for minority or female business owners.

Figure H-36.
California engineering industry business owner earnings model, 2008-2009

Variable	Coefficient	t-statistic
Constant	10.669	6.72 **
Age	0.032	0.72
Age-squared	-0.001	-1.24
Married	0.628	1.96
Speaks English well	-0.750	-0.98
Disabled	-0.062	-0.19
Less than high school	-1.633	-2.60 *
Some college	-0.174	-0.36
Four-year degree	-0.225	-0.47
Advanced degree	-0.195	-0.41
Minority	0.190	0.62
Female	-0.653	-1.75
In Greater Los Angeles	0.044	0.12
Minority in Greater Los Angeles	-0.019	-0.05
Female in Greater Los Angeles	-0.420	-0.91

Note: **, * Denotes statistical significance at the 90% and 95% confidence level, respectively.
 Source: BBC Research & Consulting from 2009 ACS 1% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

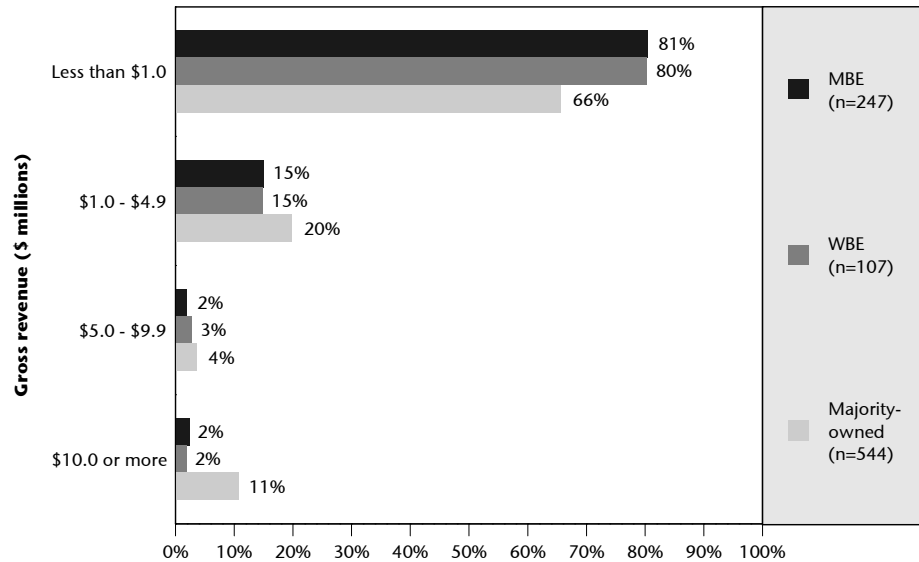
Gross revenue of construction, engineering, and goods and services firms from availability interviews. Respondents were asked to identify the size range for their gross revenue for the most recent year. A second question asked for gross revenue across all locations for multi-location firms. Results are reported in Figures H-37 through H-39.

Construction firms. Figure H-37 examines the distribution of MBE, WBE and majority-owned construction firms by revenue class. About 80 percent of MBE/WBEs reported revenue of less than \$1 million compared to two-thirds of majority-owned firms. A substantially larger portion of majority-owned firms (15%) than MBEs (4%) and WBEs (5%) reported gross revenue of \$5 million or more.

Figure H-37.
Gross revenue of company for all locations, construction industry

Note:
 WBE is white women-owned firms.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

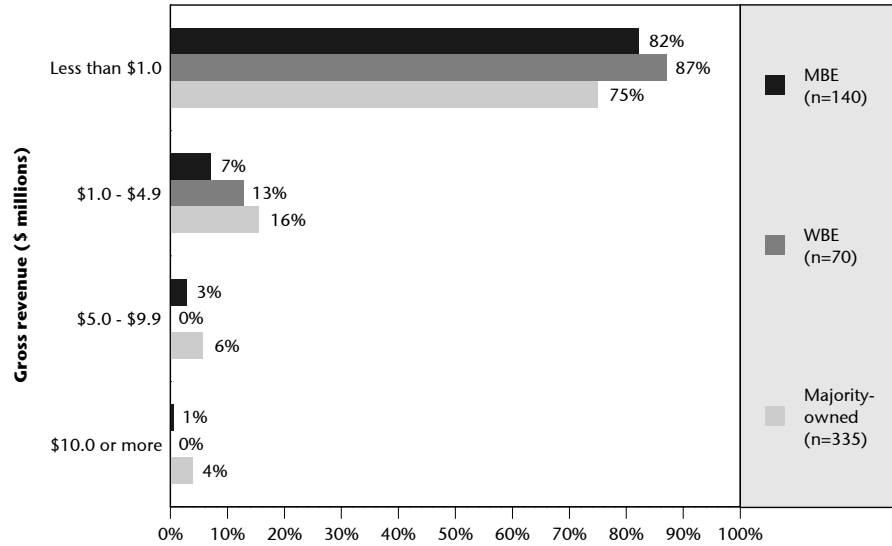


Engineering firms. Engineering industry firms were also asked to identify gross revenue across all locations for the most recent year. As shown in Figure H-38, nearly 90 percent of WBEs reported gross revenue to be less than \$1 million. No WBEs reported gross revenue of \$5 million or more. A relatively larger share of majority-owned firms (10%) than MBEs (4%) reported gross revenue of \$5 million or more.

Figure H-38.
Gross revenue of
company for all
locations,
engineering
industry

Note:
 WBE is white women-owned firms.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.

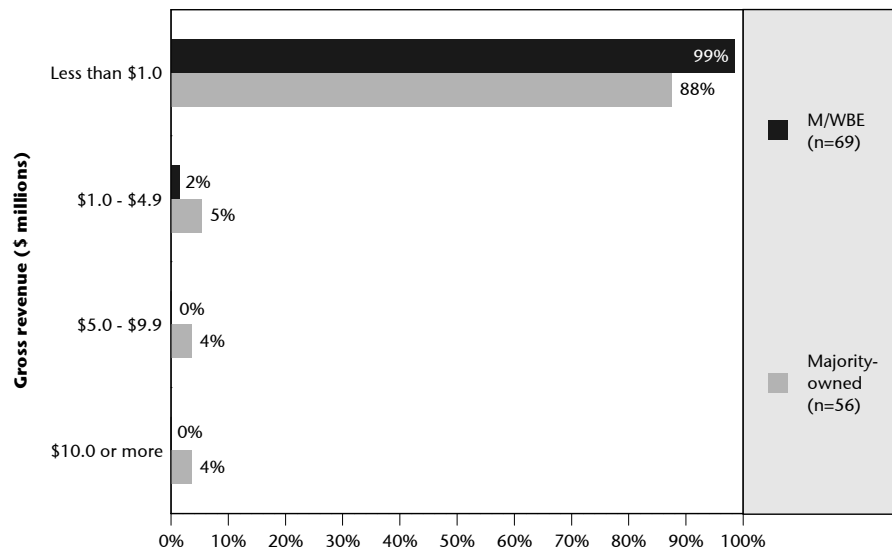


Goods and services firms. Figure H-39 examines the distribution of revenue for MBEs, WBEs and majority-owned goods and services firms included in the availability surveys. Responses of MBEs and WBEs were combined due to the relatively small number of respondents. Nearly all MBE/WBEs reported gross revenue of less than \$1. Eight percent of majority-owned firms indicated that they had gross revenue of \$5 million or greater in 2010. No MBEs/WBEs reported gross revenue of \$5 million or greater for 2010.

Figure H-39.
Gross revenue of
company for all
locations,
transportation
goods and services
industry

Note:
 WBE is white women-owned firms. Totals may not add to 100% because of rounding.

Source:
 BBC Research & Consulting from 2006 and 2007, 2008 and 2009 and 2011 Availability Interviews.



Summary of analysis of business receipts and earnings. BBC examined a number of different data sources for business receipts and earnings for firms in the Los Angeles area.

- Analysis of 2007 data indicate that, in the Los Angeles area, mean receipts for minority- and women-owned firms were lower compared to that of all firms in both the construction and the professional, scientific and technical services industries.
- Regression analyses using Census data for business owner earnings indicate that there were statistically significant disparities in earnings for the following groups after taking account of neutral factors:
 - Hispanic American business owners tended to earn less than non-Hispanic white business owners and female business owners tended to earn less than male business owners in 1999 in the Los Angeles construction industry;
 - Native American business owners earned less, on average, than non-Hispanic white business owners in the 2008-2009 Los Angeles area construction industry; and
 - Female business owners tended to earn less than male business owners in the 1999 California engineering industry.
- Data from the availability interviews indicate a larger share of Los Angeles area majority-owned firms than MBE/WBEs reported gross revenues of \$5 million or more. This was true for firms in the portions of the construction, engineering, and goods and services industries included in the availability surveys.

APPENDIX I.

Description of Data Sources for Marketplace Analyses

To perform the marketplace analyses presented in Appendices E through H, BBC used data from a range of sources, including:

- U.S. Census Bureau Public Use Microdata Samples (PUMS) from the 1980 and 2000 Census;
- U.S. Census Bureau PUMS data from the 2009 American Community Survey (ACS);
- The Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF);
- The 2007 Survey of Business Owners (SBO), conducted by the U.S. Census Bureau; and
- Home Mortgage Disclosure Act (HMDA) data provided by the Federal Financial Institutions Examination Council (FFIEC).

The following sections provide further detail on each data source, including how it was used in marketplace analyses.

PUMS Data

Focusing on the construction and engineering industries, BBC used PUMS data to analyze:

- Demographic characteristics;
- Measures of financial resources;
- Educational attainment; and
- Self-employment (business ownership).

PUMS data offer several features ideal for the analyses reported in this study, including historical cross-sectional data, stratified national and state-level samples, and large sample sizes that enable many estimates to be made with a high level of statistical confidence, even for subsets of the population (e.g., ethnic and occupational groups). PUMS data also enable analysis of certain geographic areas within states (e.g., the Los Angeles area).

BBC obtained selected Census and ACS data from the Minnesota Population Center's Integrated Public Use Microdata Series (IPUMS). The IPUMS program provides online access to customized, accurate data extracts.¹ For the analyses contained in this report, BBC used the 1980 and 2000 Census five percent samples and the 2009 ACS one percent sample.

2000 Census data. The 2000 U.S. Census five percent sample contains 14,081,466 observations. When applying the Census person-level population weights, this sample represents 281,421,906 people in the United States. The 2000 California sub-sample contains 1,690,642 individual observations, weighted to represent 33,884,660 people; the Los Angeles area subsample, 805,212 observations representing 16,375,849 individuals.

Categorizing individual race/ethnicity. To define race/ethnicity for the 2000 Census dataset, BBC used the IPUMS race/ethnicity variables — RACED and HISPAN — to categorize individuals into one of seven groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian-Pacific American;
- Subcontinent Asian American;
- Native American; and
- Other minority (unspecified).

An individual was considered “non-Hispanic white” if they did not report Hispanic ethnicity and indicated being white only — not in combination with any other race group. All self-identified Hispanics (based on the HISPAN variable) were considered Hispanic American, regardless of any other race or ethnicity identification.

For the five other racial groups, an individual's race/ethnicity was categorized by the first (or only) race group identified in each possible race-type combination. BBC used a rank ordering methodology similar to that used in the 2000 Census data dictionary. An individual who identified multiple races was placed in the reported race category with the highest ranking in BBC's ordering. African American is first, followed by Native American, Asian-Pacific American and then Subcontinent Asian American. For example, if an individual was identified as “Korean,” this person was placed in the Asian-Pacific American category; if the individual was identified as “Korean” in combination with “Black,” the individual was considered African American.

¹ Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek. *Integrated Public Use Microdata Series: Version 5.0* [Machine-readable database]. Minneapolis: University of Minnesota, 2011.

- The Asian-Pacific American category included the following race/ethnicity groups: Cambodian, Chamorro, Chinese, Filipino, Guamanian, Hmong, Indonesian, Japanese, Korean, Laotian, Malaysian, Native Hawaiian, Samoan, Taiwanese, Thai, Tongan, and Vietnamese. This category also included other Polynesian, Melanesian and Micronesian races as well as individuals identified as Pacific Islanders.
- The Subcontinent Asian American category included these race groups: Asian Indian (Hindu), Bangladeshi, Pakistani, and Sri Lankan. Individuals who identified themselves as “Asian,” but were not clearly categorized as Subcontinent Asian were placed in the Asian-Pacific American group.
- American Indian, Alaska Native and Latin American Indian groups were considered Native American.
- If an individual was identified with any of the above groups and an “other race” group, the individual was categorized into the known category. Individuals identified as “other race” or “white and other race” were categorized as “other minority.”

For some analyses — those in which sample sizes were small — BBC combined minority groups.

Business ownership. BBC used the Census detailed “class of worker” variable (CLASSWKD) to determine self-employment. Individuals were classified into eight categories.

- Self-employed for a non-incorporated business;
- Self-employed for an incorporated business;
- Wage or salary employee for a private firm;
- Wage or salary employee for a non-profit organization;
- Employee of the Federal government;
- Employee of a State government;
- Employee of a local government; or
- Unpaid family worker.

BBC counted individuals who reported being self-employed — either for an incorporated or a non-incorporated business — as business owners.

Study industries. The marketplace analyses focus on two study industries: construction and engineering-related services. BBC used the IND variable to identify individuals as working in one or the other industry. This variable includes several hundred industry and sub-industry categories. Figure I-1 identifies the IND codes used to define each study area for the 2000 Census analyses.

Figure I-1.
2000 Census industry codes used for construction and engineering-related services

Study industry	2000 Census IND codes	Description
Construction	77	Construction industry
Engineering-related services	729	Architectural, engineering and related services

Source: BBC Research & Consulting from the IPUMS program: <http://usa.ipums.org/usa/>.

Industry occupations. BBC also examined workers by occupation within the construction industry using the PUMS variable OCC. Figure I-2 summarizes the 2000 Census OCC codes used in the study team's analysis.

Figure I-2.
2000 and 2007 Census occupation codes used to examine workers in construction industry

Census 2000/2007 occupational title and code	Job description
Construction managers 22	Plan, direct, coordinate, or budget, usually through subordinate supervisory personnel, activities concerned with the construction and maintenance of structures, facilities, and systems. Participate in the conceptual development of a construction project and oversee its organization, scheduling, and implementation. Include specialized construction fields, such as carpentry or plumbing. Include general superintendents, project managers, and constructors who manage, coordinate, and supervise the construction process.
First-line supervisors/managers of construction trades and extraction workers 620	Directly supervise and coordinate the activities of construction or extraction workers.
Brickmasons, Blockmasons and Stonemasons 622	Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, Construct or repair walls, partitions, arches, sewers, and other structures. Build stone structures, such as piers, walls, and abutments and lay walks, curbstones, or special types of masonry for vats, tanks, and floors.
Carpenters 623	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms, building frameworks, including partitions, joists, studding, rafters, wood stairways, window and door frames, and hardwood floors.
Carpet, floor, and tile installers and finishers 624	Apply shock-absorbing, sound-deadening, or decorative coverings to floors. Lay carpet on floors and install padding and trim flooring materials. Scrape and sand wooden floors to smooth surfaces, apply coats of finish. Apply hard tile, marble, wood tile, walls, floors, ceilings, and roof decks.
Cement masons, concrete finishers and terrazzo workers 625	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs or gutters; patch voids; use saws to cut expansion joints. Terrazzo workers apply a mixture of cement, sand, pigment or marble chips to floors, stairways, and cabinet fixtures.

Census 2000/2007 occupational title and code	Job description
Construction laborers 626	Perform tasks involving physical labor at building, highway, and heavy construction projects, tunnel and shaft excavations, and demolition sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, clean up rubble and debris, and remove asbestos, lead, and other hazardous waste materials. May assist other craft workers. Exclude construction laborers who primarily assist a particular craft worker, and classify them under "Helpers, Construction Trades."
Paving, surfacing and tamping equipment operators 630	Operate equipment used for applying concrete, asphalt, or other materials to road beds, parking lots, or airport runways and taxiways, or equipment used for tamping gravel, dirt, or other materials. Include concrete and asphalt paving machine operators, form tampers, tamping machine operators, and stone spreader operators.
Miscellaneous construction equipment operators, including pile-driver operators 632	Operate one or several types of power construction equipment, such as motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors, or front-end loaders to excavate, move, and grade earth, erect structures, or pour concrete or other hard surface pavement. Operate pile drivers mounted on skids, barges, crawler treads, or locomotive cranes to drive pilings for retaining walls, bulkheads, and foundations of structures, such as buildings, bridges, and piers.
Drywall installers, ceiling tile installers and tapers 633	Apply plasterboard or other wallboard to ceilings or interior walls of buildings, mount acoustical tiles or blocks, strips, or sheets of shock-absorbing materials to ceilings and walls of buildings to reduce or reflect sound.
Electricians 635	Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with relevant codes. May install or service street lights, intercom systems, or electrical control systems. Exclude "Security and Fire Alarm Systems Installers." The 2000 category includes electrician apprentices.
Glaziers 636	Install glass in windows, skylights, store fronts, display cases, building fronts, interior walls, ceilings, and tabletops.
Painters, construction and maintenance 642	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. Remove old paint to prepare surfaces prior to painting and mix colors or oils to obtain desired color or consistency.
Pipelayers, plumbers, pipefitters and steamfitters 644	Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints. Excludes "Welders, Cutters, Solderers, and Brazers." Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes sprinklerfitters.
Plasterers and stucco masons 646	Apply interior or exterior plaster, cement, stucco, or similar materials and set ornamental plaster.
Roofers 651	Cover roofs of structures with shingles, slate, asphalt, aluminum, and wood. Spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures

Census 2000/2007 occupational title and code	Job description
Iron and steel workers, including reinforcing iron and rebar workers 653	<i>Iron and steel workers</i> raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. <i>Reinforcing iron and rebar workers</i> position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters.
Helpers, construction trades 660	All construction trades helpers not listed separately.
Driver/sales workers and truck drivers 913	<i>Driver/sales workers</i> drive trucks or other vehicles over established routes or within an established territory and sell goods, such as food products, including restaurant take-out items, or pick up and deliver items, such as laundry. May also take orders and collect payments. Include newspaper delivery drivers. <i>Truck drivers (heavy)</i> drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license. <i>Truck drivers (light)</i> drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "Couriers and Messengers."
Crane and tower operators 951	Operate mechanical boom and cable or tower and cable equipment to lift and move materials, machines, or products in many directions. Exclude "Excavating and Loading Machine and Dragline Operators."
Dredge, excavating and loading machine operators 952	<i>Dredge operators</i> operate dredge to remove sand, gravel, or other materials from lakes, rivers, or streams; and to excavate and maintain navigable channels in waterways. <i>Excavating and loading machine and dragline operators</i> Operate or tend machinery equipped with scoops, shovels, or buckets, to excavate and load loose materials. <i>Loading machine operators, underground mining</i> , Operate underground loading machine to load coal, ore, or rock into shuttle or mine car or onto conveyors. Loading equipment may include power shovels, hoisting engines equipped with cable-drawn scraper or scoop, or machines equipped with gathering arms and conveyor.

Source: 2000 Census occupational titles and codes at <http://usa.ipums.org/usa/volii/00occup.shtml>, 1980 codes and titles at <http://usa.ipums.org/usa/volii/98occup.shtml>, job descriptions from the Bureau of Labor Statistics www.bls.gov.

Los Angeles area. The study team used the PUMA variable to define the Los Angeles area as comprising the following counties: Los Angeles, Orange, Ventura, Riverside and San Bernardino. The counties comprising the Los Angeles area, as defined for the marketplace appendices, corresponds to the Los Angeles-Long Beach-Riverside Combined Statistical Area (CSA).

Education variables. BBC used the variable indicating respondents' highest level of educational attainment (EDUCD) to classify individuals into four categories:²

- Less than high school;
- High school diploma;
- Some college or associate's degree; and
- At least a bachelor's degree.

Definition of workers. The universe for the class of worker, industry and occupation variables includes workers 16 years of age or older who are gainfully employed and those who are unemployed but seeking work. "Gainfully employed" means that the worker reported an occupation as defined by the Census code, OCC.

1980 Census data. BBC compared 2000 Census data with data for the 1980 Census to analyze changes in worker demographics, educational attainment and business ownership over time. The 1980 Census five percent sample includes 11,343,120 observations weighted to represent 226,862,400 people. The sample includes 1,186,232 observations in California, weighted to represent 23,724,640 individuals, and 581,109 observations in the Los Angeles area, weighted to represent 11,622,180 people.

A number of changes in variables and coding took place between the 1980 and 2000 Censuses.

Changes in race/ethnicity categories between censuses. Figure I-4 lists the seven BBC-defined racial/ethnic categories with the corresponding 1980 and 2000 Census race groups. Combinations of race types are available in the 2000 Census but not in the 1980 Census. The Bureau of the Census introduced categories in 2000 representing a combination of race types to allow individuals to select multiple races when responding to the questionnaire.

For example, an individual who is primarily white with Native American ancestry could choose the "white and American Indian/Alaska Native" race group in 2000. However, if the same individual received the 1980 Census questionnaire, she would need to choose a single race group — either "white" or "American Indian/Alaska Native." Such a choice would ultimately depend on unknowable factors including how strongly the individual identifies with her Native American heritage.

In addition, data analysts do not have information about the proportions of individual ancestry in 2000 and can only know that a particular individual has mixed ancestry. The variability introduced by allowing multiple race selection complicates direct comparisons between years with respect to race and ethnicity. Even so, 98 percent of survey respondents in 2000 indicated a single race.³

² In the 1940-1980 samples, respondents were classified according the highest year of school completed (HIGRADE). In the years after 1980, this method was used only for individuals who did not complete high school, and all high school graduates were categorized based on the highest degree earned (EDUC99). The EDUCD variable merges two different schemes for measuring educational attainment by assigning to each degree the typical number of years it takes to earn.

³ Grieco, Elizabeth M. & Rachel C. Cassidy. "Overview of Race and Hispanic Origin," *Census 2000 Brief*, March 2001, page 3.

Figure I-3.
BBC race/ethnic categories compared with Census race and Hispanic Origin
survey questions, 1980 and 2000

BBC-defined race/ethnic categories	2000 Census	1980 Census
African American	Hispanic origin: no Race: Black/Negro alone or in combination with any other non-Hispanic group	Hispanic origin: no Race: Black/Negro
Asian-Pacific American	Hispanic origin: no Race: Chinese, Taiwanese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Hmong, Laotian, Thai, Indonesian, Malaysian, Samoan, Tongan, Polynesian, Guamanian/Chamorro, Native Hawaiian, Pacific Islander, Micronesian, Melanesian, or other Asian, either alone or in combination with any non-Hispanic, non-Black, or non-Native American groups	Hispanic origin: no Race: Chinese, Japanese, Filipino, Korean, Vietnamese, Native Hawaiian, Pacific Islander or other Asian
Subcontinent Asian American	Hispanic origin: no Race: Asian Indian, Bangladeshi, Pakistani or Sri Lankan, alone or in combination with white or other groups only	Hispanic origin: no Race: Asian Indian
Hispanic American	Hispanic origin: yes Race: any race groups, alone or in combination with other groups	Hispanic origin: yes Race: any or Hispanic origin: no Race: Spanish
Native American	Hispanic origin: no Race: American Indian or Alaskan Native tribe identified alone or in combination with any non-Hispanic, non-Black group	Hispanic origin: no Race: American Indian/Alaska Native
Other minority group	Hispanic origin: no Race: other race alone or in combination with white only	Hispanic origin: no Race: other race
Non-Hispanic white	Hispanic origin: no Race: white alone	Hispanic origin: no Race: white

Source: BBC Research & Consulting from the IPUMS program: <http://usa.ipums.org/usa/>.

Business ownership. BBC uses the Census “class of worker” variable (CLASSWKD) to determine self-employment. This variable is the same for 1980 and 2000 with one exception: the 1980 variable does not include a separate category for individuals who work for a wage or salary at a non-profit organization.

Changes in industry codes between Censuses. The Census definitions of some industries and sub-industries changed between 1980 and 2000. As a result, 1980 codes for the industry variable (IND) are not the same as 2000 IND codes in all cases. However, for the construction and engineering-related industries, the 1980 code corresponds directly to an equivalent 2000 code.

Geographic variables. For the analyses presented in the marketplace appendices, there were no substantial changes in geographic variables. BBC used the same variable (STATEFIP) available for 2000 Census data to identify California in the 1980 data. To define the Los Angeles area in 1980, the study team used the CNTYGP98 variable and included the same five counties from the 2000 definition.

Changes in educational variables between Censuses. The 1980 Census PUMS data includes the same educational variable found in the 2000 Census data, although the questions used for each Census to capture educational attainment differed between the two surveys.⁴

2009 American Community Survey (ACS) data. BBC also examined 2009 ACS data from IPUMS. Conducted by the U.S. Census Bureau, the ACS uses monthly samples to produce annually updated data for the same small areas as the 2000 Census long-form.⁵ Since 2005, the ACS has expanded to a roughly 1 percent sample of the population, based on a random sample of housing units in every county in the U.S. (along with the District of Columbia and Puerto Rico).

Applying the person-level population weights to the 3,030,728 observations included in the data, the 2009 ACS dataset represents 307,006,556 people in the U.S. For California, the 2009 ACS dataset includes 352,875 observations representing 36,961,664 individuals; for the Los Angeles area, 166,863 observations representing 17,819,977 people.

With the exception of a few minor differences, the variables available for the 2009 ACS dataset are the same as those available for the 2000 Census five percent sample.

⁴ For a more detailed explanation, see footnote 2.

⁵ U.S. Census Bureau. *Design and Methodology: American Community Survey*. Washington D.C.: U.S. Government Printing 2009. Available at http://www.census.gov/acs/www/SBasics/desgn_meth.htm

Changes in race/ethnicity categories between 2000 Census and 2009 ACS data. The 2000 Census five percent sample and the 2009 ACS PUMS data use essentially the same numerical categories for the detailed race variable (RACED). However, in both samples, any category representing fewer than 10,000 people was combined with another category. As a result, some PUMS race/ethnicity categories that occur in one sample may not exist in the other, which could lead to inconsistencies between the two samples once the detailed race/ethnicity categories are grouped according to the seven broader categories. This issue is unlikely to affect all but a very small number of observations. PUMS categories that were available in 2000 but not 2009 (or vice versa) represented a very small percentage of the 2000 (or 2009) population. Categories for the Hispanic variable (HISPAN) remained consistent between the two datasets.

Other variables. Other variables used by BBC did not change between 2000 and 2009. The variables CLASSWKD, LABFORCE, IND, OCC, PUMA, METAREAD and EDUCD were consistent between datasets, with variable codes in each case representing the same categories.

Survey of Small Business Finances (SSBF)

The study team used the SSBF to analyze the availability and characteristics of small business loans.

The SSBF, conducted every five years by the Federal Reserve Board, collects financial data from non-governmental for-profit firms with fewer than 500 employees. This survey is a nationally representative sample, structured to allow for analysis of specific geographic regions, industry sectors, and racial and gender groups. The SSBF is unique as it provides detailed data on both firm and owner financial characteristics. For the purposes of this report, BBC used the surveys from 1998 and 2003, which are available at the Federal Reserve Board website.⁶

Data for 1998. The 1998 SSBF includes information from 3,561 small businesses. The survey oversampled minority-owned businesses, allowing for a more precise analysis of how race and ethnicity may affect loan and financial outcomes.

Categorizing owner race/ethnicity and gender. Definition of race and ethnic groups in the 1998 SSBF are slightly different than the classifications used in the 2000 Census and 2009 ACS. In the SSBF, businesses are classified into the following five groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian American;
- Native American; and
- Other (unspecified).

⁶ The Federal Reserve Board. *Survey of Small Business Finances, 1998* and *Survey of Small Business Finances, 2003*. Available online at <http://www.federalreserve.gov/pubs/>.

A business is considered Hispanic American-owned if more than 50 percent of the business was owned by Hispanic Americans, regardless of race. All businesses reporting 50 percent or less Hispanic American ownership are included in the racial group that owns more than half of the company. No firms reported ownership by “other.”

Similarly, firms were classified as female-owned if more than 50 percent of the firm was owned by women. Firms owned half by women and half by men were counted as male-owned.

Defining selected industry sectors. In the 1998 SSBF, each business was classified according to SIC code and placed into one of eight industry categories:

- Construction;
- Mining;
- Transportation, communications and utilities;
- Finance, insurance and real estate;
- Trade;
- Engineering;
- Services (excluding engineering); or
- Agriculture, forestry and fishing.

Region variables. The SSBF divides the United States into nine Census Divisions. Along with Alaska, Washington, Oregon and Hawaii, California resides in the Pacific Census Division (referred to in marketplace appendices as the Pacific region).

Loan denial variables. In the 1998 survey, firm owners were asked if they have applied for a loan in the last three years and whether loan applications were always approved, always denied, or sometimes approved and sometimes denied. For the purposes of this study, only firms that were always denied were considered when analyzing loan denial.

Data for 2003. The 2003 SSBF differs from previous surveys in terms of the population surveyed, the variables available and in data reporting methodology.

Population differences. Similar to the 1998 survey, the 2003 survey records data from businesses with 500 or fewer employees. The sample contains data from 4,240 firms, but in 2003, minority-owned firms were not oversampled. In the 1998 data, 7.3 percent of the survey firms were owned by Hispanic Americans, but that number dropped to 4 percent in the 2003 data. Representation in the sample also dropped for African American-owned (7.7% to 2.8%) and Asian American-owned firms (5.7% to 4.2%). The smaller sample sizes for minority groups in the 2003 SSBF affects the ability to conduct analyses related to differences in loan application outcomes for race and ethnic groups.

Variable differences. In the 2003 SSBF, businesses were able to give responses on owner characteristics for up to three different owners. The data also include a fourth variable that is a weighted average of other answers provided for each question. In order to define race/ethnicity and gender variables consistently from the 1998 to 2003 surveys, BBC used the final weighted average for variables on owner characteristics. Firms were then divided into race, ethnicity and gender groups according to the same guidelines used for the 1998 data.

Industry, region and loan denial variables for the 2003 survey were defined by the study team along the same guidelines as the 1998 survey, with one exception: the 2003 survey did not include any firms in the agriculture, forestry and fishing industry.

Data reporting. Due to missing responses to survey questions in both the 1998 and 2003 datasets, data were imputed to fill in missing values. For the 1998 SSBF data, missing values were imputed using a randomized regression model to estimate values based on responses to other questions in the survey. A single variable includes both reported and imputed values, and a separate “shadow variable” can be used to identify where missing values have been imputed. However, the missing values in the 2003 data set were imputed using a different method than in previous studies. In the 1998 survey data, the number of observations in the data set matches the number of firms surveyed. However, the 2003 data includes five implicates, each with imputed values that have been filled in using a randomized regression model.⁷ Thus there are 21,200 observations in the 2003 data, five for each of the 4,240 firms surveyed. Across the five implicates, all non-missing values are identical, whereas imputed values may differ. In both data sets, therefore, when a firm answered a survey question, the response was not altered. However the method for filling in missing values differed between surveys.

As discussed in a recent paper about the 2003 imputations by the Finance and Economics Discussion Series, missing survey values can lead to biased estimates and inaccurate variances and confidence intervals.⁸ These problems can be corrected through use of multiple implicates. In order to provide the most accurate analysis, BBC utilized all five implicates provided with the 2003 data in analysis of the survey.

Multiple implicates were not provided with the 1998 data, making the method of analysis used for the 2003 data inapplicable. To address this, the study team performed analysis two different ways, first only with observations whose data was not imputed and second with all observations. Differences in results were insignificant. For summary statistics using SSBF data, BBC included observations with missing values in the analyses. For the probit regression model presented in Appendix H, the study team did not include observations with imputed values for the depended variable, loan denial.

⁷ For a more detailed explanation of imputation methods, see the “Technical Codebook” for the *2003 Survey of Small Business Finances*.

⁸ Lieu N. Hazelwood, Traci L. Mach and John D. Wolken. *Alternative Methods of Unit Nonresponse Weight Adjustments: An Application from the 2003 Survey of Small Businesses*. Finance and Economics Discussion Series Divisions of Research and Statistics and Monetary Affairs, Federal Reserve Board. Washington, D.C., 2007.
<http://www.federalreserve.gov/pubs/feds/2007/200710/200710pap.pdf>

Survey of Business Owners (SBO)

BBC used data from the 2007 SBO to analyze mean annual firm receipts. The SBO is conducted every five years by the U.S. Census Bureau. Data for the most recent publication of the SBO was collected in 2007. Response to the survey is mandatory, which ensures comprehensive economic and demographic information for business and business owners in the U.S. All tax-filing businesses and nonprofits were eligible to be surveyed: firms with and without paid employees. In 2007, almost 8 million firms were surveyed.

BBC examined SBO data relating to the number of firms, number of firms with paid employees and total receipts. This information is available by geographic location, industry, gender and race/ethnicity.

The SBO uses the 2002 North American Industry Classification System (NAICS) to classify industries. BBC analyzed data for firms in all industries and for firms in selected industries that corresponded closely to construction and engineering-related services.

To categorize the business ownership of firms reported in the SBO, the Census Bureau uses standard definitions for women-owned and minority-owned businesses. A business is defined as female-owned if more than half of the ownership and control is by women. Firms with joint male-/female-ownership were tabulated as an independent gender category. A business is defined as minority-owned if more than half of the ownership and control is African American, Asian American, Hispanic American, Native American or another minority group. Respondents had the option of selecting one or more racial groups when reporting on business ownership.

BBC reported business receipts for the following race/ethnicity and gender groups:

- African American;
- Asian American;
- Hispanic American;
- Native American; and
- Women.

BBC also reported business receipts for all firms.

Home Mortgage Disclosure Act (HMDA) Data

BBC used HMDA data provided by the Federal Financial Institutions Examination Council (FFIEC) to analyze mortgage lending in the Los Angeles area, California and the nation. HMDA data provide information on mortgage loan applications received by financial institutions, savings banks, credit unions and some mortgage companies. These data include information about the location, dollar amount, and types of loans made, as well as race and ethnicity, income, and credit characteristics of loan applicants. Data are available for home purchase, home improvement and refinance loans.

The definition of the Los Angeles area in HMDA was consistent with the study team's definition for analyses involving PUMS data.

Financial institutions were required to report 2009 HMDA data if they had assets of more than \$39 million (\$35 million for 2006), had a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies were required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, were located in an Metropolitan Statistical Area (or originated five or more home purchase loans in an MSA) and either had more than \$10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

BBC used these data to examine loan denial rates and subprime lending rates for different racial and ethnic groups in 2006 and 2009. Note that the HMDA data represent the entirety of home mortgage loan applications reported by participating financial institutions in each year examined; these data are not a sample. However, BBC did not report loan denial rates or subprime lending rates in cases where there were fewer than 25 loans in a particular category. Appendix G provides detailed explanation of the methodology used for measuring loan denial and subprime lending rates.

APPENDIX J.

Detailed Disparity Results

Detailed disparity results for federal and local contracts in construction, engineering and goods and services are provided in 26 tables on the following pages. A description of how to read and interpret these tables is provided in pages 1 through 5 of Section 6.

Figure J-2.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	753	\$119,985	\$119,985				
(2) MBE/WBE	217	\$20,697	\$20,697	17.2	29.6	-12.3	58.3
(3) WBE	70	\$10,861	\$10,861	9.1	8.4	0.7	108.2
(4) MBE	147	\$9,836	\$9,836	8.2	21.2	-13.0	38.6
(5) African American-owned	31	\$2,812	\$2,812	2.3	3.6	-1.2	66.0
(6) Asian-Pacific American-owned	16	\$2,849	\$2,849	2.4	5.1	-2.7	47.0
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.3	0.4	-0.2	59.5
(8) Hispanic American-owned	85	\$3,853	\$3,853	3.2	11.1	-7.9	28.8
(9) Native American-owned	1	\$2	\$2	0.0	1.0	-1.0	0.1
(10) Unknown MBE	0	\$0					
(11) DBE-certified	64	\$4,929	\$4,929	4.1			
(12) Woman-owned DBE	16	\$1,068	\$1,068	0.9			
(13) Minority-owned DBE	48	\$3,861	\$3,861	3.2			
(14) African American-owned DBE	12	\$1,920	\$1,920	1.6			
(15) Asian-Pacific American-owned DBE	8	\$91	\$91	0.1			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.3			
(17) Hispanic American-owned DBE	13	\$1,528	\$1,528	1.3			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-3.

Funding Source/Time Period: FAA-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	276	\$67,083	\$67,083				
(2) MBE/WBE	91	\$14,368	\$14,368	21.4	29.4	-8.0	72.9
(3) WBE	38	\$8,085	\$8,085	12.1	8.0	4.1	151.2
(4) MBE	53	\$6,283	\$6,283	9.4	21.4	-12.0	43.7
(5) African American-owned	28	\$2,161	\$2,161	3.2	4.1	-0.9	78.9
(6) Asian-Pacific American-owned	7	\$2,757	\$2,757	4.1	6.1	-1.9	67.8
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.5	0.5	0.0	103.9
(8) Hispanic American-owned	4	\$1,044	\$1,044	1.6	10.2	-8.6	15.3
(9) Native American-owned	0	\$0	\$0	0.0	0.6	-0.6	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	43	\$4,047	\$4,047	6.0			
(12) Woman-owned DBE	14	\$818	\$818	1.2			
(13) Minority-owned DBE	29	\$3,230	\$3,230	4.8			
(14) African American-owned DBE	11	\$1,853	\$1,853	2.8			
(15) Asian-Pacific American-owned DBE	1	\$19	\$19	0.0			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.5			
(17) Hispanic American-owned DBE	3	\$1,037	\$1,037	1.5			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-4.

Funding Source/Time Period: Locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	477	\$52,902	\$52,902				
(2) MBE/WBE	126	\$6,329	\$6,329	12.0	29.9	-17.9	40.1
(3) WBE	32	\$2,776	\$2,776	5.2	8.9	-3.6	59.2
(4) MBE	94	\$3,553	\$3,553	6.7	21.0	-14.3	32.0
(5) African American-owned	3	\$650	\$650	1.2	2.9	-1.6	42.8
(6) Asian-Pacific American-owned	9	\$92	\$92	0.2	3.8	-3.6	4.6
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.4	-0.4	0.0
(8) Hispanic American-owned	81	\$2,809	\$2,809	5.3	12.4	-7.1	42.9
(9) Native American-owned	1	\$2	\$2	0.0	1.5	-1.5	0.2
(10) Unknown MBE	0	\$0					
(11) DBE-certified	21	\$881	\$881	1.7			
(12) Woman-owned DBE	2	\$250	\$250	0.5			
(13) Minority-owned DBE	19	\$631	\$631	1.2			
(14) African American-owned DBE	1	\$67	\$67	0.1			
(15) Asian-Pacific American-owned DBE	7	\$71	\$71	0.1			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	10	\$491	\$491	0.9			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-5.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Construction
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	585	\$103,650	\$103,650				
(2) MBE/WBE	144	\$18,958	\$18,958	18.3	29.3	-11.0	62.4
(3) WBE	57	\$10,301	\$10,301	9.9	8.0	2.0	124.4
(4) MBE	87	\$8,657	\$8,657	8.4	21.3	-13.0	39.2
(5) African American-owned	30	\$2,195	\$2,195	2.1	3.6	-1.5	58.9
(6) Asian-Pacific American-owned	11	\$2,816	\$2,816	2.7	4.7	-2.0	57.6
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.3	0.2	0.2	197.8
(8) Hispanic American-owned	31	\$3,324	\$3,324	3.2	11.7	-8.5	27.3
(9) Native American-owned	1	\$2	\$2	0.0	1.1	-1.1	0.2
(10) Unknown MBE	0	\$0					
(11) DBE-certified	56	\$4,236	\$4,236	4.1			
(12) Woman-owned DBE	15	\$1,063	\$1,063	1.0			
(13) Minority-owned DBE	41	\$3,173	\$3,173	3.1			
(14) African American-owned DBE	11	\$1,303	\$1,303	1.3			
(15) Asian-Pacific American-owned DBE	4	\$62	\$62	0.1			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.3			
(17) Hispanic American-owned DBE	11	\$1,486	\$1,486	1.4			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-6.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Engineering
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	100	\$14,943	\$14,943				
(2) MBE/WBE	20	\$1,303	\$1,303	8.7	30.0	-21.3	29.1
(3) WBE	10	\$551	\$551	3.7	11.0	-7.3	33.5
(4) MBE	10	\$752	\$752	5.0	19.0	-14.0	26.5
(5) African American-owned	1	\$617	\$617	4.1	2.8	1.3	147.8
(6) Asian-Pacific American-owned	5	\$32	\$32	0.2	7.5	-7.3	2.9
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	2.3	-2.3	0.0
(8) Hispanic American-owned	4	\$102	\$102	0.7	6.0	-5.3	11.4
(9) Native American-owned	0	\$0	\$0	0.0	0.4	-0.4	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	8	\$693	\$693	4.6			
(12) Woman-owned DBE	1	\$5	\$5	0.0			
(13) Minority-owned DBE	7	\$688	\$688	4.6			
(14) African American-owned DBE	1	\$617	\$617	4.1			
(15) Asian-Pacific American-owned DBE	4	\$29	\$29	0.2			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	2	\$42	\$42	0.3			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-7.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	68	\$1,392	\$1,392				
(2) MBE/WBE	53	\$436	\$436	31.3	47.2	-15.9	66.3
(3) WBE	3	\$8	\$8	0.6	8.1	-7.5	7.4
(4) MBE	50	\$427	\$427	30.7	39.1	-8.4	78.5
(5) African American-owned	0	\$0	\$0	0.0	8.1	-8.1	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	3.6	-3.6	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	2.8	-2.8	0.0
(8) Hispanic American-owned	50	\$427	\$427	30.7	20.5	10.2	149.6
(9) Native American-owned	0	\$0	\$0	0.0	4.1	-4.1	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	0	\$0	\$0	0.0			
(12) Woman-owned DBE	0	\$0	\$0	0.0			
(13) Minority-owned DBE	0	\$0	\$0	0.0			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	0	\$0	\$0	0.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-8.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	430	\$77,021	\$77,021				
(2) MBE/WBE	107	\$6,468	\$6,468	8.4	26.4	-18.0	31.8
(3) WBE	25	\$1,770	\$1,770	2.3	6.9	-4.6	33.1
(4) MBE	82	\$4,698	\$4,698	6.1	19.5	-13.4	31.3
(5) African American-owned	0	\$0	\$0	0.0	4.0	-4.0	0.0
(6) Asian-Pacific American-owned	13	\$2,770	\$2,770	3.6	5.3	-1.7	67.6
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.4	-0.4	0.0
(8) Hispanic American-owned	68	\$1,926	\$1,926	2.5	8.7	-6.2	28.9
(9) Native American-owned	1	\$2	\$2	0.0	1.0	-1.0	0.2
(10) Unknown MBE	0	\$0					
(11) DBE-certified	13	\$326	\$326	0.4			
(12) Woman-owned DBE	1	\$245	\$245	0.3			
(13) Minority-owned DBE	12	\$81	\$81	0.1			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	6	\$41	\$41	0.1			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	5	\$38	\$38	0.0			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-9.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Construction

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	277	\$62,142	\$62,142				
(2) MBE/WBE	40	\$5,838	\$5,838	9.4	25.4	-16.0	36.9
(3) WBE	15	\$1,660	\$1,660	2.7	6.1	-3.4	44.0
(4) MBE	25	\$4,178	\$4,178	6.7	19.4	-12.6	34.7
(5) African American-owned	0	\$0	\$0	0.0	4.2	-4.2	0.0
(6) Asian-Pacific American-owned	8	\$2,737	\$2,737	4.4	4.9	-0.5	89.8
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	16	\$1,439	\$1,439	2.3	9.1	-6.7	25.6
(9) Native American-owned	1	\$2	\$2	0.0	1.1	-1.1	0.3
(10) Unknown MBE	0	\$0					
(11) DBE-certified	9	\$298	\$298	0.5			
(12) Woman-owned DBE	1	\$245	\$245	0.4			
(13) Minority-owned DBE	8	\$52	\$52	0.1			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	2	\$12	\$12	0.0			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	5	\$38	\$38	0.1			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-10.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Engineering
Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	85	\$13,487	\$13,487				
(2) MBE/WBE	14	\$195	\$195	1.4	29.0	-27.5	5.0
(3) WBE	7	\$102	\$102	0.8	10.9	-10.1	7.0
(4) MBE	7	\$93	\$93	0.7	18.1	-17.4	3.8
(5) African American-owned	0	\$0	\$0	0.0	2.7	-2.7	0.0
(6) Asian-Pacific American-owned	5	\$32	\$32	0.2	7.4	-7.2	3.3
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	2.1	-2.1	0.0
(8) Hispanic American-owned	2	\$60	\$60	0.4	5.6	-5.1	8.0
(9) Native American-owned	0	\$0	\$0	0.0	0.3	-0.3	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	4	\$29	\$29	0.2			
(12) Woman-owned DBE	0	\$0	\$0	0.0			
(13) Minority-owned DBE	4	\$29	\$29	0.2			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	4	\$29	\$29	0.2			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	0	\$0	\$0	0.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-11.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Goods and Services

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	68	\$1,392	\$1,392				
(2) MBE/WBE	53	\$436	\$436	31.3	47.2	-15.9	66.3
(3) WBE	3	\$8	\$8	0.6	8.1	-7.5	7.4
(4) MBE	50	\$427	\$427	30.7	39.1	-8.4	78.5
(5) African American-owned	0	\$0	\$0	0.0	8.1	-8.1	0.0
(6) Asian-Pacific American-owned	0	\$0	\$0	0.0	3.6	-3.6	0.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	2.8	-2.8	0.0
(8) Hispanic American-owned	50	\$427	\$427	30.7	20.5	10.2	149.6
(9) Native American-owned	0	\$0	\$0	0.0	4.1	-4.1	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	0	\$0	\$0	0.0			
(12) Woman-owned DBE	0	\$0	\$0	0.0			
(13) Minority-owned DBE	0	\$0	\$0	0.0			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	0	\$0	\$0	0.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-12.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Construction, Engineering, Goods and Services
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	323	\$42,964	\$42,964				
(2) MBE/WBE	110	\$14,228	\$14,228	33.1	35.2	-2.1	94.0
(3) WBE	45	\$9,090	\$9,090	21.2	10.9	10.3	194.1
(4) MBE	65	\$5,138	\$5,138	12.0	24.3	-12.4	49.2
(5) African American-owned	31	\$2,812	\$2,812	6.5	2.7	3.9	200+
(6) Asian-Pacific American-owned	3	\$79	\$79	0.2	4.6	-4.4	4.0
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.7	0.5	0.3	153.1
(8) Hispanic American-owned	17	\$1,927	\$1,927	4.5	15.6	-11.1	28.8
(9) Native American-owned	0	\$0	\$0	0.0	1.0	-1.0	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	51	\$4,602	\$4,602	10.7			
(12) Woman-owned DBE	15	\$823	\$823	1.9			
(13) Minority-owned DBE	36	\$3,780	\$3,780	8.8			
(14) African American-owned DBE	12	\$1,920	\$1,920	4.5			
(15) Asian-Pacific American-owned DBE	2	\$50	\$50	0.1			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.7			
(17) Hispanic American-owned DBE	8	\$1,489	\$1,489	3.5			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-13.

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)
Type: Construction
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	308	\$41,508	\$41,508				
(2) MBE/WBE	104	\$13,120	\$13,120	31.6	35.1	-3.5	90.1
(3) WBE	42	\$8,641	\$8,641	20.8	10.9	10.0	191.7
(4) MBE	62	\$4,479	\$4,479	10.8	24.2	-13.4	44.5
(5) African American-owned	30	\$2,195	\$2,195	5.3	2.6	2.6	200+
(6) Asian-Pacific American-owned	3	\$79	\$79	0.2	4.4	-4.3	4.3
(7) Subcontinent Asian American-owned	14	\$320	\$320	0.8	0.4	0.4	200+
(8) Hispanic American-owned	15	\$1,885	\$1,885	4.5	15.8	-11.2	28.8
(9) Native American-owned	0	\$0	\$0	0.0	1.0	-1.0	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	47	\$3,938	\$3,938	9.5			
(12) Woman-owned DBE	14	\$818	\$818	2.0			
(13) Minority-owned DBE	33	\$3,121	\$3,121	7.5			
(14) African American-owned DBE	11	\$1,303	\$1,303	3.1			
(15) Asian-Pacific American-owned DBE	2	\$50	\$50	0.1			
(16) Subcontinent Asian American-owned DBE	14	\$320	\$320	0.8			
(17) Hispanic American-owned DBE	6	\$1,448	\$1,448	3.5			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-14.

Funding Source/Time Period: FAA- and locally-funded contracts during the goals period (Jan. 2005 - July 2006)

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	219	\$43,622	\$43,622				
(2) MBE/WBE	46	\$5,745	\$5,745	13.2	27.6	-14.4	47.8
(3) WBE	20	\$2,093	\$2,093	4.8	7.5	-2.7	63.7
(4) MBE	26	\$3,652	\$3,652	8.4	20.0	-11.6	41.8
(5) African American-owned	10	\$715	\$715	1.6	3.6	-2.0	45.0
(6) Asian-Pacific American-owned	6	\$1,651	\$1,651	3.8	4.4	-0.6	86.9
(7) Subcontinent Asian American-owned	3	\$155	\$155	0.4	0.4	-0.1	83.1
(8) Hispanic American-owned	7	\$1,132	\$1,132	2.6	10.3	-7.7	25.3
(9) Native American-owned	0	\$0	\$0	0.0	1.3	-1.3	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	19	\$2,449	\$2,449	5.6			
(12) Woman-owned DBE	7	\$653	\$653	1.5			
(13) Minority-owned DBE	12	\$1,796	\$1,796	4.1			
(14) African American-owned DBE	4	\$617	\$617	1.4			
(15) Asian-Pacific American-owned DBE	2	\$28	\$28	0.1			
(16) Subcontinent Asian American-owned DBE	3	\$155	\$155	0.4			
(17) Hispanic American-owned DBE	3	\$996	\$996	2.3			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-15.

Funding Source/Time Period: FAA-funded contracts during the goals period (Jan. 2005 - July 2006)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	77	\$18,996	\$18,996				
(2) MBE/WBE	26	\$3,759	\$3,759	19.8	29.6	-9.8	66.8
(3) WBE	8	\$503	\$503	2.6	7.0	-4.4	37.7
(4) MBE	18	\$3,257	\$3,257	17.1	22.6	-5.5	75.9
(5) African American-owned	10	\$715	\$715	3.8	5.5	-1.8	68.0
(6) Asian-Pacific American-owned	4	\$1,638	\$1,638	8.6	5.9	2.7	146.2
(7) Subcontinent Asian American-owned	3	\$155	\$155	0.8	0.4	0.5	200+
(8) Hispanic American-owned	1	\$749	\$749	3.9	9.9	-6.0	39.6
(9) Native American-owned	0	\$0	\$0	0.0	0.9	-0.9	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	15	\$1,948	\$1,948	10.3			
(12) Woman-owned DBE	6	\$408	\$408	2.1			
(13) Minority-owned DBE	9	\$1,540	\$1,540	8.1			
(14) African American-owned DBE	4	\$617	\$617	3.2			
(15) Asian-Pacific American-owned DBE	1	\$19	\$19	0.1			
(16) Subcontinent Asian American-owned DBE	3	\$155	\$155	0.8			
(17) Hispanic American-owned DBE	1	\$749	\$749	3.9			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-16.

Funding Source/Time Period: Locally-funded contracts during the goals period (Jan. 2005 - July 2006)

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	142	\$24,627	\$24,627				
(2) MBE/WBE	20	\$1,986	\$1,986	8.1	26.0	-17.9	31.1
(3) WBE	12	\$1,590	\$1,590	6.5	7.9	-1.5	81.5
(4) MBE	8	\$395	\$395	1.6	18.0	-16.4	8.9
(5) African American-owned	0	\$0	\$0	0.0	2.2	-2.2	0.0
(6) Asian-Pacific American-owned	2	\$12	\$12	0.1	3.2	-3.1	1.6
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.5	-0.5	0.0
(8) Hispanic American-owned	6	\$383	\$383	1.6	10.5	-8.9	14.8
(9) Native American-owned	0	\$0	\$0	0.0	1.7	-1.7	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	4	\$501	\$501	2.0			
(12) Woman-owned DBE	1	\$245	\$245	1.0			
(13) Minority-owned DBE	3	\$256	\$256	1.0			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	1	\$9	\$9	0.0			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	2	\$247	\$247	1.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-17.

Funding Source/Time Period: FAA- and locally-funded contracts outside the goals period (Aug. 2006 - Dec. 2009)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	534	\$76,363	\$76,363				
(2) MBE/WBE	171	\$14,951	\$14,951	19.6	30.8	-11.2	63.7
(3) WBE	50	\$8,767	\$8,767	11.5	8.8	2.6	129.9
(4) MBE	121	\$6,184	\$6,184	8.1	21.9	-13.8	36.9
(5) African American-owned	21	\$2,097	\$2,097	2.7	3.5	-0.8	78.4
(6) Asian-Pacific American-owned	10	\$1,198	\$1,198	1.6	5.5	-3.9	28.8
(7) Subcontinent Asian American-owned	11	\$165	\$165	0.2	0.5	-0.2	47.0
(8) Hispanic American-owned	78	\$2,721	\$2,721	3.6	11.6	-8.1	30.6
(9) Native American-owned	1	\$2	\$2	0.0	0.9	-0.9	0.3
(10) Unknown MBE	0	\$0					
(11) DBE-certified	45	\$2,480	\$2,480	3.2			
(12) Woman-owned DBE	9	\$415	\$415	0.5			
(13) Minority-owned DBE	36	\$2,065	\$2,065	2.7			
(14) African American-owned DBE	8	\$1,303	\$1,303	1.7			
(15) Asian-Pacific American-owned DBE	6	\$63	\$63	0.1			
(16) Subcontinent Asian American-owned DBE	11	\$165	\$165	0.2			
(17) Hispanic American-owned DBE	10	\$532	\$532	0.7			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-18.

Funding Source/Time Period: FAA-funded contracts from outside the goals period (Aug. 2006 - Dec. 2009)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	199	\$48,087	\$48,087				
(2) MBE/WBE	65	\$10,608	\$10,608	22.1	29.3	-7.2	75.3
(3) WBE	30	\$7,582	\$7,582	15.8	8.3	7.4	189.0
(4) MBE	35	\$3,026	\$3,026	6.3	20.9	-14.7	30.0
(5) African American-owned	18	\$1,447	\$1,447	3.0	3.5	-0.5	85.7
(6) Asian-Pacific American-owned	3	\$1,119	\$1,119	2.3	6.1	-3.8	38.0
(7) Subcontinent Asian American-owned	11	\$165	\$165	0.3	0.5	-0.2	69.2
(8) Hispanic American-owned	3	\$296	\$296	0.6	10.2	-9.6	6.0
(9) Native American-owned	0	\$0	\$0	0.0	0.6	-0.6	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	28	\$2,100	\$2,100	4.4			
(12) Woman-owned DBE	8	\$410	\$410	0.9			
(13) Minority-owned DBE	20	\$1,690	\$1,690	3.5			
(14) African American-owned DBE	7	\$1,236	\$1,236	2.6			
(15) Asian-Pacific American-owned DBE	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned DBE	11	\$165	\$165	0.3			
(17) Hispanic American-owned DBE	2	\$288	\$288	0.6			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-19.

Funding Source/Time Period: Locally-funded contracts outside the goals period (Aug. 2006 - Dec. 2009)

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	335	\$28,276	\$28,276				
(2) MBE/WBE	106	\$4,343	\$4,343	15.4	33.2	-17.9	46.2
(3) WBE	20	\$1,185	\$1,185	4.2	9.7	-5.5	43.3
(4) MBE	86	\$3,158	\$3,158	11.2	23.6	-12.4	47.4
(5) African American-owned	3	\$650	\$650	2.3	3.5	-1.2	66.0
(6) Asian-Pacific American-owned	7	\$80	\$80	0.3	4.3	-4.0	6.5
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.4	-0.4	0.0
(8) Hispanic American-owned	75	\$2,426	\$2,426	8.6	14.0	-5.4	61.3
(9) Native American-owned	1	\$2	\$2	0.0	1.4	-1.4	0.5
(10) Unknown MBE	0	\$0					
(11) DBE-certified	17	\$380	\$380	1.3			
(12) Woman-owned DBE	1	\$5	\$5	0.0			
(13) Minority-owned DBE	16	\$375	\$375	1.3			
(14) African American-owned DBE	1	\$67	\$67	0.2			
(15) Asian-Pacific American-owned DBE	6	\$63	\$63	0.2			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	8	\$243	\$243	0.9			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-20.

Contracts Under \$1M

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Construction

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	249	\$13,060	\$13,060				
(2) MBE/WBE	35	\$3,129	\$3,129	24.0	31.4	-7.4	76.3
(3) WBE	15	\$1,660	\$1,660	12.7	9.5	3.2	133.3
(4) MBE	20	\$1,469	\$1,469	11.3	21.8	-10.6	51.5
(5) African American-owned	0	\$0	\$0	0.0	3.3	-3.3	0.0
(6) Asian-Pacific American-owned	3	\$29	\$29	0.2	5.5	-5.3	4.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	16	\$1,439	\$1,439	11.0	11.2	-0.2	98.2
(9) Native American-owned	1	\$2	\$2	0.0	1.8	-1.8	0.8
(10) Unknown MBE	0	\$0					
(11) DBE-certified	9	\$298	\$298	2.3			
(12) Woman-owned DBE	1	\$245	\$245	1.9			
(13) Minority-owned DBE	8	\$52	\$52	0.4			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	2	\$12	\$12	0.1			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	5	\$38	\$38	0.3			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-21.

Contracts Under \$100K

Funding Source/Time Period: FAA- and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)

Type: Engineering

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	71	\$1,497	\$1,497				
(2) MBE/WBE	14	\$195	\$195	13.0	37.5	-24.5	34.7
(3) WBE	7	\$102	\$102	6.8	13.1	-6.3	51.9
(4) MBE	7	\$93	\$93	6.2	24.4	-18.2	25.4
(5) African American-owned	0	\$0	\$0	0.0	3.3	-3.3	0.0
(6) Asian-Pacific American-owned	5	\$32	\$32	2.2	7.4	-5.2	29.4
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	4.4	-4.4	0.0
(8) Hispanic American-owned	2	\$60	\$60	4.0	8.6	-4.6	46.9
(9) Native American-owned	0	\$0	\$0	0.0	0.8	-0.8	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	4	\$29	\$29	1.9			
(12) Woman-owned DBE	0	\$0	\$0	0.0			
(13) Minority-owned DBE	4	\$29	\$29	1.9			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	4	\$29	\$29	1.9			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	0	\$0	\$0	0.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-22.

Funding Source/Time Period: FAA-funded contracts during the goals period (Jan. 2005 - July 2006)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	77	\$18,996	\$18,996				
(2) MBE/WBE	26	\$3,759	\$3,759	19.8	29.6	-9.8	66.8
(3) WBE	8	\$503	\$503	2.6	7.0	-4.4	37.7
(4) MBE	18	\$3,257	\$3,257	17.1	22.6	-5.5	75.9
(5) African American-owned	10	\$715	\$715	3.8	5.5	-1.8	68.0
(6) Asian-Pacific American-owned	4	\$1,638	\$1,638	8.6	5.9	2.7	146.2
(7) Subcontinent Asian American-owned	3	\$155	\$155	0.8	0.4	0.5	200+
(8) Hispanic American-owned	1	\$749	\$749	3.9	9.9	-6.0	39.6
(9) Native American-owned	0	\$0	\$0	0.0	0.9	-0.9	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	15	\$1,948	\$1,948	10.3			
(12) Woman-owned DBE	6	\$408	\$408	2.1			
(13) Minority-owned DBE	9	\$1,540	\$1,540	8.1			
(14) African American-owned DBE	4	\$617	\$617	3.2			
(15) Asian-Pacific American-owned DBE	1	\$19	\$19	0.1			
(16) Subcontinent Asian American-owned DBE	3	\$155	\$155	0.8			
(17) Hispanic American-owned DBE	1	\$749	\$749	3.9			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-23.

**Funding Source/Time Period: FAA-funded contracts outside the goals period (Aug. 2006 - Dec. 2009)
and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)**

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors, Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	676	\$100,990	\$100,990				
(2) MBE/WBE	191	\$16,937	\$16,937	16.8	29.6	-12.8	56.7
(3) WBE	62	\$10,358	\$10,358	10.3	8.6	1.6	119.1
(4) MBE	129	\$6,580	\$6,580	6.5	21.0	-14.5	31.1
(5) African American-owned	21	\$2,097	\$2,097	2.1	3.2	-1.1	65.3
(6) Asian-Pacific American-owned	12	\$1,211	\$1,211	1.2	4.9	-3.7	24.5
(7) Subcontinent Asian American-owned	11	\$165	\$165	0.2	0.5	-0.3	35.3
(8) Hispanic American-owned	84	\$3,104	\$3,104	3.1	11.4	-8.3	27.1
(9) Native American-owned	1	\$2	\$2	0.0	1.1	-1.1	0.2
(10) Unknown MBE	0	\$0					
(11) DBE-certified	49	\$2,981	\$2,981	3.0			
(12) Woman-owned DBE	10	\$660	\$660	0.7			
(13) Minority-owned DBE	39	\$2,321	\$2,321	2.3			
(14) African American-owned DBE	8	\$1,303	\$1,303	1.3			
(15) Asian-Pacific American-owned DBE	7	\$71	\$71	0.1			
(16) Subcontinent Asian American-owned DBE	11	\$165	\$165	0.2			
(17) Hispanic American-owned DBE	12	\$779	\$779	0.8			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-24.

Funding Source/Time Period: FAA-funded contracts during the goals period (Jan. 2005 - July 2006)
Type: Construction, Engineering, Goods and Services
Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	16	\$13,873	\$13,873				
(2) MBE/WBE	3	\$1,619	\$1,619	11.7	26.3	-14.6	44.4
(3) WBE	0	\$0	\$0	0.0	4.6	-4.6	0.0
(4) MBE	3	\$1,619	\$1,619	11.7	21.7	-10.1	53.7
(5) African American-owned	0	\$0	\$0	0.0	5.9	-5.9	0.0
(6) Asian-Pacific American-owned	3	\$1,619	\$1,619	11.7	6.5	5.2	180.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.3	-0.3	0.0
(8) Hispanic American-owned	0	\$0	\$0	0.0	8.4	-8.4	0.0
(9) Native American-owned	0	\$0	\$0	0.0	0.7	-0.7	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	0	\$0	\$0	0.0			
(12) Woman-owned DBE	0	\$0	\$0	0.0			
(13) Minority-owned DBE	0	\$0	\$0	0.0			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	0	\$0	\$0	0.0			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	0	\$0	\$0	0.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-25.

**Funding Source/Time Period: FAA-funded contracts outside the goals period (Aug. 2006 - Dec. 2009)
and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)**

Type: Construction, Engineering, Goods and Services

Role: Prime Contractors

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	414	\$63,148	\$63,148				
(2) MBE/WBE	104	\$4,850	\$4,850	7.7	26.5	-18.8	29.0
(3) WBE	25	\$1,770	\$1,770	2.8	7.5	-4.7	37.5
(4) MBE	79	\$3,079	\$3,079	4.9	19.0	-14.1	25.7
(5) African American-owned	0	\$0	\$0	0.0	3.6	-3.6	0.0
(6) Asian-Pacific American-owned	10	\$1,151	\$1,151	1.8	5.1	-3.2	36.0
(7) Subcontinent Asian American-owned	0	\$0	\$0	0.0	0.5	-0.5	0.0
(8) Hispanic American-owned	68	\$1,926	\$1,926	3.1	8.7	-5.7	35.0
(9) Native American-owned	1	\$2	\$2	0.0	1.1	-1.1	0.3
(10) Unknown MBE	0	\$0					
(11) DBE-certified	13	\$326	\$326	0.5			
(12) Woman-owned DBE	1	\$245	\$245	0.4			
(13) Minority-owned DBE	12	\$81	\$81	0.1			
(14) African American-owned DBE	0	\$0	\$0	0.0			
(15) Asian-Pacific American-owned DBE	6	\$41	\$41	0.1			
(16) Subcontinent Asian American-owned DBE	0	\$0	\$0	0.0			
(17) Hispanic American-owned DBE	5	\$38	\$38	0.1			
(18) Native American-owned DBE	1	\$2	\$2	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-26.

Funding Source/Time Period: FAA-funded contracts during goals period (Jan. 2005 - July 2006)
Type: Construction, Engineering, Goods and Services
Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	61	\$5,123	\$5,123				
(2) MBE/WBE	23	\$2,141	\$2,141	41.8	38.6	3.2	108.2
(3) WBE	8	\$503	\$503	9.8	13.7	-3.8	71.9
(4) MBE	15	\$1,638	\$1,638	32.0	25.0	7.0	128.0
(5) African American-owned	10	\$715	\$715	13.9	4.6	9.4	200+
(6) Asian-Pacific American-owned	1	\$19	\$19	0.4	4.3	-3.9	8.8
(7) Subcontinent Asian American-owned	3	\$155	\$155	3.0	0.6	2.4	200+
(8) Hispanic American-owned	1	\$749	\$749	14.6	14.2	0.4	103.1
(9) Native American-owned	0	\$0	\$0	0.0	1.3	-1.3	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	15	\$1,948	\$1,948	38.0			
(12) Woman-owned DBE	6	\$408	\$408	8.0			
(13) Minority-owned DBE	9	\$1,540	\$1,540	30.1			
(14) African American-owned DBE	4	\$617	\$617	12.0			
(15) Asian-Pacific American-owned DBE	1	\$19	\$19	0.4			
(16) Subcontinent Asian American-owned DBE	3	\$155	\$155	3.0			
(17) Hispanic American-owned DBE	1	\$749	\$749	14.6			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

Figure J-27.

**Funding Source/Time Period: FAA-funded contracts outside the goals period (Aug. 2006 - Dec. 2009)
and locally-funded contracts from the entire study period (Jan. 2005 - Dec. 2009)**

Type: Construction, Engineering, Goods and Services

Role: Subcontractors and Suppliers

Firm Type	(a) Number of contracts (subcontracts)	(b) Total dollars (thousands)	(c) Total dollars after Unknown MBE allocation (thousands)*	(d) Actual utilization (column c / column c, row1) %	(e) Utilization benchmark (availability) %	(f) Difference (column d - column e) %	(g) Disparity index (d / e) x 100
(1) All firms	262	\$37,842	\$37,842				
(2) MBE/WBE	87	\$12,088	\$12,088	31.9	34.8	-2.8	91.9
(3) WBE	37	\$8,587	\$8,587	22.7	10.5	12.2	200+
(4) MBE	50	\$3,500	\$3,500	9.3	24.2	-15.0	38.2
(5) African American-owned	21	\$2,097	\$2,097	5.5	2.4	3.1	200+
(6) Asian-Pacific American-owned	2	\$60	\$60	0.2	4.6	-4.5	3.4
(7) Subcontinent Asian American-owned	11	\$165	\$165	0.4	0.5	0.0	93.0
(8) Hispanic American-owned	16	\$1,178	\$1,178	3.1	15.8	-12.7	19.7
(9) Native American-owned	0	\$0	\$0	0.0	1.0	-1.0	0.0
(10) Unknown MBE	0	\$0					
(11) DBE-certified	36	\$2,655	\$2,655	7.0			
(12) Woman-owned DBE	9	\$415	\$415	1.1			
(13) Minority-owned DBE	27	\$2,240	\$2,240	5.9			
(14) African American-owned DBE	8	\$1,303	\$1,303	3.4			
(15) Asian-Pacific American-owned DBE	1	\$31	\$31	0.1			
(16) Subcontinent Asian American-owned DBE	11	\$165	\$165	0.4			
(17) Hispanic American-owned DBE	7	\$740	\$740	2.0			
(18) Native American-owned DBE	0	\$0	\$0	0.0			
(19) Unknown DBE-MBE	0	\$0	\$0	0.0			
(20) White male-owned DBE	0	\$0					
(21) Unknown DBE	0	\$0					

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

Source: BBC Research & Consulting Disparity Analysis.

APPENDIX K.

Qualitative Information Concerning the Local Marketplace

Appendix K provides a summary of anecdotal interviews for the Burbank-Glendale-Pasadena Airport Authority disparity study. A separate table of contents for Appendix K is provided below.

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INTRODUCTION AND BACKGROUND

Appendix K sets forth the summaries of 186 personal interviews, including 18 personal interviews conducted as part of the Burbank-Glendale-Pasadena Airport Authority disparity study. The BGPAA study interviews include perceptions and anecdotes regarding the utilization and participation of minority-owned businesses, women-owned businesses, and disadvantaged business enterprises, contracting and procurement in the public and private sectors and the contracting and procurement policies, practices and procedures of the Authority. The interviews were conducted by BBC and the law firm Holland & Knight LLP. A “BGP” prefix before the interviewee number references the interviews completed as part of the BGPAA disparity study.

In addition to the BGPAA disparity study interviews, the Appendix includes anecdotes from interviews conducted in connection with BBC Research & Consulting’s 2007 California Department of Transportation Study (Caltrans)¹, 2009 San Diego Regional County Airport Authority Study (San Diego), and 2010 Southern California Transportation Consortium Study (Consortium).² Those interviews are referenced using a “CT” prefix before the interviewee number for Caltrans interviews, a “SD” prefix before interviewee number for San Diego interviews, and a “CON” prefix for Consortium interviews.

Interviews

Interview participants included prime contractors, subcontractors, professional service providers, and trade associations and professional organizations that have a membership base of numerous minority, white woman-, and white male-owned firms. Interview participants were obtained primarily from a random sampling of businesses and stratified by type of firm, location, and ethnicity, race and gender. Most of the interviews were conducted with the owner, president, chief executive officer, or other manager of the business or organization. The interviewees are identified in this Appendix by their interview number.

Interviews included in this Appendix came from the following sources:

- 18 BGPAA disparity study interviews;
- 60 SDRCAA interviews;
- 60 Consortium interviews (includes public forums and written testimony); and
- 48 Caltrans interviews (includes testimony from public hearings).

Organizations Interviewed

Businesses. Of the businesses interviewed, some work exclusively or primarily as prime contractors or subcontractors, and some work as both. Some businesses are minority-owned (MBEs), woman-

¹ The Caltrans study included personal interviews from businesses and trade and business associations located in Southern California.

² The Consortium study included a consortium of five Southern California transportation agencies: Los Angeles County Metropolitan Transportation Authority (Metro), the Southern California Regional Rail Authority (Metrolink), the Orange County Transportation Authority (OCTA), the San Diego Association of Governments (SANDAG), and the San Diego Metropolitan Transit System (MTS).

owned (WBEs), and some are white male-owned firms. All of the interviews referenced in this Appendix were conducted in Southern California.

Trade and professional organizations. The following trade associations and business organizations agreed to be interviewed in connection with the BGPAA disparity study and report on the experiences, anecdotes, and perceptions of their members or clients:

- Young Black Contractors Association;³
- The Southern California Chapter of the National Association of Minority Contractors.⁴

In addition, the Appendix includes anecdotes from trade and business associations interviewed in connection with the San Diego International Airport, Consortium and Caltrans studies.⁵

Public Forums and Written Testimony

In addition to information from personal interviews, the Appendix also includes testimony that firms provided in connection with public forums that were part of BBC's 2010 Southern California Transportation Consortium disparity study. Individuals had the opportunity to submit written or verbal testimony about current marketplace conditions in Southern California at two public forums — one that was held in Los Angeles, California on October 20, 2009 and one that was held in San Diego, California on October, 21 2009.

In the Consortium section, the Appendix also includes anecdotes from written testimony and anecdotes from verbal public forum testimony. Written testimony is referenced using a "WT" prefix before the interviewee number and verbal public forum testimony is referenced using a "PF" prefix before the interviewee number.

Public forums were also held as part of the Caltrans disparity study process in 2007. Anecdotal information from these witnesses is noted as such in this Appendix.

Telephone Interviews

In addition to information from interviews and public hearing testimony, the Appendix also includes certain responses from telephone interviews with firms located in Southern California. Those surveys were conducted as part of the availability analysis. Numerous firms were provided the opportunity to complete the telephone survey in the disparity studies for BGPAA, Caltrans, San Diego Regional Airport Authority and Consortium.

³ The Young Black Contractors Association (TA #1) was founded approximately 17 years ago. The organization represents 59 local contractors and the majority of those contractors are African American. The organization works to create opportunities for local minority contractors.

⁴ The Southern California Chapter of the National Association of Minority Contractors (TA #2) has approximately 40 members. Approximately 90 percent of its membership is African American. The organization provides education and training to minority contractors in construction and promotes the economic and legal interests of minority contractor firms.

⁵ Trade association interviews included from the Caltrans study are referenced using the prefix CATA, trade association interviews included from the San Diego study are referenced using the prefix SDTA and trade association interviews included from the Consortium studies are referenced using the prefix CONTA.

SUMMARY OF ANECDOTES

A. Certification

BGPAA Study Anecdotes Regarding Certification

The certification process.

Some interviewees reported a positive experience with the certification process. [Interviewees #BGP: 2, 4, 12, 14, TA #2]. Interviewee #BGP2, a manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that the certification process is “pretty easy.”

Interviewee #BGP4, a manager of a WBE-certified construction firm, said, “There are parts of the [certification] process that drive you crazy, but you know it’s probably that way because of how it’s been manipulated. So, it’s tough, but it’s worth it. They always want another interview or a phone call, but it’s been pretty easy for us because the owner is so involved.”

Interviewee #BGP12, a manager of a WBE/DBE-certified construction supply firm, said that the company has been certified for as long as they have been with the firm. Interviewee #12 said that the renewal process is “pretty clear cut.” Interviewee #12 said, “We’ve been doing it for a while, so it’s just a matter of resubmitting everything.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, stated that he had had a “mostly positive” experience with the certification process. He said that because the company is “a member of several of the [Native American] groups,” such as the Native American Center, the company has access to assistance “in getting [its] status.”

Some interviewees reported challenges in connection with the certification process.

[Interviewees #BGP: 1, 3, 6, 9, 10, 11, 15]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that “there’s one portion of the certification process where they ask that you prove that you’re a minority, and I think that once you get certified, that shouldn’t be a question. It should be automatically known that you’re a minority when you’re up for certification renewal. Otherwise, the process is fair and quite good.”

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, stated that it has been difficult to maintain his firm’s WBE certification. He said, “It’s very difficult ... For example, we just found out that in our bylaws ... I’m the Director, even though my wife has been the owner for 15 years. One of the certifying agencies found that out and said, ‘You’re no longer a WBE.’” He said that the certification process is “honest” and “straightforward.” He said that “it took us forever to get certified.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that the certification process is “tedious.” Interviewee #6 stated, “The initial process is cumbersome, but after you jump that hurdle, it becomes relative easy.” Interviewee #6 said, “When they put the CUCP [California Unified Certification Program] in, it helped a lot. Once you’re

certified, everyone else accepts it. It was so much paperwork for every agency, but once I had that certification, then it's in the State database.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, said that “I think that anything that requires lengthy paperwork is going to be a pretty major turn off. I have better things to do.”

Interviewee #BGP10, a principal at an engineering firm, reported that the certification process was “very burdensome” initially when each agency had its own certification process, but “it is better now.” He said that “it is still not to the point of where the California Unified Certification Program is universal.” He added that prior changes were supposed to simplify the process, and they “did somewhat” when “some agencies removed their requirements that [companies] needed to be certified with them” and implemented more reciprocity, but a number of agencies still “have their own requirements, and you submit the same package basically but reformatted, and it's a three inch thick package of paper.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that the initial certification process involves considerable paperwork, and it took the company “the better part of six months to get certified” last time. He said that the renewal process is not that lengthy.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she was first “certified through the City of Los Angeles, and they expedited [her] certification.” She said that when she was going through the certification process, “the guy that came out to certify” her asked her why she “wanted to be certified as a Mexican because [her] sir name and [her] maiden name are English, and [she has] green eyes.” She said that she “was kind of offended about that.” She said that the second time that she obtained certification she went through Metro’s process, which she described as a “fantastic” process, although the company has “never gotten any work out of them.” She added, “The City of L.A. is just very, very slow in certifying ... since it's a CUCP certification that's recognized by all of the state and local agencies.”

One interviewee reported having either limited or no experience with the certification process.

[Interviewee #BGP: 8]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that he sees his firm going through the WBE certification process at some point when his firm is not as busy.

Perceived value to certification.

Many interviewees perceived a value to certification. [Interviewees #BGP: 1, 2, 3, 4, 6, 8, 10, 12, 13, 15]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that he “thinks [that the certification program is] a good program, and that they get a heads up on outreach meetings and upcoming work” because of their certifications.

Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that the certifications “have been helpful.”

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that certification “opens up doors to work [that] we normally wouldn’t be offered. ... Most of the airport work now, you have to be ... certified. ... all the big companies want you to be certified as something, it doesn’t have to be [WBE]. ... Everybody has goals they are trying to reach. ... Being a small company, a woman-owned company, that all helps.”

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that the WBE certification “helped the most with federal work. We didn’t realize how important [certification] was for federal work, but since we’ve been bidding some military work, we see that this is where we should have been looking.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that the firm’s WBE certification was not useful initially “because most of the clients were in the private sector. As I learned of the opportunity, and I pursued it, and that helped me grow. It is certainly advantageous.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that he perceives a value to certification. He said, “Many projects ... have WBE and disadvantaged business, small business set asides. So [certified firms] get some priority as a small company going up against the big ones.”

Interviewee #BGP10, a principal at an engineering firm, stated that he does feel that there is value to certifications, and “many of the agencies that do have goals or programs require certification.” He reported that the firm obtains “a large percentage” of its business because it is a small business. Interviewee #10 said more agencies seem to be using “the small business as opposed to the other categories,” particularly since Proposition 209 “was passed about 10 years ago, that basically said in California you’re not supposed to discriminate on the basis of race, religion and all that sort of thing.” He estimated that the firm obtains “about 20 to 25 percent” of its business because of its DBE certification. He said that “the DBE percentage [requirement] is usually associated with some federal funding.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that they attribute a value to certification because “it opens up doors for us, helps us grow the business.” Interviewee #12 reported that approximately 30 percent of the company’s business is obtained as a result of its DBE certification.

Interviewee #BGP13, the owner of a non-certified construction firm, said that the company was not certified, but if the company did more public sector work, it “would probably pursue at least one of those classifications to aid” the company in obtaining work.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, commented that she sees a value to certifications, particularly “as a woman-owned business.” She said, “It allows me to introduce myself to the prime.”

Other interviewees perceived limited or no value to certification. [Interviewees #BGP: 11, 13, 14, TA #2]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he was unsure of how much of the company’s business is attributable to the company’s DBE status. He said that he thinks the certification played a role in the company’s bid on

a Burbank contract, but he does not think that it has “much to do with anything” and will not carry much weight in the future. He added, “I wish it did, but it doesn’t.” He said that he once believed there was a greater emphasis on certification, but the benefits of certification seem to be declining, and today, it does not seem that important.

Interviewee #BGP13, the owner of a non-certified construction firm, said he does not think that certification is “an advantage in the private sector.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that he would attribute “less and less” of the company’s business to its MBE/DBE certification. He stated that in 2003 “there were actually bids that” called for a certain percentage use of certified companies, and that would result in a certified company winning the bid. He said that, today, use of certified companies “does not seem to be criteria that is required on all of these projects,” so “they don’t give [the company] any percentage point extra on a bid because we’re minority business, but they like to know that we are because they have certain federal requirements that they have to put down.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that “The certification process is pretty good, but the commitment for people to honor the certification is below standard.” He stated that there would be a benefit to certification if people would enforce utilization.

One interviewee identified certain disadvantages to certification. [Interviewee #BGP4: 1].

Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that the certifications do have some disadvantages. He said, “There are firms that use my name as their DVBE to win the projects, and I never heard from them. When that happens with state work, I report it to the state, and the state pays me my share. I don’t know if the state punishes the architect of record. Some of the same firms call now, and I tell them that I won’t work with them.”

Recommendations regarding the certification process.

Some interviewees recommended that the certification application or renewal application be simplified or condensed. [Interviewees #BGP: 1, 6, 10, 12]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that a firm’s minority status should not be re-evaluated during the renewal process.

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that the certification process would be easier “If more agencies used the CUCP (California Unified Certification Program).”

Interviewee #BGP10, a principal at an engineering firm, recommended “[h]aving fewer certified agencies and [a] more consistent” standard for what is considered a small business or what qualifies for certification. He said that some agencies have net worth criteria or other criteria that add another layer of complexity. He said that he would prefer others agencies to adopt the SBA’s definition of a small business, which is “uniform and can be applied over a wide variety of businesses because they have quite an extensive list of categories [into] which various businesses fall.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that the certification “could be streamlined” but added that “they’re pretty diligent in California.”

One interviewee recommended enforcing MBE/WBE/DBE utilization on projects with participation requirements. [Interviewee #BGP: TA #2]. Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that his recommendation would be “to hold the developers and contractors accountable for utilizing the required participation, whether it’s MBE, Help Fund, whatever it could be ... and penalize them if they don’t.”

SDCRAA Anecdotes Regarding Certification

The following anecdotes regarding certification were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

The certification process.

Some interviewees described the certification process as being long and time consuming or as otherwise cumbersome. Interviewee #SD4, representing a white male-owned firm, stated that the certification process is “slow.” He described an African American male-owned firm with whom he has worked in the past that has never been formally certified because of how much time the process takes.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, did not have positive impressions of the certification process: “[The certification process] sucks! I had to prove that my wife was black.” He went on to say that the process “is very time consuming.”

SDTA #6, representing an Asian American trade organization, said that the certification process can be “extremely onerous” and that many of the organization’s members do not have the expertise to fill out all of the forms.

Interviewee #SD19, representing a white male-owned firm, indicated that it is difficult for firms to get certified, particularly those with multiple owners: “At one point our company was owned by one woman partner — 51 percent — but because of our structure we couldn’t certify. It is tough to get that certification. Certification is more for those companies that are sole proprietors.” She went on to note that “the perception of being MBE or WBE doesn’t benefit anyone. You need the certification.”

Interviewee #SD17, representing a white female-owned firm that is in the process of becoming certified, indicated that the certification process is difficult and requires a great deal of work: “I’m doing the paperwork to become a certified WBE with Caltrans; it is a lot of work.”

Interviewee #SD18, representing a white female-owned firm that is not certified, said that the firm’s reasons for not becoming certified primarily have to do with their reluctance to publicize personal assets and finances: “If we publicized our personal assets and financials, the unions would have a field day.” Interviewee #SD18 went on to say that if the firm did not have to report their assets in a line item fashion, then they would be “more than willing” to go through with the certification process.

Interviewee #SD43, representing a Hispanic male-owned firm, reported that her firm is not yet MBE certified, because the process is so cumbersome and time-consuming: “It’s a difficult process ... It’s just very time consuming.”

Some interviewees described the certification process as simple and straightforward.

Interviewee #SD14, representing a Hispanic American male-owned firm, remarked that the certification process is relatively easy and “didn’t cost anything but time.” Interviewee #SD20, representing an Asian American male-owned firm, characterized the process as “easy.”

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, stated that the certification process was no more difficult than applying for a loan. She said that the Unified Port of San Diego provided her with assistance in getting through the certification process.

Perceived value to certification.

Many DBE certified firms recognized the benefits of certification. Interviewee #SD20, representing an Asian American male-owned firm, attributed the growth of his business in part to his firm’s DBE certification: “[DBE certification] really helped to grow the company and open doors. However, he pointed out that his firm’s DBE certification only plays a role on federally-funded projects.

Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, said that all of her airport revenue comes as a result of her ACDBE certification. She went on to say that she strongly supports DBE programs and that discontinuing them would be harmful to both minority- and female-owned businesses.

Similarly, Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, acknowledged that without the ACDBE program, her firm would not have had the opportunity to work as a concessionaire at the Airport.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that the firm would not be doing business at the Airport if it were not for their ACDBE program: “If [the master concessionaire at the Airport] was master lease and there was no DBE program, we could kiss this lease goodbye ...” He continued, “The certification has created opportunities for me ...” Interviewee #SD 12 added, “For [the master concessionaire] to be a success they had to meet the 30 percent [ACDBE] goal. They did not choose us because [the master concessionaire] is the good guy – it is because they had to do this to do business. If [the master concessionaire] didn’t have to do this they wouldn’t have used us.”

Interviewee #SD8, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that his MBE status was one of the primary reasons that he pursued and won a concessions opportunity at the San Diego International Airport.

Interviewee #SD10, representing an African American male-owned firm, reported that his firm’s DBE certification has certainly been beneficial: “I am a certified firm — that is a benefit to me and to the prime contractor using my services ... I would say that 99 percent of the agencies or private companies using us are using us to meet their [DBE] goal.” However, he cautioned that being DBE

certified does not solely determine success: “If you go into a business thinking that MBE, WBE certification [alone] is going to make you successful, it’s not the case.”

Interviewee #SD2, representing a white female-owned firm, reported that her firm’s WBE certification has led to more relationships with prime contractors as well as to more work. However, she also noted that she has “won over” other local firms and agencies because of the quality of her work.

Interviewee #SD28, representing a white female-owned firm, indicated that the primary advantage of being DBE certified and of good faith efforts is that it forces prime contractors to at least consider her firm for subcontracting opportunities: “The contractors have to look at us a little closer ... before [good faith efforts] they might not have even looked at us or even given us a shot.” She continued, “In our business, if we can get our foot in the door, usually we can get the door open and get in. [The certification] helps quite a bit.” Interviewee #SD28 made clear her belief that firms should not be given contracts just because they are DBE firms, but that they should be given the opportunity to demonstrate that they can do the work: “I’m not saying you should be given the job just because you’re a DBE ... give the company a chance to do that work and prove that they are equal [to majority-owned firms].”

Similarly, Interviewee #SD30, representing an African American male-owned firm, indicated that DBE certification gives small firms a chance to break into the industry: “Being certified ... gives the small [firms] a foot in the door to play with the big boys a little bit.”

Interviewee #SD36, representing an African American male-owned firm that is in the process of becoming certified indicated that the certification will help his firm get business: “Certification could help us get more business. [Certified firms] get the first choice to get the contract. Typically, the minority contractor does not get the big contract ... The DBE certification system makes [public agencies] do what they don’t typically want to do [and award contracts to minority-owned firms] ... With certification, they put companies like me at the front. That is how I see it benefiting me.”

Interviewee #SD47, representing an African American female-owned firm, reported that nearly all of her business comes as a result of her DBE certification. She said that she spent several years building a reputation for her firm before becoming DBE certified and marketing her firm as such.

Some firms that are not DBE certified recognized the benefits of certification. Interviewee #SD16, representing an African American male-owned firm that is currently working through the certification process, attributes getting work with the Airport to his firm’s small business certification: “Certification landed me work here with the airport ... It makes me visible.” Interviewee #SD16 indicated that he viewed DBE certification to be just as useful as his small business certification.

Interviewee #SD18, representing a white female-owned firm that is not certified, said that her firm misses out on certain contracts because they are unable to “mark the WBE box.”

Similarly, Interviewee #SD19, representing a white male-owned firm, said, “We probably miss out on a lot of jobs because we aren’t certified.” She went on to report that her firm has been denied subcontractor opportunities, because they are not DBE certified: “We have been passed over at least three or four times before, because we don’t [help the prime contractor] meet the DBE or WBE certification goals....”

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, indicated that a firm's DBE status likely plays a substantial role when public agencies award contracts, "I think having the DBE designation would help, and I think it will probably help the next time [a contract] goes out to bid."

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, reported that the Airport gave at least one firm the opportunity to work as a concessionaire because of its MBE/WBE status: "[The firm] ... probably would never have ended up as an airport retailer if not for [the ACDBE program]." Interviewee #SD13 went on to assert that the Port Authority (who was in charge at the time) approached the owner of the MBE/WBE as a potential subtenant precisely because she would be qualified to be ACDBE-certified.

Interviewee #SD31, representing a white male-owned firm that is DVBE certified, indicated that he definitely sees advantages to DVBE and MBE/WBE certification: "[The certification] gets people's attention. It says, 'We should at least look at this company,' where as before ... we would just be part of the herd." However, Interviewee #SD31 also pointed out that a potential disadvantage of certification is the stigma with which it might come: "Most people assume that ... certification does not equal competency. ... So the question is, are you really a competent firm, or are you just trying to ride your certification?"

Several firms argued that there is no advantage associated with certification. Interviewee #SD14, representing a Hispanic American male-owned firm, stated that there are no benefits associated with being certified: "There is no advantage anymore of being a DBE ... I don't get any of my work from DBE [goals]." He went on to say, "DBE goals are out. ... There are no benefits at all [to being DBE-certified]."

Interviewee #SD5, representing an African American male-owned firm, said: "There are some serious low baller bids that knock other bids out. The low bid gets the contract." Similarly, Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that, like other contractors, he does not consider minority or gender status when selecting subcontractors — he simply selects the subcontractor that submitted the lowest bid.

SDTA #7, representing a construction trade organization, said that the primary consideration that prime contractors make in selecting subcontractors is low bid status (i.e., prime contractors select the lowest bidder). Regarding that selection process, SDRCONTA #7 said, "The minority community doesn't quite understand [the selection process]. There isn't any special stuff going on." SDRTA #7 went on to say that his organization's Hispanic members tend to not get certified, because they do not see any advantages associated with certification: "... [Hispanic contractors] don't tend to get into the programs and stuff as much. They don't even try to get certified.... They're all sorts of them out there that just don't pay any attention to the DBE programs, because it's a lot of crap."

Interviewee #SD6, representing a white male-owned firm, said, "the DBE program doesn't help anyone."

Interviewee #SD31, representing a white male-owned firm that is DVBE certified, said that he questions the legitimacy of MBE/WBE certification: "DVBEs are different than everybody else. The state monitors our certification yearly. We don't go to some funky non-profit organization and say,

‘Hey, guess what — I’m a minority!’” I really question ... some of those [MBE/WBE] certifications and how valid they are.”

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that less than 10 percent of his firm’s sales can be attributed to DBE goals. He said that the firm does not market itself as a DBE — to get work, it relies heavily on the reputation it has established over the past 35 years.

Interviewee #SD44, representing a Hispanic male-owned firm, stated that his firm was previously MBE certified as a Hispanic American-owned firm, but it did not renew its certification because “it wasn’t worth it.” He indicated that his firm had no trouble getting certified, but working with public agencies as a DBE — particularly Caltrans — was difficult: “It was a pain ... all the hoops they want you to jump through to try and sell them a product ... was too much of a hassle.”

Interviewee #SD46, representing an African American male-owned firm, indicated that his firm’s DBE certification only accounts for approximately 5 percent of his firm’s work. He noted that his firm does not “market” its certification status when responding to bid solicitations from prime contractors. When asked if there are any advantages to being DBE certified, Interviewee #SD46 said, “I don’t see any benefits.”

Consortium Anecdotes Regarding Certification

The following anecdotes regarding certification were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

The certification process.

Some interviewees reported a positive experience with the Consortium’s certification process. [Interviewees #CON: 9, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 28, 30, 35, 36, 38, 39, 43, 44, 46, 48, 52]. Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that although he has not had experience with the certification process since 1987, he believes that the process is getting “smoother and smoother.”

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, reported that the certification process involved a lot of paperwork and it was a long process; overall it was a positive experience. Interviewee #CON10 stated that it took them approximately eight hours to complete the paperwork.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that the certification process was fairly easy and took her about 15 minutes to fill out the forms online. She stated the L.A. County MTA process was more involved including an interview; she stated that paperwork took “a couple of hours” to complete.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the Consortium certification process is “fine.” He stated the Consortium does a pretty good job of site visits, surveys, and audits. He stated that there are forms to fill out and the certification process is in line with the certification process of other states.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that with respect to the Metrolink certification process, the forms are challenging but Metrolink has done a better job of streamlining the process.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated the certification process is not too cumbersome. The company is currently involved in the certification process with L.A. County MTA.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, felt her experience with the Consortium certification process was excellent.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that her experience with L.A. County Metro's certification process was easy.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had no problem with the Consortium's certification process.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that his experience with certification occurred a long time ago. He recalled that it required a lot of paperwork but overall there was no problem.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that her experience with certification was good in that it proceeded smoothly.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience with the Consortium's certification process. His administrative assistant stated that their contact at L.A. County MTA was very helpful and supportive.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he had a fairly good experience with the Consortium certification process.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that a large prime contractor assisted him with obtaining his certifications; they walked him through the process which made it easier for him to become certified.

Interviewee #CON35, an African American female-owned WBE/MBE-certified management consulting firm, stated that the Consortium's certification process was simple and easy.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that the certification process was smooth but involved a lot of paperwork.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he had a relatively good experience going through the certification process. He stated they performed a very diligent and thorough

investigation. In his opinion it was a “meaningful operation” and he was very happy that they took the time to make sure that you qualify as a DBE when you apply for certification.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that the process was adequate and did not notice anything out of the ordinary.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that the Consortium certification process was smooth with no problems.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, described the certification process as fine and smooth.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that L.A. County MTA made the certification process easy.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that the certification process was quick and painless.

Some interviewees reported challenges in connection with the Consortium’s certification process. [Interviewees #CON: 12, 16, 17, 18, 25, 26, 29, 32, 33, 34, 37, 40, 41, 42, 45, 47, 49, 50, 51, CONTA #2, PF #4, 12]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that his business was certified through the Consortium through OCTA. They had originally tried to get certified with the City of Los Angeles but they take “forever” and you can wait years before receiving your certification. He stated that the process with OCTA was “excellent” and they received their certification within three months, in part, because the effort was driven by a proposal.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, indicated that the certification process was somewhat cumbersome because of the amount of paperwork, specifically the volume of financial data required to be produced; as a smaller company, Interviewee #CON16 stated that it did not have ready access to all of the financial information requested during the certification process. According to Interviewee #CON16, there is always more paperwork, and it is very repetitive.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the certification process is cumbersome. Interviewee #CON17 stated that very early in the certification process, many, many years ago, the certifying agencies were suspicious about where certain monies came from during start up. The agencies were suspicious that Interviewee #CON17 was not actually running the business herself, but that it was a front.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, indicated that most recently, the certification process was easy, but that a couple years ago it was extremely arduous and it took her more than a year to get certified. She was surprised during the last renewal process when it only took about two weeks to receive the certification paperwork back after submission. Interviewee #CON18 noted that the certification process has greatly improved over a very long time frame. In the past, Interviewee #CON18 stated that she was often faced with many repetitive requests for information, and the time associated with certification was “unsettling.”

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that the Consortium's certification process was tedious.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, found the Consortium certification process to be complicated and incredibly time-consuming. She also thought that it was invasive in terms of the financial information requested.

Interviewee #CON29, an African American male-owned electrical contractor, stated that he has attempted to get certified but he feels frustrated that after 21 years he has not been able to get certified. He stated that the certification process is difficult, tedious, and hard to understand.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that the certification process was not easy; they had to submit a lot of documents. He understood that was the process so he followed the rules with the hope that it would provide avenues to do business with the L.A. County MTA.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, felt that there was a value to certification. She did, however, state that Caltrans was two years behind on approving applications for certifications; the L.A. County MTA was very slow, and the state process is confusing. She also stated that some other agencies' certification process was not very good. In her experience, BART (Bay Area Rapid Transit) was the best. Her recommendation would be to have a "Unified Qualification Process," where one clearinghouse can review applications and issue certifications that will be accepted by all the agencies.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that the certification process was tedious. She stated that BART's (Bay Area Rapid Transit) system is better by comparison.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that the certification process involved a lot of unnecessary and intrusive paperwork.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the certification process was not completed in a timely manner.

Interviewee #CON41, an Asian American male owner of a DBE/MBE-certified general contracting firm, stated that the certification process was tedious and filled with a lot of paperwork.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, felt that there was a lot of paperwork involved in the certification process. She stated that there was so much paperwork that she considered not renewing her certification. After some serious reconsideration, however, she decided to renew it.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated she feels that the process to renew certification is too extensive and extremely invasive. She stated that it was too time-consuming and all around "too much."

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that the certification process was lengthy. He stated also that the L.A. County MTA lost his application and he had to complete the process all over again.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the certification process and the information requested is not relevant to the actual job that they do.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that there was a lot of paperwork although he was used to that given the nature of his business. However, he stated that there were too many reasons to potentially exclude an applicant.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, felt as though the certification process was very cumbersome. He stated that it took too long to complete, there was too much paperwork, and “even the renewals take a lot of time.”

CONTA #2, the President of the Black Contractor’s Association, stated that his association’s members find the certification process intrusive. Many members do not want to provide their tax information and are concerned about who will see the information.

PF #4, an individual representing a certified MBE firm stated that the certification process to become an MBE was fraught with requirements that resulted in the certification process itself becoming a real impediment to participation by small businesses in large contracts. She suggested that, “There has to be a better way, or your staff needs to be better trained to work with small businesses to obtain the certification.” (Public Forum Los Angeles held on October 20, 2009).

PF #12, a Hispanic individual who is a ‘Principal’ of his company provided oral testimony at a public forum held on October 20, 2009. His main concern was that the certification process to become a DBE was keeping qualified small businesses from participating in contracts. He stated that a change to the certification process would improve the lot of all disadvantaged businesses in the public sector contracting process. (Public Forum Los Angeles held on October 20, 2009).

Some interviewees reported having either limited or no experience with the Consortium’s certification process. [Interviewees #CON: 1, 2, 3, 6, 7, 8, 27]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, does not have any experience with the Consortium certification process. He has applied for certification with other agencies but he does not believe that there has been any value to the certification; the amount of paperwork is “kind of ridiculous.”

Interviewee #CON2, a DBE-certified African American male owner of a structural engineering firm in the San Diego area, had no experience regarding the Certification process. He stated that he has considered working with the Consortium but he is too busy to have time for the cumbersome certification process.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that he has only remote knowledge about the Consortium’s certification process. Between 1990-1995 one of the firms that he worked at (prior to starting his current business)

mentored small firms so he was a little more involved as to the requirements of those businesses but does not currently have much knowledge about the process.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that their certification is through Caltrans so they had no experience with the Consortium's certification process.

Perceived value of certification.

Most interviewees perceived a value to certification. [Interviewees #CON: 2, 3, 4, 5, 9, 10, 12, 13, 14, 15, 17, 19, 20, 22, 23, 24, 25, 26, 29, 30, 32, 33, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 51, 52, 55]. Interviewee #CON2, an African American male structural engineer in the San Diego area, is not certified but stated he thinks that there could be some value to the certification process because the Consortium agencies encourage minority hiring. It could open a door if the prime consultants are willing to work with DBEs.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that he does think there is value to the certification process. However, there are problems with certain firms obtaining DBE certification inappropriately (i.e., DBE fronts). Interviewee #CON3 stated that the certification procedure used by the Consortium sometimes allows participation of firms that do not really qualify. He stated that these DBE fronts still exist today but could not identify any specific projects they worked on. However, he does not believe that the business owner's status as a minority or woman matters in the end. He stated, "If you do a good job you get work, if you do not you won't." Firms that continue to grow do so because they do the work properly.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that there is value to certification because once he made the decision to concentrate on public works projects, the certification helped. Without the certification, he believes that none of the prime contractors would have come to his company to request proposals. He stated the fact that his company is certified as a DBE definitely helps in terms of getting solicitations from the prime contractors. When the DBE Program was dropped by Caltrans he saw a decrease in requests for proposals. By that time, however, he had already established the company and had working relationships with the prime contractors so the prime contractors kept coming back.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, thinks that certification is valuable because many of the governmental entities have to have a certain amount of DBE contractors on their teams. The prime contractor has to look at what percentage of the RFP or proposal request is requesting DBEs and they have a list of certified entities that they pull from. Also, Interviewee #CON5 stated that electrical engineering is one of the areas in which the agencies want DBEs.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that there is a value to certification and that is "what started the company and what grew the company" (his company graduated from the DBE Program in 2004).

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that there is a value to certification and they would not be in business without it.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that “unfortunately” there is a value to certification. He stated that in many cases when they team up as a prime contractor they solicit or team up with larger firms because they are a DBE; this selection is based on qualifications. In contrast, however, when their firm is selected, he said it is based on their DBE status instead of on their qualifications.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that certification is valuable to a company that is just starting out and it has helped him sustain his business. He also said that the contracts received due to his certification have been helpful.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that there is a value to certification.

Interviewee #CON15, a Hispanic American male owner of an MBE-certified engineering and construction company, feels that there is value to certification, but that it is more “obvious” with Caltrans than with the Consortium entities.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that certification is a priority and that it is very important to her company. To Interviewee #CON17, having her certification is like doing her homework and being ready for opportunity to come.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that certification could be valuable if he could get more work.

Interviewee #CON29, an African American male-owned electrical contractor, stated that even though he is not certified he feels that there is a value to certification. He stated that he believes with certification his business would flourish and he would not be in the situation he is in now where he has to travel down to the valley and to San Diego to wherever the work is.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there is a value to becoming certified. He stated that it helps small firms open relations with large firms and builds relationships that can be longstanding and profitable for both parties involved.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, perceived a value to certification — that is why they went through the process.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that there is a value to certification but she did not know to what extent. She is not able to determine the effect of certification on her business’ ability to obtain work.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated there was “absolutely” a value to certification; he

stated that getting certified sends the message that small businesses are really in business to do business and are serious about being competitive.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that there is definitely a value to certification; this is the only thing that makes going through the certification process worthwhile.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, attributed 30 percent of his business to his DBE certification, but did not know whether there was a value to certification.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that there is definitely a value to certification when bidding because it provides necessary government documentation.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that there is a value to certification on federal projects, but not at the local level. He stated that ever since Proposition 209 passed, there are no more goals on projects. He stated that the City of Los Angeles has a policy known as “best efforts” which he does not believe is effective. He stated that the City of Los Angeles should have goals so that the DBEs can get work.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that there is absolutely a value to certification.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that there is a value to certification although sometimes it is a double-edged sword and does not do a whole lot. Nonetheless, he felt as though certification is good to have and the good outweighs the bad.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, reported that there is a value to certification because now government jobs would be awarded to his firm.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that there is a value to a business having certification depending on state law.

Other interviewees perceived limited or no value to certification. [Interviewees #CON: 6, 11, 18, 21, 27, 28, 31, 34, 35, 37, 47, 49, 50, CONTA #1, 2]. Interviewee #CON11, a SBE-certified white female ergonomic prime consultant, stated that she has not seen any monetary benefit to having certification. Interviewee #CON11 did not have any recommendations for improving certification; she stated that certification is not the issue that impedes her ability to do work with the Consortium.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, does not believe that there is a value to certification, but she does not think that it hurts to be certified. Interviewee #CON18 is not sure whether or not she has won or lost a job as a result of having any certification. She is not sure how it hurts, but how much it helps is difficult to quantify. Interviewee

#CON18 stated that in the past, the certification process used to have more value because it got you onto bid lists. Now she is not sure how that happens.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, felt there was absolutely no value to certification. She believes that the City of L.A., in general, is unfriendly to small businesses. She feels that it should follow the federal small business guidelines like the U.S. Department of Housing.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that there used to be a value to certification, but now, he stated, it is kind of useless; he stated that his company receives very little business as a result of certification.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he did not see any value to the certification process.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, feels that he has received almost no business due to his multiple certifications. In the years he has been in the business, he feels that the work he has received has been because of his proven record as opposed to any of the certifications; he is starting to question the value of certification. He has done one job for a contractor in Long Beach and they did ask about his SBE HUD Section 3 certification. He stated that maybe there is some value to being certified because of the advertisement in the Blue Book, and it does result in inquiries in to his business and their services and can lead to work.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, does not feel that there is a value to certification. She believes that there is a negative connotation associated with being a certified DBE/MBE/WBE when seeking potential work.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that certification helps with relationship building, but it does not give you an edge or help economically.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, did not feel as though there was a value to certification and stated that he has not received a single contract as a result of his certification.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the certification does not carry the same weight or value as it did in years past.

CONTA #1, the President of the Latino Business Owners of America, stated that most of his members feel that the certification programs are “a joke.” He stated that many of his members do not renew their certifications because unless they are versed with the process, certification does not accomplish much for his members. His members become discouraged when they do not receive contracts and then often do not renew their certification. His members cannot afford to divert their attention for a couple of weeks to a RFP when they are not sure that their efforts will be fruitful; they need to keep cash flowing. When a small business ties up its assets on a public project, they cannot operate effectively in other areas and many of his members are not willing to do it. He provided one example of a trucker, for instance, who lost everything because he was unable to grow his business.

CONTA #2, the President of the Black Contractor's Association, stated that members sometimes feel there is value to the certification and other times not any value to the certification. He stated that certification encourages prime contractors to use DBEs, however, the prime contractors only use those DBEs when they are required to do so and do not use them when not required to do so. He also stated that the value of certification diminished after Proposition 209 was passed. He stated that Proposition 209 did away with race-conscious programs, and this has had an impact in terms of the availability of public work. He stated that some contractors do not call DBE subcontractors at all anymore.

Recommendations related to the certification process.

Several interviewees recommended streamlining the certification process such that certification applies from agency to agency. [Interviewees #CON: 1, 13, 16, 30, 33, 34, CONTA #1].

Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, recommended making the certification process easier and involving less paperwork. He stated that it would be helpful to have a single entity responsible for maintaining certification and then allow other agencies to cross-reference the information. He stated that the certification process has deterred him from bidding on a number of projects because of the time and resources involved.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, recommended more reciprocity between agencies and from state to state with respect to certification. He stated that the certification process requires a lot of paperwork and red tape, but he understands the need for it and thinks that the process is reasonable.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that one problem with the certification process is that the various certifying entities do not recognize each other's certifications – each year there is a requirement that “change affidavits” be submitted, in addition to more documents and financial paperwork. But Interviewee #CON16 noted that he understands the reasoning for the extensive paperwork, acknowledging that one of the goals is likely to eliminate non-DBE/minority “figureheads” who are not actually running businesses. Interviewee #CON16 suggested that the certification process be simplified such that each of the certifying entities recognizes other certifications for the full length of the certification period.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended that the certification process be nationalized so that there will be a national database that can be accessed by agencies and other entities seeking such information. This would eliminate the need to be certified with multiple agencies that have diverse and tedious processes in place.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, recommended implementing a “Unified Qualification Process,” where one clearinghouse can review applications and issue certifications that will be accepted by all the agencies.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended a nationalized certification program whereby certification would be accepted in all jurisdictions.

CONTA #1, the President of the Latino Business Owners of America, stated that one way of improving the certification process is to streamline the process. He suggested eliminating the need to certify for each agency and have one certification apply for each agency. He also stated that the program needs to encourage businesses to participate. He stated that although the agencies or prime contractors say there is no availability of DBEs for particular projects, if the Consortium created more opportunities, these businesses would develop. He also suggested better outreach efforts. He stated that the Consortium should try to better disperse revenues evenly among larger and smaller businesses. He also suggests that the Consortium stop requiring certain specializations for projects if the contractor has some general area of knowledge that could apply to projects. He also suggests that the Consortium stop requiring particular products that prime contractors have an exclusive on and state in the specifications that a comparable or equal product may be used.

Other interviewees recommended simplifying the application process. [Interviewees #CON: 4, 14, 20, 25, 26, 27, 29, 30, 39, 41, 42, 50, 51]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, recommended making a change to shorten the time it takes for certification and making the process easier. He noted that the time investment is difficult for a small business. Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that it is hard enough for a small business to get started without the added attention required to complete the certification process. He stated that the certification process requires the attention of the president of the company, an additional person, and a lot of resources.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the “system” can be confusing and the Consortium could do a better job of explaining how to get through the evaluations. She stated that site visits are an imposition for small businesses. She stated a classic example was that her business lost its certification in San Francisco because of three random site visits while her staff was out in the field; she was very frustrated and there was nothing that she could do about it.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that it took six months for his certification to be approved after he submitted his application. He was told the delay was due to a backlog of applications. He recommended streamlining the application process so that it does not take so long.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, recommended that the Consortium adjust the amount of required paperwork according to the size of the firm; she stated that many of the questions did not apply.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that since most businesses applying for certification are small, it would be preferable to reduce the amount of paperwork involved.

Interviewee #CON29, an African American male-owned electrical contractor, stated that the application process should be easier to understand and accessible to everyone interested in the certification process. He stated “make the knowledge available.”

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there should be a shorter turnover period for processing and review of applications. He

stated that the timing is inconvenient and it takes too long to receive certification. He does not understand why it would take over 30 days.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, recommended that paperwork be streamlined. He stated that the certification application requires a tremendous amount of hours to complete.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, recommended making the required application forms available online.

Interviewee #CON41, an Asian American male owner of a DBE/MBE-certified general contracting firm, recommended streamlining the application process; they stated that it took a long time to prepare which took away from their other business.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that the paperwork should be streamlined and less intrusive.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported that the certification process was “intrusive” and had a number of requirements that were “invasive;” he did not understand the need for some of the requirements.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, recommended streamlining the certification process and noted that it would speed up if the agencies were not short-staffed. He stated that the L.A. County MTA needs more staff in order to handle the certification applications.

A few interviewees recommended changes to the certification process or to the qualifications.

[Interviewees #CON: 6, 26, CONTA #2]. Interviewee #CON6, a white male co-owner of a non-DBE Native American and white owned recycling and materials supplying company in the San Diego area, could not make many recommendations for changes or improvements to the certification process because he was not that familiar with the process, but did suggest that the threshold amount be raised to include companies with volume under \$2 million so that more businesses can qualify for the program. Interviewee #CON6 also stated that government should support small businesses by not placing so many financial restraints on the business (such as permitting restraints).

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the Consortium should modify the qualifications to accommodate small businesses and make the request for financial information less intrusive.

CONTA #2, the President of the Black Contractor’s Association, recommended the following changes or improvements for the certification process: the process should be streamlined; applicants should not be required to provide tax records, and a sworn affidavit regarding the applicant’s financial status should be sufficient. In general he suggested less bureaucracy.

Two interviewees noted that the process has changed and the Consortium should reevaluate the certification process. [Interviewees #CON: 24, 39]. Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that L.A. County MTA has “changed the ball game” and the process should be evaluated.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, suggested that the Consortium revisit the application process. She feels that some of the questions are ridiculous such as the size of her firm as it relates to her ability to perform on large projects. She does feel, however, that as far as some of the DBEs are concerned, if they cannot complete the forms then they do not need to be certified. She stated that in her opinion some of the questions help with the vetting process assisting in sorting out companies that cannot handle the work. This saves her firm and many other firms from wasting a lot of time using companies just because they are DBEs and not based off of their qualifications.

Some interviewees wanted to see a more immediate benefit to certification. [Interviewees #CON: 5, 28, 32, 36, 37, 47]. Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, recommended that the Consortium allow companies like his that are minority run to qualify as a DBE even if the owner is a non-minority.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, recommended that the Consortium increase vendor participation.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, wanted to see a more immediate benefit to certification.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she became certified to obtain new business, but she has not in fact obtained any new business. She stated that there needs to be a system whereby DBEs are monitored, and thus leveling the playing field and making it fair for all contractors, large and small. She stated there has to be some way to make sure that everyone gets a piece of the pie.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that the Consortium needs to provide a significant amount of contracts on a rotating basis to allow businesses who have not yet developed beneficial connections to be involved in projects.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that it seems as though all of the large firms receive the contracts over and over again. He stated that he wants a contract with the Consortium and is frustrated that he has not received one.

Caltrans Anecdotes Regarding Certification

The following anecdotes regarding certification were obtained from interviews that the study team conducted in connection with BBC’s 2007 Caltrans study.

The certification process.

Most certified interviewees described the certification process as long and difficult. Interviewee #CT1, a Native American male-owned firm, said it was “difficult” to get certified. He said it took about six months “and that was after I submitted extensive really thick applications.” He said it

would be nice if the process was shorter, and noted that the people at Caltrans told him that they were understaffed. He said the application was straightforward although they required a lot of information.

Interviewee #CT33, a Hispanic female-owned firm, said that the Caltrans certification process “is okay” but felt Caltrans staff was “non-responsive.” She often had to remind Caltrans of certain paperwork and that she was waiting for a response on something she had given to Caltrans three months before the interview. She said delays by Caltrans in processing the company’s certification and the company’s name change caused problems, since it had to explain to other contractors that the company is certified as both an MBE and a WBE, but that Caltrans was behind on the paperwork.

CATA #2, an African American trade association, stated that the DBE certification process had been “fairly easy” for his personal business, but that he had to struggle with Caltrans to get the agency to recognize a category of petroleum supplier. He also said that the process is perhaps too intrusive, as Caltrans asks for things like the businesses’ bank signature cards.

Several interviewees offered experiences with recertification. Interviewee #CT31, an African American female-owned firm, stated that the recertification was “burdensome,” “cumbersome,” and “slow.” She stated that the company has been certified for a long time and that “being recertified should not be the issue that it is.”

Interviewee #CT46, an Asian American male-owned firm, expressed frustration with the recertification process, saying that this process involves “a lot of work,” and indicated that it is rather difficult to find someone with whom he can speak in person and find out the status of his recertification application. According to Interviewee #CT46, “you don’t even really know what phone number to call anymore. You’re always on hold. You don’t really know where to begin. You just send your package in. You don’t know if they’ve received your package or not.” Interviewee #CT39, a Hispanic male-owned firm, stated that the recertification process was not “too bad” and said that the documentation and paperwork required “was not a huge problem.” He recommended that Caltrans check-up and make sure that the people who are claiming DBE status “actually deserve the classification.”

Interviewee #CT8, a Hispanic male-owned firm, stated that “CUCP is a problem” and that “[i]t was pretty hard to do.” According to Interviewee #CT8, he received recertification paperwork telling him he had to reapply within 10 days of the letter’s date even though he did not receive the letter until three or four days after it was dated. He said that he has called the person with whom he had originally spoke at the CUCP, but that he “cannot get a hold of her to save [his] life,” and that “she doesn’t return phone calls.” Interviewee #CT8 suggested that the DBE certification process could be improved by CUCP’s establishing more branch offices so that businesses could visit them in person.

Most interviewees felt the certification process was ultimately fair. Interviewee #CT46, an Asian American male-owned firm, stated that there was an “insurmountable” amount of paperwork required in order to become certified, but in the end he felt that this was “a good deal” because “it keeps ... people that probably aren’t deserving or just everybody from getting it.” CATA #1, an Asian American trade association, thought that Caltrans’ certification process was fair and that there is “no handicap in that process.” He said that Caltrans had “substantially” improved upon the time it takes for businesses to get certified, shortening the time period from six months to a month or a month and a half. In his opinion, if Caltrans could further shorten the process, that would be even better.

Interviewee #CT81, a Hispanic male-owned firm, found the Metropolitan Transportation Authority (MTA) certification process to be fair. It was a tough process, but he expected it to be. He was lucky in that he had a very competent person from MTA guiding him through the process.

Some interviewees described the Caltrans certification process as simple and straightforward. [Interviewees #CT: 10, 29, 48, 51]. Interviewee #CT29, a Hispanic male-owned firm, described the experience at “actually very good.” He had the Los Angeles City certification, and under the reciprocity process, he was certified within a day or two.

Interviewee #CT51, a Hispanic male-owned firm, stated that he had had no problems with the Caltrans (or now the CUCP) certification process and that the paperwork “is simple enough if you sit down and do it.” He thought that perhaps some people had problems because they do not understand what they are reading or do not take the process seriously. He said that recertification had not been a problem either, since the company had been in the ownership of his family for its entire thirty-five year history. He stated that though the Caltrans investigating process needs to be strong in order to discourage people from abusing or taking advantage of an idea that is “to help those people less fortunate that have the desire to work and want to improve their lives, ... to do it on paper and complicate life by creating bureaucracy is certainly not the answer to anything.”

Some interviewees expressed confusion over the interplay between Caltrans and other agency certification processes. Interviewee #CT67, a white female-owned firm, indicated that her experience with the DBE certification process was confusing and frustrating. According to Interviewee #CT67, she was first contacted by Caltrans and the Department of General Services regarding their DBE and WBE programs ten years ago. Five years later, she said, her file was sent down to Los Angeles from Sacramento. Next thing she knew, she was talking to people from the CUCP, who tried to explain the new “umbrella system.” She is confused as to why she still received notices from Caltrans. Also, someone at Metropolitan Water District (MWD) said it had their own certification system, which Interviewee #CT67 believes is part of a network that includes the Port of Long Beach and the San Diego School System. Interviewee #CT67 stated that she sent written questions to a representative at Caltrans regarding CUCP. Someone from Caltrans called her and explained that Caltrans certification process was now folded into CUCP, but she is still confused.

She attended a Caltrans workshop in Oakland in the fall 2001 where only three people stood up to say that they were DBE certified. At the workshop, Caltrans had tables set up so that firms could register on-site for DBE certification. Interviewee #CT67 was angered that she had put in so much time to get certified while other firms were allowed to register through what she perceived as an “instant DBE session.” Interviewee #CT67 suggested that Caltrans could improve its certification program through better communication.

Some interviewees expressed frustration related to denial of certification. Interviewee #CT6, a white female-owned business, stated that the company applied for DBE certification in the early 1990s. The company was originally owned by Interviewee #CT6’s father, but after his father passed away, ownership was transferred to his mother. The company submitted an application consisting of a 3-ring binder to Caltrans, but, according to Interviewee #CT6, a Caltrans employee simply disregarded it and “threw it away.” The company wrote a letter to Senators Diane Feinstein and Barbara Boxer complaining about the situation. Interviewee #CT6 felt that Caltrans “made a mockery” of his mother and him, since they spent months putting the application together and

received back only an empty binder. The company has not sought DBE (or similar) certification with any other agencies. Interviewee #CT50, a white male-owned firm, tried to certify his business as a WBE. At the time, there was a requirement that if his wife owned less than 51 percent of the business, one had to show exactly what tasks she performed. So, Interviewee #CT50 changed the ownership of the business to be 100 percent in his wife's name, but the process was simply too complicated and he ultimately said, "forget it." He had a lot of business at the time, so he decided there was no need to get certified.

Interviewee #CT68, a self-described "mixed-race" male-owned business, was refused certification by Caltrans even though his mother's birth certificate identifies her as "colored." A person at Caltrans told him that he did not qualify for DBE certification because he did not "live [his] life as a Black man." According to Interviewee #CT68, this person could not define for him what this phrase meant, and was "very racist." Interviewee #CT68 said that he argued with this person and eventually got his local Congressional representative involved, but that he later let it go because he understood that having DBE certification would not help his company get work.

Interviewee #CT63, a white male and female co-owned business, was denied certification because the name of the business suggested it was owned by the husband. The denial took 1.5 years to be decided. They were told they could appeal but they let it go.

Perceived value of certification.

Some DBEs recognized a value to certification. A WBE submitting written testimony stated: "I put a lot of my success on having the WBE status and being involved in the various associations [NAWIC and AGC of San Diego]." (Written testimony submitted 1/26/06).

A certified DBE submitting written testimony stated it did not start receiving inquiries and unsolicited requests for proposals until after it received its Caltrans certification, and, only then, on DBE participation goal contracts. He stated: "The program certainly has enhanced our firm's ability to enter and achieve some degree of success in the public sector contracting market." (Written testimony submitted 4/12/07).

Some DBE firms questioned the value of certification based on the fact they had not received any more work after becoming certified. Interviewee #CT13, a Pakistani male-owned firm, has been "pretty successful" in the public sector, but not with Caltrans. Interviewee #CT13 stated, "Despite all the effort and money spent getting DBE certification [from Caltrans], I have not received to the best of my memory any direct contract from Caltrans. I have responded to their RFPs. I'm a very qualified person, and my company [is] very qualified, but I don't know why we don't get work from Caltrans."

Interviewee #CT31, an African American female-owned firm, questioned whether the DBE certification process was worthwhile, considering the amount of work that his firm and others receive as a result of being certified – "What is the benefit of being certified by Caltrans or by any other agency when they are not promoting utilization anyway?"

CATA #3, a Hispanic trade association, stated that the DBE certification process consumes a lot of a businesses' time and resources because of the paperwork and documentation required. "Not too many people want to be DBEs anymore ...," said CATA #3, because of the process and/or because

they are not aware of any need to. He said that more of the association's members would get certified if being certified and participating in the program were more rewarding.

CATA #7, a Filipino trade association, reported that only about ten of their 200 members are certified as DBEs with Caltrans.⁶ Historically, the program does not work, "it's a lip service." Major primes team up with the same firms over and over and they do not reach out. Nonetheless, he feels there is value in certification. It opens some doors. CATA #7 is glad to see more unification with the certification process. Small businesses do not have the resources to get certified with multiple agencies.

A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: "If this program was a requirement, we would see return on the hundreds of hours that we've spend being awarded the DBE. It would be easier to market our DBE. We wouldn't be used to win work" and "cut" later by the prime contractor. "Again, we strongly believe that if DBE is a requirement and not just a goal, the purpose for which it was designed, for highly qualified firms like ours to get our foot in the door – would be worthwhile." (P.H. Los Angeles, 3/29/07).

An African American consulting firm, testifying at a public hearing in San Diego, did not see the value in certification, "the idea of having to fill out more paperwork or more documentation, it just wasn't worth it ... if you go through the hoops to get certified ... they just weren't paying any attention to you." (P.H. San Diego, 3/22/07).

A Hispanic female-owned consulting firm stated, at a public hearing in Los Angeles, "most DBEs said they don't have interest in maintaining [certification] ... because they were inundated with faxes and calls that did not materialize into any real opportunity." (P.H. Los Angeles, 4/4/07).

A minority female-owned business testified at a public hearing in San Bernardino that the company has not received work in the public sector since certifying six months ago. "We check the various agencies' web sites regularly, we read the newspapers, and any time we hear a proposal that fits what we do then we submit our bids for those, and we've gotten none out of four or five." (P. H. San Bernardino, 3/20/07).

Some DBE firms explained that having certification can act as a barrier as opposed to a benefit due to assumptions that DBE firms who seek certification are less qualified. CATA #1, an Asian American trade association, stated that he had no personal experience with stereotyping but heard comments by a federal agency employee (from the Small Business Administration) seven or eight years ago that "DBE" was synonymous with "not qualified."

Interviewee #CT7, a white female-owned surveying firm, said that "there's definitely a stigmatism with being a DBE because it automatically gives the impression that you're new, [that] you don't have any experience, and that there's a risk in hiring you..." She stated also that this stigmatism is "really hard" for them to offset, and that "[u]nless there is a [DBE] goal on a project, we do not tell anybody that we're DBE or minority-owned because of the stigmatism associated with it."

Recommendations related to the certification process.

⁶ Note most of the 200 members are not owners of their companies but rather employees at other firms.

Some interviewees would like to see unification of certification among different entities.

Interviewee #CT32, an Asian American female-owned firm certified through the CUCP, recommended standardizing the certification process. She described “[a]ll of those certification processes” as being “so long” and said that “[i]t would be great if it was standardized.” She said that a lot of paper was wasted and that she did not see a need to be certified, as she put it, “by the feds and by the state and by this agency and that agency. It’s ridiculous.” She also noted that it was expensive for small businesses to get certified, saying that it costs on average \$500 each time.

A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: “The largest challenge I had with [certification] was when the transition happened. I have three certifications. When the central unified came in, it wasn’t clear if it covered WBE, SBE, and DBE. Those certifications expired at different times as well. So I was very nervous and very concerned at that time that I was covered.” (P.H. Los Angeles, 3/29/07).

At a public hearing in San Diego, an African American DBE consulting firm expressed frustration that “there is so many different agencies you have to potentially get certified with – and then too, you have to maintain them.” (P.H. San Diego, 3/22/07).

Some interviewees suggested fewer requirements upon recertification. While waiting for recertification, Interviewee #CT31, an African American female-owned firm, was being considered as a potential member of Caltrans project design teams. Interviewee #CT31 suggested that Caltrans could improve its recertification process by requiring only that businesses submit a certified affidavit saying that nothing had changed regarding a company’s ownership. Interviewee #CT49, an African American male-owned firm, said that the Caltrans certification process was “a little difficult” and that “some of the things that they ... ask for ... went a bit farther that was needed” He also said that firms had to “turn around and do the same all over again, which, if there had been no change, should be unnecessary.” His only recommendation for improving the process was to allow businesses to certify that their business ownership and the like has not changed in the past year (or whatever the renewal period may be).

CATA #3, a Hispanic trade association, suggests Caltrans implement self-certification for DBEs. Several firms suggested Caltrans relax the recertification requirements.

Interviewee #CT31, an African American female-owned firm, suggested that Caltrans could improve its recertification process by requiring only that businesses submit a certified affidavit saying that nothing had changed regarding a company’s ownership. Interviewee #CT49, an African American male-owned firm, also recommended improving the recertification process by allowing businesses to certify that their business ownership and the like has not changed in the past year, rather than going through the whole process again.

Some interviewees would like help becoming certified. [Interviewees #CT: 8, 46, 81].

Interviewee #CT46, an Asian American male-owned firm, who expressed considerable confusion over the certification process, suggested that Caltrans have outreach personnel that contact companies by their type of work (e.g., electrical engineering companies) or by name (e.g., company names that begin with certain letters of the alphabet). A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: “I think many, many people are still very confused about the certification process ... I usually wind up having to explain it to the primes. They don’t know the difference between an SBE, a DBE.” (P.H. Los Angeles, 3/29/07).

Interviewee #CT11, a Native American male-owned firm, would like greater communication during the certification process. He would like a company to be able to track the status of their application to alleviate concerns regarding its progress.

One trade association suggested that Caltrans require all businesses to obtain certification before working with Caltrans. CATA #2, an African American trade association, believes the DBE certification process is unfair because only DBE firms are required to be certified. DBE firms have to spend precious time and resources dealing with paperwork and a process that non-DBE firms do not have to deal with. CATA #2 suggested that in order for the program to be administered more fairly, all businesses should be required to be certified — whether as a DBE or a non-DBE firm — before they can do business with Caltrans. That way, said CATA #2, the certification program has integrity.**One trade association suggested streamlining the certification process.** CATA #3, a Hispanic trade association, suggests Caltrans allow businesses to self-certify with a one page form and impose fines and/or imprisonment as punishment for false reporting. He said that though someone would have to enforce this regime, he thought that it might be more cost-effective for both the agency and applicants than the current, paper and time intensive system.

One witness testified that it would like to see more aggressive percentage requirements for major consulting firms who contract with DBEs and WBEs. A certified WBE / DBE stated: “It would be very helpful if the certification program here in California was more aggressive in the DBE/WBE percentage requirements when contracting out design work and in linking up major consulting firms with the smaller minority and women owned businesses.” (Written testimony submitted 3/14/07)

B. Public and Private Sector Work

BGPAA Study Anecdotes Regarding Public and Private Sector Work

Private sector work experience.

Some interviewees reported working predominately in the private sector, success working in the private sector or a preference for work in the private sector. [Interviewees #BGP: 3, 8, 11, 13]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that 100 percent of the company's work is private and that all of the company's contracts are with airlines. He noted that the company did have a contract with the Airport Authority for five years but no longer has that contract.

Some interviewees reported challenges in connection with pursuing or performing work in the private sector. [Interviewees #BGP: 6, 7, 11]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, "There is no private work. It's coming back, but there's very little." Interviewee #6 said, "We used to have a 50/50 public/private mix. That is no longer the case. I'm staying in business because of public works projects right now. Many firms I know of are closed now because they only had private clients."

Interviewee #BGP7, the owner of a white male-owned SBE-certified landscaping business, reported that private sector work is relationship driven and that public sector work just requires a bid.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that it is "getting extremely difficult to make any money" in the private sector. He said that airlines are being forced to make cutbacks "because of fuel prices," and that affects the amount of money that subcontractors are paid as well. He reported that in the private sector, airlines are putting out RFPs and then asking the selected company to take a 6 percent decrease in income. He said that if the company refuses, the airline puts out another RFP mid-contract. He said that this did not occur on BGPAA projects, but he knows of at least two companies for which this has occurred at the Los Angeles Airport.

Public sector non-BGPAA work experience.

Some interviewees reported some success obtaining public sector, non-BGPAA jobs.

[Interviewees #BGP: 1, 10, 12, 14, 15, 16]. Interviewee #BGP10, a principal at an engineering firm, stated that last year more than 80 percent of the firm's work was in the public sector. He said that the amount of public work has increased during the last few years, but even during good economic times, approximately 70 percent of the firm's work was in the public sector.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that the company supplies both primes and subcontractors in both the public and private sector. He said that approximately 70 percent of the company's work originates in the public sector and 30 percent originates in the private sector. He said that this has changed over the years, adding, "During the building boom, [it was] pretty close to 50/50 [between public and private sector work]. When the [housing boom] ended, it went back to what it's traditionally been, even more so now. But we've always been oriented toward municipal projects."

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that 70 percent of the company's work is in the public sector and 30 percent of the company's work is in the private sector. He added that "with the downturn in the economy" the company "moved [its] business more into the public sector" because "the private sector business has slowed down." He said that before the downturn, the company's work was split evenly between the public and private sectors. He said that recently he has "noticed a little bit of a pickup" in work in both the public and private sector, but that observation has only been true for "just this first part of the year."

Interviewee #BGP15, the majority owner of an MBE/WBE/DBE-certified Mexican American female-owned design, consulting, architectural engineering, and construction support services firm, stated that approximately 95 percent of the firm's work is in the public sector. She said that she does not necessarily prefer public sector work. She said that she "just fell into it."

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that the corporation prefers public sector work because there is less "politics involved, especially at the federal level." He said that the corporation prefers federal public sector work "because the local politics don't get involved, [and they are] larger projects, so they're easier to schedule and keep an even workflow."

Some interviewees reported difficulties in pursuing or performing work on public sector, non-BGPAA jobs. [Interviewees #BGP: 1, 3, 5, 8, 9, 15, TA #1]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that "on the public side, now the same projects that we, as a small business, are pursuing are now being pursued by the big companies."

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that his firm does very little public sector work. He said, "To work public work, you have to have a lot of money. You have to be able to do the whole project on your own money, and hopefully you'll get paid. Eventually ... you'll get paid, but they're so far behind with pay." He said that public sector work is too impersonal. He stated, "To me contracting is relational. So when you work in the public sector, there's no relation. You don't know who's paying you. You don't know who's in charge. You don't know anything about them. ... I don't like working that way. ... You don't mind going an extra yard for somebody that you know. You work harder for those kinds of people. Working for the government is like working for nobody."

Interviewee #BGP5, the president of an 8A-certified engineering firm, said, "The biggest problem with the public sector is with the lowest qualified bid. It's exactly that; you're getting the lowest qualified person to do the work. Frequently the people are incompetent." He said that "Sometimes firms will be asked if they included everything in the bid, and they will immediately say yes without looking. Then if they left out a substantial portion of the project, they're given a major change order, which will bring them above the next lower bidder. These are the types of pitfalls you have in the public sector because of the method of bidding."

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that there is a lot of competition in the public sector. He said, "Right now, a barrier is that a lot of people are hungry, so when you go to the pre-bid meeting, they're packed. I guess that's a good thing for the public sector, but it's not a good thing for each individual [firm]."

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, said that “in the public sector there’s too much politics. The private sector seems to be a little more straight forward. When we bid for public jobs, not just work with the airport but all public sector work, they really doctor up the paper work to be the advantage of a certain vendor. That’s a norm. They cater to one vendor.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she has seen “fewer jobs being put out to bid” in the public sector “in the last five years because of the economy.” She added that she has noticed that now, when “there is a pre-bid meeting; it’s usually ... standing room ... only.” She added that the primes in attendance are from “throughout California, where before, it would be just local or ... L.A. City or Orange County primes.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that few contract dollars are awarded to African American-owned firms in California. He said, “[African American] people in the State of California spend about 23 percent on state taxes. ... [African American] contractors in this State ... we are awarded less than 1/17 of 1 percent of highways, bridges, freeways, airports, seaports ... we get none of those contracts.”

Work experience with BGPAA.

Some interviewees reported success in obtaining work with or performing work for the Airport Authority. [Interviewees #BGP: 1, 2, 5, 7, 11, 13, 14, 16]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that his firm has worked with the Authority since 2000, and it has been “excellent.” He said, “When we first started the meetings with the Airport [and] their representatives were very good. Everyone there has respect for everyone else.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that the firm has been working with the Authority for decades. He said that working with the Authority is “much easier because they have a competent engineering staff on site. They have people that actually understand the business.”

Interviewee #BGP7, the owner of a white male-owned SBE-certified landscaping business, said that his firm is currently doing work for the Authority and that pursuing work and doing work for the Authority is no more difficult than any other public agency. He said, “They are demanding but it’s OK. I like that.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, stated that the company’s work for the Authority was very positive, and public sector work is probably the way to go if you can do it. He said that the company lost its contract with the Authority because it was outbid. He stated that the company had a very positive experience working for BGPAA from 2004 until 2009. He said that when the company did the work, he felt that the focus was on service and job quality.

Interviewee #BGP13, the owner of a non-certified construction firm, said that he worked with the Authority as recently as that day and that, in addition to bidding work there, the company has a maintenance contract with the Authority, so the company works there “pretty often.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, estimated that 20 percent of the company's public work is with the Authority. He said that that source of work is "more reoccurring than anybody else." He said that the Authority is "probably one of the easiest public entities we have to work with."

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that he has had a "very positive" experience working with the Authority. He said that "Burbank has been very non-political, very open ... [regarding] ... what ... the future workload might look like."

Some interviewees reported difficulties in connection with obtaining work with or performing work for the Airport Authority. [Interviewees #BGP: 8, 9, 10, 14, 15, TA #1, TA #2]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said, "We haven't been doing as much airport-type work. ... Maybe a lot of [Airport Authority work has] been completed or flights are being cut back now ... so maybe the overall noise issues are reducing a bit." He said that his firm's airport work began falling off "three or four years ago."

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, said that "there more background checks. It's gotten worse over the past two years. That's because of the economy. Now they're just really nitpicky and penny pinching, doing things that are really unethical." Interviewee #9 went on to explain that, the airport will "have us bid a job. We designed the job, we bid the job, and then they go get other bids, and the person that's the low bidder doesn't even know what to put in. Then they'll come to us and ask if they can take a picture [of their design] so they can sell it to the firm that won." Interviewee #1 said that they have had this experience with the airport authority twice. "They have you design build something, which takes time, then after you bid it, then they'll go and get that copy and give it to someone else and let them run with it. That doesn't make any sense."

Interviewee #BGP10, a principal at an engineering firm, stated that "a very small percentage" of the firm's work is with the Authority and estimated that "certainly less than 5 percent, could be less than 1 percent," of the firm's work is with the Authority. He reported that the Authority has "preconceived ideas" regarding what they want from the firm and "has already made a decision as to what they want." He provided an example saying, the Authority may tell the firm the pavement thickness it wants, so it asks the firm to go out to the site, drill some holes, and provide the results. Interviewee #10 stated that this process differs from other airports for which the firm would go to the site, drill some holes, analyze the situation and then provide the airport with a pavement thickness.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported the Authority selects bidders based upon "bottom line price. Low price wins." He said that he has not "had a bid for Burbank this year yet, so [he did not] know if they're changing." He said that elsewhere in the industry "it was basically low bid price wins, and now they've gone to a criteria-based bidding system where it's all weighted. So, they'll weigh points to your price, they'll weigh points to your presentation, they'll weigh points to your installation, procedures and practices, and they'll break them down into multiple areas. And then, ... they go into committee on it, ... and they'll assign points to you. They'll give you ... 20 points for this, 10 points ... and at the end, who has the most points wins the bid. ... It's not as apples to apples as it used to be." He said that the Los Angeles Airport is using this more weighted system, and he commented that he thinks the new

bidding system is intended to allow the public entity “to rule [a company] out and ... take somebody who has a higher bid because they have more points in other areas,” especially when the entity “may not like the way” the company with the lower bid would “actually put the project together.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that the company “had one contract” with the Authority three or four years ago, but she has “never seen any other opportunities” to work there. She said that during her previous contract, “mid-way through the contract ... [the Airport Authority] had a lot [of] personnel change, and afterwards,” things were more difficult. She reported that when the company began working with the Authority, the experience “was very positive,” but when the Authority went through a “staff upheaval,” the company no longer had “a relationship with the new people, so it was different.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that his organization recently walked out of a meeting with the Authority and expressed disappointment over an experience with a project manager because “we asked him who was doing a project over there and he couldn’t or wouldn’t answer.” He said that the Authority’s general message to minority contractors is that they are doing all they can do to help. He said the Authority told minority contractors that “we’re going to do the best we can to help.” He said that he does not believe that the message is genuine.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that his members have not been successful bidding on Authority projects. He said, “Yeah, we’ve made a lot of attempts; you know we’re aggressively pursuing [the Airport Authority], but there’s too many loop holes ... good faith is one of them. He said, “I mean [the members are] invited to bid, but from my personal experience, they get the bids too late; you know the bid could be out for three months, but they won’t notify us until maybe a week before and then they can say that we were non-responsive and then we would respond back that we can’t bid this project. We let them know that there’s not enough notice.” He said, “I find that people who have [worked for the Airport Authority] ... only get the small portions of work. They’ll be like a major project but there will be like minorities getting a small little side.... They’ll give you a couple of crumbs but you know, but you won’t get a piece of the lion’s share.” He said these experiences with the Authority projects are recent.

Differences between private sector and public sector work experience.

Many interviewees identified differences in securing or performing work in the public and private sectors. [Interviewees #BGP: 1, 2, 4, 5, 6, 7, 8, 10, 12, 13, 14, 16, TA #1, TA #2].

Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that “the only difference is that, as far as getting paid as a prime, when working for public clients, the State has a good policy for payment, especially for certified small businesses. If an invoice goes beyond 30 days without payment, the State will pay interest. We’ve been paid that interest many times.” Interviewee #1 said that public clients may not be prompt in payment, but they hold up to their end of the payment contract. He said “that for most private contracts, the profit margin is a little bit less” than for public contracts.

Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that “our goal is to go more private, because private work is steadier. With public work, there’s no guarantee that we’ll win the bid in the next three to five years when it goes up for bid.”

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that, “In my experience, private work pays better [than public sector work]. You make more profits, and you’re paid quicker.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said, “When we do [work] in the private sector, work goes out to select bidders list. You don’t have the incompetent people there. One of the things that happens in the public sector is that you’re constantly fighting over change orders. In the private sector, the contractor can try to bleed every nickel they can out of the owner, and the net result is that they don’t get another job in that particular industry. It forces a more honest relationship.” He said that “there can be” a difference in profitability between the sectors, “depending on the type of project.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that working in the public sector versus the private sector is “very different.” Interviewee #6 said, “It’s the same kind of work, but it’s the way the contracts are structured and the paperwork is quite different. In the private sector, if I give them a fee, that’s good enough for them. A lot more scrutiny is involved in public work and things like insurance requirements have to be met. It’s a lot of paperwork.” Interviewee #6 stated, “The needs are quite different [between the two sectors]. In the private [sector], people don’t need as much detail. There are a lot of regulations in public work.” Interviewee #6 said that the profitability is slightly better in the private sector.

Interviewee #BGP7, the owner of a white male-owned SBE-certified landscaping business, reported that he believes the private sector is more profitable than the public sector. Interviewee #7 stated, “There’s lots of work in my industry — there’s never a shortage of work. Where I find a shortage is in pricing. ... Everybody, it seems to me, is dropping their prices.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said, “The public sector has their own ... established procedures [The private sector is] pretty dependent on us to tell them what the requirements are going to be and what they’re going to have to comply with to have a successful project The public sector typically has that awareness already.” He stated, “[The public sector has] budgets that are dependent on taxes and when taxes go down, their budgets go down and they cut projects. The private sector usually doesn’t begin a project until their funding [is] in place.” He said, “It may be a little harder [to obtain work] in the public sector because in the public sector they require an ... open bidding process so ... you end up with more competition.” He also said that it’s sometimes more difficult to do work in the public sector due to security constraints when they exist.

Interviewee #BGP10, a principal at an engineering firm, reported that work in the private sector typically has “higher profit margins [and] significantly less paperwork.” He said that private sector work is “significantly more volatile,” and there is a high “likelihood of not getting paid if you don’t work for the proper client.” He said public sector work involves significantly more paperwork and low profit margins, but the work is “more stable, and payment is invariably slow but certain.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that business is “more risky with [the] private [sector]” in terms of payment, but they did not think that there was a significant difference in terms of profitability between the two sectors. They stated, “Both are real competitive right now. On municipal projects, the inspection and specifications are better enforced.” Interviewee #12 stated that it is easier to learn about work opportunities in the public sector than in the private sector. They reported that they receive notifications concerning bidding opportunities from the Los Angeles Department of Public Works, commenting that “their new ERSP program ... is fantastic.” They added that Caltrans also “has a terrific website and notification program,” and “even the County of Santa Rosa ... A lot of the municipalities are very, very good. They’re getting up to speed.” They said that in the private sector they learn about most work opportunities “because a contractor will notify” the company, but “private projects are much more difficult to find.”

Interviewee #BGP13, the owner of a non-certified construction firm, said that he prefers working in the private sector because “bonding has become very stringent right now, and there’s not as big of [a] bonding requirement in the private sector, ... so it’s giving us a little bit more access in the private sector versus the public sector. ... I’d say ever since ... 2008 into 2009, bonding companies became very stringent on their requirements as far as bonding capabilities, [regardless] of your history.” He stated that bonding requirements seem “to be loosening up a little bit” as the economy improves. He stated that “there’s a little bit more paperwork on the public side than on the private side.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that he prefers to work in the private sector because “there are a lot less hurdles to jump through.” He stated that “public [jobs are] usually are less profitable. The private ones are more profitable.” He reported that “usually, [the company has not] had a problem in getting paid in either” the public or private sector. He said that in the public sector there are “sometimes ... more hurdles ... to getting paid, but you know that going in.” He said that there is “not notice” about job opportunities in the private sector. He said that companies learn of opportunities through “work of mouth” when a company will “solicit usually the manufacturers to recommend dealers.” He said that the public sector advertises opportunities and provides bid information on the entities’ websites. He added that the company “get[s] a lot of information from those [websites].” He continued, “That’s why public [sector work] is more readily available right now, because it’s posted, whereas the private [work], it’s not that way.” He said that private sector work is comprised of more design-build projects, and the public sector work is comprised of work building to a pre-determined design that is “all spelled out.” He continued that in the public sector, the company gives the entity what it wants “even if it’s something that we know could be better in [a] certain area. ... You really can’t change it. You can try adding change orders to it, but they don’t want to change pricing, so” this is usually not effective.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, stated that work in the public sector is advertised more.

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that it might be easier for minority contractors to obtain work in the public sector and it might be easier to advocate for minority contractors in the public sector. He said, “It’s always in the back of my mind that it’s easier ... with public money because there are so many people you have to hold accountable in the private sector.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that it is easier for his members to obtain work in the private sector than the public sector. He said, “The private sector [is] built on relationships so it would depend on the relationships that they would have with the private sector and we have a strong relationships in the private sector.” He stated that the private sector is more profitable and easier to perform work in than the public sector because there are fewer requirements.

Other interviewees reported similarities in securing or performing work in the private and public sectors. [Interviewees #BGP: 3, 9, 11, 13, 16]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said profitability is about the same between the private and public sectors.

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, indicated that there was no difference between working in the public versus private sector as far as work type, role or price. Interviewee #9 said, “We price them all the same. We don’t care if they’re public or private.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that payment does not vary significantly between the public and private sector. He stated that “there are certain carriers ... that are a little late in their payments,” but he said that did not notice a big difference between the public and private sectors.

Interviewee #BGP13, the owner of a non-certified construction firm, reported that notification regarding work opportunities is “approximately ... the same” in the public and private sectors.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he thinks that certainty of payment is “about the same” in the public and private sectors.

Anecdotes regarding businesses acting as prime contractors and subcontractors.

Some interviewees reported principal work as a prime contractor due to the nature of the firm’s work, a general preference for performing work as a prime contractor or other reasons.

[Interviewees #BGP: 1, 3, 7, 9, 14, 16]. Interviewee #BGP7, the owner of a white male-owned SBE-certified landscaping business, said that his firm always works as a prime contractor and never uses subcontractors. He said, in general, the projects on which his firm works are too small to include subcontractors.

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, said they act as a prime, because “We’re in a specialty trade, and usually they’re just asking for that particular project. For a security system, they’re going to go directly through us.” Interviewee #9 said that “the only time we are subs is when they put our work under a giant construction project.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that the company is “a little too small to act as a prime in a lot of these cases in the public [sector] unless [the project is] based on specific criteria.” He said that the company “almost always” acts as a prime contractor in the private sector.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that approximately 75 percent of the firm’s work is performed as a prime.

Other interviewees reported principal work as a subcontractor due to the nature of the firm's work, a general preference for performing work as a subcontractor or other reasons.

[Interviewees #BGP: 2, 4, 8, 10, 11, 13, 15, TA #2]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that the firm works primarily as a subcontractor because engineering firms working in acoustics typically work as consulting engineering firms for relatively small portions of the overall project.

Interviewee #BGP10, a principal at an engineering firm, reported that the firm acts as a subcontractor almost all of the time because its work is so specialized. He added that agencies often want one contact, but larger architectural or engineering firms, often do not perform the kind of very specialized work that his company performs, so the large firm will subcontract out specialized portions of the project, and there may be two to 20 firms on a team working with the prime depending on the size of the project.

Interviewee #BGP13, the owner of a non-certified construction firm, reported that his company works as a subcontractor approximately 75 percent of the time and as a prime contractor 25 percent of the time. He stated that he prefers the role of a prime contract, and the firm often takes on the role of prime because the company's "overhead costs are a little bit lower ... because even when we're prime, we're still performing the electrical. It just seems that there is a little bit more cash flow when we're a prime versus a subcontractor being totally dependent."

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she primarily takes on the role of a subcontractor because of her company's "size" and because "for the City of Los Angeles ... the Port of LA, and the airport," there is no MBE/WBE requirement if a project is "under ... \$150,000."

Interviewee BGP TA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that its members work almost exclusively as subcontractors because of the type of their trades.

Several interviewees reported having worked with an MBE/WBE/DBE prime contractor.

[Interviewees #BGP: 4, 5, 8, 10, 14, 15, 16, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that there was no difference between working with MBE/WBE/DBE primes compared with non-MBE/WBE/DBE primes.

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that working with an MBE/WBE/DBE prime contractor is no different than working with other firms. He said, "I haven't noticed any difference. ... There's nothing that stands in my mind as being significantly better, different, or risky. ... I would not hesitate to work for [MBE/WBE/DBE firms]."

Interviewee #BGP10, a principal at an engineering firm, reported that the firm has experience working with an MBE/WBE/DBE prime contractor, and that experience is similar to working with other non-certified firms.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that the company has worked with MBE/WBE or DBE primes and said that the experience was the same as working with a non-certified firm.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she was familiar with MBE/WBE/DBE prime contractors and has always had “very good relationships” with them. She said that sometimes these companies are her “clients, and other times, they’re [her] competitors.” She said that she has “a lot of respect for the ladies,” and she thinks that “it’s fantastic.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he is aware of MBE/WBE/DBE prime contractors, and although he cannot remember a particular instance, he thinks that the corporation has worked under an MBE/WBE/DBE prime contractor.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that its members have most likely worked for a certified prime or general but he cannot think of a specific example.

Other interviewees reported having limited to no experience working with an MBE/WBE/DBE prime contractor. [Interviewees #BGP: 6, 11, 12, 13]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, “We don’t know very often if [primes] are MBE or WBE[-certified]. Many of the primes that we work for are huge corporations, so they’re probably not going to be an MBE/WBE.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that he was aware of MBE/WBE/DBE prime contractors, and the company has submitted bids to work with these contractors, but so far, the company has never worked with an MBE/WBE/DBE prime contractor.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that the company does not ask primes whether they are MBE/WBE or DBE certified, so they would not know if they have done business with a certified prime contractor.

SDCRAA Anecdotes Regarding Public and Private Sector Work

The following anecdotes regarding work in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

Private sector work experience.

Some interviewees reported success for minority- and female-owned firms in the private sector.

Interviewee #SD16, representing an African American male-owned firm, indicated that most of his firm's work comes from the private sector. Interviewee #SD20, representing an Asian American male-owned firm, and Interviewee #SD5, representing an African American male-owned firm, both also indicated that their firms are successful in the private sector.

Interviewee #SD20, representing an Asian American male-owned firm, said that bidding on public work requires a well developed system and a well established support staff to find projects and put together proposals. As a result, he said that private work might be easier for MBE and WBE firms (that tend to be small) than public work.

Some interviewees indicated that there is more flexibility and greater profit potential in the private sector. Interviewee #SD24, representing a white male-owned firm, stated that the profit potential is much higher in the private sector than in the public sector: "Private work is more profitable because the rates are better. Public work requires more effort to win the work and the rates are not as good." He went on to say that bids are so low in the public sector in the current market that being profitable is even more difficult.

Interviewee #SD20, representing an Asian American male-owned firm, also said that profit potential is higher in the private sector but said that payment problems are also much more common compared to the public sector.

Interviewee #SD17, representing a white female-owned firm, said that over 60 percent of her firm's business comes from the private sector. She said that although "public work is more consistent," private work tends to be more profitable.

Interviewee #SD42, representing a white male-owned firm, suggested that work in the private sector is more profitable than in the public sector, but he noted, "Profitability depends on the contract."

Interviewee #SD45, representing a white male-owned firm, indicated that profitability is higher in the private sector than in the public sector due to there being far fewer contract requirements in the private sector.

SDTA #7, representing a construction trade organization, reported that private sector work is easier than public sector work, because it tends to be less structured: "In general, there is more flexibility for contractors working in the private sector." He went on to say that the bureaucracy in the public sector makes it more difficult for firms to maneuver.

Other interviewees reported that there are no consistent differences between working in the private and public sectors. Interviewee #SD21, representing a white male-owned firm, indicated that profitability used to be better in the private sector, but that today the profitability of the private

and public sectors is comparable. However, he pointed out that doing work in the private sector is riskier than doing work in the public sector, primarily because of non-payment issues.

Interviewee #SD40, representing a white male-owned firm, indicated that the profitability of the private and public sectors changes often, so one it is not consistently more profitable to work in one rather than the other: “The way San Diego works is that the public is never doing as good as the private and then it switches. If you can work on both sides of the fence you can sustain yourself here ... If you are locked into one sector, your roller coaster will have much larger dips.”

Some interviewees said that MBE and WBE firms participate less in private sector work..

Interviewee #SD2, representing a white female-owned firm, reported that only 10 percent of her work comes from the private sector. Similarly, Interviewee #SD14, representing a Hispanic American male-owned firm, explained that only 20 percent of his business comes from the private sector. He went on to say that his firm prefers not to work in the private sector because of a number of barriers that MBE and WBE firms face, including: exclusion from the “Good Old Boy Network”, rampant bid shopping, and the private sector’s disregard for MBE/WBE status.

Interviewee #SD47, representing an African American female-owned firm, said that MBE/WBE firms have a more difficult time succeeding in the private sector due to racism and stereotypical attitudes: “... the private arena is culturally biased. We thought we didn’t fit in from a race and gender perspective — we definitely don’t fit in the private sector. You look at these large corporations, the big hotels that you see — they’re not trying to see [MBE/WBE firms succeed]. If we don’t have a tray in our hand, if we’re not in a serving capacity, then we’re invisible.”

Some interviewees reported that it is more difficult for minority- and female-owned firms to be successful in the private sector due to the non-existence of DBE goals.

Interviewee #SD21, representing a white male-owned firm, remarked that DBE status does not play a role in the private sector, making it more difficult for minority- and female-owned firms. When asked why that is the case, Interviewee #SD21 replied, “On the private side, it’s all strictly low bid type stuff. It’s dollar driven.”

Interviewee #SD20, representing an Asian American male-owned firm, said that in the private sector low bids and personal connections play a much larger role in winning contracts than MBE/WBE status.

Interviewee #SD30, representing an African American male-owned firm, explained that his minority status does not help his firm get work in the private sector: “Private work really [comes down to] who [the prime contractors] know, and who has the best price.” He went on to say, “My experience in the private [sector] is that they really just want the best bang for their buck. They just want a good product in the end.”

Interviewee #SD32, representing an African American male-owned firm, indicated that DBE status does not play a role in contract awards in the private sector: “I’ve never seen a contract just because they were minority-owned or a DBE in the private sector.

Public sector work experience.

Several minority- and female-owned interviewees reported success in the public sector.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the San Diego Airport, indicated that she has had great success in the public sector operating six concessions at there. Similarly, Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, and Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, both reported success working there.

Interviewee #SD20, representing an Asian American male-owned firm, said that, compared to the private sector, finding out about projects is easier in the public sector and contract awards are fairer: “[The public sector process] is more open, more transparent. [Agencies] understand that because it’s public money, they have to select a group of consultants or contractors that’s qualified, based not solely on price. They put more emphasis on the qualifications of the team that does the work.” Interviewee #SD20 went on to say that as a result of the current recession, most of his firm’s work comes from the public sector.

Interviewee #SD28, representing a white female-owned firm, indicated that establishing relationships with prime contractors in the public sector is crucial to getting work in the future and allows small firms to be successful in the public sector: “Once you get that bond with [certain prime contractors] a lot of them don’t even call around for [other bids].”

A few interviewees reported that projects in the public sector tend to be more profitable than projects in the private sector. Interviewee #SD19, representing a white male-owned firm, said that “public jobs are more profitable [than private sector jobs].” She went on to say that the one exception to that claim is if the private sector client is a large company.

Interviewee #SD31, representing a white male-owned firm, said that public sector projects with prevailing wages are more profitable than both other public sector projects and private sector projects (which are comparable in profitability). However, Interviewee #SD31 estimated that prevailing wages apply to only half of the public sector projects on which his firm works.

A few interviewees reported that minority- and female-owned firms are not successful in the public sector. Interviewee #SD21, representing a white male-owned firm, said that it is “very, very difficult” for MBE and WBE firms to remain competitive in the public sector because they tend to be smaller and less established than majority-owned firms. He went on to say that DBE certification does not help either, because DBE goals are no longer mandatory: “I don’t think [DBE status] comes into play.”

Interviewee #SD5, representing an African American male-owned firm, reported that although he used to have success in the public sector, he is yet to win a public sector contract since reopening his business in 2006.

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that his firm’s public sector work is decreasing. A number of agencies have reduced the frequency with which they use his firm’s services (e.g., the Port Authority and the City of San Diego).

Some interviewees indicated that public sector work is very competitive as a result of the current recession. SDTA #7, representing a construction trade organization, indicated that there is increased competition in the public sector: “There was one bidders list the other day that had 43 bidders on it!” SDTA #7 went on to say that increased competition would affect small firms more than the larger firms, because they are “the weakest financially.”

Consistent with those comments, Interviewee #SD11, representing a white male-owned firm, also indicated that public sector work has become quite competitive recently: “We are having 20 to 25 bidders on our work where we used to have seven. Work has slowed down as a result of the economic downturn.”

Interviewee #SD28, representing a white female-owned firm, explained that the current recession has resulted in increased competition in his firm’s sector: “Where it used to be [that] there were three main players [in the firm’s industry], now there are five or six.”

Interviewee #SD6, representing a white male-owned firm, indicated that the public sector is “extremely competitive.” He explained that his firm was the second-lowest bidder on 13 projects in the past year, and in all cases their bids were less than 1 percent higher than that of the lowest bidder and they did not win any of those projects.

Interviewee #SD18, representing a white female-owned firm, said that the market is very competitive and that price is very important, particularly in the public sector: “Service does not tend to be a value added for this industry.”

Interviewee #SD37, representing a white male-owned firm, reported that the current market has resulted in increased competition in his firm’s industry. He noted that the residential market has slowed down and that the contractors who previously worked in the residential sector are now entering the commercial, industrial and government markets.

Interviewee #SD41, representing a white male-owned firm, explained that private sector opportunities have dried up dramatically and that firms that used to bid on private sector work are now bidding on public sector work, increasing the amount of competition in the public sector. He went on to say that many of those firms do not have experience bidding on public sector work and their bids are too low to be profitable: “People are bidding 10 to 15 percent below my costs ... my bare minimum costs!”

Interviewee #SD38, representing a Hispanic male-owned firm, also reported that there is more competition in the current market. He described a recent bid that his firm submitted: “Competition is higher ... We bid [a project at a local high school] ... There were 21 general contractors [bidding].”

Interviewee #SD43, representing a Hispanic male-owned firm, reported that the current recession has made it difficult for small firms, because there has been a steep increase in competition, which has in turn increased the probability of her firm being outbid. She went on to say that the increased competition means that firms have to exceed clients’ expectations in order to compete for jobs with them in the future.

Interviewee #SD46, representing an African American male-owned firm, indicated that, due to the current economic conditions, his firm now competes for public sector work with a number of firms who previously only worked in the private sector. He said, “Times are tough right now — it’s the economy.”

A few interviewees cited complex bid procedures or restrictive contract specifications as a barrier to doing work in the public sector. Interviewee #SD3, representing a white male-owned firm, said that the bidding process for public agencies takes some sophistication. Interviewee #SD21, representing a white male-owned firm, commented that the bidding procedures in the public sector “... could be a barrier to an inexperienced entity. They’re complex and ... difficult.”

Interviewee #SD28, representing a white female-owned firm, said that the primary difference between the private and public sectors is that working in the public sector requires firms to follow more stringent guidelines and restrictions. She remarked, “You have to jump through some different hoops [in public sector].”

Interviewee #SD31, representing a white male-owned firm, stated that the biggest differences between working in the private sector and working in the public sector are that in the private sector firms do not have to deal with bonding nor do they have to deal with “idiotic RFPs.” Regarding contracts and RFPs, he said, “I find that many of these things are written by lawyers who don’t know electricity from wind, and they put such stupid things in the contracts ... they’ve got informed attorneys sticking their nose where it doesn’t belong.”

Interviewee #SD32, representing an African American male-owned firm, reported that dealing with the contract specifications of government projects can be difficult for new firms: “I would think it’s really difficult for a new emerging ... company to come in and meet the requirements that the government sets forth. Typically, you get a contract and you get a book that’s four inches thick full of specifications.” Comparing public sector work to private sector work, Interviewee #SD32 said that there are “a lot more hoops to jump through” in the public sector.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that contract specifications in the public sector can be “difficult to deal with.”

Interviewee #SD44, representing a Hispanic male-owned firm, stated that his firm rarely sells products to public agencies — he said that 99 percent of his firm’s business comes from the private sector. He indicated that doing public agency work requires more personnel and a well-established system: “It’s just a different animal [working with public agencies]. We’re not set up to do that right now. ... We don’t have the manpower to do it.”

Interviewee #SD45, representing a white male-owned firm, stated that there is a great deal of subjectivity in how public sector staff interprets contract specifications and regulations. Interviewee #SD45 described an experience he had working with Caltrans: “When they took all their requirements and punched them all down here in District 11, we had people that interpreted the rules by their own means. It’s almost a fiefdom — like a third world country down here. You have a Green Card running the engineering for minor B-contracts. The one underneath him is a Green Card from the Philippines. The guys who are emptying the trash cans are the certified Caltrans engineers who can build bridges. It’s so upside down.” He went on to say that “... regulations are written for somebody in the industry who understands them. It’s not for ... idle interpretation.”

Interviewee #SD46, representing an African American male-owned firm, reported that firms have to meet more requirements to win public sector work compared to private sector work: “The public sector requires more qualifications than the private sector. You have to be licensed, insured and bonded. In the private sector sometimes those are not a requirement.”

Interviewee #SD47, representing an African American female-owned firm, said that the relationship that a firm has with a contracting officer goes a long way in determining the firm’s success with the public agency. She said that much of the bid process in the public sector is subjective and a lot of it is dependent on how the contracting officer feels about a particular firm: “[Contracting officers] can change your life, change your business — help propel it to be successful, cause it not to be successful. They have so much power and authority. If they are of poor character in any capacity — if they are racist, or bigoted, or anything, they can dictate where your business is going to go, and I think that’s unfair.”

Some interviewees cited extensive paperwork as a barrier to doing work in the public sector but others cited it as a feature. Interviewee #SD11, representing a white male-owned firm, indicated that extensive paperwork in the public sector impedes success: “The biggest barrier for bidding public works is the huge amount of paperwork that public agencies require ... A few of my friends have companies but they won’t do public work because of the paperwork ...”

Interviewee #SD41, representing a white male-owned firm, said, “Public projects are more paper heavy. You have to submit cut sheets on everything and anything — lots of checks and balances. The public has its own specifications for each job. You have to read the specs in their entirety. That could mean 250 to 1,000 pages. There is a lot of up front work.” He continued, “Bidding on the public [sector], it separates the men from the boys ...”

In contrast, Interviewee #SD16, representing an African American male-owned firm, said that the extensive paperwork is an advantage to working in the public sector: “I really like the paper work game with the public work. It eliminates the possibility of doing something wrong. Everything is documented.”

Interviewee #SD37, representing a white male-owned firm, said that public sector projects are described in much more detail than private sector projects, making it easier to complete the work: “Larger public jobs usually have a more complete set of plans or engineered drawings, so you know exactly what you’re going to build when you bid on it. Private jobs rarely have drawings and it will just be a verbal scope of work. The private [sector] will provide us with specifications along the way, but we figure out how we’re going to build it.”

Interviewee #SD40, representing a white male-owned firm, reported that public sector work is generally more difficult than private sector work: “Public projects have more politics and you have to be patient — there is a broader audience to please and things don’t go as fast as you would like. He went on to say that there is also less flexibility in the public sector than in the private sector.

Interviewee #SD46, representing an African American male-owned firm, reported that there is a great deal of paperwork involved with public sector work, and that it can be difficult for firms to learn: “You learn the paperwork while you’re doing the job. There’s no training for what you haven’t done paper wise.” He continued, “Paperwork can be a problem. The general cannot get paid until the sub’s

paperwork is together. The sub doesn't want to do the paper work because they're bombarded." Interviewee #SD46 indicated that his firm often does paperwork on behalf of subcontractors.

Interviewee #SD47, representing an African American female-owned firm, said that, compared to private sector work, there is much more paperwork associated with public sector work. She said, "[In the private sector] you do a job walk, you give them a quote, they give you a contract, you do the work, you bill, and you get paid. The public sector is paperwork and huge contract. There's always some kind of code, FAR regulations with the feds"

DBEs as prime contractors.

A few MBE firms indicated that they often work as prime contractors. Interviewee #SD14, representing a Hispanic American male-owned firm, reported that approximately half of his work comes as a prime contractor. Similarly, Interviewee #SD20, representing an Asian American male-owned firm said that over half of his work comes as a prime contractor. Interviewee #SD43, representing a Hispanic male-owned firm, said that her firm works almost exclusively as a prime contractor.

Interviewee #SD5, representing an African American male-owned firm, said that he prefers to work as a prime contractor, because it allows him to control his own money, deal directly with agencies and owners, and be the first to get paid. Of his work as a prime contractor, Interview #SD5 remarked, "[Working as a prime contractor is] more responsibility but better circumstances for me."

Several interviewees were able to name successful minority and female-owned firms that work as prime contractors. Interviewee #SD21, representing a white male-owned firm, indicated that there are a number of minority-owned firms working as prime contractors in the San Diego area: "There are numerous highly qualified, motivated, and financially able black and Latino contractors in Southern California." Interviewee #SD21 went on to specifically name a female-owned firm with which his firm has worked in the past.

Interviewee #SD14, representing a Hispanic American male-owned firm, said that he has worked with MBE/WBE prime contractors and has had good experiences with them. Interviewee #SD26, representing a white male-owned firm, named a Subcontinent Asian American-owned firm that he described as "one of the best project managers I have ever worked with."

SDTA #6, representing an Asian American trade association, reported having at least a few members that work as prime contractors and specifically named a minority-owned engineering firm. Similarly, SDTA #4, representing a local chamber of commerce, was able to name a successful minority-owned construction firm that works as a prime contractor in the San Diego area.

Interviewee #SD28, representing a white female-owned firm, said that her firm has worked with a few MBE/WBE prime contractors. She went on to say that working with those contractors is not any different from working with non-DBE prime contractors. She reported that the only difference is that MBE/WBE prime contractors tend to be more understanding of her firm's position as a WBE firm: "I think [MBE/WBE prime contractors] understand a little more about what we're going through [as a DBE firm]."

Other interviewees had trouble naming minority- and female-owned prime contractors. When asked if he has worked with other minority- or female-owned prime contractors, Interviewee #SD14, representing a Hispanic American male-owned firm, said, “not a whole lot.” Similarly, Interviewee #SD20, representing an Asian American male-owned firm, could not think of any examples of minority- or female-owned prime contractors with which his firm had worked, and he said that he was confident that his firm had never worked with a minority- or female-owned prime contractor on a large project.

Interviewee #SD2, representing a white female-owned firm said that her firm “rarely” works as a prime contractor.

Interviewee #SD30, representing an African American male-owned firm, indicated that there are only a small number of minority- and woman-owned firms in the San Diego area: “There’s not really a lot [of MBE/WBE firms] in San Diego ... I’m sure that has a lot to do with the small percentages [of minorities in San Diego].” He went on to say that he has never worked with an MBE/WBE prime contractor.

SDTA #1, representing a local chamber of commerce, indicated that he could not think of a single successful minority- or female-owned firm that worked as a prime contractor in the San Diego area.

Interviewee #SD43, representing a Hispanic male-owned firm, reported that she could not think of any successful MBE/WBE prime contractors in the construction industry besides her own.

Some interviewees indicated that firm size is a barrier to minority- and female-owned firms working as prime contractors. Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, said that given the size of competing firms, it is unlikely that a minority- or female-owned firm could be successful as a prime contractor in his firm’s industry.

Similarly, SDTA #1, representing a local chamber of commerce, expressed his belief that most minority- and female-owned firms are too small to be successful as prime contractors: “My bias is that [minority- and female-owned firms] are generally not [large enough].”

Consortium Anecdotes Regarding Public and Private Sector Work

The following anecdotes regarding work in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Private sector work experience.

Some of the minority- and female-owned businesses interviewed reported at least some success in the private sector. [Interviewees #CON: 1, 2, 9, 11, 13, 17 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 50, 51, CONTA #1, 2]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they do very little advertising in the private sector because their product is based on their reputation; they pride themselves on doing a quality job, paying their employees a fair wage, and always getting the referral and call-back. He stated that 95 percent of their business is repeat customers or referrals.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that people are more open minded and willing to give minority consultants a shot in the private sector. However, Interviewee #CON2 stated that the market is going through a tough economic cycle and the industry is reflective of that. Interviewee #CON2 stated that his status as a minority business owner does not affect his business in the private sector. He said that the market has been the biggest factor. He said that his business began to feel the market slowdown in 2007. He does not believe that the impact of the current economy is any different for minority or non-minority business owners. Interviewee #CON2 stated his experience in the private sector has been mixed. He has been able to obtain a few of the kinds of projects that he would like work on. He stated that it is 50-50; he reported that this primarily has to do with him operating a new, small firm. He said that it is hard to break into the market and compete. Interviewee #CON2 stated that the most challenging issue is the marketing and networking. He stated that the best thing to do would be to hire a marketing firm, but that would come at a huge cost. He stated that it is hard to do the work and marketing at the same time.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that they like to work in the private sector, because, in general, the work is more profitable. However, the profitability in the private sector fluctuates with the economy.

Interviewee #CON11, an SBE-certified Caucasian female ergonomic prime consultant, stated that work in both the private sector and the public sector is “great.”

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the actual work in the private sector and the public sector does not feel different. He stated that in the private sector, there is not as much scrutiny on his rates.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that her experience in the private sector has been positive.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, indicated that working in the private sector, her work has been largely with non-profits and 501(c)(3) organizations with transportation project components. Those experiences have been very positive because by the time those companies find Interviewee #CON18, they are in desperate need of assistance. Her work in the private sector is not much money, but the work has been steady over the years.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, reported that her business has been very successful in the private and public sectors.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, has worked in the private sector and she has been successful.

Interviewee #CON29, an African American male-owned electrical contractor, stated that all of his business comes from the private sector; he works primarily on residential and commercial buildings.

He stated that he has been successful in business for the past 21 years and has a steady flow of work. He stated that his business comes from referrals from contractors.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has been successful in the private sector.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has been somewhat successful in the private sector. She characterized her experience as “okay.” She stated that the private sector does not utilize her company’s services. She stated that there are big barriers to working in the private sector and the payment policies are horrible.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she has been successful in the private sector; she stated that after years of working with a Southern California utility company, the relationships that she has developed are strong and lead to more work.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she has been successful in the private sector, but noted that she “might not get paid.”

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that his first 10 years working in the private sector were very good. He stated, however, that recently project opportunities have been slow.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that he has definitely been successful in the private sector. He stated that he is even happier about the recent changes including that young people are getting into positions of power and looking at things differently. He stated that he is tired of the “Good Old Boy Network.” He recalled getting a contract and walking into a room at a treatment plant. He stated that the whole room became very quiet and that made him nervous; one of the men shouted: “We do not need any more minorities!” He informed the men that he was on the project and that was not going to change. He stated that this has been a way of life for him but he is tired of it.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, reported that she has been successful in the private sector, but noted that her success is dependent upon the economy; when the economy is good she is successful.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he has had a positive experience working in the private sector. He reported that he is always looking toward the future and at new contract possibilities.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has had a decent experience working in the private sector but noted that there is always a battle to receive payment in the private sector; he stated that they want the work done but they do not want to pay for it.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has had some success working in the private sector but stated that prime contractors in the private sector want to make their own rules.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported that most of his work comes from the private sector. He stated that he has to work harder in the public sector than in the private sector and the rates are “not too good” but he does feel as though he has been successful.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has been successful working in the private sector. He indicated that he has seen more success in the private sector over the past two years than he has in the public sector.

CONTA #1, the President of the Latino Business Owners of America, stated that most of his members work in the private sector. A few of his members will mix their private sector work with 10 percent public work. Generally members have experienced more success in the private sector. Members often have a better understanding of the private sector, how they can get paid and work on more than any one large project. CONTA #1 identified several differences between public and private sector work. He stated that projects in the private sector can be large and that private sector contractors or owners have no problem working with DBEs. There are a multitude of different projects that his members can do in the private sector. Also, members can get involved in private sector projects more quickly. Interviewee CONTA #1 stated that the private sector is more open because the people making decisions are not as restricted as government staff.

CONTA #2, the President of the Black Contractor’s Association, stated that members enjoy the private sector because they are timely paid in the private sector. He stated that subcontractors are paid according to the contract schedule instead of 30-60 days after schedule and after having financed the job. He stated that members are placed in a bad situation if they are required to finance a job before receiving payment.

Some minority- and female-owned businesses reported negative experiences in the private sector. [Interviewees #CON: 14, 25]. Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that the private sector is disadvantaged by budgeting and micromanaging and by the “stakeholders” in the community. Interviewee #CON14 also stated that there is more volatility in the private sector. He stated that the “politics” in the private sector consist of people from the same background. He stated that there is more “backstabbing” in the private sector. Interviewee #CON14 described the difference between the public and the private sectors by stating that in the public sector people “cover their butt” whereas in the private sector people “cover their back.” Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he did some work for a private firm but it came with a lot of difficulties.

Some DBE interviewees felt they were unsuccessful in the private sector or had limited experience working in the private sector. [Interviewees #CON: 4, 10, 15, 16, 24, 26, 31, 32, 41]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, explained that he does not typically receive private work from a prime contractor reaching out to him, without some contacts. For instance, the private developer that he is working with now came to him because the developer was referred to Interviewee #CON4 by someone from

the San Diego Port District who also knew Interviewee #CON4 well. Interviewee #CON4 stated that in 1979 he did work in the private sector. He initially began with clients that he had worked with previously in other jobs. In the beginning it was not that difficult to obtain work in the private sector, but in the mid 1980s a lot of the large firms that traditionally used to be located in Los Angeles started opening branch offices so there was a lot more competition and it became more difficult to obtain private sector jobs. Interviewee #CON4 also stated that marketing for the small company was not on the top of his priority list, so he would try to do business development only when he had time. He found it more difficult to obtain business and decided to switch and concentrate more on the public sector. Interviewee #CON4 stated that his company still does about 1 percent in the private sector. Interviewee #CON4 stated that he cannot really say whether there are any differences between public sector and private sector work because he does so little private sector work. Interviewee #CON4 stated that he does not really pursue private sector work so he has little experience being used on private sector projects.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, did not have any experience working in the private sector.

Interviewee #CON15, a Hispanic American male owner of an MBE-certified engineering and construction company, stated that in the private sector, a lot of his work depends on the contacts of his company and who he knows.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, noted that working in the private sector is not profitable for his business. He also stated that because the business serves in a niche capacity, companies in the private sector do not care whether you are a DBE or a minority. According to Interviewee #CON16, working in the private sector is basically a price game.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had very little success in the private sector.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, reported that she does not do any work in the private sector.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that right now business is slow. He stated that commercial liability insurance is extremely high and [it is difficult] to be able to pay that with things being as unstable as they are with the current economic situation. He said it is been like this almost as long as he has been in business after the economic decline following the September 11, 2001 tragedy. He feels he is capable of doing the work, but he just is not getting a fair chance at showing that he can do the work.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he does not have any experience working in the private sector.

Most white male-owned businesses reported success in the private sector. [Interviewees #CON: 7, 8, 52, 53, 54, 55, 56, 57, 58]. Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that in the private sector a business' ability to obtain work is all about competence. Interviewee #CON7 thought that general contractors or owners do not care that a business is minority-owned if the job is performed

right. In the public sector, however, Interviewee #CON7 stated that there are goals and contracts that hinge upon whether you are a minority.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that working in the private sector is “excellent” because goals and objectives are clearly defined; deliverables are clearly defined and direction is clear and succinct.

Interviewee #CON56, a white male owner of a small electrical contracting firm, reported that they have had good experiences working in the private sector. He stated that they are continuing to improve and there is tremendous room for growth.

Interviewee #CON58, a white male owner of an engineering consulting firm, reported success working in the private sector. He reported that they have offices and consultants in multiple locations and felt as though they have been very successful.

Public sector work experience.

Most of the minority- and female-owned businesses interviewed reported some success obtaining public sector jobs. [Interviewees #CON: 1, 3, 4, 9, 12, 13, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 30, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 50, WT #1]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they do work for some governmental agencies and these agencies repeatedly call them because they do quality work and they do not overcharge. Interviewee #CON1 stated that every time he has tried to bid a municipal job, he has run into numerous obstacles. He provided an example when a non-Consortium agency was bidding out too large a scope of work for the problem presented. In another instance, Interviewee #CON1 discussed a situation where the non-Consortium agency was requiring certain license requirements that were not appropriate for the work required. Interviewee #CON1 characterized this as a lack of knowledge and has prevented him from trying to bid on public sector projects.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that most of his public sector work is for local agencies, including the city and county of San Diego. He stated that his company does a fair amount of work for the San Diego County Water Authority and a little work for the Port District and some public school projects. Interviewee #CON4 stated that his company has been successful in public sector (non-Consortium jobs) because over the years he has been able to establish working relationships with a lot of the prime firms. The prime contractors already know his company and what he can do and they feel comfortable with Interviewee #CON4. Interviewee #CON4 stated that after his business was certified by Caltrans in the 1990s he tried to shift his focus to public sector work. When he first started in 1979, his company did more residential work. Today, however, his company does 99 percent public work. Interviewee #CON4 stated that it is a lot easier to deal with the owner agencies rather than private developers because with private developers you never get a good feeling about what their expectations are whereas with the owner agencies the scope of work is well defined and they tell you exactly what they want so you prepare your proposal based on what they want.

Interviewee #CON4 stated public sector work is a lot easier and he enjoys the work better than private sector work. Interviewee #CON4 stated that his current private sector work involves improvements in two existing marinas to include putting in land site improvements, buildings,

parking lots etc. On the public sector side, Interviewee #CON4 stated that his company has developed a reputation in the arena of underground utilities, and does a lot of work related to water, waste water, recycled water, pipelines, pumping stations, and all sorts of work related to storage and transportation of water. Interviewee #CON4 stated that there is no difference in the private or public sector jobs in terms of whether he is a sub or prime, in either sector, he is generally a subcontractor. Interviewee #CON4 stated that the scope of the work is generally the same whether it is the public sector or private sector. He said that he still has to go through the same steps in terms of collecting data to examine and make samples of the soil, and then test them in the laboratory and do engineering analysis. He explained, the steps are the same but what you may be looking for is different. In terms of the amount of the contracts, he stated the private sector projects were generally small residential projects (like a single family residence or subdivision) and the public sector projects can be a higher dollar value and last longer.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that most of their work comes from the non-Consortium public sector. He stated that in the public sector, the work is also good although the work is generally not as profitable and payment can be slow. Interviewee #CON9 stated that, in general, his experience on Consortium projects is the same as his experience on other public sector projects.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that in the public sector, their general work experience has been very good because most of their business is generated based on their qualifications and their past project delivery.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that work for other public agencies is similar to the work that he does for the Consortium. He stated that he is currently working on a project for the City of San Francisco that has “a lot of new age type requirements.” Interviewee #CON13 stated that he does a lot of work for smaller agencies and they do not have as many lengthy requirements as do the larger agencies. He stated that the lengthy requirements are “not a DBE thing.” However, he does not have the same legal resources as do the larger companies working for larger agencies. He suggested implementing a legal help desk to be made available to companies.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that her experience in the public sector on non-Consortium jobs has been excellent — her company is respected and she does good work. Interviewee #CON17 stated that the company’s MBE/DBE/WBE status truly acts as a door opener, and it gives you a “toe in.”

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, stated that non-Consortium public sector jobs make up the most of her work. Interviewee #CON18 indicated that the notification and qualification process for non-Consortium public sector jobs has been much better and easier than working with the Consortium. These agencies and entities are much more accessible.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, reported having been very successful in the public and private sectors.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had a good experience working on non-Consortium public sector projects. She said that they have certification monies set aside.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he had been somewhat successful obtaining non-Consortium public sector jobs. He stated that for the first four years of his business, all of their work was as subcontractors and without certification, it would not have been possible.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that 100 percent of her work experience is in the public sector and she has been very successful.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that success in the public sector varies from agency to agency. He stated that there is less risk in not getting paid on public sector work, but it takes longer to get paid, particularly with the City and County of L.A. He stated that you must develop a level of trust with the agencies to become successful and that establishing relationships is key.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that his company has been very successful in the non-Consortium public sector. He attributed this success to perseverance.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, felt that she was successful obtaining work in the non-Consortium public sector.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her work in the non-Consortium public sector has involved school districts and water districts projects. She stated that Proposition 209 has supposedly precluded large firms from using DBEs. She has had no difficulty in obtaining work and feels as though she has been successful in the public sector.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, felt that she has been successful in the non-Consortium public sector.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she has been successful in the non-Consortium public sector, but noted that she “might not get paid.”

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that overall he has had a very good experience working in the non-Consortium public sector. He stated that he had five very profitable years while working on a public project for the Los Angeles World Airport. He stated, however, that he felt he had to make compromises on the public sector non-Consortium jobs and ethics was sometimes an issue.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has done a lot of work in the public sector. He has done public sector work for the City of Palm Springs and the San Fernando Valley and all have turned out well.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that her experience in the non-Consortium public sector is about the same as in the private sector; it is about a 50-50 split between public sector and private sector work. She stated that she has been successful in the non-Consortium public sector, but it could be better. She said that sometimes when you have a small company, the Consortium and big companies think that you are inept. Interviewee #CON39 stated that she was hired by the Department of Homeland Security to do a large project and she was able to take the lead. She stated that she had to hire a large firm to be a subcontractor and that turned out to be very successful.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has been successful in the non-Consortium public sector, but feels that the relationship between the prime contractor and the subcontractor should be monitored. He stated that often the prime contractor abuses the subcontractor and requires the subcontractor to perform additional work beyond the scope of the project without additional compensation.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she was successful in the non-Consortium public sector and referred to a lucrative account with a city government public library.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he has been extremely successful working in the non-Consortium public sector work; he cited a contract with a community college that was very lucrative.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, reported that she has had the most success working for state agencies and the federal government.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has been very successful in non-Consortium public sector; he stated that these were competitive bids and 8(a) contracts which are set-aside contracts and non-compete.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, indicated that he has had a positive experience working for schools but stated that there is not enough steady work.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has had an okay experience working on public sector non-Consortium projects. He reported that he has run into issues with pricing and stated that all public sector contracts involved bidding wars.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he is doing okay working in the non-Consortium public sector and he is trying to become more successful. He stated that there is a much higher “doorstep” in the public sector and he has to try even harder to get into the private networking in the public sector.

WT #1, an individual representing an automobile parts store submitted written testimony in connection with the Consortium public forums to report a positive experience working with

LACMTA. “I have only had perfect relationships with [LACMTA] over the years. They are a great polite group to work with.” (Written testimony submitted 9/24/09).

Some minority and female-owned businesses reported difficulties in pursuing work on public sector jobs. [Interviewees #CON: 2, 10, 14, 16, 23, 29, 31, 32, 41, 51, CONTA #1]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has no experience working in the public sector. He is not certified with any of the Consortium agencies. Though Interviewee #CON2 has been certified with Caltrans for approximately one year, he stated that the certification has not provided any public work, though he used to be employed by Caltrans. Interviewee #CON2 stated that he has tried to obtain work through Caltrans but has had no success. He stated that the agencies only encourage companies to work with minorities but they do not require it. Interviewee #CON2 stated that he has sent letters to prime consultants expressing his interest in projects but has received no response. Interviewee #CON2 stated that all of his work has been from the private sector because it is much easier to obtain work in the private sector. He stated, if the economy is doing well, he can obtain work in the private sector with a simple phone call and interview. In the public sector, however, he stated that there are various other requirements to fulfill. To start, you have to have public sector experience to apply for public sector work and this has been a problem for those with no public sector experience.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that on non-transportation public sector projects, the negotiation process as between them, the prime contractor, and the government has been slow and has held up the process.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that the public sector has a lot of challenges overall. Interviewee #CON14 stated that the political structure in the public sector is “pretty heavy” and is not necessarily conducive to efficiency.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his experience on non-Consortium jobs has been terrible. Interviewee #CON16 noted that these agencies only use their local favorites and there is no reference checking about various companies’ abilities. Interviewee #CON16 indicated that for the most part, the schedules set for non-Consortium jobs are generally “ridiculous.”

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, reported mixed success obtaining non-Consortium public sector work. He stated that the City of Los Angeles, in particular, has cut back on rates and business opportunities with them.

Interviewee #CON29, an African American male-owned electrical contractor, stated that he has had only one project in the public sector at UCLA 15 years ago.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that with respect to doing business with non-Consortium public sector agencies, he feels there needs to be some sort of way of negotiating with the government entities as opposed to negotiating and putting bids in with the prime contract holders. There is no way to judge who or how the subcontractors are chosen and picked. Are they picked by lowest bidder, off of gut instinct and/or feelings, are the relationships established beforehand as the project goes up for bid and the prime contractors apply with that as a part of their package? Interviewee #CON31 reported that it is hard to figure out how to get in on the work that is out there.

Interviewee #CON31 stated that he was capable of doing the work and that he has been involved in one way or another his whole life since the age of about 15 ½ years old. He knows the business of block/brick-laying and building walls inside and out. He stated that if the dealings with prime contractors were cut out, and he could deal directly with the government agencies, he feels the games and questioning would be out of the door and that he could get more work and business would be much better. There is no chance for subcontractors to compete when big businesses can do the entire project and charge less in some areas and more in others especially when they own the equipment and rental fees are eliminated. He stated that he feels he could be doing so much better in terms of work in the non-Consortium public sector. It has been a couple of months since his last job of note and he is feeling the pressure to get the next one, not only for himself, but for his family and the men and their families who depend on his projects.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated he had no experience working in the public sector; “it hasn’t happened yet.”

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, has experience working in the public sector and noted the process of obtaining work takes a while. He believes that most prime contractors do not reach out to DBEs.

CONTA #1, the President of the Latino Business Owners of America, stated that his members have experienced challenges working in the public sector. In the public sector members must divert attention away from revenue and spend approximately two weeks working on a bid that they do not know they will win. Therefore, right away members tie up part of the bond. By nature this process is discouraging. Interviewee CONTA #1 stated that most of the companies who bid on projects are structured so that they have someone in place whose responsibility is to bid on such projects. Also, most members find that they need to have a relationship with the contractor before the bidding. If they wait until they receive outreach, the odds of participating are not good.

Most white male-owned businesses reported success in the public sector. [Interviewees #CON: 5, 8, 52, 53, 54, 55, 57, 58]. Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated public sector work pays much better and more quickly than in the private sector. The amounts of the contract are greater in the public sector.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that work in the public sector is very good but contracts are “fuzzy;” he does make money, however, because of the change order process. He stated that the bidding process, the directions, and the goals and objectives are cumbersome.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, reported having worked on a Caltrans project. He stated that he has been successful due to his firm's reputation and also because they have a relationship with their manufacturer who is a source of positive referrals for them.

Interviewee #CON58, a white male owner of an engineering consulting firm, reported success working in the non-Consortium public sector; he cited work for multiple public agencies on different projects.

Differences between private sector and public sector work experience.

Interviewees reported some differences between public sector and private sector work.

[Interviewees #CON: 1, 8, 11, 12, 13, 14, 16, 18, 29, 30, 31, 33, 37, 39, 40, 45, 47, 55].

Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that his company is not the lowest price in the county or the state but his clients know that he does quality work and is dependable. He stated that the lowest bid is not always the best value, but unfortunately the state and the municipalities always go for the lowest bid.

Interviewee #CON8 stated that there is no difference in the type of work or price of the contract between the public sector and the private sector. He stated, however, that the private sector is "meaner." He stated the prime contractors in the private sector look to find a glitch in the contract or the work completed.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that both the public and private sectors present different work environments for her business. Interviewee #CON11 said that her work for the Consortium is very narrow in scope and she has no flexibility to go outside the scope of work. In contrast, Interviewee #CON11 stated that in the private sector, she has more leeway to make recommendations and go outside the scope of work. Interviewee #CON11 also identified the scope of work and training requirements as differences between working in the private sector and the public sector.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that in the public sector there is a greater consideration to the size of the firm and reasonable project schedules. In contrast, in the private sector, there is sometimes a complete disregard for who is doing the work and payment can be held up. Interviewee #CON12 stated that his work as a subcontractor in the private sector is characterized by a faster pace, demanding schedules, and poor payment.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that there is not as much red tape in the private sector and it is easier to get a project started.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that the resources are better in the private sector. He said that there is better qualified talent in the private sector marketing departments and noted that the private sector has a better understanding of the marketing investment. In contrast, Interviewee #CON14 stated he feels that people in the public sector generally are not as qualified. He said that there is less accountability in the public sector and it is more difficult to fire someone. Interviewee #CON14 stated that the public sector agencies do not have the same understanding of the marketing process as do the private sector agencies.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his work in the public and private sector is different. In the public sector, Interviewee #CON16 functions as more of a systems integrator and manufacturer. In the private sector, Interviewee #CON16 functions mostly as a supplier of product and sometimes a contractor if a company has a small project, but not on big scale projects.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, indicated that the work she does in the public and private sectors is largely the same, but noted that the difference depends on the scale of the project.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that private sector work is much more flexible and not as rigid as public sector work in terms of regulations.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the bidding process is different as between the public and private sectors.

Interviewee #CON29, an African American male-owned electrical contractor, stated that there is a significant difference between work in the public sector and the private sector. He stated that there is more responsibility working in the public sector; you have to maintain all of your insurance paperwork and “workers’ compensation is another big one.” He said that it is hard for small businesses to meet the requirements of public sector work because of the rigorous qualifications to be able to obtain such work.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there is stringent competition within the public sector as it relates to the award of contracts and working in the public sector. He said that there is more paperwork and strenuous regulations in the public sector that have nothing to do with increasing his performance or output or outcome of the project.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that some of the major difference between private sector and public sector work are the scale of the projects and the politics that go on behind the scenes to get the projects. He said that the price does go down significantly when considering the differences between public and private sector work.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that there are more opportunities in the public sector for her type of business.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that private sector and public sector projects are completely different. He stated that in the private sector contractors can speak directly to the decision maker and have the ability to negotiate. He also stated that the private sector is more flexible, and larger firms can go after small projects. In the public sector, however, the work directive, requirements, and pay schedules are fixed and slow.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that the quality of work is the same although the discipline is different.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the public sector has different reporting and other requirements than the private sector.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that there is a monetary difference and a difference in the contract compliance aspects of her work as between the private and public sectors.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that receiving payment in the private sector is always difficult. In contrast, he noted that payment by the federal government is different and more prompt.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that although the scope of work is the same, the profit margin in the public sector is much higher than it is in the private sector (15-40 percent in the public sector as compared to 5-8 percent in the private sector). He stated that his firm prefers work in the public sector.

CONTA #2, the President of the Black Contractor's Association, stated that members are not timely paid in the public sector. He said that public sector jobs pay well and are plentiful, but the jobs are also much harder to obtain. He also stated that members find more discrimination in the public sector. CONTA #2 stated that there are several differences between public and private sector work. He said that most private sector work involves homebuilding while public work involves commercial construction. Generally, the contract amounts are larger in the public sector. He also said that there are fewer DBE prime contractors in the public sector.

Other interviewees reported no differences between private sector and public sector work. [Interviewees #CON: 15, 17, 24, 30, 32, 34, 35, 36, 38, 42, 44, 46, 49, 52, 54, 57, 58].

Anecdotes regarding businesses acting as prime contractors and subcontractors.

Interviewees reported reasons behind their decision to act as a prime or subcontractor. Some interviewees reported their decision to act as a prime contractor or a subcontractor is dependent on the project; some interviewees reported a preference to act as a prime contractor. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that his business acts as a prime contractor or a subcontractor "because that is where the work is."

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he would rather be a prime contractor than a subcontractor. He said that market conditions dictate which role he plays. He stated that when you are a subcontractor you are at the mercy of the prime contractor because of the payment arrangement. Interviewee #CON2 stated that he prefers to have a direct relationship with clients because they honor payments. Interviewee #CON2 said that he has had prime consultants default on payments on three separate occasions; the prime contractors were architects.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that most of his work is as a prime contractor because he has a particular approach to environmental projects – he buys contaminated property and cleans it up and resells it. He stated that you have to have money to do it, and banks do not loan money to buy contaminated property.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that their decision to act as a prime or a subcontractor is dependent on the work that is available.

Interviewee #CON11, a SBE-certified white female ergonomic prime consultant, stated that she acts as a prime contractor because that is how she chooses to bid. She does act as a subcontractor on occasion in the private sector, but she would rather be a prime contractor. She stated that a lot of prime contractors call her to participate on public sector bids because she is on a list of small businesses, however, because her work is so specialized, they often contact her to do work that she is not qualified to do. Interviewee #CON11 stated that she does act as a subcontractor in the private sector, however, she would prefer to act as a prime contractor.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that they base their decision whether to act as a prime contractor or a subcontractor on the expertise involved and their knowledge of the client. If both components are strong, then they will act as a prime contractor.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he prefers to act as a prime contractor on a project because that gives him more control. He stated, however, that a large number of contracts are too large to act as a prime contractor, and acting as a subcontractor gives him the opportunity to work on a lot of difference projects. Interviewee #CON13 stated that “teaming is the name of the game.”

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that their decision to act as a prime or a subcontractor on a contract is dependent on the type of contract. He indicated that their company will act as a prime contractor when their specialty is the primary focus of the contract. Interviewee #CON14 stated that their company will act as the subcontractor when other services are more important on the contract than theirs.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, also noted that his company generally works as a prime contractor because they cost their jobs as project managers – they’re involved some way in every single project.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his business predominantly functions as a prime contractor because of its line of products that it develops; it does not usually buy and resell products.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the business functions more as a prime consultant because the business is small. Interviewee #CON17’s goal has been to build a reputable consulting practice, to grow, and to be competitive.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, typically functions as a prime contractor because her work is very specialized. Much of her work as a prime

contractor she undertakes by choice rather than in a subcontractor arrangement. Interviewee #CON18 builds the partnership that is going to run a project or functions as a part of a team.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, indicated that his business acts mostly as a subcontractor, but it is dependent on the project.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she typically acts as a prime contractor and if the client asks her to take the lead she will bid accordingly. Interviewee #CON26 acts as a subcontractor when the work is a small component of a larger project.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that his business works mostly as a prime contractor because of the type of work that they do.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, reported that her business chooses to act as a prime contractor or a subcontractor depending on the opportunities available and what is more advantageous; it is dependent upon the size of the project and the scope of work.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her business principally acts as a prime contractor because she wants to be in control of her business and to be paid on time.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that her business acts as a prime contractor because she has the capacity to provide the services requested.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that his decision to work as a prime contractor or subcontractor is based on the size of the project and the types of design disciplines required for the project.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that when he acts as a subcontractor for the L.A. County MTA it is because of the skill sets that are needed. When he is the prime contractor, he will utilize subcontractors to complete other necessary work on the project.

Interviewee #CON41, an Asian American male owner of a DBE/MBE-certified general contracting firm, stated that they typically go after the project itself as a prime contractor rather than signing on later.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that they typically act as the prime contractor.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that his decision to act as a prime contractor or a subcontractor is dependent upon the type of contract they have applied for and the scope of work.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he will bid as a prime contractor if the requirement is purely electrical; if the work requires other services then he will not bid on it because it is beyond his capabilities.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported primary work as a prime contractor due to the nature of his business.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, reported that he sometimes is hired as a prime contractor on smaller projects, but their business is not set up to act as a prime contractor on larger projects.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that they act as a prime contractor on mid-size projects but as a subcontractor on larger projects. He stated that if the project requires a bond of \$1,000,000.00 or more they will get a larger firm to act as the prime contractor.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, reported that his decision to act as a prime or a subcontractor is dependent on the size of the project.

Interviewee #CON54, a white male owner of a general contracting firm, reported that they act as a prime contractor due to their size and capabilities; they favor being a prime contractor because it is all-inclusive.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that they act as a prime contractor due to their size and a preference to be in control of the project.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, stated that their decision to act as a prime or subcontractor is dependent on the scope of work encompassed in the project.

Interviewee #CON58, a white male owner of an engineering consulting firm, reported his firm's decision to act as a prime or a subcontractor depends on the size of the project and the disciplines required within the scope of work.

Other interviewees reported primary work as a subcontractor due to market conditions and other factors. [Interviewees #CON: 4, 8, 21, 22, 25, 40, 50, 56, CONTA #1, 2]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that his business acts as a subcontractor because there are very limited opportunities for geotechnical consultants to be a prime. In most projects the owner hires either a civil engineer or architect to be the prime and then his business would serve as a subcontractor. Interviewee #CON4 stated that his company is a subcontractor most of the time and always has to market themselves to the prime because there are never any RFPs or RFQs for geotechnical workers.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that the reason that his business acts as a prime or a subcontractor is based on the "ability

capacity” — he made the analogy to bonding capacity in the construction industry. He stated that public contracts often require extensive and specific experience.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that when her business acts as a prime contractor, it has been as a federal contractor, which system is set up for small businesses. When she worked as a subcontractor, she felt it was because it was advantageous for the large firm to work with a small firm. She also felt the RFPs are designed for small businesses not to get business.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, reported that bonding is the principal reason that his firm does not bid as a prime contractor.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that given the nature of his business, bidding as a subcontractor is more feasible in terms of obtaining work, particularly on large public sector projects.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that his company typically is used to fulfill the DBE requirements placed on larger majority owned firms; they typically cannot compete for the larger contracts.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that his company is not big enough to act as a prime contractor.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that his firm acts as a subcontractor because he would have a difficult time regulating so many employees; otherwise he would like to bid as a prime contractor.

Interviewee #CON56, a white male owner of a small electrical contracting firm, stated that his firm is very specialized and are not able to oversee work outside of their area.

CONTA #1, the President of the Latino Business Owners of America, stated that members act as a prime or subcontractor depending on the size of the business and the financial status. Many clients will not contract with a company that has no financial wherewithal to handle a project.

CONTA #2, the President of the Black Contractor’s Association, stated that most members are subcontractors because most members specialize in one trade or another, often in residential or trucking industry. He explained that it is a lot easier to manage a business in a smaller specialized area.

Several interviewees reported that there are DBE prime contractors working in the Consortium transportation industry. [Interviewees #CON: 3, 4, 7, 10, 12, 13, 15, 17, 18, 20, 22, 24, 26, 30, 31, 32, 34, 39, 41, 42, 46, 51, 52, 54, 55, 56, 58, CONTA #1, 2]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that there are DBE prime contractors. He stated he is aware of two Indian partners who became prime contractors, and he recalled one other DBE prime contractor whose name he could not remember. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, was aware of two minority-owned prime contractors in San Diego although he did not

believe they were DBE certified; one is a structural engineering firm and the other is a large geotechnical firm. Interviewee #CON4 indicated that he believed that there are no DBE prime contractors because to qualify as a DBE, there is a threshold amount that the firm can earn, and once the firm is successful they automatically exceed that threshold and can no longer qualify as a DBE. Interviewee #CON4 stated that he believed the structural engineering firm likely started out as a DBE.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he is aware of a female prime contractor who bonds construction. Interviewee #CON7 is also aware of two or three minority prime contractors who work in securities and construction; however, Interviewee #CON7 did not know if any of these businesses were certified as DBE. Interviewee #CON7 thought that if any of these businesses were certified as DBE the owners would not necessarily tell subcontractors.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that there are “quite a few” DBE prime contractors.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that there are DBE prime contractors and they know who their competition is. He stated that the number of DBE firms has changed over the past five or ten years, in part, because they either graduate from the DBE Program or are purchased. He stated that his company is part of the “new wave” of DBEs. Interviewee #CON12 stated that they had probably worked under a DBE prime contractor but not often.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that there are DBE prime contractors but there are not too many in his field.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that her firm has worked with two DBE prime contractors and both times it was a good experience.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there are DBE prime contractors but not many. He has worked under a DBE prime contractor.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that there are DBE prime contractors working in the industry but there are not many of them.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that she is a DBE prime contractor although she was not aware of any others.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, reported having observed one or two DBE prime contractors over the past ten years.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that he has never paid attention but that he was sure that there were DBE prime contractors working in the industry.

Interviewee #CON54, a white male owner of a general contracting firm, reported that they are aware of DBE prime contractors working in the industry and utilize them when it makes sense.

CONTA #1, the President of the Latino Business Owners of America, stated that he is aware of approximately five DBE prime contractors who are working on a regular basis. He stated that his members have worked with or under a DBE prime contractor.

CONTA #2, the President of the Black Contractor's Association, stated that he is aware of one prime contractor that operates as a general contractor and is 8A certified by the SBA. He also stated that he is aware of two prime contractors that are certified with Caltrans, one is a woman-owned firm specializing in military projects and the other is a WBE engineering firm. He also stated that he is aware of a former prime contractor who returned to subcontracting because he could not handle the headaches of being a prime contractor and sending other subcontractors work. CONTA #2 was not sure whether any of his members had ever worked with or under a DBE prime contractor.

Some interviewees reported limited knowledge, if any, of DBE prime contractors working in the Consortium transportation industry. [Interviewees #CON: 1, 2, 5, 6, 8, 11, 14, 16, 35, 36, 37, 38, 40, 43, 45, 47, 48, 49, 50, 53, 57]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know any MBE or DBE prime contractors. He believes it is because there are not a lot of minorities in the engineering field and he stated, typically people go out on their own and pursue employment. He stated that it is a challenge to minorities to venture out and sometimes people venture out for a couple of years and find they that cannot get work. Interviewee #CON2 stated that he has never worked under a DBE prime contractor.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated he does not know how many electrical engineering DBEs there are but believes there are not many in San Diego. Interviewee #CON5 stated that his company specializes in lighting consulting and as he understands there are no DBEs in lighting consulting.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, did not know of any DBE prime contractors. He stated that they are not advertised as much. Interviewee #CON6 was aware of two other DBE subcontractors: a trucking company and another company involved in materials recycling.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, was not aware of DBE prime contractors working in their line of business.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, was aware of one prime contractor who might have been a DBE but he was unsure whether the contractor was DBE-certified.

Several interviewees had worked with, or under, a DBE prime contractor. [Interviewees #CON: 9, 10, 13, 15, 17, 18, 20, 22, 23, 24, 27, 29, 30, 31, 33, 46, 53, 54, 55, 56, 58]. Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated he was not aware of other DBE prime contractors in the engineering and architecture fields. He stated that most of the companies get too big to meet the federal size standards for the Federal DBE Program. If a firm were to act as a “prime contractor a lot and won a lot of contracts, they would graduate out of the DBE Program; “that is what happened to us.” Interviewee #CON9 did indicate, however, that he has worked with DBE prime contractors within the past four years, approximately four or five times; all of these were in the public sector. He stated that that has been a positive experience and noted that DBE prime contractors understand the “situation” of other DBEs.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had worked for a DBE prime contractor a few years ago in Oakland, California.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has proposed together and even worked as a subcontractor with other DBE prime contractors. Some DBE prime contractors have performed a subcontractor role with Interviewee #CON17’s company.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, has worked with other DBE and WBE prime contractors. Interviewee #CON18 is more inclined to work with sole proprietors.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, believed that he may have worked as a second-tier subcontractor under a DBE prime contractor.

Interviewee #CON29, an African American male-owned electrical contractor, worked with a DBE prime contractor about 15 years ago.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that technically he had worked with a DBE prime contractor in that the company was legally owned by a woman and was classified as a WBE; that is a large part of how and why they got the majority of their contracts. However, the company was only owned by the female in the sense that her name was the one used as the legal owner. Interviewee #CON31 stated that he had never seen her on a project in the time that he had dealings with that company; the husband was the one running the business and had worked in the industry his entire life. The husband should have been the one classified as the owner.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, has worked once or twice with or under a DBE prime contractor.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, believed that he may have once worked with or under a DBE prime contractor.

Interviewee #CON56, a white male owner of a small electrical contracting firm, stated that they are currently working on a project with a DBE prime contractor; the project is almost 80 percent complete and it has been an overall pleasant experience.

Most interviewees had never worked with, or under, a DBE prime contractor. [Interviewees #CON: 1, 4, 5, 6, 7, 8, 11, 12, 14, 16, 19, 21, 25, 26, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 57]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, was not of having worked with or under a DBE prime contractor.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, was not sure whether he had ever worked with or under a DBE prime contractor, but did work once on a project for a minority-owned firm. At that time, however, he believes that the minority-owned firm had graduated from the DBE Program. The prime contractor in that instance was the designer on a project for the City of San Diego and Interviewee #CON4 acted as its subcontractor.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he does not think that his company has ever worked with or under a DBE prime contractor but he was unsure. Typically, he stated, prime contractors are large corporations and not required to be DBEs.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has worked with a DBE prime contractor only once about 20 years ago. The DBE was a construction company. He stated that he could not recall the name of the project, but recalled that it was a redevelopment project someplace.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had not worked with too many DBEs but she is always willing to work on a good project and it does not matter whether they are a DBE.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he has never worked with or under a DBE prime contractor. He stated that he once had a deal in the works to work with or under a DBE prime contractor, but the negotiations did not work out after a Hispanic firm was proposed for the work instead. He stated that the outcome was frustrating, but he did not complain because he did not want to hurt his future business opportunities.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, did not believe that he had ever worked with or under a DBE prime contractor, but noted that he may have worked with such a firm and not know their certification status.

Caltrans Anecdotes Regarding Public and Private Sector Work

The following anecdotes regarding work in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

DBEs as prime contractors.

Most minority or female-owned businesses reported that they work primarily as subcontractors.

These businesses offered a variety of reasons for working primarily as subcontractors, including that they were too small to bid as primes, that they preferred to work as subcontractors, and that they could not afford the capital expenditures required to be a prime contractor.

Many interviewees only knew of a few DBE primes working in the public sector and few could recall ever having worked with a DBE prime.

Interviewee #CT17, a white male-owned business, stated there are "very few" DBE contractors doing public sector work, explaining "[u]sually DBE contractors are small firms, one to ten people. They're not capable of doing large jobs like [those for] Caltrans." Interviewee #CT66, a white male-owned business, said that he "know[s] a few" DBE firms working as prime contractors for Caltrans and that they hauled rock, sand, and pavement. Interviewee #CT33, a Hispanic female-owned business, stated that she did not monitor whether any prime contractors working for Caltrans are DBE firms, but her observation was that "most of [her] primes are not DBEs or any BEs at all." Interviewee #CT34, a white male-owned business, was not aware of and/or could not think of any DBE firms that worked for Caltrans as prime contractors. CATA #1, an Asian American trade association, said there are "some" but "very, very few" DBE firms working as prime contractors on Caltrans jobs. This happens only when there is a "major push" in the community and then one or two DBE firms get a small contract as a prime. Similarly, CATA #7, a Filipino trade association, sees very few DBE primes.

Interviewee #CT30, an Asian American male-owned firm, observed that if a DBE is able to obtain prime work, it is probably getting bigger and bigger, and eventually the DBE grows out of the program. He knows of a few firms that have successfully graduated, but have had difficulty in maintaining non-DBE status, partly because they got their work due to their DBE status. Once they graduate out, "they're playing with the big boys and nobody wants to pick them anymore," not because they do not do good work, but because they are not DBE to fulfill the goal. Interviewee #CT30's main core work does not depend on DBE status.

Some DBEs reported working primarily as subcontractors due to financial limitations.

Interviewee #CT81, a Hispanic male-owned business, believes there is a lack of opportunity for small firms in both sectors. The average price range of his contracts in the public sector is \$250,000.00. This DBE works primarily as a subcontractor in both sectors because he cannot afford to bond his work.

Interviewee #CT29, a Hispanic male-owned business, tried to do more prime work by forming a limited liability corporation in 2001. He hired people, paid the workmen's compensation, and made sure that he satisfied all the requirements to avoid having the answer that they like him "but [he does not] have this or that." This DBE describes his experience as: "it was expensive and I've never gotten anywhere."

Some minority-owned businesses did not believe there were opportunities for small businesses to act as primes in the public sector.

Interviewee #CT33, a Hispanic female-owned business, stated

that the company works most of the time (about 60 percent) as a subcontractor in the public sector and that on Caltrans jobs it works primarily as a subcontractor to engineers. According to Interviewee #CT33, the company works as a sub on these jobs because, “Caltrans is very engineering-oriented and generally the engineers like to be in charge,” and “everything flows from the engineering contract.”

Interviewee #CT8, a Hispanic male-owned business, felt that his business had been successful in getting work in the public sector, including work for Caltrans, but works 80 percent of the time as a subcontractor – “it just seems that we get more work as a subcontractor than as a prime contractor.”

CATA #3, a Hispanic trade association, stated its members work mostly as subcontractors and he had not seen any Hispanic-owned firms working as prime contractors for Caltrans, at least not in the professional services area. According to CATA #3, few members go after Caltrans work because most members feel that Caltrans’ doors are not open and do not believe that work opportunities with Caltrans are anywhere close to what they should be. CATA #3 said that he knew of a couple of non-Hispanic DBE firms doing prime contractor work for Caltrans (a female-owned business that does striping work and business owned by a representative of the Small Business Council).

Some DBEs reported that they act as subcontractors because Caltrans or other agencies do not directly contract for their type of work. Interviewee #CT46, an Asian American male-owned business, works as a subcontractor for Caltrans. His company performs lighting for roadways, fences, and guardrails for Caltrans. Unlike schools that use construction managers to break down their contracts by category of work, Caltrans hires a general contractor for its projects and relies on them to break the work up and subcontract out the smaller jobs.

Similarly, Interviewee #CT51, a Hispanic male-owned business, said that the company works mostly as a subcontractor in the public sector and on Caltrans projects because of the nature of the work it performs. Caltrans does not award waterworks contracts directly but instead lets the prime contractors subcontract out this work. Along the same lines, Interviewee #CT31, an African American female-owned business, stated that the type of work the company does in the public and private sectors is “exactly the same,” but the company is primarily a prime contractor in the private sector and a subcontractor in the public sector because agencies do not directly contract for utility work.

Interviewee #CT39, a Hispanic male-owned firm, stated that the company always works as a subcontractor on all of its work because of the nature of the business – the prime contractor buys the steel and other materials and then calls the company to install the steel reinforcement.

Some DBEs report success working as prime contractors in the public sector. Interviewee #CT1, a Native American male-owned business, has done some work as prime contractor for Caltrans; these projects are fairly small and are local. For example, Interviewee #CT1 did water testing at a rest area near his laboratory. This contract came through a local Caltrans office. CATA #2, an African American trade association, said there were “quite a few” DBE firms working as prime contractors on Caltrans jobs before the passage of Proposition 209, but they are all out of business now. He said that he knew of only one DBE currently doing prime work for Caltrans, listing an equipment rental company owned by an African American male. Interviewee #CT10, an African American male-owned firm, works primarily as a subcontractor in both the private and public sectors, because that is how the business is licensed. The company sometime works as a general contractor in the public sector

and has worked as a general contractor for Caltrans. He notes, that in the public sector, he is required to pay his workers more than in the private sector due to prevailing wage requirements. Interviewee #CT9, a white male-owned business, stated that there were “some” DBE primes.

Some DBEs report success working as prime contractors in the private sector. Interviewee #CT33, a Hispanic female-owned business, who acts as a prime 80 percent of the time, felt that the company had been successful in getting private sector work, but she noted that private sector work was slower now because a slump in the building and housing market. Interviewee #CT44, a Middle Eastern male-owned firm, reported success in the private sector working primarily as a prime contractor on contracts ranging from \$300,000.00 to 700,000.00.

The representative of CATA #2, an African American trade association, stated that his company works mostly as a prime contractor in the public sector, where he felt that it had been “fairly successful.” He said that his company only bids jobs where it can make money and thus does not get as many jobs as his competitors who bid public sector jobs “just to keep the trucks running.”

Interviewee #CT49, an African American male-owned firm, stated that he used to do work in the private sector, but that he had shifted entirely to the public sector “a while ago,” and now does all of his work there. Interviewee #CT49 felt that he had been successful in getting work in the public sector and that his company works mostly as a prime contractor there, with the contracts for its jobs going up to \$3 million. He said that he knew of some DBE firms working as prime contractors on Caltrans projects but that they were not local firms.

Some interviewees stated that working as a subcontractor allows a firm to avoid bonding and other requirements. CATA #11, a minority trade association, has only one member out of sixty, an engineering contractor, who works as a prime on Caltrans projects. Rather, most of his members act as subcontractors in the public sector. According to CATA #11, it is easier in a sense to be a subcontractor since “you don’t have to get a bond ... you don’t have to go through the bidding requirements, getting a lot of sub-quotes, ... all you do is find your scope of work and give your bid to the general contractor.”

Interviewee #CT76, a white male-owned business, will not bid Caltrans projects as a prime because of all the requirements, in particular the bonding and DBE requirements.

CATA #11, a minority trade association, indicated that most of his members act as subcontractors in the public sector because “you don’t have to get a bond ... you don’t have to go through the bidding requirements (getting a lot of subcontractor-quotes) ... all you do is find your scope of work and give your bid to the general contractor.”

Anecdotes of DBEs regarding private sector work opportunities.

Most minority and female-owned firms reported success in the private sector. Interviewee #CT51, a Hispanic male-owned firm, has been successful in getting work in the private sector, where it works mostly as a subcontractor to either prime contractor or a builder-developer. He has chosen to focus on private work for the past three to four years, but said it is difficult for his company to compete against non-union firms in the private sector where there is no prevailing wage requirement.

Interviewee #CT7, a white female-owned surveying company, works primarily as a prime contractor in the private sector. She said that private sector projects are generally broken into smaller jobs. Interviewee #CT13, a Pakistani male-owned firm, characterized his attempts to get work in the private sector as “pretty successful.”

Some minority and female-owned firms reported greater success in the private sector because there is less competition, more profit, greater accessibility, and less bureaucracy. Interviewee #CT67, a white female-owned firm, said that the company works as a prime contractor in both the private and public sectors and that its pricing is done on a set schedule based on quantity. She said that the “private sector is much easier to deal with” and felt that the company had been very successful in getting work there.

CATA #2, an African American trade association, has been “very successful” in the private sector, which he found to be more accessible than the public sector because there is no bidding involved and the company need only demonstrate the quality of its product and services. He stated that the company’s “contracts” in the private sector are actually purchase orders and that the company sells fuel on a quantity basis (by the gallon). CATA #7, a Filipino trade association, stated its members are successful in the private sector. The “experience” criteria in the public sector close the members out of a lot of the public sector opportunities. It is often easier to get work in the private sector and negotiate a fee. And the fees are generally higher in the private sector.

CATA #3, a Hispanic trade association, said that he had been “pretty successful” in his attempts to get work in the private sector, and that the Association’s members had also done “pretty well” in the private sector. According to CATA #3, a lot of the members preferred private work to, or simply did not try for, public sector work because government work involves bureaucracy and certifications.

Some minority and female-owned companies reported difficulty obtaining work in the private sector. Interviewee #CT84, an African American male-owned business, went into business as a fuel supplier “because he saw this advantage” in the DBE program. He stated that small fuel suppliers cannot compete in the public sector or the private sector without the government “giving you the opportunity.” He has received only one public sector contract and no private sector contracts in the last two years. Due to the suspension of the DBE goals, he is going bankrupt. Interviewee #CT31, an African American female-owned firm, described the private sector as “tough,” particularly in San Diego, and noted that the majority of the firms in their sub-industry were “fairly conservative.”

Interviewee #CT32, an Asian American female-owned business, felt that the company had been largely unsuccessful in its attempts to get work in the private sector, and she attributed this lack of success to developers and other companies using firms with whom they had been working for a long time and having “no incentive ... to switch.”

Anecdotes of DBEs regarding public sector work opportunities.

DBE interviewees reported a variety of obstacles to pursuing work in the public sector, including contract size, payment delays, bonding/insurance issues, prevailing wage requirements, and bureaucracy. CATA #11, a minority trade association, believes its members are less successful in the public sector due to the rules and regulations, including certified payroll and bonding and insurance requirements.

Interviewee #CT73, a white male-owned firm, stated that the turn-around time for payment in the public sector is worse than the private sector. In addition, there is a lot of “red tape” in the public sector and the administrative time involved for any one project is four times longer than in the private sector.

Some interviewees reported greater success in the public sector for various reasons. Interviewee #CT11, a Native American male-owned firm, is more comfortable with the “structure” of the bidding process in the public sector than the “relationship” basis for private projects. For this reason, it does not engage in much private sector work. The company’s private sector work is usually on large projects of mostly over \$100 million in value. The company’s public sector work ranges from about \$50-\$70 million in value for prime contracts, and when the company has acted as subconsultants the projects are usually in the billions. Interviewee #CT39, a Hispanic male-owned firm, works almost exclusively in the public sector due to the nature of its work – “[v]ery few people are building their own bridge.”

Some interviewees stated that projects are generally larger or more profitable in the public sector. CATA #7, a Filipino trade association, believes contracts in the public sector are larger due to the nature of the work. CATA #3, a Hispanic trade association, reported that government work can be more lucrative than private sector work, but the former requires a “lot more effort.”

Interviewee #CT40, white male-owned firm, stated that due to the open bid system its ability to get public sector work depends if it can cut its price low enough. He reported that public sector work is more “cut and dry” than the private sector – especially with regard to payment.

Some interviewees reported payment issues in the public sector. Interviewee #CT44, a Middle Eastern male-owned firm, stated that his only complaint about working in the public sector is the turnover time for payments. It causes a cash flow problem for his business.

Telephone Interview Anecdotes Regarding Public and Private Sector Work

The following anecdotes regarding experiences with public and private sector work were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

Some telephone interview respondents reported that certain industry regulations make it difficult to work in the public sector. Respondents indicated that there a number of restrictions that have to be taken into account when bidding on public sector work. For example, a majority-owned firm said that new firms should consider public sector regulations before entering the transportation industry: "I think it would be extremely hard for someone to start a company like ours today because of all the restrictions [in the public sector]." Another respondent, representing a minority-owned firm said, "A great problem [with working in the public sector] has been [that] they have people working on specs ... that are not qualified [to do so]"

Several telephone interview respondents reported that there is a great deal of competition in the public sector. Both MBE/WBE firms and majority-owned firms indicated that increased competition in the public sector has made it difficult to be successful. For example, a majority-owned firm reported that his firm no longer bids on public sector projects because of the competition: "It is increasingly difficult to bid and win projects with any local agency. Economic realities have increased competition — especially from larger firms — to the point that I cannot compete for these projects anymore."

C. DBE Utilization

BGPAA Study Anecdotes Regarding MBE/WBE/DBE Utilization

Prime reported utilization of MBE/WBE/DBEs by prime contractors in the public and private sectors.

Some interviewees reported hiring the same subcontractors for private and public sectors jobs. [Interviewees #BGP: 5, 9, 10, 13, 16]. Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, said they “very rarely sub work out,” but when they do, they use the same subcontractors in the private sector as in the public sector. Interviewee #9 said that they have not worked with any minority- or women-owned firms and that they don’t ask if they are minority- or women-owned.

Interviewee #BGP10, a principal at an engineering firm, stated that the firm uses the same second tier subcontractors in the private sector and public sector.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that the corporation uses the same subcontractors in the public and private sector “if they can do the work necessary.” He said that he believes that the company has used MBE/WBE and DBE firms in the private sector.

Several interviewees reported positive experiences working with minority- and woman-owned subcontracting firms. [Interviewees #BGP: 5, 6, 10, 14, 15, 16]. Interviewee #BGP5, the president of an 8A-certified engineering firm, said that the firm’s is experience with MBE/WBS/DBEs is the same as non-certified firms “because we’re not seeking minority- or women- owned subcontractors, it just turns out that way. We’re trying to retain someone that [is] competent to do the work.”

Interviewee #BGP10, a principal at an engineering firm, said that some of its subcontractors are small businesses, though many of them probably have not obtained certification. He said that his experience working with MBE/WBE/DBE firms has been the same as working with non-certified firms.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that his experience working with MBE/WBE/DBE-certified firms has been the same as his experience working with non-certified firms.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she uses second tier subcontractors “for some specialized work” and will use MBE/WBE/DBE entities “if they have the right skill sets that [she is] looking for.” She said that she has had a positive experience with certified subcontractors. She said that the “biggest problem” has been “when they say they’re certified . . . , but it turns out that the agencies that they’re registered through are not recognized by CUCP (California Unified Certification Program).” She added that she will ask to see proof of claimed certification, and she will advise the subcontractors that they “really need to go through and get certified, but they don’t want to go through the process.” She said that lack of certification has not precluded her “from using [the companies] because they have the skill sets that” she needs.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that the corporation has used MBE/WBE/DBE subcontractors on Authority projects. He reported that his experience using MBE/WBE/DBE subcontractors has been positive “for the most part.” He said, “We’ve had some DBEs that after we took the time to train them ... [have] not performed well. ... [W]e wasted our time and haven’t used them in the future. But I’m sure that can be true of non-certified subs as well.”

One interviewee reported no difference in working with minority-or women-owned firms

[Interviewee #BGP9]. Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, indicated that there was no real difference in working with a MBE/WBE/DBE. Interviewee #9 said, “The only difference is that, hey, this guy put his wife down as the owner, and now he has a woman-owned business. In today’s times, in LA, the white guy’s the minority. To say a minority-owned business has less chances, everyone I’m bidding against is a minority. I mean, in California, we’re talking about a 45% Hispanic state. What good does ‘minority-owned’ do?”

A couple interviewees reported limited to no experience working with minority- or woman-owned firms. [Interviewees #BGP: 11, 13]. Interviewee #BGP13, the owner of a non-certified construction firm, reported that the company may have used an MBE/WBE/DBE subcontractor, “but it’s not a requirement” for the company, so he does not check for certification.

No interviewee reported having refused to work with a minority- or woman-owned firm based on the race, ethnicity or gender of the owner. [Interviewees #BGP: 13, 14].

Businesses’ perception of being utilized by prime contractors in the public and private sectors.

Some interviewees reported that the same prime contractors solicit them for work in both the private and public sectors. [Interviewees #BGP: 10, 12, 13, 16]. Interviewee #BGP10, a principal at an engineering firm, stated that the same prime contractors use the firm on public sector projects and private sector projects. Interviewee #10 noted that firm primarily works for prime contractors that do infrastructure projects, so most of the work is public sector work.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that the prime contractors and subcontractors use the company for both public and private sector work.

Interviewee #BGP13, the owner of a non-certified construction firm, stated that prime contractors use his company on both public and private sector projects.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, stated that the same primes hire the firm to do work in the public and private sectors. He stated, “In fact, I recall a case where we worked under a DBE prime for a private sector job.”

Other interviewees reported that the same prime contractors do not solicit them for work in both the private and public sectors. [Interviewees #BGP: 8, 11, 15]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that certain prime contractors work in the private sector and others work in the public sector due to their specializations, so the same prime contractors that use his firm in the public sector do not use his firm

in the private sector. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that the prime contractors that use the company for airport cleaning would not also use the company for private sector work because the two sectors do not overlap. He said that the public sector work is “controlled by the L.A. Department of Airports,” and that Department releases “individual bids for those contracts.” He said that he does not see the same prime contractors being hired by the private and public sector at the airport. He said that the public sector bid selection process is purely a low bid process, so no consideration is given to a company’s experience in the airport or local connection.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that prime contractors that use her company in the public sector do not usually use her firm in the private sector because the type of work that she does is “primarily with state and local agencies.”

A few interviewees reported that a prime contractor has not and would not refuse to work with them because of the firm’s status as an MBE/WBE/DBE-certified firm. [Interviewees #BGP: 10, 14, 15]. Interviewee #BGP10, a principal at an engineering firm, said that no prime has ever refused to work with the firm because of its status as an MBE/DBE firm.

SDCRAA Anecdotes Regarding DBE Utilization

The following anecdotes regarding DBE utilization were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDCRAA study.

Successful MBE/WBE Firms.

Several interviewees reported being aware of successful minority- and female-owned firms.

SDTA #3, representing a local chamber of commerce, said that there are a number of successful minority- and female-owned firms in the San Diego area, both small and large. Regarding the success of those firms, SDTA #3 said, “I really don’t think it’s their gender or ethnicity — it’s hard work and determination [that explains their success . . .]”

SDTA #2, representing a Hispanic American trade organization, also reported that there are a number of successful minority- and female-owned firms in the San Diego area. However, he indicated that they only work in certain industries: “Successful DBEs are mostly in janitorial or landscaping industries.”

When asked to name successful MBE/WBE subcontractors, Interviewee #SD28, representing a white female-owned firm, was able to name two. She said that to be successful like those firms, DBE firms have to “be active — be at every mixer, every association [event].” She added that DBE firms have to make an effort to “keep [their] name in front of everybody.” She also indicated that small firms cannot turn down jobs — they have to be willing to bid on and accept all available contracts.

SDTA #9, representing a public works trade organization, reported that many of his organization’s minority and female clients have a sense of entitlement that is detrimental to their success: “A lot of our clients have bad attitudes. Those clients, we see don’t do as well in business. For example, there is a sense of entitlement that used to be among the minority-owned businesses that they should have a successful business because of their classification. I have seen this entitlement change from minority-owned businesses to disabled vet[eran]-owned businesses now.”

Similarly, Interviewee #SD3, representing a white male-owned firm, said that MBE and WBE firms who get into the business with a sense of entitlement do not succeed. He said that minority- and female-owned firms need a strong work ethic to be successful.

Several interviewees made non-specific comments indicating that they were aware of successful minority- and female-owned firms across several different industries (e.g., Interviewee #SD3, Interviewee #SD11, Interviewee #SD19, Interviewee #SD27, Interviewee #SD32, Interviewee #SD33, Interviewee #SD34, Interviewee #SD37, Interviewee #SD41, Interviewee #SD45, Interviewee #SD46, SDTA #1, and SDTA #9).

Some interviewees had trouble naming successful minority- or female-owned firms. When asked if there were any successful MBE or WBE firms in San Diego, SDTA #5, representing a government advisory commission on minority issues, said that if there are any she is unaware of them. She went on to explain, “What has happened is that many of them who had the means have already left San Diego or many have gone out of business ... [MBE/WBE firms] have been driven out.”

Interviewee #SD38, representing a Hispanic male-owned firm, had trouble naming a female-owned firm and had trouble naming minority-owned firms that were not Hispanic: “We know people with their own landscaping or drywall company, but women don’t come to mind. Most of what you will see is Hispanic due to our geographic location.”

Interviewee #SD40, representing a white male-owned firm, also had trouble naming successful MBE/WBE firms. He said, “There aren’t a lot of [MBE/WBE firms]. This is one of our issues here in San Diego.”

Interviewee #SD44, representing a Hispanic male-owned firm, could only name one other successful local MBE/WBE firm in his firm’s industry.

Reported utilization of DBEs by prime contractors in the public and private sectors.

Several interviewees indicated that they solicit bids from minority or female-owned firms but primarily for public sector work. Interviewee #SD20, representing an Asian American male-owned firm, indicated that including minority-owned or female-owned firms on a proposal makes it more competitive in the public sector but not in the private sector. Interviewee #SD20 described MBE and WBE participation as a “non-issue” in the private sector.

Interviewee #SD11, representing a white male-owned firm, indicated that his firm only solicits bids from MBE and WBE firms when those solicitations are required: “When [MBE or WBE participation] is required to do work and complete the deal, we find someone to do it and pay them 2-3 percent more and [we] do all the work.”

Interviewee #SD4, representing a white male-owned firm, reported that when mandatory DBE goals were in place for public sector projects, he would solicit bids exclusively from minority- and female-owned firms.

Interviewee #SD3, representing a white male-owned firm, said that his firm has relationships with at least one minority- or female-owned firm in each construction industry that is outside of his firm’s expertise and, when necessary, subcontracts work out to those firms. However, he went on to say that his firm tries to avoid subcontracting any work at all.

Interviewee #SD32, representing an African American male-owned firm, said that because his firm is a DBE certified firm itself, DBE goals usually do not affect the process by which the firm selects subcontractors. However, he indicated that his firm has worked with a number of MBE/WBE subcontractors, and the experience of working with those firms is comparable to working with non-DBE subcontractors.

Two interviewees indicated that their firms solicit bids or price quotes from minority or female-owned firms for moral reasons and regardless of sector. Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, explained that his firm tries to promote diversity whenever possible. That is, when all else is equal, Interviewee #SD15 tries to choose minority- or female-owned vendors.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, said that her firm fully complies with the Airport's DBE program: "[We] compl[y] with the ACDBE program, because it's the right thing to do even without mandates." Interviewee #SD13 went on to say that approximately 30 percent of her firm's Airport-related revenues come from minority- or female-owned concessions.

Interviewee #SD20, representing an Asian American male-owned firm, said that when he selects subcontractors, he tries to use local firms as much as possible. Regarding that philosophy, Interviewee #SD 20 said, "What I believe is giving back to the community. That's what distinguishes us from the other firms."

Several interviewees reported difficulties associated with soliciting bids from minority- and female-owned firms because those firms are not available to do the required work. Interviewee #SD6, representing a white male-owned firm, reported a number of difficulties associated with soliciting bids from MBE and WBE firms. He indicated that there are only a small number of minority- or female-owned firms qualified to complete the work that his firm requires, and even a smaller number respond to solicitations. He went on to say that his firm has frequently received hostile responses from MBE and WBE firms.

Interviewee #SD24 reported that although his firm regularly subcontracts work out to MBE and WBE firms, sometimes it is difficult finding minority- and female-owned subcontractors that do work in industries that his firm requires: "Given what the contract requires, [sometimes] there's just not firms that do [that type of work]. Environmental consulting is a pretty small niche in the economy, and with those specialties, it's difficult to find firms that meet those goals."

Similarly, Interviewee #SD7 stated that there are not any MBE or WBE firms working in the industries that his firm requires: "There are only a couple of firms in the country that can handle runway rubber removal, taking the deposits off the runway without damaging it."

With regard to soliciting MBE/WBE subcontractors for work, Interviewee #SD31, representing a white male-owned firm that is DVBE certified, said, "I wouldn't know where to find one if I wanted to."

SDTA #7, representing a construction trade organization, said that there simply are not many opportunities for prime contractors to sub out work to minority- and female-owned firms due to the small population of minorities in San Diego: "The City of San Diego has terrible minority numbers,

but 95 to 98 percent of their projects are overlay or sewer and water. There just [aren't] a lot of [minority] subs in [those industries]. You dig a hole and put a pipe in it. Who do you sub it to?" SDTA #7 said that in those situations, prime contractors "just fill out the paperwork, good faith effort." He went on to say, "You can't go explain that to a black city council member that's got a constituency that thinks they should get a huge amount of work out of these things."

Interviewee #SD7, representing a white male-owned firm, reported that fulfilling DBE goals can be challenging because minority- and female-owned firms that appear on approved lists are not identified well. For example, "carpet cleaning" firms might be listed as "painting" firms.

Two interviewees indicated that claims about MBE/WBE firms being unavailable are baseless.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, said that he used to work on a citizen oversight committee related to DBE issues and a number of contractors would come to the committee claiming that they could not find minority- or female-owned firms from which to solicit bids. Interviewee #SD12 went on to explain that those contractors had no trouble finding minority- or female-owned firms when they found out that their proposals were about to be denied.

SDTA #10, representing a supplier trade organization, explained that many public agencies in the San Diego area assert that they cannot find minority- and female-owned firms from whom to solicit bids. SDTA #10 stated that that assertion "makes no sense" and that the City of San Diego and other public agencies are "not serious" about addressing MBE and WBE issues.

Many interviewees reported positive or neutral experiences working with minority- or female-owned firms on public sector projects. Interviewee #SD7, representing a white male-owned firm, reported that when his firm finds a qualified minority- or female-owned firm, they try to work with them again on future projects. Interviewee #SD7 cited an example of an MBE asbestos removal firm with which his firm liked working and that they contacted again about future work.

Interviewee #SD11, representing a white male-owned firm, said that his firm has relationships with several minority- and female-owned subcontractors with which they work regularly. Regarding his firm's selection of subcontractors, Interviewee #SD11 said, "We work with the subs who are the lowest, qualified bidder."

Interviewee #SD25, representing a white male-owned firm, reported that his firm regularly maintains over 20 percent participation from MBE, WBE, and SBE firms. He said that every member of their contracting "team" is an MBE, WBE, or an SBE.

Interviewee #SD27, representing a white male-owned firm, reported that his experience working with minority- and female-owned firms is no better or no worse than working with majority-owned subcontractors.

Interviewee #SD26, representing a white male-owned firm, indicated that his firm has worked with several MBE and WBE firms on public agency projects, and that 60 percent of those experiences have been positive. Of the positive experiences, Interviewee #SD26 said that he saw the DBE program "pay off" and give MBE/WBE firms the opportunities that they needed to grow.

Interviewee #SD24, representing a white male-owned firm, reported that his firm “has lots of experience in working with [MBE and WBE subcontractors].” He noted that the quality of those experiences was “all over the board” and was dependent on the quality of each individual firm.

Two interviewees reported negative experiences working with minority- or female-owned firms on public sector projects. Interviewee #SD6, representing a white male-owned firm, cited an example in which he accepted a subcontractor bid from a minority-owned firm on a public sector project with DBE goals. It turned out that the firm was not qualified to do the work, and Interviewee #SD6 had to use a different DBE firm. The second DBE firm was more expensive than the first one, and the agency did not cover the difference in cost — it came out of his firm’s profits.

Interviewee #SD4, representing a white male-owned firm, recounted a public sector project in which he was required to use a DBE subcontractor for two pieces of work on a historic preservation project. Interviewee #SD4 did not have a positive opinion of the subcontractor’s work: “They killed the job for me. They did not keep up to schedule and they were not proactive in addressing problems.”

Some interviewees offered comments about the differences between utilizing minority- and woman-owned firms in the public and private sectors. SDTA #11, representing a veterans trade organization, reported that, compared to the private sector, the public sector does a better job of addressing some of the barriers that disadvantaged businesses face and are more conscious of the non-mandatory goals that remain for MBE and WBE firms.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that in the private sector MBE or WBE status does not play much of a role in selecting subcontractors. Instead, that selection process is largely dependent on the desires of the clients (e.g., How quickly does the client want the work completed? How much is the client willing to spend?).

Interviewee #SD5, representing an African American male-owned firm, indicated that his firm has worked as a subcontractor on several non-Airport, public sector projects, primarily because the prime contractor needed to meet DBE goals. However, Interviewee #SD5 went on to say that he has worked as a subcontractor on at least two public sector projects with no mandatory DBE goals in place.

No interviewees reported that they had refused to solicit or utilize a minority- or female-owned firm due to race, ethnicity, or gender. However, some interviewees said that they have refused to work with certain MBE and WBE firms due to their low quality of work. Interviewee #SD2, representing a white male-owned firm, explained that there are a number of subcontractors with whom he will not work, but that his refusal to work with those firms is based on their previous performance and not their DBE status. Interviewee #SD21 went on to say that the only difference between working with DBE and non-DBE firms is that sometimes DBE firms are financially incapable of taking on certain projects.

Interviewee #SD14, representing a Hispanic American male-owned firm, also indicated that there are a number of minority- and female-owned firms with whom he refuses work, but that it has nothing to do with their minority or gender status: “There are bad contractors in any field, DBE or not.”

Some minority- and female-owned firms reported seeking out prime contractors to bid on projects rather than waiting for solicitations. Interviewee #SD20, representing an Asian American

male-owned firm, reported that, at least in the public sector, his firm takes a proactive approach to winning subcontracts. They research available projects, determine which prime contractors would likely be interested in those projects, and try to sell the project and themselves to those prime contractors. Regarding his firm's approach, Interviewee #SD20 explained, "I don't wait for the prime to reach out to me. That's too late."

Similarly, Interviewee #SD5, representing an African American male-owned firm, reported that his firm finds subcontracting opportunities by calling prime contractors that appear on planholders lists. He went on to say that his firm's approach has helped them build relationships in the construction industry.

Reported utilization of DBEs by prime contractors on San Diego Airport projects.

Some interviewees reported neutral experiences working with minority- or female-owned firms on Airport projects. Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that he has never worked as a prime contractor at the Airport but has done work as a subcontractor there.

Interviewee #SD4, representing a white male-owned firm, said that of the few projects that his firm has completed with the Airport, they have only used one or two minority- or female-owned firms. He went on to say that if his firm cannot use MBE or WBE firms, they will sometimes use MBE or WBE suppliers to meet DBE goals.

SDTA #6, representing an Asian American trade organization, reported that she is aware of at least one minority-owned firm that has done work with the Airport as a prime contractor and one minority-owned firm that has done work there as a subcontractor.

The master concessionaire at the San Diego Airport reported negative experiences working with minority- or female-owned firms. Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, indicated that the vast majority of criticism that her firm receives from the Airport is related to their minority- and female-owned concessions: "95 percent of the complaints we get from the Airport Authority really have to do with the ACDBE subtenants." She went on to say, "The feedback I get from the airport authority regarding [cleanliness or appearance] ... comes from the ACDBE locations. They don't come from [our] locations." Interviewee #SD13 acknowledged that some of those problems are a result of the vast differences in resources between her firm and the MBE and WBE concessions, and that the Authority is sensitive to those differences.

Two interviewees reported being unaware of any minority- or female-owned firms being utilized on San Diego Airport projects. SDTA #11, representing a veterans trade organization, indicated that he is not aware of the airport awarding substantial contracts to local minority- or female-owned firms (as prime contractors or as subcontractors), and he attributes part of that phenomenon to the barriers that those businesses face, "... there's too many pitfalls, too many requirements [for MBE and WBE firms]."

Interviewee #SD7, representing a white male-owned firm, reported that his firm has completed three projects at the Airport as a prime contractor and have not worked with any minority- or female-owned subcontractors.

DBE utilization following Proposition 209.

Several interviewees reported a decline in participation of minority- and female-owned firms after Proposition 209 passed and prohibited mandatory DBE goals on state-funded contracts.

Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that the situation changed substantially for minority- and female-owned firms after Proposition 209 passed: “Fifteen years ago [the situation] was a lot different. Ten to fifteen years ago there was a mandatory goal ... [MBE/WBE firms] were on the bigger projects. ... [Prime contractors] used [MBE/WBE firms] because they had to meet the goal.” Interviewee #SD14 went on to say that after Proposition 209 passed prime contractors awarded far fewer contracts to minority- and female-owned firms. He said that a firm’s status as low bidder became the most important factor: “The way times are now, it’s the low bid that will get you the job.”

Interviewee #SD2, representing a white female-owned firm, indicated that removing DBE goals after Proposition 209 hurt many minority- and female-owned firms. She said that DBE programs “gave [MBE/WBE firms] hope ... after [Proposition] 209, they lost hope.” She also stated that there would be more African American contractors if Proposition 209 had not passed, and that she saw a number of strong, African American-owned firms go out of business as a result of Proposition 209. With regard to her own firm, Interviewee #SD2 explained that after Proposition 209 passed, she no longer received as many requests for bids from prime contractors: “[It was like] night and day ... the phone calls just stopped.”

Interviewee #SD5, representing an African American male-owned firm, reported that after Proposition 209, he won far fewer contracts. He said that he had a lucrative business as a minority subcontractor throughout the first half of the 1990s, but over a nine month period following Proposition 209 his business plummeted, leading him to liquidate it in 2000.

SDTA #2, representing a Hispanic American trade organization, indicated that his organization engaged in extensive outreach with minority- and female-owned firms immediately following Proposition 209 in an attempt to offset its effects. However, SDTA #2 said that despite his organization’s efforts, there was a dramatic decrease in the participation of MBE/WBE firms after the bill passed.

Interviewee #SD25, representing a white male-owned firm, indicated that prior to Proposition 209, seeking out MBE and WBE used to be highly encouraged, and he said that his firm would try to go above and beyond the stated DBE goals.

With regard to DBE goals, Interviewee #SD28, representing a white female-owned firm, indicated that those goals help her firm get work, and that the elimination of mandatory DBE goals (as the result of Proposition 209 and Caltrans implementing a race-and gender-neutral DBE program) hurt her firm’s success: “I think [DBE goals] help, and I think [mandatory goals] going away hurt us.”

SDTA #5, representing a government advisory commission on minority issues, reported that public agencies in San Diego stopped making efforts to promote diversity following Proposition 209: “As a result of Prop 209, [the City of San Diego] feels they can’t do anything — the City can’t be aggressive in demanding diversity or creating standards.”

One majority-owned Interviewee said that doing business became easier after Proposition 209 passed. Interviewee #SD11, representing a white male-owned firm, remarked: “After Prop[osition] 209 passed, it was much easier to do business,” He indicated that he is not supportive of DBE programs or of their intent. He said, “When you submit a bid they are all submitted on white paper with black ink. This is not a racial issue.”

Consortium Anecdotes Regarding DBE Utilization

The following anecdotes regarding DBE utilization were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Reported utilization of DBEs by prime contractors in the public and private sectors.

Some prime contractors reported using the same subcontractors in the private and public sectors. [Interviewees #CON: 3, 5, 8, 14, 16, 18, 19, 20, 21, 22, 24, 26, 33, 34, 35, 36, 38, 41, 42, 46, 48, 49, 53, 54, 55, 58]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, reported that he uses the same subcontractors in the private sector and in the public sector because there are a limited number of them and once you develop a relationship with them, if you are happy with them, you continue to use them. He stated that competency was never an issue for the DBEs that he used. Interviewee #CON3 recalled using DBEs on private sector projects, most recently, in 2007. The project was an investigation to determine the amount of contamination at a site. He stated that he used a DBE analytical firm. Interviewee #CON3 stated that he has used DBEs on private sector projects tens of times. Typically the DBEs would always be analytical firms or drillers and they would be located all over Southern California. He recalled a project in which he used a demolition contractor who was a DBE. Interviewee #CON3 stated that the demolition contractor was a “sham” DBE. The demolition contractor represented that it was woman-owned but was in fact operated by a white male. Interviewee #CON3 stated that he generally finds DBEs by recommendation of colleagues. Occasionally he also finds DBEs through the agencies. Often when the Consortium puts the project out for bid, the agency will attach a list of qualified DBEs. Interviewee #CON3 stated that the typical cost of the project in the private sector that he used DBEs on was \$50,000 - \$100,000, and the DBE portion might be \$10,000 to \$30,000. Public sector jobs are more extensive, \$4 million to \$6 million. Private sector jobs tend to be small with certain exceptions like refinery sites. Interviewee #CON3 stated in the private sector the client also wants to spend less money, so they want you to take less samples, how many holes you put in the ground, how much analytical work you do.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that when his company was a prime contractor, the company would sometimes have to hire a structural engineer to provide structural calculations. Interviewee #CON5 stated that his company used the same sub-consultants in the private sector as in the public sector. Interviewee #CON5 stated that he thinks the structural engineer was a DBE but was unsure. He stated that the structural engineer is Asian and would likely qualify as a DBE. Interviewee #CON5 stated that he has used the structural engineer in public and private jobs.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, uses the same subcontractors in the private sector as in the public sector. Interviewee #CON16 stated the reason is because of his subcontractors’ knowledge, experience, and reliability. Interviewee #CON16 also noted the competitive pricing of his subcontractors as a reason for using them in both the public and private sectors.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, does use the same subcontractors in both the private and public sector, but she's not very likely to use subcontractors in the private sector; the majority of her private work is with small non-profit organizations

Interviewee #CON19, an MBE-certified African American male attorney, reported that he utilizes the same subcontractors in the private sector and the public sector. He stated that he tries to ensure that all of his subcontractors are minority or female-owned. He stated that many of his subcontractors are DBEs. He stated that he locates DBEs by word of mouth or he already knows them. Interviewee #CON19 stated that he always tries to utilize DBEs after soliciting them depending on the need.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she does use the same subcontractors in the public and private sectors; she stated that good work and good relationships dictate that decision.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, uses the same subcontractors in the public and private sectors. She stated that she is small business friendly and she will work with firms that are open to sharing information. She stated that these subcontractors are minority- or female-owned but did not know whether they were DBE-certified. She stated that she has attempted to utilize minority- and female-owned subcontractors in the private sector. She stated that she has also utilized DBEs on Consortium projects. She stated there is an advantage to using small businesses because they are flexible and do not have as many layers as larger companies. She stated that she locates DBEs via word of mouth and uses them "all the time" after soliciting business. She said the average price of the subcontracts to DBEs is between \$10,000 and \$100,000.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that for the most part she utilizes the same subcontractors in the public and private sectors. She stated that she utilizes the same subcontractors because their relationships, experience, staffing, resources and qualifications have been established and thoroughly vetted. She said that some of her subcontractors are female-owned and some are DBEs; she stated that always attempts to use minority- and female-owned and DBE subcontractors in the private sector. Interviewee #CON22 stated that she feels it is important to work with DBEs because her firm is a DBE; she locates DBEs through Caltrans, MTA and OCTA. She stated that she utilizes DBEs as often as she can after they reach an agreement as to terms. Interviewee #CON22 reported that she typically subcontracts CAD work and the average price of subcontracts she lets is \$50,000.00.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, reported that she utilizes the same subcontractors across the public and private sectors based on relationships and known qualifications. She stated that some of these subcontractors are female- and minority-owned. She stated that she has tried to use female/minority/DBE subcontractors in the private sector and on Consortium projects; she said that it is required but not mandatory. She stated that she locates DBEs using the list provided by L.A. County MTA and she often utilizes DBEs after soliciting them.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she does use the same subcontractors in the private sector as in the public sector. She

stated that she bases her selection of subcontractors on their qualifications. She said that some of these subcontractors could have been minority- or female-owned, but, again, the decision to use them is based on qualifications. She said she has used DBE subcontractors, especially when required to do so by the agency. However, she has not attempted to use minority/female/or DBE subcontractors in the private sector. She stated that on Consortium projects, she solicits price quotes from DBEs about once a year because it is required under an RFP. She stated that she locates DBEs by word of mouth and always uses them after soliciting a price quote; said the price range of these projects is between \$20,000 and \$800,000.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported using the same subcontractors in the public and private sectors and stated that experience is the overriding factor in determining which subcontractors to utilize. She stated that these subcontractors are minority- or female-owned and more often than not she utilizes minority- or female-owned firms with whom she has a relationship. She does not know whether these subcontractors are DBE-certified because she focuses on the firm's qualifications. She has attempted to utilize minority/female/DBE-subcontractors in the private sector but she has not had any assignments in the private sector. She stated that she utilizes DBEs in public sector work 100 percent of the time after soliciting them; she noted that she does not necessarily utilize DBEs because they are certified but rather because they are in her "network of people" that she uses based on the quality of their work. She stated that she has become familiar with certain DBEs through teams on former jobs. When she is seeking a subcontractor to work on a particular specialty area she will draw from her network. The average price range of her projects to DBEs is between \$60,000 and \$1,000,000.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that when the opportunity presents itself she uses the same subcontractors in the private and public sectors. She indicated that if they deliver quality service she will utilize them again. She stated that she always attempts to utilize minorities in the private sector. She stated that she locates DBEs through organizations and other referrals. She utilizes DBEs 100 percent of the time after soliciting them.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she uses the same subcontractors in the public and private sectors because she was confident in their work and knew how they worked. She stated that some of these subcontractors are female- or minority-owned. She does not always know until the start of the project whether her subcontractors are DBEs; she is more concerned with the quality of the work. She stated she would always try to utilize female- and minority-owned subcontractors in the private sector but the quality of the work is her priority. She said that she keeps a roster of good people and tries to update it based on recommendations. She stated that she locates DBEs by sending out letters to court reporters (her business) who have just passed the exam. The average contract amount to "subcontractors" is \$200 to \$2,000.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported using the same subcontractors across the private and public sectors because they are excellent at what they do. He reported utilizing minority- and female-owned and DBE-certified subcontractors. He stated that he solicits DBEs for price quotes 100 percent of the time; he solicits them because they are good at what they do and they are familiar with the reporting processes of the industry. He stated that he locates DBEs through experience working

with other businesses and through recommendations; he also advertises. He also stated that he locates them through an organization of which he is a member: National Center for American Indian Enterprise Development (NCAIED). He stated that he utilizes the firms that he solicits pretty often depending on the quality of work. Interviewee #CON38 stated that the average price range of subcontracts is \$100,000.

Interviewee #CON41, an Asian American male owner of a DBE/MBE-certified general contracting firm, reported using the same subcontractors in the public and private sectors because it is easier – they know the quality of work and it is easier to explain the vision for a project because of the working relationship they have maintained. They may have worked with a minority-owned firm but not a female-owned firm; he was not sure whether any of his subcontractors were DBEs although they have tried to work with DBEs in the private sector past. However, they do not target DBE firms.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, reported that she utilizes the same subcontractors in the private and public sectors because of the relationships that have developed and the knowledge and understanding that they have of the services provided and the related expectations. She stated that the quality of work is better. Interviewee #CON42 stated that she does use minority- and female-owned subcontractors, but she did not know whether they were certified DBEs. She stated that in both the private and public sectors she utilizes the vendors that she knows; whether they are minority- or female-owned is a secondary consideration. She does not look for DBEs in particular. The average price of her subcontracts is about \$5,000.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he tries to utilize the same subcontractors in the private and public sectors because of the quality of their work, their history, and their dependability. He stated that all of his subcontractors are female- or minority-owned but he did not know whether they were certified DBEs. He stated that he has not necessarily tried to use DBEs in the private sector because it is not required. He stated that he builds his workforce based on capabilities and skills and work history and not on a subcontractor's DBE certification — if they happen to be a DBE so be it.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated he very rarely utilizes subcontractors but noted that he does utilize the same subcontractors across all sectors. He stated that he has utilized a female-owned firm before but did not know if he had ever utilized a DBE-certified firm.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported using the same subcontractors in the private sector as well as the public sector because he is confident in the quality of their work and the services they provide. He stated that none of his subcontractors are DBE-certified although they are minority- or female-owned. He stated that his success on contracts has nothing to do with whether he utilizes DBEs; he stated that he looks for experienced subcontractors and a lot of times DBEs are lacking in experience.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, stated that he most likely uses the same subcontractors across the public and private sectors due to the quality of their work. He stated that he utilized a female-owned firm and may have utilized a DBE. He stated that he only uses firms with whom he is familiar with their work history and would

not seek out a minority- or female-owned firm or a DBE unless they happened to fall into his category of quality subcontractors.

Interviewee #CON54, a white male owner of a general contracting firm, reported that they make a point to use the same subcontractors in the public and private sectors because of the quality of work and services they provide. He stated that some of these subcontractors are minority- or female-owned or DBEs. He stated that they solicit DBEs all the time based on the quality of their work. He indicated that they locate DBEs through the Community Service Department which maintains a database of DBE subcontractors. He stated that the subcontracting work is for document control, scheduling, and estimating, and the price range for the subcontracts is about \$10 million.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that they use the same contractors who they are familiar with and enjoy good relationships. He stated their primary concern is the quality of work. He reported that some of their subcontractors are minority- and female-owned. He was not aware of his firm specifically pursuing DBEs in the private sector but believes that this is the case. He stated that they do solicit DBEs for price quotes often and they locate DBEs through an online certification vehicle. He reported that the price range for projects subcontracted to DBEs ranges between \$100,000 to \$5 million. He stated that since the passage of Proposition 209, if the contract does not have a goal, they will select a subcontractor based on work history and a firm's ability to handle all aspects of the job.

Interviewee #CON58, a white male owner of an engineering consulting firm, reported that his firm utilizes the same subcontractors across the public and private sectors. He stated that the subcontractors' disciplines, quality of work, skill set, and past relationships that have been built all contribute to this. He stated that they utilize DBE firms and have attempted to utilize DBE, and minority- and female-owned firms in the private sector. He stated that when they do utilize DBEs it is usually one that they know or that has been referred to them; in some instances they have obtained a list of approved DBEs. He stated that typically when they use a DBE, they do so because it is a requirement and will use them on additional projects as required.

Some prime contractors reported using different subcontractors in the private and public sectors for various reasons. [Interviewees #CON: 9, 11, 15, 30, 37, 39, 43, 57]. Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he does not use the same subcontractors in the public and private sectors because every project is different and "there are a lot of alternatives out there." Interviewee #CON9 stated that he has used a DBE subcontractor both in the public and private sectors. He stated that he has not had any problems using DBEs on Consortium projects or on private sector projects.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she does not use the same subcontractors in the private sector and the public sector because the Consortium has very specific requirements for the subcontractors that she may use.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported that in the private sector, his company generally functions as a subcontractor, and he notices that prime contractors generally use many of the same subcontractors. Interviewee #CON15 rarely uses DBEs on private sector projects, but he reported that is largely an issue of pricing.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he does not use the same subcontractors in the public and private sectors because of the different expertise required for different projects.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he does not use the same subcontractors in the private sector and public sector. He stated that his usage of subcontractors is dependent on the discipline and the scope of work. For instance, in the high design sector he generally works with big name firms. He stated that some of the subcontractors are DBEs, but he does not always use DBEs. Though DBE usage is a priority, he stated, that his main focus is credibility, work history, and delivery.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that she does not always utilize the same subcontractors across the public and private sectors because sometimes it is not possible (e.g., for work that is abroad). She stated that she hires subcontractors on a case-by-case basis and she hires only the most qualified subcontractors that may or may not be minority- or female-owned. She stated that some of these subcontractors are DBE-certified but they are not hired on that premise; occasionally she finds out after the fact that a subcontractor is DBE-certified but it would be a coincidence because she does not make an extra effort to use DBEs. She stated that she has tried to utilize minority- and female-owned subcontractors in the private sector but again her main focus is the quality of work; she stated that she is more likely to go after quality and credibility and if a DBE has those traits it is mere coincidence. She stated that the average price range for her subcontracts is approximately \$250,000.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, stated that they do not use the same subcontractors across the public and private sectors because their private sector subcontractors do not have the necessary public sector background. He stated that some of their subcontractors are minority- or female-owned, but he did not know whether they were DBE certified because they only pay attention to the prospective firm's work history and quality of work. He stated that their firm does not make any attempt to use minority- or female-owned firms or DBEs in the private sector because their firm evaluation is based solely on the quality of work.

Some prime contractors reported having no need for subcontractors on private sector contracts. [Interviewees #CON: 12, 13, 17, 52]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that they do not use subcontractors in the private sector.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that his work is very different as between the public and private sectors; he currently has one project in the private sector and he is acting as a subcontractor. Interviewee #CON13 stated that he has used a DBE on a Consortium project and it was no different from a non-DBE; he stated that he selected them because he thought they could do the work and not because they were a DBE.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated her company hasn't had the need to subcontract in the private sector.

Most contractors reported having had a positive experience working with DBEs. [Interviewees #CON: 3, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 26, 30, 33, 34, 35, 36, 37, 38, 42, 46, 48, 49, 54, 55, 57, 58]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, reported that his experiences working with DBE have always been fine.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that in his experience, DBEs are very good at assisting during the proposal stage, which he surmised is because DBEs “get used to getting calls at the last minute.” He stated that after the proposal stage, there is no “notable difference” between working with DBEs and non-DBEs.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has not used a DBE subcontractor on a Consortium project. He has used a DBE subcontractor on a non-Consortium public sector project and that experience has been very good. Interviewee #CON12 stated that typically the DBEs that they look at are based on the ability to deliver; they do not like to just “go out and check in the yellow pages” to select a DBE because “you do not know what you are going to get” and it could put the project at risk.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had a positive experience working with a DBE on a Consortium project.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that he has had “a lot of positive” experiences working with DBEs and MWBEs. He stated that his company chooses to work with qualified subcontractors; he stated that they look for firms that are qualified first, and then consider whether they are a DBE.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that his experience using DBEs on Consortium projects has been fine. He stated that his experiences are generally positive with DBEs, and that if there is a problem, he will go directly to the owner and get the problem resolved.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has not utilized DBEs on Consortium or private sector projects when functioning in a prime contractor capacity. Interviewee #CON17’s other experiences with DBEs has been very positive, but she noted that the experience depends largely on any business’ philosophy.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, stated her experiences with DBEs on Consortium projects has been positive because she only works with people that she knows will give her a good product – she’s too small. Interviewee #CON18 once had problems with a DBE business partner, and that led her to not work with the DBE again. Interviewee #CON18 does not have to work with DBEs, so she works with people that she needs to complete a given job.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has worked with many DBE subcontractors and stated that her network consists mainly of minority- and female-owned firms. She stated that if she receives a call

to refer a group for a project, she tends to refer people within her own network. Interviewee #CON20 stated that she utilizes DBEs because it is good for business. She stated that after being in business for 15 years, she just knows who the DBEs are and she utilizes them all the time.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had a positive experience working with DBEs.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has had a positive experience working with DBEs. She stated that she rarely solicits DBEs unless it is required and she finds DBEs through word of mouth. After soliciting DBEs she uses them about 80 percent of the time. She stated that the average price on subcontracts that she gives to DBEs is between \$20,000 and \$40,000.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, reported using minority- and female-owned subcontractors. He locates DBEs through association groups that have such listings. He stated that overall he has had a positive experience subcontracting work to DBEs. He typically subcontracts various types of engineering and construction management jobs to DBEs. He stated that these are generally smaller scale projects and range in value from \$5,000 to \$25,000.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her experiences with DBEs have been mostly positive; the only occasional issue may have been managing the subcontractor's work.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that his experience working with DBEs has been positive. He stated that he solicited DBEs for a major project at the Los Angeles World Airport, not only because the contract required it, but because he also wanted DBE participation. He stated that he subcontracts engineering, cost estimating, specifications, and move coordinator work to DBEs at an average price of four (4) to six (6) figures depending on the discipline and project duration. The frequency of DBE solicitations depends on the DBE's work history and project requirements.

A few prime contractors reported having had a negative experience working with DBEs.

[Interviewees #CON: 13, 39]. Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had major problems in the past with a WBE that he hired, but it was a long time ago, and he declined to provide further detail.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that she had a negative experience working with one (1) DBE because she felt that the company was inept. She does not like having DBE certification required and would prefer to focus on quality of work over certification.

Several interviewees indicated they have little or no experience working with DBEs in either the public or private sector. [Interviewees #CON: 2, 4, 5, 6, 7, 8, 11, 16, 17, 52].

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he uses subcontractors for drafting services in the private sector, but he does not perform any work in the public sector. Therefore, he uses these subcontractors only in the private sector. Interviewee #CON2 stated that he has not used any DBEs on Consortium projects because he has

not performed any work for the Consortium. Interviewee #CON2 stated that he is not sure whether he has ever used any DBEs. He stated that he may have used a DBE for drafting services but is not sure whether the firm is a DBE. He stated that he has used this firm on four projects. Interviewee #CON2 stated that he has not used many DBEs, but he has had a positive relationship with the drafting firm. He stated that besides the drafting firm he has not used any other DBEs on private sector projects. He said that he uses the same firm because he knows the firm and has developed a working relationship with them over the years.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that his company was awarded a contract by the City of San Diego for on-call geotechnical services in the mid 1990s and was a prime contractor on that project. There were occasions on the project where his company needed a subcontractor, for instance, to drill holes, and he would look for a DBE drilling contractor to drill holes. Interviewee #CON4 could not answer whether he used the same subcontractors in the private sector and the public sector because his private sector work as a prime contractor was much earlier (1979). Interviewee #CON4 has not worked on any Consortium projects and therefore, has no experience using DBEs on such projects. He stated that he has not used any DBEs on private sector projects because the opportunity never came up.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that has had no experience using DBEs on Consortium projects because he has not worked on any Consortium projects. He stated that other than a structural engineer who might have been a DBE, he has not used any other DBEs on private sector projects. He stated that he has used the structural engineer about twice a month in all of his jobs for the past five (5) years. Interviewee #CON5 stated that he has never tried to find any other DBEs to work with but stated that it would be a good idea. He stated that he uses this DBE rather than looking for any others because he has known the structural engineer for many years and he has always used him. The structural engineer always does a good job, his work is timely, fast and inexpensive and he is readily available. Interviewee #CON5 stated that he cannot say that other DBEs are not readily available because he has never tried to use another. He stated “when something works you do not need to fix it.”

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, has referred customers to DBEs, but has had no occasion to hire a DBE because he is a subcontractor and sells materials.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has used subcontractors at times (although he reported acting as a subcontractor 98-99 percent of the time) and he has probably used DBE subcontractors before but did not know because he never asked. Interviewee #CON7 stated that he has not had any experience using DBEs on Consortium projects. Interviewee #CON7 could not describe his experiences with DBEs because he was not sure which subcontractors were DBEs and whether he had worked with any.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, has responded to an RFP with a DBE component but has never actually worked with a DBE subcontractor.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she has never worked with a DBE although she did try once to work with a DVBE.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, has not really used DBEs on the company's projects for Consortium entities, indicating that there is no need to do so. Interviewee #CON16 works more with the various agencies rather than with other DBE companies. Interviewee #CON16 has no experience working with DBEs in private sector projects. Interviewee #CON16 has not had particular experiences with other DBEs of note, but the company does use small businesses whenever possible, despite that they may not be certified as minority-owned or disadvantaged businesses. Interviewee #CON16 very rarely likes to use large companies unless the scope of a project is so big that a smaller company cannot handle a job. Interviewee #CON16 notes that small businesses may not provide the best price, but they usually provide the best overall work experience and value. Smaller business, noted Interviewee #CON16, tend to value long-term relationships that are established over time.

No prime contractor reported having refused to work with a DBE because they were a DBE. However, some prime contractors reported having declined to work with a DBE for reasons other than their certification. [Interviewees #CON: 3, 9, 14, 13, 15, 17, 19, 22, 34, 53]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, reported that he has never refused to work with a DBE, and does not specifically know of that happening with any other prime. He stated that what might happen is that there might be one or two people within the DBE firm who the prime contractor might not like. The prime contractor may request that particular person not participate in the project. He stated that this is much more likely than refusing to work with the DBE. He does not believe that any of his colleagues, even the most prejudiced would not work with a DBE because, for instance, they do not believe women should be geologists. Interviewee #CON3 stated he does not believe that kind of thing would happen. He does think that there are situations where someone inside the firm would cause you not to work with that person, but not the firm in general.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he has decided to work with one firm over another, but it was not related to a firm's DBE certification.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had turned down teaming opportunities with both DBEs and non-DBEs in the past.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, could not remember whether he had ever refused to work with a DBE.

Interviewee #CON15, a Hispanic American male owner of a MBE certified engineering and construction company has sometimes refused to work with DBEs, but it is a business and financial concern, not because of their certification status.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has, in the past, refused to work with DBE companies because of their business ethics, but not because of their status as a disadvantaged business.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her firm has refused to work with a DBE in the past only because the companies could not come to terms.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has never refused to work with a DBE based on their DBE status. She stated that the decision to not work with a DBE would have been based on their work and not their certification.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, reported that he may have refused to work with a DBE if they did not produce.

Minority and female-owned business perceptions of being utilized by prime contractors in the public and private sectors.

Some minority- and female-owned business reported that the same prime contractors utilize them in the private and public sectors. [Interviewees #CON: 1, 9, 14, 15, 20, 22, 23, 28, 33, 36, 45, 49, CONTA #1, 2]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, reported that the same prime contractors utilize his business in both the private and the public sectors. Interviewee #CON1 stated that he has not recently been directly impacted by a prime contractor refusing to work with him because he is a minority, but he is “sure” that that condition still exists in the field.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that the same prime contractors use his business both in the private and the public sectors. Interviewee #CON9 stated there is no notable difference between being utilized on Consortium and non-Consortium public sector projects or private sector projects.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, rarely does work in the private sector, but he continues to get regular calls from the same prime contractors in the public sector for work — his business is very competitive.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has pursued work with prime contractors in the private sector and reported that the same prime contractors use her firm in the public and the private sectors. She stated that this is due to her firm’s work history and past performance; she instructs her team that every project is a marketing tool.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the same prime contractors utilize her firm in the public and private sectors. She attributed this to her ongoing relationships and experience with the work proposed. She stated that she has attempted to work with prime contractors in the private sector. She stated that she is solicited for price quotes on private sector jobs approximately 30-40 percent of the time; these projects do not have goals. She stated that these solicitations result in work approximately 60 percent of the time and the type of work is the same as it is in the private sector.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, reported that the same prime contractors sometimes utilize them in the public and private sectors due to their reputation, work, and performance. He has attempted to work with prime contractors in the private sector. He stated that they are solicited daily for price quotes on private sector projects that come in on the fax machine; he did not know whether the private sector projects had goals. He stated that these solicitations result in work 5 percent of the time. They perform hauling and demolition work in the private sector.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, reported that same prime contractors utilize his business in the public and private sectors. He stated that this is due to his number of years in business, credibility, relationships and professionalism. He stated that his company always pursues projects. He stated that the private sector projects do not generally have goals, and solicitations from prime contractors result in work approximately 50 percent of the time.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, reported that the same prime contractors utilize her in both the public and private sectors and this utilization is based on her qualifications. She reported however, that although prime contractors “always” solicit her for price quotes on private sector projects, these solicitations rarely result in work. She stated that she has attempted to work with prime contractors in the private sector, however, these attempts have not been very successful.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that it depends upon the prime contractor whether they utilize her in both the private and public sectors. She stated that she tries to maintain her relationships so that she can get work and good referrals. She stated that she has attempted to obtain work with prime contractors in the private sector and she sends out letters and a newsletter that she has developed. She is not solicited very often for work on Consortium projects. She stated that she has not received many solicitations or work resulting from solicitations lately and was not sure if that was attributable to increased competition or if things were changing.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the same prime contractors utilize her across the public and private sectors and stated that she receives a lot of referrals due to the quality of her work. She stated that in the private sector she is frequently solicited to work on projects and many of these projects have goals because they receive federal funding. She stated that these solicitations result in work almost all of the time and she receives good work from the prime contractor.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that the same prime contractors utilize his firm across the public and private sectors. He stated that this is due to the quality of his work and his company’s reputation.

CONTA #1, the President of the Latino Business Owners of America, stated that prime contractors who build a relationship with a subcontractor will use that subcontractor on their public sector and private sector jobs because of the trust factor.

CONTA #2, the President of the Black Contractor's Association, stated that once a DBE subcontractor breaks in and establishes a relationship with a prime contractor in the public setting, the subcontractor generally stays "in" with the prime contractor.

Some minority and female-owned businesses reported that the same prime contractors do not utilize them in the private and public sectors. [Interviewees #CON: 2, 4, 12, 13, 16, 17, 21, 24, 26, 27, 29, 30, 31, 32, 35, 37, 38, 40, 47, 48, 50, 51]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that there is a difference between the prime consultants who use him in the private sector and those who use him in the public sector. He stated that there are architects and developers who strictly go after public sector work and there are some that only go after private sector work.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has never really considered whether the same prime contractors who use him in the public sector use him in the private sector. For example, he noted working with a prime contractor that only utilizes his firm for public sector work, although he is aware that the prime contractor also does work in the private sector. Interviewee #CON4 stated that some of the large prime contractors do private sector work but never use the DBEs for that work. Interviewee #CON4 stated that he suspects prime contractors use him on public jobs because his company has been around long enough and has a good relationship with the public agencies so the prime may increase its chances of winning a bid if it uses Interviewee #CON4 on the public sector work; in contrast, he stated that there is no benefit to the prime contractor for using Interviewee #CON4's firm in the private sector.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the same prime contractors who use him in the public sector do not use him in the private sector. He stated it has been "clearly marked" that they only work for their public sector prime contractors in the public sector usually because of the discipline. He stated that in the private sector they are working for architects whereas in the public sector they are working for engineers.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the prime contractors that he works with focus their activity in the public sector. Interviewee #CON13 stated that there is no difference as to being utilized on Consortium and private sector projects.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that when the company functions as a subcontractor, the same prime contractors do not use him in the public and private sectors because the nature of the work is different.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the prime contractor's decision to use his firm across the public and private sectors depends largely on the mercy of the project manager. Interviewee #CON17's biggest concern is that sometimes the teams who make proposals are not the teams delivering the project – this makes business very difficult as a subcontractor. Interviewee #CON17 stated that this disconnect leads to broken promises and understandings from the time of proposal to job execution.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that the same prime contractors who utilize her business in the public sector do not use her business in the private sector; she assumes that if the opportunity presents itself they would.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that the same prime contractors who use her in the public sector do not use her in the private sector. She does not know why, but stated that the prime contractors have their own relationships.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the same prime contractors that use her in the public sector do not use her in the private sector; she stated that they do not do so because it is not required.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that he has tried to work with a prime contractor in the private sector, but these efforts have not been successful. He stated that some of the private sector projects have goals.

Interviewee #CON29, an African American male-owned electrical contractor, stated that he does not do any work in the public sector, and he does not know how to find prime contractors who need subcontractors. He stated that he is solicited for work every day on private sector projects but business has been slow over the past year. He stated that in the private sector the goal is to get the project done as cheaply as possible. He stated that because of his ethnicity he is, many times, expected to do the work for dirt cheap. He gave the example of a project that should have cost \$10,000. At that time, that was the going rate and it would have covered his costs as well as paid his employees. The prime contractor cut the staff and Interviewee #CON29 eventually cut his price in half to \$5,000 just to keep the job and pay his men. He stated that they want him to work as cheaply as possible while keeping the credibility of the project and that is very hard to do. He stated that most of his work comes through relationships and referrals. He stated that people want the job done well and he will discuss the price at the beginning of the project. He stated that solicitations almost always result in work; it is very rare when he receives a call and does not get the job.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that the same prime contractors do not use his business in both the public and private sectors for a simple reason: it is not required. He stated that the goals on private sector projects are different and normally do not require that a DBE be a part of the team. He stated that he does not get many calls to perform work in the private sector.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he does not do work in the private sector very often. He stated that the overhead and the insurance are too expensive to maintain. He stated that working in the private sector comes with a lot of risk and exposure to a significant amount of overhead even when business is slow. He stated that his attempts at seeking work with prime contractors in the private sector have not been successful. Interviewee #CON31 stated that prime contractors often solicit him for work in the private sector but these solicitations rarely result in work. He stated that he submits “responsible” price quotes on bids that interest him. He stated that most of his work comes through recommendations from previous work and not through solicitations.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he has tried to work with prime contractors in the private sector but he keeps getting the run around and has been unsuccessful in that regard. He stated that they do receive solicitations from prime contractors in the private sector but it is not often. He stated that he had “not hit the nail on the head yet” in terms of getting work in the private sector but he will keep trying; he does not know why they have not received work yet.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that the same prime contractors do not use her in the public and private sectors (although she reported acting as a prime contractor 100 percent of the time). She stated that she has tried to work with prime contractors in the private sector but these efforts have been unsuccessful. She stated that she has an alliance with a large firm and she is included in share pricing for RFPs. She stated that on the instances when she has been solicited for work in the private sector, it was on projects that did not have goals.

Interviewee #CON 37, an African American male owner of a SBA-certified architecture firm, stated that the same prime contractors do not use him in the public and private sectors. He stated that he assumes the prime contractors are utilizing different firms.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the same prime contractors do not use him across the public and private sectors. He believes it is because of the “Good Old Boy Network.” He stated that he will continue to try to obtain work in the private sector.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that prime contractors never solicit him for price quotes in the private sector. He stated that prime contractors have their own team and only utilize his business or other DBEs when it is required and they receive points or other credit. He stated that he has not attempted to obtain work with a prime contractor in the private sector.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has tried to obtain work with prime contractors in the private sector but the same prime contractors do not utilize his firm across the public and private sectors. He stated that he is not often solicited for work on Consortium projects.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the prime contractors who use him in the public sector do not use him in the private sector. He stated that this is due in large part to the fact that there is not a [DBE]

requirement in the private sector; he stated that the prime contractors utilize their own network of subcontractors for private sector projects. He stated that he no longer tries to obtain work with the public sector prime contractors in the private sector.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the prime contractors who utilize him in the public sector do not utilize his firm in the private sector. He stated that the prime contractors that use his firm in the public sector do so because of the mandatory requirements; he stated that he has stopped trying to seek work with prime contractors in the private sector because it is not an efficient way to run his business. He stated that prime contractors do not solicit his firm in the private sector. He stated that private sector projects do not have goals, which makes it highly likely that this is the primary reason that he does not get work in the private sector.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the same prime contractors do not utilize his firm across the public and private sectors. He stated that he has tried to obtain work in the private sector with those firms who have utilized him in the public sector, but this has not been successful, he believes, because those firms are not required to use him in the private sector.

Some minority- and female-owned businesses reported not seeking out work from prime contractors in the private sector. [Interviewees #CON: 18, 25, 26, 30, 40]. Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, could not think of a private sector project on which she has functioned as a subcontractor. As a subcontractor on Consortium projects, though, Interviewee #CON18 recounted a positive experience.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has not really attempted to gain much work in the private sector based on his experience in not receiving the work and the prime contractors sticking within their own “Good Old Boy Network”.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he rarely attempts to obtain work from prime contractors in the private sector. He stated that prime contractors do not have any reason to share the wealth because there is no mandate to do so. He also stated that he is rarely solicited by prime contractors on private sector projects. He stated that he believes he only receives solicitations because of something specific that he does, or he believes it is probably political.

Most interviewees reported that a prime contractor has not and would not refuse to work with them because they are a DBE, however, a prime contractor may have refused to work with them for other reasons. [Interviewees #CON: 2, 9, 10, 12, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 40, 42, 43, 44, 45, 47, 48, 49, 51, CONTA #1, 2]. Interviewee #CON2 stated that he would not say that a prime consultant has refused to work with him because he is certified with Caltrans, but he is turned down by architects on a routine basis. He stated that this is not because he is a DBE; the architects are not even interested in knowing if he is a DBE. He stated that he is often turned down because of the relationship between the architect and the engineer that architect has built a relationship with. He stated if an architect has been working with a certain engineer, the architect often wants to continue working with that engineer.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that no one has said directly to his face that he would not receive a contract or work simply because of his DBE status.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he does not think a prime contractor has ever refused to work with him because he is a DBE; at least no one has ever said that or made him feel like that is the reason.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he is considered for work because of his credibility; he does not believe that this consideration has been affected by his DBE status.

CONTA #1, the President of the Latino Business Owners of America, stated that a prime will never refuse to work with a DBE, but instead will use a DBE for a smaller amount or will sometimes state that it is using a DBE and change to another subcontractor. He stated that this occurred as recently as two to three years ago. CONTA #1 stated that the incident was not reported because he does not know who you would report it to.

A couple of interviewees reported feeling as though a prime had refused to work with them because they are a DBE. [Interviewees #CON: 16, 37]. Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, noted that while no company has ever specifically told him that his DBE status precluded the company from getting work, he has been blown off and he knows that is actually the case. The company makes strong efforts, but large companies will generally end up using whoever they want.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he feels that a prime has probably refused to work with him because he is DBE, but he did not know it. He stated that no one has said it outright but it is more or less a feeling that he has.

Some interviewees reported that they did not know whether a prime had ever refused to work with them because they are DBE. [Interviewees #CON: 4, 18, 50]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has no idea whether a prime has ever refused to work with his company because it is a DBE; he stated if so, the prime would never say so.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, did not know whether prime contractors have refused to work with her because she is a DBE — many projects fail to materialize.

Caltrans Anecdotes Regarding DBE Utilization

The following anecdotes regarding DBE utilization were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

Experience soliciting bids from DBEs.

Several of the interviewees indicated they had frequent experience with soliciting bids and price quotes from DBEs in both the public and private sectors. Interviewee #CT10, an African American male-owned business, stated that prime contractor's contact him requesting bid submissions on Caltrans projects "usually every time a bid comes out" and that the company receives work from about one third of the bids that it submits. According to Interviewee #CT10, the same 33 percent figure applies to the company's receiving non-Caltrans public sector jobs for which it bids as a subcontractor contractor and for which prime contractors are looking to meet a DBE goal.

Interviewee #CT17, a white male-owned business, stated that his experiences soliciting bids from DBEs on Caltrans projects have been positive. As for the private sector, he stated that his firm's experiences with soliciting bids from DBEs were "fine."

Interviewee #CT51, a Hispanic male-owned business, said that the company gets contacted much more frequently by prime contractors to work on other public sector jobs than it does for Caltrans jobs, and that the company had bid on four or five Caltrans jobs in the last three years but had not received any of them because it was not the low bidder. Interviewee #CT51 also stated that whether or not his or any other firm is chosen depends on whether they submit the low bid, noting that primes "want to be the low bidder in the process so they can get the job, and they are sure not going to use you if you are double their estimate or 20 percent or 10 percent or 1 percent higher, in some cases, than the non-DBE guys."

Interviewee #CT33, a Hispanic female-owned business, stated that the firm's receiving requests to bid as a subcontractor on Caltrans projects "goes in cycles" and that "right now it's happening more often[.]" as they had received three requests in the last two months. She stated that the requests have "been pretty constant [over] the past year."

Interviewee #CT9, a white male-owned business, noted that his division has experience soliciting bids from and utilizing DBEs on projects for other public agencies, including the City of Los Angeles.

Interviewee #CT67, a white female-owned business, noted that she had recently received a letter from a prime contractor saying that her company had been selected as part of a team for an upcoming Metropolitan Water District wastewater project for which bids are still out, and that this is the first time the company had ever heard back from a prime contractor to which it submitted a subcontracting bid.

Interviewee #CT13, a Pakistani male-owned business, indicated that his firm is contacted about as frequently by primes requesting price quotes on non-Caltrans public sector projects as it is contacted for quotes on Caltrans projects. However, Interviewee #CT13 stated that he has "more success" in getting work from these agencies, which are mainly water districts and cities, and that his experiences seeking and getting work from these agencies were more positive than those he had with Caltrans. Interviewee #CT13 also stated that "that work [for agencies other than Caltrans] is based on [the] qualifications and reputation of my company. It has nothing to do with me being DBE certified."

According to Interviewee #CT49, an African American male-owned business, it has been “a couple of years” since the company last bid as a subcontractor on a public sector job, but the company used to get contacted “frequently” by prime contractors to bid on Caltrans and other public sector jobs. Interviewee #CT33, a Hispanic female-owned business, felt that bidding as a subcontractor on non-Caltrans public sector work is “[g]enerally ... an easier process[,]” depending on the city and/or agency, and she stated that the company receives a higher percentage of these jobs than it does the Caltrans ones.

Some interviewees expressed general experience soliciting bids and price quotes from DBEs.

When asked about experiences with soliciting bids or price quotes from DBEs for private sector and non-Caltrans public sector work, Interviewee #CT31, an African American female-owned business, answered, “It’s fine” and “No problems.” Interviewee #CT31 stated that he and others at his company “are the ones that pursue getting all projects” and that prime contractors “do not normally come to [them]” Interviewee #CT31 attributed this lack of solicitations from prime contractors to Caltrans’ lack of enforcement of DBE goals and/or requirements.

According to Interviewee #CT31, when the company does get solicitations from prime contractors for work — whether it be for Caltrans, other agencies, or in the private sector — the “majority of the time [it is because] either the teams figure that they have to have WMBEs on their team ... or they know about us and know that we are that good.” Interviewee #CT31 also stated that the company experienced a decrease in solicitations to work on public sector projects after the passage of Proposition 209 in 1996. Interviewee #CT31 noted that the company saw this decline “in most city and county governments [and] public transportation agencies.”

Interviewee #CT48, an Asian American male-owned firm, stated also that the frequency with which his company is contacted by prime contractors to bid on non-Caltrans public sector projects varies, and that, when it bids on these projects, the company winds up getting more than half of the jobs. Interviewee #CT32, an Asian American female-owned business, recounted a similar experience, and noted that, in general, her experiences soliciting bids from and utilizing DBEs for private sector and non-Caltrans public sector work were positive ones.

However, Interviewee #CT46, an Asian American male-owned business, thought that “a lot of times” it was “ambiguous” exactly what was required of firms in terms of “put[ting] the DBE requirements together for a bid ... and the paperwork [for doing so].” He relayed one experience where his company lost a job because they were told that their “DBE wasn’t correct.”

Interviewee #CT49, an African American male-owned business, noted that his experiences soliciting bids from and utilizing DBEs on Caltrans projects and other public sector jobs had been the “just the same” as his experiences soliciting bids from and utilizing non-DBE firms.

Some of the interviewees noted solicitation experiences specifically with regard to private sector work. Some interviewees indicated positive experiences with solicitation for private sector work. CATA #11, a minority trade association, noted that his association gets eight to ten faxes and e-mails a day from private sector firms asking them for quotes from their members. Primes “are always looking for subcontractors.” His members have received these jobs. His association gets faxes from primes on City or County projects in connection with good faith efforts. His members have received these jobs.

Interviewee #CT10, an African American male-owned business, stated that primes request bids on private sector work (sometimes because they are trying to meet a DBE goal). He points out, however, although his company lands about a one third of the work for which it bid as a subcontractor in the private sector, he is contacted less frequently by primes requesting bids for private sector work.

Interviewee #CT48, an Asian American male-owned firm, stated that his company “sometimes” received requests from prime contractors to bid on private sector projects, that these projects were less than 10 percent of the company’s overall work, that there were no DBE goals for these projects, and that the company winds up getting over half of these jobs. Interviewee #CT46, an Asian American male-owned business, felt that his company’s success in landing Caltrans and other public sector work “runs in streaks,” as sometimes months pass without getting a job, whereas other times “you’ll get a couple in a row.”

Interviewee #CT13, a Pakistani male-owned business, felt that the only reason he was solicited for work in the private sector was because of his qualifications. Interviewee #CT13 stated that he also gets contacted by primes requesting bids on private sector work with the same frequency as it receives requests for bids on public sector work. He indicated that firms doing work in the private sector “could care less” whether or not they are soliciting a bid from or utilizing a DBE firm on a project.

Interviewee #CT32, an Asian American female-owned firm, stated that she does not get solicited to bid as a subcontractor on private sector work.

Interviewee #CT29, a Hispanic male-owned business, stated that his company’s private work comes from relationships and reputation built over the many years that the company has been in business. Interviewee #CT29 stated that its company’s DBE status had a lot to do with obtaining subcontractor work in the public sector but not at all in the private sector.

Some interviewees indicated they had very limited or no experience soliciting bids and price quotes from DBEs. [Interviewees #CT: 1, 7, 32, 48, 65, and 68]. Interviewee #CT1, a Native American male-owned business, stated that he does not have experience soliciting bids or price quotes from DBEs on Caltrans projects. Interviewee #CT65 (white male-owned) and Interviewee #CT48, an Asian American male-owned business, also have no experience soliciting bids from or utilizing a DBE on Caltrans projects.

Interviewee #CT68, a white male-owned business, said that he did not really have any experience with soliciting bids from and/or utilizing DBE firms on Caltrans projects and that he “d[id]n’t care” whether the firms he used as subcontractors were DBEs or not. Because, he said, no agency ever required that he use a DBE subcontractor.

Interviewee #CT48, an Asian American male-owned business, had no experience soliciting bids or price quotes from or utilizing DBEs on private sector projects or non-Caltrans public sector projects either. Interviewee #CT65 also has no experience soliciting bids or price quotes on private sector projects. Interviewee #CT82, a white male-owned business, noted that he did not actively solicit DBEs because as soon as he was awarded a contract he already knew who he was going to use.

Some interviewees indicated frustration with the DBE solicitation process. Interviewee #CT13, a Pakistani male-owned business, said that he responds to requests to bid on Caltrans projects, but that his firm gets “two typical responses”: the prime either does not respond at all, or the prime responds

saying that the team has already been formed but thanking his firm for expressing interest. Interviewee #CT13 described this process as “frustrating” and wondered why his firm spent so much money and resources to get DBE certification without receiving any benefit. Interviewee #CT13 stated that he instead could have utilized his staff “for making some money for the company. ... If that effort would have been made somewhere else I would have got more jobs, more projects, more money.”

Interviewee #CT30, an Asian American male-owned firm, explained that the same DBEs get all the work and there is a disparity between the “haves and have nots.” He observed that probably 20 percent of the DBEs “gobble up” 80 percent of the work because of their standing relationships. The remaining 80 percent of the DBEs are fighting for 20 percent of the work.

Experience utilizing DBEs.

Some interviewees recounted general and/or positive experiences with DBEs on public sector projects. Interviewee #CT17, a white male-owned business, also said that his experiences with utilizing a DBE on public sector projects had been “very positive,” that his company has “good relationships” with the firms it uses, and that his firm “like[s] working with them.”

Interviewee #CT32, an Asian American female-owned business, said the company had more success getting subcontractor work on public sector jobs, but she did not know if these other agencies have DBE goals or not. She said that she got a contract with a municipality because she was a woman-owned small business, and that she had received several contracts for the Navy, who she said “has been successful in ... awarding contracts to small businesses.”

Interviewee #CT33, a Hispanic female-owned business, noted the company has used DBE subcontractors on public sector jobs for other agencies, and said that she has “had good success with all of them.” She also stated that she “would not pick somebody just because they’re MBE or WBE and not knowing that they’re good at what they do.”

Some interviewees had experience with DBEs on private sector projects. With regard to using DBE subcontractors in the private sector, Interviewee #CT9, a white male-owned business, stated that the company does use DBE firms, but that these firms are selected because he feels that they are “the best for the job.” Because the company’s reputation is on the line, he does not want to be “required to use a set aside firm that [he] may or may not want to be using.” Interviewee #CT17, a white male-owned business, stated also that he had good experiences utilizing DBEs in the private sector, and that using them in the private sector was “probably a little less restrictive” (because there are no percentage requirements or DBE goals).

Interviewee #CT34, a white male-owned business, could not recall an instance where he did not use a DBE in the private sector, and that the DBEs that he uses regularly would in any case be among the first choices for the work they do for him. He did say, however, that with respect to soliciting bids from and utilizing DBEs in the private sector, “[i]t’s just a different consideration” because “there’s just not quite the same imperative when you’re doing private sector work.”

Interviewee #CT46, an Asian American male-owned business, said that private sector contracts “hardly ever ask you for a DBE requirement.” Interviewee #CT65, a white male-owned business, has utilized or worked with a DBE in the private sector. According to Interviewee #CT11, Native American male-owned business, the company does not use DBEs when it is a prime in private contracts — the company pretty much handles everything in house.

CATA #1, an Asian American trade association, said that he had had good experiences soliciting bids from and working with other DBEs on Caltrans and other jobs. He said that, because of good networking, he had no problem finding DBEs, and he mentioned a current contract with a public agency (the Metropolitan Water District) where his firm is listed as the prime and three others as subcontractors. According to CATA #1, a “very, very low percentage” of jobs that are bid are landed, and that getting private sector jobs depends heavily on whether a DBE program is looked upon as merely lip service or a real commitment. He identified one utility company that was good about hiring DBEs, but he said that most other utilities and defense contractors were not.

Some interviewees offered experiences with DBEs but did not specify whether the experience was in the public or private sector. When asked about his experience working with DBEs, Interviewee #CT34, a white male-owned business, stated, “I wouldn’t distinguish my experience with the DBEs from any other subcontractor-consultants that I’ve ever used.” He said that this was true of his experience using DBEs on work for Caltrans, other public sector work, and private sector work.

Interviewee #CT50, a white male-owned business, stated that he has worked with one WBE, and his experience has been good. Interviewee #CT51, a Hispanic male-owned business, indicated that the company’s experiences using DBE subcontractors on projects (be they in the public or private sector) were no different than those with non-DBE subcontractors.

Interviewee #CT67, a white female-owned business, does not subcontract out any work. Interviewee #CT67 said that, though she was not sure how often prime contractors are looking for a firm like hers to do conversions to CAD, prime contractors still keep a lot of work in house, that subcontracting work is all about positioning as a small business and how primes look at small businesses, and that it is important for her, as a small business owner, to see that the DBE program is not abolished.

Interviewee #CT69, a white male-owned business, never personally hired a DBE. But, Interviewee #CT69 has had experience with DBEs in that he has had to “clean up” a lot of their work. He said some of the DBEs have had to send two people for projects for which he would only send one. Interviewee #CT69 also worked with prime DBEs, but the problems tend to be with subcontractor DBEs.

Interviewee #CT76, a white male-owned business, stated that he utilizes the same subcontractors each time. Some of those subcontractors are DBEs, and while he might have initially used them because he was trying to meet some DBE requirement, he continues to use them because they do good work. Interviewee #CT76 works “within the family,” meaning he only uses those companies with which he has a good working relationship and knows will get the job done — regardless of whether they are certified.

Interviewee #CT7, a white female-owned business, stated that their experiences using DBEs in the private sector and on non-Caltrans public sector work were the same as those using DBEs on

Caltrans projects. Interviewee #CT7 stated also that they have no problems finding DBEs for private sector and non-Caltrans public sector work, since they use the Caltrans list to locate DBE firms no matter who is issuing the contract.

Interviewee #CT11, a Native American male-owned business, recounted that the company's experience using other DBEs has been "very good." The company has built relationships with some smaller firms that are very responsive and who understand the Caltrans process, forms, and all of things that must be in a proposal.

Interviewee #CT31, an African American female-owned business, said that his company uses "anyone that has the capabilities" but noted that, though there are not that many DBE firms out there, the company "whenever possible ... tr[ies] to promote utilization of WMBEs."

According to Interviewee #CT46, an Asian American male-owned business, some of the company's subcontractors are MBEs and WBEs, but "[i]t all depends on what job"

A non-DBE engineering firm, stated: "there seems to be a shortage of DBE certified firms for most service areas. We have found on many occasions that there are simply no DBE firms or no DBE firms available. We feel that including DBEs on our team even in non-required situations not only assists in promoting diversity, but quite frankly increases our chances of winning those projects that we would like to be working on. Obviously, the lack of these special firms creates a number of issues." (Written testimony submitted 4/16/07).

Differences in utilizing DBEs in the public and private sectors.

Some subcontractor interviewees reported that different prime contractors used them in the private sector as used them in the public sector. CATA #10, an Asian American trade association, stated the same prime contractors do not necessarily use the same subcontractors in the private sector as they do in the public sector unless they have a long relationship "because they only were hired because they had to meet the goal." Otherwise, "in our business, it is the Good Old Boy Network." Some prime firms will use a member firm in the public sector because they are DBE or minority or have a good reputation but then will not use them in the private sector. He stated this happens "most of the time." He stated in particular after Proposition 209 and after implementation of the race-neutral program this situation is more noticeable.

CATA #1, an Asian American trade association, and CATA #3, a Hispanic trade association, stated that there was no cross-over between the primes that use his company as a subcontractor in the public sector and those that do so in the private sector, and that there is very little, if any, of this cross-over between the prime contractors that subcontract work to the Association's members.

Interviewee #CT65, a white male-owned business, does not use the same subcontractors in the private sector as in the public sector because the insurance requirements changed, and he was no longer able to afford the insurance.

Interviewee #CT11, a Native American male-owned business, stated that the company's experience in the private sector is that since the clients are not held to a bidding process, the clients value relationships more than anything else. In his experience, there has been no overlap between the primes that use the company in the public sector versus the primes that use the company in the

private sector. Interviewee #CT11 explains that in the private sector, the primes like to keep most of the work in-house and there is no effort to use DBEs.

Many stated that prime contractors tend to specialize in either public or private sector work.

According to Interviewee #CT33, a Hispanic female-owned business, the prime contractors that use their companies in the public sector do not use it in the private sector because they are a “different group of people.” Interviewee #CT33 said that most of the prime contractors for whom she works on public sector projects “don’t even do private work.”

Interviewee #CT48, an Asian American male-owned business, indicated that the company did not use the same subcontractors in the public and private sectors because these were “completely different areas.” According to Interviewee #CT65, most of the contractors performing public works jobs do not do private work – he does not think that he has ever run into one (at least with Caltrans).

According to Interviewee #CT79, an African American male-owned business, prime contractors who use him in the private sector are different than the primes who use him in the public sector. Interviewee #CT81, a Hispanic male-owned business, said the people he works with on public projects do not perform private work.

Interviewee #CT48, an Asian American male-owned business, stated that the prime contractors that use his company in the public sector do not use it in the private sector, and that his company had not attempted to obtain private sector work from a prime contractor that used his company in the public sector. Interviewee #CT48 stated that the company’s private sector work is risk management work for the insurance industry (namely surveying and imaging) whereas its public sector work is more research and development, thus the company’s public and private sector work is for different types of firms.

Some interviewees reported using the same subcontractors in both sectors. Interviewee #CT13, a Pakistani male-owned business, stated that his firm sometimes subcontracts out the drilling work on its projects, and that he uses the same subcontractors on both public and private sector projects. He was “personally not aware” of whether these firms were DBEs, stating “some maybe, some maybe not” and that “[i]t is not of concern to me.” Interviewee #CT13 stated further that he did not have to contact DBE firms since his firm is a DBE, and therefore itself satisfies DBE goals or requirements on Caltrans and other projects, and that “being a DBE I wouldn’t be hunting a DBE firm.”

Some DBE firms reported that the same prime contractors who used them in the public sector also used them in the private sector. Interviewee #CT68, a white male-owned business, and Interviewee #CT62, a white male-owned business, stated that the same contractors for whom they do work as a subcontractor in the public sector also use their firms for private sector work. Interviewee #CT49, an African American male-owned business, stated that his company uses the same subcontractors, which he said were both MBEs and WBEs, in both the public and private sectors, and that these subcontractors are used for electrical, street lighting, concrete (curbs and gutters), and striping work.

Interviewee #CT46, an Asian American male-owned business, stated that the company uses subcontractors for fiber optics and low voltage communication work, and that it “more or less” uses the same subcontractors for this work in both the public and private sectors.

Interviewee #CT13, a Pakistani male-owned business, indicated that the same prime contractors that use his firm as a subcontractor in the public sector are not the same ones that use his firm as a subcontractor in the private sector, and that there are primes for whom his firm works for often, though “not as a DBE.” According to Interviewee #CT13, he has a “very long term relationship” with these primes, they are “very happy” with his work, and “any time there is a project where they need geotechnical engineering service[s] they put me on the team whether there’s a DBE requirement or not.”

Interviewee #CT10, an African American male-owned business stated that “some” of the prime contractors that use his company in the public sector also use them in the private sector.

Interviewee #CT31, an African American female-owned business, stated that the prime contractors that use the company in the public sector also use it for work in the private sector, since the scope of the work is “almost identical” and the same civil engineers who work for Caltrans and other agencies also contract for work with private land developers. Interviewee #CT34, a white male-owned business, stated that the same prime contractors that use the company as a subcontractor in the public sector also use them in the private sector. Interviewee #CT34 said that the jobs on which they work as a subcontractor are generally more narrow in scope (e.g., a biological survey or air quality and noise study) than when they work as a prime (e.g., as the overall or coordinating environmental consultant).

Some subcontractors stated that they received private sector work after working for the prime in the public sector. Interviewee #CT39, a Hispanic male-owned business, stated that the small amount of work that the company does in the private sector is for the same prime contractors for whom it works in the public sector. According to Interviewee #CT39, these jobs usually come about when the company is working for a prime contractor on a public sector job, another “little job” that is “usually very small” comes up, and the prime contractor asks them to do this job as well. Interviewee #CT39 summarized the relationship between these small private sector jobs and its public sector jobs as follows: “[I]f we don’t get the public job, we’re probably not going to get the private job.”

Interviewee #CT46, an Asian American male-owned business, stated that the same prime contractors that use the company for public sector work also use the company in the private sector, mainly for street lighting and installing conduit systems for their utilities. Interviewee #CT46 indicated that the price range for these private sector contracts was the same as the price range of its contracts for the same work in the public sector.

Interviewee #CT51, a Hispanic male-owned business, indicated that the firms that use the company as a subcontractor in the public sector also use it in the private sector, and that once his company gets the chance to work for a prime contractor and demonstrate its abilities, the relationship continues for the prime contractor’s work in both sectors. Interviewee #CT51 said that “it goes both ways.”

Interviewee #CT65, a white male-owned business, noted that, with regard to the school district projects in which his company has engaged, those public contractors have used him in the private sector.

Interviewee #CT66, a white male-owned business reported that the subcontractors for whom he works use him in both the private and public sectors. Interviewee #CT66 said that he “very rarely” gave out work to other firms and that we he did so, he did so on a limited basis with close friends who own trucks.

CATA #2, an African American trade association, stated that he had never looked for (and thus has never seen) any cross-over between the firms that use the Association’s members for subcontracting in the public and private sectors but that he was “quite sure that [cross-over] happens.” He noted that there are no DBE goals on private sector projects and said that his company subcontracts out only public sector work. CATA #2 said that the Association’s members use the same subcontractors in both sectors “all the time.” According to CATA #2, once a marriage between firms is made, it stays together, and the businesses support each other in both sectors.

Interviewee #CT30, an Asian American male-owned firm, stated that while logic would suggest that prime contractors would use DBEs in the private projects after having worked on projects with the DBE in public projects, practically speaking, he does not believe that it happens. He states that the prime might have a whole plethora of subcontractors to pick from and in the private sector most of it comes down to price.

Some prime contractors reported using the same subcontractors in both the public and private sectors. Interviewee #CT7, a white female-owned firm, stated that the company uses the same subcontractors for both its private and public sector work. The company subcontracts out work for aerial mapping, speed billing, traffic counts, and some architectural work, including with DBE firms.

Interviewee #CT1, a Native American male-owned business, stated that he also uses the same subcontractors in the private sector as he does in the public sector. When he utilizes subcontractors, it is for specialty testing like for pesticides and radioactivity. According to Interviewee #CT1, these are generally not DBEs or M/WBEs.

Interviewee #CT10, an African American male-owned business, relayed that his company uses the same subcontractors in the private and public sector. Interviewee #CT10 said that most of the subcontractors that the company uses on public sector projects are DBEs, but that “we don’t use them [DBE subcontractors] all the time” on private sector jobs.

Interviewee #CT17, a white male-owned business, stated that the company does use the same subcontractors in the private and public sector, mainly for subcontracting surveying work Interviewee #CT17 also stated that though the company “sometimes ha[s] a call for DBEs” in the private sector, this happens “very rarely” since “it’s mostly in the public [sector] if we use them at all.” The firm has used DBEs on public sector work for the Metropolitan Water District, the Eastern Municipal Water District, and other agencies.

Interviewee #CT31, an African American female-owned business, stated that it performed most of its work in-house, but occasionally uses subcontractors for potholing for both its public sector and private sector work. Interviewee #CT32, an Asian American female-owned business, said that her firm uses the same subcontractors in the public and private sectors, and that these subcontractors are local DBE firms to whom she subcontracts out environmental work. Interviewee #CT44, a Middle-Eastern male-owned business, also uses the same subcontractors in the private sector that he does in

the public sector, but doesn't know if any of them are certified as a DBE. Interviewee #CT44 subcontracts traffic light work, landscaping, and other small projects.

Interviewee #CT33, a Hispanic female-owned business, said that when her firm is the prime contractor, it tends to use the same subcontractors, but that "it varies." She said that some of the subcontractors are DBE firms but noted that she does not need to use DBE firms to satisfy a DBE goal on a project. Interviewee #CT33 stated that "all else being equal, [she] will choose the WBE and/or MBE firms" but that if a particular firm has experience that will help her company get the job, she will use them "regardless of whether they're WBE or MBE."

Interviewee #CT34, a white male-owned business, stated that the company uses the same subcontractors in the private sector that it uses in the public sector, and that these subcontractors usually are specialty firms. Interviewee #CT34 said that some of these firms are DBEs on specifically subcontracts that the company uses for endangered species surveys, geotechnical work, public participation, landscape architect, and biological work. Interviewee #CT45, a white male-owned business stated that "in general," he uses the same subcontractors in the private sector as he does in the public sector. With respect to whether he has attempted to use DBE/MBE/WBE subcontractors in the private sector that he used in the public sector, Interviewee #CT45 stated that if they are the low bidder, he will use them.

Interviewee #CT45 stated that everyone has to follow the rules. Interviewee #CT45 noted that "everyone has a perception that DBEs come along and we have to foster them to bid in those situations they can't survive." Interviewee #CT45 stated "Caltrans gives no leniency after you get the job, they don't care if the guy quits the job, Caltrans said we have rules if you have to replace the subcontractors we don't care if it's a DBE. When subcontractors go down it is a problem to the [general contractor]."

Interviewee #CT51, a Hispanic male-owned company, stated his company uses the same group of suppliers and subcontractors that it likes working with in both the public and private sectors for concrete structures and hot-tapping work, as well as for trucking, landscaping, and sweeping. Interviewee #CT51 also said that the company "do[es] not care if the guy is a minority or not a minority or disadvantaged or not disadvantaged" but instead cares if the subcontractor can do a good job and meet the criteria of the specifications, and that the company wants to help minorities "in every way [it] can" and "prefer[s] to use DBEs or ... veterans ..." so long as they are going to do a good job and help the company meet project requirements. Interviewee #CT51 also stated that though the company generally uses the same subcontractors, it was open to developing and had developed relationships with new subcontractors and suppliers.

Interviewee #CT68, a white male-owned business, typically uses the same subcontractors in the public and private sectors, and it subcontracts out work to botanists, biologists, irrigation designers, and lighting engineers. Interviewee #CT68 said that the firms he uses as subcontractors are local ones, including a WBE that he used "all the time," but which was no longer in business.

Interviewee #CT73, a white male-owned business, noted that if he worked in the public sector, he would use the same subcontractors there as he does in the private sector. These subcontractors probably are not DBEs. He subcontracts out back-hoe services, concrete cutting services and equipment rental.

Some DBE firms reported that various prime contractors only used them on projects where there was a DBE requirement. Interviewee #CT31, an African American female-owned business, said that “even if we work with that firm consistently in the private sector they will not call us unless there is a specific reason to do so if it is a Caltrans project[]” and stated further that “if Caltrans does not enforce or pursue utilization of WMBEs and specifically call for professionals in our area of expertise, the ‘civils’ [civil engineering prime contractors] are not going to call us up. I do not care how many projects we work with them [on] in the private sector, it is not going to happen.”

CATA #1, an Asian American trade association, said that unless there is a DBE requirement (i.e., public sector), prime contractors will do in-house all the work they can and will use DBE firms only if these firms can provide services that the big prime contractors cannot do themselves. CATA #3, a Hispanic trade association, said that where there is no DBE goal (i.e., the private sector), prime contractors do not “bring [DBE firms] into their fold of business,” and that prime contractors will generally not use DBE firms for subcontracting where there is no requirement to do so.

Interviewee #CT13, a Pakistani male-owned business, noted that if the DBE requirement is there, ... [it is] satisfied That’s the only impact it [DBE certification] has made on my business. The primes who had been working with me the last twelve [or] thirteen years do not have to go to somebody else to satisfy DBE requirements. That’s the only difference it can make.”

Interviewee #CT9, a white male-owned business stated that his division uses the same subcontractors in the private sector that it uses in the public sector, and that most subcontractors were selected because of their qualifications and the need to comply with DBE “set-aside” requirements.

Interviewee #CT34, a white male-owned business, acknowledged that the company “consciously” uses DBE firms in the public sector because it helps them meet DBE goals and estimated that about 20 percent of the company’s public sector work is subcontracted to DBEs. Interviewee #CT34 summarized the firm’s DBE utilization practices as follows: “Well, to be truthful, I would say we are more conscious of ... When we’re doing private sector work, we probably are most focused on which subcontractor-consultants ... we’ve had the best results within the past. In the public sector, we’re always conscious of the need to meet the various goals of the public agency. And I’m not saying those two objectives are mutually exclusive. It’s just that there are times when, if you absolutely had your druthers, you might use one subcontractor over another, and that could potentially be at the expense of a DBE. And if you were working for a public sector client, it’s conceivable that you might have made a different decision.”

Interviewee #CT7 stated that they try to get private sector work from prime contractors that use them in the public sector but that they have not been successful, as prime contractors contact them only when they need to meet a DBE goal. According to Interviewee #CT7, there is no incentive for a project manager at a prime contractor to contract out work to them or other DBE firms in the private sector because project managers are rewarded and compensated based on how much work (and money) they can bring in to their firms.

Interviewee #CT7 felt that whether or not their firm actually got hired to work as a subcontractor on Caltrans and other public sector jobs depended on whether the prime contractor had satisfied the minimal DBE goal by using other DBE subcontractors. If the prime had done so, then their firm did not get the job, unless “they [the primes] need help.” Interviewee #CT7 identified as an issue that in

these situations where primes need immediate help, it is difficult for small DBE firms to provide the necessary personnel and equipment “with no advanced warning that this [work] was coming up.”

CATA #10, an Asian American trade association, stated that, in many cases, if there is no requirement, a prime will not use a DBE firm. CATA #10 does not have knowledge of a prime refusing to work with a DBE because it is a DBE. On a professional service contract, they will assemble a team, and the larger firm will not negotiate the price until they are awarded the contract. In order to assemble a team, a prime will ask for information from a subcontractor as “window-dressing” because the team is already assembled; they do not want it to get back to the public agency that the big firms are not “cooperating.” Many times they won’t do anything once they receive the information from the smaller firm.

Some DBEs stated that they are used even when there is no DBE requirement. Interviewee #CT1, a Native American male-owned firm, stated that in the past five years, he has had two three-year contracts as a subcontractor on Caltrans projects at a price of about \$100,000.00 per year. He stated that these contracts did not have a DBE goal, and that he did not receive the contracts because he was a DBE.

Interviewee #CT32, an Asian American female-owned business, indicated that the prime contractors who use her firm as a subcontractor in the public sector (which is usually for the environmental portion of construction projects) do not do so in the private sector. Interviewee #CT32 stated that she had not worked for any prime contractors in the private sector. According to Interviewee #CT32, “in the private sector there’s no need to subcontract to DBEs or small businesses. There’s absolutely zero incentive for large businesses to subcontract out because the private sectors do not expect that.”

Interviewee #CT9, a white male-owned business, relayed that his division wants to work with people with whom it has worked in the past, and who can deliver and meet the firm’s needs. His division uses DBE subcontractors in the private sector (where there is no DBE goal or requirement) if it thinks that these firms are good ones.

Interviewee #CT68, a white male-owned business, said that because no agency ever required that he uses a DBE subcontractor, it was not something that he considered in his selection criteria.

Refusal to use DBEs.

No interviewee stated that they had refused to solicit or use a DBE based on race, ethnicity, or gender. Some interviewees stated that they refused to work with particular DBE firms due to issues with work quality. Interviewee #CT40, a white male-owned business, stated that she had never refused to work with a DBE except for one company against whom her company filed a claim for failure to complete the work on a Caltrans project. Although Interviewee #CT65, a white male-owned business, stated that there was one time when the company refused to work with a DBE, “they worked it out.”

According to Interviewee #CT11, a Native American male-owned firm, the company has declined to work with some DBEs, but only as a part of the normal teaming selection process.

No DBE stated that another firm had refused to work with them based on race ethnicity or gender. However, some DBE firms felt that prime contractors were not genuinely interested in using DBEs. CATA #1, an Asian American trade association, stated that he had never refused to work with a DBE firm. When asked if a prime contractor had ever refused to work with his business or his members' businesses because they are DBEs, CATA #1 said that the refusal is "very subtle" and that the discrimination is not on the surface but rather is buried deeply in peoples' minds. And, said CATA #1, people show this discrimination through their actions (even though they do not outright say they do not want to work with a DBE firm).

Interviewee #CT8, a Hispanic male-owned business, noted that a prime contractor had never refused to work with him because it is a DBE, and that the company gets contacted "quite a bit" by prime contractors soliciting bids on Caltrans projects. This interviewee stated further that, "basically all the do is meet their good faith efforts and never have any intentions of using [the company]."

Interviewee #CT31, an African American female-owned business, recounted an experience that happened a number of years ago when a South African firm had awarded a private sector contract and his company had been hired and put on the project team. The company as later fired because the owner of the South African firm did not want him working on the project. Interviewee #CT31 went on to say that "it has been really though breaking into the professional arena[,]" and noted that, "the majority of the time you are not going to see people of color in these meetings, whether it is on a public sector or a private sector project" Interviewee #CT33, a Hispanic female-owned business, stated that, to her knowledge, a prime had never refused to work with her because her firm is DBE, but she noted that, "[She doesn't] know what [firms] decide internally." Interviewee #CT39, a Hispanic male-owned business, did not think that another firm had outright and overtly refused to work with the company because it is a DBE, but he said that the company does "get the feeling that if it's not a DBE requirement, ... they're [other companies] not going to seek [them] out."

Interviewee #CT46, an Asian American male-owned business, stated that his firm had never refused to work with a DBE. Neither had a prime contractor ever refused to work with his firm because it is a DBE firm. In fact, said Interviewee #CT46, "[u]sually [it's] the other way around [because] people really want you to bid the work."

Interviewee #CT67, a white female-owned business, shared her impression that, on the whole, prime contractors' efforts to utilize DBE firms now end at the good faith efforts stage, and primes keep work in-house to the maximum extent possible.

Interviewee #CT81, a Hispanic male-owned business, stated that a prime has never refused to work with him because he was a DBE. In fact, once they know you are a DBE and that you do quality work, "primes go nuts over you." Interviewee #CT81 often gets calls from a prime requesting a bid on private sector work; gets these calls by referrals, the average price of these contracts is \$30,000.00; he usually gets the job.

Interviewee #CT82, a white male-owned business, does not think he ever used any DBEs and tends to use the same subcontractors each time.

Interviewee #CT7, a white female-owned business, stated that the company had never refused to work with a DBE firm and that no one, so far as they were aware, had ever refused to work with them because they are a DBE firm. Interviewee #CT7 stated that the philosophy of the larger firms

was to do as much work in-house as possible, and Interviewee #CT7 stated that “if there’s no DBE goal we don’t get a call” and that primes simply “want to hit [whatever] the minimal DBE goal is.” Thus, according to Interviewee #CT7, “on the private [side] they just don’t hire us.”

Interviewee #CT11, a Native American male-owned firm, stated the company has not been refused work because they are a DBE, although he has had the experience of having been put on a team because they were a DBE and then they were not used in the actual project work. Interviewee #CT11 noticed that with the larger firms, they believe that certain firms have either political contacts, certain experience to help them win the project as a prime, but once they get it because they have to report to their directors, a lot of times they will drop those firms and keep the work in-house so they can improve their bottom line.

Experiences regarding DBE utilization after May 2006.

Some firms reported a decline in DBE participation since Caltrans moved to a race gender neutral implementation of the DBE Program. According to Interviewee #CT7, a white female-owned business, there has been a “great decrease” in the number and frequency of calls the company has received since May 2006. He said that this decrease has impacted the number of jobs and amount of work that the company has been doing for Caltrans. Interviewee #CT9, a white male-owned business, recognized that he had not been pursuing that many contracts with Caltrans since May 2006, but that he was “glad to see it [Caltrans’ DBE contract goals] suspended.” He stated also that when the DBE program was in place, he often “scrambled to find ... the necessary quotas or set asides for various functions.”

According to Interviewee #CT7, the company’s phone used to ring “off the hook” with calls from prime contractors requesting bids from them, but now that “there’s no DBE participation [goal], the phone doesn’t ring.” He stated further that since Caltrans ceased using the DBE participation goals, “our phones have stopped ringing on the DBE issue” and “[w]e don’t get the calls anymore.” The only projects for which the company still gets calls from prime contractors have been federal projects where there is a goal for small businesses and/or businesses located in HUBZones.

According to Interviewee #CT32, an Asian American female-owned business, the company still receives the same two or three calls a year that it received before Caltrans suspended its DBE program, but she referred to the DBE solicitation process as “just a name sake” and said, “They just send these forms over that we have to fill out and then turn back in. Then we never hear back from them.”

Interviewee #CT39, a Hispanic male-owned business, stated that, as a result of Caltrans stopping the use of participation goals and the decrease in solicitations from prime contractors, the company has had to be “very proactive [in] trying to locate work.” He said that the company had received more work because of its being more active in seeking it, but that this work carried a lower profit margin and that the firm’s bottom line had suffered as a result. Interviewee #CT39 also thought that the company had experienced a decrease in calls asking them to bid on projects for other governments and government agencies because they, like Caltrans, had stopped using DBE participation goals. He stated that the company has experienced an overall decline in the number and frequency of calls they receive from prime contractors soliciting bids. Although the company did not always get the jobs, and sometimes did not even bid on the jobs for which it was solicited, Interviewee #CT39 feels that

the DBE program was good if for no other reason than it allowed DBE firms to get their names out to prime contractors.

According to Interviewee #CT46, an Asian American male-owned business, the company would get contacted “at least once a week” to bid on Caltrans projects, but the number of requests for MBEs to bid on Caltrans work “has gone down somewhat ... probably a lot in the last year or two”

Interviewee #CT67, a white female-owned business, stated the DBE program is a “vital gateway” to prime contractors and thus to work. She added that it took a lot of time and work to get the DBE program established, and “to see it no longer [be] part of good faith ...” is indicative of the way the industry is going, and she said that “it’s frightening.”

Interviewee #CT17, a white male-owned business, stated further that his company’s practices with respect to soliciting bids from DBEs has not changed in the past year, but the firm has not tried to bid a project with Caltrans since the DBE program was suspended. According to Interviewee #CT17, “DBE isn’t the problem ... Caltrans’ hiring practices is [sic] really the problem, in my opinion.”

Interviewee #CT69, a white male-owned business, indicated that up until two years ago, primes did try to use DBEs. But there were so many problems with DBEs not being able to complete the work in a satisfactory manner that primes stopped trying to utilize DBEs. Now, the primes just want to use subcontractors who can get the job done.

With respect to his experience with DBEs, Interviewee #CT45, a white male-owned business, stated there are “very few to solicit.” He stated that “[it] has not been a requirement in two years. [It] used to be you couldn’t get job if didn’t have 20 percent minority.” He stated that contractors didn’t take the low bidder and sometimes had to take the high bidder to meet the goal. Interviewee #CT45 stated that now they can take the low bidder “rightfully the way it should be.”

According to CATA #1, an Asian American trade association, his business is “very, very rare[ly]” solicited to bid on Caltrans contracts. He said that, whether the work is for Caltrans or anyone else (both public and private sector), whether he and others are solicited for bids depends on whether they have a relationship with the prime contractors. He also said that the larger prime contractors often do not provide opportunities for these relationships to develop and that the impetus has to come from elsewhere, and he called Caltrans’ mentor/protégé program a “first step” in this area. CATA #1 stated that, since Caltrans had suspended its DBE program, requests by prime contractors for bids had “decreased substantially,” and that “race neutral” means “they don’t have to use you ... they can use somebody else.”

CATA #2, an African American trade association, stated that although his company had not worked under a prime contractor on a Caltrans job since Proposition 209 was passed, generally the frequency with which the Association’s members received solicitations to bid on Caltrans projects did not change pre- and post-209. Rather, said CATA #2, the big change in solicitation frequency occurred with local government jobs. However, CATA #2 also said that DBE goals have never been met on Caltrans projects in the post-209 era.

Generally, said CATA #3, a Hispanic trade association, “[t]he fact that you’re a DBE doesn’t make you any better or any worse,” but if a DBE firm has been around for a long time, it is “probably more sophisticated” because it has a lot of experience dealing with public agencies and government

bureaucracy. CATA #3 stated that in the 1990s there were more firms to choose from if one was looking for DBE firms to bid on Caltrans work. Now, he said, it is harder to put teams together, in part due to the passage of Proposition 209 and in part due to economics since Caltrans has not in recent years received as much funding as it did in the past.

A white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified “when there are no goals, I can tell you that the fax machines stop, the phones stop, and there is no solicitation. After 209, it was just like night and day. The next day I got not faxes, the phone didn’t ring, asking for my bid. It was remarkable ... I used to get maybe 20 faxes a day ... now I might get three a week.” She still does 80 percent of her work in the public sector but stated “we have to really scrounge to find work.” (P.H. San Diego, 3/22/07).

A female-owned consulting firm stated “large primes regularly use our company ... to join their team because we are a certified DBE firm, and I have no doubt that many perhaps most of those large primes would make no effort to include small businesses without that subcontractor requirement ... it’s definitely dropped off in the last year.” (P.H. San Diego, 3/22/07).

An African American certified female consulting firm stated at a public hearing “my firm was certified in 1990 and I sincerely believe that I would not have survived in business for the last 16 years had it not been for the existence of the DBE programs and others developed to address the current affects of past discrimination and the more subtle forms that remain ever present today ... I believe that San Diego is a poster child for the repeal of Proposition 209 ... Many firms have simply gone out of business, particularly those in the construction industry.” (P.H. San Diego, 3/22/07).

An Asian American DBE female-owned consulting firm testified at a public hearing that since the suspension of the goals “it’s very difficult for us to get contract, to get a subcontract.” Before the goals were suspended they were able to get on teams with the primes. Now the primes do not include them. (P.H. Irvine, 3/29/07).

A DBE information technology consulting firm who testified at a public hearing stated that she does 98 percent of her work in the public sector. She has noticed a gradual decline since the suspension of the goals, but due to her good track record she still receives solicitations. (P.H. Los Angeles, 3/29/07).

A certified DBE, submitting written testimony in connection with the public hearings, stated “The elimination of the race-conscious elements of the Caltrans DBE program will have a severe adverse impact on the availability of opportunities for all M/W/DBE firms to pursue and obtain public sector contracts.” (Written testimony submitted 4/12/07).

An “ex-DBE” contractor who testified at a public hearing in San Bernardino stated that he was “forced out of business through the discrimination process of the non-DBE giants of the industry.” He explained that he used to receive ample work from the large primes “during 1985 to 1995.” But after that time the program became less effective. Before “the reason that these contractors would call us is to meet their DBE requirements ... Caltrans or the prime contractors found a way to honor those guidelines.” He stated that now that the DBE requirements are no longer in place, DBEs are not utilized. He went bankrupt in 2000. (P. H. San Bernardino, 3/20/07).

D. The Bidding Process

BGPAA Study Anecdotes Regarding the Airport Authority's Bidding Process

Experiences with the Airport Authority's bidding process.

Some interviewees reported neutral or positive experiences with the Airport Authority's bidding process. [Interviewees #BGP: 1, 2, 5, 9, 11, 14, 16]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that the Authority's bid process is "pretty easy." He said that there is no difference between the Authority's bid process and other public agencies.

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm, reported that the Authority's bidding process is like any other public works process. He said, "I can't say that they are any better or any worse." Interviewee #BGP9 added that, "The Airport is not as bad as the schools and colleges. When you get to the college projects, you have to do all that paper work for the bond and for the PLA (labor agreement with the union). That is crazy!"

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that the Authority's bidding process was similar to other public agencies. He said that the Authority's bidding process was probably "a little bit more thorough in all of the requirements than we faced ever before." He added that the process was "very lengthy," but it was professional, and he "felt [that] all of the questions that were asked were fair."

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that the Authority's bidding process is "pretty much like any other entity." He said that it is difficult for small companies to respond to the voluminous paperwork required in public projects, so the company often requests help from other entities, such as Native American groups.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, stated that most of the corporation's work with the Authority is obtained through a "qualification process," not a bidding process. He said that his experience with this process has been "very good" and commented that he thinks "they've been fair." He added that the corporation has been working with the Authority for 14 years.

Some interviewees reported challenges in connection with the Airport Authority's bidding process.

[Interviewees #BGP: 4, 6, 10, 13, TA #1, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said, "When we do federal and military work, we usually get tons of feedback on a bid. In regard to the Airport, nothing ever filters back to us. There's zero feedback and zero reasons why [we didn't win the bid]. We don't know why we're not being used." He said, "The people who run the [a certain Airport Authority program] are infamous for collecting all the bids then throwing them all out and rebidding the whole project. It's not fair. Let's say the first firm has a problem with their bid, then it should go to the second firm, but instead, they'll declare everyone non-responsive and throw every bid out. This saves the Airport a bunch of money, because they know all the firms are just going to browbeat each other over money. All that does is hurt firms like ours." He said, "There has been some real outcry over how the Airport has declared firms non-responsive. There was a while when no one wanted to bid the Airport anymore, because they felt like all they're going to do is take our bids and throw them back out to save a bunch of money."

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that “You have to be specifically on the Airport [Authority’s] list. They have their own SBE or WBE qualifications, and I did not know that. That is not published very [clearly].”

Interviewee #BGP10, a principal at an engineering firm, reported that its experience bidding with the Authority has been “[n]ot good and getting worse.” He said that in California professional service providers are supposed to be selected on the basis of qualifications, and contractors who construct things are supposed to be selected on the basis of price. Interviewee #10 stated that the Authority is more and more frequently selecting professional service providers on the basis of price alone, and the low bid gets the project.

Interviewee #BGP13, the owner of a non-certified construction firm, stated that in the Authority’s bidding process, the “low number gets the job, and it’s bonded work.” He added that bid competition has increased significantly recently, but when he sees “projects going to 10, 20, 30 percent below your cost, you know that person is probably not prepared [for] that project, but they’re awarded the project, and it’s bonded, ... but generally you don’t see that contractor again.” He stated that the number of bidders has doubled within the last couple of years. He said where between five and seven contractors were bidding before, now he is seeing “15 to 20 contractors bidding.” He said that the Authority has “pushed to try to keep the work local,” but “low numbers still rule.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that the Authority seems to write contract specifications for particular firms and that his organization has expressed this concern to the Authority. He said, “What we said to them is that the specifications that are written ... are written [for a particular firm] to get the job. ... That’s a no-no.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, described the Authority’s bidding process as “kind of unfavorable.” He said, “Well the notification process, the outreach program ... [are] not effective. He said that “bundled projects, make it harder for smaller business to have a part in the project [when] there’s no requirement for 2nd and 3rd tier contractors; it is flawed during the design process.” He said that if “you have a \$20 million dollar contract then there’s no way that you should just do the whole \$20 million; you should partner in and have relationships with smaller SBA, MBE, you know companies, I think that’s what the main problem is, it’s not solicited correctly or favorably, you know fair...because if you don’t have the big money, the big bonding you know then you’re out and there’s no requirement to utilize. They could say, we want you too, but they’re like, well we can’t find anybody.”

A couple of interviewees reported limited or no experience with the Airport Authority's bidding process. [Interviewees #BGP: 12, 15]. Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that the company has “very little” experience supplying or working with the Authority and has not bid significantly on projects with the Authority because it has not found many projects that match the “scope” of work that the company usually performs. Interviewee #12 said that they did not have any experience with the Authority's bidding process. They said, “I wish we had; I wish there was more.” They said that they have had experience with the bidding process associated with other public agencies in the transportation industry in the Los Angeles area, particularly Caltrans, and that experience has been “very positive.” They added that “[d]ue to budget constraints, sometimes they are slow to award, but that's understandable.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she does not remember anything about the Authority's bidding process because she thinks that the Authority gave her company “a sole source contract,” so a bidding process was not required. She said that if she remembers correctly, the company “just provided a quote and then issued a contract.”

Notification of opportunities to bid.

Some interviewees reported that the Airport Authority has good notification procedures in place to notify individuals of opportunities to bid. [Interviewees #BGP: 2, 4, 5, 9, 10, 13, 16].

Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that the Authority calls them about job opportunities.

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that “In terms of notification and access to plans, that's all great. It's very accessible to get involved in the bid process [with the Airport Authority]. Compared to other airports, that's very good.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that “occasionally we go through an RFP process, but the Airport usually contacts us directly, and we provide a proposal.” He said that the Authority advertises bid opportunities and that also “notify competent people that they have a past relationship with to notify them that projects are coming up and ask them to bid on it.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm stated, “I have never been notified of any bid. They just call me up and ask me to bid. I never get email notifications or mail or nothing like that. I guess because I'm their vendor of choice, they just call me up and ask for a bid.”

Interviewee #BGP10, a principal at an engineering firm, commented that the Authority provides adequate notification regarding opportunities to bid or present proposals. He said that he does not remember exactly how the Authority notifies the public, but the firm subscribes to a marketing service and when a request for qualifications is released, the marketing service notifies the firm. He said that the firm usually submits its qualifications but declines to submit a price quote because the firm is good at what it does and is not the cheapest firm around.

Interviewee #BGP13, the owner of a non-certified construction firm, said that he is adequately notified of opportunities to bid with the Authority. He said that the company is “registered with [the

Airport Authority's] business opportunities on their website, so [the company will] generally follow up on that to see what's going on and [remain] up to date." He said, "We also read the paper and see things posted [there], and because [the company is at the airport so often, it has] a general air of what's going on at the airport and what's coming up."

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that he was notified about opportunities to work with the Authority "either by word of mouth" through employees that are currently working there "or by e-mails or by advertisements in the typical venues like the newspaper or journals or whatever." He said that he thinks that these advertisements and e-mails are distributed by the Authority.

Other interviewees reported challenges in connection with learning of opportunities to bid.

[Interviewees #BGP: 1, 8, 12, 14, TA #2]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that in regard to the Authority's registration, "it hasn't been helpful yet for us." He said that "in the past six months, he has only received two e-mails from the Burbank Airport" regarding potential work, but that "may[be] that's just all they have, so I can't really say that they aren't sending information about projects that they have."

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that it might be more difficult to learn about work opportunities with the Authority because "the fact that we haven't heard anything or haven't been contacted and haven't seen anything publicized; it probably is [harder to learn about work with the Airport Authority]."

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that the company does not receive notification from the Authority regarding potential work opportunities. Interviewee #12 reported that "some agencies are much, much better than others" at notifying companies about potential work opportunities. They added, "We see more and more projects being advertised, even on small municipalities, smaller towns. They're getting it right. Sometimes their websites are tough to navigate. They seem to be making improvements."

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that "there's no notification method" concerning jobs with the Authority, so "you have to search for it."

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that his members have missed opportunities to bid on Authority projects and other public sector projects because they have not been notified of the opportunities to bid. He said, "Well, it's just like you know, you guys, you know, it's like we weren't even notified ... that about this program ... and we just brought this to their attention, like you didn't notify us, so we didn't have any participation but we weren't notified that there was a project going on...maybe there was no standard to hold the general contractor to use minorities."

Some interviewees reported having limited to no experience with the Airport Authority's notification of bid opportunities. [Interviewees #BGP: 6, 11, 14].

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, "We don't really touch the Airport [Authority's bids]. We mostly work with the prime."

Interviewee #6 said that “The prime comes to us asking us to be on their team, and we send them our qualifications and our rate schedule. Then they send in their qualifications and proposal to the Airport.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, stated that he does not remember how the Authority notified potential bidders of business opportunities. He stated that “the L.A. Airport has a system” for notifying potential bidders about requests for proposals every time the City of Los Angeles releases a new request for proposal. He said that to his knowledge, the Authority does not have that system, but it would be “very beneficial” if it did. He recommended that the Authority could improve its communications concerning available work, not only work with the Authority but also with private entities that work at the airport, so that companies may learn about opportunities there.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that he is not aware of notifications directly from the Authority concerning work opportunities. He stated that the company is notified about projects at the Airport Authority “through manufacturers’ reps, or the manufacturer.” He continued, “The manufacturer has representatives for our equipment that we install, and whatever entity is seeking the equipment at the airport will ask them to recommend dealers, and because they’re local in the area, they’ll recommend [our company] and three other companies, or two other companies, to bid the project.”

Knowledge of prime contractors’ interest in bid.

One interviewee reported that a subcontractor can determine which prime contractors have expressed interest in a particular RFP. [Interviewee #BGP: 16]. Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he is not sure whether the Authority has this, but in public sector work, “[a] lot of times, there’s a list of people that attend pre-submittal conferences, ... [and] you can get the registration list.” He said that this is how the company generally learns about opportunities to work as a subcontractor.

Other interviewees reported that subcontractors are unable to determine which prime contractors have expressed interest in a particular RFP. [Interviewees #BGP: 11, 12, 13, TA #2]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that there is no way to identify opportunities to work with prime contractors until a company attends “a pre-RFP walk around” when the company can sign up with all of the interested prime contractors. He said that his firm participates in these walk arounds because if you do not attend, “you’re excluded from the bid.” Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated that some prime contractors advertise to notify potential bidders about opportunities, but some do not.

Interviewee #BGP13, the owner of a non-certified construction firm, stated that he does not “think that there’s any specific notification” process regarding opportunities to work with primes. He said that his company is only notified of opportunities to work for primes when “somebody is contacting [the company] specifically” requesting a bid on a project. He added that the community is “pretty small, ... and the airport is not that big,” so the company is able to work off of “general knowledge” regarding “who might be bidding a project.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said there is no way for its members to know which primes have expressed an interest in an RFP unless the primes contact them directly.

Denials of bid or price quote submission opportunities.

Some interviewees reported never having been denied the opportunity to submit a bid on a project. [Interviewees #BGP: 1, 2, 6, 9, 11, 12, 13, 14, 15, 16].

A few interviewees reported instances in which they believe they were denied the opportunity to submit a bid on a project. [Interviewees #BGP: 4, 5, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said, “It’s odd to me that they single source the materials. The last two jobs, I didn’t even bother to bid because the Airport said, ‘It has to be this one [type of material].’ They limit opportunity, and that’s frustrating. Even though my [materials] function identically, I’ve probably missed a quarter of a million dollars in work, because I was told ‘don’t even bother to bid.’” He said that the Authority “is not reasonable. They won’t even sit down to talk about it. When I call, they say, ‘That’s just the way it is.’ They don’t even want to address what I have to say.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that the firm has been denied the opportunity to bid by a prime contractor. He said, “It’s generally when you have a very large firm that is looking for minority content. We also lost one project because we lost our small business certification last year.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is not aware specifically of his members being denied the opportunity to submit a bid. He said “I don’t know about denied. I don’t know that they’ve even been denied the opportunity, there just wasn’t enough time to prepare one, so if you could say, keeping on time, we could have, then we were denied the opportunities based on the timeline that we were notified and received bidding documents.”

Recommendations.

One interviewee recommended implementing changes to the bidding process in order to make the bidding process more accessible to small businesses and DBEs. [Interviewee #BGP: 11].

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, recommended that the Authority give more consideration to a company who has been working for the Airport Authority for several years.

Some interviewees recommended that the Airport Authority implement race- and gender-conscious goals and small business set-asides in connection with the bidding process.

[Interviewees #BGP: TA #1, TA #2]. Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that there are no provisions for small or minority-owned contractors in BGPAA projects. He said, “How can you let a [project manager] put no provisions in the contract that he’s going to be overseeing for \$130 million? There’s no provision for small businesses. There’s no provision for diverse businesses. There’s no provision for minority businesses. There’s no provision for local businesses. ... It has to be in the specifications.” He said, “My recommendation [to the Airport Authority] was to take our local people here from Pasadena and Burbank ... and add them to the team.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, recommended that the public agencies “establish criteria that must be abided to in regards to minorities, small businesses that would eliminate the general contractor from being awarded the contract if he didn’t comply ... In other words, when you have this project, you come in and you list your subs because what happens ... is that they list us but then they get hold of the contract and don’t utilize us...that happens a lot. That is a common practice, so they meet all of the requirements and then it sounds really good but then when the job is awarded we never get the call, like I said, that happens all of the time.

A couple of interviewees made other recommendations. [Interviewees #BGP: 4, 10]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said, “I wish we could change the bid process in itself because it’s a low bid dollar process, and that isn’t always best for the Airport [Authority’s] or homeowner’s interests. Some of these bids are too low, and when they’re too low, they’re going to take shortcuts, and those shortcuts are going to come out in someone’s home. Maybe there should be a minimum on bids, or the process should be changed from low dollar to true evaluation of the package and contractor experience.”

Interviewee #BGP10, a principal at an engineering firm, recommended that the Authority pick a firm based on qualifications and not open the fee until the firm is selected. He said that the perception is that the Authority wants the fee upfront and makes a selection based upon that fee. He added that many agencies, such as the Los Angeles World Airports and the Los Angeles County Metropolitan Transportation Authority, will go through the selection process, select a firm, and then negotiate the scope of the work and associated fee. He commented that he thinks that this is a preferable process for the agency and for the engineering community.

SDRCAA Anecdotes Regarding the San Diego International Airport Bid Process

The following anecdotes regarding the San Diego International Airport bid process were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

Bid notification.

Interviewees reported different ways in which they find out about Airport bid opportunities.

Interviewee #SD2, representing a white female-owned firm, said that her firm finds out about Airport bid opportunities through prime contractors who solicit her firm for a bid or through published listings (e.g., The Daily Transcript and through the Associated General Contractors of America).

Interviewee #SD27, representing a white male-owned firm, said that his firm finds out about Airport projects through personal relationships that he has made with Airport personnel. He went on to say that he developed those relationships through working on Airport projects, attending networking events, and on-site visits.

Interviewee #SD5, representing an African American male-owned firm, reported that his firm is made aware of Airport projects through third party emails.

Some interviewees indicated that they use the Airport’s website to find out about bid opportunities. Interviewee #SD21, representing a white male-owned firm, indicated that he finds out about Airport bid opportunities by closely monitoring their website: “For airport work, [the website is] the best source.” Similarly, Interviewee #SD24, representing a white male-owned firm,

and Interviewee #SD28, representing a white female-owned firm, both said that the Airport posts projects on their website and that their staff monitor it to keep aware of potential projects.

SDTA #3, representing a local chamber of commerce, indicated that the organization's members find out about Airport work by way of its website.

Adequacy of notification.

Some interviewees reported that the San Diego International Airport adequately notifies potential bidders about bid opportunities. Interviewee #SD3, representing a white male-owned firm, said that it is easy to stay informed about Airport projects. He reported that his firm spends one day each week reviewing a number of different sources providing information about bid opportunities (e.g., e-bid board, the blue book, trade papers, and emails and faxes).

Interviewee #SD20, representing an Asian American male-owned firm, reported that finding out about Airport bid opportunities is relatively easy, because the agency is local and they do a good job of advertising their projects. In describing that process, Interviewee #SD20 remarked that, “[The Airport] lets everyone know [about available projects] and then [local firms] compete.”

Interviewee #SD4, representing a white male-owned firm, stated that he has no trouble finding out about Airport bid opportunities because they are advertised so well.

A few interviewees reported that the San Diego International Airport's Requests for Quotes (RFQs) and Requests for Proposals (RFPs) are too complex. SDTA #2, representing a Hispanic American trade organization, said that the language that public agencies use in RFP's and RFQ's is too complex and their requirements are too stringent to garner a wide network of competition: “The language is too technical. For example, on a contract that [an MBE/WBE firm] was bidding on, the agency required the bidding company own a big rig truck. [The firm] wanted this contract so bad that they went and bought a \$25,000 truck because they didn't know any better. The public agency ultimately said the big rig was not necessary to bid on the contract after the fact. This company lost \$25,000 just on the bidding for this project.” SDTA #2 went on to suggest that there might be a racial component to how agencies write RFPs and RFQs: “RFPs are written to deter applications from people like us [i.e., minority- and female-owned firms].”

Similarly, Interviewee #SD24, representing a white male-owned firm, noted that RFPs for all public agencies could be written more clearly. However, he went on to say that they are not overly restrictive. Interviewee #SD18, representing a white female-owned firm, said about the Airport's RFPs, “The RFP language is difficult and the package is so thick.”

Experiences with the San Diego International Airport Bid process.

Some interviewees reported positive or neutral experiences with the Airport's bid process.

Interviewee #SD4, representing a white male-owned firm, said that the Airport's bidding process is better than that of other public agencies. Interviewee #SD4 went on to remark that it is easy to learn about Airport projects, and it is fairly straightforward to prepare a bid. Similarly, Interviewee #SD21, representing a white male-owned firm, said that bidding on Airport projects is "generally straight forward."

Interviewee #SD3, representing a white male-owned firm, reported that the Airport's specifications and bidding procedures are clear and straightforward. However, Interviewee #SD3 added that the Airport "doesn't know how to administer a contract."

Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that winning work with the Airport is no easier or harder than winning work with any other entity. He added that the process is largely dependent on being the low bidder and unrelated to a firm's DBE status. Related to those comments, Interviewee #SD36, representing an African American male-owned firm, and Interviewee #SD38, representing a Hispanic American-owned firm also reported that public sector contracts always go to the lowest bidder. Interviewee #SD37 said, "[Public agencies] take the low bidders every time."

Interviewee #SD20, representing an Asian American male-owned firm, also indicated that winning work with the Airport is no easier or harder than with any other entity: "You win some, you lose some."

Interviewee #SD33, representing a Hispanic American male-owned firm, said that his firm has been doing work with the Airport for approximately eight years. He characterized the agency as organized, as having a "big picture" plan, and as being advocates of quality work. He said that it is a pleasure to work with the Airport.

Interviewee #SD42, representing a white male-owned firm, reported that the Airport was quite helpful throughout the bid process of a project related to the Quieter Home Program: "The Authority was helpful to us throughout the bidding process. We were prequalified through the MATOC program but were awarded a sole contract with the Airport to complete a phase of the Quieter Home Program." Interviewee #SD42 went on to describe Airport staff as supportive and helpful during the bid process.

Other interviewees reported negative experiences with the Airport's bid process. Interviewee #SD16, representing an African American male-owned firm, indicated that bidding on work with the Airport is more difficult than with other agencies: "There are more hoops to jump through and more paper work to deal with." He went on to report that his firm has a three year service contract with the airport, but that he was disappointed that the contract was also awarded to three other contractors with whom he has to compete for each piece of work. Regarding that arrangement, Interviewee #SD16 said, "It is possible to have a contract and never get a job. Why are there three [contractors]? It is misleading."

Interviewee #SD5, representing an African American male-owned firm, reported that other contractors have informed him that certain Airport projects require financial commitments that dissuaded his firm from bidding on them: “I have had conversations with others in the industry. They say that before they start work, they have to buy the materials, including windows. As a result, the contractors are spending \$250,000 before they have even begun work on the project.”

Interviewee #SD4, representing a white male-owned firm, indicated that the detail required in the Airport’s bidding form is burdensome (e.g., unit pricing). He went on to say that he would prefer it if the Airport would have more concern for contractors’ profits rather than only being concerned about saving money.

Interviewee #SD18, representing a white female-owned firm, indicated that the Airport’s bid process is very cumbersome: “The amount of paper work in [the Airport’s] bid package is over 100 pages, in addition to the security check. It takes a lot.”

Similarly, Interviewee #SD37, representing a white male-owned firm, said that in comparison to other public agencies, it is harder to bid work for the Airport because of the increased security restrictions: “We have to go through TSA to get a badge, etc. We have seven men who are authorized to go in restricted access areas like behind counters, baggage areas, etc., but if those seven guys are on a pre-existing job, then we can’t bid on the work.”

Interviewee #SD17, representing a white female-owned firm, characterized the Airport’s bid process as time consuming and as often being a source of frustration: “The [bid] process is very time consuming. A lot of times bids are time consuming and end up going nowhere – this is frustrating.”

Interviewee #SD31, representing a white male-owned firm, indicated that, in his experience, the Airport is neither helpful nor responsive in addressing the concerns of contractors: “I attended one of their DVBE outreach programs ... met with all kinds of people from the Airport, sent emails ... They didn’t even reply to my emails, even after I met them at an outreach program and they said ‘Contact me.’” He continued, “I’ve found at least with other agencies, even if there was nothing going on, I was at least given a reply to my email.”

Interviewee #SD43, representing a Hispanic male-owned firm, reported that she has attended a number of outreach events that the Airport hosted, but has not yet submitted a bid because the idea of bidding with the Airport is “overwhelming.” She said, “They give you a lot of pamphlets and information and [have you] go to their website. It seems like you constantly have to keep going to workshops and to seminars It seems like it’s difficult to get the process going with them.”

SDTA #11, a veterans trade organization, said that there is too much paperwork and hassle associated with bidding on public sector projects, particularly with the airport.

Similarly, SDTA #1, representing a local chamber of commerce, has heard specific complaints from the organization’s members about winning work with the Airport: “There have been members who have voiced frustration with getting work at the airport.”

Interviewee #SD46, representing an African American male-owned firm, expressed concerns about the Airport awarding Quieter Home Program contracts to the same few firms. He said, “I think it’s not a fair and equitable [process], but I mean you really can’t say that because if it’s the low bidder

who has been fortunate enough to have won six bids in a row ... [but] it doesn't give [small firms] the opportunity ... to get in there edgewise and try to submit something.”

Recommendations related to the San Diego International Airport bid process.

A few interviewees offered recommendations regarding the San Diego International Airport's bidding process. Interviewee #SD2, representing a white female-owned firm, said that she would like to see a system in place by which she can determine which firms the Airport actually uses on their projects.

Interviewee #SD19, representing a white male-owned firm, recommended that the Airport simplify its bid process and its invoicing procedures.

Interviewee #SD46, representing an African American male-owned firm, suggested that the Airport downsize Quieter Home Program bid packages from a \$2.5 million range to a \$1.5 million range in order to increase competition.

SDTA #6, representing an Asian American trade organization, reported that the Airport could improve how it disseminates information about available projects, how firms can become qualified to bid on those projects, and how firms can become DBE certified.

Similarly, SDTA #4, a local chamber of commerce, indicated that the Airport should improve contractors' access to information about project guidelines and also offer assistance in putting together bids and proposals.

A number of telephone interview respondents — primarily majority-owned firms — recommended that public agencies should consider more than just low bidder status when awarding contracts. Respondents suggested that a firm's qualifications should play a bigger role in contract awards. For example, a majority-owned firm said that focusing on price leads to a disproportionate number of contracts going to minority-owned firms: “My experience is that [public sector contracts] are usually only [going to] the lowest bid, and it's usually going to Mexicans. My complaint is, let's leave it in the country.”

Telephone Interview Anecdotes Regarding Public and Private Sector Work

The following anecdotes regarding the bidding process were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

A large number of telephone interview respondents — representing both MBE/WBE and majority-owned firms — said that there are difficulties associated with bidding on public sector projects. Many respondents identified complex bid processes as a barrier to doing work in the public sector. For example, a majority-owned firm indicated that the difficulties associated with public agencies' bid processes require firms to have extra staff and a well-developed bidding system: "You basically need to hire someone with expertise in writing proposals and understanding the terminology and what the solicitors want to see. You need more manpower [to bid on public sector projects]."

Several telephone interview respondents indicated that excessive paperwork is a problem with pursuing public sector work. Both MBE/WBE and majority-owned firms reported that bidding on public sector work requires a great deal of paperwork. For example, a majority-owned firm said that, compared to the private sector, the public sector requires much more paperwork: "[There is] just so much paperwork [in the public sector] as opposed to private [sector] jobs. Sometimes with schools, they're slow to pay as a result of the all the paperwork."

Some telephone interview respondents indicated that contract specifications can be complex and difficult to deal with. Both MBE/WBE and majority-owned firms said that public agencies' contract specifications can be stringent. For example, a majority-owned firm said, "Just don't plan on taking shortcuts [in fulfilling contract specifications]. If a plan shows something being done one way, that's the way it has to be built."

E. Partnerships

BGPAA Study Anecdotes Regarding Partnerships

Joint ventures.

Several interviewees reported knowledge of or experience with a joint venture program.

[Interviewees #BGP: 2, 8, 10, 16, TA #2]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that “sometimes a bigger company will ask us to go in on a project with them that has a DBE requirement. This has been helpful.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that the firm has participated in joint ventures. He said, “I’ve worked on a lot of joint venture projects. Sometimes they are necessary because projects are of such a nature that you have to bring together a number of major capabilities that may not exist [in a single firm].”

Interviewee #BGP10, a principal at an engineering firm, reported that the firm has had experience with joint venture relationships. He said that the firm has worked with two firms in addition to the joint venture with which it is currently involved, and the experience has been positive.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he believes that the company has participated in a joint venture with another firm. He said that he “heard that the problem with a joint venture is ... who’s really in charge.” He said that “sometimes joint venture firms point fingers at each other,” but he did not know if his company had experienced this problem.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, stated that his members have participated in some joint venture relationships. He said “Well, from my personal experience [firms] outreach to NAMCO and we are able to partner in some qualified contractors.”

Other interviewees reported no knowledge of or experience with joint ventures. [Interviewees #BGP: 1, 6, 11, 12]. Interviewee #BGP1, the African American owner of an MBE/DBE and DVBE-certified architecture firm, said that he has not been in nor would he want to be in any joint venture relationships because you are creating a new entity, and a joint venture is normally only for very big projects.

Mentor-protégé.

Several interviewees reported knowledge of or experience with a mentor-protégé program.

[Interviewees #BGP: 6, 14, 15, 16, TA #2]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, “I know that Caltrans has a mentor/protégé program, and it could be useful in breaking in new firms. I think it’s useful for younger firms.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that the company participates in mentor-protégé relationships through the Native American Center. He said, “We’ll actually bring in disadvantaged youths, and they will come to work for us. Sometimes we have actually hired them, kept them past the six month [training] period. ... We’re not under any

requirement to. ... We usually train them, and if they show a lot of promise, or show up to work, and everything is good, and we have the need, we'll actually hire them full time."

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she was mentored by "some of the prime companies ... when [she] started out," and she is now "sort of mentoring new businesses along [and] helping them get through the process." She said that she obtained her certification on her own, but "the City of L.A. provides a list on their business website of other sources where you can contact minority businesses," and organizations, such as "the Latin Business Association [and the] ... National Association of Women Business Owners ... [do] some degree of mentoring and certification."

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that the firm has participated in mentor-protégé relationships. He said that when his firm uses subcontractors, "a lot of times [the corporation will] train them on how [it wants] the work done."

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that its members have participated in mentor-protégé relationships and the "ones that have had it, have been very successful ... but they're far and few in between." He said that mentor-protégé relationships are far and few between "because it costs companies money to mentor, time and money. It's like being in the service, it costs you time and there's not a whole lot of payback for the individual."

Other interviewees reported no knowledge of or experience with mentor-protégé relationships. [Interviewees #BGP: 8, 11, 12, 13]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, expressed support for mentor-protégé relationships. She said "I think [mentor-protégé programs] would be a major help for small emerging firms. I have never heard of that happening, but that would be a good thing. "

Interviewee #BGP13, the owner of a non-certified construction firm, said that he is "not familiar" with mentor protégé programs, but he said that the company is "a member of ABC, Association of Builders and Contractors," and participates in ABC's apprenticeship program, which he feels "has improved the apprenticeship of electricians."

SDCRAA Anecdotes Regarding Partnerships

The following anecdotes regarding partnerships were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

Joint ventures.

A few interviewees shared their experiences with joint ventures. Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, said that her firm has been a part of two joint ventures, both as concessionaires at the Airport. Currently, her firm is involved in a joint venture with the master concessionaire at the Airport. Interviewee #SD9 indicated that the joint venture agreement has been beneficial for her firm, as the master concessionaire has taught her firm how to be competitive and has saved them a great deal of money (because the master concessionaire can purchase business-related products more cheaply than her firm).

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, described her involvement in a joint venture as a concessionaire at the Airport. Interviewee #SD1's partner was an African American female-owned firm that was responsible for business administration. The relationship was not particularly successful, as the business dissolved after only 18 months.

Interviewees #SD31, representing a white male-owned firm, indicated that joint ventures are very beneficial to his firm and to other small firms in construction. Regarding joint ventures, he explained: "It gives me access to a level of [the company] that I wouldn't get otherwise."

Interviewees #SD40, representing a white male-owned firm, said that joint ventures make sense for his firm on large projects: "We sometimes [participate in joint ventures] on large mega projects because we find that two firms are better than one. ... You cannot have everything tied into one project and can combine the expertise of two firms."

Several interviewees who reported having no direct experience with joint ventures had positive or neutral opinions of them. SDTA #1, representing a local chamber of commerce, indicated that he supported the idea of joint ventures, because "[joint ventures] could help to get some of the local smaller firms ... into the game."

SDTA #3, representing a local chamber of commerce, and SDTA #11, representing a veterans trade organization, both said that joint venture programs are worthwhile endeavors for minority- and female-owned businesses. Similarly, Interviewees #SD14, representing a Hispanic American male-owned firm, said that joint ventures are useful for minority- and female-owned firms, particularly on large projects.

Interviewees #SD20, representing an Asian American male-owned firm, indicated that he supports the idea of joint ventures but that their utility is dependent on whether the team makes sense. That is, each partner has to bring skills to the project that the other partner cannot bring on its own.

Interviewees #SD32, representing an African American male-owned firm, stated that joint ventures can work, particularly on large projects: "If you're looking at a gigantic contract — \$300 million — there are very few companies that can do those kinds of jobs without a joint venture."

Other interviewees who reported having no direct experience with joint ventures had negative opinions of them. Interviewee #SD21, representing a white male-owned firm, said that he could imagine joint venture working for minority- and female-owned firms, but that he views them as being unfair. He said, “I don’t believe it’s reasonable [to offer financial incentives to find a joint venture partner].”

Interviewee #SD45, representing a white male-owned firm, said that joint ventures are “... good to a point, but generally [small] firms don’t want to cough up ownership [to large firms].”

SDTA #10, a supplier trade organization, described joint ventures and joint venture incentives as “a tough area.” He said that very few small firms understand them and their utility. He noted that small firms prefer to work under their own brand names.

SDTA #7, representing a construction trade organization, reported that joint ventures involving MBE or WBE firms typically are not very successful. He said that such agreements are usually set up to “pacify the politicians,” rather than to create sensible partnerships. He remarked, “... when you’re in a joint venture you got to bring something to the table other than [being] black.”

Mentor-protégé.

Several interviewees shared their experiences with mentor-protégé programs. Interviewee #SD14, representing a Hispanic American male-owned firm, reported that his firm has taken part in mentor-protégé programs through Caltrans as the protégé. He said that those programs are useful in that they bring prime contractors face-to-face with smaller, MBE and WBE firms. He reported that those programs helped his firm in terms of networking and marketing.

Interviewee #SD5, representing an African American male-owned firm, is currently part of a mentor-protégé relationship as the protégé. He said that the mentor has been “very helpful.” Interviewees #SD20, representing an Asian American male-owned firm, reported that his firm has taken part in mentor-protégé programs several times as the protégé. He said that the programs were useful but that the number of mentor-protégé opportunities is limited.

Interviewee #SD24, representing a white male-owned firm, reported that his firm is working with two protégés as part of SANDAG’s mentoring program. Regarding his firm’s motivation to participate in the program, Interviewees #SD24 stated, “We were encouraged to participate by SANDAG, and we certainly want to be on good terms with them. Maybe we’re imparting great value to this [WBE firm] whose wealth and income I would envy.”

Interviewee #SD4, representing a white male-owned firm, participated in a mentor-protégé program twice as the mentor. He reported that the first protégé with whom his firm worked went out of business after submitting a bad bid, and the second protégé had unrealistic expectations regarding her firm’s growth.

Interviewee #SD25, representing a white male-owned firm, was involved in mentor-protégé programs when he worked at a large national firm. He indicated that they were positive experiences, and that he still works with most of the protégés from those programs. He said that he has seen their firms grow substantially over the years. Interviewees #SD25 went on to say that he understands why firms in construction (as opposed to firms in engineering) are hesitant to take part in mentor-protégé programs as mentors — it is akin to those firms strengthening their own competition in a “low bid environment.”

Interviewee #SD37, representing a white male-owned firm, said that he supports mentor-protégé programs and finds them to be mutually beneficial: “It shows us what the smaller companies are doing and the way they are approaching work. But it also shows them how we’re approaching it.”

Interviewee #SD46, representing an African American male-owned firm that participated in a mentor-protégé program as the protégé, reported that the program helped his firm learn about the business side of the industry and also helped increase his firm’s bonding capacity.

Regarding mentor-protégé relationships, Interviewee #SD47, representing an African American female-owned firm, said, “[Mentor-protégé relationships] can be helpful or they can be a hindrance. If [the mentor] makes you sign something saying you can’t participate with anybody else ... it could be three years that you’re stuck with somebody that’s not trying to help you”

Several interviewees who reported having no direct experience with mentor-protégé programs had positive or neutral opinions of them. Interviewee #SD21, representing a white male-owned firm, said that although his firm has never directly participated in a mentor-protégé program, they worked with a mentor-protégé pair on a project. According to Interviewee #SD21, the arrangement appeared to work well in that case. He said, “I believe the mentor ended up finishing the job. The mentor entity actually provided labor and labor financing.”

Interviewee #SD27, representing a white male-owned firm, said that his firm is interested in participating in a mentor-protégé program through the Airport. He said that his firm considers their subcontractors as their employees, and they see both a moral value and a business value in supporting local firms.

Interviewee #SD31, representing a white male-owned firm, described mentor-protégé programs as “excellent,” because “it’s one of the main ways to cover bonding.” That is, as part of those relationships, the mentor can bond for the protégé. In addition, Interviewees #SD31 suggested that the mentor can help the protégé make connections within the industry.

Interviewee #SD32, representing an African American male-owned firm, indicated that mentor-protégé programs are very helpful, particularly to small firms trying to grow: “It gives you the ability to bond higher, get that larger job that you wanted. ...” But, Interviewees #SD32 said that he has also seen a few situations in which the mentor has taken advantage of the protégé: “Essentially, the big business [does] the small business’s work even though it was the small business that got the contract — just using [the small business] as a vehicle to get more work.”

Interviewee #SD40, representing a white male-owned firm, reported that the Associated General Contractors of America (AGC) has a mentor-protégé program that is very beneficial to local MBE/WBE firms.

SDTA #7, representing a construction trade organization, indicated that his organization supports the idea of mentor-protégé programs and has one in place for its members. Speaking about mentor-protégé programs in general, SDTA #7 remarked, "... what a great deal [for the protégés] to be able to have [a mentor] that's been in the business for years get in and tell you what to do. It takes years out of the learning curve." He added that in order for mentor-protégé programs to be successful, the pair has to be matched correctly.

SDTA #2, representing a Hispanic American trade organization, indicated that he strongly supports mentor-protégé programs and believes that public agencies should offer financial incentives to develop mentor-protégé relationships. SDTA #2 said that mentor-protégé programs give smaller firms the confidence to progress and teaches them the basic skills needed to be successful: "Most jobs aren't rocket science — they require a check list and repeat."

SDTA #13, a retired official from a local public agency, stated that the Airport should continue encouraging participation in mentor-protégé programs and should do more to facilitate firms meeting and entering into those relationships. She went on to say that businesses have to stop viewing each other as combatants and instead view each other as friendly competitors.

SDTA #11, representing a veterans trade organization, said that mentor-protégé programs are excellent, but one disadvantage of them is that mentors are legally prohibited from working with their protégés in the future.

SDTA #3, representing a local chamber of commerce, and SDTA #10, representing a supplier trade organization, both said that mentor-protégé programs can be useful to MBE and WBE firms. Interviewees #SD 16, representing an African American male-owned firm, also indicated that such programs are worthwhile.

SDTA #9, representing a public works trade organization, described mentor-protégé programs with which he was familiar: "The California Mentor Program for [architecture and engineering] was great. This program had 25 [mentor-protégé] pairs in its first year. The program is for small business with a focus on DBEs. The City Program on the other hand takes on two to three new teams per year. The issue is finding mentors who are willing to regularly meet face to face. This type of programming can be very helpful, but there are not enough opportunities and it is very competitive." He indicated that in order for mentor-protégé relationships to be successful, both partners have to have similar expectations: "I think the difficulty with DOT mentor-protégé programs is that the mentor and the protégé have different perceptions of what should come out of the relationship."

Other interviewees who reported having no direct experience with mentor-protégé programs had negative opinions of them. Interviewee #SD2, representing an African American female-owned firm indicated that mentors are not ideally suited to give advice to protégés: "You need to know so much as a company to be able to advise me. The mentor only knows a slice of the business and can't advise across all areas." One problem that Interviewees #SD2 described specifically is that mentor firms tend to be larger and thus can only provide advice about systems and procedures for large firms but not small ones.

Interviewee #SD10, representing an African American male-owned firm, indicated that training programs in general are of no use to his firm: "Training and mentoring is a waste of time and money. I have been at this too long for that to be of use for me."

Interviewee #SD28, representing a white female-owned firm, said that mentor-protégé relationships are useful in general, but that they are not very applicable to her firm's situation because of the niche industry in which the firm works. She added that the competition is so stiff in her firm's industry that it would be difficult to convince one firm to help another: "One of our competitors is not going to ... take us under their wings ... and help us. Nobody's going to give any advice to help anyone else out."

SDTA #8, representing an electrical workers trade organization, reported that she has heard quite a bit of negative feedback about mentor-protégé programs. The complaints have predominantly been related to the time commitment and a reluctance to share trade secrets.

SDTA #1, representing a local chamber of commerce, described mentor-protégé programs as "intriguing", but indicated that he is worried about the mentor being in a position to take advantage of the protégé.

Consortium Anecdotes Regarding Partnerships

The following anecdotes regarding partnerships were obtained from interviews that the study team conducted in connection with BBC's 2009 Consortium study.

Some of the businesses interviewed reported no knowledge of or experience with partnerships, either joint venture or mentor-protégé arrangements. [Interviewees #CON: 1, 5, 6, 7, 9, 10, 11, 19, 28, 29, 40, 41, 43]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, did not have any experience with a joint venture but he would be interested in participating with that; he would also like to participate in a mentor protégé program but he had no experience with such a program.

Joint ventures.

Several interviewees reported knowledge of or experience with a joint venture program. [Interviewees #CON: 2, 3, 4, 8, 13, 14, 17, 18, 20, 22, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 39, 44, 45, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, CONTA #2]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has heard of joint ventures between DBEs and non-DBEs. For instance the public agencies, like SANDAG, require DBEs to pair up with prime contractors to do work for the agencies. SANDAG provided him with contact information to pair up with a prime contractor. However, the prime contractors already have their teams. Interviewee #CON2 said the agencies have pretty much relegated the responsibility to the prime contractors to hire DBEs. He stated that he has been unable to pair up with any of the prime contractors.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that joint ventures between DBEs and non-DBEs are fairly rare in the environmental consulting business. They do happen on occasion but only between large firms with thousands of employees. He stated that typically a large firm would not joint venture with a smaller firm. Rather, the larger firm would hire the smaller firm as a subcontractor and it would hold the purse strings. Interviewee #CON3 stated that he vaguely recalled several years ago there was some entity trying to promote a joint venture but he does not think it ever happened. He suspects that it did not happen because the prime contractor wanted complete control of projects. The other issue is money, everybody has to be billable. Depending on firms the prime may want the DBE to be 100

percent billable. The prime expects to get so much money from the contract. Interviewee #CON3 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, entered into a joint venture with two other firms in the 1990s: a large non-DBE firm and another DBE firm. Interviewee #CON4 stated that the entities formed a partnership to go after work in San Diego. The partnership lasted seven years. He stated that they were successful in obtaining between 12 and 20 public projects in San Diego. The joint venture has since been dissolved.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, has “often considered” entering into a joint venture with a DVBE; he is aware of this program through the State of California. Interviewee #CON8 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, entered into a joint venture agreement with a non-DBE in 1999 or 2000 for MTA; he stated that it was a positive experience.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that he had once participated in a joint venture and it was a “tough situation.” He stated that joint ventures are not easy relationships to build. He stated that his company engaged in a joint venture when they felt it was advantageous, dependent upon the contract. He stated that companies engage more in joint ventures when they are starting out in order to supplement their experience and meet the requirements for an RFP. Interviewee #CON14 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has submitted proposals as a joint venturer, but the company has never won any of those jobs.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, has had positive experiences with the joint venture program, and has been involved with joint ventures for many proposals. Interviewee #CON18 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, participated in a joint venture with a private sector prime contractor.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, has participated in joint ventures in both the public and private sectors; she stated that there are always joint ventures.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, reported that he has participated in a joint venture on a private sector project.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of joint ventures within the Consortium but had never participated in one.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has participated in a joint venture in the public sector. She is aware of joint ventures with the Consortium and across the public and private sectors.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, had participated in a joint venture in the public sector.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has not experienced a joint venture between a DBE and non-DBE. He stated that he has not partnered in the capacity of a joint venture. He has worked with other firms on projects but none within the same scope of work in which they were considered partners. He stated that he feels there is not any incentive to initiate a joint venture type of relationship between a DBE and non-DBE firm. He stated that joint ventures do exist but they are typically beneficial to the larger business' interests.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he has participated in a joint venture with the manufacturer of some of his products.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, was aware of joint ventures in the Consortium, non-Consortium public sector, and the private sector.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported having participated in a joint venture on a public sector project in Texas with a DBE; she was not aware of any other joint ventures.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she participated in a joint venture in the public sector.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, has participated in a joint venture in the public sector.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, participated in a joint venture through one of the Consortium member agencies.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had experience with a joint venture with the Consortium.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, had experience with a joint venture in the private sector.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported having participated in a joint venture with another electrical contractor.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he was aware of two or three joint ventures over the past 15 years.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, indicated that he has discussed participating in a joint venture and anticipates participating in one in the next six months.

Interviewee #CON54, a white male owner of a general contracting firm, reported that his firm has participated in joint ventures and was aware of other joint ventures in existence.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, was aware of joint ventures but had never participated in one.

Interviewee #CON56, a white male owner of a small electrical contracting firm, reported having knowledge of joint ventures in the private sector but had not participated in one.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, reported having participated in a joint venture in the private sector.

Interviewee #CON58, a white male owner of an engineering consulting firm, stated that he was aware of joint ventures but noted that his firm has intentionally avoided participating in one because it is too time-consuming and requires one to practically set up an entire new company.

CONTA #2, the President of the Black Contractor's Association, stated that he is not aware of any joint ventures between a DBE and non-DBE in the private sector, but stated that there have been several in the public sector.

Mentor-protégé.

Several interviewees reported knowledge of or experience with a mentor-protégé program.

[Interviewees #CON: 2, 4, 12, 13, 15, 16, 17, 21, 22, 23, 24, 26, 27, 30, 31, 33, 35, 36, 37, 42, 45, 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 58, CONTA #1, 2]. Interviewee #CON2, an African American structural engineer, stated that he has heard of mentor-protégé programs between DBEs and non-DBEs. He stated that once in a while he receives an email from Caltrans about such programs. He stated that he knows of one DBE that participated in the program five or six years ago as a subcontractor for a prime. This particular subcontractor really liked it, and it was a good project, a SANDAG railway project. Interviewee #CON2 stated that he has considered participating in the program when it begins again.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he was not aware of the Consortium's mentor-protégé program but was aware that Caltrans had a "protégé" program in which he participated last year. The program went pretty well and was helpful. His mentor was a non-DBE. He explained that the program works by pairing large prime contractors to volunteer as a mentor and protégé with DBEs. The program was just a one-year program. Interviewee #CON4 stated that he began participating in the program in October 2007 and the program will end in October 2008. Interviewee #CON4 stated that he found value in the program.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he did have experience with a mentor-protégé program through Caltrans District 7. He stated that in his experience the program was "non-results oriented." He stated that the first mentor "perhaps forgot that we were their protégé." He stated that they dissolved that relationship and

signed up to receive a second mentor with whom they pursued a project; they were not successful. He stated that as the protégé they actually brought work to the mentor. Interviewee #CON12 did not have any knowledge of or experience with a joint venture.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he believes a mentor-protégé program would be a great idea but he has not been able to find anyone to partner with. He stated that the mentor-protégé program with the SBA was a lot of work for not a lot of benefit.

Interviewee #CON15, a Hispanic American male owner of a MBE certified engineering and construction company stated that he has a lot of experience in the mentor-protégé program, and has been very successful with his mentor. Interviewee #CON15's work has been referred out by his mentor and it is through the program that he was encouraged to become a prime contractor. Interviewee #CON15 did not have any knowledge of or experience with a joint venture.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, has no experience with the mentor-protégé program because they haven't found anyone that wants to participate in the program with them. Interviewee #CON16 noted that it sounded like a great program that isn't being "recommended." Interviewee #CON16 thinks that there are not enough incentives for the larger companies to participate in the mentor-protégé program. Interviewee #CON16 did not have any knowledge of or experience with a joint venture.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the company is now a mentor, but that it never participated as a protégé. The mentor-protégé program has been very positive for Interviewee #CON17's company.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, had experience with a mentor-protégé program through the federal government.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, had participated in a public sector mentor-protégé program.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, participated in a mentor-protégé program years ago but was not aware of any such programs now.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has participated in a mentor-protégé program in the private sector with USC through its public arts program.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that he had minimal experience with a mentor-protégé program.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, had participated in a mentor-protégé program through Caltrans.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has heard of mentor-protégé programs but has never participated in such a project. He has learned that the people who do get to participate in these types of programs are handpicked (most likely a family member or relative or close friend or some sort of other way that would make them want to train a potential competitor), thus limiting the ability for regular firms and truly disadvantaged firms to become a part of such programs. He suggested forcing mentors to work with their protégés. He stated they should position them in a way in which they would work with them to get a project or risk losing their funding.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, had participated in a mentor-protégé relationship in the Consortium.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, had heard of a mentor-protégé programs but was not aware of any real program.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, was aware of MBDC Capacity Building sponsored in part by Southern California Edison. She did not have any experience, however, with a mentor-protégé program.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she was aware of some mentoring programs sponsored by private companies and through public universities. She also stated that she has developed her own mentoring program and the people that she invited to participate were graduates of court reporting schools.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he has participated in a mentor protégé program in the private and public sectors.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, was involved in a mentor-protégé program at the State Board of Equalization.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had experience with a mentor-protégé program, but she did not feel that it was a true mentor-protégé program.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the federal government, L.A. County MTA, and Metro all have mentor-protégé programs and he has been trying to get involved in one for 10 years, but he just has not had the time.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, believed that he remembered participating in a mentor-protégé program through the federal government. He was not aware of other mentor-protégé programs.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, was aware of mentor-protégé programs and noted there used to be several programs in the past.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was aware of a mentor-protégé program offered by a private company.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, had no knowledge of any mentor-protégé program but reported having heard prime contractors talk about such programs during projects. He stated that no such opportunities have materialized and he feels that once majority firms learn that there is no benefit to them, they lose interest in the idea.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, reported having participated in a mentoring program — not targeted towards DBEs — through private organizations of which he is a member.

Interviewee #CON54, a white male owner of a general contracting firm, stated that they have an internal mentoring program for small firms within a department of their firm.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that he has participated in several mentor-protégé programs and he understands the importance of them. He stated that he would like more small and minority-owned businesses to do well.

Interviewee #CON56, a white male owner of a small electrical contracting firm, reported having general knowledge of mentor-protégé programs, but said he had no knowledge of the specific details.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, reported having participated in a mentor-protégé program through a local college and was also aware of programs in other areas.

Interviewee #CON58, a white male owner of an engineering consulting firm, noted that an office of his firm has participated in a mentor-protégé program as a mentor to a DBE. He was aware of other mentor-protégé programs.

CONTA #1, the President of the Latino Business Owners of America, stated that he has heard of mentor-protégé programs between DBE and non-DBE business owners but was not aware of any such program with Consortium agencies.

CONTA #2, the President of the Black Contractor's Association, stated that he is not aware of a Consortium mentor-protégé program between DBEs and non-DBEs and did not believe that Caltrans had any such program. He did recall that the City of San Diego had a similar program that was not very successful because the program only accepted one-two protégés and it was a very slow process.

Caltrans Anecdotes Regarding Partnerships

The following anecdotes regarding partnerships were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

Joint ventures.

Several of the businesses interviewed had made at least one attempt at participating in a joint venture. [Interviewees #CT: 9, 16, 34, 45, 48]. However, none of these joint ventures involved work on Caltrans projects. In addition, a few of the trade associations interviewed had either directly been involved with a joint venture or had a member of its association who had joint venture experience (CATA #1, #2, #3). None of these experiences were on a Caltrans project.

One business had been approached about a joint venture but never participated. #: CT16].

Of the businesses with experience participating in joint ventures, the joint ventures varied widely in experience. Interviewee #CT9, a white male-owned firm, had a number of joint venture experiences but none with DBEs. Interviewee #CT16, a white male-owned firm, had joint venture experience with DBEs. Interviewee #CT48 was involved with joint ventures on both public and private contracts.

Of the trade associations' involvement with joint ventures, two of them were currently involved in joint ventures with DBEs [CATA #2, #3] and one had a member participating successfully in a joint venture with a large firm [CATA #1].

In addition, CATA #1, an Asian American trade association, knew of small women-owned businesses participating in joint ventures with large firms. CATA #3, Hispanic trade association, who is currently participating in a joint venture with another minority business, stated that the experience has been very positive. CATA #3 has no knowledge of any of its members having experiences in joint ventures with non-DBE firms.

Mentor-protégé.

Almost all of the businesses interviewed have not participated in a mentor-protégé relationship. For those businesses aware of the Caltrans mentor-protégé program, the consensus is that it is just getting started. Interviewee #CT16, a white male-owned firm, previously participated in a federal Small Business Administration mentor protégé program as a mentor.

CATA #1, an Asian American trade association, is a protégé in Caltrans' program and expressed that the program "has been very good." He was among the first to promote Caltrans' mentor-protégé program. CATA #1 and two of its members had received jobs or at least been put on a project team as a result of their involvement with the program.

Interviewee #CT81, a Hispanic male-owned firm, has no knowledge of formal partnership programs administered by Caltrans, but is aware of informal arrangements in the private sector where prime contractors mentor subcontractors, and help them with bonding and sending work their way.

A DBE and 8A company submitting written testimony is involved in the San Diego mentor-protégé program with the AGC and stated there "seems to be some conflict with their participation and their

stance on programs ... [and] there remains a resistance to inclusion and opportunities.” (Written testimony submitted 3/26/07).

Recommendations related to partnerships.

Interviewees urged Caltrans to continue and expand efforts to grow mentor-protégé programs, and communicate the need for mentors and protégés to Caltrans’s contractors and vendors.

[Interviewees #CT: 7, CATA #7]. Some interviewees suggested Caltrans monitor the pairings to ensure that each side is receiving the full benefit of the relationship.

Interviewee #CT7, a white female-owned business, would like Caltrans to establish more training programs where training was done by the firms themselves. He suggested Caltrans could improve upon the apprentice program and have 20 percent of people working on any job (particularly those working as landscape inspectors) be working as apprentices. Doing so would lower the cost to Caltrans and that “everybody would benefit.” Though he said “it’s not a DBE issue,” he noted that “it could help DBE firms increase their size.”

F. Prequalification

BGPAA Study Anecdotes Regarding Prequalification

Some interviewees reported a successful or positive experience with the Airport Authority's prequalification procedure. [Interviewees #BGP: 9, 14, 15, TA #2]. Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm stated that prequalification for the Authority's insurance was easy. He said, "I've only been the prequalification for the insurance and so forth, and for us it's easy, because we have everything in place."

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, stated that there are qualifications that must be met to bid on projects with the Authority, such as being qualified as a "local business contractor" or meeting certain education criteria. He said that these prequalification requirements were "typical" and "good because ... the Airport needs to be protected and bring in qualified firms, and I don't think that they ever use the pre-qualifications to specifically limit who bids [on] their jobs."

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she had a good experience with prequalification "with the Bureau of Engineering." She noted that the agency pre-qualification process is generally "very slow and very lengthy," but she said that she thinks "that's just the way that agencies work nowadays."

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that it is "not a problem filling out the paperwork [for the prequalification process], but the problem is that you get prequalified but then nothing happens there." He said, "You are not placed on a list ... for example, I'm a [general contractor], I go to the Airport, I fill out my pre-qualifications for you, pre-qualify, what happens when a mechanical contractor is awarded a job, what happens to that 2nd and 3rd opportunity, never happens."

Several interviewees had no experience with the Airport Authority's prequalification process. [Interviewees #BGP: 10, 11, 12, 13, 16]. Interviewee #BGP10, a principal at an engineering firm, said that he is unfamiliar with the Authority's prequalification process if it has one. He reported that some other public agencies have a prequalification process for the professional services field, and his firm has participated in the process. He said that "some of the other agencies will have one where they will prequalify firms," and, as projects come up, these agencies will allow prequalified firms to submit proposals. He said that he does not think that the Authority works that way.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he did not know if the Authority has a prequalification process. He said that the Los Angeles Airport does not have a pre-qualification requirement, and anyone can bid on any request for proposal. He said that a prequalification process has been proposed at the Los Angeles Airport and is under consideration.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that they were unaware of whether the Authority has a prequalification process. Interviewee #12 reported that some public agencies have a prequalification process, but it is very rare. They said that prequalification requirements make “things over exclusive.”

Interviewee #BGP13, the owner of a non-certified construction firm, said that he has been working with the Authority “for about 20 years,” and he does not “have a recollection of prequalifying other than what our insurance requirements are and everything ... because of the maintenance contract.”

Some interviewees had recommendations for improving the prequalification process.

[Interviewees #BGP: 10, TA #2]. Interviewee #BGP10, a principal at an engineering firm, recommended having a prequalification process so that the agency and the engineering community can go through a single prequalification process and so that neither has to go through a time consuming prequalification process for each individual project.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, recommended that the general contractors’ lists of potential bidders for projects be made available to subcontractors because some prequalified subcontractors are not being listed as potential bidders.

SDCRAA Anecdotes Regarding Prequalification

The following anecdotes regarding prequalification were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

A few interviewees recommended that more public agencies prequalify firms in particular industries. Interviewee #SD21, representing a white male-owned firm, recommended that public agencies prequalify some number of MBE and WBE firms within each construction sector and require prime contractors to subcontract out to those firms when they need that type of work completed.

Similarly, Interviewee #SD4, representing a white male-owned firm, recommended that the San Diego International Airport prequalify MBE and WBE firms within specific trades.

Interviewee #SD37, representing a white male-owned firm, indicated that prequalifying bidders would be beneficial to both the Airport and to bidders: “The Airport should pre-qualify bidders. This would be beneficial, because it would eliminate contractors I don’t think are qualified. Pre-qualifying bidders would cut the competition down, and the Airport would get more qualified contractors doing the work for them.”

Interviewee #SD45, representing a white male-owned firm, suggested the San Diego International Airport should provide general contractors with a list of prequalified subcontractors. He recommended that the Airport develop a prequalification program that evaluated quality and price rather than just price. He said, “Intangibles need to be considered.”

Two interviewees indicated that prequalifying firms is a barrier to small firms being successful in the public and private sectors. SDTA #5, representing a government advisory commission on minority issues, reported that prequalification does not help small firms: The City [of San Diego] has

been neglectful and dysfunctional. Prequalification is a choice that San Diego has made — they do things without thinking about consequences. Prequalification is a barrier to small businesses.”

Interviewee #SD46, representing an African American male-owned firm, stated that prequalification processes are time consuming: “By the time you can complete the prequalification process, the bid is over.” He went on to say that prequalification should be considered unnecessary if a firm can get bonded for the project.

One interviewee reported that the prequalification process is expensive. Interviewee #SD5, representing an African American male-owned firm, characterized the prequalification process as too expensive to be practical: “The city requires a lot to be pre-qualified. They require businesses to do a compilation, an audit, and a bonding letter. Many of these requirements cost a lot of money to get together. For example, the compilation requires an audit by a CPA. Many small businesses cannot afford the three to five thousand dollars required just to get pre-qualified to do work with the city.” However, Interviewee #SD5 pointed out that the SDRCAA offers assistance in getting through the certification process.

Telephone Interview Anecdotes Regarding Prequalification

The following anecdotes regarding prequalification were obtained from telephone interviews that the study team conducted in connection with BBC’s availability analysis of Southern California firms.

A few telephone interview respondents indicated that qualifications requirements are excessive in the public sector. Those respondents reported that it is difficult to be successful in the public sector because of the restrictions related to a firm’s qualifications. For example, a minority-owned firm remarked, “[Public agencies] make it so difficult to be a minority-owned business [and] get contracts. Just all the hoops you have to jump through — it’s not worth it really.”

G. Licensing

BGPAA Study Anecdotes Regarding Licensing

Most interviewees reported no issues in connection with obtaining the licensing required in their particular field. [Interviewees #BGP: 1, 2, 3, 5, 6, 9, 10, 11, 12, 13, 16, TA #2]. Interviewee #BGP10, a principal at an engineering firm, reported that members of his firm are licensed as individual professionals.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, stated that the Los Angeles Airport requires companies to have a non-exclusive operating license. He said that “every firm that operates on the airport is given a five year non-exclusive license to operate there, and at the end of the five years, you have to go back and reapply again.” He said that the process to obtain a license takes a while, but more emphasis is being placed on this licensure.

Some interviewees reported mixed or negative experiences regarding licensing. [Interviewees #BGP: 8, 14]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that the firm had an issue with the City of Los Angeles requiring certain types of engineering firm to be licensed as such in the State of California.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that “state licensing is not a problem, ... but it’s getting more and more difficult in California ... [because of] the hurdles you have to jump through.” He said that some cities require city business licenses, and if you are pulled over in a business vehicle without a city business license, you will receive a ticket.

H. Experiences with Payment

BGPAA Study Anecdotes Regarding Experiences with Payment

Some interviewees reported a positive experience in connection with payment by the Airport Authority. [Interviewees #BGP: 1, 5, 11, 13, 14, 16]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that he has had no issues with receiving payments from the Authority, and that the payment process is very clear.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that the company “didn’t have any problems ... with payment” from the Authority. He said that the public sector is pretty good about payment.

Interviewee #BGP13, the owner of a non-certified construction firm, reported that the Authority “has been very good about paying.” He said that the Authority usually pays within 30 to 45 days.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that payment from the Authority has been “consistent [and] good. We never have to call and ask for payment. It always happens per the contract.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that the company’s experience obtaining payment from the Authority has “been very good.” He said that there might be “a little lag in receiving payment” when the company acts as a subcontractor instead of a prime, but he is “not aware of much of a difference.”

Some interviewees reported a negative experience in connection with payment by the Airport Authority. [Interviewees #BGP: 2, 4, 9, 10, TA #2]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that relative to other public agencies, “it’s a little harder” to receive payments from the Authority.

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that the firm has experienced difficulties related to payment by the Authority. He said, “The contractor performs the work, but the Airport won’t close the work so [the contractor] can get paid. They hold the retention, and the contractor is losing money every day. That can drive our prices up through credit reasons because we don’t know how long it will take to get paid. It definitely drives up financing charges. When that happens, you scare away the good contractors.” He said, “My average Burbank Airport payment, from the day I deliver to the day I get paid, is 120 days. The average finance charge is 3 to 4 percent. So when the Airport takes four months to pay, the subcontractor is losing 3 to 4 percent every month. My profit margin is 10 percent for the whole job, and when I have to finance for four months, it costs me to do these jobs.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm reported that his firm had a problem once with the Authority, but that it was fixed. He said, “We ran into a problem and one time, but they corrected...” When asked how the Authority compares to other public sector work in timely payment, Interviewee #9 said, “It’s fair. On a scale of 1 to 10, it’s about a six-and-a-half.

Interviewee #BGP10, a principal at an engineering firm, reported that payment by the Authority is “slow.” He said that the public sector is slow generally, “slower than it should be.” Interviewee #10 said that there is a different payment process for engineers and other contractors, and the firm’s average payment window is usually “a little over 90” days. He stated, “You know, the public sector can pay their contractors within 30 days, but they find it difficult to pay engineers within 60 to 90 days.” He said that the law requires the Authority to pay contractors “within 30 days,” and “[c]ontractors will ... stop work if they don’t get paid,” so payment is made on time. He said that the problem with slow payment is with the Authority and is not the result of the prime taking too long to pay the subcontractor. He said that the prime usually pays a subcontractor within five or 10 days of receiving payment from the Airport Authority.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that payment by the Authority is “slow ... slow to very slow.”

One interviewee reported that timely payment does not present a barrier to working with public agencies and/or the private sector. [Interviewee #BGP: 5].

Some interviewees reported that timely payment presents a barrier generally with public agencies and/or the private sector. [Interviewees #BGP: 2, 3, 6, 8, 11, 12, 13, 14, 15].

Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, stated that timely payment has been an issue for the firm. He said that “a lot of state agencies are slow because of budget issues. We have experienced payment delays.”

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that timeliness of payment can present a barrier for small contractors. He said, “Cash is king, so yeah, if you have problems with cash flow, you’re not going to stay in business very long.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that timely payment is “an issue. We have the prompt pay law in the State of California where when a prime is paid, then they have ten day to pay us, but some primes do not do that.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said, “We have not seen a slump in work. What we have seen is a slump in getting paid. ... I think it’s a general delay [in payment].” He said that there are certain firms that his firm will not work with because “they don’t pay their bills.”

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that the company has had problems with late payments from airlines as a result of the airlines’ “financial condition,” but “that happens everywhere.” He said that payment issues occur more in the private sector because private companies have “their own financial problems.” He added that contracts often call for late fees when an airline is late with payment, but the company usually does not enforce these provisions because it is important to maintain the company’s positive relationship with the airline, and the airline does not look favorably upon enforcement of these late fee provisions.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that payment “varies project to project. There are some agencies

that pay very quickly. There are some up front, for example, [that] just say, ‘Hey, I won’t even submit [the invoice] until 55 days after delivery, and then it has to touch seven or eight people [before] you finally get a check back.’” They said that in those situations, payment is usually received within 90 to 120 days, but on average the company receives payment in between 60 and 90 days. They added that “it’s very slow.”

Interviewee #BGP13, the owner of a non-certified construction firm, said that the Authority usually pays within 30 to 45 days. Regarding everyone else, he said, “Everybody’s taking forever to pay now,” and the typical payment window is “running 60 to 120” days.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that when the company works as a subcontractor, payment from the prime may be delayed if the company’s work is tied to another subcontractor’s work that has not yet been completed. He reported that most private entities pay once a quarter, and it does not matter when the invoice goes out or when the contract says payment will be made. He said that the company will often offer early payment discounts, but some private entities do not take advantage of this offer.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she does not recall her experience with obtaining payment from the Authority. She said that with public agencies, the company does not “get paid until the prime gets paid, and once the prime gets paid, the primes are usually good about cutting ... checks to us within five days. However, ... it can be 90 to 120 days” before an agency pays the prime, “and that’s really way too long for a small business. I mean, it hurts.” She said that in the private sector, a prime generally pays the company “once a client approves the project.” She said that this “typically” takes “net 30 days.”

Some interviewees identified paperwork and related issues as a barrier to receiving payment.

[Interviewees #BGP: 12, 13, TA #2]. Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated that payment varies “greatly” depending upon who is acting as the prime contractor on the project “and how they turn in their paperwork.” They added, “Change orders tend to get paid more slowly because they require more paperwork.”

Interviewee #BGP13, the owner of a non-certified construction firm, stated that subcontractors do not get paid “until the prime contractor has been paid, ... so even if you have a 30 day net on your invoicing, it doesn’t matter, and nobody’s really chasing any type of penalties or anything like that, so ... the prime takes 30 days or 60 days to get paid, [and] ... a pretty common contractual agreement is you have about 10 days to pay [the subcontractors] after you’ve been paid as a prime.” He added that “nobody’s financing the job except for the ... subcontractors.” He said that if there is a barrier concerning prompt payment, it is associated with proper processing of paperwork by the project owner or user. He said that often the “paperwork [is] sitting with the user” waiting for approvals and such, but he said that this observation is not unique to “a specific entity” and is “just industry-wide.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that the pay cycle is a barrier to payment. He said, “Yes, you have 30 days, right, plus if you took it down to, you can say you can do it on a 20 day cycle or a 15 day cycle then you would turn over the invoices faster, so you wouldn’t have to work with 30 days, during the invoice after 30 days then there’s usually another 15 days before you get payment on

that, so it's actually like 45 days to 60 days before you get a check, in the meantime, on the second cycle you're still working and paying out of pocket ... so to shorten the cycle." He said that payroll expenses present a big barrier for firms when pay cycles are slow.

Most interviewees reported that their race, ethnicity or gender does not affect their ability to receive payment. [Interviewees #BGP: 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that "I wouldn't say it is discrimination, but we have issues with slow payments."

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that slow payment is a general problem and probably not based on race or gender. He said, "We get a lot of slow pays, and I bet [minority firms] get a lot of slow pays. ... Maybe they're a little slower with minority owned firms, but I haven't heard ... that complaint expressed."

Some interviewees had recommendations for improving payment. [Interviewees #BGP: 4, 10, 12, 13, 15, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, recommended that the contractors be pre-qualified by the Authority to ensure that they can pay their subcontractors.

Interviewee #BGP10, a principal at an engineering firm, recommended that that Authority "pay within 30 days." He said that he thinks that this payment window is feasible for the Authority. He said that slow payment forces "small firms to finance ... work and finance the airport," which is a "significant difficulty" for small firms.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, recommended that agencies pay "more quickly" and "streamline the payment process to the general contractor."

Interviewee #BGP13, the owner of a non-certified construction firm, recommended that the project owner pay faster so that contractors are not forced to finance the projects. He said that he has noticed payment windows getting "longer and longer over the last ... three to five years." He suggested that a 10 to 15 day turnaround on payment of invoices should be feasible.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that in obtaining timely payment, it is important to make "sure that the statement of work is clearly identified," that the same terms are used in all of the documents, and that all of the parties are "on the same page" regarding what particular terms mean. She said that a company "shouldn't have to submit timecards" when it is "working on projects that are not to exceed the lump sum ... because it's going to be lump sum, and those are based on milestone deliverable." She said that agency inputting and enforcing these requirements can cause delay, and the process is unnecessary.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, recommended shortening the pay cycle.

SDCRAA Anecdotes Regarding Experiences with Payment

The following anecdotes regarding experiences with payment were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

Payment by prime contractors, public agencies, or private sector clients.

Some interviewees reported positive experiences with getting paid by prime contractors or public agencies. Interviewee #SD11, representing a white male-owned firm, indicated that his firm has never had issues with agencies paying them. As an example, he said, "The City just paid us in seven days." Interviewee #SD11 went on to say that his firm has never had any issues paying their subcontractors, and that it is their policy to pay their subcontractors within seven days of getting paid themselves. He said that any delay in paying subcontractors is due to delays in receiving payment from the agency: "Our problem is that we are waiting up to 60 days to get paid from the public agency which might slow down the payment time."

Interviewee #SD2, representing a white female-owned firm, also has had good experiences getting paid on projects. She said that the only difficulty comes when the project goes considerably beyond the original estimate. Interviewee #SD22, representing a white male-owned firm, also reported experiencing no issues related to payment.

Interviewee #SD45, representing a white male-owned firm, said that receiving payment in a timely manner is "always, always a problem." In describing the differences between receiving payment in the public and private sectors, Interviewee #SD45 commented, "Payment may be slow in the public sector, but it is guaranteed. You need a gun to get paid in the private sector."

Several interviewees complained that prime contractors or agencies often pay slowly in the public sector. Interviewee #SD14, representing a Hispanic American male-owned firm, said that there are "always" agencies and prime contractors that pay slowly. He explained that slow payment is especially problematic now because of the recession. Interviewee #SD20, representing an Asian American male-owned firm, expressed a similar sentiment: "[Slow payment] happens all the time! I would like to see some sort of contract clause between the primes and agencies [so that the prime contractor], within 10 days of getting paid, has to pay the subs."

Interviewee #SD16, representing an African American male-owned firm, reported that slow payment is a negative aspect of doing public sector work: "It is hard to get paid." He went on to say that slow payment becomes particularly difficult in times when his firm has limited capital.

Interviewee #SD18, representing a white female-owned firm, indicated that payments from public agencies take between 60 and 90 days, longer than payments from private entities: "The difference between public and private agencies is the decision making process. The public sector takes a long time to make decisions."

Interviewee #SD19, representing a white male-owned firm, reported that "50 percent of payments [from public agencies] take over 120 days ..." She went on to say that when her firm works as a prime contractor payment tends to be faster than when they work as a subcontractor. Regarding her firm's payment experiences as a subcontractor, Interviewee #SD19 said, "We may have finished our piece of the job, but [if] the prime contractor is not on schedule, [...] we don't get paid until the job is complete." She continued, "There are cases where we did not get paid at all."

Interviewee #SD37, representing a white male-owned firm, indicated that his firm prefers to work as a prime contractor, because there are too many payment issues associated with subcontractor work: “The company doesn’t have to worry about getting paid when [it is] the prime. We are currently working with a general as a subcontractor and have been working with them for over a year, and we practically have to dig our money out of them.” He went on to say that sometimes his firm will simply forego payment from general contractors, because pursuing legal action against them is too expensive.

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that payment issues are prevalent on construction projects, because prime contractors often delay payments because of “re-do’s or go-backs.” He went on to say that small firms are more likely to be affected by slow payments and that “it’s sometimes 60 - 90 days out before the initial payment on a new project is received.” Interviewee #SD36, representing an African American male-owned firm, said, “Always with [public agencies] you can count on a 60, 90 or 120 day pay period. That will affect you if you don’t have the foundation to pay people on time.”

SDTA #2, representing a Hispanic American trade organization, and Interviewee #SD25, representing a white male-owned firm, both also reported that payments from public agencies take anywhere from 60 to 90 days. SDTA #2 indicated that payment delays that are longer than 90 days are usually the prime contractor’s fault and not the agency’s.

Interviewee #SD24, representing a white male-owned firm, reported that payment to subcontractors is often delayed because of the processing that is required on the part of the prime contractor, or because the agency rejects one or more payment invoices.

Interviewee #SD3, representing a white male-owned firm, explained that there is typically a 10-week lag between the start of a public agency project and the first payment. He said that the time that it takes to get paid is almost twice as long for subcontractors than for prime contractors. Interviewee #SD3 remarked that because of payment delays, it is crucial for firms to have a good line of credit.

Interviewee #SD28, representing a white female-owned firm, said that slow payment is “always” an issue. She explained that both public and private entities are typically taking “at least 120 days right now” to pay contractors. She went on to say that because her firm is usually not the biggest firm on a project, its payment concerns are not as high on the prime contractor’s priority list. She said, “We don’t have as much pull [to demand quicker payment].”

Interviewee #SD35, representing an Asian American male-owned firm, reported that he used to own another firm that went into bankruptcy, primarily because prime contractors refused to pay his firm: “... we couldn’t get paid from several of our primes.” Interviewee #SD35 indicated that one prime contractor in particular put his former firm out of business: “They would always come up with some reason why we weren’t getting paid on time. Usually, it was the paper work. In the last days of [the firm], [the prime contractor] owed \$180,000. [The prime contractor] put us out of business.” Interviewee #SD35 indicated that his previous problems with payment have made him hesitant to take on subcontractor roles with his current firm.

Interviewee #SD43, representing a Hispanic male-owned firm, said that slow payment is often an issue, but it is especially difficult for firms working in the public sector. She explained that in her experience, public agencies can take anywhere from three to four months to pay contractors. She said that in the private sector it only takes a couple of weeks to receive payment.

Interviewee #SD46, representing an African American male-owned firm, reported that a prime contractor withheld payment for more than 60 days on a public sector project with which is firm was involved. Interviewee #SD46 said that it would be helpful if agencies posted prime contractor payment data so that subcontractors would know when they could expect payment.

SDTA#9, representing a public works trade organization, explained that although payment issues are not as prevalent as they were in the past, they can still pose problems for small firms: “The payments have gotten a lot better than they used to be from public agencies, [but] the 60-90 days that it takes to get paid is difficult for small businesses.” He went on to say that payment issues are much more common for subcontractors than they are for prime contractors.

Several interviewees also complained of slow payment in the private sector. Interviewee #SD21, representing a white male-owned firm, indicated that payment issues are a substantial barrier to working in the private sector as well: “One of the toughest parts of the business on the private side is just getting paid.” He went on to say that not receiving payment in a timely manner (or at all) is a barrier to contractors’ progress and growth.

Interviewee #SD5, representing an African American male-owned firm, reported several incidents in which he had trouble receiving payments from prime contractors in both the public sector and the private sector. He said that in one case his firm had to wait over six months to get paid.

Interviewee #SD34, representing a white male-owned firm, said that he is often given the “runaround” when getting paid by his clients. He said that he frequently has to follow up with them to get paid.

Interviewee #SD41, representing a white male-owned firm, reported that his firm has over \$2 million in unpaid invoices from private sector clients that have gone bankrupt. He said, “We are in court now trying to litigate. ... Getting paid is a big risk in the private industry. I would be happy getting 10 cents on the dollar right now.”

Interviewee #SD44, representing a Hispanic male-owned firm, remarked that slow payment is often an issue with which all firms have to deal and indicated that the issue does not selectively affect MBE/WBE firms: “With every business you have [slow payment issues].”

Some interviewees suggested that slow payment disproportionately affects small firms.

Interviewee #SD7, representing a white male-owned firm, indicated that payments “aren’t going to come when you think they are going to come.” He went on to say that slow payments are “just a hiccup, not a show stopper” for large, well established firms but could be catastrophic for minority- or female-owned firms that are smaller and less established.

Interviewee #SD30, representing an African American male-owned firm, reported that slow payment is a barrier, particularly for a small firm. He explained that most clients typically pay contractors 30 days after receiving an invoice, but that delay makes it difficult for small firms to cover costs in the meantime.

Interviewee #SD31, representing a white male-owned firm, stated that slow payment is an issue for small firms on large projects, because they do not have the capital to cover upfront costs. He said, “Nobody is going to ship you a million dollars worth of [materials] without getting most of their money up front.” And he went on to indicate that bridge loans are too expensive to be practical.

Interviewee #SD40, representing a white male-owned firm, reported that payment delays are difficult for small firms to handle: “The 60 to 90 day payment is difficult for small businesses. I love it when a guy calls and says I need my check.” Interviewee #SD40 reported that his firm pays its subcontractors within 30 days. He said, “We take a lot of pride in making sure all of our paperwork is correct. We do what we call a pencil copy five days before the invoice is due to ensure our payment is on time.”

Consistent with those comments, SDTA#1, representing a local chamber of commerce, reported that payment delays pose a substantial problem for small firms, because, relative to large firms, they have less capital.

SDTA#4, representing a local chamber of commerce, said that she has seen good, small firms struggle to make payroll as a result of payment delays.

A few interviewees expressed a preference to work in a particular sector because of payment considerations. Interviewee #SD16, representing an African American male-owned firm, stated that he prefers to work for large private clients, because he finds payments to be more secure: “I prefer to work for a large private company who I know pays their bills.”

Interviewee #SD35, representing an Asian American male-owned firm, said that he prefers to work in the private sector to avoid payment delays: “I prefer private work, because you get paid sooner as opposed to the public. We also prefer to prime projects because of payment issues.”

In contrast, Interviewee #SD 20, representing an Asian American male-owned firm, said that he prefers to work in the public sector, because, from a legal standpoint, payments are much more secure.

Payment experiences with the San Diego International Airport.

Many interviewees shared positive experiences with getting paid by the Airport. Interviewee #SD16, representing an African American male-owned firm, indicated that he has never had trouble getting paid on Airport projects and that in fact the Airport pays earlier than required: “I have received two payments from the airport and neither was held to the thirty days (the limit by which public agencies are required to pay contractors after receiving an invoice).” Similarly, Interviewee #SD21, a white male-owned firm, also reported positive experiences with being paid on Airport projects.

Interviewee #SD24, representing a white male-owned firm, indicated that when he works as a prime contractor on Airport projects, the agency's payment schedule is more consistent and less challenging than that of other public agencies. However, he went on to say that when he worked as a subcontractor on an Airport project his payment was much slower.

Interviewee #SD17, representing a white female-owned firm, reported that, in general, her firm has not experienced any problems receiving payment from the Airport: "We just email a PDF and usually get paid within 15 to 20 days from the Airport."

Interviewee #SD42, representing a white male-owned firm that worked on a contract related to the Quieter Home Program, said that the Airport paid his firm on a bi-weekly basis in a timely manner until the agency cancelled his contract for reasons unrelated to payment.

A few interviewees shared negative experiences with getting paid by the Airport. Interviewee #SD28, representing a white female-owned firm, reported that she has experienced only one payment issue with the Airport. A few years ago, the Airport bounced a check in trying to pay her firm, but she went on to say that the Airport took care of the situation immediately.

Interviewee #SD35, representing an Asian American male-owned firm, explained that the Airport's payment policy makes it difficult for small firms to remain competitive: "When working with the Airport, contractors are required to purchase materials up front without funds from the Authority. This is an issue because the wholesale suppliers want to be paid within 30 days, and if you aren't getting paid by your prime or the agency, it is difficult to have the capital to keep you afloat. As a small business you can't carry the overhead."

Interviewee #SD47, representing an African American female-owned firm, reported that in her experience, the Airport and other state agencies pay quite slowly: "We were going out of business because they didn't pay [quickly]." She continued, "We don't have lines [of credit] and loans where we can wait [for payment]."

Denial of payment based on race, ethnicity, or gender.

Two MBE/WBE interviewees reported that their minority or gender status played a role in experiencing payment delays. Interviewee #SD10, representing an African American male-owned firm, said that he has felt discriminated against when trying to be paid. He described a situation in which he was refused payment because of his minority status: "I had a guy from San Diego County call me because they were late for paying me for one of my accounts. He said the check was ready but insisted that I come to their offices to get it even after I asked multiple times for him to send it. The man at the County ... insisted that he would leave the check at the front desk for me." Interviewee #SD10 ultimately agreed to pick up the check, but once he arrived at the front desk they made him go to another office to pick it up. Once he arrived at the second office, a white male who was holding his check asked him, "How did you get this contract?" Interviewee #SD10 said of the situation, "It got to the point that I couldn't get paid. I had to go to the city council to help me get my money. Once he saw the color of my skin he asked how I got the contract. This was with the County of San Diego about five years ago. He wanted to know how a black man got this opportunity. This is the nature of the business."

Interviewee #SD2, representing a white female-owned firm, also reported that she has been discriminated against in certain payment situations, albeit several years ago. She provided an example from 20 years ago when she needed payment from a prime contractor to make payroll. She said that she visited the prime contractor about receiving payment, and he told her that he was not going to pay her. She subsequently sent her husband to talk to the prime contractor, and he wrote her a check immediately.

Recommendations related to payment.

A few interviewees recommended that public agencies be more proactive in ensuring that subcontractors get paid in a timely manner. Interviewee #SD20, representing an Asian American male-owned firm, stated that public agencies need to monitor how quickly prime contractors pay their subcontractors: “Make sure the prime pays the subs.”

Interviewee #SD2, representing a white female-owned firm, suggested that public agencies follow Caltrans’ example and list when they pay prime contractors on their websites. She indicated that access to payment information has made a substantial difference in terms of subcontractors being paid quickly.

Interviewee #SD35, representing an Asian American male-owned firm, suggested that public agencies (and the Airport in particular) play the role of watchdog to ensure that subcontractors get paid: “If a sub[contractor] is not getting paid by a government agency or their prime contractor, then the public agency, in this case the Airport, should become a watchdog for those small subcontractor businesses.” He continued, “Not getting paid on time can break a business. ...”

SDTA#5, representing a government advisory commission on minority issues, recommended that public agencies figure out a way to ensure that firms get paid quickly: “Cash flow is very important to small businesses with payroll, etc. [Public agencies] have to create ways for people to get paid quickly and on time. If [they] aren’t sensitive to those needs these businesses will go under.”

Consortium Anecdotes Regarding Experiences with Payment

The following anecdotes regarding payment were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Some interviewees reported positive experiences being paid by prime contractors on private sector projects. [Interviewees #CON: 8, 13, 18, 20, 22, 28, 29, 31, 37, 49, 51, 56, CONTA #2]. Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that payment by prime contractors in the private sector is “excellent.”

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has had a very good experience being paid by a prime contractor on private sector projects.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience being paid by prime contractors in the private sector, but stated that is due to the caliber of prime contractors that he does business with.

Interviewee #CON29, an African American male-owned electrical contractor, stated that he has had positive experiences being paid on private sector projects. He stated that he makes arrangements to have his money available at the end of the project or upfront as segments of the project are completed.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that in the private sector he typically has goals on his projects which dictate his pay schedule. He feels this makes it easier for him to get paid because the prime contractor can see the results.

Interviewee #CON37, an African American male owner of a SBA certified architecture firm, stated that he has had a positive experience being paid by prime contractors on private sector projects.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that payment by prime contractors in the private sector is fairly prompt; at the very least he has been paid in accordance with the agreed upon terms.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that payment by prime contractors on private sector projects has been good and prompt.

CONTA #2, the President of the Black Contractor's Association, stated that in the private sector, subcontractors receive timely payment according to their contracts with the prime contractor.

Some interviewees reported negative experiences being paid by prime contractors on private sector projects. [Interviewees #CON: 11, 12, 14, 15, 23, 30, 33, 36, 38, 39, 43, 45, 52, 57, PF #19]. Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she did have a problem at one point in time being paid by prime contractors on private sector projects; she identified a lack of funds as a the source of this problem.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated the payment in the private sector has been "terrible," so much so that they are no longer interested in pursuing work in the private sector. He stated that with new or questionable clients they request a 30 percent retainer.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that he has not always had good experiences being paid by prime contractors on private sector projects. He stated that they are currently working on a contract out-of-state and the prime contractor is two to three months behind on billing; this has caused the prime contractor to be three to four months behind on paying the subcontractors. He stated that when the prime contractor is "not sharp" the subcontractor will suffer.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported that payment by prime contractors on private sector projects is slow and often problematic. Many times, Interviewee #CON15 reports requirements of releases, signatures, etc. for vendors and payment — there is much more paperwork in the private sector.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, reported that payment from prime contractors in the private sector is usually late.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that his experience being paid by prime contractors in the private sector is about the same as on Consortium projects; he stated that sometimes it takes a lot to get his money.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that her experience being paid by prime contractors in the private sector has not been too good. She stated that “if the prime does not get paid, we do not get paid.” She stated that payment in the “old days” was better in that you could depend on getting paid within 60 to one hundred 100 days.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had difficult experiences getting paid by prime contractors on two private sector projects; they claimed they had to wait to get paid.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that payment in the private sector has been very slow in some instances, which is very difficult for a small firm to carry.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that payment by prime contractors in the private sector has also been slow.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that in his experience prime contractors on private sector projects have been slow to make payments, which is difficult for small businesses.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that payment by prime contractors on private sector projects is very slow.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, reported that they have experienced late payment by prime contractors in the private sector.

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, stated that payment by prime contractors in the private sector varies a great deal and is dependent upon the contractor; he stated that some firms are slow and others are just okay.

PF #19, an individual representing a minority-owned construction management small business firm provided oral testimony at a public forum held on October 20, 2009. He suggested that the payment process to small businesses be changed because, in his personal experience, he sometimes did not receive payments for up to five years. In these cases, his money was held as a retainer by the Prime contractor.

Other interviewees reported mixed experiences being paid by prime contractors on private sector projects. [Interviewees #CON: 1, 2, 4, 9, 27, CONTA #1]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that in the private sector, 90 percent of the prime contractors pay them on time; the other 10 percent drag out payment or state they will pay when paid. He stated that in the public sector, the prime contractors also agree to pay when paid.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that architects in general in the private sector often default on payment; developers and owners are very good in paying, and with the exception of the current economic crisis, generally pay on time. Interviewee #CON2 said that he has heard from other consultants that they are paid in a timely manner on public sector projects.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that the only difference in being paid by the prime contractors on private sector projects is that he dealt directly with the developer or owner or contractor so it is a direct one-on-one relationship whereas in the public sector there is another step involved. Interviewee #CON4 has to submit his invoice to the prime contractor and then the prime contractor incorporates it into their invoice and it goes to the client. As a result, Interviewee #CON4 stated that it takes longer to get paid in the public sector but on the other side, with the private sector, he explains that you always have the risk of the client you are working for going bankrupt or disappearing and never collecting your money whereas in the public sector you know you will get paid; it is just a slow process.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that payment is the same in the private sector as it is in the public sector. He stated that when a problem arises it is more difficult to remedy it. He stated payment was okay up until the beginning of this year; he stated that the economy has now affected payment.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that payment by prime contractors on private sector projects has been both positive and negative — you either are paid quickly or not at all.

CONTA #1, the President of the Latino Business Owners of America, stated that the trend in the private sector is that there is a much tighter relationship between the subcontractors, prime contractors, and owners; payment and timing of payment is negotiated so that these problems are not as prevalent in the private sector.

Some interviewees reported no experiences with being paid by prime contractors on private sector projects. [Interviewees #CON: 16, 40, 44, 47, 48, 50, 54].

Several subcontractor interviewees reported that timely payment by prime contractors is an issue “throughout the industry” and across the private and public sectors. [Interviewees #CON: 5, 7, 21, 22, 37, 52, CONTA #2]. Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that receiving payment is a problem throughout the industry. He stated that his company is currently having problems with prime contractors on city projects because the prime contractors want to pay the sub-consultants when the prime gets paid. Interviewee #CON5 stated that because his contract is with the prime contractor and not the prime contractor’s client, he feels that his company should be paid when the work is completed. Interviewee #CON5 stated that this is an industry-wide problem, but it has nothing to do with being a DBE or the Consortium; it is a sub-consulting issue.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that in general all subcontractors have a tough time obtaining payment from prime contractors on both private sector and public sector projects. He stated that many times owners do not pay on time and in most cases the prime contractor will not pay subcontractors until the prime contractor is paid.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that her experiences with receiving payment have varied; she stated that some experiences were awful and one incident almost put her out of business. She stated that “thankfully” the federal government now has a “prompt payment act” for small businesses where she is paid within 30 days. She stated that there is similar legislation under California law.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the barrier to receiving payment is late payment by a prime contractor.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that the lack of enforcement of the agreed payment schedule is a barrier to receiving payment. He stated that there is no one making sure that prime contractors pay their subcontractors within a certain time period.

CONTA #2, the President of the Black Contractor’s Association, stated that the experience of being paid by a prime contractor on public projects varies depending on the prime contractor and the relationship between the prime contractor and the subcontractor. He stated that some subcontractors may be timely paid (within the 30-day billing period or even sooner) if the subcontractor has a good relationship with the prime. He stated that it is a problem when prime contractors get paid and there is no way that subcontractors know. He stated that some agencies have tried to make prime contractors inform subcontractors when they are paid, but the practice of not informing the subcontractors is rampant. Generally, his members try to stimulate their own commerce among businesses in the private sector rather than to rely on public work.

Some interviewees identified paperwork and related issues as a barrier to receiving payment. [Interviewees #CON: 8, 9, 13, 14, 16, 17, 27, 30, 35, 37, CONTA #1]. Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that in the non-Consortium public sector, the notice of completion is not always known to the subcontractors or the project manager; this he says is a barrier to receiving payment.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, identified the rejection of invoices for “trivial reasons” like leaving off an expense as a barrier to receiving payment; he was not sure whether that had ever happened with one of the Consortium member agencies.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, identified agencies’ failure to timely review invoices as a barrier to receiving payment. Interviewee #CON13 stated that on one occasion L.A. County MTA was in the process of installing a new bidding system; payment was delayed for two months because the system did not work.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that the biggest barrier to receiving payment is that often they are working with a procurement agent dealing with an engineering contract that is not geared toward the type of billing that they use in the marketing area. He stated that billing for marketing often covers intangible items, but the procurement agent will request his company to adapt their billing to a more tangible format.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that sometimes paperwork issues preclude fast payment, and also stated that all paperwork must be filled out correctly to receive payment.

Interviewee #CON17 stated that payments are subject to a lot of scrutiny before they are made, and if there were any barriers to payment it would be a covert not an overt action.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that it takes forever to get contracts approved.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that sometimes the procedures and paperwork associated with payment can be quite tedious; if one item is missing it can push back his payment on projects and work being done.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, felt that a major barrier to receiving payment is the payee’s lack of payment technology.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, identified paperwork as one barrier to receiving payment.

CONTA #1, the President of the Latino Business Owners of America, stated that there are a number of barriers to receiving payment, including excessive paperwork, failing to complete paperwork on time, not meeting the expectation of the prime contractor, and the client not being satisfied.

Some interviewees identified the owner/client's failure to pay the prime contractor or failure to approve a project as a barrier to receiving payment. [Interviewees #CON: 12, 23, 33, 56].

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that a common barrier to receiving payment is when the ultimate client does not pay the prime contractor and then the prime contractor cannot pay the subcontractor. Interviewee #CON12 stated that another barrier is when the client does not approve the project. Interviewee #CON12 stated that he was recently a subcontractor to an architect who had two contracts with a school district; they were attracted to assist on this contract because the school district guarantees payment within 30 days. However, it turned out that that meant payment within 30 days of project approval which took over a year; he stated this was "gut-wrenching."

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that the impediment to receiving timely payment in the private sector is due to the fact that the prime contractor is usually waiting to be paid.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that the only barrier to payment is when the prime contractor does not get paid.

Interviewee #CON56, a white male owner of a small electrical contracting firm, noted that they have encountered issues being paid by the average customer although they have received payment in the end.

Some interviewees identified various other issues with respect to the prime contractor that act as a barrier to receiving payment. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that the prime contractor's lack of adequate financing is a barrier to receiving payment.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that delay on the part of the prime contractor is a barrier to receiving payment.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has read books and gone through classes on financing projects and he makes sure that his people get paid. He stated that he had an issue getting paid on a HUD project in which he blew the whistle on a crew that was doing his work after hours. This was an incident in which he was a subcontractor, but he told on the prime contractor who was taking away his work after hours and on weekends against the rules because he would have received time and a half on this work and they were likely getting much less.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that people are supposed to pay you for work delivered but that no one is watching the prime contractors to make sure that they pay their subcontractors. She stated that if she complains then she runs the risk of losing future contracts.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that the only barrier to receiving payment is unexplained late payment.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that prime contractors want to pay their subcontractors last; they do not follow the Prompt Pay Act set forth in the C.F.R.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the process to receive payment is slow and cumbersome. He stated that there should be some sort of checks and balances system in place that would allow subcontractors to receive payment directly from the project owner instead of having to rely on payment from the prime contractor

Most interviewees reported no barriers to receiving payment. [Interviewees #CON: 2, 3, 4, 6, 10, 11, 15, 18, 19, 20, 21, 24, 26, 28, 29, 34, 38, 40, 42, 43, 44, 47, 48, 49, 50, 53, 54, 55, 57, 58, CONTA #2]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, did not think that there are generally any barriers to receiving payment, but noted that one “methodology” for delaying a payment is to reject an invoice, whether because of the format or otherwise.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, did not identify any barriers to receiving payment and did not feel as though her race, ethnicity, or gender has ever affected her ability to receive payment.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she was aware of barriers to receiving payment, but she could not specify any time in which she experienced such a barrier.

CONTA #2, the President of the Black Contractor’s Association, stated that there are generally no barriers to receiving payment. He stated that if a contractor is qualified, he is usually paid unless there are issues of nonperformance or workmanship disputes.

The majority of interviewees reported that their race, ethnicity, or gender does not affect their ability to receive payment. [Interviewees #CON: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 35, 38, 39, 42, 43, 44, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, CONTA #1, 2]. Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he cannot specifically say that race, ethnicity, or gender has ever affected any business’s ability to receive payment, but thought that all minorities could say that it has at some point. He stated there would be no EEOC and agencies of that nature if there were no problems.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated he does not feel that the race, ethnicity, or gender of a business owner affects the business’s ability to receive payment. He stated that the quality of work is much more a factor than race, ethnicity, or gender.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she did not feel that race, ethnicity, or gender has affected her ability to receive payment. Sometimes it is late, but that is not a result of discrimination.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that the size of his firm affects his ability to receive payment more so than race or gender.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that his race, ethnicity, or gender may have affected his ability to receive work, but not to actually receive payment.

CONTA #1, the President of the Latino Business Owners of America, stated that he does not think that race, ethnicity, or gender affects his members' ability to receive payment. He stated that prime contractors "play games" no matter who the subcontractor is.

CONTA #2, the President of the Black Contractor's Association, stated that he does not feel that race, ethnicity, or gender has ever affected a business owners' ability to receive payment.

Some interviewees reported feeling that their race, ethnicity, or gender has affected their ability to receive payment. [Interviewees #CON: 25, 34, 36, 37, 40, 45, 50, 51]. Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, reported feeling instinctively that his race, ethnicity, or gender may have affected his ability to receive payment. He stated that he does not believe Caucasian-owned firms have the same problem being paid.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, does feel as though her gender has affected her ability to receive payment. She believes that some large firms may not have paid her due to her gender. She stated that she had no concrete evidence of this, but instinctively felt it to be the case. She believes that her gender has affected her business relationships generally and in addition to payment issues.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that indirectly she believes that her race or gender has affected her ability to receive payment, but it is nothing that she can prove.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he knows beyond the shadow of a doubt that race has affected his ability to receive payment.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported feeling as though his ethnicity may have affected the timeliness of his payment on one Consortium project. He stated that he turned in his billing in February, but was not paid until May while the other subcontractors were paid a month before that.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, felt that his race has affected his ability to receive payment, but could not identify any experience that has lead to this belief.

A couple of interviewees did not know whether their race, ethnicity, or gender has affected their ability to receive payment. [Interviewees #CON: 14, 46]. Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, did not know whether race, ethnicity, or gender has affected his ability to receive payment.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he would never know whether his race, ethnicity, or gender would affect his ability to receive payment because “you do not know what people say about you when the door closes.”

Caltrans Anecdotes Regarding Experiences with Payment

The following anecdotes regarding experiences with payment were obtained from interviews that the study team conducted in connection with BBC’s 2007 Caltrans study.

Payment by prime contractors.

Some interviewees reported that primes contractors frequently paid slowly. Interviewee #CT65, a white male-owned business, and Interviewee #CT66, a white male-owned business, stated that “it takes some time for the money to make its way to the subs” and that this creates problematic “situations” regarding accounts receivable. As a general observation, Interviewee #CT49, an African American male-owned business, stated slow payment is a barrier to pursuing work in the public sector.

Interviewee #CT7, a white female-owned business, explained that sometimes payment is held up because there is a problem with a prime contractor’s invoice, and that even though the problem or error may lie with only one subcontractors’ component of any given invoice, payment to the other subcontractors is held up because Caltrans will not pay the prime contractor, thus holding up everyone else’s money “until that one firm cleans up the invoice and resubmits it.”

Several interviewees believed that payment delays are attributable to the prime contractors and not Caltrans. [Interviewees #CT: 10, 40]. Interviewee #CT6, a white female-owned business, identified instances where prime contractors filed bankruptcy, changed their business name, and skipped out on payment obligations. Interviewee #CT16, a white male-owned business, noted that “being a subcontractor for a private contractor is probably the worst place to ever be in the business situation.”

Interviewee #CT51, a Hispanic male-owned business, noted “sometimes in a bureaucracy government gets so screwed up and so many people have to touch everything that it delays getting paid to primes, and the primes consequently do not pay you until they get paid because that is ... the law” Several contractors stated that prime contractors operate on a pay when paid system. Interviewee #CT33, a Hispanic female-owned business, stated, “Prime contractors usually don’t pay their contractors until Caltrans pays them. So, if Caltrans pays them slowly, guess where subcontractors are? They’re at the bottom of the line.” Interviewee #CT39, a Hispanic male-owned business, stated that prime contracts get paid well before subcontractors.

Interviewee #CT49, an African American male-owned business, formerly performed subcontracting work, but because there were so many problems getting paid by prime contractors, the company ceased working in that capacity. This problem was also identified by CATA #2, an African American

trade association, which indicated that a lot of subcontractors, including the association's members, who experienced problems getting paid by prime contractors, have to stop work because of these payment issues — it “hurts them” and “kills them.” CATA #2 stated further that he knew of firms that were forced out of business due to delays in payment and the resulting impact on their financials. CATA #11, a minority trade association, stated that payment in the private sector varies, and that some owners pay quickly, while others take their time. CATA #11 also affirmed that counties and cities are usually the slowest with payment, but that, unlike in the private sector, companies will eventually get paid. Interviewee #CT13, a Pakistani male-owned business, echoed that sentiment, and stated that he never has had any problems getting paid by other public agencies. He continued by stating that sometimes he had problems getting paid by prime contractors, but he attributed these problems to the nature of the industry, and that “[b]uilders like to hold on to money as long as they can.”

Interviewee #CT39, a Hispanic male-owned business, did note that every now and then, his company runs into problems getting paid by prime contractors. According to Interviewee #CT1, a Native American male-owned business, payment by prime contractors is a “mixed bag, sometimes it’s been very difficult.” Interviewee #CT51, a Hispanic male-owned business, indicated that the “critical issue” is the delay in payment by/from contractors that are the result of Caltrans’ and other public agencies’ practices.

CATA #7, a Filipino trade association, indicated that “he has heard complaints from his members that the primes will get paid and not pass the payment onto [the various subcontractors].” This complaint was echoed by Interviewee #CT69, white male-owned business, who indicated that “primes want to hold onto the money as long as they can, and that sometimes the primes themselves are waiting for dollars to be released.” CATA #2, an African American trade association, summarized the general theme of the interviewees statements – “you have to ‘stay on [prime contractors]’ and do your due diligence, and that ‘[i]f you stay on them, they’ll pay you.’”

CATA #10, an Asian American trade association, stated another issue being paid by prime contractors is that subcontractors do not have any leverage. The Interviewee stated that the issue has been presented at many meetings with Caltrans, and that it is even worse for a second or third tier subcontractor. CATA #10 identified that this impacts the performance of the subcontractors and the cash flow of the small firms, which makes it very difficult for them to operate and at some times it has impacted whether the firm can survive or not.

Several interviewees reported that gaining access to capital can be difficult. MBE/WBE and majority-owned firms alike indicated that financing issues are prevalent in the public sector. For example, a majority-owned firm stated that it takes a great deal of capital to be successful in the public sector: “Save your money. Have money and experience — it takes a lot of money [to work in the public sector]. Just be knowledgeable in [the area of financing] and have the capital to do your work.”

Some interviewees said that bonding can be a barrier in the public sector. Both MBE/WBE and majority-owned firms indicated that bonding requirements can be problematic when working in the public sector. For example, one MBE firm said that the difficulties associated with bonding deter his firm from bidding on public sector projects, “I would like it to be easier to acquire bonds. It is so hard, it discourages minority bidders like myself.”

A few interviewees indicated that insurance requirements can be a barrier in the public sector. Most respondents that identified insurance as a barrier were MBE/WBE firms. For example, an MBE firm remarked, “Be prepared for contract requirements as far as insurance is concerned — there are a lot of hurdles to do work with public agencies.”

Denial of payment based upon race.

Only one of the DBE or M/WBE businesses interviewed stated it feels its payment had been delayed or denied due to the company’s status as a disadvantaged-, minority-, or female-owned enterprises. [Interviewee #CT: 31]. Interviewee #CT48, an African American male-owned business, stated that he did not feel that any delays in payment were the result of racism or other discrimination. Interviewee #CT1, a Native American male-owned firm, echoed that statement, noting that “[h]e does not think his race or ethnicity or the size of his business has been a factor in payment.” CATA #1, an Asian American trade association, stated he did not know if race played a factor in slow payment situations.

CATA #3, a Hispanic trade association, stated that he knew of a Hispanic contractor that was forced to file for bankruptcy in the 1990s because he was not paid for work by prime contractors, as well as an [African American] owned firm that had problems getting paid by a prime contractor (on a non-Caltrans job) and had to fight the matter in court for some time. Interviewee #CT46, an Asian American male-owned business, stated he “did not feel that the slowness of contractors’ payment or [an] incident where the company did not get paid was attributable to the company’s being a DBE firm ... [i]t’s just the way the business is.”

CATA #10, an African American trade association, male-owned business, stated that he does not know whether race, ethnicity, or gender affect payment, although many times big firms will neglect the needs of smaller firms. The Interviewee stated that he does not know whether this is related to race, but most of the small firms do happen to be ethnic, small DBE firms.

Recommendations related to payment.

An African American DBE consulting firm suggested that Caltrans publish payment to the primes on the website. “It’s kind of an alert, oh, look, this guy got paid, he’s got ten days to go and give me my money.” (P.H. San Diego, 3/22/07).

An African American DBE trucking company who testified at a public hearing in San Diego suggests that Caltrans make it mandatory for primes to place a preliminary lien on a job to ensure prompt payment. He testified that “when we work for Caltrans or contractors ... we pretty much bankroll the trucking for the company, and it takes 60 to 90 days to get our money ... if we prelim [preliminary lien] it, I become blackballed, because contractors don’t like trucking company to prelim the job ... it’s a lot of extra paperwork, but it protects me in getting my money.” (P.H. San Diego, 3/22/07).

Telephone Interview Anecdotes Regarding Payment

The following anecdotes regarding payment were obtained from telephone interviews that the study team conducted in connection with BBC’s availability analysis of Southern California firms.

A few telephone interview respondents indicated that slow payment from prime contractors and public agencies is problematic. Both MBE/WBE and majority-owned firms indicated that receiving payment from prime contractors can be a time consuming process, particularly in the public sector. For example, one MBE firm indicated that payment is so slow in the public sector that the firm does not typically bid on public sector projects: “It takes a long time for government jobs to pay so we usually do not take them.”

I. Experiences with Financing, Bonding and Insurance

BGPAA Study Anecdotes Regarding Experiences with Financing, Bonding and Insurance

Some interviewees reported issues related to obtaining financing. [Interviewees #BGP: 1, 3, 4, 6, 8, 10, 11, 14, TA #1, TA #2]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, stated that they have not had to obtain financing to run a project, but he said that contractors may have difficulties obtaining financing because they have “20 people out there working and they have to make payroll.”

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that obtaining financing is difficult for most small businesses. He said, “The banks are really tough right now. I’ve been talking to my banker ... and he said most of the contractors he works with have lost their line of credit.” He stated that his firm has not experienced barriers related to obtaining financing.

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that obtaining financing was a potential barrier to pursuing business opportunities. He said, “Let’s say that I was to bid a job that started in September. I need to have all my supplies in by August, so my billing cycle is in August, but I won’t get paid by the contractor until 30 days from the September start date. Where does a new business find the money to finance this? If the Airport was proactive and got the subs paid on time, you can usually make it work without needing financing, but that’s not the reality.” He said, “Financing is a huge hurdle, and it’s hard to get.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that obtaining financing “the first one to three years was difficult, but once I had the firm’s financial history established, it wasn’t difficult.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that financing is a barrier. He said, “I think right now the barrier [associated with financing] is universal. In the current economy ... they’ve raised the bar on qualifications. It’s almost like you have to not have to have the money in order for them to approve you. It’s very difficult. ... We’ve actually not been able to get any funding in the last year. We’ve had to do our funding through credit cards.”

Interviewee #BGP10, a principal at an engineering firm, reported that obtaining financing was a barrier when the firm began when “no one wanted to loan [the firm] money,” and it is still difficult “now that money is a lot tighter.” He said that he does not think that the race or ethnicity of the firm contributed to this barrier.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that financing is “extremely hard to get,” and banks are “very, very slow to approve any kind of a financing arrangement.” He said that the individual owner of the company is the person requesting financing, and the rest of the company does not really participate. He stated that part of the reason the company has not gotten into the ground handling business is because of the expense involved.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that obtaining financing was a barrier during “the earlier days of the business” but not recently.

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that obtaining financing is “really a problem, but we don’t really address those issues. ... We’re not worried about the money; we want the contract.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that obtaining financing is difficult in this market and that the barrier is related to race and ethnicity.

Other interviewees reported no issues related to obtaining financing. [Interviewees #BGP: 2, 5, 9, 12, 13, 15, 16]. Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm indicated they did not have any problems obtaining financing. He said, “now is a great time to start a minority- or women- owned business, or any small business, because the economy is struggling, interest rates are low, and it’s the perfect time for any small business.”

Interviewee #BGP13, the owner of a non-certified construction firm, said that he has not experienced any specific barriers to obtaining financing, but he stated that opportunities to obtain financing, particularly credit lines, disappeared in 2008.

Some interviewees reported issues related to obtaining bonding. [Interviewees #BGP: 2, 4, 12, 13, TA #2]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that “our rating used to be really good, but then we [performed some work] for [a public agency], and they weren’t all great profits for us, so our rating went down a little bit. It’s been a little harder to bond higher expense contracts since [then].”

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that “Bonding is not an issue for most guys with good credit. If their business has suffered, then I could see bonding as a tough thing and a barrier.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated that the company “rarely” has bonding requirements. They said that when it is required, it creates “a little stress” for the company and “a little strain on the cash flow” because the company is “not used to having to buy a \$25,000 bond.”

Interviewee #BGP13, the owner of a non-certified construction firm, reported that obtaining bonding is a barrier to obtaining work, but he does not think that the Authority’s “bonding requirements are so out of line. It’s a typical bid bond and performance and payment bond, ... which is fine. It’s just that ... that market really tightened up, and if you have a lapse in your bonding, where we might be doing a lot of private work and not a lot of public work, ... it’s like starting all over again.” He said that he thinks “bonding is a good requirement, [and] ... paying one and one half or ... up to 3 percent of a project’s value to have that insurance ... is a good idea, but on the construction side, it’s become harder and harder to obtain those bonds.” He said that the company may have “shied away from some of the public work because of the bonding requirements,” but he said that the company has recently been able to and required to “acquire bonding for some private projects that weren’t necessarily required before.” He added, “I don’t see a lot of bid bonds in the

private sector, but we are [seeing requirements for] performance and payment bonds,” and although the public sector requires bonds for anything \$25,000 and above, the private sector usually only requires bonds for anything over \$100,000.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that “bonding is always an issue” but is related to “dollars” not race, ethnicity, or gender. He said that bonding presents a significant barrier to its members. He said, “We’re looking at jobs, like oh man but the bonding, we can’t bond it...we can do it but we just can’t bond it. [A firm can’t obtain bonding] unless you have adequate cash flow. The bonding companies want so much, in collateral, and they don’t want to touch you, right now we need to call somebody else, somebody more solvent.”

Other interviewees reported no issues related to obtaining bonding. [Interviewees #BGP: 1, 3, 5, 6, 9, 11, 12, 14, 15]. Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that the company has always been able to get around barriers to obtaining insurance because the company carries “an office policy.” They said that businesses sometimes want the company to add “them as an additional insured.” They said that the company is “not at that point yet because that’s like a ... \$25,000” a year policy, which is “a little out of reach” for their small business. Interviewee #12 said that “it takes some negotiating,” but the company has “been able to stay away from” the really “high aggregate policies” and has been able to work with contractors and subcontractors to make the deal work. The said that so far, the company has not “lost any contracts or sales because of it,” but the “time may come when [it] ... may have to modify that.”

Some interviewees reported issues related to obtaining insurance. [Interviewees #BGP: 2, 5, 8, 10]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, stated that he does not deal directly with insurance, but “from what I understand, it’s not easy for a small business to get insured.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that obtaining insurance may be a barrier. He said, “Larger clients frequently want us to have a level out of line for the type of services we’re performing, and in many cases, uninsurable.”

Interviewee #BGP10, a principal at an engineering firm, reported that obtaining insurance is “very expensive” and is a barrier for many firms, especially firms that work primarily in the private sector and smaller firms that are not insured. He said that most agencies “require professional errors and omissions insurance,” which costs “between 2 and 4 percent” of the firm’s gross fee. He said that that means that if the firm hires a second tier subcontractor and pays the subcontractor \$10,000, the firm must pay a \$400 insurance fee for that work. He reported that public agencies are tending to require firms to have higher insurance limits. He added that agencies previously required a \$1 million limit per claim or occurrence, and now, many agencies require a \$2 million limit, and some are requiring up to \$5 or \$10 million. He said that \$5 and \$10 million insurance limits are not available for a small business, so these requirements are effectively excluding small businesses. Interviewee #10 said that he does not recall whether the Authority requires these extreme insurance limits.

Other interviewees reported no issues related to obtaining insurance. [Interviewees #BGP: 1, 6, 9, 11, 13, 14, 15, 16, TA #2]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that the company has had no problem obtaining insurance and that the company has had a good relationship with those providing insurance products. He noted that “auto insurance at the airport is going way, way up, [and] the L.A. Airport is increasing [its] insurance from a total of \$5 million to \$10 million; they’re doubling it.” He said that these are expenses that companies have to absorb because “airlines ... will not accept [price] increases.”

Interviewee #BGP13, the owner of a non-certified construction firm, said that he has not experienced obtaining insurance to be a barrier. He said that he has not seen excessive insurance requirements, and his only vendor requiring substantial insurance is the Authority, which requires the company “to have a pretty high liability insurance for the airport because [the company does] work ... on the runways and stuff like that.” He said that because of the high cost of insurance, the company really has to “watch to make sure that the value of [its] work” with the Authority is sufficient to justify the cost of the insurance because the cost of the insurance “is based on [the company’s] gross sales,” not just its work with the Authority, “and if [the company is] only doing so much work over there but [is] paying for that policy,” it has to be sure that the income generated justifies the cost of insurance. He added that the company values its relationship with the Authority, though, and ties to do what it can to continue that relationship.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that obtaining insurance was not a barrier. She said that the insurance requirements have been appropriate “for the most part.” She said that some agencies, particularly “the ports and the airport authorities where they deal with an awful lot of trucks and that kind of stuff,” “have some bizarre requirements. The City of L.A. [requires] that you ... have a separate auto rider even though we’re never going to be driving our car on the tarmac.” She said that the company has “tried ... contesting some of these requirements, and then it gets kicked up to risk management, and it usually doesn’t do us any good, so we just carry the additional riders that we need.” She said that this causes a financial impact, but it is not a barrier to obtaining the business.

A couple of interviewees reported that race, ethnicity, or gender may affect a firm’s ability to obtain financing, bonding or insurance.[Interviewees #BGP: 4, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, stated that there is discrimination in obtaining financing, bonding, materials and supplies or other products or services. He said, “It’s all a perceived risk thing. They don’t really look at the business. They see MBE or WBE, and there’s some preconceived thing that they’re small and ineffective, that they’re only there to satisfy someone’s check box.”

Other interviewees reported that they did not feel as though race, ethnicity, or gender affected a businesses’ ability to obtain financing, bonding or insurance. [Interviewees #BGP: 2, 3, 6, 8, 9, 10, 11, 12, 13, 15].

A few interviewees made recommendations for improving access to financing, bonding and insurance. [Interviewees #BGP: 10, 13, TA #2]. Interviewee #BGP10, a principal at an engineering firm, recommended that agencies write contracts more fairly and pay specific “attention to ... California Civil Code [Section] 2782.8,” which he said prohibits a public agency from requiring a professional “to indemnify and defend that agency unless [it is] negligent.” He reported that “[m]any agencies will [include] an indemnification clause [in a contract] that completely ignores” this prohibition causing firms to put their firm at risk with each contract.

Interviewee #BGP13, the owner of a non-certified construction firm, said that “banks just need to open their doors a little bit more.” He stated that he previously used a credit line to assist with things such as payroll, and others use it to assist with capital financing and to assist when they are waiting for payment. He said that even companies with a good history are “feeling the pinch.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, suggested that there be bonding assistance offered to small businesses. He suggested that the bonding premium could be put into the contractor’s cost and that fee could be added to the bottom line but it wouldn’t come out of the contractor’s pocket up front

SDCRAA Anecdotes Regarding Experiences with Financing, Bonding and Insurance

The following anecdotes regarding experiences with financing, bonding, and insurance were obtained from interviews that the study team conducted in connection with the 2009 SDRCAA study.

Many interviewees reported that financing and bonding are barriers to success in the public and private sectors. Speaking generally about doing business in California, SDTA #3, representing a local chamber of commerce, indicated that obtaining financing is generally very difficult in San Diego, particularly in the current market. She also stated that operating expenses are very high in the state of California: “It’s expensive to do business in California. ...” She listed workman’s compensation, living costs, and utility costs as some of the reasons why operating expenses are so high.

Interviewee #SD16, representing an African American male-owned firm, described financing as “a large barrier.” He continued, “It takes operating and working capital to be competitive. The money allows you to be visible. ... If I had capital, I’d be better off.” Interviewees #SD 16 explained that he applied for a loan in the past but was denied.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, said that, unlike large, well-established firms, small firms do not have the financial clout to receive preferred rates on loans. She remarked that small firms have to take the loans that they can get and be grateful.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, reported that financing is a significant barrier to being successful. He explained that in his firm’s line of work, firms have to pay high operating expenses that the awarding agency reimburses at a later date. Thus, firms generally have to take out loans to cover those expenses.

Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, reported that obtaining a loan is very challenging for small firms and that the process is becoming stricter. She said that when her firm tried to get a loan they had to approach several different banks.

Interviewee #SD20, representing an Asian American male-owned firm, explained that credit is extremely tight in the current market and particularly so for small firms that are not well established. Regarding credit for smaller firms, he asked rhetorically, “If I am a bank, would I loan money to [someone] with no experience?” Interviewees #SD 20 went on to explain that the process of obtaining financing is also time consuming and requires a great deal of effort.

Interviewee #SD36, representing an African American male-owned firm, indicated that obtaining loans is difficult so he never attempted to do so: “I never went to the bank [for a loan]. I didn’t even try because I know how that works. It just doesn’t work for me, so I went ahead and [financed my business] myself.”

Similarly, Interviewees #SD32, representing an African American male-owned firm, reported that financing is a substantial barrier that firms face, particularly those firms that are just starting out. He said, “You’d have to have a lot of cash in order to be able to get working, because most of these [banks] aren’t giving credit lines unless you’ve really established yourself.”

Interviewee #SD22, representing a white male-owned firm, said that financing is a significant barrier to working in the public and private sectors, particularly because profit margins are quite small.

Interviewee #SD28, representing a white female-owned firm, explained that financing is particularly problematic in the current market, because banks are not loaning money. She said, “[Financing] was hard before. I would say it’s even harder — if not impossible — to get financing and financial help nowadays.” Regarding bonding, Interviewees #SD 28 reported that bonding can be a substantial barrier in her firm’s industry. She said that sometimes the bonding requirements actually exceed the value of a contract (e.g., a \$7,000 contract requiring an \$8,000 bond).

Interviewee #SD33, representing a Hispanic American male-owned firm, expressed concern about tight credit. He stated that it will be difficult for smaller companies to expand and purchase equipment, because lenders are making it more difficult to obtain loans.

SDTA #4, representing a local chamber of commerce, reported that access to capital is a significant barrier for small firms. She said that smaller firms tend to perceive the loan process as very difficult and that they are afraid to spend a great deal of time on it only to be rejected in the end.

Interviewee #SD5, representing an African American male-owned firm, stated that firms must have a good line of credit and a bond to be successful but that those things are difficult to obtain. With regard to bonding in particular, Interviewees #SD5 said, “Our bonding capacity is only half a million dollars. This doesn’t allow us to be very competitive.” He went on to explain that public agencies have large bonding requirements, which severely limit opportunities for smaller firms who do not have the bonding capacity to bid on that work.

Interviewee #SD21, representing a white male-owned firm, described the bonding process as “arduous.” He said that, in his experience, public agencies in California require contractors to bond the full value of projects and thus it can be quite expensive. Consistent with those comments,

Interviewees #SD14, representing a Hispanic American male-owned firm, indicated that bonding is a substantial barrier to success. He said that bonds are more difficult to get — but are also more important to have — in construction compared to other sectors. With regard to the importance of bonding, he said, “Without a bond, you’ll never grow.”

Interviewee #SD31, representing a white male-owned firm, said that financing is a “very big barrier” in the current market. He indicated that it is very difficult to obtain loans, because banks are not lending money to contractors in most industries, his firm’s industry being an exception: “If you’re not in a sexy industry ... don’t even bother walking in the door.” Interviewees #SD31 went on to say that bonding is “probably the biggest issue” facing firms in San Diego. He explained that his firm does not bond — typically, the firm teams up with a third party that will bond on its behalf. He said, “I don’t have \$20 million to put aside for surety to use against to give me a bond. I’ve had to turn down jobs because of bonding.”

Interviewee #SD42, representing a white male-owned firm, reported that financing is the biggest barrier that firms face in San Diego: “The biggest barrier is capital — having money to do what needs to be done to make money.” He went on to explain that his firm had to get creative with financing: “I come from the spectrum of starting with little capital and putting together an organization. I have learned to creatively finance my previous businesses and now have the confidence to continue that.”

SDTA #2, representing a Hispanic American trade organization, said “Working with the public agencies is all about bonding ability. If you don’t have any bonding capacity, you can’t do work.” He went on to explain that many minority and female-owned businesses simply do not have enough equity and assets to obtain bonds.

SDTA #7, representing a construction trade organization, indicated that most firms in the San Diego area are having trouble obtaining loans and bonds: “I would be surprised if [his organization’s members] aren’t having trouble with their bank, lines of credit, that sort of thing.” With regard to bonding specifically, SDTA #7 remarked, “Bonding has been tough for quite a while. It’s not let up. ... “Those that have [bonds] can’t increase them as easily. ... Getting a bond will be much tougher [with the recession].” However, SDTA #7 indicated that troubles with bonding are offset to some degree for smaller firms, because prime contractors “almost always” bond for their subcontractors, particularly in the current market.

SDTA #9, representing a public works trade organization, said that bonding serves as a large barrier to being successful in the public sector: “Public works requires three bonds: full performance bond, bid bond, and labor and materials bond, all of which tie back to ownership assets. If you are capable ... that is not enough to get a bond.” SDTA #9 said that he has not seen discrimination in bonding, only cases in which small firms do not have the assets to obtain bonding. He did say that the Airport is doing a good job in helping small firms with bonding.

SDTA #11, representing a veterans trade organization, indicated that, along with bonding, financing is the most substantial barrier facing small businesses in the San Diego area: “The biggest issues are financing and bonding.” He explained that financing problems stem from the fact that small businesses have less capital than larger, more established ones. SDTA #1, representing a local chamber of commerce, agreed that, compared to large firms, it is much more difficult for small firms in San Diego to obtain a bond and to raise capital for operation costs and equipment.

Interviewees #SD38, representing a Hispanic male-owned firm, said, “Our biggest obstacle that we have seen is the bonding ... it is really high. When you have jobs in the millions they want a certain percentage of bonding and that is money that is tough for us to put out.”

Interviewee #SD43, representing a Hispanic male-owned firm, stated that financing is difficult, particularly for small firms: “For a small company, if you don’t have the assets ... financing is difficult.” She went on to say that it is particularly difficult for minority-owned firms to obtain financing. When asked why she thought that was the case, Interviewee #SD43 responded, “I don’t know ... I don’t if they’re afraid that the people that [Hispanic-owned firms] hire aren’t legal. I think that can have something to do with it.” She explained that as a result of the difficulties associated with financing her firm only takes on jobs that they can afford to do with the capital that it has on hand.

Interviewee #SD44, representing a Hispanic male-owned firm, remarked that small firms (including MBE/WBE firms) have trouble competing with large firms because of capital restrictions: “[Minority- or woman-owned firms] aren’t going to have the buying power of the big boys”

Interviewee #SD45, representing a white male-owned firm, described bonding as a “big issue.” He stated, “[Sureties are] only matching you dollar for dollar. You have to hock anything you have [to obtain a bond]. For subcontractors, it’s probably impossible [to obtain a bond].”

Interviewee #SD47, representing an African American female-owned firm, said that her firm’s bonding capacity limits growth and success. She indicated that currently, her firm’s gross revenue substantially exceeds her firm’s bonding capacity.

Several interviewees indicated that it is crucial to develop relationships with bankers in order to be successful. Interviewee #SD3, representing a white male-owned firm, said that financing and bonding are two of the most critical elements of a firm’s success. He indicated that a number of MBE and WBE firms fail because they do not develop financing and bonding relationships. Interviewees #SD3 went on to report that the bonding process is much more difficult in the current market than it was in the past.

Consistent with those comments, Interviewees #SD2, representing a white female-owned firm, reported that it is important for firms to have a relationship with a bonding company: “You have to have a relationship with the bonding company ... they have to know your philosophy in life.”

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, said that although he has not had trouble obtaining loans and bonds himself, most other minority- and female-owned firms do not have the banking relationships that he developed in his previous career and thus likely find financing and bonding to be more difficult than his firm does.

Interviewee #SD43, representing a Hispanic male-owned firm, reported that bonding companies like to see that firms have experience working in the public sector before awarding them bonds, which makes bonding especially difficult for new firms. Interviewee #SD43 indicated that it is important to build and maintain relationships with bonding companies to ensure that the process goes smoothly on future projects.

Several interviewees indicated that insurance is more expensive in particular industries or in California. Interviewee #SD14, representing a Hispanic American male-owned firm, reported that construction companies are required to hold more insurance compared to other sectors. Similarly, Interviewees #SD15, representing a white male-owned firm that is a concessionaire at the Airport, said that companies in his firm's industry have to carry two types of liability insurance.

Consistent with those comments, SDTA #11, representing a veterans trade organization, explained that the City of San Diego requires contractors to hold separate insurance policies for residential and commercial construction. He argued that those requirements make it difficult for small firms to compete with large firms that can afford those insurance policies more easily.

Interviewee #SD3, representing a white male-owned firm, indicated that insurance is quite expensive in construction. He reported that his firm pays approximately \$40,000 per year in insurance premiums. Similarly, Interviewees #SD5, representing an African American male-owned firm, indicated that his firm's insurance premiums are also very expensive (approximately \$17,000 per year).

Interviewee #SD28, representing a white female-owned firm, said, "Insurance costs are extremely high. We shop them every six months. ..." She went on to say that a number of insurance companies will not insure firms that work in her firm's industry because it is so dangerous.

Interviewee #SD36, representing an African American male-owned firm, reported that his firm holds both liability and workmen's compensation policies and that both are quite expensive: "Workmen's comp and liability — they cost a lot of money. The higher your payroll, the higher the workmen's comp."

Interviewee #SD43, representing a Hispanic male-owned firm, explained that insurance costs are very high and insurance requirements are very stringent in the construction industry: "Right now we have general liability, we have workman's comp. But then comes a case where you need a certain other [type of] insurance, and just the insurance is \$500 extra for just that one job."

SDTA #3, representing a local chamber of commerce, explained that insurance is expensive in California compared to other states and is thus a barrier for all local firms.

SDTA #9, representing a public works trade organization, said that many of his organization's clients have stopped bidding on work with public agencies due to the insurance requirements: "Some of our clients have not bid [on contracts] because of increased level of insurance requirements on public contracts."

Many interviewees reported that bonding, financing, or insurance are not barriers to pursuing work in the public and private sectors. Interviewee #SD11, representing a white male-owned firm, indicated that obtaining a loan is relatively easy, regardless of race, ethnicity, or gender. He described his own experience in obtaining a loan: “I just went to [a national bank chain]. They asked if I had a house, I said ‘Yes’ and they said ‘OK.’ They gave me the line of credit right then.” He continued, “Race and gender is not an issue in banking and bonding ... [banks] are in business trying to get money, not turn you away because of what you look like.” However, Interviewees #SD 11 acknowledged that there are likely a few lenders that are less willing to give loans to minority- and female-owned firms but that ultimately those lenders still approve the loans: “There are probably a few stubborn [lenders] out there, but why would [they] give up money because of the way someone looks?”

Interviewee #SD21, representing a white male-owned firm, reported that he is not aware of any barriers related to financing but that procuring equipment can be quite expensive in the construction industry. Similarly, Interviewees #SD24, representing a white male-owned firm, said that there are no barriers in construction associated with financing, bonding, or insurance.

Interviewee #SD5, representing an African American male-owned firm, indicated that obtaining a loan was relatively easy for his firm.

Interviewee #SD17, representing a white female-owned firm, reported that bonding is not a barrier to her firm’s success: “We are not bonded, although some jobs have asked that we are. We would consider getting bonded if it was necessary and made a difference in getting a job, but so far it hasn’t mattered.”

Interviewee #SD10, representing an African American male-owned firm, reported that financing is not necessary to be successful in his line of work: “If your house is in order you should be ok [without loans].” He indicated that he has maintained his operating expenses by relying on his personal savings. Similarly, Interviewees #SD18, representing a white female-owned firm, said that the firm has never experienced any substantial financing issues, because they rely on their long-standing business revenues rather than on loans.

Interviewee #SD41, representing a white male-owned firm, indicated that if a firm has good credit, obtaining financing is relatively easy: “If you have a good credit history and a good banking relationship I don’t think financing is too bad. Right now it is tough. Fortunately, we haven’t had an issue, even with the current economic conditions.”

Interviewee #SD46, representing an African American male-owned firm, said that insurance is not a barrier in his firm’s industry: “Insurance has not been a problem. We have to shop it on a yearly basis to try to look for the best price.”

Recommendations related to bonding and financing.

Some interviewees suggested that public agencies should provide finance and bonding assistance for minority- and female-owned firms. Interviewee #SD3, representing a white male-owned firm, said that public agencies should relax bonding requirements for MBE and WBE firms, because, along with insurance, bonding is a substantial barrier to entry into the construction industry. Interviewees #SD3 also suggested that public agencies (and prime contractors) should grant a 5 percent price preference to MBE and WBE firms for contracts worth up to \$100,000.

Interviewee #SD4, representing a white male-owned firm, recommended that public agencies should relax insurance requirements for subcontractors proportional to the size of their firm.

Interviewee #SD5, representing an African American male-owned firm, recommended that public agencies help MBE/WBE firms secure lines of credit from banks, obtain liability insurance at lower rates, and pay initial material costs. Regarding the latter point, he said: “Agencies should pay for materials and have them delivered to the job site. They should be supporting the general contractor in upfront costs of the job.”

Consortium Anecdotes Regarding Experiences with Financing, Bonding and Insurance

The following anecdotes regarding experiences with financing and bonding were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Some interviewees reported issues related to obtaining financing and bonding. [Interviewees #CON: 2, 7, 8, 15, 16, 18, 20, 21, 23, 30, 31, 34, 35, 37, 40, 43, 46, 48, 51, 52, 53, CONTA #1, 2, PF #19]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has had a bad experience attempting to obtain financing. He stated that he could not obtain approval for a \$100,000-\$200,000 loan though his credit score is excellent. He stated that the firm had no credit score. He was only able to obtain a \$15,000 line of credit. Interviewee #CON2 stated he does not know why his business is unable to obtain financing other than that the business is new.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that money is an issue in terms of a DBE’s ability to obtain financing. He stated that financing issues affect more DBEs because you have to have assets available to obtain a loan. Interviewee #CON7 stated, however, that bonding is an even bigger issue for DBEs. He stated that all public jobs require bonds. Contractors cannot work on Consortium projects without obtaining a significant bond. He stated if general contractors do not carry DBEs under their bond, it becomes a major issue for DBEs.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that the excessiveness of insurance requirements has discouraged him from trying to work with SANDAG. Interviewee #CON8 stated that other public sector agencies are bureaucratic and you need to understand that when working with them.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported difficulties obtaining financing in the early years because he had no credit history, but now that he’s established, there are no problems to report. Interviewee #CON15,

also noted problems with bonding that result from constant changes in job specifications with regard to bonding amounts required for various projects. Interviewee #CON15 does not understand how projects can be with the same agency, in the same area, with different bonding requirements; this did not make sense to Interviewee #CON15.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that obtaining financing has been very difficult. Interviewee #CON16 received a couple of loans from the SBA, and that has been positive. In the private sector, Interviewee #CON16 noted that financing is difficult because the banks want private guarantees for loans, especially for anything about a hundred thousand dollars. Interviewee #CON16 has not had any bonding experience.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, noted difficulty obtaining bonding, but stated that the problem was related to her company's size and not due to race, ethnicity, or gender.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that financing is hard as a small business owner — she stated that when the business is waiting for payment and has to carry the bills her FICA score will “take a hit” and then financing becomes even more difficult. She stated that unless a business has family money, there are no alternatives available to fill in cash flow; that is the reality of the marketplace. Interviewee #CON20 also indicated that the Consortium has recently required E&O Insurance which is very expensive (\$7,000 per annum) and a waste.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that financing was very hard to obtain but did not provide further detail.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that there are barriers to obtaining bonding (but not financing). He stated that insurers will not bond a company unless they know them.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that sometimes there are barriers in obtaining financing such as receiving a line of credit. He stated that sometimes these are barriers that would keep him off of a project or keep him from getting awarded a project.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has had difficulties obtaining financing. This is a part of the reason why he is a disadvantaged business. He has had personal issues in the past that has affected his ability to receive financing on projects. It does not make sense to him when he is trying to make payroll and payments to rent equipment and has an outstanding history of making those payments as it relates to his business, but when it comes to obtaining financing for his work related projects, he has difficulty obtaining financing because of issues in his personal life. He stated that with respect to obtaining bonding, on a \$1 million bond, 2.5 percent is required. He said that if he had that kind of cash available, he would not qualify for disadvantaged status. He feels that this is another way that small businesses are disqualified for projects.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that initially it was difficult for her to obtain financing because she had no credit history. She stated that it has become easier over time.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that start-up financing was difficult, and it was the biggest difficulty as related to financing.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that it is difficult to obtain bonding. He stated that bonds are larger than your financials will allow.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that it has been very difficult for him to receive bonding because of all of the applications and the “enormous” assets required. He stated that it worked out for him in the end, but that the asset requirement was well beyond what it would have cost him to do the job, which he believed does not make sense and is unreasonable.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, had not experienced any barriers with respect to obtaining financing. He stated that he had to obtain a bond once for a small amount and that was difficult because of the liquid assets that it required.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that obtaining financing is always difficult and a challenge. He stated jobs tend to be undercapitalized and more capital is needed than the job is typically worth.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he had not encountered any issue obtaining bonding until recently. He stated that he was unsure whether it was economy or some other factor that has caused him some difficulties recently in this area. He stated that he has had an “okay” experience obtaining financing.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has experienced barriers in trying to obtain financing and noted that the qualifications are hard to meet and get approved. He stated that the requirements for bonding are even more outrageous than the ones for financing.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that the financial institutions and markets are in ruins now so it is very hard to obtaining financing and there are a lot of requirements. He stated that bonding is another problem and has been a nightmare. He stated that the requirement of up-front assets is an issue with obtaining bonding.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, reported that his firm maintains a line of credit and has for many years. He stated that once they got over the initial paperwork everything was fine.

CONTA #1, the President of the Latino Business Owners of America, stated that his members’ ability to obtain financing is a directly related to their ability to collateralize. If members do not have assets to collateralize it becomes a problem for their business. Sometimes members get a bid which takes them out of their economic zone. Members have to have cash on hand to sustain the project

and if they cannot obtain money they cannot bid on a project. Interviewee CONTA #1 stated that “funding is crucial.” Most members as a whole have been successful obtaining loans from banks, however, it depends on how well they manage their business credit and relationship with the banking institution.

CONTA #2, the President of the Black Contractor’s Association, stated that most members have a hard time obtaining financing because most are undercapitalized and have limited resources. He stated that credit, lack of assets, lack of a steady flow of profitable jobs, and lack of an asset base to collateralize all affect a business owner’s ability to obtain financing. CONTA #2 stated that members try to obtain bonding but many do not qualify for bonding because of lack of cash flow, lines of credit and no asset base.

PF #19, an individual representing a minority-owned construction management small business firm provided oral testimony at a public forum held on October 20, 2009. He suggested the need for changes in the procurement process for insurance and bonding requirements. He said, “It is practically impossible for minority and small businesses to compete effectively when there are insurance and bonding issues that would really be extreme impediments...” He believes LACMTA and other public agencies should revitalize their education and assistance to small businesses regarding paperwork and document preparation for minority contractors. He stated, “It seems to be getting tougher, tougher, and tougher as it gets more competitive out there.” (Public Forum Los Angeles held on October 20, 2009)

Some interviewees reported they felt as though race, ethnicity, or gender affected a businesses’ ability to obtain financing or bonding. [Interviewees #CON: 7, 22, 23, 31, 37, 40, 46, 51, CONTA #1, 2]. Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he feels that race, ethnicity, or gender can affect a business owner’s ability to obtain financing or bonding because of the potential lack of collateral.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that race, ethnicity, and gender have affected her ability to obtain financing or bonding and it is much harder for minorities to obtain financing than it is for Caucasian business owners. She stated that she has had a good experience obtaining financing and bonding, especially now, since she has been in the business for a long time and knows many of the players. She stated that for start-up companies there are barriers.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that his race is a big part of having been denied bonding.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he cannot put his finger on it, but believed that race or ethnicity affects his ability to receive financing or bonding.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, did believe that one or more of those factors did affect his ability to obtain bonding but he does not know how to prove it.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he felt that his race absolutely affected his ability to obtain financing. He feels as though his financials and credit are more closely scrutinized than a white-owned firm seeking credit.

CONTA #1, the President of the Latino Business Owners of America, stated that he believes race, ethnicity, or gender is a factor in a business owners' ability to receive financing or bonding, but cannot unequivocally state. He thinks that it goes back to the asset base.

CONTA #2, the President of the Black Contractor's Association, stated that race, ethnicity, and gender affects a business owner's ability to receive financing or bonding because demographically people are discriminated against because of a lack of capital.

Two interviewees stated that they were not sure whether race, ethnicity, or gender affected a businesses' ability to obtain financing or bonding. [Interviewees #CON: 2, 35]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know whether his race or ethnicity has affected the business's ability to obtain financing. He said it could be the case or might not be.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she did not know whether her race or gender has affected her ability to obtain financing because that has never been overtly obvious.

Most interviewees reported that they did not feel as though race, ethnicity, or gender affected a businesses' ability to obtain financing or bonding. [Interviewees #CON: 1, 3, 5, 16, 20, 21, 24, 25, 26, 28, 29, 30, 33, 34, 38, 39, 41, 43, 44, 45, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58].

Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he is not aware of his race, ethnicity, or gender having affected his ability to obtain financing or bonding. He stated that he understands that some people are "set in their ways."

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, was not aware of any circumstances in which race, ethnicity, or gender has ever affected a DBE's ability to receive financing or bonding.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, did not feel that his race, ethnicity, or gender has affected his ability to obtain financing but he wasn't sure. He felt that the economy affected his ability to obtain financing more so than race.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that her experience obtaining financing was okay and she did not believe that it was affected by her gender. She stated that generally if you have been in business for a long time and are in good standing it is easy to get financing.

Other interviewees reported no issues related to bonding or financing. [Interviewees #CON: 1, 3, 4, 9, 26, 28, 29, 37, 38, 41, 45, 49, 54, 55, 56, 57, CONTA #1]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that obtaining bonding was not too difficult. Interviewee #CON1 did not identify any barriers to obtaining bonding. Interviewee #CON1 is currently looking into obtaining financing.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, was not aware of any specific barriers to DBEs obtaining financing or bonding.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that once a company has been in business a few years and has a relationship with financial institutions and “they know you” there are no problems obtaining financing. Interviewee #CON4 stated, however, if you are new to the business it would be more difficult to obtain financing. Interviewee #CON4 stated that he has not had any problems in terms of obtaining loans from a bank. Interviewee #CON4 does not have to obtain bonding for his work.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that 10 years ago it was difficult to obtain financing but now it has gotten easier. She has not had any issues obtaining bonding or insurance.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience trying to obtain financing. His company has rarely needed bonding.

Interviewee #CON29, an African American male-owned electrical contractor, reported no issues related to financing or bonding. He has used only the standard bonding of \$12,500 that is required as insurance under the law.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he has not experienced any barriers while trying to obtain financing.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has had an overall good experience obtaining financing and bonding with no problems to report.

Interviewee #CON41, an Asian American male owner of a DBE/MBE-certified general contracting firm, stated that he felt the process to obtain bonding went smoothly.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he had an okay experience obtaining financing. He stated that he was asked to supply a business plan and collateral in order to secure the financing he needed.

Interviewee #CON54, a white male owner of a general contracting firm, reported that they have not experienced any barriers in connection with obtaining bonding or financing, and noted that his firm will often team up with developers allowing them easier access to financing.

Interviewee #CON55, a white male owner of a construction services and program management firm, stated that because they are a large firm they have not had difficulty securing a line of credit.

Interviewee #CON56, a white male owner of a small electrical contracting firm, stated that obtaining bonding was relatively simple. He stated that “without any black marks on your record, you should not have any problems with obtaining bonding.”

Interviewee #CON57, a white male owner of a construction and landscape architecture firm, reported having an overall good experience obtaining financing.

CONTA #1, the President of the Latino Business Owners of America, stated that obtaining bonding is not as much of an issue as financing because in the last couple of years prime contractors are helping with bonding as a result of the problems that subcontractors faced due to the high costs of obtaining bonding.

Several interviewees had no experience with bonding or financing. [Interviewees #CON: 2, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 24, 27, 36, 39, 42, 44, 47, 50]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not have to obtain bonding in his line of work. He stated that he does have to obtain insurance but insurance has not been a problem.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, does not have experience with financing or bonding.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has not had much of a need to obtain financing. Interviewee #CON17 stated she’s not a risk taker when it comes to money, just lots of risks otherwise. There was an issue when she first started the company, Interviewee #CON17 reported that it was difficult to get even a credit card in her name, but that was many, many years ago.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, has never had to obtain financing because all of her costs are labor costs, so she’s able to keep her overhead experience low.

Recommendations related to bonding and financing.

One interviewee requested the implementation of training programs to assist with bonding and financing. Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that he would like to see training and assistance in receiving bonding. He stated that he has been unable to receive bonding even with using his property as collateral. He stated that the bonding process needs improvement from city to state.

Caltrans Anecdotes Regarding Experiences with Financing, Bonding and Insurance

The following anecdotes regarding experiences with financing, bonding, and insurance were obtained from interviews that the study team conducted in connection with the 2007 Caltrans study.

Many DBEs reported that bonding, financing and insurance is a barrier to pursuing work in the public and private sectors. CATA #1, an Asian American trade association, said that many of the association's members do not get involved with public sector work because the bonding requirements are too high and unaffordable. This issue is something that CATA #1 said that the Association had raised with Caltrans "for years" but that Caltrans has not been able to address satisfactorily. CATA #1 said bonding puts restrictions on the amount of work a contractor can receive. If you are a small company and you do not have any property, you might only get a bond for \$50,000 so this is the largest project you can receive. Even if you get a job, then you cannot bid any more jobs until you finish that job. Caltrans might have a \$25 million ramp. If you cannot get a bond for that amount, then you have to bid as a subcontractor. Usually the primes won't require the subs to have a bond for work under \$50,000 to \$100,000, but if it is over this then the subs usually have to provide bonding. He feels that his members' ethnicity affects their ability to get bonding because as minorities they don't own a lot of assets and other property. Personal wealth is taken into consideration in getting a bond.

Interviewee #CT51, a Hispanic male-owned firm, stated that the majority of prime contractors require bonding from subcontractors, especially if the subcontractor is a major subcontractor, but that some prime contractors know subcontractors from their reputations do not require bonding. He said that bonding was a "real problem" and a "very difficult problem" for DBEs. For his business, bonding had not been a problem up until the last few years, when it became an issue because the company "had a couple of jobs that went south" and over which it is litigating right now.

Interviewee #CT7, a white female-owned firm, stated that the company had a "good relationship" with their bank. However, she did relay an experience where a loan officer was telling her that the bank would not refinance a relatively small loan because their books showed little year-end income, even though the company ran \$500,000 in payroll through the bank each year. She was able to get the loan by going to someone higher up in the bank. She also stated that it is difficult for small companies to buy health insurance and noted that the per-employee price they pay for health coverage is higher than that paid by larger firms.

A DBE commercial roofing contractor, submitting written testimony in connection with the public hearings, stated: "We do have difficulty obtaining bonding for public works jobs due to our limited resources." (Written testimony submitted 3/27/07).

A DBE and 8A company, submitting written testimony, stated most DBEs are excluded from multi-million dollar contracts (speaking specifically with respect to water authorities) because of lack of capital and bonding. (Written testimony submitted 3/26/07). A certified female DBE firm, submitting written testimony, stated she has had no problem trying to obtain insurance although she has never worked on a project requiring bonding which "might tell you how far excluded I am from being able to gain entry into some transportation projects." (Written testimony submitted 3/8/07).

A few interviewees reported that their race, ethnicity or gender had affected their ability to obtain financing or bonding. Interviewee #CT33, a Hispanic female-owned firm, said that she had not thought about her gender affecting her ability to obtain financing or bonding, but that she would say yes. She continued, “I’d have to have some sort of proof and I don’t. I don’t have any idea. You sense it sometimes, but I have no proof of that. Hopefully, I’m wrong.”

Interviewee #CT10, an African American male-owned firm, stated that his race affected his ability to get financing and bonding “a long time ago,” but that now it has “opened up” so that he does not have any problems. He feels that this was a change that occurred gradually over time.

CATA #1, an Asian American trade association, did not think that there are racial barriers to obtaining bonding or insurance, but said that the association’s members have problems with obtaining financing because financial institutions “look at DBE firms more closely for some reason ...” CATA #11, a minority trade association, has a member that owns a credit union and he facilitates most of the financing for the other members. Ability to get financing depends on your credit. He said that if you’ve been in business for a while, your credit is probably fine. Most young businesses, he stated, have bad credit. He believes race affects his members ability to get financing, especially if their credit is not good.

An white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified at a public hearing in San Diego: “I think minorities and women have a much harder time getting capital, getting bonding and getting insurance ... in bonding ... women are still asked to have their husbands sign at the bank, which floors me after 33 years” in business. (P.H. San Diego, 3/22/07).

Some interviewees feel their status as a DBE helped them in these areas. Interviewee #CT75, a white male-owned firm, simply cannot afford to bond his work. He feels DBEs are less affected by bonding issues because bond companies have DBE-type goals just like Caltrans. Interviewee #CT40, a white male-owned firm, knows that DBEs receive special rates on financing and bonding, but she does not have a lot of experience in the area. Interviewee #CON39, a Hispanic male-owned firm, also indicated that the company’s ability to get financing was related to its ability to get steel at competitive prices and stated that the company “wouldn’t have been able to get credit at all without the DBE program.”

A small DBE information technology consulting firm who testified at the Los Angeles public hearing stated “There are so many good bonding programs out there, but you have to establish a track record ... And I don’t see that as an issue. I see it as building the business and getting all the right controls and accounting procedures and all those things in place first; that the actual access to money is maybe not the issue.” (P.H. Los Angeles, 3/29/07).

Interviewee #CT39 stated that, with respect to financing, the company “do[es] pretty well by the bank.” He said that bonding is “sometimes” a problem because of the company’s small size. Interviewee #CT39 noted that sometimes a prime contractor will waive a bonding requirement for them because they are a small company and a DBE firm. Interviewee #CT39 said that he could not answer the question of whether the company’s being a DBE firm had affected its ability to get bonding and/or financing, as he had been at the company for only two years.

A few interviewees were not sure whether their race affected their ability to obtain bonding, but suspected it might. Interviewee #CT49, an African American male-owned firm, stated that he did not know whether his race or gender ever affected his ability to get bonding or financing, but that it was something that possibly happened. He said it would be subtle if at all since no one ever said outright that his ability to get bonding or financing was impacted by his being African American.

Interviewee #CT51, a Hispanic male-owned firm, said that financing is a “tremendous” problem for DBEs, and one that is exacerbated by slowness in payment from government bureaucracies and/or prime contractors. He stated that he could not answer whether his race had ever affected his ability to get bonding or financing, since the person or entity denying a bond is “not going to tell you, ‘We are not bonding you because you are of a certain ethnicity or race or color or whatever []’” but instead will “give a hundred other reasons why they do not give you the bond.”

Many DBEs did not feel that their race affected financing. Interviewee #CT46, an Asian American male-owned firm, stated that financing and bonding were issues that the company has to deal with, but he did not feel that the company had experienced any race-related or race-based barriers to its obtaining financing or bonding. Instead, he said whether a company can get bonding or financing is determined by its financial stability, and just “like everything else, your buying capacity ... is directly proportional to ... your financials, and you’ve got to work your way up...”

Interviewee #CT48, an Asian American male-owned firm, stated that there were no problems, barriers, or obstacles — based on gender, race, or other considerations — with obtaining financing.

Interviewee #CT7, a white female-owned firm, feels her gender has never affected her ability to obtain financing or bonding. She relayed only one experience where the company had to obtain bonding — a design and build job for the Army Corps of Engineers where the company hired and supervised construction contractors. It had to provide a personal guarantee for this bonding, however, a newer, smaller company (as opposed to someone like them who had been in business for two decades) would “have a hardship in [getting] bonding” and that “for a small company it would be almost impossible unless they do a personal guarantee for the bonding.”

Some DBE interviewees reported no trouble with bonding or financing. Interviewee #CT31, an African American female-owned firm, indicated that the company does not have problems obtaining this insurance or financing generally because it has a solid track record that it has established over the past three decades. Interviewee #CT79, an African American male-owned firm, has not had any issues with financing or bonding. Interviewee #CT79 has not had any issues with financing or bonding. Interviewee #CT11, a Native American male-owned firm has not had any problems obtaining financing.

Many interviewees stated that financing was difficult for smaller companies with less assets and new companies with less history, and not due to race. Interviewee #CT49, an African American male-owned said that the company has to get bonding for its jobs and that, though bonding was an obstacle at the beginning when the company did not have a track record, it is not a problem now that the company is well established. He said that the same was true with respect to his company obtaining financing.

CATA #2, an African American business trade association, indicated that obtaining financing was not as big an issue for the association’s members as is obtaining bonding. He said that if a company has

been in business, it generally has a line of credit, but that the difficulty is getting the business experience in the first place and building one's business to the point where (s)he can put up its or other assets to secure financing.

Interviewee #CT81, a Hispanic male-owned firm, has had issues obtaining financing, but these problems have been those characteristic to small businesses in general and had nothing to do with his race. Interviewee #CT29, a Hispanic male-owned firm, believes a company needs to have been in business for three (3) years or more in order to satisfy the risk tolerance for banks. He cashed out his 401k in order to finance his business.

CATA #3, a Hispanic trade association, stated that he had had problems obtaining financing in the past and that now that he has sufficient financial resources to obtain loans, he does not have the work opportunities to make taking out these loans worthwhile. CATA #3 said that many young and/or fledgling companies have trouble with financing, and that the federal Department of Transportation's program to guarantee loans through banks was a good program but that it had been "cut back considerably." He also said that banks do not like (to make loans to) businesses with no track record and/or financial history, but that, even though banks are less likely to take risks with people of color, if one has money (s)he can borrow money. Asked if his ability to get financing had been affected by his race, CATA #3 replied that he did not know and that he did not think so, but that perhaps it did in the past.

Interviewee #CT8, a Hispanic male-owned firm, stated that "[b]onding is always an issue" and that it is "99 percent harder on any small business ... than it would be on a large business." He did not think that any barriers to obtaining bonding or financing were attributable to his firm being a DBE, but instead to the size of his company and having trouble finding someone to put up the money for a bond.

Interviewee #CT46, an Asian American male-owned firm, stated that financing and bonding were issues that the company has to deal with, but he did not feel that the company had experienced any race-related or race-based barriers to its obtaining financing (which, according to Interviewee #CT46, the company really does not do) or bonding. Instead, said Interviewee #CT46, whether a company can get bonding or financing is determined by its financial stability, and just "like everything else, your buying capacity ... is directly proportional to ... your financials, and you've got to work your way up."

Interviewee #CT64, a white male-owned firm, has not performed enough big jobs to get bonded hire than \$500,000. He feels this is a "Catch 22." He would like \$1 million bonding capacity. He is working his way up slowly – if he can do ten (10) \$100,000 jobs per year his capacity will go up.

A small African American owned construction company testified at a public hearing in San Diego that he did not feel there was equal access to capital, bonding, and insurance for DBE firms. He gets excited on jobs where primes offer to assist with bonding and insurance. "I think that certainly more effort needs to be put into the bonding and insurance. We had access to capital. That was not a problem for us, but bonding and insurance was." (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, testified at a public hearing in San Diego that "getting the insurance and bonding ... it's almost impossible in a lot of cases to get that.

Because I am an Indian contractor ... the only way that I can get the work is if I partner with another.” (P.H. San Diego, 3/22/07).

Interviewee #CT1, a Native American male-owned firm, does not need to obtain bonding in his type of business. He has not experienced any barriers in obtaining financing. He stated it is more difficult when you are new. When he first started in the 90’s he “couldn’t buy a pencil sharpener on credit.”

Interviewee #CT6, a white female-owned firm, stated the nature of the business is such that bonding and financing are not something that the company deals with. Interviewee #CT16, a white male-owned firm, stated “[w]e don’t really deal with that too much” because the company is “self-funded and ... pretty cash flow positive.”

Recommendations related to bonding and financing.

Interviewees suggested Caltrans should advertise, promote, and expand programs aimed at assisting small business obtain bonding, insurance, and financing. (CT Interviewees #64, #75, CATA #2). Very few interviewees were aware of any programs by Caltrans to assist with bonding, insurance, or financing. Interviewee #CT75, a white male-owned firm, feels Caltrans should provide bonding for the contractors who win the bids; otherwise, most small businesses are shut out from participating in Caltrans projects. CATA #2, an African American trade association, suggested Caltrans implement a system under which prime contractors cover bonding and insurance for their subcontractors. Interviewee #CT64, a white male-owned firm, suggests Caltrans make the engineers’ estimates tighter so bonding capacity is not unnecessarily taken up.

Interviewee #CT29, a Hispanic male-owned firm, believes that the mentor program is helpful for obtaining bonding because the bond capacity of the mentor can be used under most mentor programs. Furthermore, the bundling issue affects the ability for companies to be within reach of obtaining the projects as a prime because the jobs are so large, it is very difficult if not impossible to finance.

CATA #2, an African American trade association, stated that it was difficult for the Association’s members to get bonding and that he thought that prime contractors should do a better job in this area. He queried why, if a prime contractor has a bond, a subcontractor also needs one, and why, even if the subcontractor is required to carry a bond, the sub’s bond needs to be in the same amount as the primes. CATA #2 indicated that obtaining financing was not as big an issue for the Association’s members as is obtaining bonding. He said that if a company has been in business, it generally has a line of credit, but that the difficulty is getting the business experience in the first place and building one’s business to the point where (s)he can put up its or other assets to secure financing. He said that the state bonding program is good but expensive, and that the Association had addressed the issue of bonding with Caltrans, along with the prompt payment issue. He said that bonding, financing, and payment issues are big issues now and were big issues when the program was in place. He also said that a company’s landing a contract helps it to better deal with these issues (e.g., a company that receives money on a contract can use some of this money to pay for a bond) but that a DBE program is needed in order for more businesses to get contracts.

CATA #10, an Asian American trade association, said the USDOT used to have the transportation loan program as did the Small Business Administration Program. He stated financing is available but you lose a percentage of your profit.

J. Anecdotes Regarding the Effect of Race, Ethnicity, and Gender, if Any, Upon a Business Owner's Ability to Obtain or Engage in Business

BGPAA Study Anecdotes Regarding the Effect of Race, Ethnicity, and Gender upon a Firm's Ability to Obtain or Engage in Business

Some interviewees reported that race, ethnicity, and/or gender affected their ability to obtain or engage in business. [Interviewees #BGP: 3, 10, 12, 14, TA #2]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that majority-owned firms are discriminated against, not MBE/WBEs. He said, "It's quite opposite. If you're a DBE or any kind of minority[-owned] company, you have a priority in this country, and you can do very well. [It's] almost [the case that] the average, healthy Joe doesn't have a chance. If you want to talk about discrimination, it's discrimination against the average guy, not minorities."

Interviewee #BGP10, a principal at an engineering firm, reported that he is aware of discrimination occurring among different racial and ethnic groups. He said that "an Asian firm [will] typically hire ... only Asian subs," and firms usually only have people of the same race or ethnicity working for them. He said that Caucasians do not care and will hire everyone.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that the gender of the company's owner has positively affected the company's ability to obtain business.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, stated that the race or ethnicity of the firm's owners has actually "helped the company positively. ... In the earlier days of the business, [it] helped us a lot and probably helped to establish us. ... [But] it's less and less of a positive or negative."

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that the work environment for MBE/WBE/DBEs "would be the culture of white male dominant and the general contractor." He said that disadvantaged businesses need to be segmented more by race, ethnicity and gender.

Some interviewees reported that their race, ethnicity, and/or gender had no effect on their ability to obtain or engage in business. [Interviewees #BGP: 13, 15, 16]. Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she does not think that race, ethnicity or gender has affected her ability to engage in business positively or negatively. She stated that over the last "five years now," the "City of L.A. has been" including "OBE" requirements in RFPs, or requirements that companies use "other business enterprises." She said that this classification is a category for "the white, middle-aged man" and that she has seen this change in agencies across the State.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he is not aware of race, ethnicity or gender being barriers to engaging in business, but he said that discrimination "probably does happen."

Work environment for minorities and women.

Some interviewees reported no significant difference in the work environment for minorities and women when compared to the work environment for men and majority firms. [Interviewees #BGP: 1, 2, 3, 5, 6, 12, 14].

One interviewee reported differences in the work environment for women and minorities when compared to the work environment for men and majority firms. [Interviewee #BGP: 8, 9].

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that offensive comments and behavior still exists toward minorities and women in the construction and engineering industries. He said, “I think you become aware of [stereotyping] more just in the side comments and things like that when teams are being pulled together or working together. Unfortunately, I think there are still some attitudes ... just downright racist. ... That still goes on.

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm said “They’re [MBE/WBE/DBEs] usually the ones that get the priority.”

Stereotyping.

Some interviewees reported having heard of or experienced stereotyping on the job site.

[Interviewees #BGP: 4, TA #1]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that there are stereotypical attitudes in the marketplace. He said, “There’s a preconceived notion that when you’re on a difficult project, an MBE or WBE will be a liability because they’re not going to be as big or as organized. There’s a stereotype in the overall capabilities.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that the local contracting industries have a poor perception of minority-owned contractors, particularly those that are African American-owned. He said, “The perception out there about [African American] contractors is ... ‘[African American people] are cowards, they’re lazy, and they’re not going to fight you if you push them away a little bit.”

Many interviewees reported never having heard of or experienced stereotyping on the job site.

[Interviewees #BGP: 1, 2, 3, 5, 6, 9, 11, 12, 14, 15]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he has not experienced any stereotyping based upon the racial or ethnic composition of the company. He said that he thinks that “every company runs into some kind of comments and so forth, but these are comments made between people in the same company. ... If anything like that should happen between two separate companies, ... they’re dealt with immediately. For example, we could have an aircraft cleaner up there cleaning an airplane and a caterer comes down and makes some [inappropriate] statement, ... that will be dealt with immediately between the two companies, but we don’t see that very much either.”

Offensive comments or behavior.

Some interviewees reported having heard of or experienced offensive comments or behavior on the job site. [Interviewees #BGP: 8, 14, TA #2]. Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that discrimination and offensive behavior still exists. He said, “Almost every project that we’ve been on ... everybody on the team goes on sensitivity training. ... I think ... the laws have clamped down a lot and big companies are doing what they’re supposed to do, but I still think out in the mud, some [discrimination and racist and sexist behavior] still goes on.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that he has experienced inappropriate comments on worksites but the comments are mostly related to the company being non-union. He stated that he has not experienced inappropriate comments while working on Authority projects.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he does not experience offensive comments or behaviors on the job site as much as he did in the past.

Some interviewees reported never having heard of or experienced offensive comments or behavior on the job site. [Interviewees #BGP: 3, 9, 12, 13, 15]. Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has not experienced offensive behavior on the basis of race, ethnicity or gender, and said, “That will not be tolerated.”

Discrimination.

Some interviewees reported never having heard of or experienced discrimination on the job site. [Interviewees #BGP: 3, 5, 6, 9, 13, 14].

Sexual harassment.

Some interviewees reported never having heard of or experienced sexual harassment on the job site. [Interviewees #BGP: 9, 12, 13, 14, 15].

SDCRAA Anecdotes Regarding the Effect of Race, Ethnicity, and Gender upon a Firm’s Ability to Obtain or Engage in Business

The following anecdotes regarding the effect of race, ethnicity, and gender upon a firm’s ability to obtain or engage in business were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

Perceptions regarding race, ethnicity, or gender effects.

Many interviewees reported that issues related to race, ethnicity, and gender hinders the ability of firms to obtain or engage in business. Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that although racial discrimination is not the same as it was in the past, his firm has still faced discrimination in its business dealings: “Outright discrimination doesn’t exist the way it did 40 years ago. The objective and goals are still the same, but [discrimination is] much more sophisticated the way it is executed.” He went on to describe negotiations that his firm had with the master concessionaire at the Airport in which Interviewee #SD12 felt discriminated against: “There were negotiations taking place with [the master concessionaire at the Airport] when a young MBA ... thought it would be ok to treat us as if we were Neanderthals and we should have never got the contract.” Interviewee #SD12 noted that the man did not say anything inappropriate but made him feel very uncomfortable.

Interviewee #SD5, representing an African American male-owned firm, indicated that his race prevented him from joining a San Diego construction trade: “Until 2002 blacks contractors could not get into the San Diego union. He continued, “I tried to get into the union. I paid about \$12 per month to stay on the list for about two years before I went into business. I was never accepted.”

Consistent with those comments, SDTA #13, a retired official from a local public agency, stated that although local unions do not openly discriminate, they practice favoritism with regard to membership and they prefer members who are white males. SDTA #13 described the local unions as being based on a “Good Old Boy Network” and that union membership is “by invitation only.”

Interviewee #SD16, representing an African American male-owned firm, indicated that, based on previous research and anecdotal stories from other local firms, he believes that discrimination still exists in San Diego. He reported that discrimination generally takes place in the form of prime contractors discriminating against subcontractors on the basis of race, gender, or age. However, those beliefs notwithstanding, Interviewee #SD16 indicated that the Airport and other agencies have treated his firm quite well.

Interviewee #SD10, representing an African American male-owned firm, said that racial discrimination affects the way he markets his firm. Specifically, he tries not to mention that his firm is African American-owned. Regarding that strategy, he said: “If I come up I will become a target to those who do not want to see a black man succeed.”

Interviewee #SD2, representing a white female-owned firm, said that financing is much more difficult for a WBE firm compared to a male-owned firm, because most bankers are men. Interviewee #SD2 reported that particularly in the early years of her business, she had difficulty dealing with bankers and experienced gender discrimination: “[They would say] ‘bring your husband in to sign the paperwork.’”

Interviewee #SD28, representing a white female-owned firm, reported that she started her own firm, because the firm she worked for previously made clear to her its stance that “a woman should [not] be in management.”

When asked if his firm has been discriminated against based on the owner’s ethnicity, Interviewee #SD36, representing an African American male-owned firm, said: “To be honest with you, of course

I have been discriminated against. They will give you the contract, but in order to keep it I have to put the white person out there to be the front man.” He continued, “Once they find out it is a black man behind the operation they will unfairly terminate the contract.” Interviewee #SD36 reported that, “The City and County don’t do this, but private [sector clients] do this all the time.”

Interviewee #SD45, representing a white male-owned firm, indicated that women do not perform adequately as laborers and are better suited for operating equipment: “Women are great equipment operators — that’s the best place for them to go. They make good wages, and it doesn’t require superhuman strength.”

Interviewee #SD46, representing an African American male-owned firm, reported that race is a substantial issue in his firm’s industry: “... whether it’s leasing a space, buying a car, [obtaining] a line of credit from supplies, [race is] a factor in everything we do.”

SDTA #2, representing a Hispanic American trade organization, observed that approximately 50 percent of all construction workers in San Diego are Hispanic Americans and yet the vast majority of construction firms are owned by Caucasians: “For example, [take the construction of] Petco Park – over one half of the workforce is Latino and most of the owners are white.” SDTA #2 went on to say that even when construction firms are Hispanic American-owned, those firms usually do not work as prime contractors.

SDTA #6, representing an Asian American trade organization, estimated that the Asian American population in San Diego is close to 12 percent. In contrast, she guessed that the percentage of contracts that go to Asian American-owned firms is less than 1 percent.

SDTA #4, representing a local chamber of commerce, said that there is not a level playing field for minority- and female-owned firms in San Diego, despite the fact that a large percentage of the population believes that there is. However, she indicated that she believes that society is making progress in limiting the effects of discrimination.

SDTA #8, representing an electrical workers trade organization, reported that across all construction sectors, women are severely underrepresented.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, reported that many large franchises are not interested in obtaining space at the Airport because they do not want to do business with the subtenants with whom the master concessionaire does business. When asked why that was the case, Interviewee #SD13 replied, “[The MBE/WBE subtenants] are the unknown. Franchises want specific guidelines followed. They want that reassurance that they get from [the master concessionaire running their stores].”

Several interviewees reported that issues related to race, ethnicity, and gender does not affect the ability of a firm to obtain or engage in business. SDTA #7, representing a construction trade organization, stated, “I do not think there is discrimination, and I’m not just saying that because of my position.” He continued, “... I think when the baby boom generation came in [racial discrimination] pretty well dissipated. That’s me and I think the next generation won’t even know what we’re talking about. We’re electing a black man president. You can’t tell me there’s a lot of prejudice deep seeded in the country when we’re electing Barack Obama now.” He went on to say that there is a group of organizations in San Diego who benefit from having the public believe that discrimination exists in the construction industry.

Interviewee #SD14, representing a Hispanic American male-owned firm, repeatedly mentioned that, given Proposition 209 and the state of the economy, race and gender do not play a role in winning contracts — it is all about being low bidder.

Interviewee #SD8, representing a minority male-owned firm that is a concessionaire at the Airport, said that he does not have any experience with discrimination with the Airport, nor has he seen discrimination against anyone other firms.

Interviewee #SD33, representing a Hispanic American male-owned firm, said that when his father started the firm 30 years ago he experienced discrimination, primarily because he did not know a great deal of English. However, the firm was able to remain competitive and grow because it provided a quality product. He went on to say that there are such a large number of Hispanic Americans (and other minorities) in his firm’s industry today that discriminating against them would be akin to discriminating against the entire industry — it would be too impractical. He went on to say that the contracting industry in San Diego is “an even playing field” with regard to race and gender.

Interviewee #SD34, representing a white male-owned firm, remarked that MBE/WBE firms do not need any help to be successful. He said, “If they are strong, they should be fine. They can learn from firms they worked with before starting their own businesses.”

Interviewee #SD40, representing a white male-owned firm, reported that, to his knowledge, there is no discrimination based on race or gender in San Diego. He said that he has no knowledge of firms being denied the opportunity to bid, contract awards, financing or any other opportunity based on race or gender.

Interviewee #SD44, representing a Hispanic male-owned firm, speaking generally about the effect of MBE/WBE status on a firm’s success in his industry, remarked: “The people that are in our industry ... are all very helpful to one another. It doesn’t matter ... what your ethnicity is.” He went on to say, “I’ve had good experience in this business.”

SDTA #6, representing an Asian American trade organization, indicated that she is not aware of any acts of discrimination against minority- or female-owned firms, but that those firms would be unlikely to file formal complaints about discriminatory acts even if they occurred.

SDTA #12, representing a workforce trade organization, indicated that his organization’s members complain about hiring discrimination based on age but that he has not heard complaints about contracting discrimination based on race, ethnicity, or gender.

SDTA #13, a retired official from a local public agency, indicated that issues related to race, ethnicity, or gender do not make it more difficult to engage in business in San Diego — what matters is firm size: “People need to let go of [the idea that race, ethnicity, or gender affect success] and stop saying, ‘Oh, it’s because I’m black, or it’s because I’m a woman, or it’s because of this’ and just realize that small businesses have a disadvantage.”

Some interviewees reported that minority- and female-owned firms have been afforded a number of opportunities because of their race, ethnicity, or gender. SDTA #3, representing a local chamber of commerce, indicated that, in her view, MBE/WBE firms have a great deal of opportunity to succeed in the greater San Diego area. Regarding local opportunities for those firms, SDTA #3 said, “To me, there are so many resources out there that I think [MBE/WBE firms] actually have more opportunities [than majority-owned firms] at times.” She went on to say that race and gender typically do not play a role in the local marketplace, and what matters is each person’s work ethic, “I haven’t heard of any problems [related to race and gender].” She continued, “To me it’s not your gender, it’s not your race — it’s your work ethic and what you decide to be. Any opportunity we can give them to be successful is there. ...” Speaking more generally, she indicated that racism and sexism are not as problematic as they were in the past. With regard to racism, she said, “We’ve come a long way.” With regard to sexism, she commented, “Twenty years ago ... there was a different pay scale [for men and women], but I believe those days are gone.”

SDTA #7, representing a construction trade organization, expressed his belief that there are no barriers in construction specific to minority- or female-owned firms. He said, “We do all these nice things [i.e., agencies’ remedies], but cutting through all that, you got to train people to be contractors and [the] market will probably take care of its self. There isn’t a real barrier — that I can see anyway — for minorities getting to be a contractor.” He went on to explain that the determining factor for success in construction has nothing to do with race — it is about taking chances: “You got to be a young guy and want to run out and take a chance. ... Does some African American or Hispanic guy take that chance to quit that nice project manager job [they] got? ... The first thing you got to have is the guts to do it.”

Interviewee #SD24, representing a white male-owned firm, indicated that he has not observed any manifestations of discrimination against minority- or female-owned firms, and he said that instead DBE programs have afforded them a number of advantages: “If anything I think it’s the opposite [i.e., MBE/WBE firms are advantaged], because there are often DBE related requirements. Firms like that tend to be courted more than anything else.”

Work environment.

Some interviewees indicated that the work environment for minorities and females working in San Diego is less favorable than it is for white males. Interviewee #SD2, representing a white female-owned firm, reported that it is difficult for her firm to develop relationships with prime contractors, precisely because her firm is female-owned. She said that there have been instances when she had to bring a male employee from her company to meetings with prime contractors so that they would treat her with more respect. She indicated that there is an aversion to women in the construction industry.

Interviewee #SD17, representing a white female-owned firm, reported that she has been the victim of gender discrimination on a number of occasions. She indicated that sometimes that discrimination

has been subtle, but other times it has been blatant. Regarding subtle discrimination, Interviewee #SD17 said, “As a woman, I am aware of unspoken discrimination. For example, contractors will automatically call and ask for my husband Jeff to come to the job even though my name is on the company and I am the president.” Regarding blatant discrimination, Interviewee #SD17 indicted that some contractors have been quite audacious with her on the telephone: “One client called and said he would give our company a [contract], but only if I was hot.” She also said that her firm has worked on a project for which the foreman told her that he refuses to work with women.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that an unfair work environment continues to exist from time to time for MBE and WBE firms. He gave an example of women contractors not commanding as much respect as their male counterparts.

Interviewee #SD21, representing a white male-owned firm, is aware of rampant, race-related graffiti being present on some of his work sites. He referred to the construction industry as a “jungle environment,” and as such he acknowledged that more could be done to help minority- and woman-owned contractors in the field. However, he also pointed out that those firms are making good progress in today’s construction industry. He said that many more MBE/WBE contractors have college degrees today than in decades past, and those contractors are either running construction companies themselves or are playing integral roles in someone else’s construction company. He said, “Things are evolving so that the playing field is much more [level].”

Interviewee #SD32, representing an African American male-owned firm, reported that many people in the construction industry are “not necessarily racist, but prejudiced in general and make [discriminatory] remarks.” He indicated that although such remarks are unpleasant, he does not think his firm has lost any work because of the owner’s race. With regard to women, Interviewee #SD32 said, “I think due to the nature of construction being dominated by males in general ... it’s hard for women to come into an industry like this and be accepted as peers.”

Interviewee #SD34, representing a white male-owned firm, commented that women-owned firms encounter problems in the contracting industry because, “there are still men out there who think it’s a man’s world.” He noted that minority-owned firms also encounter difficulties. Interviewee #SD34 reported that he has witnessed contractors making inappropriate comments toward both minorities and women on job sites.

Interviewee #SD39, representing a Hispanic female-owned firm, reported that the work environment is particularly unpleasant for Hispanics working in his firm’s industry: “Discrimination is going on with the drivers because they don’t speak very good English.”

Interviewee #SD47, representing an African American female-owned firm, stated that eight of her own employees were recently terminated for using the “N” word and making derogatory comments about her and her brother, the firm’s Operations Manager. She said that her firm has retained the services of a well-respected diversity consultant to address her firm’s race-related difficulties. Interviewee #SD47 also reported that the “N” word was directed at one of her employees on a work site in the private sector during a project on which her firm was working as a subcontractor.

SDTA #5, representing a government advisory commission on minority issues, indicated that public agencies in San Diego actively prevent minority- and female-owned firms from being successful: “San Diego creates barriers for people to get involved and does the same thing over and over until the

“Good Old Boy Network” can pretty much kill off small and black-owned or other ethnic-owned businesses. ... There is no consequence for not doing outreach or supporting diversity in San Diego.” She went on to explain that racism is a substantial issue in San Diego but that the city makes an effort to hide those problems: “San Diego is bona fide racist — that is it! San Diego reports themselves as the finest city, but indicators of harsh racism are hidden.”

Stereotypical attitudes.

Several interviewees indicated that MBE/WBE firms are sometimes victim to stereotypical attitudes on the part of prime contractors or agencies. SDTA #10, representing a supplier trade organization, said that some of the personnel at public agencies believe that MBE/WBE firms are less qualified than large, well-established firms and that their participation generates additional costs. SDTA #10 said that many of those people believe there are “no good MBEs out there.” He remarked, “These individuals should be open to accepting that there are, in fact, good [MBE/WBE] firms and that their utilization does not increase costs.”

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, stated that some of the master concessionaire’s personnel take the attitude toward Interviewee #SD1 that “You’re only here because you’re a minority.” She went on to say that those people do not appear to have bought into the notion that minority-owned firms are legitimate and are “here to stay.”

Interviewee #SD21, representing a white male-owned firm, indicated that minority- and female-owned firms still face stereotypical attitudes in the construction industry but that the problem is relatively small. He said, “You’ll get an old inspector ... they’re not necessarily too enthused when a woman project manager rolls in.”

Interviewee #SD20, representing an Asian American male-owned firm, reported being aware of prime contractors and agencies having stereotypical attitudes about minority- and female-owned firms but only in subtle, indirect ways.

Interviewee #SD28, representing a white female-owned firm, reported that she has often been victim to prime contractors having stereotypical attitudes against women in which “they don’t think you know anything because you’re a woman.” In describing how she deals with those situations, she said, “If I swallow my pride, I just give [the phone] to [a male member of the firm] and [he] tells them the same thing that I would tell them.”

Interviewee #SD43, representing a Hispanic male-owned firm, said that agencies and prime contractors sometimes assume that Hispanic-owned firms will hire illegal immigrants or cheap labor to complete the work.

Interviewee #SD46, representing an African American male-owned firm, indicated that sometimes subcontractors appear to question his firm’s ability to act as a prime contractor due to his minority status. He said that some subcontractors seem to wonder “Can this guy pay me? Is he for real?” He went on to say that when he goes on job walks, he gets the sense that other firms look at him and wonder, “Are there goals on this project?”

Interviewee #SD47, representing an African American female-owned firm, indicated that there is a stigma associated with being DBE certified that the firm is unqualified: “I’d heard so much about the stigma of these certifications ... [Other firms in the industry] talk about how unqualified [DBE certified] firms were and how they couldn’t perform.” She went on to say that it is very difficult being an African American woman in the construction industry: “In this industry, if there is a white male with me, ... they could be the driver ... they’re going to get more respect than I will. If it’s a Black male, they’ll get more respect, too. If it’s a white female, they’re going to still be addressed and interacted with more than me. I’m always the low man on the totem pole.”

Consortium Anecdotes Regarding the Effect of Race, Ethnicity, and Gender, if any, upon a Firm’s Ability to Obtain or Engage in Business

The following anecdotes regarding the effect of race, ethnicity, and gender were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Some businesses interviewed felt that race, ethnicity, or gender affected their ability to obtain or engage in business. [Interviewees #CON: 2, 4, 5, 10, 12, 13, 16, 17, 19, 20, 21, 22, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 40, 43, 45, 46, 47, 50, 51, CONTA #2, WT #9, 10, PF #8]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that race or ethnicity may affect his business’s ability to obtain business because of the lack of financing or being unable to obtain financing.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he believes that race, ethnicity, or gender indirectly affects his ability to obtain or engage in business because he does not believe that prime contractors would contact him if his company was not certified as a DBE. He stated, “I know the only reason they did in the very beginning was because we were certified and at that time [the programs required between 10 to 15 percent DBE participation]; that is the only reason why they would call us.”

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he is aware of one situation in which the race, ethnicity, or gender of the owner of a business has affected the businesses’ ability to obtain or engage in business. Interviewee #CON5 stated that his company cannot receive DBE certification and cannot compete for certain jobs, though most of the employees are minorities, because the owner of the company is Caucasian.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that they had a feeling their race, ethnicity, or gender had affected their ability to obtain or engage in business. Interviewee #CON10 declined to elaborate further for purposes of the report.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he could not prove any instance in which his race, ethnicity, or gender has affected his ability to obtain or engage in business; but, he stated that he has tried pursuits in the past that have left him feeling “that maybe that was a part of it” (e.g., race, ethnicity, or gender). He stated he was left feeling like he did not represent the local community. He stated that in other cases, “it has been the complete opposite” in that he has benefited the team, not so much due to his ethnicity, but due to the fact of where he grew up. He stated that he knew the local sensitivities, the local priorities, and he could relate to the locals.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, believes that his race and ethnicity affect his company's ability to obtain or engage in business. He stated that he used to have a white male business partner and he seemed to always have a lot of work. Interviewee #CON13 stated that although the difference in the amount of work may be due to his marketing skills, he believes there is a "Good Old Boy Network" at play.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that race, ethnicity, and gender have affected the business' ability to obtain and engage in business. The DBE/MBE certification has given the company opportunities and the ability to participate in the work environment on a larger scale. Without the qualifications associated with Interviewee #CON16's race, ethnicity, and gender, the company would just be another one of hundreds to choose from for large companies; the DBE/MBE status helps to differentiate the business.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that race, ethnicity, and gender has affected the business' ability to obtain and engage in business, noting that this is the result of human nature. Interviewee #CON17 stated affirmatively that companies work with whom they are comfortable. Interviewee #CON17 reported that "we all have our paradigms, and it takes a long time to get over them."

Interviewee #CON19, an MBE-certified African American male attorney, stated that there are always barriers to pursuing work. He stated that African American law firms are not treated the same as Caucasian law firms.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that if asked 14 years ago she would have said that her race, ethnicity, and gender have affected her ability to obtain and engage in business. She stated that today her company has relationships with many of the large firms that they work with and those large firms come from the same social network that she does. She stated that there is a certain hesitancy among companies to trust her business with large projects. She stated that she felt the Consortium has encouraged prime contractors to work with minority- and female-owned businesses, but it is dependent on the constituency. She stated that prime contractors should utilize firms that reflect the constituency of the municipality and should be sensitive to that need. She stated that in the private sector it is a challenge to obtain work and her firm is contacted when the prime contractor needs an African American firm.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, felt that her race and gender has probably affected her ability to obtain or engage in business with the Consortium and prime contractors. She did not feel as though this has been an issue in the (non-Consortium) public sector although it has been an issue in the private sector.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, felt that his race has played a positive role in helping him to obtain business with the Consortium, but that it has negatively impacted his ability to work with prime contractors.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, does feel sometimes that being a female in a male-dominated field has affected her ability to obtain or

engage in business. She stated that her gender has affected her ability to obtain work with prime contractors approximately 50 percent of the time whereas in the public sector, depending on the job, her gender has affected her ability to obtain or engage in business approximately 30 percent of the time.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, did not believe race or gender has affected his ability to obtain or engage in work in an overt way, but stated that there is a tendency for a firm “to go with people who know your work.” He stated that “you have to break in to the inner circle. It is harder to do when you are a minority. It is hard to gain their confidence.”

Interviewee #CON29, an African American male-owned electrical contractor, stated that his race, ethnicity or gender has “absolutely” affected his ability to obtain or engage in business considering the fact that he has never worked with a huge firm on any large-scale projects. Interviewee #CON29 stated that with respect to pursuing work with the Consortium, the knowledge of the availability of contracts is not available to the public or on the website so he feels that it is a selective process and they select who they want based on friendships and relationships. He stated that relationships result in the contracts and that minorities are not able to develop relationships because they do not socialize with the majority firms; they are typically kept out of the inner circle. He stated that he has never worked in the public sector other than his single project with UCLA, so he does feel that there is a bias. He stated that typically the “worker bees” will be minorities and possibly one or two at the top, but there is indeed a bias as it relates to the awarding of contracts and the knowledge of projects. He stated that his race, ethnicity, or gender has positively affected his ability to obtain work in the private sector. He stated that even though companies and people feel that they can get over on him, he feels that it does allow him to keep his business afloat. He stated that people do hire him because of his race and that gets him in the door. He stated that once he gets a job it is proven that it will lead to more work either through the same person or a referral and that is what has sustained his business.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he does feel as though his race and ethnicity affect his ability to obtain and engage in business. He feels that this happens in instances in which he does not fit into the mainstream look of other investors or contractors even if he has done past business with them and they can vouch for his performance and his business’ quality of work. He does not feel that it has affected his ability to obtain work with the Consortium or with other prime contractors.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated both “yes” and “no” as to whether his race, ethnicity, or gender has affected his ability to obtain or engage in business. He stated that his business has been identified as a minority business even though he utilizes the best crew that he can assemble. He does not care if they are minorities: black, white, blue, or brown. He just uses the crew that can perform to the standards which he places on them. Interviewee #CON31 said he is the face of the business and as the face of the business there are some stereotypes and preconceived notions about the work that African Americans do. He stated there is the thought that African American workers are lazy, overcharge, and cut corners. He feels that none of these examples characterized what he and his company have done on their completed jobs.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that her gender has “absolutely” affected her ability to obtain and engage in work with the Consortium and in the non-Consortium public sector and private sector.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, feels that her race and her gender have affected her ability to obtain or engage in business. She feels that the Consortium has a bias against DBEs. She stated that she has experienced gender bias with prime contractors and in the public sector.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that her race, ethnicity, or gender has probably affected her ability to obtain or engage in business with prime contractors and in the private sector. Interviewee #CON35 stated that many times things are worked out ahead of an RFP even being presented to the public; she feels as though race is sometimes a factor.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she believes that her race and gender affect her ability to obtain or engage in business. She stated that she had a recent contract with Metro but then they called her and decided to take all the work back. She feels that when you are African American you get questioned a lot about your company’s price structure. She stated that with respect to law firms in the private sector, she believes that large non-African American law firms will not utilize her services, but will work with someone from their race instead (although it is not something someone would say to her face). She stated that if she knows that the law firm is not African American she will send a white employee to get the business.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he felt that his race or ethnicity affects his ability to obtain or engage in business with the Consortium, with prime contractors, and in the private sector in general. He stated that it is common knowledge that prime contractors do not want to use DBEs. He stated that, in the private sector, if prime contractors do not have to use a minority firm, and they do not receive any incentive for using one, the prime contractors will not use minority firms but use their friends instead. He stated that his firm has been successful in the public sector generally though he did not get everything that he bid on. He stated that he works everyday to build his business and credibility.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that his race or ethnicity has affected his ability to obtain or engage in business across all sectors. He explained that there are very few Native Americans in the contracting business; he stated that the L.A. County MTA and other agencies then have a lot of curiosity about Indians. He stated that they want to see his identification, ask him how he got his identification, and ask him how he knew that he was an Indian.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, felt that his race or gender has affected his ability to obtain or engage in business with the Consortium, with prime contractors, and in the private sector (but not in the non-Consortium public sector). He stated that the only reason a prime contractor will contact him is if DBE participation is required; it is only to help them make money. He stated that the Consortium should somehow put small businesses and DBEs in a position to make money too.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that it was possible that his race, ethnicity, or gender has affected his ability to obtain or engage in business with prime contractors and in the private sector. He did not believe these factors affected his ability to obtain or engage in work with the Consortium or in the public sector.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, does not feel as though her race, ethnicity, or gender have affected her ability to obtain or engage in business because they just do not give the offers anymore. This has been the case in the public and private sectors.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he believes his race has definitely affected his ability to obtain or engage in business with the Consortium (MTA and RTD), with prime contractors and in the private sector to a lesser extent. He stated that ever since white females became a protected class “it has been downhill.” He stated that he is competing with white females as minorities or white males using white females as “fronts” so that they can get the minority business.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that his race has probably affected his ability to obtain or engage in work with the Consortium, in the non-Consortium public sector, and with prime contractors, but stated that he could not prove it. He stated that in the private sector, when you do not get picked for a job but know that you are just as qualified as the competitor, you have to wonder if it is because you are African American.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that if he were Caucasian he would get more contracts. He stated that no one would help him to obtain bonding which he felt was also a factor in his ability to obtain or engage in business. He stated that when he needs to get an insurance claim approved he will send a white employee because the rate for which they will receive approval is higher than that of other employees. He stated that last year, in the public sector, a white-owned firm with no license and no insurance received a contract based on the fact that they were not minority owned. Interviewee #CON50 also cited his race and ethnicity as a barrier to pursuing work with the Consortium.

CONTA #2, the President of the Black Contractor’s Association, stated that the race, ethnicity, or gender of a business owner does affect the businesses’ ability to obtain or engage in business because prime contractors often have a lack of confidence in newcomers or others who they feel have not met certain prequalification requirements. Interviewee CONTA #2 stated that in general DBEs, women, and minorities are impacted by the lack of outreach utilization in the Consortium transportation industry. He stated that women have a particularly hard time with prime contractors working on public contracts.

WT #9, a Principal of a small business transportation planning consulting firm, in the process of getting certified as a DBE, submitted written testimony regarding the Southern California Regional Disparity Study. He noted the major problem is the year of the data used for analysis, since during those years the economy was at the highest point and there were a lot of projects — so many that the big firms were willing to share with smaller DBE/SBEs. Times have changed now with not that many projects out to bid and numerous firms applying. He stated, “the results of [the] study is not valid to the current business environment and no one expects that we would see the 2006/2007 [results] again in the near future or even again in our lifetime.” He further stated, “In short, if you don’t

mandate DBE or SBE requirements, a lot of DBE firms won't be around next year." (Written testimony not dated)

WT #10, a female representing an SBE firm that is in the process of getting certification for WBE/DBE submitted written testimony that the Disparity Study is not valid to the current business environment. "It was [done when] the economy was at the highest point and there were a lot of projects. The big firms had so [many] projects that they were willing to share with smaller DBE/SBE firms. But time has changed drastically. There are not that [many] projects out there. In short, if you don't mandate DBE requirements, a lot of DBE firms won't be around next year." (Written testimony submitted 11/03/09).

PF #8, a woman representing the minority business opportunity services in the Mayor's office provided oral testimony at the public forum held on October 20, 2009. She addressed the need for checks and balances, "[b]ecause we have people with personal agendas and personal issues that they may not want to see fairness across the board." (Public Forum Los Angeles held on October 20, 2009).

Some interviewees felt their race, ethnicity, or gender had no effect on their ability to obtain or engage in business. [Interviewees #CON: 1, 3, 6, 7, 8, 11, 14, 15, 18, 22, 23, 28, 32, 39, 41, 42, 52, 53, 55, 56, 57, 58, CONTA #1]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, does not believe that his race, ethnicity, or gender has ever affected his firm's ability to obtain or engage in business.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, was not aware of any circumstances in which the race, ethnicity, or gender of the owner has affected the businesses' ability to obtain or engage in business.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, was not aware of any incidents in which race, ethnicity, or gender of the owner of a business has affected the business's ability to obtain or engage in business.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he does not think that the race, ethnicity, or gender of the owner of a business affects the businesses' ability to obtain or engage in business. He stated that it is generally a positive because on government jobs there are goals for employing DBEs. In the private sector a business' ability to obtain business is related to its competence; general contractors just want the job done. Therefore, being a minority is an asset. He stated that he has never seen a situation in which the race, ethnicity, or gender of the owner was a negative.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her race, ethnicity, or gender has not affected her ability to obtain or engage in business with the Consortium or with non-Consortium public sector work, but it has sometimes affected her ability to engage in business in the private sector.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that his race, ethnicity, or gender has not affected his ability to obtain or engage with business with the Consortium or prime contractors. He felt it was hard to say whether it has affected his ability to engage in business in the non-Consortium public sector and the private sector.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, does not feel as though her race or gender has affected her ability to obtain or engage in business, but she does feel that there is a mental block toward small businesses.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, reported that only the quality of his work affected his ability to obtain or engage in business.

CONTA #1, the President of the Latino Business Owners of America, stated generally a businesses' ability to obtain or engage in business is not based on race, ethnicity, or gender but on ability. He did state, however, that minorities have a harder time building relationships. CONTA #1 stated that this problem is generational. Non-minorities have more contacts than minorities. CONTA #1 stated he believes that this situation is somewhat different in Los Angeles because there are more mature minority firms there. He stated that in comparison, most minority firms in San Diego are still in their infancy.

A few interviewees did not know whether their race, ethnicity, and/or gender had an effect on their ability to obtain or engage in business. [Interviewees #CON: 9, 24, 44, 48, 49]. Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not know whether his race, ethnicity, or gender has affected his business' ability to obtain in or engage in business.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she did not think her race, ethnicity, or gender has affected her ability to obtain work with the Consortium, but sometimes a light bulb comes on and she thinks that maybe it is.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he does not believe that his race, ethnicity, or gender has affected his ability to obtain or engage in business, but stated that it is not something he would ever know because it is not obvious.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, did not feel as though his race, ethnicity, or gender had affected his ability to work with the Consortium or in the non-Consortium public sector. He was not sure whether it affected his ability to obtain work with prime contractors but stated that he could not prove anything.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, did not feel as though he has been shut out of opportunities with prime contractors, the Consortium, or other public sector entities. He did not know whether his race or ethnicity has ever shut him out of opportunities to obtain business.

Work environment for minorities and women.

Some interviewees reported no differences in the work environment for minorities and women than for non-DBEs in the Consortium transportation industry. [Interviewees #CON: 3, 7, 8, 9, 11, 16, 18, 20, 22, 23, 37, 39, 48]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, did not know of any differences in the work environment for DBEs, women, and minorities in the Consortium transportation industry. From his perspective as a prime contractor, he noted that he did not care who showed up to work a job; gender and minority status had no impact on the job.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated in general there are no issues with the work environment for DBEs, women, and minorities in the Consortium transportation industry. He stated, in general, the private sector goes on competence. If the general contractor or owner thinks that a business is competent, they do not care about race, ethnicity, or gender. If, however, they think that you obtained the job by means other than competence, then it becomes an issue. However, if the DBEs know what they are doing, no one cares that the company is a DBE.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that there is no “significant distinction” as to the work environment for women, minorities, or DBEs. He spoke negatively about the DBE Program. He stated that if for some reason the state needs a quick turn-around on a project they will waive the DBE requirement. He stated that the DBE Program is arbitrary and as a result, he feels it is “worthless.” He stated that the DBE subcontractors that he has spoken with indicated to him that “nothing has ever come of their” DBE certification.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that among the transportation engineering firms, the work environment for women, minorities, and DBEs is not significantly different than that for non-DBEs; “there are a lot of good engineering firms out there.”

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, declined to describe the work environment for DBEs, women, and minorities in the Consortium transportation market, but stated that her personal experience has been “great.”

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, noted that the work environment for DBEs, women, and minorities in the Consortium transportation industry is very inviting and that it is a positive work industry. In large part, diversity is being enforced and promoted on various projects. Interviewee #CON16 did state that people are generally chosen because of their abilities.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, noted that “she’s having a blast,” and that there are lots of opportunities for small businesses to do important things in the Consortium transportation industry.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the work environment for women and minorities is very positive and very integrated; this has been very helpful for business. Interviewee #CON20 identified

an African American female-owned business with a fleet of over 7,000 buses; she thought this was very impressive.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has experienced normal work days.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, stated that the work environment for women and minorities is “okay.”

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he did not remember anything negative about the work environment for DBEs, women, and minorities in the Consortium transportation industry. He stated that, for the most part, the work environment is okay.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that she does not think the work environment in the transportation industry is different than anyone else’s; she stated that work can be difficult and hard and that just comes with the territory.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that as far as he knows the Consortium work environment for DBEs and women-owned business is okay.

Some interviewees reported “inequalities” in the work environment for DBEs, women, and minorities when compared to the work environment for non-DBEs, non-women, and non-minorities. [Interviewees #CON: 14, 26, 33, 34, 40, 50, 51]. Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that inequalities in the work environment often happen because the agencies with whom they work do not understand the industry. He stated that the ability to do good work is tied directly to the qualifications of the project manager and in the public sector, the project manager often does not have the required experience.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the work environment for women and minorities is not easy, is sometimes hostile, and is very male-dominated.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that the work environment for women and minorities is “all over the map” in terms of how it affects women and minorities. She stated that it is dependent on the prime contractor and the circumstances of the project. She stated that in the final analysis, the work environment created by the prime contractor is usually based on trying to save money.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated there is generally a bias against women in the industry and an institutional bias against DBEs in particular.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, observed that DBEs are “kind of looked down upon.” He stated that the Consortium makes you feel like you are only there because you are a minority and you should be happy with any

amount of money that you make; they want the DBEs to think that they are lucky to be there working.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the work environment for women and minorities is very difficult; he stated that the work environment for Caucasian people is very easy.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has come to the conclusion that small businesses cannot compete in the transportation industry.

Some interviewees reported that “women and minorities” are still affected by who they are.

[Interviewees #CON: 1, 4, 13, 17]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that people are still affected by who they are. He stated that he believes women who are aptly qualified for a job are still discriminated against and not given their full opportunity. He stated he had experience in a private sector company when “an extremely gifted” apprentice was sexually harassed “and left the field because of it.” Instead of the female taking action, she just left the trade. He stated that in contrast he has also seen some extremely talented women “living up to their full potential” and running crews in the field.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that the work environment in the industry for DBEs, women, and minorities is not easy because you have to sell yourself to the prime contractors and make sure that they are willing to put you on their team as a subcontractor. He said even if you are successful in getting on the team, you have to be lucky enough that the prime contractor actually wins the contract.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that while he could not comment on gender, he does have a white male assistant and sometimes he feels as though his assistant is able to better relate to his white male clients.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, described the work environment for DBEs, women, and minorities in the Consortium transportation industry as fine. Interviewee #CON17 has been in the industry for a long time and knows the people, and her company has earned its reputation. Interviewee #CON17 knows there are opportunities that she’s missed because she’s not the right ethnicity or not the right race, but she just moves on to other opportunities.

Some interviewees reported a difficulty in new DBEs' ability to obtain contracts. [Interviewees #CON: 12, 30]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that most members of the Consortium (OCTA, L.A. County MTA, and SCRA) have done an excellent job of offering opportunities to DBEs, WBEs, and MBEs, and that support has allowed the industry to diversify and has forced large companies to increased participation by qualified firms. In some cases, it has opened up opportunities for new DBEs. The issue with the Consortium agencies is that some will introduce new DBEs although others will only use the "same old, same old" DBEs.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he can perform the work as well as audit and accounting processes, but he is not called to perform the work because he is a small business.

Stereotypical attitudes.

Some interviewees reported having experienced stereotyping "first-hand." [Interviewees #CON: 12, 17, 19, 20, 25, 26, 28, 31, 33, 34, 40, 45, 46, 50, CONTA #2, WT #11]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he had experienced stereotyping within the Consortium transportation industry. He stated that he had one situation where he was "tagged" as a "rail engineer" without the understanding or wanting to understand that he does more than that; this happened in an interview with one of the Consortium agencies and his company did not receive the job. He stated that one of the key members of the panel called one of his friends to learn more information about Interviewee #CON12 and classified him on that basis.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has knowledge of stereotyping in the Consortium transportation industry, but that when this occurs the work is not worth it. Interviewee #CON17 immediately handles any reports of this kind of behavior when reported by her employees.

Interviewee #CON19, an MBE-certified African American male attorney, stated that he believes that his firm is not given high-profile cases because of stereotyping.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has experienced stereotyping in the Consortium transportation industry. She stated that typically women are called when the project calls for outreach; this is in her favor because that is her firm's focus.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he has heard of stereotyping within the Consortium transportation industry; he felt as though a firm's DBE certification is like a negative label.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has heard about stereotyping in the industry and she has overheard male contractors make references about certain people that were stereotypical.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that stereotyping is a matter of perception; his company endures and they move on to the next bid.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has experienced stereotyping. Although it was not in the Consortium transportation industry, he feels that he has dealt with it in the sense that when he arrives on a project with a diverse crew of the best men available, in his opinion, they look at him and expect less immediately. They assume that the quality of work will not be up to snuff whereas when he has worked on a project for a minority firm with all white men, and maybe he, and one other [minority], there is not the same feeling or expectation for failure.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that it can be very difficult to get out of the mold of the impressions that prime contractors have about DBEs. She stated that even when prime contractors have previously worked with a subcontractor, it is very difficult for them to understand that you may have the skills other than those utilized on prior jobs.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has experienced stereotyping in that because she is a small firm, she is presumed to be incompetent and incapable of doing the job.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has experienced stereotyping and there are always conflicts between the prime contractors and the subcontractors. He stated that even if the Consortium believes that he can do a certain job the prime contractor is not convinced.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the Consortium always utilizes the same companies as opposed to opening opportunities to new companies and inviting fresh ideas.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has experienced stereotyping “a little bit.” He stated that he has gone out on some little meetings to discuss a contract and he could see the meeting participant’s surprise when he walked into the room.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he has the feeling that he is stereotyped any time that his face is shown. He stated that his appearance has been a factor in his inability to receive the quantity of work that he is capable of performing.

CONTA #2, the President of the Black Contractor’s Association, stated that he has experienced first-hand stereotyping of African Americans in the Consortium transportation. The stereotype is that they are “lazy” and “do not want to work.” Similarly there are stereotypes that Asian people do not do construction because they do computers, and Native Americans do not do construction because they have bingo. CONTA #2 stated that last year he approached a Hispanic foreman and asked the foreman why there were no African Americans working on the project. He recorded the response, “they’re lazy and they do not want to work.” CONTA #2 stated that he also went to another

Caucasian foreman and asked the same question, why there were no African Americans on the job, and was told “they do not want to work.” CONTA #2 taped the comments and reported it to the local government. The job site was shut down that day. The next day CONTA #2 met with the owner, and the owner hired a couple of African Americans who were subsequently laid off after the job was completed. The company has not hired any other African Americans and they are still doing work for the City of San Diego. The City Attorney met with CONTA #2 and listened to the recording. CONTA #2 was told that the City would audit the company’s employee records. CONTA #2 later learned, however, that the audit was only a “desk audit” in which a questionnaire was completed. The company was also determined to be in compliance.

WT #11, a Hispanic individual representing a minority woman-owned small business IT firm submitted written testimony in connection with the Southern California Regional Disparity Study to report what he believes is “evidence of Discrimination based on race, gender or ethnicity in the transportation contracting industry.” He stated that he has participated in OCTA Small Business Match Making Meetings and submitted at least a dozen requests to the OCTA Contracting Office for the opportunity to demonstrate a new technology that can benefit OCTA operations but his requests were ignored. “So, yes I believe that because of my Hispanic background I’m being ignored and not taken seriously.” (Written testimony submitted 9/29/09).

Some interviewees had heard of stereotyping but not experienced it. [Interviewees #CON: 15, 22, 49, 51]. Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of stereotyping in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside. Interviewee #CON15 has specifically informed his employees that kind of behavior is intolerable and not allowed.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had heard of stereotyping.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he had heard of stereotyping and was sure that it exists.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, reported having heard of stereotyping in the Consortium transportation industry.

Discrimination.

Some interviewees reported the existence of discrimination in the transportation industry. [Interviewees #CON: 2, 4, 13, 14, 15, 17, 19, 22, 24, 25, 27, 30, 34, 37, 38, 40, 46, 47, 49, 50, 51, 52, 53, 55, 58, CONTA #1, 2, WT #12, 13, 14, 15]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he experienced discrimination while employed by Caltrans five or six years ago. He stated that non-minorities were favored for promotion.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that although he has not specifically heard of any instances of

discrimination in the industry, he is sure that there are such instances of discrimination in the industry, but it is so hard to prove.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had never heard of or experienced “overt” discrimination, but it is hard to tell. He stated that there is much that could be discriminatory but everyone is “politically correct.” Interviewee #CON13 also stated that he has observed favoritism on the part of the agency favoring a male over a female counterpart.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that he had “maybe” heard of discrimination in the Consortium transportation industry; for example, he has heard comments like “people do not like to work with women.” He stated that he does not know the basis for decisions (i.e., whether discrimination is involved) because he is not there when the decisions are made.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of discrimination in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside.

Interviewee #CON19, an MBE-certified African American male attorney, stated that he has experienced subtle discrimination by the Consortium in that he is not given the quality or quantity of cases that he deserves; he stated that they are not assigned the high-value cases.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of discrimination in the transportation industry.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, reported that she has heard of discrimination in the Consortium transportation industry but not as far as contracts are concerned.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he felt as though discrimination is always present. He believes that his inability to get “face time” with prime contractors is racially motivated. He stated that “white men do not want to sit down and talk with blacks; it is hard.”

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he has experienced discrimination in the transportation industry in being placed on a team and then “put to the side.”

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, feels as though there is a level of discrimination, but nothing that he can unequivocally prove simply because those types of things are not stated nor are they put in writing; rather they are manifest in actions and execution. Interviewee #CON30 has not complained about alleged discrimination because DBEs and small firms do not have the manpower nor the ability to expose them without concrete evidence.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he has not observed any obvious discrimination but he is sure that it has happened. He stated that he would not know who to complain to about any such discrimination without jeopardizing future contracts.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has experienced discrimination in the Consortium transportation industry. He stated that someone once made a comment about going back to the reservation. He did not complain and he has no confidence in anyone he would complain to; he stated that this has been going on ever since [Christopher] Columbus.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, reported that he had been called a racial slur and had been verbally accosted by a prime contractor's employees.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has heard of discrimination in the transportation industry, but "this has been going on for a few hundred years — nothing new." He stated: "I have been dealing with it all my life."

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he had "not really" heard of discrimination in the Consortium transportation industry, but stated "it is hard to put your finger on. It is just a part of life."

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that it was very possible that he had experienced discrimination in the Consortium transportation industry. He felt as though it may have happened, but he just did not recognize it.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported feeling discriminated against in terms of obtaining work with the Consortium, but stated that it was nothing that he could prove.

Interviewee #CON51, a DBE-certified African American male owner of a construction management and contracting firm, reported having experienced discrimination in the Consortium transportation industry. He felt that because of his color he was told not to complain about his experience because he would suffer retaliation in terms of firms not utilizing him on future projects.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, reported having heard of discrimination in the Consortium transportation industry, but again, could not identify any specific examples.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, stated that he has heard of discrimination, but stated that it was nothing concrete.

Interviewee #CON55, a white male owner of a construction services and program management firm, stated that he believes that there is veiled discrimination in the transportation industry, but he does not know how to prove it. He feels that you can change situations by changing the requirements.

Interviewee #CON58, a white male owner of an engineering consulting firm, had heard of discrimination in the Consortium transportation industry, but could not identify any particular incident.

CONTA #1, the President of the Latino Business Owners of America, stated that there is discrimination in the Consortium transportation industry in the form of participation of minority firms. He stated that the industry does not have to directly discriminate against minorities to impact their participation. CONTA #1 stated that the program does not encourage participation and the agencies do not follow the racial breakdown of their projects.

CONTA #2, the President of the Black Contractor's Association, stated that there are lots of incidences of discrimination in the Consortium transportation industry. However, he stated that much of the discrimination is based on nepotism and discrimination regarding language. He was told 10 years ago by the owner of a project that the owner could not hire CONTA #2's members because workers in the owner's crew only spoke Spanish, CONTA #2's members would not fit in because they did not speak Spanish, and it was a Spanish-only workforce. According to CONTA #2, the workers were working on a private public works project and the City of San Diego hired them to do some redevelopment.

WT #12, an individual representing a small business performing mail delivery services submitted written testimony in response to a request for public comment regarding the Disparity Study regarding harassment, criticism and disrespect of the firm's staff by Caltrans' employees who exhibited what she calls "unprofessional conduct" causing a "monumental amount of stress" for the firm's staff. Examples cited include: "How did you manage to get this contract"; "I will give you a one month trial"; "You need to quit this now, sooner than later, sooner will be better." She stated after facing so many episodes of harassment she again informed the manager [Caltrans] who told her to give her staff the Caltrans manager's business card and call. She stated there were several Caltrans employees giving instructions to her staff concerning the job with no continuity or consistency. She stated, "[i]n spite of Caltrans' employee[s] limited communication processes and resistance, I will continue to deliver the best service possible to benefit Caltrans' day to day maintenance operations." (Written testimony submitted 9/25/09 and 10/1/09).

WT #13, an individual representing a minority woman-owned, DBE-certified, small engineering business submitted written testimony for the Southern California Regional Disparity Study public forum. She stated that, "[b]ased on my experiences, without goals for Black firms set by public agencies, Black firms will not get contracts from large white firms." She cited an example of one prime contractor offering work to them for \$600 - \$5,000 on a Caltrans contract estimated at around \$8 million dollars just to meet the Good Faith Effort. They had informed the prime they were experienced and could handle much more work under the project but the prime implied the only reason they were contacted was for a small amount of work to fulfill DBE compliance. She asks [Caltrans], "[w]hatever happened to giving small businesses a fair share of Caltrans contracts? Is this type of behavior monitored by Caltrans, and if so, what is Caltrans doing about it? Why is this type of business behavior allowed?" (Written testimony submitted 10/19/09).

WT #14, a Hispanic male owner of an engineering firm that recently lost its DBE status provided written testimony in response to a request for comments about the Disparity Study that his firm has been "denied the opportunity to provide civil engineering/surveying services despite having the

qualifications and experience working on similar projects in scope and size” and attributes “its non-selection for contracting opportunities with [LACMTA]/OCTA as based upon prejudice and discrimination.” (Written testimony submitted 11/09/09).

WT #15, a male principal of a small Hispanic-owned engineering firm submitted written testimony in response to a request for public comment regarding the Disparity Study that, “there is an apparent discrimination against smaller firms and in particular Hispanics.” His firm has responded as a prime to a few LACMTA solicitations and submitted a proposal but has never received a contract from LACMTA. (Written testimony submitted 11/05/09).

Most interviewees reported never having heard of or experienced discrimination in the transportation industry. [Interviewees #CON: 1, 3, 5, 6, 7, 8, 9, 10, 12, 16, 18, 20, 21, 23, 25, 26, 28, 29, 31, 32, 33, 36, 39, 41, 42, 44, 45, 48, 54, 57]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that he was unaware of any acts of discrimination in the Consortium transportation industry. The only “discrimination” that he was aware of are decisions made based upon ability or the fact that someone cannot do the job or the fact that you just do not like someone (for instance the annoying driller) not based on race or gender.

Caltrans Anecdotes Regarding the Effect of Race, Ethnicity, and Gender upon a Firm’s Ability to Obtain or Engage in Business

The following anecdotes regarding the effect of race, ethnicity, and gender upon a firm’s ability to obtain or engage in business were obtained from interviews that the study team conducted in connection with BBC’s 2007 Caltrans study.

Perceptions regarding race, ethnicity, or gender effects.

Few minority or female-owned businesses feel that race, ethnicity, or gender hindered their ability to obtain or engage in business. CATA #1, an Asian American trade association, stated that there are “serious” but subtle personal barriers to getting work in both the private and public sectors and with all public agencies. These barriers were not obvious but instead existed deep in people’s minds and hearts. According to CATA #1, the problem is not so much that people do not like DBEs, but that non-DBE firms do not trust DBE firms because they do not know them.

Interviewee #CT44, a Middle-Eastern male-owned firm, feels there are barriers to pursuing work that he believes are due to his race. He has not experienced blatant discrimination, but he hears things like “we need someone with more experience” or what he views as other “sham” excuses. He feels that frequent change orders may be related to his race. He never files complaints because he cannot afford an attorney.

Interviewee #CT7, the Hispanic co-owner of a white female-owned firm, believes race affects his ability to engage in business in that he does not receive certain RFPs. Interviewee #CT7 spoke of the attitudes of some of the older engineers at Caltrans who were hesitant to accept women and people of color coming to work as Caltrans engineers. Interviewee #CT7, the white female owner, stated that one time while working on a Caltrans project an engineer put a hand in front of her face when she was trying to explain something to the Caltrans project manager. Interviewee #CT7 feels that things would change “once this kind of generation is gone” and more Hispanic and Asian engineers filled the ranks at Caltrans.

A female certified DBE firm submitting written testimony stated “there are not just difficulties in bidding projects as primes and sub’s, it is to the point where nothing short of an outright set-aside contract in conjunction with litigation is going to change the mindset and negative attitudes of the staff working in the transportation industry.” She stated that “based upon my gender or status as a certified DBE firm, however you want to put it, we are treated like an old shoe that ‘should not be at the table’ and ‘would not be at the table’ if there wasn’t a goal to meet or a client who specifically requested us.” She stated “no one is going to give a woman a large transportation project.” (Written testimony submitted 3/8/07).

CATA #11, a minority trade association, believes his race affects his ability to obtain or engage in business. “It happened yesterday ... when I walk on a job site everyone wants to know what I’m doing there ... if an older white guys walks onto a job he could walk all the way through it and no one would ask him anything ... but once you get there and they know who you are then they aren’t going to say that.” “It’s just human nature ... they already have an idea about certain people ... you have to go in there and prove yourself right off the bat ... show them you have some credibility and talk with some sort of sense and it gets smoothed over a lot.”

A white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified at a public hearing in San Diego “if you ask the question is there discrimination, I have to say yes, yes, yes. There are many, many difficulties and barriers to women and minorities. And I have to tell you that without any race-conscious measures, government agencies experience sharp declines in participation ... when there are no goals on projects, it reverts back to the ‘Good Old Boy Network’ that’s always been there.” She further testified “construction is a traditionally male-dominated field, and we have had to climb many walls.” (P.H. San Diego, 3/22/07).

A WBE, submitting written testimony, stated that she worked for a competitor in San Diego for 16 years and the new owner told her they “didn’t want a woman in Management [because] they thought contractors like to deal with men, point blank.” She stated that she thought if she sued she was “sure if I did I would never work in construction again.” (Written testimony submitted 1/26/06).

A Hispanic American woman-owned engineering firm, stated that without a DBE or similar program, DBEs do not have a chance to participate in State contracts. She went on to say, “Discrimination still exists in the heart and, thus, hard to prove, but I assure you, discrimination remains ALIVE AND WELL.” (Written testimony submitted 3/8/07).

A certified DBE, submitting written testimony, stated “Although discriminatory practices are prevalent in the contracting industry, it is practically impossible to prove that the discrimination is based solely on considerations of race, ethnicity, and/or gender.” (Written testimony submitted 4/12/07).

Some white male-owned firms feel that their race negatively affected their ability to engage in business. Interviewee #CT65, a white male-owned firm, believes that his race has affected his ability to engage in work with Caltrans. He feels that he has been intentionally discriminated against, especially when the trucking brokers came on board. Because there were not many white workers in his industry when he was doing Caltrans work, he was looked down on and treated as though he was a minority. He thinks he is passed over by prime contractors who are looking for DBEs to fill a quota. As to other agencies and in the private sector, he does not think that he has been discriminated against on the basis of his race. Interviewee #CT26, a white male-owned engineering contractor, discussed an experience he had in 1991 when Caltrans awarded a job in Humboldt County to a DBE firm whose bid was higher than his (\$42,000 compared to \$28,000).

Some of these non-DBE firms feel they have lost work to DBEs. Interviewee #CT34 said, “I may be able to think of some instance where our biologists weren’t used because they had to use biologists from a DBE firm, but I can’t think of any examples. I mean, I think you’d be hard pressed to say that you’re at a disadvantage for being Anglo-Saxon.”

Some minority and female-owned businesses did not feel that race or gender affected their ability to engage in business. [Interviewees CT#: 1, 6, 11, 29, 48, 81, CATA #7]. CATA #7, a Filipino trade association, believes DBEs are able to compete fairly with small non-DBE businesses, but not large non-DBE or DBE businesses.

Interviewee #CT1, another Native American male-owned firm, does not think his race affects his ability to obtain or engage in business. He stated he thinks his gender may be an advantage “although it’s hard to say for sure, but I would assume some advantage,” however, he feels it is probably limited to the private sector.

Interviewee #CT6, a white female-owned firm, does not feel her gender has affected her ability to engage in business. Interviewee #CT67, a white female-owned firm, said that, though she worked in a male-dominated field, she did not ever feel discriminated against. Interviewee #CT32, an Asian American female-owned company, did not believe her race or gender affected her ability to obtain or engage in business in either sector.

Interviewee #CT79, another African American male-owned firm, does not feel his race has affected his ability to obtain work in the transportation industry. He noted that he has a very “white” sounding name and thinks this makes a difference in his attempts to secure contracts. However, a prime has never refused to work with him simply because he is African American.

Interviewee #CT29, a Hispanic male-owned firm, does not believe that his race has affected his ability to obtain business, but stated that his biggest hurdle is being an unknown.

An African American male-owned small printing business testified, at a public hearing in Los Angeles, that “the discrimination that continues today has nothing to do with race. It may very well have something to do with gender. I do think that women have an unfair advantage in this process” due to female fronts. He went on to state “I don’t believe there’s a lot of racism existing in these programs anymore ... we got rid of the racist system, and now we’ve got a system of cronyism. And all of us are not cronies.” (P.H. Los Angeles, 4/4/07).

Some minority firms feel that their race helped them get business. [Interviewee #CT: 46].

Interviewee #CT46, an Asian American male-owned firm, did not think that his race had ever negatively affected his ability to obtain or engage in business with Caltrans or anyone else. In fact, said Interviewee #CT46, “it’s been just the opposite to be honest with you” because if there is a DBE requirement on Caltrans or other work, DBE firms are sought out for work.

Some minority or female-owned business were “not sure” whether their race, ethnicity, and/or gender affected their ability to engage in business, but suspected it had some impact.

CATA #3, a Hispanic trade association, said it was “hard to say” whether or not race or gender had ever affected his members’ ability to get work. He stated that Hispanics were not well represented in Caltrans work, and that District 7 should focus on bringing in more Hispanics, both internally within Caltrans administration and staff and in Caltrans contracting and procurement practices, especially in the professional services arena. CATA #3 did not feel “militant enough” to press this issue with Caltrans or the District Director and that, outside of the above, he did not know about race affecting his members’ ability to get business.

Interviewee #CT31, an African American female-owned firm, answered, “I would never know that ... things are really subtle now, and it is not overt anymore. It is pretty much you go into a meeting and you can kind of tell by body language whether you’re going to be accepted or not. Our biggest problem is getting our foot in the door, because once we get our foot in the door and we can show that we do a good job, then it is a marketing issue. But getting the foot in the door is tough.”

Interviewee #CT51, a Hispanic male-owned firm, stated that he could not answer whether his race had ever affected his ability to get work with Caltrans or anyone else. He said that, “hell yes,” there is prejudice in the world and that “anybody that thought there is not is lying” but that he could not answer whether this prejudice had affected him, and he chooses to believe that it has not. Interviewee #CT51 stated that it was difficult for anyone to break into the California transportation industry, especially minorities.

Some minority and female-owned business feel that race or gender did not affect their ability to engage in business in the public sector but did affect their ability to engage in business in the private sector.

Both Interviewees #CT10 and #CT49, African American male-owned firms, stated that their race had never affected their ability to get business from Caltrans or other agencies, but that it had affected their ability to get work from prime contractors — mostly in the private sector.

Interviewee #CT49, an African American male-owned firm, attributed this “discrimination” at least in part to there being so few African American contractors in the California transportation industry, stating that “because they do not see a lot of African Americans out there in the industry,... they do not have a way to gain confidence.”

CATA #2, an African American trade association, said that he did not think that race had affected his members’ ability to get work with Caltrans, but that it had affected their ability to get work for prime contractors and in the private sector. He also said that his race had affected his company’s ability to get business with local governments whose agencies and the contractors they hire “take on the flavor” of the local city or county. For example, said CATA #2, the City of Pasadena does not award many contracts to firms owned by people of color. He said that this latter issue was “still pervasive.”

Work environment.

Some white male-owned firms viewed the industry as open and accepting. Interviewee #CT9, a white male-owned company said “I think it’s unlimited” and “I don’t see any barriers for any race, creed, color, or ethnic barriers in the [engineering] profession.”

Asked to describe the work environment for DBEs, women, and minorities in the California transportation industry, Interviewee #CT17, a white male-owned firm, said “I think the field is so wide open now, the sky’s the limit with anybody that wants to work in this business. If they’re bright and they want to work hard, the sky’s the limit. There’s no limitation on a woman or any minority that I know of, certainly not in my firm.” Interviewee #CT17 stated also that he had never experienced any stereotyping, offensive comments, discrimination, sexual harassment, or complaints about other offensive behavior in the California transportation industry.

Interviewee #CT34, a white male-owned firm in business for 70 years, stated that he had seen things change over the course of his career to the point where now he did not see “any appreciable difference in the treatment of minority or female contractors or staff at all.” He stated also that “a high level of diversity in transportation work is just a given now,” but also noted that “that’s a product of where we are,” indicating that things might be different in other geographic areas. Interviewee #CT34 said that his company, being a company of 1500 people, sometimes has to deal with complaints about sexual harassment, discrimination, and other offensive behavior or comments internally, but he thought that this was “probably the same as it is with any industry” and said that the company is “very proactive about maintaining ... [a] diverse, tolerant work environment.”

Interviewee #CT66, a white male-owned firm, replied that it “seems like sometimes [DBEs] have a little advantage” but also that he could not “really comment too much on that” and that he “d[id]n’t really know.” He stated that women drivers in his business were sometimes looked down upon because people think that truck driving is a man’s job. Interviewee #CT40, a white male-owned firm indicated that there is little trouble for women and minorities in the industry.

Interviewee #CT75, a white male-owned firm, believes that DBEs are treated no different than non-DBEs, except for the preference DBEs are afforded upfront. After that, everyone is treated the same.

Several interviewees mentioned that price, not race or gender, is the motivating factor for primes in selecting subcontractors. Interviewee #CT45, a white male-owned construction firm, stated that in the public sector general business factors affect the work environment for a firm, but not race or gender: “you have to know the business, the work you are quoting on, and you have to have financing and be strong enough to carry your payroll and equipment for a month or two.” He stated with “the business we are talking about, all you have to do is be low bidder and have a bid bond.”

Some DBE firms also feel that the work environment was generally good. Interviewee #CT39, a Hispanic male-owned firm, replied that “It’s not perfect, but we had the program there that helped us out ...”. He went on to say that he thought there were “a few jobs” that the company could have received or “at least had a better shot at” if the DBE program had not been suspended. Interviewee #CT46, an Asian male-owned electrical construction company certified as a DBE with Caltrans, replied that he did not “see any difference if you were you a minority or not” and that he did not think that “conditions are any better or worse if you’re a minority.”

Interviewee #CT79, an African American male-owned firm who is not certified as a DBE with Caltrans, knows of a couple of certified entities that are doing relatively well with Caltrans. Interviewee #CT44, a Middle-Eastern male-owned firm, stated that his overall experience with the work environment for minorities in the California transportation industry has been good.

Interviewee #CT49, an African American male-owned company, emphasized the importance of opportunity. He viewed his success as an exception more than the rule because he had knowledge and experience from working in the industry for many years before starting his own business. In his opinion, he was able to take advantage of opportunities not available to others, but most African Americans were not able to get the same kind of experience that he had and that created more opportunities for him than would have otherwise existed.

Some trade associations classified the work environment as positive while stressing the continued relevance and importance of government assistance programs. CATA #2, an African American trade association, feels that the work environment was for the most part good, but stated that the government needed to stay involved to make sure DBEs continue to be utilized. CATA #2 said that in his own experience, he found that prime contractors preferred working with firms owned by white women than ethnic minority-owned firms, such as his company. He said he had no experience with or knowledge of overt stereotyping, discrimination, or sexual harassment in the California transportation industry.

CATA #3, a Hispanic trade association, stated “there’s a lot of opportunity” for DBEs, people of color, and women in the California transportation industry, but that everyone needs to push harder for work.” According to him, “there’s a lot of work, and we need to get a piece of it.” He said that this would require the association’s members to be aggressive on both the marketing and advocacy fronts, and that this advocacy and marketing is critical for DBE firms because there is an “unequal playing field.” He also said that Caltrans needs to look at bringing in more Hispanics and African Americans on its jobs because they are the most underrepresented.

Some DBE firms feel that DBE firms were held to a higher standard than their non-DBE counterparts. Interviewee #CT33, a Hispanic female-owned company, used the word “tolerated” to describe the work environment for DBEs in the California transportation industry. She said that they were not “welcomed with open arms” and that she thought some firms viewed DBEs “as a necessary evil” because they would rather not share work with DBE firms but do so because “Caltrans has a certain percentage.” CATA #1, an Asian American trade association, described the work environment for DBEs as “very, very tough” and said that DBE firms “have to be out there fighting all the time, as opposed to white [firms] ... [that] just flow through.”

CATA #7, a Filipino trade association, states that DBEs are held to a higher standard; they are scrutinized more than non-DBEs. If they make a mistake, they are not given the benefit of the doubt. On the other hand, if they do good work they will continue to be utilized. CATA #7 would like Caltrans to set aside certain work for small businesses, regardless of race or ethnicity, since all small business face the same challenges. The governor has expressed an interest in encouraging all small businesses.

K. Perceived General Barriers to Participation in the Public and Private Sectors

BGPAA Study Anecdotes Regarding Perceived General Barriers to Participation in the Public and Private Sectors

Barriers to pursuing work with the Airport Authority.

Some interviewees identified the Airport Authority's notification of work opportunities or bidding process as barriers to pursuing work with the Airport Authority. [Interviewees #BGP: 4, 5, 10, 12]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that the contract and bid procedures were not unnecessarily restrictive for small businesses, but that "the real restriction is for big businesses. It's not worth it for the big generals to do all the paperwork. For the Airport, the sizes of the contracts are small, and there are so many small business and minority business requirements that they have built into these contracts. If they took that off, and did some sort of performance measure or best use package bid proposal, then the big guys would dominate the work. They have it set up for small generals, but that's why it's so imperative to make sure the subs are getting paid because these are small generals that are sometimes very shaky firms."

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that there are barriers related to unnecessarily restrictive contract specifications and bidding procedures. He said, "It's the liabilities and indemnification clauses in those [contracts and bids]." He stated that contracts awarded on the basis of qualifications rather than the low bid can present a barrier for small businesses because "larger firms are typically going to have better qualifications, so it's going to limit your access."

Interviewee #BGP10, a principal at an engineering firm, reported that the biggest barrier to working with the Airport Authority is that the Authority appears to take the lowest bid. He said that in order to deal with this barrier, firms "try not to give a complete proposal," and if the firm knows that something "needs to be done," but it is left out of the "request for a proposal, then you leave it out" because the person who provides a proposal for "the smaller scope of work" will win the work because of the lower fee. He reported that firms have to manipulate their bid by providing a proposal that responds solely to request for proposals and nothing more so that they have a chance of winning and can add on costs that were not included in the request for proposals.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, reported that the company may have experienced a barrier to working with the Airport Authority due to lack of notification concerning opportunities.

A couple of interviewees identified obtaining financing, bonding or insurance as barriers to pursuing work with the Airport Authority. [Interviewees #BGP: 6, 13]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, "Sometimes the primes want to impose flow down procedures that were imposed on them by the [Airport] Authority or agencies, and sometimes that is unduly stringent. They're asking us for too much insurance, but I've never had a problem negotiating that to a reasonable level."

Interviewee #BGP13, the owner of a non-certified construction firm, reported that obtaining working capital is a barrier to obtaining work for all businesses.

One interviewee identified certain contract specifications as a barrier to pursuing work with the work with the Airport Authority. [Interviewee #BGP: 3]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that safety specifications are becoming problematic. He said, “It’s getting bad. ... It seems like what they’re trying to do with all the safety stuff [is a barrier]. ... They’re tying our hands so bad [with safety specifications] that, to me, it’s making things unsafe.”

Some interviewees reported that they have not experienced any barriers to pursuing work with the Airport Authority. [Interviewees #BGP: 11, 14, 15, 16]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that he has not experienced any barrier to pursuing work with the Authority, but that the company “would obviously like to have more business with them.” He said that it might be good for Burbank to have a project notification system similar to the one used by the Los Angeles Airport to notify prospective bidders of opportunities because his company “would jump all over it.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that the company would like to work with the Authority and does not feel unfairly excluded from doing work. He said that the only barrier for doing work with the Authority is that the Airport Authority has hired its own “very sharp people” who can do much of the work themselves. He reported that negative personal relationships may be a barrier to doing work at the Los Angeles Airport but not at BGPAA.

Barriers to pursuing work with other public sector agencies.

One interviewee identified issues related to race, ethnicity, and gender as a barrier to pursuing work with public sector agencies. [Interviewee #BGP: TA #1]. Interviewee BGP TA #1, the executive director of the Young Black Contractors Association, said that minority contractors need to be more assertive in trying to obtain work because the system is geared toward preventing them from obtaining work. He said, “[The message from the contracting industries seems to be], ‘We [aren’t] going to give you [anything], we [aren’t] going to let you get [anything] until you act like you want to try and take it. Whatever you do, we’re going to try to head you off at the path.’ ... [The system] is geared to keep [African American] people out, period.”

Other interviewees identified other barriers to pursuing work with other public sector agencies. [Interviewees #BGP: 6, 13, 15, 16]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, “A market barrier for any SBE trying to break into the market is the certification process. It’s long, it’s tedious, it’s very difficult and it scares a lot of SBEs off. Or I hear ‘I don’t want someone to see my finances or my personal net worth.’”

Interviewee #BGP13, the owner of a non-certified construction firm, reported that bonding and access to working capital were the only significant barriers for his firm in the public sector.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that the only obstacle to working in the public sector “is knowledge that there’s an opportunity.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that there are sometimes political barriers to doing work in the public sector.

Barriers to pursuing work in the private sector.

One interviewee identified small profit margins as a barrier to pursuing work in the private sector. [Interviewee #BGP: 11]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that the main barrier to working in the private sector is the lack of profit allowed by the airlines. He added that it has “gotten to a point where they want to know what your percentage profit is off of that contract,” and that information is a company’s private information, “but now they demand that you tell them how much money ... you’re going to make and ... asking ... questions that [allow them to] ... figure up whether or not that is true. ... If you want to do business out there, that’s what you [have] to do.”

One interviewee reported that he was unaware of any barriers to pursuing work in the private sector. [Interviewee #BGP: 13]. Interviewee #BGP13, the owner of a non-certified construction firm, said that he has not really encountered any barriers in the private sector. He said, “It’s become a very competitive market right now for construction. Our margins are very small, ... but I wouldn’t consider it a barrier I guess.”

Network/“good old boy network.”

Some interviewees reported knowledge of or experience with a “Good Old Boy Network” or other type of closed network. [Interviewees #BGP: 3, 5, 6, 8, 9, 16, TA #1, TA #2]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that there is a “Good Old Boy Network” in the local marketplace and it makes it difficult to obtain certain work. He said, “There’s definitely a “Good Old Boy Network” out there. ... You can’t get around that. There are some jobs — you just can’t bid them, you don’t go anywhere near them. It’s a waste of time.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that there may be there may be some preferential networking for public agency work. He said, “If it’s open bid work for the State of California, unless you’re a small business or have an in, you’re not going to get the project. We don’t even bother.” He said, “Trying to get your foot in the door is always the issue. Engineering is mostly done based on reputation, and unless you have some type of relationship with those people or a network where they know you from, you’re generally not going to get invited.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, “I hear of [the ‘Good Old Boy Network’] on the contractor end. I hear of networks ..., but we don’t know.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that a small number of firms seem to win a lot of projects in acoustical engineering and that sometimes the outcome of the bid process seems pre-determined in favor of those firms. He said, “Sometimes I have the distinct impression that the bidding process was a formality to comply with a requirement to get three or four bids, but the winning party was pre-selected.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm reported that the “good old boy network” still exists. He said, “Of course that still goes around. Even if you’re the lower bid, they’ll just cancel it to give their boy a chance to bid lower again.” When asked whether this was a problem in both the public and private sectors, Interviewee #9 said, “It’s mainly a problem in public sector work...not with the Airport Authority.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that “some governmental agencies ... may want to use their ‘Good Old Boy Network’ rather than the most qualified consultant.” He said that he has not “had that [problem] with Burbank.” He said, “There’s always the possibility that the ‘Good Old Boy [Network]’ exists where people are working comfortably together and they do the work fine, and that’s understandable.” He said that within the last year he experienced a situation in which he was asked to submit a response to an RFQ, but the public entity told him that they were going with the other company because they knew the other company could “hit the ground running.” He said that he knew that the only reason that he was asked to submit a response was because the public agency was required to obtain responses from more than one company.

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that there is a “Good Old Boy Network” that makes it more difficult for minority contractors and other small businesses to get work. He said, “[Problems] trickle down from the top. Cronyism. Nepotism. Favoritism. ... We call it the ‘Good Old Boy Network’. ... It’s strong as ever.” He said, “There are people getting contracts that they don’t have to bid on. There are people who get contracts from the federal government that are sole sourced to them up to \$5 million. And once they get in there, they stay there. ... Cronyism. Nepotism. Favoritism. ‘Good Old Boy Network.’”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that the “Good Old Boy Network” is a barrier to obtaining work in the marketplace. He said, “It’s just in the culture ... the coming year and when you have large firms that were never had such standard, minority businesses, they never had to a reason to outreach ... it’s like everything, you know that’s what they’re accustomed to, that’s what they’re comfortable with.” He said that his members have experienced the “Good Old Boy Network” on Airport Authority projects.

Other interviewees reported no knowledge of or experience with the “Good Old Boy Network” or other closed networks being a barrier to pursuing business opportunities. [Interviewees #BGP: 2, 10, 11, 12, 13, 14, 15]. Interviewee #BGP10, a principal at an engineering firm, said that the firm has not experienced the “Good Old Boy Network” being a barrier to obtaining work. He said that he has heard other people complain that it is a barrier. He said that he and his partner “have been around ... forever” and have established relationships, so “we’re probably a part of the ‘Good Old Boy Network.’” He said that the firm typically does not care who it hires and has hired from every group.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that the “Good Old Boy Network” is “not at all” a barrier to obtaining work. He said, “The Good Old Boy types of things were in effect [in] ... the 60s and 70s, ... and ... going through that era we did have that process going on, but not now. ... That situation is long gone from the ... public sector, but from [the] private sector too, everybody looks at money and how much money is involved in everything.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated, “There is a ‘Good Old Boy Network,’ but it’s not a barrier. And we’re actually seeing less and less of it with this influx of smaller subcontractors, so I would have to say that it’s not significant.”

Interviewee #BGP13, the owner of a non-certified construction firm, reported that the “Good Old Boy Network” is not a barrier to obtaining work with the Authority. He said, “There [are] no loyalties there whatsoever. I think that they know you as a contractor and your performance, but not the ‘Good Old Boy [Network]’ thing, absolutely not.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that the “Good Old Boy Network” is not a barrier to obtaining work “now that they have [a] prequalified on-call list where ... there are certain game rules.” She said that the on-call list was created “about 10 years ago,” and “[i]t has opened it up for everyone to participate in a more equal environment. Prior to that, we had the experience where they had an onsite project manager that was a prime, and that prime was responsible for managing all of the subs, and ... at that point, yes, that was ... the ‘Good Old Boy Network.’ I saw that really in play in those days.” She added that, previously, the “Good Old Boy Network” would use the same subcontractors, “or they would create LLPs or something just to eliminate a strategic partner down the road ... on another job.” She also said that “there are MBE/DBE ... [and] WBE firms that are prime” today and never would have been prime before.

Bid shopping.

Several interviewees reported knowledge of or experience with bid shopping. [Interviewees #BGP: 3, 8, 10, 12, 14, TA #2]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that he suspects bid shopping occurs, but that it is difficult to prove.

Interviewee #BGP10, a principal at an engineering firm, said that he has experienced primes who engage in bid shopping, “but it’s pretty rare,” and once he finds out that a prime is doing that, he will not work for that prime anymore.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated that bid “shopping does happen, but it’s very low key” and does not present a barrier to obtaining work.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that he experiences bid shopping “all the time, and as a matter of fact, they’ll tell you, ... ‘Hey, we took your bid to somebody else. They [offered to do it] ... for \$1,000 less than you. Can you do that?’” He said that this occurs in both the public and private sectors but more consistently in the private sector. He said that “you’ll see more of that” with smaller projects. He said that he is “pretty sure” that the Authority has checked his prices with other firms, adding, “I don’t know if it’s bid shopping. I think it’s price checking - making sure they’re getting a good price.” He said that this has occurred “within the last three years.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that bid shopping occurs “all of the time.”

Other interviewees reported no knowledge of or experience with bid shopping. [Interviewees #BGP: 1, 2, 5, 6, 9, 11, 13, 15, 16].

Bid manipulation/different bid criteria.

Several interviewees reported having heard of or experienced bid manipulation. [Interviewees #BGP: 3, 8, 14, 15, 16]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that he suspects bid manipulation occurs, but that it is difficult to prove.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that he has heard of bid manipulations. He said that in his industry, companies “can’t be certified by all of the different manufacturers. You have to pick the few that you work with the best and you like the equipment the best, but ... sometimes ... the wording in the bid ... [requires the use of] a certain manufacturer [for which] ... a certain dealership in the area is the certified dealer.” He said, “There are times when ... an architect or a design company will position a bid by utilizing manufacturers” that only have particular companies as certified dealers. He said that he has not notified the Authority of this issue.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has heard about bid manipulation, but she has never experienced it.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that he has “heard of” bid manipulation, and he vaguely remembers “maybe five [or eight] years ago” that “there may have been an allegation of some contractors or a contractor” engaging in bid manipulation. He added that he remembered “that the Burbank Airport thoroughly investigated it, and they fight very hard to make sure that doesn’t occur.” He said that the Authority has “done a very good job in policing it [and] making sure it doesn’t happen.”

Other interviewees reported having never heard of or experienced bid manipulation.

[Interviewees #BGP: 1, 2, 5, 6, 9, 11, 12, 13, TA #2]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he does not “know of any specific time in which a bid has been manipulated,” but said that if it occurs, it likely occurs at a higher level.

Experience/expertise.

Several interviewees reported that obtaining experience or expertise is a barrier to pursuing business opportunities. [Interviewees #BGP: 8, 14, 16, TA #1]. Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that obtaining experience and expertise is a barrier in his industry. He said that the company “may go to [a] manufacturer’s rep and say, ‘We would like to become certified with that manufacturer.’ And depending upon the representative and the manufacturer, they may not want another dealer in the area, and sometimes that’s good, and sometimes that’s bad. If you’re the dealer that has the certification, that’s good because you don’t want a bunch of people in your area to do what you do. If you’re somebody who wants [a particular] project, it’s not good. So, that’s the limitations in our industry, so it’s really based on relationships.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, stated that he is aware of obtaining experience and expertise being a barrier. He said that this has been a barrier for his firm and said that when he “tried to get work with Caltrans, ... they basically said, ‘You don’t have enough experience in this work locally.’ So it’s like Catch 22. You can’t get the work if you don’t have the experience, and you can’t get the experience if you can’t get the work.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said, “A lot of people are saying, ‘Are [minority-owned contractors] really out there? Can they really do the work?’ The biggest thing is, [minority-owned contractors] are out there not getting a chance. We’ve done all the leg work that we know to do. ... We only need a fair opportunity.”

Other interviewees reported that obtaining experience or expertise is not a barrier to pursuing business opportunities. [Interviewees #BGP: 9, 10, 11, 12, 13, 15, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that he has not experienced obtaining experience or expertise as a barrier. He said that the firm is good at what it does, and if it does not have a particular expertise, the firm usually contacts “a university professor” who focuses “on that particular area of expertise.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that obtaining necessary expertise or experience is not a barrier because she belongs “to a really good network of professional alliances.”

Access to labor/personnel

Some interviewees reported that obtaining qualified labor or personnel is a barrier to pursuing business opportunities. [Interviewees #BGP: 3, 5, 6, 8, 14]. Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that there are barriers associated with finding qualified personnel and labor, particularly for union employers. He said, “It depends on whether you’re union or non-union. In my position [as a union employer], I have to take who they send to me, good or bad. If he’s good, he may stay around for a while. If he’s bad, he goes back to the hall right away, and then you call for more. It takes a while to weed through and find a qualified [worker].”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that attracting personnel and labor is “problematic, especially in our industry. Nobody teaches power electrical engineering anymore. Everyone’s going to the high tech stuff, and power is considered passé. We’re not finding U.S. citizens that are trained in this field.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that access to labor and personnel was a barrier “when the industry was booming and I needed more help. Then I’m competing against the big guys. It’s more difficult because I don’t have an internal recruitment agency.”

Interviewee #BGP8, the technical director of a white woman-owned non-certified engineering firm, said that it can be difficult for small businesses to train personnel and get them up to speed. He said, “The barrier in our line of work is finding qualified people. Being a small business, we can’t afford to take people who don’t understand our terminology and train them. We’d be interested in those that can hit the ground running.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that access to labor can be a barrier because “there are not a lot of people out there ... [with the] ability to do what we do. They could learn it, but there’s training” required, so the company usually tries to work with “what’s out there.”

Other interviewees reported that obtaining qualified labor or personnel is not a barrier to pursuing business opportunities. [Interviewees #BGP: 1, 9, 10, 11, 12, 13, 16, TA #2].

Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that there are no barriers associated with finding qualified personnel and labor in the architecture industry, but that it is difficult to retain qualified staff because “after six or so months, they often receive offers from other architecture firms for another dollar.”

Interviewee #BGP10, a principal at an engineering firm, said that he has not experienced access to qualified labor and personnel as a barrier. He said that when the “economy was good, it was hard to hire engineers,” but now that the economy is weaker, it is “much easier to hire people.”

Interviewee #BGP13, the owner of a non-certified construction firm, stated that access to qualified labor and personnel has not been a barrier recently, but “when unemployment is low, experience is hard to find because the good guys are working. Right now, it’s an employer’s market. I think you can pretty much ... get your values worth right now.”

Learning about work and marketing opportunities.

Some interviewees reported that learning about work and marketing opportunities is a barrier to pursuing business opportunities. [Interviewees #BGP: 10, 12, 15, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that learning about work and marketing opportunities has always been a “struggle.”

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that learning about work and marketing is not a barrier generally, but learning about work opportunities is probably the biggest barrier to working with the Authority.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that learning about work or marketing has been a barrier to obtaining work because she has to depend on the prime to invite her “in on the on-call opportunity” and to find out about opportunities through the on-call list.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that learning about work and marketing opportunities has been a barrier on Authority projects.

Other interviewees reported that learning about work and marketing opportunities is not a barrier to pursuing business opportunities. [Interviewees #BGP: 1, 2, 3, 5, 7, 8, 9, 11, 13, 16].

Interviewee #BGP13, the owner of a non-certified construction firm, reported that learning about work or marketing opportunities has not been a barrier to obtaining work. He said that the company has “plenty of avenues and access to the market for construction. ... I get e-mails from the State of California. I get e-mails from two or three different bid marketing firms that sent stuff over. So, we always have a pretty good idea” of what opportunities are available. He said that the notification programs were for the private and public sector.

Interviewee #7, the owner of a white male-owned SBE-certified landscaping business, said that approximately 70 percent of his firm’s work comes from the public sector. He said that his firm finds out about bid opportunities for public agency work through the newspaper and various agency outreach efforts.

Unfair contract denial.

Some interviewees reported having experienced or being aware of an unfair contract denial.

[Interviewees #BGP: 2, 10, 14, 15, 16, TA #2]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that “we have had some weird experiences with public bids. They always give explanations that seem within their rights, but they seem funny. We had an issue with [another public agency] six years ago where they didn’t want a small ... company. We were the lowest bidder, and that was the qualification for the contract, but it went out for re-bid. They said that something in the bid process went wrong, so we re-bid, but someone else in the bid process was the low bidder.”

Interviewee #BGP10, a principal at an engineering firm, reported that the firm has experienced an unfair contract denial. He said that last year, when his firm’s proposal was not selected, he later read in the newspaper that members of the selected team were related to a city council person. He said that this was not an Authority project.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that the company is aware of unfair contract denials, like when a public entity released a company from a project based on “a financial crisis,” but “it’s easy for them to say financially the city doesn’t have money, so ... we’re not going to maintain your contract anymore,” but then, we found out that “sometimes they’ll do that, they’ll swap [the work] into a new project, and all of a sudden there’s another company taking care of that contract. ... Sometimes that’s due ... to the fact that they want to get a better price and this was the only way for them to renegotiate. ... Sometimes they’ll just want to bring another firm in because they’re going to get better pricing, and it’s a way for them to get out of a contract.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has experienced an unfair contract denial on “a 15-year contract [with the City of Los Angeles] to the tune of \$100 million, and the recommendation from the agency who’s contracting it went to the prime who was high bid and [had] the lowest MBE/WBE participation. And their offices are out of Arizona.” She added that the contract still “has to go to City Council ..., [which] has to decide whether they’re going to” accept the recommendation.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he has experienced an unfair contract denial. He said that he thought that “there was a contract where [the company was] most qualified, and the firm that was picked, the prime consultant, had someone in their firm that went to school with the client.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is aware of its members being denied contract awards unfairly.

Other interviewees reported never having experienced an unfair contract denial. [Interviewees #BGP: 1, 3, 5, 6, 8, 9, 11, 12, 13].

Double standards in work performance.

Some interviewees reported experiencing or being aware of double standards in work performance. [Interviewees #BGP: 9, 10, 11, 16]. Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm noted that there are double standards in work performance occur all the time. He said, “You are going to run into that all the time. There’s a double standard, because when you win a job, and you’re the outsider, they want you to do a little more than when an insider does it.” Interviewee #9 noted that they have not experienced the double standard issue with the Authority.

Interviewee #BGP10, a principal at an engineering firm, stated that he had not heard of double standards for work performance in the private sector, but he said that public agencies generally “hold ... consultants to a significantly [higher] standard” than they hold their own employees.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he is sure that double standards in work performance occur, but he is not aware of any specific examples. He said that “it did happen” during his experience working at different airlines, but he is not aware of it occurring recently.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that he has experienced double standards of work performance but not with the Airport Authority. He said that on one public project where four consultants were hired, the other three consultants were not “held to the same standard.” He said that he thinks that this may be because of “some DBE political issues.”

Other interviewees reported that they have not experienced double standards in work performance. [Interviewees #BGP: 1, 2, 3, 5, 8, 12, 13, 14, 15]. Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, stated that he has not experienced double standards in work performance, but he has had “clean up other people’s work” before his company can start its work on a project.

Price discrimination by a supplier.

Some interviewees reported experiencing price discrimination by a supplier. [Interviewees #BGP: 2, 13, 14]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, stated that he believes price discrimination by suppliers occurs, but it is “nothing we can prove.” He said that he does not believe price discrimination is related to discrimination based on race, ethnicity or gender.

Interviewee #BGP13, the owner of a non-certified construction firm, said that he has experienced price discrimination by suppliers in the last 20 years, but “not recently.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that he has experienced price discrimination involving relationships among dealers and manufactures.

Other interviewees reported that they have not experienced price discrimination by a supplier. [Interviewees #BGP: 1, 3, 5, 6, 8, 9, 11, 12, 16]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that “there are different price levels based upon how much you buy from [a particular company],” and a company has the opportunity to say that it thinks that a particular price is too high, but he does not think that there is the opportunity to know if something is being priced differently for someone else.

Allegations of fronts.

Several interviewees reported some knowledge of alleged MBE/WBE/DBE fronts or frauds. [Interviewees #BGP: 1, 3, 5, 6, 9, 10, 11, 14, 15, TA #1, TA #2]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said, “I have worked with some [MBE/WBE fronts]. It was women-owned businesses that were fronted by the wife of a husband who has the legitimate business. Most of that went away when the State came up with the new Caltrans agreement.”

Interviewee #BGP5, the president of an 8A-certified engineering firm, said that there are issues with MBE/WBE/DBE fronts or frauds. He said, “There are a bunch of firms that are women- and minority-owned by name only, where the owner’s wife is the principal owner, but they are really not participants. There are very few minority- or women-owned firms that we’ve worked for that are truly minority- or women-owned.”

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said, “I’ve heard about some [MBE/WBE or DBE fronts or frauds] in the industry. I’d say that was more in the 1990’s; there were a lot of fronts and frauds, especially on the contracting end. I’d hear, ‘I’ll just get my wife to own the company’ all the time, but I don’t really hear it anymore.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm stated that regarding MBE/WBE/DBE fronts and frauds, “that happens a lot. It’s sad, but it’s a loophole they use, but I haven’t heard of this in Airport work.”

Interviewee #BGP10, a principal at an engineering firm, reported that he had heard of “a couple” of MBE/WBE or DBE fronts or frauds. He said that he had seen them in the marketplace last year, but he did not come into contact with them while working on an Authority project.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that “there is no question” that MBE/WBE or DBE fronts exist, but he is not aware of any specific examples currently. He stated that he does not “think that these MBE and WBE requirements are that important anymore to anybody.”

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported that he is not personally aware of MBE/WBE or DBE fronts or frauds, but he has “heard of it” and has heard that “they were able to gain contracts” not because they actually employed any minorities but because they were hiring minority subcontractors. He said that he was not aware of this occurring on BGPAA projects.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has observed MBE/WBE or DBE fronts or frauds. She said that “every four or five years we have an engineer who puts his wife up, and she absolutely has no knowledge on the day-to-day business dealings or anything, and she’s just there so they can get the contracts, which is unfortunate. But yes, it does happen.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that he is aware of MBE/WBE or DBE fronts and frauds. He said, “The thing that gets me about [Caucasian] women being in the same pool as [minority-owned firms] is that all they do is have the [Caucasian] husband take his business and put it in his wife’s name.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is sure there are MBE/WBE or DBE fronts or frauds but he does not have specific examples.

Some interviewees reported that they are not aware of MBE/WBE or DBE fronts or frauds. [Interviewees #BGP: 2, 8, 12, 13, 16].

Allegations of false DBE reporting.

One interviewee reported experience with or knowledge of false MBE/WBE or DBE reporting. [Interviewee #BGP: 15]. Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has been aware of false reporting “within the last five years.” She said that a prime falsely reported in a bid that he would use her company for “4 percent” of the work on what she recalls “was a half million dollar contract, and [she] never got any work out of it.” She said that the prime worked the numbers so that it could argue that it was no longer required to use her company.

Most interviewees reported no knowledge of false MBE/WBE or DBE reporting. [Interviewees #BGP: 2, 5, 6, 8, 9, 10, 11, 13, 14, 16, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that he is not aware of false reporting of MBE/WBE or DBE utilization. He stated that many teams are formed before the pre-proposal meeting in which good faith efforts are required, so he wonders if prospective proposers are engaging in any kind of falsification.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is not aware of false reporting of MBE/WBE outreach efforts. He said, “I don’t know because I talked about that earlier, we don’t get to see what they list and that’s one reason that I mentioned that because we don’t know if there is fraud going on.” He said, “If you listed me, I want to see where you listed me ... that should be made public.”

Failure to use good faith efforts.

Some interviewees reported perceptions of instances where prime contractors did not use genuine good faith efforts to locate qualified and available DBE subcontractors. [Interviewees #BGP: 1, 4, 9, 15]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, said that he has had problems with false reporting of good faith efforts. He said, “People would call and I will tell them that we are DVBE and fill out any appropriate documents. Then we would get a copy of the prime’s bid documents that claimed that they did a good faith effort but couldn’t find anyone. But this problem has gone away, because the State has now says that there’s no such thing as a good faith effort.”

Interviewee #BGP4, a project manager of a WBE-certified construction firm, said, “There are some contractors that don’t really care about the way the program is set up. They look at the minimum guidelines and say, ‘Okay, all I have to do is put together this good faith effort.’ They have a cookie cutter good faith effort ready to go, and if the Airport actually took the time to look back at some bid scopes, they’d see that it’s the exact same thing every time. These good faith efforts are a joke. They’re not really doing a good reach out.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm said, “No one really tries. They just sign that paper.” Interviewee #9 added that, “People don’t really falsify maliciously.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she has heard of prime contractors falsifying good faith efforts to utilize MBE/WBE or DBEs “within the last five years.” She said that she has had the “most experience with” the City of Los Angeles, and Los Angeles has gone “after the good faith effort” requirement. She said that the City is “supposed to be validating how many companies” a prime is reaching out to, but the City does not “have the personnel to fully” fulfill that mandate.

Other interviewees reported that they had never heard of or experienced a prime contractor falsifying its good faith efforts. [Interviewees #BGP: 11, 12, 13, 16].

SDCRAA Anecdotes Regarding Perceived General Barriers to Participation in the Public and Private Sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

Administrative expense/bureaucracy.

Many interviewees reported that it is more expensive to work with the San Diego Airport due to various administrative expenses, and several interviewees specifically cited insurance costs.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, said that operating expenses tend to be considerably higher for businesses in an airport compared to other venues.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the San Diego Airport, said that insurance costs can be two to three times higher in an airport than in other venues like malls. She said that the Airport also requires concessionaires to carry a \$20,000 bond in case they have trouble paying their rent.

Interviewee #SD7, representing a white male-owned firm, reported that bonding and insurance are significant issues for firms working with the Airport. He indicated that most public agencies (including the Airport) require a large bond to bid projects and a payment bond to hire subcontractors. Regarding insurance for Airport projects, Interviewee #SD7 said, “At the airport you need \$3 to \$10 million general liability. If you work outside you need \$10 million general liability and \$2 million auto insurance. He went on to say that small firms have trouble qualifying for insurance policies of that size.

Interviewee #SD2, representing a white female-owned firm, also indicated that the Airport’s insurance requirements are burdensome. She said that the Airport requires firms to carry \$10 million policies, a value that far exceeds her financial capability.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, said that his firm is required to carry a great deal of insurance: “Our insurance is very expensive – it costs about \$50,000 per year.” He went on to say that his firm’s preexisting relationship with insurance brokers helps t to bring their costs down.

Interviewee #SD4, representing a white male-owned firm, reported that bids that he receives from some subcontractors (including minority and female-owned ones) include a premium for working on Airport projects. That is, those subcontractors give higher estimates for Airport projects than for projects that are not with the Airport.

Interviewee #SD26, representing a white male-owned firm, reported that the Airport requires firms to hold \$5 million of liability insurance requirement, which Interviewee #SD26 regards as excessive for his line of work: “How much damage can a sandblaster do?”

Some interviewees indicated that insurance costs are not a barrier to working with the San Diego Airport. Interviewee #SD3, representing a white male-owned firm, reported that the Owner Controlled Insurance Program (OCIP) covers workers’ compensation and general liability for his firm. He added that the Airport also provides a third party broker to help with the insurance requirements for prime contractors and subcontractors.

Interviewee #SD8, representing a minority male-owned firm that is a concessionaire at the Airport, said: “If you work for a week, you should be able make enough money for the insurance. He also added that he did not need help financing his concession. Interviewee #SD9, representing a minority female-owned firm and a concessionaire at the Airport, indicated that insurance has not been a problem for her while working there. She reported that she carries her own general liability and health insurance policies.

A number of interviewees cited the San Diego Airport's bureaucracy and restrictive policies as a barrier to working there. Interviewee #SD4, representing a white male-owned firm, reported that he had a difficult time meeting DBE goals in the past, because minority- and female-owned firms considered the Airport "tough to work for." Interviewee #SD4 cited an example of a subcontractor who had to redo a powder coat because the color was "speckled white" instead of "plain white." The Interviewee added that the inspector examined the work "with a flashlight and magnifying glass."

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, said of the bureaucracy, "The bureaucracy is a problem. For this industry it is important to have a system that is sensitive to the market needs. We have to ask to get hot new items on the shelf, but the bureaucracy is too slow." He went on to indicate that no one at the Airport wants to make a decision, because they are worried about keeping their jobs: "No one wants to be held accountable... This drives me crazy!"

Interviewee #SD20, representing an Asian American male-owned firm, explained that some aspects of Airport work are more difficult compared to other entities, because the Airport is under high scrutiny due to the fact that they are spending public money. As a result, they have to make sure that contractors are doing good work. However, Interviewee #SD20 seemed understanding about the extra paperwork, the increased oversight, and the stringent standards associated Airport work.

Interviewee #SD19, representing a white male-owned firm, reported that her firm does not usually bid on work with the Airport, because of the difficulties associated with working with the Airport that they have heard about from other firms. Some of the difficulties that Interviewee #SD19 cited were: additional insurance requirements, extensive amounts of paperwork, difficult invoicing procedures, and a fear of being sued by the Airport.

Interviewee #SD26, representing a white male-owned firm, reported that his firm prefers to work as a subcontractor rather than as a prime contractor on Airport projects, because of the extensive paperwork and stress involved with working as the latter.

Interviewee #SD42, representing a white male-owned firm, reported that his firm had a \$1 million contract with the Airport as part of the Quieter Home Program that was suspended due to a disagreement between his firm and the agency: "In a nutshell, we made a minor adjustment to the delivery of a specific door that was supposed to be used for our phase of the project." Interviewee #SD42 explained that his firm did not install the doors that they agreed to install in its contract with the Airport because of a clerical error on the part of its supplier that vastly underestimated the materials costs. That clerical error led Interviewee #SD42 to install a modified version of the doors that were more cost effective. The supplier called the Airport and told the agency about the materials change. Interviewee #SD42 said that the Airport was upset with the materials change and led to the indefinite suspension of his contract: "The Airport claims we had no right to order the doors without the glass and put the glass in ourselves. They state that they have very stringent warranty requirements and the materials that [Interviewee #SD42's firm] used did not meet their requirements." He continued, "When working with the Airport, it is a one way street."

Interviewee #SD42 stated that his experience with the Airport has done a great deal of damage to his firm. He explained that the contract suspension has eliminated the possibility of his firm ever obtaining bonding again: "The failure of this contract has eliminated any future opportunity for bonding. I am completely wiped out and will not be able to get bonded probably ever again. Even if I

created a new entity, there is just no possibility of getting bonded again — you don't clean up from this. Bonding companies are more conservative and more credit-sensitive than even a bank because they will be responsible for completing the work." He went on to say that his company may have to file for bankruptcy as a result of the contract: "We are hanging on, [BUT] we are very close to filing for bankruptcy and probably will ... This has been a very negative process that has brought our company to its knees."

SDTA #1, representing a local chamber of commerce, explained that long approval procedures and delays associated with working at the Airport are a source of frustration for his organization's members. He said, "It would really be a positive if some of these [public sector] projects would move along."

SDTA #9, representing a public works trade organization, reported that the special requirements associated with working at the Airport are burdensome for small firms: "The special requirements from the Airport pose as a barrier and are burdensome to [our organization's] small business clients. For example, the security, bonding, and extra licensing are hard to get for small businesses."

Airport security restrictions.

Several interviewees said that the San Diego Airport's security restrictions make it more difficult and more expensive to work there. Interviewee #SD21, representing a white male-owned firm, indicated that security requirements are a significant issue when working with public agencies and particularly when working with the Airport. Regarding the security policies at the Airport, he said, "It's costly, it's time consuming, [but] it's ... necessary."

Interviewee #SD13, representing a white male-owned firm and master concessionaire at the Airport, said that all of their subtenants and their employees must pass rigorous security measures (e.g., finger printing and background checks) that not only make it more difficult to find employees but also drive up operating costs.

Interviewee #SD7, representing a white male-owned firm, reported a number of responsibilities associated with the security restrictions at the Airport. For example, he explained that in order for a firm's workers to receive security badges, they have to attend several days of classes and learn about the myriad restrictions that apply to them. He went on to indicate that the security process is also quite costly, and after he learned of the costs he substantially increased the amount of his bids on Airport work.

Interviewee #SD2, representing a white female-owned firm, reported that the Airport's security review of firms' employees is a significant issue. She explained that after a firm wins a contract, they need to spend time and money on getting security badges for their employees. Regarding that process, Interviewee #SD2 commented: "You can't have an employee with any blemish."

Interviewee #SD23, representing a white male-owned firm that is a concessionaire at the Airport, explained that the specialized security requirements at the Airport drive up the costs of insurance for firms doing work there.

Interviewee #SD28, representing a white female-owned firm, reported that the post 9/11 security restrictions at the Airport are burdensome in terms of both time and cost.

Interviewee #SD47, representing an African American female-owned firm, reported that her firm had a negative experience working with the Airport because of the agency's post-9/11 security restrictions. She said that her firm could not complete the project on time, because the security requirements were too stifling. For example, her employees had to keep their tools within a specified distance from themselves and they could only access the worksite at particular time during the day.

A number of interviewees reported that the San Diego Airport's security restrictions also limit when contractors can work each day. Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, reported that when repairs need to be made on her concessions, security guidelines dictate that all improvements be made at night and that the contractors must pass all security and badging guidelines. Interviewee #SD1 indicated that those restrictions slow down work and make it more expensive to do business with the Airport.

Interviewee #SD4, representing a white male-owned firm, reported that the work hours at the Airport are very restrictive. He explained that contractors have to cordon off work areas and complete their work there before moving on to another area, and, as a result, the work becomes more difficult.

Interviewee #SD2, representing a white female-owned firm, indicated that a challenge associated with working at the Airport is the short amount of time each day that her firm is permitted to be working on the runway. All of their work has to be done at night and has to be completed and dry before the runway opens the next morning.

Experience and expertise.

Several interviewees indicated that a firm needs to be experienced with the San Diego Airport's organization and policies in order to be successful working there. Interviewee #SD21, representing a white male-owned firm, reported that although his firm does not find it to be particularly difficult to work with the Airport, his firm has a lot of experience working with them and that a less experienced contractor might find the process to be "much more difficult." Similarly, Interviewee #SD4, representing a white male-owned firm, said that the Airport is a difficult place to work for contractors who are unfamiliar with working there.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, stated that both experience and firm size are barriers to doing business with the Airport. She explained that if a firm is too small or does not have enough experience, the Airport will not be interested in awarding them a concession.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, reported that her firm carefully evaluates potential subtenants and their business ideas to ensure that their concession will be viable. Interviewee #SD13 explained, "We don't want them to fail." As part of that evaluation process, the master concessionaire strongly considers a potential subtenant's previous experience.

Airport “uses the same large firms.”

A few interviewees commented that the San Diego Airport tends to select the same large firms for many of their projects at the expense of small, less-established firms. SDTA #1, representing a local chamber of commerce, reported that a common criticism of the Airport is that they are biased toward awarding contracts to large, well-established, out-of-state firms rather than to small, local firms. SDTA #1 indicated that that trend seems to be true across different industries but seems to be especially true for construction and professional services.

Interviewee #SD30, representing an African American male-owned firm, said that the Airport should focus on awarding work to local firms: “I was really disturbed to hear that ... the Airport’s work is going to out-of-towners. like from New York and Kentucky — it’s taking the money out of town and that’s not good. I think they should definitely make an effort to [keep the money] in state.”

SDTA #2, representing a Hispanic American trade organization, reported that the organization’s members say that it is difficult to do work with the Airport: “[The Airport is] very private in doing business. They don’t do a good job of outreaching for diversity. They are doing better though – [The Port Authority] used to be very insulated.” SDTA #2 went on to say that none of the organization’s current members are doing work with the Airport, and he believes that is due to the Airport having long standing relationships with other construction firms.

Another trade organization reported that the San Diego Airport tends to emphasize small business participation. SDTA #6, representing an Asian American trade organization, stated that the Airport wants to do business with small firms in particular, including minority- and female-owned ones.

Airport has limited space.

Two concessionaires indicated that there is limited space to work in the San Diego Airport.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, reported that there is limited space in the Airport, thus limiting opportunities for potential concessionaires. Consistent with that statement, Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, said that she needs more storage space for her concessions but that it has not been granted to her due to the space limitations at the Airport. She went on to say that concessionaires who “play the game better [than her]” have received additional space.

Non-specific comments.

Some interviewees offered non-specific comments about barriers to being successful at the San Diego Airport. Interviewee #SD11, representing a white male-owned firm, indicated that working for public agencies (including the Airport) comes with a great deal of scrutiny that is difficult to manage: “Government work bothers me, because it appears the government thinks that we do something that we aren’t supposed to be doing. They assume that we are the bad guy from the beginning, and then we have to come up with mountains of paperwork to prove we are doing the right thing.”

Interviewee #SD13, a white male-owned firm that is the master concessionaire at the Airport, indicated that operating a small business in an airport is much more difficult than running a small business in other venues (e.g., malls, strip malls, etc.). She said, “This is a challenging environment.”

In contrast, Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, stated that although there are no guarantees in business and there are always challenges, new concessions in airports have a 5 percent failure rate – much lower than the 18 percent failure rate for other new businesses.

“Good old boy network”

Several interviewees reported that a substantial barrier to obtaining work in the public and private sectors is the preexisting relationships between agencies and particular prime contractors or between prime contractors and particular subcontractors. Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that his firm is excluded from the “Good Old Boy Network”. And that the “Good Old Boy Network” breeds discrimination: “Discrimination happens in construction much more because of the “Good Old Boy Network.” Discriminatory attitudes manifest themselves when contractors say ‘I can’t find anyone to do the work.’”

Interviewee #SD20, representing an Asian American male-owned firm, reported that the “Good Old Boy Network” still affects his business, primarily in the private sector: “In the private sector, [issues related to a ‘Good Old Boy Network’ are] still happening!” He went on to say that those problems do not exist to the same degree in the public sector because the work is more varied, which generates opportunities for different firms.

Interviewee #SD16, representing an African American male-owned firm, indicated that the “Good Old Boy Network” causes problems for his firm: “The “Good Old Boy Network” still exists and it is wrong.”

Interviewee #SD34, representing a white male-owned firm, indicated that many potential clients have existing relationships with competing firms in his industry and that it is difficult to convince them to make a change, even when his firm can offer better prices.

SDTA #1, representing a local chamber of commerce, indicated that networks of large contractors certainly present a challenge to all small firms in San Diego, including those that are minority- and female-owned.

SDTA #2, representing a Hispanic American trade organization, reported that public agencies favor certain contractors over others: “[Public agencies] have their favorites in contracting.” He went on to say that the “Good Old Boy Network” in San Diego motivated the founding of his organization: “I have been questioned by other majority-serving chambers as to why we don’t join [them]. My answer to them is simply. ‘We created our own business network because we couldn’t play in yours.’”

SDTA #5, representing a government advisory commission on minority issues, indicated that the “Good Old Boy Network” has been detrimental to small firms in San Diego, including minority- and female-owned ones: “I have seen how the “Good Old Boy Network” is an issue in doing business in San Diego and how the community can kill off small businesses through various means.”

When asked if her firm has ever experienced exclusion from the “Good Old Boy Network”, Interviewee #SD43, representing a Hispanic male-owned firm, stated, “Definitely.” She explained, “When we send bids ... we’ll see the same names coming up over and over again [as the winning prime and subcontractors].” She went on to say that her firm as attempted to get more subcontracting work but has not been successful because large prime contractors tend to only use firms with whom they have worked in the past: “I think most of the big construction companies have their established subs that they go to They usually go with the [subcontractors] they already know.”

A number of interviewees reported that networking is particularly difficult for small firms.

Interviewee #SD20, representing an Asian American male-owned firm, said that the biggest problem for small firms is their inability to network with local agencies and prime contractors. He stressed that the more local connections a small firm has, the better off it will be.

Interviewee #SD14, representing a Hispanic American male-owned firm, asserted that in order to establish their names, less established firms have to work with a number of large, better established firms, which can be difficult. He remarked, “That’s why I didn’t change the name of [my] company [after buying it from his uncle], because it was established when I took it over.”

SDTA #6, representing an Asian American trade organization, said that many of the organization’s members do not know how to market their businesses effectively. She reported that some of the organization’s members quit after one or two marketing events, because they do not understand that the crux of marketing is developing relationships.

Interviewee #SD5, representing an African American male-owned firm, said that marketing is particularly difficult for small firms, because trade associations that are supposed to help them market do not do a good job of it. He indicated that those organizations do not address the marketing needs of small firms: “They are not catering to the small businesses that need help.”

Interviewee #SD17, representing a white female-owned firm, indicated that advertising effectively is difficult for her firm: “Knowing when and where to advertise is difficult. It has been a hit-and-miss experiment for us.”

Interviewee #SD30, representing an African American male-owned firm, explained that networking is crucial to being successful in the contracting industry. He said that finding out about work is relatively easy, but “the obstacle is getting [the work],” and that is when having a well-established network of clients and contractors helps. Regarding the importance of having relationships with other contractors, he said, “A lot of general contractors go with [subcontractors] who they’re familiar with, who they know, who they’ve done business with before. They do ... good faith efforts, but they still fall right back into lock step and go with [subcontractors] they know ...” Interviewee #SD30 indicated that there are a few prime contractors with whom he has been able to build relationships.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that marketing and learning about work can be expensive and is a barrier to success for new firms: “It’s just difficult getting your name out there. It seems like every time you want to put your name out there, it costs some kind of money to do it.”

Some interviewees reported having issues with the San Diego chapter of the AGC. Interviewee #SD2, representing a white female-owned firm, reported being threatened at a trade meeting because she previously criticized the AGC. She said that a man who was also attending the meeting took her aside and said, “What are you saying about the AGC? You better be careful!” Interviewee #SD2 said that she did not report the incident, because she was afraid that if she did, members of the AGC would not do business with her.

Related to those comments, Interviewee #SD3, representing a white male-owned firm, reported that he had previously been a member of the AGC, but left the organization because he was uncomfortable with how it conducted business. Interviewee #SD# said that he was later blackballed by the AGC. He said that a supplier recently called him and told him that they would not sell him materials, and Interviewee #SD3 attributed that refusal to his icy relationship with the AGC.

Interviewee #SD47, representing an African American female-owned firm, stated that colleagues have advised her to “stay away from the AGC — they don’t mean you any good ... When you pursue your insurance or bonding, look at the AGC directory and make sure [the insurance broker or surety company] is not affiliated [with the AGC]. Interviewee #SD47 indicated that she has followed that advice since the inception her firm.

SDTA #11, representing a veteran’s trade organization, indicated that a network of large contracting companies in the San Diego area makes it difficult for smaller firms to compete. He said that the AGC in particular perpetuates the problems of a “Good Old Boy Network”: “[The AGC] are the big boys, and they don’t want anyone [else] in the dance.”

A few interviewees reported that problems with the “Good Old Boy Network” have been addressed, either by agencies or by the current market. Interviewee #SD14, representing a Hispanic American male-owned firm, said there used to be a “Good Old Boy Network” that made it difficult for small firms and MBE/WBE firms to compete for contracts, particularly in the private sector. However, because of the slow economy, agencies and prime contractors no longer rely exclusively on those contractors and instead try to find the lowest bid, some of which happen to come from minority- and female-owned firms.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, reported that long-standing contracts in the public sector change hands quite often due to concerns about the “Good Old Boy Network”, “[Some municipalities] don’t want one company to be there for 30 years ... because they’re going to probably catch a lot of flak for that.” Interviewee #SD15 explained that public agencies — like the San Diego International Airport — are required to open a contract up for bidding every five years.

Interviewee #SD33, representing a Hispanic American male-owned firm, stated, “There’s going to be a ‘Good Old Boy Network’” anywhere. He indicated that his firm has experienced exclusion from the “Good Old Boy Network”, but “not so much in municipal work.” He said that his firm has encountered that exclusion primarily in the private sector.

SDTA #10, representing a supplier trade organization, stated that some of the organization’s members have experienced exclusion from the “Good Old Boy Network,” but that his organization works to help mitigate its impacts.

Some MBE/WBE firms reported being part of the “Good Old Boy Network.” Interviewee #SD28, representing a white female-owned firm, said that the “Good Old Boy Network” exists, and a number of small firms in San Diego are excluded from it. However, she reported that because of her existing relationships in the industry, her firm is included in the network. She added, “We’ve broken a lot of barriers, because [firms in the “Good Old Boy Network”] found that we could do the work.”

Interviewee #SD32, representing an African American male-owned firm, stated that not only is there a “Good Old Boy Network” in San Diego but that his firm is part of the network: “We’re one of the good old boys.” He said that his firm is part of the network because it has marketed itself effectively and built a reputation for performing well.

Interviewee #SD18, representing a white female-owned firm, indicated that the “Good Old Boy Network” exists in San Diego, but that her firm is well accepted within the network, because it began as a white male-owned business and continues to be thought of as such.

A few interviewees said that they were unaware of the existence of a “Good Old Boy Network”. SDTA #7, representing a construction trade organization, indicated that there is no “Good Old Boy Network” in San Diego. He said, “You got to work your way in — there is some of that. But a lot of it is design, bid, build . . . There is no ‘Casper is a demo contractor and he’s 10 percent high, but we really like him because we had a drink with him the other night so I think we’ll let him do [the work].”

Similarly, Interviewee #SD22, representing a white male-owned firm, indicated that he had no direct knowledge of the existence of a “Good Old Boy Network” in the San Diego area but he wondered aloud how a competing firm recently won a contract with the Airport without Interviewee #SD22’s firm even hearing about the opportunity. He said, “I wonder why the Airport didn’t ask us directly — we’ve been in the business for so many years.”

Interviewee #SD21, representing a white male-owned firm, reported that he had no knowledge of the existence of a “Good Old Boy Network” in the San Diego area.

Interviewee #SD19, representing a white male-owned firm, indicated that there used to be a “Good Old Boy Network” in San Diego that made it difficult for small firms to compete for projects, but that those problems have dissipated: “When I first started in this industry there was a lot of “Good Old Boy Networks” going on, but even now this is still not a woman’s firm but I feel like most firms have at least one woman and are getting more transparent [in their subcontracting procedures].”

DBE prime contractors prefer to use DBE subcontractors.

Several interviewees explained that MBE/WBE prime contractors are more likely to use other MBE/WBE firms as subcontractors. Interviewee #SD20, representing an Asian American male-owned firm, said that his firm actively tries to use other minority- and female-owned firms when selecting subcontractors: “We strive to give opportunities to MBE and WBE firms, because we were like them before.” He made clear though that DBE status is never the sole consideration.

Similarly, Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, expressed her firm’s interest in providing opportunities to other MBE/WBE firms so that they can enjoy the same benefits as her firm.

Interviewee #SD5, representing an African American male-owned firm, indicated that he tends to use the same subcontractors across projects: “I know people. I have been in the construction industry since the 1980s.” He went on to report that the majority of his subcontractors are African American- and Hispanic American-owned firms. Similarly, Interviewee #SD16, representing an African American male-owned firm, reported that most of the subcontractors that his firm uses are Hispanic American-owned firms.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, said that his firm’s previous owner was an African American male, and he almost exclusively used minority- or female-owned vendors. Interviewee #SD15 said, “I know that [the previous owner] ... sought after DBE companies [as vendors].” As a result, the number of MBE/WBE vendors with which the firm still deals is “more than average.”

Natural and unavoidable.

Some interviewees indicated that agencies or prime contractors using firms with whom they have preexisting relationships is natural and unavoidable. SDTA #1, representing a local chamber of commerce, reported that it is natural that local public agencies are more comfortable using large, well-established contractors.

Interviewee #SD30, representing an African American male-owned firm, said that a “Good Old Boy Network” exists in San Diego, but he indicated that it is natural and understandable and that it is not “exclusive to one race.” He said, “I think you do need to be a part of it [to be successful].”

Similarly, SDTA #9, representing a public works trade organization, said that pre-existing relationships between prime contractors and subcontractors is the most important factor in subcontractors getting work: “Some primes might have sub opportunities and [our organization] will then post the opportunity or work to get the appropriate team together. But putting together a team is mostly about relationships and trust.” He went on to say that it is difficult for small firms to develop those relationships because of their size: “Small businesses are at a disadvantage of developing relationships because of their size. They don’t have the staff to allocate for business development and relationship development.”

Bid shopping and manipulation.

Many interviewees reported that bid shopping or bid manipulation are barriers to being successful in the public and private sectors. Interviewee #SD5, representing an African American male-owned firm, said that a problem with the bidding system is that there are a number of prime contractors that do not want certain subcontractors to win contracts. He explained that the prime contractor will disclose subcontractor's bids to other subcontractors that they want to use. He said, "[There are times when] I know I have a low bid and can do the job. But what the companies do is shop the bid."

Interviewee #SD2, representing a white female-owned firm, said that she is staunch about giving her lowest bid at the time of bid, but prime contractors still try to shop it. She reported that her firm has lost some good jobs "because [we] won't play the game." She indicated that bid shopping occurs most often when listing laws are not being enforced: "When there are no laws or they are not enforced, that's when you have a problem When the primes have one or two days to list, that's when they bid shop."

Interviewee #SD4, representing a white male-owned firm, reported that subcontractors submit their bids quite late, because they are afraid that the prime contractor will shop their bid. Similarly, he said that suppliers submit their quotes late to subcontractors, because they are afraid that the subcontractor will shop their quote. Interviewee #SD4 noted that his firm never shops bids, because they do not want to develop a bad reputation among subcontractors.

Interviewee #SD14, representing a Hispanic American male-owned firm, reported that bid shopping occurs "all the time," particularly in the private sector. He said that he often receives solicitations for bids from prime contractors that have no intention of using him. Instead, they shop his bid around until they can find a contractor that they want to use that will match his price. He explained, "If you bid a private sector job ... they'll call up somebody else and chop your [bid] up."

Interviewee #SD20, representing an Asian American male-owned firm, reported that bid shopping occurs most often in the private sector, because it is much more price driven than the public sector. He said that because the public sector is more focused on the qualifications of contractors, bid shopping is less common. Consistent with those comments, Interviewee #SD6, representing a white male-owned firm, said that prime contractors are not required to list their bids in the private sector and as a result prime contractors shop bids more often.

Interviewee #SD17, representing a white female-owned firm, reported that it is very important for a firm to offer competitive prices in order to be successful: "We have been locked out [of bid processes] because we were not the lowest bid, but we were the lowest hourly rate." She went on to say that, because of the pressure for firms to be low bidder, bid shopping occasionally takes place: "Certain companies are sneaky and they will call pretending to be inquiring about prices for a job. That doesn't happen often, but it does happen." She went to say that as a result of bid shopping, her firm generally does not share bid information with other firms: "We keep our mouth closed. We don't share bid information because we know people like [a specific firm in the area] shop bids."

Interviewee #SD28, representing a white female-owned firm, reported that she knows that prime contractors have faxed her firm's bids to other firms. She explained that one prime contractor mistakenly faxed one of her firm's bids back to her, because he thought he was sending it to another firm. However, she said that she does not think that bid shopping occurs all that often.

Interviewee #SD30, representing an African American male-owned firm, indicated that it is well known in the industry that bid shopping takes place. He said that subcontractors do their best to prevent prime contractors from shopping their bids: "The training I had is that when you submit your estimate or your proposal you want to submit it ... shortly before the deadline, even if you [have] it ready a day or two before the deadline."

Interviewee #SD31, representing a white male-owned firm, stated that bid shopping occurs "no matter who you are — the big boys will do it to each other!" However, he went on to explain the likelihood of bid shopping decreases as a firm becomes bigger and builds its reputation.

Interviewee #SD32, representing an African American male-owned firm, reported that his firm often shops bids to find the best deal: "We shop everything." Interviewee #CON32 explained that although his firm shops bids, it does not manipulate them.

Interviewee #SD33, representing a Hispanic American male-owned firm, indicated that bid shopping occurs regularly, and that his firm does not submit bids to certain firms because they shop bids: "[We do] not bid to certain contractors because they use our numbers. Some generals get [our] numbers and shop around or use the numbers themselves."

Interviewee #SD44, representing a Hispanic male-owned firm, indicated that he is aware of bid manipulation taking place to some degree. He provided an example of certain public sector contracts requiring supplies made from particular, large manufacturers (e.g., Ingersoll Rand), forcing prime contractors to buy products from those firms. Interviewee #SD44 said that he did not know why certain contracts are specified in that way.

Interviewee #SD45, representing a white male-owned firm, said his firm has frequently been victim to bid shopping: "Many times they have solicited our bid only to go shopping with it." He went on to say that bid shopping is less common on federally-funded projects.

Interviewee #SD47, representing an African American female-owned firm, indicated that bid shopping occurs so frequently in the construction industry that it is almost an accepted practice: "Our prices used to get shopped — I've heard that's just the way the industry works. Construction is a shrewd, cutthroat, hard knock type of industry, and that that's the way business is done. [Prime contractors] get your prices, they shop around and play around with them ..."

SDTA #9, representing a public works trade organization, said that his organization's clients often complain about bid shopping, but that his organization is unable to verify its occurrence: "We hear about [bid shopping] all the time but are unsure if this is actually taking place."

A few interviewees reported that bid shopping or bid manipulation is not a significant issue in the construction industry. SDTA #7, representing a construction trade organization, indicated that bid shopping is not an issue in the construction industry. He explained, “[Prime contractors] don’t do this calling back and forth too much saying ‘Hey, if you lower your bid [by] 10 percent we’ll give [the contract] to you.’ [Bid shopping] used to be a big deal, but now the listing law took care of that to a certain extent. ... I’m sure [bid shopping] happens still, but not as much — it just seems like there has been a cultural change.”

Interviewee #SD21, representing a white male-owned firm, reported having no knowledge of bid shopping taking place in the construction industry.

Experience and expertise.

The majority of interviewees cited a firm’s experience and expertise as a barrier to being successful in the public and private sectors. SDTA #7, representing a construction trade organization, reported that experience and expertise are substantial barriers to being successful. He explained, “You actually have to learn to build something to be a contractor. ... Politicians don’t believe that — they just believe you can just take someone, and they can somehow magically get ... bonding and all that stuff.” He continued, “There’s a perception among our political leaders that you can take people out of the general population, put them through some technical assistance, and they can be contractors. If you’re taking someone out of the general population and trying to get them to build a sidewalk around the Airport, it’s not like selling hot dogs — it’s much more complicated.” SDTA #7 added that it is becoming increasingly common for contractors to earn college degrees. He said, “You can’t run these businesses for the most part without some academic background.”

Interviewee #SD14, representing a Hispanic American male-owned firm, explained that a firm’s experience is crucial to its success. He said that firms have to know what they are doing when they take on a contract, and they also have to establish their brand, because according to Interviewee #SD14, “Construction is about trust.”

Interviewee #SD21, representing a white male-owned firm, also indicated that experience and expertise are crucial to being a successful firm. He argued that firms have to be qualified to remain competitive. Otherwise, they put themselves in the position of having to deal with “uncontrollable risk.”

Interviewee #SD20, representing an Asian American male-owned firm, indicated that it is more difficult for less established, small firms to compete for and win federally-funded projects in the engineering industry, because those contracts tend to be awarded on a qualification-based selection process. In other words, firms have to be deemed qualified in order to win contracts rather than simply submitting the lowest bid.

Interviewee #SD22, representing a white male-owned firm, reported that experience is definitely a barrier to staying competitive in his firm’s industry. He indicated that people have to know what they are doing to be successful: “[success takes] a little bit of smarts [and] lots of perseverance.”

Interviewee #SD28, representing a white female-owned firm, said that people need to take classes to learn how to work in her firm’s industry, so expertise can be a barrier to success.

Interviewee #SD24, representing a white male-owned firm said that in order to remain competitive, firms have to be experienced with good reputations, have a history of quality work, and hire excellent, experienced personnel.

Interviewee #SD26, representing a white male-owned firm, stated that many contractors go out of business, because they do not know anything about running a business. They assume that contractors make a great deal of money without considering overhead costs. When asked how one learns to run a business successfully, Interviewee #SD26 replied, “Surround yourself with smart people.”

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that many public agencies require firms to have experience working for their agencies before awarding contracts, which is a difficult requirement for new firms to meet: “They require the company to have the experience — [that is]to say [they] have worked ... in the past in public works [But] it’s very hard to even get the first job and get your foot in the door.”

Interviewee #SD46, representing an African American male-owned firm, indicated that although many MBE/WBE firms are qualified to work on contracts, they are often overlooked because they are not well known: “I feel 80 percent of the guys or companies that go in business have the basic ability to perform the work. The problem is that ... not being known or recognized, you’re overlooked on several project, and ... [prime contractors] don’t want to take the chance.”

Personnel.

Some interviewees indicated that finding good personnel is a barrier to being successful in the public and private sectors. Interviewee #SD20, representing an Asian American male-owned firm, explained that finding good employees is difficult in the engineering industry, particularly for a less established firm. He said, “Why would a good engineer come work for you if you just started a company? Why wouldn’t they work for a firm that’s been around for thirty years? [Less established firms] are definitely at a disadvantage.”

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, reported that the most challenging aspect of working with the Airport is finding good personnel: “It is difficult to find staffing and to find people with the same values as you because the turnover in the industry is so high ... In order to retain staff you must create a fostering environment and help to develop their transferable skills to make them better.”

Interviewee #SD24, representing a white male-owned firm, reported that the recession in the 1990s and a “post-baby boomer dip” undermined the development of a pool of experienced personnel in the environmental services industry. He went on to say that to remain competitive, firms need good personnel who have 10 years or more of experience.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, indicated that personnel issues are also a challenge in the parking services industry, because most of the staff earns the minimum wage and there is a “revolving door to some degree.” As a result, firms have to be creative in their recruiting procedures because they are competing with other minimum wage employers.

Interviewee #SD19, representing a white male-owned firm, reported that her firm's most substantial barrier is related to "management of the firm — keeping employees happy with benefits and pay."

Interviewee #SD29, representing an African American male-owned firm, indicated that it is difficult to find good employees who are willing to work for his firm, even in the current economy: "It's hard to get good people." He said that it is particularly difficult to find people who have experience in his firm's industry.

Interviewee #SD32, representing an African American male-owned firm, indicated that although his firm has no trouble finding experienced personnel in the current market, in stronger economic times it is difficult to find personnel with the necessary experience working on government projects. He said that it is crucial for a firm's employees to have experience dealing with the paperwork and bureaucracy associated with government work.

Interviewee #SD37, representing a white male-owned firm, said that to remain competitive in the marketplace, firms have to establish an exceptional staff: "It's a people business. You have to have the proper people in place. Estimators need to know how to estimate, project managers need to know how to manage, foreman need to have a sense of how to control their men without being overbearing and get the most out of them."

Interviewee #SD41, representing a white male-owned firm, said that it is difficult to find good personnel in construction: "Finding personnel is the biggest hurdle these days. In construction, there is not an abundance of kids who want to get into the industry and get dirty. They are now playing on computers. They want to show up with a laptop, not a shovel. It is hard to find good, young people to start at the bottom and work their way up both in the field and in the office."

Interviewee #SD44, representing a Hispanic male-owned firm, indicated that good personnel can be difficult to find: "To get a competent employee that is trustworthy ... you probably have to go through some people"

Interviewee #SD45, representing a white male-owned firm said that finding good personal is "the toughest part [of a firm being successful]." He explained that the current state of the economy and the lack of work in San Diego have forced skilled workers to leave the area.

Interviewee #SD46, representing an African American male-owned firm, indicated that it is difficult for small firms to attract good personnel: "Most smaller companies do not have the kind of revenue to keep [skilled personnel] on board or even to hire them." He went on to say that good personnel is crucial to a firm's success: "Personnel is one of the keys to being competitive and also advancing."

Other interviewees indicated that personnel issues are not a barrier to being a successful firm.

Interviewee #SD21, representing a white male-owned firm, said that he was not aware of any barriers related to personnel and labor in the construction industry. He said that "prevailing wage" laws in California make it relatively easy for construction firms to attract good employees without those wages being unreasonably high.

Interviewee #SD16, representing an African American male-owned firm, indicated that finding qualified personnel is not an issue for his firm — a much larger issue for his firm is finding capital to pay those employees: "If I had the cash flow I could do very well."

Interviewee #SD28, representing a white female-owned firm, said that in the current market, it is relatively easy to find good labor. He explained that in the past, other firms would actively try to steal their employees but with the slowdown in the economy, there are plenty of people available for work.

Interviewee #SD43, representing a Hispanic male-owned firm, said that finding personnel is not difficult for her firm, because of her firm's contacts and because there are "a lot of people without work" in the current economy.

Learning about work.

Several interviewees indicated that it is difficult to learn about available projects. Interviewee #SD2, representing a white female-owned firm, reported that it is hard to find out about available projects from most public agencies. She said that she has tried to get her firm on agency lists, but that the process is too time consuming. However, she acknowledged that agencies *try* to let contractors know about available projects.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, said that firms "have to do [their] homework" in order to learn about available projects. He went on to say that firms can learn about work opportunities at public agencies' networking events, in trade magazines, and by having themselves placed on agency lists.

SDTA #6, representing an Asian American trade association, reported that her organization struggles with disseminating information about available projects to their membership. It is her feeling that public agencies are not in close enough contact with her organization and do not reach out to them with information about work opportunities.

SDTA #11, representing a veterans trade organization, said that disadvantaged businesses do not learn about available contracts soon enough. He said, "I don't think [agencies are] getting RFIs (Requests for Interest) out fast enough." He said that disseminating RFIs earlier would help disadvantaged businesses compete more effectively for contract awards.

SDTA #2, representing a Hispanic American trade organization, indicated that his membership learns about available projects through on-line listings and by word-of-mouth. However, he went on to say that small businesses need to be educated on how to find out about available projects and on how to be competitive.

SDTA #1, representing a local chamber of commerce, indicated that learning about work is particularly difficult for small firms: "For many of the smaller firms, it's ... a challenge to be fully aware of the opportunities that are out there." He went on to say that those firms also need assistance in trying to "maneuver around the opportunities and requirements for ... public work."

DBE fronts.

A number of interviewees reported having direct knowledge of MBE/WBE frauds or fronts, including supply brokers. Interviewee #SD4, representing a white male-owned firm, reported having knowledge of a female-owned firm that serves only as a supply broker. That is, according to Interviewee #SD4, if a prime contractor has trouble meeting DBE goals, they fulfill them last minute by using a supply broker, because prime contractors are not required to list supplier information during the bidding process. The supply broker marks up the costs of goods for the project, allowing the prime contractor to meet DBE goals.

Similarly, Interviewee #SD6, representing a white male-owned firm, indicated that there are quite a few firms listed as minority- or female-owned that are actually supply brokers — they do not actually do any work, but rather provide goods at marked up prices so that prime contractors can meet DBE goals.

Interviewee #SD11, representing a white male-owned firm, spoke of a minority-owned firm that wins contracts but does not actually do any work or provide any goods — it is only included on contracts when the prime contractor needs to meet DBE goals. He said, “A lot of material brokers sprung up with the DBE program. It is hard to figure out who is a desk and who is a real business There are illegitimate businesses making money off of [DBE goals] ... There are a lot of fronts going on.” He went on to remark that, “Using [supply brokers] make you look better on the contract but all they are doing is marking up the contract.”

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, reported that his firm previously used a vendor that was certified as a WBE firm, but that was actually run by the female owner’s husband.

Interviewee #SD28, representing a white female-owned firm, reported that one of her firm’s largest competitors lists itself as a DBE firm, but it is neither minority- or woman-owned. She indicated that it is a mystery to her how the firm is DBE certified.

Interviewee #SD35, representing an Asian American male-owned firm, indicated having direct knowledge of DBE fronts and frauds: “Usually, [a] firm would say they were woman-owned or minority [-owned], but really, their wife was fronting or they would say their great grandma was from Mexico.”

Interviewee #SD41, representing a white male-owned firm, reported that his firm uses MBE/WBE fronts quite frequently to fulfill participation goals, because there are not enough MBE/WBE firms in San Diego to fulfill them legitimately: “There are a lot of [fronts and frauds] out there ... It is a niche for them to fill, and a great opportunity.” He went to say, “I often thought about putting my wife on the head title holder of this company. We could all put of our wives on it because, especially in the government contracting, there are all types of set asides.”

SDTA #10, a supplier trade organization, noted that he has encountered several MBE/WBE fronts in the past decade. He stated that self-certification is dangerous and that people will try to take advantage of the system in the absence of a thorough review and agency scrutiny.

SDTA #7, representing a construction trade organization, indicated that the Black Contractors Association perpetuates DBE frauds: “The Black Contractors Association will never give us a list of black contractors, but my guess is there’s three or four, maybe five, that are real. There’s a whole bunch of members, but they are all white contractors. ...” SDTA #7 also said that when MBE/WBE contract goals have been in place in other parts of the country, prime contractors often paid MBE/WBE subcontractors even though those subcontractors did not do any work, just so the prime contractors could meet agency goals: “... when we had quotas we would just find a minority ... Typically though, [the minority contractor] wasn’t actually doing anything. We would just do the work and give that person a percentage of it.”

Similarly, SDTA #5, representing a government advisory commission on minority issues, said that the Black Contractors Association in San Diego is a front: “The Black Contractors Association is a front. [They are] pimping the system.” She went on to say that particular contractors have “had it out against the Black Contractors Association ... for their fraudulent behavior.”

A few interviewees reported having no direct knowledge of MBE/WBE frauds or fronts but nonetheless suspect that they exist. Interviewee #SD13, representing a white male-owned firm that is also the master concessionaire at the Airport, said that she is unaware of ACDBE frauds working with the Airport but said that such frauds exist. She went on to say that her firm has become increasingly careful in the past five years to ensure that MBE/WBE participation is legitimate in all of the contracts with which her firm is involved.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, indicated that she has no direct knowledge of MBE/WBE fronts but wonders how some firms with which she deals are disadvantaged. She stated that some firm owners appear to be quite wealthy.

Interviewee #SD6, representing a white male-owned firm, wondered, “What percentage of [SBEs] are nothing more than a front for larger companies that are not [SBEs]?” He said that he suspects that 85 percent of SBEs are just a front for larger companies.

Interviewee #SD40, representing a white male-owned firm, indicated that he has no direct knowledge of MBE/WBE fronts but is confident that they exist: “I am sure [MBE/WBE fronts] are out there. You wouldn’t be asking if the perception wasn’t out there [that they exist]. However we haven’t ever dealt with this.” He continued, “Unfortunately the perception of fronts and frauds places a negative stigma on the DBE program.”

SDTA #1, representing a local chamber of commerce, said that he is aware of MBE/WBE frauds and fronts, but that he is not aware of any that do business in San Diego.

Several interviewees reported having no knowledge of MBE/WBE frauds or fronts [e.g., Interviewee #SD20, Interviewee #SD21, and SDTA #2].

False DBE reporting.

Some interviewees reported knowledge of false reporting as it relates to MBE/WBE participation or good faith efforts. Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that, in the past, agencies or prime contractors would call MBE/WBE firms for bids and list them as subcontractors even if they did not ultimately use them. However, Interviewee #SD14 made clear that false reporting does not occur anymore, because DBE goals are no longer mandatory deeming the practice unnecessary.

Interviewee #SD20, representing an Asian American male-owned firm, described a situation in which a prime contractor used his firm's resume as part of their proposal for a large public project and got "short listed." A few weeks later, Interviewee #SD20 heard that the prime contractor won the contract, but when he contacted the prime contractor to discuss his firm's role in the work, the prime contractor told him that it decided not to use his firm after all. Of similar situations Interviewee #SD20 said, "It happens, it still happens."

Interviewee #SD16, representing an African American male-owned firm, indicated that he received an offer from a North Carolina-based prime contractor that would pay his firm 3 percent of the contract without having to do any work — the prime contractor was only interested in his MBE status. Interviewee #SD16 turned down the offer.

Interviewee #SD45, representing a white male-owned firm that is DVBE certified, described an experience in which a prime contractor solicited a bid from his firm to which his firm responded. Interviewee #SD45 later learned that the prime contractor erased information from the bid and reused it on other projects without Interviewee #SD45's knowledge or permission. Interviewee #SD45 also became aware that the prime contractor made fraudulent payments to his firm to make it appear as if his firm was involved on the other projects.

Interviewee #SD46, representing an African American male-owned firm, indicated that his firm often receives bid solicitations as part of good faith efforts on the day the bid is due, a practice that violates USDOT code: "[Sending solicitations the day that a bid is due] is actually not legitimate. [Prime contractors] are manipulating the dates on their paperwork ... because [solicitations to MBE/WBE firms are] supposed to be [sent] two weeks prior [to the bid due date]."

SDTA #2, representing a Hispanic American trade organization said that false reporting occurs often with good faith efforts.

Price discrimination by suppliers.

Some interviewees reported awareness of price discrimination by suppliers. Interviewee #SD2, representing a white female-owned firm, said that her firm was discriminated against a few years ago by a supplier. She said that the supplier would not do business with her firm because it was woman-owned.

Interviewee #SD16, representing an African American male-owned firm, said that it is difficult to disentangle price discrimination based on race and gender from receiving worse prices as a result of being a smaller firm: "The cost of paint is measured by volume of purchase. Therefore, smaller

businesses feel the impact. Institutionally the smaller business is the minority-owned business. This type of discrimination is hard to prove.”

Interviewee #SD28, representing a white female-owned firm, described a situation in which a supplier refused to continue to supply materials to her, because one of its larger competitors threatened to stop using the supplier if it continued to work with her firm.

Interviewee #SD45, representing a white male-owned firm, indicated that he has experienced price discrimination by suppliers due to the small size of his firm: “If you’re not a large user, they’ll sometimes jack up the price or won’t provide a bid at all.”

Interviewee #SD47, representing an African American female-owned firm, reported that her firm cannot establish accounts with suppliers due to her ethnicity and stereotypical attitudes: “We still can’t get account like everybody else.” She went on to say that the situation is made even more difficult, because some large projects require her firm to use certain suppliers that do not treat her firm well: “[On certain projects], the vendor is built in ... they know we have to use them.”

A few interviewees reported that suppliers quote different prices to different firms, but that the practice has nothing to do with race or gender. Interviewee #SD30, representing an African American male-owned firm, indicated that “bigger firms get a bigger discount” because of the quantity that those firms buy. Interviewee #SD30 said that price differences between firms have nothing to do with race or gender.

Interviewee #SD31, representing a white male-owned firm, indicated that several factors determine supplier prices. First, firms with a reputation of doing quality work get better prices from suppliers than firms with bad or no reputation. Second, large firms get better prices than small firms, because they tend to buy in larger quantities.

Good faith efforts.

Many interviewees reported that some prime contractors do not use genuine good faith efforts to locate qualified and available DBE subcontractors. Interviewee #SD16, representing an African American male-owned firm, characterized good faith efforts as “a numbers game for the prime contractors.” He said that prime contractors often solicit his firm for bids with no intent of using it in order to fulfill good faith efforts. His firm has received solicitations for industries in which they have never done work and for projects that are not even remotely near its geographic location. Interviewee #SD16 said that he is able to recognize when his firm receives a bid solicitation only because the prime contractor is trying to fulfill good faith efforts: “I know that if I am requested to bid on a project at the twelfth hour with no access to plans — this is a strong indicator that something is not right.”

Interviewee #SD30, representing an African American male-owned firm, said that he is aware of prime contractors abusing the good faith efforts process. He said that some prime contractors solicit disadvantaged firms for bids with no intention of actually using them, only to fulfill good faith efforts. He stated that good faith efforts cannot be effective if “[prime contractors] are not sincere about them.” He went on to say that he does not support the idea of subcontractor goals: “I’m not for quotas or mandatory [requirements] ... I think that’s a bad thing — I would like to think that that wouldn’t ... be necessary.”

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that good faith efforts do not work because prime contractors do not take them seriously: “I see the good faith efforts in San Diego, but it doesn’t work because the answer is always ‘we couldn’t find anyone’.”

Interviewee #SD31, representing a white male-owned firm that is DVBE certified, stated that his firm receives bid solicitations on a daily basis from large firms that leave him with “ridiculously” short amounts of time to respond. He indicated that firms send those solicitations with no intention of considering his firm for work — instead, they are only interested in fulfilling good faith efforts: “It’s obvious to me that they’re just going through the motions.”

SDTA #6, representing an Asian American trade organization, said that she does not believe that DBE goals and good faith efforts are effective and that prime contractors abuse the program. As an example, she said that several large companies have faxed her information about projects to distribute to her membership, and then considered that information to fulfill their good faith efforts.

SDTA #2, representing a Hispanic American trade organization stated, “Good faith efforts are a joke.”

Similarly, SDTA #9, representing a public works trade organization, said that there are circumstances in which prime contractors will contact his organization when they are looking for SBE- or DBE-certified subcontractors, and that the practice can sometimes be problematic as it relates to good faith efforts: “The problem with this is that those prime contractors then use their phone call as good faith efforts that are submitted on public contracts, and they really haven’t tried [to find SBE or DBE firms].” SDTA #9 indicated that there needs to be more oversight for MBE/WBE programs and good faith efforts to be effective: “[Our organization] has been getting notices on work that is not done by subs, so they are being used to get the contract but are not getting the dollars or the work committed to them. There needs to be oversight. ...” However, SDTA #9 went on to say that those agencies that do not have MBE/WBE programs have poor participation among minority- and female-owned firms: “Overall, those agencies that don’t have goals or programs are struggling in their diversity numbers. If the goal isn’t supported by a public agency, their numbers are going to reflect that commitment and they will not be impressive.”

Interviewee #SD14, representing a Hispanic American male-owned firm, stated that no remedies would be effective for increasing MBE/WBE participation until mandatory goals are reinstated. Regarding good faith efforts in particular, he said, “You [have to] do away with the good faith efforts.” He believes that good faith efforts should only play a role on smaller contracts (i.e., contracts with only a few pieces), because for those contracts prime contractors might have a difficult time finding MBE/WBE firms that are available for the type of work that they require.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that in her experience many prime contractors are not genuine about fulfilling good faith efforts. Instead, she thinks that those firms just make sure that they contact enough MBE/WBE firms to fulfill good faith efforts but have no intention of actually using them. She said, “I think they’re just trying to meet the requirements most of the time.”

Interviewee #SD45, representing a white male-owned firm that is DVBE certified, stated he frequently receives bid solicitations one or two days before bids are due or for work that is outside a reasonable geographic area. Regarding such practices, Interviewee #SD45 said, “That’s the game [some prime contractors] play to meet the requirements. They say ‘We solicited them, I informed them.’”

Interviewee #SD46, representing an African American male-owned firm, indicated that some prime contractors will mislead MBE/WBE firms into thinking that they will be included as part of a bid when in fact those prime contractors are only interested in fulfilling good faith efforts and have no intention of including the MBE/WBE firms. Interviewee #SD46 said, “... large firms, especially for government projects, they solicit [minority-owned firms] to put a package together, and they lead you on ... saying you’re a part of the bid package, and once the job is awarded you find out you’re not a part of [the bid package].”

Interviewee #SD47, representing an African American female-owned firm, commented that a number of MBE/WBE firms, particularly new ones, have the misconception that prime contractors contact them because they are interested in working with them. She indicated that often they are only interested in fulfilling good faith efforts: “When you’re a subcontractor and you’re new to the game, you’re naïve. You get all these faxes from all these companies that want you to bid. You get silly and think, ‘Look at all these people that want to work with us.’ No, they don’t want to work with you. You’re on a list ... They go into these databases, they don’t know who you are and don’t care. They want to document that they faxed you a bid invitation so they can show they outreached to a minority or woman-owned firm.”

A number of majority-owned firms indicated that they do not support DBE goals or good faith efforts, because it is too difficult to find minority- or female-owned firms who are available for or interested in the work. SDTA #7, representing a construction trade organization, stated that DBE goals and good faith efforts do not generally work, because agencies do not spend enough time carefully considering the availability of minority and female contractors. With regard to African American contractors specifically, SDTA #7 indicated that the small African American population in San Diego does not justify race-conscious goals for that group. He said, “... there is just a small black population in San Diego. What is it — 5 to 6 percent or something? So every time we get into these squabbles with city council it’s because they want 10 percent of the contracts given to blacks. Well it’s just not going to happen. They aren’t [in the construction industry].” In describing his organization’s position on DBE goals, SDTA #7 said, “... I think in general we are going to fight situations where [agencies are] trying to disguise a quota and bring it in ...” With regard to good faith efforts, he stated that they involve, “just pushing paper, everybody knows that ... that’s just political cover, it always has been.”

Interviewee #SD11, representing a white male-owned firm, reported that taking the effort to fulfill good faith efforts is not problematic but getting results is difficult. He said, “We do 90 percent of our work [ourselves], so it is hard to find subs to do this type of work.” In describing his firm’s position on DBE goals and good faith efforts, Interviewee #SD11 said, “If the DBE program is race neutral then I don’t have a problem.”

Interviewee #SD7, representing a white male-owned firm, described several problems with the good faith efforts process. He said that there is no indication of experience level when firms fill out MBE/WBE paperwork, so there are a number of firms that are not qualified to do the necessary

work. He also complained that many of the minority- and female-owned firms that he solicits for bids are not receptive to his solicitations — they will say “Quit bugging me” or some will not even know why he is soliciting them to bid on a project. Interviewee #SD7 indicated that the process can be frustrating: “It’s like beating your head against a wall.”

Interviewee #SD4, representing a white male-owned firm, reported that the number of usable bids that he receives from soliciting MBE/WBE firms for bids is very low, making it difficult to fulfill good faith efforts. He estimated that of the MBE/WBE firms that he solicits for bids, only 15 percent will typically respond, 35 percent of which will be out of business by the time he follows up with them.

Interviewee #SD21, representing a white male-owned firm, stated that blanket, one-size-fits-all goals are not very effective, because different industries have different availability rates of MBE/WBE firms. He said that DBE goals should be tailored to fit different sectors of construction work based on the number of DBEs available to do work within each sector (e.g., higher percentage goals should apply to those sectors with a larger number of available DBEs). With regard to the difficulty of fulfilling good faith efforts, Interviewee #SD21 said, “It is easier to meet or exceed a [DBE] goal than it is to meet or exceed the requirements of documentation and solicitation of good faith efforts.”

Interviewee #SD11, representing a white male-owned firm, reported that their disapproval of DBE programs stems from public agencies only being concerned with MBE/WBE participation numbers: “... if you didn’t use the DBE guy, [public agencies throw] your bid out because you were supposed to use them. The public agency is only looking for numbers, they never policed the program. ...” He went on to say that it is very difficult to find MBE and WBE firms in his firm’s industry that is certified and are capable of completing the work that his firm requires.

Interviewee #SD41, representing a white male-owned firm, said that his firm has experience little success in finding MBE/WBE firms to participate on contracts: “Our success in finding DBEs has been absolutely terrible. They don’t exist or they can’t bid the scope of work. No one will turn a bid in. It is really hard to find [MBE/WBE firms]!”

Some majority-owned firms indicated that they do not support DBE goals or good faith efforts, because the process is too costly or time consuming. Interviewee #SD7, representing a white male-owned firm, reported that DBE programs require much more than good faith efforts. He said that if his firm receives interest from an MBE or WBE firm, then they have to “hold their hand” through the process, which can be quite costly and time consuming. The process includes: copying the plans and specifications for the MBE/WBE firm, walking the firm through the plans, and ensuring that the firm has all the addendums to the project. He went on to say that “99.9 percent of the time,” the MBE/WBE firm does not even bid on the project, so his firm might as well “take that cost and flush it down the toilet.”

Interviewee #SD6, representing a white male-owned firm, reported that his firm spends an average of \$200,000 per year to fulfill good faith efforts (including Disadvantaged Veterans Business Enterprise goals). He said that his firm spends anywhere between \$5,000 and \$10,000 on good faith efforts for each job on which they bid, and they win perhaps one out of every 15 of those jobs. Interviewee #SD6 referred to good faith efforts as an “abomination of cost.”

Interviewee #SD24, representing a white male-owned firm, indicated that DBE goals and good faith efforts are a frustrating aspect of competing for public sector work: “It’s frustrating when [DBE goals and good faith efforts] make the process longer and more expensive. Public work is already more expensive [than private work]. When you add another layer ... that can be a frustration, particularly if some agencies have some fairly onerous requirements.” He added, “Obviously the fewer requirements there are, the easier it is for us. ...”

Interviewee #SD41, representing a white male-owned firm, said that DBE Programs are ineffective: “[The DBE program] is not working. I don’t see the benefit. There has to be a better way.” He continued, “[The DBE program] makes it tougher to do business. I am a firm believer that if you work hard and are honest, you are going to do well in life. I am not out to give anyone help for no reason. The not working for it I have a problem with. If you are a hard worker you will be profitable.”

Two majority-owned firms reported having their bids thrown out, because of reasons related to DBE goals and good faith efforts. Interviewee #SD3, representing a white male-owned firm, stated that his firm bid on a project in which they failed to meet the 15 percent DBE goal but fulfilled their good faith efforts. Nonetheless, the awarding agency tried to throw out their bid. Interviewee #SD3 reported that his firm had to hire a \$300 per hour attorney to fight the decision (which they ultimately won).

Interviewee #SD4, representing a white male-owned firm, reported that his firm bid on a project on which there was an addendum that extended the bid deadline by one week. Although his firm advertised for MBE/WBE subcontractors for the first three weeks, they did not advertise during the final week. The awarding agency found that the firm did not fulfill their good faith efforts, and their bid was thrown out. Interviewee #SD4’s firm contested the decision but was unsuccessful.

Some interviewees indicated that they support DBE goals and good faith efforts. Interviewee #SD20, representing an Asian American male-owned firm, indicated that DBE goals and good faith efforts are beneficial to minority- and female-owned firms: “Those [measures] are really helpful.”

Interviewee #SD27, representing a white male-owned firm, indicated that his firm supports DBE goals and good faith efforts. He said that if society has operated in a way that has disadvantaged certain minority groups, then it should take steps to try and right those wrongs. However, Interviewee #SD27 went on to say that he can appreciate the fact that there are some people who believe that giving preferential treatment to minorities and women is unfair.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, said that without a DBE program, there are limited opportunities for minority- and female-owned firms in San Diego. She noted that large firms do not go out of their way to provide opportunities to MBE and WBE firms unless they are required to do so.

Interviewee #SD28, representing a white female-owned firm, reported that good faith efforts help DBE firms be considered for contract opportunities: “I really think [good faith efforts] help a lot of companies get their foot in the door and ... to compete with [larger firms].” She went on to say that a number of prime contractors would not have used her firm if not for DBE goals, and now the firm has strong, working relationships with a number of prime contractors.

Interviewee #SD40, representing a white male-owned firm, indicated that he supports DBE programs and does not think that they should be eliminated, particularly the Airport's program: "Don't remove the program. I think the Airport has taken a lot of time to see what fits the community." Interviewee #SD40 went on to note that his firm implements internal MBE/WBE participation goals. However, Interviewee #SD40 said that he does not believe that mandatory set-asides are fair: "I personally don't believe in [race- or gender-based set asides]. I think you need the best qualified firms to do the work. I have a hard time ethically saying that a certain amount of work should be set aside for a certain type of firm. Let's get the best firms to do the work."

SDTA #6, representing an Asian American trade organization, indicated the DBE goals are helpful to minority- and female-owned firms. She said, "If you ... are not as conscientious as the Airport then [race- and gender-based] targets are important."

SDTA #1, representing a local chamber of commerce, stated that his organization supports DBE goals and good faith efforts, because they give agencies concrete targets. He referred to them as "good policy."

SDTA #3, representing a local chamber of commerce, said that her organization also supports DBE goals and good faith efforts. She said that they encourage a strong work force, and they encourage people to "get in there and start."

SDTA #13, a retired official from a local public agency, indicated that DBE goals are useful, because they provide agencies information about which remedies have been effective and which have not. She also said that the goals provide an opportunity for minority and female-owned firms to interact directly with prime contractors.

Interviewee #SD35, representing an Asian American male-owned firm, reported that DBE goals have been very beneficial to his firm, especially before Proposition 209: "Because we were DBE and federally-funded contracts needed minority participation, they would call us to bid."

Interviewee #SD37, representing a white male-owned firm, indicated that he does not oppose good faith efforts and does not consider goals to be a problem: "I think any required percentage they want to set for MBE/WBE is fine. Otherwise, the big contractors would take over and there would be no work left for the small contractors."

Recommendations related to good faith efforts.

A few interviewees recommended that public agencies do a better job of enforcing MBE/WBE utilization. Interviewee #SD10, representing an African American male-owned firm, stated that public agencies should make prime contractors prove that they are utilizing MBE/WBE subcontractors that they list during the bidding process: "Every public sector job should be audited during and after construction. If you use an MBE — prove it! This should be done during and after the contract."

Interviewee #SD16, representing an African American male-owned firm, expressed a similar sentiment: "A challenge to the certification program is to ensure that if the prime uses the certified sub on a bid that they use them on the job. Public agencies should continue reporting and further their checks and balances of programs."

Similarly, SDTA #5, representing a government advisory commission on minority issues, indicated that more information about which firms receive awards would improve DBE/ACDBE programs: “I want to know what the history and who is doing the work. How do you know you are winning the game if you don’t know the score?”

Interviewee #SD14, representing a Hispanic American male-owned firm, stated that mandatory DBE goals need to be in place and need to be enforced: “Make [the goals mandatory]. Then everyone’s got the same playing field.” He went on to say that good faith efforts should be eliminated, particularly for larger contracts that have more subcontracting opportunities.

Double standards in performance.

A few interviewees reported that prime contractors and agencies hold MBE/WBE firms to an unfair standard of performance. Interviewee #SD20, representing an Asian American male-owned firm, said that he has often heard from other firms that when something goes wrong on a project, the scrutiny is much worse for minority- and female-owned firms than it is for majority-owned firms. Regarding those accounts, he said, “I see some truth in it.”

Interviewee #SD28, representing a white female-owned firm, indicated that small firms (including MBE/WBE firms) are held to more stringent standards than larger, more-established firms. She said that double standards were especially a problem for her firm when it was just starting: “In the beginning, I really felt like we had to go the extra mile to prove ourselves, because [prime contractors] didn’t think we could do the job. I don’t feel it as much anymore — maybe it’s because we’re proving ourselves. ...”

Interviewee #SD2, representing a white female-owned firm, reported that WBE firms have to complete projects better and faster than majority-owned firms in order to receive the same recognition.

Interviewee #SD34, representing a white male-owned firm, said that MBE/WBE firms “... need to do double the amount of work [and] get it done the first time [without] being given a second chance” in order to receive the same amount of recognition as majority-owned firms

Similarly, Interviewee #SD29, representing an African American male-owned firm, reported that DBE firms have to work “twice as hard” as majority-owned firms to win the same number of contracts and to receive the same recognition. He went on to say that DBE firms also have to have lower prices than majority-owned firms to remain competitive.

Interviewee #SD30, representing an African American male-owned firm, said that smaller firms are held to different standards than larger firms, but he indicated that the practice is to be expected: “If you’re a small or minority firm ... [prime contractors] would probably would watch you a little more carefully or inspect your work a little more closely just because it’s their first time dealing with you.”

Related to those comments, Interviewee #SD31, representing a white male-owned firm, said that although small, MBE/WBE firms are not held to different standards than large, majority-owned firms, initially MBE/WBE firms might have to answer more questions about their competence and their ability to do the work.

SDTA #1, representing a local chamber of commerce, indicated that although he does not have any direct knowledge about prime contractors and agencies holding MBE/WBE firms to different standards than majority-owned firms, he said, “I don’t doubt that it happens ...”

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that double standards exist in the construction industry such that small firms (including MBE/WBEs) have to accomplish more to receive the same amount of recognition as majority-owned firms: “[Small firms] just [can] expect to do more or to go way beyond in order to be able to get the job with the same client again.”

Unfair contract denials.

Several interviewees reported having knowledge of unfair contract denials as a result of race, ethnicity, or gender. Interviewee #SD10, representing an African American male-owned firm, described a situation in which he lost a concessionaire contract with the Airport to a white female-owned firm that was a front for the female owner’s husband. Interviewee #SD10 indicated that the board that awarded the contract consisted of three minorities and four white males, and that the white males overruled the minority members of the board in awarding the contract to the white female-owned firm. Interviewee #SD10 said, “Race was an issue here.”

SDTA #10, representing a supplier trade organization, stated he was aware of a situation in which a minority-owned firm initially won a contract, but that the awarding entity terminated the contract when it found out that the firm was minority-owned. SDTA #10 said, “Prime contractors can say they tried to work with an MBE, [but] too often they are unfairly treated and dismissed.”

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, remarked that MBE and WBE firms might be discriminated against and denied contracts, but that the discrimination is too subtle or “sophisticated” to be noticed: “If someone doesn’t like you because you are black, minority, or [a] woman, you won’t get the opportunity. That discrimination would never be revealed.”

Similarly, Interviewee #SD20, representing an Asian American male-owned firm, said that he suspects that unfair contract denials occur, but that the discrimination is too subtle to be perceived: “All [prime contractors] have to do is find *some* reason [to deny a contract].”

SDTA #13, a retired official from a local public agency, indicated that unfair contract denials occur as a result of discrimination on the part of prime contractors, but that it would be difficult for anyone to prove: “... when you look at the contractors, the prime contractors, no one is going to admit that they excluded a person because of their color or gender. It is going to be very hard to prove that discrimination has occurred.”

Some interviewees reported having no knowledge of unfair contract denials as a result of race, ethnicity, or gender. Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, said that her firm has never denied a potential concessionaire space at the Airport because of their race, ethnicity, or gender. Interviewee #SD13 went on to say that in fact four concessionaire locations were added at the Airport in order to increase ACDBE revenues.

Interviewee #SD2, representing a white female-owned firm, and Interviewee #SD21, representing a white male-owned firm, both reported having no knowledge of unfair contract denials.

Consortium Anecdotes Regarding Perceived General Barriers to Participation in the Public and Private Sectors

The following anecdotes regarding general barriers to participation in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2009 Consortium study.

Barriers to pursuing work with public sector agencies.

A couple of interviewees identified the absence of race-, ethnic-, and gender-based goals as a barrier to pursuing work with public sector agencies. [Interviewees #CON: 12, 46]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that when Caltrans went race-neutral a lot of the local agencies implementing federal projects no longer required strict compliance with DBE goals. He stated that on a recent contract, his company was the low bidder and the "highest DBE firm" (the prime contractor), but the agency awarded the contract to another company based on "preferences." He stated that that the individual on the selection panel was a former employee of the company that won the contract. He stated that also during that interview, the individual leading the interview told them that "DBE is not that important anymore." To him, "it was like a slap in the face" because it was a federally-funded contract and the RFP clearly stated there was a 10 percent DBE goal.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the absence of goals on projects in Santa Monica, San Diego, or Orange County Transit Agencies is a barrier to pursuing work.

Other interviewees identified multiple miscellaneous barriers to pursuing work with public sector agencies. [Interviewees #CON: 4, 6, 10, 31, WT #16, 17, PF #25]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that with respect to other agencies, sometimes large scale projects are so huge that even large scale prime contractors cannot handle it; they have to partner with another firm to handle the project. Interviewee #CON4 stated that it would be helpful if the owner agencies were able to break up huge projects into smaller ones and thereby create more opportunities for smaller firms to participate. For example, a county water authority is embarking on a project that will start in 2009 whereby they will raise the dam on one of the reservoirs; that is a huge project worth \$600 million or more. It is so big that even the prime contractors who go after it pair up with other prime contractors. He explained that the problem is most prime contractors have enough in-house capabilities that they could do the work themselves or 95 percent of the work, and there is very little to subcontract which means that DBEs are left out. If projects that big could be broken up into smaller projects, Interviewee #CON4 stated that would help.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, stated that as for other agencies, permit fees are a barrier to pursuing work with the county government. The county shut down Interviewee #CON6's company because of his failure to obtain a site plan for his property at a cost of \$60,000 to \$100,000.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that the way that non-Consortium agencies draft their RFPs is a barrier to pursuing work; the RFPs are "targeted."

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he is a very small business and has not been successful on his attempts to work with prime contractors. He stated that he has the requisite licenses, experiences, etc., but there is no one to assist him in obtaining work. He stated that it would be great if someone could find a way to streamline and simplify the process in order to help out good contractors.

WT #16, a male Asian Pacific owner of a civil engineering firm submitted written testimony regarding the Disparity Study that he feels “most prime consultants can easily circumvent the UDDBE goals by subcontracting out services they don’t have in-house. [His] firm [has unsuccessfully] tried for many months to convince the big prime consulting firms to let out a small portion of their work (normally done by their in-house forces).” (Written testimony submitted 10/13/09).

WT #17, a male managing partner of a firm that makes a product from recycled tires submitted written testimony that “as a small business, we really feel that we are at a disadvantage...to break in with OCTA....” (Written testimony submitted 9/28/09).

PF #25, an individual representing a business providing uniform services described his business as “a local mom and pop shop.” He lodged a complaint with MTS of San Diego that small businesses are negatively affected by the actions of agencies and prime contractors with no recourse or remedy. He shared an example of how his company, a local small business, used to provide uniform services to MTS for 33 years. MTS then ended their contract with him and hired an out-of-state uniform service company. Subsequently, his company lost approximately 33 percent of its business. He concluded by saying, “[t]hat means that the contract money from the San Diego MTS is now going to someone ‘outside’ of the community.” (Public Forum San Diego held on October 21, 2009).

Several interviewees indicated that there are no barriers to pursuing work with public sector agencies. [Interviewees #CON: 2, 5, 22, 23, 24, 26, 28, 33, 38, 39, 40, 41, 42, 44, 45, 48, 49, 52, 53, 54, 55, 56, 57, 58]. Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he has not heard of any barriers or obstacles to pursuing work with other agencies; he believes that those with DBE certification have the benefit.

Barriers to pursuing work in the private sector.

Several interviewees identified networking as a barrier to pursuing work in the private sector; some reported that in the private sector, receiving work is dependent on “who you know.” [Interviewees #CON: 2, 4, 5, 10, 12, 22, 31, 32, 33, CONTA #2]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that in the private sector, the primary barrier is networking and marketing.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that in terms of private sector, the barrier is that the prime contractors do business with the same companies over and over; it is always “who they know.”

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business, stated that although he has never seen any barriers or obstacles to pursuing work in the private sector, he did state that work is based on the relationship that you have with people. If his company does the job and the prime contractor likes what he does, they bring him back. Interviewee #CON5 stated that there are no issues about being a small business or DBE in the private sector.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that they do not know where the private sector work is or who the prime contractors are in order to solicit work.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that obtaining work in the private sector is dependent “on who you know” and it is very hard to get in to the network unless you have had prior experience. He stated obtaining work in the private sector is more based on luck than anything else.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the tendency to team with friends is a barrier to pursuing work in the private sector.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he suspects that in the private sector the prime contractors already know who they are going to work with. He stated that in addition, unless you bid the project extremely low, you will not get the contract. He stated that he cannot figure out how some firms are able to bid so low unless they are not paying decent wages or payroll taxes. He indicated that the prime contractors now are frequently self performing, which cuts out a lot of subcontractors.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that there are the same obstacles to pursuing work in the private sector as there are with other agencies — contractors will only use those subcontractors with whom they are familiar and have a relationship.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that there are barriers to pursuing work in the private sector but occasionally you can approach the prime contractor, although they already have their team put together, and ask them to take another look at their team and consider working with your company.

CONTA #2 stated that private sector projects are pretty open. Owners choose contractors based on their comfort zone and feeling that the contractor is competent.

Other interviewees identified multiple miscellaneous barriers to pursuing work in the private sector. Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that obtaining financing is a barrier or obstacle to pursuing work in the private sector.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the lack of regulation in the private sector could also be seen as a barrier because the evaluators are not always fair, but he stated that that occurs in the public sector as well.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the private sector has no responsibility or goal requirement to utilize her firm; they will only utilize her firm if they have to. She stated that no matter how hard she tries to obtain work, and with all of her experience, she is still unable to obtain work in the private sector. She stated that the private sector firms have their own teams.

Interviewee #CON29, an African American male-owned electrical contractor, stated that there are few opportunities for small businesses and people want to hire “name brand” companies.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that her firm is not able to provide the same perks for her clients as are other firms; this may be a barrier to pursuing work in the private sector.

CONTA #1, the President of the Latino Business Owners of America, stated that there are barriers or obstacles to pursuing work in the private sector, but they are not as prevalent as in the public sector. He stated that it is more competitive in the private sector and the work is more spread out.

Several interviewees were unaware of any barriers to pursuing work in the private sector. [Interviewees #CON: 1, 6, 9, 23, 24, 26, 28, 38, 39, 40, 41, 42, 44, 45, 46, 49, 52, 53, 54, 55, 56, 57, 58]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that there are no barriers to pursuing work in the private sector. He stated that they try to get work, and if they do not get the work, they try to figure out why they did not get the work.

Some interviewees reported the impact that the unions have had, if any, upon their businesses.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that unions have not had an impact on his business.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that the L.A. County Union has positively impacted her business because they hired her to do a project for them.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, did not identify any issues caused by unions.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, has not had any issue with the unions.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that unions have directly impacted his ability to engage workers and get certain jobs because of Davis-Bacon wages and the use of non-union contractors. His company has a strong set of union card carrying members because Interviewee #CON15 couldn't oppose the union.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, noted that unions do have an impact on a DBE's ability to pursue, engage in, and obtain work. Davis-Bacon pay scales and rates are much better so union work is favored according to Interviewee #CON16. Interviewee #CON16 has not experienced any obstacles or barriers to work due to a union.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she knows unions in the construction industry have had an impact on some companies, but not her company directly.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, had no experience with unions affecting her ability to work in any way in the industry.

Some interviewees commented on their experiences as — or with — suppliers and whether their experiences have been affected by their DBE certification. Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has not experienced any barriers regarding licensing agreements, pricing or distribution arrangements with manufacturers. She stated that she is able to obtain competitive prices for supplies and was not aware of a supplier giving a DBE firm less favorable pricing.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated he has experienced barriers regarding licensing agreements or distribution arrangements with manufacturers and distributors. He stated that it was clear discrimination in that certain distributors will refuse to quote prices to subcontractors. He is not able to obtain competitive prices for supplies all the time; he stated that sometimes the supplier refuses to quote. He was aware of situations when suppliers have given DBEs less favorable prices or treatment.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, does not feel as though he has had any issues with his suppliers. They have told him that business is slow for everyone right now. He feels he gets the same prices as everyone else gets from his supplier. Interviewee #CON31 is not aware of any suppliers giving DBEs less favorable prices or treating them unfairly, especially with the state of the economy and the industry, they are just trying to stay above water.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he has not had any negative experiences with the manufacturers of his cleaning products. He has been successful in negotiating good prices for his products; he is not aware of suppliers or wholesalers giving less favorable prices to DBEs.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she has not experienced any barriers regarding licensing agreements, pricing or distribution arrangements with manufacturer or distributors. She stated that she is able to obtain competitive pricing.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has been able to obtain competitive prices for his supplies and has not experienced any barriers regarding licensing agreements, pricing, or distribution arrangements. He is not aware of a supplier or wholesaler giving less favorable prices to DBEs and stated that if he was he would report it.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, had never experienced any barriers with respect to licensing or distribution agreements or pricing. She is able to obtain competitive prices for her supplies and was not aware of any manufacturer or wholesaler giving DBEs less favorable prices or fair treatment.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that for the most part his experience obtaining supplies has been okay and he

purchases his petroleum products directly from the refineries. In the past he has been unable to obtain competitive supplies for his prices, but now he is able to. He was aware of refineries giving more favorable prices to Caucasian-owned companies.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, noted that sometimes the manufacturer will fill large orders first and his smaller business has to wait on supplies; this would hurt their business and their reputation. He was not aware of any suppliers or wholesalers giving less favorable prices to DBEs.

“Good old boy network.”

Several interviewees reported having been closed out of an opportunity because the prime contractor utilized a subcontractor within its own network. [Interviewees #CON: 1, 2, 3, 4, 7, 8, 9, 12, 13, 14, 16, 17, 18, 20, 21, 22, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 45, 46, 48, 49, 52, 56, 58, CONTA #1, 2]. Many of these firms indicated that “it happens all the time.” Several firms, however, noted that this is due to the prime contractor’s comfort level with the subcontractor based on their past relationship. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he has been closed out of an opportunity because the prime contractor used a subcontractor in his own network; he stated that “it happens all the time.” He stated that when a prime contractor finds a subcontractor that he likes to work with, he will very rarely deviate from that. He stated that at his old company, they would have members of the company bid the contract under different names to ensure that someone within their own network would get the job.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he feels he has been closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He says it happens all the time. He stated that this occurred about six months ago. There was a private warehouse design project that came up and Interviewee #CON2 approached the developer, submitted his company’s profile, and it never came to fruition. He stated that the contract was awarded to another structural engineer that the developer had worked with.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated businesses are often closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He stated that it happens all the time, whether the firm is a DBE or not. He stated that prime contractors use a subcontractor with whom they have become comfortable. Interviewee #CON3 stated that the use of DBEs is not required in the private sector, so if you have a non-DBE who a prime contractor is experienced with and a DBE who it is not experienced with, the prime contractor might use the non-DBE.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he is sure there are occasions where his business has been closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network, but there is no way to prove it. He did not know of any specific occasions or specific projects. Interviewee #CON4 stated he has done a fair amount of work on county water authority projects within the last five years, the list of projects that he has worked is more than a page long, so he has the experience. But, he explained, certain prime contractors that go after these projects never call his company or invite his company to be on their team nor does he ever receive a courtesy call from

those prime contractors requesting that he submit qualifications. Interviewee #CON4 stated that he wonders what the reason is, and he knows it is not because of his capabilities or lack of experience. He stated he does not know why he does not get this work other than that firms have a special relationship with other subcontractors.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has known subcontractors who were cut out of a project because the general contractor did not have experience with them and chose to use a subcontractor within its own network. Interviewee #CON7 stated that this has happened as recently as the past few months on non-Consortium projects. Interviewee #CON7 stated that most contractors go with someone who is competent and the question is whether to take a risk on someone new who has no record.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that he has been closed out of an opportunity because the prime contractor used someone within its own network. In the private sector, his perception is that the prime contractor has a relationship with another subcontractor and will tend to use the other subcontractor irrespective of low bid. In the public sector, Interviewee #CON8 has had the strong feeling that the public agency staff would never select a small firm like his over a large firm because the staff-member could then have an opportunity to work for the large firm when they leave the public sector.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that his business has been closed out of an opportunity because the prime contractor used a subcontractor within his own network. He stated that it is usually understandable when that happens because it is due to friendships and past relationships. Interviewee #CON9 stated that some non-Consortium agencies do not like them but “it is a free country.”

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that it is “common” to be closed out of an opportunity because the prime contractor uses someone within their own network. He stated that there are some affiliations that you cannot break. The only way to break such affiliations is to build close ties with the ultimate client who can then advise the prime contractors as to who they should hire.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has felt closed out of an opportunity because a prime contractor used a subcontractor within their own network. He stated that he has attended some procurements and found out that certain prime contractors are going to bid on large contracts. He stated that his business could help them but the prime contractor often has their standard team in place. He stated that he has felt “locked out” of opportunities to work with those prime contractors. Interviewee #CON13 stated that he does not feel as though he is part of a “network.”

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that his company has been closed out of opportunities because the prime used a subcontractor in its own network, but “it goes for everybody.” He stated that the Consortium agencies reward companies for having relationships with other companies.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that the business has been closed out of opportunities to be a subcontractor because a prime contractor used members of its own network.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, noted that she has been closed out of opportunities to subcontract because of a prime contractor favoring other subcontractors, but she indicated that this is the result of relationships. According to Interviewee #CON17, the key to success is the quality of her company's work. Interviewee #CON17 notes that favoritism isn't necessarily a bad thing.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, stated that the business has been closed out of opportunities because prime contractors use preferred providers, but noted that prime contractors have every right to do so — it is the nature of the work.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that her business has been closed out of an opportunity because the prime contractor utilized subcontractor in its own network. She stated that this goes back to relationships. Interviewee #CON20 stated that she understands why this happens, but does not feel that it is right.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she has absolutely been closed out of opportunities because the prime contractor used a subcontractor within its own network. She stated that this is especially the case in the construction, transportation and engineering fields. She stated that she is in the marketing field and several of the prime contractors deal only with a few Caucasian-owned firms. She said this has been the consistent case for the past three years.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she sometimes feels as though she is closed out of bid opportunities because the prime contractor used a subcontractor within its own network. She stated that sometimes teams are put together long before a proposal is put out which forecloses opportunities.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that his firm has been closed out of an opportunity to bid because the prime contractor used a subcontractor within its own network. He noted that they are consultant and they get jobs by developing relationships; if they do not get there first they are shut out.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has been closed out of an opportunity due to the "Good Old Boy Network" network and that it is difficult to break through.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that it is not easy to break through and be able to work with other agencies. He feels that since he is new and many companies do not know him, the other agencies continue to use companies and people that they already know and with whom they are familiar.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she realizes the dictates of competition, but teams are usually formed well before an RFP issues. She could not specify a specific instance, but she knew that it has happened.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that with respect to her work with other non-Consortium public agencies, she has responded to multiple RFPs, but has not received any contracts or return phone calls.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that his firm has been closed out of opportunities because the prime contractor used a subcontractor within its own network.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she has been closed out of opportunities a couple of times because the prime contractor used a subcontractor within its own network.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that prime contractors utilize subcontractors within their own network all the time.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported that he has been closed out of an opportunity because a prime contractor used a subcontractor within its own network. He stated that when Caltrans stopped their mandatory requirements for DBE utilization, all of the prime contractors went back to using their own subcontractors. He stated that his work with L.A. County MTA dropped although L.A. County MTA used to have a good DBE and MBE Program. He stated that there used to be better opportunities when contractors were required to utilize DBEs and MBEs.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that over the years he has been closed out of opportunities because a prime contractor used a subcontractor within its own network; he stated that this has happened on more than one occasion.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that his firm has been closed out of a business opportunity because the prime contractor used a subcontractor within its own network but this happens in business. He indicated that this is the reason his firm considers networking to be part of his business growth strategy.

Interviewee #CON56, a white male owner of a small electrical contracting firm, stated that he has been closed out of an opportunity because the prime contractor used a subcontractor within their own network, but stated that this is a normal part of business for most firms.

Interviewee #CON58, a white male owner of an engineering consulting firm, stated that it was possible that his firm had been closed out of an opportunity because the prime contractor used a subcontractor within its own network, but he does not feel as though this has affected the success of his business as a whole.

CONTA #1, the President of the Latino Business Owners of America, stated that he is aware that businesses are often closed out of an opportunity to be a subcontractor because the prime used a

subcontractor within its own network. He stated that this happens every day and he thinks that it is more related to a level of comfort that the prime contractors have with subcontractors that they know in their own network.

CONTA #2, the President of the Black Contractor's Association, stated that his members often feel closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He stated that it happens all the time on public projects. CONTA #2 stated that he frequently hears this complaint, but could not provide any specific examples. CONTA #2 stated that in relation to other agencies, like the City of San Diego, there is a "Good Old Boy Network" that prevents his members from obtaining work. CONTA #2 stated that last year, the City issued \$400,000 in projects and CONTA #2's members received only \$5,200 worth of those contracts, and this year there is zero African American participation.

Other interviewees reported no knowledge of subcontractors being closed out of opportunities because prime contractors used subcontractors within their own network. [Interviewees #CON: 11, 25, 28, 29, 32, 42, 47, 53, 57]. Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, did not know whether she had been closed out of an opportunity due to a "network" because she does not follow up with prime contractors if she loses the bid.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he does not know if he has been closed out of an opportunity. He stated he is trying to get to know people so that he can get in the door and get a contract.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, did not know whether he had been closed out of an opportunity because the prime contractor used a subcontractor within its own network.

Some interviewees reported the existence of a "Good Old Boy Network" in the transportation industry. [Interviewees #CON: 1, 2, 3, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 30, 31, 34, 37, 38, 45, 46, 48, 49, 54, PF #13, 24]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that there is a "Good Old Boy Network" in existence. He stated that his contractors send their numbers out to people and get repeat work, but he would hope that if someone else had a better price that the prime contractor would use them instead. He stated that he knows for a fact other contractors in the field "help manipulate the environment to better themselves."

Interviewee #CON2, an African American structural engineer, stated that he feels that there is a "Good Old Boy Network" in the transportation industry because 95 percent of the firms who are offering the work are non-minorities and they get the contracts. He stated that it is difficult to pinpoint because many of these companies have been in business for years and are positioned to obtain business, but his company is new. Hence, he stated that it is difficult to tell whether they get more business because of a "Good Old Boy Network" or because they have simply been in business longer.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that the "Good Old Boy Network" exists on some level, but that it is really about offering projects to people or entities that the prime contractor has worked with. The prime contractor will often use the same people. This happens in the private sector as well. Interviewee

#CON3 said companies will always have those companies that they want to work with and sometimes this is to the disadvantage of the DBE.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that there “could be” a “Good Old Boy Network” within some agencies wherein the same firms are “connected” and repeatedly selected for work.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated there is “definitely” a “Good Old Boy Network” in the Consortium transportation industry. He stated that he believes that the selection panels are influenced by the various agency boards.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he would guess there is a “Good Old Boy Network”, but he does not have evidence of that.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that there is a little bit of a “Good Old Boy Network” among the engineers, but it is not in the same sense as it is in “other industries where you actually use the term.”

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated there is a “Good Old Boy Network” in the Consortium transportation industry, but had no specific incidents to report.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, said she knows there is a “Good Old Boy Network” in the industry. At first, Interviewee #CON17 was intimidated, but she is not looked down upon any more; she said she has earned her reputation.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, confirmed that there is a “Good Old Boy Network” network in the industry, but stated that is how you become known and network. Interviewee #CON18 thinks the system can be used as a place to be identified as someone who does good work. She stated that there is value to having these friendships and relationships when the firms know what to expect of each other.

Interviewee #CON19, an MBE-certified African American male attorney, reported that he was aware of a “Good Old Boy Network” network, but did not have any specific examples as it relates to the transportation industry.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that there is a “Good Old Boy Network” with the Consortium transportation industry. She indicated that she cannot even get an appointment to discuss construction related marketing material with some contractors.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that there is a “Good Old Boy Network” in the Consortium transportation industry. She stated that there is a certain amount of work available and the “Good Old Boy Network” tries to make sure that the work is spread among themselves. She feels as though they concentrate on their relationships to help them get the work.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that there are maybe six contractors that get work. He stated that they have a history and a trust and there are some individuals that get work all the time.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that the “Good Old Boy Network” is alive and well and that it has a lot to do with relationships.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, definitely feels that there is a “Good Old Boy Network.” He believes that it is extremely difficult to crack through the wall and get into the network.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated there is no doubt that there is a “Good Old Boy Network.” He commented about the fact he is trying to crack the combination to get into this network. He hires all people: African American, Caucasian, Hispanic, Asian, it does not matter to him.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported that there is a group of firms that typically get all of the work and he noted that it is hard to crack open that door.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the “Good Old Boy Network” is alive and well.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that there is a “Good Old Boy Network” within the Consortium transportation industry. He stated that when DBE utilization was mandatory, the prime contractors would go out and competitively seek DBE subcontractors; now that utilization is voluntary, the prime contractors use who they want on the project. He stated that the Minority Business Opportunity Center (“MBOC”) is a good organization that performs outreach to encourage prime contractors to work with minority-owned businesses on major projects.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that there is definitely a “Good Old Boy Network” in the Consortium transportation industry. He also reported the existence of a “Good Old Woman Network.”

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he could not specifically state that there is a “Good Old Boy Network” in the Consortium transportation industry, but thought that the “Good Old Boy Network” exists everywhere.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, confirmed that there is a “Good Old Boy Network” in the industry, but stated that is how you become known and network. Interviewee #CON18 thinks the system can be used as a place to be identified as someone who does good work. She stated that there is value to having these friendships and relationships when they know what to expect of each other.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that there is a “Good Old Boy Network” to some degree; she stated that all industry is like that.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that “of course” there is a “Good Old Boy Network” in the transportation industry.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, reported that there is a “Good Old Boy Network” everywhere in all industries. She stated that even when she is competitive and goes up against a non-minority company, she will receive various excuses as to why her firm did not receive the work, including that they need more experience or the other bid was just a bit lower.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she was aware of a “Good Old Boy Network” and they use the same people on their contracts. She stated that she knows this from her own experience dealing with them.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he did not know about a “Good Old Boy Network,” but identified a “buddy-buddy” system throughout the industry. He stated that private sector companies do enough to pass the rules; they will put out a solicitation to everyone, but know ahead of time which companies they are going to use. He stated that about eight or nine years ago he contacted a company about a security solicitation and told them that it sounded like from the solicitation that they intended to give the contract to the incumbent. He indicated to them that he was not planning on suing them, but he did not want to spend the money to respond to the RFP if they had a firm in mind already. He stated the firm finally told him that they planned to use the incumbent. He stated that now he is pretty good at looking at the RFP and determining whether it is geared to the incumbent.

Interviewee #CON55, a white male owner of a construction services and program management firm, stated that there is a “Good Old Boy Network” in all construction.

CONTA #1, the President of the Latino Business Owners of America, stated there is a “Good Old Boy Network” in every agency. He stated that it is the nature of the business. Agencies already know who they want to do business with. He stated that there must be more accountability in the industry.

CONTA #2, the President of the Black Contractor’s Association, stated that there is a “Good Old Boy Network” in the transportation industry. He said that a large contractor’s association has a motto that states its members do business with its members. He also said a large engineering contractors association, which does a lot of Consortium jobs, has the same commitment to support each other.

PF #13, the President of a woman-owned IT consulting firm provided oral testimony at a public forum held on October 20, 2009. She said, “Our experience with OCTA was very, very frustrating primarily because we watched a contract go to an ‘out-of-state’ vendor when we were a comparably qualified local vendor, and our rates were competitive.” She also stated that whenever her firm sees an RFP with a short lead time (e.g., two weeks) and it is fairly complex proposal, she believes it is an indication that a vendor has already been selected. She suggested that a better monitoring and

disclosure process is needed so that small businesses can learn from their mistakes, and ‘emulate’ what others are doing right. (Public Forum Los Angeles held on October 20, 2009).

PF #24, an individual representing a minority- and woman-owned business in the field of human capital management provided oral testimony at the public forum held on October 21, 2009. He stated, “The same firms (including minority-owned and other DBEs) always seem to get the contract awards.” His main concern was “cronyism,” not discrimination. He was also concerned that the dollar amount for the few contracts that are awarded to small businesses is simply, “too low in value to make a living and grow a business.” He wants and needs contracts that are above the \$3,000, \$4,000 and \$5,000 range in value. (Public Forum San Diego held on October 21, 2009).

Other interviewees reported no knowledge of a “Good Old Boy Network” in the transportation industry. [Interviewees #CON: 4, 6, 7, 8, 9, 11, 29, 32, 36, 42, 52, 53, 57, 58]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, did not have any thoughts on whether there is a “Good Old Boy Network” in the industry.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, did not feel that there is a “Good Old Boy Network” in the Consortium transportation industry.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that, to his knowledge, there is no “Good Old Boy Network” in the Consortium transportation industry.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, does not believe that there is a “Good Old Boy Network” in the Consortium transportation industry.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, does not believe there is a “Good Old Boy Network” in the Consortium transportation industry.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she does not believe there is a “Good Old Boy Network” in the Consortium transportation industry and stated that the “contracts people are fair.”

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, did not know whether there was a “Good Old Boy Network” in the Consortium transportation industry; he stated that he is just trying to build his company.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she did not know whether there was a “Good Old Boy Network” in the Consortium transportation industry, but stated that companies know who they like to work with and get them back when they can.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, stated that he did not know or care whether there was a “Good Old Boy Network” in the Consortium transportation industry.

Bid shopping.

Several interviewees reported knowledge of or experience with bid shopping by prime contractors. [Interviewees #CON: 1, 2, 5, 7, 8, 11, 12, 14, 15, 16, 20, 22, 26, 28, 31, 32, 33, 37, 38, 42, 45, 46, 47, 52, 53, 54, 55, 56, CONTA #1, 2]. Several interviewees relayed multiple instances of bid shopping having occurred. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, identified a recent case of bid shopping on a nationwide contract and the prime contractor was requiring the subcontractor to accept a 20 percent discount on work performed; he stated that the subcontractor will agree to do this in order to keep getting work in the future. He said that it is extremely disheartening, but it happens all the time.

Interviewee #CON2, an African American male-owned structural engineer, stated that he has experienced bid shopping within the past year. He stated that this occurs in the private sector. He said architects sometimes take proposals from engineers and shop the lowest bid to its preferred consultant. He stated that he is aware of the practice because other engineers sometimes disclose that the architects have shopped the bid to them and awarded the contract. He stated that he tested an architect by slashing his proposal by 50 percent but, even after lowering his price, Interviewee #CON2 did not get the job. The architect went to another engineer and negotiated the contract.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he cannot say that he has heard of instances of bid shopping, but knows that it happens all the time in the industry whether the subcontractor is a DBE or non-DBE. He stated that municipalities and private companies always take three bids in. Interviewee #CON5 stated that the prime contractors generally call him back and tell him what the lowest bid is, and ask if he wants to beat the price and he generally says “no.” Hence, he stated, price shopping happens all the time.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that bid shopping is “very prevalent” in the industry, whether or not the subcontractor is a DBE. In fact, Interviewee #CON7 stated that the morning of this interview, he lost a bid on a project to someone else after the contractor shopped the bid.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that he has heard of bid shopping. He has suspected that it has happened on several occasions in the public sector, but none of those instances was with the Consortium. He stated that there is a law that on certain contracts the prime contractors must list the subcontractor’s bid to prevent “bid peddling,” but his contracts are too small to meet the threshold for this law.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she has experienced bid shopping in the private sector and people call her all the time to get pricing. She stated that there are strict rules, and she is selected because of low price.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has been “on the other side” of bid shopping. He stated that he receives calls for bids and he tells his people not to spend a lot of time putting together a proposal, but rather just give them a number.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has heard of “bid shopping.” He stated that another challenge is when the pricing portion of the bid requires the use of a formula that has very little to do with the actual project. For example, he stated that a proposal for a marketing plan should be evaluated based on talent and price. However, the more talented the individuals, the more expensive the proposal. He stated that this requires the talented company to underbid the proposal. He stated that sometimes this causes his company to lose a proposal to a company who is less expensive, but has “no idea what they are doing.” He stated that these proposals should be evaluated by an experienced marketing planner with transportation experience as opposed to evaluation based on construction pricing.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has experienced and heard of bid shopping. Companies have asked for quotes and his pricing and then used that information to push preferred contractors’ pricing down. Interviewee #CON15 has had subcontractors call him and say, “How is my number?”

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he has heard of and experienced bid shopping. Interviewee #CON16 notes that these games get played all the time.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that he has experienced bid shopping; this is why he feels he did not get some contracts. He believes that there have been instances where the prime contractor has taken his prices and then found someone to submit a lower bid, despite the quality of the project.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, was aware of bid shopping. She stated that it is prevalent in printing and is a standard part of the contract.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that within the past two years he has had contractors ask for his price, which they will then pass on to their own electrical company so that it knows it must come in under that number. He stated that other times contractors will request a price three days before a bid is due in order to verify the price of their chosen subcontractor. He stated that he no longer provides price quotes to these companies. He stated that his bid is protected only when the prime contractor is required to have 20 percent minority participation; then they will protect his quote.

Interviewee #CON56, a white male owner of a small electrical contracting firm, reported that he was aware of bid shopping.

CONTA #1, the President of the Latino Business Owners of America, stated that he has heard of bid shopping recently. He stated that generally prime contractors make subcontractors lower their prices until they finally bow out.

CONTA #2, the President of the Black Contractor’s Association, stated that he has heard of bid shopping. He stated that his members often suspect that the prime contractor provided their quote to another subcontractor to receive a lower quote. As a result, he stated that many subcontractors (whether DBE or non-DBE) call their numbers in five minutes before the bid time because they do not want their numbers shopped. He stated that if they trusted the prime they would send their

numbers in a week or a day early. CONTA #2 could not provide the names of any specific projects in which bid shopping may have occurred.

Other interviewees reported no knowledge of or experience with bid shopping by prime contractors. [Interviewees #CON: 3, 4, 6, 9, 10, 17, 18, 19, 21, 25, 27, 29, 30, 34, 35, 36, 47, 49, 57, 58]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that he had not heard of any bid shopping.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has not directly experienced bid shopping, but does not know whether it has happened to others.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has never heard of any bid shopping.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he has not experienced bid shopping although sometimes their business will be told that their prices are too high and that is why the prime contractor stopped calling them.

Bid manipulation/different bid criteria.

Several interviewees reported having experienced or heard of bid manipulation. [Interviewees #CON: 1, 2, 3, 4, 7, 8, 9, 13, 14, 15, 16, 20, 22, 26, 28, 31, 37, 45, 46, 47, 48, 53, 54, 55, CONTA #1, 2]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he has “absolutely” seen bid manipulation happen. He referenced the example of someone with the prime contractor’s firm bidding the project under a different name to ensure that one of the parties will win the contract.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has not heard of or experienced any bid-manipulation directly, but he knows that it clearly happens in the private sector. He stated that he knows for a fact that an architect will look at the low bid price and approach his preferred engineer and say “lower your price to this one and I’ll give you the job.” He stated that he has not seen this in the public sector.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that there is a lot of speculation about bid manipulation in the public sector. He could not give any examples, but heard of situations as recently as 2000 in which a prime contractor designated a particular DBE for bid and changed the DBE afterward. Interviewee #CON3 stated that a prime can always come up with a reason not to use a DBE. For instance, the prime might say that a DBE did not have enough manpower. Interviewee #CON3 stated that he has also heard of prime contractors satisfying the requirement to use a DBE at the bid stage and then the DBE would not get the work.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has not heard of bid-manipulation, but was generally aware that general contractors often sent notices out to subcontractors asking for a price quote 24

hours before the bid was due. He stated that this last occurred four months ago, on a private sector project involving electrical work for a school district.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that he has perceived bid manipulation, but it is very difficult to prove; this experience was not with the Consortium. Interviewee #CON8 provided the example of a State of California RFP that indicated that qualifications came first, and price came second; he did not think this was true.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that bid manipulation “could happen,” but he does not have any proof. He stated that once in a while there will be an RFP where the price is supposed to be maintained in a sealed envelope until after the selection of the firm, but sometimes it will be “leaked out of ignorance” by the project manager; they will say “we opened it up and saw how low the other guys were so we picked them.” He noted, however, that this has not happened with a Consortium agency.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has had the experience where non-Consortium agencies have found something that they liked in a proposal they received, and have then issued an addendum to the RFP based on what they saw and what they liked; he stated that this is not fair. Interviewee #CON13 stated that he has also been told by agencies to team up with another contractor to avoid competition.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that bid-manipulation is a “touchy situation,” but it “definitely” exists to some extent.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he has heard of and experienced bid manipulation. Interviewee #CON16 noted that these types of things happen all the time.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of bid manipulation, but has not experienced it. She stated that when teams do not win a project they will complain of bid manipulation.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that when large companies shop around for bids, even if a minority-owned company has the lowest bid, if they want to use their own people they will use the term “lowest responsible bidder,” which allows them to award the contract to the firm that has not submitted the lowest bid.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, reported that he had experienced bid manipulation. He relayed one instance in which he bid a job at \$13 million which was as low as he could go. The agency then informed him that they were going to award the contract to another bidder at \$11 million. Interviewee #CON47 stated that he went back to his bid, and he removed all profit, overhead, and G&A and got his bid down to the pure cost which was around \$11 million — he stated that he could not figure out how someone was able to bid the contract at \$11 million. He followed up with a friend who was a friend of someone in the agency;

this agency person informed him unofficially that the agency planned to amend the award to get it back up to \$12 or \$13 million.

CONTA #1, the President of the Latino Business Owners of America, stated that bid-manipulation happens every day. He stated that prime contractors request price quotes from DBEs for bidding purposes, but they do not provide the DBEs with enough time to respond.

CONTA #2, the President of the Black Contractor's Association, stated that he has heard of instances of bid-manipulation, primarily by calling DBE subcontractors to request a price quote the day before a bid is due so that the prime can say that it made a good-faith effort to use a DBE. CONTA #2 stated that this is commonplace and he hears about it periodically. CONTA #2 stated that he has in the past heard of occasions in which a prime contractor represents that it is going to use a DBE, but does not in fact use the DBE.

Several interviewees had never heard of or experienced bid manipulation. [Interviewees #CON: 5, 6, 10, 11, 13, 17, 18, 19, 21, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 42, 49, 52, 56, 57, 58].

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has never heard of or experienced bid-manipulation because in San Diego most agencies follow-up. Interviewee #CON4 stated that sometimes he receives an email or call saying that his firm has been listed as someone who was contacted and the agency asks him whether it is true, and whether he submitted a bid. He stated that he is not sure whether the agencies follow-up every time, but once in a while he does receive follow-up and knows that someone is checking. Interviewee #CON4 also explained that when a prime contractor submits a proposal for a project the prime contractor is supposed to have letters of commitment from that subcontractor and if the prime contractor wins the contract it is not easy to change the subcontractor. The prime must obtain prior approval first from the agency and provide reasons why it is changing the subcontractor.

DBE fronts.

Several interviewees reported some knowledge of alleged "DBE fronts." [Interviewees #CON: 2, 3, 4, 9, 10, 13, 16, 19, 20, 22, 25, 27, 28, 30, 31, 33, 34, 36, 37, 38, 42, 45, 46, 48, 49, 54, 55, 56, CONTA #2]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he hears about DBE "fronts" "all the time." Often times, he stated that the DBE is certified because the wife of the person who operates the business is listed as the owner. He stated that he has heard of DBE "fronts" as recently as a couple of years ago, but could not recall any specific projects.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that the downside of the DBE Program is that there are often businesses certified as woman-owned but women have no involvement in the actual operations. Interviewee #CON3 stated that he is aware of a drilling subcontractor in the environmental business commonly used and certified as a woman-owned business, but the female owner did know much about the area and was not a geologist. He stated "it was a scam." This company obtained projects through the Consortium and the Consortium qualified them. Interviewee #CON3 stated that when he was employed at his previous firm, between 1990 and 1995, he thought that half to two-thirds of the subcontractors held their certification improperly. It was not always under the circumstances of a woman-named the proprietor.

Interviewee #CON3 also described other DBE “fronts” including an analytical laboratory that had a woman-owned business designation, and “sham” drillers on assessment projects. He recalled that the DBEs he felt were shams did work for the Consortium, but could not recall any projects that they worked on.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has heard of DBE fronts. He was aware about 10 years ago of a business certified as a woman-owned business, but the wife who was owner was actually never involved in the business and the husband was running the show behind the scenes. Interviewee #CON4 stated that he is not aware whether the company obtained work through the Consortium, and could not recall any particular projects that they worked on.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, has heard of DBE fronts but has not “dealt with it much recently.” He stated that sometimes this happens with a WBE firm where the wife is supposedly in charge but that is rare. He could not think of any MBE fronts.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, had heard about DBE fronts in the news. She stated that the SBA newsletter reported an incident several months ago about a firm that was not a minority at all. She stated that it is her understanding from the SBA newsletter that the SBA now has to go and investigate firms to make sure that they are in fact qualified.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has heard of DBE fronts and provided the example of a husband and wife team where the wife is the listed president, but the husband is really in charge of the company.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, has heard of DBE “fronts” posing as minority companies to get various contracts. Interviewee #CON16 stated that this often happens with suppliers and vendors where it is easier to write contracts around various industry standards and requirements for minority business use.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had heard of DBE “fronts,” but it was her recollection that this occurred more in the 1980s and 1990s when the DBE Program had just begun.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he had heard of DBE fronts a long time ago, but he did not have any first-hand experience with this.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, had heard of instances of business fronts where the minority or DBE does not truly own the company.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has heard of DBE fronts, but he’s not sure about them.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has heard of DBE fronts. He stated that the L.A. County MTA comes to your house and looks at what you have and they want to see that you are disadvantaged; he noted that he had experienced a DBE front though. There was an instance in which he observed a DBE front where the wife of the person running the business was listed as its primary owner. This was in order for their business to receive certification as a female-owned entity. He said the husband has been a bricklayer his whole life and his wife was able to get certification and they now qualify for projects that he could not get because they are competing for the same types of funds.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of DBE fronts. She provided the example of the wife being a nurse or a real estate agent and they open an engineering firm and the husband is an engineer; she stated that they do this to try to get business as a female/minority-owned firm.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported that he has heard of DBE “fronts.” He stated that this is usually in the form of a female-owned business that is actually run by the woman’s husband or someone else.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, reported that she had heard of DBE “fronts” about three or four years ago; she heard that men would list females or minorities, like a cousin, as the business owner in order to obtain work.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he was aware of a few DBE fronts in particular.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of Caucasian women posing as a business owner in order to qualify for DBE certification.

Interviewee #CON56, a white male owner of a small electrical contracting firm, reported having worked at a firm in the past that he believes operated as a DBE but was a “front.” He stated that the firm reportedly had a female owner, but she was the owner in name only; her husband was actually the managing owner of the organization.

CONTA #2, the President of the Black Contractor’s Association, stated that he has heard of DBE “fronts” but could not say that he knew of a DBE front. He stated that he has sometimes seen teaming between a non-DBE and DBE firm to obtain projects.

Some interviewees reported that they had never heard of “DBE fronts.” [Interviewees #CON: 1, 5, 6, 7, 8, 12, 14, 15, 17, 18, 21, 26, 29, 32, 35, 47, 52, 53, 57, 58, CONTA #1].

False DBE reporting.

Some interviewees reported experience with or knowledge of false DBE reporting.

[Interviewees #CON: 3, 10, 19, 20, 22, 27, 28, 31, 35, 36, 37, 38, 45, 48, 49, 55, CONTA #1].

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that he had not heard of false DBE reporting but also relayed the following example: he stated that he has heard of situations as recently as 2000 in which a prime contractor designated a particular DBE for bid and changed the DBE afterward. Interviewee #CON3 stated that a prime can always come up with a reason not to use a DBE. For instance, the prime might say that a DBE did not have enough manpower. Interviewee #CON3 stated that he has also heard of prime contractors satisfying the requirement to use a DBE at the bid stage and then the DBE would not get the work.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, had heard of false DBE reporting. Interviewee #CON10 stated that other non-Consortium agencies have a team to ensure that prime contractors properly make a good faith effort to utilize DBE subcontractors. She stated that she has received a phone call from the team to ensure that she was a DBE and was contacted by the prime contractor.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of false DBE reporting. She noted that it had been a while, but she had heard of a company receiving 10 percent of the work and having it reported that they received 25 percent.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that in the 1990s their firm was a DBE on a rail project and the prime contractor inflated his firm's hours for reporting purposes. He stated on another occasion, a prime contractor used their name without their permission to win work; they only found out about it by accident after receiving some mail.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, was aware of instances where prime contractors have falsely reported DBE participation in contracts.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that on some non-Consortium projects she has submitted a bid, been listed as a subcontractor, but then does not receive any work.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported that a lot of contractors will bring on a DBE or MBE to buy something and then pay them 8 percent above the cost for their effort. For example, if the prime contractor needs the DBE to do 15 percent of the work and that is \$250,000.00, the prime contractor will have the DBE purchase the materials from a designated supplier and will pay the bill and pay the DBE 8 percent for their effort; the DBE, however, is never physically on the job. He stated that passing work to buy the materials to a minority subcontractor in order to meet a goal is not the way the DBE Program was intended.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of false DBE reporting as it relates to white female-owned firms being utilized on projects. He also reported an instance of a large company deciding not to use DBEs after they had included DBEs on their proposal. He stated that the company came up with a number of “thin-veiled” excuses to get out of using the DBEs.

CONTA #1, the President of the Latino Business Owners of America, stated that he has heard of false DBE reporting, but could not recall any specific details.

Most interviewees reported no knowledge of false DBE reporting. [Interviewees #CON: 2, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 21, 25, 26, 29, 30, 32, 34, 42, 46, 47, 52, 53, 54, 56, 57, 58, CONTA #2]. Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, had never heard of or experienced false DBE reporting or prime contractors falsifying their good faith efforts to utilize DBEs. He stated “I’m not saying it does not happen but I haven’t heard of it.”

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has not experienced or heard of false DBE reporting, but he is “not in a position to know.”

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, was not sure if he had heard of false DBE reporting.

A few interviewees reported that they had no direct knowledge of false DBE reporting, but were “sure” that it has happened. [Interviewees #CON: 1, 4, 7, 33]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, had never heard of false DBE reporting or of prime contractors falsifying their good faith efforts to utilize DBEs although he is “sure that it happens.”

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has never heard of any false DBE reporting, but he is sure that it has probably happened.

Interviewee #CON7, a non-DBE white male owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he does not specifically know of any false DBE reporting, however, he is sure that it happens.

Good faith efforts.

Many interviewees reported perceptions of instances where prime contractors did not use genuine good faith efforts to locate qualified and available DBE subcontractors. [Interviewees #CON: 3, 4, 7, 8, 11, 12, 13, 16, 18, 20, 21, 22, 26, 27, 28, 30, 31, 33, 37, 38, 45, 46, 47, 48, 49, 54, 55, CONTA #1, 2, PF #5, 7, 10, 14, 15, 16, 22, 23, 6]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, recalled situations in 2000 where it was rumored that a prime falsified its “good faith efforts” to utilize DBEs. He stated that the prime simply explained that it could not find a DBE.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he does not think that prime contractors really make an effort to

falsify their “good faith efforts” to utilize DBEs. His impression is that most prime contractors are just going through the motions when it comes to good faith efforts. They have to do it so they advertise and send faxes or emails or letters. Interviewee #CON4 stated that he does not think that they are doing it in an earnest way because often he receives a RFP with very little time on the clock left, and there is no way his firm can put together a proposal in two days or so. For example, recently he received a RFP on a fairly large project for a public agency and the prime wanted a proposal in two days; his firm could not put it together.

Interviewee #CON7 stated that he is generally aware that prime contractors falsify their “good faith efforts” to utilize DBEs. This often occurs when the prime contractors wait until twenty-four hours before a bid is due to notify DBEs of the bid.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that he has heard of prime contractors falsifying their good faith efforts to utilize DBEs, but not on Consortium projects.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that people do falsify their good faith efforts and they are just trying to satisfy the requisite criteria.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he did not have evidence to show that a prime contractor had ever falsified his good faith efforts. But, he stated that on one contract he did not think the prime contractor who won had met the DBE goal or satisfied the good faith efforts.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he receives a lot of inquiries from prime contractors doing business with the City of Los Angeles asking whether he is interested in participating on a project; he stated that he always responds that they are interested, but he “never” gets a response from the prime contractor.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, thinks that good faith efforts are “the biggest joke out there.” Interviewee #CON16 receives faxes all the time from companies seeking to certify that they have sought out minority businesses as subcontractors and meeting good faith effort standards. A lot of times Interviewee #CON16 receives these faxes for services totally unrelated to his business or sometimes a day before a bid is due — the company cannot even put a bid together in that short amount of time. “These companies are trying to bypass the system and use a loophole.”

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, reported that she has heard recently about prime contractors falsifying their good faith efforts, and that this practice is ongoing.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that prime contractors will go through the effort, but already have a firm in mind. He stated that they have been helped and hurt by this, and he believes that it is the way the system works.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he feels that this has happened to him where he's received information about an opportunity, but did not hear back primarily because the prime contractor was reaching out to DBEs only because of the good faith effort requirement, which wasn't enough to actually get the contract awarded to him. It was simply an attempt to get his information to be included in a report as a "good faith effort."

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, said that often prime contractors will send him information to bid on projects for plumbing and drainage, but he is a masonry contractor. He stated that the prime contractors are just going through the step of showing a so-called good faith effort, but they are not really trying to get a subcontractor.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she perceives prime contractors do falsify their good faith efforts. She stated that she came close to fighting a company's claim of good faith efforts a couple of times, but she did not want to spend the time trying to prove it. She wanted instead to put forth her effort at finding new business.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he has heard of contractors falsifying their good faith efforts, but that it is just the nature of the business and it is not going to change during his lifetime.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, indicated that he believes all prime contractors falsify their "good faith efforts" to utilize DBEs.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has received telephone calls and faxes asking him to be a subcontractor; he sends in information, but never hears back from them. He stated that within the past six to eight months, he has provided information to four companies, but has not heard back from any of them. He stated these companies may then tell the government they solicited DBEs but could not find anyone. He also indicated that prime contractors can have someone within their own company fill out the paperwork to become a DBE, and then they can award the jobs to them.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of contractors falsifying their good faith efforts to utilize DBEs; he believes that this was reported, but nothing was done to rectify the situation.

Interviewee #CON55, a white male owner of a construction services and program management firm, reported that he has heard all the time about prime contractors falsifying their good faith efforts to utilize DBEs.

CONTA #1, the President of the Latino Business Owners of America, stated he believes that prime contractors do falsify their “good faith efforts” to utilize DBEs. He stated that they put in a little effort and simply say there was no response and then use a non-DBE. He stated that there is no way for the agency to go back and find out if the prime contractor actually requested any price quotes from DBEs. He stated that there is no monitoring of the prime contractor’s “good faith efforts” and whatever the prime contractor reports is accepted by the agency. He stated that he last heard of this occurring this year.

CONTA #2, the President of the Black Contractor’s Association, stated that prime contractors often falsify their “good faith efforts” to utilize DBEs by providing only a 24 hour notice of an invitation to bid so that they can have a file letter indicating that they made a good-faith effort to use a DBE. Subcontractors then have very little time, if any, to submit the quote. CONTA #2 also stated that he has heard members say that they have seen their names on bids, but were not used or the member was substituted.

PF #5, an individual representing a certified DBE/SBE public relations firm provided oral testimony at the public forum held on October 20, 2009. His concern was that when prime contractors make their good faith effort that it is not actually done in good faith. He said that the prime contractors make demands and request certifications with urgency and then they never follow through with the subs or rarely, if ever, do they actually award a contract to subs. He said, “You don’t risk not sending anything because then you truly get nothing. But that’s what the ultimate results are – not getting work whether you respond to a Primes request, or not. I think it is exceedingly unprofessional. What can be done about it?” (Public Forum Los Angeles held on October 20, 2009).

PF #7, an African American woman representing a certified MBE environmental company voiced frustration with the certification process and the solicitation process by prime contractors. She said, “I have to prove over and over again that I’m still a black person, for instance.” She stated that the prime contractors are disingenuous in their outreach efforts to truly include minorities and award contracts to minority subcontractors. She stated that the primes are only contacting minority businesses to claim that they have done their due diligence, but their efforts are not genuine. “The primes simply want to include the fact that they have made their outreach efforts by contacting us in their proposals, but they have very little intention of providing the work to us.” She also wants more work set aside for DBEs and to stop cronyism. She wants to see an improvement and increase in outreach efforts to minority businesses, which should increase their participation in actual contracts. (Public Forum Los Angeles held on October 20, 2009).

PF #10, an individual representing an engineering firm stated, “I’m an architect at an engineering company, and I can see since when I first came in 1978 there’s a change in how contracts are given to minority firms.” It is his contention that since the abolishing of affirmative action, there is no mandate or requirement for large corporations to give contracts to small minority firms. “It needs to be a part of our culture.” (Public Forum Los Angeles held on October 20, 2009).

PF #14, a female Hispanic individual representing a non-profit organization of Latin business owners, stated that her organization searches for RFPs and forwards the information to their members. She and her organization have serious doubts about the validity of the good-faith efforts by prime contractors. She said, “Good-faith efforts does not work for us, and I mean, we hear it all the time. It’s not effort any more. I think we need to go beyond that step and build true partnerships to give true access to the minority businesses.” (Public Forum Los Angeles held on October 20, 2009).

PF #15, an individual who represents a DBE certified testing and inspection firm provided oral testimony at the public forum held on October 20, 2009. She had an issue with the lack of genuine good-faith efforts made by primes. She described the good-faith process as disingenuous, and said it only serves to provide primes with validation that they made an effort, but it does not validate that they awarded work to DBEs and other small businesses. The good-faith efforts need to be mandatory. (Public Forum Los Angeles held on October 20, 2009).

PF #16, an African American woman who represents a computer supply company as well as an African American Chamber of Commerce provided oral testimony at a public forum held on October 20, 2009. She stated that there is a lack of an authentic, verifiable, and enforced good-faith effort by primes. “I have been in business for 11 years. The joke about good-faith in the small business and minority communities is to refer to the good-faith as the ‘Good-Fake’ effort.” She also stated, “I think we need to put some teeth in the program. There should be a penalty. There should be penalties in the program... make mandatory requirements, so it’s not just a good-faith estimate effort.” She stated that transparency is crucial. (Public Forum Los Angeles held on October 20, 2009).

PF #22, an individual representing the interest of black-owned firms provided oral testimony. He began with the statement, “Without goals (hiring quotas for black-owned businesses), black-owned firms do not and will not receive contracts from large white-owned firms.” He gave an example of being offered only \$600 by a prime contractor when the total contract was worth \$7.6 million. He believed that the prime was only offering this work to the minority-owned firm to fulfill their minority-owned business mandate, which was very insulting. During the public forum, he made a request that mandatory goals be included in all contracts. He stated that, “Good faith effort language is grossly insufficient to compel large primes to hire DBEs.” (Public Forum San Diego held on October 21, 2009).

PF #23, an individual representing a woman- and Asian Pacific-owned firm provided oral testimony at a public forum held on October 21, 2009. Her firm went through the entire process to secure a contract with a large prime contractor. “It was a great deal of work, time, and costs that had a zero return for our efforts.” She stated that it was a common experience for her firm and other small business owners to do all that is required, and then not hear back from a prime and not be accepted. She stated that the primes are just going through the motions of their due diligence to conduct outreach to small business, but have little or no genuine intent to award a subcontractor a portion of the work. (Public Forum San Diego held on October 21, 2009).

PF #6, an individual representing his company stated that it's the prime contractors who insist on a subcontractor sending certifications, without delay, and then the prime never gets back to the subcontractor. The subcontractors, he said, are at the mercy of the primes, without any enforcement or oversight for their business practices or lack of contracts awarded. The individual stated, "It is very frustrating." (Public Forum Los Angeles held on October 20, 2009).

Other interviewees reported that they had never heard of or experienced a prime contractor falsifying its good faith efforts. [Interviewees #CON: 2, 6, 14, 15, 17, 19, 25, 29, 32, 34, 36, 42, 52, 53, 56, 57]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has not heard of or experienced prime contractors falsifying their "good faith efforts" to utilize DBEs.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has never heard of any prime contractors falsifying their "good faith efforts" to utilize DBEs.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that he has not heard of a prime contractor falsifying their good faith efforts to utilize DBEs. Interviewee #CON14 stated however that no one audits contracts to determine what was proposed as far as DBE participation (and, presumably actual participation).

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has been approached by companies regarding "good faith efforts." Interviewee #CON17 gets a lot of requests that she thinks are for the purpose of making good faith efforts because the company is listed in certain directories as being a contractor rather than a professional services firm.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she could not say for sure whether she was aware of prime contractors falsifying their good faith efforts, but noted that prime contractors use the firms that they want to use.

Recommendations related to good faith efforts.

Some interviewees recommended the Consortium more closely monitor DBE utilization and good faith efforts. [Interviewees #CON: 15, 16, 22, 24, 26, 36, 37, 40, 45, PF #18, 20].

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that more stringently enforced good faith efforts rules would help with compliance. He felt this is largely non-existent.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, thinks that good faith efforts should only be considered when the efforts are made in the relevant service industry and with enough time for bids to actually be completed. Otherwise, good faith efforts are completely meaningless.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the Consortium should be more consistent in its visits to work sites.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that the Consortium needs to monitor the amount of the contract that is supposed to go to a DBE and the percentage that actually does. She stated that prime contractors need to be held accountable and show that monies set aside for DBEs are actually used for DBEs. She stated the Consortium should also monitor prime contractors' use of "best efforts."

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the Consortium should hold prime contractors more accountable for using DBEs on their contracts thus preventing them from using DBEs to meet bid requirements and then not using them when they are awarded the contract.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that the Consortium should perform an audit to make sure DBEs are getting the work that they are supposed to get.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, recommended stated that the Consortium should monitor DBE utilization to ensure that the process is fair and business deals are not made because of relationships. He stated that the Consortium should not make small businesses and firms always compromise to get a piece of the pie. He stated that there must be some kind of oversight to make sure the process is what it is intended to be.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the Consortium should have a system in place to monitor the worksites and the business relationship between the prime contractor and the DBE. He stated that the DBEs should not be doing 25 percent of the work when the contract only reflects them doing 10 percent of the work. He stated that in order to avoid disputes later, all levels should meet at the beginning of the project and come to an understanding so that they are all on the same page when the project begins. He stated that the agency should stay involved in each project and there should be a mediator. This is so that no one will suffer, especially the DBE; he stated that the DBE cannot roll through problems.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, recommended that the Consortium monitor prime contractors and make sure that they are utilizing DBEs when required. She stated that the Consortium should take into consideration that DBEs are DBEs for a reason and they need to be given an opportunity to showcase their abilities to give them the ability to graduate from their DBE status. "They need to make prime contractors use the DBEs. DBEs should be referred to the prime contractors that are shortlisted for projects. [DBEs] need to be informed more than three days before a bid is due. The only letters they receive are about renewing their certifications, but nothing more than just that There is no way to ensure you get the work after you are solicited. You wonder if [they] wanted to use you in the first place or did they have someone else in mind from the beginning." She stated that firms are not being compliant.

PF #18, an individual representing an African American-owned private investigation small business provided oral testimony at a public forum held on October 20, 2009. His concern was that minority-owned businesses are being used and manipulated by prime contractors and others to secure federal contracts. He stated that once the federal contract is awarded, there is no participation or monies that flow to the minority business that helped the prime look good to the federal government. He

suggested that there needs to be enforcement to verify participation by the small businesses identified in the primes' proposals. (Public Forum Los Angeles held on October 20, 2009).

PF #20, a Hispanic man representing a certified MBE/DBE firm as well as an organization of Hispanic contractors provided oral testimony at a public forum held on October 21, 2009. He stated that while he has been in the database as a qualified MBE/DBE for four years, his firm has only been selected for one project during that time. He asked, "How many contracts have been awarded to disadvantaged companies?" and, "Why do Primes have the right to waive contract goals for minority owned business?" He felt the right to waive contract goals was an impediment to small business contractors securing work with prime contractors. (Public Forum San Diego held on October 21, 2009).

Caltrans Anecdotes Regarding Perceived General Barriers to Participation in the Public and Private Sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

Obstacle to pursuing or obtaining business.

A substantial barrier reported by interviewees, both DBE and non-DBE, in obtaining work in the public and private sectors was the perceived inability to "break into the market" due to the pre-existing relationships among prime and subcontractors. In this respect, most interviewees reported the existence of a "Good Old Boy Network" in the California Transportation industry. Many interviewees viewed this as an obstacle to the pursuing or obtaining work. [CT Interviewees #6, #7, #8, #10, #29, #31, #32, #33, #39, #44, #51, #65, #66, #79, CATA #1, #2, #3]. These interviewees expressed feeling closed out of opportunities because certain prime contractors use subcontractors within their own network and, therefore, do not solicit or accept bids from others. Others either did not believe there was a "Good Old Boy Network" or did not see it as an obstacle to receiving work [CT Interviewees #1, #34, #45, #46, #48, #50, #73]. Some interviewees thought the "Good Old Boy Network" was more prevalent in the private than the public sector, others thought it occurred in both sectors.

Interviewees reported they are "quite often" [Interviewee #CT6], "frequently" [Interviewee #CT8], "quite a bit" [Interviewee #CT10] and "a lot of times" [Interviewee #CT51] shut out of a job because the prime contractor already has a preferred subcontractor. Interviewee #CT17, a white male-owned firm, stated that because of a "good old boys club" the same group of firms gets all of the Caltrans work in his area. Interviewee #CT40, a white male-owned firm, stated that the company is in the "Good Old Boy Network" because the company "has been around forever." Interviewee #CT51, a Hispanic male-owned firm, could not say or know whether he was shut out because he was not the prime contractor's buddy or because of any prejudice or discrimination.

Interviewee #CT7, a white female-owned business, reported that she never received an RFP from certain cities. She stated it was not necessarily because they are a DBE firm, but because they are not "in the good old boy system." She stated that it is hard to maintain relationships with project managers at large prime contractors (in order to get what DBE or small business work is available) because these people often move from one firm to another and those firms already have particular subs in their own network that they use.

A white female-owned professional services provider in the construction management field testified at a public hearing in Los Angeles that “There’s still very much a “Good Old Boy Network,” I’m sorry to say. And if you’re not an old boy, you’re not in that network.” According to this DBE, “there’s a lot of information that you don’t get.” At the “golf course meetings, the information ... flows.” She believes the DBE Program “allows us to have an equal playing field.” (P.H. Los Angeles, 3/29/07).

Interviewee #CT13, a Pakistani male-owned firm, found it “very difficult to break in” and get work from prime contractors on Caltrans projects, mainly because the prime contractors always use the same subs and “don’t see any reason of cultivating relationships [with and] providing jobs to new DBE firms when they got nothing to gain financially in doing that.” CATA #10, an Asian American trade association, stated that some of the small firms have a good relationship with some larger firms and in that case the larger firms will use those small firms no matter what. Without goals, he believes, primes will use the firms with whom they have the best relationship or who they think will give them the lowest cost.

According to CATA #11, a minority trade association, the primes working for Caltrans have been working for Caltrans for many years. Most of them have bought all their equipment and their own plants. If they need a supplier or a subcontractor they use the same one they have always used so “they don’t have to think or worry or try something new.” CATA #1, an Asian American trade association, said that it is difficult to get on a Caltrans job as a subcontractor, because you have to know the primes and it takes years to build these relationships. He also said that generally primes already have their teams formed and are not looking for new and different DBE firms.

An African American DBE trucking company who testified at a public hearing in San Diego would like Caltrans to encourage primes to use different DBEs. Caltrans should tell them to “use so many of these guys, just don’t put us with all your friends. Because it’s a network system out there, and if you’re not a part of that network system, you’re not going to get it.” (P.H. San Diego, 3/22/07).

An African American DBE consulting firm testified at a public hearing in San Diego that the “number one thing” that “puts DBEs at a disadvantage is access to decision makers.” The project engineers tell the large prime contractors about opportunities early on “maybe they go out to drinks every once in a while ... or see each other on the golf course.” (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, testified at a public hearing in San Diego that “As for barriers that I can see for Native American companies ... for all disadvantaged companies is to be able to work with the prime contractor for them to really take you serious. Because they have a “Good Old Boy Network,” and it doesn’t matter if it’s a white company, a white woman company, it’s still there. And unless you can have a connection with the prime, it’s hard to get that work.” (P.H. San Diego, 3/22/07).

Interviewee #CT11, a Native American male-owned firm, is familiar with the “Good Old Boy Network” network, but perceives that it is more of an issue with smaller agencies, e.g., the cities, than Caltrans. These smaller agencies say that it has to do with which companies they are comfortable working. Caltrans is “fairly good about being very stringent in their standards.”

A DBE commercial roofing contractor, stated: “We have BEEN treated fairly by most prime contractors we currently have business contact with. (Written testimony submitted 3/27/07).

A woman business owner stated, “Attending pre-bid meetings tends to be fruitless. The primes appear to know the firms they will work with before the meetings begin. Their attendance appears to meet a pre-bid requirement only.” She stated she was told by a business counselor, and “it is my perception and his too, that it doesn’t make sense to call oneself disadvantaged. It is tantamount to calling myself a loser before I even make it out of the gate.” (Written testimony submitted 4/15/07).

DBE prime contractors prefer to use DBE subcontractors.

Some DBE firms explained that they were more likely to use their DBE friends as subcontractors on their projects. CATA #11, a minority trade association, reports that his DBE members tend to use DBE subcontractors. “People tend to use people that they are comfortable with.” “A DBE contractor would tend to gravitate toward the DBE contractor ... they talk the same language, they understand each other’s philosophy.” Very rarely, he said, would a DBE subcontract to a majority-owned contractor.

A white female-owned professional services provider in the construction management field testified at the Los Angeles public hearing and reported “we make every effort to include colleagues or small businesses. And we make an effort to make sure they have work on our team because we know what that’s like.” (P.H. Los Angeles, 3/29/07).

Interviewee #CT69, a white male-owned trucking company, stated that there is a network of Hispanic business owners that pass the work to each other. The dispatchers are Hispanic and therefore more likely to call the Hispanic truckers. As a white male, he feels it has been more difficult to get work because of this network.

CATA #2, an African American trade association, indicated that neither he nor his association’s members had experience soliciting bids from or utilizing DBEs on Caltrans projects because, he said, they are “almost always” subcontractors on work for Caltrans. He stated that for work for other agencies, the Association’s members almost always use other DBE firms as subcontractors (or whoever has the expertise if there is no goal). He also stated that in the private sector his company and other of the association’s members try to use other DBE firms if they can but also use non-DBE firms in situations where other DBE firms are unavailable to do the work. He gave as an example his company’s using non-DBE firms to haul its products because there are no DBE firms that own trucks to haul the products. According to CATA #2, people like to work with people that look like them or with whom they are comfortable. The association’s members subcontract work to other DBE or “non-majority” firms, and the association encourages small firms to team and work together because it gives them more financial and equipment strength and thus allows them to land bigger contracts.

Natural and unavoidable.

Some interviewees feel that selecting business partners based on relationships was natural and unavoidable. Interviewee #CT79, an African American male-owned firm, stated that networks are a fact of life and that people will always want to work with the people with whom they have built relationships. Interviewee #CT66, a white male-owned firm, said that it “occasionally” happens that he is closed out of an opportunity to work because there is a “Good Old Boy Network” in place, but said that “it ... works both ways too” and he sometime receives work because of a relationship.

Interviewee #CT46, an Asian American male-owned firm, said that “every contractor has ... the people that they’re comfortable working with.” He did not feel that prime contractors chose not to use certain subcontractors because those subcontractors were DBEs but rather because the prime contractor went with someone “in the comfort zone of ... their own personnel.” CATA #7, a Filipino trade association, stated that firms prefer to work with companies with which they have worked in the past, but that once you establish a relationship with the firm, you get more work. He did not believe the network is race-based, but rather relationship based.

Interviewee #CT45, white male-owned firm, stated that “other than mandatory pre-bids,” he did not see a “Good Old Boy Network”: “All you have to do is be low bidder and have a bid bond.” CATA #2, an African American trade association, stated that the association’s members were often closed out of opportunities to work as subcontractors because prime contractors use someone within their own network. He stated that it is understandable that a company would want to use a firm that it has used before and knows can do good work. The problem, said CATA #2, is that prime contractors’ past experiences are almost always with white male-owned firms. The DBE program gives DBE firms a chance to “get into the arena” and show their skills to and develop relationships with prime contractors.

Interviewee #CT1, a Native American male-owned firm, is familiar with the “Good Old Boy Network” but does not believe it affects his ability to obtain or engage in business. When a prime contractor contacts a subcontractor about a Caltrans job, he assumes “that they have some kind of history with a subcontractor.”

Bid shopping.

Many interviewees reported that they had experienced bid shopping by prime contractors.

Interviewee #CT1, a Native American male-owned firm, said he does have a lot of pressure to lower his prices. He said that with the first subcontract he did for Caltrans, the prime contractor “basically said here are the prices, take it or leave it.”

Interviewee #CT8, a Hispanic male-owned firm, indicated that bid shopping is something that “happens frequently,” usually after prime contractors are awarded a contract. Interviewee #CT16, a white male-owned firm, stated the company had experiences with bid shopping by prime contractors after a contract had been awarded, but that these experiences had been in other states (in California, Caltrans purchases the product directly from the company).

Interviewee #CT33, a Hispanic female-owned firm, stated that bid shopping was something that “happens a lot,” that the company “get[s] cut down sometimes[,]” and that this often happens without the company even being asked. She said that this cutting down usually happens after the prime contractor is awarded the contract or during negotiations. Interviewee #CT33 also said that there were times when she had “called their bluff” and had the primes tell her they were going to use someone else, only to come back months later saying that they wanted to use her company after all.

Interviewee #CT34, a white male-owned firm, had no experience with or knowledge of bid shopping. He attributed the lack of bid shopping to the way that services are contracted out in his Caltrans district, saying that typically selections are made on the basis of qualifications and that the actual bid is not prepared until after the firm has already been selected.

Interviewee #CT49, an African American male-owned firm, said that bid shopping was something that happens, “frequently” particularly on larger jobs and for Caltrans. He also said that because of the practice or threat of bid shopping, firms bidding as subcontractors on larger jobs sometimes are forced to submit bids that are higher than they otherwise would be, since these subs can expect to be bid-shopped by the prime.

Interviewee #CT81, a Hispanic male-owned firm, feels primes do shop DBE bids around to their construction buddies because there’s no way that a big company could undercut his bid without knowing what it was. However, he doesn’t feel that DBE bids are being shopped around because of the DBE’s race, but rather because the primes get used to working with the same people. The large contractor gets used to working with a large electrical company, and they want to keep it that way. He is not being passed over for jobs because of his race, but it is just hard to break into these personal relationships companies have built with each other.

CATA #1, an Asian American trade association, stated that he had heard about bid shopping from the association’s members but had no personal experience with it. He said that the association had been talking with Caltrans about bid-shopping as well, and that Caltrans had taken a strong stance and made “good progress” in this area. CATA #2, an African American trade association, said that though he had never been bid-shopped, a lot of the association’s members had, especially on construction contracts and usually after the prime is awarded the contract (when the primes also try to substitute their subcontractors and tell Caltrans that the sub originally listed did not want to do the work). CATA #2 said that bid shopping, though it still happens, was a bigger problem in the 1990s than it is today (namely because Caltrans had stopped allowing a 10-day turnaround or review period after awarding its contracts to primes) and was something that the association had addressed with Caltrans through discussions on the Small Business Council.

A Hispanic female-owned consulting firm explained, at a public hearing in Los Angeles, that contractors sometimes bid shop out the DBEs number to “to their own subsidiary companies to bid against DBEs” so that they can “justifiably deny participation” based on price. (P.H. Los Angeles, 4/4/07).

Bid manipulation/different bid criteria.

Very few interviewees reported they had experienced bid manipulation. Some interviewees had heard of the practice but had no personal experience. Interviewee #CT33, a Hispanic female-owned firm, described a situation where her company submitted two RFPs on a job (she did not know if Caltrans funding was involved), one for urban design and streetscape. She feels that her company had the best chance of getting the streetscape job, since it had won the previous streetscape job four years earlier. But, according to Interviewee #CT33, the two proposals were combined after they had been submitted separately, and the company did not get the streetscape job. Interviewee #CT33 said that had she known the two proposals would be combined, she would have pursued a different strategy.

Interviewee #CT46, an Asian American male-owned firm, relayed an experience where his company bid as a prime but then lost the bid and was given as the reason that the company had not correctly satisfied the job’s DBE requirement. Interviewee #CT46 stated that this job was then re-bid, but he did not know whether or not the awarding of the job to his firm was protested only so that the job could be re-bid. Interviewee #CT46 did say that it was a common practice for agencies and districts to re-bid their jobs “multiple times just to get the price down.” He did not think that this re-bidding

had anything to do with “the minority status or requirements[,]” but that it is “just their technique.” He also stated that he had “[n]o proof on it [this practice of re-bidding,]” but did feel “that’s what they do all the time.”

Interviewee #CT65, a white male-owned firm, has knowledge of bid manipulation and kickbacks, especially on Caltrans work where brokers and truckers have been involved.

CATA #1, an Asian American trade association, said that bid manipulation was not so much a problem compared to prime contractors wanting to substitute their subcontractors after being awarded a contract. CATA #1 said that the association had addressed this issue with Caltrans for the past decade, and that though Caltrans had made efforts and “some progress” to mitigate this problem, there is “still a long way to go.”

A small African American owned construction company located in Chula Vista testified at a public hearing in San Diego, that two years ago he attempted get a contract on the South Bay toll road. The DBE requirement was in the double digits. Over the holiday, he put a team together, which included the required number of DBEs, and prepared the bid. When the solicitation came out the requirements had changed. He had to put a whole new team together. The company was not ultimately selected. He stated that the bid was not opened like it normally is but rather, he had to inquire as to whether he got the job. “After being treated the way we were treated in the bid, after them knowing that we were going to be bidding on it and then changing the specifications, and the specifications were changed to that extent that ... it was very difficult.” (P.H. San Diego, 3/22/07).

DBE fronts.

Only a few interviewees reported direct knowledge of “fronts. Most interviewees reported no knowledge of “fronts.” Some of these interviewees stated that while they had no direct knowledge, they suspected that they occurred. CATA #7 believes it is hard to monitor in the consulting realm since the president does not need to be the architect or engineer. Companies can put up a minority president who has very little control.

Interviewee #CT75, a white male-owned firm, has seen WBE and MBE shams. Some so-called “women” owned businesses are in fact fully operated by the husband or two friends decide to put the business in her name and file for certification with the understanding that the female friend will take no part in the business. Another example is where two individuals join in an informal partnership in which the minority will file for certification and the white man will be the actual person in charge. According to Interviewee #CT75, everyone knows this sort of thing happens, and that it happens a lot.

Some viewed fronts as undermining the DBE program. Interviewee #CT29, a Hispanic male-owned firm, said that fronts injure the DBE Program. And that because of fronts prime contractors may question whether he is also a “sham.” He stated that in California, the “responsible managing employee” designation allows this to happen because it allows companies to use other companies’ licenses to bid on work.

Some interviewees thought Caltrans did an adequate job policing for fronts and saw the existence of fronts declining. Interviewee #CT51, a Hispanic male-owned firm, stated that there were “a lot” of DBE fronts at the beginning of Caltrans’ DBE Program and certification process, but that Caltrans had done a “very good job of investigating those people” and now does a better job of policing DBE fronts.

CATA #1, an Asian American trade association, encountered fronts “quite a bit” in the past, especially in the construction field. He gave an example of concrete mixture firms that would set up DBE firms to get their subcontracts and that would use these DBE subs as brokers to get supplies. He thought that the government had cracked down “quite strongly” on DBE fronts, but he said that they still surface. CATA #2, an African American trade association, said DBE fronts were more common in the 1990s than today, and thought the practice had gone more underground since then (in part because some people in San Diego went to jail over this).

Interviewee #CT75, white male-owned firm, does not believe that Caltrans, or any state agency, can prevent sham DBEs. He stated that the state has no formal mechanism by which they can verify that the individual requesting certification will be an active leader of the company. However, Interviewee #CT75 believes that in the end it does not matter since the only time DBE status is going to help is when the bids are close, which is not often. Interviewee #CT75 doesn’t think there is any formal reporting mechanism for DBE shams and questioned whether they were even against the law. Interviewee #CT76 does not believe fronts have been a problem in the last five years, and since the suspension of the goals he says there is no real money in the schemes.

Many interviewees reported that female fronts are more common than minority fronts and that these fronts most often occur in the context of an owner putting the business in his wife's name. Interviewee #CT6, a white female-owned firm, said that he knew of DBE 'fronts' (several of them large companies) where wives were given 51 percent or more ownership of a company that their husbands actually owned and ran. Interviewee #CT31, an African American female-owned firm, said it is not at all uncommon to go to meetings with WBEs and "never see the woman." Interviewee #CT33, a Hispanic female-owned firm, knew of "a couple of women owned businesses where the woman is not really involved."

Some interviewees had knowledge of minority fronts. Interviewee #CT69, a white male-owned firm, reported that non-certified companies will take racial minority employees, help them start their own company, and get them certified. The newly certified DBE will use the non-certified company's equipment, manpower, etc., and in return the non-certified company gets to bid jobs as a DBE. The two companies split the money. He says minority status automatically gets you more money. CATA #3, a Hispanic trade association, said "I think they're around" He said some DBE fronts eventually become legitimate, meaning, for example, that the person who nominally runs a business actually learns it. "We wonder sometimes about certain ones, but it's hard to know. It's really up to the agencies to do their homework."

An African American male-owned small printing business stated, at a public hearing in Los Angeles, "if you go back 15 years ago ... most of the small business in this country ... were managed, owned, operated by men. If you fast-forward ... today those businesses are run by women ... in most cases ... women are the wives of the men that ran them before." (P.H. Los Angeles, 4/4/07).

False DBE reporting.

Very few interviewees reported they had experienced or heard of false DBE reporting by prime contractors. Very few interviewees reported any knowledge of this practice. Interviewee #CT40, a white male-owned firm, thought it would be difficult to get away with false reporting on a public works contract. Interviewee #CT33, a Hispanic female-owned firm, had no knowledge of false reported stating "[y]ou don't question that."

CATA #10, an Asian American trade association, stated his firm has been named as a subcontractor on a contract but after the prime is awarded the contract they do not hear anything. That happened pre-Caltrans race-neutral program.

Good faith efforts.

Many DBEs report that prime contractors sometimes do not actually engage in genuine "good faith efforts" to utilize DBEs. Interviewee #CT8, a Hispanic male-owned firm, stated that prime firms often falsify their good faith efforts to utilize DBE firms: "The people who are seeking out the DBEs generally could care less about a DBE." According to Interviewee #CT8, "the DBE program is a good program, but I think a lot of people bypass it just simply [by] doing their good faith effort and things of that nature and really don't take much interest in the DBEs themselves ... the good faith effort is what it's all about, instead of actually using a DBE."

According to Interviewee #CT8, "basically all they do is meet their good faith efforts and never have any intentions of using us." He estimated that his company winds up working on only about 25 percent of the Caltrans jobs for which it is contacted to submit a bid. For bids for which the

company is solicited on work for other public entities, Interviewee #CT8 estimated that the percentage was even lower and stated that his company did not “get as many of” these jobs as they did the ones for Caltrans work. Further, noted Interviewee #CT8, the company is usually trying to meet a DVBE goal as opposed to a MBE or WBE goal, and that the amount of work that the company subcontracts out varies but typically is between anywhere from 5 to 25 percent of the total contract amount.

Interviewee #CT67, a white female-owned firm, had not heard of prime contractors falsifying their good faith efforts to utilize DBEs, but she questioned the sincerity of many firms when undertaking these efforts and whether they in fact are made in good faith. Similarly, Interviewee #CT75, a white male-owned business, had no personal knowledge of primes falsifying their good faith efforts, but he sometimes hears about it happening.

According to CATA #1, an Asian American trade association, prime contractors do not “falsify” their good faith efforts to use DBE firms, but they undertake these efforts in a rather “strategic manner” and use good faith efforts as a loophole to get around using DBEs. For example, said CATA #1, prime contractors will sometimes put out a request for solicitations and give firms only 24 hours to respond. He mentioned another instance (on a water project in San Diego in winter 2006) where his firm submitted a bid to a prime but never heard back. He said that two or three months later his firm got an email from the agency saying that the prime could not certify his firm as a DBE.

A small African American owned construction company testified at a public hearing in San Diego and stated “I think that a lot of prime contractors are disingenuous when it comes to really being forthright and really soliciting participation from these companies ... you do have contractors that do make a good faith effort ... I know with Caltrans, San Diego, they have this annual event where they recognize contractors that have done an exceptional job, so there are those that do. But my feeling is that probably the vast majority of large prime contractors do not make a good faith effort.” He noted that there are “a ton of resources” designed to help prime contractors locate qualified DBEs. He listed Caltrans website, “lots of associations, the Black Contractor Association, the National Multi-Cultural Association, women in construction associations.” Prime contractors should utilize these sources as part of their good faith. “Why as a small business can I do it and a lot of the large primes contractors seem not to be able to?” (P.H. San Diego, 3/22/07).

A DBE consulting firm testified at a public hearing in San Diego, “We used to call good faith efforts ‘good fake efforts’ because all you have to do is program the numbers into the fax machine, hit, you know, fax blast.” He recalls a project at the Oakland Airport where the prime had an “incentivized contract to include small and local businesses.” The way the contract was structured if the prime did not use these businesses it was penalized, the more it used the more it earned. “They hired local consultants; they went out and talked to the people, because the last thing they wanted was to lose money.” A representative from a minority trade association, who testified at a public hearing in Sacramento, agreed: “I believe that there needs to be some specific compliance, or if you will, chief or incentive penalties or financial incentives to get them engaged in the process of working with small business contractors.” (P.H. San Diego, 3/22/07).

A Hispanic female-owned consulting firm testified at a public hearing in Los Angeles that “lack of consistent and proper review of good faith efforts, pre and post-award” is a barrier. “While many

agencies have instituted a proactive review of good faith efforts, some agencies only review the good faith effort requirements if there is a complaint filed.” (P.H. Los Angeles, 4/4/07).

A DBE and 8A company submitting written testimony stated they have received hundreds of phone calls regarding an invitation to bid over the past few years within one to two days of a bid deadline, which has made it impossible to bid. (Written testimony submitted 3/26/07).

A certified DBE, submitting written testimony, stated that when the race-conscious goals were in effect, “Many prime consultants/contractors considered good-faith outreach requirements and DBE participation goals as a ‘burden and a nuisance’ and devised creative ways to circumvent those requirements.” (Written testimony submitted 4/12/07).

Some DBEs believed prime contractors were falsifying their good faith efforts because they were contacted for work outside their specialty or at the last minute. A minority female-owned business testified at a public hearing in San Bernardino that the company has been solicited from prime contractors “very little” since receiving certification. “I think the two letters that I’ve received from prime contractors looking for a disadvantaged business have been something that I don’t do. It has nothing to do with me at all. They sent me a letter. So I can’t understand ... why they would send me something for construction workers ... to me for a security guard?” (P. H. San Bernardino, 3/20/07).

One DBE stated that primes comply with good faith efforts. Interviewee #CT34, a white male-owned firm, stated that he was not aware of any prime contractors falsifying their good faith efforts and that going through the good faith efforts requirement is “a pretty standard way of doing business here locally”, and “kind of an accepted part of the way things operate.”

Some non-DBEs expressed frustration over good faith efforts because DBEs are difficult to find and the process is costly. Interviewee #CT76, a white male-owned firm, is not personally aware of people falsifying their DBE utilization, but he stated he was sure it does happen. According to Interviewee #CT76, some of the good faith effort requirements are almost impossible to comply with, so falsifying one’s efforts is almost a necessity. CATA #2, an African American trade association, stated that most prime contractors now have staff and/or departments that handle their good faith efforts compliance.

Some noted that DBE availability was an issue. Interviewee #CT9, a white male-owned business, stated that it is “hard to give away that much work” on City contracts where the DBE goal is 25 percent, and that sometimes the company is not awarded a contract because they did not meet the DBE goal on a previous project. The interviewee stated also that when working for the City of Los Angeles, his division spends more time tracking the accounting and making sure that DBE goals are satisfied than it does actually doing the work. Interviewee #CT9 spoke specifically of a current contract where 20 to 30 percent of the cost is going to administration, and he called it “a waste.”

Interviewee #CT46, an Asian American male-owned business, stated that it sometimes is hard to meet DBE goals because it is difficult to find DBE firms in one’s area that do certain specialty work. According to Interviewee #CT46, many firms are unable and/or unwilling to travel a long distance just to work as a subcontractor on a project because “[l]ogistically, it’s a nightmare.”

Interviewee #CT40, a white male-owned business, noted that sometimes it's difficult for his company to meet DBE goals because they can only use contractors that are certified by the union; there are few DBE union contractors. Elimination of DBE requirements has made it much easier for Interviewee 40's company to enter into subcontracts. Interviewee #CT40 does not have any experience with DBE utilization in the private sector: "They don't follow the same rules that public sector does."

But, Interviewee #CT17, a white male-owned business, stated also that many DBE firms are "very limited" in how much they can help (because of their size), and that "it's also difficult to get the percentages of time that they need to satisfy the State requirements" — i.e., that "getting them [the DBE subcontractors] enough time" can be "difficult at times."

Other firms felt it was not difficult to find DBE. Interviewee #CT10, an African American male-owned business, stated that when he uses the Caltrans DBE list, that he has had no problems finding qualified DBEs or meeting DBE goals, and that his experiences utilizing and working with DBEs had been favorable. Interviewee #CT49, an African American male-owned business, said that he never had any problems finding DBEs or meeting project DBE goals.

Interviewee #CT51, a Hispanic male-owned business, said that he never encountered a DBE goal in the private sector; that, even though it was hard to find DBE firms to perform certain specialty work (he gave the example of electric welding and said that if there are DBE firms that do this work, they are probably so busy that you cannot get them to work on your contract), the company never had any problems meeting DBE goals; and that the company usually tries to subcontract out upwards of 40 percent of the work on a job. He also said that the easiest way to deal with the percentage issue is to lay out in the specifications a certain percentage of the work that must be subcontracted out.

Some DBEs stated that there is "no way of knowing" whether a prime contractor is falsifying his or her good faith effort on a particular project. Interviewee #CT31, an African American female-owned firm, stated that when you do not get on a project team, there is no reason to pursue the matter further because no one is going to help you. According to Interviewee #CT31, it would be a waste of resources to do investigative work as to good faith efforts. Interviewee #CT49, an African American male-owned firm, stated that there is "really no way of knowing" whether prime contractors falsify their good faith efforts to utilize DBEs. Interviewee #CT51, a Hispanic male-owned firm, had no evidence but believes it happens on Caltrans projects and others. CATA #2, an African American trade association, said he had no proof that prime contractors were falsifying their good faith efforts to utilize DBEs, but that Caltrans was not verifying whether or not primes make these efforts and should do a better job of doing so.

Some DBE interviewees stated that DBEs are sometimes listed on the bid and then their work is cut or they are never used. CATA #3, a Hispanic trade association, stated that he did not know about any prime contractors falsifying their good faith efforts to utilize DBEs, but that sometimes contractors put DBE firms on a bid list just to play a minor role and thereby try to "minimize [the DBEs'] work," and that he had heard about situations (he mentioned one particular one out of state) where prime contractors just give subcontractors a check without actually doing any work. CATA #7, a Filipino trade association, believes this is prevalent. He has also seen situations where the prime wins the project and never calls the DBE whose quote he used in the bid.

Interviewee #CT29, an African American male-owned firm, believes companies do not care whether the DBEs are real or not, just that they have satisfied the requirements. As for falsifications, Interviewee #CT29 stated that he has heard of a contractor taking the certifications obtained from his good faith efforts from a prior job and inserting them into future jobs without the knowledge of the DBE.

A small DBE information technology consulting firm who testified at the Los Angeles public hearing stated: “In our experience, what has happened is that we will be invited to formally bid on a project with a prime, and then once the prime has won the work ... they then will call us and cut back on our hours, saying that they have budget constraints and therefore are not able to keep ... what was initially proposed.” She recalled an example: “I was on the District 59 contract that just ended. It was three years on call, and that team was successful. I was a subconsultant on that team. I never placed a single person, never got a dollar out of that contract.” (P.H. Los Angeles, 3/29/07).

A female-owned DBE blueprinting company testifying at Los Angeles public hearing stated that “there are some situations where we were invited because of our WBE and SBE status. The really sad news is some of those – in a lot of cases, we haven’t actually seen the work. They use your name and then you don’t get the work. So it would be nice if there was some enforcement ... some kind of monitoring system down the line a year later.” This has happened to her five (5) times in the last year. (P.H. Los Angeles, 3/29/07).

Telephone Interview Anecdotes Regarding Perceived General Barriers to Participation in the Public and Private Sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from telephone interviews that the study team conducted in connection with BBC’s availability analysis of Southern California firms.

Several telephone interview respondents indicated that experience is necessary to be successful in the public sector. Many respondents — both majority-owned and MBE/WBE — indicated that public sector work requires a great deal of experience in the transportation contracting industry. For example, a minority-owned firm said, “You have to have plenty of knowledge and you need a great background with what people have taught you [to be successful in the public sector].”

Some telephone interview respondents indicated that public agencies award contracts to the same small group of firms. Both MBE/WBE and majority-owned firms said that there is a network of large firms that win a disproportionate amount of public sector work. For example, a minority-owned firm remarked, “[Public agencies] seem to use the same people over and over.”

A few telephone interview respondents — representing both MBE/WBE and majority-owned firms — reported that unions can make it difficult to work in the public sector. Those respondents indicated that many projects require union membership. For example, a majority-owned firm reported, “We have had to turn down contracts because the general contractor asks if we are union and we say ‘No,’ then we are turned down.”

Several MBE/WBE telephone interview respondents suggested that networking is difficult.

Many of those respondents indicated that it is difficult to break into the transportation industry. For example, a WBE firm in San Diego said, “San Diego is a very small connected network of people and everybody knows each other and there is a very established community of people who have been doing the same work for many years and it’s difficult to get [into that network].”

Some majority-owned telephone interview respondents indicated that there is too much emphasis on minority- or gender-status.

Those respondents indicated that there should be more emphasis on quality of work rather than on DBE status. For example, a majority-owned firm stated that often, MBE/DBE firms offer inferior products or services: “Agencies like our products and services, but the process often awards [contracts] to ‘disadvantaged’ companies. These companies either [provide] inferior products or fail to pay their bills. I believe the procurement system in place is flawed.”

L. Experiences Working With the Airport

BGPAA Study Anecdotes Regarding Experience Working with Airport Staff

Airport Authority officials and staff.

Most interviewees reported positive experiences with Airport Authority officials and staff.

[Interviewees #BGP: 10, 11, 13, 14, 16]. Interviewee #BGP10, a principal at an engineering firm, said that his experience with officials and staff at the Authority has been “fine,” but he has not done work for the Authority since 2007. He said that the firm has submitted proposals to the Authority during that time but has not been selected.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, reported that his experience dealing with officials and staff at the Authority was “really very good.” He said, “We had a very good relationship with most everybody, but an excellent one with one particular person out there ...; he went out of his way to really help us.” He reported that the company “received a lot of help from the Burbank staff” related to understanding particular aspects of a project and said that others benefited from this assistance as well. He said, “I’m sure they provided that to all of the bidders. I just remember that they really went out of their way to help us, to make us aware of problem areas, issues that may have happened in the past and so forth, which was very helpful.”

Interviewee #BGP13, the owner of a non-certified construction firm, reported that he has had a positive experience with staff and officials at the Authority.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, reported a positive experience working with the Authority and its staff. He said that the company has “relationships with people there who give [the company] information that” it needs. He said, “We don’t have to jump through a lot of hoops. If we run into any kind of roadblocks on the projects, we get a pretty much immediate resolution.” He said that the Authority “is a small enough entity right now that there are people who are able to make decisions ... within a week” regarding small design questions or modifications, unlike at the Los Angeles Airport where such decisions may take six months or more.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that staff and officials with the Authority have “been very good to work with [and] extremely helpful and available.”

Some interviewees reported mixed or negative perceptions of Airport Authority officials and staff.

[Interviewees #BGP: 2, 3, 9, 15, TA #2]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that the Authority “has some questionable managers. Points of contact have been an issue. One month it will be one person, and the next month it will be someone else, so we never know who to contact if we have any issues.” He stated that the firm has had some contractual issues because the Authority “interpreted our contract one way, and we interpreted it another way.”

Interviewee #BGP3, the co-owner of a white woman-owned construction firm, said that the firm has had difficulties with some BGPAA inspectors. He said, “We had to work through the inspectors, and a lot of times they do things is different from the way you normally do things. They have different

ways of doing things. ... A lot of the inspectors don't know what they're inspecting, so it makes it difficult."

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm indicated that he had a problem with what he reported to be an unethical Authority employee. He reported that, "I did have a problem with one staff at one time. He was unethical. He would have us bid a project, and then he would want us to fill out a timesheet. The actual time was less than what it said [on the timesheet], He would tell us that he wanted us to refund that money, but if it's more, then we couldn't bill. That doesn't make any sense." Interviewee #9 went on to state, "he got terminated," and hasn't had any problems since."

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, reported that when the company began working with the Authority, the experience "was very positive," but when the Airport Authority went through a "staff upheaval," the company no longer had "a relationship with the new people, so it was different."

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that its members' experiences with BGPAA staff have been "entertaining." He said, "Well, I mean they meet you, you know and a nice smile and a warm handshake, [but] you know at the end of the day there is no contract."

Airport Authority websites.

Some interviewees reported that the Airport Authority's website is helpful. [Interviewees #BGP: 4, 13, 14, 16]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that on-line registration was very useful. He said, "The Burbank [web]site has a great on-line registration, and they do a fantastic job of spreading the information. If you know that's there, then you can stay informed."

Interviewee #BGP13, the owner of a non-certified construction firm, said that the Authority's website is "easy to use," and his experience with the website has been positive.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, said that the Authority's website is "very good."

Other interviewees reported limited to no experience with the Airport Authority's website. [Interviewees #BGP: 6, 9, 10, 11, 12, 15, TA #2]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said the Authority needs to "get their website out. If we're unaware, that probably means there's general unawareness."

Interviewee #BGP10, a principal at an engineering firm, said that the firm probably looks at the Authority's website "occasionally," but he does not do it personally, and it is probably not done routinely because BGPAA does not have that much work to distribute involving the firm's particular industry.

Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that they have not reviewed the Authority's website in detail but recommended that the Airport Authority create a user-friendly website for use by prospective bidders.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is not aware of job opportunities being made available on the BGPAA website and its members are not sure where to go to learn about Authority job opportunities.

DBE Directory.

Many interviewees were not aware of an MBE/WBE/DBE directory or were not aware of how to locate it. [Interviewees #BGP: 1, 2, 9, 10, 11, 13, 14, 15, 16, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that he is not aware of whether the Authority maintains a directory of MBE/WBE/DBEs. He stated that if the Authority does maintain such directory, it probably should not because it is so labor intensive and would be a waste of their resources and time.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he was unaware of whether the Authority maintained an MBE/WBE/DBE directory, but he said that he did know that BGPAA was “very, very strong on that area,” and did thorough investigations concerning company’s certification status. He said that his company had personal experience with the Authority’s investigation process and was impressed at how thorough it was. He said that this was in contrast to the Los Angeles Airport, which seems only to require that a company provide its certificate.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she did not know if the Authority maintained a directory of MBE/WBE/DBEs, but she did think that it would be beneficial to have one because she credits these kinds of lists as “a prime part of the reason that” her company keeps “getting hired with some of these contractors.” She said that the lists indicate that her company has “knowledge of these agencies, standards, their procedures,” and that the company has contacts.

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that he is not aware of an MBE/WBE/DBE directory maintained by BGPAA. He said that the he is likely unaware of it because he does not “use it,” adding, “We have the DBE firm that we’ve been using,” and most of the list is “for contractors that do construction.”

Some interviewees were aware of an MBE/WBE/DBE directory maintained by the Airport Authority or other public agency. [Interviewees #BGP: 4, 5]. Interviewee #BGP5, the president of an 8A-certified engineering firm, said that hard copy or electronic directories of potential subcontractors are “pretty much useless [because] the people that I know are out there aren’t coming up, and the people that I have contacted, most of the time the information is out of date.”

SDRCAA Anecdotes Regarding Experience Working with Airport Staff

The following anecdotes regarding experiences working with San Diego International Airport staff were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

Several interviewees reported positive experiences with San Diego Airport officials and staff.

Interviewee #SD8, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that he has had only positive experiences working with the Airport. He described the Airport as a “safe haven” and that the people there have treated him “real good.”

Interviewee #SD21, representing a white male-owned firm, said of Airport officials and staff, “They are reasonable and rational.” Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, had high praise for one of the Airport’s staff members in particular: “[An Airport staff member] is one of the most awesome individuals – I use [her] as a resource.”

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, spoke very highly of the master concessionaire at the Airport. She noted that the master concessionaire has always had good managers and that they treat their subtenants as “partners.” She also reported that the Airport has treated her firm very fairly and that they are very helpful to MBE and WBE firms.

SDTA #8, representing an electrical workers trade organization, reported that their members have had good experiences working with the Airport. SDTA #8 went on to say that the Airport is better than most public agencies about monitoring work and wages and that they seem to care about those issues.

SDTA #7, representing a construction trade organization, also had favorable things to say about working with the Airport and attributes their members’ positive experiences to the efforts of the Airport’s management team: “The guys running [procurements at the Airport] seem to be on top of it. They know what they’re doing ... they seem to be a cut above – the caliber of the people.” SDTA #7 went on to report that his organization’s members have said that working with the Airport has gotten much better since they broke off from the Unified Port of San Diego (the Port).

Some interviewees reported negative experiences with San Diego Airport officials and staff.

Interviewee #SD3, representing a white male-owned firm, indicated that his firm had difficulties dealing with the Airport’s “affirmative action person.” Interviewee #SD3 said that Airport personnel would periodically ask his employees what their positions were to ensure that they were not doing more than they were hired to do. To avoid being hassled, Interviewee #SD3 now pays all of his employees on the highest pay scale so that they can legally perform any work that they are asked to perform.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that he does not like working with the management team there and thinks that they need a change: “[The Airport] needs a management change. They need someone who is not afraid to take positions and will not just go along to get along.” He continued, “I would like to see authority take feedback from those on the ground. There is a concession meeting once a month but it is a dog and pony show. If individuals felt they could speak freely it might be productive, but they don’t feel that freedom.”

Interviewee #SD3, representing a white male-owned firm, indicated that it is more difficult to work with the Airport than it was to work with the Port. Interviewee #SD12 reported that when he had a problem with a Port project, there were people available to answer difficult questions. However, when he calls the Airport with those types of questions, they seem too inexperienced to answer them.

Interviewee #SD12 also had negative impressions of working with the master concessionaire at the Airport. His complaints were primarily related to the master concessionaire not allowing his firm to take part in decision making processes: "... [The master concessionaire] is here to make money, and we are not always at the table in decision making. For example, the expansion to Terminal 2 [led to] many retail opportunities. We got location crumbs because we weren't at the negotiation table. They took the best visibility, the best spots, etcetera, and brought me the corner location and said 'look what we did for you' and act[ed] like they [we]re doing us a favor."

Interviewee #SD17, representing a white female-owned firm, reported that she has experienced discriminatory behavior on the part of Airport staff: "In the beginning of our contract there was a Hispanic guy who did not like working with women My husband didn't have any problems with that guy, so I changed my shift so that I wouldn't have to work with him."

M. Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

BGPAA Study Anecdotes Regarding Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

Outreach programs.

Several interviewees had participated in or were otherwise aware of race-, ethnic-, and gender-neutral programs outreach efforts. [Interviewees #BGP: 1, 10, 15]. Interviewee #BGP1, the African American male owner of an MBE/DBE-certified architecture firm, stated that most public agencies are doing a great job with their outreach.

Interviewee #BGP10, a principal at an engineering firm, reported that the Metropolitan Transportation Authority of Los Angeles County (Metro) has the largest outreach effort of which he is aware to help firms obtain business, and the U.S. Army Corps of Engineers also has a program.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she was aware of outreach efforts to increase participation by MBE/WBE/DBEs. She said that the “LA Airport... just recently ... [held] seminars ... and ... open[ed] up the floor, so [companies could] meet all of the buyers” and obtain a list of primes. She said that she thought that the Los Angeles Airport Authority was “doing a very good job.”

Several interviewees were not aware of any race-, ethnic-, or gender-neutral programs sponsored by the Airport Authority aimed at increasing small or disadvantaged business participation by increasing their opportunities and skills. [Interviewees #BGP: 10, 11, 12, 13, 14, 15, 16, TA #2]. Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is not aware of the Airport Authority providing outreach efforts to notify businesses of how to obtain work with the Authority. He said that he, along with several other people, met with BGPAA recently to have a roundtable discussion about how to obtain work with the Authority. He said, “Prior to begging and pleading for that to happen, it never would have happened.” He said that they discussed “how to utilize outreach programs, how to implement accountability for [African] Americans and ethnic groups to participate in this tier subcontracting, and encouraging them to hold general contractors liable and responsible for listing their subs and utilizing the subs listed.” He said that he was satisfied with the responses he received from the Authority at the meeting.

Some interviewees were aware of financing, bonding, or insurance assistance being provided. [Interviewees #BGP: 4, 6, 9, 10, 15, 16, TA #1, TA #2]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that financing assistance is “absolutely essential” for small businesses.

Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that they believe the City of LA offers assistance in obtaining insurance.

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm said that bonding, insurance and financing programs “would be beneficial for anyone.”

Interviewee #BGP10, a principal at an engineering firm, said that he is aware of programs provided outside of the Authority to aid in obtaining bonding, insurance or financing.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that “El Camino at the Junior College [and] Harbor City College ... hold classes all of the time” to assist small businesses and to teach them “how to obtain bonding,” financing, and insurance. She said “that information is available on the City of L.A. Business Network.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that he thinks that there are programs in the community that assist with bonding, insurance, or financing. He said that he did not know what they were, but “there’s talk of it in some of the bids that have gone out. They offer resources to help with bonding.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that finance, bonding, and insurance assistance is helpful “for some people.” He said that despite assistance programs, financing, bonding and insurance is “hard to get unless your paperwork looks like [Caucasian] folks’ paperwork.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is aware of programs that assist businesses with financing, bonding and insurance. He is not aware of any programs through the Authority to assist with bonding and that was discussed at the meeting he had with the Airport Authority. He said that programs to assist with financing, bonding and insurance are beneficial to small businesses.

Other interviewees were not aware of any programs to assist firms with financing, bonding or insurance. [Interviewees #BGP: 12, 13].

Some interviewees were aware of educational programs or training programs being made available to businesses. [Interviewees #BGP: 6, 9, 13, 15]. Interviewee #BGP6, the president and marketing coordinator of a WBE-certified engineering firm, said that most people are already trained but that “pre-jobsite trainings, like safety training sessions, are helpful.”

Interviewee #BGP9, the owner of a non-certified Hispanic American-owned security services firm said that training programs “would help all businesses.”

Interviewee #BGP13, the owner of a non-certified construction firm, reported that ABC (Association of Builders and Contractors) offers continuing education for “journeymen electricians as well as some of the staff. Some of that training might not be necessarily trade oriented. It might be CPR or OSHA training or something like that, ... but ... electricians are required to get 32 hours of training” and “have to recertify every two or three years.” He said that employees pay for their own training.

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she was aware of educational training opportunities and that “South Bay Regional Community Center and adult schools” advertise “courses on how to start your own business, [keep] your books, Quicken for business, that sort of thing.”

Streamline bidding.

Some interviewees reported awareness of efforts by the Airport Authority to streamline the bidding process. [Interviewees #BGP: 12, 16]. Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, stated that they were aware of efforts to simplify or streamline the bidding process with airport authorities and said that ERSP has a really “neat program that [Los Angeles] just implemented last month.” They said that the program allows companies to subscribe and then sends subscribers e-mails, “sometimes too many, but that’s fine,” with information regarding “items that they have coming up for bid throughout their entire agency. The thing that makes it unique is how quickly the communication happens because” the agency provides an e-mail address and a telephone number, “and they’re very, very good, at least at this point, in getting back to you. They’re terrific. If you call them and [leave them a voicemail], they’ll call back usually within the hour. Often times, someone picks up the phone, and it’s who you’re looking for. It’s excellent so far. It’s only a month old.”

Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that the Authority has made efforts to streamline or simplify the bidding process in the past, and his company actually assisted BGPAA in its efforts.

Most interviewees reported no awareness of or experience with Airport Authority efforts to streamline the bidding process. [Interviewees #BGP: 10, 11, 13, 14, 15, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that he is unaware of efforts by the Authority to simplify or streamline the bidding process, but he said that he does think that streamlining the process would be beneficial. He said that agencies should always have a page limit for proposals between 10 and 30 pages so that proposers and agency personnel do not use excessive amounts of time preparing and reading the proposals.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he was unaware of any efforts by the Authority to simplify or streamline the bidding process. He said that whether simplifying or streamlining the process would be beneficial would depend “upon the provisions that they’re streamlining” and what is left after BGPAA eliminates some of the excess.

Interviewee #BGP13, the owner of a non-certified construction firm, reported that he is unaware of efforts by the Authority to streamline or simplify its bidding process, but he said that some things have been streamlined industry-wide over the years with the use of computers and the internet.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that he was not aware of any effort by the Authority to simplify its bidding process. He said that it may take the company “a month to put a bid together for LAX, and that’s five people here working on it as much as they can. [To prepare a bid for] Burbank Airport, one person can handle the project and putting it together.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she is unaware of BGPAA or any other airport authorities making an effort to streamline the bidding process “because everything is on-call now, and it’s pre-qualified on-call.”

Unbundle contracts.

Some interviewees reported knowledge of efforts by public agencies to unbundle large contracts to make them more accessible to small businesses. [Interviewees #BGP: 13, 15, 16, TA #2]. Interviewee #BGP13, the owner of a non-certified construction firm, said that he thinks that BGPAA has pursued efforts to unbundle large contracts in the past “where a project might be hard for one contractor to bond” to make it “a more fundable project.” He said that unbundling the projects “makes the work a little bit more accessible.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, said that she was aware of efforts to unbundle large contracts. She said that “the California High Speed Rail [is] ... trying to figure out how ... they’re going to be bundling things.” She said that they are considering bundling plans that would create “opportunity for small businesses to ... submit bids.”

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, said that he is not aware of any effort by the Authority to unbundle large projects. He said that he is aware of other public agencies unbundling larger projects to make them more accessible to small businesses. He said that unbundling large projects would be beneficial to its members.

Most interviewees reported having no knowledge of or experience with efforts by public agencies to unbundle large contracts to make them more accessible to small businesses. [Interviewees #BGP: 10, 11, 12, 14]. Interviewee #BGP12, a general manager and an account manager of a WBE/DBE-certified construction supply firm, said that they were unaware of an effort by any public agencies to unbundle large projects and do “not necessarily” think that such efforts would be beneficial to small businesses.

Segment larger contracts into smaller contracts.

Some interviewees reported knowledge of Airport Authority or other public agency efforts to segment larger contracts into smaller ones. [Interviewees #BGP: 10, 14, TA #1]. Interviewee #BGP10, a principal at an engineering firm, said that some public agencies segment larger projects into smaller ones, and this is good to keep the agencies from getting too tied to any individual firm. He stated that projects should not be broken up into pieces that are too small because that would cause the agency too much hassle with administrative costs. He said that a large project may effectively be split into a couple of projects. Interviewee #10 reported that he is not aware of the Authority having what he would consider larger projects that would be segmented.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that the Authority will “segment out the contracts” to some extent because they are able to do a lot of the work in house. He said, “the less they do in house ... [the more they] rely on primes to handle more of those things.”

Interviewee BGPTA #1, the executive director of the Young Black Contractors Association, said that breaking up large contracts into smaller pieces is “a great thing, but even when they break them up the bigger guys still get control of them; they still get it.”

Most interviewees reported having no knowledge of or experience with Airport Authority efforts to segment larger contracts into smaller ones. [Interviewees #BGP: 11, 12, 13, 15, 16, TA #2]. Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he was unaware of any efforts by the Authority to segment larger contracts into smaller contracts, but he thought that such efforts would be helpful. He said that an opposing effort to make projects more condensed and larger seemed to be underway at the Los Angeles Airport.

Price or evaluation preferences for small businesses.

Some interviewees reported awareness of price or evaluation preferences for small businesses. [Interviewees #BGP: 2, 4, 5, 15]. Interviewee #BGP2, the sales manager of an Asian American-owned MBE/WBE/DBE-certified maintenance and repair firm, said that price and evaluation preferences for small businesses are useful. He said, “We usually get a 5 percent preference for being a small business, but it could be more.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, stated that she is aware of some price or evaluation preferences for small businesses. She said that the “City of L.A. [has] ... local agencies [that will] ... give you ... like a percentage.”

Most interviewees reported no knowledge of or experience with price or evaluation preferences for small businesses. [Interviewees #BGP: 10, 11, 12, 13, 14, 16, TA #2]. Interviewee #BGP10, a principal at an engineering firm, reported that he is not generally aware of any price or evaluation preferences for small businesses on projects. He stated that California has a small business 5 percent preference, but he said that that really applies to supplying goods and contracting services, and the firm does not benefit from that.

Monitor utilization.

Most interviewees reported no awareness of Airport Authority efforts to monitor MBE/WBE/DBE utilization throughout a project. [Interviewees #BGP: 10, 11, 13, 14, TA #2]. Interviewee #BGP10, a principal at an engineering firm, said that he is not aware of monitoring MBE/WBE/DBE utilization by the Authority on a jobsite, but he said that he thinks that the prime is required to inform BGPAA of how much of their fee went to utilizing such firms so that the Authority can use federal funding.

Interviewee #BGP11, a manager of an Asian male-owned DBE-certified cleaning services company, said that he never witnessed officials from BGPAA or from the Los Angeles Airport visiting a worksite to monitor the MBE or DBE utilization on a project.

Interviewee #BGP13, the owner of a non-certified construction firm, said that he is not aware of any compliance efforts or monitoring by the Authority. He said that in general, not just at the Authority, “[t]he [only] place I ever see it is maybe in a bid invitation.” He said that he usually only sees it in the public sector during pre-qualifications when he may be asked if the company has any particular certification.

Interviewee #BGP14, a manager of an MBE/WBE-certified equipment supplier and installer, said that he was unaware of the Authority visiting work sites to monitor MBE/WBE or DBE utilization but did know that they would visit sites “to monitor how ... the project is going.”

One interviewee reported awareness of Airport Authority efforts to monitor MBE/WBE/DBE utilization on work sites. [Interviewee #BGP: 16]. Interviewee #BGP16, a manager of a non-certified engineering and information technology firm, reported that either the Authority “or somebody that works with them” monitors MBE/WBE/DBE utilization on jobsites.

SDCRAA Anecdotes Regarding Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from interviews that the study team conducted in connection with BBC’s 2009 SDRCAA study.

Outreach programs.

Many interviewees had positive or neutral opinions about public agencies hosting outreach programs. Interviewee #SD20, representing an Asian American male-owned firm, stated that agency outreach programs are very useful for minority- and female-owned firms. He went on to say and that the Airport does a good job with such programs. Interviewee #SD21, representing a white male-owned firm, said that he believes that agency outreach programs are helpful to small firms (including MBEs/WBEs).

Interviewee #SD25, representing a white male-owned firm, said that networking opportunities are crucial for small firms in order to establish themselves. He went on to say that the networking events that the Airport has hosted have been very useful.

Interviewee #SD28, representing a white female-owned firm, indicated that she thinks that outreach programs are one of the most effective remedies that agencies can implement. She said that it gives small firms an opportunity to network with and learn about prime contractors in the area and vice versa.

Interviewee #SD30, representing an African American male-owned firm, indicated that he supports agency outreach events, particularly if the prime contractors that are invited to those events have “a proven track record of actually using [MBE/WBE] firms.”

Interviewee #SD31, representing a white male-owned firm, indicated that outreach events are quite beneficial to small firms that are trying to develop relationships and make contacts with public agencies and prime contractors: “It’s all about access, and anything that gives me access [to the decision makers] is good.”

Interviewee #SD43, representing a Hispanic male-owned firm, reported that the Small Business Administration has helpful programs in place for small businesses, particularly as it relates to learning about work: “... [As a result of the SBA’s efforts] we see a lot of the jobs that maybe we wouldn’t see through E-Bid board or ... Bluebook ... and they’re small, more local jobs. And what they’ll do — maybe two or three times a week sometimes — they’ll send us emails just [listing] all the small jobs and requesting subs.”

SDTA #3, representing a local chamber of commerce, indicated that outreach events are very helpful for MBE and WBE firms, and that she is aware of the San Diego International Airport having hosted such events in the past. She said that if public agencies informed her organization about outreach events, then her organization would disseminate that information to its members: “If they let us know, we’ll email [that information] out.”

SDTA #11, representing a veterans trade organization, said that agency outreach is very useful in helping disadvantaged firms and indicated that the Airport is doing its part in hosting such events: “The Airport is the only one trying to do anything.” He continued, “The people running the Airport and the outreach programs are wanting to help. ...”

SDTA #7, representing a construction trade organization, stated that the Airport does a good job with its outreach programs. He explained that such programs “allow everyone to see what’s available and what kind of project it is and what kind of subcontracting opportunities there will be.” He added that advance notice about projects does not substantially help contractors in the public sector but does help in the private sector.

SDTA #6, representing an Asian American trade organization, indicated that outreach programs would be very helpful for small firms (including MBEs/WBEs). She went on to list a number of things that an agency should do in order to have a successful outreach program, including: informing organizations about the types of projects for which they need vendors, identify ways in which they can better assist small firms, and host an event for small firms to inform them about what projects are available.

SDTA #4, representing a local chamber of commerce, stated that informational workshops are some of the most useful tools to increase awareness of contracting opportunities. She said that she would like to see representatives from the Airport attend those workshops to provide insight to potential bidders.

SDTA #2, representing a Hispanic American trade organization, indicated that his organization has entered into agreements with various public agencies to host outreach events. Those events are intended to increase contracting opportunities for small and emerging firms.

SDTA #13, a retired official from a local public agency, indicated that outreach workshops at the Airport are some of the most effective remedial programs for small firms (including MBE/WBE firms).

SDTA #9, representing a public works trade organization, discussed local public agencies’ outreach events for small and disadvantaged businesses. Overall, he indicated that whereas some outreach efforts are disappointing, others have been quite effective: “The best [agency outreach events] give access to decision makers, and the ones that don’t work [have] one per year and no follow up information. Unsuccessful efforts include connecting businesses with those who don’t have [the] ability to make decisions.” He went on to discuss agency outreach programs that are successful, including the Airport’s: “The Airport is working hard. We submitted them for an award for supplier development award for outreach ... Caltrans is good. They have buyers on the spot at their outreach events ... The Navy has a good outreach program. They hold quarterly events with small businesses to make presentations and buyers come that day.”

Other interviewees had negative opinions about public agencies hosting outreach programs.

Interviewee #SD2, representing a white female-owned firm, indicated that outreach programs are not very effective: “There is not any substance to outreach events.” She said that local agencies should list all of their available contracts in one, centralized location: “There needs to be a clearinghouse.”

Consistent with those comments, SDTA #9, representing a public works trade organization, said, “No matter how good the agency is, it is hard for subs and small businesses to get all information and opportunities from them.” He said that he would like his organization and other, similar organizations to act as a clearing house for public agencies to make it easier for local small business to learn about available work.

Interviewee #SD14, representing a Hispanic American male-owned firm, said that he has attended a number of events hosted by different public agencies and believes that they are not effective, because without mandatory goals agencies are only concerned with finding the low bidder — networking cannot change that.

Interviewee #SD34, representing a white male-owned firm, indicated that he does not consider agency outreach as important to the success of his firm: “[Agency outreach] doesn’t matter — it’s not how I get business.”

Interviewee #SD43, representing a Hispanic male-owned firm, reported that she has attended outreach events at the Airport and that the Airport staff provided a great deal of information, but that they were not very helpful on an individual basis: “For example, they had different people speaking about different things all at one time But they didn’t give you enough information as to where you felt like you can actually be part of it or get started It was just ... general information about different subjects.”

Interviewee #SD43 went on to say that she has noticed that most of the people attending the Airport’s events know each other. That is, the prime contractors that attend the events seem to have developed relationships with the Airport staff.

Interviewee #SD46, representing an African American male-owned firm, indicated that outreach events do not help MBE/WBE firms get contracts: “[Outreach events] look good on the outside, but actually gaining a project from those ... [the potential] is nil.” He continued, “The bad part is that if you have a business starting out, or a business that is trying to maintain, they are hopeful when they attend those gatherings, but it’s a lot of talk, it’s a lot of hype. You don’t even hear back from those vendors.”

SDTA #1, representing a local chamber of commerce, said that outreach programs could be effective in principle, but in practice the marketing of those events have been quite poor. He said, “My impression would be that turn out would be relatively low [for such events].” He went on to say that agencies need to make sure that they get the attention of those companies that would most benefit from outreach programs, and try to ensure that those companies attend the events.

SDTA #10, representing a supplier trade organization, stated that public agencies are too focused on outreach and not focused enough on tangible results.

Educational, training, and technical skills programs.

Several interviewees had positive or neutral opinions about educational, training, and technical skills programs aimed at small firms. Interviewee #SD21, representing a white male-owned firm, stated that technical assistance programs are very helpful to minority- and female-owned firms. However, he would like to see unions “expand their training horizons.” That is, he believes that unions should establish broader training programs for their members rather than leaving it up to individual agencies.

Interviewee #SD5, representing an African American male-owned firm, stated that a large construction firm hosts a 14-week training seminar at the Airport that he described as being very helpful. In addition, Interviewee #SD5 attends seminars with various public agencies to gather information and develop relationships with members of the certification and bonding communities.

Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that technical assistance programs would be helpful for firms that are just starting out, particularly in making new contacts. He went on to say that on-the-job training programs would also be helpful for those firms, but that such programs are not very practical in the current economy.

Interviewee #SD19, representing a white male-owned firm, indicated that although technical assistance programs would not help her firm (because it is well-established and she has a great deal of experience), they would be particularly useful for less established firms: “If you are just starting out, this might be good.”

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, said that her firm provides its subtenants with support in many different areas, including: recruitment, airport badging, obtaining contractor information, warehouse discounts, rent reminders, and merchandising and business concept consultation.

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, reported that the master concessionaire at the Airport provides training and support for their subtenants. She has also received technical assistance from the SBA related to finance and understanding financial statements, marketing, and website development. She went on to say that her firm also receives a great deal of information from the Airport Minority Advisory Council (AMAC), including newsletters and information on courses that they offer.

Interviewee #SD33, representing a Hispanic American male-owned firm, indicated that technical assistance is necessary for small firms, because they may find contracting specifications and procedures overwhelming. He said, “If [public agencies] break it down and walk through it, it is helpful.”

Interviewee #SD40, representing a white male-owned firm, reported that his firm offers free classes to small firms that teach them a broad range of business skills, including scheduling, bidding, and project management.

Interviewee #SD47, representing an African American female-owned firm, stated that technical assistance and training programs are vital to the success of small firms, because they cannot afford internal training programs: “People don’t have any money for training”

SDTA #1, representing a local chamber of commerce, indicated that he supports the idea of technical assistance programs and on-the-job training programs, but expressed concern about firms actually attending them. He also said that he is unaware of public agencies in San Diego implementing such programs.

SDTA #7, representing a construction trade organization, said that his organization hosts construction training classes that members and nonmembers are welcome to attend. He said, “I think we are the main training facility for this area and probably part of LA too.

SDTA #10, representing a supplier trade organization, stated that he and his staff spend at least 25 percent of their time providing technical assistance to suppliers.

Other interviewees had negative opinions about educational, training, and technical skills programs aimed at small firms. Interviewee #SD2, representing a white female-owned firm, reported that public agencies spend a lot of money on technical assistance, but most of that assistance is at a very basic level. She said that classes at that level can hurt small firms more than they can help. She said that technical programs can be improved if “actual contractors that do actual work” teach the classes.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, said that there is too much emphasis on teaching: “Some of the teaching and assistance is good, but at some point we have to set out and play.” Interviewee #SD12 reported that he would like to see more practical assistance programs in place: “I’m not looking for academic help. I’m looking for rubber to meet the road, results oriented assistance.”

SDTA #10, representing a supplier trade organization, reported that not all technical programs are useful: “There are tons of technical assistance programs, but not all are good or useful.” He went on to say that public agencies do not do a good job of identifying the useful programs and eliminating the bad ones: “There seems to be a willingness to simply perpetuate the programs with a focus on systems and processes, but with no attention given to the bottom line or a return.”

Interviewee #SD20, representing an Asian American male-owned firm, said about his own firm: “We don’t really need [technical assistance].” He also indicated that technical assistance programs would be a great deal of work for public agencies, rendering them impractical.

Interviewee #SD10, representing an African American male-owned firm, stated that the resources spent on technical assistance programs are better spent in other areas: “I am too jaded in this industry and this city to think that technical assistance works. I need help making sure I am getting the work that is promised to me.”

SDTA #11, representing a veterans trade organization, indicated that he did not think that technical assistance programs were particularly useful. One pitfall that SDTA #11 pointed out about those programs was that they were too short to be productive, “When you’re going to talk about bonding, don’t give it a 15 minute time frame.” He also said that he would prefer if agencies spent time educating their own procurement people on the needs of local small businesses.

SDTA #5, representing a government advisory commission on minority issues, reported that she considers a particular trade association's mentoring program to be a complete failure: "The ... mentoring program ... is a failure I believe. It is nice that they have it, but when you have a program that is seven years old and graduated only four people I don't know how you consider that a success."

Assistance with financing, bonding, and insurance.

Many interviewees had positive or neutral opinions about programs aimed at assisting small firms with financing, bonding, and insurance. Interviewee #SD14, representing a Hispanic American male-owned firm, said that finance and bonding programs would be very useful for MBE and WBE firms, particularly for small firms that are not well established. However, he indicated that he has never heard of any such programs being implemented in San Diego and would not know how to get information about them.

Interviewee #SD21, representing a white male-owned firm, indicated that programs aimed at providing financing and bonding assistance would be very helpful to MBE/WBE firms. He said that he is aware of a bond guarantee program through the Small Business Association (SBA), but did not share any opinions about it. He noted that bond waivers are not a reasonable expectation for public agency work.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that financing and bonding programs would definitely help small firms (including MBE/WBE firms). With regard to financing, Interviewee #SD20 said that he would also like to see some sort of program or policy by which the prime contractor is required to pay its sub contractors in a timely fashion.

Interviewee #SD16, representing an African American male-owned firm, reported that that he is participating in a bonding class through the Airport. He indicated that the class has been very helpful to his firm and is optimistic about its positive impact on the public contracting community. Consistent with those comments, SDTA #2, representing a Hispanic American trade organization, remarked, "I hear good things about the airport's bonding program."

Interviewee #SD30, representing an African American male-owned firm, reported that financial assistance would be very helpful to small firms, including MBE/WBE firms. Regarding the importance of a firm having its finances in order, he said, "A large firm — particularly in the public sector — wants to see that you are handling your financials properly." He went on to suggest that public agencies should help small firms by lending them money upfront for startup costs on projects.

Interviewee #SD31, representing a white male-owned firm, said that bonding is absolutely the biggest hurdle that firms face in construction and any programs that help firms with bonding would be beneficial. Specifically, he indicated his preference for bond waivers rather than bond guarantees: "Bond waivers are better than bond guarantees, because in the end you still have to find someone ... to put up the money [with bond guarantees]."

Interviewee #SD47, representing an African American female-owned firm, said that trade associations, particularly those representing minority- and female-owned firms, should spend more time developing relationships with financial institutions and surety companies on behalf of their members: "Instead of forming alliances with people who don't mean minority contractors any good,

[trade associations should] form those alliances with surety companies, insurance companies, CPA's, accountants and bookkeepers.”

Interviewee #SD47 went on to say that current bonding programs can be helpful but are inaccessible to most of the firms that need them: “I had to go all the way to Washington [to get bonding assistance ... the average person will give up — I think [finance and bonding programs] are designed that way.”

SDTA #8, representing an electrical workers trade organization, indicated that the San Diego Airport's bonding program is a “wonderful” program. She said that bonding is one of the biggest obstacles for small firms that are not well established. She also said that her organization's members value the Airport's bonding program — they believe that it significantly helps their employees.

SDTA #6, representing an Asian American trade organization, reported that it would be particularly helpful if the San Diego Airport developed programs to assist small firms with bonding. She went on to say that her organization would like to provide members with bonding assistance, but that they currently do not have the capacity to do so.

SDTA #11, representing a veterans trade organization, indicated that programs aimed at assisting small firms with financing and bonding are worthwhile programs. He noted that some bonding assistance is currently available for small firms through the Small Business Administration, but that many firms are not aware of it. He said that for financing and bonding programs to be effective, financial institutions and disadvantaged businesses need to be educated on them.

SDTA #3, representing a local chamber of commerce, indicated that financing programs would certainly be useful to minority- and female-owned firms, particularly given the current state of the economy and how difficult financing can be for a new business. She said, “The first three years when you start a business [are] your most difficult. ...” She said finance programs would encourage businesses to open and to compete. SDTA #3 indicated that bonding assistance would also be beneficial to MBE/WBE firms.

SDTA #7, representing a construction trade organization, said that financing assistance would certainly be helpful for small firms (including MBE/WBE firms), but that he does not think that banks would agree to such arrangements, because “they don't care what color [the contractors are] — they just look at the numbers.”

SDTA #1, representing a local chamber of commerce, stated that both financing and bonding assistance would be very helpful to minority- and female-owned firms as well as to other small firms in San Diego.

Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, said that she learns about insurance policies and receives training on obtaining loans through various ACDBE conferences as well as through the Small Business Association (SBA).

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, reported that her firm used to offer a financing program that made it easier for its subtenants to obtain loans, but that the program no longer exists.

One interviewee reported that the SBA's bonding program is not helpful. Interviewee #SD2, representing a white female-owned firm, indicated that the SBA's bonding assistance is not very useful for small firms: When asked why not, she replied, "There is so much BS to it."

Simplification and streamlining of the bid process.

A few interviewees reported that they would like to see public agencies simplify and streamline their bid processes. Interviewee #SD28, representing a white female-owned firm, indicated that changes in bid procedures would help all firms, not just small firms or DBE firms. He thinks that public agencies in San Diego need to work together to make their bid procedures more consistent and uniform.

Similarly, Interviewee #SD31, representing a white male-owned firm, said that in principle streamlining bid procedures would be helpful, but it would be difficult to do in practice because "every agency's [bid] procedures are different." Interviewee #SD31 said that it would be helpful to make bid procedures uniform across agencies if they were "put together by competent people."

SDTA #11, representing a veterans trade organization, said that there was too much paperwork and hassle associated with bidding on public sector projects, particularly with the San Diego Airport. He indicated that he supported measures to simplify the bid process.

SDTA #1, representing a local chamber of commerce, indicated that streamlining the bid process would be very useful in helping firms better understand available bid opportunities. Similarly, Interviewee #SD21, representing a white male-owned firm, said that streamlining the bid process would be very helpful to minority- and female-owned firms.

Other interviewees expressed concerns about how bid processes would be simplified and whether it would be beneficial. Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that he does not want to see any changes in bid procedures: "I think you have to keep the bidding procedures like they are." He said that he believes that the bid process as it is ensures that available contracts go to qualified contractors.

Interviewee #SD30, representing an African American male-owned firm, indicated that he would be hesitant to simplify bid procedures. He would rather see more outreach and training related to bid procedures rather than seeing them change in any way. He went on to say that that he would like see agencies' estimating procedures become more transparent to bidders: "One process I would like to see changed is ... the engineer's estimate I really don't think it's accurate, and I think it handcuffs ... the prime from the get go."

Interviewee #SD32, representing an African American male-owned firm, said that streamlining bid procedures could be problematic, because certain aspects of them are necessary to ensure that the best contractors win projects: "I think certain requirements are necessary in order to ... [separate] the good contractors from the bad contractors."

Interviewee #SD20, representing an Asian American male-owned firm, stated that, in theory, streamlined bid procedures would help small, less established firms, but he thinks that all aspects of the current bid process seems necessary. He expressed concerns about what the agencies would eliminate.

SDTA #3, representing a local chamber of commerce, reported that she preferred that public agencies provide more information to potential bidders about the current bid procedures rather than change those procedures in any way.

Segmenting larger contracts into smaller contracts.

Many interviewees reported that segmenting large contracts into smaller pieces would help smaller firms. Interviewee #SD2, representing a white female-owned firm, reported that breaking contracts down into smaller pieces is important to helping minority- and female-owned firms: “Breaking up jobs would be a good thing.” She went on to say that having large contracts does not save public agencies money, as many of them think: “You pay so much for different levels of construction managers [on large contracts] ... You also get more competition with smaller jobs.” Interviewee #SD2 said that although many local firms prefer smaller contracts, public contracts appear to be getting larger.

Consistent with those comments, Interviewee #SD21, representing a white male-owned firm, reported that although breaking up contracts would be helpful to small firms (including MBE/WBEs), the San Diego Airport has been moving away from that measure. He said, “The Airport has gone just the opposite way [recently]. They’ve been lumping [contracts] together.”

Interviewee #SD20, representing an Asian American male-owned firm, agreed that breaking up large contracts into smaller pieces would help minority- and female-owned firms: “That would help [DBEs and small firms].”

Interviewee #SD16, representing an African American male-owned firm, indicated that breaking up large contracts would greatly help his firm: “Let’s put it like this, babies can’t eat meat, right? Well businesses like mine can’t take million dollar contracts.” He said that the main issue for small firms is that they lack the capital to take on bigger projects.

Interviewee #SD9, representing a minority female-owned firm that is a concessionaire at the Airport, said that breaking up large contracts into smaller pieces has helped MBE/WBE firms at other airports. It allowed small firms to bid on contracts directly, increasing competition and opportunity.

Interviewee #SD28, representing a white female-owned firm, reported that segmenting large contracts into smaller pieces would help both prime contractors and subcontractors in San Diego: “The Airport was going to have ... contracts in big units, and that would have meant companies from out of state that were ... specialized in [that type of work] would be coming in to do them, and it would have been less work for the people here in San Diego, but [the Airport] broke [the contracts apart]”

Interviewee #SD30, representing an African American male-owned firm, said that “without a doubt” public agencies should break up large contracts into smaller pieces to make them accessible to small firms. He gave the example of a new federal courthouse that is going up in the city: “It’s easily \$10 million — just the electrical — but they would list that \$10 million job as a small business [opportunity]. Come on now — I think they [must] look at me as a tiny business, not a small business.”

Interviewee #SD31, representing a white male-owned firm, indicated that he supports breaking up large contracts into smaller pieces: “The smaller the [contract] pieces, the easier it is to qualify for a particular piece. In other words, someone might be willing to give me a \$2 million job, but are they going to give me a \$50 million job?”

Interviewee #SD40, representing a white male-owned firm, reported that his subcontracts work out in small pieces to allow small firms the opportunity to bid on them. He indicated that segmenting contracts in that way creates more work for his firm, but that it is important to allow small, local firms the opportunity to compete: “We are creating work for the local community. What we do is try to create work that fits the local market. We will package work so smaller companies can compete, so they can get the insurance and the bonding. The benefit is that we get to keep as much work local as possible and grow the companies in our local market.”

Interviewee #SD40 continued, “For DBEs, I think the biggest challenge is that if the work is not packaged in the right way disadvantaged firms are forced to be excluded. I think that we need to know what the requirements are and not set the bar so high so they can participate. It is sometimes more work for general contractors, but the benefit goes to the client.”

Interviewee #SD43, representing a Hispanic male-owned firm, stated that segmenting large contracts into smaller pieces would go a long way in encouraging MBE/WBE participation because it would (1) make those contracts more affordable for small firms; and (2) make it so multiple small firms could participate on one project rather than having it go to a single large firm.

Interviewee #SD47, representing an African American female-owned firm, indicated that the construction industry’s standard for “small” contracts is about \$30 million, an amount that precludes most small firms and MBE/WBE firms from competing for them. She indicated that there needs to be more small contracting opportunities but that they do not exist because bundling contracts together is “easier for [agencies].”

SDTA #2, representing a Hispanic American trade organization, stated that breaking up large contracts would greatly benefit minority- and female-owned firms. He said, “We should be [breaking up large contracts so] most contractors [can] compete, instead of having one Goliath get all of the profits.”

SDTA #9, representing a public works trade organization, reported that the Airport has recently begun to segment large contracts into smaller pieces, and that that measure has helped small firms compete for work: “The Airport has done a better job in breaking projects into [smaller] pieces for smaller businesses to have a better opportunity for bidding.

SDTA #6, representing an Asian American trade organization, reported that her organization’s membership would strongly prefer that public agencies break large contracts into smaller pieces. She explained that an appropriate project size for her membership could be as low as \$10,000.

SDTA #7, representing a construction trade organization, reported that breaking up large contracts would definitely help small firms. However, he pointed out that breaking up large contracts involves a great deal of coordination and planning on the part of the agency.

SDTA #5, representing a government advisory commission on minority issues, indicated that she played a role in segmenting large contracts when she used to work for a government agency and that those efforts were quite beneficial to small firms, particularly minority- and female-owned ones: “We had one man who provided all of our paper needs because of the way the contract was bundled. With such a large contract, the only way to do it was to have one large company fill the request. You get the same person every time. [After segmenting the contract], we ended up with people who did cups and another did bathrooms — smaller companies were able to work for [the agency]. Breaking up the RFP was successful and resulted in a more diverse pool of people doing business with us.”

Interviewee #SD38, representing a Hispanic male-owned firm, indicated that he supports efforts to segment large contracts into smaller pieces: “I like the idea of breaking up larger contracts for smaller jobs. I think that is a smart way of doing it. It will also keep people on their toes and keep general contractors on top of the job. Also, your bracket for the workers grows.”

A few interviewees expressed concern that breaking up large contracts would result in public agencies losing the “economy of scale. Interviewee #SD14, representing a Hispanic American male-owned firm, said that breaking up large contracts into smaller pieces would help small firms, particularly with bonding, “For small businesses that can’t bond \$20 million contracts, [they] could bond \$4 or \$5 million contracts.” However, he expressed concerns about agencies’ and prime contractors’ willingness to break up contracts, because it is cheaper for them to award one large contract than several smaller ones.

SDTA #1, representing a local chamber of commerce, expressed a similar concern. Although he agreed that breaking up large contracts would be helpful to MBE/WBE firms, he reported that agencies would be reluctant to do it, because they would lose “economy of scale.”

SDTA #3, representing a local chamber of commerce, also expressed concerns about losing “economy of scale” if public agencies were to break up large contracts into smaller pieces. She went on to say that large contractors effectively break up contracts on their own anyway by subbing out pieces of a project.

Price/evaluation preferences.

A few airport interviewees indicated that they supported price or evaluation preferences for MBE/WBE firms. Interviewee #SD14, representing a Hispanic American male-owned firm, stated that price preferences would definitely be helpful for MBE and WBE firms, but that he was only familiar with those programs as they relate to small business enterprises.

Similarly, Interviewee #SD20, representing an Asian American male-owned firm, and SDTA #2, representing a Hispanic American trade organization, both indicated that price and evaluation preferences would definitely be helpful to minority- and female-owned firms.

Interviewee #SD32, representing an African American male-owned firm, remarked that price and evaluation preferences seem to be a “good deal” for DBE firms, but not necessarily a good deal for the majority-owned firms that have to compete with them.

Other airport interviewees said that they did not support price or evaluation preferences for MBE/WBE firms. SDTA #11, representing a veterans trade organization, stated that price preferences generally do not work and that agencies should be concerned with best value and not lowest price.

SDTA #1, representing a local chamber of commerce, said that price and evaluation preferences sound helpful for MBE and WBE firms, but he is concerned that majority-owned firms may feel disadvantaged or discriminated against.

SDTA #3, representing a local chamber of commerce, indicated that she did not support the idea of price and evaluation preferences, “I don’t like crutches where you bid other people out of business ... [Agencies] should go with the best quality work.”

Recommendations related to remedies.

Some interviewees recommended that public agencies engage in more outreach efforts.

Interviewee #SD4, representing a white male-owned firm, suggested that public agencies should have an open forum for MBE and WBE firms and ask them, “How can I help you?” Particular to the Airport, Interviewee #SD4 said that he would like to see Airport inspectors be more helpful and less combative with regard to MBE/WBE regulations.

Interviewee #SD16, representing an African American male-owned firm, stated that public agencies need to reach out more to minority- and female-owned firms: “Reaching out to those who have been outside of the playing field for so long because of race, age or gender is important. Public agencies should be more aggressive about attacking social ills and we could be more effective in developing a remedy.”

Interviewee #SD25, representing a white male-owned firm, recommended that the Airport continue with its networking events. He said that Airport staff regularly attends local networking events and encourages small firms to bid on available projects.

Interviewee #SD30, representing an African American male-owned firm, stated that small firms are not as big of a part of the San Diego contracting industry as they should be: “I don’t think it’s a level playing field, because small businesses or the new start up guys are not necessarily in the loop.” He said to improve the situation, public agencies need to focus on disseminating more information to small firms and need to do more outreach to help small firms be aware of work opportunities.

Interviewee #SD43, representing a Hispanic male-owned firm, suggested that the Airport should allow small firms to interview one-on-one with Airport staff, because she thinks that the Airport’s current outreach events are inaccessible to small firms: “When there’s so many people [at outreach events] and it’s so overwhelming, they’re not taking your company into consideration in particular. It’s very difficult.”

SDTA #3, representing a local chamber of commerce, suggested that public agencies should do more to ensure that potential bidders are informed about available projects and remedial programs. Particular to the Airport, SDTA #3 recommended that their website be thorough and inviting to potential bidders, and that representatives from the Airport speak at events that local chambers host.

SDTA #5, representing a government advisory commission on minority issues, suggested that the Airport should host “vendor fairs” that would allow large firms to meet face-to-face with small firms: “The Airport should bring people in to do business with them. Have small contracts that people could get on the spot while [attending] the vendor fair. That would encourage people to come.”

SDTA #9, representing a public works trade organization, said that public agencies need to do more to encourage the participation of small firms: “We have 65,000 small businesses in California. We should be asking the question, ‘How [can] local agencies work better ... to help small business and themselves?’ There should be a cooperation of public agencies on bidding, outreach, and communication to recruit these businesses.”

Several interviewees recommended that public agencies institute education programs, both for potential bidders and for their staff. Interviewee #SD11, representing a white male-owned firm, suggested that public agencies should be involved in educating and training those in the community that are interested in entering the construction industry. He cited the success that a local organization has had in developing an apprenticeship program and training “willing workers to be subcontractors.”

Interviewee #SD16, representing an African American male-owned firm, indicated that public agencies could provide more information and more learning opportunities to minority- and female-owned firms related to “how to do business.”

Interviewee #SD1, representing a minority female-owned firm that is a concessionaire at the Airport, stated that the Airport needs more business-oriented staff (e.g., staff with backgrounds in business or real estate development) rather than staff that perpetuate bureaucratic problems. She indicated that the current staff needs a better understanding of the challenges of business owners.

Interviewee #SD30, representing an African American male-owned firm, stated that he would like to see education programs expand to include training beyond the classroom: “[The agencies] offer a lot of classes and seminars ... [but] you really need more hands-on mentoring.”

SDTA #7, representing a construction trade organization, stated that the target of most remedial programs is wrong. He said that rather than focusing on discrimination among contractors, public agencies should focus on educating people and getting them into the industry: “Almost their entire emphasis should be on getting people into the trade, getting people through construction tech. and into the universities. ...”

SDTA #8, representing an electrical workers trade organization, reported that public agencies need to enforce apprenticeship laws — that is, they need to ensure that there are apprentices working on every project. She explained that most contractors move up in the construction industry through the trades, and in order to see a greater representation of minorities and females in the construction industry, public agencies have to foster education and apprenticeships.

SDTA #4, representing a local chamber of commerce, stated that MBE/WBE firms still need help with basic industry knowledge that is generally passed down from one generation to another. SDTA #4 also said that MBE/WBE firms also need improved access to information about bid opportunities and that language barriers continue to be an issue.

SDTA #11, representing a veterans trade organization, recommended that public agencies use more programs to educate MBE and WBE firms about bidding procedures and to educate their own staff about the needs of small firms in San Diego.

Regarding education and technical assistance programs, SDTA #9, representing a public works trade organization, said, “I view technical assistance as something that is one-on-one. Asking the questions, what do you need help with? Based on this definition there is not enough technical assistance being provided by public agencies. Technical assistance is limited with public agencies, because people at the public works are not able to give inside information. Additionally, they are busy and there are not enough people for one-on-one [interactions].”

A few interviewees suggested that public agencies should segment large contracts into smaller pieces. Interviewee #SD4, representing a white male-owned firm, suggested that public agencies should segment large projects into smaller pieces in order to help small firms be more competitive. He said, “Take a small project and break it up into smaller pieces. Even a small structural metal subcontract of \$5 million is still too large for small subcontractors.”

SDTA #2, representing a Hispanic American trade organization, stated that public agencies should segment large contracts to allow small firms to compete against larger ones. He went on to say that the way contracts are presently sized, “large businesses can crush the small businesses.”

Recommendations related to DBE programs.

Some interviewees recommended that mandatory DBE goals should be in place. Interviewee #SD2, representing a white female-owned firm, said that the Airport “should set aside contracts for small businesses.”

Interviewee #SD31, representing a white male-owned firm, recommended that public agencies transition from using subcontractor goals to using mandatory quotas, assuming that there are enough competent firms available for the work: “If there were enough competent firms, I would say [quotas] might be something to consider.”

SDTA #11, representing a veterans trade organization, recommended that mandatory goals should be reinstated, but said that all disadvantaged firms (e.g., African American-owned, Asian American owned, female-owned, and veteran-owned) should have the same goal: “Make it all equal [for disadvantaged firms].”

SDTA #4, representing a local chamber of commerce, indicated that mandatory DBE goals are necessary and should be reinstated, because the playing field is not yet equal for minority- and female-owned firms.

Interviewee #SD13, representing a white male-owned firm that is the master concessionaire at the Airport, said that a potential subtenant’s ACDBE status plays a substantial role in whether he or she is granted a concessionaire lease at the Airport, particularly if the master concessionaire is not currently meeting their ACDBE goal, “If I’m below 30 percent [MBE/WBE goal participation], I think [ACDBE certification] would play a large role.” She went on to explain that her firm takes assertive measures if it is below its 30 percent ACDBE goal.

Other interviewees recommended that DBE goals and good faith efforts should be eliminated altogether. Interviewee #SD11, representing a white male-owned firm, indicated that DBE programs should be eliminated: “Do away with regulations. Make it an open market. The small guy just can’t handle all of the paperwork. They should do away with regulations. Primes should advertise and they should choose the most qualified, lowest bidder for the project.” He went on to ask rhetorically, “Can we close the DBE department? It doesn’t work.”

Interviewee #SD7, representing a white male-owned firm, indicated that race and gender should not play a role in contracting procedures: “If you are qualified to do a job your experience level should stand on its own, no matter the color of your skin.

Interviewee #SD15, representing a white male-owned firm that is a concessionaire at the Airport, expressed concerns that DBE programs and mandatory goals will lead agencies to overemphasize race, in turn leading them to award contracts to minority- or female-owned firms that may be less qualified than other majority-owned firms. He said, “You have to look at the entire package. Focusing too much on one aspect could be detrimental.” He went on to say that agencies who overemphasize race might ultimately get worse service or value. However, Interviewee #SD15, reported that, in principle, DBE programs are important: “I think it gives people opportunities that might not otherwise be there for them, in terms of competing with larger competitors.”

SDTA #12, representing a workforce trade organization, said that minorities and women do not need preferential treatment — they need encouragement and the opportunity to acquire additional skills

Some interviewees recommended that public agencies pay more attention to issues related to minority- and female-owned firms. SDTA #5, representing a government advisory commission on minority issues, said that the City of San Diego and its public agencies do not focus enough on diversity issues and helping MBE and WBE firms: “I have seen what happens when there is a lack of focus ... to have diversity. This is what is happening in the City [of San Diego] which I am sure is spilling into other agencies throughout San Diego. I have not seen a commitment to data collection or outreach in any seriousness throughout the City which I am sure is the same here at the Airport.” She continued, “Currently, there is no will or interest to accomplish a successful DBE program. When it comes from the top it will work.”

SDTA #1, representing a local chamber of commerce, said that more needs to be done to help minority- and female-owned firms, but he was careful to say that assistance should not be limited to only those firms but should include other small firms in San Diego as well. He recommended that public agencies keep the issues of all local, small firms front and center, and that those issues “shouldn’t just be a box to fill out on the side.”

SDTA #2, representing a Hispanic American trade organization, indicated that the Airport needs to take a more proactive approach to dealing with MBE/WBE issues: “The Airport should get more involved and step out of their comfort zone — have an attack campaign on the ground.”

Two interviewees suggested that public agencies should offer monetary incentives to prime contractors to work with MBE/WBE firms. Interviewee #SD7, representing a white male-owned firm, stated that financial incentives would encourage prime contractors to use their own resources to help MBE/WBE firms get through the bid process. He suggested that prime contractors should receive a small percentage of MBE/WBE subcontractors’ contract values.

Interviewee #SD6, representing a white male-owned firm, said that the Airport should maintain a Small Business Enterprise Program but eliminate its DBE program, at least how it is presently structured. He suggested that the Airport could keep DBE goals, but make them voluntary and eliminate good faith efforts. As an alternative to mandatory goals, Interviewee #SD6 suggested that prime contractors receive a monetary credit for using MBE or WBE subcontractors.

One interviewee suggested that public agencies should institute limits on how long a particular firm can be awarded a contract. SDTA #2, representing a Hispanic American trade organization, said, “There should be a limit on the amount of time you can do business with the public. For example, you can’t do business longer than ten years in a row.” He explained that without such limits, contracts transfer from one generation of a firm to the next. He described that practice as discriminatory: “This is general institutional racism and discrimination.”

Several interviewees offered non-specific recommendations about how public agencies can improve their contracting procedures and DBE programs. Interviewee #SD21, representing a white male-owned firm, said that he is not familiar enough with DBE programs to know if there are certain components that are particularly helpful to MBE/WBE firms. He said that he is much more concerned about whether a subcontractor can help him complete a job rather than about the subcontractor’s DBE status, “I’m absolutely a dollar driven guy. If somebody can walk in and help me make money, that’s what’s important to me.”

SDTA #8, representing an electrical workers trade organization, said that any program that helps small firms (including MBE and WBE firms) is a good use of tax dollars.

SDTA #11, representing a veteran’s trade organization, indicated that remedial program work as well for MBE/WBE firms as they do for Disadvantaged Veterans Business Enterprise (DVBE) firms, with the caveat that the work ethic of veterans far exceeds that of minorities and women. He said, “If it works for service disabled veterans, it will probably work for minorities [and women], with the exception of one thing ... the work ethic [of service disabled veterans is better].”

Related to those comments, Interviewee #SD31, representing a white male-owned firm that is DVBE certified indicated that he supports the use of remedial programs for disadvantaged firms. However, he went on to say that DVBE firms deserve those preferences more than MBE/WBE firms: “Quite frankly, compared to the other minority categories, we feel we earned it — not born into it.” With regard to MBE/WBE firms benefitting from evaluation preferences in particular, Interviewee #SD31 said, “I don’t think they’ve earned it.”

SDTA #7, representing a construction trade organization, indicated that a major problem with existing remedies is that they are more political than they are practical. Regarding those politics, he said, “A politician doesn’t care about who is getting contracts or not. They just want to create a program that they can tell people that they are [addressing minority and gender issues]. The results never are good. They don’t care about [minority and gender issues] — they just want to create the program.”

SDTA #3, representing a local chamber of commerce, indicated that she was unfamiliar with the term “DBE” and thus had no knowledge regarding the certification process.

Interviewee #SD12, representing a minority male-owned firm that is a concessionaire at the Airport, indicated that the net worth limits of DBE programs stifle advancement: “What does the ACDBE program do for me” really? The net worth of an ACDBE cannot be more than \$750,000. We want to grow and make money too . . .”

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that in order to encourage MBE/WBE participation, prime contractors should be required to use subcontractors that they have not used in the past, which would give opportunities to new firms: “I just think bigger companies should be able to try out different [subcontractors] and not just stick with the ones they usually do. I think it should be some kind of requirement where they have to try new, small companies just so we can get an opportunity to show what we can do.”

Two interviewees recommended that public agencies should stop commissioning firms to complete disparity studies. SDTA #7, representing a construction trade organization, stated that disparity studies rarely offer an accurate depiction of the marketplace. He also indicated that his organization will formally dispute any disparity study that they view as incorrect: “As soon as [a contractor] is low [bidder], and a job is taken from them because of whatever came from the disparity study and the disparity study wasn’t right there’s going to be a conflict.” Regarding previous disparity studies in California, SDTA #7 remarked, “You got to get it right – we haven’t had one here that was right.”

Consistent with those comments, SDTA #11, representing a veterans trade organization, indicated that disparity studies are not particularly useful and should be eliminated: “Don’t have a disparity study.”

Consortium Anecdotes Regarding Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from interviews that the study team conducted in connection with BBC’s 2009 Consortium study.

Outreach programs.

Several interviewees had participated in or were otherwise aware of race-, ethnic-, and gender-neutral programs provided by the Consortium. [Interviewees #CON: 4, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 20, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 42, 44, 45, 46, 47, 48, 50, 52, 55, CONTA #1, PF #3]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that locally SANDAG does outreach efforts in conjunction with Caltrans to assist businesses by increasing their opportunities and skills to participate in Consortium projects. These are networking events with prime contractors. He has participated in some of these networking events. He sometimes found them helpful and sometimes not because the same prime contractors usually attend who already know you and what you can do. Occasionally there are new firms enabling him to establish new contacts and relationships. Interviewee #CON4 stated that the last SANDAG event occurred last year. Interviewee #CON4 also recalled that he received notice this year from the Orange County Transportation Authority about a networking event but was unable to attend. Interviewee #CON4 suggested that these outreach efforts should continue. Interviewee #CON4 stated that he has not had any direct experience with programs that assist with bonding, insurance and financing, but had seen announcements from the agencies

regarding such programs. He stated that he has never seen any educational or training programs or other programs on how to do business with the Consortium.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that SANDAG, CCDC (Center City Development Corporation), Port of San Diego and some other agencies had a networking event about three months ago at the Convention Center to assist businesses by increasing their opportunities and skills to participate in Consortium projects, but he was unable to attend. The purpose of the event was to meet people and help with the certification process. He also recalled a similar networking event in Los Angeles recently, but could not recall specifics. These events are advertised. Interviewee #CON5 is also on a mailing list with the CCDC so his company receives information about RFPs, jobs, training seminars, certification process, etc. through the CCDC.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, recalled receiving information about outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects many years ago, but did not recall anything about the program.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that the L.A. County MTA offers outreach programs. He stated that 20 years ago they had a program to assist DBEs with accounting. He did not know whether they still had such a program, but stated that it was very helpful. Interviewee #CON9 was not aware of programs to assist with bonding, insurance, or financing. He stated that L.A. County MTA has a program on “how to do business” with the Consortium.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, stated that the Consortium has a vendor fair, but that was the only outreach that she was aware of. She stated that the Consortium does ask whether small businesses need assistance with financing, bonding, or insurance; but she stated that from a CPA standpoint, the business must meet those requirements anyway and she does not feel that it is up to the Consortium to assist on that. Interviewee #CON10 stated that some of the Consortium members have information online on “how to do business” with the Consortium, but stated that basically you sign up on the vendor list and then receive an automated email.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that she was aware of emails regarding different education opportunities and training manuals on how to write a proposal and obtain insurance. She noted, however, that these programs all cost money.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the outreach effort by L.A. County MTA is “the most impressive” in terms of “embracing and facilitating participation.” He stated that L.A. County MTA has been holding a networking period for pre-proposal meetings which is helpful and provides for prequalification updates. He stated that they assist the smaller firms with their paperwork and connect with the bigger firms. He stated that the only problem is that most of the teams are set by that point, but that is not an L.A. County MTA “fault, it is just a reality.”

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that L.A. County MTA or the SBA may offer programs regarding bonding and financing.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has taken advantage of outreach programs regarding the completion of paperwork associated with Consortium work. He also has knowledge of programs assisting with monetary issues, but he has never actually used these programs. Interviewee #CON15 is also aware of educational and training programs, some even offered by other prime contractors. Interviewee #CON15 has also attended and participated in Consortium-agency sponsored vendor fairs.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has knowledge of and exposure to a lot of the Consortium's outreach efforts and efforts to assist businesses. Interviewee #CON17's company has taken advantage of many of these opportunities.

Interviewee #CON17 is also aware of programs that assist with bonding, insurance, and financing, but she hasn't attended these programs because her company is a professional services firm.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, is aware of outreach efforts by the Consortium to assist businesses by increasing visibility. Often she does not go to programs because she does not think that she can get work at those types of events. She does know of programs to assist with bonding, insurance, and financing.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, had knowledge of Consortium outreach efforts, but stated that programs to assist with bonding, financing and insurance are not very helpful. She had knowledge of educational and training programs and of programs on how to do business with the Consortium.

Interviewee #CON24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, was aware of programs offered on how to do business with the Consortium.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of outreach programs offered by the Consortium, including programs on how to do business with the Consortium.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, was aware of outreach efforts by the Consortium (including MTA and El Camino). She had heard of or otherwise participated in educational and training programs and programs on how to do business with the Consortium.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, was aware of outreach efforts by the Consortium including programs to assist with bonding, insurance, and financing, educational and training programs, and programs on how to do business with the Consortium.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, was aware of outreach efforts offered by the Consortium including programs to assist with bonding, insurance, and financing.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, was aware of outreach efforts offered by Caltrans and the L.A. County MTA, including educational and training programs and programs on how to do business with the Consortium. He has participated in a program with Caltrans in the past.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, believed the Consortium offered outreach programs, but had not participated in any.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated that his company had participated in a “meet the buyers” workshop and other educational programs offered by the Consortium. He had not participated in any programs on how to do business with the Consortium, but stated that he was going to start taking advantage of such programs.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that the Consortium has expended significant effort in outreach programs. She noted that Caltrans, in comparison, has done nothing in terms of outreach and they “do not try anything new.” She stated that there are always seminars available to assist with bonding, insurance, and financing. She was also aware of educational and training programs and programs on how to do business with the Consortium.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, was aware of an annual business conference, but felt it was a “waste.” She was also aware of a program on how to do business with the Consortium, but had a similar negative perception.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, was familiar with outreach efforts with TBAC — Transportation Business Advisory Council (an organization established under state law for Metro vendors). She was aware of programs to assist with bonding, insurance, and financing and with programs on how to do business with the Consortium.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had participated in two workshops provided by Metro. She attended fairs that provided information regarding programs to assist with bonding, insurance, and financing. She was aware of programs on how to do business with the Consortium, but she had not attended any such programs.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the Consortium offers a lot of outreach efforts, but he has always been suspicious of them and considered them to be shams. He was aware of programs on how to do business with the Consortium.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, reported having heard “vaguely” about programs on how to do business with the Consortium, but she did not know anything about it.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, was aware of programs to assist with bonding, insurance and financing having been offered in the past but nothing recent. He was aware of one or two educational and training programs offered by L.A. County MTA as well as programs on how to do business with the Consortium.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she had met people in the outreach department. She was aware of educational and training programs and programs on how to do business with the Consortium.

Interviewee #CON44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, had experience with Consortium outreach efforts including educational and training programs and programs on how to do business with the Consortium.

Interviewee #CON45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had heard of Consortium outreach efforts through Consortium personnel. She had heard of programs to assist with bonding, insurance and financing, educational and training programs (through Caltrans), and programs on how to do business with the Consortium. She stated that she participated in such a class with Metro.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, was aware of outreach programs offered by Metro.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he had participated a long time ago in a program on how to do business with the Consortium. He was not aware of any other outreach programs.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, was aware of outreach efforts offered by the Consortium. He has participated in programs to assist with financing and bonding and on how to do business with the Consortium. He was aware of other educational and training programs, but had not participated in them.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he was recruited by an outreach program. He stated that there is such a “tall doorstep that it makes it extremely difficult to put your hand down to pull people up with you.” He was aware of programs to assist with bonding and financing and other educational training programs. He was not aware of programs on how to do business with the Consortium.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, was aware of Consortium programs to assist businesses with bonding, insurance, and financing. He was not aware of other outreach efforts offered by the Consortium.

Interviewee #CON55, a white male owner of a construction services and program management firm, was aware of outreach programs to assist with bonding, financing and insurance, and had knowledge of programs on how to do business with the Consortium.

CONTA #1, the President of the Latino Business Owners of America, stated that agencies in Los Angeles are more active with outreach efforts to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He stated that they provide workshops and other activities from certification instruction to payroll. He stated that San Diego's agencies are not as good in developing outreach efforts. He stated that educational outreach is helpful, but if you do not address the way that businesses are doing business it is futile. CONTA #1 stated that he has heard of a few programs that assist with bonding, insurance, and financing and believes that these programs are generally good. He also stated that he has heard of a few educational/training programs. CONTA #1 also stated that he is aware of a few workshops sponsored by different agencies on how to do business with the Consortium, but believes that these programs will be futile unless Consortium agencies make a real effort to include DBEs on their projects.

PF #3, an individual representing a black business association provided oral testimony at a public forum held on October 20, 2009. He was concerned about outreach efforts and whether or not the people in attendance were representative of firms that have the most problems with securing contracts. He thought the outreach and the efforts to raise awareness to issues are in question, and without outreach and awareness there will be reduced participation by minority owned businesses. He also questioned the effort, and authenticity of the efforts, to include African American businesses in projects. He stated that the qualifications for contracts are sometimes too stringent and that minority business owners cannot comply with them. He also questioned the enforcement process for verifying that prime contractors who say that they have done their due diligence and/or claim to have minority subcontractors under contract are actually in compliance with what they say. (Public Forum Los Angeles held on October 20, 2009).

Several interviewees were not aware of any race-, ethnic-, or gender-neutral programs sponsored by the Consortium aimed at increasing small or disadvantaged business participation by increasing their opportunities and skills. [Interviewees #CON: 1, 2, 3, 5, 6, 7, 8, 14, 19, 21, 29, 41, 49, 51, 53, 54, 57, 58, CONTA #2]. Other interviewees had very limited knowledge of such programs. [Interviewees #CON: 16, 22, 23, 37, 39, 43, 56]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, was not aware of any outreach or training programs offered by the Consortium or other agencies.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has no knowledge of outreach efforts by the Consortium to assist business by increasing their opportunities and skills to participate in Consortium projects. He stated that he is aware of Caltrans networking conventions which take place at the end of October. Interviewee #CON2 also stated that he has not participated in these conventions in the past, but plans to attend if any similar convention is held in Southern California. Interviewee #CON2 also stated that he has no experience with or knowledge of any efforts to assist with bonding, insurance, and financing, efforts to implement any educational/training programs, or with programs on how to do business with the Consortium.

Interviewee #CON7, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that he has no knowledge of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. Interviewee #CON7 stated he has not had any experience with programs that assist with bonding, insurance, and financing, but believed that there are such programs. He stated that he is unaware of any educational/training program efforts. Interviewee #CON7 also stated that he is not aware of any programs offered by the Consortium on how to do business with the Consortium, but P-TAC (an organization funded by veterans) offers programs about how to do business with the Consortium. The program is sponsored by the Water Authority.

Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated he was not aware of outreach efforts by the Consortium to increase business opportunities, but he expects that that might occur. He stated that prime contractors have in the past offered to assist him with bonding, but he has never pursued that.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, did not have knowledge of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He did not have any knowledge of programs or efforts to assist with bonding, insurance, financing, educational or training programs. Interviewee #CON14 noted that L.A. County MTA does publish a newsletter.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, has no experience with various outreach efforts by the Consortium entities or others, except for a small business program through the City of L.A. and L.A. County MTA's programs that provide small business assistance with bonding, insurance, and financing.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, had no experience with outreach efforts by the Consortium, but was aware of programs to assist with bonding, insurance and financing, educational and training programs, and programs on how to do business with the Consortium.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, had seen flyers offering educational and training programs, but had never participated in any.

Interviewee #CON37, an African American male owner of a SBA-certified architecture firm, stated that he had heard of some business conferences, but never attended any of the conferences. He stated that he was not aware of any programs to assist with bonding, insurance, or financing or educational and training programs. He stated that he had heard of seminars on how to do business with the Consortium, but had not participated in these seminars.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, reported that she is vaguely aware of outreach efforts offered by other agencies in order to increase participation of DBEs and small businesses in doing work with the Consortium.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that he had seen a flyer advertising a program on how to do business with the Consortium, but he did not attend the program.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that in the past the Consortium offered outreach efforts to assist small businesses, but he stated that these programs no longer exist.

Interviewee #CON56, a white male owner of a small electrical contracting firm, was generally aware of programs to assist with bonding, insurance and financing and other educational and training programs (although it was not clear who offered these programs).

CONTA #2, the President of the Black Contractor's Association, stated that he is not aware of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He stated that he is aware that the Metro Waste Water Treatment Plant may have such a program. CONTA #2 stated that he has not heard of any programs relating to how to do business with the Consortium.

Some interviewees were aware of or had participated in outreach programs offered by non-Consortium agencies. [Interviewees #CON: 2, 3, 4, 5, 7, 9, 11, 12, 13, 15, 16, 17, 23, 25, 26, 30, 31, 33, 36, 38, 50, 54, CONTA #1, 2]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he is aware of outreach efforts by the City of San Diego to increase participation of DBEs and small businesses in doing work with the Consortium. He stated that the City sends out emails inviting businesses to attend target events where business owners can learn about on-going projects and pair up with prime contractors. He stated that he last heard of one of these events one year ago. He stated that he attended the event, and it was somewhat helpful, but he thinks that it still comes down to networking with prime contractors.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, was generally aware that some of the agencies have seminars on how to do business with the government entity. For instance, the Metropolitan Water District has a program, but he has never attended a session. The objective of the program is to find out about projects well in advance of when they become public. Interviewee #CON3 is aware of efforts by the federal government to increase participation of DBEs and small businesses. The Navy Facility Engineering Command has done work to increase participation of DBEs and small businesses. The work involved is all environmental work relating to the base realignment closure. They also developed mentoring programs. The Command also has a mini-racks program in the \$5,000 to \$10,000 range which was DBE directed, but the program experienced limited success because many of the participating DBEs he believed were DBE fronts.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, was aware of several outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses. For instance, the Path to Partnership program sponsored by the County Water Authority and the State of California Department of General Services, is normally held in September or October of every year. He was also aware that the Minority Supplier Council in San Diego has a similar outreach event once a year. He said there are generally at least three networking events each year in San Diego and some of the individual agencies, such as the Port, may have their own networking event for particular projects.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he is aware of outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses. For instance, he receives the Hispanic News

every month and the newspaper advertises different programs including certification programs, but his company does not qualify.

Interviewee #CON7, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that he is aware of outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses in doing work with Consortium. He stated that an organization called Elite SDVOB provides outreach programs. They generally hold a monthly meeting which members of the Port Authority and PG&E attend. He stated that PTAC also puts on a lot of programs relating to bonding, the Water District, and the Airport.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that L.A. County has held trade shows in the past with booths where DBEs can come to meet prime contractors; he had knowledge of them doing this at least a couple of years ago.

Interviewee #CON11, an SBE-certified white female-owned ergonomic prime consultant in the Los Angeles area stated that she uses the free services offered by the small business development center “all the time.”

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has seen programs to assist with bonding, insurance, and financing, but they do not rely on that. He stated that most of the training programs that he has seen are held by non-Consortium agencies like L.A. County. He was not aware of an outreach program re: “how to do business with the Consortium” although he noted the information may be available on the Consortium websites.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he is aware of workshops on how to fill out a proposal, but he felt these are not offered by Consortium agencies. Interviewee #CON13 also stated there are a lot of private companies that “promise to find work” or market for companies for a fee.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, is aware that Caltrans, the City of Los Angeles, and L.A. Public Works have created outreach efforts to increase participation of DBEs and small business doing work with the contractors.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, is only aware of outreach efforts from the SBA with regard to increased participation of DBEs and small business in doing work with the Consortium.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she is aware of the Governor’s initiative for small business to increase participation with the Consortium agencies.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, was aware of the State offering outreach efforts to increase participation of DBEs and small business doing work with the Consortium.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of an organization called MBOC, or the Minority Business Outreach Counsel, that has an outreach program component.

Interviewee #CON26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, was aware of El Camino's outreach programs aimed at increasing participation of DBEs doing work with the Consortium.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, participated in an outreach program offered by Caltrans in the past. He was also aware of outreach efforts by MWD and LAUSD with the intent of doing business with DBEs and granting them contracts for working with their entities.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, was aware of outreach programs offered by other agencies, but believes that the participants are hand-picked.

Interviewee #CON36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, was aware of outreach efforts offered by Southern California Edison.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, was aware of outreach efforts offered through his organization, NCAIED.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was aware of outreach efforts by Caltrans and the Department of Defense's Air Force.

Interviewee #CON54, a white male owner of a general contracting firm, noted that his own firm offers construction training programs in order to increase opportunities for DBEs and other small businesses.

CONTA #1, the President of the Latino Business Owners of America, stated that he is aware of sporadic outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses in doing work with Consortium. He stated that occasionally an agency will put on a workshop on how to do business and how to get certified.

CONTA #2, the President of the Black Contractor's Association, stated that he is aware of a bonding assistance program offered by the Regional Airport Authority. Interviewee CONTA #2 stated that he is not otherwise familiar with any Consortium programs to assist with bonding, insurance, and financing. Interviewee CONTA #2 also stated that the San Diego Community College District has a partnership or collaboration with the COC (Contractors Opportunity Committee) to offer educational/training programs, but the program is not offered by the Consortium.

Other interviewees were not aware of outreach efforts by non-Consortium agencies.

[Interviewees #CON: 6, 8, 9, 10, 14, 19, 20, 21, 24, 27, 28, 29, 32, 34, 35, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 55, 56, 57, 58, CONTA #2]. Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, was not aware of outreach efforts

by other agencies except to the extent that they require prime contractors to reach out to DBEs to work on projects.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, was not aware of outreach efforts by non-Consortium agencies. She stated that she wanted to know how to do business with large private institutions, but cannot figure out how to break into that market.

Simplification and streamlining of the bid process.

Some interviewees were familiar with Consortium efforts to streamline the bid process.

[Interviewees #CON: 4, 12, 18, 22, 24, 32, 33, 38, 42, 44, 46, 48]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that last year he heard of efforts to simplify and streamline the bidding process, but is not sure what is involved. Interviewee #CON4 stated that he could not recall what he heard. Interviewee #CON4 thinks that a more simplified and streamlined approach would be helpful.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the OCTA “stands out as the agency” that tries to streamline the bidding process through their online system. He stated that they have an online system to request bids from consulting engineers for specific small tasks; this is helpful because you do not have to waste a lot of time putting together a bid, but the process is not transparent and you have no idea how the decision is made.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, has some knowledge of efforts to streamline and simplify the bidding process, but it depends on each individual project.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, had knowledge of Consortium efforts to simplify and streamline the bidding process, but he stated that he is waiting for it to happen.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of efforts by the Consortium to streamline the bidding process.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that at the onset of the project L.A. County MTA will include the bidding aspects.

Most interviewees had no knowledge of or experience with Consortium efforts to streamline the bidding process. [Interviewees #CON: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 17, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 39, 40, 41, 43, 45, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, CONTA #1, 2]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, was not specifically aware of efforts by the Consortium to simplify and streamline the bidding process but did recall that he had read something about it on one of the websites.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not know whether the Consortium has done anything lately to streamline the bidding process. He recalled complaining in the past about the Consortium requirement to have documents notarized. He is “pretty sure” that they have ended the notary requirement.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated the he had “very little” experience with the Consortium efforts to streamline the bidding process.

Interviewee #CON29, an African American male-owned electrical contractor, was not aware of efforts to simplify or streamline the Consortium bidding process and stated that the process is extremely difficult to understand or to qualify to place a bid.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, indicated that the bidding process is not streamlined.

Interviewee #CON37, an African American male owner of a SBA certified architecture firm, stated that he has no knowledge of Consortium efforts to simplify and streamline the bidding process. He stated that he wishes it could happen because it would save his firm a lot of time and stress. He stated that he knows he is not going to get every contract, but the sooner he knows whether he will be awarded the contract or will not be awarded the contract he can move on to the next bid.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, was not aware of Consortium efforts to streamline the bidding process but thought that it would be a great idea to implement such a process. He stated that this would help cut back on unnecessary paperwork.

Interviewee #CON58, a white male owner of an engineering consulting firm, was not aware of Consortium efforts to streamline and simplify the bidding process, but stated that he wished that they would.

CONTA #1, the President of the Latino Business Owners of America, stated that he has not heard of any Consortium efforts to simplify and streamline the bidding process, and added he believed that it would make no difference.

CONTA #2, the President of the Black Contractor’s Association, stated that he has not heard of any efforts by the Consortium to simply and streamline the bidding process.

Segmenting larger contracts into smaller contracts.

Some interviewees reported knowledge of Consortium efforts to segment larger contracts into smaller ones. [Interviewees #CON: 3, 5, 9, 13, 14, 18, 20, 22, 24, 33, CONTA #1]. Interviewee #CON3 was aware that in and around 2000 the Consortium tried to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that the Consortium tried to divide the projects up internally instead of giving the entire project to one prime contractor. He said this did not help because the principal work is still done by a limited number of big contracting firms.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business, stated that he recently read something that he may have received from SANDAG regarding Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that many of the agencies are trying to break larger jobs up to bring smaller corporations in. Interviewee #CON5 stated that this is a good idea. Interviewee #CON5 stated that he has also heard of another program in which the agencies try to pull resources from the area where a project is being completed. If the contractors are located in particular zip codes, they could receive work on the project. Interviewee #CON5 stated that he has read about these programs on a number of governmental agency websites.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he likes when the Consortium segments larger contracts into smaller contracts and “as far as he can tell” the Consortium does try to do this. He stated that when the Consortium does lump a contract together they usually provide a reason for doing so at the pre-proposal meeting.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that L.A. County MTA has “work benches” for prequalification of companies, but he has not received any business from being on a work bench.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that Consortium efforts to segment larger contracts into smaller ones is done for the purpose of controlling workload and not give opportunities to smaller businesses.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, stated she knows that recent projects are being segmented to make more opportunities available for small business — she felt that this was positive.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, was aware of Consortium efforts to segment larger contracts into smaller ones and promote opportunities for smaller contractors. She stated that personally this has been helpful.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, had experience with Consortium efforts to segment larger contracts into smaller ones, and she noted that she helped to write some of the policies.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of Consortium efforts to segment larger projects into smaller ones, but she has not seen it in her business.

CONTA #1, the President of the Latino Business Owners of America, stated that he is aware that the City of San Diego attempted about five years ago to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that segmenting these larger contracts into smaller ones is a key element, but in general thought it might be unhelpful because agencies need to make these contracts realistic for small business owners to participate. The contracts should be more realistic in terms of the scope of services to be provided by small business owners.

Most interviewees reported having no knowledge of or experience with Consortium efforts to segment larger contracts into smaller ones. [Interviewees #CON: 1, 2, 4, 6, 7, 8, 10, 11, 12, 16, 17, 19, 21, 23, 25, 26, 27, 28, 29, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, CONTA #2]. Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, has not heard of any efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors, but expressed a wish for more agencies to do that.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, did not have much experience with the Consortium agencies segmenting larger contracts into smaller ones. He stated that some people “could say that the on-calls are an attempt to do that” but most of the on-calls — 60 to 70 percent — translate to no business and create a waste of their time.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, would very much like to see the Consortium segment larger contracts into smaller contracts, but does not know of such efforts.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has seen Caltrans segment large contracts into smaller contracts, and she would like to see the same happen with the Consortium agencies.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he had no knowledge of Consortium efforts to segment larger contracts into smaller ones, but stated that the Metropolitan Water District of Southern California does unbundle contracts.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he was not aware of Consortium efforts to segment larger projects into smaller ones, and sometimes it is the other way — contracts continue to be large and unbundled.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, would like a system in which the Consortium allowed bidding with small businesses where it was actually competitive by making it exclusive to small businesses.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, indicated that the Consortium does not segment larger contracts into smaller ones.

Interviewee #CON35, an African American female-owned WMBE/MBE-certified management consulting firm, had no experience with the Consortium segmenting large contracts to smaller ones, but believes it would be helpful.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he had never heard of Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that he wishes that there was such an effort because of his firm’s discipline.

Interviewee #CON39, an Asian American female-owned 8(a)-certified architectural firm, stated that in her opinion large firms monopolize the contracts.

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, had no knowledge of Consortium efforts to segment larger contracts into smaller ones, but stated that would be fantastic positioning for smaller firms to bid on industry specific contracts.

Interviewee #CON46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, was not aware of Consortium efforts to segment large contracts into smaller ones, and he stated that they need to do so.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, had no experience with or knowledge of Consortium efforts to segment larger contracts into smaller ones but felt that the Consortium should make this a priority.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the Consortium has not been proactive in trying to segment larger projects into smaller ones.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was not aware of Consortium efforts to segment larger contracts into smaller ones, and said he believes that they should do so.

Interviewee #CON52, a DVBE-certified white male owner of a solar contracting firm, had no knowledge of Consortium efforts to segment larger contracts into smaller ones, and stated that he wished that they would do that in the future.

CONTA #2, the President of the Black Contractor's Association, stated that he has not heard of any Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors.

Monitor DBE utilization.

Most interviewees were not aware of Consortium efforts to monitor DBE utilization throughout a project. [Interviewees #CON: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 19, 22, 23, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37, 39, 41, 44, 45, 46, 49, 51, 52, 53, 54, 56, 57, 58, CONTA #1, 2].

Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, had no knowledge as to whether the Consortium visits worksites to monitor DBE utilization.

Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know whether the Consortium visits work sites to monitor DBE utilization throughout the project.

Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, stated that it is not his experience nor has he ever heard of the Consortium visiting work sites to monitor DBE utilization throughout the project.

Interviewee #CON4, a DBE-certified Asian-Pacific American male owner of an engineering firm in the San Diego area, stated that he has never heard of the Consortium visiting work sites to monitor DBE utilization throughout the project.

Interviewee #CON5, an employee at a non-DBE white male-owned electrical engineering business in the San Diego area, stated that he visited Consortium work sites while working for a different employer 10 years ago, however, he could not say whether the Consortium visited work sites to monitor DBE utilization throughout the project.

Interviewee #CON6, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, had no knowledge whether the Consortium visits work sites to monitor DBE utilization throughout the project.

Interviewee #CON7, a white male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that, in his experience, the Consortium does not visit work sites to monitor DBE utilization throughout the project.

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not believe he had ever seen the Consortium visit a worksite to monitor DBE utilization.

Interviewee #CON10, a DBE-certified African American female-owned accounting firm, did not know whether the Consortium visits worksites to monitor DBE utilization.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, stated that he did not know whether the Consortium visits work sites to monitor DBE utilization.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he does not have experience with the Consortium visiting worksites to monitor DBE utilization.

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, did not have experience with the Consortium visiting work sites to monitor DBE utilization.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has seen the Consortium conduct labor compliance interviews, but has not experienced visits to work sites to monitor DBE utilization throughout a project.

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, is unaware of the Consortium visiting work sites to monitor utilization — she has only seen the agencies actually involved at the point of proposal, not midstream, but she has seen review and auditing of contracts.

Interviewee #CON22, an African American female owner of a DBE/MBE-certified planning engineering firm, was not aware of the Consortium visiting work sites to monitor DBE utilization but she knows that they are supposed to.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, was not aware of Consortium efforts to monitor work sites, but stated that the prime contractors should be required to prepare reports on their DBE utilization.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he is not aware of Consortium visits to work sites in order for them to monitor utilization of DBEs on projects, and he feels that this is something lacking in the Consortium.

Interviewee #CON 37, an African American male owner of a SBA certified architecture firm, stated that he has never known of the Consortium visiting work sites to monitor DBE utilization. He stated that he thinks it would be a good follow-up.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, was not aware of Consortium efforts to monitor DBE utilization. He stated that this is especially problematic when a prime contractor has subcontracted work to a DBE, but then does not give them the work.

CONTA #1, the President of the Latino Business Owners of America, stated that he has never heard of the Consortium visiting work sites to monitor DBE utilization.

CONTA #2, the President of the Black Contractor's Association, has no information whether the Consortium visits work sites to monitor DBE utilization throughout a project.

A few interviewees were aware of some Consortium efforts to monitor DBE utilization on work sites. [Interviewees #CON: 14, 18, 20, 21, 33, 38, 40, 42, 48, 50, 55]. Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, stated that the Consortium does not visit work sites to monitor DBE utilization although procurement will sometimes “keep track” of DBE utilization.

Interviewee #CON18, a white female owner of a DBE/WBE-certified transit planning firm, experienced a field visit regarding DBE utilization. L.A. County MTA performed field visits twice in the last decade.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the Consortium does visit work sites to monitor DBE utilization and she knows that it is hit or miss. She could not speak to how successful this is.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that on her one contract with L.A. County MTA, L.A. County MTA monitored compliance.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, stated that the Consortium rarely visits worksites to monitor DBE utilization.

Interviewee #CON40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, had experience with the Consortium visiting worksites to monitor DBE utilization, but stated that they should do it more often.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she had experienced a visit from the Consortium.

Recommendations related to remedies.

Several interviewees recommended expansion of outreach efforts to encourage small business participation including: increased advertising and the coordination and notification of work opportunities as between prime contractors and subcontractors. [Interviewees #CON: 1, 15, 16, 20, 21, 23, 25, 28, 30, 42, 51, CONTA #1, 2]. Interviewee #CON1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, suggested blanket advertising of the DBE Program to contractors and offer assistance to small businesses; he stated that that would increase his desire to do work with the Consortium.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, has noticed a significant difference in outreach, and this will continue to help him out tremendously as he continues to bid as a prime contractor.

Interviewee #CON16, a Hispanic American male owner of a value-added supply and system integration firm, suggested that there are more efforts to bring small and large businesses together, to monitor those efforts, and that such efforts are not just entertained for the purpose of checking a box for a particular bid requirement.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, recommended that the Consortium continue with due diligence for small companies to have opportunities and to not just look to the low bid but to quality as well.

Interviewee #CON21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that most agencies and private companies fail to make appropriate outreach efforts to DBEs. She stated that in order to solve the problem, the agencies and private companies must incorporate a small business set-aside for DBEs similar to the federal government's 8(a) Program.

Interviewee #CON23, an African American male owner of a DBE/MBE-certified trucking subcontractor, recommended improved outreach to African American-owned businesses. He believes that other minority-owned businesses are being utilized to the exclusion of African American-owned businesses.

Interviewee #CON25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that there needs to be more partnering between small firms and prime contractors. He stated that there should be more face time with prime contractors in addition to the L.A. County MTA Vendor Fairs.

Interviewee #CON28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated the L.A. County MTA needs to increase awareness and advertising about bidding opportunities, RFPs, and education programs related to bonding and financing.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there should be a greater push for more outreach to smaller businesses so that they can participate in the bidding process.

Interviewee #CON42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that the L.A. County MTA should offer more DBE outreach programs.

CONTA #2, the President of the Black Contractor's Association, stated that Caltrans has representatives who provide information about prime contractors who have expressed an interest in a particular RFP; he recommended that the Consortium provide this information. CONTA #2 also recommended holding workshops in collaboration with the Black Contractors Association and having the Consortium officials and staff introduce themselves and make themselves known so that people know what they do.

Several interviewees recommended changes to simplify and streamline the bidding process including the dissemination of more information at the initial stage of the process and the simplification of paperwork. [Interviewees #CON: 9, 11, 13, 14, 17, 20, 29, 33, 34, 55, 58].

Interviewee #CON9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that usually the first question they ask the Consortium is whether a given project is federally-funded and whether the DBE goals are a firm requirement. He stated that sometimes the answer to that question is unknown even during the pre-proposal meeting; he stated that more knowledge on the part of the agency would be helpful. He stated this information affects the way teams are formed. Interviewee #CON9 recommended that the agencies provide more information with respect to whether a project is federally-funded; he stated that federal funding provides them with a "hint" as to whether the contract has a "hard DBE goal" as opposed to a "soft DBE goal" on those contracts without federal funding.

Interviewee #CON11, an SBE-certified white female ergonomic prime consultant, recommended making the RFP process easier including requiring "less paperwork."

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, noted that "a lot of times" Consortium responses to questions about a particular RFP come too close to the due date of the proposal and raise additional questions that could impact the proposal. He stated that he understands the cut-off for receipt of additional questions but noted that it could affect an individual's ability to respond to a proposal. Interviewee #CON13 stated that some RFPs have page limitations which can be detrimental. Interviewee #CON13 also stated that some RFPs do not provide evaluation weighting information.

Interviewee #CON14, a Latin American male owner of a DBE-certified marketing firm, recommended that the people drafting the RFPs should be more qualified in the particular field. He stated that often the RFPs are written for engineering companies and then modified or tailored for communications projects but they retain qualifications that are "ridiculous" and not applicable (e.g., an insurance requirement).

Interviewee #CON17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, reported that her recommendations deal more with the delivery side of the process. Interviewee #CON17 stated that there is a disconnect between prime consultants and agency managers. Interviewee #CON17 recommended that agencies do a better job of "in-reach" to hold personnel accountable with regard to the commitments made during the proposal and planning stages of job and team formation.

Interviewee #CON20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, recommended that the Consortium cut down on the amount of paperwork associated with the bidding process. She stated that there are a lot of redundant forms that ask questions regarding, for example, lobbying, childcare facilities, etc. which often must be resubmitted twenty (20) times a year. She stated that there should be one form that captures all of the information so that they only have to go through the process once a year.

Interviewee #CON29, an African American male-owned electrical contractor, recommended that the Consortium make the process small business-friendly. He suggested streamlining efforts to make it easier to understand the proposals as well as the qualifications for the proposals and making them obtainable goals. He would like the certification process to be simplified. He stated that if the government really wanted to help small businesses they would have a checks and balances system in place for businesses who are supposed to get a percentage of the dollars to actually get the dollars.

Interviewee #CON33, a white female-owned DBE/WBE/SBA-certified management consultant, recommended that the Consortium reduce the number of addendums to the RFPs which would simplify the process.

Interviewee #CON34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended eliminating bureaucratic hurdles in the bidding process.

Interviewee #CON55, a representative from a white male-owned large construction services and program management firm, stated that the Consortium should re-write the parameters in the proposals.

Interviewee #CON58, a white male owner of an engineering consulting firm, indicated that it may take a Consortium member agency one year to put together an RFP, but when it is released they will request a response within two weeks. He noted that sometimes the deadlines conflict with national holidays, and he offered that the agencies could be more considerate of the timing.

Several interviewees recommended that the Consortium unbundle, and segment larger contracts into smaller ones in order to increase opportunities for small businesses.

[Interviewees #CON: 2, 15, 30, 31, 32, 38, 43, 50, 53]. Interviewee #CON2, a DBE-certified African American male structural engineer in the San Diego area, recommended that the Consortium break larger contracts into smaller ones.

Interviewee #CON15, a Hispanic American male owner of a MBE-certified engineering and construction company, recommended that the bidding process reflect the breaking down of contracts into smaller segments. Interviewee #CON15 noted that the bidding process and the contracts are, themselves, too big. He said that he would like to see contracts broken down into more management segments so that companies his size can bid on more projects.

Interviewee #CON30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that the Consortium should divide larger contracts and split them down into smaller contracts so that the smaller firms can become more competitive for contracts; this will also do a better job of ensuring more minority and small business participation in becoming prime contractors and dealing directly with the Consortium.

Interviewee #CON31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he thinks it would be a great idea for small businesses to be able to negotiate directly with the Consortium as it relates to the bidding process. Also he thinks that there should be some sort of system in place that breaks down the requirements of projects so that a \$10 million project which might have \$200,000 worth of masonry can be bid out in smaller portions (which is what he would want to bid on). He stated that he can never be the prime contractor on that type of project or be able to bond for a \$10 million project but if he's bidding on a \$200,000 project he becomes more competitive.

Interviewee #CON32, an African American male-owned DBE-certified distributor of cleaning products, stated the Consortium should enable smaller companies to obtain smaller contracts so that they can establish a track record with a prime contractor which could lead them to getting larger contracts.

Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the structures of the contracts should be unbundled allowing more specialized bidding. This will allow bidders to bid within their own scope of work; he stated that some of the RFPs have you locked in a crazy perimeter of work. He also said they should make it fair and closely monitor the "Good Old Boy Network."

Interviewee #CON43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that the Consortium should develop a system that allows small businesses to be truly competitive on the bidding process; this would include some form of segmenting larger contracts into smaller ones.

Interviewee #CON50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the awarding entity should unbundle the contract so that smaller businesses have an opportunity to bid. He stated the Consortium should stop consolidating the contracts into one large all-inclusive contract that may, due to the scope of work and price, diminish the chance of a small business to be awarded the contract.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, stated that some of the Consortium projects are too large and they are always awarded to the larger firms. He recommended that the Consortium make the contracts smaller so that a firm can realistically go after it and do the job.

Some interviewees recommended the Consortium take efforts to encourage growth of small businesses. [Interviewees #CON: 3, 27, 47, 55, CONTA #1, PF #26]. Interviewee #CON3, a non-DBE white male owner of an environmental services company in the San Diego area, made the following recommendations for improvement to the Consortium DBE Program: spend an adequate amount of money to encourage participation. For instance, spend money to allow prime contractors to mentor and work with DBEs who may be less experienced.

Interviewee #CON27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that it has been more difficult to obtain business since the passage of Proposition 209. He stated that as a result he has been forced to market in other areas. He stated that since his firm is not a small business, nor a large one, he needs another stream of dependable work.

He said that the Consortium should help small businesses become larger businesses so that they do not remain stagnated in the small business category.

Interviewee #CON47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that small businesses should have the same opportunities as larger companies and the Consortium should give small companies a chance so that they can grow. He stated that if they continue to give all of the jobs to the large companies the small companies will never have the opportunity to compete. He stated that L.A. County MTA will not award a contract to a small company if it deems it to have insufficient experience or annual revenue; and, he stated the L.A. County MTA will automatically assume that to be the case if it is a small business as all of them are placed in the same category. He stated that this is a bad business model. He stated that jobs are hard to finance and it seems as though the rules are set in place to eliminate businesses as opposed to assisting them. He indicated that he has pursued the same contract year after year, but it always goes to the incumbent; it has become a waste of time and money.

Interviewee #CON55, a white male owner of a construction services and program management firm, recommended that the Consortium find a way that comports with Proposition 209 to enable small and minority-owned firms to obtain work.

CONTA #1, the President of the Latino Business Owners of America, stated the agencies should also work to create stepping stones to grow small businesses. Further, he stated that the Consortium needs to change the perception that there is no gain to doing business with Consortium agencies and that the agencies are open to working with small businesses. CONTA #1 recommended that the agencies should go back to the drawing board and change the way that they do business. He stated that the contracts should be realistic in terms of the scope of work made available to DBEs. He also suggested that the agencies focus more on growing small businesses. He stated that unless the agencies help grow small businesses, all of the project supplies, for instance, will be imported.

PF #26, an individual representing a certified MBE/DBE engineering company provided oral testimony at a public forum held on October 21, 2009. He said, "I hope that SANDAG will adopt mandatory subcontracting minimums in contracts." He also stated that, "I'm hoping that SANDAG will consider giving special preference points to small and local businesses, and not just for everybody." (Public Forum San Diego held on October 21, 2009).

Some interviewees recommended relaxation of the participation goals in certain instances and expansion of other opportunities for small businesses. [Interviewees #CONTA: 1, 53]. CONTA #1, the President of the Latino Business Owners of America, recommended that the Consortium make realistic participation goals for small businesses. The allocation of contract dollars has to be realistic in terms of availability of DBEs. If there is no availability of DBEs in a particular area, the program should be focusing on creating availability. Additionally, the agencies often want to deal exclusively with one vendor who can supply multiple products, which excludes smaller vendors. The agencies should alter their practice of hiring a one source vendor to include smaller vendors.

Interviewee #CON53, a white male owner of a traffic, transportation, and engineering consulting firm, stated that he does not believe that any group should be forced to use a particular group because of their size, race, or gender; rather, everything should be left up to a firm's work history.

Recommendations related to DBE programs.

Some interviewees recommended that the Consortium avoid eliminating race-conscious participation goals. [Interviewees #CON: 12, 13, 19, 48, 49, PF #1, 2, 11, 21]. Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the Consortium should be “consistent” in its implementation of the DBE Program and “not do what Caltrans did ...” He stated that Caltrans “went race-neutral” and left the local agencies to “do whatever they please ... and to ignore DBE participation, if necessary, because they have something lined up for someone.” He stated that they had a direct experience with a local panel who told them that DBE was not that important. He stated that the Consortium should continue equal treatment of all DBEs. He stated that Caltrans did not take demographics into effect and the fact that there are more Hispanic Americans in the southern California area. He stated that limiting the DBE Program to certain races would be a “mistake.”

Interviewee #CON13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, noted that many projects today do not have a DBE requirement, but rather just encourage participation. He stated that in many instances that is reasonable because there are not DBEs that do that kind of work. Interviewee #CON13 stated that opportunities for DBEs are shrinking and many states have done away with the DBE Program altogether, which is “bad” for his ability to get work. Interviewee #CON13 stated that he understands why states are curtailing the DBE Program, but he does see value to the DBE Program too. He stated that in the “big picture,” he does not know whether the DBE Program is good or bad, but it has certainly helped his company to survive. He stated that his company has done some great work for the Consortium so both he and the Consortium have benefited.

Interviewee #CON19, an MBE-certified African American male attorney, stated “the playing field should be leveled” where the minority law firms can fairly compete for business and for more desirable business.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, recommended that the Consortium bring back the requirement for the utilization of DBE and MBE firms that was in existence before Proposition 209. He stated that once the Consortium eliminated the requirements in favor of goals, his telephone stopped ringing for new work. He stated that the L.A. County MTA had one of the strongest programs, and he hopes that they would return to that in the future.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that Consortium contracts should no longer be race-neutral and should require utilization of minority-owned firms.

PF #1, an African American individual representing his MBE/DBE energy company, as well as a black business association, provided oral testimony at a public forum held on October 20, 2009. Since 1990, his firm has submitted over 80 bids, however, their rate of success is very poor. He stated that without goals included on all public sector contracts, small business owners will not be treated fairly. He stated, “Without goals at Metro, in particular goals for the inclusion of African Americans, any program will be doomed.” (Public Forum Los Angeles held on October 20, 2009).

PF #2, an individual representing an office products company, as well as a black business association, provided oral testimony at a public forum held on October 20, 2009. His firm has been bidding on contracts since 1980 and has had very poor results. Other members of the black business association stated that few contracts were ever awarded to minority-owned firms. He stated that there seems to always be an impediment to minority participation, even though the opportunities are there. He wants LACMTA to include goals in all of their contracts. He said, "If there are no goals, I think it's going to be quite bleak for the minority-owned businesses." (Public Forum Los Angeles held on October 20, 2009).

PF #11, a female individual representing a real estate company said, "We have noticed a difference in the way that they have represented contracts for minority and big-ticket holders." She stated that she and her company have found that there are no participation goals included in contracts. These goals are crucial to her company, and have affected their business "in a big way." (Public Forum Los Angeles held on October 20, 2009).

PF #21, an individual representing a dry utilities company stated that they are qualified as a MBE, SBA8A and woman-owned small business. He began by addressing the genuine need for dry utility work on all public agency projects. He stated that his firm was willing and able to work throughout California, and that they have been consistent in their business pursuits to secure work with prime contractors. However, he stated that they had very little contract award success. He stated that his understanding is that without federal funding attached to the project, there are no goals included on the project to hire MBEs, WBEs or DBEs. "Without such goals, WMBE's and others are not being hired, and it is a huge problem. It is a problem that permeates the entire system." (Public Forum San Diego held on October 21, 2009).

One interviewee recommended that the Consortium should be sure to update its programs to keep them current with the state of business operations. [Interviewee #CON: 54]. Some interviewees offered mixed perceptions regarding continuing the Consortium DBE Program [Interviewees #CON8, 12]. Interviewee #CON8, a white male owner of an environmental consulting firm in the San Diego area, stated that he "resents" the DBE Program and having to comply with it. He stated that on non-Consortium projects a DBE requirement will sometimes be the deciding factor as to whether he decides to bid on the project. Interviewee #CON8 stated that the DBE Program is a time-consuming added requirement.

Interviewee #CON12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that based on his experience with LA County MTA and OCTA, he did not have any recommendations for improving the DBE Program "provided that it continues to exist." He stated that the Caltrans process has led to some confusion and disadvantage.

Some interviewees recommended that the Consortium return to mandatory DBE goals. [Interviewees #CON: 38, 48, 49]. Interviewee #CON38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the Consortium should return to the time when the goals were mandatory and were strictly enforced. He stated that they should level the playing field where public money is spent as it relates to small businesses involvement. He recommended making the project distribution fair by allowing all qualifying firms to become part of the bidding process.

Interviewee #CON48, a DBE/MBE-certified African American male owner of an electrical contracting firm, indicated that prior to the passage of Proposition 209, 85 percent of his business was attributable to his DBE certification; now it is less than 1 percent. He stated that he would like the certification to mean something.

Interviewee #CON49, a MBE/SCRPC-certified African American male owner of a job training firm, recommended that the Consortium have an initiative based on ethnic status. He feels as though this would help fight discrimination.

Caltrans Anecdotes Regarding Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

Educational, training, technical skills.

Most interviewees were not aware of any Caltrans programs aimed at educating, training, or improving the technical skills of small or disadvantaged business owners. Several interviewees thought such programs would be helpful. Interviewee #CT44, a Middle Eastern male-owned firm, does not know about any educational/training programs to increase opportunities for small businesses to participate in Caltrans projects. He wishes Caltrans offered such programs. Interviewee #CT16, a white male-owned firm, attended a program in San Diego put on by Caltrans in conjunction with the Federal Highway Administration (FHWA) for professional development, and he feels that it was "a really good conference." CATA #3, a Hispanic trade association, said that there were some promising educational and training programs coming out of District 7 (he said he did not know about others), including a high school mentor program to promote careers in the construction and professional services fields.

Some interviewees had experience with non-Caltrans training programs. Interviewee #CT79, an African American male-owned firm, said the City of Los Angeles sponsored a training session for contractors at the mayor's office. Since Interviewee #CT79 is well-known and respected in his field, he was asked to recommend additional contractors to participate. The program was called "Business Boot Camp," and Interviewee #CT79 served as a mentor. The Los Angeles United School District also provided some training on the DBE certification process. He found these programs to be very helpful, and wishes there were more.

CATA #10, an Asian American trade association, stated he did go to a few educational/training programs but that they need improvement, particularly with regard to the selection process, preparation of the RFP, and training on how to prepare for auditing.

Assistance with financing, bonding, and insurance.

Very few interviewees were aware of any programs aimed at assisting small businesses obtain bonding, insurance, or financing, and even fewer have participated in such programs. Many of the DBEs interviewed believed that such a program would be helpful, but some interviewees were not interested in such a program. Interviewee #CT40, a white male-owned firm, stated that when the DBE program was in existence, his company had to provide some programs that assisted with

bonding, insurance, financing, and educational programs — none of which he agreed with: “If you’re going to be in business, you should know how to do that stuff.” CATA #2, an African American trade association, said that the State of California had programs to assist with bonding and insurance and that, though prime contractors are supposed to help subcontractors get financing, he had never seen it because some DBE firms do not want this kind of help and/or prime contractors do not want to give it.

Interviewee #CT49, an African American male-owned firm, said that Caltrans “at one time” helped out with bonding, insurance, and financing. Interviewee #CT48 an Asian American male-owned firm, stated that he receives information on programs to assist businesses with bonding, insurance, and financing, but he said that he could not remember if this information was from Caltrans or some other agency.

CATA #3, an Asian American trade association, said that he had not heard of Caltrans offering any programs to assist with bonding, insurance, and/or financing, but he again mentioned the U.S. Department of Transportation’s loan guarantee program and suggested it as something Caltrans may wish to consider replicating.

Interviewee #CT9, a white male-owned firm, stated that he was aware of Caltrans’ outreach efforts through various liaison committees, but that attending a seminar and being selected for a project “are two different things[,]” and that outreach and training “won’t be the whole solution...” Interviewee #CT9 stated that he had attended Caltrans-sponsored seminars for specifications, cost-estimating, and seismic research (the latter were coordinated with local universities), and that these programs had been “very rewarding.”

The remaining interviewees had no knowledge of programs sponsored by Caltrans to assist with bonding, insurance or financing.

Efforts to segment larger contracts into smaller contracts.

Most interviewees were not aware of efforts by Caltrans to segment larger contracts into smaller pieces to promote opportunities for small and mid-sized firms to act as primes.

However, many interviewees would be in favor of this effort. Interviewee #CT81, a Hispanic male-owned firm, does not have any knowledge of Caltrans efforts to segment larger contracts into smaller ones, but that would be “great.” Interviewee #CT1, a Native American male-owned firm, does not think Caltrans needs to streamline the bidding process because it is okay as it is. He thought it would be a “good idea [and] ... a wonderful thing” for Caltrans to segment larger contracts into smaller contracts. Interviewee #CT13, a Pakistani male-owned firm, had no knowledge of or experience with Caltrans trying to break up larger contracts, but he said that this is something that Caltrans should do.

Interviewee #CT7, a white female-owned business, has had no experience with or knowledge of Caltrans trying to segment larger contracts into smaller ones, but suggested if Caltrans is going to do so, it should “exclude the big boys [from bidding] and then allow the big boys to compete [only] if there aren’t any qualified GM medium or small size firms that are submitting them [bids].”

Interviewee #CT75, a white male-owned firm, has not heard of any efforts by Caltrans to break up large contracts into smaller projects in order to provide small businesses an opportunity to participate.

He thinks it would be “stupid” to do so, as there are plenty of opportunities for smaller businesses, provided, of course, they can afford the bonding requirements.

Some interviewees were aware of this effort by Caltrans. Interviewee #CT45, a white male-owned firm, stated that Caltrans does segment some large contracts into smaller ones, but “they don’t do enough of it.” Interviewee #CT50, a white male-owned firm, has heard that Caltrans is making efforts to segment larger contracts into smaller contracts. He feels this is a good idea because certain sections of a project would have to be divided up and handled by specific groups within a large firm anyways.

CATA #1, an Asian American trade association, said that he had heard from Caltrans’ director and others about a commitment to segment more of Caltrans’ larger contracts to promote opportunities for small businesses and that he understood that District 4 and District 7 had been doing this, but also that he and the Association’s members wanted to see this commitment become a formalized policy.

Interviewee #CT11, a Native American male-owned firm, is aware that recently, District 7 broke what could have been one or two very large contracts into three or four. Interviewee #CT11 knows that one of the contracts did go to a smaller business and that there is an effort to go that route, which he thinks is “outstanding.”

CATA #10, an Asian American trade association, stated he has seen some effort to segment contracts but it is easier for Caltrans to manage one large project than many smaller projects and Caltrans thinks it is more cost effective although he disagrees with this because small firms are more competitive than larger firms.

Recommendations related to remedies.

Several interviewees suggested that Caltrans should increase its outreach efforts, such as training programs and job fairs. Interviewees suggested Caltrans host industry-specific job fairs. This would allow vendors and contractors to use their time and money more efficiently by attending and marketing at only those events where others in their field are likely to be. Caltrans should encourage older, more established DBE businesses to attend DBE gatherings, as well as foster introductions between large and small contractors.

Interviewees said Caltrans should continue and further develop educational workshops on how to do business with Caltrans or how to submit bids. Caltrans should conduct targeted programs such as how to obtain certification, how to fill out bid forms, and how to navigate the Caltrans website. Caltrans could design programs to teach DBEs and small businesses how to compete in the private sector, including workshops on how to estimate costs and how to market effectively.

Interviewee #CT34, a white male-owned firm, recommended sponsoring “large-scale contracting workshops that deal with the consulting sector as a whole,” to have “targeted days or targeted workshops that [ar]e geared specifically toward the various disadvantaged business categories.” Interviewee #CT34 noted that, currently, Caltrans’ outreach “seems to be very project-oriented, as opposed to need-oriented,” and he suggested that Caltrans’ focusing its outreach on specific firms and/or specific services might be a better way of “getting the word out in terms of what the opportunities were.”

Interviewee #CT79, an African American male-owned firm, suggested increasing the number of training programs. CATA #1, an Asian American trade association, would like Caltrans to offer education and training programs for small firms on how to use its software for design work so that these firms can better compete for Caltrans jobs. CATA #11, a minority trade association, would like Caltrans to facilitate meetings between general contractors and minority firms. His members often make business connections at their meetings. CATA #3, a Hispanic trade association, would like Caltrans to expand upon its outreach efforts, especially in the professional services area, and begin hosting and/or sponsoring quarterly mixers where Caltrans staff and officials, prime contractors, small businesses, and DBE firms can all come together to get to know each other and learn about upcoming work opportunities. Caltrans should also offer workshops on how to prepare and submit proposals that meet Caltrans' needs. In order to ensure clarity in the bid documents, Caltrans should have a panel of DBE firm and small business representatives review Caltrans' current RFPs and recommend improvements.

Interviewee #CT44, a Middle Eastern male-owned firm, recommends that Caltrans focus on improving its methods of communication with contractors. He wishes that Caltrans advertised bidding opportunities more prominently and were otherwise engaged in efforts to make sure small businesses knew about them. CATA #1, an Asian American trade association, suggested Caltrans implement an "e-blast" system (like it used to have with "fax-blast") for advertising its jobs.

Interviewee #CT67, a white female-owned firm, recommended that Caltrans do a better job of outreach and notification.

An African American consulting firm suggested, at a public hearing in San Diego, that the project managers and engineers attend the procurement fairs and roundtables. "You'll do the procurement fairs, but you go out ... and you don't have the participants or the projects managers going. The next level is where you would have the project engineers at these events, you know, very, very much roundtables." He would also like to see more "informal meeting, either going out to lunch or in the office where it's one-on-one time or they are a member of the AGC and they are a member of an advisory committee ... its' you and eight people and ... the public agency basically asking every question they want to." (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, stated, at a public hearing in San Diego, that DBE firms "don't market themselves correctly. They are not selling themselves to the primes correctly. And that needs to be looked at." (P.H. San Diego, 3/22/07). A white male-owned consulting firm testified, at a public hearing in Los Angeles, "you need to market yourself because being on the list is only the first step. You have to take an active role in knocking on doors like you would in any business and show your wares and discuss your expertise because that's what's going to get you the work." (P.H. Los Angeles, 4/4/07).

Some trade associations suggested Caltrans develop a formal partnership in order to reduce duplicative efforts and enhance the effectiveness of Caltrans' program. They point out the officials and administrators working for Caltrans appear to have many connections with area trade associations, but there is no formal line of communication that holds a specific office or official responsible for maintaining these relationships and utilizing their expertise. These associations suggested this formal relationship could include convening quarterly meetings in which Caltrans offers an open invitation to trade associations to discuss all entities' programs and outreach. This

partnership, they recommended could also coordinate the certification process between the trade associations and Caltrans to reduce redundancy. They suggested Caltrans could advertise and encourage businesses to attend events hosted by trade organizations, as well as inform vendors and contractors of the variety of trade organizations and their individual missions.

Many businesses suggested breaking larger contracts into smaller pieces so that small businesses or DBEs could participate as primes. [Interviewees #CT: 1, 7, 8, 11, 12, 64, CATA #1, #2, #7]. Interviewee #CT51, a Hispanic male-owned firm, pointed to the importance of increasing work opportunities for DBEs, stating, “I think the one thing that I have said before is the more that they increase the participation in the contract, the more people are going to have an opportunity to work.” Interviewee #CT12, an African American male-owned firm, suggests that smaller jobs would make Caltrans more “accessible” to small companies.

Interviewee #CT1, a Native American male-owned firm, stated that he is unable to take on contracts that are more than a couple hundred thousand dollars a year.

Interviewee #CT8, a Hispanic male-owned firm, is not aware of anything Caltrans had done to simplify or streamline the bidding process (which Interviewee #CT8 feels was “pretty easy” already) or to segment its larger contracts so as give more opportunities to smaller businesses, though he said, “I’ve often thought of why they didn’t do that [break their contracts up].”

Interviewee #CT29, a Hispanic male-owned firm, stated that Caltrans should not waste people’s time if the incumbent is going to be selected anyway, and his suggestion is for Caltrans to allow companies to be more upfront about whether the opportunity is really there. Also, the bundling of projects makes the projects out of reach for small entities, and so Caltrans should break them down into smaller projects.

Interviewee #CT51, a Hispanic male-owned firm, thought it would “be good” if Caltrans were to break up its larger contracts, although he did not know how Caltrans would go about breaking up a highway project, and he wondered if breaking up contracts would drive up costs. He said that Caltrans would be better off increasing the participation of DBEs on its contracts than trying to break its jobs down into smaller bidding contracts.

CATA #1, an Asian American trade association, suggested that Caltrans set aside a certain number or percentage of its contracts for segmenting. Caltrans should break down more contracts to provide more opportunities for small businesses to work as prime contractors.

Some interviewees recommend Caltrans should make drawings and bid papers more accessible and more affordable by developing an electronic format (available through the internet or on CD ROM). These interviewees said the goal should be to reduce the cost burden placed on contractors while maintaining an effective and fair bidding process. Some of the issues these interviewees say to consider include 1) whether the number of copies required to bid can be reduced; 2) whether answers to some of the information required at the initial bid (i.e., bonding) can be postponed until the contractor moves a step closer to successfully winning the bid; and 3) whether the standard forms and process are appropriate for distinct procurement categories.

Some interviewees suggested that Caltrans foster a program that focuses on development of small businesses, which might limit bidding on selected small contracts to those registered as a small business with Caltrans [CT Interviewees #49, #63]. The purpose of this program would be to reduce the perception of large, national contractors being awarded small Caltrans contracts. Alternatively, interviewees suggested Caltrans initiate a preference for small businesses that operates similarly to its local preference allowance. Interviewee #CT49, an African American male-owned firm, recommended to improve Caltrans DBE program that Caltrans (as he understood some other agencies had done) implement a preference and/or percentage requirement for small business utilization on its project, and he said that doing so would be a “very good thing” for businesses that are just starting out.

Interviewee #CT65, a white male-owned firm, sees large contractors always getting bids because smaller companies are not receiving subcontractor opportunities. Interviewee #CT65 stated that most small business are becoming disadvantaged because they cannot get work, as they are so small, or the work is being done in-house. No small contractors can afford the insurance and bonding requirements that are as large as those required by Caltrans, so there is no point in even bidding for work. He notes that while women and minority owned business continue to get special privileges, the single, one-man companies are becoming an “endangered species” when they’ve been the mainstay of the industry.

Some interviewees suggested promptly informing all bidding contractors of the name of the company that won the contract. This would afford them the opportunity to raise any issues or problems as to the bid process and contract in a timely manner. Knowledge of successful bidders also encourages other companies to seek them out as potential partners in future contracts. Interviewees suggest informing contractors of the reasons behind their loss of the contract to promote review and growth. A Hispanic female-owned consulting firm stated, at a public hearing in Los Angeles, “Firms have listed DBEs to meet contract-specific goals without notifying the respective DBEs that they were named in the bid or proposal.” (P.H. Los Angeles, 4/4/07).

Recommendations related to DBE programs.

Some interviewees recommended that Caltrans eliminate its DBE program altogether.

Interviewee #CT17, a white male-owned firm, stated: “I’d like to see [Caltrans’ DBE program] abolished myself.” He believes the “status quo” should change, but not so much with respect to DBEs as with respect to the Caltrans bidding process (how Caltrans selects and awards bids), which he said frustrates him as a taxpayer.

Interviewee #CT17 suggested Caltrans needs to look beyond ownership and “get more in the business of finding out how many minorities [a] firm has working for them instead of a business that could be owned by a woman ... [but] not have any minorities at all working there.” Interviewee #CT17 stated that his firm has “more Hispanic, Asian, and Middle Eastern [people] working here than probably whites,” and expressed frustration that the DBE program is focused only on ownership. According to Interviewee #CT17, if the goal of the DBE program is to increase the number of people of color working in the transportation industry, then the program does not accomplish this goal by looking only at a firm’s ownership.

Interviewee #CT40, a white male-owned firm, would like the DBE program disbanded in its entirety. She thinks there should only be some sort of emerging small business program rather than DBE categorizations. She has spoken to several contractors, and notes that the process for getting certified as a DBE is entirely too difficult and there is too much paperwork. She notes that one subcontractor who was a DBE did not even go through with recertification because the process was so daunting.

Interviewee #CT69, a white male-owned firm, believes the DBE program should be terminated altogether. He feels that is the only way he has a fighting chance of getting work. The suspension of the DBE program last year flooded his business with work. Interviewee #CT76, a white male-owned firm, is in favor of eliminating the program and feels the preferential treatment given to DBEs is unfair, as well as completely unnecessary.

Some interviewees suggested a time limitation be placed on the DBE program. Interviewee #CT9, a white male-owned firm, stated that, fundamentally, he was not sure if he agrees with the DBE program. He did state that it should be “a time dependent function,” such that a business should be accorded DBE status for only a limited period of time. According to Interviewee #CT9, “it’s fine for you to have a DBE certification for a period of time,” but that “after five years you need to be on your own, or your business should shut down.”

Some businesses suggested that Caltrans should reinstitute the race- and gender-conscious goals. CATA #10, an Asian American trade association thinks “throughout the state there are many, many available, willing, and capable DBE firms but if Caltrans does not send the message to the big firms, they are not willing to team up with the small firms. But if Caltrans has the top commitment and sends the message to the larger firms [requirement of 10 percent goal or higher (“which would be better”)] ... if that message is there then you will see a big improvement on DBE participation.”

CATA #3, a Hispanic trade association, is in favor of making the program “race-conscious.” CATA #2, an African American trade association, said that the impact of not having any goals or preferences for firms owned by people of color and women can be seen in California by looking at the data from the awarding of public sector contracts in the pre-2009 and post-2009 eras, and that California was unique in this regard. According to CATA #2, a DBE program is needed because “without a program, the primes are just not going to do the right thing. They’re just not.”

Interviewee #CT31, an African American female-owned firm, stated: “Well, the heart of it is [that] if there are those firms that exist, if they do not continue to exist, then there will not be firms that can be contracted. And there will not be new firms coming up behind them. So if Caltrans is not making an effort to ensure that WMBEs not only have access to but actually are awarded contracts there will not be a Caltrans DBE program because there will not be any [DBEs]. I mean, bottom line is if you are without a contract you are not going to be in business. I do not care what business you are in. If you do not have the work and if you do not get paid, you are not going to be in business.”

Interviewee #CT39, a Hispanic male-owned firm, recommended that the DBE program be reinstated because, according to him, “small companies like us ... without the DBE, we wouldn’t even exist. It might be new companies want to start up; they’d find it hard.” Interviewee #CT67, a white female-owned firm, said that dropping the DBE program would be an “insult” because it would show that Caltrans is not concerned about small businesses. She recommended Caltrans: keep the program; develop a good mentor-protégé program; do more outreach to, among other things, spread awareness

of the program and work opportunities; and do a better job of communicating with small businesses and DBE firms.

CATA #1, an Asian American trade association, stated Caltrans should increase the DBE goals on its project. A small African American owned construction company who reported falsification of good faith efforts stated “my personal feeling is that it shouldn’t be a goal. It should be a requirement.” (P.H. San Diego, 3/22/07).

Some interviewees suggested setting aside certain projects for DBEs. CATA #3, a Hispanic trade association, would like Caltrans to earmark a certain number or percentage of small contracts for DBEs each year. Interviewee #CT32, an Asian American female-owned firm, suggested that Caltrans could improve its DBE program by setting aside small dollar values for DBEs, so that DBEs can start relationships with other businesses and “see how the business relationship works out with that initial project and then grow from there.” She said that she did not think that “just setting goals with these large businesses really works or is effective” and that she thinks Caltrans “need[s] to really go directly to the DBEs.”

Interviewee #CT32, an Asian American female-owned firm, said that “just like [in] the federal sector... , DBEs can get a large business to be a sub for them,” and she felt that this arrangement would be a “win-win for everybody.”

Interviewee #CT7, a white female-owned business, suggested that Caltrans keep an on-call list and award jobs to DBEs by rotation, as the MTA does. He stated that Caltrans “needs to create a bridge from DBEs to primes” because when a firm loses its DBE status due to its exceeding the net worth threshold, “you’re still too small to be a prime unless you have a specific area of specialty that nobody else offers.” She noted that such niche firms were more common in the biology and environmental reconnaissance fields but stated that “in engineering that’s really hard to have and there’s no bridge there from being a DBE to be[com]ing a prime because there’s so much emphasis placed on size.”

Interviewee #CT13, a Pakistani male-owned firm, recommended Caltrans subdivide its projects into smaller ones that can be handled by DBE firms. This way, suggested Interviewee #CT13, the DBE firms could deal directly with Caltrans instead of “being at the mercy of some big prime” to be part of the team: “Why does it always have to be that we are at the mercy of some prime to benefit from DBE status when Caltrans can have those benefits directly, rather than going through all these extensive programs of mentoring and certification ... [and] awareness?” According to Interviewee #CT13, Caltrans does not need “all these mentoring programs and stuff like that” but instead needs to simply make sure that DBE firms — and not the same ones over and over again — are used.

Interviewee #CT13 recommends Caltrans require prime contractors to rotate the DBE subcontractors they use on different projects, so that different DBE firms would have the opportunity to work for these primes (instead of the same firms getting all the work).

Some interviewees suggested Caltrans advertise and promote the DBE program. As part of this effort, Interviewees said Caltrans should inform businesses of the Caltrans contractor directories and encourage prime contractors to use the directories to find quality DBEs and small businesses. They stated Caltrans should keep the directories current and accurate and provide methods whereby vendors and contractors can easily submit updated information. Interviewees suggest Caltrans could collaborate with trade organizations to create a comprehensive directory.

CATA #3, a Hispanic trade association, would like Caltrans to publish and publicize a comprehensive directory listing DBEs categorically, both alphabetically and by the services they provide. Interviewee #CT68, a white male-owned firm, recommended making contractors and vendors more aware of the DBE program.

Some interviewees suggested greater communication and notification of opportunities to work with Caltrans. CATA #11, a minority trade association, believes the main barrier in his members pursuing Caltrans work is lack of knowledge. He would like Caltrans to publicize all their projects in a very open manner and provide a complete description of the scope of work (not just a one liner like “ramp widening”). He would like Caltrans to tell contractors where to pick up the plans and who they can go to with questions.

Interviewee #CT46, an Asian American male-owned firm, said that “the important issue is communication.” He stressed that it is important for Caltrans to make available to businesses someone with whom they can talk in person and suggested that Caltrans could create liaison or outreach officers that would be assigned to different categories or alphabetical groupings of companies.

Telephone Interview Anecdotes Regarding Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from telephone interviews that the study team conducted in connection with BBC’s availability analysis of Southern California firms.

Some telephone interview respondents recommended that public agencies should segment large contracts into smaller entities. Both MBE/WBE and majority-owned firms indicated that smaller contract elements would benefit small firms. For example, a minority-owned firm said, “[Public agencies] should be able to make the bids smaller so us small guys can bid on them.” **A number of telephone interview respondents recommended that public agencies streamline or simplify their bid processes.** Many firms commented that bid processes in the public sector are too complicated, making it difficult for small firms to get through them. For example, one respondent, representing a majority-owned firm, commented that he would like to see “simplification of the bid process.” He said that currently, the process to bid on public sector work is as difficult as “buying a house.” He went on to say, “I’m a veteran-owned business and don’t have a staff to do the [bid] process so simplification is the best and easiest solution.”

Some telephone interview respondents recommended that public agencies should base contract awards on qualifications rather than on price. Some firms expressed their opinion that always going with the low bidder sometimes results in unqualified firms winning contracts. For example, a respondent representing a majority-owned firm said: “[Public agencies] shouldn’t always go with low bid — [they] should go with well qualified bid[s]. There are people in the business that aren’t well qualified.

N. Recommendations by Interviewees to Improve MBE/WBE/DBE Participation

BGPAA Study Anecdotes Regarding Recommendations by Interviewees to Improve MBE/WBE/DBE Participation

Some interviewees recommended that the Airport Authority set goals on projects for the utilization of MBE/WBE/DBEs and/or small businesses and monitor good faith efforts.

[Interviewees #BGP: 10, 15, TA #2]. Interviewee #BGP10, a principal at an engineering firm, recommended that agencies provide a numeric goal for use of small businesses and then give more points during evaluation when that goal is met. He said that this will incentivize primes to meet the goal and use small businesses. He said that some agencies say that they have a goal or that something is important to them, but they do not provide any points for meeting that goal during evaluation, so “it doesn’t mean anything.”

Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, recommended more complete monitoring of reported good faith efforts.

Interviewee BGPTA #2, the president of the Southern California Chapter of the National Association of Minority Contractors, recommended putting MBE/WBE/DBE participation requirements in solicitations in the design build process. He said, “Because what happens, is [the Airport Authority] send[s] it out to a select few engineers, they send it out to their people, their people send it, their people get involved, [and] the next thing you know you have a whole group or a team working on a project, or nine times out of 10 the guy who designed it is mechanical is going to be the guy who is bidding on it. He designed it, so he already has one foot in the door and there is no requirement to include other companies in that process.” He said that this happened on a Burbank project and after the project had been completed he “was able to bring a team of engineers [to the table] that were local in Burbank that weren’t even notified who were qualified to do the design on parts of the designs on the project; they weren’t even notified.”

One interviewee recommended that the Airport Authority participate in outreach efforts to help connect subcontractors and primes. [Interviewee #BGP: 15]. Interviewee #BGP15, the owner of a Hispanic American woman-owned MBE/WBE/DBE-certified engineering and construction support services firm, recommended that for BGPAA to improve its MBE/WBE/DBE utilization, it should do something similar to what the Los Angeles Airport Authority does “as far as having a vendor fair [to give companies the opportunity to] meet ... prime[s].”

One interviewee recommended that public agencies establish formal complaint and grievance procedures. [Interviewee # BGP: 4]. Interviewee #BGP4, a project manager of a WBE-certified construction firm, said that formal complaint/grievance procedures at the public agency would be useful because “I do have a complaint, and I don’t know my next step from here. I really haven’t looked into it, but that would be useful.”