

Public Comment Period Comments and Responses

Below are verbal comments received during the disparity study public hearings and were included in the anecdotal appendix and analyzed in developing the considerations chapter in the final report.

Topic – Importance of prompt payment

Comment – “Prompt pay works well but for small and micro business the financial burden can be difficult to manage. For example, if a prime has submitted an invoice that is challenged for whatever reason, it can delay payment to business that does not have anything to do with the contested invoice. Agencies that provide support in finance and capacity such as allowing for initial deposits for ramp up, etc., are significantly ahead of the curve in building their supply chain of DBE's.”

Comment – “The same problem exists when the Prime (for whatever reason) delays submitting their invoices. Agencies need to push primes to submit timely invoices, and monitor and address issues with that. We waited 6 months for a payment on High-Speed Rail due to a Prime not submitting invoices for 3 months. This happens more than agencies realize.”

Comment – “One option some agencies have considered is developing an escrow account to pay SB/DBE firms right after invoice acceptance by the Prime.”

Metro Response: The study addressed comments on this topic in the qualitative data collection chapter and the qualitative data collection appendix of the report.

Topic – Negative impacts of established rates and the cost of completing an audit to be exempted from those fully loaded rates for small professional services firms.

Comment – “Small businesses that are below \$5M in annual revenues cannot operate with a cap on mark-up - it's not sustainable for us to deliver the value if we lose money on your contracts.”

Comment – “Whatever you're doing has to be economically viable. And so that means, you know, a path to prime opportunities. One, because as a sub you know your profitability is going to be severely limited. ... The drift toward task orders has created a lot more limitations on DBE vendors and SBE vendors because that means that you have to carry the bench to be able to do the work. And if you're making decisions based upon the individuals that are presented in the initial SOQs, those individuals you know often are beyond the reach of DBE and SBE vendors because you know, they're typically extremely well compensated and rest within organizations, which can be competitive disadvantage for DBE vendors. [One] model might be the Port Authority of New York and New Jersey, ... they've actually created a separate class of contracts for minority-owned and women-owned vendors. And what they've also done is they've identified the disparity between the disparity, and they focused on specific... racial groups and provided opportunities to address those disparities, but they literally created

two classes of procurements. One is the standard kind of contract. If there's a calling contract, then they created a corollary, a contract for small business, or even for minority-owned business. I know that you can't do to MBE, and instead of California, but that's a potential resource to leverage, but being able to look at procurements and look at procurement activity ... You're [LA Metro's] kind of the 800-pound gorilla regionally and even in the state. So, the culture that you create relative to procurement is very likely to be adopted by other places because they're looking at you as creating a precedent."

Metro Response: The study addressed comments on this topic in the qualitative data collection chapter and the qualitative data collection appendix of the report.

Topic – What is the goal setting process for disabled veteran-owned businesses.

Comment – "Purchasers often become comfortable with large providers, suppliers, contractors, making it impossible for small new entrants to participate. When an agency uses a firm, regularly and primes can pull them into be seen as experience in the agency environment, it eliminates the ability of SBEs to be considered... This also finds its way in when primes list potential small firms as part of their teams, but do not actually utilize them after the award. I'll give you a direct example with Metro. ... You have firms that do third party administration for project labor agreements. They are an extension of your internal administration processes. There are other firms like ours that are specifically experienced and can-do large-scale work as was described in one of the questions earlier. But the two issues that we face is you can't even see a procurement go out because these companies are already embedded into the system and if and when prime is looking for somebody to support on their side, they are typically not encouraged to ensure that it's a DBE or [not]. They are encouraged to use the existing administrative offices that Metro has around these processes or to partner with. ... Does the agency have an appetite for real time compliance review so that they can actually validate performance and adjust as companies are moving through their construction processes, especially if they're meeting or not meeting these inclusion criteria like the measurement of apprenticeship, the utilization of small businesses et cetera, ... is there an appetite for that to happen in real time rather than post-performance?" (Addressed by Taisha Smith during the meeting).

Metro Response: This comment was addressed by Metro staff during the meeting. The disparity study focuses on the DBE program.

Topic – Legal considerations around substitutions and elimination of work for DBEs and the rights of subcontractors/subconsultants as protected by the Federal DBE Program and California state law.

Comment – "Agencies should be aware of which DBEs are still under contract so they can identify any removals. They should also provide education to those firms on their rights."

Metro Response: This comment was addressed by Taisha Smith during the meeting.