

CHAPTER ES.

Executive Summary

The Los Angeles County Metropolitan Transportation Authority (Metro) retained BBC Research & Consulting (BBC) to conduct a *disparity study* to provide information for the agency in implementing the Federal Disadvantaged Business Enterprise (DBE) Program. The Federal DBE Program is designed to address potential discrimination against DBEs in the award and administration of United States Department of Transportation (USDOT)-funded contracts. The program comprises various measures to encourage the participation of minority- and woman-owned businesses including *race- and gender-neutral* measures—which are designed to encourage the participation of all businesses—and, potentially, *race- and gender-conscious* measures—which are designed to specifically encourage the participation of minority- and woman-owned businesses (e.g., using DBE contract goals).

As part of the disparity study, BBC assessed whether there were any disparities between:

- The percentage of contracting dollars (including subcontract dollars) that minority- and woman-owned businesses received on construction; professional services; and goods and other services contracts that Metro awarded between January 1, 2011 and December 31, 2015 (i.e., *utilization*);¹ and
- The percentage of construction; professional services; and goods and other services contracting dollars that minority- and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of Metro prime contracts and subcontracts (i.e., *availability*).

The disparity study also examined other quantitative and qualitative information related to:

- The legal framework surrounding Metro’s implementation of the Federal DBE Program;
- Local marketplace conditions for minority- and woman-owned businesses; and
- Contracting practices and business assistance programs that Metro or other entities in its marketplace currently have in place.

Metro could use information from the study to help refine its implementation of the Federal DBE Program including setting an overall goal for the participation of DBEs in Metro’s Federal Transit Administration (FTA)-funded contracting; determining which program measures to use to encourage the participation of minority- and woman-owned businesses and DBEs; and, if appropriate, determining which groups would be eligible for any race- or gender-conscious program measures.

¹ The study team considered businesses as minority- or woman-owned regardless of whether they were certified as DBEs through the California Unified Certification Program.

BBC summarizes key information from the 2017 Metro Disparity Study in five parts:

- A. Analyses in the disparity study;
- B. Utilization and disparity analysis results;
- C. Overall DBE Goal;
- D. Program implementation; and
- E. Qualitative Research Results Summary.

A. Analyses in the Disparity Study

Along with measuring potential disparities between the participation and availability of minority- and woman-owned businesses in Metro contracts, BBC also examined other quantitative and qualitative information related to the agency's implementation of the Federal DBE Program:

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal, state, and local requirements related to minority- and woman-owned business programs including the Federal DBE Program (see Chapter 2 and Appendix B).
- BBC conducted quantitative analyses of the success of minorities; women; and minority- and woman-owned businesses throughout Los Angeles. In addition, the study team collected qualitative information about potential barriers that minority- and woman-owned businesses face in the local marketplace through in-depth interviews, telephone surveys, public meetings, and written testimony (see Chapter 3, Appendix C, and Appendix D).
- BBC analyzed the percentage of relevant Metro contracting dollars that minority- and woman-owned businesses are available to perform. That analysis was based on telephone surveys that the study team completed with more than 1,100 Los Angeles County businesses that work in industries related to the types of construction; professional services; and goods and other services contracts that Metro awards (see Chapter 5 and Appendix E).
- BBC analyzed the dollars that minority- and woman-owned businesses received on more than 12,000 construction; professional services; and goods and other services prime contracts and subcontracts that Metro awarded between January 1, 2011 and December 31, 2015 (i.e., the study period) (see Chapter 6).
- BBC examined whether there were any disparities between the participation and availability of minority- and woman-owned businesses on the construction; professional services; and goods and other services contracts that Metro awarded during the study period (see Chapter 7, Chapter 8, and Appendix F).
- BBC provided Metro with information from the availability analysis and other research that the agency might consider in setting its three-year overall DBE goal including the base figure and consideration of a "step-2" adjustment (see Chapter 9).

- BBC reviewed Metro’s current contracting practices and DBE program measures and provided guidance related to additional program options and refinements to those practices and measures (see Chapter 10, Chapter 11, and Appendix G).

B. Utilization and Disparity Analysis Results

Utilization and disparity analysis results are relevant to Metro’s determination of which groups could be eligible for any race- or gender-conscious measures. Courts have considered the existence of substantial disparities between utilization and availability for particular groups as inferences of discrimination in the local marketplace against those groups and as support for using race- and gender-conscious program measures. In addition, that information is useful for Metro to examine the effectiveness of the measures that it is currently using to encourage the participation of minority- and woman-owned businesses.

Utilization results. The study team measured the participation of minority- and woman-owned businesses in terms of *utilization*—the percentage of prime contract and subcontract dollars that minority- and woman-owned businesses received on Metro prime contracts and subcontracts during the study period. Figure ES-1 presents the overall percentage of contracting dollars that minority- and woman-owned businesses received on construction; professional services; and goods and other services contracts that Metro awarded during the study period. As shown in Figure ES-1, overall, minority- and woman-owned businesses received 23.2 percent of the relevant contracting dollars that Metro awarded during the study period. The darker portion of the bar represents the percentage of contracting dollars—14.7 percent—that went to certified DBEs.

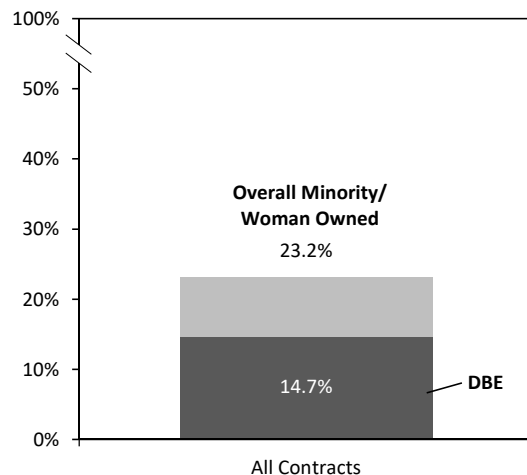
Figure ES-1.
Participation of minority- and woman-owned businesses

Notes:

The study team analyzed 12,149 prime contracts and subcontracts.
The darker portion of the bar represents participation of certified DBEs.
For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting utilization analysis.



Disparity analysis results. Although information about the participation of minority- and woman-owned businesses in Metro contracts is useful on its own, it is even more useful when it is compared with the level of participation that might be expected based on the availability of minority- and woman-owned businesses for Metro work. In the disparity analysis, BBC compared the participation of minority- and woman-owned businesses in Metro prime contracts and subcontracts with the percentage of contract dollars that those businesses might be expected to receive based on their availability for that work. BBC expressed both participation and availability as percentages of the total dollars that a particular group received for a

particular set of contracts. BBC then calculated a *disparity index* by dividing participation by availability and multiplying by 100.² A disparity index of 100 indicates an exact match between participation and availability for a particular group for a specific set of contracts (often referred to as *parity*). A disparity index of less than 100 may indicate a disparity between participation and availability, and disparities of less than 80 are described in this report as *substantial*.³ Disparity analysis results for key contract sets are described below.

All contracts. Figure ES-2 presents disparity analysis results for all construction; professional services; and goods and other services contracts that Metro awarded during the study period. The line down the center of the graph shows a disparity index of 100, which indicates parity between participation and availability. For reference, a line is also drawn at a disparity index level of 80, because many courts use 80 as a threshold for what indicates a substantial disparity. As shown in Figure ES-2, overall, the participation of minority- and woman-owned businesses in contracts that Metro awarded during the study period was substantially lower than what one might expect based on the availability of those businesses for that work. The disparity index of 74 indicates that minority- and woman-owned businesses considered together received approximately \$0.74 for every dollar that they might be expected to receive based on their availability for the relevant prime contracts and subcontracts that Metro awarded during the study period. White woman-, Black American-, and Hispanic American-owned firms exhibited disparity indices substantially below parity.

Figure ES-2.
Disparity indices by group

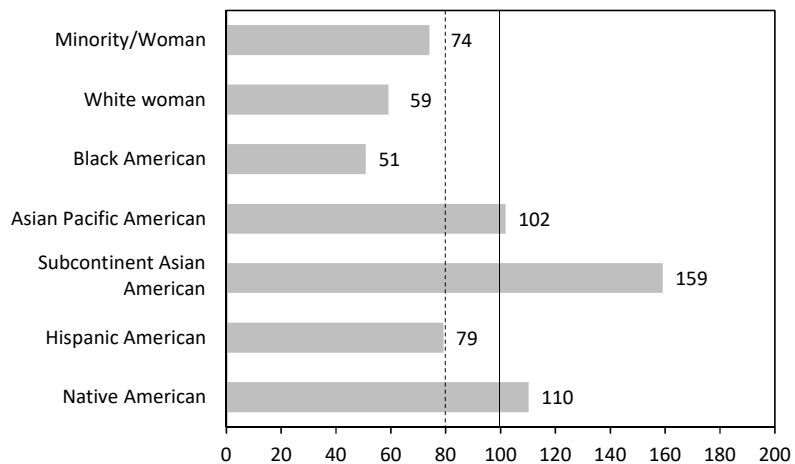
Note:

The study team analyzed 12,149 prime contracts/subcontracts.

For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting disparity analysis.



Note that during part of the study period Metro used DBE contract goals (a race-and gender conscious measure) on USDOT-funded contracts.

² For example, if actual participation of non-Hispanic white woman-owned businesses on a set of contracts was 2 percent and the availability of non-Hispanic white woman-owned businesses for those contracts was 10 percent, then the disparity index would be 2 percent divided by 10 percent, which would then be multiplied by 100 to equal 20.

³ Several courts deem a disparity index below 80 as being “substantial” and have accepted it as evidence of adverse conditions for minority- and woman-owned businesses. For example, see *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 B for additional discussion of those and other cases.

Contracts with and without race- or gender-conscious measures. On many of the contracts during the study period, Metro applied race- and gender-conscious DBE subcontracting goals. It is important to consider disparity analyses on sets of contracts where goals were applied with those that were not subject to race- or gender-conscious measures. Examining participation in no-goals contracts provides useful information about outcomes for minority-owned businesses and woman-owned businesses on contracts that Metro awarded in a race-neutral and gender-neutral environment and whether there is evidence that certain groups face any discrimination or barriers as part of Metro’s contracting.^{4, 5, 6} Figure ES-3 presents disparity analysis results for contracts awarded using DBE goals and contracts awarded without using DBE goals. As shown in Figure ES-3, overall, most groups experienced greater disparities on contracts awarded without goals than on those where DBE goals were applied. All groups, with the exception of Subcontinent Asian American-owned businesses, exhibited disparity indices substantially below parity on contracts without DBE goals.

Figure ES-3.
Disparity indices for goals and no-goals contracts

Note:

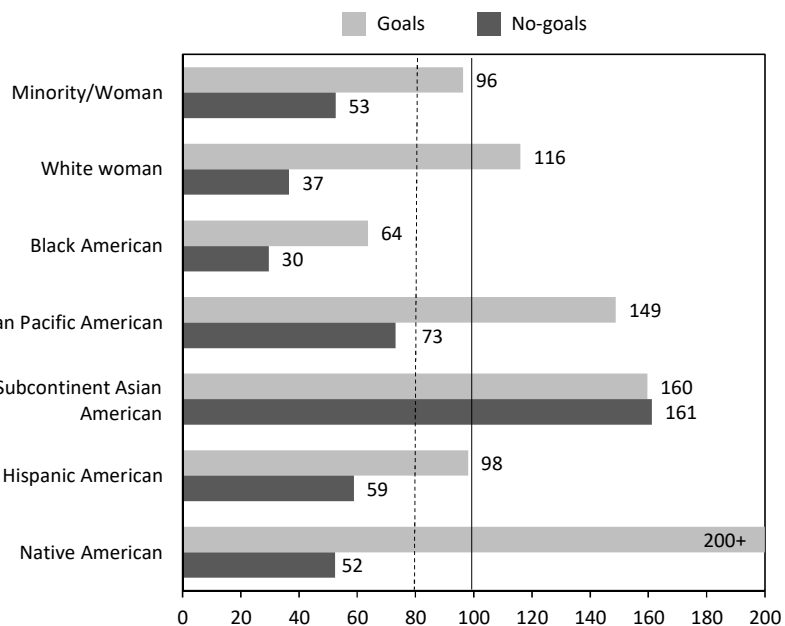
The study team analyzed 5,293 contract elements to which subcontracting goals applied. The study team analyzed 6,896 contract elements to which no subcontracting goals applied.

Race-conscious goals were applied beginning in June of 2013 and gender-conscious goals began in October of 2015. Those contracts included in the goals analysis included race and/or gender conscious goals or both.

For more detail, see Figures F-14 and F-15 in Appendix F.

Source:

BBC Research & Consulting disparity analysis.



C. Overall DBE Goal

According to 49 Code of Federal Regulations (CFR) Part 26, an agency is required to develop and submit an overall goal for DBE participation. The goal must be based on demonstrable evidence of the availability of DBEs relative to the availability of all businesses to participate on the agency’s USDOT-funded contracts. The agency must try to meet the goal using race- and gender-neutral means and, if necessary, race- and gender-conscious means.⁷ As specified in the Final

⁴ Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al., 713 F.3d 1187, 1192, 1196 (9th Cir. 2013).

⁵ Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950, 985, 987-88 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003).

⁶ H. B. Rowe Co., Inc. v. Wyndo Tippett, NCDOT, et al., 615 F.3d 233,246 (4th Cir. 2010).

⁷ 49 CFR Sections 26.45, 26.51.

Rule effective February 28, 2011, an agency is required to submit its overall DBE goal every three years.⁸ However, the overall DBE goal is an *annual* goal in that an agency must monitor DBE participation in its USDOT-funded contracts every year. If DBE participation for a particular year is less than the overall DBE goal, then the agency must analyze the reasons for the difference and establish specific measures that enable it to meet the goal in the next year.

Metro must prepare and submit an overall DBE goal for federal fiscal years (FFYs) 2019 through 2021 that is supported by information about the steps that it used to develop the goal. Federal regulations require Metro to establish its overall DBE goal using a two-step process:

1. Determining a base figure; and
2. Considering a “step-2” adjustment.

Determining a base figure. Establishing a base figure is the first step in calculating an overall DBE goal for Metro’s FTA-funded contracts. BBC calculated the base figure by measuring the availability of *potential DBEs*—that is, minority- and woman-owned businesses that are DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26. BBC examined the availability of potential DBEs for FTA-funded prime contracts and subcontracts that Metro awarded during the study period. BBC’s approach to calculating Metro’s base figure is consistent with relevant court decisions, federal regulations, and USDOT guidance. BBC’s analysis indicates that the availability of potential DBEs for Metro’s FTA-funded contracts is 27.0 percent. Metro might consider 27.0 percent as the base figure for its overall goal for DBE participation.⁹

Considering a “step-2” adjustment. The Federal DBE Program requires that an agency consider a step-2 adjustment to its base figure as part of determining its overall DBE goal. Factors that an agency should assess in determining whether to make a step-2 adjustment include:

- Current capacity of DBEs to perform agency work as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.¹⁰

⁸ <http://www.gpo.gov/fdsys/pkg/FR-2011-01-28/html/2011-1531.htm>

⁹ Metro should consider whether the types, sizes, and locations of FTA-funded contracts that the agency anticipates awarding in the time period that the goal will cover will be similar to the types of FTA-funded contracts that the agency awarded during the study period.

¹⁰ 49 CFR Section 26.45.

Based on information from the disparity study, there are several reasons why Metro might consider adjusting the 27.0 percent base figure:

- Metro might consider making an upward adjustment to its base figure to account for barriers that minorities, women, and minority- and woman-owned businesses face in the Los Angeles marketplace related to human capital, financial capital, business ownership, and business success (for details, see Chapter 3 and Appendices C and D). Such an adjustment would correspond to a “determination of the level of DBE participation you would expect absent the effects of discrimination.”¹¹
- Metro might also consider a downward adjustment to its base figure based on the volume of work that DBEs have performed in recent years on its contracts. Metro’s utilization reports for FFYs 2011 through 2014 indicated median annual DBE participation of 3.7 percent for those years, which is lower than its base figure. (BBC’s analyses showed DBE participation on Metro contracts during the study period to be 15.1 percent.) USDOT’s “Tips for Goal-Setting” suggests that an agency can make a step-2 adjustment by averaging the base figure with past median DBE participation.

USDOT “Tips for Goal-Setting” states that an agency is not required to make a step-2 adjustment to its base figure as long as it can explain what factors it considered and can explain its decision in its Goal and Methodology document.

D. Program Implementation

Chapter 11 reviews information relevant to Metro’s implementation of the Federal DBE Program. Metro should review study results and other relevant information in connection with making decisions concerning the program. Key areas of potential refinement include the following.

- Metro should consider continuing and expanding its efforts to network with minority- and woman-owned businesses (such as the monthly Transportation Business Advisory Council (TBAC) meetings).
- To further encourage the participation of small businesses—including many minority- and woman-owned businesses—Metro should consider making efforts to unbundle relatively large contracts (e.g. large construction or design/build contracts) into several smaller contracts. Doing so would result in that work being more accessible to small businesses, which in turn might increase opportunities for minority- and woman-owned businesses and result in greater minority- and woman-owned business participation.
- Given the anticipated size and types of projects expected with Measure M, Metro should consider information presented in Appendix G regarding best practices for encouraging participation by small businesses, and minority- and women-owned businesses on design-build, public private partnership (P3), and other “mega-projects.”

¹¹ 49 CFR Section 26.45 (b).

- Metro should consider continuing to explore ways to increase prime contracting opportunities for small businesses including many minority- and woman-owned businesses. For example, Metro might consider expanding its set aside small prime contractor program for small business bidding to encourage the participation of minority- and woman-owned businesses as prime contractors. Metro could consider increasing the number of contracts included in the small prime contractor set aside program, as well, as the dollar limits around those contracts.
- Metro should also explore ways to increase subcontracting opportunities for small, minority-, and woman-owned businesses. Metro could consider implementing a program that requires prime contractors to include certain minimum levels of subcontracting as part of their bids and proposals. Prime contractors bidding on the contract would be required to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be responsive. Due to Proposition 209, Metro cannot implement race and gender conscious measures on state- and locally-funded contracts.
- Disparity analysis results indicated that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place during the study period. As a result, Metro should consider using DBE contract goals in the future. The agency will need to ensure that the use of those goals is narrowly tailored and consistent with other relevant legal standards (for details, see Chapter 2 and Appendix B).
- Many small businesses who participated in in-depth interviews and public meetings discussed the difficulties they experienced with cash flow due to delayed payment. Metro should continue to review prompt payment programs and policies that help address those issues, especially for second- and third-tier subcontractors.

As part of the disparity study, the study team also examined information concerning conditions in the local marketplace for minorities; women; and minority- and woman-owned businesses including results for different racial/ethnic and gender groups. Metro should review the full disparity study report, as well as other information it may have, in determining whether it needs to use any race- or gender-conscious measures as part of its efforts to comply with the Federal DBE Program, and if so, what groups might be considered eligible to participate in such measures.

E. Qualitative Research Results Summary

Throughout the disparity study, business owners and managers; trade association representatives; and other key stakeholders had the opportunity to share their experiences with working in the Los Angeles metropolitan area. BBC collected testimony and qualitative information about the local marketplace through a variety of efforts including:

- Conducting in-depth interviews;
- Conducting telephone surveys;
- Facilitating focus groups;
- Facilitating public meetings; and
- Soliciting stakeholders for written testimony.

BBC analyzed the qualitative information and public testimony that we collected throughout the study and identified several important themes around key study topics. Those results are summarized below. For details about the various efforts that BBC used, see Appendix D.

BBC study team engaged the Transportation Business Advisory Council (TBAC) in the disparity study by attending four TBAC meetings to update the board and its members on the progress of the disparity study and to encourage participation through written testimony and to complete availability and utilizations surveys, if contacted.

Experiences Working with Metro and Other Public Sector Organizations. Business owners and managers shared their experiences working with Metro and with other public sector organizations.

Many business owners and managers offered positive comments about working with Metro and other public sector organizations. Key comments included the following:

- Several businesses felt that public sector work was advantageous, because it was often more profitable, set clearer expectations for contractors, and there was less favoritism by prime contractors during project team selection because of SBE and DBE requirements.
- Three business owners viewed Metro as more approachable and focused on small business development than other public agencies. One business owner stated, “The biggest difference is that Metro, over the last years and during the recession, had the most opportunities [compared to other agencies and cities]. Many consultants of my type tried to get work with other agencies, and we agree that Metro provides the most opportunity for SBE and DBE firms and are the strongest in bringing along small firms.”
- Two business owners praised Metro’s “Meet the Primes” event as particularly helpful for small businesses. One business owner commented, “[Metro] had a master outreach event that had all their general contractors in one building. And it was great. You could move from room to room to room and walk around. And ... it's free parking. That's huge.”
- Most business owners and managers expressed support for small business set-asides on Metro and other public sector contracts.

Some business owners and managers had negative comments about working with Metro and other public sector organizations. Key comments included the following:

- Business owners and managers identified the general complexity and difficulty of the public sector bidding process; the length and large size of projects; and the lack of transparency in the bid selection process as challenges, especially for small, disadvantaged businesses. For example, one business owner noted, “[Public sector work is] harder because of the competition involved, the bond requirements, insurance requirements, and the necessary capital to perform the work.” Another business executive stated, “Our firm is small so our marketing group is one full-time person. We don’t have the experience or staff to prepare proposals, especially [consistent with] what we think would be expected by Metro.”
- The most common complaints about doing business with Metro included difficulties finding out about contract opportunities, the complexity of RFP requirements, meeting contract pre-

qualification standards, and finding out which businesses were awarded contracts. Business owners highlighted the difficulty of navigating Metro’s website and finding contract opportunities through Metro’s vendor portal.

- Two business owners raised concerns about timely payment on Metro contracts.

Some business owners and managers offered recommendations for Metro to improve its contracting processes. Many business owners commented on Metro’s mentor-protégé initiative. Small business owners generally favored this type of program. However, five business owners felt that Metro needs to clarify program expectations and desired outcomes to ensure effectiveness. One business owner said, “Metro is now including a provision for mentoring, but they don’t have a clear program with structure. If Metro is going to [the program] seriously, primes need a clear idea of what the mentoring is supposed to do [and of the objectives]. [The primes] wonder, ‘Why would somebody train a company that is going to be a competitor?’”

Other business owners and managers encouraged Metro to improve its contract notification process. Business owners recommended a number of possible solutions, including:

- Metro should consider streamlining how it organizes opportunities on its vendor portal to make it easier to locate relevant contracting opportunities;
- Metro should create a separate vendor portal for small business opportunities; and
- Metro should do a better a job communicating about contract opportunities, especially via email. For example, one business owner said, “[Metro’s] online system is a little complicated. I mean it’s kind of hard to navigate. I mean they could probably simplify that a little more because on one section—where it asks you to look at the solicitations where they have numbers and they have the descriptions—it’s so many. So, if they can ‘segmentize’—if that’s a word—things that are for the janitorial contractors as primes, list that in a section, then we can look. Because we’re scrolling through a lot of stuff that doesn’t pertain to us. When you go through the section of solicitations, you have to scroll through pages and pages of stuff that doesn’t pertain to us at all.”

Barriers and Challenges for Small Businesses in Los Angeles. Business owners and managers discussed the challenges that they and others face in the Los Angeles marketplace.

Business owners and managers also discussed the continued existence of double standards for and stereotypical attitudes about minorities and women in the LA marketplace. For example, the Hispanic American male owner of a DBE- and MBE-certified specialty contracting company observed, “When we first started, we had to prove every step of the way we had the ability to do the work.” [Caltrans Interview #46a] However, some minority and woman business owners that the study team interviewed did not think that their businesses had been affected by any race- or gender-based discrimination.

Theme	Frequency Count	Illustrative Quote
Insurance Requirements and Obtaining Insurance	13	The executive of a non-Hispanic white male-owned landscape architecture firm explained, “In this case, the insurance requirements shouldn’t be one-size-fits-all...sometimes we’re being asked to have insurance coverage which is the same as the engineer or the architect who needs to have it for the [total project cost of] \$20,000,000. So, for us to be paying for insurance coverage which is far greater than our role in the project is not good, and many agencies and companies don’t recognize that...We can’t justify paying that amount of insurance for one project when our fee on that project is not adequate to cover the additional insurance.” [Interview #5]
Obtaining Financing	11	The Black American female owner of a construction-related business stated that the biggest challenge to starting and maintaining her company is obtaining funding. She reported having very little cash or other resources to invest at startup, which affected her ability to pursue opportunities, purchase equipment, and fund the day-to-day operations of her business. [Caltrans Interview #2]
Delayed Payment, Lack of Payment and Other Payment Issues	9	The non-Hispanic white male co-owner of an SBE-certified construction management and consulting firm stated, “[Payment is] always a challenge because we don’t get paid fast enough. My challenge is 30 percent of my total contract goes to my subs. And all those subs want their money fast. And because I’m a small company I always pay them fast because I want to maintain a relationship with those companies. If we don’t get paid fast enough we can’t pay them. We always have a huge cash flow issue.” [Interview #13]

DBE Certification and Program Implementation. Business owners and managers offered several comments about DBE certification and Metro’s implementation of the Federal DBE program.

- The majority of business owners praised DBE certification as advantageous. For example, one business owner said that one of the advantages of being certified is the fact that prime contractors will take notice of certified businesses more than non-certified businesses because of public project requirements and the credit that they receive. She went on to add, “It puts your name out there more.”
- One business owner, when asked how the DBE program impacts her firm’s business said, “Oh, positively, 100 percent.” She added, “Bigger corporations will not give you the time of day unless you have that certification. Two companies specifically wanted to use us because of our DBE [certification]. Now, they kept using us because of our customer service and our DBE [status].”

Business owners and managers offered differing opinions about the effectiveness of Metro and other agencies’ implementations of the Federal DBE program and expressed differing opinions about the program’s effectiveness. For example:

- Several business owners thought the DBE program was helpful but were concerned about Metro’s enforcement of it. A representative of a trade association stated that many prime contractors do not know that Metro has eliminated good faith effort guidelines. He stated,

“They think they can put down some [DBE] firms on their list and not follow through. They don’t realize Metro is serious.” The manager of another business said, “The DBE- program is great, but it is not perfect.” He explained that if Metro wants to limit disparities, there must be change at the policy and procedural level. He explained that if there is a billion dollar project and 20 percent of it has to be committed to DBEs, then there needs to be more monitoring in place to make sure the prime contractor is actually awarding the work to the DBEs that it identified in the bid.

- Several business representatives felt that the DBE and other disadvantaged business programs in California have adverse effects on other businesses and on marketplace competition. For example, several business owners questioned how a minority should be defined in the context of southern California’s relatively high concentration of racial/ethnic minorities. One business owner stated, “The minority-owned [certification] programs in southern California should hold no weight anymore, because there is no majority. It’s Southern California.”