



Board Report

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PLANNING AND PROGRAMMING COMMITTEE

MARCH 20, 2024

EXECUTIVE MANAGEMENT COMMITTEE

MARCH 21, 2024

SUBJECT: DISPARITY STUDY

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

CONSIDER:

- A. RECEIVING AND FILING the Final 2023 Disparity Study Report; and
- B. AUTHORIZING the Chief Executive Officer (CEO) to develop a three-year pilot Micro Small Business Program and certification designation.

ISSUE

In accordance with guidance from the U.S. Department of Transportation, recipients that use race and gender conscious measures (DBE contract goals) as part of their DBE program must conduct a disparity study to determine if disparity and/or discrimination exists within their contracting market area. Metro commissioned BBC Research & Consulting (BBC) to conduct its 2023 Disparity Study to determine if there is evidence of discrimination or disparities in Metro’s contracting market area. Information from the disparity study supports the remedial use of DBE race- and gender- conscious contract goals to promote and ensure equal opportunities for businesses that may face systemic barriers in competing for contracts. BBC analyzed \$8.8 billion of worth of contracts and procurements Metro awarded during the study period to measure the participation and availability of People of Color (POC) and woman-owned businesses for Metro work to assess whether any disparities exist between those measures.

Based on qualitative data obtained during the study, the recommendation to establish a Business Technical Development Program (BTDP) enables Metro to seek a consultant team, with expertise within the transportation industry. The BTDP will include business consultants and industry partners to provide technical assistance and supportive services to POC- and woman-owned small and disadvantaged businesses. Such services can contribute to the growth and business efficiency of firms competing for prime and subcontracts and performing on Metro’s major capital projects.

**BACKGROUND**

Disparity studies help organizations understand changes in their marketplaces, refine program measures, and ensure up-to-date information on the participation and availability of POC- and woman-owned businesses for their work, including identifying which groups are substantially underutilized on their contracts and procurements. The 2023 study analyzed Metro’s contracting data between January 1, 2016 and December 31, 2021.

While there is no court-mandated expectation of the time between studies, the standard is typically every five to seven years and a comprehensive disparity study lasts about 12 months. The study period includes the most recent full year contracting data available at study kick-off. The 2023 study was kicked off at the close of 2022, rendering 2021 the latest year of complete contract data. Hence, ensuring this continuity while also using the most recent data available resulted in a study period of 6 years. As demonstrated in the table below, Metro has been consistent in conducting disparity studies to support the DBE program with the majority of the study periods being five years.

Final report Issued	Contracting History Period	Duration of Study
2010	January 1, 2003 - December 31, 2007	-5 years
2012*	January 1, 2008 - December 31, 2010	-3 years
2017	January 1, 2011 - December 31, 2015	-5 years
2023	January 1, 2016 - December 31, 2021	-6 years

\*Metro determined an update was needed to the 2010 study based on the findings.

**DISCUSSION**

BBC analyzed \$8.8 billion worth of contracts and procurements Metro awarded during the study period. A custom census availability analysis was conducted to estimate the availability of POC- and woman-owned businesses for Metro work.

BBC also calculated the participation of POC- and woman-owned businesses in relevant contracts and procurements Metro awarded during the study period. BBC used Metro data to help determine the Study’s geographical market area in which Metro spends the substantial majority of its contract and procurement dollars. For this study, Metro awarded approximately 78% of relevant contract and procurement dollars to businesses located in Los Angeles County, representing a 4% increase over the 2017 study results. Key results from those analyses are summarized below.

**Availability & Utilization**

The following chart compares the data for POC- and woman-owned business availability and utilization between 2017 and 2023 Study findings.

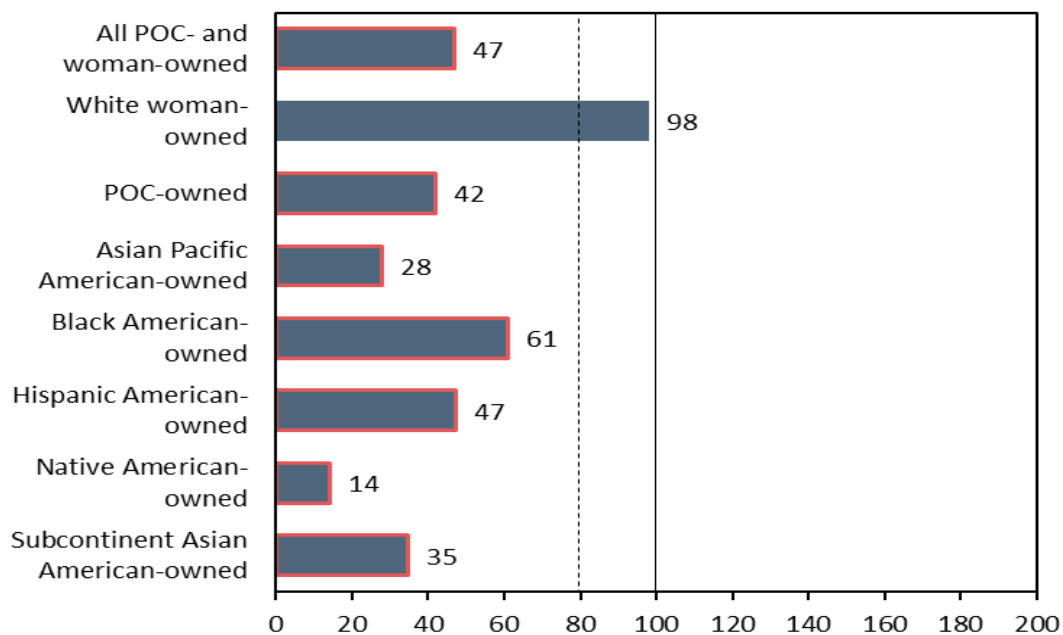
POC-/Woman-Owned Business Results	2017	2023
Composition of Availability Database	47.0%	53.3%
Overall Dollar Weighted Availability	31.3%	46.8%
Overall Dollar Weighted Utilization	23.2%	22.0%
Availability of Potential DBEs	27.0%	31.3%

By comparison, the Study found that overall availability increased by 15.5% from 2017 to 46.8% in 2023. This represents the availability of all POC- and woman-owned firms, including firms that might not qualify for DBE certification due to personal net worth and revenue requirements. The study also found that overall utilization decreased slightly by 1.2% from 2017 to 2023. The 31.3% availability of potential DBEs demonstrates a 4.3% increase over 2017 and represents firms that could potentially be certified as DBEs. It is important to note that the 2017 study period analyzed \$3 billion in contracting, \$5.8 billion less than the 2023 Study.

Disparity Analysis

The 2023 study found all individual groups of POC-owned businesses exhibited substantial disparities for Metro work. A disparity index of 100 indicates parity or the participation is in line with the availability. A disparity index of less than 80 indicates a substantial disparity between participation and availability. Courts interpret a substantial disparity for a particular racial/ethnic or gender group as an inference of discrimination against that group in the marketplace. It often serves as evidence that Metro may need to continue using race- or gender-conscious measures (DBE contract goals) to address barriers for that group. The chart below shows the disparity index by group.

**Overall Disparity Analysis Chart**



Marketplace Conditions

The Disparity Study includes extensive quantitative analyses that determined POCs, women, and POC and woman-owned businesses face barriers in Metro's contracting and procurement in construction, professional services, goods, and other services, and transit service industries in Los Angeles County. Existing and primary research indicated that POC and women face barriers related to acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence that those barriers exist even after accounting for various personal and business factors.

The Study found further evidence that many disparities are due-at least, in part-to race or gender-based discrimination. Barriers in the marketplace likely have important effects on the ability of POCs and women to start businesses in relevant industries-construction, professional services, goods and other services, and transit services-and to operate those businesses successfully. Any difficulties those individuals face in starting and operating businesses may reduce their availability for government work and the degree to which they can successfully compete for such projects.

#### COVID-19 Pandemic

Economic and social vulnerabilities preceding the onset of the COVID-19 pandemic exacerbated the adverse impacts of the pandemic on POC and woman-owned businesses. Public health measures to reduce the spread of the COVID-19 virus, along with direct health impacts, led to an economic crisis that reached its peak in March and April of 2020. In California, POC and woman-owned small businesses, with the exception of Asian-American owned businesses, experienced higher rates of business closure and slower recoveries than white-American owned small businesses. More than 25 percent of small businesses in Los Angeles County closed during 2020, including approximately 7,500 businesses that closed permanently. Definitive data as to how many small businesses no longer certified as a result of COVID-19 impacts was not collected by Metro DEOD. However, between March 2020 - December 2021, twenty-seven small businesses requested removal from the programs for various reasons (i.e. company went out of business, financial hardship, graduated from the programs, change in ownership, and retirement).

#### Qualitative Information

The BBC Study team collected testimony and qualitative information. BBC conducted two focus groups and gathered comments from 507 business owners/representatives, managers, trade association representatives, and other key stakeholders in the Los Angeles metropolitan area. Additionally, BBC completed 42 in-depth interviews with business owners/representatives and received 27 written comments during qualitative data collection for the study that were included in the anecdotal appendix and analyzed in developing the considerations chapter. Many small businesses discussed the difficulties they experienced with cash flow due to delayed payment from the prime contractor to its subcontractors, at any tier-level. Several respondents reported that the quantitative and qualitative results of the study were representative of their experiences in the marketplace. Several questions were general clarification questions regarding how a disparity study is conducted. Comments received were incorporated in the final report.

Key concerns raised from the collection of anecdotal evidence included:

- Challenges responding to public sector bid requests and requests for proposals.
- Difficulties managing the administrative aspects of running a business.
- Prompt payment by agencies and prime contractors.
- Access to bonding, insurance, and financing; and
- Closed networks within the business community.

Study Recommendations

Study participants in the qualitative data collection expressed appreciation for all of Metro's efforts to help small businesses and indicated that Metro excels when compared with other agencies in the region, state, and country. Based on a review of Metro policies and qualitative evidence, the study identified the key recommendations listed below for how Metro can increase opportunities and further eliminate barriers in the DBE program

Staff will continue to evaluate and collaborate with Vendor Contract Management (VCM), Metro Departments, and Project Managers to assess the feasibility of implementing initiatives that align to Metro's contracting process.

1. Bench contracts: Consider implementing a rotation system for bench contract task orders to ensure that each business on a bench gets work. Metro could also consider more closely monitoring the participation of small and disadvantaged businesses in bench contracts to ensure that they receive a proportionate amount of the work. Lastly, Metro could consider developing benches comprised exclusively of small and disadvantaged businesses.

Metro Response: Metro is currently implementing, on a small percentage of contracts, a rotational bench system and already has benches established that are comprised exclusively of small and disadvantaged businesses. To provide opportunity for each firm on the bench to get work, staff will continue to work with Metro Departments and VCM to encourage more use of these types of benches, as appropriate. Staff will also review anecdotal to identify further process improvements.

2. Technical assistance support: Metro should provide more detailed information or training on how to bid with the agency. The agency should increase the visibility of appropriate contact points for project issues and consider hiring liaisons for small businesses in particular. Assigning small business liaisons to projects or expanding the responsibilities of existing staff to resolve small businesses' project issues would help them perform Metro work more successfully.

Metro Response: While the DBE Program has experienced a measure of success in providing opportunities for disadvantaged businesses, there is an urgent need to address the substantial disparity identified in the study and to increase utilization. DEOD will establish a Business Technical Development Program (BTDP) to provide technical assistance to small and disadvantaged businesses during the performance of their subcontract. The BTDP will provide targeted and comprehensive business development assistance to foster technical competence, sound business structure, and sustainability to compete and perform on larger projects and lead to continued growth for the firm.

The proposed areas of technical assistance for the BTDP, include, but are not limited to:

- One-on-One technical assistance
- Matchmaking
- Estimating and Scheduling
- Alternative Delivery Project Requirements
- Form 60's Preparation
- Project Management
- Dispute Resolution
- Change Order Process (Prime/Subcontractor)
- Request for Change Process
- Proposal/Bid Preparation

- Human Resources Management
- Overhead Rates
- Construction Management
- Financial Audit/Review
- Accounting - Accountant services, cash flow review, income statement review

3. Microbusiness Program: The Small Business Administration (SBA) size thresholds for small businesses allow gross receipts of up to \$47 million for certain industries. Anecdotal evidence suggests that, due to the large range of small business size standards, smaller SBEs are often unable to compete with larger SBEs. Metro could consider adding an additional certification classification for microbusinesses with smaller revenue requirements. Metro could then consider including preferences and benefits exclusive to these microbusinesses, including proposal points, bid reductions, or setting aside certain opportunities exclusively for microbusiness competition.

Metro Response: Staff recommends policy authorization to develop a three-year pilot Micro Small Business Program and certification designation and will collaborate with VCM on program contracting thresholds.

4. New businesses: Consider using bid and contract language to encourage prime contractors to partner with subcontractors and suppliers they have never worked with. Metro could award evaluation points or price preferences based on the quality of those efforts. Increasing the number of new subcontractors involved in Metro's bid process could help many small businesses-including DBEs-and grow the pool of small businesses involved in Metro work.

Metro Response: DEOD will work with VCM to develop solicitation language that encourages primes to partner with SBE/DBE subcontractors they have never worked with to increase new business engagement.

5. Unbundling contracts: Consider expanding the current efforts to unbundle relatively large prime contracts-and even subcontracts-into several smaller, focused contracts. Such initiatives would likely increase contracting opportunities for all small businesses, including many POC and woman-owned businesses.

Metro Response: DEOD already encourages unbundling as a component part of the Set Aside Program. As a result, staff will continue to work with Metro Departments and Project Manager during the procurement planning process to evaluate the potential benefits of unbundling large contracts.

6. Inflation: Consider adjusting contract prices to account for inflation on projects that span a certain number of years to allow for equitable adjustment considerations for DBEs.

Metro Response: DEOD and VCM will explore the feasibility of implementing this recommendation.

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7. Pre-Qualification requirements: Consider only applying Pre-Qualification requirements to larger contracts to reduce the administrative burden on small and disadvantaged businesses competing for work. Metro could also consider extending the validity of prequalification reviews or eliminating validation requirements for already prequalified businesses and offer additional technical assistance to help small and disadvantaged businesses navigate the prequalification process.

Metro Response: DEOD will work with VCM to implement process improvements to the Pre-Qualification requirements that will reduce the administrative burden on small and disadvantaged businesses competing for Metro work.

### Public Participation

The draft 2023 study report was released on January 12, 2024, for a 30-day public comment period that closed February 12, 2024. The draft Study report was posted on the Metro Vendor Portal with the opportunity to review a PowerPoint presentation summarizing the results. Public comments were accepted by US mail, electronically through the disparity study website, and directly by email, as well as orally or in writing. Metro conducted two public hearings, one in-person at Metro Headquarters on January 29, 2024, with eight participants, and one held virtually on February 5, 2024, with 43 participants. During the public hearings, businesses reported challenges breaking into existing business networks and the importance of networking. Some participants also encouraged Metro to continue to improve access to contracting opportunities. No written comments were received during the public comment period. However, during the in-person and virtual public hearings, a total of seven verbal comments were received (Attachment B).

A presentation on the study's findings was also presented to the Transportation Business Advisory Council (TBAC) at their meeting on March 7, 2024. Questions from TBAC participants regarding study results were addressed and comments received echoed concerns raised during the public hearings and in the collection of the anecdotal data, related to the cost of audited overhead rates for small businesses and the reduction paperwork required during the procurement process.

### FINANCIAL IMPACT

There is no financial impact to approving the recommendations.

### EQUITY PLATFORM

The purpose of the study is to assess, quantify, and evaluate whether POC- and woman-owned businesses (DBEs) face any barriers in Metro contracting by studying the prevalence, significance, and scope of discrimination in the market area that specifically historically underutilized, POC and/or woman-owned businesses are experiencing and identify strategies to eliminate barriers and increase equity in Metro contracting. The study's results and considerations will be utilized by Metro to identify strategies to increase equity and eliminate barriers in Metro contracting. While Metro has made a significant commitment to offer innovative programs for POC and women, more is still needed to level the playing field for increased equity in Metro contracting. Metro will continue to be a regional leader in advancing a multi-pronged approach to eliminate racial and gender disparities in Metro contracting

further.

..Implementation\_of\_Strategic\_Plan\_Goals  
**IMPLEMENTATION OF STRATEGIC PLAN GOALS**

This report supports strategic plan Goal 5.5, “Expanding opportunities for businesses and external organizations to work with Metro.”

**NEXT STEPS**

- Upon Board approval, initiate development, and implementation process for the three-year pilot Micro Small Business Program.
- Staff will use the study data to develop the upcoming triennial Overall DBE Goal for Federal Fiscal Years (FFY) 2025 - 2027. This will require the following activity in accordance with 49 Code of Federal Regulation Part 26.45:
  - Staff is currently obtaining anticipated contracts to be awarded over the FFY2025-2027 from Grants and Project Managers to determine availability, if not similar to the mix of contracts analyzed in the study.
  - Complete draft of the overall DBE Goal and Goal Methodology report, with base figure and required step 2 adjustment analysis.
  - Post Metro's draft Overall DBE Goal and Methodology Report Metro website for a 30-day public comment period.
  - Return to the Board in June 2024 with the recommended triennial overall DBE goal for consideration and approval.
  - Submit FFY 2025- 2027 Overall DBE Goal Methodology to FTA by the August 1, 2024, deadline.
- New initiatives developed and implemented as a result of the study will be included in the 48 x '28 Plan, for tracking and reporting purposes.

**ATTACHMENTS**

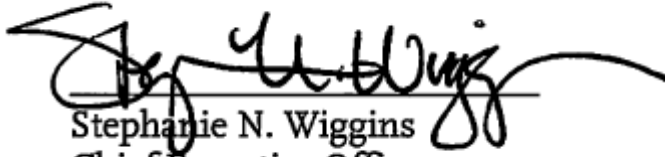
Attachment A - 2023 Final Disparity Study Executive Summary

Attachment B - Public Comment Period Comments and Responses

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