



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.

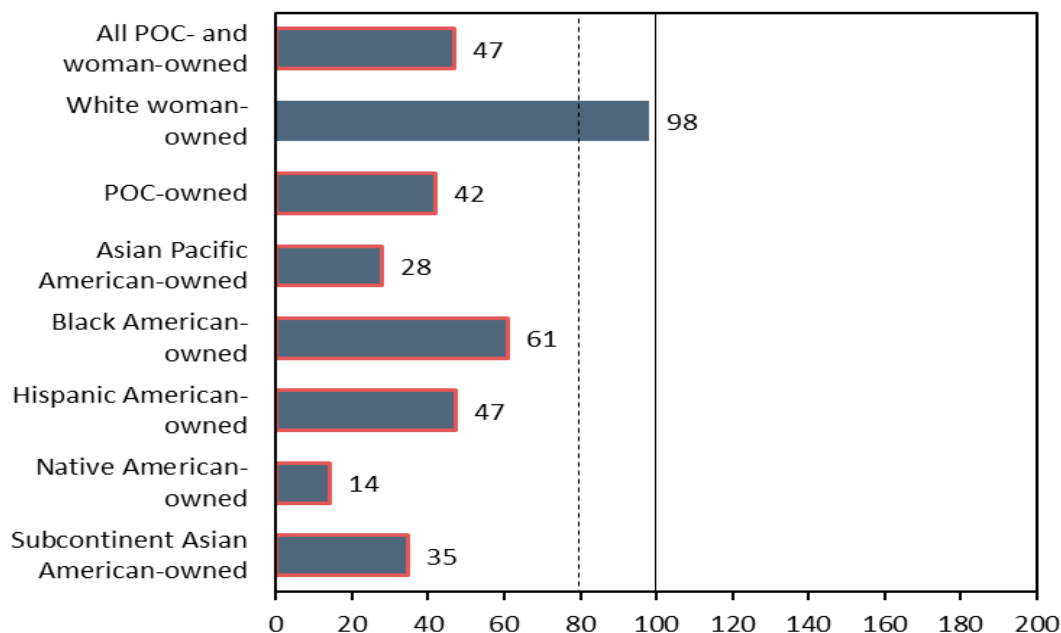
POC-/Woman-Owned Business Results	2017	2023
Composition of Availability Database	47.0%	53.3%
Overall Dollar Weighted Availability	31.3%	46.8%
Overall Dollar Weighted Utilization	23.2%	22.0%
Availability of Potential DBEs	27.0%	31.3%

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.

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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.

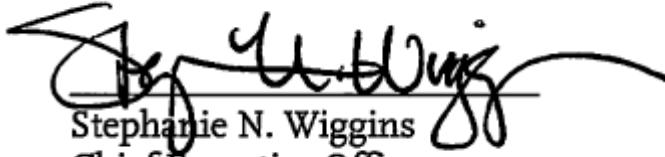
ATTACHMENTS

Attachment A - 2023 Final Disparity Study Executive Summary

Attachment B - Public Comment Period Comments and Responses

Prepared by: Elke Campbell, Deputy Executive Officer, (213) 418-3081
Tashai R. Smith, Executive Officer, (213) 922-2128

Reviewed by: Sharon Gookin, Deputy Chief Executive Officer, (213) 418-3101



Stephanie N. Wiggins
Chief Executive Officer

SECTION ES.

Executive Summary

BBC Research & Consulting (BBC) conducted a *disparity study* to evaluate whether person of color (POC)- and woman-owned businesses face any barriers in the Los Angeles County Metropolitan Transportation Authority (LACMTA's or Metro's) construction, professional services, and non-professional services and goods contracts and procurements. As part of the disparity study, we examined whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars Metro awarded to POC- and woman-owned businesses during the *study period*, which was January 1, 2016 to December 31, 2021 (i.e., *utilization, or participation*); and
- The percentage of contract and procurement dollars one might expect Metro to award to POC- and woman-owned businesses based on their availability to perform specific types and sizes of Metro contracts and procurements (i.e., *availability*).

Information from the disparity study will help Metro better understand outcomes for POC- and woman-owned businesses in its contracting and procurement and help Metro address any substantial disparities between the participation and availability of POC- and woman-owned businesses in Metro work. Moreover, if Metro determines that it is appropriate to use race- and gender-conscious measures to address substantial disparities (e.g., awarding individual contracts and procurements with the use of POC- and woman-owned business participation goals), then the agency can rely on information from the disparity study to help ensure its use of such measures adheres to the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

A. Disparity Study Results

BBC analyzed \$8.8 billion of worth of contracts and procurements Metro awarded during the study period to measure the participation and availability of POC- and woman-owned businesses for Metro work to assess whether any disparities exist between those measures. We summarize key results from those analyses below and identify sections of the report that provide more details about the methodology and results of each analysis.

1. Availability analysis (Chapter 6 and Appendix E of the report). BBC conducted a *custom census availability analysis* to estimate the availability of POC- and woman-owned businesses for Metro work while accounting for the specific characteristics of relevant businesses that exist in the Los Angeles County marketplace and the specific characteristics of the relevant prime contracts and subcontracts Metro awards. Figure ES-1 presents the availability of each relevant group of POC- and woman-owned businesses for relevant Metro contracts and procurements overall. The availability of those businesses is 46.8 percent. The business groups that exhibit the greatest availability for Metro work are Hispanic American-owned businesses (18.8%), Asian Pacific American-owned businesses (12.2%), and Black American-owned businesses (6.0%).

Figure ES-1.
Availability estimates for Metro work

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	4.3 %
Asian Pacific American-owned	12.2 %
Black American-owned	6.0 %
Hispanic American-owned	18.8 %
Native American-owned	0.2 %
Subcontinent Asian American-owned	5.4 %
Total POC-owned	42.6 %
Total POC- and woman-owned	46.8 %

2. Utilization analysis (Chapter 7 of the report). BBC also calculated the participation of POC- and woman-owned businesses in relevant contracts and procurements Metro awarded during the study period. As shown in Figure ES-2, during the study period, Metro awarded 22.0 percent of its relevant contract and procurement dollars to POC- and woman-owned businesses. The groups that exhibited the greatest levels of participation in that work were Hispanic American-owned businesses (8.9%), white woman-owned businesses (4.2%), and Black American-owned businesses (3.6%).

Figure ES-2.
Utilization analysis results for Metro work

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	4.2 %
Asian Pacific American-owned	3.4 %
Black American-owned	3.6 %
Hispanic American-owned	8.9 %
Native American-owned	0.0 %
Subcontinent Asian American-owned	1.9 %
Total POC-owned	17.9 %
Total POC- and woman-owned	22.0 %

3. Disparity analysis (Chapter 8 and Appendix F of the report). The crux of the disparity study was to assess whether any disparities exist between the participation of POC- and woman-owned businesses in Metro work and the availability of those businesses for that work. A disparity index of 100 indicates *parity* between actual participation and availability. That is, the participation of a particular business group is in line with its availability. A disparity index of less than 100 indicates a *disparity* between participation and availability. That is, the group is considered to have been underutilized relative to its availability. Finally, a disparity index of less than 80 indicates a *substantial disparity* between participation and availability. A *substantial disparity* for a particular racial/ethnic or gender group is interpreted by courts as an inference of discrimination against that group in the marketplace and often serves as evidence that the organization of interest could consider using race- or gender-conscious measures to address barriers for that group (for details, see Chapter 2).

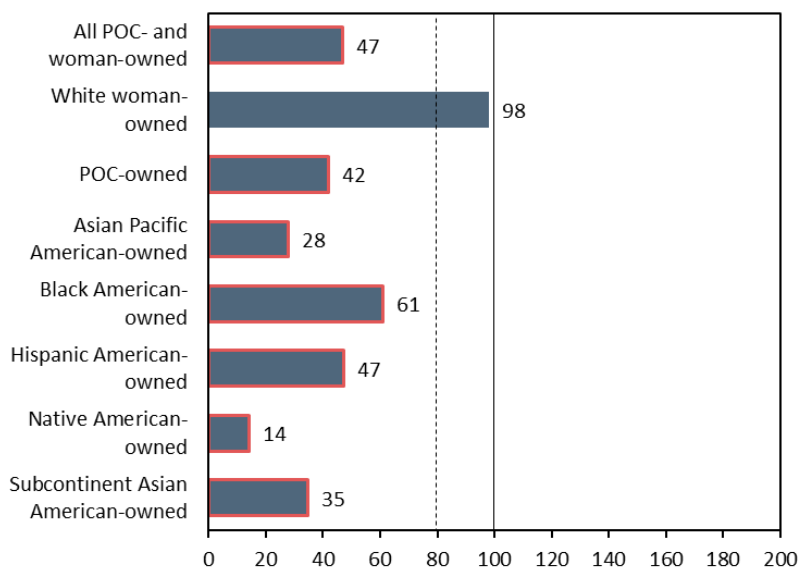
a. Overall. Figure ES-3 presents disparity indices for POC- and woman-owned businesses for all relevant prime contracts and subcontracts Metro awarded during the study period considered together. As shown in Figure ES-3, POC- and woman-owned businesses considered together exhibited a disparity index of 47 for all relevant contracts and procurements Metro awarded during the study period,

indicating a disparity where Metro awarded POC- and woman-owned businesses \$0.47 for every dollar one might expect the agency to award to those businesses based on their availability for that work. All individual groups of POC-owned businesses exhibited substantial disparities for Metro work: Asian Pacific American-owned businesses (disparity index of 28), Black American-owned businesses (disparity index of 61), Hispanic American-owned businesses (disparity index of 47), Native American-owned businesses (disparity index of 14), and Subcontinent Asian American-owned businesses (disparity index of 35). White woman-owned businesses did not exhibit a substantial disparity for Metro work (disparity index of 98).

Figure ES-3.
Overall disparity analysis
results for Metro work

Note:
 Substantial disparities
 highlighted with red borders.

Source:
 BBC disparity analysis.



b. Funding source. The Federal DBE Program applies specifically to Metro’s United States Department of Transportation (USDOT)-funded projects.¹ As part of the program, the agency uses various race- and gender-neutral measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the USDOT-funded projects it awards. However, Metro is prohibited from using race- and gender-conscious measures to award non USDOT-funded projects due to Proposition 209. Thus, comparing disparity analysis results separately for USDOT- and non USDOT-funded projects may be indicative of the efficacy of Metro’s implementation of the Federal DBE Program as well as its use of race- and gender-conscious measures to encourage the participation of POC- and woman-owned businesses in its work relative to their availability for it. As shown in Figure ES-4, POC- and woman-owned businesses considered together exhibited substantial disparities for both USDOT-funded work (disparity index of 47) and non USDOT-funded work (disparity index of 47). Disparity analysis results differed by business group and funding source:

- Asian Pacific American-owned businesses (disparity index of 17), Hispanic American-owned businesses (disparity index of 47), Native American-owned businesses (disparity index of 11) and Subcontinent Asian American-owned businesses (disparity index of 46) all exhibited substantial disparities for USDOT-funded projects. Black American-owned businesses also showed a disparity for USDOT-funded work (disparity index of 86), but that disparity was not substantial.

¹ BBC considered a project to be USDOT-funded if it included at least one dollar of USDOT funding.

- White woman-owned businesses (disparity index of 69), Asian Pacific American-owned businesses (disparity index of 52), Black American-owned businesses (disparity index of 42), Hispanic American-owned businesses (disparity index of 48), Native American-owned businesses (disparity index of 17), and Subcontinent Asian American-owned businesses (disparity index of 28) showed substantial disparities on non USDOT-funded work.

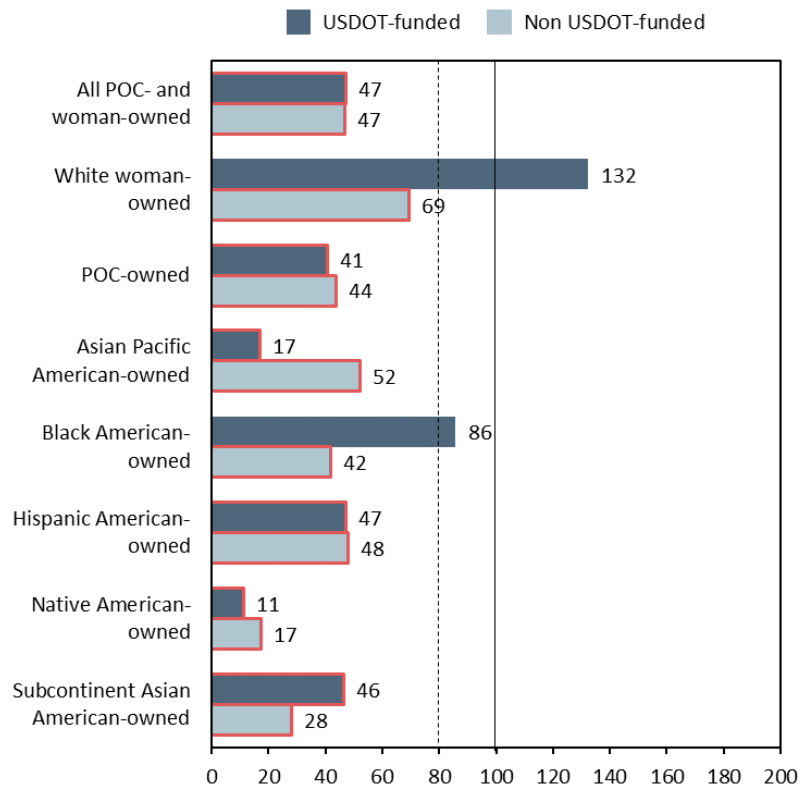
Figure ES-4.
Disparity analysis results by funding source

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

Source:

BBC disparity analysis.



c. Summary. Figure ES-5 presents a visualization of the various sets of Metro contracts and procurements for which relevant POC- and woman-owned business groups exhibited substantial disparities, as indicated by black circles. Most POC-owned business groups showed substantial disparities for many of the contract and procurement sets shown in Figure ES-5 with the exception of Black American-owned businesses. Black American-owned businesses showed substantial disparities for all work considered together, as well as for prime contracts, for professional services projects, and for non-USDOT funded work, but did not show substantial disparities for any other projects sets presented in Figure ES-5. Similarly, white woman-owned businesses showed substantial disparities for prime contracts, professional services projects, and non USDOT-funded work, but did not show substantial disparities for any other project sets presented in Figure ES-5. Substantial disparities indicate inferences of discrimination against relevant POC- and woman-owned business groups in the Los Angeles County marketplace and as part of Metro’s contracting and procurement.

Figure ES-5.
Substantial disparities observed for Metro work

Contract set	Business group							
	All POC and white woman	All POC	White woman	Asian Pacific American	Black American	Hispanic American	Native American	Subcontinent Asian American
All work	●	●		●	●	●	●	●
Construction	●	●		●		●	●	●
Professional services	●	●	●		●	●		●
Non-prof. svcs. and goods	●	●		●		●	●	●
Prime contracts	●	●	●	●	●	●	●	●
Subcontracts	●	●		●			●	●
USDOT-funded	●	●		●		●	●	●
Non USDOT-funded	●	●	●	●	●	●	●	●

Notes: ● indicates substantial disparity

Source: BBC disparity analysis.

B. Marketplace Conditions

BBC conducted extensive quantitative analyses to assess whether POCs, women, and POC- and woman-owned businesses face any barriers in the construction, professional services, goods and other services, and transit services industries in Los Angeles County. The study team also examined the potential effects any such barriers have on the formation and success of businesses as well as their participation in and availability for contracts and procurements Metro awards. We examined local marketplace conditions in four primary areas:

- **Human capital**, to assess whether POCs and women face barriers related to education, employment, and gaining industry experience;
- **Financial capital**, to assess whether POCs and women face barriers related to wages, homeownership, personal wealth, and financing;
- **Business ownership**, to assess whether POCs and women own businesses at rates comparable to that of white men; and
- **Business success**, to assess whether POC- and woman-owned businesses have outcomes similar to those of businesses owned by white men.

For more details, see Chapter 3 and Appendix C of the report.

1. 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.ⁱ 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.^{ii, iii, iv} 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.^v More than 25 percent of small businesses in Los Angeles County closed during 2020, including approximately 7,500 businesses that closed permanently.

Disparities in the rates of request and approval of the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) Program illustrated the limited reach of the government’s financial assistance to small businesses. A fraction of small businesses received financial support from the federal government to cover revenue losses and retain employees.^{vi} Other small businesses did not receive any assistance, in part due to differences in the resources available to between large and small businesses to navigate bank loan processes and from lack of information for businesses with no employees on how to make assistance requests.^{vii} Disparities in access to pandemic-related financial assistance between large and small businesses are particularly impactful to POC- and women-owned businesses, because in the Los Angeles Metro Area, POC- and women-owned businesses are more likely to be small businesses than white American- and men-owned businesses.^{viii}

2. Summary. BBC’s analyses of marketplace conditions in Los Angeles County indicate that POCs and women face various barriers in industries relevant to Metro’s contracting and procurement. Existing research and primary research we conducted indicate that disparities exist in acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence those disparities exist even after accounting for various personal and business factors. There is also 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 are able to successfully compete for such projects.

C. Overall DBE Goal

In accordance with 49 Code of Federal Regulations (CFR) Part 26 and United States Department of Transportation (USDOT) requirements, every three years, Metro must establish an overall goal for the participation of DBEs in the USDOT-funded projects it awards. USDOT requires agencies to set their overall DBE goals using a two-step process: establishing a base figure and considering whether a step 2 adjustment to the base figure is warranted. The disparity study provides information regarding both steps of the required goal-setting process for Metro to consider as it sets its next overall DBE goal.

1. Base figure. In accordance with USDOT requirements, BBC assessed the availability of potential DBEs—that is, POC- and woman-owned businesses that are currently DBE-certified or appear they could be DBE-certified according to size limits specified in the Federal DBE Program—for the USDOT-funded projects Metro awarded during the study period. That analysis indicated that the availability of potential DBEs for Metro’s USDOT-funded work is 31.3 percent, which Metro could consider as its base figure for its next overall DBE goal.

2. Step 2 adjustment. After establishing a base figure, Metro must consider additional information to determine whether any adjustment is needed to the base figure to ensure the agency’s new overall DBE goal is precise and reflects current conditions in the local marketplace for POCs, women, and POC- and woman-owned businesses. USDOT suggests agencies consider the following information in assessing whether to make step 2 adjustments to their base figures:

- Current capacity of DBEs to perform agency work;
- Information related to employment, self-employment, education, training, and unions;

- Disparities in the ability of DBEs to access financing, bonding, or insurance; and
- Other relevant factors.²

BBC assessed information related to each of the above factors, which we summarize below:

- **Current capacity of DBEs to perform agency work.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded projects in recent years. Based on information from Metro’s Uniform Reports, the participation of certified DBEs in the USDOT-funded projects Metro awarded in FFYs 2016 through 2021 was 18.7 percent of total dollars on USDOT-funded projects. That information supports a downward adjustment to Metro’s base figure.
- **Information related to employment, self-employment, education, training, and unions.** BBC’s analyses of barriers in the local marketplace indicate barriers that certain POC groups and women face related to human capital, financial capital, business ownership, and business success. Such barriers may decrease the availability of POC- and woman-owned businesses for the USDOT-funded projects Metro awards. For example, BBC used regression analyses to investigate whether race/ethnicity and gender are related to business ownership in relevant industries among workers in the Los Angeles marketplace, independent of various other personal characteristics, including familial status, education, and age. (Chapter 3 and Appendix C provide details about our regression analyses.) Based on the results of those analyses, Metro might consider an upward adjustment of its base figure for USDOT-funded contracts to account for marketplace barriers.
- **Any disparities in the ability of DBEs to get financing, bonding, or insurance.** BBC’s analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in the region do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men. Any barriers to obtaining financing, bonding, or insurance might limit opportunities for POCs and women to successfully form and operate businesses in the RGMA. Any barriers that POC- and woman-owned businesses face in obtaining financing, bonding, or insurance would also place those businesses at a disadvantage in competing for Metro’s USDOT-funded projects. Thus, those results also support an upward adjustment to Metro’s base figure.
- **Other relevant data.** Marketplace analyses also indicate that POC- and woman-owned businesses are less successful than other businesses in the local marketplace in terms of business closures, business receipts, business owner earnings, and other metrics. Barriers in business success among POC- and woman-owned businesses can limit their growth, which may depress their availability for Metro’s USDOT-funded work. Thus, those results also support an upward adjustment to the agency’s base figure.

The agency should consider the above information carefully as part of setting its next triennial DBE goal for Federal Fiscal Years (FFY) 2025-2027, if anticipated future contracts are similar to the contracts reviewed as part of the disparity study. Metro is not required to make a step 2 adjustment, but it must explain its decision to make or not make an adjustment in goal documentation it submits to USDOT.

² 49 CFR Section 26.45.

D. Guidance

BBC observed substantial disparities between the participation and availability of POC- and woman-owned businesses for the contracts and procurements Metro awarded during the study period. We present guidance on how Metro can use that information and other information from the disparity study to further encourage the participation of those businesses in its work and address the disparities we observed effectively and in a legally defensible manner, including potentially using race- and gender-conscious measures to do so. In considering the guidance we provide, Metro should be mindful of the legal requirements surrounding the use of race- and gender-conscious measures in particular, including state and federal regulations as well as relevant case law. The organization should consult closely with its Department of Justice in developing any new policies or programs related to POC- and woman-owned businesses to ensure they are consistent with the requirements of the strict scrutiny, intermediate scrutiny, and *rational basis* standards of constitutional review, respectively. We present key recommendations below and present additional recommendations and more information relevant to those recommendations in Chapter 10 of the report.

1. Bench contracts. Anecdotal evidence suggests businesses that are awarded Metro's bench contracts often receive little to no work from those awards. In addition, once on a bench, businesses must maintain the appropriate level of insurance coverage, regardless of whether they actually perform work on the contract, which can place a financial burden on small and disadvantaged businesses. Metro could consider implementing a rotation system for bench contract task orders to ensure that each business on a bench gets work. The agency could also consider more closely monitoring the participation of small and disadvantaged businesses on bench contracts to ensure that they receive a proportionate amount of the. Lastly, Metro could consider developing benches comprised exclusively of small and disadvantaged businesses. For example, the San Diego Association of Governments (SANDAG) has a bench program that includes pool of certified DBE and SBE subcontractors that prime consultants can access for work on various SANDAG bench contracts.

2. Technical assistance support. Multiple interviewees indicated that they consider the public sector bid process to be confusing and time-consuming. To better support businesses bidding with Metro, some interviewees suggested that Metro should provide more detailed information or training on how to bid with the agency. Additional anecdotal evidence indicated that when businesses experience challenges during project performance, finding the appropriate Metro employee to contact can be difficult. The agency should increase the visibility of appropriate points of contact for project issues and consider hiring liaisons for small businesses in particular. Assigning small business liaisons to projects or expanding responsibilities of existing staff to resolve project issues small businesses experience could help them perform Metro work more successfully. For example, the State of Maryland has designated liaisons for its small business program that act as advocates for small businesses working on contracts for the agency.

3. Microbusiness program. For certain industries, the SBA size thresholds for small businesses allow gross receipts of up to \$47 million. Anecdotal evidence suggests that, due to the large range of small business size standards, smaller SBEs are unable to compete with larger SBEs. Metro should consider adding an additional certification classification for microbusinesses with smaller revenue requirements. For example, the State of California Department of General Services has a microbusiness program (implemented as a subset of their small business program) for businesses with gross annual receipts of \$5 million or less. In addition, the San Francisco Bay Area Rapid Transit District has a Micro Small

Business Entity certification for businesses whose average gross receipts over the prior three years do not exceed \$10 million (construction) or \$6 million (professional services and procurement), which are thresholds Metro could consider. The organization could then add preferences and benefits exclusive to microbusinesses, including proposal points, bid reductions, or setting aside certain opportunities exclusively for microbusiness competition.

4. New businesses. The disparity study indicated that a substantial portion of the contract and procurement dollars Metro awarded to POC- and woman-owned businesses during the study period were largely concentrated with a relatively small number of businesses. Metro could consider using bid and contract language to encourage prime contractors to partner with subcontractors and suppliers with which they have never worked. For example, as part of the bid process, the agency might ask prime contractors to submit information about the efforts they made to identify and team with businesses with which they have not worked, and 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—become aware of and compete for Metro opportunities and grow the pool of small businesses involved in Metro work.

5. Unbundling contracts. As part of in-depth interviews and public meetings, several business owners reported that the size of Metro projects is sometimes a barrier to their success. To further encourage the participation of POC- and woman-owned businesses in its work, Metro should consider expanding its current efforts to unbundle relatively large prime contracts—and even subcontracts—into several smaller pieces. Such initiatives might increase contracting opportunities for all small businesses, including many POC- and woman-owned businesses.

6. Inflation. Metro has many projects that span multiple years. Anecdotal evidence indicated that businesses that are awarded such contracts or associated subcontracts associated often supply goods or services years after their initial proposals and cost estimates. At times, inflation can make quoted prices too low for a business to provide goods or services years later. Metro could consider adjusting contract prices to account for inflation for projects that span a certain number of years. For instance, the federal government often adds an Economic Price Adjustment clause in its contracts in times of high inflation or strong economic uncertainty to further balance risk and to hedge against fluctuations in labor or material costs.

7. Prequalification requirements. Businesses competing for Metro projects worth \$100,000 or more are required to complete prequalification applications, which the agency reviews prior to making awards to ensure that businesses are qualified to provide requested services. Although prequalification reviews remain active for a period of two years, businesses must submit validation forms for each solicitation to which they respond and often must update their applications for each solicitation. Business representatives that reported doing work with Metro discussed the burden associated with prequalification paperwork required for each new bid. Other businesses also expressed that doing the amount of paperwork required to start each project is daunting for new businesses. Metro could consider raising the contract value threshold for which prequalification requirements apply to reduce the administrative burden on small and disadvantaged businesses competing for its work. The agency could also consider extending the length of validity of prequalification reviews or eliminating validation requirements for businesses that have already been prequalified. Lastly, Metro could consider providing

additional technical assistance to help small and disadvantaged businesses navigate the prequalification process.

ⁱ Wang, Qingfang, and Wei Kang. 2021. What are the Impacts of COVID-19 on Small Businesses in the U.S.? Early Evidence Based on the Largest 50 MSAS. *Geographical Review* 111 (4): 528-557. doi:10.1080/00167428.2021.1927731.

ⁱⁱ Los Angeles County Economic Development Corporation. 2021. *Pathways for Economic Resiliency: Los Angeles County 2021-2026*. Report, Los Angeles. Retrieved, September 8, 2023 (https://wdacs.lacounty.gov/wp-content/uploads/2021/02/Pathways-for-Economic-Resiliency-Executive-Summary-copy.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

ⁱⁱⁱ Fairlie, Robert. 2020. *The impact of COVID-19 on small business owners: Evidence from the first three months after widespread social-distancing restrictions*. *Journal of Economics & Management Strategy* 29 (4): 727-740. doi:10.1111/jems.12400

^{iv} Together for L.A. 2022. *Small Business Recovery Report and Resource Guide*. Report, Los Angeles. Retrieved, September 8, 2023 (<https://laedc.org/wp-content/uploads/2022/06/Together-for-LA-Small-Business-Recovery-Report-and-Resource-Guide-June-2022-v2.pdf>).

^v Dani, Lokesh, John S. Earle, and Kyung Min Lee. 2022. *COVID-19 Impact on California's Entrepreneurs*. Report. Retrieved, September 8, 2023 (<https://edcollaborative.com/wp-content/uploads/2021/02/COVID-19-Impact-on-California-Entrepreneurs-v3.pdf>).

^{vi} United States Census Bureau. 2022. *Impacts of the COVID-19 Pandemic on Business Operations*. June 15. Retrieved September 8, 2023 (<https://www.census.gov/library/publications/2022/econ/2020-aces-covid-impact.html#:~:text=In%202020%2C%20the%20coronavirus%20pandemic,different%20impact%20on%20their%20payroll>).

^{vii} Next Street; CommonFuture. 2020. *Los Angeles County Small Business Ecosystem Assessment*. Report.

^{viii} United States Census Bureau. 2019. "Annual Business Survey." Retrieved September 25, 2023 (<https://data.census.gov/table?q=AB1900CSA04&g=310XX00US31080>).

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.



2023 Disparity Study Report

Executive Management Committee

March 21, 2024



Metro

RECOMMENDATIONS/BACKGROUND

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

BACKGROUND:

- Metro commissioned BBC Research & Consulting to conduct 2023 Disparity Study.
- Purpose: To evaluate if current contracting conditions at Metro are creating barriers for POC- and woman-owned businesses (DBEs) and to identify strategies to increase equity and eliminate barriers in Metro contracting.
- Analyzed Metro's contracting data over a six-year period from January 1, 2016 – December 31, 2021.
- Study Engagement:
 - Led 2 focus groups
 - Gathered anecdotal comments from 507 business owners/representatives
 - Completed 42 in-depth interviews with owners/representatives
 - Conducted 2 public meetings, one in-person and one virtual on study findings



Metro

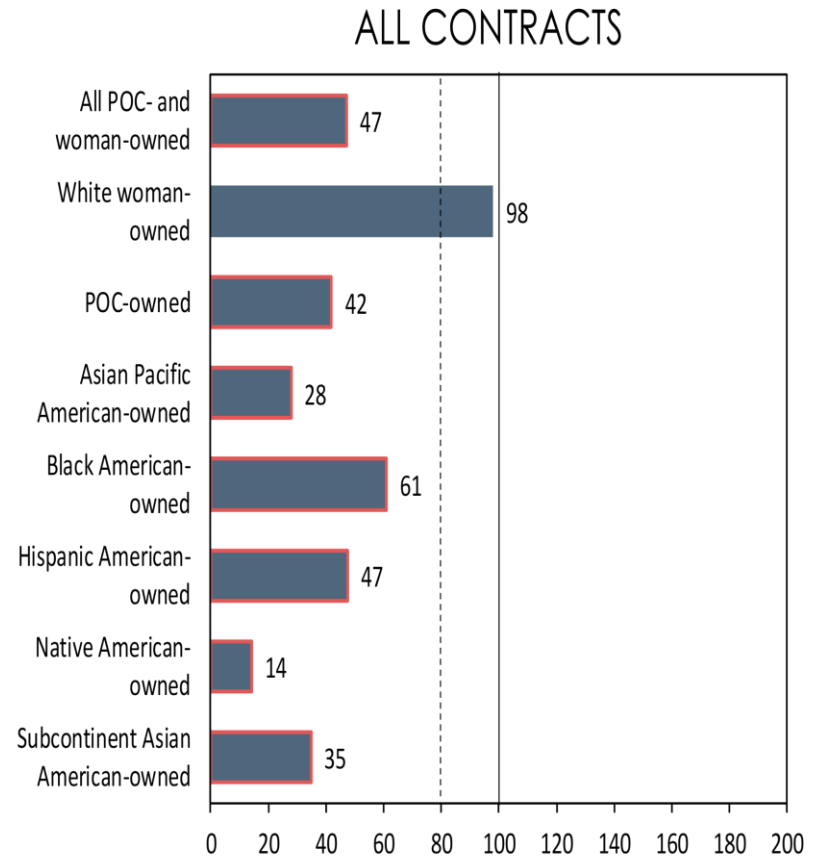
2017 – 2023 COMPARISON

- By comparison, the Study found overall availability increased by 15.5% from 2017 to 46.8% in 2023.
- The Study also found 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.

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%

OVERALL DISPARITY RESULTS

- All individual groups of People of Color (POC) -owned and women-owned businesses exhibited substantial disparities for Metro work.
 - All POC-and woman-owned (47)
 - White woman-owned businesses did not exhibit a substantial disparity for Metro work (98)
 - POC-owned (42)
 - Asian Pacific American-owned businesses (28)
 - Black American-owned businesses (61)
 - Hispanic American-owned businesses (47)
 - Native American-owned businesses (14)
 - Subcontinent Asian American-owned businesses (35)



*Disparity index of 80 or less = substantial underutilization; Disparity index of 100 = parity



QUALITATIVE DATA

Key concerns raised from qualitative data collection:

- 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

	Recommendations	Metro Response
1.	Rotation system for bench contracts and/or developing benches comprised solely of SBE/DBE firms	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 Vendor Contract Management (VCM) to encourage more use of these types of benches, as appropriate. Staff will also review anecdotal to identify further process improvements.
2.	Provide technical assistance support on how to bid with Metro	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 SBE/DBE firms during the performance of their subcontract.
3.	Develop a Microbusiness Program	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.	Consider changing solicitation language to encourage primes to partner with subcontractors with which they have never work	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 large contracts	DEOD encourages unbundling as a component part of the Set Aside Program. 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.	Adjust contract value for inflation for projects that span a certain number of years	DEOD and VCM will explore the feasibility of implementing this recommendation.
7.	Improvements prequalification requirements	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.



NEXT STEPS

- Upon Board approval, initiate development, and implementation process for the three-year pilot Micro Small Business Program.
- Staff will use Study data for the development of upcoming triennial Overall DBE goal for FFY 2025 – 2027:
 - Return to the Board in June 2024 with 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.