

Washington State Department of Transportation Disparity Study 2024



**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
DISPARITY STUDY**

2024

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About the Study Team

Colette Holt & Associates (“CHA”) is a national law and consulting firm specializing in issues related to Minority, Women and Disadvantaged Business Enterprise programs, business diversity initiatives, and affirmative action issues. The firm has conducted court-approved disparity studies and designed court-approved programs for over 30 years, including for numerous governments. CHA also provides training, monitoring, and investigative services across the country to agencies and businesses. CHA is led by Colette Holt, J.D., the founding principal of Colette Holt & Associates and a nationally recognized attorney and expert. Ms. Holt is also a frequent expert witness, and a media author, on these issues. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician; Ilene Grossman, B.S., Project Administrator; Glenn Sullivan, B.S., Director of Technology; Victoria Farrell, MBA, Director Qualitative Data Collection; and Joanne Lubart, J.D., Associate Counsel.

Yates Consulting Group, founded in 2008, specializes in diversity and inclusion support for prime contractors and government agencies. President Henry Yates has more than 30 years’ experience in senior state and local government positions. He has helped national and local firms with recruitment, compliance, and monitoring of D/WMBE, small and veteran business performance. The firm has worked with CHA to collect anecdotal data on other disparity studies.

WindGypsy Consulting leverages 16 years of business consulting to assist small and diverse businesses with analyzing goals, establishing, developing, and improving internal processes. The firm connects prime contractors and agencies to small and diverse businesses to surpass their procurement goals through detailed and clear communication. The firm has worked with CHA to collect contract data on other disparity studies.

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I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by the Washington State Department of Transportation (“WSDOT”) to perform a disparity study of its contracts funded by the Federal Highway Administration (“FHWA”), the Federal Transit Administration (“FTA”) and the State of Washington. We determined WSDOT’s utilization of Minority- and Woman-owned Business Enterprises (“M/WBEs”) and Disadvantaged Business Enterprises (“DBEs”)¹ on WSDOT construction and construction-related services contracts for fiscal years 2018 through 2021; the availability of these firms as a percentage of all firms in WSDOT’s geographic and industry market areas; and any disparities between the WSDOT’s utilization of DBEs and DBE availability. We further analyzed disparities in the Washington economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of minority- and woman-owned firms in obtaining WSDOT contracts and associated subcontracts. We evaluated WSDOT’s DBE Program for FHWA and FTA funded contracts and its Minority, Small, Veteran, Woman’s Business Program for state funded contracts for conformance with constitutional standards, regulatory requirements and national best practices for government contracting affirmative action programs. Based on the results of these extensive analyses, we provide recommendations for WSDOT’s diverse business programs.

The methodology for this study embodies the constitutional principles of *City of Richmond v. Croson*, Ninth Circuit Court of Appeals’ case law and best practices for designing race- and gender-conscious and small business contracting programs. The CHA approach has been specifically upheld by the federal courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for conducting legally defensible disparity studies.

A. Summary of Legal Standards for Disadvantaged Business Enterprise Programs

To be effective, enforceable, and legally defensible, a race-based program for public sector contracts must meet the judicial test of constitutional “strict scrutiny”.

1. Throughout this report, the term “DBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (“*Northern Contracting III*”) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

Strict scrutiny is the highest level of judicial review. WSDOT must meet this test to ensure that any race- and gender-conscious program is in legal compliance.

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman² firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority and woman firms in the market area and seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;
2. The efficacy of race-neutral remedies at overcoming identified discrimination;
3. The flexibility and duration of the relief, including the availability of waiver provisions;
4. The relationship of numerical goals to the relevant market; and
5. The impact of the relief on the rights of third parties.

In *Adarand v. Peña*,³ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the U.S. Department of Transportation (“USDOT”) DBE program.⁴ Just as in the state and local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.⁵

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

3. *Adarand v. Peña*, 515 U.S. 200 (“*Adarand III*”) (1995).

4. 49 C.F.R. Part 26.

Most federal courts have subjected gender preferences to “intermediate scrutiny”.⁶ Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.⁷ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.⁸ However, some appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program⁹ or held that the results would be the same under strict scrutiny.¹⁰

To comply with *Adarand*, Congress reviewed and revised the DBE program statute¹¹ and regulations¹² for federal-aid contracts in the transportation industry. The program governs WSDOT’s receipt of federal funds from the FHWA. To date, every court that has considered the issue has found the regulations to be constitutional on their face.¹³ These cases provide important guidance to WSDOT about how to narrowly tailor its DBE program.

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry when it first enacted and subsequently reauthorized the DBE program. The Ninth Circuit held that “[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21’s enactment, Congress had a strong basis in evidence for concluding that, in at least some parts of the country, discrimination within the transportation contracting industry hinders minorities’ ability to compete for federally funded contracts.” Relevant evidence before Congress included:

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5. See, for example, *Crosan*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; see generally *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).
 6. See, for example, *Builders Ass’n of Greater Chicago v. County of Cook, Chicago*, 256 F.3d 642 (7th Cir. 2001).
 7. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).
 8. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F.3d 983, 998 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).
 9. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007) (“*Northern Contracting III*”).
 10. *Western States Paving Co., Inc. v. Washington State Department of Transportation*, 2013 W.L.1607239 at *13 fn.6 (9th Cir. 2005).
 11. See the *Transportation Equity Act for the 21st Century* (“TEA-21”), Pub. L. No. 105-178 (b)(1), June 22, 1998, 112 Stat. 107, 113.
 12. 49 C.F.R. Part 26.
 13. See, for example, *Midwest Fence Corporation v. Illinois DOT*, 840 F.3d 932 (7th Cir. 2016); *Northern Contracting*; *Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation*, 713 F.3d 1187, 1198 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 994; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000) (“*Adarand VII*”), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001); *M.K. Weeden Construction v. State of Montana*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.¹⁴

Next, the regulations were facially narrowly tailored. Part 26 provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures, as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."¹⁵

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-

14. *Western States*, 407 F.3d at 992-93.

15. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d. 964, 973 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

neutral measures that assist all small firms to achieve minority and woman participation. A recipient must also estimate the portion of the goal it predicts will be met through race-neutral and race-conscious contract goals.¹⁶ This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.¹⁷ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015 and 2020, Congress reauthorized the DBE program based on extensive testimony and reports and again concluded that the evidence before it “provided a strong basis” to continue the program.¹⁸

B. WSDOT’s Diverse Business Programs

1. U.S. Department of Transportation’s Disadvantaged Business Enterprise Program

As a recipient of USDOT funds through the FHWA and the FTA, WSDOT is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26.

Executive Order 1009.02, issued by the WSDOT’s Secretary of Transportation and modified in 2022, affirms the Department’s commitment to promoting equity in contracting. To address complaints of discrimination under Title VI of the Civil Rights Act of 1964 and the DBE program regulations, WSDOT publishes External Complaint Procedures, with instructions on how to file an online complaint.

WSDOT administers a DBE Program Plan based upon the samples and guidance from USDOT. This Plan has been approved by the relevant modal administrations. For federal fiscal years (“FFYs”) 2024 through 2026, WSDOT’s established interim FHWA goal is 19.0%, with 16.5% projected to be met through race-conscious contract goals and 2.5% to be met through race-neutral measures. For FTA funded contracts, its proposed goal for FFYs 2021 through 2023 was 4.80%, comprised of 4.45% race-conscious and 0.35% race-neutral. As discussed in Chapters IV and VII, the results of the availability analysis can be used to set WSDOT’s future triennial and contract goals.

16. 49 C.F.R. §26.45(f)(3).

17. *See, e.g., Sherbrooke*, 345 F.3d. at 973.

18. *Fixing America’s Surface Transportation Act* (Fast Act), Pub. L. No. 114-94, Section 1101 (b), 129 Stat. 1323-1325 (23 U.S.C. 101 *et. seq.*) (2015).

a. DBE Program Elements

i. Eligibility and certification

DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size and personal net worth limits. The applicant owner must also demonstrate that the socially and economically disadvantaged individual owns, manages, and controls the business on a day-to-day basis. Additional standards are set forth in the DBE regulations.

WSDOT has entered into an Interagency Agreement with the State's Office of Minority and Women Business Enterprises ("OMWBE") to delegate DBE certification to OMWBE. OMWBE maintains and regularly updates the statewide Unified Certification Program Directory.

ii. Race- and Gender-Neutral Measures

(a). Small Business Enterprise Element

To meet the requirement in §26.39, Small Business Participation, WSDOT has established a race-neutral Small Business Program. Elements of WSDOT's approved DBE Program Plan include:

- Encouraging DBE Participation on emergency service projects.
- Unbundling of large/mega-project prime and subcontracts and unbundling contracts analysis.
- Ensuring small business technical assistance in understanding WSDOT's Small Business Program.
- Identifying alternative acquisition strategies.
- Small Works Roster program for contracts under \$300,000. There is a streamlined prequalification process for firms not already prequalified to perform larger jobs. Firms on the Roster receive solicitations of their interest and can then request the bid documents if they will bid the work.
- Setting race-neutral Small Business Enterprise ("SBE") and Veteran Business Enterprise ("VBE") goals on state funded projects.
- Small business enterprise certification.
- Small business set-asides for contracts under \$300,000.
- Small business goals for federal-aid projects determined to have sufficient opportunities.

WSDOT has actively taken steps to unbundle contracts and assist small firms to bid as prime contractors. WSDOT has an abbreviated procedure to prequalify contractors for contracts under \$100,000. This one-page form does not require financial statements.

WSDOT sets SBE goals on design-bid-build federal-aid projects determined to have sufficient opportunities using its individual project goal setting methodology. The SBE program has enforceable goals and good faith effort requirements.

(b). Safe Harbor Program for Consultant Contracts

Small architectural and engineering firms seeking to do business with WSDOT as prime vendors or subconsultants may forgo the requirement to comply with the Federal Acquisitor Regulations (“FAR”) regarding actual indirect cost rates by participating in the Safe Harbor Program. The Safe Harbor Program was developed by FHWA to help firms to that find establishing an indirect cost rate to be costly and a barrier to participating in engineering and design contracts.¹⁹ The Program’s basic concept is to allow new, small, and DBE firms that do not have a compliant FAR overhead rate to voluntarily use the Safe Harbor rate while developing a cost history and adequate accounting system, with the objective of enabling more firms to compete for work and ultimately transition to a FAR compliant rate.

(c). Access to Information

WSDOT has created materials to assist firms to navigate their business processes. These include:

- An instruction handout on “Subcontracting on WSDOT Projects from Prior to Bid to Payment.”
- A form to document joint venture arrangements.
- Instructions and tips on vendor registration.
- Construction Contract Opportunities and Contractor Bulletins.
- A web page with links to Contractor Resources.
- Information on how to become prequalified to bid as a prime contractor on WSDOT highway construction projects.
- Information on regular dealers; a list of WSDOT approved regular dealers; and a Regular Dealer Request Form for each project.

b. DBE Program Administration

i. Staff Responsibilities

WSDOT’s Office of Equity and Civil Rights (“OECR”) manages and monitors the WSDOT External Civil Rights Programs including the DBE Program. The OECR Director serves as its DBE Liaison Officer (“DBELO”)

19. [Guidance on Safe Harbor Rate Streamlining for Engineering and Design Services Consultant Contracts.](#)

and is responsible for administering all aspects of the DBE program. The DBELO and the Assistant Director of Business Diversity & Inclusion supervise staff delivering data analysis, communications, and community engagement. WSDOT's headquarters Construction Office works collaboratively with OECR in administering and resolving contract administration issues and compliance violations related to DBE specifications.

WSDOT interacts with the contracting community through the DBE Advisory Work Group. The Group is comprised of WSDOT divisions and local agencies, as well as contractors, consultants, and industry group representatives. The Group meets once a month.

WSDOT has set performance metrics for employees with responsibilities for the DBE program within the Human Resources Division's Performance Management System.

Subrecipients²⁰ must designate their own DBELO, responsible to the chief executive of the agency. Local agencies follow WSDOT's monitoring and compliance procedures, including on-site reviews to ensure that the DBEs are performing a Commercially Useful Function ("CUF"). Local agencies submit monthly reports to OECR.

ii. DBE Contract Goal Setting Policies and Procedures

As required by 49 C.F.R. § 26.51, WSDOT sets contract goals to meet any portion of the overall DBE goal not projected to be met through race-neutral measures. Projects with an engineer's estimate of less than \$250,000 may be excused as not appropriate for a Condition of Award or Consultant DBE Contract goal. Projects with a dollar value over \$100M will be evaluated to determine if a separate overall goal should be set for the project.

To set contract goals, WSDOT evaluates the scopes of work of the project; the estimated percentage of those scopes; historical evidence of subcontractor utilization on similar projects; and the availability of ready, willing, and able DBEs to perform the type(s) of subcontractable work; and WSDOT's progress towards meeting its overall triennial goal. If there are fewer than three certified DBEs for one scope of work within a reasonable mobilization distance, that scope is given a zero weight for goal setting.

For subrecipient projects, WSDOT's Local Programs Project Development Engineer ("Local Engineer") reviews each project to determine if

20. WSDOT passes through money from USDOT to local agencies (often referred to as subrecipients).

it involves work elements that are conducive to DBE participation. No construction funding will be obligated prior to the project review for DBE goals. The Local Engineer then establishes a DBE goal for the project, applying the same methodology as WSDOT uses for its direct contracts.

iii. Data Collection and Monitoring

WSDOT administers a Diversity Compliance and Management System (“DMCS”) powered by B2Gnow[®] for tracking payments to subcontractors, lower tier subcontractors, consultants, manufacturers, regular dealers, and service providers. The DMCS includes all WSDOT diverse business programs. The Department is currently implementing the following modules:

- Contract goal setting
- Automated tracking of contract goals and participation
- Verification of subcontractor payments
- Automated electronic mail communications with subcontractors regarding compliance; and flexible reporting capabilities

c. Counting DBE Participation

If materials or supplies are purchased from a DBE regular dealer, only 60% of the cost of materials or supplies can be counted toward DBE goals. Bidders may count only 50% of the work sublet as “force account.”²¹ DBE utilization can only be counted in those North American Industry Classification System (“NAICS”) codes in which it is certified, with the further restriction that the DBE must perform in one of WSDOT’s narrower work codes.

d. Contract Award Procedures

Detailed Instructions to Bidders provide the requirements for the DBE program as part of the solicitation specifications. WSDOT’s bid process is based on responsiveness. When a DBE contract goal is used, award of the contract is based on the lowest responsive bidder’s demonstration of GFE to meet the prescribed goal. Bidders are required to submit a Disadvantaged Business Enterprise Utilization Certification form with the bid; failure to do so may cause the bid to be rejected as non-responsive. To demonstrate GFE, a bidder must either document that it has met the goal or submit adequate GFE documentation.

21. A force account is a payment method used for extra work when WSDOT and the prime contractor cannot agree on a unit price or lump sum amount or if either method is impracticable.

GFE obligations are imposed for the life of the contract. A DBE may only be terminated and/or replaced for good cause and with WSDOT's prior, written consent. If a DBE is replaced, the new firm must perform the same amount of work under the contract as the DBE that was terminated to the extent needed to meet the contract goal. If OECR subsequently finds inadequate GFE due to failure to submit information, the contractor may be required to pay a DBE penalty equal to the amount of the unmet commitment, in addition to other sanctions imposed by the FHWA or imposed by OECR.

WSDOT conducts regular reviews to ensure that DBEs are performing a CUF. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved.

WSDOT's Construction Office assists OECR with periodic reviews and/or DBE program audits. It will also assist with the investigation of any DBE program and prompt payment complaints.

WSDOT enforces its prompt payment provisions and processes through DMCS. WSDOT does not withhold retainage from prime contractors or prime consultants on federal-aid contracts. However, prime contractors or consultants may withhold retainage from subcontractors or subconsultants.

e. Outreach, Technical Assistance and Training

WSDOT coordinates with organizations, prime contractors, and consultants, as well as with internal divisions, regions and offices to offer technical assistance, business development, training and mentoring programs for DBEs. WSDOT also works with the FHWA, FTA, and FAA to provide training on DBE certification and the assignment of appropriate NAICS codes. WSDOT provides video training to employees and contractors on program compliance elements and procedures.

WSDOT engages in numerous information sharing and outreach activities that include emails, a weekly notice to contractors, and a DBE program newsletter, that provide contracting information and upcoming seminar and event information. WSDOT's website posts information about how to do business with WSDOT, including other bid and contract documents.

WSDOT's DBE supportive services program is a multi-phased framework to provide new and emerging DBEs with general and firm specific training and technical assistance. Long-term development assistance is offered to increase opportunities for DBEs to participate in more varied and significant work, and to help firms achieve self-sufficiency.

WSDOT also has a Long-Term Business Development Program. Assistance includes business assessments; management and organizational development; proposal preparation; strategic growth business plans; accounting and financing; human relations and labor relations; marketing customer services and communications; bidding; estimating and scheduling; and guidelines and laws important to the DBE program.

OECR further works with the Procurement Technical Assistance Centers (“PTACs”), the Native PTAC, the USDOT’s Small Business Transportation Center, the U.S. Department of Commerce’s Small Business Development Centers, the National Association of Minority Contractors, Tabor 100, and other groups providing support to DBEs and small firms.

2. Minority, Small, Veteran and Women’s Business Enterprises Program for State Funded Contracts

OECR administers the M/S/V/WBE Program to increase S/VBE and M/WBE participation on state funded contracts. WSDOT sets mandatory S/VBE goals and voluntary or aspirational M/WBE goals. Progress is measured against goals set by the Governor.

a. Program Eligibility

An eligible SBE is any business that is owned and operated independently from all other businesses; that has either 50 or fewer employees; or has a gross revenue of less than \$7M annually as listed on Federal tax returns or with the Washington State Department of Revenue. The firm must be self-certified through the Washington’s Electronic Business Solution (WEBS) and listed as a small, mini, or micro business in its certification.

VBE certification is conducted by the Washington State Department of Veterans Affairs. Only basic veteran discharge status and business information are required. There are no business size or personal net worth limits. Proof that the business is a Washington State Enterprise is required.

M/WBE certification conducted by OMWBE is modelled after the criteria in Part 26.

b. Program Administration

State funded projects over \$300,000 are reviewed for mandatory SBE and VBE goals and voluntary M/WBE goals. Goals are calculated as a percentage of the contractor’s total bid amount. The established goals are as follows:

- SBEs: 5%

- VBEs: 5%
- MBEs: 10%
- WBEs: 6%

To be eligible for award of the contract, the bidder must complete and submit a Small and Veteran-Owned Business Plan. A contractor is required to use each SBE or VBE identified on its S/VBE Plan for each scope of work and dollar amount listed. Successful prime bidders must submit an M/WBE Participation Plan; meeting any MBE or WBE goal is strictly voluntary. WSDOT otherwise generally follows the DBE program process.

c. Capacity Building Mentorship Program

WSDOT has created the Capacity Building Mentorship Program (“CBMP”), previously called the Mentor Protégé Program, to support and build capacity for underrepresented firms to obtain transportation contracts in Washington State. The CBMP pairs small, minority, veteran and woman businesses with successful prime contractors and consultants. WSDOT has paired over 150 mentors and protégés since the Program launched in 2017. Additionally, Business Impact NW administers loans to protégés participating in the Program, with a total of \$750,000 in loans available from local credit unions.

In addition to the CBMP, WSDOT offers dedicated state funding to assist firms with technical assistance. The Department coordinates with the Associated General Contractors of America in the implementation of the Small Works Roster. Other measures dedicated to the M/S/V/WBE program include updated outreach and community engagement plans, agency-wide training as well as M/S/V/WBE participation plans on state funded construction projects.

d. Minority and Women Business Enterprises Support Services

WSDOT also offers the Minority and Women Business Enterprises Support Services state funded program. The program provides free supportive services and training to minorities, females, and other socially and economically disadvantaged firms. Services include accounting practices, bid preparation, billing and invoicing, prompt payment advice, workflow management, and business plan development.

3. Staff Training

WSDOT staff participate in numerous trainings to ensure that the programs continue to meet legal standards and national best practices. These include:

- American Contract Compliance National Training institute
- B2Gnow® Diversity Management System training
- Bridging the Diversity Gap, a Skillsoft course
- Environmental justice internal online training
- “Valuing Diversity” training documents
- Green Belt Process Improvement Training, offered by Six Sigma
- Community engagement training
- Contract management, an online course

4. Business Owner and Stakeholder Interviews

To explore the impacts of WSDOT’s program, we interviewed 141 individuals about their experiences and solicited their suggestions for changes. We also collected written comments.

Safe Harbor Program: Owners reported mixed experiences with this option. Some found it helpful. Others reported the Program was not useful. Some stated that choosing this option was affirmatively harmful because the low rate makes it difficult to be profitable.

Payments: Difficulties in being paid promptly have caused some small firms to eschew government work altogether. Change order processing was sometimes especially problematic for small firms.

Project Qualifications: Surety bonding requirements were often an obstacle to small firms’ ability to participate on Department projects. DBEs also found insurance requirements sometimes hard to meet. Some consultants believe the requirements are greater than necessary to protect the Department’s interest. Some large non-DBE prime firms suggested an owner-controlled insurance policy to allow small firms to work on large projects.

Access to Capital: Many small firms encountered barriers to obtaining working capital. Many requested more support.

Supportive Services and Technical Assistance Programs: Some prime contractors thought WSDOT needs to do more to support emerging DBEs. Primes are providing significant support. DBEs and non-DBEs agreed that an ombudsman type person was one answer to the need for individualized help. While WSDOT has enhanced its supportive services and technical assistance recently, some business owners stated more in depth and targeted assistance is needed.

Mentor-Protégé Program: Most DBEs supported the mentor-protégé program approach, as did several prime contractors. Some owners who had participated in WSDOT's program gave mixed reviews. A consulting firm questioned whether it is adequately resourced.

Setting Contract Goals: Many interviewees, both non-DBEs and DBEs, requested more transparency about how the Department sets contract goals. Goals that are unrealistic can hurt DBEs. Some non-DBE trade contractors stated that the DBE program hurts their firms.

Meeting DBE Contract Goals: Most prime contractors and consultants were able to meet contract goals. Contractors working in Eastern Washington found the DBE pool to be shallow. Large projects present additional challenges. Several large construction firm representatives stated that they have sometimes chosen not to bid on a WSDOT project because of inability to meet the DBE goal.

Some prime bidders reported that certified firms did not in fact have experience in the industry codes in which they have been certified by OMWBE. Others raised concerns about the accuracy of OMWBE's list. Some interviewees wanted WSDOT to be more proactive about getting firms into the DBE program and helping them to succeed.

Some prime firms stated that they seek to utilize the best qualified subcontractors, without regard to race or gender.

Meeting VBE Contract Goals: Several large firms reported it was difficult to meet the VBE goals on state funded contracts. One bidder questioned whether veterans suffer discrimination. Another reported that his firm rejected a less costly DBE in favor of a VBE to meet the goal.

Good Faith Efforts to Meet DBE and S/VBE Contract Goals: Establishing a bidder's GFE to meet contract goals was difficult for many firms. More guidance from WSDOT about what would be acceptable documentation was requested.

Contract Performance Compliance: Replacing a non-performing DBE was reported to be sometimes difficult. One interviewee stated that the DBE requirements negatively impact his workforce.

DBEs' Capacities: Many prime contractors expressed concerns about whether DBEs have the capacity to perform at the level of WSDOT's goals.

5. Electronic Survey Responses

Written comments were collected from 190 survey respondents about their experiences with WSDOT's Program.

Impact of the DBE Program: Minority and woman respondents widely supported the DBE program. Many stated it was essential to obtaining WSDOT business. Several DBE respondents felt the same firms were used repeatedly. However, one Black respondent believed the program does not support the growth of Black-owned firms.

Impact of the VBE Program: Veteran respondents generally found the program to be helpful. One VBE has not been able to obtain work through the program.

Access to WSDOT Contracting Opportunities: Some DBEs want more opportunities to perform as prime contractors. One common request was to “unbundle” contracts. Several DBEs thought more could be done to increase opportunities for professional services firms. Project Labor and Community Workforce Agreements were barriers to some small construction firms obtaining work for WSDOT. Experience requirements were seen as another barrier. Some DBEs want higher goals. Similar to DBE respondents, VBEs want higher and mandatory VBE goals and set-asides for their firms.

Program Monitoring: Several DBEs requested more oversight to ensure that prime contractors comply with DBE program requirements. Several minority owners felt that White woman-owned firms were “fronts” for White men and there were reports of certified DBEs that were not legitimately minority-owned. One respondent was concerned about retaliation for challenging another firm’s eligibility for the program. Several non-DBEs agreed that ineligible firms were sometimes certified.

Payment: The standard construction industry approach that subcontractors are paid when the prime contractor is paid cause cash flow issues for DBE firms. Payment delays from contract change orders were especially problematic. VBEs also requested faster payment to subcontractors.

Meeting DBE Contract Goals: Although most prime firms indicated they could meet goals, a few found it difficult to find DBE firms.

Outreach and Access to Information: Several DBE respondents requested more outreach and more timely information. Several wanted more opportunities to network with primes and to meet with WSDOT staff. A VBE also requested more networking with prime contractors. Some DBEs were unaware of WSDOT’s DBE support services offerings.

Experiences with the Certification Process: A few thought that the paperwork required for certification was too cumbersome. One certified firm felt that the certifying agency could be more supportive.

Experiences with Supportive Services: Those who had participated in supportive services generally found them to be helpful. Some DBEs requested assistance with obtaining working capital and surety bonding. One DBE that

participated in a bonding support program did not find it helpful because it did not include assistance with obtaining bonding at an affordable rate. Several veteran-owned firms also requested assistance with obtaining capital.

Experiences with Mentor-Protégé Programs and Teaming Arrangements: Mentor-protégé programs and joint ventures were often mentioned as approaches to help DBEs. DBEs that participated in these programs generally reported good experiences. A veteran firm also supported a mentoring program.

C. Utilization, Availability and Disparity Analyses of WSDOT’s Contracts

The study examined WSDOT’s contract data for FHWA, FTA and state funded contracts for fiscal years 2018 through 2021. We received contract records from WSDOT that contained 1,692 contracts, worth \$5,900,612,874. Because of this large volume of FHWA and state funded contracts, we created separate statistically appropriate random sample files for our analysis of contracts from both of these funding sources. Because of the small number of FTA funded contracts, we analyzed the entire universe of FTA contracts.

Table 1-1 presents WSDOT’s geographic market area for contracts funded by all three funding sources is the State of Washington. Tables 1-2 through 1-4 present data on utilization, weighted availability, and disparity ratio by each funding source. We further analyzed state funded contracts with and without S/VBE goals, to examine the results when WSDOT did not intervene in the market with any remedial measures.

**Table 1-1: Summary of Findings:
Share of Final Contract Data File within the State of Washington
(by funding source)**

Funding Source	State of Washington Share of FCDF
FHWA	91.0%
FTA	88.3%
State	89.8%

Source: CHA analysis of WSDOT data

CHA processed the data to determine the share of contract dollars received by different demographic groups (utilization); each group’s availability, weighted by each NAICS code’s share of overall WSDOT spending (weighted availability); and the disparity between the utilization and weighted availability (disparity ratio).

Table 1-2: Summary of Findings: FHWA Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	1.3%	5.3%	3.1%	2.7%	5.8%	18.3%	81.7%
Weighted Availability	2.0%	3.2%	2.1%	3.5%	7.1%	17.9%	82.1%
Disparity Ratio	68.2% ^{‡***}	163.6%***	146.8%***	77.9% ^{‡***}	81.7%***	102.2%***	99.5%***

Source: CHA analysis of WSDOT data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

Table 1-3: Summary of Findings: FTA Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	1.0%	0.2%	3.8%	0.01%	5.4%	10.5%	89.5%
Weighted Availability	1.8%	1.4%	2.0%	2.3%	6.7%	14.2%	85.8%
Disparity Ratio	58.3% [‡]	12.4% [‡]	191.3%	0.4% [‡]	80.5%***	73.8% ^{‡***}	104.3%***

Source: CHA analysis of WSDOT data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

Table 1-4: Summary of Findings: State Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	0.2%	2.4%	1.7%	3.0%	7.6%	14.9%	85.1%
Weighted Availability	1.9%	3.1%	2.2%	3.2%	7.1%	17.4%	82.6%
Disparity Ratio	10.1% ^{‡***}	79.6% ^{‡***}	74.9% ^{‡***}	94.4%***	107.9%***	85.8%***	103.0%***

Source: CHA analysis of WSDOT data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

With respect to substantive and statistical significance, the courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a

“large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.²² Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.²³ A more in-depth discussion of statistical significance is provided in Chapter IV and Appendix C.

D. Analysis of Disparities in the Washington State Department of Transportation’s Marketplace

Evidence of the experiences of DBE firms outside of DBE programs is relevant and probative of the likely results of WSDOT continuing to use only race- and gender-neutral measures. To examine the outcomes throughout WSDOT’s market area, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in WSDOT’s industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in WSDOT’s prime contract and subcontract opportunities.

We analyzed the following data and literature:

- The Census Bureau’s American Community Survey from 2017-2021 for the State of Washington, WSDOT’s geographic market. This rich data set establishes with greater certainty any causal links between race, gender, and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to White males. The data indicate that non-Whites and White women receive lower wages and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.
- State of Washington Industry Data from the Census Bureau’s 2018 Annual Business Survey, which contains 2017 data, the most recent data available.

22. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

23. A chi-square test – examining if the utilization rate was different from the weighted availability – was used to determine the statistical significance of the disparity ratio.

This dataset indicated large disparities between DBE firms and non-DBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), and the payroll of employer firms.

- Surveys and literature on barriers to access to commercial credit and the development of human capital. These sources further establish that minorities and women continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed. These results support the conclusions drawn from the anecdotal interviews and analysis of the WSDOT's contract data that DBEs face obstacles to achieving success on contracts outside of DBE programs.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention.

E. Qualitative Evidence of Race and Gender Barriers in the WSDOT's Marketplace

In addition to quantitative data, anecdotal evidence of firms' marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for DBEs such that narrowly tailored race-conscious contract goals are needed to ensure equal opportunities to compete for WSDOT prime contracts. To explore this type of anecdotal evidence, we received input from participants in four small group interviews. We also received 190 net responses to an electronic anecdotal survey and written comments during the study period.

1. Business Owner Interviews

Many minority and woman owners reported that while progress has been made in integrating their firms into public and private sector contracting opportunities through programs like WSDOT's, significant barriers on the basis of race and/or gender remain.

- Several minority or woman business owners reported that they experience negative assumptions about their qualifications and competency. They believe there can be a stigma to being a DBE.
- Many women stated that sexism remains a problem in the highway construction and consulting industries.

- Numerous DBEs found it difficult to penetrate the networks necessary for success in the highway industry.
- Many DBEs were eager to work as prime contractors or consultants on WSDOT contracts.
- Some minority owners reported that WSDOT staff exacerbates barriers.
- More support was requested for those small firms that have been awarded prime contracts.
- Project size was reported to be a major impediment to DBEs receiving direct awards from WSDOT.
- Even with contact goals, some interviewees felt that large firms did as little as possible to support their inclusion. Compliance was sometimes *pro forma*. Many participants stated that early and meaningful involvement leads to better outcomes.
- Task order or job order contracts– where the future needs of the agency are not yet fully determined– were reported to sometimes result in less work being performed by the DBE than anticipated. The failure of the prime contractor to communicate with its subcontractors was problematic for some firms.
- There was near universal agreement from minority and woman owners that contract goals remain necessary to ensure equal opportunities to compete. Many certified firms stated they received little work outside the DBE program.
- Some interviewees who had complained about poor treatment suffered retaliation.

Experiences of Veteran-Owned Business Enterprises

- VBEs reported that they do not suffer from bias or discrimination.
- Most of the interviewees were happy to take advantage of the contracting preference.
- Two others reported that the fraud associated with VBE programs over the years was a disincentive to participate in WSDOT’s VBE program.

2. Electronic Business Survey

Results from the electronic survey were similar to those of the interviews. Among minority- and woman-owned firms, 43.0% reported that they still experience barriers to equal contracting opportunities; 38.3% said their competency was questioned because of their race or gender; and 28.0% indicated

that they had experienced job-related sexual or racial harassment or stereotyping.

For this Report, WSDOT specifically directed us to examine DBEs' "capacity" to perform on Department contracts. The concern about the abilities of DBEs to meet contract goals has been raised repeatedly by non-DBE prime contractors and consultants. Since there is no accepted definition of capacity— and it seems likely it would vary somewhat from subindustry to subindustry and from construction to professional services – we included questions on the anecdotal survey directed to how much work DBEs can currently perform, and whether they could perform more work if they had the opportunities. We also inquired about their bonding capacities. In sum, we found that the majority of DBEs reported they are ready, willing and able to perform on WSDOT contracts, especially as subcontractors; they can perform contracts well or slightly above their current workloads and they could take on more work if it were offered; and they have the resources to hire additional staff and seasonal employees to meet demand. The largest capacity gap concerned access to surety bonding. Although the vast majority of DBE construction contractors reported being surety bonded, non-DBE construction contractors enjoy much higher aggregate and individual contract limits.

Responses to the survey's open-ended questions expressed these experiences in further detail. The following is a summary of the most common responses.

- Several minority business owners reported that they continue to experience negative assumptions and perceptions about their competency and capabilities based on race and ethnicity.
- Many minority respondents reported that fair opportunities to compete for contracts were not available because of systemic racial barriers.
- Minority respondents reported being subject to demeaning comments and racial harassment.
- Sexism and stereotyping of women in the construction and design industries remains pervasive, according to many women.
- Many women business owners reported instances of hostile environments and sexual harassment.
- A few DBE firms reported entrenched relationships and "good 'ole boy" networks impede access to contract opportunities.
- Some DBEs reported that prime firms use them only on projects with goals and that private sector and no-goal work is unavailable.
- A number of non-minority, woman-owned firms attributed the contract barriers they have experienced to their firm size.

- Many DBEs reported institutional barriers when trying to obtain surety bonding, insurance and loans that reduce their ability to compete on an equal basis. Several reported being subject to stricter criteria when trying to obtain bonding, insurance and loans than their White male counterparts.
- Some respondents reported pressure to reduce their pricing or receiving discriminatory terms because of their DBE status.
- Several non-minority women who were not eligible to be DBE certified felt they were at a disadvantage relative to minority contractors.
- No veteran respondent reported discriminatory barriers based on military service. The most commonly reported issue was difficulty in obtaining bonding, insurance and financing.
- Some veteran respondents felt that veteran-owned firms should be afforded the same level of remedial program benefits and attention as firms owned by racial/ethnic minorities and White women.
- One respondent noted that prime companies use them to meet the goal but do not follow through with the work once the contract is awarded.

F. Recommendations for Enhancements to WSDOT’s Diverse Business Programs

WSDOT’s programs comply with strict constitutional scrutiny, the DBE program regulations and national best practices. Several elements are outstanding, such as its achievement of parity for most groups, supportive services offerings and a strong commitment to leveling the playing field for disadvantaged firms. The Department has made significant strides since our 2017 Study in enhancing its offerings to assist DBEs and SBEs to enhance their capacities. The following suggestions are additional recommendations to support current efforts and to provide even greater opportunities for all firms to compete on a level playing field for WSDOT contracts and subcontracts.

1. Enhance Race- and Gender-Neutral Measures

The courts and the DBE program regulations require that an agency use race-neutral²⁴ approaches to the maximum feasible extent to meet its DBE goal. This is a critical element of narrowly tailoring the program, so that the burden on non-DBEs is no more than necessary to achieve WSDOT’s remedial pur-

24. The term race-neutral as used here includes gender-neutrality, as defined in 49 C.F.R. §5.

poses. Increased participation through race-neutral measures by DBEs will also reduce the need to set contract goals. The following race-neutral approaches address this requirement.

a. Revise the Eligibility Standards for the Minority, Small, Veteran and Woman’s Business Enterprise Program for State Funded Contracts

We suggest revising the eligibility criteria in three ways.

- First, there are no size limits for VBEs; so long as the majority shareholder is a veteran, the firm is eligible. By way of comparison, the limit in the SBE program is \$7M/year in annual gross revenues. We therefore suggest WSDOT’s VBE eligibility standards mirror the size limits for SBEs, thereby equalizing the two types of certifications and not overly advantaging VBEs. This is will also eliminate any confusion between the various certifications.
- Second, apply the affiliation restrictions in the DBE program to SBEs and VBEs. This will ensure that SBEs and VBEs are in fact small business, not part of larger amalgamations of firms. The remedial programs should be limited to businesses that have been potentially subject to barriers on the basis of their size to create a more level playing field.
- Third, in line with the other changes, SBE and VBE eligibility should be limited to owners whose personal net worth is subject to the same test as in the DBE program. This will ensure that only firms owned by persons who are economically disadvantaged are eligible for the preference.

We further recommend that the SBE and VBE certification process be moved to the Office of Minority and Woman Business Enterprises (“OMWBE”). The addition of size limits, affiliation restrictions and a personal net worth test will require OMWBE’s extensive expertise in reviewing certification applications. Trained staff must evaluate applications to ensure that eligibility criteria are adhered to and no front or pass thorough entities receive the benefits of the program.

b. Use the DBE Availability Estimates to set the SBE and VBE Contract Goals

WSDOT currently applies the same SBE and VBE goal to every contract. We recommend a more tailored approach that uses the DBE availability estimates in this report to set SBE and VBE contract goals. As discussed below, similar to the DBE program, this approach will ensure that SBEs and VBEs are utilized to the maximum feasible extent. The availability of DBEs is less than that for SBEs, since SBEs may be owned by individuals who are not

socially and economically disadvantaged. This means that the estimate of DBE availability will be a subset of SBEs (and VBEs if our recommendation to apply the same criteria to VBEs is implemented), ensuring that the goals are achievable.

c. Expand Opportunities for Smaller Contracts

WSDOT has two contracting initiatives to assist small firms to propose on its contracts. The Department unbundles contracts under \$100,000 to assist small firms to bid as prime contractors through an abbreviated prequalification procedure. WSDOT also implements a streamlined prequalification process through its Small Works Roster program for contracts under \$300,000.

We recommend that these limits be raised. The current approach has yielded results. But the dollar amounts of the Department's contracts have increased, and so should the limits of reduced prequalification. Perhaps the abbreviated procedure could be applied to contracts up to \$250,000 and the Small Works Roster to contracts up to \$500,000. DBEs reported that they could handle somewhat larger jobs under their current prequalification status, so raising the limits would allow them to grow their capacities without the burden of the full process and criteria for prequalification for large contracts.

d. Support Consulting Firms' Relationships with DBEs by Permitting Markups

Several large consulting firms stated that the Department's prohibition on marking up a subconsultant's billing rates to account for the increased cost of managing another firm was a disincentive to using DBE subconsultants to the maximum possible extent. Several years ago, FHWA expressed concern with this approach, but offered to work with the Department to explore addressing this issue. We suggest that WSDOT follow up on this collaboration to determine whether a fixed markup percentage (perhaps 5%) can be permitted to encourage large firms to use DBEs as much as possible.

e. Expand the Mentor-Protégé Program

WSDOT implements a mentor-protégé program to increase firms' capacities as part of the S/VBE program. DBEs and non-DBEs generally agreed that supporting the growth and development of DBEs is a worthy objective.

Most participants in WSDOT's program reported excellent experiences. The program has helped them to increase their skills and develop stronger relationships between the parties. More resources to increase the number of firms that can participate would support the growth of the pool of DBEs

and their capacities to perform on WSDOT work as both prime contractors and subcontractors.

f. Increase Resources to Enhance DBEs' Surety Bonding Limits

In our review of DBEs' capacities to perform on WSDOT contracts, the largest gap between their abilities to take on work and non-DBEs concerned surety bonding limits. While the Department has many supportive services offering to address this disparity, more should be done to overcome barriers. There are some excellent programs with demonstrated success that go beyond outreach and training to bring sureties and lenders to the table to actually provide bonds and insurance to small firms.²⁵ We suggest WSDOT explore these enhancements to its current efforts.

g. Target Support for NAICS Codes in which Black-owned DBEs Do Not Fully Participate

These study results suggest that WSDOT's supportive service and other efforts should have an intentional focus on Black firms participating in the most important industries of its contract. Resources should be targeted towards increasing Black utilization in the three codes that make up 71.6% of WSDOT's total spend (237310, Highway, Street, and Bridge Construction; 238910, Site Preparation Contractors; and 238210, Electrical Contractors and Other Wiring Installation Contractors). Black-owned DBEs could be surveyed to determine what would help them to expand their capacities into these subindustries.

2. Continue to Implement a Narrowly Tailored DBE Program

Based on the analyses in Chapters IV and V and the results of our anecdotal data collection in this study and in our other studies conducted in Washington State, we recommend that WSDOT continue to implement a narrowly tailored DBE program.

a. Use the Study to Set the Triennial DBE Goal for FHWA and FTA Funded Contracts

49 C.F.R. 26.45 requires WSDOT to engage in a two-step process to set a triennial goal for DBE participation. One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the Department use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c).²⁶ These results are the estimates of total

25. See, for example, <https://www.illinoistollway.com/technicalassistance>.

DBE availability that reflect the importance of each subindustry to WSDOT's overall FHWA funded contracting activity.

Under §26.45(d), the Department must perform a Step Two analysis. WSDOT must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The Department can consider using the statistical disparities in Chapter V of the rates at which DBEs form businesses as evidence of a possible marker of the availability of minority- and woman-owned businesses that would be expected "but for" discrimination.

b. Use the Study to Set DBE Contract Goals

As a recipient under the jurisdiction of the Ninth Circuit Court of Appeals, WSDOT is required to limit its use of race-conscious contract goals to those groups that have suffered discrimination in its market area. The results of the disparity analyses of WSDOT's contracting activities on both FHWA, FTA and state funded contracts, as well as the economy-wide disparities established in the Census Bureau datasets, support the inference that DBEs do not yet enjoy a level playing field for all types of WSDOT prime contracts and associated subcontracts without affirmative intervention to address the market failure of discrimination. We therefore recommend that the Department continue its use of narrowly tailored contract goals to level the playing field for its contracts.

The highly detailed unweighted availability estimates in Chapter IV can serve as the starting point for setting narrowly tailored contract goals²⁷ that reflect the percentage of available DBEs as a percentage of the total pool of available firms. These "step 1" results must then be evaluated on a case-by-case basis to reflect the current capacity of DBEs to perform the specific scopes of work of that project. Factors such as the location of the project; whether the work is of a specialized nature; current WSDOT or other major projects underway that may impact the ability of DBEs to work on the contract; the entry of newly certified firms into the program; the exit of certified firms from the program; and WSDOT's progress towards meeting its annual DBE goal must all be considered.

26. Table 4-9, Aggregated Weighted Availability.

27. For information about using disparity study data to set narrowly tailored contract goals, please see www.contractgoal-setting.com. We developed this free website in conjunction with B2Gnow®, Inc., to assist agencies to set defensible and achievable contract goals.

c. Consider Utilization Above Contract Goals in Evaluating Good Faith Efforts

Some prime contractors asserted that they might use DBEs more extensively if they were able to receive credit for exceeding the goal in the solicitation or for using DBEs not listed in the original compliance documents. Valid concerns about undermining the use of DBEs on future contracts militate against “banking” past utilization for future projects. However, we suggest that the Department track any DBE utilization greater than the condition of award goal, and permit a bidder to submit the achievement beyond the goal as evidence of its good faith efforts should it fail to fully meet the goal on a future project. This would encourage prime firms to exceed the goals when possible.

d. Enhance DBE Program Policies and Procedures

The DBE program operates well. We suggest some revisions based on the feedback of business owners and staff and national best practices. We note that many of these enhancements will require more staff resources.

- More transparency about how DBE contract goals are set would be helpful. As discussed below, we recommend using the highly detailed data in this Report to set contract goals. While WSDOT uses a narrowly tailored, legally defensible and replicable methodology, information about how a specific goal was determined should allay concerns. More transparency might help to address resistance or questions from prime contractors and even WSDOT staff. For example, a list of the NAICS codes used to set the goal could be listed in the bid documents to provide guidance on how to meet the target for that solicitation.
- Greater clarity about the process to submit GFE documentation was requested by many firms. There was generally skepticism about whether GFE would be accepted and few bidders were willing to take the risk. Developing checklists, samples and training materials would help to ensure that the steps to document GFE are clear and the process for evaluating submissions is transparent. The results of submissions should also be published so that other firms can use them as a guide and increase confidence that the Department fairly evaluates submissions.
- Increased monitoring of DBE program compliance was urged by DBEs and WSDOT staff. This seems to be mostly a problem of insufficient program personnel. Examples include the requirement that prime contractors promptly pay all subcontractors (not only DBEs), meeting the DBE commitments in the bid submission and the contractual

documents, and evaluating contractors' GFE throughout the life of the contract.

e. Develop Performance Measures for Program Success

WSDOT should develop quantitative performance measures for the overall success of the DBE program. To evaluate its effectiveness in reducing the systemic barriers identified in this Report, possible benchmarks might be:

- Increased participation by Black-owned businesses as prime contractors and subcontractors.
- Increased prime contract awards to certified firms
- Increased variety in the industries in which minority- and woman-owned firms are awarded prime contracts and subcontracts
- Increased "capacity" of certified firms as measured by bonding limits, size of jobs, profitability, etc.

II. LEGAL STANDARDS FOR DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program for public sector contracts, regardless of funding source, must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review.²⁸ Strict scrutiny analysis is comprised of two prongs:

1. The government must establish its “compelling governmental interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.
2. Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.²⁹

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority or woman firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area. These are disparity indices, comparable to the type of “disparate impact” analysis used in employment discrimination cases.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority- and woman-owned firms in the market area or in seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

28. Strict scrutiny of remedial race-conscious programs is used by courts to evaluate governmental action that classifies persons on a “suspect” basis, such as race. It is also used in actions purported to infringe upon fundamental rights. Legal scholars frequently note that strict scrutiny constitutes the most rigorous form of judicial review. *See, for example*, Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 U.C.L.A. Law Review 1267, 1273 (2007).

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

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;³⁰
2. The efficacy of race-neutral remedies at overcoming identified discrimination;³¹
3. The flexibility and duration of the relief, including the availability of waiver provisions;³²
4. The relationship of numerical goals to the relevant market;³³ and
5. The impact of the relief on the rights of third parties.³⁴

In *Adarand v. Peña*,³⁵ the United States Supreme Court extended the analysis of strict scrutiny to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts.³⁶ Just as in the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.³⁷ Most federal courts have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.³⁸ The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. The Ninth Circuit requires that gender-based classifications be supported by “sufficient probative evidence” and “exceedingly persuasive justification” and be “substantially related to the objective”.³⁹ However, appellate courts have applied strict scrutiny to the gender-based presumption of social dis-

30. *United States v. Paradise*, 480 U.S. 149, 171 (1987).

31. *Id.*

32. *Id.*

33. *Croson*, 488 U.S. at 506.

34. *Id.*

35. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (“*Adarand III*”).

36. 49 C.F.R. Part 26 and Part 23.

37. *See, for example, Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. 200, 227; *see generally Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

38. *See, e.g., Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore and Maryland Minority Contractors Ass’n*, 83 F.Supp.2d 613 (D. Md. 2000) (“*Baltimore I*”); *W.H. Scott Construction Co., Inc. v. City of Jackson, Mississippi*, 199 F.3d 206, 215 (5th Cir. 1999); *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997) (“*Engineering Contractors II*”); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1519 (10th Cir. 1994) (“*Concrete Works II*”); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1009-1011 (3rd Cir. 1993) (“*Philadelphia II*”); *Coral Construction Co. v. King County*, 941 F.2d 910, 930-931 (9th Cir. 1991).

39. *Western States Paving, Inc. v. Washington Department of Transportation*, 407 F. 3d 983, 998 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

advantage in reviewing the constitutionality of the DBE program⁴⁰ or held that the results would be the same under strict scrutiny.⁴¹

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review called “rational basis” scrutiny.⁴² The Ninth Circuit Court of Appeals applies intermediate scrutiny to gender conscious programs.⁴³ In contrast to strict scrutiny and to intermediate scrutiny, rational basis means the governmental action or statutory classification must be “rationally related” to a “legitimate” government interest.⁴⁴ The courts have held there are no equal protection implications under the Fourteenth Amendment of the United States Constitution for groups not subject to systemic discrimination.⁴⁵

Under strict scrutiny, unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.⁴⁶ The plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.⁴⁷ “[W]hen the proponent of an affirmative action plan produces sufficient evidence to support an inference of discrimination, the plaintiff must rebut that inference in order to prevail.”⁴⁸

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”⁴⁹ To successfully refute the government’s case, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.⁵⁰ For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed

40. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007), *cert. denied*, 15-1827, June 26, 2017 (“*Northern Contracting III*”).

41. *Western States Paving*, 407 F.3d at 998.

42. *See, generally, Coral Construction Co. v. King County*, 941 F. 2d 910 ; *Equal. Found. v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).

43. *See, for example, Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d 1187, 1195 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 990 n.6.

44. *Heller v. Doe*, 509 U.S. 312, 320 (1993).

45. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

46. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).

47. *Scott*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10th Cir. 2000), 532 U.S. 941, *cert. granted then dismissed as improvidently granted*, 534 U.S. 103 (2001) (“*Adarand VII*”).

48. *Engineering Contractors II*, 122 F.3d at 916.

49. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003) (10th Cir. 2003) (“*Concrete Works IV*”).

50. *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233 (4th Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932 (7th Cir. 2016) (“*Midwest Fence II*”).

to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”⁵¹ When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.⁵² A plaintiff cannot rest upon general criticisms of studies or other related evidence; it must meet its burden that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or government program illegal.⁵³

To meet strict scrutiny, studies have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and woman-owned firms and their actual utilization compared to White male-owned businesses. High quality studies also examine the elements of the agency’s program to determine whether it is sufficiently narrowly tailored. The following is a detailed discussion of the legal parameters and the requirements for conducting studies to support defensible programs.

B. Elements of Strict Scrutiny

In its landmark decision in *City of Richmond v. J.A. Croson Co.*, the United States Supreme Court established the constitutional contours of permissible race-based public contracting programs. Reversing long established Equal Protection jurisprudence, the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that inures to the benefit of these victims of historic discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence” and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny”.

The Court struck down the City of Richmond’s Minority Business Enterprise Plan (“Plan”) because it failed to satisfy the strict scrutiny analysis applied to “race-

51. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 970 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

52. *Coral Construction*, 941 F. 2d at 921; *Engineering Contractors II*, 122 F.3d at 916.

53. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1522-1523; *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999), *aff’d per curiam*, 218 F. 3d 1267 (11th Cir. 2000); *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

based” government programs. The City’s “setaside” Plan required prime contractors awarded City construction contracts to subcontract at least 30% of the project to Minority-Owned Business Enterprises (“MBEs”). A business located anywhere in the nation was eligible to participate so long as it was at least 51% owned and controlled by minority citizens or lawfully-admitted permanent residents.

The Plan was adopted following a public hearing during which no direct evidence was presented that the City had discriminated on the basis of race in contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50% Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) generalized statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

In affirming the court of appeals’ determination that the Plan was unconstitutional, Justice Sandra Day O’Connor’s plurality opinion rejected the extreme positions that local governments either have *carte blanche* to enact race-based legislation or must prove their own active participation in discrimination:

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment...[I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion ...[it] could take affirmative steps to dismantle such a system.⁵⁴

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by ensuring that the legislative body is pursuing an important enough goal to warrant use of a highly suspect tool.⁵⁵ It also ensures that the means chosen “fit” this compelling goal so closely that there is little or no likelihood that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny is designed to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.

54. 488 U.S. at 491-92.

55. See also, *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.”).

Richmond’s evidence was found to be lacking in every respect.⁵⁶ The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects.

According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City’s evidence would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, the City could not rely upon Congress’ determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and, in any event, it was exercising its powers under Section Five of the Fourteenth Amendment of the United States Constitution. Local governments are further constrained by the Amendment’s Equal Protection Clause.

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”⁵⁷

This analysis was applied only to Blacks. The Court emphasized that there was “absolutely no evidence” of discrimination against other minorities. “The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City’s purpose was not in fact to remedy past discrimination.”⁵⁸

Having found that Richmond had not presented evidence in support of its compelling interest in remediating discrimination—the first prong of strict scrutiny—the Court made two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30% quota had no basis in evidence and

56. The City cited past discrimination and its desire to increase minority business participation in construction projects as the factors giving rise to the Plan.

57. *Crosen*, 488 U.S. at 510.

58. *Id.*

was applied regardless of whether the individual MBE had suffered discrimination.⁵⁹ The Court noted that the City “does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”⁶⁰

Apparently recognizing that her opinion might be misconstrued to eliminate all race-conscious contracting efforts, Justice O’Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.⁶¹

While much has been written about *Croson*, it is worth stressing what evidence was, and was not, before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.⁶² Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court’s rejection of Richmond’s reliance on only the percentage of Blacks in the City’s population to a requirement that only firms that bid or have the

59. *See Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

60. *Croson*, 488 U.S. at 502.

61. *Id.* at 509 (citations omitted).

62. *Id.* at 502.

“capacity” or “willingness” to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.⁶³

This argument has been rejected explicitly by some courts. In denying the plaintiff’s summary judgment motion to enjoin the City of New York’s M/WBE construction ordinance, the court stated:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.⁶⁴

Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible goals based upon the availability of MBEs to perform the scopes of the contract in the government’s local market area. In contrast, the USDOT DBE program avoids these pitfalls. 49 C.F.R. Part 26 “provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*”.

While strict scrutiny is designed to require clear articulation of the evidentiary basis for race-based decision-making and careful adoption of remedies to address discrimination, it is not, as Justice O’Connor stressed, an impossible test that no proof can meet. Strict scrutiny need not be “fatal in fact”.

63. See, for example, *Northern Contracting III*, 473 F.3d 715, 723.

64. *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785, *28-29 (E.D. N.Y. 1998); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2nd Cir. 1992) (“*Croson* made only broad pronouncements concerning the findings necessary to support a state’s affirmative action plan”); cf. *Concrete Works II*, 36 F.3d at 1528 (City may rely on “data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger’s summary judgment motion”).

C. Strict Scrutiny as Applied to United States Department of Transportation Disadvantaged Business Enterprise Program

1. Elements of the DBE Program for USDOT Assisted Contracts

In *Adarand v. Peña*,⁶⁵ the Supreme Court again overruled long settled law and extended the analysis of strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to federal enactments. To comply with *Adarand*, Congress reviewed and revised the DBE program statute⁶⁶ and implemented regulations⁶⁷ for federal-aid contracts in the transportation industry. The program governs WSDOT's receipt of federal funds from the Federal Highway Administration ("FHWA"), the Federal Transit Administration ("FTA") and the Federal Aviation Administration ("FAA").

To date, every court that has considered the issue has found the regulations to be constitutional on their face.⁶⁸ These cases provide important guidance to WSDOT about how to narrowly tailor its DBE program, as well as its initiatives for its state funded contracts.

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry. The Ninth Circuit held that "[i]n light of the substantial body of statistical and anecdotal material considered at the time of TEA-21's enactment, Congress had a strong basis in evidence for concluding that, in at least some parts of the country, discrimination within the transportation contracting industry hinders minorities' ability to compete for federally funded contracts." Relevant evidence before Congress included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms;
- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and

65. 515 U.S. 200 (1995) ("*Adarand III*").

66. See the *Transportation Equity Act for the 21st Century* ("TEA-21"), Pub. L. No. 105-178 (b)(1), June 22, 1998, 112 Stat. 107, 113.

67. 49 C.F.R. Part 26.

68. See, for example, *Midwest Fence II*; *Northern Contracting III*, 473 F.3d at 715; *AGC v. CalTrans*; *Western States*, 407 F.3d at 994; *Sherbrooke*; *Adarand II*; *M.K. Weeden Construction v. State of Montana*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.⁶⁹

Next, the regulations were facially narrowly tailored. Unlike the prior program,⁷⁰ the new Part 26 rule provides that:

- The overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient's federally assisted contracts.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures as well as estimate that portion of the goal it predicts will be met through such measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The goals are to be adjusted during the year to remain narrowly tailored.
- Absent bad faith administration of the program, a recipient cannot be penalized for not meeting its goal.
- Periodic review is undertaken by Congress during surface transportation reauthorizations to ensure adequate durational limits.
- The inclusion of provision allowing for individual determinations of social and economic disadvantage
- Exemptions or waivers from program requirements are available.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."⁷¹

These elements have led the courts to conclude that the program is narrowly tailored on its face. First, the regulations place strong emphasis on the use of race-neutral means that assist all small firms to achieve minority and woman participation. WSDOT must also estimate the portion of the goal it predicts will

69. *Western States Paving*, 407 F.3d at 992-93.

70. The DBE program regulation in effect prior to March of 1999 was set forth in 49 C.F.R. Part 23.

71. *Sherbrooke*, 345 F.3d. at 973.

be met through race-neutral and race-conscious measures (contract goals).⁷² This requirement has been central to the holdings that the DBE regulations meet narrow tailoring.⁷³ Further, a recipient may terminate race-conscious contract goals if it meets its annual overall goal through race-neutral means for two consecutive years. Finally, the authorizing legislation is subject to Congressional reauthorization that will ensure periodic public debate.

In 2015, Congress reauthorized the DBE program and again concluded that the evidence before it “provided a strong basis” to continue the program.⁷⁴ Relevant evidence before Congress fell into four main categories: (1) evidence of discriminatory barriers to the formation of qualified MBEs; (2) evidence of discriminatory barriers to the success of qualified MBEs; (3) evidence from local disparity studies; and (4) evidence from the results of removing affirmative action programs.⁷⁵

More recently, in the *Infrastructure Investment and Jobs Act (IIJA)*, also known as the *Bipartisan Infrastructure Law (BIL)*,⁷⁶ Congress received and reviewed testimony and voluminous documentation of race and gender discrimination from numerous sources, including congressional hearings and other investigative activities, disparity studies, scientific reports, reports issued by public and private agencies at every level of government, news reports, academic publications, reports of discrimination by organizations and individuals, and discrimination lawsuits. This evidence demonstrates that race- and gender-neutral efforts alone continue to be insufficient to address the nationwide problem. Congress found that despite the real improvements caused by the DBE program, minority- and woman-owned businesses across the country continue to confront serious and significant race- and gender-based obstacles to success on USDOT funded transportation contracts.⁷⁷

2. Narrowly Tailoring WSDOT’s DBE Program

Agencies that receive FHWA grants for planning or development and award prime contracts for projects that equal or exceed an accumulative amount of \$250,000.00 in a fiscal year must have a DBE program and must meet related

72. 49 C.F.R. §26.45(f)(3).

73. *See, e.g., Sherbrooke*, 345 F.3d at 973.

74. *Fixing America’s Surface Transportation Act (Fast Act)*, Pub. L. No. 114-94, Section 1101 (b), 129 Stat. 1323-1325 (23 U.S.C. 101 *et. seq.*) (2015).

75. *Adarand VII*, 228 F.3d at 1167-1175; *see also Sherbrooke*, 345 F.3d at 969-970; *Western States Paving*, 407 F.3d at 720-721, and Appendix – The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey, 61 Fed. Reg. 26050 (May 23, 1996) (citing approximately thirty congressional hearings since 1980 concerning MBEs).

76. Pub. L. No. 117-58, 117th Congress (2021).

77. The Invest in America Act also addresses aspects of the COVID-19 pandemic and states that its incidents and effects on DBEs constitute another reason for continuing the USDOT DBE Program.

requirements as an expressed condition of receiving these funds. Therefore, WSDOT must establish a DBE program plan in conformance with 49 C.F.R. Part 26 (“Part 26”).

While the Ninth Circuit has agreed with the other Federal courts that have reviewed the DBE program and found that Part 26 and its authorizing statutes are constitutional, it has said that in order to be narrowly tailored, the race-conscious elements of a national program must be limited to those parts of the country where its race-based measures are demonstrably needed. The Ninth Circuit has moved beyond the DBE regulatory and legal framework and added the requirement that a recipient must provide additional evidence beyond the national data in the record upon which Congress relied in enacting the DBE program in order to narrowly tailor the agency’s DBE program. In *Western States Paving v. Washington State Department of Transportation*, the court was persuaded by USDOT’s argument that race-conscious goals can only be applied by recipients in those localities where the effects of discrimination are present. “As the United States correctly observed in its brief and during oral argument, it cannot be said that TEA-21 is a narrowly tailored remedial measure unless its application is limited to those states in which the effects of discrimination are actually present.”⁷⁸ In addition, each group sought to be included in race-conscious relief must have suffered discrimination in the agency’s market area.⁷⁹

WSDOT failed to introduce any evidence at the summary judgment stage to address the question whether “the effects of discrimination [are] present in the Department’s markets.”⁸⁰ The court was proffered no statistical or anecdotal data similar to that presented to the district court in the challenge to the Minnesota Department of Transportation’s DBE program.⁸¹ “The record is therefore devoid of any evidence suggesting that minorities currently suffer--or have ever suffered--discrimination in the Washington transportation contracting industry. We must therefore conclude that Washington's application of TEA-21 conflicts with the guarantees of equal protection because the State's DBE program is not narrowly tailored to further Congress's remedial objective.”⁸²

As the result of the decision in *Western States Paving*, states in the Ninth Circuit must establish the presence of discrimination within their transportation contracting industry. Even if discrimination is present within the state, the pro-

78. 407 F.3d at 998.

79. 407 F.3d at 999.

80. 407 F.3d at 996.

81. See generally, *Sherbrooke* (Minnesota and Nebraska had conducted studies. CHA served as counsel to the Minnesota DOT report.).

82. 407 F.3d at 999.

gram is narrowly tailored only if it applies to those minority groups that have actually suffered discrimination.

In the wake of *Western States*, the Office of General Counsel of USDOT issued official institutional guidance in the form of *Questions and Answers Concerning Response to Western States Paving Co. v. Washington State Department of Transportation (USDOT Guidance)* for the benefit of states in the Ninth Circuit.⁸³ The USDOT Guidance calls for consideration of both statistical and anecdotal evidence and advises recipients to gather evidence of discrimination and its effects separately for each of the presumptively disadvantaged Part 26 groups. Recipients should consider, as they plan their studies, the evidence-gathering efforts that Federal courts have approved in the past and specifically points to the studies in the *Sherbrooke* and *Northern Contracting* cases.⁸⁴ In conducting subsequent studies, research should include:

- Evidence for each racial and ethnic group and White women.
- An assessment of any anecdotal and complaint evidence of discrimination.
- Evidence of barriers in obtaining bonding and financing and disparities in business formation and earnings.
- Disparity analyses between DBE utilization by the agency and the availability of DBEs to perform in its markets.
- Comparison of DBE utilization on contracts with goals to utilization on contracts without goals.
- Evidence-gathering efforts that Federal courts have approved in the past.

Under Part 26, WSDOT must use a two-step goal-setting process to establish its overall triennial goal for its FHWA funded contracts. WSDOT's overall triennial goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on its USDOT assisted contracts. As discussed in the USDOT Guidance, a disparity study is the preferred method in the Ninth Circuit to determine the availability of DBEs to perform in the recipient's market.⁸⁵

Under Step 1, WSDOT must determine the base figure for the relative availability of DBEs. Under Step 2, WSDOT must examine all evidence available in its

83. <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/western-states-paving-company-case-qa>.

84. *Sherbrooke; Northern Contracting III*.

85. An availability study using a methodology similar to that of this Report was recently upheld as the basis for the Illinois Department of Transportation's DBE program, as well as the Illinois Tollway's program for non-federally funded contracts.

jurisdiction to determine whether to adjust the base figure. WSDOT must consider the current capacity of DBEs, as measured by the volume of work DBEs have performed in recent years.

To perform Step 1– estimating the base figure of DBE availability– the study must conduct the following analyses. First, it must empirically establish the geographic and product dimensions of its contracting and procurement market area. This is a fact driven inquiry; it may or may not be the case that the market area is the government’s jurisdictional boundaries.⁸⁶ A commonly accepted definition of geographic market area applied in this Report is the contiguous locations that account for at least 75% of the agency’s contract and subcontract dollar payments.⁸⁷ Likewise, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and subcontract payments for the Study period.⁸⁸ This is the methodology recommended in the Transportation Research Board’s *National Disparity Study Guidelines*. Second, the study must calculate the availability of DBEs in WSDOT’s market area, discussed below.

Programs based upon studies similar to the “custom census” methodology employed for this Report have been deemed a rich and relevant source of data and have been upheld repeatedly. This includes the availability analysis and the examination of disparities in the business formation rates and business earnings of minorities and women compared to similarly situated non-minority males. The Illinois Department of Transportation’s (IDOT’s) DBE program was upheld based on this approach combined with other economy-wide and anecdotal evidence. The USDOT’s institutional guidance for Part 26 refers approvingly to this case. IDOT’s plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a “level playing field” for government contracts.

The stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, indicates that IDOT’s 2005 DBE goal represents a “plausible lower-bound estimate” of DBE participation in the absence of discrimination... Plaintiff presented no persuasive evidence contravening the conclusions of IDOT’s studies, or explaining the disparate usage of DBEs on goals and non-goals contracts... IDOT’s proffered evidence of discrimination against DBEs was not limited to alleged discrimination by prime

86. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore “economic reality”).

87. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010, p. 49 (“*National Disparity Study Guidelines*”).

88. *Id.* at 50-51.

contractors in the award of subcontracts. IDOT also presented evidence that discrimination in the bonding, insurance, and financing markets erected barriers to DBE formation and prosperity. Such discrimination inhibits the ability of DBEs to bid on prime contracts, thus allowing the discrimination to indirectly seep into the award of prime contracts, which are otherwise awarded on a race- and gender-neutral basis. This indirect discrimination is sufficient to establish a compelling governmental interest in a DBE program... Having established the existence of such discrimination, a governmental entity has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.⁸⁹

In upholding the Minnesota Department of Transportation’s DBE program using the same approach, the Eighth Circuit opined that while plaintiff attacked the study’s data and methods, it

failed to establish that better data was [sic] available or that Mn/DOT was otherwise unreasonable in undertaking this thorough analysis and in relying on its results. The precipitous drop in DBE participation in 1999, when no race-conscious methods were employed, supports Mn/DOT’s conclusion that a substantial portion of its 2001 overall goal could not be met with race-neutral measures, and there is no evidence that Mn/DOT failed to adjust its use of race-conscious and race-neutral methods as the year progressed, as the DOT regulations require.⁹⁰

More recently, the Seventh Circuit affirmed the district court and upheld the Illinois Tollway’s DBE program for non-federal-aid contracts based upon a Colette Holt & Associates disparity study utilizing this methodology. Plaintiff’s main objection to the defendant’s evidence was that it failed to account for “capacity” when measuring DBE availability and underutilization. As is well established, “Midwest would have to come forward with ‘credible, particularized evidence’ of its own, such as a neutral explanation for the disparity between DBE utilization and availability showing that the government’s data is flawed, demonstrating that the observed disparities are statistically insignificant or presenting contrasting statistical data. [citation omitted]. Plaintiff “fail[ed] to provide any independent statistical analysis or make this showing here.”⁹¹ Midwest offered only mere conjecture about how the defendants’

89. *Northern Contracting II*, at *82 (internal citations omitted); see *Croson*, 488 U.S. at 492.

90. *Sherbrooke*, 3345 F.3d at 973.

91. See *Midwest Fence II*, 84 F. Supp. 3d at 705.

studies' supposed failure to account for capacity may or may not have impacted other evidence demonstrating actual bias.

In the Ninth Circuit, recipients must take the further step of ensuring that only those groups that have suffered discrimination in its marketplace are eligible for race-conscious relief. In practice, this means that the agency must have commissioned a disparity study that found that a group no longer is subject to discriminatory barriers and enjoys a level playing field for recipient prime contracts and subcontracts. If a group is no longer "underutilized", a firm owned by a member of an otherwise presumptively socially disadvantaged group may not be credited toward meeting contract goals.⁹² Further, the availability of any such group cannot be part of the analysis to set contract goals.⁹³

Guidance on the application of this test has been provided by courts in the Ninth Circuit in the wake of *Western States*. In the challenge to the California Department of Transportation's ("CalTrans") DBE program, the court affirmed the district court's judgment that CalTrans program was sufficiently narrowly tailored.⁹⁴ CalTrans properly relied upon a disparity study to determine whether there was evidence of discrimination in California's contracting industry.

The district court in *Mountain West Holding Co., Inc. v. Montana*,⁹⁵ applied *Western States Paving* and rejected the plaintiff's argument that the Montana Department of Transportation's DBE goal-setting program unlawfully required prime contractors to give preference to minority and female subcontractors competing for work with prime contractors on state jobs. Montana established sufficient evidence to demonstrate discrimination in the Department's transportation contracting industry. The court relied on evidence demonstrating that participation by DBEs declined after Montana abandoned contract goals in the wake of *Western States Paving*, as well as anecdotal evidence of a "good ol' boys" network within the state's contracting industry.⁹⁶ Following Mountain West's appeal, the Ninth Circuit determined that the claims for injunctive and declaratory relief were moot, since Montana does not currently employ gender- or race-conscious goals, and the goals were several years old.

92. No case has addressed whether a firm certified under the individual consideration of social and economic disadvantage criteria set out in Appendix E to Part 26 can be counted towards contract goals.

93. Part 26, §26.45 (h) states that overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

94. *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d 1187 (9th Cir. 2013).

95. 2017 WL 2179120 (9th Cir. May 16, 2017), Memorandum Opinion (Not for Publication), dismissing in part, reversing in part and remanding the U.S. District Court decision at 2014 WL 6686734 (D. Mont. 2014).

96. *Id.*

As discussed in Chapter VI of this report, there is no requirement that anecdotal evidence be verified. The *CalTrans* case specifically rejects such a test. Further,

AGC also discounts the anecdotal evidence because some accounts ascribe minority underutilization to factors other than overt discrimination, such as difficulties with obtaining bonding and breaking into the “good ole boy” network of contractors. However, federal courts and regulations have identified precisely these factors as barriers that disadvantage minority firms because of the lingering effects of discrimination. [citations omitted] Moreover [sic], AGC ignores the many incidents of racial and gender discrimination presented in the anecdotal evidence. Caltrans does not claim, and the anecdotal evidence does not need to prove, that every minority-owned business is discriminated against. It is enough that the anecdotal evidence supports Caltrans’ [sic] statistical data showing a pervasive pattern of discrimination.⁹⁷

Even where an agency has established its right to employ race-conscious contract goals on appropriate solicitations, the recipient must use race-neutral measures to the maximum feasible extent.⁹⁸ There is no requirement that an agency must try or exhaust all possible race-neutral approaches and prove they failed before it can implement contract goals.⁹⁹

Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by WSDOT without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.¹⁰⁰ Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.¹⁰¹ It was precisely these types of race-neutral remedies applied by Cal-

97. *Caltrans*, 713 F.3d at 1198-1199; see also *Mountain West Holding Co. v. Montana Department of Transportation*, 2014 WL 6686734 (D. Mont 2014) (study uncovered substantial anecdotal evidence of discrimination in Montana’s transportation contracting market, including evidence of a “good ole boy network.”); *H.B. Rowe*, 615 F3d at 261 (“such networks exert a chronic and pernicious influence on the marketplace that calls for remedial action.”).

98. 49 C.F.R. §26.51(a).

99. 2013 WL 1607239 at *10.

100. *Id.*

101. *Croson*, 488 U.S. at 503 n.3.

Trans that the Ninth Circuit pointed to in holding its program to meet strict scrutiny.¹⁰²

102. 2013 WL 1607239 at *10.

III. WASHINGTON DEPARTMENT OF TRANSPORTATION'S DIVERSE BUSINESS PROGRAMS

This Chapter describes the WSDOT Disadvantaged Business Enterprise (“DBE”) program for federal-aid contracts and Minority, Small, Veteran and Women’s Business Enterprise (“M/S/V/WBE”) program for state funded contracts. We first provide an overview of the elements of the programs. The second section presents the results of our interviews with businesses and stakeholders about the implementation of the programs and of our electronic survey of business owners.

A. U.S. Department of Transportation’s Disadvantaged Business Enterprise Program

As a recipient of US Department of Transportation (“USDOT”) funds through the Federal Highway Administration (“FHWA”) and the Federal Transit Administration (“FTA”), WSDOT is required as a condition of receipt to implement a DBE program in compliance with 49 C.F.R. Part 26.¹⁰³

- Keep and report various data to USDOT, including the utilization of DBEs on its federal-aid contracts and create a bidders list of all firms bidding to WSDOT as prime contractors and firms bidding to those prime contractors as subcontractors.¹⁰⁴
- Adopt a non-discrimination policy statement.¹⁰⁵
- Appoint a DBE Liaison Officer (“DBELO”), with substantial responsibilities and direct reporting to the chief executive office of the agency.¹⁰⁶
- Make efforts to utilize DBE financial institutions.¹⁰⁷

103. 49 C.F.R. §§ 26.3 and 26.21.

104. 49 C.F.R. § 26.11.

105. 49 C.F.R. § 26.23.

106. 49 C.F.R. § 26.25.

107. 49 C.F.R. § 26.27.

- Adopt a prompt payment mechanism for its prime contractors and for the prompt payment of subcontractors by prime contractors.¹⁰⁸
- Create and maintain a DBE directory. WSDOT is a member of the Washington Unified Certification Program (“UCP”) and conducts DBE certifications.¹⁰⁹
- Address possible overconcentration of DBEs in certain types of work.¹¹⁰
- Include elements to assist small businesses.¹¹¹

WSDOT administers a DBE Program Plan based upon the samples and guidance from USDOT. This Plan has been approved by the relevant modal administrations. As part of the Plan, WSDOT is required to submit a triennial DBE goal to each USDOT modal administration. For federal fiscal years (“FFYs”) 2024 through 2026, WSDOT’s established interim FHWA goal is 19.0%. For FTA funded contracts, its proposed goal for FFYs 2021 through 2023 was 4.80%, comprised of 4.45% race-conscious and 0.35% race-neutral. As discussed in Chapters IV and VII, the results of the availability analysis can be used to set WSDOT’s future triennial and contract goals.

WSDOT conducts “goal attainment forecasting” to predict DBE utilization towards meeting the goal for the current and future years. This performance measure takes into account participation levels on a contract and predicts the year the project will be completed. The forecast addresses the regulatory requirement that a recipient provide its modal administration with a “shortfall analysis” if it fails to meet its annual goal.

WSDOT’s Secretary of Transportation has issued Executive Order 1009.02 which affirms the Department’s commitment to promoting equity in contracting. It states WSDOT’s policy regarding disadvantaged and other small firms and includes provisions on accountability; external inclusion and outreach; program administration; stakeholder engagement; and contact information. The policy was last modified in 2022.

To address complaints of discrimination under Title VI of the Civil Rights Act of 1964 and the DBE program regulations, WSDOT publishes External Complaint Procedures, with instructions on how to file an online complaint. The complainant must identify the project and designate whether the genesis of the complaint is based on prompt payment, certification, retainage, or fraud. The complainant may also provide a narrative of additional pertinent information. The complaint is sent to WSDOT OECR. The case is then assigned to a Lead Investigator.

108. 49 C.F.R. § 26.29.

109. 49 C.F.R. § 26.31.

110. 49 C.F.R. § 26.33.

111. 49 C.F.R. § 26.39.

1. Eligibility for the DBE Program

DBEs must meet the requirements of 49 C.F.R. Part 26, including the business size¹¹² and personal net worth limits¹¹³. The applicant owner must also demonstrate that the socially and economically disadvantaged individual owns, manages, and controls the business on a day-to-day basis. Additional standards are set forth in the DBE regulations.

WSDOT has entered into an Interagency Agreement with the State’s Office of Minority and Women Business Enterprises (“OMWBE”) to delegate DBE certification to OMWBE. WSDOT pays OMWBE to conduct the DBE certification process. WSDOT reviews OMWBE’s compliance with the Agreement and all federal DBE certification requirements bi-annually; attends OMWBE’s management meetings; investigates complaints against OMWBE related to DBE certification; and works with OMWBE to investigate certification complaints. This arrangement has been approved by USDOT as in compliance with the Unified Certification Program under Part 26.¹¹⁴ OMWBE maintains and regularly updates the statewide Unified Certification Program Directory.

2. Race- and Gender-Neutral Measures

a. Small Business Enterprise Element

To meet the requirement in § 26.39, *Small Business Participation*, WSDOT has established a race-neutral Small Business Program. Elements of WSDOT’s approved DBE Program Plan include:

- Encouraging DBE Participation on emergency service projects.
- Unbundling of large/mega-project prime and subcontracts and unbundling contracts analysis.
- Ensuring small business technical assistance in understanding WSDOT’s Small Business Program.
- Identifying alternative acquisition strategies.
- Small Works Roster program for contracts under \$300,000. There is a streamlined prequalification process for firms not already prequalified to perform larger jobs. Firms on the Roster receive solicitations of their interest and can then request the bid documents if they will bid the work.

112. The current overall ca is \$30.4M.

113. The current limit is \$1.32M.

114. 49 C.F.R. §26.39.

- Setting race-neutral Small Business Enterprise (“SBE”) and Veteran Business Enterprise (“VBE”) goals on state funded projects.
- Small business enterprise certification.
- Small business set-asides for contracts under \$300,000.
- Small business goals for federal-aid projects determined to have sufficient opportunities.

WSDOT has actively taken steps to unbundle contracts and assist small firms to bid as prime contractors. WSDOT has an abbreviated procedure to prequalify contractors for contracts under \$100,000. This one-page form does not require financial statements.

WSDOT sets SBE goals on design-bid-build federal-aid projects determined to have sufficient opportunities using its individual project goal setting methodology. The requirement to submit a SBE Plan prior to starting work is mandatory; the achievement of the SBE goal is not. The Plan must contain a statement from the bidder of its commitment to foster and grow SBEs; a mission statement; a list of the personnel charged with the authority and responsibility to implement and monitor the Plan; the approaches and methodology that will be employed to ensure the maximum participation by SBEs; provisions for staff training to implement the Plan; the mechanism to ensure that all subcontractors will be paid promptly; a dispute resolution process, etc.

b. Safe Harbor Program for Consultant Contracts

Small architectural and engineering firms seeking to do business with WSDOT as prime vendors or subconsultants may forgo the requirement to comply with the Federal Acquisitor Regulations (“FAR”) regarding actual indirect cost rates by participating in the Safe Harbor Program. The Safe Harbor Program was developed by FHWA to help firms to that find establishing an indirect cost rate to be costly and a barrier to participating in engineering and design contracts.¹¹⁵ The Program’s basic concept is to allow new, small, and DBE firms that do not have a compliant FAR overhead rate to voluntarily use the Safe Harbor rate while developing a cost history and adequate accounting system, with the objective of enabling more firms to compete for work and ultimately transition to a FAR compliant rate.

c. Access to Information

WSDOT has created materials to assist firms to navigate its business processes. These include:

115. [Guidance on Safe Harbor Rate Streamlining for Engineering and Design Services Consultant Contracts.](#)

- An instruction handout on “Subcontracting on WSDOT Projects from Prior to Bid to Payment.”
- A form to document joint venture arrangements.
- Instructions and tips on vendor registration.
- Construction Contract Opportunities and Contractor Bulletins.
- A web page with links to Contractor Resources.
- Information on how to become prequalified to bid as a prime contractor on WSDOT highway construction projects.
- Information on regular dealers; a list of WSDOT approved regular dealers; and a Regular Dealer Request Form for each project.
- Joint Check Request Form.
- Trucking Forms.

3. DBE Program Administration

a. Staff Responsibilities

WSDOT’s Office of Equity and Civil Rights (“OECR”) manages and monitors the WSDOT External Civil Rights Programs, including the DBE Program. The OECR responsibilities include, but are not limited to, establishing DBE goals and contract goals; identifying mechanisms to improve progress; conducting internal and external assessments and reviews of DBE program activities and coordinating enforcement action; and advising the Secretary and other office directors on DBE matters.

The WSDOT OECR Director serves as its DBELO and is responsible for administering all aspects of the DBE program. The DBELO has direct, independent access to WSDOT’s Secretary concerning DBE program matters. The Director has delegated day-to-day DBE program responsibilities to the Assistant Director, who then supervises the DBE Compliance Leads. The Compliance staff delivers data analysis, communications, and community engagement.

WSDOT’s headquarters Construction Office works collaboratively with the WSDOT OECR in administering and resolving contract administration issues and compliance violations related to DBE specifications. This office also works with OECR to develop general special provisions and contract language to ensure that the DBE program is administered in compliance with Part 26 and WSDOT’s *DBE Program Participation Plan*.

To assist with the administration of the DBE program, WSDOT has established a Washington State DBE Work Group comprised of WSDOT divisions and local agencies. The Group provides feedback to WSDOT regarding roles, responsibilities and other issues. The Group advises WSDOT on DBE issues such as goal setting, outreach and training and provides stakeholders with information about the program.

WSDOT has set performance metrics for employees with responsibilities for the DBE program within the Human Resources Division's Performance Management System. The Results through Performance Management system contains information on performance measures that indicate how much, how well, and at what OEER is achieving its objectives and whether progress is being made toward reaching policy or organizational goals. WSDOT uses the system to identify performance targets.

Subrecipients are required to either adopt WSDOT's *DBE Participation Plan* or develop an equivalent plan.¹¹⁶ Subrecipients must designate their own DBELO, responsible to the chief executive of the agency. At the direction of the designated DBELO, local agencies are to follow WSDOT's monitoring and compliance procedures, including on-site reviews to ensure that the DBEs are performing a Commercially Useful Function ("CUF"), and upload their contracts and payments into DMCS of the amounts credited as DBE participation.

b. WSDOT's DBE Contract Goal Setting Policies and Procedures

As required by 49 C.F.R. § 26.51, WSDOT sets contract goals to meet any portion of the overall DBE goal not projected to be met through race-neutral measures. Projects with an engineer's estimate of less than \$100,000 may be excused as not appropriate for a Condition of Award ("COA") or Consultant DBE Contract goal. Projects with a dollar value over \$100M will be evaluated to determine if a separate overall goal should be set for the project.

To set contract goals, WSDOT evaluates the scopes of work of the project; the estimated percentage of those scopes; historical evidence of subcontractor utilization on similar projects; and the availability of ready, willing and able DBEs to perform the type(s) of subcontractable work. If there are fewer than three certified DBEs for one scope of work within a reasonable mobilization distance, that scope is given a zero weight for goal setting.

WSDOT passes through money from USDOT to local agencies (often referred to as subrecipients). For these projects, WSDOT's Local Programs Project Development Engineer ("Local Engineer") reviews each project to determine if it involves work elements that are conducive to DBE participa-

116. No local agencies have submitted their own plans.

tion. No construction funding will be obligated prior to the project review for DBE goals. The Local Engineer then establishes a DBE goal for the project, applying the same methodology as WSDOT uses for its direct contracts. If a local agency believes the project goal set by the Local Engineer is inappropriate, it may submit a request to OECR to have it changed.

c. Data Collection and Monitoring

WSDOT administers a Diversity Management and Compliance System (“DMCS”) powered by B2Gnow[®] for tracking payments to subcontractors, lower tier subcontractors, consultants, manufacturers, regular dealers, and service providers. The DMCS includes all diverse business programs, including the DBE program. User manuals are available on the WSDOT website. The DMCS is accessible to all firms doing business with WSDOT. WSDOT staff are well-trained and support is available for businesses that are required to use the system. The Department is currently implementing the following modules:

- Contract goal setting
- Automated tracking of contract goals and participation
- Verification of subcontractor payments
- Automated electronic mail communications with subcontractors regarding compliance; and flexible reporting capabilities

d. Contract Award Procedures

Detailed Instructions to Bidders provide the requirements for the DBE program as part of the solicitation specifications. The Instructions describe definitions; the COA goal; how to find eligible DBEs; the standards for crediting DBE participation; the various forms to be submitted; how to document the bidder’s Good Faith Efforts (“GFE”) to meet the goal if the goal was not met; administrative reconsideration of GFE documentation; procedures between contract award and execution; criteria for determining whether the DBE is performing a CUF; using joint checks; prompt payment requirements; reporting; changes to COA work committed to DBEs; and the consequences of non-compliance.

If materials or supplies are purchased from a DBE regular dealer¹¹⁷ only 60% of the cost of materials or supplies can be counted toward DBE goals.

117. A regular dealer is defined in §26.55 (e)(2)(iii) as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Bidders may count only 50% of the work sublet as “force account.” A force account is a payment method used for extra work when WSDOT and the prime contractor cannot agree on a unit price or lump sum amount or if either method is impracticable.

Bidders must submit the Disadvantaged Business Enterprise Written Confirmation Document that certifies that the DBE will enter into an agreement with the bidder if the latter is awarded the contract. DBE utilization can only be counted in those North American Industry Classification System (“NAICS”) codes in which it is certified, with the further restriction that the DBE must perform in one of WSDOT’s narrower work codes.

WSDOT’s bid process is based on responsiveness. When a DBE contract goal is used, award of the contract is based on the lowest responsive bidder’s demonstration of GFE to meet the prescribed goal. Bidders are required to submit a *Disadvantaged Business Enterprise Utilization Certification* form with the bid; failure to do so may cause the bid to be rejected as non-responsive. The form details the name of the DBE; its role in the project; a description of the work to be performed; the amount subcontracted to the DBE; and the amount to be applied to the DBE contract goal.

To demonstrate GFE on WSDOT or Local Program contracts, a bidder must either document that it has met the established goal or submit adequate documentation demonstrating the bidder’s efforts to meet the goal even though it failed to do so. OECR or the Local Program will review only the first five bidder’s packages for responsiveness unless one or more are rejected, necessitating the need for a review of the next five bidders until the lowest responsive bidder is determined.

A *Bid Item/Breakdown/Written Confirmation* form must be submitted within 48 hours of due date for bids a *Bid Item Breakdown/Written Confirmation* form that does not conform to the *Disadvantaged Business Enterprise Utilization Certification* form or reflects a different scope of work and/or amount of DBE participation is viewed as nonresponsive unless the difference in amount is determined to be the result of an error attributed to a transposition of numbers.

OECR will review all submitted GFE documentation from the bidder within five business days and prepare a disposition letter to be sent to State Construction or the Local programs. In the event of a denial of GFE, the bidder must request administrative reconsideration within 48 hours of the GFE determination. The DBELO or its designated representative who did not take part in the initial decision will preside over a hearing. During the reconsideration process, the bidder will be afforded the opportunity to provide written documentation or arguments concerning the issue of whether

it made adequate GFE to meet the goal. The decision issued by this official is administratively final and cannot be appealed to USDOT.

GFE obligations are imposed for the life of the contract. If a DBE is replaced, the new firm must perform the same amount of work under the contract as the DBE that was terminated to the extent needed to meet the contract goal. If OECR subsequently finds inadequate GFE due to failure to submit information, the contractor may be required to pay a DBE penalty equal to the amount of the unmet commitment, in addition to other sanctions imposed by the FHWA or imposed by OECR. Sanctions may include impairing a contractor or other entity's ability to participate in future WSDOT contracts and suspension or revocation of the contractor's prequalification.

WSDOT conducts regular reviews to ensure that DBEs are performing a CUF. Part 26 provides extensive provisions defining a CUF and how to evaluate a subcontractor's or subconsultant's performance. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. A DBE does not perform a CUF if its role is that of an extra participant in a transaction, agreement, or project through which funds are passed.¹¹⁸ Prime contractors are responsible for ensuring that DBE firms are performing a CUF. To ensure Part 26 compliance, OECR project staff will review the role and performance of DBEs during execution of contracts. OECR has developed forms to evaluate and track on-site reviews for DBE subcontractors, regular dealers, manufacturers, architects and engineers.¹¹⁹ These reviews are tracked in the DMCS. To further enforce the requirement that DBEs remain independent of the prime firm, the issuance of joint checks must be approved by WSDOT using the DBE Joint Check Request Form.

WSDOT's Construction Office assists OECR with periodic reviews and/or DBE program audits. It will also assist with the investigation of any DBE program and prompt payment complaints.

WSDOT enforces its prompt payment provisions and processes through DMCS. This has enabled the Department to increase the effectiveness of enforcement. WSDOT requires that payments be made within 10 days from the date that the prime contractor or prime consultant receives each payment from WSDOT. WSDOT does not withhold retainage from prime contractors or prime consultants on federal-aid contracts. However, prime contractors or consultants may withhold retainage from subcontractors or subconsultants. Since payments must be reported in the DMCS, subcon-

118. 49 C.F.R. §26.55(c)(1).

119. The local agencies follow the same CUF and reporting procedures.

tractors and subconsultants can confirm or dispute payments. If a payment is disputed, OECR staff become involved.

4. Outreach, Business Development and Training

A Community Engagement Plan has been developed to guide the agency's interactions with stakeholders about all aspects of its operations. The recently updated Plan covers the legal and policy requirements for community engagement; a resident's guide to engaging in WSDOT's "practical solutions approach to decision-making"; guidance for WSDOT staff; assessment of engagement effectiveness, including "culturally sensitive outreach"; and case studies to highlight different successful methods for community engagement.

WSDOT offers technical assistance, business development, training and mentoring programs for DBEs by coordinating with organizations, prime contractors, consultants, individuals, as well as WSDOT divisions, regions, and offices. WSDOT also coordinates with FHWA, FTA, and FAA to provide training on DBE certification and the assigning of appropriate NAICS codes.

WSDOT provides video training to employees and contractors on program compliance elements and procedures. Areas of focus include cultural competency; diversity issues such as identifying discrimination and sexual harassment, and sensitivity to individuals with disabilities; and unconscious bias.

WSDOT engages in numerous information sharing and outreach activities. An email is sent weekly to DBEs that lists contracting information, upcoming seminars and events, and other items of interest to the DBE community. WSDOT also offers information on upcoming events, DBE utilization, program reforms and supportive services.

WSDOT provides information on how to do business with WSDOT and its various divisions (*e.g.*, Ferries, Highway Maintenance, etc.), as well as upcoming projects, is provided on the Department's website. Contractors and potential bidders can review the Department's Standard Specifications for Road Bridge, and Municipal Construction, as well as other bid and contract documents.

WSDOT provides newly revamped DBE supportive services in accordance with 23 C.F.R. Part 230, Subpart B and Part 26, Appendix C, Business Development Programs. The DBE Support Services Program is marketed through community engagement and WSDOT's website. The program presents a multi-phased framework to provide new and emerging DBEs with general and firm specific training and technical assistance to help them to become more competitive in the heavy highway construction industry. WSDOT contracts with outside consultants to deliver training to DBEs on the following topics: (1) An overview of project labor agreements; (2) administrative considerations for bidding; (3) general estimating; and (4) scheduling and working. Services provided address

immediate and long-term business management, record keeping, and financial and accounting capabilities. Long-term development assistance is offered to increase opportunities for DBEs to participate in more varied and significant work, and to help firms achieve self-sufficiency.

DBEs are selected for each phase or element of the program through targeted recruitment and a detailed application and selection process, with enumerated criteria, based upon the applicant's business plan.

WSDOT also has a Long Term Business Development Program. Assistance includes business assessments; management and organizational development; proposal preparation; strategic growth business plans; accounting and financing; human relations and labor relations; marketing customer services and communications; bidding; estimating and scheduling; and guidelines and laws important to the DBE program.

To ensure that its services remain targeted towards the needs of DBEs and small firms, WSDOT has surveyed its firms concerning how it can best help to support their growth and development. The most recent survey was conducted in 2016. WSDOT also seeks feedback by surveys related to the effectiveness and utilization of its assistance programs.

OECR further works with the Procurement Technical Assistance Centers ("PTACs"), the Native PTAC, the USDOT's Small Business Transportation Center, the U.S. department of Commerce's Small Business Development Centers, the National Association of Minority Contractors, Tabor 100, and other groups providing support to DBEs and small firms.

B. Minority, Small, Veteran and Women's Business Enterprises Program for State Funded Contracts

OECR currently administers the M/S/V/WBE Program to increase S/VBE and M/WBE participation on state funded contracts. WSDOT sets voluntary or aspirational M/WBE goals. WSDOT uses a State Funded Contracts Diversity Roadmap to initiate multiple voluntary race- and gender-neutral measures to increase diversity spending on state funded contracts. The Roadmap is used to outline voluntary measures (*i.e.*, goals and contract language; inclusion plans; community engagement; technical assistance; and capacity mentorship); race and gender neutral measures (*i.e.*, mandatory S/VBE Program; Inclusion Plans, overhead reimbursement; and GFE); and define progress (*e.g.*, new WSDOT subcontracts and subcontractors, new private sector contracts, increased bonding, increased gross receipts, increased bidding, and decreased disparity). Progress is measured against goals set by the Governor.

1. Program Eligibility

An eligible SBE is any business that is owned and operated independently from all other businesses; that has either 50 or fewer employees; or has a gross revenue of less than \$7M annually as listed on Federal tax returns or with the Washington State Department of Revenue. The firm must be self-certified through the Washington's Electronic Business Solution (WEBS) and listed as a small, mini, or micro business in its certification.

VBE certification is conducted by the Washington State Department of Veterans Affairs. Only basic veteran discharge status and business information are required. There are no business size or personal net worth limits. Applicants must complete a master business application and submit documents including business plan, operating agreement, business license, and tax form. Proof that the business is a Washington State Enterprise is required. This is defined as an enterprise which is incorporated in the State of Washington as a Washington domestic corporation, or an enterprise whose principal place of business is located within the State of Washington for enterprises that are not incorporated.

M/WBE certification conducted by OMWBE is modeled after the criteria in Part 26.

2. Program Administration

State funded projects with a threshold over \$300,000 are reviewed for mandatory SBE and VBE goals and voluntary M/WBE goals. Goals are established as a percentage of the contractor's total bid amount. The established goals are as follows:

- SBEs: 5%
- VBEs: 5%
- MBEs: 10%
- WBEs: 6%

To be eligible for award of the contract, the bidder must complete and submit a Small and Veteran-Owned Business Plan. Contractors are required to use each SBE or VBE identified on its S/VBE Plan for each scope of work and dollar amount listed. A prime contractor may split the participation of a firm that is registered as both a SBE and a VBE to attain the SBE and VBE goals. Successful prime bidders must submit a M/WBE Participation Plan; meeting any MBE or WBE goal is strictly voluntary.¹²⁰

WSDOT generally follows the DBE program process. Firms must be certified at the time the bid is due. Bidders unable to meet the goal must submit documentation of GFE. CUF reviews are conducted. Participation is evaluated to determine if the bidder has met both the S/VBE commitments and any voluntary M/WBE goals. Termination of a commitment is allowed only for good cause and with written approval of the engineer.

3. Capacity Building Mentorship Program

To increase diverse business participation and implement the Contracts Diversity Roadmap, WSDOT created the Capacity Building Mentorship Program (“CBMP”), previously called the Mentor Protégé Program. The CBMP’s mission is to support and build capacity for underrepresented firms to obtain transportation contracts in Washington State. The CBMP pairs small, minority, veteran and woman businesses with successful prime contractors and consultants. WSDOT has paired over 150 mentors and protégés since the Program launched in summer 2017. Additionally, Business Impact NW administers loans to protégés participating in the Program, with a total of \$750,000 in loans available from local credit unions.

In addition to the CBMP, WSDOT offers dedicated state funding to assist firms with technical assistance. The Department coordinates with the Associated General Contractors of America in the implementation of the Small Works Roster. Other measures dedicated to the M/S/V/WBE program include updated outreach and community engagement plans, agency-wide training as well as M/W/V/WBE participation plans on state funded construction projects.

WSDOT’s recent efforts also include examining other states’ strategies, as well as working with the DBE Advisory Group, construction, consulting, minority and woman business organizations to improve its programs and services.

WSDOT also offers the Minority and Women Business Enterprises Support Services state funded program. The program provides free supportive services and training to minorities, females, and other socially and economically disadvantaged firms. Services include accounting practices, bid preparation, billing and invoicing, prompt payment advice, workflow management, and business plan development.

120. A 2017 opinion issued by the Washington State Office of the Attorney General states that while Initiative 200 (“I-200”) prohibits public institutions from granting preferential treatment based on race, sex, color, ethnicity, or national origin within public education, employment, and contracting, I-200 does not categorically prohibit all uses of race- or sex-conscious measures in state contracting. The measure allows the use of means that take race or gender into account in state contracting without elevating a less qualified contractor over a more qualified contractor. Under a narrow set of circumstances, a Washington State agency may be allowed to use a narrowly-tailored preference based on race or sex when no other means is available to remedy demonstrable discrimination in state contracting.

C. Staff Training

WSDOT staff participate in numerous trainings to ensure that the programs continue to meet legal standards and national best practices. These include:

- American Contract Compliance National Training institute
- B2Gnow[®] Diversity Management System training
- Bridging the Diversity Gap, a Skillsoft course
- Environmental justice internal online training
- “Valuing Diversity” training documents
- Green Belt Process Improvement Training, offered by Six Sigma
- Community engagement training
- Contract management, an online course

D. Experiences with WSDOT’s Diverse Business Programs

To explore the impacts of race- and gender-neutral contracting policies and procedures and the implementation of WSDOT’s DBE and S/VBE programs, we conducted 11 small group interviews with 141 business owners, stakeholders and WSDOT Advisory Group members about their experiences and their suggestions for changes. We also collected written comments from 190 minority and women respondents and non-DBE businesses about their experiences with WSDOT’s programs through an electronic survey. We also received written comments throughout the study period.

The following are summaries of the topics discussed during the group interviews. Quotations are indented and have been edited for readability. They are representative of the views expressed during 11 sessions by participants.

1. Business Owner and Stakeholder Interviews

a. Race- and Gender-Neutral Policies

i. Safe Harbor Program

One race- and gender-neutral program designed to assist small engineering firms is the Safe Harbor Program. Participants are permitted a standard overhead rate, rather than being required to submit indirect

cost rates in compliance with the Federal Acquisition Regulations. Owners reported mixed experiences with this option. Some found it helpful.

The Safe Harbor Program actually has worked out great for my firm up to now.

As firms gain experience, more targeted support would be beneficial.

Our Safe Harbor is about to expire, so we're having to go through the hurdles of getting approved rates, which I'm finding very challenging. WSDOT has a lot of resources with their Safe Harbor and audit compliance website. But it's tricky because depending on how your firm is structured from a tech standpoint... It's so variable... WSDOT walks you through at the beginning when you get accepted to the Safe Harbor program, you have to do some trainings and then there's training resources on their site. But they might offer small group trainings at various intervals as you try to advance to the next level... If you've made it past a six-month threshold and you have WSDOT contracts in hand, could they set up some sort of training for half dozen to a dozen firms to get some of that site-specific or company-specific feedback?

Other owners reported the Program was not useful or even affirmatively harmful.

[The Safe Harbor program] actually punishes you for being smaller because you are being more efficient. So, you're trying to be efficient because you've got to make your money work. And then when you get audited, it's like, "Oh, now it's too low." So, there's this game that you play where you're trying to get your overhead up, but then you don't want it to be up because then you're not going to be able to make payroll and your taxes and all that. So, it's a real struggle. You're not going to make it [using Safe Harbor]... I have successfully said or told people that if I had negotiated an overhead rate for a contract and that contract is signed, that rate should be as good for the length of the contract. So, they shouldn't come back to you and say, "Oh, you need a new overhead rate." And you say, "Well, this is the same contract as it was."... Sometimes when I see behind the curtain ... what other people's rates are at some of

these big firms, I'm just like, "Oh my God, I don't even make what the secretary makes."

The whole Safe Harbor process to me is asinine, and I really can't understand the logic in it, and it makes it difficult for small businesses to make a profit.

You have to use your overhead rate or Safe Harbor rate to be able to be on pre-qualification list. So, WSDOT has a separate list to be pre-qualified and you kind of give them your actual not-to-exceed rates. I learned this the hard way that if you end up getting a rate through their consultant services office, they do not consider that [Federal Acquisition Regulation] compliant and you'll lose a year of being on their pre-qual list. So, I would recommend never going down that route and really sticking to their typical audit team because you'll miss out. And that's something that the audit team had no idea because the two departments don't really speak to each other very well. It's like, "Well, that's in their court, or this is in my court." It'd be great if they were a little more integrated so they understand the effects of their recommendations for smaller firms and what they should be doing.

ii. Payments

Difficulties in being paid promptly have caused some small firms to eschew government work altogether.

I have to call OEO, every time I turn around, about payment issues on Prime electricals and general contractors. We've got a couple brewing right now. It's a sad state of affairs.... Our solution is to back away from this type of contracting, whether it's with Sound Transit, WSDOT or Port of Seattle, because they've become increasingly difficult to work for, and work with. I mean they're just horrible.

[We need] prompt and accurate pay. We mainly do unit price contracts, and whether you underpay us through units or you slow pay us by your process, which in WSDOT can be a fairly lengthy one, both of those really hurt cash flow for small businesses like myself.

Processing contract change orders was reported to sometimes be especially problematic for small firms.

I just get the pressure, for a year, of a change order laying out there, unapproved. And I'm funding the Washington State Highway system, to the tune of about a million dollars right now, and it's damn sickening and I'm tired of it.

One of the quickest ways a sub, who happens to be a DBE, gets in trouble is that they go out and perform a whole bunch of work, at the owner's direction and then the owner decides, including WSDOT to wrap it into a change order three or four months down the road when things finally get reconciled. And I know it's been brought up in other environments, but there's got to be a better way to protect a sub who happens to be a DBE about owners turning around a change order when it's directed by them.

iii. Project Qualifications

Surety bonding requirements are often an obstacle to small firms' ability to participate on Department projects.

Bonding is creating a problem on procurements over 200 or 300 grand. They're being required to bond. If it's a [general contractor/construction management] project, they have to put a bond together. The contract exceeds like, I don't know, 50, 75 grand. And so, these public agencies are tying us up with insurance. Sometimes they tie us up with retention, and now obviously the bond. And so under-capitalized firm bonding is an obstacle for us and we need to find ways to make it easier to do business with WSDOT and other agencies.

Without enough financial wherewithal, it's virtually almost impossible for a DBE firm to get a bonding line of credit.

Part of the challenge from the capacity perspective ... the lack of access to capital. Bonding is still an issue and retainage.... What happens is if you don't have bonding, primes ask for additional retainage.

Several DBEs reported that insurance requirements were often difficult to meet.

The insurance requirements can be very onerous.

Being small, you won't even imagine how much I pay a year. It is crazy, and there are more and more insurance companies will not support construction industries as well because it's just the amount and the rate.... It's hard to get insurance. It is just horrendous.

Some consultants believe the requirements are greater than necessary to protect the Department's interest.

[WSDOT should] take a look at how insurance requirements are flowing down to small businesses and stop the stupid stuff, okay? Because it's sending us all through this every single time. Here we go again. We've got to get back into this process and talk about silly stuff. The small businesses, we call it, "Okay, it's silly time."

What would be useful, and this goes across every jurisdiction, is that for planning projects, we don't create brick and mortar threats. We don't create any kind of liability because these are just ideas that then the engineers have to, sometimes even us, have to design. It's a separate process. But all these jurisdictions have these huge insurance requirements because their contract officer does not want to do the work, or their lawyers don't want to do the work to say, "A construction project. Every firm needs to have \$5M worth of insurance because they're building things, there's lives, there's properties, there's security." But planning firms, they're coming up with ideas. What kind of liability do they really create? So, we have to get these huge insurance amounts for planning projects when all we do is write on paper.

Some large non-DBE prime firms suggested an owner-controlled insurance policy to allow small firms to work on large projects.

It would be really helpful if it was an owner insurance policy because we just had one issue two weeks ago where somebody's a DBE iron worker sub and they had a scope of work of a few hundred thousand dollars. To

get the right insurance, it was \$150,000 because they can't just do it for just the hours work on that job. They have to do it for everything. So, it's this big barrier, big hurdle to like, you got to get the work first so you can up your insurance, but you don't have the right insurance, so you can't get the work. That's the challenge. If it was owner-provided insurance, it would be definitely way easier for all of these people to get it.

We really struggle to bond DBE contractors, most DBE contractors and a lot of them also aren't able to provide insurance equal to what we are required to provide to WSDOT. So ... maybe WSDOT [should have] some sort of program to be able to provide insurance or get them connected towards insurance providers.... we're stuck with making a business decision of whether we are able to contract or not [without full coverage from the DBE]. I've not tried to replace a DBE. Even if you could, I'm not sure if there would be one available. For lack of insurance or bonding, usually we just bite the bullet and accept lower limits that they're able to provide.

We've definitely every year we've got somebody that we've got to just kind of take the risk of having a lower insurance certificate.

iv. Access to Capital

Many small firms encountered barriers to obtaining working capital.

The barrier is with the lenders. The banks, because the [DBE] program is a great program.

There's not a lot of funding options, especially nowadays. You can't go get a loan in three days. And sometimes they move these projects along so quick, the funding, the training, and those are the two biggest things to me.

More support was requested.

One of the biggest things that WSDOT can probably help out is help us with financial or some sort of capital that we can access to buy material or to be able to pay for employees. Sometimes we avoid getting into the bigger jobs because we can't man them because we don't have the employees.

One interview was unaware of any financing programs.

I haven't heard of these financial programs that they offer until just today [at the interview].

v. Supportive Services and Technical Assistance Programs

Training on how to do business with the Department is offered regularly. However, some DBEs were unaware of offerings.

Make it known as part of initial entrance into the DBE kind of world, is "This is what you could expect" [for paperwork requirements] kind of thing, would be very helpful.

Some prime contractors thought WSDOT needs to do more to support emerging DBEs. Primes are providing significant support.

The other area where we have had some struggles is getting them onboarded, both with getting certified as a small or a DBE, but then also approved in the WSDOT system. So, we've had to work with them pretty closely, where they don't have audited overhead rates to get on the Safe Harbor Program, get all the required paperwork to get approved by WSDOT for being able to work on WSDOT contracts. So, we've had to provide that type of support just to get them to be able to work on our contracts in WSDOT, and it does take a lot of handholding and time to do that. And then, yeah, some of these do struggle with their back-office invoicing reporting. But yeah, so we've had good successes, but it does take time, it does take effort and it does take a lot of support from the prime and the larger firms just to make sure that they're successful in the work that they're providing to us.

DBEs and non-DBEs agreed that an ombudsman type person was one answer to the need for individualized help.

Small companies are intimidated by the WSDOT document package. If there was a way to have that mentor person who could help both with the interpretation of documents and with the ability to push the right buttons on things like change orders or issues there that might be happening in the field.

If [the Secretary of Transportation] was to announce a month from now that, "Hey, we have just created a new position and title is going to be DBE advocate or ombudsman," whatever we want to call them. "And here's the four things they're going to do."... I know that would be so well received by both the DBE community [and non-DBEs].

While WSDOT has enhanced its supportive services and technical assistance recently, some owners stated more in depth and targeted assistance is needed.

I am extremely frustrated and disappointed with the support services that are currently provided. They are extremely generic, very limited, and I question the credentials of some of the people who actually are supposed to be providing the services. I have encountered consultants that are providing these services that I think they're totally dependent on providing support services for their living because they're not competitive in the general market for the services they provide. So, for example, we have issues about Safe Harbor, we have issues about our rates and support services doesn't provide anything specific to that. It's very generic how to have a bookkeeper help you with your books. They don't offer anything as far as rate determinations, how to make sure that you've got your overhead put together, those kinds of things.

It's too generic. Even the accounting bookkeeping services that are provided, the individuals involved, for example, I cannot get services to help me with government audit. I'm subjected by WSDOT for audits because as a consultant, that's what I go through. But I have asked for services in the past where I needed somebody who had government accounting expertise. And none of the folks that I got from support services had any government accounting expertise at all. All I got was the generic private sector stuff, which I can do myself, I don't need that. And so, what the gap is, is that there's no credential checking, there's no formal training. There's no certifications for the majority of the folks providing the services.

Have maybe quarterly meetings, check-ins with the DBE communities about where they are. Are people busy? What obstacles are you seeing?

vi. Mentor-Protégé Program

Most DBEs supported the mentor-protégé program approach.

It's understood in the industry that DBEs and MBEs are unreliable, flaky, a nuisance to deal with because they are terrible with paperwork and compliance and all this other stuff. Well, how can us little contractors get the experience without being mentored into this industry? [WSDOT should] incentivize these larger primes to utilize and mentor the smaller subcontractors.

Several prime contractors agreed.

Which was voluntarily started mostly by the [Associated General Contractors], along with OMWBE. I'm on my third mentorship, and we are currently mentoring two companies, but it's never really factored into any of the participation goals. It started as a way to hold off the governor from implementing his own program for non-federally funded projects for all the locally funded stuff. And then now that that's been implemented, we've never been able to capture any return, or no one's measuring the benefits other than pairing these companies up, and then we're doing this mentoring.... There's lots of success stories out there, it's being done but it's not being measured.

A consultant supported the program, but questioned whether it is adequately resourced.

There's so many people who are trying to get into the program. I just don't know that they have the capacity to bring everybody on in a timely manner, and there's a lot of paperwork that has to be gone through in order to get somebody on board. It's just very challenging.... Maybe that's on us to work a little bit more with the program to find how we can get more planning level firms to come into the system and know about the system so that we can help on that side of the house, which we really definitely want to do that.

Some owners who had participated in WSDOT's program gave mixed reviews.

The mentor protege program, I thought it was a success. I did not like the way it ended. It ended abruptly. I was notified that I had graduated from the mentor protege program, and I didn't even know it was over. Me and my mentor still had things scheduled to do under this program, but it was abruptly cut off. I just got this certificate saying, "You've now been mentored." I'm like, "Wait a minute. We were only mentored maybe 50% of the way, and we had a whole plan of things that we were going to do," but somebody in WSDOT decided that the mentor- protégé program is over and let's go... Do some course correction for the program.

I was recruited heavily to do the mentorship program, because somehow, they felt that the primes could make me a better firm. But I've worked with some of the largest firms in the state and in other states, and I kind of know what I'm doing. So, I didn't feel that would be a good use of my time.... you're having small firms spend time in this program. Hopefully they'll get some return on this extraordinary amount of time they're spending in this program, and that it will result in more business. So, you have to measure the outcomes to see how the program can be tweaked.... I don't think there's been any reflection or analysis of what the outcomes were. Did the program actually reach the goals that it had set for itself? So, I think that needs to be done in order to either keep or retire the program or change the program.

Good program, but again, there is no accountability. There's no... teeth to the program. Again, it's a great PR move as far as I'm concerned, from a prime saying, "We are helping a DBE." Somehow, they should be held accountable or given some kind of incentive that take a DBE, if you're going to mentor them. There were high level milestones, very high level. Nothing great. It was more fluff.

One DBE reported a negative experience.

I fired my mentor.

b. DBE Program Administration and Compliance

i. Setting Contract Goals

Many interviewees, both non-DBEs and DBEs, requested more transparency about how the Department sets contract goals.

We as general contractors would love to see some sort of transparency in how WSDOT sets the goals. So right now, that's very cryptic to us, and we would like to see how do you get to a 22% goal when I look at it and say, that's not doable, and then sometimes there's a five percent goal and that's easy to reach, and how did they come up with that? We don't know.

I'd sure like to understand the tracking matrix of why the goals are what they are.

A little bit more transparency on how they achieve the goals would be helpful. I feel like it's a black box, you just get presented these goals, and they say that there's people available. I'm like, "Well, who are they?" I can't find them so they're out there, but I don't know who they are. And so, just have a little more transparency would be helpful.

We're general contractors, but we do a particular type of work and there's only three or four or five subcontracted items on any of the work that we do when we're doing paving. The goal setting regimen is non-transparent to us. We don't know exactly how it's done, but if you've only got traffic control and guardrail and striping, there's not a lot to sub out. All those issues that you talked about all kind of come back to that black box of capacity not really ever being addressed by the DOT in our opinion. And so, you get a lot of skewed goals and skewed things that are counterproductive to the whole system.

WSDOT could clarify that process a bit more, so that everybody understands. Because I personally always get the brunt of it [as a DBE]. And there is no real clear answer, really. I would love for them to have a more concise way of letting everybody know how they do set those goals for each project.

Goals that are unrealistic can also hurt DBEs.

Nobody likes to see a DBE having to be replaced, just because they can't meet the expectations on a job. I mean, it's not good for the DBE, it's not good for the contractor, it's not good for WSDOT. So, I think that's one area that some people have made a pretty good point. We understand what the intent is, but if it's overextended, it's not in anybody's interest.

Some non-DBE trade contractors stated that the DBE program hurts their firms.

DBEs have a lot of advantages across the board, and it may be easier for them, because not only is there the goals, but there's lists and so forth that they're able to get on, and people are doing outreach to them to go get work, whereas I got to go hit the pavement and knock on doors and work to try to find a scope of work with potential customers.... If there's a DBE [goal] on it, we won't get that work because of the DBE goals.... There's really no incentive for the people that are following under in the DBE group to make some changes, to grow, to do things different, because it can be very good for them.... There's plenty of contractors out there that are taking advantage of this and bringing in, say their wives become 51% ownership.

There are not a great deal of DBE contractors in the North Central region. And the contract value of my subcontract, or the concrete subcontract, it falls almost directly within the goal or these projects. So, it makes it rather difficult to compete, from my perspective and my perspective only, in that when the goal is met, regardless of whether I'm low or not on that project, I don't tend to end up with those.... I am not in any sense of the notion against starting, perpetuating minority or woman-owned businesses. I think that there is a real place for that, and I don't have any issue with it at all. The problem that I have is that on all these projects, other than one, I have been the low bidder. And on many projects, I'm told by the general, "[Name], there's just no reason for you to even waste time on this, because we're going to have to use the DBE concrete contractor out of [location]." And that's a little disheartening.

[Even though my quote is low,] I've seen where the goal is high enough that the prime ... [will] just add money to it because they got to get the goal, and they're like, "Well, I know your [DBE] bid is a hundred grand, but I got to get to 130, so it's actually 130 now, you're welcome."

ii. Meeting DBE Contract Goals

Most prime contractors and consultants were able to meet contract goals.

We've had a lot of great [DBEs]. I mean, really a lot of great ones that are competitively priced and don't seem to take advantage of the fact that they're a DBE. They come to get the work and we appreciate that as well.

We have been able to meet our DBE requirements, but it's an effort.... We've brought on several DBEs that have graduated, they've been successful in the work that they've been doing and have graduated out of the program.

Contractors working in Eastern Washington found the DBE pool to be shallow.

I'm in our [location] office, so we don't have all the same resources that those in Seattle or Spokane have, and so it seems like we don't really have the opportunity to have many local DBEs, which can often be a challenge. That can be something that agencies are looking for. They want that local presence, and so that makes it difficult.

I'm not bidding DOT work in a lot of cases because of [increasingly higher DBE contract goals]. Over here in Eastern Washington, I guess this is sort of a regional discussion, but the other problem with WSDOT's program is we're treating the entire state as one unit, which is far from true. So, while there is a fair amount of DBE availability on the west side, there's almost none in Eastern Washington, primarily consists of a handful of traffic control firms and one dirt sub. So, when we see goals over here that are like 15 to 20%, if you have a structures job, like I said, we self-perform all our own structures work, sell bridges and stuff like that. If you

have a structures job that has a really small dirt component, there's no way you're going to get there. And you already know going in that the only two ways you can get there with dirt traffic control. So, if we look at a \$20M job and there's only a million dollars' worth of dirt on it, I'm just not bidding, it's not worth our time.

Large projects present additional challenges.

When you're looking at a \$30M project, finding enough DBEs that have the skills and can work on the front-end side of the project gets really challenging.

We do very little private, so DOT work is a big part of our revenue stream. And been fairly successful being able to meet the DBE goals. We've never not met a DBE goal or requirement. But it has come with its challenges... some of these larger projects have been very difficult to actually be able to get all the DBE goal met. And to be quite honest, we've literally just paid people out that were DBEs for not performing the work, so that we could actually meet the goal.

Some prime bidders reported that certified firms did not in fact have experience in the industry codes in which they have been certified by OMWBE.

When we solicit in our process and we send out and we get responses back where we will see a DBE say, yeah, we're good, say with highway paving as far as the NAICS code. But they don't really have any experience in that. And so, it leads to some confusion sometimes and it would be nice if they could be more accurate with their NAICS codes.

Others raised concerns about the accuracy of OMWBE's list.

There's a lot of people that are on the OMWBE registry that never bid WSDOT work. They're either out of business, you know, call them, don't get a phone number because when we do start these outreach things, usually I get back a sheet of paper that has mostly just red marks through no answer left message, blah, blah, blah. And so, I think that somebody needs to be actively managing that list, both from the standpoint

of purging contractors that either no longer exist or that don't bid WSDOT work.

Some interviewees want WSDOT to be more proactive about getting firms into the DBE program and helping them to succeed.

[WSDOT needs to] find people who have their own businesses and that are on the front-end design and environmental side to get them into this program so that we can or get them certified as a DBE or the other acronyms so that we can get them onto the projects. I think that's going to be really important for us.

[WSDOT} needs to be increasing their efforts tenfold in trying to attract and help new contractors to get registered.

The Department's primary goals should be finding more contractors, helping those people, guiding them, making contacts for them, those sorts of things. And it's really more they get somebody signed up and then they turned their backs and say, "Now contracting community, it's on you."

I make more of those phone calls than OMWBE does. And they need to be out there connecting these contractors.

Several large construction firm representatives stated that they have sometimes chosen not to bid a WSDOT project because of inability to meet the DBE goal.

Some of the work we can't go after just simply because we can't meet the DBE goal and estimate times. So, it has handicapped us a little bit.

We end up spending money because some of the DBE traffic control companies are not as proficient as we are. So, we end up supplementing with having people helping them direct that we don't even get paid for. So, we kind of get to a point where if we've got to give this away and that away, and then all of a sudden for us, we have to run all trucks and we have a fleet of trucks that we like to use, then it's like, why even get the job at all?

As these goals move up, the current federal contract doesn't allow us to do any markups on subs, so we're

basically losing money on every sub that runs through our books. We've got insurance we got to pay; we've got B&O taxes. We got real costs that are there just by having a sub, and you get zero.... I had one recently, and I'm like, "I am not going to go out for the project because half the work is subbed and I'm just going to sit there and lose money on it, I can't make any money on this project."

We battle that with getting union subcontractors to bid our work, and to actually get the bid in on time. And we have that fight, and then apprenticeship goals and everything that goes along with just trying to be successful at bid time has become very, very difficult.

Some prime firms stated that they seek to utilize the best qualified subcontractors, without regard to race or gender.

Us GC's, we live in a low bid market. We don't care how you put your pants on or the color of your skin, or where you live, or what zip code, truly. If you can be competitive and help us get the work, you're going to get the work. And we've employed a lot of female trucking firms, even though we own a lot of our own trucks.

If we provide [a service] in-house, the answer would be no [we do not solicit DBEs], unless we're too busy for some reason. But I guess for me, I don't really care if they're DBE or not. If they're a good sub, I want to use them. I look more into the service they're providing, and are they the right team, the right fit, that's what I care more about. If they happen to be DBE, great, that's great.

Some participants stated that the program is failing the taxpayers, WSDOT and DBEs.

We lose sight of the bigger picture that to create these quotas and to create these programs that create entitlement and it's not good for enterprise, and that's why we're seeing many, many of these programs that don't succeed as we're buttering their bread for them rather than them go out and butter their own bread. And it's a real frustrating thing for contractors and for competitors to see how their segregation of people

based on their identities, based on their races, based on their genders, and there's creating these special programs, and it's the proofs in the pudding, it came from the OMWBE that the success of the program is very poor. And how can the DOT and the Office of minority women owned business enterprises look to change the culture to actually get some success out of this program rather than just increasing the rules, increasing the goals, and ending up and in a spot where nobody's satisfied with the end result, not even the DBEs.

I think it's important moving forward in definition of the program, is that the DOT, you know, taxpayers are paying for the whole works, right.

[The program is] a real disincentive for the DBEs to be active part of the bidding process, they're just going to stay home and wait until they get solicited and everything is laid out in front of them.

I've been a broken record for the last 10 years just asking, does anybody care how much this program costs. I mean we collectively as an industry support the program. We just have such major issues with the way it is run. And one of the things is if they were paying attention to how much of a premium they are paying for some of this work, then maybe they would be a little more eyes open to alternative methods of kind of like what you're talking about... If we bid a job that has no goals, then we're actually bidding the work against the other contractors and whoever figures out a way to build a better mouse trap gets the project. On projects that have DBE goals, it's whoever can manipulate all the sub quotes to a point where they can meet their goal and try and add the least amount to their bid. It's no longer I have the most competitive bid, it's I bid the job and now I've got to figure out how I can meet this goal and make my bid less egregious when it comes to the premium. And that is where our frustration of the industry really stems from.

For 30 years, I have been raising my hand at every meeting and saying, "Please add a line to the form that says, "How much did this cost the taxpayers to meet this goal?" And it's fallen on deaf ears.

iii. Meeting VBE Contract Goals

Several large firms reported it was difficult to meet the VBE goals on state funded contracts.

Another thing that I think we've been challenged with, is we've been able to hit the women, minority, small. It's the V that is the most troublesome for us, it's the veteran-owned demographic.... We've really had to look to try to meet that specific target and there are a lot of firms that are quote/unquote veteran-owned, and they have a presence locally, but they're incorporated and certified in an out-of-state, so they don't technically are recognized or on the Washington veteran-owned certification list, so we have to work with a couple of firms to get certified in the State of Washington, just to be able to meet that specific demographic.

Every company would love to employ veteran-owned, veteran-disabled companies and everything else. There's just not very many out there. And goals are now mandatory as well and so it makes that much tougher [to bid work].

One participant questioned whether veterans suffered discrimination.

[The VBE we work with is] a White guy, and I hate to be so stark about it, but he's got the privilege from that standpoint, and I don't want to take away from it. He's a very driven worker. So, he does great work and has done a really good job, but he doesn't have that introduction issue that I think a lot of other folks have. So, it's easier to get around that with him.

Another reported that his firm rejected a less costly DBE in favor of a VBE to meet the goal on a state funded contract.

It would've been our choice actually to go with the DBE, but because we had a condition of award goal for veteran, it pushed us in the direction of paying the premium and go into the veteran.

iv. Good Faith Efforts to Meet DBE and S/VBE Contract Goals

Establishing a bidder's GFE to meet contract goals was difficult for many firms.

You have to meet the goal because the good faith effort system is broken.... There's only ever been one good faith effort awarded in the whole state for the last six years. So that kind of tells you, at least for paving contractors, that it's not a viable option.... If that [milling DBE] gets bigger, then they'd graduate out. If they stay the same, then they can't cover [all the work that's put there]. And in a paving contractor, that's one of the only things that have a high dollar value that can help get to the goal.

Everybody knows in this industry that good faith efforts aren't worth the paper they're written on.... We went through the appeal process, we came to understand that a good faith effort would constitute a tremendous amount of documentation about who you solicited, how many times you solicited them, did you document all this. And at the end of the day, it came down to, yeah, there's no such thing as a good faith effort because no general contractor is going to be able to produce this amount of documentation in an active bid environment, where there's both DBE and non-DBE bids coming in. And there it's just too cumbersome and it won't happen.

[WSDOT has] awarded one project in the history of the program based on good faith effort.... We're just unwilling to put forth the process and the effort to submit that knowing full well that the better bet is you know what? Screw it. I'm just going to add \$150,000 and use this DBE and then at least I know I made the goal.... It's submitting an essay and just hoping that somebody likes it.

The track record on good faith efforts is abysmal.... Too many unknowns, basically you're risking putting a whole lot of time and effort with your people into something that potentially you're never going to get even if you're low. So, right now, it's a real disincentive to doing work for WSDOT.

I could spend a heck of a lot of effort [into submitting GFE] and not get anything out of it. So, what do you do? You figure out how to get your goals, whether or not

you like it or not, and you just somehow make it happen.

How the GFE thing works, is that if you want to make the decision to add a hundred thousand dollars to your bid, so you know, meet the goal, that's a business decision that you have to make. If contractor B wants to roll the dice and put in a good faith effort submittal, that's a decision he has to make.

If the second or third bidder made the goal somehow, then it just says, well, you obviously could have made the goal, you didn't so your good faith effort is thrown out.

This has become a bit of a common occurrence for us. We will pay more even to go to a DBE over a non-DBE because we are afraid of what is reasonable. So, I will say, I can't speak for other contractors on here, but I would be willing to bet we're in the same boat that we have paid premiums because we're fearful of going down the good faith effort path and trying to determine what is reasonable. Which is scary for us because we have to be low bid on bid day. We don't get the option with WSDOT of being reasonable. We have to be low.

More guidance from WSDOT about what will would be acceptable documentation was requested.

We would like a little bit more of a defined standard when it comes to the possibility of turning in a good faith doc.... From my understanding, it sounds like a, just regurgitate all the information that you've tracked over time and hope and pray that this is sufficient information.... We would like to see not a check the box standard, but more of an actual skeleton, a guideline of how to actually submit a good faith effort.

We don't know what they want and I don't know if they know what they want. So, I think WSDOT could put some effort into laying out what they would accept.

v. Contract Performance Compliance

Replacing a non-performing DBE was reported to be sometimes difficult.

We had a DBE electrician on the project that completely failed in performance. I mean, epicly failed. I had to cover payroll, I had to cover materials, joint checking the whole contract, and performed 30% of the work and yet paid them for it. And one of the struggles I really had with that is the fact that I didn't have any teeth. Any subcontractor begins to waiver on a subcontract, I'm moving towards terminating the subcontract, and I'm hiring somebody else. That is almost impossible with a DBE subcontractor.

It's important that there's accountability on performance. I think that's really critical.

One interviewee stated that the DBE requirements negatively impact his workforce.

To play the DBE game really disincentivizes us to self-perform a lot of our work to cross-train our employees. And when we have guys sitting at home that can perform the work, but it's a condition of award to use a DBE or whatever, that's just a morale thing.... There's a level of frustration when we tailor our bid towards compliance rather than getting a good product and getting our guys working. And I get it, I don't mean to sound flippant and we're a small, 120-year-old company, family business, a lot of multi-generational employees.

vi. DBEs' Capacities¹²¹

Many prime contractors expressed concerns about whether DBEs have the capacity to perform at the level of WSDOT's goals.

[Capacity] really depends on your labor force and your supplier sources right now. We are a union-based contractor and it's very difficult to find competent [tradespeople] in the industry right now.... Labor is difficult on the craft side to find. And also, there is some pretty restrictive [material] supply issues going on kind of nationally and especially in the greater Western Washington area that are limiting the ability of us as a

121. For the results of the electronic survey regarding DBE capacity, see Chapter VI, Qualitative Evidence of Race and Gender Barriers in the Washington Department of Transportation's Market.

firm to go and do what we do. And those are not really controllable by a firm of my size.

We're starting to see a [DBE] capacity issue. We pursue some larger design builds. They may be in the 200, 300 million range, and if we see a 20% goal on a 300 million job, that's 60 million in DBE, and we're starting to see that as a capacity issue.

On capacity, I have two quick comments. One with the federal dollars passed recently with infrastructure package, lots more municipalities have opportunities to apply for grants, and we're seeing a lot more municipality jobs with DBE, fed aid dollars on them, and they compete with WSDOT for that DBE capacity.... There's a huge percentage of DBE capacity that may have been there in the past that won't be there in the future because of all these municipal jobs with DBE requirements on them as well.

We've seen a number of contractors either get out of the business or decide that they don't want to bid WSDOT work anymore. And so, I did a simple look of the top three subcontractors that we've used in the last two years are no longer bidding WSDOT work as a DBE.... In two cases, they sold the business, in one case, they've decided that they don't want to travel to all the far reaches of the state and they're going to stay local. But what that means though, is I'm a contractor that's on the west side of the state, and I span the whole I-5 corridor, but it's really hard. As a few others have said, it's hard to get DBEs to go to Longview or Vancouver, Washington. I don't work in the east side of the state, but to get people to travel from certain areas to those farther-reaching areas is much harder.

At bid time, if you're not getting so many bids, that's an indication that there's a problem with capacity. And then when you actually have the job, I think a number of firms this year that were DBE's couldn't meet the obligations, and I think there's probably a number of contractors out there that have lived through in the last year or so, a number of DBE contractors that we've all been doing our best to work with them. And probably

on certain jobs, Granite's been trying to get somebody else's job to come over to our job.

Capacity, capacity, capacity. That's our biggest frustration is there's lots of work out there with goals and here it is 1st of April, we're quickly running out of subcontractor capacity. We're going to be bidding jobs in May and June and we're not going to be getting any sub-participation from the DBE community.... It would be quite simple [to measure DBEs' capacities]. If they were to take everything they contracted in a 12-month period with goals, multiply that by 16, 19%, whatever the goal was on each individual project, and you would have a required DBE participation goals for the year. Not goals but requirements for the year. And let's just say just round figures, if there's \$1000 worth of work, and so they want 16% so they want \$160 worth of participation. And then to look at the pool of [DBE] contractors, and their capacities and those sorts of things which they could measure ... [by] interacting with them, making a phone call, "Hey, what is your bonding capacity? How much can you do this year? How much do you want to do?" Contractor ABC says, "Well, I did two million dollars last year, my bonding capacity is two and a half. I'd love to grow to three." I mean, those are conversations they should be having so they know where these people are. It may not even be a volume capacity. It might be a "Hey, I have enough personnel to do four jobs this year. And once I get my four jobs, I'm done." And they need to check that where are we at January 1st? Where are we at March 1st? Where are we at June 1st? What I'm saying is come June 1st, we get it because we are calling and talking to these people which it's a whole different thing. I don't think OMWBE does anywhere near enough outreach and contact work with their certified firms. But they would know that by June 1st there's very little capacity left where I have a goal and I need to come up with \$280,000 worth on this thing and I only have two contractors in trades that are willing to quote to me. It might be a fence guy and a guardrail guy and their totals are only going to come to 65,000 bucks.

It all really comes back to capacity and really not the DOT or whoever, not really ever coming to terms with that issue as to what is true capacity. How do you measure it, how do you keep track of it?

Adding requirements on the state only funded project, you're going to pull away from the capacity for those fed aid jobs. So, if you're going to get contractors busy on a state only project, then that's less capacity in the marketplace for them to work on a fed aid job.

The capacity in general to meet the demands in this region for workforce, I mean to grow in general, is very challenging.... There's really some constraints on what the DBE community can supply. I just don't see them being able to supply the workforce.

2. Electronic Survey Responses

Written comments from the electronic survey have been categorized and are presented below. Comments are indented and have been edited for readability.

a. Impact of the DBE Program

Minority and woman respondents widely supported the DBE program. Many stated it was essential to obtaining WSDOT business.

DBE Program it has helped a lot!! A BIG Thank you.

It has helped us grow to be a respected firm that contractors can count on and call us regardless of DBE requirements.

It gets our foot in the door.

Without the DBE program the white contractors would not do business with African Americans.

It gives us access to contracts that would normally go to the 'big boys'.

WSDOT DBE program is great for our business. It helps by providing opportunities to work on WSDOT projects doing meaningful work. It provides opportunities to work with different Consultants and creating new partnerships.

The support and connections they [sic] provide is priceless. Because of WSDOT's DBE program we are getting the chance to work on projects that would never be accessible to us. Just today we won 2 significant projects because of the DBE program!

It has helped us be able to open doors that wouldn't have been opened previously.

The DBE program helped me directly with administrative support such as HR documentation and an online website that has helped me with my business credibility. I've also had a lot of businesses reaching out requesting to work with me.

We started in the DBE program in the mid 80's which helped us grow into the company we are today.

The Disadvantaged Business Enterprise (DBE) program has helped my business in several ways. Access to government contracts: The DBE program provides opportunities for small businesses owned by socially and economically disadvantaged individuals to compete for government contracts. This can help my business by providing access to new markets, clients, and revenue streams. Becoming certified as a DBE can enhance your business's reputation and credibility, making it more attractive to potential clients and partners. Overall, the DBE program can help my business grow and succeed by providing access to new opportunities, resources, and support.

It has helped us obtain work.

This program has been the key to my firm's success and growth. WSDOT's DBE requirements have encouraged prime firms to partner with our new firm.

WSDOT's DBE Program helps us secure larger projects for WSDOT.

We are contacted by primes to reach DBE goals.

The DBE goals enable me to work on jobs that I would be passed over for by larger companies.

The contractor will hire us when they know we have DBE [certification] and that does help us very much.

The DBE goals on federally funded projects has helped us get on teams for design projects and has resulted in subcontracts for desired work.

The DBE program has helped a lot and generated a lot of work for us over the years.

They've provided resources and connections to get us positioned to better go after projects.

One DBE firm recounted that while the program was helpful in obtaining work, this was not on a consistent basis.

It has led to some work in the past. It is extremely difficult to get on prime teams on a consistent basis. So, we now do not pursue work unless a team asks or they call us to do a specific task.

One Black respondent believed the program does not support the growth of Black-owned firms.

The State of Washington has absolutely no way to create new African American businesses nor do whatever it takes to help the existing African American firms that are struggling to obtain contracts.

b. Impact of the VBE Program

Veteran respondents generally found the Veterans Business Enterprise program helpful.

[The program] has given us an opportunity to at least get our foot in the door.

It gave us a small angle to compete.

Opened a couple doors for us.

We won a contract with a prime.

One veteran-owned firm reported not being able to obtain work through the VBE program.

I jumped all the burning hoops to get Service Disabled (100%) Veteran-Owned business status, yet I could not get any work, even small projects. As such, I have no employees and my business is inactive since Covid. I would entertain work, even as a consultant or superintendent, as that's where my other expertise is.

c. Access to WSDOT Contracting Opportunities

Some DBE respondents requested more opportunities to perform as prime contractors. One common request was to “unbundle” contracts.

Small contracts for WSDOT work would help the smaller contractors to participate in gov't programs.

Break down contract sizes so that we would be able to contract directly with the GC's or to WSDOT.

Having better contract sizes that aren't \$2M dollars and up. We do best with contracts that are 500K to \$1.5M.

Unbundled contracts to allow for more small businesses to prime or direct awards for professional services under \$50K-\$100K.

For WSDOT to offer more landscape architecture opportunities by breaking out some design portions of larger contracts.

Make more small projects available. Anything 500k and under would be helpful.

Yes, we want to have contracts broken out for small businesses.... That way we can control the narrative, and bottom line.

It would be helpful to have smaller GEC or on-call programs for small and disadvantaged firms. Many of the large GEC contracts are held by large firms with few small businesses included.

Several DBEs thought more could be done to increase opportunities for professional services firms.

Create accessible opportunities for A&E professional services.

Increase DBE Participation in A&E.

For design build project, we recommend WSDOT mandate the participation of design engineering, instead of leaving the design builder to decide. For most design build contracts, we are pushed from the contractors to designers and from the designers to contractors as the rules are not clear. WSDOT needs to ensure sufficient DBE firm's

participation in bridge structural engineering design, which big firms are holding to themselves.

Project Labor and Community Workforce Agreements were barriers to some small construction firms obtaining work for WSDOT.

Union and Workforce agreements that I can't fulfill due to the nature of what I do and the training involved. These agreements make it hard for the small company to get in on the work.

We do not have the chance to work for any WSDOT job yet. I assume it maybe because we are not union company. Some company wants to work with us but can't due to this status.

If DBE's have to work on a PLA or CWA project, it would be nice to have a WSDOT representative act as a liaison between the Union and the DBE. In my experience, Unions care more about their organization than they care about collaborating with the DBE in a way that is sensible.

Experience requirements were seen as another barrier to obtaining WSDOT work.

There are no practical means to pursue WSDOT projects as a General Contractor given the magnitude and past experience criteria from WSDOT.

Past performance requirements [are prohibitive]. If we never get an opportunity to perform, how can we have past performance.

Some DBEs want higher goals.

Possibly larger DBE goals on state and federally funded projects. Think this would lead to having more contractors include our scope of work into their bids.

Although it brings small businesses into projects with prime contractors, many times it doesn't turn into full time FTE work. Percentage goals should equate to meaningful FTE hours for a full or part time equivalent.

Reinstate the UDBE program and make the M/WBE participation goals mandatory.

Similar to DBE respondents, veteran respondents want higher and mandatory VBE goals and set-asides for their firms.

It would be very helpful if WSDOT would list MORE goals/ incentives to veteran-owned business like they do with DBE incentives for Primes. In my experience the larger companies that have been in business for decades have a monopoly on most of these larger projects, which excludes the smaller businesses. We have the capabilities, just need an equitable shot of reaching our goals. Having recognized Veteran status is helpful, but have MORE VBE incentives attached to overall projects would really help. Increase the goals!

The program goals [for veteran firms] need to be increased.

Contracts and subcontracts set-asides [for] veteran-owned [firms].

Mandatory [veteran] goals.

Have mandatory SDVOSB participation.

Several DBE respondents felt the same firms were used repeatedly.

It may not be based on race but a lot of agencies will play it safe and pick the usual suspects all the time.

WSDOT projects continue to be awarded to the same, large, privileged organizations - that then make token efforts to cobble together small subs & suppliers.

Have accountability for regional managers that only offer jobs to "Their favorite bidder".

One DBE suggested more transparency in the bidding process and the award of informal contracts.

Transparency for what projects went where. Give constructive feedback to non-winning bidders -especially Disadvantaged. Transparency in who the manager is sending the bids out of projects below \$50,000.

d. DBE Program Compliance

i. Contract Performance Monitoring

Several DBEs requested more oversight to ensure prime contractors comply with DBE program requirements.

DO NOT let the Prime contractor tell WSDOT that they are having problems meeting DBE goals. I have been on

many jobs where the prime contractor petitions to Office of Equal Opportunity (OEO) and WSDOT to lower the goal, and WSDOT has.

Force primes to use the DBEs they put in their bids on the contract and not deviate from that list or self-perform the DBE's work.

Start with enforcing DBE requirements 49 C.F.R. 26.53 and .55 (CUF).

Get a list of DBE and veteran-owned subs/suppliers on the prime's contract awarded. Request those firms be present at the post-award conference. Site visits to ensure those firms are being used on the contract, all too often the firms are not used.

Subcontractors need to be contacted in time to prepare a proper bid or quote.

We do get calls and emails when a job is bidding with DBE goals. Sometimes it is on the day that the job bids or little to no time to quote.

Many minority owners felt that White woman-owned firms were "fronts" for White men.

I respect and commend WSDOT for implementing this program in the first place and maybe they could prevent the prime contractors from creating businesses for female family members and then just using them as "qualified DBEs" just to keep the money in their family, a lot of that is going on. And it prevents a business like me from ever winning any contracts.

Please do not let companies take advantage of the DBE program by listing their wife, mother or daughter as majority owner when clearly these individuals have no involvement whatsoever in operating the business. There are lots of DBE companies who are legitimately run by capable disadvantaged individuals.... Please carefully vet these individuals when they are seeking DBE status. Someone running a company should have intricate knowledge about the company workings, expenses, employees, jobsites, customers and equipment.

The main barrier is that many of the DBE companies say that they are women-owned, but in reality, their husbands have owned the businesses for many years and now they say that their wife owns the business to get the DBE status. When Washington state had the UDBE program [that excluded White woman-owned firm for credit towards FHWA funded contracts] it gave us a chance to actually be awarded some contracts, but now we are just bidding against non-disadvantaged companies that are listed as DBE but truly aren't.

There were reports of certified DBEs that were not legitimately minority-owned.

Do whatever it takes to meet or exceed with a true minority on business. Prime contractors meet goals with certified firms that have no business being certified in the first place.

In order to be certified as a minority business, the application to be minority certified can be easily manipulated or easily falsified in order to defraud the DBE program.

One respondent was concerned about retaliation for challenging another firm's eligibility for the program.

If you are a legit, minority certified firm and raise concerns about other fraudulent firms, you can be blackballed in the industry, and the State of Washington has no recourse or solution to protect our rights.

Several non-DBE certified contractors agreed that ineligible firms were sometimes certified.

I know colleagues and competing contractors who falsify business information, thinking it increases the odds of winning a bid. The most common offense is using a wife or girlfriend as the Owner or President of their company even though the woman has no experience in the field or is involved in the daily operations of the company.

You've made the daughters of large firm owners' wealthy is the main result so far.

I know of firms that list ownership in either an owner's spouse's name or that file as DBE solely for the purpose of getting preference, regardless of their status as 'disadvantaged'. It would be a more genuine program if WSDOT could test the means of the DBE businesses.

ii. Payment

The standard construction industry approach that subcontractors are paid when the prime contractor is paid cause cash flow issues for DBE firms.

Do away with "pay when paid" language on WSDOT projects for DBE/MBE businesses. This is very damaging for us. Make GC's accountable for what they owe. This way we don't get involved with disputes between the GC and the owner. We only want to collect on our undisputed amounts that get hung up in battles between owner and GC. Problems not of our making yet we get punished for it. Instead of a meager 1% on late payments hike it to 25%. Make folks reconsider a late payment to a minority contractor. As it stands now, we finance and build these projects with no regard about how we are being damaged by everyone up the food chain including WSDOT.

We are paid within 10 days from Prime receiving payment from owners. This is good but our pay application to Prime can be held for more than 60 days before they submit it to owners adding 40-50 days before we are paid.

Require Prime Contractors to submit our monthly pay Applications every month. Many Prime Contractors hold these because of problems with other subcontractors pay apps, causing them to submit to owners late.

Payment policies that require Large Primes to pay quicker and more efficient when working with Woman-owned companies.

Payment delays from contract change orders were especially problematic.

Enforce prompt payment for Change Orders many are held by the prime contractors for months to be compiled into one large payment request to owners. In

the meantime, we had to pay our vendors and employees off of funds from our Credit Line.

Slow pays, no pays, no pays for changes. Changes always turn to claims which we cannot afford to fight and must settle for less.

VBEs also requested faster payment to subcontractors.

Quick payment from prime contractors. Sub-contractors basically finance the project for the primes.

Contractors need to pay balances owed to subs of less than 100k weekly.

iii. Meeting DBE Contract Goals

Although most prime firms indicated they could meet goals, a few found it difficult to find DBE firms.

High goals are very difficult to obtain in a lot of ways. Plus, we have to help manage them along the way.

There are not enough qualified DBEs. Please reevaluate DBE goals with Scopes of Work.

WSDOT should more closely analyze DBE availability locally before setting goals on DOT projects and local agency funded projects. The one size fits all is greatly impacting our local subcontractors as none are DBE. The requirements eliminate them from consideration and force the import of out of the area subs.

e. Outreach and Access to Information

Several DBE respondents requested more outreach and more timely information.

For large solicitations I recommend announcing opportunities farther in advance to allow for more time for discussion, networking and develop relationships. There's an incorrect perception that small, diverse firms are "a slice of the pie" rather than in business to "create more pie" because of traditional access by larger firms and the time constraints for solicitations. The typical three-week window I've seen is too tight for meaningful conversation, understanding, and it can feel very transactional or uncomfortable for parties involved.

I would like to receive more information ahead about the DBE Projects around the Cities or Counties.

More individual face to face information.

Several requested more opportunities to network with primes and to meet with WSDOT staff.

I would like to get to more networking with primes in Washington.

Access to on-call contracts, opportunities to present to staff, opportunities to network with prime contractors.

A veteran-owned firm also requested more networking with prime contractors.

I would welcome the opportunity to present our capabilities to prime contractors in person or online.

Some DBEs were unaware of WSDOT's DBE support services to help newly certified firms access WSDOT contracting opportunities.

I don't see how the program helps to convert opportunities. We would need help with estimating the cost takes more time than commercial construction.

I think a "Beginners Guide" would be extremely helpful. It's hard enough to navigate uncharted territory; so, I think it would be nice to have a PDF of "Next Steps" that would help any new owner navigate the waters. It could include helpful links to a variety of event sites and maybe even a resource of types of classes to start post business registration (IE: Bookkeeping, Certifications, Workplace Safety, etc.)

I have found that there is not much offered by WSDOT or OMWBE in terms of helping DBEs or other Certified Businesses start, develop and maintain their business. This help usually comes from the Prime Contractors that are trying to foster relationships with the Certified Business in order to help meet the goals.

I recommend that companies like ours be paired up with a WSDOT professional that works with us for a number of years until we become familiar with the processes.

Education on what benefits are available to a MBE.

One firm requested regular updates to DBEs about program changes.

Keeping up on major changes to the program overall is important. Just a quick "did you know..." in bullet form would very helpful.

f. Experiences with the certification process

A few thought that the paperwork required for certification was too cumbersome.

Too much paperwork to fill out.

Certification requirements and surety requirements can be made easier and cheaper.

One certified firm felt the certifying agency could be more supportive.

There is very much the sentiment that OMWBE is out to get the contractor, not support them, whether DBE or not.

g. Experiences with business supportive services

Those who had participated in business support services generally found them helpful.

I have had positive experiences. WSDOT is an amazing organization that does its best to help DBE organizations thrive. Their DBE Advisory Group has been essential in helping me make connections and in seeking the support our company has needed. In some cases, the connections I have made through WSDOT have made it possible for our company to get paid when a prime was withholding payment. I don't know that our company would be where it is now if it wasn't for WSDOT and their efforts to help DBE businesses like mine.

I've had very positive experiences receiving support for education and administrative work. I'm very thankful for my experiences.

I feel WSDOT has done a good job setting education if we the contractors want to attend and learn what has changed or improved. I know personally getting classes from all the various sites is overwhelming I've learned to pick and choose classes to benefit my company or staff.

I feel these classes have good ideas and sometimes sitting a second time around is good to get information missed the first time and/or new changes have happened.

Fantastic, we are currently working with [an administrative support program] to create our HR system.

I took a Construction School of Management course from Turner Construction and it was very helpful. I have taken a few courses with PTAC. Again, very helpful. I would like to continue to take courses so that I can in the future start bidding and/or win bids for work with the state or federal.

Currently debating on whether or not to renew certification. The company would like to renew because of all of the training resources WSDOT has to offer as well as other programs that are offered to OMWBE/DBE certified businesses. Great for making it possible and preparation for future work on government contracts.

Some DBEs requested assistance with obtaining working capital and surety bonding.

Financing or loan programs require traditional terms and conditions that do not favor underrepresented Black firms. Bonding cost is based on relationships and record of accomplishment, which eliminates 99% or more of Black heavy-civil contractors ... since we can't get WSDOT contracts or financing. Now, I pay ten-times what the average White Prime [trade] furnish and install firm pays.

Better access to small business loans for equipment and payroll capital.

Ease of obtaining funding for new equipment. Grants would be great.

Funds, bookkeeping support, financial consultation, leadership courses for owners and managers, company evaluation of operations for productivity.

Our main obstacle is capital, we typically have 90% of our credit/capital tied up in projects.

Offer Surety bonding information and also guidance and support in payment.

One DBE firm that participated in a bonding support program did not find it helpful because it did not include assistance with obtaining bonding at an affordable rate.

[Participation in a bonding program] wasn't successful because finance/bonding companies are used to firms that are making high revenue. Which means our bonding rate is astronomical and a prime contractor finds another way to use a firm that would meet their criteria.

Several veteran-owned firms also requested assistance with obtaining capital.

Loans. We need the capital to support payroll and bring more people on.

Access to funding.

h. Experiences with mentor-protégé programs and teaming arrangements

Mentor-protégé programs and joint ventures were often mentioned as approaches to help DBEs. DBEs that participated in these programs generally reported good experiences.

Mentor program was very helpful. Would like to do it again.

The program for mentor/protege was so beneficial, I want to participate in that again so I can get all the back-office knowledge from some of these primes.

More mentoring or assistance with how the public works for meeting the metrics.

The actions that would help my company grow would be to have a mentor/protege program or a partnership with a company that is willing to assist a young start-up with getting contracts.

Mentorship and pointing me in the right direction.

The mentor protégée program helped me establish a rapport with larger companies.

A veteran firm also supported a mentoring program.

Collaboratively we need to do a mentor program.

One prime firm was supportive of teaming relationships because they help in obtaining business.

Generally, these relationships improve our ability to compete.

A few DBEs that participated in mentor-protégé relationships had suggestions for making the program more successful.

[Require] more mentors and more monitoring.

Need to find the right partners.

One DBE respondent found teaming arrangements preferable to Mentor-Protégé partnerships.

Protege was a joke. JV worked fine.

E. Conclusion

WSDOT implements a program that complies with the DBE program regulations and national best practices. Overall, DBE firms obtained work as prime vendors and subcontractors. Prime contractors were generally able to comply with Program requirements. The Program was supported by participants and was viewed as important to the growth and development of DBEs. However, there are areas for improvement including issues caused by the Safe Harbor program; facilitating payment on a timely basis; modifying policies and requirements that inhibit DBE participation; developing more detailed guidance to assist bidders in establishing GFE; assisting DBEs with surety bonding and insurance; and increasing outreach and communication of available technical support services.

Although some VBEs found the program helpful in obtaining WSDOT and supported their preference, prime contractors often found meeting VBE goals difficult and more costly.

IV. CONTRACT DATA ANALYSIS FOR THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

A. Contract Data Overview

We analyzed data from the Washington State Department of Transportation (“WSDOT”) federal aid and State funded contracts for fiscal years 2018 through 2021. We received contract records from WSDOT that contained 1,692 contracts, worth \$5,900,612,874. These contracts were funded by either Federal Highway Administration (“FHWA”), Federal Transit Administration (“FTA”), or state dollars. Because of this large volume of FHWA and State funded contracts, we created a separate statistically appropriate random sample file for our analysis of contracts from both of these funding sources. Because of the small number of FTA funded contracts, we analyzed the entire universe of FTA contracts. Thus, the final file of prime contractors that CHA used to contact primes in order to fill in missing data and obtain information on all associated subcontractors included the random samples of FHWA and FHWA , State- Funded and FTA contracts.

To conduct the analysis, we constructed all the fields necessary where they were missing in WSDOT’s contract records (*e.g.*, industry type; zip codes; six-digit North American Industry Classification System (“NAICS”) codes of prime contractors and subcontractors; payments, race; gender; etc.). These results were used to create the Final Contract Data Files (“FCDFs”).

B. Summary of Findings

WSDOT’s geographic market area for contracts funded by all three funding sources is the State of Washington (see Table 4-1). In Tables 4-2 through 4-4, we present data on utilization, weighted availability, and disparity ratio by each funding source.

**Table 4-1: Summary of Findings:
Share of Final Contract Data File within the State of Washington
(by funding source)**

Funding Source	State of Washington Share of FCDF
FHWA	91.0%
FTA	88.3%
State	89.8%

Source: CHA analysis of WSDOT data

Table 4-2: Summary of Findings: FHWA Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	1.3%	5.3%	3.1%	2.7%	5.8%	18.3%	81.7%
Weighted Availability	2.0%	3.2%	2.1%	3.5%	7.1%	17.9%	82.1%
Disparity Ratio	68.2% ^{‡***}	163.6%***	146.8%***	77.9% ^{‡***}	81.7%***	102.2%***	99.5%***

Source: CHA analysis of WSDOT data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

Table 4-3: Summary of Findings: FTA Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	1.0%	0.2%	3.8%	0.01%	5.4%	10.5%	89.5%
Weighted Availability	1.8%	1.4%	2.0%	2.3%	6.7%	14.2%	85.8%
Disparity Ratio	58.3% [‡]	12.4% [‡]	191.3%	0.4% [‡]	80.5%***	73.8% ^{‡***} *	104.3%** *

Source: CHA analysis of WSDOT data

[‡] Indicates substantive significance

*** Statistically significant at the 0.001 level

Table 4-4: Summary of Findings: State Funded Contracts

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Utilization	0.2%	2.4%	1.7%	3.0%	7.6%	14.9%	85.1%
Weighted Availability	1.9%	3.1%	2.2%	3.2%	7.1%	17.4%	82.6%
Disparity Ratio	10.1% ^{‡****}	79.6% ^{‡****}	74.9% ^{‡****}	94.4% ^{***}	107.9% ^{***}	85.8% ^{***}	103.0% ^{***}

Source: CHA analysis of WSDOT data

‡ Indicates substantive significance

****Statistically significant at the 0.001 level*

In Section C through Section R, we present data on the following results for each funding source:

- Contract Data Overview
- The Geographic and Product Market for WSDOT Contracts
- Utilization of firms in WSDOT’s Geographic and Product Market
- The Availability of DBEs for WSDOT Contracts in its Geographic and Product Markets
- Disparity Analysis of WSDOT Contracts

Because the methodology for the data analysis is identical across each funding source, we detail the methodology for the FHWA funded contracts; in order to avoid repetition, we present only the tables for FTA funded contracts and state funded contracts.

C. FHWA funded Contracts: Contract Data Overview

Tables 4-5 and 4-6 provide data on the FCDF for WSDOT’s FHWA funded contracts.

**Table 4-5: Final Contract Data File
Number of Contracts
(FHWA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	264	11.8%
Subcontractor	1,977	88.2%
TOTAL	2,241	100.0%

Source: CHA analysis of WSDOT data

**Table 4-6: Final Contract Data File
Net Dollar Value of Contracts
(FHWA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$289,538,804	58.6%
Subcontractor	\$204,742,953	41.4%
TOTAL	\$494,281,757	100.0%

Source: CHA analysis of WSDOT data

The following sections present our analysis, which consisted of five steps:

1. The determination of the geographic and product markets for the analysis.
2. The estimation of the utilization of DBEs by WSDOT.
3. The calculation of the unweighted and weighted availability of DBEs in WSDOT’s marketplace.
4. The examination of concentration of contract dollars among DBEs and non-DBEs.
5. The presentation of the disparity analysis.

D. FHWA Funded Contracts: The Geographic and Product Market for WSDOT Contracts

As discussed in Chapter II, the federal courts¹²² and the U.S. Department of Transportation DBE regulations¹²³ and Guidance¹²⁴ require that a recipient narrowly tailor its DBE program to its geographic market area. This element of the analysis must be empirically established.¹²⁵ The accepted approach is to analyze those

detailed industries, as defined by six-digit NAICS codes,¹²⁶ that make up at least 75% of the prime contract and subcontract payments for the study period.¹²⁷ The determination of WSDOT’s geographic and product market for FHWA funded contracts required three steps:

1. Develop the FCDF to determine the product market. Table 4-3 presents these results.
2. Identify the geographic market.
3. Determine the product market constrained by the geographic parameters. Table 4-4 presents these results.

1. Final Contract Data File for WSDOT’s FHWA Funded Contracts

The FCDF, which establishes WSDOT’s product market, consisted of 67 NAICS codes, with a total contract dollar value of \$494,281,757. Table 4-7 presents each NAICS code with its share of the total contract dollar value. The NAICS codes are presented in the order of the code with the largest share to the code with the smallest share.

Table 4-7: Industry Percentage Distribution of WSDOT Contracts by Dollars (FHWA Funded)

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	55.1%	55.1%
238910	Site Preparation Contractors	8.1%	63.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.4%	69.6%
561990	All Other Support Services	4.9%	74.5%

122. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); see 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> (“D. Explain How You Determined Your Local Market Area.... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.”).

123. 49 C.F.R. §26.45(c).

124. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

125. *Concrete Works of Colorado, Inc. v. the City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore “economic reality”).

126. www.census.gov/eos/www/naics.

127. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 (“*National Disparity Study Guidelines*”).

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NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541330	Engineering Services	3.4%	77.9%
324121	Asphalt Paving Mixture and Block Manufacturing	3.0%	80.9%
238120	Structural Steel and Precast Concrete Contractors	2.8%	83.7%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.5%	86.2%
488390	Other Support Activities for Water Transportation	1.7%	88.0%
237110	Water and Sewer Line and Related Structures Construction	1.7%	89.7%
238110	Poured Concrete Foundation and Structure Contractors	1.5%	91.2%
237990	Other Heavy and Civil Engineering Construction	1.4%	92.5%
561730	Landscaping Services	1.2%	93.7%
336612	Boat Building	1.0%	94.7%
238990	All Other Specialty Trade Contractors	1.0%	95.7%
541370	Surveying and Mapping (except Geophysical) Services	0.5%	96.2%
541990	All Other Professional, Scientific, and Technical Services	0.5%	96.7%
561320	Temporary Help Services	0.5%	97.2%
236210	Industrial Building Construction	0.4%	97.6%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.4%	98.0%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.4%	98.3%
238320	Painting and Wall Covering Contractors	0.3%	98.6%
541620	Environmental Consulting Services	0.3%	98.9%
488490	Other Support Activities for Road Transportation	0.2%	99.2%
562119	Other Waste Collection	0.1%	99.3%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.1%	99.4%
336611	Ship Building and Repairing	0.1%	99.5%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	0.1%	99.6%
541380	Testing Laboratories	0.1%	99.6%
541420	Industrial Design Services	0.1%	99.7%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541720	Research and Development in the Social Sciences and Humanities	0.1%	99.7%
541350	Building Inspection Services	0.05%	99.8%
562910	Remediation Services	0.04%	99.8%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.03%	99.9%
541360	Geophysical Surveying and Mapping Services	0.02%	99.9%
541310	Architectural Services	0.02%	99.9%
541320	Landscape Architectural Services	0.01%	99.9%
562998	All Other Miscellaneous Waste Management Services	0.01%	99.9%
561720	Janitorial Services	0.01%	99.9%
238350	Finish Carpentry Contractors	0.01%	99.9%
531320	Offices of Real Estate Appraisers	0.01%	99.9%
488330	Navigational Services to Shipping	0.01%	99.9%
238290	Other Building Equipment Contractors	0.01%	99.9%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.01%	99.95%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.005%	99.96%
113310	Logging	0.005%	99.96%
561790	Other Services to Buildings and Dwellings	0.005%	99.97%
611710	Educational Support Services	0.004%	99.97%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	0.004%	99.97%
562219	Other Nonhazardous Waste Treatment and Disposal	0.003%	99.98%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.003%	99.98%
238310	Drywall and Insulation Contractors	0.003%	99.98%
423840	Industrial Supplies Merchant Wholesalers	0.003%	99.99%
333120	Construction Machinery Manufacturing	0.002%	99.99%
562112	Hazardous Waste Collection	0.002%	99.99%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	0.002%	99.99%
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	0.002%	99.99%
236220	Commercial and Institutional Building Construction	0.001%	99.996%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.001%	99.997%
237210	Land Subdivision	0.001%	99.997%
237120	Oil and Gas Pipeline and Related Structures Construction	0.001%	99.998%
519110	News Syndicates	0.001%	99.999%
541820	Public Relations Agencies	0.0005%	99.999%
922120	Police Protection	0.0004%	99.9995%
531130	Lessors of Miniwarehouses and Self-Storage Units	0.0003%	99.9998%
541340	Drafting Services	0.0001%	99.9999%
238140	Masonry Contractors	0.0001%	100.0000%
TOTAL		100.0%	

Source: CHA analysis of WSDOT data

2. Geographic Market for WSDOT’s FHWA Funded Contracts

To determine the geographic market area, we applied the standard of identifying the firm locations that account for close to 75% of contract and subcontract dollar payments in the FCDF.¹²⁸ Firm location was determined by zip code and aggregated into counties as the geographic unit. The State of Washington captured 91.0% of the FCDF. Therefore, we used the state as the geographic market.

128. *National Disparity Study Guidelines*, at p. 29.

E. FHWA Funded Contracts: Utilization of Firms in WSDOT’s Geographic and Product Market

Having determined WSDOT’s geographic market area, the next step was to determine the dollar value of its utilization of DBE firms¹²⁹ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 56 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$449,618,985.

Table 4-8 presents these data. We note that the contract dollar shares in Table 4-8 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability¹³⁰ from unweighted availability, as discussed below.

Table 4-8: NAICS Code Distribution of Contract Dollars in WSDOT’s Constrained Product Market for FHWA Funded Contracts

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$252,143,504	56.1%
238910	Site Preparation Contractors	\$38,555,160	8.6%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$31,368,982	7.0%
561990	All Other Support Services	\$22,618,278	5.0%
541330	Engineering Services	\$15,454,210	3.4%
324121	Asphalt Paving Mixture and Block Manufacturing	\$14,643,667	3.3%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$11,510,893	2.6%
488390	Other Support Activities for Water Transportation	\$8,580,456	1.9%

129. For our analysis, the term “DBE” includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (“*Northern Contracting III*”) (The “remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.”).

130. See “Tips for Goal Setting in the Disadvantaged Business Enterprise Program” (“F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.”) (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237110	Water and Sewer Line and Related Structures Construction	\$8,200,415	1.8%
237990	Other Heavy and Civil Engineering Construction	\$6,702,561	1.5%
238110	Poured Concrete Foundation and Structure Contractors	\$6,581,988	1.5%
561730	Landscaping Services	\$5,653,154	1.3%
336612	Boat Building	\$4,983,110	1.1%
238990	All Other Specialty Trade Contractors	\$3,521,329	0.8%
238120	Structural Steel and Precast Concrete Contractors	\$3,068,703	0.7%
541370	Surveying and Mapping (except Geophysical) Services	\$2,406,976	0.5%
236210	Industrial Building Construction	\$2,005,339	0.4%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$1,879,275	0.4%
561320	Temporary Help Services	\$1,702,188	0.4%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$1,630,924	0.4%
238320	Painting and Wall Covering Contractors	\$1,547,429	0.3%
541620	Environmental Consulting Services	\$1,225,972	0.3%
488490	Other Support Activities for Road Transportation	\$843,824	0.2%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$447,404	0.1%
541990	All Other Professional, Scientific, and Technical Services	\$430,690	0.1%
541380	Testing Laboratories	\$321,058	0.1%
562119	Other Waste Collection	\$298,163	0.1%
541420	Industrial Design Services	\$287,570	0.1%
541350	Building Inspection Services	\$231,355	0.1%
562910	Remediation Services	\$204,627	0.05%
541360	Geophysical Surveying and Mapping Services	\$75,792	0.02%
541320	Landscape Architectural Services	\$69,340	0.02%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
561720	Janitorial Services	\$60,421	0.01%
238350	Finish Carpentry Contractors	\$36,213	0.01%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	\$35,043	0.01%
531320	Offices of Real Estate Appraisers	\$31,300	0.01%
488330	Navigational Services to Shipping	\$29,695	0.01%
238290	Other Building Equipment Contractors	\$27,142	0.01%
541614	Process, Physical Distribution, and Logistics Consulting Services	\$24,412	0.01%
113310	Logging	\$23,750	0.01%
561790	Other Services to Buildings and Dwellings	\$23,564	0.01%
562998	All Other Miscellaneous Waste Management Services	\$20,871	0.005%
611710	Educational Support Services	\$19,392	0.004%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$13,649	0.003%
423840	Industrial Supplies Merchant Wholesalers	\$12,892	0.003%
333120	Construction Machinery Manufacturing	\$12,000	0.003%
562112	Hazardous Waste Collection	\$11,330	0.003%
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	\$10,705	0.002%
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$9,975	0.002%
236220	Commercial and Institutional Building Construction	\$5,314	0.001%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	\$5,108	0.001%
237210	Land Subdivision	\$3,900	0.001%
237120	Oil and Gas Pipeline and Related Structures Construction	\$3,200	0.001%
541820	Public Relations Agencies	\$2,345	0.001%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
922120	Police Protection	\$2,079	0.0005%
238140	Masonry Contractors	\$350	0.0001%
TOTAL		\$449,618,985	100.0%

Source: CHA analysis of WSDOT data

Tables 4-9 and 4-10 present data on WSDOT's DBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-9: Distribution of WSDOT FHWA Funded Contract Dollars by Race and Gender
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	\$0	\$0	\$0	\$0	\$0	\$0	\$23,750	\$23,750
236210	\$0	\$0	\$0	\$0	\$0	\$0	\$2,005,339	\$2,005,339
236220	\$0	\$0	\$0	\$0	\$0	\$0	\$5,314	\$5,314
237110	\$805,600	\$806,737	\$555,744	\$815,230	\$3,631,269	\$6,614,579	\$1,585,836	\$8,200,415
237120	\$0	\$0	\$0	\$0	\$0	\$0	\$3,200	\$3,200
237210	\$0	\$0	\$0	\$0	\$0	\$0	\$3,900	\$3,900
237310	\$0	\$4,002,303	\$2,223,759	\$3,259,348	\$8,027,813	\$17,513,223	\$234,630,285	\$252,143,508
237990	\$0	\$104,018	\$3,018,893	\$0	\$7,301	\$3,130,212	\$3,572,348	\$6,702,560
238110	\$60,346	\$0	\$105,962	\$811,913	\$704,022	\$1,682,242	\$4,899,746	\$6,581,988
238120	\$0	\$938,257	\$404,892	\$0	\$464,002	\$1,807,151	\$1,261,552	\$3,068,702
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$350	\$350
238190	\$0	\$0	\$0	\$1,623,914	\$0	\$1,623,914	\$255,361	\$1,879,275

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238210	\$722,236	\$8,228,365	\$0	\$138,320	\$217,670	\$9,306,590	\$22,062,391	\$31,368,981
238220	\$0	\$0	\$0	\$0	\$0	\$0	\$447,404	\$447,404
238290	\$0	\$0	\$0	\$0	\$27,142	\$27,142	\$0	\$27,142
238320	\$218,173	\$52,442	\$0	\$0	\$0	\$270,615	\$1,276,814	\$1,547,429
238350	\$0	\$0	\$0	\$0	\$0	\$0	\$36,213	\$36,213
238910	\$471,316	\$631,271	\$315,000	\$2,301,649	\$2,301,270	\$6,020,506	\$32,534,653	\$38,555,160
238990	\$0	\$315,794	\$0	\$43,237	\$942,614	\$1,301,645	\$2,219,684	\$3,521,329
324121	\$0	\$37,835	\$0	\$694,795	\$0	\$732,630	\$13,911,038	\$14,643,667
327999	\$0	\$0	\$0	\$0	\$0	\$0	\$35,043	\$35,043
333120	\$0	\$0	\$0	\$12,000	\$0	\$12,000	\$0	\$12,000
336612	\$0	\$0	\$0	\$0	\$0	\$0	\$4,983,110	\$4,983,110
423510	\$0	\$86,558	\$0	\$0	\$29,296	\$115,854	\$1,515,070	\$1,630,924
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$13,649	\$13,649
423840	\$0	\$0	\$0	\$0	\$0	\$0	\$12,892	\$12,892
424930	\$0	\$5,108	\$0	\$0	\$0	\$5,108	\$0	\$5,108
484220	\$1,586,244	\$1,211,613	\$221,972	\$825,618	\$2,076,735	\$5,922,183	\$5,588,710	\$11,510,893
488330	\$0	\$0	\$0	\$0	\$10,494	\$10,494	\$19,201	\$29,695
488390	\$635,485	\$0	\$0	\$0	\$0	\$635,485	\$7,944,971	\$8,580,456
488490	\$35,945	\$27,646	\$0	\$0	\$204,990	\$268,580	\$575,243	\$843,824
531320	\$0	\$0	\$0	\$0	\$31,300	\$31,300	\$0	\$31,300
532120	\$0	\$0	\$0	\$0	\$0	\$0	\$9,975	\$9,975
541320	\$0	\$0	\$0	\$0	\$19,340	\$19,340	\$50,000	\$69,340
541330	\$32,486	\$948,766	\$519,517	\$2,600	\$42,704	\$1,546,073	\$13,908,138	\$15,454,210

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
541350	\$0	\$0	\$0	\$0	\$0	\$0	\$231,355	\$231,355
541360	\$0	\$75,792	\$0	\$0	\$0	\$75,792	\$0	\$75,792
541370	\$386,076	\$409,918	\$246,174	\$30,863	\$0	\$1,073,032	\$1,333,944	\$2,406,976
541380	\$0	\$112,074	\$11,373	\$0	\$40,620	\$164,068	\$156,990	\$321,058
541420	\$0	\$0	\$0	\$0	\$0	\$0	\$287,570	\$287,570
541614	\$0	\$0	\$0	\$0	\$24,412	\$24,412	\$0	\$24,412
541620	\$0	\$0	\$17,890	\$0	\$7,600	\$25,490	\$1,200,482	\$1,225,972
541715	\$0	\$0	\$0	\$0	\$0	\$0	\$10,705	\$10,705
541820	\$0	\$0	\$0	\$0	\$2,345	\$2,345	\$0	\$2,345
541990	\$0	\$113,387	\$31,532	\$0	\$4,582	\$149,501	\$281,188	\$430,690
561320	\$0	\$0	\$0	\$0	\$159,454	\$159,454	\$1,542,733	\$1,702,187
561720	\$60,421	\$0	\$0	\$0	\$0	\$60,421	\$0	\$60,421
561730	\$938,993	\$637,541	\$8,805	\$146,127	\$597,046	\$2,328,513	\$3,324,640	\$5,653,153
561790	\$0	\$0	\$7,850	\$0	\$15,714	\$23,564	\$0	\$23,564
561990	\$70,477	\$4,909,418	\$6,240,254	\$1,544,675	\$6,692,550	\$19,457,374	\$3,160,904	\$22,618,278
562112	\$0	\$0	\$0	\$0	\$0	\$0	\$11,330	\$11,330
562119	\$0	\$0	\$0	\$13,300	\$0	\$13,300	\$284,863	\$298,163
562910	\$0	\$0	\$0	\$0	\$0	\$0	\$204,627	\$204,627
562998	\$0	\$0	\$0	\$0	\$0	\$0	\$20,871	\$20,871
611710	\$0	\$0	\$0	\$0	\$9,773	\$9,773	\$9,619	\$19,392
922120	\$0	\$0	\$0	\$0	\$0	\$0	\$2,079	\$2,079
Total	\$6,023,797	\$23,654,843	\$13,929,618	\$12,263,590	\$26,292,056	\$82,163,904	\$367,455,081	\$449,618,985

Source: CHA analysis of WSDOT data

**Table 4-10: Percentage Distribution of WSDOT FHWA Funded Contract Dollars
by Race and Gender
(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237110	9.8%	9.8%	6.8%	9.9%	44.3%	80.7%	19.3%	100.0%
237120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	1.6%	0.9%	1.3%	3.2%	6.9%	93.1%	100.0%
237990	0.0%	1.6%	45.0%	0.0%	0.1%	46.7%	53.3%	100.0%
238110	0.9%	0.0%	1.6%	12.3%	10.7%	25.6%	74.4%	100.0%
238120	0.0%	30.6%	13.2%	0.0%	15.1%	58.9%	41.1%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238190	0.0%	0.0%	0.0%	86.4%	0.0%	86.4%	13.6%	100.0%
238210	2.3%	26.2%	0.0%	0.4%	0.7%	29.7%	70.3%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
238320	14.1%	3.4%	0.0%	0.0%	0.0%	17.5%	82.5%	100.0%
238350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238910	1.2%	1.6%	0.8%	6.0%	6.0%	15.6%	84.4%	100.0%
238990	0.0%	9.0%	0.0%	1.2%	26.8%	37.0%	63.0%	100.0%
324121	0.0%	0.3%	0.0%	4.7%	0.0%	5.0%	95.0%	100.0%
327999	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
333120	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	0.0%	5.3%	0.0%	0.0%	1.8%	7.1%	92.9%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423840	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424930	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
484220	13.8%	10.5%	1.9%	7.2%	18.0%	51.4%	48.6%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
488330	0.0%	0.0%	0.0%	0.0%	35.3%	35.3%	64.7%	100.0%
488390	7.4%	0.0%	0.0%	0.0%	0.0%	7.4%	92.6%	100.0%
488490	4.3%	3.3%	0.0%	0.0%	24.3%	31.8%	68.2%	100.0%
531320	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
532120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541320	0.0%	0.0%	0.0%	0.0%	27.9%	27.9%	72.1%	100.0%
541330	0.2%	6.1%	3.4%	0.0%	0.3%	10.0%	90.0%	100.0%
541350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541360	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541370	16.0%	17.0%	10.2%	1.3%	0.0%	44.6%	55.4%	100.0%
541380	0.0%	34.9%	3.5%	0.0%	12.7%	51.1%	48.9%	100.0%
541420	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541614	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541620	0.0%	0.0%	1.5%	0.0%	0.6%	2.1%	97.9%	100.0%
541715	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541820	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541990	0.0%	26.3%	7.3%	0.0%	1.1%	34.7%	65.3%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	9.4%	9.4%	90.6%	100.0%
561720	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561730	16.6%	11.3%	0.2%	2.6%	10.6%	41.2%	58.8%	100.0%
561790	0.0%	0.0%	33.3%	0.0%	66.7%	100.0%	0.0%	100.0%
561990	0.3%	21.7%	27.6%	6.8%	29.6%	86.0%	14.0%	100.0%
562112	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562119	0.0%	0.0%	0.0%	4.5%	0.0%	4.5%	95.5%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
611710	0.0%	0.0%	0.0%	0.0%	50.4%	50.4%	49.6%	100.0%
922120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	1.3%	5.3%	3.1%	2.7%	5.8%	18.3%	81.7%	100.0%

Source: CHA analysis of WSDOT data

F. FHWA Funded Contracts: The Availability of DBEs for WSDOT Contracts in its Geographic and Product Markets

1. The Methodological Framework

Estimates of the availability of DBEs in WSDOT's geographic and product market are a critical component of WSDOT's compliance with its obligations under 49 C.F.R. Part 26 to analyze possible barriers to equal opportunities to participate in the Department's contracting activities. The availability estimates must reflect the number of "ready, willing and able" firms that can perform on specific types of work involved in WSDOT's prime contracts and associated sub-contracts.¹³¹ These availability estimates are compared to the utilization percentage of dollars received by DBEs to determine whether minority- and woman-owned firms achieve parity.¹³² Availability estimates are also crucial for WSDOT to set narrowly tailored triennial and contract goals.

We applied the "custom census" approach, with refinements, to estimate availability. The courts and the National Model Disparity Study Guidelines¹³³ have recognized this methodology as superior to the other methods for at least four reasons:

- First, it provides an internally consistent and rigorous "apples to apples" comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (*e.g.*, certified or firms that respond to a survey) and the denominator (*e.g.*, registered vendors or the Census Bureau's County Business Patterns data).
- Second, by examining a comprehensive group of firms, it "casts a broader net" beyond those known to the agency. As recognized by the courts, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been excluded. Our methodology is less likely to be tainted by the effects of

131. 49 C.F.R. §25.45(c).

132. For our analysis, the term "DBE" includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and recommended by USDOT that supports the remedial nature of the programs. See *Northern Contracting III*, 473 F.3d 715, at 723 (The "remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net."). See also https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf.

133. *National Disparity Study Guidelines*, pp.57-58. This was also the approach used in the successful defense of the Illinois Department of Transportation's Disadvantaged Business Enterprise Program in the *Northern Contracting* case, discussed in Chapter II.

past and present discrimination than other methods, such as bidders' lists, because it seeks out firms in WSDOT's market area that have not been able to access the agency's opportunities.

- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and woman firms may be smaller, newer, and otherwise less competitive than non-DBE firms because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.¹³⁴
- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois Tollway's DBE program, for which we served as testifying experts.¹³⁵

Using this framework, CHA utilized three databases to estimate availability:

1. The Final Contract Data File.
2. The Master M/W/DBE Directory compiled by CHA.
3. Dun & Bradstreet/Hoovers Database.

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. Without this elimination of duplicate listings, the availability database would be artificially large. This list of unique firms comprised the first component of the Study's availability determination.

To develop the Master Directory, we utilized the State of Washington's Office of Minority Women Business Enterprise certification list of DBEs and M/WBEs and the WSDOT Contract Data File. We limited the firms we used in our analysis to those operating within WSDOT's geographic and product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-DBE firms. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms

134. For a detailed discussion of the role of capacity in disparity studies, see *the National Disparity Study Guidelines*, Appendix B, “Understanding Capacity.”

135. *Midwest Fence, Corp. v. U.S. Department of Transportation et al.*, 840 F.3d 932 (2016); see also *Northern Contracting III*, 473 F.3d at 715.

conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in WSDOT's market area to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority owned.¹³⁶ However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on WSDOT's contracts.

2. The Availability Data and Results

Tables 4-11 through 4-13 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for WSDOT's product market;
- The weights used to adjust the unweighted numbers;¹³⁷ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in WSDOT's market area.

We "weighted" the availability data for two reasons. This comports with USDOT Guidance. First, the weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which the WSDOT spends its dollars.

136. The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

137. These weights are equivalent to the share of contract dollars presented in the previous section.

Second, weighting also reflects the importance of the availability of a demographic group in a particular NAICS code, that is, how important that NAICS code is to WSDOT’s contracting patterns.¹³⁸ For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are DBE firms; hence, DBE availability would be 60%. However, if WSDOT spends only one percent of its contract dollars in this NAICS code, then this high availability would be offset by the low level of spending in that NAICS code. In contrast, if WSDOT spent 25% of its contract dollars in NAICS Code 123456, then the same availability would carry a greater weight. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix D.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code, presented in Table 4-11. In the previous example, the unweighted availability for DBE firms in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of WSDOT’s spending in that NAICS code, presented in Table 4-12. This share is the *weight*. Using the previous example, where WSDOT spending in NAICS Code 123456 was one percent, the component of DBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say “the component of DBE firm weighted availability for NAICS Code 123456” because this process is repeated for each NAICS code and then the components are summed to generate an overall weighted availability estimate. The results of this calculation are presented in Table 4-13.

Table 4-11: Unweighted DBE Availability for WSDOT FHWA Funded Contracts

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	0.1%	0.0%	0.0%	0.4%	3.0%	3.6%	96.4%	100.0%
236210	2.8%	0.4%	2.4%	1.2%	7.6%	14.4%	85.6%	100.0%
236220	1.8%	1.9%	2.0%	3.0%	4.4%	13.2%	86.8%	100.0%
237110	2.4%	2.0%	2.7%	4.9%	7.7%	19.8%	80.2%	100.0%
237120	1.8%	0.0%	5.3%	3.5%	7.0%	17.5%	82.5%	100.0%
237210	0.0%	0.0%	0.1%	0.0%	0.6%	0.7%	99.3%	100.0%
237310	2.4%	4.6%	2.7%	4.7%	8.0%	22.4%	77.6%	100.0%
237990	3.4%	3.2%	5.4%	5.9%	8.8%	26.6%	73.4%	100.0%

138. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238110	0.5%	1.2%	0.8%	0.8%	2.8%	6.0%	94.0%	100.0%
238120	3.6%	10.8%	5.7%	2.6%	8.8%	31.4%	68.6%	100.0%
238140	0.3%	1.0%	0.2%	0.2%	2.0%	3.8%	96.2%	100.0%
238190	5.4%	5.4%	4.9%	2.7%	6.0%	24.5%	75.5%	100.0%
238210	0.8%	0.9%	0.4%	0.4%	3.7%	6.3%	93.7%	100.0%
238220	0.3%	0.3%	0.2%	0.4%	2.0%	3.4%	96.6%	100.0%
238290	2.0%	2.0%	0.0%	1.0%	11.9%	16.8%	83.2%	100.0%
238320	0.4%	0.6%	0.2%	0.1%	2.4%	3.7%	96.3%	100.0%
238350	1.2%	2.6%	1.4%	0.7%	2.4%	8.4%	91.6%	100.0%
238910	1.4%	1.5%	1.4%	2.7%	6.3%	13.3%	86.7%	100.0%
238990	0.4%	0.7%	0.2%	0.4%	1.8%	3.4%	96.6%	100.0%
324121	0.0%	2.0%	0.0%	3.9%	5.9%	11.8%	88.2%	100.0%
327999	0.0%	0.0%	0.0%	4.5%	4.5%	9.1%	90.9%	100.0%
333120	0.0%	0.0%	0.0%	1.5%	3.1%	4.6%	95.4%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	3.8%	3.8%	96.2%	100.0%
423510	0.2%	0.4%	1.3%	0.2%	6.7%	8.8%	91.2%	100.0%
423830	0.3%	0.3%	0.3%	0.1%	2.8%	3.9%	96.1%	100.0%
423840	0.5%	0.0%	0.3%	0.0%	5.0%	5.9%	94.1%	100.0%
424930	0.0%	0.8%	0.0%	0.0%	10.4%	11.3%	88.8%	100.0%
484220	4.9%	3.3%	2.0%	7.8%	13.3%	31.2%	68.8%	100.0%
488330	0.0%	0.0%	0.0%	0.0%	6.0%	6.0%	94.0%	100.0%
488390	1.9%	0.0%	0.9%	0.9%	7.4%	11.1%	88.9%	100.0%
488490	6.0%	0.8%	1.6%	0.8%	10.3%	19.4%	80.6%	100.0%
531320	0.1%	0.0%	0.0%	0.0%	7.1%	7.2%	92.8%	100.0%
532120	0.0%	0.0%	0.0%	0.0%	2.6%	2.6%	97.4%	100.0%
541320	0.1%	0.2%	0.3%	0.1%	3.7%	4.3%	95.7%	100.0%
541330	0.5%	0.8%	2.4%	0.5%	4.1%	8.2%	91.8%	100.0%
541350	0.2%	0.2%	0.9%	0.0%	2.2%	3.4%	96.6%	100.0%
541360	8.3%	33.3%	8.3%	0.0%	33.3%	83.3%	16.7%	100.0%
541370	2.4%	3.1%	1.9%	1.7%	5.3%	14.4%	85.6%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
541380	0.0%	0.4%	2.3%	0.1%	4.7%	7.4%	92.6%	100.0%
541420	0.0%	5.0%	5.9%	1.0%	10.9%	22.8%	77.2%	100.0%
541614	2.2%	1.2%	1.6%	0.3%	18.2%	23.4%	76.6%	100.0%
541620	1.5%	1.6%	2.3%	1.1%	15.2%	21.6%	78.4%	100.0%
541715	0.1%	0.0%	0.0%	0.0%	7.1%	7.2%	92.8%	100.0%
541820	2.7%	1.1%	1.1%	0.7%	15.4%	20.9%	79.1%	100.0%
541990	0.2%	0.4%	0.8%	0.1%	6.8%	8.4%	91.6%	100.0%
561320	1.9%	1.2%	2.9%	0.7%	8.8%	15.4%	84.6%	100.0%
561720	1.7%	0.6%	0.4%	0.1%	6.8%	9.6%	90.4%	100.0%
561730	0.6%	0.7%	0.6%	0.4%	4.5%	6.8%	93.2%	100.0%
561790	0.6%	0.2%	0.2%	0.1%	3.9%	4.9%	95.1%	100.0%
561990	0.6%	0.4%	0.4%	0.4%	4.9%	6.6%	93.4%	100.0%
562112	8.0%	0.0%	0.0%	0.0%	32.0%	40.0%	60.0%	100.0%
562119	3.4%	0.0%	3.8%	4.7%	5.1%	17.1%	82.9%	100.0%
562910	3.6%	4.6%	5.1%	4.1%	9.2%	26.7%	73.3%	100.0%
562998	0.0%	0.0%	14.6%	0.0%	14.6%	29.3%	70.7%	100.0%
611710	0.9%	0.5%	0.9%	0.0%	9.3%	11.7%	88.3%	100.0%
922120	0.0%	0.0%	0.0%	0.0%	0.5%	0.5%	99.5%	100.0%
Total	0.7%	0.7%	0.7%	0.6%	4.5%	7.4%	92.6%	100.0%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

These unweighted estimates should be used by WSDOT as the starting point for setting narrowly tailored DBE contract goals on FHWA funded contracts.

Table 4-12: Distribution of WSDOT’s Spending on FHWA Funded Contracts by NAICS Code (the Weights)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
113310	Logging	0.01%
236210	Industrial Building Construction	0.5%
236220	Commercial and Institutional Building Construction	0.001%
237110	Water and Sewer Line and Related Structures Construction	1.8%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
237120	Oil and Gas Pipeline and Related Structures Construction	0.001%
237210	Land Subdivision	0.001%
237310	Highway, Street, and Bridge Construction	56.1%
237990	Other Heavy and Civil Engineering Construction	1.5%
238110	Poured Concrete Foundation and Structure Contractors	1.5%
238120	Structural Steel and Precast Concrete Contractors	0.7%
238140	Masonry Contractors	0.0001%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.4%
238210	Electrical Contractors and Other Wiring Installation Contractors	7.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.1%
238290	Other Building Equipment Contractors	0.01%
238320	Painting and Wall Covering Contractors	0.3%
238350	Finish Carpentry Contractors	0.01%
238910	Site Preparation Contractors	8.6%
238990	All Other Specialty Trade Contractors	0.8%
324121	Asphalt Paving Mixture and Block Manufacturing	3.3%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	0.01%
333120	Construction Machinery Manufacturing	0.003%
336612	Boat Building	1.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.4%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.003%
423840	Industrial Supplies Merchant Wholesalers	0.003%
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	0.001%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.7%
488330	Navigational Services to Shipping	0.01%
488390	Other Support Activities for Water Transportation	1.9%
488490	Other Support Activities for Road Transportation	0.2%
531320	Offices of Real Estate Appraisers	0.01%
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	0.002%
541320	Landscape Architectural Services	0.02%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541330	Engineering Services	3.4%
541350	Building Inspection Services	0.1%
541360	Geophysical Surveying and Mapping Services	0.02%
541370	Surveying and Mapping (except Geophysical) Services	0.5%
541380	Testing Laboratories	0.1%
541420	Industrial Design Services	0.1%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.01%
541620	Environmental Consulting Services	0.3%
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	0.002%
541820	Public Relations Agencies	0.001%
541990	All Other Professional, Scientific, and Technical Services	0.1%
561320	Temporary Help Services	0.4%
561720	Janitorial Services	0.01%
561730	Landscaping Services	1.3%
561790	Other Services to Buildings and Dwellings	0.01%
561990	All Other Support Services	5.0%
562112	Hazardous Waste Collection	0.003%
562119	Other Waste Collection	0.1%
562910	Remediation Services	0.1%
562998	All Other Miscellaneous Waste Management Services	0.01%
611710	Educational Support Services	0.004%
922120	Police Protection	0.001%
TOTAL		100.0%

Source: CHA analysis of WSDOT data

Table 4-9 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBE firms, weighted by WSDOT’s spending in its geographic and industry markets, is 17.9%.

Table 4-13: Aggregated Weighted DBE Availability for WSDOT's FHWA Funded Contracts

Black	Hispanic	Asian	Native American	White Women	DBE	Non DBE	Total
2.0%	3.2%	2.1%	3.5%	7.1%	17.9%	82.1%	100.0%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

3. Analysis of the Concentration of Contract Dollars among Firms

In addition to examining the level of DBE and non-DBE contract dollar utilization, another important dimension to a disparity analysis is an examination of any asymmetries between the NAICS codes where the agency spends large shares of its funds and the NAICS codes that provide DBEs and non-DBEs their largest shares of earnings. This analysis is important for two reasons. First, to the extent the NAICS codes where the agency spends the largest shares of its funds align with the codes that provide the largest shares of non-DBE firm earnings AND these NAICS codes are different from the codes that provide large shares of DBE firms earnings, this indicates that DBE firms do not enjoy the same position in the agency's marketplace as non-DBE firms. Second, if an asymmetry exists between agency spending and DBE firms' earnings, then the high utilization of DBEs as a group will mask unequal opportunities at a more granular level. Consequently, a race- or gender-based remedial program may still be supportable. This section presents data to examine this issue.

Three findings stand out. 1) WSDOT spent 56.1% of all FHWA funded contract dollars in NAICS code 237310 (Highway, Street, and Bridge Construction) and this large share of spending shaped other key results. 2) NAICS code 237310 was one of the top three NAICS codes for all DBE groups except for Blacks. 3) In each of the three NAICS codes that provide the most contract dollars to each DBE group, the code's share of that group's overall contract dollars exceeded that code's share of overall contract dollars received by non-DBEs. The exception was in NAICS code 237310, where that code's contribution to overall non-DBE contract dollars was larger than that code's share of overall dollars for Hispanics, Asians, Native Americans, and White women.

Table 4-14 presents data on the share of WSDOT's contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Tables 4-9 and 4-10. The three NAICS codes where WSDOT spent most of its contract dollars captured 71.6% of all WSDOT spending. This figure is similar to the share for Hispanics (72.5%), and White women (69.8%); less than the share for Asians (82.4%); and greater than the share for Blacks (55.3%) and Native Americans (58.6%).

Table 4-14: Comparison of the Share of WSDOT Spending Captured by the Top Three NAICS Codes for Each Demographic Group (FHWA Funded Contracts)

Demographic Group	Share of All WSDOT Spending in the Top Three NAICS Codes for Each Group
All	71.6%
Black	55.3%
Hispanic	72.5%
Asian	82.4%
Native American	58.6%
White Woman	69.8%
Non-DBE	78.7%

Source: CHA analysis of WSDOT data

With respect to the second findings, Table 4-15 provides more detail on the data presented in Table 4-14. Table 4-15 lists the top three codes for each group and their corresponding share of the group’s total spending. As stated above, NAICS code 237310 was among the top three codes for all groups except Blacks. However, for Hispanics, Asians, and Native Americans, the NAICS code 237310 share of each groups total contract dollars (16.9%; 16.0%; 26.6% respectively) was far less than the corresponding figure for non-DBEs (63.9%).

Table 4-15: The Top Three WSDOT Spending NAICS Codes for Each Demographic Group (FHWA Funded Contracts)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
237310	Highway, Street, and Bridge Construction	56.1%	71.6%
238910	Site Preparation Contractors	8.6%	
238210	Electrical Contractors and Other Wiring Installation Contractors	7.0%	
Black			
484220	Specialized Freight (except Used Goods) Trucking, Local	26.3%	55.3%
561730	Landscaping Services	15.6%	
237110	Water and Sewer Line and Related Structures Construction	13.4%	
Hispanic			

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
238210	Electrical Contractors and Other Wiring Installation Contractors	34.8%	72.5%
561990	All Other Support Services	20.8%	
237310	Highway, Street, and Bridge Construction	16.9%	
Asian			
561990	All Other Support Services	44.8%	82.4%
237990	Other Heavy and Civil Engineering Construction	21.7%	
237310	Highway, Street, and Bridge Construction	16.0%	
Native American			
237310	Highway, Street, and Bridge Construction	26.6%	58.6
238910	Site Preparation Contractors	18.8%	
238190	Other Foundation, Structure, and Building Exterior Contractors	13.2%	
White Woman			
237310	Highway, Street, and Bridge Construction	30.5%	69.8%
561990	All Other Support Services	25.5%	
237110	Water and Sewer Line and Related Structures Construction	13.8%	
Non DBE Firm			
237310	Highway, Street, and Bridge Construction	63.9%	78.7%
238910	Site Preparation Contractors	8.9%	
238210	Electrical Contractors and Other Wiring Installation Contractors	6.0%	

Source: CHA analysis of WSDOT data

Tables 4-16 through 4-20 present data on the third finding: how WSDOT spending varies across groups. These results illustrate the different levels of concentration of contract dollars among DBE firms compared to non-DBE firms. For each demographic group, we provide the three NAICS codes where the group received the largest share of WSDOT’s spending (first presented in Table 4-14). Then, we present the weight for each code derived from WSDOT’s overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-DBE firms.

Table 4-16 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 55.3% of all Black contract dollars, the corresponding figure for non-DBE firms was 2.9%.

Table 4-16: Three NAICS Codes where Black Firms Received the Most Spending (FHWA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non DBE Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	2.6%	26.3%	1.5%
561730	Landscaping Services	1.3%	15.6%	0.9%
237110	Water and Sewer Line and Related Structures Construction	1.8%	13.4%	0.4%
Total 3-code Share of Total Group Dollars			55.3%	2.9%

Source: CHA analysis of WSDOT data

Table 4-17 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. These codes comprised 72.5% of all Hispanic contract dollars; the corresponding figure for non-DBE firms was 70.7%. While these figures are similar, an examination of the table indicates that in two of the codes – NAICS code 238210 and NAICS code 561990 – their contribution to overall Hispanic dollars far exceeded the corresponding figure for non-DBEs.

Table 4-17: Three NAICS Codes where Hispanic Firms Received the Most Spending (FHWA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non DBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	7.0%	34.8%	6.0%
561990	All Other Support Services	5.0%	20.8%	0.9%
237310	Highway, Street, and Bridge Construction	56.1%	16.9%	63.9%
Total 3-code Share of Total Group Dollars			72.5%	70.7%

Source: CHA analysis of WSDOT data

Table 4-18 presents the three NAICS codes where 82.4% of all Asian contract dollars, the corresponding figure for non-DBE firms was 65.3%. Once again, these figures are close only because of NAICS code 237310; in the other two codes, the share of all Asian contract dollars far exceeds the corresponding figures for non-DBEs.

**Table 4-18: Three NAICS Codes where Asian Firms Received the Most Spending
(FHWA Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non DBE Dollars
561990	All Other Support Services	5.0%	44.8%	0.9%
237990	Other Heavy and Civil Engineering Construction	1.5%	21.7%	1.0%
237310	Highway, Street, and Bridge Construction	56.1%	16.0%	63.9%
Total 3-code Share of Total Group Dollars			82.4%	65.7%

Source: CHA analysis of WSDOT data

Table 4-19 presents the three NAICS codes where Native American firms received the largest share of their contract dollars. While these codes captured 58.6% of all Native American contract dollars, the corresponding figure for non-DBE firms was 72.8%. Once again, an examination of the two non-237310 codes tells a similar story as with Hispanics and Asians: The codes' share of total Native American dollars exceeds their share of non-DBE dollars.

**Table 4-19: Three NAICS Codes where Native American Firms Received the Most Spending
(FHWA Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non DBE Dollars
237310	Highway, Street, and Bridge Construction	25.9%	26.6%	63.9%
238910	Site Preparation Contractors	18.3%	18.8%	8.9%
238190	Other Foundation, Structure, and Building Exterior Contractors	12.9%	13.2%	0.1%
Total 3-code Share of Total Group Dollars			58.6%	72.8%

Source: CHA analysis of WSDOT data

Table 4-20 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. These codes comprise 69.8% of all White woman contract dollars; the corresponding figure for non-DBE firms was 65.1%. Consistent with previous stories, the two non-237310 codes' share of total White woman dollars exceed their share of non-DBE dollars.

Table 4-20: Three NAICS Codes where White Woman Firms Received the Most Spending (FHWA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non DBE Dollars
237310	Highway, Street, and Bridge Construction	56.1%	30.5%	63.9%
561990	All Other Support Services	5.0%	25.5%	0.9%
237110	Water and Sewer Line and Related Structures Construction	1.8%	13.8%	0.4%
Total 3-code Share of Total Group Dollars			69.8%	65.1%

Source: CHA analysis of WSDOT data

The data presented in Tables 4-14 through 4-20 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of DBE firms with respect to participation in WSDOT procurements were significantly different than the experiences of non-DBE firms. When examining most of the three leading NAICS codes for DBE firms, we found that the DBE firms share of all group earnings exceeded the non-DBE firms share of all group earnings. This was true for all of the leading NAICS codes for Blacks and the two non-237310 NAICS codes for Hispanics, Asians, Native Americans, and White women.

G. FHWA Funded Contracts: Disparity Analysis of WSDOT Contracts

As required by strict constitutional scrutiny and case law in the Ninth Circuit Court of Appeals, we next calculated disparity ratios for each demographic group, comparing the group’s total utilization compared to its total weighted availability.

A *disparity ratio* is the relationship between the utilization and weighted availability (as determined in the section above). Mathematically, this is represented by:

$$DR = U/WA$$

Where DR is the disparity ratio; U is utilization rate; and WA is the weighted availability.

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the

result may be caused by the disparate impacts of discrimination.¹³⁹ Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.¹⁴⁰ A more in-depth discussion of statistical significance is provided in Appendix C.

Substantive and Statistical Significance

- ‡ Connotes these values are substantively significant. Courts have ruled the disparity ratio less or equal to 80 percent represent disparities that are substantively significant. (See Footnote 139 for more information.)
- * Connotes these values are statistically significant at the 0.05 level. (See Appendix C for more information.)
- ** Connotes these values are statistically significant at the 0.01 level. (See Appendix C for more information.)
- *** Connotes these values are statistically significant at the 0.001 level. (See Appendix C for more information.)

Table 4-21 presents the disparity ratios for each demographic group. The disparity ratio for Blacks and Native Americans is substantively significant. All of the disparity ratios are statistically significant at the 0.001 level.

**Table 4-21: Disparity Ratios by Demographic Group
(FHWA Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Disparity Ratio	68.2%‡***	163.6%***	146.8%***	77.9%‡***	81.7%***	102.2%***	99.5%***

Source: CHA analysis of WSDOT data

‡ Indicates substantive significance

*** Statistically significant at the 0.001 level

139. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

140. A chi-square test – examining if the utilization rate was different from the weighted availability - was used to determine the statistical significance of the disparity ratio.

H. FTA funded Contracts: Contract Data Overview

As for FHWA funded contracts, Sections H through K present the results for FTA funded contracts. Because the methodology behind these calculations mirrors what was done for our analysis of FHWA funded contract data, we dispense with detailed explanations.

Tables 4-22 and 4-23 provide data on the resulting FCDF for WSDOT’s contracts.

**Table 4-22: Final Contract Data File
Number of Contracts
(FTA Funded)**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	24	5.8%
Subcontractor	392	94.2%
TOTAL	416	100.0%

Source: CHA analysis of WSDOT data

**Table 4-23: Final Contract Data File
Net Dollar Value of Contracts
(FTA Funded)**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$64,784,932	56.6%
Subcontractor	\$49,644,868	43.4%
TOTAL	\$114,429,800	100.0%

Source: CHA analysis of WSDOT data

I. FTA Funded Contracts: The Geographic and Product Market for WSDOT Contracts

1. Final Contract Data File for WSDOT Highway Authority Contracts

Table 4-24 presents the FCDF for FTA funded contracts. It consisted of 62 NAICS codes, with a total contract dollar value of \$114,429,800.

**Table 4-24: Industry Percentage Distribution of WSDOT Contracts by Dollars
(FTA Funded)**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
236210	Industrial Building Construction	23.6%	23.6%
488390	Other Support Activities for Water Transportation	14.2%	37.8%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	11.0%	48.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	7.8%	56.6%
237990	Other Heavy and Civil Engineering Construction	7.1%	63.7%
238120	Structural Steel and Precast Concrete Contractors	6.3%	70.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	5.3%	75.3%
237310	Highway, Street, and Bridge Construction	3.4%	78.7%
238910	Site Preparation Contractors	2.9%	81.6%
237110	Water and Sewer Line and Related Structures Construction	1.8%	83.4%
336612	Boat Building	1.7%	85.2%
238160	Roofing Contractors	1.6%	86.7%
238350	Finish Carpentry Contractors	1.2%	88.0%
238150	Glass and Glazing Contractors	1.2%	89.1%
561320	Temporary Help Services	1.1%	90.2%
238290	Other Building Equipment Contractors	1.0%	91.2%
541380	Testing Laboratories	0.9%	92.1%
561730	Landscaping Services	0.9%	92.9%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.8%	93.7%
238990	All Other Specialty Trade Contractors	0.8%	94.5%
238320	Painting and Wall Covering Contractors	0.7%	95.2%
541330	Engineering Services	0.5%	95.7%
561990	All Other Support Services	0.5%	96.2%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.4%	96.5%
238310	Drywall and Insulation Contractors	0.3%	96.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
424690	Other Chemical and Allied Products Merchant Wholesalers	0.3%	97.2%
423840	Industrial Supplies Merchant Wholesalers	0.3%	97.4%
541620	Environmental Consulting Services	0.3%	97.7%
541490	Other Specialized Design Services	0.3%	98.0%
541370	Surveying and Mapping (except Geophysical) Services	0.3%	98.2%
488330	Navigational Services to Shipping	0.2%	98.4%
541990	All Other Professional, Scientific, and Technical Services	0.2%	98.5%
562910	Remediation Services	0.2%	98.7%
562998	All Other Miscellaneous Waste Management Services	0.1%	98.8%
238140	Masonry Contractors	0.1%	99.0%
541820	Public Relations Agencies	0.1%	99.1%
541310	Architectural Services	0.1%	99.2%
541618	Other Management Consulting Services	0.1%	99.4%
238110	Poured Concrete Foundation and Structure Contractors	0.1%	99.5%
541611	Administrative Management and General Management Consulting Services	0.1%	99.5%
488490	Other Support Activities for Road Transportation	0.1%	99.6%
238330	Flooring Contractors	0.1%	99.7%
562119	Other Waste Collection	0.05%	99.7%
444190	Other Building Material Dealers	0.05%	99.8%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.04%	99.8%
551112	Offices of Other Holding Companies	0.03%	99.8%
324121	Asphalt Paving Mixture and Block Manufacturing	0.03%	99.9%
221310	Water Supply and Irrigation Systems	0.02%	99.9%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.02%	99.9%
561790	Other Services to Buildings and Dwellings	0.02%	99.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.02%	99.9%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.02%	99.96%
561612	Security Guards and Patrol Services	0.02%	99.98%
238390	Other Building Finishing Contractors	0.01%	99.99%
562991	Septic Tank and Related Services	0.01%	99.99%
561910	Packaging and Labeling Services	0.003%	99.997%
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.001%	99.998%
811192	Car Washes	0.001%	99.999%
424710	Petroleum Bulk Stations and Terminals	0.001%	99.999%
488991	Packing and Crating	0.0003%	99.9997%
541690	Other Scientific and Technical Consulting Services	0.0003%	99.9999%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.0001%	100.0000%
TOTAL		100.0%	

Source: CHA analysis of WSDOT data

2. Geographic Market for WSDOT Contracts

The State of Washington captured 88.3% of the FCDF. Therefore, we used the state as the geographic market.

J. FTA Funded Contracts: Utilization of firms in WSDOT’s Geographic and Product Market

Having determined WSDOT’s geographic market area, the next step was to determine the dollar value of its utilization of DBE firms as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 53 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$101,040,305. Table 4-25 presents these data. As explained in the section on FHWA funded contracts, these contract dollar shares in Table 4-25 are equivalent to the weight of spending in each NAICS

code and they will be used to calculate weighted availability from unweighted availability.

Table 4-25: NAICS Code Distribution of Contract Dollars in WSDOT’s Constrained Product Market (FTA Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
236210	Industrial Building Construction	\$27,035,996	26.8%
488390	Other Support Activities for Water Transportation	\$16,250,071	16.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$12,534,002	12.4%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$8,808,346	8.7%
237990	Other Heavy and Civil Engineering Construction	\$8,152,273	8.1%
238120	Structural Steel and Precast Concrete Contractors	\$3,201,638	3.2%
238910	Site Preparation Contractors	\$3,137,418	3.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$2,733,005	2.7%
237310	Highway, Street, and Bridge Construction	\$2,169,423	2.1%
237110	Water and Sewer Line and Related Structures Construction	\$2,089,682	2.1%
336612	Boat Building	\$1,995,138	2.0%
238160	Roofing Contractors	\$1,773,813	1.8%
238150	Glass and Glazing Contractors	\$1,332,473	1.3%
238290	Other Building Equipment Contractors	\$1,091,669	1.1%
541380	Testing Laboratories	\$995,040	1.0%
561730	Landscaping Services	\$978,571	1.0%
238990	All Other Specialty Trade Contractors	\$852,662	0.8%
238320	Painting and Wall Covering Contractors	\$591,659	0.6%
541330	Engineering Services	\$529,280	0.5%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$515,185	0.5%
561990	All Other Support Services	\$508,713	0.5%

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NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	\$447,104	0.4%
541490	Other Specialized Design Services	\$294,816	0.3%
423840	Industrial Supplies Merchant Wholesalers	\$285,998	0.3%
541370	Surveying and Mapping (except Geophysical) Services	\$265,197	0.3%
238310	Drywall and Insulation Contractors	\$204,996	0.2%
488330	Navigational Services to Shipping	\$189,772	0.2%
562910	Remediation Services	\$178,867	0.2%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$167,655	0.2%
562998	All Other Miscellaneous Waste Management Services	\$164,116	0.2%
238350	Finish Carpentry Contractors	\$163,167	0.2%
238140	Masonry Contractors	\$152,422	0.2%
541820	Public Relations Agencies	\$151,033	0.1%
541310	Architectural Services	\$136,510	0.1%
541620	Environmental Consulting Services	\$121,675	0.1%
238110	Poured Concrete Foundation and Structure Contractors	\$116,851	0.1%
561320	Temporary Help Services	\$108,820	0.1%
541990	All Other Professional, Scientific, and Technical Services	\$100,618	0.1%
541611	Administrative Management and General Management Consulting Services	\$88,341	0.1%
488490	Other Support Activities for Road Transportation	\$82,700	0.1%
238330	Flooring Contractors	\$80,837	0.1%
444190	Other Building Material Dealers	\$52,142	0.1%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$46,419	0.05%
551112	Offices of Other Holding Companies	\$30,010	0.03%
324121	Asphalt Paving Mixture and Block Manufacturing	\$29,452	0.03%
561790	Other Services to Buildings and Dwellings	\$23,034	0.02%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	\$18,864	0.02%
561612	Security Guards and Patrol Services	\$17,820	0.02%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	\$16,945	0.02%
238390	Other Building Finishing Contractors	\$11,985	0.01%
562991	Septic Tank and Related Services	\$8,883	0.01%
562119	Other Waste Collection	\$6,377	0.01%
811192	Car Washes	\$823	0.001%
TOTAL		\$101,040,305	100.0%

Source: CHA analysis of WSDOT data

Tables 4-26 and 4-27 present data on WSDOT’s DBE firm utilization, measured in contract dollars and percentage of contract dollars.

Table 4-26: Distribution of WSDOT Contract Dollars by Race and Gender
(total dollars)
(FTA Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
236210	\$0	\$0	\$0	\$0	\$0	\$0	\$27,035,996	\$27,035,996
237110	\$0	\$0	\$0	\$0	\$0	\$0	\$2,089,682	\$2,089,682
237310	\$0	\$3,500	\$0	\$0	\$0	\$3,500	\$2,165,923	\$2,169,423
237990	\$0	\$0	\$0	\$0	\$0	\$0	\$8,152,273	\$8,152,273
238110	\$0	\$0	\$0	\$0	\$0	\$0	\$116,851	\$116,851

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238120	\$0	\$0	\$2,325,220	\$0	\$0	\$2,325,220	\$876,418	\$3,201,638
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$152,422	\$152,422
238150	\$0	\$0	\$0	\$0	\$0	\$0	\$1,332,473	\$1,332,473
238160	\$0	\$0	\$0	\$0	\$0	\$0	\$1,773,813	\$1,773,813
238190	\$0	\$0	\$0	\$0	\$8,186	\$8,186	\$506,998	\$515,185
238210	\$0	\$169,775	\$0	\$0	\$613,218	\$782,993	\$8,025,353	\$8,808,346
238220	\$34,680	\$0	\$0	\$0	\$0	\$34,680	\$2,698,325	\$2,733,005
238290	\$0	\$0	\$0	\$0	\$788,319	\$788,319	\$303,350	\$1,091,669
238310	\$0	\$0	\$0	\$0	\$0	\$0	\$204,996	\$204,996
238320	\$47,122	\$0	\$0	\$0	\$0	\$47,122	\$544,537	\$591,659
238330	\$0	\$0	\$0	\$0	\$0	\$0	\$80,837	\$80,837
238350	\$0	\$0	\$0	\$0	\$0	\$0	\$163,167	\$163,167
238390	\$0	\$0	\$0	\$0	\$0	\$0	\$11,985	\$11,985
238910	\$249,896	\$0	\$0	\$0	\$0	\$249,896	\$2,887,522	\$3,137,418
238990	\$0	\$0	\$0	\$8,140	\$32,943	\$41,083	\$811,579	\$852,662
324121	\$0	\$0	\$0	\$0	\$0	\$0	\$29,452	\$29,452
336612	\$0	\$0	\$0	\$0	\$0	\$0	\$1,995,137	\$1,995,137
423510	\$0	\$0	\$324,199	\$0	\$1,679,027	\$2,003,226	\$10,530,776	\$12,534,002
423610	\$0	\$0	\$0	\$0	\$0	\$0	\$16,945	\$16,945
423720	\$0	\$0	\$0	\$0	\$0	\$0	\$18,864	\$18,864
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$46,419	\$46,419
423840	\$0	\$0	\$0	\$0	\$52,085	\$52,085	\$233,913	\$285,998
424690	\$167,625	\$0	\$0	\$0	\$0	\$167,625	\$30	\$167,655

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
444190	\$0	\$0	\$0	\$0	\$0	\$0	\$52,142	\$52,142
484220	\$0	\$0	\$0	\$0	\$17,066	\$17,066	\$430,039	\$447,104
488330	\$0	\$0	\$0	\$0	\$9,600	\$9,600	\$180,172	\$189,772
488390	\$199,795	\$0	\$0	\$0	\$512,203	\$711,998	\$15,538,074	\$16,250,071
488490	\$39,524	\$0	\$0	\$0	\$12,920	\$52,444	\$30,256	\$82,700
541310	\$0	\$0	\$0	\$0	\$136,510	\$136,510	\$0	\$136,510
541330	\$0	\$0	\$27,500	\$0	\$0	\$27,500	\$501,780	\$529,280
541370	\$102,196	\$0	\$0	\$0	\$0	\$102,196	\$163,001	\$265,197
541380	\$0	\$0	\$990,765	\$0	\$3,375	\$994,140	\$900	\$995,040
541490	\$0	\$0	\$0	\$0	\$0	\$0	\$294,816	\$294,816
541611	\$0	\$0	\$0	\$0	\$88,341	\$88,341	\$0	\$88,341
541620	\$120,775	\$0	\$0	\$0	\$0	\$120,775	\$900	\$121,675
541820	\$0	\$0	\$1,752	\$0	\$132,564	\$134,316	\$16,717	\$151,033
541990	\$0	\$0	\$5,721	\$0	\$17,752	\$23,473	\$77,145	\$100,618
551112	\$0	\$0	\$0	\$0	\$0	\$0	\$30,010	\$30,010
561320	\$0	\$0	\$7,204	\$0	\$972	\$8,176	\$100,644	\$108,820
561612	\$0	\$0	\$0	\$0	\$0	\$0	\$17,820	\$17,820
561730	\$0	\$0	\$0	\$0	\$973,471	\$973,471	\$5,100	\$978,571
561790	\$23,034	\$0	\$0	\$0	\$0	\$23,034	\$0	\$23,034
561990	\$71,150	\$0	\$32,162	\$0	\$384,709	\$488,021	\$20,691	\$508,713
562119	\$0	\$0	\$0	\$0	\$0	\$0	\$6,377	\$6,377
562910	\$0	\$0	\$0	\$0	\$0	\$0	\$178,867	\$178,867
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$8,883	\$8,883

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
562998	\$0	\$0	\$158,211	\$0	\$0	\$158,211	\$5,905	\$164,116
811192	\$0	\$0	\$0	\$0	\$0	\$0	\$823	\$823
Total	\$1,055,797	\$173,275	\$3,872,734	\$8,140	\$5,463,262	\$10,573,207	\$90,467,097	\$101,040,305

Source: CHA analysis of WSDOT data

**Table 4-27: Percentage Distribution of WSDOT Contract Dollars by Race and Gender
(share of total dollars)
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
236210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	0.2%	0.0%	0.0%	0.0%	0.2%	99.8%	100.0%
237990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238120	0.0%	0.0%	72.6%	0.0%	0.0%	72.6%	27.4%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238190	0.0%	0.0%	0.0%	0.0%	1.6%	1.6%	98.4%	100.0%
238210	0.0%	1.9%	0.0%	0.0%	7.0%	8.9%	91.1%	100.0%
238220	1.3%	0.0%	0.0%	0.0%	0.0%	1.3%	98.7%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	72.2%	72.2%	27.8%	100.0%
238310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238320	8.0%	0.0%	0.0%	0.0%	0.0%	8.0%	92.0%	100.0%
238330	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238390	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238910	8.0%	0.0%	0.0%	0.0%	0.0%	8.0%	92.0%	100.0%
238990	0.0%	0.0%	0.0%	1.0%	3.9%	4.8%	95.2%	100.0%
324121	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	0.0%	0.0%	2.6%	0.0%	13.4%	16.0%	84.0%	100.0%
423610	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423720	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423840	0.0%	0.0%	0.0%	0.0%	18.2%	18.2%	81.8%	100.0%
424690	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
444190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	0.0%	0.0%	0.0%	0.0%	3.8%	3.8%	96.2%	100.0%
488330	0.0%	0.0%	0.0%	0.0%	5.1%	5.1%	94.9%	100.0%
488390	1.2%	0.0%	0.0%	0.0%	3.2%	4.4%	95.6%	100.0%
488490	47.8%	0.0%	0.0%	0.0%	15.6%	63.4%	36.6%	100.0%
541310	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541330	0.0%	0.0%	5.2%	0.0%	0.0%	5.2%	94.8%	100.0%
541370	38.5%	0.0%	0.0%	0.0%	0.0%	38.5%	61.5%	100.0%
541380	0.0%	0.0%	99.6%	0.0%	0.3%	99.9%	0.1%	100.0%
541490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541611	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541620	99.3%	0.0%	0.0%	0.0%	0.0%	99.3%	0.7%	100.0%
541820	0.0%	0.0%	1.2%	0.0%	87.8%	88.9%	11.1%	100.0%
541990	0.0%	0.0%	5.7%	0.0%	17.6%	23.3%	76.7%	100.0%
551112	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561320	0.0%	0.0%	6.6%	0.0%	0.9%	7.5%	92.5%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561730	0.0%	0.0%	0.0%	0.0%	99.5%	99.5%	0.5%	100.0%
561790	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561990	14.0%	0.0%	6.3%	0.0%	75.6%	95.9%	4.1%	100.0%
562119	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	0.0%	0.0%	96.4%	0.0%	0.0%	96.4%	3.6%	100.0%
811192	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Total	1.0%	0.2%	3.8%	0.01%	5.4%	10.5%	89.5%	100.0%

Source: CHA analysis of WSDOT data

K. FTA Funded Contracts: The Availability of DBE Firms for WSDOT Contracts in its Geographic and Product Markets

1. The Methodological Framework

Using the custom census framework, we merged three databases (the Final Contract Data File; The Master M/W/DBE/DBE Directory compiled by CHA; Dun & Bradstreet/Hoovers Database) to form an accurate estimate of firms available to work on WSDOT’s contracts.

2. The Availability Data and Results

Tables 4-28 through 4-30 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for WSDOT’s product market;
- The weights used to adjust the unweighted numbers;¹⁴¹ and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in WSDOT’s market area.

141. These weights are equivalent to the share of contract dollars presented in the previous section.

**Table 4-28: Unweighted DBE Firms Availability for WSDOT Contracts
(FTA Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
236210	2.7%	1.1%	2.7%	4.2%	7.3%	18.0%	82.0%	100.0%
237110	2.4%	2.0%	2.7%	4.9%	7.7%	19.8%	80.2%	100.0%
237310	2.4%	4.6%	2.7%	4.7%	8.0%	22.4%	77.6%	100.0%
237990	3.4%	3.2%	5.4%	5.9%	8.8%	26.6%	73.4%	100.0%
238110	0.5%	1.2%	0.8%	0.8%	2.8%	6.0%	94.0%	100.0%
238120	3.6%	10.8%	5.7%	2.6%	8.8%	31.4%	68.6%	100.0%
238140	0.3%	1.0%	0.2%	0.2%	2.0%	3.8%	96.2%	100.0%
238150	0.5%	1.0%	1.0%	0.0%	10.0%	12.4%	87.6%	100.0%
238160	0.2%	0.5%	0.2%	0.0%	2.0%	2.8%	97.2%	100.0%
238190	5.4%	5.4%	4.9%	2.7%	6.0%	24.5%	75.5%	100.0%
238210	0.8%	0.9%	0.4%	0.4%	3.7%	6.3%	93.7%	100.0%
238220	0.3%	0.3%	0.2%	0.4%	2.0%	3.4%	96.6%	100.0%
238290	2.0%	2.0%	0.0%	1.0%	11.9%	16.8%	83.2%	100.0%
238310	0.5%	1.7%	0.3%	0.0%	1.9%	4.3%	95.7%	100.0%
238320	0.4%	0.6%	0.2%	0.1%	2.4%	3.7%	96.3%	100.0%
238330	1.1%	0.9%	0.7%	0.2%	3.9%	6.9%	93.1%	100.0%
238350	1.2%	2.6%	1.4%	0.7%	2.4%	8.4%	91.6%	100.0%
238390	1.1%	1.7%	0.9%	1.3%	3.8%	8.9%	91.1%	100.0%
238910	1.4%	1.5%	1.4%	2.7%	6.3%	13.3%	86.7%	100.0%
238990	0.4%	0.7%	0.2%	0.4%	1.8%	3.4%	96.6%	100.0%
324121	0.0%	2.0%	0.0%	3.9%	5.9%	11.8%	88.2%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	3.8%	3.8%	96.2%	100.0%
423510	0.2%	0.4%	1.3%	0.2%	6.7%	8.8%	91.2%	100.0%
423610	0.5%	0.6%	1.3%	1.0%	4.8%	8.2%	91.8%	100.0%
423720	1.1%	0.0%	0.0%	0.0%	4.5%	5.7%	94.3%	100.0%
423830	0.3%	0.3%	0.3%	0.1%	2.8%	3.9%	96.1%	100.0%
423840	0.8%	0.0%	0.7%	0.0%	5.0%	6.5%	93.5%	100.0%
424690	0.9%	0.9%	1.3%	0.4%	5.6%	9.0%	91.0%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
444190	4.3%	0.0%	8.7%	4.3%	47.8%	65.2%	34.8%	100.0%
484220	4.9%	3.3%	2.0%	7.8%	13.3%	31.2%	68.8%	100.0%
488330	0.0%	0.0%	0.0%	0.0%	6.0%	6.0%	94.0%	100.0%
488390	1.9%	0.0%	0.9%	0.9%	7.4%	11.1%	88.9%	100.0%
488490	6.0%	0.8%	1.6%	0.8%	10.3%	19.4%	80.6%	100.0%
541310	0.4%	0.8%	1.4%	0.1%	7.4%	10.0%	90.0%	100.0%
541330	0.5%	0.8%	2.4%	0.5%	4.1%	8.2%	91.8%	100.0%
541370	2.4%	3.1%	1.9%	1.7%	5.3%	14.4%	85.6%	100.0%
541380	0.0%	0.4%	2.3%	0.1%	4.7%	7.4%	92.6%	100.0%
541490	0.1%	0.0%	0.1%	0.0%	3.1%	3.4%	96.6%	100.0%
541611	2.4%	0.8%	1.1%	0.3%	8.8%	13.4%	86.6%	100.0%
541620	1.5%	1.6%	2.3%	1.1%	15.2%	21.6%	78.4%	100.0%
541820	2.7%	1.1%	1.1%	0.7%	15.4%	20.9%	79.1%	100.0%
541990	0.2%	0.4%	0.8%	0.1%	6.8%	8.4%	91.6%	100.0%
551112	0.0%	0.0%	0.0%	0.0%	0.4%	0.5%	99.5%	100.0%
561320	1.9%	1.2%	2.9%	0.7%	8.8%	15.4%	84.6%	100.0%
561612	3.0%	1.6%	0.7%	0.2%	3.7%	9.3%	90.7%	100.0%
561730	0.6%	0.7%	0.6%	0.4%	4.5%	6.8%	93.2%	100.0%
561790	0.6%	0.2%	0.2%	0.1%	3.9%	4.9%	95.1%	100.0%
561990	0.6%	0.4%	0.4%	0.4%	4.9%	6.6%	93.4%	100.0%
562119	3.4%	0.0%	3.8%	4.7%	5.1%	17.1%	82.9%	100.0%
562910	3.6%	4.6%	5.1%	4.1%	9.2%	26.7%	73.3%	100.0%
562991	0.2%	0.0%	0.2%	0.0%	5.0%	5.4%	94.6%	100.0%
562998	0.0%	0.0%	14.6%	0.0%	14.6%	29.3%	70.7%	100.0%
811192	0.6%	0.1%	0.1%	0.0%	1.6%	2.4%	97.6%	100.0%
Total	0.7%	0.7%	0.7%	0.5%	4.3%	7.0%	93.0%	100.0%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

These unweighted estimates should be used by WSDOT as the starting point for setting narrowly tailored DBE contract goals.

**Table 4-29: Distribution of WSDOT’s Spending by NAICS Code (the Weights)
(FTA Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
236210	Industrial Building Construction	26.8%
237110	Water and Sewer Line and Related Structures Construction	2.1%
237310	Highway, Street, and Bridge Construction	2.1%
237990	Other Heavy and Civil Engineering Construction	8.1%
238110	Poured Concrete Foundation and Structure Contractors	0.1%
238120	Structural Steel and Precast Concrete Contractors	3.2%
238140	Masonry Contractors	0.2%
238150	Glass and Glazing Contractors	1.3%
238160	Roofing Contractors	1.8%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.5%
238210	Electrical Contractors and Other Wiring Installation Contractors	8.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	2.7%
238290	Other Building Equipment Contractors	1.1%
238310	Drywall and Insulation Contractors	0.2%
238320	Painting and Wall Covering Contractors	0.6%
238330	Flooring Contractors	0.1%
238350	Finish Carpentry Contractors	0.2%
238390	Other Building Finishing Contractors	0.01%
238910	Site Preparation Contractors	3.1%
238990	All Other Specialty Trade Contractors	0.8%
324121	Asphalt Paving Mixture and Block Manufacturing	0.03%
336612	Boat Building	2.0%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	12.4%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.02%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.02%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.05%
423840	Industrial Supplies Merchant Wholesalers	0.3%

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NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
424690	Other Chemical and Allied Products Merchant Wholesalers	0.2%
444190	Other Building Material Dealers	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.4%
488330	Navigational Services to Shipping	0.2%
488390	Other Support Activities for Water Transportation	16.1%
488490	Other Support Activities for Road Transportation	0.1%
541310	Architectural Services	0.1%
541330	Engineering Services	0.5%
541370	Surveying and Mapping (except Geophysical) Services	0.3%
541380	Testing Laboratories	1.0%
541490	Other Specialized Design Services	0.3%
541611	Administrative Management and General Management Consulting Services	0.1%
541620	Environmental Consulting Services	0.1%
541820	Public Relations Agencies	0.1%
541990	All Other Professional, Scientific, and Technical Services	0.1%
551112	Offices of Other Holding Companies	0.03%
561320	Temporary Help Services	0.1%
561612	Security Guards and Patrol Services	0.02%
561730	Landscaping Services	1.0%
561790	Other Services to Buildings and Dwellings	0.02%
561990	All Other Support Services	0.5%
562119	Other Waste Collection	0.01%
562910	Remediation Services	0.2%
562991	Septic Tank and Related Services	0.01%
562998	All Other Miscellaneous Waste Management Services	0.2%
811192	Car Washes	0.001%
TOTAL		100.0%

Source: CHA analysis of WSDOT data

Table 4-30 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBE firms, weighted by WSDOT’s spending in its geographic and industry markets, is 14.2%.

Table 4-30: Aggregated Weighted Availability for WSDOT Contracts (FTA Funded)

Black	Hispanic	Asian	Native American	White Women	DBE	Non DBE	Total
1.8%	1.4%	2.0%	2.3%	6.7%	14.2%	85.8%	100.0%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

3. Analysis of the Concentration of Contract Dollars among Firms

As with the FHWA funded contracts, we examined any asymmetries between the NAICS codes in which WSDOT spends large shares of its FTA funds and the NAICS codes that provide DBEs and non-DBEs the largest shares of their respective earnings.

Prior to presenting these data, it is important to emphasize three important findings: 1) the share of contract dollars derived from contracts in the top three NAICS codes for Hispanics, Asian, and Native Americans was larger than the share of contract dollars that WSDOT spent in its three largest NAICS codes. The share of total Black contract dollars from the three codes providing the most business for Blacks was roughly the same as for WSDOT and the share of total White woman contract dollars from the three codes providing the most business for White women was a bit larger than the corresponding share for WSDOT; 2) There is minimal overlap between the set of NAICS codes that provide the greatest contracting opportunities for DBEs and those NAICS codes where WSDOT spends most of its dollars; and 3) when examining the three leading NAICS codes for DBE firms, their share of the overall earnings exceeded the share of non-DBE firms’ overall earnings from those three NAICS codes.

With respect to the first finding, Table 4-31 presents data on the share of WSDOT’s contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Tables 4-26 and 4-27. The three NAICS codes where WSDOT spent most of its contract dollars captured 55.2% of all WSDOT spending. This is approximately the same for Blacks (58.5%) and slightly under the figure for White women (63.0%). However, it is far less than the corresponding figures for Hispanics (100.0%), Asians (94.0%), and Native Americans (100.0%).

Table 4-31: Comparison of the Share of WSDOT Spending Captured by the Top Three NAICS Codes for Each Demographic Group (FTA Funded Contracts)

Demographic Group	Share of All WSDOT Spending in the Top Three NAICS Codes for Each Group
All	55.2%
Black	58.5%
Hispanic	100.0%
Asian	94.0%
Native American	100.0%
White Woman	63.0%
Non-DBE	58.7%

Source: CHA analysis of WSDOT data

With respect to the second finding, Table 4-32 provides more detail on the data presented in Table 4-31. Table 4-32 lists the top three codes for each group and their corresponding share of the group’s total spending. Among the top three codes for Black firms, only one – NAICS code 488390 (Other Support Activities for Water Transportation) appears among the top three codes where WSDOT spends its funds. For Asian firms and White woman firms, just one NAICS code 423510 (Metal Service Centers and Other Metal Merchant Wholesalers) appear in both the top three codes for those DBEs and WSDOT. None of the leading codes for Hispanic or Native American firms appear among the top three codes for WSDOT.

Table 4-32: The Top Three WSDOT Spending NAICS Codes for Each Demographic Group (FTA Funded Contracts)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
236210	Industrial Building Construction	26.8%	55.2%
488390	Other Support Activities for Water Transportation	16.1%	
423510	Metal Service Centers and Other Metal Merchant Wholesalers	12.4%	
Black			

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
238910	Site Preparation Contractors	23.7%	58.5%
488390	Other Support Activities for Water Transportation	18.9%	
424690	Other Chemical and Allied Products Merchant Wholesalers	15.9%	
Hispanic			
238210	Electrical Contractors and Other Wiring Installation Contractors	98.0%	100.0%
237310	Highway, Street, and Bridge Construction	2.0%	
Asian			
238120	Structural Steel and Precast Concrete Contractors	60.0%	94.0%
541380	Testing Laboratories	25.6%	
423510	Metal Service Centers and Other Metal Merchant Wholesalers	8.4%	
Native American			
238990	All Other Specialty Trade Contractors	100.0%	100.0%
White Woman			
423510	Metal Service Centers and Other Metal Merchant Wholesalers	30.7%	63.0%
561730	Landscaping Services	17.8%	
238290	Other Building Equipment Contractors	14.4%	
Non DBE Firm			
236210	Industrial Building Construction	29.9%	58.7%
488390	Other Support Activities for Water Transportation	17.2%	
423510	Metal Service Centers and Other Metal Merchant Wholesalers	11.6%	

Source: CHA analysis of WSDOT data

Tables 4-33 through 4-37 present data on the third finding: the leading codes for DBE firms are more important for overall DBE contract dollars compared to those codes' importance to non-DBEs. These results illustrate the different levels of concentration of contract dollars among DBE firms compared to non-DBE firms. For each demographic group, we provide the three NAICS codes where the group received the largest share of WSDOT's spending (first presented in Table 4-32). We then present the weight for each code derived from WSDOT's overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-DBE firms.

Table 4-33 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 58.5% of all Black contract dollars, the corresponding figure for non-DBE firms was 20.4%. The two codes that do not overlap with the leading codes for WSDOT (NAICS codes 238910 and 424690) contribute much more to overall Black contract dollars (23.7% and 15.9%, respectively) than they do for overall non-DBE contract dollars (3.2% and 0.0%, respectively).

Table 4-33: Three NAICS Codes where Black Firms Received the Most Spending (FTA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non DBE Dollars
238910	Site Preparation Contractors	3.1%	23.7%	3.2%
488390	Other Support Activities for Water Transportation	16.1%	18.9%	17.2%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.2%	15.9%	0.0%
Total 3-code Share of Total Group Dollars			58.5%	20.4%

Source: CHA analysis of WSDOT data

Table 4-34 presents data on the two NAICS code where Hispanic firms received all of their contract dollars. These codes comprised 100.0% of all Hispanic contract dollars; the corresponding figure for non-DBE firms was 11.3%. While the shares are similar for NAICS code 237310 (Highway, Street, and Bridge Construction), NAICS code 238210 (Electrical Contractors and Other Wiring Installation Contractors) provides a much larger share of overall Hispanic contract dollars (98.0%) than it does for overall non-DBE contract dollars (11.3%).

Table 4-34: Three NAICS Codes where Hispanic Firms Received the Most Spending (FTA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non DBE Dollars
238210	Electrical Contractors and Other Wiring Installation Contractors	8.7%	98.0%	8.9%
237310	Highway, Street, and Bridge Construction	2.1%	2.0%	2.4%
Total 2-code Share of Total Group Dollars			100.0%	11.3%

Source: CHA analysis of WSDOT data

Table 4-35 presents the three NAICS codes where Asian firms received the largest share of their contract dollars. While these codes captured 94.0% of all Asian contract dollars, the corresponding figure for non-DBE firms was 12.6%. The two codes that do not overlap with the leading codes for WSDOT (NAICS code 238120 and NAICS code 541380) contribute much more to overall Asian contract dollars (60.0% and 25.6%, respectively) than they do for overall non-DBE contract dollars (1.0% and 0.0%, respectively).

Table 4-35: Three NAICS Codes where Asian Firms Received the Most Spending (FTA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non DBE Dollars
238120	Structural Steel and Precast Concrete Contractors	3.2%	60.0%	1.0%
541380	Testing Laboratories	1.0%	25.6%	0.0%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	12.4%	8.4%	11.6%
Total 3-code Share of Total Group Dollars			94.0%	12.6%

Source: CHA analysis of WSDOT data

Table 4-36 presents the only NAICS code where Native American firms received any contract dollars. While this code captured 100.0% of all Native American contract dollars, the corresponding figure for non-DBE firms was 0.9%.

Table 4-36: Three NAICS Codes where Native American Firms Received the Most Spending (FTA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non DBE Dollars
238990	All Other Specialty Trade Contractors	0.8%	100.0%	0.9%
Total 1-code Share of Total Group Dollars			100.0%	0.9%

Source: CHA analysis of WSDOT data

Table 4-37 presents the three NAICS codes where White woman firms received the largest share of their contract dollars. While these codes captured 63.0% of all White woman contract dollars, the corresponding figure for non-DBE firms was 12.0%. Examining the two codes that do not overlap with the leading codes for WSDOT (NAICS code 561730 and NAICS code 238290), those codes contribute much to overall White woman contract dollars (17.8% and 14.4%,

respectively) than they do for overall non-DBE contract dollars (0.0% and 0.3%, respectively).

Table 4-37: Three NAICS Codes where White Woman Firms Received the Most Spending (FTA Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non DBE Dollars
423510	Metal Service Centers and Other Metal Merchant Wholesalers	12.4%	30.7%	11.6%
561730	Landscaping Services	1.0%	17.8%	0.0%
238290	Other Building Equipment Contractors	1.1%	14.4%	0.3%
Total 3-code Share of Total Group Dollars			63.0%	12.0%

Source: CHA analysis of WSDOT data

The data presented in Tables 4-31 through 4-37 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of DBE firms with respect to participation in WSDOT procurements were significantly different than the experiences of non-DBE firms. There is minimal overlap between the three NAICS codes that were central to WSDOT’s spending and the three most important NAICS codes for the different racial and ethnic groups and White women. In addition, when examining the three most important NAICS codes for DBE firms, we found that for each group, the DBE firms share of all group earnings exceeded the non-DBE firms share of all group earnings in most cases.

L. FTA Funded Contracts: Disparity Analysis of WSDOT Contracts

As explained in section G, we next calculated disparity ratios for each demographic group, comparing the group’s total utilization compared to its total weighted availability.

Table 4-38 presents the disparity ratios for each demographic group. The disparity ratio for Blacks, Hispanics, Native Americans, and DBE firms is substantively significant. All of the disparity ratios except for Hispanics and Native Americans are statistically significant at the 0.001 level.

**Table 4-38: Disparity Ratios by Demographic Group
(FTA Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Disparity Ratio	58.3% ^{‡***}	12.4% [‡]	191.3% ^{***}	0.4% [‡]	80.5% ^{***}	73.8% ^{‡***}	104.3% ^{***}

Source: CHA analysis of WSDOT data
[‡] Indicates substantive significance
^{***} Statistically significant at the 0.001 level

M. State Funded Contracts: Contract Data Overview

As with the previous analyses for FHWA and FTA funded contacts, Sections M through R present the results for State funded contracts: We again dispense with any detailed explanations.

Tables 4-39 and 4-40 provide data on the resulting FCDF for WSDOT’s State funded contracts.

**Table 4-39: Final Contract Data File
Number of Contracts**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	198	13.8%
Subcontractor	1,237	86.2%
TOTAL	1,435	100.0%

Source: CHA analysis of WSDOT data

**Table 4-40: Final Contract Data File
Net Dollar Value of Contracts**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$533,862,256	51.4%
Subcontractor	\$504,639,704	48.6%
TOTAL	\$1,038,501,960	100.0%

Source: CHA analysis of WSDOT data

N. State Funded Contracts: The Geographic and Product Market for WSDOT Contracts

1. Final Contract Data File for WSDOT’s State Funded Contracts

Table 4-41 presents the FCDF for state funded contracts. It consisted of 75 NAICS codes, with a total contract dollar value of \$1,038,501,960.

Table 4-41: Industry Percentage Distribution of WSDOT Contracts by Dollars (State Funded)

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	43.0%	43.0%
238910	Site Preparation Contractors	11.0%	54.0%
541330	Engineering Services	6.1%	60.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.9%	66.1%
237110	Water and Sewer Line and Related Structures Construction	5.8%	71.9%
541420	Industrial Design Services	5.1%	77.0%
561990	All Other Support Services	2.4%	79.4%
541620	Environmental Consulting Services	2.0%	81.5%
238120	Structural Steel and Precast Concrete Contractors	1.9%	83.4%
324121	Asphalt Paving Mixture and Block Manufacturing	1.7%	85.0%
236220	Commercial and Institutional Building Construction	1.6%	86.6%
238310	Drywall and Insulation Contractors	1.2%	87.8%
238990	All Other Specialty Trade Contractors	1.1%	88.9%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.0%	89.9%
237990	Other Heavy and Civil Engineering Construction	0.9%	90.9%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.9%	91.8%
238320	Painting and Wall Covering Contractors	0.9%	92.7%
541370	Surveying and Mapping (except Geophysical) Services	0.9%	93.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.9%	94.5%
561730	Landscaping Services	0.8%	95.3%

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NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541990	All Other Professional, Scientific, and Technical Services	0.7%	96.0%
541380	Testing Laboratories	0.4%	96.5%
561110	Office Administrative Services	0.4%	96.8%
238110	Poured Concrete Foundation and Structure Contractors	0.4%	97.2%
423390	Other Construction Material Merchant Wholesalers	0.4%	97.6%
488490	Other Support Activities for Road Transportation	0.3%	97.9%
238160	Roofing Contractors	0.2%	98.1%
541320	Landscape Architectural Services	0.1%	98.2%
238350	Finish Carpentry Contractors	0.1%	98.4%
611710	Educational Support Services	0.1%	98.5%
541820	Public Relations Agencies	0.1%	98.6%
238290	Other Building Equipment Contractors	0.1%	98.8%
561790	Other Services to Buildings and Dwellings	0.1%	98.9%
561320	Temporary Help Services	0.1%	99.0%
541690	Other Scientific and Technical Consulting Services	0.1%	99.1%
561612	Security Guards and Patrol Services	0.1%	99.2%
541611	Administrative Management and General Management Consulting Services	0.1%	99.3%
336612	Boat Building	0.1%	99.4%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.1%	99.4%
444190	Other Building Material Dealers	0.05%	99.5%
541310	Architectural Services	0.04%	99.5%
238330	Flooring Contractors	0.04%	99.6%
562910	Remediation Services	0.04%	99.6%
922120	Police Protection	0.04%	99.6%
423210	Furniture Merchant Wholesalers	0.03%	99.7%
562112	Hazardous Waste Collection	0.03%	99.7%
531210	Offices of Real Estate Agents and Brokers	0.03%	99.7%
221310	Water Supply and Irrigation Systems	0.03%	99.8%
238130	Framing Contractors	0.03%	99.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238390	Other Building Finishing Contractors	0.03%	99.8%
541618	Other Management Consulting Services	0.03%	99.8%
541720	Research and Development in the Social Sciences and Humanities	0.03%	99.8%
562211	Hazardous Waste Treatment and Disposal	0.02%	99.9%
541910	Marketing Research and Public Opinion Polling	0.02%	99.9%
562119	Other Waste Collection	0.02%	99.9%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.02%	99.9%
488190	Other Support Activities for Air Transportation	0.01%	99.9%
562991	Septic Tank and Related Services	0.01%	99.9%
541340	Drafting Services	0.01%	99.9%
488390	Other Support Activities for Water Transportation	0.01%	99.96%
562111	Solid Waste Collection	0.01%	99.96%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.01%	99.97%
238140	Masonry Contractors	0.005%	99.97%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.005%	99.98%
492210	Local Messengers and Local Delivery	0.003%	99.98%
238150	Glass and Glazing Contractors	0.003%	99.98%
541360	Geophysical Surveying and Mapping Services	0.003%	99.99%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.002%	99.99%
561720	Janitorial Services	0.002%	99.99%
113310	Logging	0.002%	99.99%
562998	All Other Miscellaneous Waste Management Services	0.002%	99.99%
488330	Navigational Services to Shipping	0.002%	99.996%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	0.002%	99.998%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.001%	99.999%
519110	News Syndicates	0.001%	100.000%
TOTAL		100.0%	

Source: CHA analysis of WSDOT data

2. Geographic Market for WSDOT Contracts

The State of Washington captured 89.8% of the FCDF. Therefore, we used the State as the geographic market.

O. State Funded Contracts: Utilization of Firms in WSDOT’s Geographic and Product Market

Having determined WSDOT’s geographic market area, the next step was to determine the dollar value of its utilization of DBE firms as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 70 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$932,326,883.

Table 4-42: NAICS Code Distribution of Contract Dollars in WSDOT’s Constrained Product Market (State Funded)

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$435,091,968	46.6%
238910	Site Preparation Contractors	\$99,518,824	10.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$61,360,508	6.6%
237110	Water and Sewer Line and Related Structures Construction	\$59,986,332	6.4%
541330	Engineering Services	\$55,822,244	6.0%
561990	All Other Support Services	\$24,192,276	2.6%
541620	Environmental Consulting Services	\$18,967,570	2.0%

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NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
236220	Commercial and Institutional Building Construction	\$16,428,766	1.8%
541420	Industrial Design Services	\$16,377,252	1.8%
324121	Asphalt Paving Mixture and Block Manufacturing	\$15,359,851	1.6%
238120	Structural Steel and Precast Concrete Contractors	\$15,025,480	1.6%
238310	Drywall and Insulation Contractors	\$10,179,608	1.1%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$9,728,572	1.0%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$9,480,580	1.0%
541370	Surveying and Mapping (except Geophysical) Services	\$9,378,569	1.0%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$9,183,590	1.0%
237990	Other Heavy and Civil Engineering Construction	\$8,703,252	0.9%
238990	All Other Specialty Trade Contractors	\$7,184,050	0.8%
561730	Landscaping Services	\$6,706,667	0.7%
541990	All Other Professional, Scientific, and Technical Services	\$6,344,362	0.7%
561110	Office Administrative Services	\$4,013,752	0.4%
541380	Testing Laboratories	\$4,011,597	0.4%
423390	Other Construction Material Merchant Wholesalers	\$3,961,715	0.4%
238110	Poured Concrete Foundation and Structure Contractors	\$3,663,264	0.4%
488490	Other Support Activities for Road Transportation	\$3,016,439	0.3%
238160	Roofing Contractors	\$1,788,146	0.2%
541320	Landscape Architectural Services	\$1,506,228	0.2%
541820	Public Relations Agencies	\$1,343,865	0.1%
561790	Other Services to Buildings and Dwellings	\$1,203,402	0.1%
238390	Other Building Finishing Contractors	\$1,123,534	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
561320	Temporary Help Services	\$999,326	0.1%
238350	Finish Carpentry Contractors	\$920,775	0.1%
561612	Security Guards and Patrol Services	\$818,481	0.1%
336612	Boat Building	\$707,340	0.1%
611710	Educational Support Services	\$681,048	0.1%
238320	Painting and Wall Covering Contractors	\$647,051	0.1%
541611	Administrative Management and General Management Consulting Services	\$634,872	0.1%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$592,586	0.1%
541690	Other Scientific and Technical Consulting Services	\$509,037	0.1%
541310	Architectural Services	\$435,252	0.05%
238330	Flooring Contractors	\$429,433	0.05%
562910	Remediation Services	\$418,346	0.04%
922120	Police Protection	\$392,025	0.04%
562112	Hazardous Waste Collection	\$324,850	0.03%
221310	Water Supply and Irrigation Systems	\$301,666	0.03%
238290	Other Building Equipment Contractors	\$296,799	0.03%
238130	Framing Contractors	\$289,936	0.03%
541618	Other Management Consulting Services	\$274,538	0.03%
541720	Research and Development in the Social Sciences and Humanities	\$270,130	0.03%
531210	Offices of Real Estate Agents and Brokers	\$245,688	0.03%
444190	Other Building Material Dealers	\$206,890	0.02%
541910	Marketing Research and Public Opinion Polling	\$195,500	0.02%
562119	Other Waste Collection	\$166,203	0.02%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$160,029	0.02%
488190	Other Support Activities for Air Transportation	\$114,198	0.01%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
562991	Septic Tank and Related Services	\$77,082	0.01%
488390	Other Support Activities for Water Transportation	\$76,773	0.01%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	\$54,614	0.01%
238140	Masonry Contractors	\$48,641	0.01%
492210	Local Messengers and Local Delivery	\$31,729	0.003%
238150	Glass and Glazing Contractors	\$31,043	0.003%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	\$23,971	0.003%
561720	Janitorial Services	\$23,857	0.003%
113310	Logging	\$23,400	0.003%
541614	Process, Physical Distribution, and Logistics Consulting Services	\$20,923	0.002%
562998	All Other Miscellaneous Waste Management Services	\$20,133	0.002%
488330	Navigational Services to Shipping	\$16,795	0.002%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	\$16,113	0.002%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$14,335	0.002%
562111	Solid Waste Collection	\$5,725	0.001%
TOTAL		\$932,326,883	100.0%

Source: CHA analysis of WSDOT data

Tables 4-43 and 4-44 present data on WSDOT’s DBE firm utilization, measured in contract dollars and percentage of contract dollars.

Table 4-43: Distribution of WSDOT Contract Dollars by Race and Gender
(total dollars)
(State Funded)

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	\$0	\$0	\$0	\$0	\$0	\$0	\$23,400	\$23,400
221310	\$0	\$0	\$0	\$0	\$0	\$0	\$301,666	\$301,666
236220	\$0	\$0	\$0	\$0	\$0	\$0	\$16,428,766	\$16,428,766
237110	\$0	\$0	\$0	\$22,441,492	\$34,456,759	\$56,898,251	\$3,088,082	\$59,986,333
237310	\$72,106	\$4,170,364	\$85,987	\$3,044,449	\$7,176,198	\$14,549,104	\$420,542,879	\$435,091,982
237990	\$0	\$651,145	\$86,776	\$0	\$198,524	\$936,445	\$7,766,807	\$8,703,252
238110	\$0	\$0	\$0	\$26,955	\$252,382	\$279,336	\$3,383,927	\$3,663,264
238120	\$0	\$118,476	\$0	\$0	\$880,657	\$999,133	\$14,026,348	\$15,025,480
238130	\$0	\$0	\$0	\$0	\$0	\$0	\$289,936	\$289,936
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$48,641	\$48,641
238150	\$0	\$0	\$0	\$0	\$0	\$0	\$31,043	\$31,043
238160	\$0	\$0	\$0	\$0	\$0	\$0	\$1,788,146	\$1,788,146
238190	\$0	\$2,573	\$61,300	\$0	\$6,190	\$70,063	\$522,523	\$592,586
238210	\$43,160	\$877,145	\$112,259	\$0	\$418,886	\$1,451,450	\$59,909,057	\$61,360,507
238220	\$0	\$2,840,916	\$0	\$0	\$0	\$2,840,916	\$6,342,675	\$9,183,590
238290	\$0	\$0	\$0	\$0	\$54,950	\$54,950	\$1,226,056	\$1,281,006
238310	\$0	\$0	\$5,196	\$0	\$129,748	\$134,944	\$10,044,664	\$10,179,608
238320	\$0	\$0	\$0	\$0	\$58,510	\$58,510	\$588,541	\$647,051
238330	\$0	\$0	\$0	\$0	\$0	\$0	\$429,433	\$429,433
238350	\$366,814	\$0	\$0	\$0	\$0	\$366,814	\$553,961	\$920,775

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238390	\$0	\$0	\$0	\$7,783	\$0	\$7,783	\$289,016	\$296,799
238910	\$0	\$2,929,456	\$58,703	\$720,525	\$10,756,106	\$14,464,790	\$85,054,036	\$99,518,826
238990	\$0	\$122,179	\$0	\$17,428	\$2,052,782	\$2,192,388	\$4,991,661	\$7,184,050
324121	\$0	\$0	\$0	\$0	\$0	\$0	\$15,359,851	\$15,359,851
327999	\$0	\$0	\$0	\$0	\$0	\$0	\$16,113	\$16,113
336612	\$0	\$0	\$0	\$0	\$0	\$0	\$707,340	\$707,340
423390	\$0	\$0	\$0	\$0	\$0	\$0	\$3,961,715	\$3,961,715
423450	\$0	\$0	\$0	\$0	\$0	\$0	\$23,971	\$23,971
423510	\$0	\$0	\$966,821	\$0	\$29,271	\$996,092	\$8,732,480	\$9,728,572
423830	\$0	\$0	\$0	\$0	\$0	\$0	\$14,335	\$14,335
424720	\$0	\$0	\$0	\$0	\$54,614	\$54,614	\$0	\$54,614
444190	\$0	\$0	\$0	\$0	\$157,149	\$157,149	\$49,740	\$206,890
484220	\$79,915	\$22,494	\$2,372,583	\$153,172	\$350,770	\$2,978,934	\$6,501,646	\$9,480,580
488190	\$0	\$0	\$0	\$0	\$0	\$0	\$114,198	\$114,198
488330	\$0	\$0	\$0	\$0	\$0	\$0	\$16,795	\$16,795
488390	\$0	\$0	\$0	\$0	\$0	\$0	\$76,773	\$76,773
488490	\$476,161	\$0	\$11,412	\$0	\$74,255	\$561,828	\$2,454,611	\$3,016,439
492210	\$0	\$0	\$0	\$0	\$0	\$0	\$31,729	\$31,729
531210	\$0	\$121,856	\$0	\$0	\$0	\$121,856	\$123,832	\$245,688
541310	\$0	\$25,867	\$0	\$0	\$0	\$25,867	\$409,385	\$435,252
541320	\$0	\$12,475	\$0	\$0	\$0	\$12,475	\$1,493,752	\$1,506,228
541330	\$0	\$287,120	\$157,101	\$0	\$983,924	\$1,428,145	\$54,394,101	\$55,822,245
541370	\$161,474	\$384,337	\$7,314,258	\$52,890	\$345,124	\$8,258,083	\$1,120,486	\$9,378,569

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
541380	\$0	\$609,926	\$0	\$0	\$40,073	\$649,999	\$3,361,598	\$4,011,597
541420	\$0	\$4,164,717	\$383,226	\$0	\$0	\$4,547,942	\$11,829,310	\$16,377,252
541611	\$0	\$219,099	\$0	\$0	\$53,442	\$272,541	\$362,331	\$634,872
541614	\$0	\$0	\$0	\$0	\$20,923	\$20,923	\$0	\$20,923
541618	\$274,538	\$0	\$0	\$0	\$0	\$274,538	\$0	\$274,538
541620	\$0	\$2,335,473	\$838,124	\$0	\$133,156	\$3,306,753	\$15,660,817	\$18,967,570
541690	\$0	\$0	\$0	\$0	\$1,700	\$1,700	\$507,337	\$509,037
541720	\$0	\$0	\$0	\$0	\$0	\$0	\$270,130	\$270,130
541820	\$131,218	\$0	\$0	\$0	\$799,773	\$930,990	\$412,874	\$1,343,865
541910	\$0	\$0	\$0	\$0	\$0	\$0	\$195,500	\$195,500
541990	\$0	\$0	\$489,518	\$0	\$1,240,900	\$1,730,418	\$4,613,944	\$6,344,361
561110	\$41,132	\$0	\$286,241	\$0	\$718,416	\$1,045,790	\$2,967,962	\$4,013,752
561320	\$0	\$0	\$998,733	\$0	\$0	\$998,733	\$593	\$999,326
561612	\$0	\$230,812	\$384,173	\$0	\$0	\$614,985	\$203,496	\$818,481
561720	\$0	\$0	\$23,857	\$0	\$0	\$23,857	\$0	\$23,857
561730	\$17,613	\$1,709,750	\$548,481	\$1,809,620	\$609,670	\$4,695,133	\$2,011,534	\$6,706,667
561790	\$0	\$0	\$0	\$0	\$1,199,789	\$1,199,789	\$3,613	\$1,203,402
561990	\$83,847	\$951,204	\$177,007	\$60,334	\$7,009,390	\$8,281,783	\$15,910,493	\$24,192,276
562111	\$0	\$0	\$0	\$0	\$5,725	\$5,725	\$0	\$5,725
562112	\$0	\$0	\$0	\$0	\$34,566	\$34,566	\$290,284	\$324,849
562119	\$0	\$0	\$0	\$25,430	\$2,450	\$27,880	\$138,322	\$166,203
562910	\$0	\$2,592	\$149,818	\$0	\$213,924	\$366,334	\$52,012	\$418,346
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$77,082	\$77,082

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
562998	\$0	\$0	\$0	\$0	\$15,537	\$15,537	\$4,597	\$20,133
611710	\$0	\$0	\$0	\$0	\$6,596	\$6,596	\$674,453	\$681,048
811310	\$0	\$0	\$0	\$0	\$0	\$0	\$160,029	\$160,029
922120	\$0	\$0	\$0	\$0	\$392,025	\$392,025	\$0	\$392,025
Total	\$1,747,978	\$22,789,974	\$15,511,575	\$28,360,078	\$70,934,850	\$139,344,455	\$792,982,428	\$932,326,883

Source: CHA analysis of WSDOT data

**Table 4-44: Percentage Distribution of WSDOT Contract Dollars by Race and Gender
(share of total dollars)
(State Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
221310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237110	0.0%	0.0%	0.0%	37.4%	57.4%	94.9%	5.1%	100.0%
237310	0.0%	1.0%	0.0%	0.7%	1.6%	3.3%	96.7%	100.0%
237990	0.0%	7.5%	1.0%	0.0%	2.3%	10.8%	89.2%	100.0%
238110	0.0%	0.0%	0.0%	0.7%	6.9%	7.6%	92.4%	100.0%
238120	0.0%	0.8%	0.0%	0.0%	5.9%	6.6%	93.4%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238150	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238190	0.0%	0.4%	10.3%	0.0%	1.0%	11.8%	88.2%	100.0%
238210	0.1%	1.4%	0.2%	0.0%	0.7%	2.4%	97.6%	100.0%
238220	0.0%	30.9%	0.0%	0.0%	0.0%	30.9%	69.1%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	4.3%	4.3%	95.7%	100.0%
238310	0.0%	0.0%	0.1%	0.0%	1.3%	1.3%	98.7%	100.0%
238320	0.0%	0.0%	0.0%	0.0%	9.0%	9.0%	91.0%	100.0%
238330	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238350	39.8%	0.0%	0.0%	0.0%	0.0%	39.8%	60.2%	100.0%
238390	0.0%	0.0%	0.0%	2.6%	0.0%	2.6%	97.4%	100.0%
238910	0.0%	2.9%	0.1%	0.7%	10.8%	14.5%	85.5%	100.0%
238990	0.0%	1.7%	0.0%	0.2%	28.6%	30.5%	69.5%	100.0%
324121	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
327999	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423390	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423450	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423510	0.0%	0.0%	9.9%	0.0%	0.3%	10.2%	89.8%	100.0%
423830	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424720	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
444190	0.0%	0.0%	0.0%	0.0%	76.0%	76.0%	24.0%	100.0%
484220	0.8%	0.2%	25.0%	1.6%	3.7%	31.4%	68.6%	100.0%
488190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488330	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488390	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
488490	15.8%	0.0%	0.4%	0.0%	2.5%	18.6%	81.4%	100.0%
492210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	49.6%	0.0%	0.0%	0.0%	49.6%	50.4%	100.0%
541310	0.0%	5.9%	0.0%	0.0%	0.0%	5.9%	94.1%	100.0%
541320	0.0%	0.8%	0.0%	0.0%	0.0%	0.8%	99.2%	100.0%
541330	0.0%	0.5%	0.3%	0.0%	1.8%	2.6%	97.4%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
541370	1.7%	4.1%	78.0%	0.6%	3.7%	88.1%	11.9%	100.0%
541380	0.0%	15.2%	0.0%	0.0%	1.0%	16.2%	83.8%	100.0%
541420	0.0%	25.4%	2.3%	0.0%	0.0%	27.8%	72.2%	100.0%
541611	0.0%	34.5%	0.0%	0.0%	8.4%	42.9%	57.1%	100.0%
541614	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541618	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541620	0.0%	12.3%	4.4%	0.0%	0.7%	17.4%	82.6%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	0.3%	0.3%	99.7%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541820	9.8%	0.0%	0.0%	0.0%	59.5%	69.3%	30.7%	100.0%
541910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	0.0%	0.0%	7.7%	0.0%	19.6%	27.3%	72.7%	100.0%
561110	1.0%	0.0%	7.1%	0.0%	17.9%	26.1%	73.9%	100.0%
561320	0.0%	0.0%	99.9%	0.0%	0.0%	99.9%	0.1%	100.0%
561612	0.0%	28.2%	46.9%	0.0%	0.0%	75.1%	24.9%	100.0%
561720	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
561730	0.3%	25.5%	8.2%	27.0%	9.1%	70.0%	30.0%	100.0%
561790	0.0%	0.0%	0.0%	0.0%	99.7%	99.7%	0.3%	100.0%
561990	0.3%	3.9%	0.7%	0.2%	29.0%	34.2%	65.8%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
562112	0.0%	0.0%	0.0%	0.0%	10.6%	10.6%	89.4%	100.0%
562119	0.0%	0.0%	0.0%	15.3%	1.5%	16.8%	83.2%	100.0%
562910	0.0%	0.6%	35.8%	0.0%	51.1%	87.6%	12.4%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562998	0.0%	0.0%	0.0%	0.0%	77.2%	77.2%	22.8%	100.0%
611710	0.0%	0.0%	0.0%	0.0%	1.0%	1.0%	99.0%	100.0%
811310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
922120	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
Total	0.2%	2.4%	1.7%	3.0%	7.6%	14.9%	85.1%	100.0%

Source: CHA analysis of WSDOT data

P. State Funded Contracts: The Availability of DBE Firms for WSDOT Contracts in its Geographic and Product Markets

1. The Availability Data and Results

Tables 4-45 through 4-47 present data on:

- The unweighted availability percentages by race and gender and by NAICS codes for WSDOT’s product market;
- The weights used to adjust the unweighted numbers; and
- The final estimates of the weighted averages of the individual six-digit level NAICS availability estimates in WSDOT’s market area.

**Table 4-45: Unweighted DBE Firms Availability for WSDOT Contracts
(State Funded)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
113310	0.1%	0.0%	0.0%	0.4%	3.0%	3.6%	96.4%	100.0%
221310	0.3%	0.4%	0.3%	0.3%	2.1%	3.4%	96.6%	100.0%
236220	1.8%	1.9%	2.0%	3.0%	4.4%	13.2%	86.8%	100.0%
237110	2.4%	2.0%	2.7%	4.9%	7.7%	19.8%	80.2%	100.0%
237310	2.4%	4.6%	2.7%	4.7%	8.0%	22.4%	77.6%	100.0%
237990	3.4%	3.2%	5.4%	5.9%	8.8%	26.6%	73.4%	100.0%
238110	0.5%	1.2%	0.8%	0.8%	2.8%	6.0%	94.0%	100.0%
238120	3.6%	10.8%	5.7%	2.6%	8.8%	31.4%	68.6%	100.0%
238130	0.2%	0.6%	0.2%	0.2%	1.2%	2.3%	97.7%	100.0%
238140	0.3%	1.0%	0.2%	0.2%	2.0%	3.8%	96.2%	100.0%
238150	0.5%	1.0%	1.0%	0.0%	10.0%	12.4%	87.6%	100.0%
238160	0.2%	0.5%	0.2%	0.0%	2.0%	2.8%	97.2%	100.0%
238190	5.4%	5.4%	4.9%	2.7%	6.0%	24.5%	75.5%	100.0%
238210	0.8%	0.9%	0.4%	0.4%	3.7%	6.3%	93.7%	100.0%
238220	0.3%	0.3%	0.2%	0.4%	2.0%	3.4%	96.6%	100.0%
238290	2.0%	2.0%	0.0%	1.0%	11.9%	16.8%	83.2%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
238310	0.5%	1.7%	0.3%	0.0%	1.9%	4.3%	95.7%	100.0%
238320	0.4%	0.6%	0.2%	0.1%	2.4%	3.7%	96.3%	100.0%
238330	1.1%	0.9%	0.7%	0.2%	3.9%	6.9%	93.1%	100.0%
238350	1.2%	2.6%	1.4%	0.7%	2.4%	8.4%	91.6%	100.0%
238390	1.1%	1.7%	0.9%	1.3%	3.8%	8.9%	91.1%	100.0%
238910	1.4%	1.5%	1.4%	2.7%	6.3%	13.3%	86.7%	100.0%
238990	0.4%	0.7%	0.2%	0.4%	1.8%	3.4%	96.6%	100.0%
324121	0.0%	2.0%	0.0%	3.9%	5.9%	11.8%	88.2%	100.0%
327999	0.0%	0.0%	0.0%	4.5%	4.5%	9.1%	90.9%	100.0%
336612	0.0%	0.0%	0.0%	0.0%	3.8%	3.8%	96.2%	100.0%
423390	4.0%	0.8%	4.0%	0.8%	8.0%	17.6%	82.4%	100.0%
423450	0.5%	0.0%	1.1%	0.2%	6.2%	8.0%	92.0%	100.0%
423510	0.2%	0.4%	1.3%	0.2%	6.7%	8.8%	91.2%	100.0%
423830	0.3%	0.3%	0.3%	0.1%	2.8%	3.9%	96.1%	100.0%
424720	0.3%	0.0%	0.0%	1.7%	4.0%	5.9%	94.1%	100.0%
444190	4.3%	0.0%	8.7%	4.3%	47.8%	65.2%	34.8%	100.0%
484220	4.9%	3.3%	2.0%	7.8%	13.3%	31.2%	68.8%	100.0%
488190	1.4%	0.0%	1.4%	1.4%	2.1%	6.3%	93.8%	100.0%
488330	0.0%	0.0%	0.0%	0.0%	6.0%	6.0%	94.0%	100.0%
488390	1.9%	0.0%	0.9%	0.9%	7.4%	11.1%	88.9%	100.0%
488490	6.0%	0.8%	1.6%	0.8%	10.3%	19.4%	80.6%	100.0%
492210	0.0%	0.0%	0.0%	0.0%	4.6%	4.6%	95.4%	100.0%
531210	0.1%	0.1%	0.1%	0.0%	2.1%	2.3%	97.7%	100.0%
541310	0.4%	0.8%	1.4%	0.1%	7.4%	10.0%	90.0%	100.0%
541320	0.1%	0.2%	0.3%	0.1%	3.7%	4.3%	95.7%	100.0%
541330	0.5%	0.8%	2.4%	0.5%	4.1%	8.2%	91.8%	100.0%
541370	2.4%	3.1%	1.9%	1.7%	5.3%	14.4%	85.6%	100.0%
541380	0.0%	0.4%	2.3%	0.1%	4.7%	7.4%	92.6%	100.0%
541420	0.0%	5.0%	5.9%	1.0%	10.9%	22.8%	77.2%	100.0%
541611	2.4%	0.8%	1.1%	0.3%	8.8%	13.4%	86.6%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE	Total
541614	2.2%	1.2%	1.6%	0.3%	18.2%	23.4%	76.6%	100.0%
541618	0.2%	0.1%	0.2%	0.1%	2.4%	3.0%	97.0%	100.0%
541620	1.5%	1.6%	2.3%	1.1%	15.2%	21.6%	78.4%	100.0%
541690	1.0%	1.0%	1.8%	0.5%	11.0%	15.2%	84.8%	100.0%
541720	0.7%	0.7%	0.7%	0.1%	8.8%	10.9%	89.1%	100.0%
541820	2.7%	1.1%	1.1%	0.7%	15.4%	20.9%	79.1%	100.0%
541910	1.0%	1.2%	0.4%	0.2%	10.0%	12.9%	87.1%	100.0%
541990	0.2%	0.4%	0.8%	0.1%	6.8%	8.4%	91.6%	100.0%
561110	0.3%	0.1%	0.2%	0.0%	1.6%	2.2%	97.8%	100.0%
561320	1.9%	1.2%	2.9%	0.7%	8.8%	15.4%	84.6%	100.0%
561612	3.0%	1.6%	0.7%	0.2%	3.7%	9.3%	90.7%	100.0%
561720	1.7%	0.6%	0.4%	0.1%	6.8%	9.6%	90.4%	100.0%
561730	0.6%	0.7%	0.6%	0.4%	4.5%	6.8%	93.2%	100.0%
561790	0.6%	0.2%	0.2%	0.1%	3.9%	4.9%	95.1%	100.0%
561990	0.6%	0.4%	0.4%	0.4%	4.9%	6.6%	93.4%	100.0%
562111	10.3%	3.4%	5.2%	1.7%	5.2%	25.9%	74.1%	100.0%
562112	8.0%	0.0%	0.0%	0.0%	32.0%	40.0%	60.0%	100.0%
562119	3.4%	0.0%	3.8%	4.7%	5.1%	17.1%	82.9%	100.0%
562910	3.6%	4.6%	5.1%	4.1%	9.2%	26.7%	73.3%	100.0%
562991	0.2%	0.0%	0.2%	0.0%	5.0%	5.4%	94.6%	100.0%
562998	0.0%	0.0%	14.6%	0.0%	14.6%	29.3%	70.7%	100.0%
611710	0.9%	0.5%	0.9%	0.0%	9.3%	11.7%	88.3%	100.0%
811310	0.1%	0.4%	0.3%	0.1%	3.1%	4.0%	96.0%	100.0%
922120	0.0%	0.0%	0.0%	0.0%	0.5%	0.5%	99.5%	100.0%
Total	0.6%	0.6%	0.6%	0.4%	4.1%	6.3%	93.7%	100.0%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

**Table 4-46: Distribution of WSDOT's Spending by NAICS Code (the Weights)
(State Funded)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
113310	Logging	0.003%
221310	Water Supply and Irrigation Systems	0.03%
236220	Commercial and Institutional Building Construction	1.8%
237110	Water and Sewer Line and Related Structures Construction	6.4%
237310	Highway, Street, and Bridge Construction	46.6%
237990	Other Heavy and Civil Engineering Construction	0.9%
238110	Poured Concrete Foundation and Structure Contractors	0.4%
238120	Structural Steel and Precast Concrete Contractors	1.6%
238130	Framing Contractors	0.03%
238140	Masonry Contractors	0.01%
238150	Glass and Glazing Contractors	0.003%
238160	Roofing Contractors	0.2%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	1.0%
238290	Other Building Equipment Contractors	0.1%
238310	Drywall and Insulation Contractors	1.1%
238320	Painting and Wall Covering Contractors	0.1%
238330	Flooring Contractors	0.05%
238350	Finish Carpentry Contractors	0.1%
238390	Other Building Finishing Contractors	0.03%
238910	Site Preparation Contractors	10.7%
238990	All Other Specialty Trade Contractors	0.8%
324121	Asphalt Paving Mixture and Block Manufacturing	1.6%
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	0.002%
336612	Boat Building	0.1%
423390	Other Construction Material Merchant Wholesalers	0.4%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.003%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	1.0%
423830	Industrial Machinery and Equipment Merchant Wholesalers	0.002%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.01%
444190	Other Building Material Dealers	0.02%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.0%
488190	Other Support Activities for Air Transportation	0.01%
488330	Navigational Services to Shipping	0.002%
488390	Other Support Activities for Water Transportation	0.01%
488490	Other Support Activities for Road Transportation	0.3%
492210	Local Messengers and Local Delivery	0.003%
531210	Offices of Real Estate Agents and Brokers	0.03%
541310	Architectural Services	0.05%
541320	Landscape Architectural Services	0.2%
541330	Engineering Services	6.0%
541370	Surveying and Mapping (except Geophysical) Services	1.0%
541380	Testing Laboratories	0.4%
541420	Industrial Design Services	1.8%
541611	Administrative Management and General Management Consulting Services	0.1%
541614	Process, Physical Distribution, and Logistics Consulting Services	0.002%
541618	Other Management Consulting Services	0.03%
541620	Environmental Consulting Services	2.0%
541690	Other Scientific and Technical Consulting Services	0.1%
541720	Research and Development in the Social Sciences and Humanities	0.03%
541820	Public Relations Agencies	0.1%
541910	Marketing Research and Public Opinion Polling	0.02%
541990	All Other Professional, Scientific, and Technical Services	0.7%
561110	Office Administrative Services	0.4%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
561320	Temporary Help Services	0.1%
561612	Security Guards and Patrol Services	0.1%
561720	Janitorial Services	0.003%
561730	Landscaping Services	0.7%
561790	Other Services to Buildings and Dwellings	0.1%
561990	All Other Support Services	2.6%
562111	Solid Waste Collection	0.001%
562112	Hazardous Waste Collection	0.03%
562119	Other Waste Collection	0.02%
562910	Remediation Services	0.04%
562991	Septic Tank and Related Services	0.01%
562998	All Other Miscellaneous Waste Management Services	0.002%
611710	Educational Support Services	0.1%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	0.02%
922120	Police Protection	0.04%
TOTAL		100.0%

Source: CHA analysis of WSDOT data

Table 4-47 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBE firms, weighted by WSDOT’s spending in its geographic and industry markets, is 17.4%.

Table 4-47: Aggregated Weighted Availability for WSDOT Contracts (State Funded)

Black	Hispanic	Asian	Native American	White Women	DBE	Non DBE	Total
1.9%	3.1%	2.2%	3.2%	7.1%	17.4%	82.6%	100.00%

Source: CHA analysis of WSDOT data; Hoovers; CHA Master Directory

2. Analysis of the Concentration of Contract Dollars among Firms

As with the FHWA and FTA funded contracts, we examined any asymmetries between the NAICS codes in which WSDOT spends large shares of its FTA funds

and the NAICS codes that provide DBEs and non-DBEs the largest shares of their respective earnings.

We again made three important findings: 1) the share of contract dollars derived from contracts in the top three NAICS codes for Native Americans, and White women was larger than the share of contract dollars that WSDOT spent in its three largest NAICS codes. The share of total Black and Asian contract dollars from the three codes providing the most business for Asian was roughly the same as for WSDOT and the share of total Hispanic contract dollars from the three codes providing the most business for Hispanic was less than the corresponding share for WSDOT; 2) There is some overlap between the set of NAICS codes that provide the greatest contracting opportunities for DBEs and those NAICS codes where WSDOT spends most of its dollars; and 3) when examining the three leading NAICS codes for DBE firms, their share of the overall earnings exceeded the share of non-DBE firms' overall earnings from those three NAICS codes – except when the NAICS code is 237310 (Highway, Street, and Bridge Construction).

With respect to the first finding, Table 4-48 presents data on the share of WSDOT's contract dollars received by the top three NAICS codes for each demographic group. These shares were derived from the data presented in Tables 4-43 and 4-44. The three NAICS codes where WSDOT spent most of its contract dollars captured 63.87% of all WSDOT spending. For Blacks, Native Americans, and White women, the corresponding figure for the share of spending captured by the top three codes were 63.93% (Black), 92.6 (Native American), and 73.9% (White Woman). For Hispanic, the figure was 49.4%; for Asian, the figure was 68.9%.

**Table 4-48: Comparison of the Share of WSDOT Spending Captured by the Top Three NAICS Codes for Each Demographic Group
(State Funded Contracts)**

Demographic Group	Share of All WSDOT Spending in the Top Three NAICS Codes for Each Group
All	63.87%
Black	63.93%
Hispanic	49.43%
Asian	68.89%

Demographic Group	Share of All WSDOT Spending in the Top Three NAICS Codes for Each Group
Native American	96.25%
White Woman	73.86%
Non-DBE	71.31%

Source: CHA analysis of WSDOT data

With respect to the second finding, Table 4-49 provides more detail on the data presented in Table 4-48. Table 4-49 lists the top three codes for each group and their corresponding share of the group’s total spending. Among the top three codes for WSDOT, NAICS code 237310 (Highway, Street, and Bridge Construction) appears among the top three codes for Hispanics, Native Americans, and White women; NAICS code 238910 (Site Preparation Contractors) appears among the top three codes for Hispanics and White women; NAICS code 238210 (Electrical Contractors and Other Wiring Installation Contractors) appears among the top three codes for Blacks.

Table 4-49: The Top Three WSDOT Spending NAICS Codes for Each Demographic Group (State Funded Contracts)

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
All			
237310	Highway, Street, and Bridge Construction	46.6%	63.9%
238910	Site Preparation Contractors	10.7%	
238210	Electrical Contractors and Other Wiring Installation Contractors	6.6%	
Black			
488490	Other Support Activities for Road Transportation	27.2%	63.9%
238350	Finish Carpentry Contractors	21.0%	
541618	Other Management Consulting Services	15.7%	
Hispanic			
237310	Highway, Street, and Bridge Construction	18.3%	49.4%
541420	Industrial Design Services	18.3%	
238910	Site Preparation Contractors	12.9%	

NAICS	NAICS Code Label	WEIGHT	Total of Top 3 Codes
Asian			
541370	Surveying and Mapping (except Geophysical) Services	47.2%	68.9%
484220	Specialized Freight (except Used Goods) Trucking, Local	15.3%	
561320	Temporary Help Services	6.4%	
Native American			
237110	Water and Sewer Line and Related Structures Construction	76.1%	96.2%
237310	Highway, Street, and Bridge Construction	10.3%	
561730	Landscaping Services	6.4%	
White Woman			
237110	Water and Sewer Line and Related Structures Construction	48.6%	73.9%
238910	Site Preparation Contractors	15.2%	
237310	Highway, Street, and Bridge Construction	10.1%	
Non DBE Firm			
237310	Highway, Street, and Bridge Construction	54.0%	72.0%
238910	Site Preparation Contractors	11.2%	
541330	Engineering Services	6.9%	

Source: CHA analysis of WSDOT data

Tables 4-50 through 4-54 present data on the third finding: the leading codes for DBE firms are more important for overall DBE contract dollars compared to those codes' importance to non-DBEs except when the code in question is 237310 - Highway, Street, and Bridge Construction. These results illustrate the different levels of concentration of contract dollars among DBE firms compared to non-DBE firms. For each demographic group, we provide the three NAICS codes where the group received the largest share of WSDOT's spending (first presented in Table 4-49). Then, we present the weight for each code derived from the WSDOT's overall spending. Finally, we present the share of all group contract dollars and compare that share to the corresponding share received by non-DBE firms.

Table 4-50 presents the three NAICS codes where Black firms received the largest share of their contract dollars. While these codes captured 63.93% of all Black contract dollars, the corresponding figure for non-DBE firms was 0.4%. In each of these codes, the share of all Black contract dollars greatly exceeded the share of all non-DBE contract dollars.

**Table 4-50: Three NAICS Codes where Black Firms Received the Most Spending
(State Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non DBE Dollars
488490	Other Support Activities for Road Transportation	0.3%	27.2%	0.3%
238350	Finish Carpentry Contractors	0.1%	21.0%	0.1%
541618	Other Management Consulting Services	0.03%	15.7%	0.0%
Total 3-code Share of Total Group Dollars			63.93%	0.4%

Source: CHA analysis of WSDOT data

Table 4-51 presents data on the three NAICS codes where Hispanic firms received all of their contract dollars. While these codes comprised 49.4% of all Hispanic contract dollars, the corresponding figure for non-DBE firms was 66.7%. The higher non-DBE share can be attributed to 237310 (Highway, Street, and Bridge Construction) where the code provides 18.3% of all Hispanic contract dollars but 54.0% of all non-DBE contract dollars. In a second code that was among the top three for Hispanics and WSDOT, 238910 (Site Preparation Contractors), the shares for total contract dollars was relatively close (Hispanic, 12.9%; non-DBE, 11.2%) In the third code (541420 - Industrial Design Services) provides a much larger share of overall Hispanic contract dollars (18.3%) than it does for overall non-DBE contract dollars (1.6%).

**Table 4-51: Three NAICS Codes where Hispanic Firms Received the Most Spending
(State Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non DBE Dollars
237310	Highway, Street, and Bridge Construction	46.6%	18.3%	54.0%
541420	Industrial Design Services	1.8%	18.3%	1.6%
238910	Site Preparation Contractors	10.7%	12.9%	11.2%
Total 3-code Share of Total Group Dollars			49.4%	66.7%

Source: CHA analysis of WSDOT data

Table 4-52 presents data on the three NAICS codes where Asian firms received most of their contract dollars. None of these codes overlapped with the leading codes for WSDOT. Overall, the top three codes for Asians captured 68.9% of all contract dollars; for non-DBEs, the corresponding figure was 1.0%. For all three individual codes, the Asian share exceeded the non-DBE share (541370 -

Surveying and Mapping (except Geophysical) Service - 47.2% versus 0.1%;
 484220 - Specialized Freight (except Used Goods) Trucking, Local - 15.3% versus 0.9%;
 561320 - Temporary Help Services - 6.4% versus 0.0%).

**Table 4-52: Three NAICS Codes where Asian Firms Received the Most Spending
 (State Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non DBE Dollars
541370	Surveying and Mapping (except Geophysical) Services	1.0%	47.2%	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.0%	15.3%	0.9%
561320	Temporary Help Services	0.1%	6.4%	0.0%
Total 3-code Share of Total Group Dollars			68.9%	1.0%

Source: CHA analysis of WSDOT data

Table 4-53 presents data on the three codes where Native American firms received all of their contract dollars. While these codes comprised 92.6% of all Native American contract dollars, the corresponding figure for non-DBE firms was 54.6%. The high non-DBE share can be attributed to 237310 (Highway, Street, and Bridge Construction) where the code provides 18.3% of all Native American contract dollars but 54.0% of all non-DBE contract dollars. In the other two codes, the Native American share was greater than the corresponding non-DBE share: 237110 - Water and Sewer Line and Related Structures Construction – 76.1% versus 0.4%; 561730 - Landscaping Services – 6.1% versus 0.3%.

**Table 4-53: Three NAICS Codes where Native American Firms Received the Most Spending
 (State Funded Contracts)**

NAICS Code	NAICS Code Label	Weight	Share of Total Native American Dollars	Share of Total Non DBE Dollars
237110	Water and Sewer Line and Related Structures Construction	6.4%	79.1%	0.4%
237310	Highway, Street, and Bridge Construction	46.7%	10.7%	54.0%
561730	Landscaping Services	0.7%	6.4%	0.3%
Total 3-code Share of Total Group Dollars			96.2%	54.7%

Source: CHA analysis of WSDOT data

Table 4-54 presents data on the three NAICS codes where White woman firms received all of their contract dollars. These codes comprised 73.9% of all White woman contract dollars; the corresponding figure for non-DBE firms was 65.664.1%. NAICS code 237310 (Highway, Street, and Bridge Construction) provides 10.1% of all White woman contract dollars but 53.0% of all non-DBE contract dollars. In NAICS code 238910 (Site Preparation Contractors), the shares for total contract dollars were relatively close (White women: 15.2%; non-DBE: 10.7%). In the third code (237110 - Water and Sewer Line and Related Structures Construction) provides a much larger share of overall White woman contract dollars (48.6%) than it does for overall non-DBE contract dollars (0.4%).

Table 4-54: Three NAICS Codes where White Woman Firms Received the Most Spending (State Funded Contracts)

NAICS Code	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non DBE Dollars
237110	Water and Sewer Line and Related Structures Construction	6.4%	48.6%	0.4%
238910	Site Preparation Contractors	10.7%	15.2%	10.7%
237310	Highway, Street, and Bridge Construction	46.7%	10.1%	53.0%
Total 3-code Share of Total Group Dollars			73.9%	64.1%

Source: CHA analysis of WSDOT data

The data presented in Tables 4-48 through 4-54 support the inference that regardless of any statistical disparities between contract utilization and weighted availability, the experiences of DBE firms with respect to participation in WSDOT procurements were significantly different than the experiences of non-DBE firms. There is minimal overlap between the three NAICS codes that were central to WSDOT’s spending and the three most important NAICS codes for the different racial and ethnic groups and White women. In addition, when examining the three most important NAICS codes for DBE firms, we found that for each group, the DBE firms’ share of all group earnings exceeded the non-DBE firms share of all group earnings; for Blacks, Hispanics, and Asians, the differences were very large.

Q. State Funded Contracts: Disparity Analysis of WSDOT Contracts

As explained in Section G, we next calculated disparity ratios for each demographic group. Table 4-55 presents the disparity ratios for each demographic group for all State funded contracts. The disparity ratio for Hispanic and Asian firms is substantively significant. All of the disparity ratios are statistically significant at the 0.001 level.

**Table 4-55: Disparity Ratios by Demographic Group
(State Funded Contracts)**

	Black	Hispanic	Asian	Native American	White Woman	DBE	Non DBE
Disparity Ratio	10.1%‡***	79.6%‡***	74.9%‡***	94.4%***	107.9%***	85.8%***	103.0%***

Source: CHA analysis of WSDOT data
 ‡ Indicates substantive significance
 *** Statistically significant at the 0.001 level

R. Conclusion

This Chapter examines WSDOT’s utilization of DBE firms compared to non-DBE firms; provides estimates of the availability of DBE firms and non-DBE firms to perform the types of goods and services utilized by WSDOT in its geographic market area; tests for whether there are significant disparities in the results of utilization compared to availability; and analyzes the NAICS code concentration of DBE firms compared to non-DBE firms on WSDOT contracts. CHA conducted this analysis separately for its FHWA funded contracts, FTA funded contracts, and State funded contracts.

For FHWA funded contracts, FTA funded contracts, and state funded contracts, we found that, in general, DBEs received contracting opportunities starkly different from non-DBEs. The NAICS codes that provided most of the contract dollars received by DBEs were different from the codes where WSDOT spent its funds and those codes that generated the most funds for non-DBEs generated few funds to DBEs.

V. ANALYSIS OF DISPARITIES IN THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION'S MARKETPLACE

A. Introduction

The late Nobel Prize Laureate Kenneth Arrow, in his seminal paper on the economic analysis of discrimination, observed:

Racial discrimination pervades every aspect of a society in which it is found. It is found above all in attitudes of both races, but also in social relations, in intermarriage, in residential location, and frequently in legal barriers. It is also found in levels of economic accomplishment; this is income, wages, prices paid, and credit extended.¹⁴²

This Chapter explores the data and literature relevant to how discrimination in the State of Washington's economy affects the ability of minorities and women to fairly and fully engage in WSDOT's goods and services contract opportunities. Because WSDOT's business equity programs cover construction and construction-related services industries, we limit our discussion to those two industries. First, we analyze the rates at which Disadvantaged Business Enterprises ("DBEs") in the Washington economy form firms and their earnings from those firms. Then, we analyze state-wide data to see if DBE firms' share of all firms is greater than or less than their share of all sales and receipts and their share of all annual payroll. Next, we summarize the literature on barriers to equal access to commercial credit. Finally, we summarize the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in discrimination without some type of affirmative intervention.

142. Arrow, Kenneth J., "What Has Economics to say about racial discrimination?" *Journal of Economic Perspectives*, 12, 2, (1998), 91-100.

A key element to determine the need for WSDOT to intervene in its market through contract goals is an analysis of disparities independent of WSDOT's intervention through its contracting affirmative action program.

The courts have repeatedly held that analysis of disparities in the rate of at which minorities and women form businesses in the government agency's markets as compared to similar non-DBEs, disparities in DBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market outcomes are affected by race or gender ownership status.¹⁴³ Similar analyses supported the successful legal defense of Illinois' DBE program from constitutional challenge.¹⁴⁴

Similarly, the Tenth Circuit Court of Appeals also upheld the U.S. Department of Transportation's DBE program, and in doing so, stated that this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.¹⁴⁵

143. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

144. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7th Cir. 2016) (upholding the WSDOT's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); see also *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at * 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to White men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's DBE program for local construction contracts satisfied "compelling interest" standards using this framework).

145. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1169 (10th Cir. 2000), cert. granted then dismissed as improvidently granted, 532 U.S. 941 (2001).

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. In unanimously upholding the USDOT DBE Program, federal courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.¹⁴⁶ As recognized by a federal court of appeals, “[e]vidence that private discrimination results in barriers to business formation is relevant because it demonstrates that DBEs are precluded *at the outset* from competing for public Goods contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* DBEs are precluded from competing for public contracts.”¹⁴⁷

This type of court-approved analysis is especially important for an agency such as WSDOT, which has been implementing its DBE program for many years. WSDOT’s remedial market interventions through the use of DBE and S/VBE contract goals have mostly ameliorated the disparate impacts of marketplace discrimination in WSDOT’s own contracting activities. Put another way, the programs’ success in moving towards parity for minority and woman firms may be “masking” the effects of discrimination that, but for the contract goals, would mirror the disparities in DBE utilization in the overall economy.

To explore the question of whether firms owned by non-Whites and White women face disparate treatment in WSDOT’s construction and construction-related services marketplace outside of agency contracts, we examined two data sets. The first data set was the U.S. Bureau of the Census’ *American Community Survey* (“ACS”), which provided data to analyze disparities using individual entrepreneurs as the basic unit of analysis.¹⁴⁸ With the ACS, we will address four basic questions:

1. What are the business formation rates for the different demographic groups? We ask this question to establish a basic baseline of business formation outcomes in the private sector.
2. What is the probability of a group forming a business once the analysis considers education, age, industry, and occupation? We want to explore the issue of demographic business formation difference once we statistically tease out possible non-demographic explanations for these differences.
3. Do business earnings vary by demographic group once the analysis considers education, age, industry, and occupation? This question explores the issue of demographic differences in the central business outcome (earnings) once we

146. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at *64 (Sept. 8, 2005).

147. *Id.*

148. Data from 2017-2021 American Community Survey are the most recent for a five-year period.

statistically tease out possible non-demographic explanations for these differences.

4. Do wages vary by demographic group once the analysis considers education, age, industry, and occupation? This question is similar to the third in examining wages instead of business earnings. It is important because economic research indicates that wage levels can impact the future business formation behavior of individual.

We used the State of Washington (as we did in Chapter IV) as the geographic unit of analysis. We found disparities in wages, business earnings and business formation rates for minorities and women in all industry sectors in WSDOT's marketplace.¹⁴⁹

The second data set was the U.S. Bureau's Annual Business Survey ("ABS"). The ABS supersedes the more well-known Survey of Business Owners ("SBO"). The SBO was last conducted in 2012 and historically had been reported every five years. In contrast, the ABS was first conducted in 2017 and it is the Census Bureau's goal to release results annually. This study utilizes the 2018 ABS which contains 2017 data.¹⁵⁰ With the ABS data, six key variables are used in this analysis:

1. The number of all firms
2. The sales and receipts of all firms
3. The number of firms with employees (employer firms)
4. The sales and receipts of all employer firms
5. The number of paid employees
6. The annual payroll of employer firms

CHA examined these data in two ways: First, we calculated the minority- and woman-owned business share of each variable. Second, we calculated three disparity ratios for each grouping of minority- and woman-owned businesses and for the grouping of firms that are not non-White- or White woman-owned:

1. Ratio of sales and receipts share for all firms over the share of total number of all firms.

149. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb's "Access to Capital among Young Firms, Minority-owned Firms, Woman-owned Firms, and High-tech Firms" (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).

150. While there are more recent surveys, much of the data needed for this analysis were not present. CHA reached out to the Census Bureau via e-mail and its response (dated November 11, 2022) was that the 2018 ABS sampled approximately 850,000 firms, which allowed a more complete set of data to be released. In the ABS conducted in 2019-2022, the sample was reduced to 300,000 firms; consequently, the detailed statistics presented in the 2018 ABS could not be reproduced. The 2023 ABS will return to the 2018 sample size of 850,000.

2. Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
3. Ratio of annual payroll share over the share of total number of employer firms.

We explored the data to see if an DBE's share of sales/receipts and payroll approximates its share of firms. For example, Black firms might represent 10% of all firms but the sales for Black firms might capture just 2% of the sales of all firms. The ratio of Black share of sales over Black share of firms would be .2% (2% divided by 10%), indicating that the sales levels for Black firms in the industry is less than one would expect given the number of Black firms in the industry. As this ratio approaches one, we interpret that as a sign of approaching parity.

Results of the analysis of the ABS data indicate that non-Whites and White women's share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

B. Disparate Treatment in the WSDOT's Marketplace: Evidence from the Census Bureau's 2017 - 2021 American Community Survey

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of WSDOT's contracting equity programs (discussed in Chapter III). In this section, we used the Census Bureau's ACS data to explore this and other aspects of this question. One element asks if demographic differences exist in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is important for the issue of possible variations in the rate of business formation by different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital, or the income level affects one's ability to borrow funds. Consequently, if particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of one percent of the population and the PUMS provides detailed information at the individual level. To obtain robust results from our analysis, we used the file that combines the most

recent data available for years 2016 through 2020.¹⁵¹ With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, “Other”, to capture individuals who are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. To avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. When Whites are disaggregated into White men and White women, those groupings are non-Hispanic White men and non-Hispanic White women. For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and residence in the analysis.

We employed a multiple regression statistical technique to process this data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided a more detailed explanation of this technique in Appendix A.

151. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 290,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

With respect to the first result of regression analysis, we examined how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We determine the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist (*e.g.*, holding all other factors constant, women earn less than men), but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.¹⁵² If a result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. Note: this does not mean the result is wrong, only that there is not a statistically significant level of confidence in the result.

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates. We developed these results using data

152. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

from the U.S. Bureau of the Census' ACS for the State of Washington. The State of Washington was also determined to be the geographic market in Chapter IV. Since the scope of this report covers construction and construction-related services, we analyzed those two sectors.

1. The Construction Industry in the State of Washington

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. Table 5-1 presents these results. As stated above, the business formation rate represents the share of a population that forms businesses. When developing industry-specific rates, we examine the population that works in that particular industry and identify what share of that sub-population form businesses. For example, Table 5-1 indicates that 5.4% of Hispanics in the Construction industry form businesses; this is less than the 11.8% business formation rate for White men. There were low numbers of Black, Native American and Other firms in the ACS sample; consequently, reliable estimates of firm outcomes could not be made for these groups. In Table 5-1, this is indicated by the symbol "----".¹⁵³ Overall, this table indicates that White men have higher business formation rates compared to Hispanics, Asians, and White women. Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.¹⁵⁴ This table indicates that Hispanics, Asians, and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 4.0% to 0.5%. Only the coefficient for Hispanics was statistically significant and it was statistically significant at the 0.5 level. Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcomes while controlling for other factors, such as education and age.¹⁵⁵ Tables 5-3 and 5-4 present these data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that all DBE groups earn less than White men with the range of coefficients from -43.8% to 7.7%. All coefficients except those for Asians and Others were statistically significant at the 0.001 or 0.01 level. Table 5-4 indicates that none of coefficients was statistically significant.

153. This symbol was used through the chapter when there were insufficient observations to establish reliable estimates.

154. Appendix B provides a "Further Explanation of Probit Regression Analysis."

155. See Appendix A for more information on multiple regression statistical analysis.

**Table 5-56: Business Formation Rates
Construction, 2017 - 2021**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	5.4%
Native American	-----
Asian/Pacific Islander	9.1%
Other	-----
White Women	10.8%
DBE	7.4%
White Male	11.8%

Source: CHA calculations from the American Community Survey

**Table 5-57: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction, 2017 - 2021**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-4.0%*
Native American	-----
Asian/Pacific Islander	-0.8%
Other	-----
White Women	-0.5%

Source: CHA calculations from the American Community Survey

* Indicates statistical significance at the 0.05 level

**Table 5-58: Wage Differentials for Selected Groups Relative to White Men
Construction, 2017 - 2021**

Demographic Group	Wages Relative to White Men (% Change)
Black	-43.8%***
Hispanic	-16.3%***
Native American	-30.3%**

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-7.7%
Other	-19.0%
White Women	-33.3%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

**Table 5-59: Business Earnings Differentials for Selected Groups Relative to White Men
Construction, 2017 - 2021**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	23.4%
Native American	-----
Asian/Pacific Islander	14.5%
Other	-----
White Women	-63.8%

Source: CHA calculations from the American Community Survey

2. The Construction-Related Services Industry in the State of Washington

Tables 5-5 through 5-8 present the analysis of data in the Construction-Related Services industries. As in the analysis of the Construction industry, there were insufficient observations of certain groups to allow for proper analysis. In the Construction-Related Services industry, these groups were Blacks, Hispanics, Native Americans, Asians, and Others. Table 5-5 indicates that White women formed businesses at a lower rate (6.4%) than White men (8.9%). Examining the business formation probabilities (Table 5-6) – once again controlling for age education and gender – White women were less likely to form businesses compared to White men, but this result was not statistically significant. Table 5-7 present data on wage differentials: DBEs earned less than White men except for Hispanics and only the coefficients for the wages for Asians (-27.8%) and White women (-36.1%) were statistically significant at the 0.001 or 0.01 level. Business earnings – presented in Table 5-8 – indicate that only the coefficient for White women was negative and it was not statistically significant.

**Table 5-60: Business Formation Rates
Construction-Related Services, 2017 - 2021**

Demographic Group	Business Formation Rates
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	6.4%
DBE	4.7%
White Male	8.9%

Source: CHA calculations from the American Community Survey

**Table 5-61: Business Formation Probability Differentials for Selected Groups
Relative to White Men, Construction-Related Services, 2017 - 2021**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	-0.2%

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

**Table 5-62: Wage Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2017 - 2021**

Demographic Group	Wages Relative to White Men (% Change)
Black	-18.6%
Hispanic	8.8%
Native American	-27.5%

Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-27.8%***
Other	-0.6%
White Women	-36.1%***

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

**Table 5-63: Business Earnings Differentials for Selected Groups Relative to White Men
Construction-Related Services, 2017 - 2021**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-----
Hispanic	-----
Native American	-----
Asian/Pacific Islander	-----
Other	-----
White Women	--128.0% ^a

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for White Women in Table 5-7), is the percentage amount non-M/WBEs earn that is more than the group in question. In this case, White men earn 128% more than White Women.

Source: CHA calculations from the American Community Survey

*** Indicates statistical significance at the 0.001 level

** Indicates statistical significance at the 0.01 level

Where there are sufficient observations to draw accurate inferences, the data presented in the above Tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

C. Disparate Treatment in WSDOT’s Marketplace: Evidence from the Census Bureau’s 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the State of Washington – the geographic market for WSDOT. This question is operationalized by exploring if the share of business receipts, number of firms, and payroll for firms owned by non-Whites and White women is greater than, less than, or equal to the share of all firms owned by non-Whites and White women.

To answer this question, we examined the ABS. The ABS surveyed about 850,000 employer firms and collected data on a variety of variables documenting ownership characteristics including race, ethnicity, and gender. It also collected data on the firms’ business activity with variables marking the firms’ number of employees, payroll size, sales, and industry.¹⁵⁶ For this analysis, we examined firms in the State of Washington. The State was the geographic unit of analysis because the ABS does not present data at the sub-state level.

With these data, we grouped the firms into the following ownership categories:^{157,158}

- Hispanics
- Non-Hispanic Blacks
- Non-Hispanic Native Americans
- Non-Hispanic Asians
- Non-Hispanic White women
- Non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly-owned or where the ownership could not be classified

For this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White

156. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

157. Race and gender labels reflect the categories used by the Census Bureau.

158. For expository purposes, the adjective “non-Hispanic” will not be used in this Chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Hispanic.

woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group “not non-White/non-White women”. While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- Construction
- Professional, Scientific and Technical Services

The ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. We had to define the sectors at the two-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the Department’s contract data in Chapter IV, where we are able to determine sectors at the six-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report two-digit data.

We analyzed the ABS data on the Construction and Professional, Scientific, and Technical Services industries. The latter industry is broader than Construction-Related Services, but It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses. Table 5-9 presents information on which NAICS codes were used to define each sector.¹⁵⁹

Table 5-64: Two-Digit NAICS Code Definition of Sector

ABS Sector Label	Two Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services	54

The balance of this Chapter reports the findings of the ABS analysis.

159. The two-digit NAICS code level did not allow us to define and analyze an information technology industry as we did with the ACS data.

1. Construction Industry

Table 5-10 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

1. The number of firms with employees (employer firms)
2. The sales and receipts of all employer firms
3. The number of paid employees
4. The annual payroll of employer firms

Panel A of Table 5-10 presents data for the four basic non-White racial groups:

1. Black
2. Hispanic
3. Asian
4. Native American

Panel B of Table 5-10 presents data for the following types of firm ownership:

1. Non-White
2. White women
3. Not non-White/non-White women¹⁶⁰

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firms respectively (a total of 18 ratios), presented in Table 5-11:

- Ratio of sales and receipts share for all employer firms over the share of total number of all employer firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

160. Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 54.8% (as shown in Table 5-11). This is derived by taking the Black share of sales and receipts for all employer firms (0.4%) and dividing it by the Black share of total number of all employer firms (0.8%) that are presented in Table 5-10.¹⁶¹ If Black-owned firms earned a share of sales equal to their share of total firms, the disparity index would have been 100%. An index less than 100% indicates that a given group is being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission’s “80% rule” that a ratio less than 80% presents a *prima facie* case of discrimination.¹⁶² Twelve of the 18 disparity ratios for non-White firms and White woman firms (presented in Table 5-11) are below this threshold.¹⁶³

**Table 5-65: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Construction, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non White Firms				
Black	0.8%	0.4%	0.6%	0.6%
Hispanic	6.7%	2.4%	4.0%	2.9%
Asian	2.1%	1.2%	1.2%	1.0%
Native American	0.9%	1.3%	1.5%	1.8%
Panel B: Distribution of All Firms				
Non-White	10.5%	5.4%	7.3%	6.4%

161. Please note that while the numbers presented in Table 5-10 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-11 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-11 of 54.8% is not the same figure as that which would be derived when you divided 0.4 by 0.8 (the numbers presented in Table 5-10).

162. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”).

163. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
White Women	6.3%	4.2%	5.9%	5.4%
Not Non-White/Not White Women	83.2%	90.4%	86.8%	88.2%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-66: Disparity Ratios – Aggregated Groups
Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	54.8%	79.3%	81.3%
Hispanic	35.9%	60.6%	44.0%
Asian	57.3%	55.9%	46.5%
Native American	143.1%	159.0%	195.2%
Panel B: Disparity Ratios for All Firms			
Non-White	51.1%	69.7%	60.5%
White Women	66.4%	92.7%	85.6%
Not Non-White/Not White Women	108.7%	104.4%	106.1%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

2. Professional, Scientific, and Technical Services Industry

Tables 5-16 and 5-17 present the same analysis for the Other Services industry. All of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-17 fall under the 80% threshold.

**Table 5-67: Demographic Distribution of Sales and Payroll Data – Aggregated Groups
Professional, Scientific, and Technical Services, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
Panel A: Distribution of Non White Firms				
Black	1.1%	0.4%	0.6%	0.4%
Hispanic	1.5%	1.1%	1.1%	1.1%
Asian	6.7%	4.9%	4.9%	4.6%
Native American	0.3%	0.2%	0.1%	0.1%
Panel B: Distribution of All Firms				
Non-White	9.6%	6.5%	6.7%	6.1%
White Women	22.3%	6.9%	8.4%	6.1%
Not Non-White/Not White Women	68.2%	86.6%	84.9%	87.8%
All Firms	100.0%	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

**Table 5-68: Disparity Ratios – Aggregated Groups
Professional, Scientific, and Technical Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
Panel A: Disparity Ratios for Non White Firms			
Black	32.8%	51.6%	33.6%
Hispanic	72.5%	75.2%	70.4%
Asian	73.3%	72.9%	69.0%
Native American	54.2%	46.6%	36.3%
Panel B: Disparity Ratios for All Firms			
Non-White	67.9%	69.9%	64.1%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
White Women	30.9%	37.7%	27.4%
Not Non-White/Not White Women	127.1%	124.6%	128.7%
All Firms	100.0%	100.0%	100.0%

Source: CHA calculations from American Business Survey

3. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that the non-White share and White woman share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this Study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working capital to perform on state contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a consensus that disparities in personal wealth translate into disparities in business creation and ownership.¹⁶⁴ The most recent research highlights the magnitude of the COVID-19 pandemic’s disproportionate impact on minority-owned firms.

164. See, e.g., Evans, David S. and Jovanovic, Boyan, “An Estimated Model of Entrepreneurial Choice under Liquidity Constraints,” *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, “Some empirical aspects of entrepreneurship,” *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

1. Federal Reserve Board Small Business Credit Surveys¹⁶⁵

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys (“SBCS”) to develop data on small business performance and financing needs, decisions, and outcomes.

a. 2022 Report on Firms Owned by People of Color

This Report constitutes a follow-up to the *Small Business Credit Survey 2021 Report on Firms Owned by People of Color*,¹⁶⁶ which found that businesses owned by people of color often face more financial and operational challenges than their White counterparts and were frequently less successful at obtaining the funding necessary to weather the effects of the global COVID-19 pandemic. It finds that these disparities continue to persist. The Report contains results for employer firms with 1 to 499 employees other than the owners by four race/ethnicity categories: Asian or Pacific Islanders; Black or African American; Hispanic or Latino; and White.¹⁶⁷

The Report found that while revenues and employment improved for some businesses, most firms, particularly those owned by people of color, had not yet recovered from the effects of the pandemic. Firms owned by people of color were more likely than White-owned firms to report declines in revenue and employment in the prior twelve months. Both Asian- and Black-owned firms were more than twice as likely as White-owned firms to be in poor financial condition at the time of the survey. Asian-owned firms were more likely than other firms to report weak sales as a financial challenge, while Black-owned firms were more likely than others to say that credit availability was a concern.

The Report also found that firms owned by people of color were more likely to seek pandemic-related financial assistance than White-owned firms. Firms were less likely to apply for the Paycheck Protection Program (“PPP”) in 2021 than in 2020; however, when they did apply, firms owned by people of color were less likely than White-owned firms to report receiving the full amount of funding for which they applied in the prior twelve months.¹⁶⁸

165. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

166. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

167. Findings for Native American-owned firms were omitted from the report because sample sizes were too small to make precise estimates for most measures.

168. The Report finds that in 2021, firms continued to rely on pandemic-related financial assistance, including the PPP, Economic Injury Disaster Loans (“EIDL”) and other federal, state, and local funding programs. EIDL and PPP loans were the most common.

While firms owned by people of color were more likely to apply for traditional financing than White-owned firms (excluding pandemic-related assistance programs in the prior twelve months), they were less likely to receive the funding sought. Compared to White-owned businesses, firms owned by people of color sought smaller amounts of financing. Among low-credit-risk applicants, firms owned by people of color were less likely than White-owned firms to receive all the financing they sought.

Applicant firms were more likely to seek loans, lines of credit, and cash advances at large or small banks than at nonbank lenders. However, firms owned by people of color were less likely than White-owned firms to be approved for financing. Regardless of the type of lender they applied to, firms owned by people of color were less likely than White-owned firms to be approved for the full amount of funding sought. Firms owned by people of color were half as likely as White-owned firms to be fully approved for a loan or line of credit at a small bank and almost a third as likely to be fully approved at a nonbank finance company.

b. 2022 Small Business Credit Survey

The 2022 Small Business Credit Survey (“2022 Survey”)¹⁶⁹ gathered insights about the COVID-19 pandemic’s continuing impact on small businesses, including workforce challenges, business performance, and credit conditions. The 2022 Survey yielded 10,914 responses from a nationwide convenience sample of small business firms with 1-499 full- or part-time employees across all 50 states and the District of Columbia. The 2022 Survey was fielded during September through November of 2021 and was the second survey conducted during the global pandemic.

The 2022 Survey found that the pandemic continues to significantly impact firms, with 77% reporting negative effects. While pandemic-related financial assistance programs, including the PPP, were widely used in 2020 and 2021, the 2022 Survey found a decline in their use in the 12 months prior to the Survey. Personal funds and cash reserves remain an important source of financial stability for small businesses, while financing approval rates continue to decline relative to pre-pandemic levels. Although two-thirds of employer firms received pandemic-related financial assistance in the prior 12 months, firms were less likely to seek financial assistance than they were earlier in the pandemic. Approval rates on loans, lines of credit and cash advance applications declined for the second consecutive year. Other key findings include:

169. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report>.

- More than half of firms were in fair or poor financial condition at the time of the Survey, and nearly all firms faced at least one operational or financial challenge in the prior 12 months.
- Firms owned by people of color, smaller firms, and leisure and hospitality firms were most likely to be in fair or poor financial condition.

Application rates for traditional financing were lower in 2021 than in prior years, and those who applied were less likely to receive the financing they sought. Firms owned by people of color, firms with fewer employees, and leisure and hospitality firms were least likely to receive the full amount of financing sought.

c. 2021 Report on Firms Owned by People of Color

i. Overview

The *2021 Report on Firms Owned by People of Color*¹⁷⁰ compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.^{171,172} The Report provides results by four race/ethnicity categories: White, Black or African American, Hispanic or Latino, and Asian or Pacific Islander. For select key statistics, it also includes results for 4,531 non-employer firms, which are firms with no employees on payroll other than the owner(s) of the business.

Patterns of geographic concentration emerged among small business ownership by race and ethnicity. This was important given the progressive geographic spread of the novel coronavirus throughout 2020 and variations in state government responses to limit its spread. The Report found that 40% of Asian-owned small employer firms are in the Pacific census division, and another 28% are in the Middle Atlantic. Early and aggressive efforts by the impacted states may have affected the revenue performance of Asian-owned firms in the aggregate given their geographic concentration. Black-owned and Hispanic-owned small employer firms are more concentrated in the South Atlantic region, which includes states with a mix of pandemic responses. For example, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic, including North Carolina, maintained more strict guidelines.

170. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

171. The SBCS is an annual survey of firms with fewer than 500 employees.

172. The 2020 SBCS was fielded in September and October 2020 and yielded 9,693 responses from small employer firms in all 50 states and the District of Columbia.

The *Report* found that firms owned by people of color continue to face structural barriers in acquiring the capital, business acumen, and market access needed for growth. At the time of the 2020 SBCS – six months after the onset of the global pandemic – the U.S. economy had undergone a significant contraction of economic activity. As a result, firms owned by people of color reported more significant negative effects on business revenue, employment, and operations. These firms anticipated revenue, employment, and operational challenges to persist into 2021 and beyond. Specific findings are, as follows:

ii. Performance and Challenges

Overall, firms owned by people of color were more likely than White-owned firms to report that they reduced their operations in response to the pandemic. Asian-owned firms were more likely than others to have temporarily closed and to have experienced declines in revenues and employment in the 12 months prior to the survey. In terms of sales and the supply chain, 93% of Asian-owned firms and 86% of Black-owned firms reported sales declines as a result of the pandemic. Relative to financial challenges for the prior 12 months, firms owned by people of color were more likely than White-owned firms to report financial challenges, including paying operating expenses, paying rent, making payments on debt, and credit availability. Black-owned business owners were most likely to have used personal funds in response to their firms' financial challenges. Nearly half of Black-owned firms reported concerns about personal credit scores or the loss of personal assets. By contrast, one in five White-owned firms reported no impact on the owners' personal finances. Asian-owned firms were approximately twice as likely as White-owned firms to report that their firms were in poor financial condition.

iii. Emergency Funding

The *Report* finds that PPP loans were the most common form of emergency assistance funding that firms sought during the period. Black-owned and Hispanic-owned firms were less likely to apply for a PPP loan. Only six in ten Black-owned firms actually applied. Firms owned by people of color were more likely than White-owned firms to report that they missed the deadline or were unaware of the program. Firms owned by people of color were less likely than White-owned firms to use a bank as a financial services provider. Regardless of the sources at which they applied for PPP loans, firms that used banks were more likely to apply for PPP loans than firms that did not have a relationship with a bank. While firms across race and ethnicity were similarly likely to apply for PPP loans at large banks, White- and Asian-owned firms

more often applied at small banks than did Black- and Hispanic-owned firms. Black-owned firms were nearly half as likely as White-owned firms to receive all of the PPP funding they sought and were approximately five times as likely to receive none of the funding they sought.

iv. Debt and Financing

Black-owned firms have smaller amounts of debt than other firms. About one in ten firms owned by people of color do not use financial services.

On average, Black-owned firms completed more financing applications than other applicant firms. Firms owned by people of color turned more often to large banks for financing. By contrast, White-owned firms turned more often to small banks. Black-owned applicant firms were half as likely as White-owned applicant firms to be fully approved for loans, lines of credit, and cash advances.

Firms owned by people of color were less satisfied than White-owned firms with the support from their primary financial services provider during the pandemic. Regardless of the owner's race or ethnicity, firms were less satisfied with online lenders than with banks and credit unions.

In the aggregate, 63% of all employer firms were non-applicants – they did not apply for non-emergency financing in the prior 12 months. Black-owned firms were more likely than other firms to apply for non-emergency funding in the 12 months prior to the survey. One-quarter of Black- and Hispanic-owned firms that applied for financing sought \$25,000 or less. In 2020, firms owned by people of color were more likely than White-owned firms to apply for financing to meet operating expenses. The majority of non-applicant firms owned by people of color needed funds but chose not to apply, compared to 44% of White-owned firms. Financing shortfalls were most common among Black-owned firms and least common among White-owned firms.

Firms of color, and particularly Asian-owned firms, were more likely than White-owned firms to have unmet funding needs. Just 13% of Black-owned firms received all of the non-emergency financing they sought in the 12 months prior to the survey, compared to 40% of White-owned firms. Black-owned firms with high credit scores were half as likely as their White counterparts to receive all of the non-emergency funding they sought.

v. Findings for Non-employer Firms

Non-employer firms, those that have no paid employees other than the owner, represent the overwhelming majority of small businesses across the nation. In all, 96% of Black-owned and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.¹⁷³

Compared to other non-employer firms, Asian-owned firms reported the most significant impact on sales as a result of the pandemic. They were most likely to report that their firm was in poor financial condition at the time of the survey.

Compared to other non-employer firms that applied for financing, Black-owned firms were less likely to receive all of the financing they sought. Black-owned non-employer firms that applied for PPP loans were less likely than other firms to apply at banks and more often turned to online lenders. Among PPP applicants, White-owned non-employer firms were twice as likely as Black-owned firms to receive all of the PPP funding they sought.

d. 2021 Small Business Credit Survey

The 2021 SBCS¹⁷⁴ reached more than 15,000 small businesses, gathering insights about the COVID-19 pandemic's impact on small businesses, as well as business performance and credit conditions. The 2021 Survey yielded 9,693 responses from a nationwide convenience sample of small employer firms with between one and 499 full- or part-time employees across all 50 states and the District of Columbia. The 2021 Survey was fielded in September and October 2020, approximately six months after the onset of the pandemic. The timing of the 2021 Survey is important to the interpretation of the results. At the time of the 2021 survey, the PPP authorized by the Coronavirus Relief and Economic Security Act had recently closed applications, and prospects for additional stimulus funding were uncertain. Additionally, many government-mandated business closures had been lifted as the number of new COVID-19 cases plateaued in advance of a significant increase in cases by the year's end.

The 2021 Survey findings highlight the magnitude of the pandemic's impact on small businesses and the challenges they anticipate as they navigate changes in the business environment. Few firms avoided the negative impacts of the pandemic. Furthermore, the findings reveal disparities in

173. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

174. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

experiences and outcomes across firm and owner demographics, including race and ethnicity, industry, and firm size.

Overall, firms' financial conditions declined sharply and those owned by people of color reported greater challenges. The most important anticipated financial challenge differed by race and ethnicity of the owners. Among the findings for employer firms relevant to discriminatory barriers were the following:

- For Black-owned firms, credit availability was the top expected challenge, while Asian-owned firms disproportionately cited weak demand.
- The share of firms in fair or poor financial conditions varied by race: 79% of Asian-owned firms, 77% of Black-owned firms, 66% of Hispanic-owned firms and 54% of White-owned firms reported this result.
- The share of firms that received all the financing sought to address the impacts of the pandemic varied by race: 40% of White-owned firms received all the funding sought, but only 31% of Asian-owned firms, 20% of Hispanic-owned firms and 13% of Black-owned firms achieved this outcome.

e. 2018 Small Business Credit Survey

The 2018 SBCS¹⁷⁵ focused on minority-owned firms. The analysis was divided into two types: employer firms and non-employer firms.

i. Employer firms

Queries were submitted to businesses with fewer than 500 employees in the third and fourth quarters of 2018. Of the 7,656 firms in the unweighted sample, five percent were Asian, ten percent were Black, six percent were Hispanic, and 79% were White. Data were then weighted by number of employees, age, industry, geographic location (census division and urban or rural location), and minority status to ensure that the data is representative of the nation's small employer firm demographics.¹⁷⁶

Among the findings for employer firms relevant to discriminatory barriers were the following:

175. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

176. *Id* at 22. Samples for SBCS are not selected randomly. To control for potential biases, the sample data are weighted so that the weighted distribution of firms in the SBCS matches the distribution of the small firm population in the United States by number of employees, age industry, geographic location, gender of owner, and race or ethnicity of owners.

- Not controlling for other firm characteristics, fewer minority-owned firms were profitable compared to non-minority-owned firms during the past two years.¹⁷⁷ On average, minority-owned firms and non-minority-owned firms were about as likely to be growing in terms of number of employees and revenues.¹⁷⁸
- Black-owned firms reported more credit availability challenges or difficulties obtaining funds for expansion—even among firms with revenues of more than \$1M. For example, 62% of Black-owned firms reported that obtaining funds for expansion was a challenge, compared to 31% of White-owned firms.¹⁷⁹
- Black-owned firms were more likely to report relying on personal funds of owner(s) when they experienced financial challenges to fund their business. At the same time, White- and Asian-owned firms reported higher debt levels than Black- and Hispanic-owned firms.¹⁸⁰
- Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing. Forty percent of Black-owned firms did not apply because they were discouraged, compared to 14% of White-owned firms.¹⁸¹
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.¹⁸²

ii. Non-employer firms¹⁸³

Queries were submitted to non-employer firms in the third and fourth quarters of 2018. Of the 4,365 firms in the unweighted sample, five percent were Asian, 24% were Black, seven percent were Hispanic, and 64% were White. Data were then weighted by age, industry, geographic location (census division and urban or rural location), and minority status.¹⁸⁴

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

177. *Id.* at 3.

178. *Id.* at 4.

179. *Id.* at 5.

180. *Id.* at 6.

181. *Id.* at 9.

182. *Id.* at 15.

183. *Id.* at 18.

184. *Id.* at 18.

- Black-owned firms were more likely to operate at a loss than other firms.¹⁸⁵
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.¹⁸⁶
- Black- and Hispanic-owned firms submitted more credit applications than White-owned firms.¹⁸⁷

f. 2016 Small Business Credit Survey

The 2016 Small Business Credit Survey¹⁸⁸ obtained 7,916 responses from employer firms with race/ethnicity information and 4,365 non-employer firms in the 50 states and the District of Columbia. Results were reported with four race/ethnicity categories: White, Black or African American, Hispanic, and Asian or Pacific Islander.¹⁸⁹ It also reported results from woman-owned small employer firms, defined as firms where 51% or more of the business is owned by women, and compared their experiences with male-owned small employer firms.

i. The 2016 Small Business Credit Survey: Report on Minority-Owned Firms¹⁹⁰

The 2016 SBCS Report on Minority-Owned Firms provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

(a). Demographics¹⁹¹

The Report found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the healthcare and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades and Goods (27%). White-owned firms were more evenly distributed

185. *Id.*

186. *Id.* at 19.

187. *Id.* at 20.

188. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

189. When the respondent sample size by race for a survey proved to be too small, results were communicated in terms of minority vis-à-vis non-minority firms.

190. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

191. 2016 SBCS, at 2.

across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).¹⁹²

(b). Profitability Performance Index¹⁹³

After controlling for other firm characteristics, the Report found that fewer minority-owned firms were profitable compared to non-minority-owned firms during the prior two years. This gap proved most pronounced between White-owned (57%) and Black-owned firms (42%). On average, however, minority-owned firms and non-minority-owned firms were nearly as likely to be growing in terms of number of employees and revenues.

(c). Financial and Debt Challenges/Demands¹⁹⁴

The number one reason for financing was to expand the business or pursue a new opportunity. Eighty-five percent of applicants sought a loan or line of credit. Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing.

Black-, Hispanic-, and Asian-owned firms applied to large banks for financing more than they applied to any other sources of funds. Having an existing relationship with a lender was deemed more important to White-owned firms when choosing where to apply compared to Black-, Hispanic- and Asian-owned firms.

The Report also found that small Black-owned firms reported more credit availability challenges or difficulties for expansion than White-owned firms, even among firms with revenues in excess of \$1M. Black-owned firm application rates for new funding were ten percentage points higher than White-owned firms; however, their approval rates were 19 percentage points lower. A similar but less pronounced gap existed between Hispanic- and Asian-owned firms compared with White-owned firms. Of those approved for financing, only 40% of minority-owned firms received the entire amount sought compared to 68% of non-minority-owned firms, even among firms with comparably good credit scores.

Relative to financing approval, the Report found stark differences in loan approvals between minority-owned and White-owned firms.

192. *Id.* Forty-two percent of Black-owned firms, 21% of Asian-owned firms, and 24% of Hispanic-owned firms were smaller than \$100K in revenue size compared with 17% of White-owned firms.

193. *Id.* at 3-4.

194. *Id.* at 8-9; 11-12; 13; 15.

When controlling for other firm characteristics, approval rates from 2015 to 2016 increased for minority-owned firms and stayed roughly the same for non-minority-owned firms. Hispanic- and Black-owned firms reported the highest approval rates at online lenders.¹⁹⁵

Low credit score and lack of collateral were the top reported reasons for denial of Black- and Hispanic-owned firms' applications. Satisfaction levels were lowest at online lenders for both minority- and non-minority-owned firms. A lack of transparency was cited as one of the top reasons for dissatisfaction for minority applicants and borrowers.

Forty percent of non-applicant Black-owned firms reported not applying for financing because they were discouraged (expected not to be approved), compared with 14% of White-owned firms. The use of personal funds was the most common action taken in response to financial challenges, with 86% of Black-owned firms, 77% of Asian-owned firms, 76% of White-owned firms, and 74% of Hispanic-owned firms using this as its source.

A greater share of black-owned firms (36%) and of Hispanic-owned firms (33%) reported existing debt in the past 12 months of less than \$100,000, compared with 21% of White-owned firms and 14% of Asian-owned firms. Black-owned firms applied for credit at a higher rate and tended to submit more applications, compared with White-owned firms. Black-, Hispanic-, and Asian-owned firms applied for higher-cost products and were more likely to apply to online lenders compared to White-owned firms.

*(d). Business Location Impact*¹⁹⁶

Controlling for other firm characteristics, minority-owned firms located in low-income minority zip codes reported better credit outcomes at large banks, compared with minority-owned firms in other zip codes. By contrast, at small banks, minority-owned firms located in low- and moderate-income minority zip codes experienced lower approval rates than minority-owned firms located in other zip codes.

*(e). Non-employer Firms*¹⁹⁷

Non-employer firms reported seeking financing at lower rates and experienced lower approval rates than employer firms, with Black-owned non-employer firms and Hispanic-owned non-employer firms

195. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

196. *Id.* at 17.

197. *Id.* at 21.

experiencing the most difficulty. White-owned non-employer firms experienced the highest approval rates for new financing, while Black-owned non-employer firms experienced the lowest approval rates for new financing.

ii. **The 2016 Small Business Credit Survey: Report on Woman-Owned Firms**¹⁹⁸

The 2016 SBCS Report on Woman-Owned Firms provides results from woman-owned small employer firms where 51% or more of the business is owned by women. These data compared the experience of these firms compared with male-owned small employer firms.

*(a). Firm Characteristics: Woman-Owned Firms Start Small and Remain Small and Concentrate in Less Capital-Intensive Industries*¹⁹⁹

The Report found that 20% of small employer firms were woman-owned, compared to 65% male-owned and 15% equally owned. Woman-owned firms generally had smaller revenues and fewer employees than male-owned small employer firms. These firms tended to be younger than male-owned firms.

Woman-owned firms were concentrated in less capital-intensive industries. Two out of five woman-owned firms operated in the healthcare and education or professional services and real estate industries. Male-owned firms were concentrated in professional services, real estate, and non-manufacturing goods production and associated services.²⁰⁰

*(b). Profitability Challenges and Credit Risk Disparities*²⁰¹

Woman-owned firms were less likely to be profitable than male-owned firms. These firms were more likely to report being medium or high credit risk compared to male-owned firms. Notably, gender differences by credit risk were driven by woman-owned startups. Among firms older than five years, credit risk was indistinguishable by the owner's gender.

198. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

199. 2016 SBCS, at 1-5.

200. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Goods; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

201. *Id.* at 6-7.

(c). Financial Challenges During the Prior Twelve Months²⁰²

Woman-owned firms were more likely to report experiencing financial challenges in the prior twelve months: 64% compared to 58% of male-owned firms. They most frequently used personal funds to fill gaps and make up deficiencies. Similar to male-owned firms, woman-owned firms frequently funded operations through retained earnings. Ninety percent of woman-owned firms relied upon the owner's personal credit score to obtain financing.

(d). Debt Differences²⁰³

Sixty-eight percent of woman-owned firms had outstanding debt, similar to that of male-owned firms. However, woman-owned firms tended to have smaller amounts of debt, even when controlled for the revenue size of the firm.

(e). Demands for Financing²⁰⁴

Forty-three percent of woman-owned firms applied for financing. Woman-owned applicants tended to seek smaller amounts of financing even when their revenue size was comparable.

Overall, woman-owned firms were less likely to receive all financing applied for compared to male-owned firms. Woman-owned firms received a higher approval rate for U.S. Small Business Administration loans compared to male-owned firms. Low-credit, woman-owned firms were less likely to be approved for business loans than their male counterparts with similar credit (68% compared to 78%).

(f). Firms That Did Not Apply for Financing²⁰⁵

Woman-owned firms reported being discouraged from applying for financing for fear of being turned down at a greater rate: 22% compared to 15% for male-owned firms. Woman-owned firms cited low credit scores more frequently than male-owned firms as their chief obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

202. *Id.* at 8.
203. *Id.* at 10.
204. *Id.* at 16.
205. *Id.* at 14.

(g). *Lender Satisfaction*²⁰⁶

Woman-owned firms were most consistently dissatisfied by lenders' lack of transparency and by long waits for credit decisions. However, they were notably more satisfied with their borrowing experiences at small banks rather than large ones.

2. Small Business Administration Loans to African American Businesses (2020)

As detailed in a 2021 article published in the *San Francisco Business Times*,²⁰⁷ the number of loans to Black businesses through the SBA's 7(a) program²⁰⁸ decreased 35% in 2020.²⁰⁹ This was the largest drop in lending to any race or ethnic group tracked by the SBA. The 7(a) program is the SBA's primary program for financial assistance to small businesses. Terms and conditions, like the guaranty percentage and loan amount, vary by the type of loan. Lenders and borrowers can negotiate the interest rate, but it may not exceed the SBA maximum.²¹⁰

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.²¹¹ The PPP loan program provided the source of relief to underserved borrowers through a direct incentive for small businesses to keep their workers on payroll.²¹² Approximately 5.2M PPP loans were made in 2020, as compared with roughly 43,000 loans made through the 7(a) program.

In a published statement to the *Portland Business Journal*, the American Bankers Association, an industry trade group, noted that the 2020 decline in SBA 7(a) loans to Black-owned businesses is not a one-year anomaly; it has been declining for years at a much faster rate than 7(a) loans to other borrowers. The 2020 data²¹³ reveal that the number of SBA loans made annually to Black

206. *Id.* at 26.

207. SBA Loans to African American Businesses Decrease 35%, *San Francisco Business Times* (August 11, 2021) at: <https://www.bizjournals.com/sanfrancisco/news/2021/08/11/sba-loans-to-african-american-businesses-decrease.html>. Data were obtained through a Freedom of Information Act request.

208. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

209. The total number of 7(a) loans declined 24%.

210. The SBA caps the maximum spread lenders can charge based on the size and maturity of the loan. Rates range from prime plus 4.5% to prime plus 6.5%, depending on how much is borrowed.

211. The Coronavirus Act, Relief, and Economic Security Act ("CARES Act"), required the SBA to issue guidance to PPP lenders to prioritize loans to small businesses owned by socially and economically disadvantaged individuals including Black-owned businesses. See 116-136, §1, March 27, 2020, 134 Stat. 281.

212. PPP loans were used to help fund payroll costs, including benefits, and to pay for mortgage interest, rent, utilities, workers protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020 as well as certain supplier costs and operational expenses.

businesses has declined 90% since a 2007 peak, more than any other group tracked by the SBA. In that interval, the overall number of loans decreased by 65%.

The nation's four largest banks (JP Morgan Chase, Bank of America, Citigroup, and Wells Fargo), which hold roughly 35% of national deposits, made 41% fewer SBA 7(a) loans to Blacks in 2020.²¹⁴

PPP loans served as a lifeline during the pandemic for millions of businesses. However, industry experts maintained that PPP loans detracted from more conventional SBA lending efforts that year. Wells Fargo provided more than 282,000 PPP loans to small businesses nationwide in 2020, with an average loan size of \$50,000. Wells Fargo, the most active lender for Black businesses nationwide in 2020, saw its SBA loans to Blacks drop from 263 in 2019 to 162 in 2020. Bank of America, Chase, and Citigroup also reported fewer SBA loans to African American businesses in 2020.

While PPPs have been heralded for providing needed monies to distressed small and mid-size businesses, data reveals disparities in how loans were distributed.²¹⁵ An analysis in 2020 by the *Portland Business Journal*, found that of all 5.2M PPP loans, businesses in neighborhoods of color received fewer loans and delayed access to the program during the early critical days of the pandemic.²¹⁶ More recent analysis released by the Associated Press indicates that access for borrowers of color improved exponentially during the later rounds of PPP funding, following steps designed to make the program more accessible to underserved borrowers.

3. 2010 Minority Business Development Agency Report²¹⁷

The 2010 Minority Business Development Agency Report, "Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs", summarizes results from the Kauffman Firm Survey, data from the U.S. Small Business Administration's Certified Development Company/504 Guaranteed Loan Program and addi-

213. The SBA denied the original request for information; however, the publication prevailed on appeal.

214. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

215. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

216. Many industry experts have observed that businesses that already had strong relationships with lenders were the most successful in accessing PPP loans. The nation's long history of systemic racism in banking fostered disparities in PPP loan distribution. See Alicia Plerhoples, *Correcting Past Mistakes: PPP Loans and Black-Owned Small Businesses*, at <https://www.acslaw.org/expertforum/correcting-past-mistakes-ppp-loans-and-black-owned-small-businesses/>.

217. Robert W. Fairlie and Alicia Robb, *Disparities in Capital Access Between Minority and non-Minority Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, Minority Business Development Agency, U.S. Department of Commerce, 2010 ("MBDA Report") (<https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>).

tional extensive research on the effects of discrimination on opportunities for minority-owned firms. The report found that:

low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner's wealth can be invested directly in the business, used as collateral to obtain business loans or used to acquire other businesses.²¹⁸

It also found, "the largest single factor explaining racial disparities in business creation rates are differences in asset levels."²¹⁹

Some additional key findings of the Report include:

- Denial of Loan Applications. Forty-two percent of loan applications from minority firms were denied compared to 16% of loan applications from non-minority-owned firms.²²⁰
- Receiving Loans. Forty-one percent of all minority-owned firms received loans compared to 52% of all non-minority-owned firms. MBEs are less likely to receive loans than non-minority-owned firms regardless of firm size.²²¹
- Size of Loans. The size of the loans received by minority-owned firms averaged \$149,000. For non-minority-owned firms, loan size averaged \$310,000.
- Cost of Loans. Interest rates for loans received by minority-owned firms averaged 7.8%. On average, non-minority-owned firms paid 6.4% in interest.²²²
- Equity Investment. The equity investments received by minority-owned firms were 43% of the equity investments received by non-minority-owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43% of the average of new equity investments in non-minority-owned firms. The differences were even larger for loans received by high sales firms.²²³

218. *Id.* at 17.

219. *Id.* at 22.

220. *Id.* at 5.

221. *Id.*

222. *Id.*

223. *Id.*

4. Federal Reserve Board Surveys of Small Business Finances

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for years 1993, 1998 and 2003.²²⁴ These Surveys of Small Business Finances are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than White-owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive.²²⁵

5. Other Reports

- Dr. Timothy Bates found venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.²²⁶
- According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their own firms were about 18% lower in the first year of operations compared to those of non-minority-owned firms. This disparity grew in the subsequent three years of operations, where minorities' investments into their own firms were about 36% lower compared to those of non-minority-owned firms.²²⁷
- Another study by Fairlie and Robb found minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.²²⁸

224. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These Surveys have been discontinued. They are referenced to provide some historical context.

225. See Blanchflower, D.G., Levine, P. and Zimmerman, D., "Discrimination In The Small Business Credit Market," *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C., "Market structure and discrimination, the case of small businesses," *Journal of Money, Credit, and Banking*, (1998).

226. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

227. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).

228. *Id.*

E. Evidence of Disparities in Access to Human Capital

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. A generational lack of self-employment capital disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.²²⁹ Black men have been found to face a “triple disadvantage” in that they are less likely than White men to: 1. Have self-employed fathers; 2. Become self-employed if their fathers were not self-employed; and 3. To follow their fathers into self-employment.²³⁰

Intergenerational links are also critical to the success of the businesses that do form.²³¹ Working in a family business leads to more successful firms by new owners. One study found that only 12.6% of Black business owners had prior work experiences in a family business as compared to 23.3% of White business owners.²³² This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.²³³ The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.²³⁴ Minorities and women in our interviews reported that they felt excluded from the networks that help to create success in their industries.

F. Conclusion

The economy-wide data, taken as a whole, paint a picture of systemic and endemic inequalities in the ability of firms owned by minorities and women to

229. Fairlie, R.W., “The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment,” *Journal of Labor Economics*, Vol. 17, 1999, pp 80-108.

230. Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.

231. Fairlie, R.W. and Robb, A., “Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital,” *Journal of Labor Economics*, Vol. 24, No. 2, 2007, pp. 289-323.

232. *Id.*

233. Allen, W. D., “Social Networks and Self-Employment,” *Journal of Behavioral and Experimental Economics (formerly The Journal of Socio-Economics)*, Vol. 29, No. 5, 2000, pp. 487-501.

234. “Increasing MBE Competitiveness through Strategic Alliances” (Minority Business Development Agency, 2008).

have full and fair access to state contracts and associated subcontracts. This evidence supports the conclusion that absent the use of narrowly tailored contract goals, these inequities will create disparate impacts on minorities and women.

VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN THE WASHINGTON DEPARTMENT OF TRANSPORTATION'S MARKET

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. This evidence is relevant to the question of whether despite the operations of the Department's contracting equity programs, Disadvantaged Business Enterprises ("DBEs") continue to face discriminatory barriers to their full and fair participation in WSDOT opportunities. Anecdotal evidence also sheds light on the likely efficacy of using only race- and gender-neutral remedies, designed to benefit all small contractors, to combat discrimination and achieve the objectives of the DBE and Small and Veteran Business ("S/VBE") Program. As discussed in the Legal Chapter, this type of anecdotal data has been held by the courts, including in the unsuccessful challenge to WSDOT's program, to be relevant and probative of whether an agency continues to have a need to use narrowly tailored DBE contract goals to remedy the effects of past and current discrimination and to create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."²³⁵ Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.²³⁶ The courts have held that while anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."²³⁷ "[W]e do not set out a categorical

235. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

236. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10th Cir. 2000), cert. granted, 532 U.S. 941, then dismissed as improvidently granted, 534 U.S. 103 (2001).

237. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10th Cir. 1994).

rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough.”²³⁸

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. In finding the State of North Carolina’s Historically Underutilized Business program to be constitutional, the Fourth Circuit Court of Appeals opined that “[p]laintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”²³⁹ Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”²⁴⁰

To explore this type of anecdotal evidence of possible discrimination against minorities and women in WSDOT’s geographic and industry markets and the effectiveness of its current race-conscious and race-neutral measures, we conducted eleven small group and individual business owner, stakeholder and WSDOT Advisory Board interviews, totaling 141 participants. We also explored experiences of veterans with discrimination in contracting opportunities. We received written comments throughout the term of the study.

We met with a broad cross section of business owners from WSDOT’s geographic and industry markets. Firms ranged in size from large, long established prime contracting and consulting firms to new market entrants. We sought to explore their experiences in seeking and performing public sector prime contracts and subcontracts with WSDOT, other government agencies, and in the private sector. We also elicited recommendations for improvements to WSDOT’s DBE and S/VBE Programs.

Many minority and woman owners²⁴¹ reported that while progress has been made in integrating their firms into public and private sector contracting opportunities through programs like WSDOT’s, significant barriers on the basis of race and/or gender remain.

238. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11th Cir. 1997).

239. *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 249 (4th Cir. 2010).

240. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003).

241. Throughout this chapter we use the term “DBE” which includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs.

Non-minority, non-woman-owned veteran firms did not experience similar barriers to equal contracting opportunities based on their veteran status.

In addition to the group interviews, we conducted an electronic survey of firms in WSDOT's market area about their experiences in obtaining work, firm capacity, marketplace conditions and WSDOT's DBE and S/VBE Programs. One hundred ninety net responses were received to the survey. The results were similar to those of the interviews. Among minority- and woman-owned firms, 43.0% reported that they still experience barriers to equal contracting opportunities; 38.3% said their competency was questioned because of their race or gender; and 28.0% indicated that they had experienced job-related sexual or racial harassment or stereotyping.

A. Business Owner Interviews

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed by numerous participants.

We have also appended a summary of the anecdotal results from several disparity studies we have conducted in Washington. These studies are directly relevant and probative of the barriers to success that minority and woman entrepreneurs continue to face in the Washington market.²⁴²

1. Biased assumptions and negative perceptions of competency

Several minority or woman business owners reported they experience negative assumptions about their qualifications and competency. There can be a stigma to being a DBE.

I do think that there's a going in presupposition on a lot of people's parts that if you're a woman and you're attractive or if you're a minority and you have dark skin that you're probably not as smart as they are.

There is no question in my mind that there's that systematic racism.

When I go to outreach firms or outreach events, whether it's for a specific project at a large company or it's a WSDOT program, it's always shocking that I am an engineer and I'm a project manager. I usually get tagged as the marketing person, the outreach, a planning person.... There definitely is that stigma, especially in the engineering industry. That's very

242. Appendix E: Qualitative Evidence from Washington Disparity Studies.

prevalent in most, if not all of the events I go to or the introductions that I make. People are always surprised. So, I do think that [discrimination definitely still exists.

I believe that race and gender challenges still are out there... There's still a lot of discrimination even within the larger firm's workforces that I see. And then when they're dealing with small firms, it's a little bit more amplified because it's one thing if it's within your own people, it's another thing when it's an outsider.

As a Latina, even though I'm fair complected and I can pass for a white person with an Italian surname, because it goes back to 1032, the problem is that if they know that I'm Latina, I get a different feel than if I walk in into the room and they all know who I am.

There is almost an automatic assumption with most of the GCs that [the DBE program] an unnecessary evil. They've got to fulfill their requirements, so they try and find a box to check. But the assumption is that, or the unspoken message, is that we don't know if you're going to be competent or not. Of course, we've been working for 20 years to prove our competency, and I think we have a good reputation.

Sexism remains a problem in the highway construction and consulting industries.

Being a woman, usually when I walk into a private chamber, the room silences and they all look at me and then nobody talks anymore and it's very uncomfortable.

You definitely get kind of the dumb office girl vibe is what I call it. They just assume you don't know what you're talking about. You've never dealt with this before. You've never been in this industry. And I've watched, I've worked with project managers that are also women, and it's very much so still a thing. They have to claw themselves into a respectful position, and it's a heck of a lot harder to get there than it would be if they were a dude.

They always go to a man with gray hair, It doesn't matter if they work for me, or anything. They will always walk by me.

I have experienced a lack of respect, particularly from an older gentleman who is a union representative, and I do believe that it was because I was a woman, well, I'm still a woman because I am a woman and I'm younger and I'm petite. And I tested my

theory because after having a meeting, I think I maybe had one or two meetings with him, I didn't appreciate the way in which he was speaking to me, treating me, being very dismissive and kind of manipulative and almost a little intimidating. I decided, Okay, you know what? Next time I meet with you, I'm going to bring my accountant.... He's like an older, tall gentleman. And I'm going to bring my uncle who's my senior estimator, and I'm going to see how he treats them versus how he treats me. And it was night and day. To the point where after that meeting, I sent a letter to another union representative I've been working with who seems to be a little bit more not old school in that sense. And even he was like, "I am very sorry that you were treated this way. It is a problem and we need to address it." And I was like, "Yeah, you definitely do."

One woman reported that she had never experienced bias or discrimination.

I've never had experienced anything that I felt I was uncomfortable or I thought they were discriminating against me.

2. Access to Industry and Professional Networks

Many DBEs found it difficult to penetrate the networks necessary for success in the highway industry.

It takes a long time to build those relationships and get past the old school deep thinking, really, and old relationships. That's it. You need time to prove yourself. If the system's not allowing you to get through and be able to do that, it can be a disadvantage.

There's no motivation [for non-DBEs to network with DBEs outside the program]. The primes that I work for, I don't get called to their holiday parties. Nobody takes me out for lunch and say, "Hey, how busy are you? Can you come and join us for some of these other projects? Which ones can you join? Which ones do you have a skill for?" So, as we all know, relationships take two.... WSDOT puts the onus on the small firms saying, "You need to go out and make friends with all these people." I'm like, "First of all, I don't have access to the PMs who make all these decisions. I'm best friends with all the marketing folks, trust me. But they're not able, they have no power in their company. They're not able to put me on their projects."... I would like to see all the relationship building, the actions from

those companies that actually get all the money instead of everyone putting all the onus on the small business to fix this problem. We didn't create the problem.

I do think that they were taking advantage of us. Now, did they ever explicitly say, "It's because you're a woman-owned, minority-owned, disadvantaged business enterprise"? No, but again, they didn't communicate to us. When I tell you they ghosted us, I'm not kidding. I would answer every single question they threw at me and then I would throw them questions and they would not respond. So, it was very disrespectful and I'm just appalled that they think that that's okay, because it's terrible business practice.

I'm glad that now they're putting DBE goals on design contracts; before didn't have [any]. And I've tried to get into teams with a couple projects, and I knew who the primes were, I called them. I told them that I would like to be on team, and I didn't get any phone calls back. So, it's a step in the right direction to have a goal, but they don't call you back, so might as well not even have a goal. So, I don't know what else to do. Yeah, I cannot force somebody to hire me, but we're not getting any luck.

Sometimes the [WSDOT] decision makers are so intertwined with those large businesses that are doing business with WSDOT, a lot of them end up working for those agents for the agency or they work for the private corporations. And so, it's difficult for our small businesses to develop those types of business development relationships, which are very intimate, to say the least. And so, we need to be able to have that same type of access that the big businesses do, or we need to have different types of guidelines that don't put us at a disadvantage because we didn't hire someone, a retired engineer who just retired from WSDOT, to secure 2M worth of business with WSDOT.

3. Obtaining Work as Prime Contractors or Consultants

Many DBEs were eager to work as prime contractors or consultants on WSDOT contracts.

The ultimate goal is for us to be primes, not all of us, but all of us that desire to be. That's the ultimate goal. I don't want to keep us into the sub role.

My other issue is about small businesses and DBE firms being included in primes and part of JV programs. I don't know any other way that we could possibly be lifted up towards graduation of this program without making us part of the major partner teams. Start to include us in the big story.

We suffer from lack of information because we're cut off from information from the GC and from WSDOT. We are only contractually allowed to hear what the major prime electrical tells us. These projects don't get broken down so we're trapped behind that. We've made the decision from here on out not to subtier any longer because it's too damaging, and who knows what goes on in the mind of a WSDOT bureaucrat or Prime Electrical subcontractor or a general contractor. I just have feelings and suspicions that the foot is on my air hose all the time.

Some minority owners reported that WSDOT staff exacerbates barriers.

I've got friends at WSDOT and I try to approach them, and the word that came back was, "You've essentially hit the boys club within the construction office and you can't get beyond that." And that's the barrier ahead. And once you hit that barrier, because a national contractor is involved, WSDOT will do all the writing and the aspirational goals and all of that, but they won't take it to the next level [and actually use a DBE design firm for a large design build project].... I got all kinds of you know, attorneys approached us, the media approached us to go public and all of this. You know, I have been raised the Christian way and my dad told me, "you'll never bite the hand that feeds you." So, I did not want to rock the boat on this.

More support was requested for those small firms that have been awarded prime contracts.

As you get to notice to proceed, there needs to be some training, walkthrough steps for small businesses, for the reality check of what is required. Because that's too where there's a disconnect, where there's some technical assistance that a small business could utilize.... Technical assistance, making sure that we capture all dollars as a small business to pay our staff to be able to execute, to get to the notice to proceed.

Project size is a major impediment to DBEs and SBEs receiving direct awards from WSDOT.

I would hope that they would break these work into smaller blocks where these smaller companies can compete.

There are opportunities for smaller procurements where consulting and engineering, A and E folks could be working directly with the agency and complimenting projects instead of working on a team as a second, third tier firm.

I will tell you that for prime contracts, the scope of the contracts are generally too large for a small business to bid on as a prime. It would be very helpful to see maybe some things carved out of the larger contracts that are more suitable to niche small businesses that we can bid on those independently.

It'd be nice to see more small works roster stuff.... Get more stuff into small works rosters so that there's more things that small guys can go after without being so prequalified.

For as long as we've been doing this stuff, and we're pretty good at our paperwork, we just can't seem to grow at all in this racket. So, we've chosen to back away, probably from washed out work, because it keeps getting rolled out in large packages. We're good at what we do, but I'm just not willing to give money away again.... We could do larger contracts, much larger contracts and we're held back. Part of that is the system sees us as coming after them a little bit, the larger [trade contractors]. They don't want us to succeed, I get that and it's a competitive world out there. And if the contracts are kept large enough, I can't participate. I can chase them to a certain size. Then after that, the mega projects, I'm not going to be a part of. And then now, we've made the decision because it's too damaging to be a sub-tier [trade contractor], we just won't do it anymore. So, we're off the market. Somebody else has to fill that [DBE] hole.

Even with contact goals, some interviewees felt that large firms did as little as possible to support their inclusion. Compliance was sometimes *pro forma*.

I do get contacted by firms for work that is way far away and it's always usually last minute because they're not getting anyone to bid on it, so they want somebody to throw some numbers at them. So, these companies will call me and kind of pester me last minute to turn in a bid. Well, I'm not comfortable doing that. I want to be sure about my numbers. I want to be safe and know that if I bid something, I'm not going to go out of business because I hastily turned in a bid.

These bigger companies just want to be able to throw some numbers out there quickly and they contact you last minute and kind of pressure you to throw out some numbers at them. And they're like, she said, they're usually far away. I can't afford to mobilize and send my company three hours away all the time and have the trucks go back and forth. That's not economically viable for me.

Early and meaningful involvement leads to better outcomes.

When we're brought into the team early on, we're able to adapt and integrate our program with whomever the prime is.

Task order or job order contracts— where the future needs of the agency are not yet fully determined— could result in less work being performed by the DBE than anticipated. The failure of the prime contractor to communicate with its subcontractors was problematic.

Sometimes the agency doesn't really realize how much they're asking for and how much it's going to cost. So, what happens is we are on a team that wins a project and then some of the smallest subs end up getting cut at the end because it just turns out there wasn't actually the money to do the work that the agency had requested in the RFP.

It should be a real public transparent process because sometimes primes don't like to share with you how they intend to use you, and then you find out about the procurement or you find out that they've been awarded the project and you see that your contract has been whittled down.

4. Obtaining Work as Subcontractors or Subconsultants

There was near universal agreement from minority and woman owners that contract goals remain necessary to ensure equal opportunities to compete. Many certified firms received little work outside the DBE program.

This program is phenomenal. Where I have got here today, it is because of this program.

That's one thing I will say about the programs, and how it is important to know that somebody has your back in the long run. And that we can have these meetings and have support in different aspects. So, we know that somebody's out there trying to rally for us.

It only took 18 months after not being a DBE anymore to go from doing 9M a year to nothing.... We talk about building capacity, which I'm all in favor for, but it's frustrating to think that, but for the DBE program, a lot of the same major general contractors, and I've worked with them all, are not going to use you unless they have to. It was super disheartening to me to see that happen.

It's almost a waste of time to try and work in the private sector because of many of the things I've already said. Yeah. We are very, very appreciative of the DBE program with WSDOT and the SBA programs. Quite literally, it fuels and funds our business, and it keeps 80 people employed here. It's essential to us.

The GCs are coming to us because there's that incentive.

[Prime consultants] have to meet the condition of award [DBE goal] in order to win that job. If this wasn't there, the work would be so minimal for all the DBE firms.

Absolutely women and minorities are still facing barriers and it's the small businesses also, but very specifically women and minorities. If the program was reduced or eliminated or changed to be any way they could get out of using us, I think they often would. And it's not because we're not great at doing our jobs, they just want to perform the work and play with the people that they would play with normally who might also not be women and minorities. So, we definitely still face barriers.

I get the comment from large firms, "Yeah, but they're not a DBE, so why would I use them?" That is something I have heard since day one. I used to work at large consulting firms. I heard it there. I still hear it today. I just heard it this week on a phone call. "So-and-so is not a DBE firm, so why would I put them on my project?"... If we did not have this program that required them to use DBEs, they wouldn't.

If the goals are not mandatory, forget it. They're not going to work with us. Because they're going to make more money by spending less going with another company that has more resources. I do not have an asphalt plant. So, I'm at a huge disadvantage financially if they go with me than if they go with them.

It is valuable as a woman, a person, a woman of color like myself, Latina, or a woman or a person of color to be certified DBE because that's the only really the time you're probably going to get looked at, particularly if you're a newer firm. Even if you're an established firm, unless you're in a niche. If you're in a highly desired limited niche, you can have more mobility. But if you're not, you're part of the crowd, the DBE label is actually very helpful.

Without the DBE program, it would be detrimental to businesses like our small businesses for people of disparity, for people of color, for women. These large one-stop shopping or one-stop shop engineering firms would push us out of WSDOT projects, out of Sound Transit projects and [Seattle Public Utilities] projects. So, it's crucial for us to have this program in place.

If the program was eliminated, I would say that it'd be very difficult for my firm to remain in the same revenue size or employee count size.... When there is a condition of award goal when we are on contracts, typically where general contractors try leveraging us is if they find themselves in a difficult situation with an owner, they will often ask us to provide a perspective from a DBE, which is not the most flattering thing in the world. They use it oftentimes as kind of a political tool as opposed to some type of objective measure of our competency.

Some firms that complained about poor treatment suffered retaliation.

I don't want to be labeled a troublemaker or a crybaby or whatever for speaking up and saying, "Hey, here's my problem. Here's what I'm genuinely out here doing every day to try to be a part of this."

When I filed that complaint and it came back with my name on it, from that point on, I was not only continued to be discriminated against, but retaliated as well.

The one time I complained about being called a boy, I got laid off for a couple months. So, I just try to keep my mouth closed.... They make it clear that they don't want you there.... You come up there to the plant and they start calling you a different name [than your correct name]and that kind of stuff. But I says, "Well, don't say nothing, just get your [truck]load, get out and you only have to deal with them for ten minutes and go out there. And then when you get out there to the other part,

deliver the stuff." If I go left, it's wrong. If I go right, it's wrong....
I'm the only [Black owner-operator] out there.

5. Experiences of Veteran-Owned Business Enterprises

We conducted a separate interview with VBEs to develop evidence of any discriminatory barriers they face because of their military service. All agreed that VBEs do not suffer from bias or discrimination.

I don't think I have experienced any discrimination.

I don't feel like there's been discrimination as far as a veteran-owned company.

No, I don't think [I have experienced any discrimination].

I don't feel like there's been any discrimination. I think for the most part, people are supportive of veterans and appreciative of the sacrifice.

I have never made an issue of or tried to use my veteran status to gain business. It just never occurred to me.

Most of the interviewees were happy to take advantage of the contracting preference.

We will take advantage of this program, and we will be equitable, and we will do things the right way,

I don't never want to just be a box that's checked, but like I said, I think it's an opportunity for a win-win where you get to help out veterans, but also get good quality people and good quality products.

Two others reported that the fraud associated with VBE programs over the years was a disincentive to participate in WSDOT's VBE program.

There is a stigma, because the veteran-owned program in this state, both state and federally, was abused for a long time. And I think a lot of that stigma follows down. The veteran-owned thing as far as contractors is a very new thing to this state.

I don't think I'll mention my veteran status in trying to acquire work.

B. Anecdotal Survey of WSDOT Market Area Firms

To supplement the in-person interviews, we also conducted an anecdotal, electronic survey of firms on our Master DBE Directory; prime firms on the contract data file; and non-minority, non-woman-owned veteran firms and other firms identified through our outreach efforts. We further solicited written comments. The survey was comprised of up to fifty-eight closed- and open-ended questions and replicated the topics discussed in the business owner interviews. Questions focused on doing business in the WSDOT’s market area, specifically barriers and negative perceptions, access to networks, information and experiences in obtaining work, and firm capacity and capacity development, as well as WSDOT’s DBE program.

Three hundred six gross responses were received. After accounting for incomplete and non-relevant responses, there were 190 useable responses. Percentage results have been rounded to one decimal place to increase readability. We received only 13 useable responses from VBEs, so the information presented for those firms is limited to only their profiles.

1. Respondents’ Profiles

Table 6-1: The race and gender distribution of the 190 respondents is listed below. Minority and woman respondents accounted for 56.3%; non-minority, non-female veterans for 6.8% of the responses; and publicly-held, non-minority, non-female respondents accounted for the remaining 36.8% of the responses.

Table 6-1: Race and Gender Distribution

Firm Ownership	#	%
African American	22	11.6%
Hispanic	16	8.4%
Native Hawaiian or Pacific Islander American	6	3.2%
East, Southeast, Subcontinent Asian American	8	4.2%
Native American/ Alaska Native	4	2.1%
Non-Minority Women	51	26.8%
DBE Total	107	56.3%
Non-Minority, Non-Female Veterans	13	6.8%
Publicly-Held, Non-DBE	70	36.8%
Total Firms	190	100%

2. Firms' Profiles

Chart 6-1: The type of work performed by the 190 respondents is listed below.

Chart 6-1: Type of Work

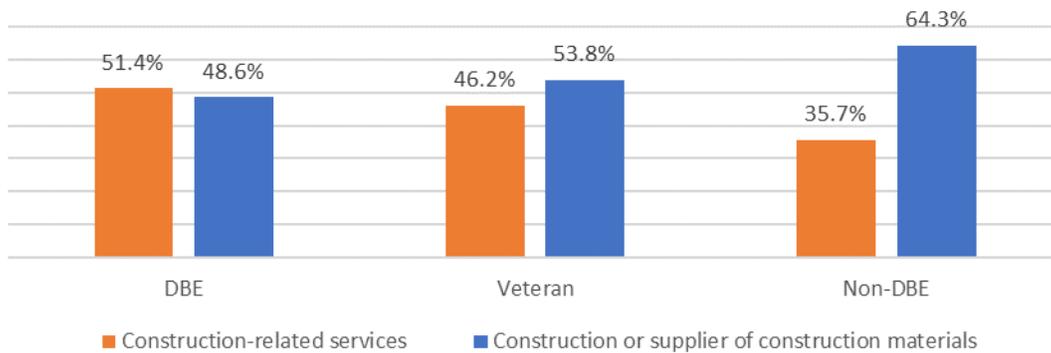


Chart 6-2: Among DBEs, construction firms and suppliers accounted for 48.6% of the respondents. Construction-related professional services firms accounted for 51.4% of the respondents.

Chart 6-2: Type of Work – DBE Firms

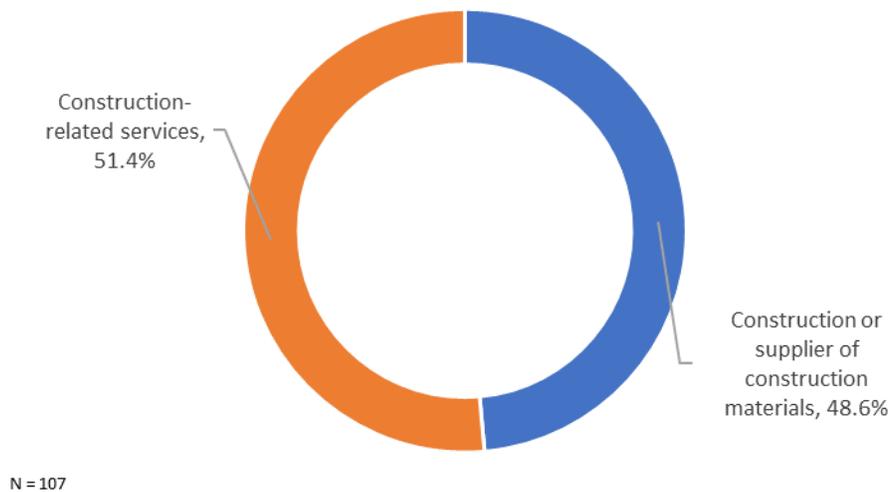


Chart 6-3: Among veterans, construction firms and suppliers accounted for 53.8% of the respondents. Construction-related professional services firms accounted for 46.2% of the respondents.

Chart 6-3: Type of Work – Veteran-Owned Firms

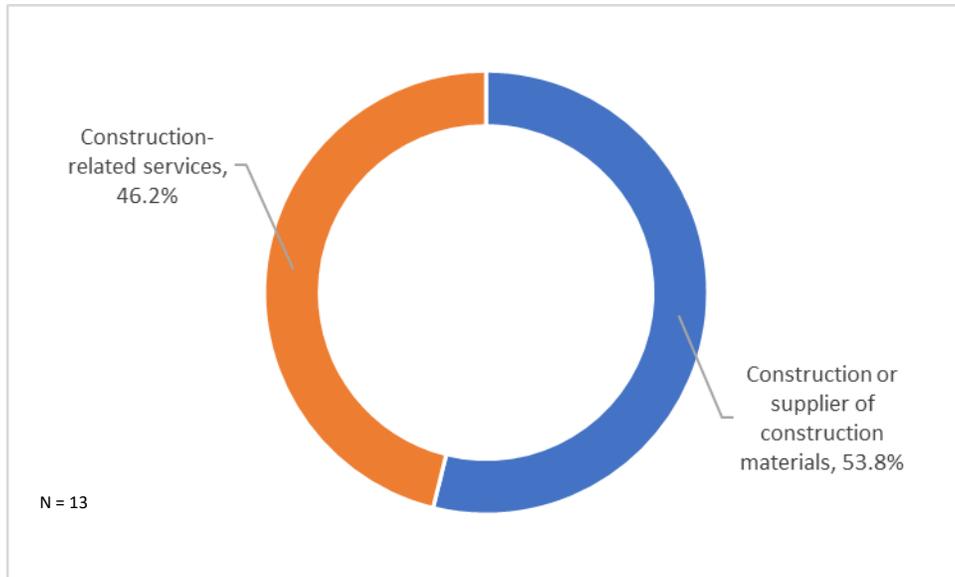


Chart 6-4: Among non-DBEs, construction firms accounted for 64.3% of the respondents. Construction-related professional services firms accounted for 35.7% of the respondents.

Chart 6-4: Type of Work - Non-DBE Firms

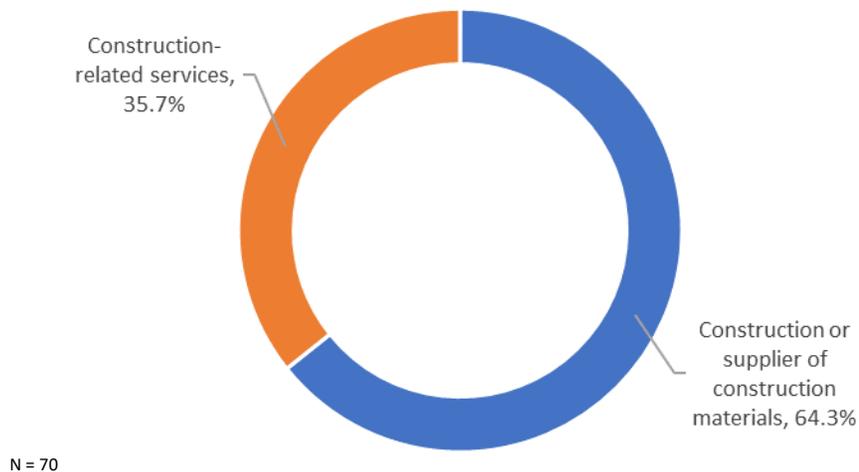


Chart 6-5: Almost 90% (88.8%) of DBE respondents reported that some of their revenues were derived from government work; 21.5% reported up to twenty-five percent; 15.9% reported between twenty-five and fifty percent; 17.8%

reported between fifty-one and seventy-five percent; and 33.6% reported between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 11.2% of the firms.

Chart 6-5: Percent of Gross Revenue from Government Work – DBE Firms

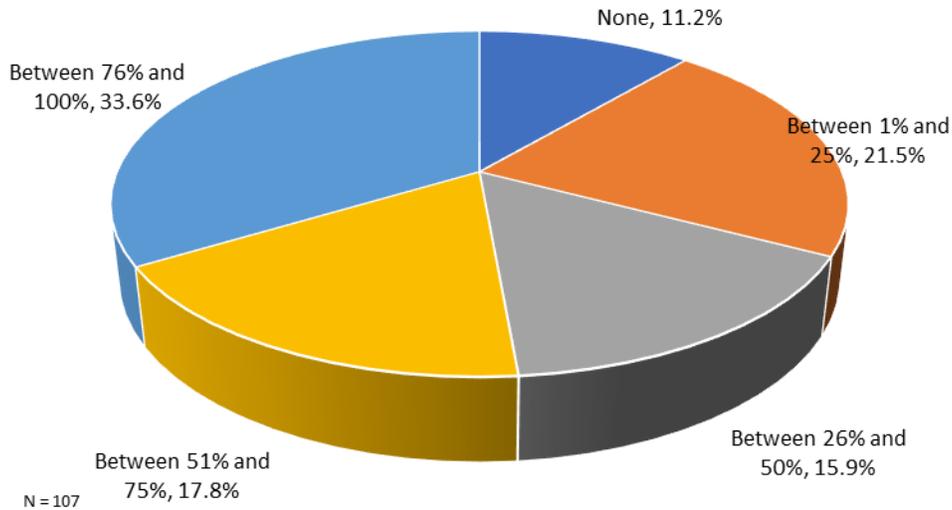


Chart 6-6: Almost 85% (84.6%) of veteran respondents reported that some of their revenues were derived from government work; 7.7% up to twenty-five percent; 38.5% between twenty-five and fifty percent; 15.4% between fifty-one and seventy-five percent; and 23.1% between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 15.4% of the firms.

Chart 6-6: Percent of Gross Revenue from Government Work – Veteran-Owned Firms

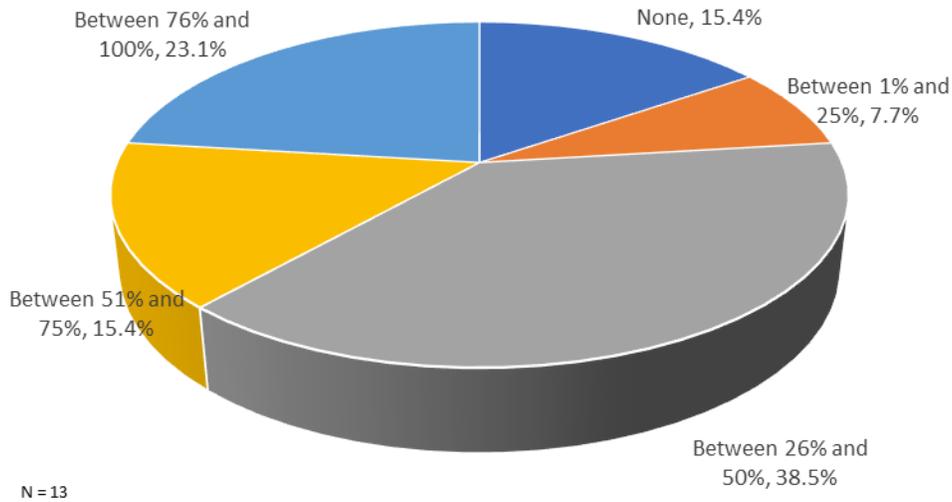


Chart 6-7: Almost all (98.6%) of non-DBE respondents reported that some of their revenues were derived from government work; 21.4% up to twenty-five percent; 37.1% between twenty-five and fifty percent; 20.0% between fifty-one and seventy-five percent; and 20.0% between seventy-six and one hundred percent. Government work did not contribute to the gross revenues of 1.4% of the firms.

Chart 6-7: Percent of Gross Revenue from Government Work – Non-DBE Firms

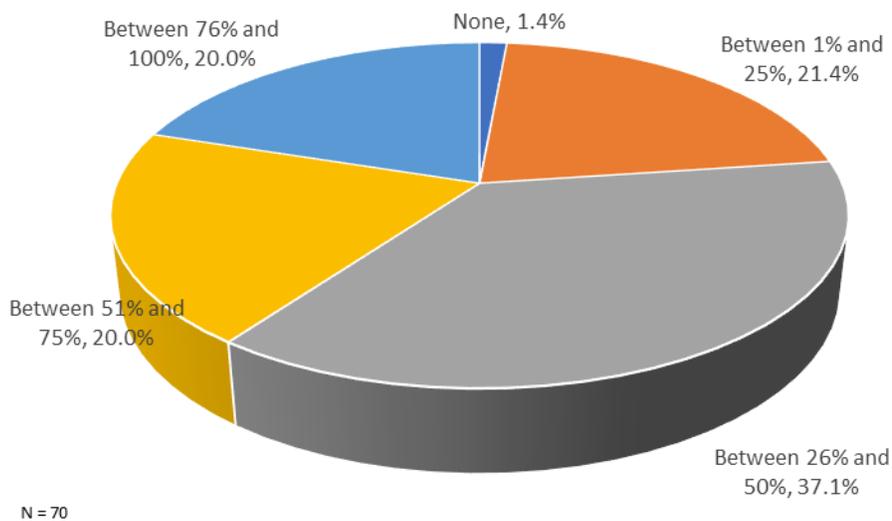
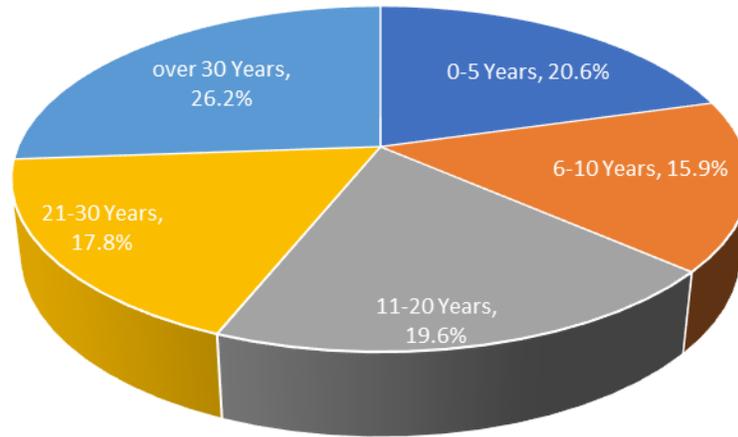


Chart 6-8: About a fifth (20.6%) of DBE firms reported being in business for five years or less; 15.9% for six to ten years; 19.6% for 11 to 20 years; 17.8% for 21 to 30 years; and 26.2% for over 30 years.

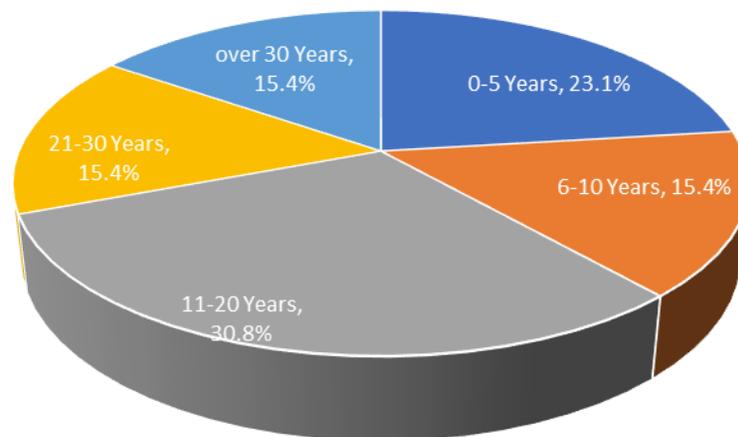
Chart 6-8: Years in Business – DBE Firms



N = 107

Chart 6-9: About a quarter (23.1%) of veteran firms reported being in business for five years or less; 15.4% for six to ten years; 30.8% for 11 to 20 years; 15.4% for 21 to 30 years; and 15.4% for over 30 years.

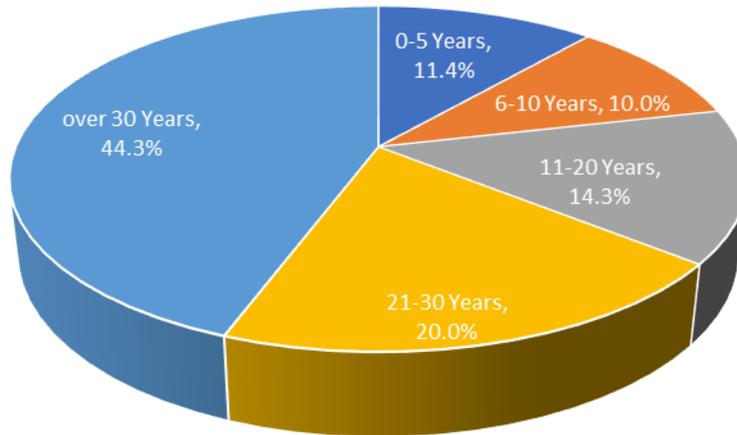
Chart 6-9: Years in Business – Veteran-Owned Firms



N = 13

Chart 6-10: Only 11.4% of non-DBE firms reported being in business for five years or less; 10% for six to ten years; 14.3% for 11 to 20 years; 20.0% for 21 to 30 years; and 44.3% for over 30 years.

Chart 6-10: Years in Business – Non-DBE Firms



N = 70

Chart 6-11: More than a third (34.6%) of DBE firms reported having one to five employees; 42.1% reported six to 25 employees; 12.1% reported 26 to 50 employees; 4.7% reported 51 to 100; and 6.5% reported 101 to 500 employees.

Chart 6-11: Size of Workforce – DBE Firms

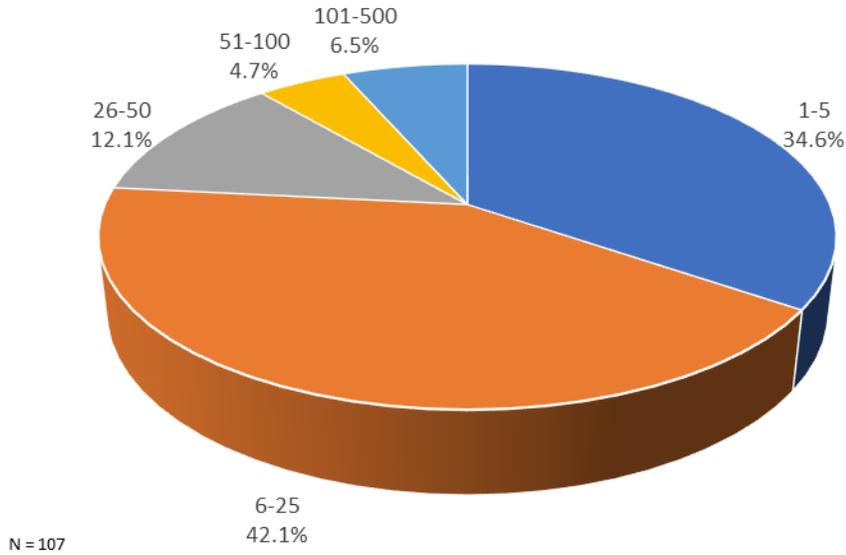


Chart 6-12: A majority (61.5%) of veteran firms reported having one to five employees; 30.8% reported having six to 25 employees; and 7.7% reported having 26 to 50 employees.

Chart 6-12: Size of Workforce – Veteran-Owned Firms

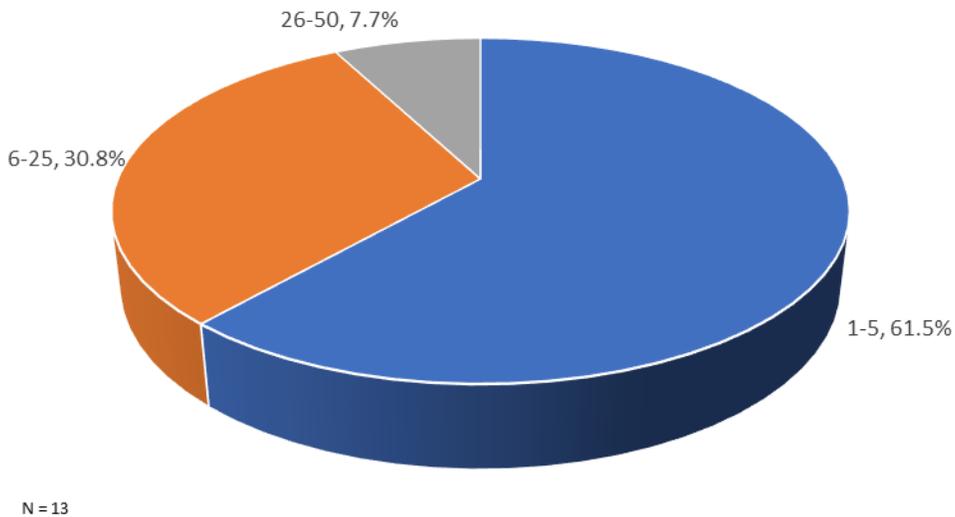


Chart 6-13: Twenty percent of non-DBE firms reported having one to five employees; 37.1% reported six to 25 employees; 4.3% reported 26 to 50

employees; 12.9% reported 51 to 100 employees; 18.6% reported 101 to 500 employees; and 7.1% reported over 500 employees.

Chart 6-13: Size of Workforce – Non-DBE Firms

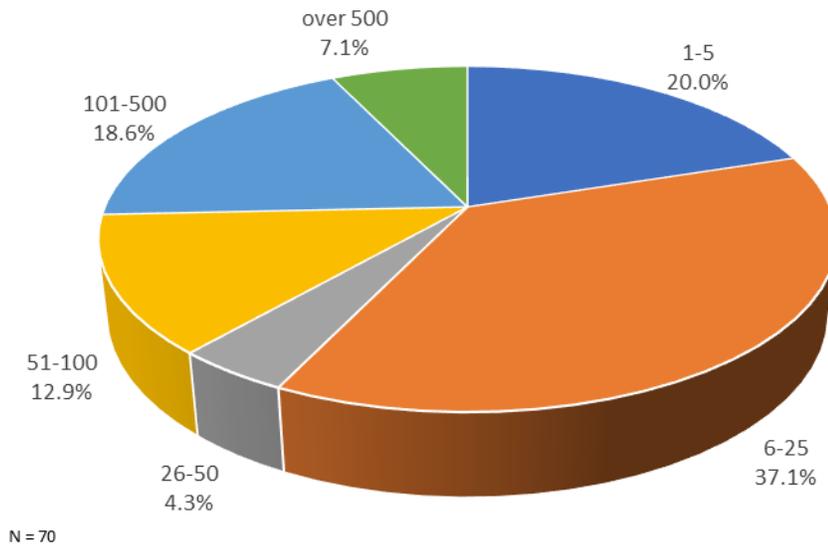


Chart 6-14: Among DBE respondents, 0.9% reported that at least one of the firm’s owners has less than a high school degree or equivalent; 20.6% at least one has a high school degree or equivalent; 34.6% at least one has a bachelor’s degree; and 31.8% at least one has a graduate degree. Twelve percent (12.1%) reported at least one has a trade or technical certificate or degree.

Chart 6-14: DBE Firm Owner Education

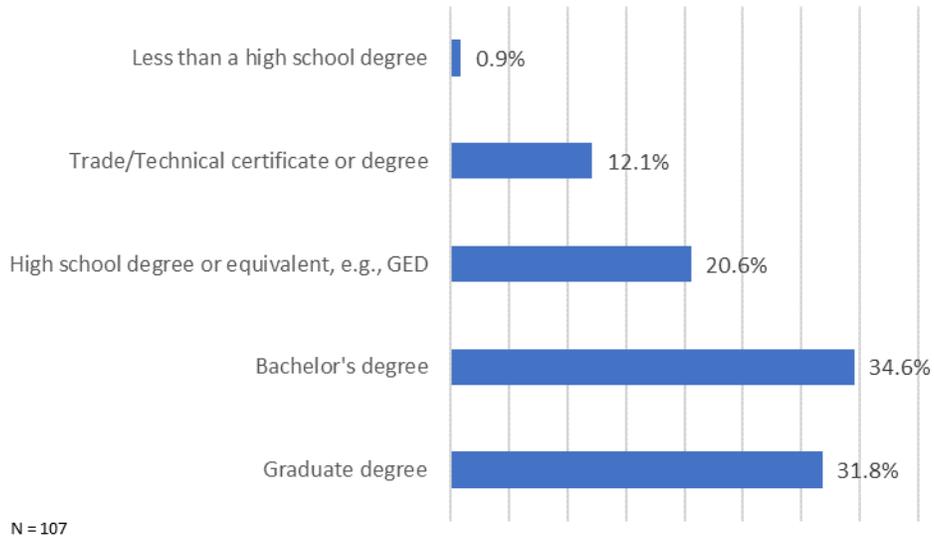


Chart 6-15: Among veteran respondents, 30.8% reported that at least one of the firm’s owners has a bachelor’s degree; 15.4% at least one has a graduate degree; and 53.8% at least one has a trade or technical certificate or degree.

Chart 6-15: Veteran Firm Owner Education

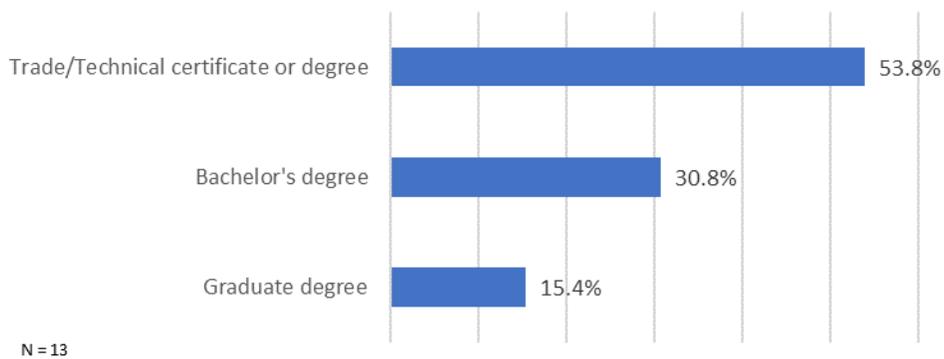


Chart 6-16: Among non-DBE respondents, 18.6% reported that at least one of the firm’s owners has a high school degree or equivalent; 35.7% at least one has a bachelor’s degree; and 34.3% at least one has a graduate degree. A little over eleven percent (11.4%) reported at least one has a trade or technical certificate or degree.

Chart 6-16: Non-DBE Firm Owner Education

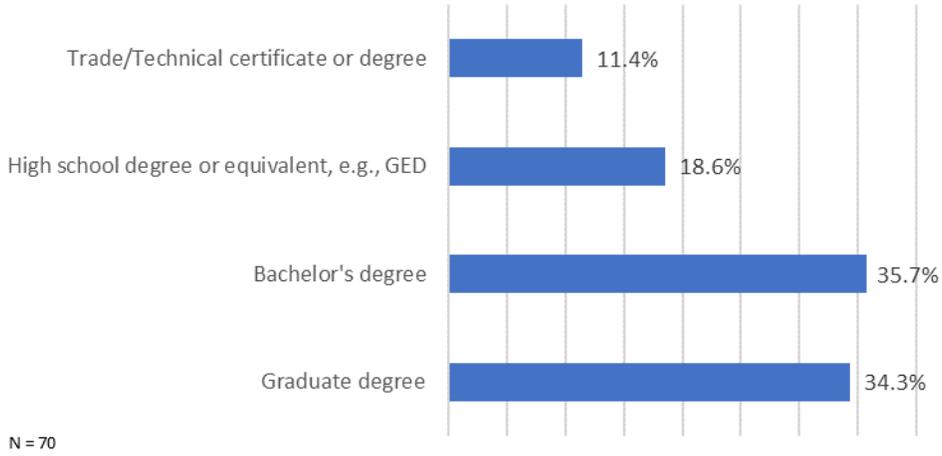


Chart 6-17: Over a quarter (26.2%) of DBE respondents indicated their firm was a union signatory.

Chart 6-17: DBE Union Signatory Status

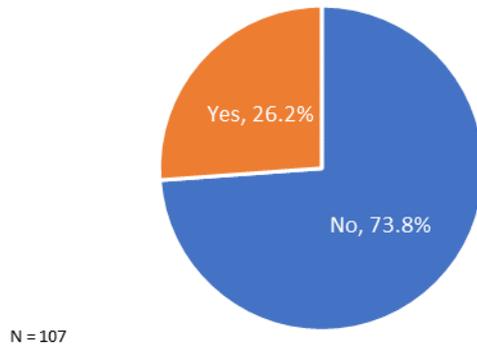
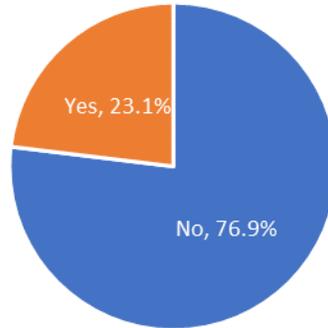


Chart 6-18: A little under a quarter (23.1%) of veteran respondents indicated their firm was a union signatory.

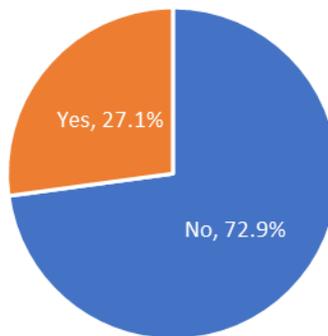
Chart 6-18: Veteran Union Signatory Status



N = 13

Chart 6-19: A little over a quarter (27.1%) of non-DBEs were union signatories.

Chart 6-19: Non-DBE Union Signatory Status



N = 70

3. WSDOT Contract and Bidding Profile

Chart 6-20: Among DBEs, 2.8% of the firms had worked on WSDOT projects only as a prime contractor or supplier; 41.1% had worked only as a subcontractor or supplier; 21.5% had worked as both a prime contractor or supplier and as a subcontractor; and 34.6% had not done business with WSDOT. A little under three-quarters (73.8%) were certified as a DBE with OMWBE. More than three-quarters (77.6%) were certified as a minority, woman or disadvantaged business with additional government agencies or authorities.

Chart 6-20: DBE Respondent Contractor Status with the WSDOT

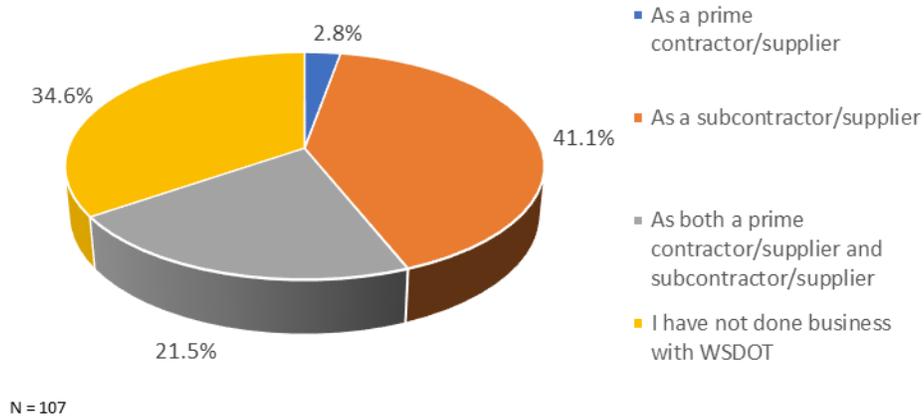


Chart 6-21: Among veteran respondents, none of the firms had worked on WSDOT projects only as a prime contractor or supplier; 46.2% had worked only as a subcontractor or supplier; 15.4% had worked as both a prime contractor or supplier and as a subcontractor; and 38.5% had not done business with WSDOT. Over three-quarters (77.6%) were certified as a VBE with the Washington Department of Veterans Affairs.

Chart 6-21: Veteran Respondent Contractor Status with the WSDOT

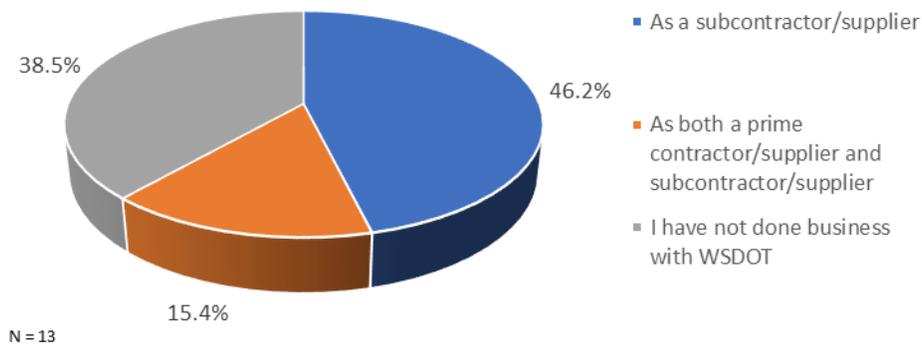


Chart 6-22: Among non-DBE respondents, 14.3% of the firms had worked on WSDOT projects only as a prime contractor or supplier; 37.1% had worked only as a subcontractor or supplier; 37.1% had worked as both a prime contractor or supplier and as a subcontractor; and 11.4% had not done business with WSDOT.

Chart 6-22: Non-DBE Respondent Contractor Status with the WSDOT

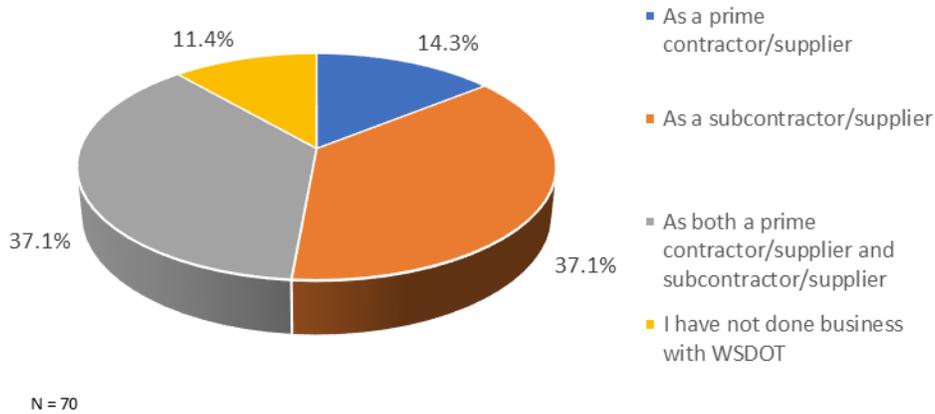


Chart 6-23: Approximately a third (33.6%) of DBEs had submitted from one to ten bids/proposals/quotes on WSDOT projects as either a prime or subcontractor; 11.2% had submitted 11 to 25 bids/quotes/proposals; 6.5% had submitted between 26 to 50 bids/quotes/proposals; 0.9% submitted had between 51 and 75 bids/quotes/proposals; and 7.5% had submitted between 76 and 100 bids/quotes/proposals. Two-fifths (40.2%) of DBEs had submitted zero bids/quotes/proposals.

Chart 6-23: DBE WSDOT Bid/Quote/Proposal Submission

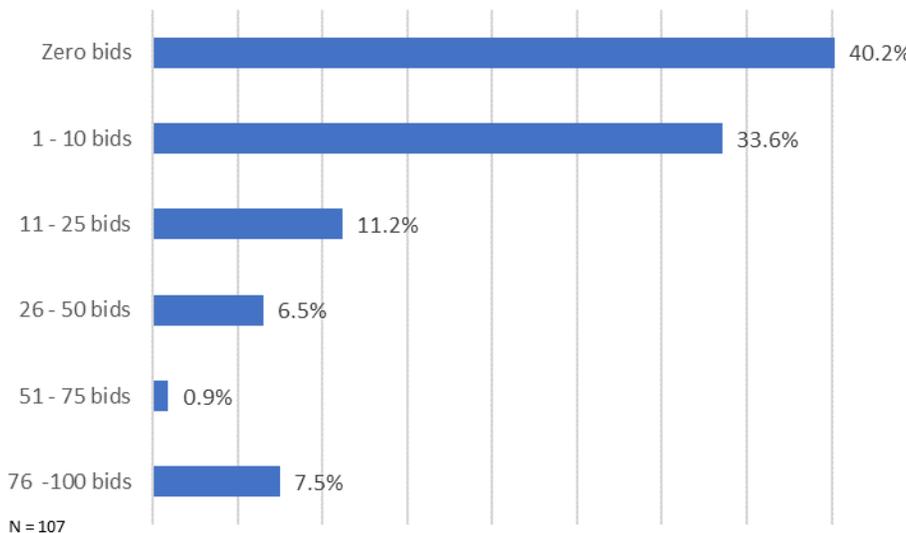


Chart 6-24: A majority (61.5%) of veteran respondents indicated that their firm submitted from one to ten bids/proposals/quotes on WSDOT projects as either a prime or subcontractor; 7.7% had submitted 11 to 25 bids/quotes/proposals;

and 7.7% had submitted between 26 to 50 bids. Almost a quarter (23.1%) had submitted zero bids/quotes/proposals.

Chart 6-24: Veteran WSDOT Bid/Quote/Proposal Submission

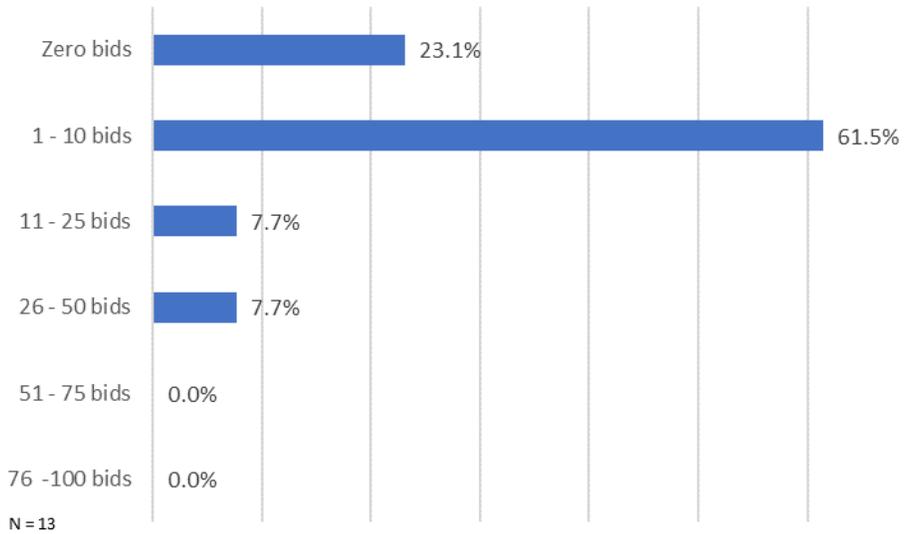
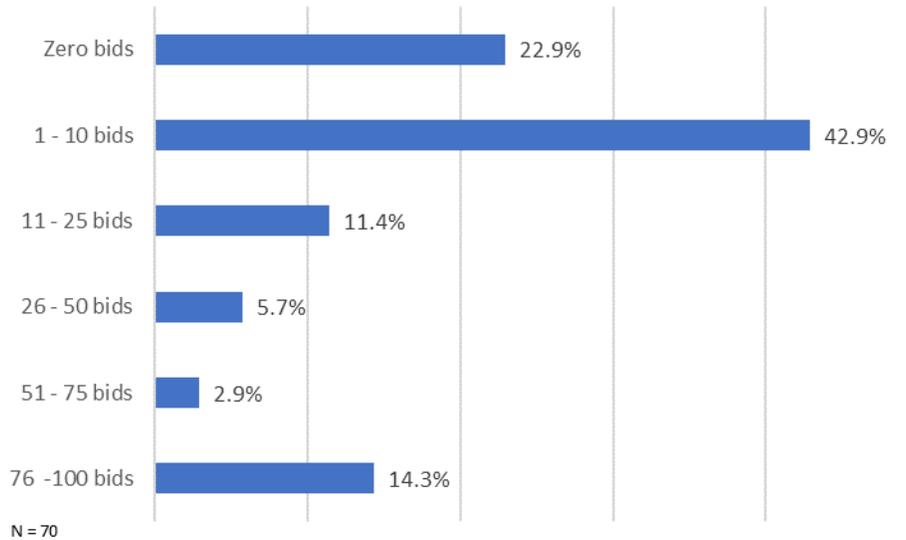


Chart 6-25: Approximately two-fifths (42.9%) of non-DBEs had submitted from one to ten bids/proposals/quotes on WSDOT projects as either a prime or sub-contractor; 11.4% had submitted 11 to 25 bids/quotes/proposals; 5.7% had submitted between 26 to 50 bids; 2.9% had submitted between 51 and 75 bids; and 14.3% had submitted between 76 and 100 bids. One-fifth (22.9%) of non-DBEs had submitted zero bids/quotes/proposals.

Chart 6-25: Non-DBE WSDOT Bid/Quote/Proposal Submission



4. Experiences in the Washington State Construction Industry and Obtaining WSDOT Work

a. Discriminatory Barriers and Perceptions on the basis of Race or Gender

Chart 6-26: Forty-three percent of DBEs reported that they had experienced barriers to contracting opportunities based on their race and/or gender.

Chart 6-26: Barriers to Contracting Opportunities Based on Race and Gender Experienced by DBEs

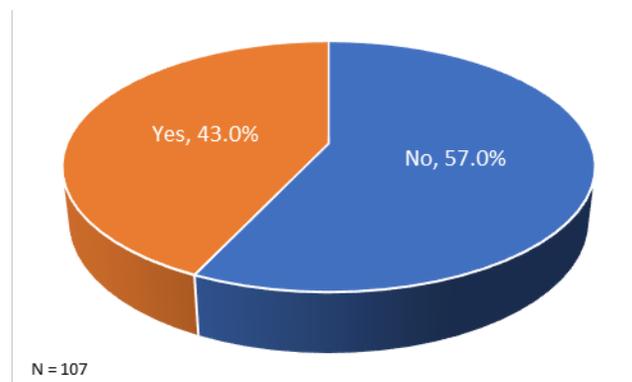


Chart 6-27: Over a third (38.3%) of DBEs answered “Yes” to the question, “Is your competency questioned based on your race and/or gender?”

Chart 6-27: DBE Negative Perception of Competency Based on Race or Gender

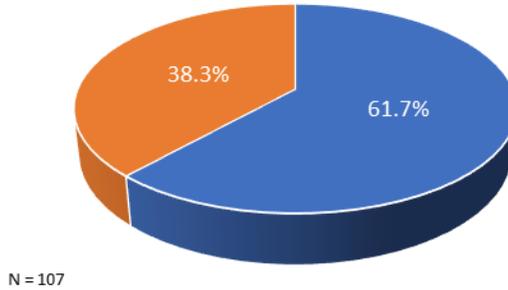


Chart 6-28: Over a quarter (28.0%) of DBEs had experienced job-related sexual or racial harassment or stereotyping.

Chart 6-28: DBE Industry-Related Sexual or Racial Harassment or Stereotyping

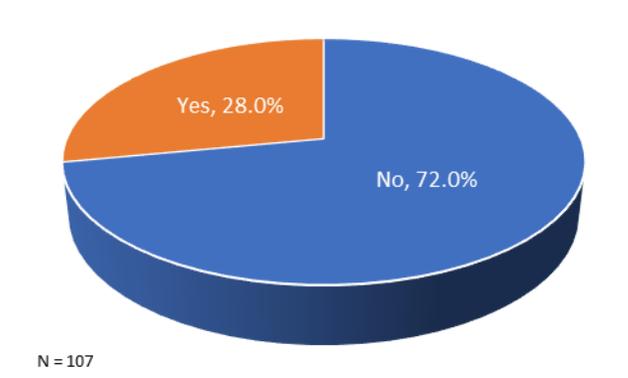
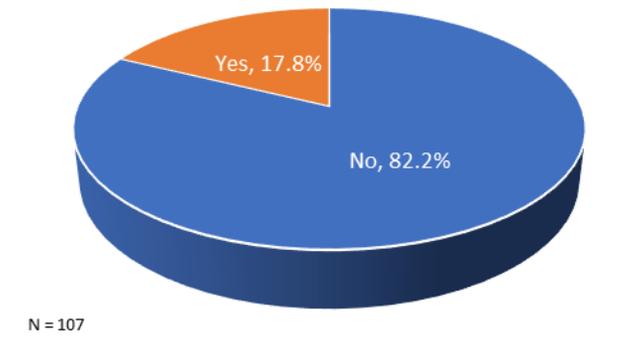


Chart 6-29: Discrimination from suppliers or subcontractors because of their race and/or gender was experienced by almost a fifth (17.8%) of the DBEs.

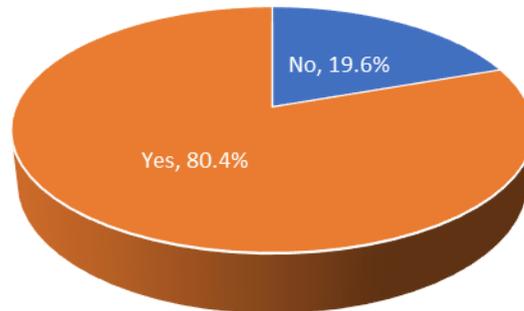
Chart 6-29: DBE Supplier Pricing and Terms Discrimination Based on Race and Gender



b. Access to Formal/Informal Business and Professional Networks

Chart 6-30: Almost 20 percent (19.6%) of DBEs did not have equal access to the same information as non-certified firms in their industry.

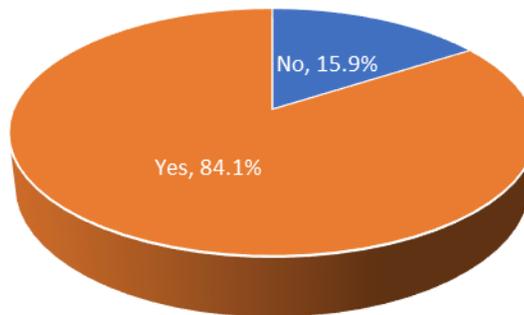
Chart 6-30: DBE Access to the Same Information as non-Certified Firms



N = 107

Chart 6-31: Limited access to informal and formal networking information was reported by 15.9% of DBEs.

Chart 6-31: DBE Access to Informal and Formal Networking Information



N = 107

c. Access to Financial Supports

Chart 6-32: Among DBEs, 12.1% reported challenges in their efforts to obtain surety bonding; 29.0% had not tried to obtain bonding. Only 5.7% of the non-DBEs reported difficulty with obtaining bonding; 21.4% had not tried to obtain bonding.

Chart 6-32: DBE Reported Barriers to Obtaining Bonding

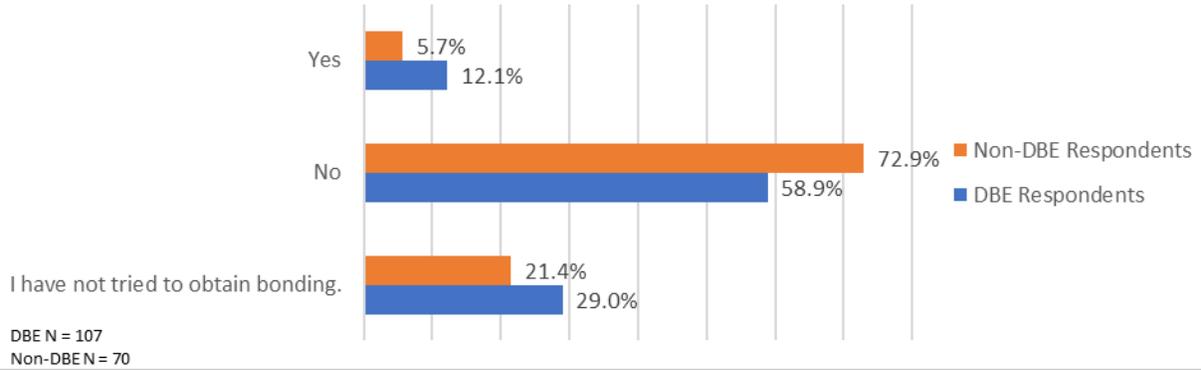


Chart 6-33: Almost a quarter (23.4%) of DBEs reported barriers in their efforts to obtain financing and loans; 22.4% had not tried to obtain financing. In comparison, 10% of the non-minority firms reported such difficulties; 21.4% had not tried to obtain financing.

Chart 6-33: DBE Reported Barriers to Obtaining Financing and Loans

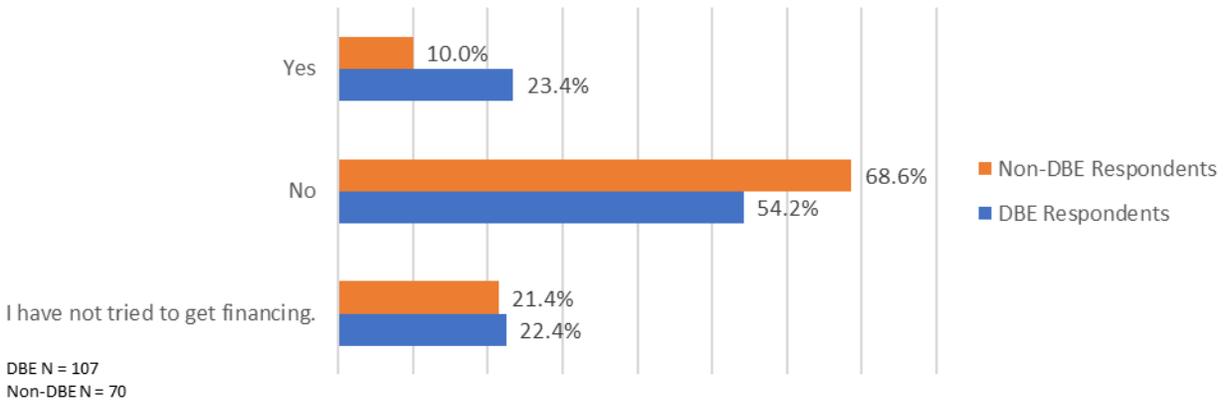
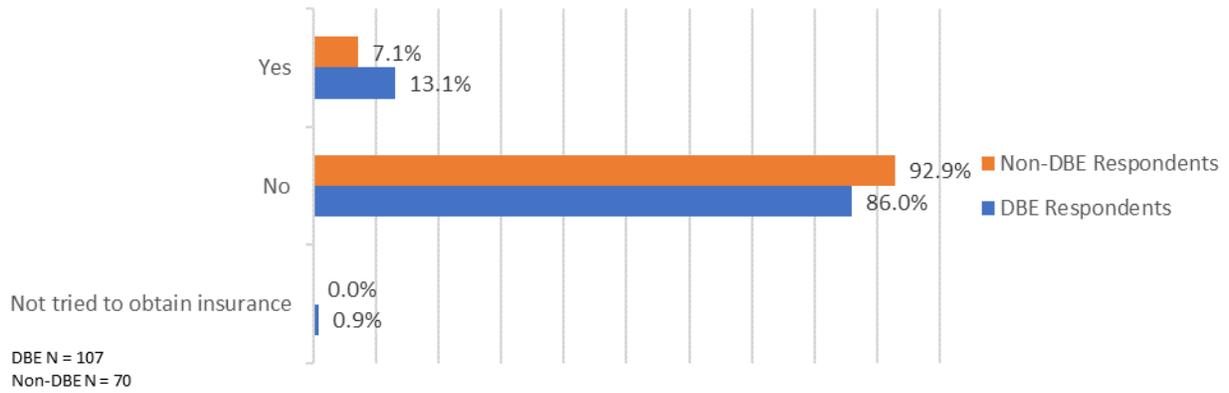


Chart 6-34: Among DBEs, 13.1% reported experiencing barriers to obtaining insurance. Among non-minority firms, only 7.1% reported such difficulties.

Chart 6-34: DBE Reported Barriers to Obtaining Insurance



d. Obtaining Work on an Equal Basis

Chart 6-35: More than two-thirds (68.2%) of DBEs reported that they are solicited for WSDOT or government projects with DBE goals.

Chart 6-35: DBE Solicitation for WSDOT or Government Projects with DBE Goals

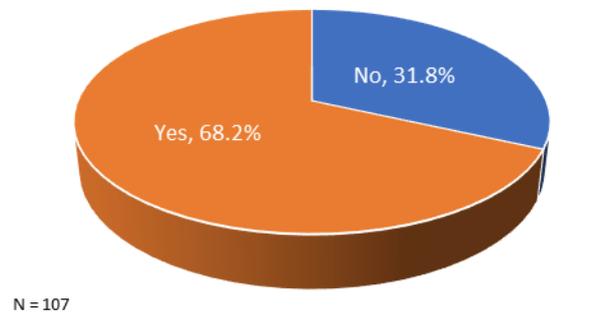
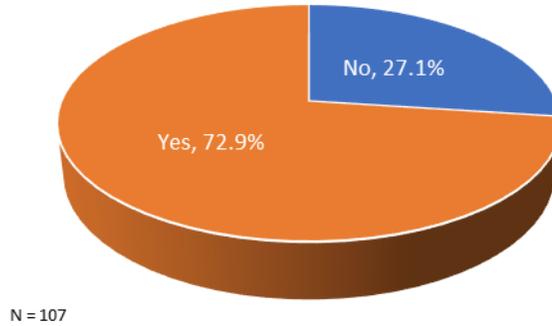


Chart 6-36: Almost three quarters (72.9%) of DBE respondents reported that they are solicited for private projects or projects without goals.

Chart 6-36: DBE Solicitation for Private Projects or Projects Without Goals



e. Prompt Payment²⁴³

Chart 6-37: Of the DBE contractors who reported doing work for WSDOT, 62.5% said that WSDOT paid them promptly. Prime contractors were reported to pay a little less promptly, with 52.6% of DBE respondents reporting that prime contractors paid within 30 days.

Chart 6-37: Prompt Payment within 30 Days

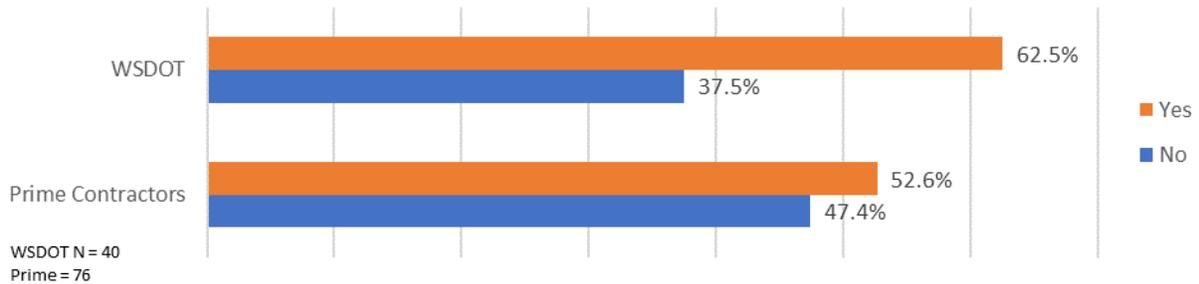
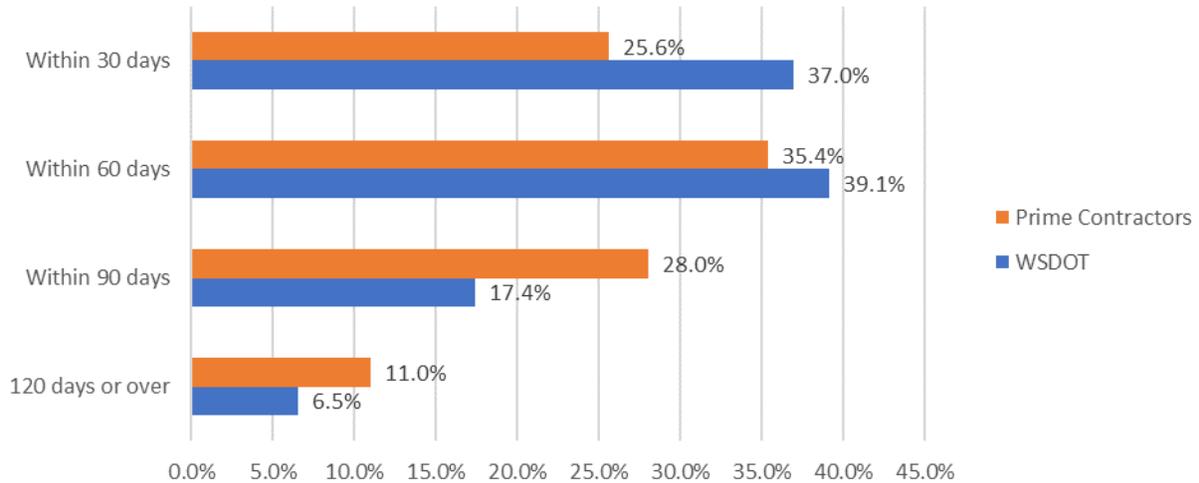


Chart 6-38: Of DBE contractors performing work for WSDOT, 76.1% reported receiving payment within 60 days; 17.4% were paid within 90 days; and 6.5% were paid in 120 days or later. Prime vendors were reported to pay on a slower schedule: three-fifths (61.0%) said prime vendors paid within 60 days; 28.0% reported they were paid within 90 days; and 11.0% reported they were paid within 120 days or later.

243. Information about prompt payments among veteran respondents is not presented because of the small number of responses.

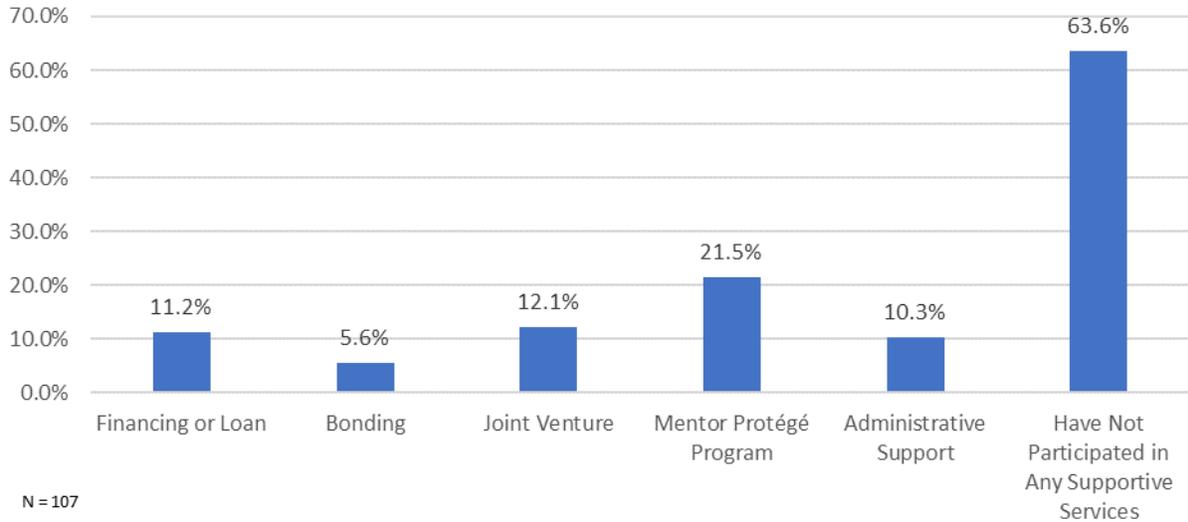
Chart 6-38: DBE Amount of Time to Receive Payment



f. Participation in Supportive Services or Capacity Development Programs

Chart 6-39: Close to a third (36.4%) of the DBE respondents reported they had participated in a business support program. A little over ten percent (11.2%) had participated in financing or loan programs and 5.6% had accessed bonding support programs. Over 12 percent (12.1%) had joint ventured with another firm; 21.5% had participated in a mentor-protégé program. Ten percent (10.3%) had received support services such as assistance with marketing, estimating, information technology. A majority, 63.6%, had not participated in any capacity development programs.

Chart 6-39: DBE Participation in Supportive Services Programs



5. DBEs’ Capacity to Perform on WSDOT Contracts

For this Report, WSDOT specifically directed us to examine DBEs’ “capacity” to perform on Department contracts. The concern about the abilities of DBEs to meet contract goals has been raised repeatedly by non-DBE prime contractors and consultants. Since there is no accepted definition of capacity— and it seems likely it would vary somewhat from subindustry to subindustry and from construction to professional services – we included questions on the anecdotal survey directed to how much work DBEs can currently perform, and whether they could perform more work if they had the opportunities. We also inquired about their bonding capacities.

Chart 6-40: Close to six percent (5.6%) of DBE respondents indicated their firm was ready and able to perform work on WSDOT contracts as a prime contractor or supplier. 43.9% indicated they were ready and able to perform on WSDOT contracts as both a prime contractor or supplier and as a subcontractor; 47.7% indicated they were ready and able to perform work only as a subcontractor or supplier. A small number of DBE respondents, 2.8%, indicated their firm was not ready and able to perform work on WSDOT contracts.

Chart 6-40: DBEs' Readiness to Perform on WSDOT Contracts

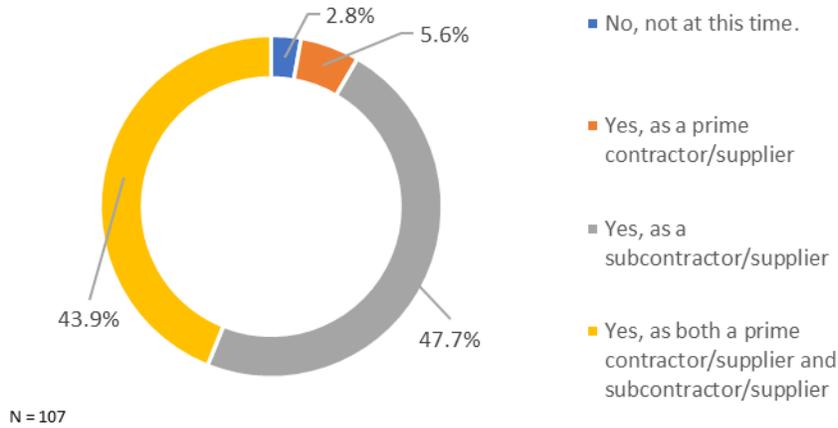


Chart 6-41: We also asked respondents whether they were willing to work on WSDOT contracts. Responses to these two questions are nearly identical. Among DBEs, 1.9% were not willing and 2.8% were not ready and able to take on WSDOT work. Close to 98% of DBE respondents indicated they are ready, able and willing to take on WSDOT work as either a prime, subcontractor or supplier.

Chart 6-41: DBEs' Willingness to Perform on WSDOT Contracts

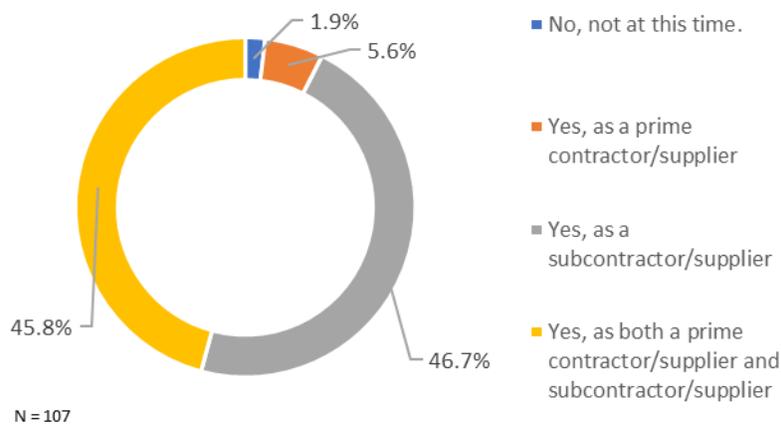


Chart 6-42: Only 2.8% of DBEs had not obtained all the professional licensing required to take on work as a contractor, supplier or subcontractor on WSDOT projects. For prime contractor and supplier work, 6.5% reported having all the required professional licensing; for prime, subcontracting, supplier work, 50.5% reported having all the required professional licensing; and for subcontracting and supplier work, 40.2% reported having all the required professional licensing.

Chart 6-42: DBEs' Professional Licensing Status

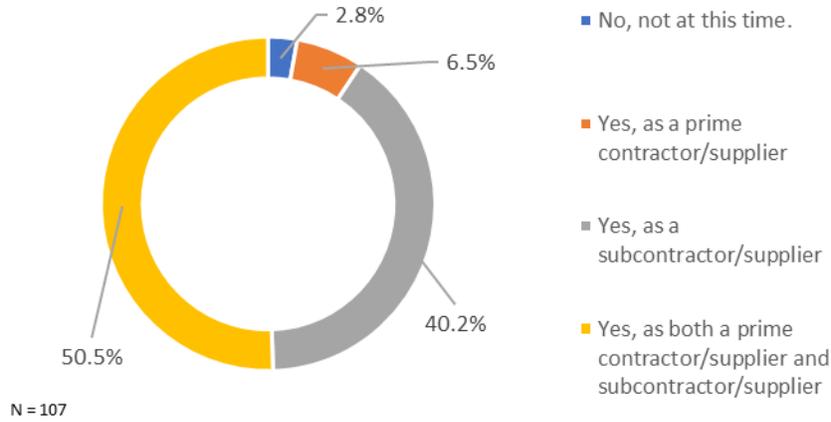


Chart 6-43: Over half of the DBEs (57%) reported that the size of contracts they had received was either well or slightly below the amount they are qualified to perform.

Chart 6-43: DBEs' Contract Size vs. Contract Amounts Qualified to Perform

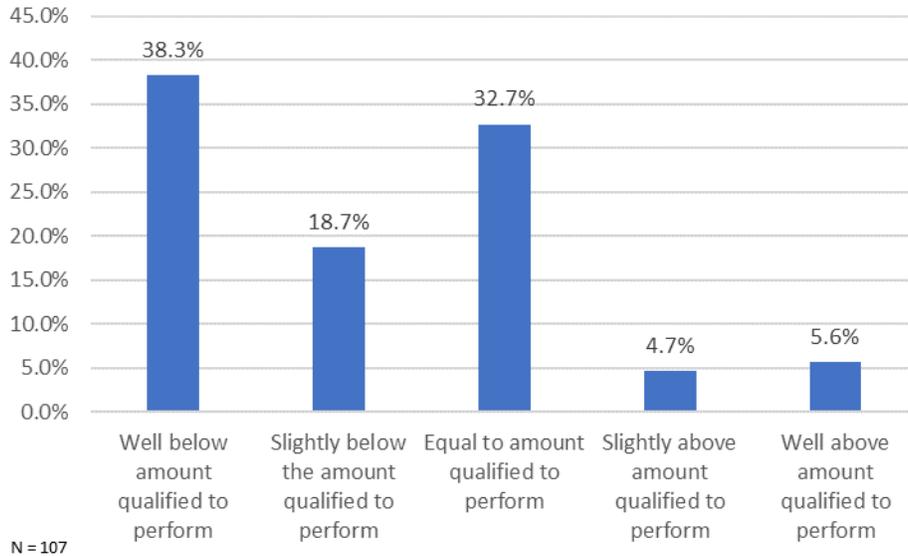


Chart 6-44: Over three quarters (78.4%) of minority and female respondents reported that they could take on up to 75% more work if it were offered; 20.6% could take on 75% more work; 0.9% were working at full capacity.

Chart 6-44: DBEs' Capacity for More Work

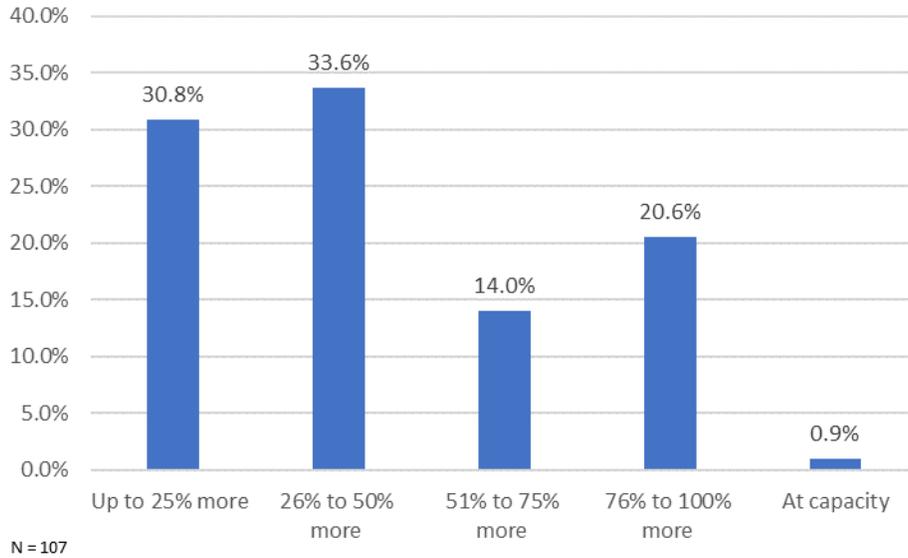


Chart 6-45: Two-fifths (40.2%) of DBEs worked on one to ten contracts annually; 35.5% worked on 11 to 50 contracts; 13.1% worked on 51 to 100 contracts; and 6.5% worked on more than 100 contracts.

Chart 6-45: Number of Contracts Performed Annually by DBEs

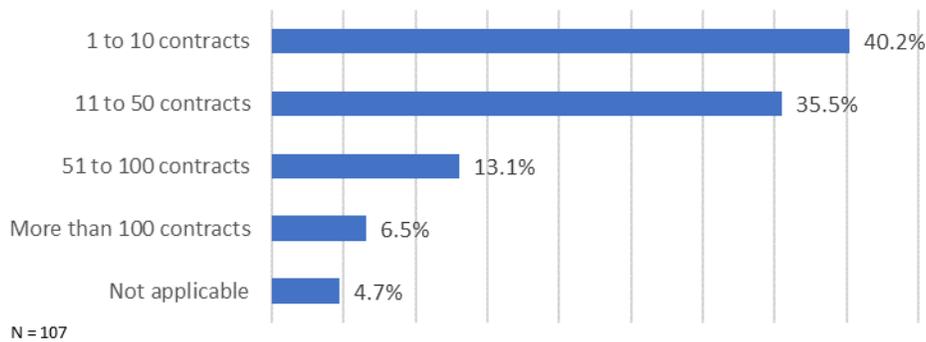


Chart 6-46: The average contract value for 73.8% of DBEs respondents is \$500,000 or less; 13.1% had secured contracts with an average value between \$501,000 to \$2M; 3.7% had secured contracts with an average value over \$5M and under \$15M; and 1.9% had secured contracts with values over \$15M but under \$45M.

Chart 6-46: Value of Contracts Performed Annually by DBEs

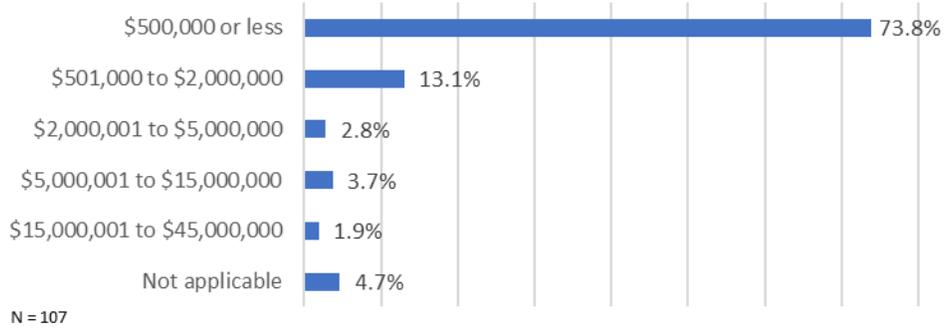


Chart 6-47: More than four-fifths (81.3%) of DBE respondents indicated their firm has the resources to hire additional staff to expand capacity.

Chart 6-47: DBE Resources to Add Additional Staff

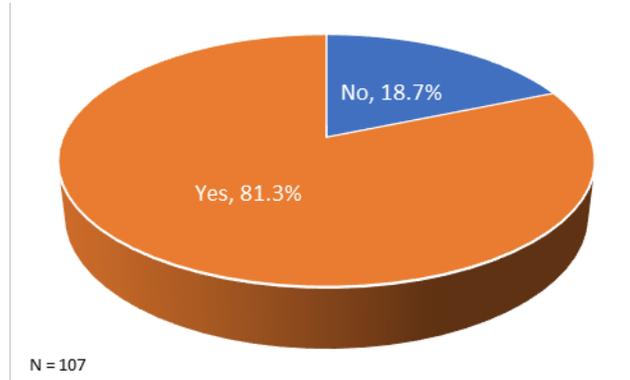
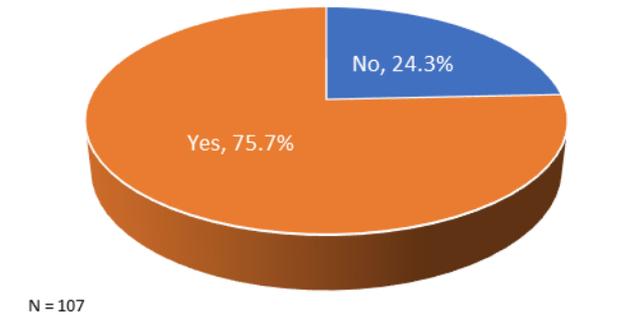


Chart 6-48: Three quarters (75.7%) of DBE respondents indicated their firm has access to temporary or seasonal labor to expand capacity.

Chart 6-48: DBE Access to Temporary Labor



We also examined DBEs' bonding capacity. The availability of surety bonding is another important factor in assessing whether firms could perform more work if they had the opportunities.

Chart 6-49: Over three-quarters (78.8%) of DBE construction contractors reported being surety bonded.

Chart 6-49: DBE Construction Firm Surety Bonding Status

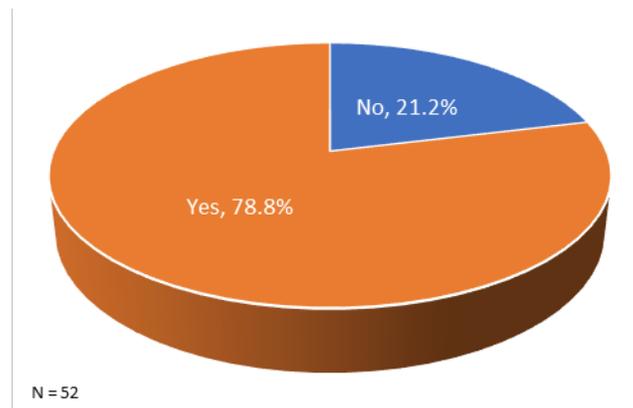


Chart 6-50: Over ninety percent (93.3%) of non-DBE construction contractors reported being surety bonded.

Chart 6-50: Non-DBE Construction Firm Surety Bonding Status

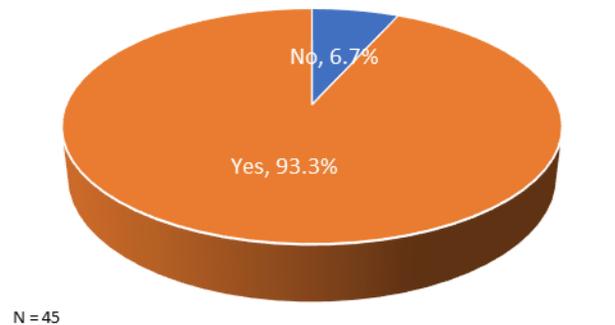


Chart 6-51: Among DBE construction respondents, three-fifths (61.6%) had obtained bonding an aggregate bonding limit between \$500,000 and \$15 million; 3.8% had obtained between \$15 million and \$30 million; 1.9% had obtained between \$30 million and \$50 million; and 11.5% had obtained over \$50 million in aggregate surety bonding. Only one-fifth (21.2%) indicated their firm had not obtained any bonding.

Chart 6-51: Maximum Aggregate Bonding Limit for DBE Construction Firms

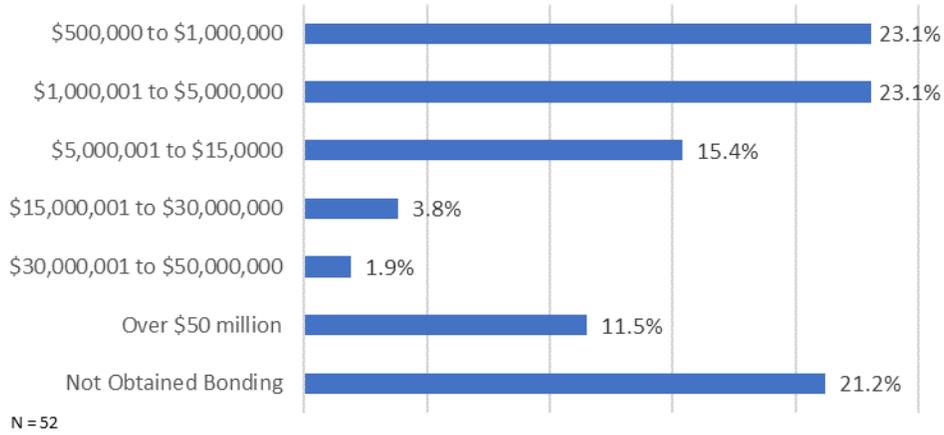


Chart 6-52: Among non-DBE construction respondents, over two-fifths (44.4%) had obtained an aggregate bonding limit between \$500,000 and \$15 million; 6.7% had obtained between \$15 million and \$30 million; 6.7% had obtained between \$30 million and \$50 million; and 35.6% had obtained over \$50 million in aggregate surety bonding. Only 6.7% indicated their firm had not obtained any bonding.

Chart 6-52: Maximum Aggregate Bonding Limit for Non-DBE Construction Firms

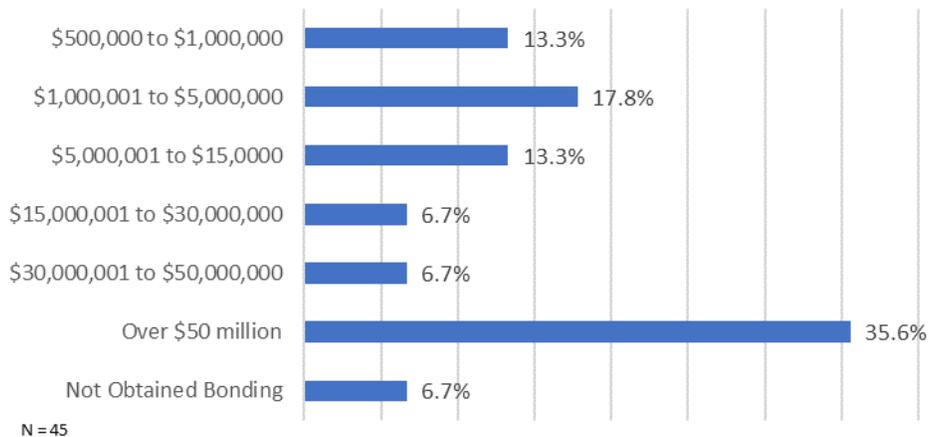


Chart 6-53: Among DBE construction respondents, over half (57.7%) had an individual contract bonding limit between \$500,000 and \$5M; 7.7% had an individual contract limit between \$5M and \$15M; 5.8% had an individual contract limit between \$15M to \$30M; 1.9% had an individual contract limit between \$30M to \$50M; 7.7% had an individual contract limit over \$50M; and 19.2% had not obtained any bonding.

Chart 6-53: Individual Contract Bonding Limit for DBE Construction Firms

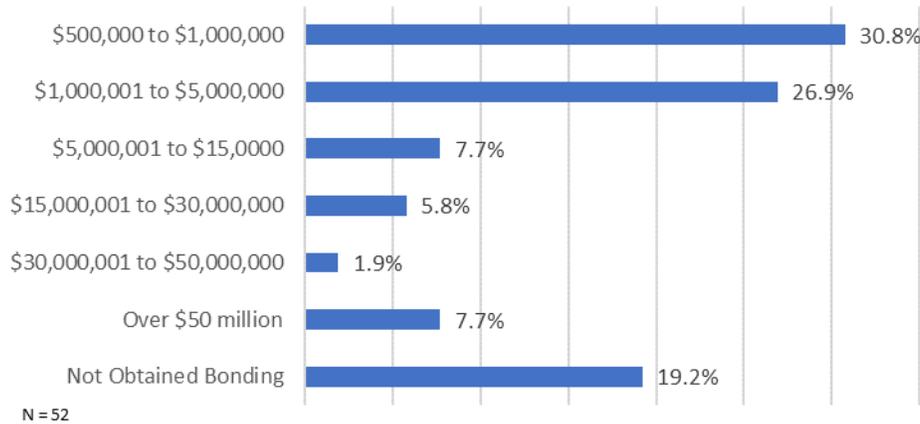
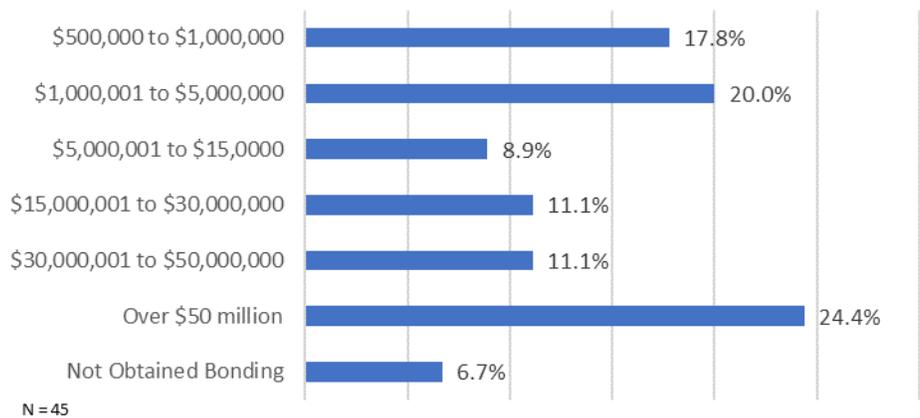


Chart 6-54: Among non-DBE construction respondents, 37.7% had an individual contract bonding limit between \$500,000 and \$5M; 8.9% had a limit between \$5M and \$15M; 11.1% had a limit between \$15M to \$30M; 11.1% had a limit between \$30M to \$50M; and 24.4% had a limit over \$50M.

Chart 6-54: Individual Contract Bonding Limit for Non-DBE Construction Firms



In summary, we found that:

- 91.6% of DBEs reported they were able to perform as subcontractors on WSDOT contracts.
- Over 50% have all the required professional licensing for prime, subcontracting, supplier work.
- 57% of DBEs reported that the size of contracts they had received was either well or slightly below the amount they are qualified to perform.

- 78.4% of DBEs reported that they could take on up to 75% more work if it were offered; less than 1.0% were working at full capacity.
- 81.3% of DBEs indicated their firm has the resources to hire additional staff to expand capacity and 75.7% reported their firm has access to temporary or seasonal labor to expand capacity.

The largest capacity gap between DBEs and non-DBEs concerned access to surety bonding. Although 78.8% of DBE construction contractors reported being surety bonded, compared to 93.3% of non-DBE construction contractors, the limits for DBEs were much smaller. For DBEs, 61.6% of had obtained bonding an aggregate bonding limit between \$500,000 and \$15 million; 3.8% had obtained between \$15 million and \$30 million; 1.9% had obtained between \$30 million and \$50 million; and 11.5% had obtained over \$50 million in aggregate surety bonding. In contrast, 44.4% of non-DBEs had obtained an aggregate bonding limit between \$500,000 and \$15 million; 6.7% had obtained between \$15 million and \$30 million; 6.7% had obtained between \$30 million and \$50 million; and 35.6% had obtained over \$50 million in aggregate surety bonding.

6. Written Survey Responses from Minority and Woman Respondents

The survey also included open-ended response questions. These responses were consistent with information provided in the business owner interviews and the survey's closed-ended questions. Responses from minority and woman respondents to these questions have been categorized and are presented below.

a. Negative perceptions of competency and professionalism

Several minority business owners reported that they continue to experience negative assumptions and perceptions about their competency and capabilities based on race and ethnicity.

That people don't deserve to work and that we don't know how, so why hire us and that we don't have the bandwidth. Which is a lie!

They place my knowledge of the trade in question for no reason. I have 5 journeyman cards.

Assumption is that Hispanic-owned are subservient and only capable of landscaping and labor, not management, much less primes.

I assume that my competency is questioned at first. But I believe that my company has proved our competency with our quality of work.

Our qualifications are often called into question by those on the ownership side who have higher degrees. For instance, LAs and inspection engineers who have never completed a project in their life will have issues with the ways we perform the work in the field.

We are constantly questioned on our ability to perform by others as most of my workforce does not speak English fluently.

Not giving you objective comments, rather looking for fault.

Undervalued [has been my experience].

We are devalued before we even get out of the gate.

It's always a question whether we can perform the work if we have qualified workers, even when we dispatch from the union. There are some Jim Crow going on because if they somehow challenge us it's intimidating to our team sometimes when yes, we may have not worked with them before but most of our workers are union trained.

b. Systemic racial exclusion

Many minority respondents reported that fair opportunities to compete for contracts were not available because of systemic racial barriers.

As a black man I would like to have a fair opportunity to compete for government contracts the same as larger companies without discriminatory barriers.

It [discriminatory barriers] is a horrendous problem in Washington State procurement and contracting, particularly for Black heavy-civil contractors with very little to no external assistance.

Hispanic-owned firms don't get equal treatment.

I have been told that they did not want to work with a Black firm, and not to call back. I have been told that they don't work with minority firms. I have been told that they already have their minority firm to work with. I have been refused

bid documents and told that there is no MBE or WBE goal on the WSDOT project, only voluntary goals.

They don't have to question based on race it's given without even asking. We can't show up as a chameleon with white skin.

They always try to make it difficult and find the most difficult work to set aside to make DBE work.

[As an American Indian or Alaska Native] I believe the system is altogether cynical, In the end we electrical contractors compete against other minority contractors who may have less intense scopes of work than we face. We fight an uphill struggle in this system because of what we are and who we are.

Based on the color of my skin, you can see their facial expression which isn't friendly.

White males discriminate against women of color and men of color.

Or [some] will simply say they do not want to work with a Black company, which has happened many times before.

c. Racial Harassment

Minority respondents reported being subject to demeaning comments and racial harassment.

Been called "BOY". Last person [to be] asked to start job and the first one to be let go from the job before it's done.

Heard some racial chatter over the CB radios when in my semi-truck, but can't dial in what company is saying that stuff.

In the past, Aryan nation racism from white union workers.

There is non-awareness of how harassment, bullying can show up in professional settings that disproportionately affect those in underrepresented groups and how they are perceived, dealt with. This can range from subliminal behaviors to the overt and obvious ones. From my experience in various settings, bullies do not stop even if you ascend to a better position relative to them, have people advocating for you, sponsoring you.

One woman respondent noted improvement since her parents' generation.

Please note that my mother and father were owners before I became the owner. I know my mother dealt with far more issues regarding her race and gender than I am having to deal with. If she hadn't put in the hard work, I don't think it would be quite as easy for me to have the business set up the way it currently is.

d. Gender bias and barriers

Sexism and stereotyping of women in the construction and design industries remains pervasive.

Being 100% female owned has caused me to lose contracts from men who say women shouldn't be in construction.

Men don't think women should be in construction. It's more of a male dominated area. White males discriminate against women of color and men of color. They are happy to put their wives and daughter as owners but nobody else.

Some general contractors prefer to work with male project managers and owners.

I had a trucking contract. They hired a new superintendent and he is less than favorable to women. Once he was hired, I have not performed any work for that company. He doesn't believe women should work in construction. I lost over \$100,000 per year of work from that company alone.

Some prime consultants have been hesitant or unwilling to subcontract with an WBE based on gender.

As a female business owner in a male dominated industry, often times some men will think they know more about my expertise and question what I have to say. Sometimes they have asked to speak to the "owner" and expect there to be a man in charge.

Many times when talking with males in the industry I am questioned on what I "truly" know because I am a female. I often have to provide evidence or further explanations simply because I am not taken seriously.

Contractors discussing my age and gender as it relates to the amount of experience they think I have and competency to do the work.

[As a white, female contractor] I don't feel valued and my input is often ignored.

I do get "mansplained" to a lot in my field by less qualified project managers with less expertise.

Not treated with the same respect as male owners/engineers.

I'm also held to a higher standard than male subcontractor counterparts.

One example would be when a MALE Realtor that I contracted to sell one of my projects in 2022 told me that "You should just leave the building up to the guys."

Women at the construction job site are not treated with the same respect as their male counterparts.

A woman in the [name] industry is treated different by the DOT's and many maintenance supervisors and other DOT leadership.

Being asked if I need someone to turn my truck around. I have 38 years of experience. I can get a truck in and out of anything.

As a woman and in my role as a 51% owner my capabilities to manage, bid, and quality control projects gets questioned even though I have the certs and experience.

It's a Man's World. Women in the industry are expected to have more office type jobs.

[In] meetings my input is ignored. People are hearing and aren't listening or understanding what I am telling them.

Not listening, talking over, interrupting, is a way of questioning, not respecting competence and judgment. There were opportunities at other agencies where I was told statements such as "the client doesn't need you," "you need to develop yourself more, you're not ready to be PM," "this solicitation isn't about your expertise" by members of certain large firms.

Which time [has my competency been questioned]? It's happened enough that it usually doesn't register a reaction.

I haven't experienced harassment in a long time, but stereotyping and subtle bias remains an issue.

There are instances when I'll be in a meeting with men, and they will not take me seriously or they will only speak to the male employees I have brought with me to the meeting. I have experienced this on more than one occasion and even with Union Representatives before. I do think these conditions are improving. But only because they are realizing that the goals they must meet are being taken seriously.

Stereotyping for a woman in the construction industry will be here for the foreseeable future. The government customer will often turn to males on sites visits for questions.

Many women business owners reported instances of hostile environments and sexual harassment.

Comments made on jobsite about my gender. Sexual harassment by operators exposing themselves to me (contractor tried to remove me from the job to solve the problem).

Just being female in a male dominated industry. Can't be female and smart. All so screwed because you either don't have the right "look" or way of dressing. Basically, you're either too dressed up or good looking to be smart and if you're neither of those then you should be happy to deal with the comments and suggestions that are made- and you're still not smart.

The engineering consulting industry is mostly led by older white males who do not treat women, minorities, and other marginalized community members the same way as other white men. In my experience, some MBE engineering firms (*some agencies' MBE programs include many nationalities/races by definition) headed by men from cultures that do not respect women and others from specific communities also treat us differently (and not in a good way).

Numerous microaggressions to physical assault by senior engineer (pinning against a wall while yelling at me.)

There are often times I have been bullied in attempt at receiving other products for discounted rates.

Because I am female, many times men think they can bully me into getting lower pricing or free items.

The construction consultant made multiple comments about me needing a male partner, meaning a husband. I am not LGBTQ, but I guess he thought I was (shouldn't matter). The men did not want me to actually get the project built. It felt like none of them did. I was forced to sell my project with the plans and permits. Not a positive experience with my first project. I AM NOT GIVING UP.

The industry is male and female parts, they can't help themselves. As a woman I'm here to provide a quality service and build relationships. I am here to provide opportunity and access and provide a service not sexual favors.

Many times, the person that was the most demeaning was the project manager/construction consultant that was contracted out. The ONLY reason I subcontracted with him was because he begged for the work and he was a major hindrance/disruptor on this project. He did it on purpose because the comments over and over again about me not being married were APPARENT.

Sometimes in the field my crew will experience this [sexual harassment], as soon as the office is notified it is dealt with.

Prime consultants are constantly making disparaging remarks - but because we work harder, they are proven wrong.

e. Access to networks

A few DBE firms reported entrenched relationships and “good ‘ole boy” networks impede access to contract opportunities.

NO, Bob and Bill don't call us first.

Lots of times contractors don't communicate vital job information to me, but they give my competitors that info.

Not getting information.

[I'm] not invited.

Not always or it's last minute.

As a subconsultant, it's still mostly who you know. And I don't play golf.

Construction is a good ole boys club. Primes use their favorite subs who have usually been in the business for years. Systemic racism and classism perpetuate the lack of opportunity to break into these relationships.

There is no way to really get "in" without being "in."

I can't get visibility to obtain contracts being small, women owned firm.

Creating unpleasant or unwelcoming environments, experiences, this can prevent access for diverse firms and individuals. Industry associations that organize these gathering places are sponsored by large companies that serve as board members, officers who can exercise significant bias for their own business interests.

Several non-minority women respondents felt they had the same access to informal and formal networking information.

Yes, in Washington I believe we have the same access.

I have worked in Seattle for 22 years so I do have a network but this may be WSDOT specific.

f. Access to contract opportunities

Some DBEs reported that prime firms use them only on projects with goals and that private sector and no-goal work is unavailable.

I believe there are Prime Contractors working with us because they only need us to meet their goals. If they were not having to meet goals, they would rather not work with us.

Just get looked at as a mandatory nuisance.

They don't keep us on the projects to learn the work so then our crews are limited to scope and capacity. It's systemic of preventing African Americans and Island people from working on projects.

A number of non-minority, woman-owned firms attributed the contract barriers they have experienced to their firm size.

Much of prime contractors go with large firms they have heard about for engagement and do not investigate smaller firms.

Again, this is based on firm size. Many small firms are overlooked due to the larger firms having more personnel even though most of their personnel would not work on the contracted project.

My competency is questioned because I am a "single-shingle," woman-owned firm. There is an assumption that a larger firm is more capable to lead.

The white firms know that we have limited experience because they don't hire us neither are we given opportunity to exercise our team on project to increase capacity.

g. Financial barriers to opportunities

Many DBEs reported institutional barriers when trying to obtain surety bonding, insurance and loans that reduce their ability to compete on an equal basis. Several reported being subject to stricter criteria when trying to obtain bonding, insurance and loans than their white male counterparts.

Not overtly, but my credentials and business insurance/qualifications had excessive scrutiny that other male subcontractors did not experience.

They require higher downpayments from us based on credit or lack of credit.

Have been quoted exaggerated prices on insurance that my competitors don't pay.

Most of the time we can't get funding due to prior or the fact they know the system is betting on us to lose not win! It's the system, that's why we can't walk into a bank without two co-signers and collateral.

Lack of land and home ownership causes some bonding agents to pause and second guess bonding availability.

African-American firms have always had a difficult time obtaining bonding. If we were able to obtain work year-round, it would be much easier to obtain bonding but when

it's difficult to get work and we can't pay our bills, especially insurance, and if it lapses, we cannot obtain insurance or bonding.

Financing or loan programs require traditional terms and conditions that do not favor underrepresented Black firms. Bonding cost is based on relationships and record of accomplishment, which eliminates 99% or more of Black heavy-civil contractors.

Small and new firms face particularly large challenges.

We are a small family-owned business and have difficulty meeting some of the bonding requirements for our larger projects.

Performance bonding can be difficult due to size of contracts.

Access to these [financial support] services is tough given the small size of our firm. The smaller insurers can't provide the correct coverage and the large ones don't really give you the time of day.

Both with loans and [letters of credit]. Big banks like Bank of America and Chase do not like to deal with small companies like us and will give us higher rate. Local banks are more friendly but they have been very conservative in financing lately perhaps due to the economic forecast.

Lines of credit with banks will always be difficult. As a small business banks want everything as collateral but not equal collateral for lines of credit.

Loans are limited due to the economy and our size.

I can get bonding to certain amount yet it is at a high rate.

Insurance and bonding capacity have usually been limited by the size and the time in business.

This is more of a business size issue. We need to maintain professional liability insurance which costs us just under \$5000 a year. If gross revenues are \$175,000, that is almost 3%, not including general liability and other insurance requirements.

The price of insurance for our small trucking company is very expensive.

Cost of required insurance. Finding carrier willing to insure.

h. Barriers to equal contract terms

Some respondents reported pressure to reduce their pricing or discriminatory terms because of their DBE status.

I have done work where I was paid half of what my competitors made on the same job.

Often asked to lower my prices or used to fill a quota but never actually awarded work.

Prime contractors expect me to be much lower than my competitor's. Not sure why.

They think I should price my hourly rate based on white owner operators that do not have multiple trucks and do not have to account for employees in their pricing and insurances as well.

Typically, someone of my gender does not supply major materials. It is rare, therefore, the prime contractor expects very low pricing in order to do business with them.

My competitors do not like that I am an MBE/DBE. They bid extremely low, then when I tell the prime, I can't bid that low, they use my competitor after they have renegotiated their prices.

The GC called to ask why I marked the material up so high and I advised that I didn't mark the material up, that I gave him the same price his material supplier gave to me. He got the material supplier on a conference call and supplier admitted that he doubled the price for rebar because we were an MBE firm that he had never worked with him before.

It appears that when we request quotes for supplies, we always seem to be higher.

I've found out recently that I was being charged a higher paint [price] than others, making our bid higher so blocking us from winning work.

Yes, they get better quotes on materials, etc. just because they really don't want to work with us.

A lot of times we get higher pricing and late bids sometimes less than 10 min before bids and many times after the bid so that makes our bid off or low.

Several non-minority women who were not eligible to be DBE certified felt they were at a disadvantage relative to minority contractors.

Other companies that are predominantly "non-white" receive more contracts because they are classified as a "disadvantaged" business when the selection process should have everything to do with merit, quality control, and customer satisfaction.

Because we are white, we feel we are at a disadvantage.

Since we cannot become a certified WMBE, we get passed over in favor of those that are.

We are not DBE, reverse discrimination. Giving 17-20% as condition of award to DBE. Totally unfair to the non-minority businesses.

i. Written Survey Responses Veteran Respondents

The few written comments from non-minority, non-female veterans are presented below.

No veteran respondent reported discriminatory barriers based on military service. The most commonly reported issue was difficulty in obtaining bonding, insurance and financing. Similar to minority- and woman-owned firms, small veteran-owned firms faced the largest challenges.

Bonding is more expensive than the profit margins and requires a superior credit score.

We have a hard time getting loans based on that we're a new business.

We are small and haven't been in business long. We have had a painful and expensive learning curve. It has affected the company's credit.

One veteran A&E firm reported they were adequately insured.

We are a consulting firm. We are adequately insured for Professional E&O, Auto, and General Commercial Liability.

Some veteran respondents felt that veteran-owned firms should be afforded the same level of remedial program benefits and attention as firms owned by racial/ethnic minorities and White women.

Veteran status is not an equal priority for companies as DBE, WBE, MBE. No one seems to really care.

SDVOSB does not have equal status to other demographic set-asides in all jurisdictions.

Very small/sparse opportunities for veteran incentives in WSDOT projects.

Federal: must have sufficient pool of bidders for SDVOSB set-aside. Since there aren't many of us it's extremely hard to get work set-aside.

There is not funding for Veterans but there is for WBE and Minorities.

If there is no VOB goal some companies won't look at us.

One respondent noted that prime companies use them to meet the goal but do not follow through with the work once the contract is awarded.

Large companies use our status to win a contract and then we don't see the work.

C. Conclusion

Consistent with other evidence reported in this Study, the business owner and stakeholder interviews and the survey results strongly suggest that minorities and women continue to suffer widespread discriminatory barriers to full and fair access to contracts and associated subcontracts in WSDOT's market area. Many DBEs reported negative perceptions and assumptions about their competency that impeded their ability to conduct business. Minorities and women still face challenges related to stereotyping, racial bias and sexism. DBEs had reduced opportunities to obtain contracts, less access to formal and informal networks, and difficulty in securing financial support relative to non-DBEs in the construction industry. Contract size also remains a barrier to obtaining prime contracts. Veteran-owned firms did not experience discriminatory barriers based on their military service.

Anecdotal evidence examining DBE firm capacity indicate a large number of DBEs are working below their capacity. Many reported they had available labor and staffing resources to take on additional work. While extremely difficult to obtain,

DBE construction firms reported securing surety bonding in aggregate and for individual projects to compete for contracts.

Anecdotal evidence may “vividly complement” statistical evidence of discrimination. While not definitive proof that the WSDOT has a sufficient evidentiary basis to continue to implement race- and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that, especially when considered in conjunction with other evidence assembled, are relevant and probative of the WSDOT’s evidentiary basis to consider the continued use of race- and gender-conscious measures.

VII. RECOMMENDATIONS FOR THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION'S DIVERSE BUSINESS PROGRAMS

The quantitative and qualitative data in this study provide a thorough examination of the experiences of Minority- and Woman-owned Business Enterprises (“M/WBEs”), Disadvantaged Business Enterprises (“DBEs”) and Veteran-Owned Business Enterprises (“VBEs”) in the Washington State Department of Transportation’s (“WSDOT”) geographic and industry markets for construction and construction-related services contracts and associated subcontracts. As required by strict constitutional scrutiny and the DBE program regulations²⁴⁴, we analyzed evidence of DBE²⁴⁵ utilization by WSDOT as measured by dollars spent. We next estimated the availability of DBEs in WSDOT’s markets in the aggregate and by detailed industry code. We then compared the Department’s utilization of DBEs to the availability of all ready, willing and able firms in its market to calculate whether there are disparities between WSDOT’s utilization and the availability of DBEs to perform on its contracts.

We further solicited anecdotal or qualitative evidence of DBEs’ experiences in obtaining contracts in the public and private sector construction and design industry and with WSDOT’s diverse business programs. WSDOT staff also provided extensive input about the operations of the program and suggestions for enhancements. These results provide WSDOT with the evidence necessary to narrowly tailor its DBE program as required by the federal courts.

WSDOT’s programs complies with strict constitutional scrutiny, the DBE program regulations and national best practices. The Department has made significant strides since our 2017 Study in enhancing its offerings to assist DBEs and SBEs to enhance their capacities. Several elements are outstanding, such as its achievement of parity for most groups, supportive services offerings and commitment to leveling the playing field for DBEs. The following suggestions are additional enhancements to support cur-

244. 49 C.F.R. Part 26.

245. As used throughout this report, the term DBE includes minority- and woman-owned firms that are not certified as DBEs under the Unified Certification Program.

rent efforts and activities to provide even greater opportunities for all firms to compete on a level playing field for WSDOT contracts and subcontracts.

A. Enhance Race- and Gender-Neutral Measures

The courts and 49 C.F.R. Part 26 require that an agency use race-neutral²⁴⁶ approaches to the maximum feasible extent to meet its DBE goal. This is a critical element of narrowly tailoring the program, so that the burden on non-DBEs is no more than necessary to achieve WSDOT's remedial purposes. Increased participation through race-neutral measures by DBEs will also reduce the need to set contract goals.

1. Revise the Eligibility Standards for the Minority, Small, Veteran and Woman's Business Enterprise Program for State Funded Contracts

The Office of Equity and Civil Rights administers the M/S/V/WBE Program to increase S/VBE and M/WBE participation on state funded contracts. We suggest that these efforts be enhanced by revising the eligibility criteria in three ways.

- First, there are no size limits for VBEs; so long as the majority shareholder is a veteran, the firm is eligible. By way of comparison, the limit in the SBE program is \$7M/year in annual gross revenues. We therefore suggest WSDOT's VBE eligibility standards mirror the size limits for SBEs, thereby equalizing the two types of certifications and not overly advantaging VBEs. This will also eliminate any confusion between the various certifications.
- Second, apply the affiliation restricts in the DBE program to SBEs and VBEs. This will ensure that SBEs and VBEs are in fact small business, not part of larger amalgamations of firms. The remedial programs should be limited to businesses that have been potentially subject to barriers on the basis of their size to create a more level playing field.
- Third, in line with the other changes, SBE and VBE eligibility should be limited to owners whose personal net worth is subject to the same test as in the DBE program. This will ensure that only firms owned by persons we are economically disadvantaged are eligible for the preference.

We further recommend that the SBE and VBE certification process be moved to the Office of Minority and Woman Business Enterprises ("OMWBE"). The

246. The term race-neutral as used here includes gender-neutrality, as defined in 49 C.F.R. §5.

addition of size limits, affiliation restrictions and a personal net worth test will require OMWBE's extensive expertise in reviewing certification applications. Trained staff must evaluate applications to ensure that eligibility criteria are adhered to and no front or pass thorough entities receive the benefits of the program.

2. Use the DBE Availability Estimates to set the SBE and VBE Contract Goals

WSDOT currently applies the same SBE and VBE goal to every contract. We recommend a more tailored approach that uses the DBE availability estimates in this report to set SBE and VBE contract goals. As discussed below, for the DBE program, this approach will ensure that SBEs and VBEs are utilized to the maximum feasible extent. The availability of DBEs is less than that for SBEs, since SBEs may be owned by individuals who are not socially and economically disadvantaged. This means that the estimate of DBE availability will be a subset of SBEs (and VBEs if our recommendation to apply the same criteria to VBEs is implemented), ensuring that the goals are achievable.

3. Expand Opportunities for Smaller Contracts

WSDOT has two contracting initiatives to assist small firms to propose on its contracts. The Department unbundles contracts under \$100,000 to assist small firms to bid as prime contractors through an abbreviated prequalification procedure. WSDOT also implements a streamlined prequalification process through its Small Works Roster program for contracts under \$300,000.

We recommend that these limits be raised. The current approach has yielded results. But the dollar amounts of the Department's contracts have increased, and so should the limits of reduced prequalification. Perhaps the abbreviated procedure could be applied to contracts up to \$250,000 and the Small Works Roster to contracts up to \$500,000. DBEs reported that they could handle somewhat larger jobs under their current prequalification status, so raising the limits would allow them to grow their capacities without the burden of the full process and criteria for prequalification for large contracts.

4. Support Consulting Firms' Relationships with DBEs by Permitting Markups

Several large consulting firms stated that the Department's prohibition on marking up a subconsultant's billing rates to account for the increased cost of managing another firm was a disincentive to using DBE subconsultants to the maximum possible extent. Several years ago, FHWA expressed concern with

this approach, but offered to work with the Department to explore addressing this issue. We suggest that WSDOT follow up on this collaboration to determine whether a fixed markup percentage (perhaps 5%) can be permitted to encourage large firms to use DBEs as much as possible.

5. Expand the Mentor-Protégé Program

WSDOT implements a mentor-protégé program to increase firms' capacities as part of the S/VBE program. There was a general consensus among both DBEs and non-DBEs that supporting the growth and development of DBEs is a worthy objective.

Most participants in the program reported excellent experiences. The program has helped them to increase their skills and develop stronger relationships between the parties. More resources to expand the number of firms that can participate would support the growth of the pool of DBEs and their capacities to perform on WSDOT work as both prime contractors and subcontractors.

6. Increase Resources to Enhance DBEs' Surety Bonding Limits

In our review of DBEs' capacities to perform on WSDOT contracts, the largest gap between their abilities to take on work and non-DBEs concerned surety bonding limits. While the Department has many supportive services offering to address this disparity, more should be done to overcome barriers.²⁴⁷ There are some excellent programs with demonstrated success that go beyond outreach and training to bring sureties and lenders to the table to actually provide bonds and insurance to small firms.²⁴⁸ We suggest WSDOT explore these enhancements to its current efforts.

7. Target Support to NAICS Codes in which Black-owned DBEs Do Not Fully Participate

The concentration analyses in Chapter IV suggest that DBEs could benefit from efforts to expand the subindustries in which they receive work. DBEs had received few to no dollars in some North American Industry Classification System ("NAICS") codes and utilization was highly concentrated in a handful of DBEs in the major subindustries in which WSDOT procures construction services. For example, in contrast to non-DBEs, spending with Black-owned firms

247. WSDOT has commissioned two studies about barriers to obtaining surety bonding. <https://wsdot.wa.gov/sites/default/files/2021-11/WSDOT-Surety-Bond-Study.pdf>; https://wsdot.wa.gov/sites/default/files/2023-05/Executive-Order-22-01-Bonding-Study_4.pdf. Both studies found that DBEs still experience difficulty in obtaining bonding, and suggested more education, training and assistance such as financial literacy programs and credit repair services.

248. *See, for example*, <https://www.illinoistollway.com/technicalassistance>.

is highly concentrated in NAICS codes in which the Department spends little money. The largest codes for Black firms (484220, Specialized Freight (except Used Goods) Trucking, Local; 561730, Landscaping Services; and 237110, Water and Sewer Line and Related Structures Construction) constitute 55.1% of all dollars received by Black firms. In stark contrast, these codes make up only 2.9% of the share of dollars going to non-DBEs. Further, the disparity ratio for Blacks on FHWA funded contracts was 68.4%, which is both substantively and statistically significant at the 0.001 level.

These results suggest that WSDOT's supportive service and other efforts should focus on Black firms participating in the most important aspects of its contracts and target resources to increase Black utilization in the three codes that make up 71.6% of its total spend (237310, Highway, Street, and Bridge Construction; 238910, Site Preparation Contractors; and 238210, Electrical Contractors and Other Wiring Installation Contractors). Black-owned DBEs could be surveyed to determine what would help them to expand their capacities into these subindustries.

B. Continue to Implement a Narrowly Tailored DBE Program

WSDOT's DBE program has been very successful in opening opportunities for minority and woman firms on its contracts. As reported in Chapter IV, overall, DBEs have reached parity with non-DBEs in receiving WSDOT dollars. We note, however, that Black-owned firms still experienced large and statistically significant disparities. Further, when we examined whether firms were concentrated within an industry, or between industries, on the basis of race or gender, a picture emerged of unequal outcomes for DBEs compared to non-DBEs. Further, the utilization was highly concentrated amongst a small number of firms, which suggests that market wide barriers have not been overcome for all groups.

In addition, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that D/M/WBEs do not yet enjoy full and fair access to opportunities to compete for construction and construction-related services contracts. Data from the Census Bureau's *Survey of Business Owners* indicate very large disparities between D/M/WBE firms and non-D/M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Similarly, data from the Census Bureau's *American Community Survey* ("ACS") indicate that Blacks, Hispanics, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly

situated White men. The results of numerous small business credit surveys reveal that D/M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our other studies for WSDOT, Federal Aviation Administration funded contracts and state funded contracts outside WSDOT's construction and construction related services contracts further buttress the conclusion that race and sex discrimination remain persistent barriers to equal contracting opportunities. Many minority and female owners reported that they still encounter barriers based on their race and/or gender and that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete.

We therefore recommend that WSDOT continue to implement a narrowly tailored DBE program.

1. Use the Study to Set the Triennial DBE Goal for FHWA and FTA Funded Contracts

49 C.F.R. Part 26 requires a recipient to engage in a two-step process to set a triennial goal for DBE participation.

Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination.²⁴⁹

One approved method to set the triennial goal is to use data from a disparity study. We therefore recommend that the Department use the DBE aggregated weighted availability findings in Chapter IV to determine the Step One base figure for the relative availability of DBEs required by §26.45(c).²⁵⁰ These results are the estimates of total DBE availability that reflect the importance of each subindustry to WSDOT's overall FHWA funded contracting activity.

249. 49 C.F.R. §26.45(b).

250. Table 4-9, Aggregated Weighted Availability.

Under §26.45(d), the Department must perform a Step Two analysis.²⁵¹ WSDOT must consider whether to adjust the Step One figure to reflect the effects of the DBE program and the level of DBE availability that would be expected in the absence of discrimination. The Department can use the statistical disparities in Chapter V of the rates at which DBEs form businesses as a possible marker of the availability of minority- and woman-owned businesses that would be expected “but for” discrimination. This is the type of “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”²⁵² However, we note that while the DBE regulations have withstood repeated legal attacks, there is no direct case law upholding this type of “but for” analysis. We therefore advise WSDOT to proceed with caution in using the economy-wide data for an adjustment.

2. Use the Study to Set DBE Contract Goals

As a recipient under the jurisdiction of the Ninth Circuit Court of Appeals, WSDOT is required to limit its use of race-conscious contract goals to those groups that have suffered discrimination in its market area. The results of the disparity analyses of WSDOT’s contracting activities on both FHWA and state funded contracts, as well as the economy-wide disparities established in the Census Bureau datasets, support the inference that DBEs do not yet enjoy a level playing field for all types of WSDOT prime contracts and associated sub-contracts. Even with the use of contract goals on federal aid projects, Black-owned firms still did not enjoy parity. We therefore recommend that the Department continue its use of narrowly tailored contract goals to level the playing field for its contracts.

The highly detailed unweighted availability estimates in Chapter IV can serve as the starting point for setting narrowly tailored contract goals that reflect the percentage of available DBEs as a percentage of the total pool of available firms. The Department should weigh the estimated scopes of the contract by the availability of DBEs in those scopes, and then adjust the result based on geography and current market conditions (for example, the volume of work currently underway in the market, project location, the entrance of newly certified firms, specialized nature of the project, etc.), past achievement on similar projects and any other relevant factors.

WSDOT uses the B2Gnow[®] electronic diversity management system to support DBE program implementation. We have worked with this firm to develop the contract goal setting module used by the Department to assist with the

251. “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal.” 49 C.F.R. §26.45(d).

252. 49 C.F.R. §26.45(d)(3); *see also* §23.51.

process of setting narrowly tailored goals that are legally defensible and administratively feasible. The new detailed, six-digit NAICS availability figures in Chapter IV should be entered into the goal setting formula, then adjusted to the dollar weights of the specific contract scopes. The results of this formula must then be reviewed by WSDOT for any adjustments.²⁵³

3. Consider Utilization Above Contract Goals in Evaluating Good Faith Efforts

Some prime contractors asserted that they might use DBEs more extensively if they were able to receive credit for exceeding the goal in the solicitation or for using DBEs not listed in the original compliance documents. Valid concerns about undermining the use of DBEs on future contracts militate against “banking” past utilization for future projects. However, we suggest that the Department track any DBE utilization greater than the condition of award goal and permit a bidder to submit the achievement beyond the goal as evidence of its good faith efforts should it fail to fully meet the goal on a future project. This would encourage prime firms to exceed the goals when possible.

4. Enhance DBE Program Policies and Procedures

The DBE program operates well. We suggest some revisions based on the feedback of business owners and staff and national best practices. We note that some of these enhancements will require more staff resources.

- More transparency about how DBE contract goals are set would be helpful. As discussed below, we recommend using the highly detailed data in this Report to set contract goals. While WSDOT uses a narrowly tailored, legally defensible and replicable methodology, information about how a specific goal was determined should allay concerns. Goals on smaller contracts and jobs in eastern Washington were reported to be especially difficult to meet. A readily accessible methodology might help to address resistance or questions from prime contractors and even WSDOT staff. In addition to using this approach, a list of the NAICS codes used to set the goal could be listed in the bid documents to provide guidance on how to meet the target for that solicitation.
- Greater clarity about the process to submit Good Faith Efforts (“GFE”) documentation was requested by many firms. There was generally skepticism about whether GFE would be accepted, and few bidders were

253. For information about using disparity study data to set narrowly tailored contract goals, please see www.contractgoal-setting.com. We developed this free website in conjunction with B2Gnow®, Inc., to assist agencies to set defensible and achievable contract goals.

willing to take the risk. Developing checklists, samples and training materials would help to ensure that the steps to document GFE are clear and the process for evaluating submissions is transparent. The results of submissions should also be published so that other firms can use them as a guide and increase confidence that the Department fairly evaluates documentation.

- Increased monitoring of DBE program compliance was urged by DBEs and WSDOT staff. This seems to be mostly a problem of insufficient program personnel. Examples include the requirement that prime contractors promptly pay all subcontractors (not only DBEs), meeting the DBE commitments in the bid submission and the contractual documents, and evaluating contractors' GFE throughout the life of the contract.

5. Develop Performance Measures for Program Success

WSDOT should develop quantitative performance measures for the overall success of the DBE program. To evaluate its effectiveness in reducing the systemic barriers identified in this Report, possible benchmarks might be:

- Increased participation by Black-owned businesses as prime contractors and subcontractors
- Increased prime contract awards to certified firms
- Increased variety in the industries in which minority- and woman-owned firms are awarded prime contracts and subcontracts
- Increased "capacity" of certified firms as measured by bonding limits, size of jobs, profitability, etc.

APPENDIX A:

FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 and β_3 are coefficients, and μ is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined the Washington State Department of Transportation, the analysis was limited to data from the State of Washington. The coefficient for the new variable showed the impact of being a member of that race or gender in the metropolitan area.

APPENDIX B:

FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. Probit regression analysis is used to explore the determinants of business formation because the question of business formation is a “yes’ or “no” question: the individual does or does not form a business. Hence, the dependent variable (business formation) is a dichotomous one with a value of “one” or “zero”. This differs from the question of the impact of race and gender of wages, for instance, because wage is a continuous variable and can have any non- negative value. Since business formation is a “yes/no” issue, the fundamental issue is: how do the dependent variables (race, gender, etc.) impact the probability that a particular group forms a business? Does the race or gender of a person raise or lower the probability he or she will form a business and by what degree does this probability change? The standard regression model does not examine probabilities; it examines if the level of a variable (*e.g.*, the wage) rises or fall because of race or gender and the magnitude of this change.

The basic probit regression model looks identical to the basic standard regression model:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry and occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term; β_1 , β_2 , and β_3 are coefficients, and μ is the random error term.

As discussed above, the dependent variable in the standard regression model is continuous and can take on many values while in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. The two models also differ in the interpretation of the independent variables’ coefficients, in the standard model, the interpretation is fairly straight-

forward: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.²⁵⁴ However, in the probit model, because the model is examining changes in probabilities, the initial coefficients cannot be interpreted this way. One additional computation step of the initial coefficient must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurring. For instance, with the question of the impact of gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the additional computation chance of the coefficient of WOMAN yielded a value of -0.12, we would interpret this to mean that women have a 12 percent lower probability of forming a business compared to men.

254. The exact interpretation depends upon the functional form of the model.

APPENDIX C:

SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating that a number has statistical significance at 0.001, 0.01, or 0.05 levels (sometimes, this is presented as 99.9 percent; 99 percent and 95 percent, respectively) and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This Appendix provides a general explanation of significance levels.

This Report seeks to address the question of whether or not non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing the Washington State Department of Transportation as it explores whether each racial and ethnic group and White women continue to experience discrimination in its markets is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (e.g., wages) and the independent variable (e.g., non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say, for example, that this analysis determines that non-Whites receive wages that are 35 percent less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (e.g., non-Whites) and the dependent variable (e.g., wages) – the first sub-question. It is still important to determine how accurate the estimation is. In other words, what is the probability that the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (e.g., non-Whites earn identical wages compared to White men

or non-Whites earn 0 percent less than White men). This sometimes is called the null hypothesis. We then calculate a confidence interval to find the probability that the observed relationship (e.g., -35 percent) is between 0 and minus that confidence interval.²⁵⁵ The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. When a number is statistically significant at the 0.001 level, this indicates that we can be 99.9 percent certain that the number in question (in this example, -35 percent) lies outside of the confidence interval. When a number is statistically significant at the 0.01 level, this indicates that we can be 99.0 percent certain that the number in question lies outside of the confidence interval. When a number is statistically significant at the 0.05 level, this indicates that we can be 95.0 percent certain that the number in question lies outside of the confidence interval.

255. Because 0 can only be greater than -35 percent, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.

APPENDIX D:

UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

Defining Unweighted and Weighted Availability

Unweighted availability measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent ($\$100,000/\$1,000,000$).

Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be measured in dollars to permit an “apples-to-apples” comparison.

How to Calculate the Weighted Availability

Three steps are involved in converting unweighted availability into weighted availability:

- Determine the unweighted availability
- Determine the weights for each NAICS code
- Apply the weights to the unweighted availability to calculate weighted availability

The following is a hypothetical calculation.

Table A contains data on unweighted availability measured by the number of firms:

Table A

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
TOTAL	40	45	53	12	48	1230	1428

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table A). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table B presents the unweighted availability measure as a group’s share of all firms.

Table B

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
TOTAL	2.8%	3.2%	3.7%	0.8%	3.4%	86.1%	100.0%

Table C presents data on the agency’s spending in each NAICS code:

Table C

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCCC	\$2,000.00	44.4%
TOTAL	\$4,500.00	100.0%

Each NAICS code’s share of total agency spending (the last column in Table C) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group’s overall weighted availability. This is done by multiplying the NAICS code weight by the particular group’s unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA’s component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D under the cell which presents NAICS code AAAAAA’s share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group’s overall weighted availability. Table D presents this information:

Table D

NAICS	Black	Hispanic	Asian	Native American	White Women	Non M/W/ DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
TOTAL	0.028	0.029	0.037	0.008	0.034	0.864

To determine the overall *weighted availability*, the last row of Table D is converted into a percentage (*e.g.*, for the Black weighted availability: $0.028 * 100 = 2.8$ percent). Table E presents these results.

Table E

Black	Hispanic	Asian	Native American	White Women	Non MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

APPENDIX E:

QUALITATIVE EVIDENCE FROM WASHINGTON DISPARITY STUDIES

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted three disparity studies in the State of Washington over the last several years. These reports that shed light on the experiences of Minority- and Woman-owned Business Enterprises (“M/WBEs”) in the Puget Sound area and overall Washington marketplace. The results are quite consistent across agencies, time periods and industries. We interviewed minority and woman owners and non-M/WBE representatives about barriers to the full and fair participation of all firms in the procuring agency’s market area. The total number of participants for these interviews was 539 individuals. We also collected comments from 32 organizations representing M/WBE and prime, non-MWBE firms in an electronic survey.

This summary of anecdotal reports provides an overview of the following Disparity Studies: the State of Washington 2019 (“State 2019”);²⁵⁶ Washington State Airports 2019 (“Airports 2019”);²⁵⁷ and Washington State Department of Transportation 2017 (“WSDOT 2017”)²⁵⁸.

1. **Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism Continue to Impede the Success of M/WBEs**

Many minority and woman owners reported being stigmatized by their race and/or gender or being a certified firm. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that they often experience negative attitudes concerning their competency, skill,

256. State 2019: <https://omwbe.wa.gov/sites/default/files/public/State%20of%20Washington%20Disparity%20Study%202019%20-%202019%2007%2030%20%281%29.pdf>

257. Airports 2019: <https://wsdot.wa.gov/sites/default/files/2022-02/Washington-State-Airports-Disparity-Study-2019.pdf>

258. WSDOT 2017: <https://wsdot.wa.gov/sites/default/files/2021-10/OEO-DisparityStudy-2017.pdf>

and professionalism. These biases impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that M/WBEs and smaller firms are less qualified and capable.

They are very entrenched in their mindset as to because you are a person of color, you don't qualify. Period. No matter your degrees and all the certifications and everything. I have certifications as long as your arm but it does not make a difference. (State 2019, page 113)

When I show up for projects, people see an ethnic minority, therefore incompetency. (WSDOT 2017, page 119)

Just because you have that label [of MBE certification], some people have a bad view of that program.... They think that you're not as good because you are an MBE, "You're only getting work because you're an MBE." I don't know how you get rid of that notion. (State 2019, pages 113-114)

[The] majority of time, [people] will hire people who are like themselves. You put a job out for RFQ, right? And you look for the qualifications and you say, "Oh! That person looks like me, or I relate to that person." (Airports 2019, page 128)

Typically, once a contractor realizes I am black and a female, the standards for me and my firm will raise to level that seem unreachable for most businesses. (State 2019, page 129)

It's just this stigma [to being a DBE].... It's a double edge sword. There's the chip on the shoulder of the people you're interfacing with, whether it's a project manager, estimator, typically some white guy that feels like the DBE program shouldn't be in existence. (Airports 2019, page 129)

It's still a man's world and a White man's world. And I'm constantly reminded of that....[there is still a] good ole boys club. (State 2019, page 114)

Being black is often perceived as symbols of limits or a metaphor for "outsider." (State 2019, page 129)

Sexist attitudes were still prevalent.

I've been made fun of lots of times when I show up [as a woman] and I'm the engineer. (State 2019, page 114)

It's still very a man's world. It's very hard to even have a woman project manager.... The good ole boys. That definitely still has an issue, I notice in the construction industry, at least over here on this side of the mountains for eastern Washington. It is definitely a White man's world. (State 2019, page 114)

There's just a different perception when it comes to women in this industry, and I very much think that it's an issue.... The unions, they would all call other males that worked in the office ... I would just pick up that phone, and I'm like, "That is not who you deal with. You deal with me." They would automatically, and it still happens all the time, go to somebody else. Just that undertone of they need to deal with the guy, or whoever, to get something done. (WSDOT 2017, page 120)

I went to wait on a contractor on the counter and I was told "I'll wait for one of the boys." (WSDOT 2017, page 120)

The most overt discrimination that I had since taking over the company was going to a woman-owned bank and talking to a woman new account manager who looked at my VP's name and said, "Oh, are you here to sign this individual up as the new owner?" Rather than myself, who was sitting right in front of her. (State 2019, page 116).

Usually, the older school generation has a harder time working with the females. I know that, so I play off my brother. My brother takes control of that job. (WSDOT 2017, page 121).

I went on the job pre-construction meeting and I'm going to say there was probably about six contractors there. I was the woman. "Oh, who's the chick here?" (State 2019, page 117)

Most of the primes I deal with are male, most of the DOT people I deal with are males. There's no one out there for me to go to that I feel is looking out for my interest, because I'm a female. (WSDOT 2017, page 120)

I received a letter in the mail that said women did not belong in transportation and that I was taking away a job from a man who was supporting his family. It's only about four years ago. I wrote him a letter back. "Dear angry man, of course women belong in transportation. At least we stop and ask for directions." (WSDOT 2017, page 122)

Women also experienced sexual harassment and hostile work environments.

As a woman, I have personally had several encounters – some innocuous, just offensive and a few very scary ones. As a group, harassment occurs implicitly and in insidious ways. (State 2019, page 130)

I try to make contacts and sometimes as a woman it turns into being asked out on a date or hit on or touched inappropriately. (State 2019, page 118)

My first journeyman, he would just start coming up on the ladder behind me and like press himself against me or something. He cup grabbed my ass a few times, and I turned him in. And all he was given was a slap on the wrist. (State 2019, page 117)

2. Lack of Access to Business and Professional Networks and Information Limit M/WBEs' Opportunities

Many minority and woman respondents reported difficulty in accessing networks and fostering relationships necessary for professional success. These barriers extended to agency staff. Respondents were unable to gain access to and communicate with key agency decisionmakers.

I want to be able to compete legitimately with [entrenched consultants] or at least get my foot in the door so I can ask to bid on a particular project. [An agency staffer] said, "Well, I don't really know. You just have to talk to people you know." (WSDOT 2017, page 123)

Barriers are subtle, and hidden behind pleasantries. They are pervasive and relentless. They are perpetuated by government employees and none are ever held accountable by managers. (State 2019, page 129)

I'm always questioning [WSDOT staff], and they are insulted that I'm questioning them. The prime contractor's insulted that I'm questioning them. (WSDOT 2017, page 120)

The barrier here is the contracting culture [with] some of the smaller airports. The agency staff just wants you to do what they're comfortable with.... They just hang out with [these consultants] at golf courses, in bars. (Airports 2019, page 130)

You need to know who to contact. Who the decision maker's going to be when it comes to putting together your team, or putting together the ultimate proposal. You need to know who

that lead is, who that project manager is, who that decisionmaker is, because if you're talking to anybody else, you're wasting your time. (WSDOT 2017, page 123)

I will not be given all the resources needed to perform the service while other firms will be given ample resources to perform the service. (State 2019, page 129)

Where I have sometimes the most gender [issues] is with WSDOT employees....If you can get your foot in the door and then keep working with [the general contractors] and showing them that you can do a good job. I think they get beyond that gender. (Airports 2019, page 128)

In some trades, minority contractors cannot get the certifications to install certain products and materials. They simply are not allowed because the supplier wants to limit competition, which results in whites having the advantage. (State 2019, page 130)

3. Obtaining Work on an Equal Basis

Respondents reported that institutional and discriminatory barriers continue to exist in the Washington State area marketplaces. They were in almost unanimous agreement that M/WBE contract goals remain necessary to level the playing field and equalize opportunities. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure equal opportunity.

I'd be back at a larger firm [without the DBE program] and subordinate to White men who always want to be "the man". (Airports 2019, page 130)

Without goals there wouldn't be these businesses in the room. (WSDOT 2017, page 123)

Probably 80% of [firm] business is on contracts where primes need to meet a goal, and the same case where if there's not a goal, they don't call and when there's a goal they call. It's every major contractor that operates in this region. (WSDOT 2017, pages 123-124)

The only chance we have here in this room is if there's a goal, they'll call you. Otherwise, they never call you. (WSDOT 2017, page 124)

Unless there's a head shift and they start to see the benefit of the program, the benefit of diversity, the benefit of having

different values and different backgrounds and how that can actually make their project more efficient and better, this is going to continue to be a conversation. (WSDOT 2017, page 119)

It's kind of like a license to hunt. I might not catch anything, but it gave me that license and I get to get out there and do it. (Airports 2019, page 130)