



# **2023 Idaho Department of Transportation Disparity Study**

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FINAL REPORT

**Final Report**

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# **2023 Idaho Transportation Department Disparity Study**

**Prepared for**

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# CHAPTER 1.

## Introduction

The Idaho Transportation Department (ITD) is responsible for the planning, construction, operation, and maintenance of highways and bridges throughout Idaho. As a United States Department of Transportation (USDOT) fund recipient, ITD implements the Federal Disadvantaged Business Enterprise (DBE) Program, which is designed to address potential discrimination against DBEs in the award and administration of USDOT-funded contracts and procurements. In an effort to refine its implementation of the Federal DBE Program in an effective and legally defensible manner, the agency retained BBC Research & Consulting (BBC) to conduct a *disparity study* to evaluate whether person of color (POC)- or woman-owned businesses face any barriers in competing for or obtaining agency work and to evaluate the effectiveness of its implementation of the Federal DBE Program in encouraging the participation of those businesses in its Federal Highway Administration (FHWA)-, Federal Transit Administration (FTA)-, and Federal Aviation Administration (FAA)- funded projects. As part of the study, BBC examined whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars ITD awarded to POC- and woman-owned businesses during the *study period*, which was October 1, 2018 through September 30, 2021 (i.e., *utilization*); and
- The percentage of contract and procurement dollars one might expect ITD to award to POC- and woman-owned businesses based on their availability to perform specific types and sizes of agency prime contracts and subcontracts (i.e., *availability*).

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

- The legal framework surrounding the Federal DBE Program, other POC- and woman-owned business programs, and disparity study methodology;
- Conditions in the Idaho marketplace for POCs, women, and POC- and woman-owned businesses; and
- Contracting practices ITD has in place or could consider implementing in the future and its implementation of the Federal DBE Program.

There are several reasons why information from the disparity study is useful to ITD:

- The study provides information about whether POC- and woman-owned businesses face any barriers in competing for or obtaining ITD work.
- The study identifies barriers POCs, women, and POC- and woman-owned businesses face in the Idaho marketplace that might affect their ability to compete for or obtain ITD work.
- The study provides an evaluation of how effective various efforts are in encouraging POC- and woman-owned business participation in ITD contracts and procurements.

- The study provides insights into how ITD could refine contracting processes and its implementation of the Federal DBE Program to better encourage the participation of POC- and woman-owned businesses in its work and help address any barriers.

BBC introduces the 2023 ITD Disparity Study in three parts:

- A. Background;
- B. Study Scope; and
- C. Study Team Members.

## A. Background

The Federal DBE Program is designed to increase the participation of POC- and woman-owned businesses in USDOT-funded projects. As a recipient of FHWA, FTA, and FAA funds, ITD must implement the Federal DBE Program and comply with program regulations for projects that include those funds.

**1. Overall DBE goal.** Every three years, ITD is required to set separate overall aspirational goals for the participation of DBEs in its FHWA-, FTA-, and FAA-funded work. If DBE participation is less than its overall DBE goal for a particular funding type in a particular year, then the agency must analyze the reasons for the difference and establish specific measures that enable it to meet the goal in the next year. The Federal DBE Program specifies the steps ITD must follow to establish its overall DBE goals. To begin the goal-setting process, the agency must develop *base figures* for its goals based on demonstrable evidence of the availability of *potential DBEs* to participate in its FHWA-, FTA- and FAA-funded projects. Then, the agency must consider conditions in its *relevant geographic market area (RGMA)* and other factors to determine whether adjustments to its base figures are necessary to ensure its overall DBE goals accurately reflect current contracting conditions for POC- and woman-owned businesses (referred to as *step-2 adjustments*). ITD is not required to make step-2 adjustments to its base figures, but it is required to consider relevant factors and explain its decision to FHWA, FTA, and FAA.

**2. Program measures.** The Federal DBE Program also requires ITD to project the portions of its overall DBE goals it will meet through the use of *race- and gender-neutral* measures and the portions it will meet through the use of any *race- and gender-conscious* measures. Race- and gender-neutral measures are designed to encourage the participation of all businesses—or all small businesses—in an agency’s work, regardless of the race/ethnicity or gender of business. If an agency cannot meet its goals solely through the use of race- and gender-neutral measures, then it must consider also using *race- and gender-conscious* measures. Race- and gender-conscious measures are designed to encourage the participation of POC- and woman-owned businesses, specifically, in an agency’s work (e.g., using condition-of-award DBE goals to award individual contracts or procurements).

ITD has determined that using race- or gender-conscious measures is appropriate for its implementation of the Federal DBE Program and therefore must also determine which race/ethnic or gender groups are eligible to participate in those measures and for which types of projects. Eligibility for such measures must be limited to those groups for which compelling evidence of discrimination exists in the marketplace (i.e., *inferences of discrimination*). USDOT provides a waiver provision if an agency determines that its implementation of the Federal DBE Program should include race- or gender-conscious measures but only considers certain groups as eligible to participate in them.

**3. DBE certification.** ITD's Office of Civil Rights (OCR)'s certification committee is responsible for certifying businesses as DBEs including initial certification, renewal, and decertification. OCR serves in that role for all Idaho agencies that receive USDOT funds. To be eligible for DBE certification, business owners must prove they are part of a "socially and economically disadvantaged" group as defined by 49 Code of Federal Regulations (CFR) Part 26. The groups USDOT presumes to be disadvantaged as part of the Federal DBE Program include Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, and women of any race/ethnicity. Business owners who identify as members of those groups must establish 51 percent "real and substantial ownership," in their businesses, and they must possess the power and expertise to control the daily operations and management of their businesses. Approximately 250 businesses are currently certified as DBEs with ITD, a number that has remained consistent over the past five years.

## B. Study Scope

BBC conducted a disparity study based on the state-, FHWA-, FTA-, and FAA-funded contracts and procurements ITD's Highways Division, Consulting Division, Public Transportation Office, and Aeronautics Division awarded during the study period. Information from the study will help the agency encourage the participation of POC- and woman-owned businesses in its work and implement the Federal DBE Program effectively and in a legally defensible manner.

**1. Definitions of POC- and woman-owned businesses.** To interpret the analyses presented in the disparity study, it is useful to understand how BBC defined POC- and woman-owned businesses, certified DBEs, and potential DBEs in its analyses.

**a. POC-owned businesses.** BBC focused its analyses on the POC business groups presumed to be disadvantaged as part of the Federal DBE Program in 49 CFR Part 26:

- Asian Pacific American-owned businesses;
- Black American-owned businesses;
- Hispanic American-owned businesses;
- Native American-owned businesses; and
- Subcontinent Asian American-owned businesses.

Businesses had to be 51 percent owned and controlled by individuals who identified as members of one of the above race/ethnic groups to be considered POC-owned businesses. We gathered that information from a variety of sources, including surveys, business listings, and Internet research. We considered businesses to be POC-owned based on the known races/ethnicities of their business owners, regardless of whether they were DBE-certified or held any other types of certification. Our definition of POC-owned businesses included businesses owned by men of color and women of color. For example, we grouped results for businesses owned by Black American men with results for businesses owned by Black American women to assess outcomes for Black American-owned businesses in general.

**b. Woman-owned businesses.** Because BBC classified businesses owned by women of color according to their corresponding race/ethnic groups, analyses and results pertaining to woman-owned businesses pertain specifically to *white woman-owned businesses*. As with POC-owned businesses, we considered

businesses to be woman-owned if they were 51 percent owned and controlled by individuals who identify as women, based on the known genders of business owners and regardless of whether the businesses were DBE-certified or held any other types of certification.

**c. DBEs.** DBEs are POC- and woman-owned businesses specifically certified as such by ITD or another agency that ITD recognizes as a certifying authority. A determination of DBE eligibility includes assessing business' gross revenues and business owners' personal net worth.

**d. Potential DBEs.** BBC considered businesses to be potential DBEs if they were POC- or woman-owned businesses that were DBE-certified at the time of the study or appeared they could be DBE-certified based on revenue requirements specified in 49 CFR Part 26 (regardless of actual certification). We examined the availability of potential DBEs as part of helping ITD calculate base figures for its next overall DBE goals.

**2. Analyses in the disparity study.** The crux of the disparity study was to assess whether any disparities exist between the participation and availability of POC- and woman-owned businesses for transportation-related contracts and procurements ITD awarded between October 1, 2018 and September 30, 2021 in the areas of construction, professional services and nonprofessional goods and other services, including work other local agencies awarded using passthrough FHWA, FTA, and FAA funds from ITD. Information in the study is organized in the following manner:

**a. Legal framework and analysis.** The study team conducted a detailed analysis of relevant federal regulations, case law, state law, and other information to guide the methodology for the study and inform ITD's implementation of the Federal DBE Program. The legal framework and analysis for the study is summarized in **Chapter 2** and presented in detail in **Appendix B**.

**b. Marketplace conditions.** BBC conducted quantitative analyses of outcomes for POCs, women, and POC- and woman-owned businesses working in relevant Idaho contracting industries relative to white men and businesses owned by white men. In addition, we collected anecdotal evidence about potential barriers POC- and woman-owned businesses face in Idaho from public meetings, in-depth interviews, and other efforts. Information about marketplace conditions is presented in **Chapter 3, Chapter 4, Appendix C, and Appendix D**.

**c. Data collection and analysis.** BBC examined data from multiple sources to conduct the utilization and availability analyses, including surveys the study team conducted with hundreds of businesses throughout Idaho. The scope of our data collection and analysis for the study is presented in **Chapter 5**.

**d. Availability analysis.** BBC estimated the percentage of ITD's relevant prime contract and subcontract dollars that POC- and woman-owned businesses are *ready, willing, and able* to perform. That analysis was based on agency data and surveys the study team conducted with Idaho businesses that work in industries related to the types of transportation-related contracts and procurements ITD awards. We analyzed availability separately for relevant business groups and for different types of contracts and procurements. Results from the availability analysis are presented in **Chapter 6** and **Appendix E**.

**e. Utilization analysis.** BBC analyzed relevant prime contract and subcontract dollars ITD awarded to POC- and woman-owned businesses during the study period. We analyzed that information separately

for relevant business groups and for different types of contracts and procurements. Results from the utilization analysis are presented in **Chapter 7**.

**f. Disparity analysis.** BBC examined whether there were any disparities between the participation of POC- and woman-owned businesses in contracts and procurements ITD awarded during the study period and the availability of those businesses for that work. BBC analyzed disparity analysis results separately for relevant business groups and for different types of contracts and procurements. We also assessed whether any observed disparities were statistically significant. Results from the disparity analysis are presented in **Chapter 8** and **Appendix F**.

**g. Program measures.** BBC reviewed measures ITD uses to encourage the participation of small businesses as well as POC- and woman-owned businesses in its contracts and procurements as well as its implementation of the Federal DBE Program. That information is presented in **Chapter 9**.

**h. Overall DBE goals.** Based on the availability analysis and other research, BBC provided ITD with information to help them set their next overall DBE goals for their FHWA-, FTA-, and FAA-funded projects, including establishing base figures and considering step-2 adjustments. Information about ITD's overall DBE goals is presented in **Chapter 10**.

**i. Considerations.** BBC provided guidance related to additional program options and changes to current contracting practices ITD could consider, including information related to its next overall DBE goals for FHWA-, FTA-, and FAA-funded work. Our review and guidance related to program implementation is presented in **Chapter 11**.

## **C. Study Team Members**

The study team was made up of five firms that, collectively, possess decades of experience related to conducting disparity studies in connection with the Federal DBE Program.

**1. BBC (prime consultant).** BBC is a disparity study and economic research firm based in Denver, Colorado. We had overall responsibility for the study and performed all the quantitative and qualitative analyses.

**2. GCAP Services (GCAP).** GCAP is a DBE-certified Hispanic American-owned program implementation firm based in Costa Mesa and Sacramento, California. GCAP assisted the project team with community engagement and data collection tasks.

**3. The Metts Group.** The Metts Group is a woman-owned, DBE-certified economic and community analysis firm based in Hayden, Idaho. The Metts Group helped with anecdotal data collection.

**4. Davis Research.** Davis Research is a survey fieldwork firm based in Calabasas, California. The firm conducted telephone and online surveys with thousands of businesses in connection with the availability and utilization analyses.

**5. Holland & Knight.** Holland & Knight is a multi-national law firm and has participated in more than 75 disparity studies with BBC. Holland & Knight developed the legal framework for the disparity study.

## CHAPTER 2.

# Legal Analysis

As a recipient of United States Department of Transportation (USDOT) funds, the Idaho Transportation Department (ITD) implements the Federal Disadvantaged Business Enterprise (DBE) Program, which is designed to encourage the participation of person of color (POC)- and woman-owned businesses in an agency's USDOT-funded work. ITD uses a combination of *race- and gender-neutral* and *race- and gender-conscious* measures as part of its implementation of the program. Race- and gender-neutral measures are designed to encourage the participation of all businesses in an agency's contracting, regardless of the race/ethnicity or gender of business owners. Examples of such measures include networking and outreach efforts, technical assistance programs, and mentor-protégé programs not limited to POC- and woman-owned businesses. In contrast, race- and gender-conscious measures are specifically designed to encourage the participation of POC- and woman-owned businesses in an agency's contracting. The only race- and gender-conscious measure ITD uses as part of the Federal DBE Program is using condition-of-award DBE contract goals to award individual Federal Highway Administration (FHWA)-funded projects. Prime contractors bidding on those contracts must meet the goals by either making subcontracting commitments to DBEs or submitting *good faith efforts* documentation demonstrating they made genuine efforts to meet the goals but failed to do so.

Because ITD uses both race- and gender-neutral and race- and gender-conscious measures as part of its implementation of the Federal DBE Program, it is instructive to review information related to the legal standards governing their use. BBC Research & Consulting (BBC) summarizes legal information related to the use of race- and gender-neutral and race- and gender-conscious measures in three parts:

- A. Legal standards for different types of measures;
- B. Seminal court decisions; and
- C. Addressing legal requirements with the disparity study.

Appendix B presents additional details about the above topics.

### A. Legal Standards for Different Types of Measures

There are different legal standards for determining the constitutionality of program measures designed to increase business participation depending on whether they are race- and gender-neutral or race- and gender-conscious.

**1. Race- and gender-neutral measures.** Government agencies must show a *rational basis* for their use of race- and gender-neutral program measures. Courts typically apply the rational basis test to programs that do not potentially jeopardize any fundamental rights or discriminate on the basis of race, gender, sexual orientation, or other suspect factors. Showing a rational basis requires agencies to demonstrate that their contracting programs are rationally related to legitimate government interests (e.g., increasing the participation of local small businesses in their work). It is the least-rigorous standard for evaluating the constitutionality of business programs.



**2. Programs that include race- and gender-conscious measures.** Race- and gender-conscious measures must meet the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively.

**a. Strict scrutiny.** The strict scrutiny standard presents the highest threshold for evaluating the legality of contracting programs, short of prohibiting them altogether. Under the strict scrutiny standard, agencies must show a *compelling government interest* in using race-conscious measures and ensure that the use of such measures is *narrowly tailored* to meet program objectives.

**i. Compelling government interest.** Agencies that use race-conscious measures have the initial burden of showing evidence of discrimination within their relevant geographic market areas (RGMAs)—including statistical and anecdotal evidence—that supports the use of such measures.<sup>1</sup> Although organizations can draw on national statistics relevant to marketplace conditions within their own regions, they cannot rely solely on such information to demonstrate a compelling government interest for their programs. It is not necessary for organizations themselves to have discriminated against POC-owned businesses for them to take remedial action. They could take action if evidence indicates they are *passive participants* in race-based discrimination that exists in their RGMAs. Passive participation in discrimination refers to government organizations perpetuating discrimination in their contract and procurement processes simply by operating in a marketplace where such discrimination exists. One of the primary objectives of the disparity study is to determine if there is evidence of race-based discrimination in ITD's RGMA, which could indicate that ITD is passively participating in that discrimination and help establish a compelling government interest for the agency to use race-conscious measures as part of its contracting and procurement.

**ii. Narrow tailoring.** In addition to demonstrating a compelling government interest, government agencies must demonstrate that their use of race-conscious measures is narrowly tailored to meet program objectives. There are a number of factors courts consider when determining whether the use of such measures is narrowly tailored:

- The necessity of such measures and the efficacy of alternative race-neutral measures;
- The degree to which the use of such measures is limited to those groups that actually suffer discrimination in the local marketplace;
- The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;
- The relationship of any numerical goals to the relevant business marketplace; and
- The impact of such measures on the rights of third parties.

**b. Intermediate scrutiny.** In 1976, the United States Supreme Court ruled that gender-conscious programs must adhere to the requirements of the intermediate scrutiny standard, which is less rigorous

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<sup>1</sup> See e.g., *Concrete Works, Inc. v. City and County of Denver* ("Concrete Works I"), 36 F.3d 1513, 1520 (10th Cir. 1994).

than the strict scrutiny standard but more rigorous than the rational basis standard.<sup>2</sup> In order for a gender-conscious program to meet intermediate scrutiny, it must:

- Serve an important government objective, and
- Be substantially related to achieving the objective.

## B. Seminal Court Decisions

Two Supreme Court cases established that the use of race-conscious measures in contracting programs must adhere to the requirements of the strict scrutiny standard:

- *City of Richmond v. J.A. Croson Company (Croson)*;<sup>3</sup> and
- *Adarand Constructors, Inc. v. Peña (Adarand)*.<sup>4</sup>

Many subsequent decisions in federal district or appellate courts have refined the requirements for the use of race-conscious measures as part of POC- and woman-owned business programs, including several cases in the Ninth Circuit, the jurisdiction in which ITD operates. BBC briefly summarizes the United States Supreme Court's decisions in *Croson* and *Adarand* as well as the Ninth Circuit Court of Appeals' decisions in three other cases related to POC- and woman-owned business programs:

- *Western States Paving Co. v. Washington State Department of Transportation (Western States)*;<sup>5</sup>
- *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al. (AGC, San Diego)*;<sup>6</sup> and
- *Mountain West Holding Co., Inc. v. State of Montana, Montana DOT, et al. (Mountain West Holding)*.<sup>7</sup>

**1. *Croson* and *Adarand*.** The United States Supreme Court's landmark decisions in *Croson* and *Adarand* are the most important court decisions to date in connection with POC- and woman-owned business programs, the use of race-conscious measures, and disparity study methodology. In *Croson*, the Supreme Court struck down the City of Richmond's race-based subcontracting program as unconstitutional, and in doing so, established various requirements to which government agencies must adhere when using race-conscious contracting measures as part of their contracting and procurement:

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<sup>2</sup> *Craig v. Boren*, 429 U.S. 190 (1976).

<sup>3</sup> *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

<sup>4</sup> *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

<sup>5</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

<sup>6</sup> *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187 (9th Cir. 2013).

<sup>7</sup> *Mountain West Holding Co., Inc. v. The State of Montana, Montana DOT, et al.*, 2017 WL 2179120 (9th Cir. May 16, 2017), Memorandum opinion, (not for publication) United States Court of Appeals for the Ninth Circuit, May 16, 2017, Docket Nos. 14-26097 and 15-35003, dismissing in part, reversing in part and remanding the U. S. District Court decision at 2014 WL 6686734 (D. Mont. Nov. 26, 2014). The case on remand voluntarily dismissed by stipulation of parties (March 14, 2018).



- Agencies' use of race-conscious measures must meet the strict scrutiny standard of constitutional review—that is, in remedying any identified discrimination, they must establish a compelling government interest to do so and must ensure the use of such measures is narrowly tailored.
- In assessing availability, agencies must account for various characteristics of the prime contracts and subcontracts they award and the degree to which local businesses are *ready, willing, and able* to perform that work.
- If agencies show *statistical disparities* between the percentage of dollars they awarded to POC-owned businesses and the percentage of dollars those businesses might be available to perform, then *inferences of discrimination* could exist, justifying the use of narrowly tailored, race-conscious measures.

The Supreme Court's decision in *Adarand* expanded its decision in *Croson* to include federal government programs—such as the Federal DBE Program—that potentially include race-conscious measures, requiring that the use of such measures must also meet the strict scrutiny standard as part of federal programs.

**2. *Western States*.** *Western States* represented the first time the Ninth Circuit Court of Appeals considered the constitutionality of a state department of transportation's implementation of the Federal DBE Program. In *Western States*, the court struck down the Washington State Department of Transportation's (WSDOT's) implementation of the Federal DBE Program, because it included the use of race-conscious measures that did not satisfy the narrow tailoring requirement of the strict scrutiny standard. Specifically, the court held that:

- WSDOT did not present compelling evidence of race-based discrimination in the Washington transportation contracting industry, and agencies must demonstrate evidence of such discrimination for their use of race-conscious measures to be considered narrowly tailored and serving a remedial purpose.
- Even when evidence of discrimination exists within agencies' RGMAs, the use of race-conscious measures is narrowly tailored only when it is limited to those business groups that have been shown to actually suffer from discrimination in their marketplaces.
- Agencies can rely on statistical disparities between the participation and availability of POC- and woman-owned businesses on work they awarded to show discrimination against particular business groups in the marketplace, particularly if that work was awarded using only race- and gender-neutral measures.
- In assessing availability, agencies must account for various characteristics—such as capacity, firm size, and contract size—of the projects they award and the businesses located in their RGMAs.
- Sufficient amounts of both statistical and anecdotal evidence are necessary to demonstrate the need for race- and gender-conscious measures.

**3. *AGC, San Diego*.** In *AGC, San Diego*, the Ninth Circuit Court of Appeals considered the constitutionality of a state department of transportation's implementation of the Federal DBE Program for the first time after *Western States*. In contrast to its decision in *Western States*, the court upheld Caltrans' use of race- and gender-conscious measures and its implementation of the Federal DBE Program as constitutional, ruling that they met both the compelling government interest and narrow

tailoring requirements of the strict scrutiny standard. Caltrans' implementation of the Federal DBE Program and its defense of its program was based in large part on a 2007 disparity study BBC conducted.

**4. *Mountain West Holding.*** In *Mountain West Holding*, the Ninth Circuit Court of Appeals gave an unpublished opinion regarding the Montana Department of Transportation (MDT)'s implementation of the Federal DBE Program and Mountain West Holding Co.'s claim that MDT unconstitutionally gave preference to POC- and woman-owned businesses through its use of DBE contract goals. The court found Mountain West Holding Co.'s claims for injunctive and declaratory relief to be moot, because by the time of the case, MDT was no longer using DBE contract goals to award any work. However, the court found MDT's implementation of the Federal DBE Program may have relied on dubious information, including:

- MDT's interpretation of the decrease of DBE participation in its USDOT-funded projects when the agency stopped using DBE contract goals as evidence of barriers against POC- and woman-owned businesses in its work;
- MDT relying on anecdotal evidence in the absence of compelling, statistical evidence to demonstrate barriers against POC- and woman-owned businesses in its marketplace; and
- Numerous disputes of fact as to whether MDT's 2009 disparity study provided evidence in support of using race- and gender-conscious measures.

As a result of those findings, the court reversed and remanded for the district court to conduct further proceedings, including a trial or the resumption of pretrial litigation. However, the case was voluntarily dismissed by stipulation of both parties.

## C. Addressing Requirements

Many government agencies have used information from disparity studies to:

- Determine whether their contracting and procurement practices are affected by race- or gender-based discrimination;
- Design efforts to encourage the participation of POC- and woman-owned businesses in their work, both as part of the Federal DBE Program and independent of it; and
- Ensure their use of any race-conscious or gender-conscious measures meets the requirements of the strict scrutiny and intermediate scrutiny standards, respectively.

Various aspects of the 2023 ITD Disparity Study specifically address requirements the United States Supreme Court and other courts have established around POC- and woman-owned business programs and race- and gender-conscious measures:

- The study includes extensive econometric analyses and analyses of anecdotal evidence to assess whether any discrimination exists for people of color, women, and POC- and woman-owned businesses in the RGMA and whether ITD is actively or passively participating in that discrimination.

- BBC accounts for various characteristics of the contract and procurements ITD awards—such as work type, role, size, and location—as well as the specific characteristics of businesses working in the RGMA—such as primary lines of work, roles, bid capacities, and interest in government work—resulting in precise estimates of the degree to which POC- and woman-owned businesses are *ready, willing, and able* to perform that work.
- The study includes assessments of whether POC- and woman-owned businesses exhibit substantial statistical disparities between their participation and availability for ITD work, indicating whether any inferences of discrimination exist for specific business groups.
- The study includes specific recommendations to help ensure ITD’s implementation of the Federal DBE Program meets applicable legal standards and that any potential use of race- or gender-conscious measures is appropriate as part of its contracting and procurement and how to do so effectively and in a legally defensible manner.

## CHAPTER 3.

# Marketplace Conditions

Historically, there have been myriad legal, economic, and social obstacles that have impeded persons of color (POCs) and women from starting and operating successful businesses. Barriers including slavery, racial oppression, segregation, race-based displacement, labor market discrimination, and discriminatory government policies have produced substantial disparities for POCs and women, the effects of which still impact them today. Those barriers have limited opportunities for POCs in terms of both education and workplace experience.<sup>1, 2, 3, 4</sup> Similarly, many women were restricted to either being homemakers or taking gender-specific jobs with low pay and little chance for advancement.<sup>5</sup>

POC groups and women in Idaho faced similar barriers. American Indians in Idaho such as the Coeur d'Alene, Nez Perce, Shoshone, Bannock, Northern Paiute, Kalispel, and Kootenai were targets of military campaigns and forced assimilation programs that took indigenous land and attempted to end traditional cultural practices.<sup>6</sup> For example, the Dawes Severalty Act of 1887 effectively divided reservations into individually owned lots to offer Native Americans a path to land ownership, ultimately divesting two-thirds of Idaho Indigenous land to non-Native purchasers.<sup>7, 8</sup> Black Americans, Chinese Americans, Japanese Americans, and Hispanic Americans in Idaho were barred from using the same theaters, restaurants, and churches as white Americans and often lived in racially segregated neighborhoods.<sup>9, 10</sup> In addition, it was illegal for Black Americans or Chinese Americans to leave their residences after dark in a number of towns including Ashton and Wallace.<sup>11</sup> Disparate treatment also extended into the labor market. Black Americans, Chinese Americans, Japanese Americans, and Hispanic Americans were concentrated in low-paying jobs in the agriculture, extraction, railroad, and service industries and routinely experienced poor working conditions and discriminatory treatment.<sup>12, 13</sup> Women also experienced barriers in the labor market. Most women were restricted to service industry jobs such as domestic servants or store clerks and were excluded from positions of political and economic power.<sup>14</sup>

In the middle of the 20<sup>th</sup> century, many reforms opened up new opportunities for POCs and women nationwide. For example, *Brown v. Board of Education*, *The Equal Pay Act*, *The Civil Rights Act*, and *The Women's Educational Equity Act* outlawed many forms of discrimination. Workplaces adopted personnel policies and implemented programs to diversify their staffs.<sup>15</sup> Those reforms increased diversity in workplaces and reduced educational and employment disparities for POCs and women.<sup>16, 17, 18, 19</sup> However, despite those improvements, POCs and women continue to face barriers—such as incarceration, residential segregation, and disproportionate family responsibilities—that have made it more difficult for them start and operate businesses successfully.<sup>20, 21, 22, 23</sup>

Federal Courts and the United States Congress have considered barriers POCs, women, and POC- and woman-owned businesses face in a local marketplace as evidence for race- and gender-based discrimination in that marketplace.<sup>24, 25, 26</sup> The United States Supreme Court and other federal courts have held that analyses of conditions in a local marketplace for POCs, women, and POC- and woman-owned businesses are instructive in determining whether agencies' implementations of POC- and woman-owned business programs are appropriate and justified. Those analyses help agencies determine whether they are *passively participating* in any race- or gender-based discrimination that makes it more difficult for POC- or woman-owned businesses to successfully compete for government

contracts and procurements. Passive participation in discrimination refers to agencies unintentionally perpetuating race- or gender-based discrimination simply by operating within discriminatory marketplaces. Many courts have held that passive participation in any race- or gender-based discrimination establishes a *compelling governmental interest* for agencies to take remedial action to address any such discrimination.<sup>27, 28, 29</sup>

BBC Research & Consulting (BBC) conducted quantitative and qualitative analyses to assess whether POCs, women, and POC- and woman-owned businesses face any barriers in the transportation-related construction; professional services; and non-professional services, goods, and supplies industries throughout the Idaho Transportation Department's (ITD's) relevant geographic market area (RGMA). The study team also examined the potential effects any such barriers have on the formation and success of businesses as well as their participation in and availability for contracts and procurements ITD awards. We examined marketplace conditions in four primary areas:

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

For most analyses, the study team defined ITD's RGMA as the geographical area including the entire state of Idaho; Asotin County, Washington; and Spokane County, Washington. The study team made that determination based on the fact that ITD awards the vast majority of contract and procurement dollars (91.1%) to businesses located within that geographical area.

The information in Chapter 3 comes from existing research related to marketplace conditions for POCs, women, and POC- and woman-owned businesses as well as primary research BBC conducted on current marketplace conditions. Additional quantitative information about marketplace conditions is presented in Appendix C.

## A. Human Capital

Human capital is the collection of personal knowledge, behavior, experience, and characteristics that make up an individual's ability to perform and succeed in particular labor markets. Human capital factors such as education, business experience, and managerial experience have been shown to be related to business success.<sup>30, 31, 32, 33</sup> Any barriers in those areas may make it more difficult for POCs and women to work in relevant industries and prevent some of them from starting and operating businesses successfully.

**1. Education.** Barriers associated with educational attainment may preclude entry or advancement in certain industries, because many occupations require at least a high school diploma, and some occupations—such as in professional services—require at least a four-year college degree. In addition, educational attainment is a strong predictor of both income and personal wealth, which are both shown

to be related to business formation and success.<sup>34, 35</sup> Nationally, POCs lag behind white Americans in terms of both educational attainment and the quality of education they receive.<sup>36, 37</sup> POCs are far more likely than white Americans to attend schools that do not provide access to core classes in science and math.<sup>38</sup> In addition, Black American students are more likely than white Americans to be expelled or suspended from high school.<sup>39</sup> For those and other reasons, POCs are far less likely than white Americans to attend college, enroll at highly or moderately selective four-year institutions, or earn college degrees.<sup>40</sup>

Educational outcomes for POCs in the RGMA are similar to those for POCs nationwide. The study team's analyses of the labor force indicate that certain POC groups are far less likely than white Americans to earn college degrees. Figure 3-1 presents the percentage of workers in the RGMA that have earned four-year college degrees by race/ethnicity and gender. As shown in Figure 3-1, Black American (26%), Hispanic American (13%), and Native American (22%) workers are substantially less likely than white workers (34%) to have four-year college degrees.

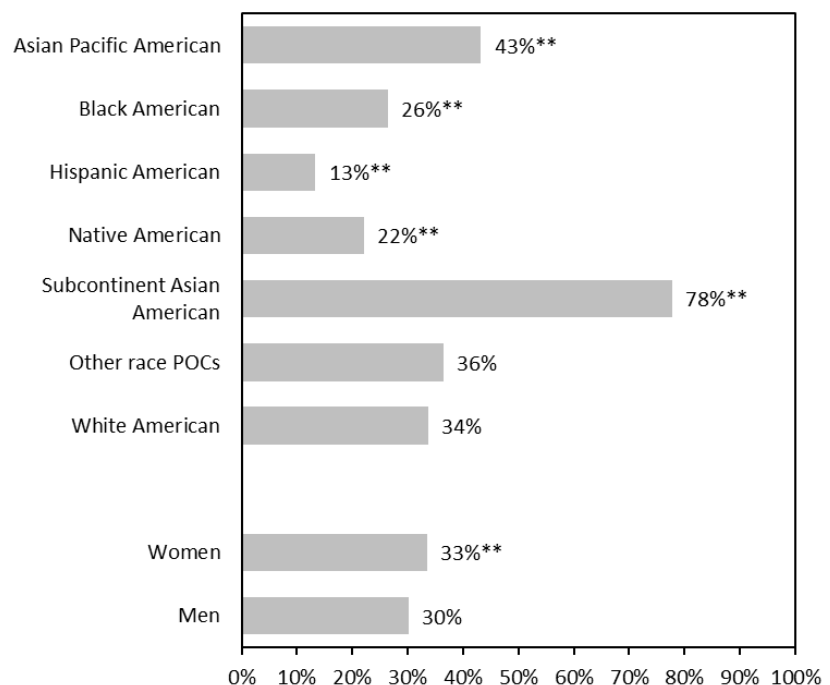
**Figure 3-1.**  
**Percentage of workers in the**  
**RGMA aged 25 and older with**  
**at least a four-year degree**

Note:

\*\* Denotes that the difference in proportions between the POC group and white Americans or between women and men is statistically significant at the 95% confidence level.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.



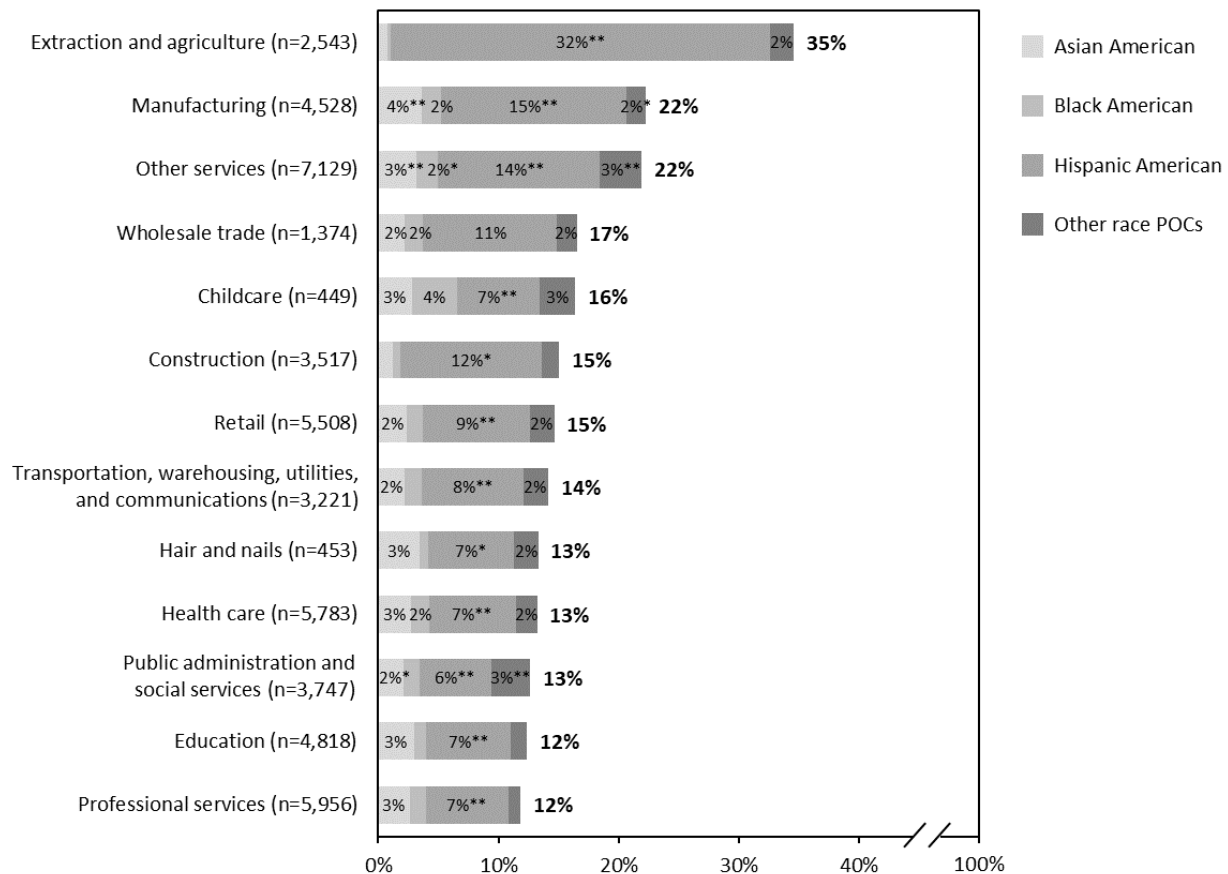
**2. Employment and management experience.** An important precursor to business ownership and success is having work experience in relevant industries. Any barriers that limit POCs and women from acquiring that experience could prevent them from starting related businesses in the future.

**a. Employment.** On a national level, prior industry experience has been shown to be an important indicator for business ownership and success. However, POCs and women are often unable to acquire that experience. They are sometimes discriminated against in hiring decisions, which impedes their entry into the labor market.<sup>41, 42, 43</sup> When employed, they are often relegated to peripheral positions in the labor market and to industries that exhibit already high concentrations of POCs and women.<sup>44, 45, 46, 47, 48</sup> In addition, Black Americans, Hispanic Americans, and Native Americans are incarcerated at higher

rates than white Americans in Idaho and nationwide, which contributes to many labor difficulties, including difficulties finding jobs and slow wage growth. <sup>49, 50, 51, 52, 53</sup>

The study team's analyses of the labor force in the ITD RGMA are largely consistent with nationwide findings. Figure 3-2 presents the representation of POC workers in various industries in the RGMA. As shown in Figure 3-2, the industries with the highest representations of POC workers are extraction and agriculture (35%), manufacturing (22%), and other services (22%). The industries with the lowest representations of POC workers are public administration and social services (13%), education (12%), and professional services (12%).

**Figure 3-2.**  
**Percent representation of POCs in various industries in the RGMA, 2015-2019**



Note: \*, \*\* Denotes that the difference in proportions between POC workers in the specified industry and all industries is statistically significant at the 90% and 95% confidence level, respectively.

The representation of POCs among all ITD Study Area workers is 3% for Asian Americans, 1% for Black Americans, 11% for Hispanic Americans, 2% for other race POCs, and 17% for all POCs considered together.

"Other race POC" includes Native Americans and other races.

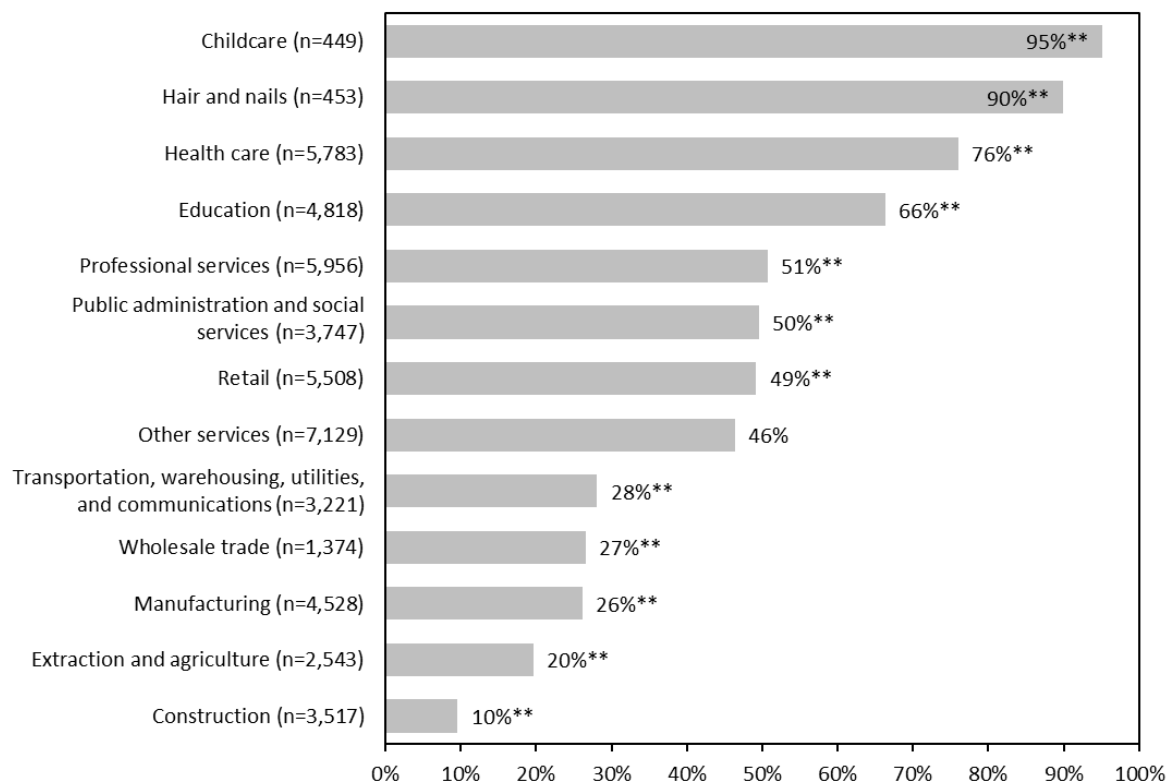
Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services; Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



Figure 3-3 indicates that the industries with the highest representations of women are childcare (95%), hair and nails (90%), and health care (76%). The industries with the lowest representations of women are manufacturing (26%), extraction and agriculture (20%), and construction (10%).

**Figure 3-3.**  
**Percent representation of women in various industries in the RGMA, 2015-2019**



Note: \*\* Denotes that the difference in proportions between women workers in the specified industry and all industries is statistically significant at the 95% confidence level.

The representation of women among all ITD Study Area workers is 46%.

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services; Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services.

Source: BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

**b. Management experience.** Managerial experience is an essential predictor of business success, but discrimination remains a persistent obstacle to greater diversity in management positions.<sup>54, 55, 56</sup> Nationally, POCs and women are far less likely than white men to work in management positions.<sup>57, 58</sup> Similar outcomes appear to exist for POCs and women in the RGMA. The study team examined the concentration of POCs and women in management positions for transportation-related construction; professional services; and non-professional services, goods, and supplies industries. As shown in Figure 3-4:



- Smaller percentages of Asian Americans (1.8%) and Hispanic Americans (2.1%) work as managers in the construction industry than white Americans (6.8%).
- A smaller percentage of women (0.3%) than men (4.1%) work as managers in the professional services industry.

**Figure 3-4.**  
**Percent of non-owner workers who worked as a manager in study-related industries in the RGMA**

Note:

\*\* Denotes that the difference in proportions between the POC group and white Americans or between women and men is statistically significant at the 90% and 95% confidence level, respectively.

"Other race POCs" includes Native Americans and other races.

† Denotes significant differences in proportions not reported due to small sample size.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

ITD Study Area	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian American	1.8 % **	0.0 % †	0.0 % †
Black American	12.8 % †	0.0 % †	0.0 % †
Hispanic American	2.1 % **	5.0 %	0.0 % †
Other race POCs	5.5 %	16.2 % †	0.0 % †
White American	6.8 %	2.9 %	2.8 %
<b>Gender</b>			
Women	8.0 %	0.3 % **	0.0 %
Men	5.9 %	4.1 %	4.1 %
<b>All individuals</b>	<b>6.1 %</b>	<b>3.0 %</b>	<b>2.6 %</b>

**3. Intergenerational business experience.** Having family members who own businesses is an important predictor of business ownership and business success. Such experiences help entrepreneurs gain access to important opportunity networks, obtain knowledge of best practices and business etiquette, and receive hands-on experience in helping to run businesses. However, nationally, POCs have substantially fewer family members who own businesses and both POCs and women have fewer opportunities to be involved with those businesses.<sup>59, 60</sup> That lack of experience makes it difficult for POCs and women to subsequently start their own businesses and operate them successfully.

## B. Financial Capital

In addition to human capital, financial capital has been shown to be an important indicator of business formation and success.<sup>61, 62, 63</sup> Individuals can acquire financial capital through many sources, including employment wages, personal wealth, homeownership, and financing. If race- or gender-based barriers exist in financial capital markets, POCs and women may have difficulty acquiring the capital necessary to start, operate, or expand businesses.

**1. Wages and income.** Wage and income gaps between POCs and white Americans and between women and men are well-documented throughout the country, even when researchers have statistically controlled for various personal factors ostensibly unrelated to race and gender.<sup>64, 65, 66</sup> For example, national income data indicate that, on average, Black Americans and Hispanic Americans have household incomes less than two-thirds and three-fourths, respectively, of those of white Americans.<sup>67</sup> Women have also faced consistent wage and income gaps relative to men. Nationally, the median hourly wage of women is still only 84 percent that of men.<sup>68</sup> Such disparities make it difficult for POCs and women to use wages as a source of business capital.

BBC observed wage gaps in ITD's RGMA consistent with those that researchers have observed nationally. Figure 3-5 presents mean annual wages for workers in the RGMA by race/ethnicity and

gender. As shown in Figure 3-5, Black American, Hispanic American, and Native American workers in the RGMA earn substantially less than white Americans (\$52,621). In addition, women (\$39,920) earn substantially less than men (\$59,817).

**Figure 3-5.**  
**Mean annual wages in**  
**the RGMA**

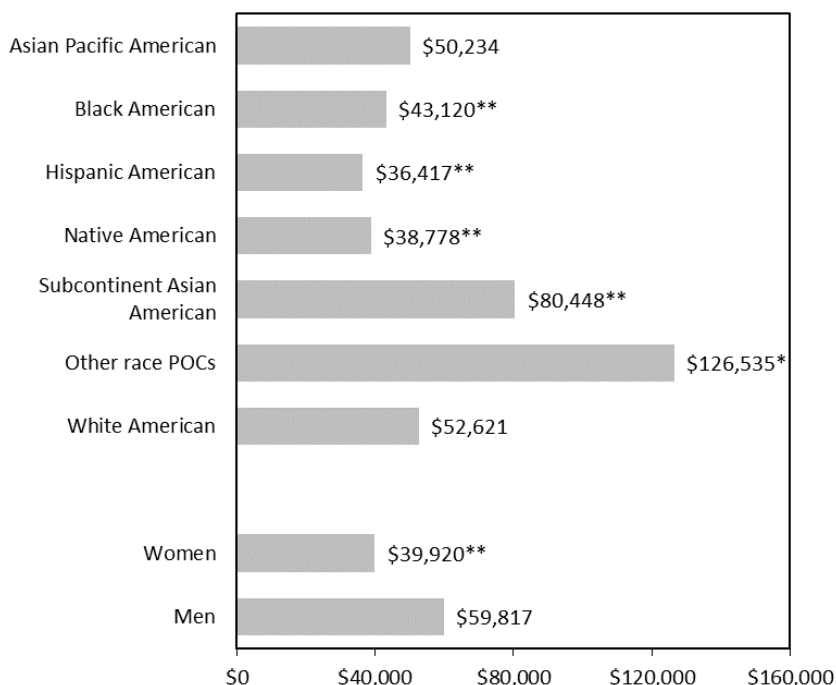
Note:

The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

\*, \*\* Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 90% and 95% confidence levels, respectively.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.



BBC also conducted regression analyses to assess whether wage disparities exist even after accounting for various personal factors such as age, education, and family status. Those analyses indicated that, even after accounting for various personal factors, being Asian Pacific American, Black American, or Hispanic American was associated with substantially lower earnings than being white American. In addition, being a woman was associated with substantially lower earnings than being a man (for details, see Figure C-7 in Appendix C).

**2. Personal wealth.** Another important source of business capital is personal wealth. As with wages and income, there are substantial disparities between POCs and white Americans and between women and men in terms of personal wealth.<sup>69, 70</sup> For example, in 2019, Black Americans and Hispanic Americans across the country exhibited average household net worth that was 14 percent and 17 percent that of white Americans, respectively.<sup>71</sup> In addition, approximately 20 percent of Black Americans and 17 percent of Hispanic Americans in the United States are living in poverty, compared to less than 10 percent of white Americans. In Idaho, approximately 14 percent of Hispanic Americans are living in poverty, compared to approximately 10 percent of white Americans.<sup>72</sup> Wealth inequalities also exist for women relative to men. For example, the median wealth of non-married women nationally is approximately one-third that of non-married men.<sup>73</sup>

**3. Homeownership.** Homeownership and home equity have also been shown to be key sources of business capital.<sup>74, 75</sup> However, POCs appear to face substantial barriers nationwide in owning homes. For example, nationally, Black Americans and Hispanic Americans own homes at less than two-thirds the rate of white Americans.<sup>76</sup> Discrimination appears to be at least partly to blame for those disparities.

Research indicates that POCs continue to be given less information on prospective homes and have their purchase offers rejected because of their race.<sup>77, 78</sup> POCs who own homes tend to own homes worth substantially less than those of white Americans and also tend to accrue substantially less equity.<sup>79, 80</sup> Differences in home values and equity between POCs and white Americans can be attributed—at least, in part—to the depressed property values that tend to exist in racially segregated neighborhoods.<sup>81, 82</sup>

POCs appear to face homeownership barriers in ITD’s RGMA similar to those observed nationally. BBC examined homeownership rates in the RGMA for relevant racial/ethnic groups. As shown in Figure 3-6, Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, and Subcontinent Asian Americans exhibit homeownership rates significantly lower than that of white Americans (70%).

**Figure 3-6.**  
**Home ownership**  
**rates in the RGMA**

Note:

The sample universe is all households.

\*\* Denotes statistically significant differences from white Americans at the 95% confidence level.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

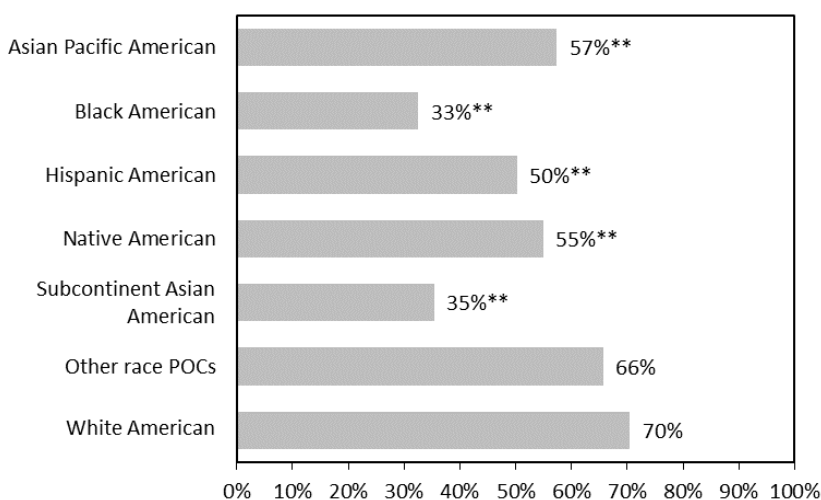


Figure 3-7 presents median home values among homeowners of different racial/ethnic groups in the RGMA. Those data indicate that Hispanic American, Native American, and other race POC homeowners own homes that, on average, are worth less than those of white Americans (\$205,000).

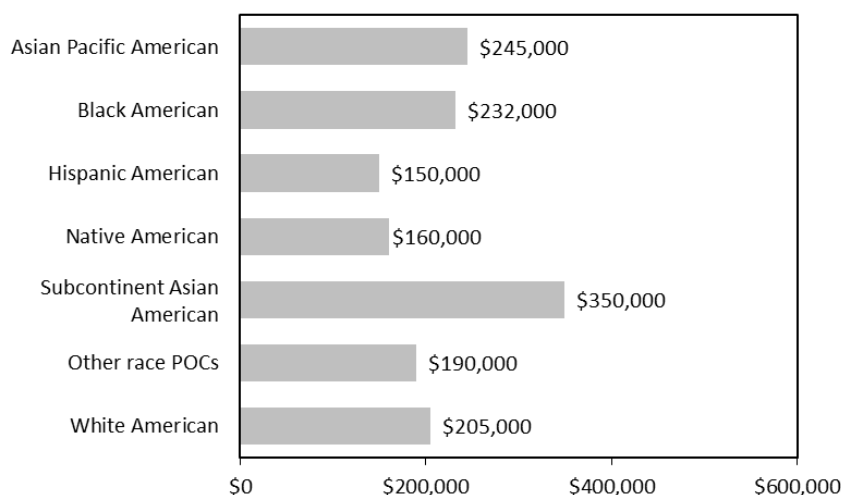
**Figure 3-7.**  
**Median home**  
**values in the RGMA**

Note:

The sample universe is all owner-occupied housing units.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.



**4. Access to financing.** POCs and women face many barriers in trying to access credit and financing, both for home purchases and business capital. Researchers have often attributed those barriers to various forms of race- and gender-based discrimination that exist in credit markets.<sup>83, 84, 85, 86, 87, 88</sup> BBC assessed difficulties POCs and women face in home credit and business credit markets in ITD's RGMA.

**a. Home credit.** POCs and women continue to face barriers when trying to access credit to purchase homes. Examples of such barriers include discriminatory treatment of POCs and women during pre-application and disproportionate targeting of POC and women borrowers for subprime home loans.<sup>89, 90, 91, 92, 93</sup> Race- and gender-based barriers in home credit markets, as well as the foreclosure crisis, have led to decreases in homeownership among POCs and women and have eroded their levels of personal wealth.<sup>94, 95, 96, 97</sup> To examine how POCs fare in the home credit market relative to white Americans, we analyzed home loan denial rates for high-income households by race/ethnicity in ITD's RGMA. As shown in Figure 3-8, Asian Americans (5%), Black Americans (15%), Hispanic Americans (6%), and Native Americans (6%) in the RGMA are denied home loans at higher rates than white Americans (4%). In addition, the study team's analyses indicate that certain POC groups in the RGMA are more likely than white Americans to receive subprime mortgages (for details, see Figure C-11 in Appendix C).

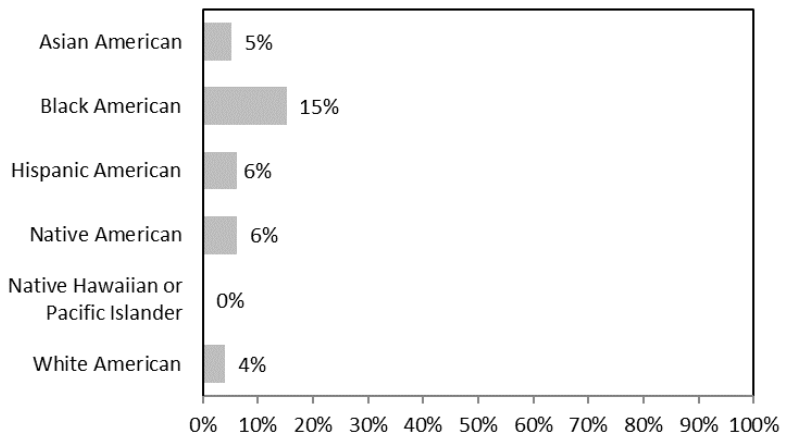
**Figure 3-8.**  
**Denial rates of conventional purchase loans for high-income households in the RGMA**

Note:

High-income households are those with 120% or more of the HUD area median family income.

Source:

FFIEC HMDA data 2021. The 2021 raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: <https://ffiec.cfbp.gov/data-browser/>.



**b. Business credit.** POC- and woman-owned businesses face substantial difficulties accessing business credit. For example, during loan pre-application meetings, POC-owned businesses are given less information about loan products, are subjected to more credit information requests, and are offered less support than businesses owned by white Americans.<sup>98</sup> In addition, researchers have shown that POC-owned businesses are more likely to forego submitting business loan applications due to fears of denial and are more likely to be denied business credit when they do seek loans, even after accounting for various race- and gender-neutral factors.<sup>99, 100, 101, 102</sup> In addition, woman-owned businesses are less likely to apply for credit and receive loans of lower value when they do.<sup>103, 104, 105</sup> Without equal access to business capital, POC- and woman-owned businesses must operate with less capital than businesses owned by white American men and must rely more on personal finances.<sup>106, 107, 108, 109</sup>

## C. Business Ownership

Nationally, there has been substantial growth in the number of POC- and woman-owned businesses recently. For example, from 2017 to 2020, the number of woman-owned businesses increased by 9 percent, Black American-owned businesses increased by 14 percent, and Hispanic American-owned businesses increased by 17 percent.<sup>110, 111</sup> However, important barriers in starting and operating

businesses remain. Black Americans, Hispanic Americans, and women are still less likely to start businesses than white American men.<sup>112, 113, 114, 115</sup> In addition, POCs and women have been unable to penetrate all industries equally. They disproportionately own businesses in industries that require less human and financial capital to be successful and that already include large concentrations of POCs and women.<sup>116, 117, 118</sup> The study team examined rates of business ownership in the RGMA for transportation-related construction; professional services; and non-professional services, goods, and supplies industries by race/ethnicity and gender. As shown in Figure 3-9:

- Asian Americans (14%) and Hispanic Americans (13%) own construction businesses at lower rates than white Americans (27%); and
- Hispanic Americans (10%) own professional services businesses at lower rates than white Americans (26.3%).

**Figure 3-9.**  
**Business ownership rates in**  
**study-related industries in the**  
**RGMA**

Note:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans, or between women and men is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

Source:

BBC from 2015–2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.

	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian American	14.1 % *	2.4 % †	0.0 % †
Black American	6.8 % †	31.5 % †	0.0 % †
Hispanic American	13.5 % **	9.5 % **	14.6 % †
Other race POCs	23.9 %	16.3 % †	7.6 % †
White American	27.2 %	26.3 %	2.9 %
<b>Gender</b>			
Women	21.9 %	21.2 %	2.3 %
Men	25.6 %	25.8 %	4.0 %
<b>All individuals</b>	<b>25.2 %</b>	<b>24.5 %</b>	<b>3.4 %</b>

BBC also conducted regression analyses to determine whether differences in business ownership rates exist based on race/ethnicity and gender even after statistically controlling for various personal factors such as income, education, and familial status. The study team conducted those analyses separately for each relevant industry. Figure 3-10 presents the racial/ethnic and gender-related factors significantly and independently associated with business ownership for each relevant industry. As shown in Figure 3-10, even after accounting for various personal factors:

- Being Hispanic American is associated with a lower likelihood of owning a construction business relative to being white American, and being a woman is associated with a lower likelihood of owning a construction business relative to being a man.
- Being Asian American is associated with a lower likelihood of owning a professional services business relative to being white American.

**Figure 3-10.**  
**Statistically significant predictors of business ownership in relevant industries in the RGMA**

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa>.

Industry and Group	Coefficient
<b>Construction</b>	
Hispanic American	-0.29 *
Women	-0.27 *
<b>Professional services</b>	
Asian American	-1.59 **

## D. Business Success

A great deal of research indicates that, nationally, POC- and woman-owned businesses fare worse than businesses owned by white American men. For example, Black Americans, Native Americans, Hispanic Americans, and women exhibit higher rates of business closures than white Americans and men. In addition, POC- and woman-owned businesses have been shown to be less successful than businesses owned by white Americans and men, respectively, based on a number of different indicators such as profits and business size.<sup>119, 120, 121</sup> The study team examined data on business closures, business receipts, and business owner earnings to further explore business success in the ITD RGMA.

**1. Business closure.** BBC examined the rates of closure among Idaho businesses by the race/ethnicity and gender of the owners. Figure 3-11 presents those results. As shown in Figure 3-11, Asian American-, Black American-, and Hispanic American-owned businesses in Idaho appear to close at higher rates (29%, 42%, and 36%, respectively) than white American-owned businesses (28%). In addition, woman-owned businesses (32%) appear to close at higher rates than businesses owned by men (27%).

**Figure 3-11.**  
**Rates of business closure in Idaho**

Note:

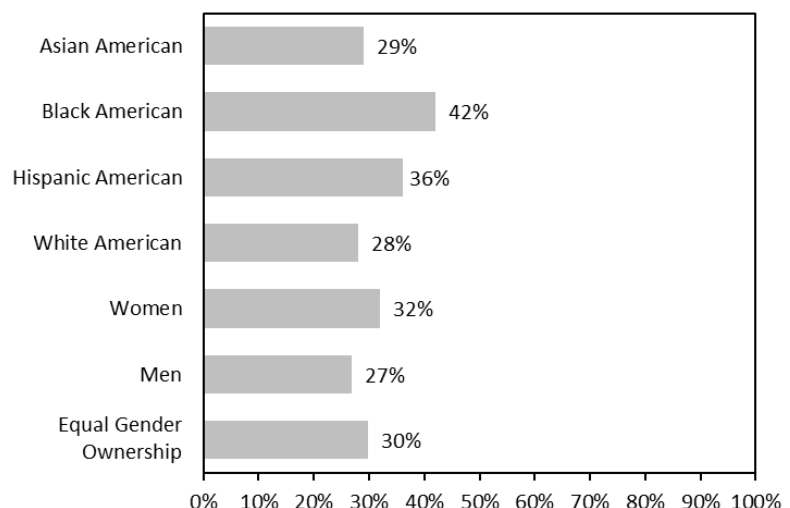
Data include only non-publicly held businesses.  
Equal Gender Ownership refers to those businesses for which ownership is split evenly between women and men.

Statistical significance of the results could not be determined, because sample sizes were not reported.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

Lowrey, Ying. 2014. "Gender and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.



**2. Business receipts.** BBC also examined data on business receipts to assess whether POC- and woman-owned businesses in Idaho earn as much as businesses owned by white Americans and men, respectively. Figure 3-12 shows mean annual receipts for businesses by the race/ethnicity and gender of owners. Those results indicate that, in 2018, Asian American-, Black American-, Hispanic American-, and American Indian and Alaska Native American-owned businesses in Idaho showed lower mean annual business receipts than businesses owned by white Americans (\$2.1 million). In addition, woman-owned businesses (\$923,000) showed lower mean annual business receipts than businesses owned by men (\$2.9 million).

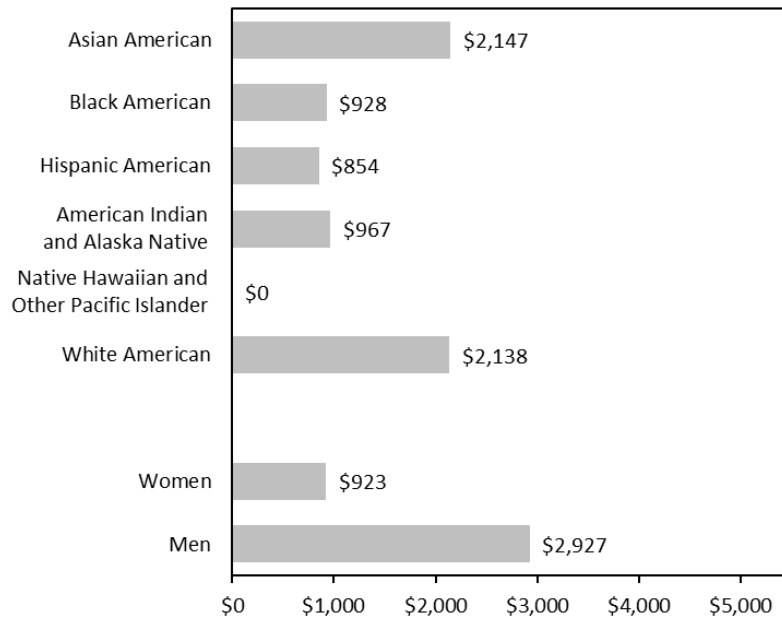
**Figure 3-12.**  
**Mean annual business receipts**  
**(in thousands) in Idaho**

Note:

Includes employer businesses only. Does not include publicly traded companies or other firms not classifiable by race/ethnicity and gender.

Source:

BBC from 2018 Annual Business Survey.



**3. Business owner earnings.** BBC also analyzed business owner earnings to assess whether business owners who are POCs and women in the ITD RGMA earn as much as business owners who are white Americans and men, respectively. As shown in Figure 3-13:

- Asian Pacific American (\$20,051), Black American (\$20,799), Native American (\$31,666), and Subcontinent Asian American (\$15,758) business owners earn less on average than white American business owners (\$40,582); and
- Women business owners (\$24,015) earn less on average than men business owners (\$51,618).

**Figure 3-13.**  
**Mean annual business owner**  
**earnings in the RGMA**

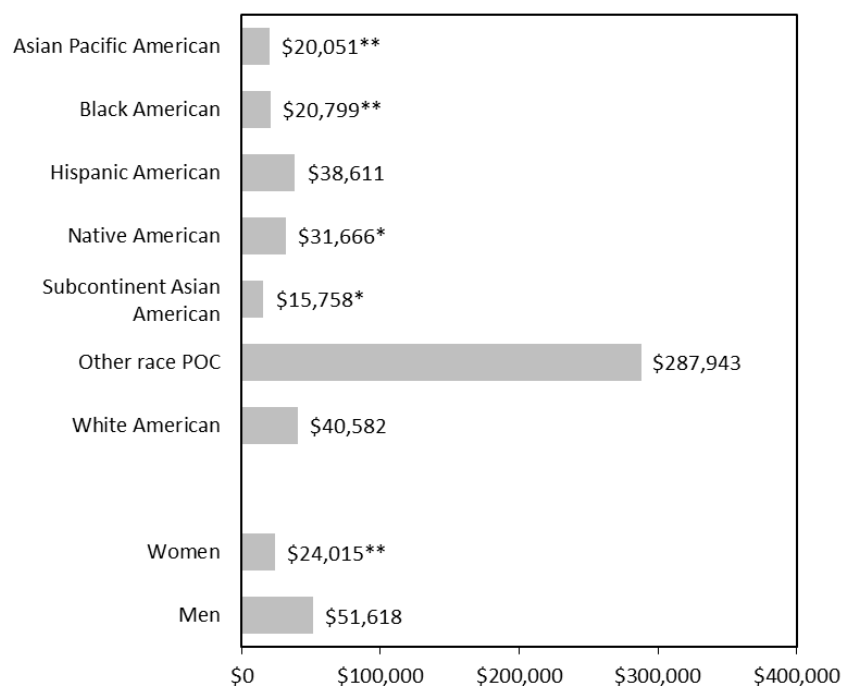
Note:

The sample universe is business owners aged 16 and over who reported positive earnings. All amounts in 2019 dollars.

\*, \*\* Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 90% and 95% confidence level, respectively.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.





BBC also conducted regression analyses to determine whether race- and gender-based differences in business owner earnings in the ITD RGMA exist even after statistically controlling for various personal factors such as age, education, and family status. The results of those analyses indicated that, compared to being a man, being a woman was associated with substantially lower business owner earnings (for details, see Figure C-25 in Appendix C).

## E. Summary

BBC's analyses of marketplace conditions in the ITD RGMA indicate that POCs and women face various barriers in the region. Existing research and primary research we conducted indicate that disparities exist in terms of acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence those disparities exist even after accounting for various race- and gender-neutral factors such as age, income, education, and familial status. There is also evidence many disparities are due—at least, in part—to race- and gender-based discrimination.

Barriers in the marketplace likely have important effects on the ability of POCs and women to start businesses in relevant industries—transportation-related construction; professional services; and non-professional services, goods, and supplies—and to operate those businesses successfully. Any difficulties those individuals face in starting and operating businesses may reduce their availability for government work and may also reduce the degree to which they are able to successfully compete for government contracts. In addition, the existence of barriers in the marketplace indicates that government agencies in the region may be passively participating in discrimination that makes it more difficult for POC- and woman-owned businesses to successfully compete for their contracts and procurements. Many courts have held that passive participation in any race- or gender-based discrimination establishes a compelling governmental interest for agencies to take remedial action to address such discrimination.

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# CHAPTER 4.

## Anecdotal Evidence

As part of the disparity study, business owners, trade association representatives, and other stakeholders had the opportunity to share personal insights about their experiences working in Idaho as well as with the Idaho Transportation Department (ITD). BBC Research & Consulting (BBC) documented those insights and identified key themes about conditions in Idaho for person of color (POC)- and woman-owned businesses as well as other businesses. The study team used that information to augment many of the quantitative analyses we conducted as part of the disparity study to provide context for study results and provide explanations for various barriers POC- and woman-owned businesses potentially face as part of ITD's contracting and procurement. Chapter 4 describes the process we used to collect personal insights and key themes the study team identified from that information. BBC presents all the personal insights we collected as part of the disparity study in Appendix D.

### A. Data Collection

The study team collected personal insights about marketplace conditions, experiences working with ITD, and recommendations for program implementation. We made various efforts between October 2022 and April 2023 to collect that information:

- **Public forums:** The study team solicited stakeholders for written and verbal insights at two public forums BBC facilitated in Boise and Coeur D'Alene, Idaho on October 19 and 20, 2022.
- **In-depth interviews:** The study team conducted 30 in-depth interviews with owners and other representatives of local construction and professional services businesses. The interviews included discussions about interviewees' perceptions of, and experiences with, the local contracting industry, working or attempting to work with government agencies in Idaho, ITD's implementation of the Federal Disadvantaged Business Enterprise (DBE) Program, and other relevant topics. BBC identified interview participants primarily from a random sample of businesses the study team contacted during the availability survey process, stratified by business type, location, and the race/ethnicity and gender of business owners. The study team conducted most of the interviews with the owner or another high-level representative of each business.
- **Availability surveys:** BBC conducted availability surveys for the disparity study with 719 businesses between October 2022 and February 2023. As a part of the surveys, the study team asked business owners and managers to share insights about whether their companies have experienced barriers or difficulties starting or expanding businesses in their industries, obtaining work in Idaho, or working with government organizations in the state. Three hundred and seventy-seven business owners and representatives shared such information.
- **Focus groups:** BBC conducted two focus groups with representatives of businesses organizations, such as chambers of commerce, business assistance organizations, and other business groups on March 1 and March 2, 2023. During each focus group, participants engaged in discussions and shared their insights about working in Idaho with public and private sector organizations.

- **Written comments:** Throughout the study, stakeholders and community members had the opportunity to submit written comments directly to the study team regarding their experiences working in Idaho. Eleven stakeholders and community members shared such comments.

## B. Key Themes

Various themes emerged across all the insights BBC collected as part of the disparity study. We summarize those themes by relevant topic area and presents illustrative quotations for each one. In an effort to protect the anonymity of individuals and businesses, we coded the source of each quotation with a random number and prefix that represents the individual who submitted the comment and the data collection method. We denote availability survey comments by the prefix “AV,” focus group comments by the prefix “FG,” public forum comments by the prefix “PT,” and written comments by the prefix “WT.” In-depth interview comments do not have a prefix. We also preface each quotation with a brief description of the race and gender of the business owner and the business type. In addition, we indicate whether each participant represents a certified DBE, a certified minority- or woman-owned business enterprise (MBE/WBE), a certified small business enterprise (SBE), or other relevant certification types.

### 1. Marketplace conditions. Overall, businesses see the Idaho marketplace as growing and thriving.

*The co-owner of a majority-owned construction company stated, “There’s so much growth here and so much new development.” [#11]*

*The owner of a majority-owned professional services company stated, “The building boom that’s certainly come down in all aspects across the board hasn’t been too bad for us.” [#12]*

Although ITD is seen as a smaller department of transportation (DOT), compared with other state DOTs such as Washington, interviewees shared that there is a sense of opportunity for businesses to start, grow, and thrive in Idaho partly because of the work opportunities the organization offers.

*A representative of a majority-owned construction company stated, “It’s been a healthy market due to the transportation funding. District 1 has the strongest growth in the nation.” [#AV81]*

New businesses and residents have been moving to Idaho in recent years, in part due to the COVID-19 pandemic, leading to increased work opportunities across industries.

*The owner of a majority-owned professional services company stated, “We have become the Tahoe of the Northwest. ... We’re getting a huge spike. For instance, I think the nationwide real estate spike was under 50 percent. Our local [real estate market growth] was 300 percent. So, a \$300,000 home in 2019 sold for over \$900,000 in 2021.” [#8]*

*The Hispanic American owner of an MBE- and DBE-certified professional services company stated, “[People moving to Idaho] has impacted us somewhat positively, because they’re building a lot of roads in this state to try to catch up the infrastructure and stuff because of all the people moving in.” [#28]*

However, some business owners forecast a potential future downturn in the market caused by wider economic conditions, especially in residential and private sector work.

*A representative of a majority-owned professional services company stated, "Now that interest rates have risen, our private clients have pulled back quite a bit, and so they're kind of tapping the brakes a little bit." [#2]*

*A representative of a majority-owned construction company stated, "[Growth's] going to drop down to probably about three to four [percent] here after the first year, because I don't see much big work coming out right now." [#5]*

**2. Business success.** Interviewees described several factors they considered to be essential to running a successful business in Idaho. They indicated that businesses need a strong internal structure in order to succeed as well as well-established business plans, knowledge of bidding and estimating, and capacity to do the necessary administrative work.

*A representative of a woman-owned and DBE-certified construction company stated, "I actually have made my own set of spreadsheets that do all my math for me and stuff. ... I just make it so anyone can call me on my phone, and I'm like, 'This is how much it's going to cost, so that's how much I'm going to pay.' ... I've had that for several years. I've been bidding jobs for [this company] since I was like 22 or 23." [#18]*

*A representative of a trade organization in Idaho stated, "Very first and foremost, one of the biggest keys to success is having a business plan and a strategic plan on moving forward as far as growth." [#FG1]*

Interviewees said that business owners who have both strong business acumen and strong working knowledge of their industries tend to thrive. They also noted that newer business owners often must wear multiple hats, acting both as workers and leaders, and being able to balance both of those tasks effectively helps businesses survive their first few years.

*The Hispanic American owner of a construction company stated, "You have to learn how the work is and what you're getting yourself into. If you just get into the business of construction and not knowing how to do the work, then you're going to have a hard time bidding and submitting quotes and stuff." [#3]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "You've got to pick up the slack when you're building a business and [are] not established and you're shuffling through employees. Because you are a new business, you got to understand every aspect of it. Every aspect is difficult, and you have to play it smart, and you have to know that you're an up-and-coming business." [#14]*

In addition, business owners emphasized the need for strong professional networks. They said that developing deep relationships with other businesses in their industries allows them to ask questions, find good partnerships for projects, and learn about new work opportunities.

*The Hispanic American owner of a construction company stated, "In this line of business, [the] number one [predictor of success] I would say is relationships with contractors and relationships with who you know." [#3]*



*A representative of a volunteer organization in Idaho stated, "I think one of the biggest key[s] ... to any success of any business when they open up is how much they get involved in their community. When they get out and start participating at business after hours and really doing that networking aspect of it, is a huge thing when you see success versus failure, at least in my area." [#FG2]*

**3. DBE certification, benefits, and disadvantages.** Interviewees shared their experiences with the DBE certification process in Idaho and their experiences being certified or working with certified businesses. Generally, interviewees said that DBE certification is only valuable for Federal Highway Administration (FHWA)-funded work in Idaho, and there are negligible benefits to certification for businesses that work on projects with different funding sources or in the private sector. For many, it is not worth the administrative burden of getting certified. Businesses that work outside of highway-related industries indicated that DBE certification does not typically lead to work opportunities on other projects that are not funded by the FHWA.

*The owner of a DBE- and WBE-certified professional services company stated, "Idaho [has] decided that it's the Transportation Department who's in charge of it. And you have no other services that count." [#20]*

*The owner of a DBE-certified professional services company stated, "The program focuses quite intensely on construction projects, and DBEs ... who can lay pavement, install guardrail, do pavement markings. ... No one has ever reached out to us and said, as a consulting outfit, 'How can we help you acquire work for ITD?'" [#22]*

**a. Advantages of certification.** Interviewees whose business are certified as DBEs noted that their certification status helps them obtain subcontracting work on FHWA-funded projects. They said that there are ample opportunities for DBEs to work on FHWA-funded projects, which helps them grow.

*The Hispanic American owner of a DBE-certified construction company stated, "It was quite amazing, the DBE [certification]. Even though we haven't got a ton of jobs from it, it was definitely a game-changer." [#19]*

*The woman owner of a DBE-certified professional services company stated, "I feel very fortunate as a DBE, because I don't have to put a lot of time into marketing like some of the larger firms and when I don't have the capital or the cash flow to do that." [#21]*

**b. Disadvantages of certification.** Interviewees indicated that being certified as a DBE in an industry without much DBE competition can overwhelm a business with work.

*A representative of a woman-owned and DBE-certified construction company stated, "It gives us a lot more work, but sometimes it gives us too much work. ... Basically, by November or December, I have bid enough work that we don't need to do bidding anymore. ... It's just that there's so much work ... contractors just get too full too fast." [#18]*

**c. ITD's certification process.** Interviewees stated that the application process for DBE certification is time-consuming, confusing, and costly.

*The woman owner of a DBE-certified professional services company stated, "It's very time-consuming, because it's a detailed application and you have to pretty much tell them everything about yourself and your finances and your personal life." [#17]*

*The woman owner of a DBE-certified professional services company stated, "Sometimes, it's a little confusing with the whole DBE thing and what y'all have to turn in and update. We just recently updated it, so it's like, 'Okay, what do we all need to turn in again?' ... It would be helpful to have a little more help with that, because I did email the person a bunch of times and ask, 'What do we need to do to fill out this no change form? What do you need?' Didn't hear back and didn't hear back. Finally, they're like, 'Oh, you can just do it online.' ... It was very confusing. The online platform that they have is not user-friendly at all." [#27]*

Business owners shared that it can take ITD months to review and approve an application, and if a certification lapses, it can take a substantial amount of time to re-certify. According to interviewees, such delays are due to the limited number of ITD staff available to process the large volume of applications the agency receives.

*The woman owner of a DBE-certified professional services company stated, "We had a due date of February for our certification, so we obviously met the date. But we didn't hear [back] probably until June or July because they had staffing changes, and they didn't have time to review applications, and all the stuff. Even though we knew it wasn't a problem ... I guess it's important, because people are relying on us to be a DBE." [#6]*

*The woman owner of a DBE-certified professional services company stated, "The contractor that's asked me to get it, because they want to put it on their contract, says, 'We'll see which happens first—that ITD actually gets the contract for them together or I get my DBE first.' But we've both been waiting for both for quite a while. ... I'd say it took me to get the application going again six to eight hours maybe to get them everything they needed and then submit it ... in November. And since it's just been token emails from them: 'We're working on it. We'll get to it. Thank you for...' Maybe every couple of weeks I get something canned out of the email." [#17]*

**4. Doing business with public agencies.** Interviewees discussed their experiences obtaining and doing work with public agencies, including ITD, and shared some barriers and challenges they face when working in the public sector. They also discussed some of the differences between the public and private sector, and how those differences affect how they obtain or do work. For example, interviewees stated that prompt payment requirements are limited to public-sector work, and businesses that work in the private sector said they are not always confident that they will be paid for their work in a timely fashion or even be paid at all.

*Representatives of a majority-owned construction company stated, "One of the biggest differences is your assurance of being paid on the public sector. We never worry that we're not going to get paid on a public project, because there are challenges there on the private side." [#1]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Working with the state, if you do your part more than likely you're going to get paid." [#14]*

*The woman owner of a DBE-certified professional services company stated, "ITD is really good ... with paying invoices in a timely manner." [#27]*

Public-sector work has a variety of regulations that affect the wage rates for a project, and interviewees noted that the applicability of those regulations is not clear in solicitation documents.

*The Hispanic American owner of a construction company stated, "It's difficult to bid a job when they don't list [the required wages]. Because on certain areas, some of the wages may be higher or they may be lower according to the Davis-Bacon [wage rates]. And when I would try to reach out to find out what [are] the wages that I'm supposed to be paying for this area, ... I could never get answers. Literally, nobody knew." [#3]*

Public agencies may also require annual audits of their vendors, which interviewees view as a burden on small businesses or businesses that do not do a significant volume of work with the agency.

*A representative of a majority-owned professional services company stated, "ITD does require an overhead rate audit to be done every year. That's just part of their bid process. ... They do it in terms of [what] you pay your labor, plus an approved overhead rate, plus a small fee on top of that. And so that can be a bit of a barrier. It's not fun to go through that audit every year. And for the amount of effort, doesn't seem like it's really worth it, at least in my eyes." [#2]*

*The woman owner of a DBE-certified professional services company stated, "Our only thing would be with the auditing process, which just sucks for us. ... We obviously have the volume of work. That's why we have to go through a federal audit every year. But we just don't have everything a big, monster engineering firm has, which is why they have to go through the audit." [#6]*

Interviewees also noted that some cost estimates provided by agencies for contracts do not recognize the impact of inflation on the cost of doing business in specific industries. This disconnect makes it more difficult for businesses to make a profit on certain public projects.

*A representative of a majority-owned construction company stated, "If there's multiple price increases, then yes, we should be able to recoup our losses, especially when the base price gets higher than your selling price." [#5]*

*A representative of a majority-owned professional services company stated, "[It's] getting more difficult with the current economy, cost of projects, construction inflation, funding appropriation in relation to market conditions." [#AV206]*

*A representative of a trade organization in Idaho stated, "Inflation is I think having an impact and slowing some of these opportunities down for people." [#FG2]*

**a. Experiences working with ITD.** Businesses interviewed for the study generally considered ITD to have good communication with its vendors when answering questions, responding to requests, or reporting changes for a contract.

*A participant in a focus group stated, "[ITD is] pretty responsive when you call them and talk to them." [#FG1]*

However, ITD's reputation amongst business owners varied across its district offices.

*A representative of a public agency in Idaho stated, "Something that's not clear across the districts is how they're intended to interface with us. ... I have districts that are awesome. [District 2] has turned around. ... They do a ton. District 1 could not want less to do with us. I don't know if there's kind of an ITD way, but it would be nice if they were all consistent. ... It would just be nice to have some consistency to understand our expectation from them." [#15]*

*A representative of a woman-owned and DBE-certified construction company stated, "[District 4 is] very bad at bad-mouthing the companies. ... It's hard to do a good job for somebody when they don't want to pay you to do a good job." [#18]*

Interviewees said there is a high administrative burden associated with ITD bids and the time investment required to develop a submission deters bidders that are not confident that they can win. They noted small projects often have the same administrative burden as large projects, further reducing the potential payoff from the resources invested in the bid process.

*A representative of a majority-owned professional services company stated, "Oftentimes by the time we've gone through all of that process on a smaller project, we really can't make any money for all practical purposes." [#2]*

*The owner of a woman-owned professional services company stated, "If you are going to have to invest that amount of time, in our opinion, we need to feel fairly confident that we have a good chance of being able to compete for that bid realistically." [#13]*

*A representative of a majority-owned professional services company stated, "Not interested in working with ITD due to the paperwork involved." [#AV26]*

One such administrative burden discussed by business owners is that DBEs must submit their quotes in a specific written format to meet ITD's requirements, which can be challenging for both prime contractors and subcontractors. Businesses said ITD is not very lenient with submissions that do not meet its strict specifications, such as when businesses submit similar but incorrect forms or formats for their subcontractor quotes.

*Representatives of a majority-owned construction company stated, "The quotes, it's got their letterhead on it, why does it matter how they titled the quote. ... We think projects may have been deemed irregular for something that's costing taxpayers [a] significant amount of money on one project." [#1]*

*A representative of a majority-owned construction company stated, "One of the things is they claim that they need a handwritten signature on quotes in order to make them valid."*

*... But just things like the signature having to be a handwritten signature in this day of digital everything [is a burden].” [#PT1]*

Some business owners indicated that ITD has strict and unique specifications and requirements for its projects, which may present a steep learning curve for new businesses.

*A representative of a majority-owned professional services company stated, “[Subcontractors we use that have not worked with ITD before are] used to maybe submitting a memo and then they find out that there’s all these other things that ITD is going to require them to do to meet their needs. I’m not saying it’s not legitimate—stuff that needs to be done—but the education part of it is, I feel like, how can we educate these smaller businesses and encourage them to do the job?” [#26]*

Business owners said such issues are exacerbated by the variability in the interpretation of those specifications or requirements by different district offices.

*Representatives of a majority-owned construction company stated, “It gets to where one district will do it one way, another district will do it another way.” [#1]*

*A representative of a public agency in Idaho stated, “When I started, I was in District 2, and I just assumed that what I learned was the ITD way. You get out of District 2, [and] everybody is so dang different. You work with different contractors and [Districts] 1 and 4 and 6 and everything is different.” [#15]*

*A representative of a woman-owned and DBE-certified construction company stated, “[District 4 is] ran different than any other district, let’s put it that way. Here locally, in the Boise area, if we go out on an ITD job, we go out, we turn in the hours, they’re cool with it. But down there, the inspector’s like, ‘I didn’t approve that you could have flaggers there.’ And technically, according to most contractors, that’s not how their contracts should work with ITD.” [#18]*

**b. Learning about or obtaining ITD work.** Generally, interviewees found ITD to be good at forecasting upcoming projects, and business owners expressed appreciation for ITD’s notification system for upcoming or recently released solicitations. They also noted ITD often publishes its bidders lists, which helps them develop project teams.

*Representatives of a woman-owned construction company stated, “[I]t’s pretty easy to figure out when the jobs are bidding.” [#10]*

*Representatives of a majority-owned construction company stated, “ITD publishes all the plan holders. It’s pretty easy for somebody who’s wanting to bid as a sub to know who’s pulled plans on that project. ... You can even get notified when new jobs are posted ... ITD is probably the easiest. They’ve got a very quick system in place.” [#1]*

Interviewees said ITD generally provides clear answers to questions about solicitations, but some said some district offices are slow to respond to questions.

*Representatives of a woman-owned construction company stated, “When you’re bidding the job, they actually answer questions, which not all owners do, which greatly helps clarify*

*because there's always questions. ... Even jobs you think are simple ... It definitely helps the bidders get more accurate [information], and that means ITD is saving themselves arguments down the road by answering questions." [#10]*

**c. Worst procurement and contract administration practices by public agencies.** Businesses shared their experiences with the most difficult or burdensome procurement and contract administration practices they encountered with ITD and other public agencies. Business owners said agencies are understaffed, and some of the staff do not seem to be knowledgeable about the industries they serve.

*The owner of a woman-owned professional services company stated, "I know that with Idaho Public Television, they're understaffed by three or four people, and I just know that that is the case in several different agencies." [#13]*

*A representative of a woman-owned and DBE-certified construction company stated, "We work in Boise. That's probably one of the worst places in the world to work as far as sidewalks ... [because] they don't know all the rules that are going to be required when you get there." [#18]*

In addition, interviewees shared that the supportive services offered by various public organizations are often staffed with individuals who may have knowledge about specific elements of small business support, but who lack a concrete understanding of the challenges facing small businesses in different industries.

*The Hispanic American owner of a DBE-certified professional services company stated, "They ended up doing more one-on-one consulting and one-on-one help, which I don't know if that was very successful either. It's a challenge. ... And a lot of times the people that are advising you on your business ... they just don't really understand. And what do you do? They're trying to be helpful. ... it's kind of pro-business, but not necessarily pro-small business." [#9]*

Some business owners stated that there are agencies that support the DBE program in concept, but do little to practically support their bidders in meeting the objectives of the program. Interviewees noted that these agencies are pushing DBEs away through their lack of follow-through.

*A representative of a majority-owned professional services company stated, "When I'm in a meeting with them at the [Washington State Department of Transportation], they give everybody a warm, fuzzy feeling about how they're going to work with these small businesses and give them opportunities and all these kind of things. Then they pretty much just snub you when you walk out of the meeting." [#4]*

**d. Best procurement and contract administration practices by public agencies.** Businesses also shared the best procurement and contract administration practices they have experienced with ITD and other public agencies. In general, interviewees expressed that they highly valued transparency and flexibility from public agencies, with communication being a central feature of successful relationships with public agencies. Several business owners who had experience working with Washington public agencies shared ways in which doing public work in Washington was easier than doing public work in Idaho.



*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's just much easier to gather information from Washington than it is in Idaho." [#23]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Washington is just easier [than Idaho], better in the transparency aspect of it, easier and better in almost every way. ... One of the barriers ITD has is their transparency on when a project is awarded, to view who the prime contractor used as a DBE. As of my understanding right now, in order to get that information, you have to put in a [Freedom of Information Act] request. ... I could do a lot of things with that information, which should be public and should just be posted. ... And I say it should be, because I also do work with [the Washington State Department of Transportation] as a DBE, and they post it at the award on their website." [#14]*

Interviewees praised the Resident Engineer (RE) Academy hosted by District 6. It helps them gain a better understanding of specifications and other bidding documents.

*A representative of a public agency in Idaho stated, "Apparently [District] 6 is doing, I think it was 12-session long training for new construction staff. And I've heard rave reviews. We had talked about doing something for not only our staff, but consultant staff. If D6 would share what they've been doing, I think that could be really helpful for a lot of people." [#15]*

**5. Doing business as a prime contractor or subcontractor.** Business owners interviewed for the study discussed the role they typically perform on contracts (i.e., as a prime contractor, subcontractor, supplier, or trucker) and why. They also discussed how they assemble project teams and the factors that influence their decisions to work with other businesses.

**a. Decision to perform as a prime contractor or subcontractor.** Generally, business owners said their decision to perform as a prime contractor or subcontractor on a project depends on the scope of the project and whether the project takes place in the public sector or private sector.

*A representative of a majority-owned professional services company stated, "Almost all of the public work stuff, I'm prime." [#4]*

*Representatives of a woman-owned construction company stated, "It just depends on the type of job, but we choose to pursue jobs where we can be the prime." [#10]*

*The owner of an SBE-certified construction company stated, "I would say in the public realm, subcontractor. In the private realm, I am prime." [#24]*

Business owners interviewed for the study generally favored prime contracting work, with some stating that they would rather act as the prime contractor on private sector work than perform as a subcontractor on public-sector work. Reasons they cited included delays in payments to subcontractors in the public sector as well as their desire to control project schedules, scopes, and overall output.

*The co-owner of a majority-owned construction company stated, "One of the reasons that we focus more on residential versus seeking out more subcontractor work [in the public sector] is because with our residential customers we get half down at the time of their*

*signing or approving or when we go into contract for the project, and then we get the remaining half within five days.” [#11]*

*The Hispanic American owner of a DBE-certified construction company stated, “We’re more sub but definitely want to gear towards more of the prime.... it’s a little more fun, kind of [like] the ball’s in our court.” [#19]*

**b. Selection of subcontractors.** Many business owners said that cost is the primary factor when selecting subcontractors to build their project teams. However, other factors such as subcontractors’ quality of work or ability to help meet a contract’s DBE goals may override cost for a particular project.

*Representatives of a majority-owned construction company stated, “Most public projects are a low-bid process, and so we select the subs in the same way ... based on low price. ... When it’s a federal job with DBE requirements, typically those DBE requirements are set high enough that any DBE quotes we receive, we have to use regardless of what their price is. In those cases, we really don’t have the option to go with low bid.” [#1]*

*Representatives of a woman-owned construction company stated. “As long as you’re the low bidder, unless there’s a subcontracting goal, like an MWBE requirement. Or there’s some subs that we’ve worked with before, and we know they’re a little tougher to deal with, so you don’t necessarily use them if they’re low. But nine times out of 10, you’re using the low-bid subcontractor.” [#10]*

Interviewees said prime contractors often use the same subcontractors for different projects, and developing relationships with those prime contractors can be difficult for new businesses trying to break into their industries.

*A representative of a majority-owned professional services company stated, “A lot of times if a proposal is put out ... there might be five consultants that put in for a proposal. Three, four, or five of those are all going to have the same environmental consultants on their team to try to meet their DBE goal as well as just because they’re one of the best here locally.” [#2]*

*Representatives of a woman-owned construction company stated, “There are subs that we use repeatedly.” [#10]*

*The co-owner of a majority-owned construction company stated, “We’ve been fortunate in the subcontractors that we’ve worked with that we came about the contracts organically, that we just met them working on other projects, and then they became an option for us to utilize. And we’ve not at this point needed to seek outside of that.” [#11]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, “You have to have a prime that’s going to go, ‘Okay, I’ll do the extra work, and I’ll give you a shot,’ because he has to get work out of you as a DBE, and then he has to go shop around for other DBEs to hit the goal.” [#14]*

**c. Finding DBE-certified subcontractors.** Business owners indicated there is a limited pool of companies interested in public sector subcontracting work from which prime contractors can choose, and therefore, a small number of DBEs that can be used to meet DBE goals on federally funded contracts.



That dearth of DBEs could lead to certain DBEs being overextended due to the number of contracts on which they are participating at one time, and some interviewees expressed concern that the lack of competition could lead to DBEs demanding higher prices.

*A representative of a majority-owned professional services company stated, "Idaho is a busy market and the contractor pool is limited. There is too much work and not enough subs." [#AV3]*

*A representative of a majority-owned construction company stated, "[The] lack of DBEs when they have DBE thresholds, [makes it] hard to find DBE contractors that are competitive or even submit a bid." [#AV3052]*

*A representative of a majority-owned professional services company stated, "Fortunately for us we have DBE team members that have the knowledge and experience to help us get these projects. The unfortunate part of this is that these firms are on the same competing teams and almost always end up on the selected team, which is great for them but also a curse. It is a curse in that they obtain so much work that their services suffer in meeting schedules and providing the level of expected service resulting in us not wanting to use them in the future because the lack of service reflects on the prime firm and not on the DBE." [#WT5]*

*A representative of a majority-owned professional services company stated, "Another concern I see is the lack of DBEs provide the existing DBEs an opportunity to seek or demand higher pricing creating an unfair market for those not classified as DBEs. This also leads to increased costs for the client and taxpayers." [#WT4]*

*A representative of a majority-owned professional services company stated, "Another concern I see is the lack of DBEs provide[s] the existing DBEs an opportunity to seek or demand higher pricing creating an unfair market ... This also leads to increased costs for the client and taxpayers. ... The DBE requirements also impact companies that can provide the requested services but are not afforded the opportunity, because the prime firms and contractors need to meet the minimum DBE requirements. This often results in using higher bids and less experienced firms and companies to meet the DBE requirements." [#WT5]*

**6. Potential barriers to business success.** Businesses may face a variety of barriers to entering the marketplace or trying to expand, particularly in relation to trying to work with public agencies such as ITD. Interviewees shared their experiences with several of these challenges and identified areas in which ITD could implement or improve measures to help ease them.

**a. Finding information on contracting and bidding.** Newer businesses reported they had difficulty finding information about various aspects of public contracting and bidding opportunities, including information about the necessary experience required to bid on projects, the process for compiling and submitting bids, common bidding ranges for certain types of projects (especially for business that work in multiple states, as each state's market may support different rates), and learning about upcoming opportunities.

*The Hispanic American owner of a construction company stated, "The only way you can get the advertisement for those public work jobs is you have to pay a yearly membership*

*deal. Even on the Idaho Transportation Department website, it's kind of hard to navigate and they make it hard to find the jobs." [#3]*

*Representatives of a woman-owned construction company stated, "[The owner will] get phone calls from companies saying, 'How do I bid this? They don't even know where to get the plans. They don't know, 'No, you can't ask me what I want you to quote.' ... We've run into subs with issues and again, not knowing how to estimate work. That is a skill, not everybody knows how to do it." [#10]*

*A representative of a Hispanic American-owned professional services company stated, "[It's] very difficult to be able to compete and participate in the bids. [There is lots of] out of state competition and it's a price market, [it's] not clear about what the budgets are for the projects (being advertised)." [#AV251]*

**b. Overhead rate calculations and bid shopping.** Some interviewees said low overhead rates for professional services work may lead businesses to inflate their overhead costs to increase their profits, as the current rate system precludes professional services firms from generating much profit from ITD work. Additionally, some subcontractors expressed reservations about sharing their overhead rate calculations with their project partners, as this information may inadvertently reveal their employees' rates to the prime contractor and potentially to the broader public.

*A representative of a majority-owned professional services company stated, "The other issue is DOT has what's called an approved overhead rate and other ways that they calculate your hourly fees for professional consulting services. Because of the way they calculate these fees, a company my size, I might be paid somewhere around \$90 or \$95 an hour for the same exact services where a company the size of [Business Name] would get paid \$165 an hour because they can doctor their paperwork and they can show a larger amount of overhead." [#4]*

*A representative of a majority-owned professional services company stated, "One thing that I find as a disadvantage to all engineering firms on the contracting side of things is a lot of times, it's a cost-plus-fixed-fee. When you do that, you basically are telling anybody that we deal with, as a sub-consultant, we have to give our private information about what we are charging and billing our employees out at their cost rates. ... I wonder if it's driving up the market costs because it's all out there for everybody to see." [#26]*

**c. Delayed payment.** Most interviewees believe that prompt payment is essential to business liquidity. Delayed payment can impact a business's ability to pay its employees, obtain necessary equipment or material, or force the business to obtain a loan to cover its costs. Generally, business owners view ITD's payment as prompt and flexible. ITD offers the option to bill twice each month rather than on a monthly basis, which helps small businesses maintain their cash flow. ITD also offers subcontractors the ability to see if prime contractors have been paid, which allows subcontractors to be proactive in securing their payments from prime contractors if there are delays. Interviewees that have experience working with ITD discussed these measures positively.

*Representatives of a majority-owned construction company stated, "ITD pays very consistently. And I guess one thing we could ask is right now we are allowed to, especially on a bigger project, we can bill twice a month. We can request progress payments twice a*

*month. ... I guess we would encourage that they don't take that option away because that helps everybody get paid quicker, us and the subs. ... We would encourage to help everybody's cash flow, especially on larger projects that that bimonthly progress estimate option not be removed.” [#1]*

*The Native American owner of a professional services company stated, “I think understanding the client and breaking it into more phased payments or more progress payments could definitely help with a smaller business.” [#7]*

For public work, subcontractors reported that prime contractors may delay payments by claiming they have not yet been paid, even if they have.

*The Hispanic American owner of a DBE-certified construction company stated, “The guys over here have taken care of us really well, and it was just a slow process. They kept blaming it on ITD and ITD's like, ‘We've paid ‘em.’ I'm like, I know of you, ‘I've seen you get paid, bro. I know you have money.’ ... Well, you can look it up and see if the prime's been paid. So, we've seen it, I don't know, they'd be a few weeks out after that or a month or two.” [#19]*

Interviewees noted that subcontractors' payments can also be delayed if there is an issue with prime contractors' invoices, regardless of whether the invoicing issues are related to the scopes of work subcontractors performed.

*The woman owner of a DBE-certified professional services company stated, “When you're a sub, if there's an issue with the invoice when they submit it, whether it's your issue, or the prime's issue, or another sub's issue, everybody has to wait and suffer I guess, which it's not ... We just account for it in the business knowing that we've been the engineering company and invoice, we more than likely won't get paid for six months.” [#6]*

Businesses stressed that they typically need to have multiple ongoing projects in order to maintain cash flow, as the rate of payment can typically vary from 30 days to 120 days.

*The co-owner of a majority-owned construction company stated, “One of the reasons that we focus more on residential versus seeking out more subcontractor work is because with our residential customers we get half [of our payment] at the time of their signing or approving or when we go into contract for the project, and then we get the remaining half within five days. ... how this works with the public sector, ... with contractors, they generally are not going to pay anything down. So we're holding the entirety of the expenses and then they can take as much as a month to pay. So it's like really doesn't make sense for us. If we can stay busy ourselves, why wait for the money when we have a customer base that helps significantly with just our cash flow?” [#11].*

*The woman owner of a DBE-certified professional services company stated, “We are usually paid ... within 120 days ... I mean, we'd like to see that closer to 60 days ... I mean I had one payment that was out almost 180 days.” [#21]*

**d. Experience and skills gaps.** Interviewees noted that new businesses face knowledge gaps when starting to work in the public sector. Reading and interpreting agencies' various regulations, requirements, and specifications is an essential skill for businesses to successfully contract with the

agency, but businesses shared that there is a steep learning curve. Interviewees said that this issue may be exacerbated for those who do not speak English as a first language, and multilingual support is not often offered.

*Representatives of a woman-owned construction company stated, "You can tell if somebody hasn't worked for ITD before, and all of a sudden, they're like, 'Wait, I have to do what? I have to turn in what?' Again, doesn't matter whether they're a MWBE or not. If they haven't done it before, they're going to have a steep learning curve." [#10]*

*A representative of a majority-owned professional services company stated, "I find that, as a larger consultant, ITD relies on us basically to train our smaller companies. I'm not meaning even minority, but also the minority- or women-owned or small companies, they're relying on us to train them how to do ITD work, how to meet their standards and stuff like that. I think that is a disadvantage for the businesses because I think sometimes, they're coming in a little bit, I don't want to say blind, but they're coming in green maybe." [#26]*

*A participant in a focus group stated, "The public works contractor license is fairly straightforward in Idaho, but I'm speaking from a native English-speaking standpoint and someone familiar with financial statements and being able to submit those and show that information. But to work on a public works project in Idaho, you need to submit financial statements and complete a licensing process there with the state. So, I think some assistance is probably needed for some contractors." [#FG1]*

Many public agencies have specific requirements for contractors in reporting financials and invoices, as well as prequalification requirements. Interviewees said meeting such requirements may require the assistance of certified public accountants, which can add to their costs or prevent them from bidding. Small business owners shared that although they may be eligible to compete for contracts that have these requirements, they may not have the internal capacity to perform these tasks or to hire staff that can provide the necessary administrative support.

*The Native American owner of a professional services company stated, "You need somebody sitting at a desk just being able to do [financial] paperwork, which I mean me personally I don't enjoy that all the time. But yeah, it's just once you get to a level where you can justify salary and do that basically." [#7]*

*The owner of a DBE-certified professional services company stated, "Accounting work is critical. I do not have the expertise nor the credentials to do that. [My wife] does not either." [#22]*

*A representative of a majority-owned professional services company stated, "The greatest barrier is the financial side of your application of governmental work. Doing certified payroll. It is the most time consuming [part]." [#AV212]*

Interviewees expressed that some businesses may not be aware of existing supportive organizations or services that offer assistance with reporting, responding to bids or proposals, or other administrative support, which are often available at little to no cost.

*The owner of an SBE-certified construction company stated, “Only because of my connections with other business owners that do more of this kind of work, of the public sector work. I think that’s the only way that I personally would’ve ventured out into that or tried [support services], which I think I tried once or twice in the past—it’s been a while now—is because they had the knowledge of what should be included in these or whatever we were looking at. And I needed that assistance to get it right. And once I got it, I could do it.” [#24]*

*A Hispanic American representative of a trade organization in Idaho stated, “A lot of these businesses ... don’t know all the resources that are available to them ... We just need to do a better job in making sure that people know what the resources are out there to help these business owners, specifically first-time business owners.” [#FG1]*

**e. Inventory, equipment, and supplies.** Interviewees discussed challenges associated with acquiring the equipment and supplies required to perform ITD work. Some noted that much of ITD’s work heavily relies on access to equipment, putting a burden on businesses that have to rent equipment they do not already own. This characteristic of the work drives up costs for contractors, potentially impacting their ability to bid on certain contracting opportunities or reducing their profitability on such work. Some interviewees also noted that the time it takes to acquire equipment could impact their ability to perform ITD work.

*A representative of a majority-owned goods and services company stated, “Due to current new truck lead times the public sector is slow to adapt to ordering equipment in a timely manner.” [#AV68]*

*A representative of a trade organization in Idaho stated, “The cost of leasing and maintaining vehicle tractors to pull the large trailers, that came up a lot [with the businesses we work with].” [#FG2]*

Some interviewees noted that large businesses often have greater purchasing power than small businesses due to their ability to buy in large volumes. Large businesses may also have the advantage of being able to prepare for projects ahead of time by ordering materials to have on hand.

*The Native American owner of a professional services company stated, “When you’re just a small guy ... my timeframes are typically short compared to big companies with one, two-year backlogs on projects. They have time to prepare and order things in advance or schedule whatever. So, it definitely can be a challenge, and depending on what it is, I don’t necessarily have a lot of buying power because I don’t have a huge volume.” [#7]*

Multiple interviewees noted that supply chain issues are still impacting the Idaho marketplace in terms of both higher costs and delayed deliveries, impacting project costs and timelines.

*Representatives of a majority-owned construction company stated, “It’s a barrier to getting projects done on time, but we’re getting material quotes but sometimes that material’s not available when it comes time to construct the project. There has been, I’d say, shortages.” [#1]*

*The Hispanic American owner of a DBE-certified construction company stated, "It started slow, because of COVID, but I guess the biggest repercussions [have] been getting the concrete and all that weird stuff. [With] the demand, it all got backed up so much. So that's been the biggest thing." [#19]*

**f. Networking and finding potential project partners.** Interviewees repeatedly said relationships are key to running a successful business and for the development of project teams. Many business owners identified finding partners for projects as a challenge, particularly if they are new to the market or are looking to work with a company that already has an established list of preferred project partners.

*The owner of a DBE-certified professional services company stated, "Knowing the right people is terribly important too. Something that can't be replicated." [#22]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's all relations. That was the other thing I used to put a lot of effort into—mingling with people that don't matter. It's like, 'Oh, you need to make the right friends. You need to mingle with the right people.' And so [I'm] slowly learning that." [#23]*

*The woman owner of a DBE- and 8(a)-certified professional services company stated, "So much of it is connections. It's who you know, who knows you. And plus, I'm at a time in my life where I can afford to fly to every single conference in every single state, and I see the same core group of people. And pretty soon that core group's just moving around and then they introduce you to someone else. So as a result of that, you're able to form joint ventures, mentor or protegee with other women or just other businesses. And that, there's so many benefits to that because as you know, somebody just mentions your name to someone and now all of a sudden, you're on a project." [#25]*

With the increase of residents and businesses moving to Idaho, business owners expressed a need for additional support developing those relationships and networking with potential project partners. Interviewees noted that both public agencies and prime contractors seem to have a bias against out-of-state or new-to-the-state businesses.

*A representative of a majority-owned construction company stated, "I mean, there's people that look at out of town contractors and say, 'You're coming in our area, we're not going to sell to you because you're taking work away from our local people.'" [#5]*

*A representative of a trade organization in Idaho stated, "We see our networking events, the demand for those is just through the roof. As a matter of fact, we're having challenges [regarding], even where we can host them, because so many people want to turn out for them. And I think the reason for that is we are seeing a large number of new business startups and new business openings from people moving into the area and needing to build those relationships and those networks rather quickly. So, they're looking for these type of opportunities. I would say, probably, at least a half, if not more, of our new businesses that we signed up this last year were people that had moved into the area in the last two to three years that were seeing the growth of our community, seeing opportunities, and bringing their experience and their expertise from other areas to start those businesses." [#FG2]*



Some interviewees noted that there are groups whose networks are limited by external factors. For example, some Native American-owned businesses that work primarily with tribal governments often have difficulties establishing relationships with other businesses that do not perform work with local tribal governments.

*A representative of a trade organization in Idaho stated, "Native American communities, it's also [a barrier] getting their name out there, but also [having] the trust in communities outside of their tribal entities." [#FG1]*

**g. License and permits.** Across the state, cities, counties, and other municipalities have different fees for obtaining permits. Business owners discussed how this practice may deter some businesses from working in specific locations due to higher permitting fees.

*A representative of a majority-owned construction company stated, "[I] have stopped working because the price of building permits and impact fees in Bonneville County and City of Idaho falls. [The] majority of [my] work is outside of that area because we cannot afford to get a permit." [#AV85]*

In addition to the cost of obtaining permits, interviewees shared that some permitting offices are slow to issue permits or answer questions, delaying projects unnecessarily. Some interviewees requested additional guidance on where and how to obtain certain permits or licenses.

*A representative of a majority-owned professional services company stated, "Since COVID, the public agencies who issue the permits have become very unresponsive. What used to take me a month to two months ... has now been taken six to eight months ... and it's 100% percent because of lack of response from public agencies." [#4]*

*A representative of a volunteer organization in Idaho stated, "[If] the businesses [are] needing to work with something with a road related issue, there's a lot of passing the buck. It's like, 'Well, the city doesn't do it, go to the county. The county doesn't do it, go to ITD.' So there's a lot of frustration happening when they're trying to get the permits and certain things needed with nobody [knowing] exactly where to send them to, so they go serve one referral, then the next person says, 'I'll go to so-and-so,' and it's a lot of bouncing them back and forth around, which leads to a lot of frustration before they finally get to the right person who can give them answers." [#FG2]*

Multiple interviewees identified public works licenses as a burden that can be a barrier to entry for businesses seeking to work for ITD, as the licensure is not free to obtain and requires specific levels of experience to qualify to do work with state agencies. Paradoxically, without a public works license, businesses may not be able to gain the work necessary to acquire the license.

*A representative of a majority-owned construction company stated, "Getting a public works license in Idaho [is a barrier]." [#AV266]*

*A representative of an Asian Pacific American-owned construction company stated, "The biggest issue in Idaho is public works licensing. It is hard to get a larger dollar amount when you are getting going." [#AV3072]*



**h. Finding or hiring personnel and labor.** Business owners across all industries reported low workforce availability for both experienced and entry-level employees as well as increasing costs for labor. Interviewees identified challenges related to attracting talent to new, small businesses, particularly during the start-up phase. Without sufficient staff, owners find it difficult to grow their businesses or expand into the public sector.

*The owner of a majority-owned professional services company stated, "I hired and had trouble finding anybody with actual skills and those that ... have any skills are gone." [#8]*

*The co-owner of a majority-owned construction company stated, "I would say just finding candidates that have the work ethic and care about the quality of works to the level that we do [is a barrier]. Another challenge has been entry level type of positions have entry level type of pay. And so it's understandable that it's a challenge to motivate people that are in entry level careers, you know what I mean? But it's also equally a great challenge to pay more because then you of course have to increase your prices." [#11]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I wish I could snap my fingers and get the best personnel, but how are you supposed to do that? You got to go through the application process like anybody else and throw out the bad ones and hire the good ones. But then as a new company, the good ones probably aren't looking to come work for a small business. ... when you're first starting out, how do you promise a guy, 'Oh yeah, I'll keep you busy all year.'" [#14]*

*A representative of a woman-owned and DBE-certified construction company stated, "We could do a lot more work if we could find people that were willing to work. We could do a lot more. We turn down a lot of work because there's just not enough of a workforce for people. ... If we could get more people, we would have way more work." [#18]*

**i. Prequalification requirements.** Although interviewees acknowledged the need for stringent prequalification requirements for conducting business in the public sector in order to maintain a high quality of work, they discussed how some of these requirements may be preventing capable businesses from entering the marketplace. Business owners cited difficult-to-meet requirements and restrictions as some of the barriers to obtaining necessary licensure. This issue is particularly evident for certain industries for which there is a dearth of businesses in Idaho, such as land surveyors.

*A representative of a majority-owned professional services company stated, "The State of Idaho needs to change the land surveying program so that it is more accessible and offered to more universities and allow for credit based on work experience not necessarily schooling only. The state has been short of surveyors for 15 years. It's because of restrictions, and requirements to get a land surveyors license." [#AV19]*

*A representative of a majority-owned professional services company stated, "Licensure is always a barrier to entry. Have minimum of three types of engineers of license. More hoops and costs for an engineering business than other business[es]. Make[s] it more difficult to get a business going that way and keep going that way. The State took license requirements for individuals and business from State board of Engineers and Land Surveyors and moved to a different department and that dep[artment] does not understand what is involved in engineering." [#AV104]*

Many public agencies have prequalification requirements demanding a certain level of past experience doing work for that agency or for public agencies in general. Similarly, public agencies consider past experience when evaluating proposals or other non-low-bid awards that do not have prequalification requirements. Businesses seeking to break into public sector work identify this practice as a barrier, as lack of past experience will prevent the businesses from meeting these requirements and gaining the experience necessary to qualify or compete for that work.

*Representatives of a majority-owned construction company stated, "On the pre-qualification, the only thing that comes into a challenge there is having the experience. Sometimes the only people that are able to bid are people that have a lot of ... experience. And even with our history, sometimes we don't have those individuals that have been around in our company that long. I would think that would create challenges for a lot of people that would exclude them from certain work." [#1]*

*A representative of a majority-owned professional services company stated, "A lot of the projects are awarded on qualification-based criteria. If we are not awarded the projects, we don't have the experience, so we won't get future projects. We can't get experience if we are not awarded the project." [#AV29]*

Agencies using qualifications-based selection for professional services consider both qualifications of companies as well as the makeup of firms' staffs, which interviewees believe gives an advantage to large companies with more employees who may or may not be the actual staff performing the work. Interviewees noted that sometimes prequalification or past experience requirements may not be in line with the difficulty or scope of the work on which they are bidding.

*A representative of a majority-owned professional services company stated, "One of the problems is there is a law—Quality Based Selection—and it requires that ... engineering selection is based on the quality of ... staff. The result is that very large international companies have a vast pool of resources to choose from." [#AV104]*

*A representative of a majority-owned professional services company stated, "The reality of it is firms my size get denied the opportunity to go after public work because of our size, as a sub anyway. Larger companies have a higher likelihood of being viewed as, I guess, more professional and more desirable to work with in the eyes of public agencies." [#4]*

**j. Incomplete contract specifications.** Some business owners said that the specification and bidding documents for some projects are not well-tailored to the work being solicited. Interviewees see incomplete or irrelevant information as a barrier for businesses bidding on those projects as complete information is necessary to develop an accurate cost estimate or build a well-qualified team. Inaccurate specifications in bidding documents may be incorporated into contract documents, leading interviewees to be contractually obligated to meet requirements that may not be appropriate for the scope of work.

*The owner of a majority-owned professional services company stated, "[Contract specification] is a barrier. But it's often a result of the people putting out the specifications and bidding documents are inexperienced and don't really understand. They're cut [and] pasting from another project. That scope may be way beyond what is really necessary. ... And whether it's appropriate or not is not really considered and it gets put in the specifications of contracts. Now you're stuck with it." [#8]*

**k. Treatment by prime contractors and customers.** Interviewees whose firms work as subcontractors noted that although prime contractors may honor DBE requirements within their management, their mid-level employees may not honor those agreements, and subcontractors have little recourse to remedy that behavior.

*The Hispanic American owner of an MBE- and DBE-certified construction company, "The truck boss would hire out his buddies and put them at earlier start times and stuff than my trucking company, and I've had to address that a couple times, like, 'Hey, I have a goal to meet. I don't want to drag it.' ... If I can get the goal met in two weeks and then be done and move on, and he doesn't want to use me for the rest of the project, then let him go. As long as I met my goal as quickly as I can, then I can go out and go onto the next one, instead of dragging out the project for me, getting six, seven hours a day while the other trucking companies are getting 10, 11 hours a day. So it only made sense of they're not even in the contract, so why are they starting before me? ... The chief estimator is like, 'Yeah, if you have a problem, just come talk to us, because the truck boss doesn't know or need to know what's going on behind the scenes, who's in the contract or not.' But then again, he kind of does need to know so that my scheduling doesn't get messed up." [#14]*

Interviewees reported that some prime contractors have forced extra work on their subcontractors without appropriate compensation, and some interviewees said they learned after the fact that the prime contractors received a change order for the extra work but did not share the increased budget with their subcontractors.

*A representative of a majority-owned professional services company stated, "Some primes will come to me, and they'll say, 'This is obviously not in your scope of work. We're happy to pay you the extra fees to complete this work.' Other primes will come to me, and they will say, 'Yep, guess what? You're going to do it for free, and that's the way it's going to be. If you don't like it, don't work with us anymore.' ... So, I don't work with them anymore. It's unfair to me, and the reality of it is, over time, I've found out they're hitting the owner with the change order. Then they're bulldogging me into doing work for free, and then they're pocketing the profit without sharing it with me. So basically, I do a bunch of free work and they get the money for it. So, I've identified a couple primes that that's happened with, and I'm either very aggressive about getting paid for my change orders when I work with them, or I just don't work with them anymore." [#4]*

Subcontractors also noted that they are not often included in contract negotiations or other contract changes and feel as though they are simply a line item to a prime contractor rather than a project partner. They said that when subcontractors are not involved in contract negotiations, prime contractors can take advantage of subcontractors if there are change orders. Some interviewees suggested that the lack of respectful and meaningful partnerships can hinder subcontractors from developing the relationships they need to transition from working as subcontractors to becoming prime contractors.

*The woman owner of a DBE-certified professional services company stated, "When we're a subconsultant, or a subcontractor to a prime, sometimes, they just ask for a scope, but then they go into their own meetings with the client, and they'll make decisions without getting our input." [#6]*

*The Hispanic American owner of a DBE-certified professional services company stated, "We can't get any DBE subs.' It's like, 'Well, yeah, because you don't develop them. You don't support them. They're just a line item [to you].'" [#9]*

**7. Barriers related to race and gender.** Beyond the barriers that businesses generally face in the Idaho marketplace when starting or expanding a business, interviewees discussed additional barriers related to the race or gender of the business owners.

**a. False reporting of DBE participation or good faith efforts (GFEs).** Federally funded contracts often set DBE participation goals as a requirement for bidders to be considered responsive. Prime contractors can either use DBE-certified subcontractors to meet the goal or submit GFE documentation showing that they attempted but were not able to find certified subcontractors to meet the goal. Subcontractors interviewed for the study shared experiences in which prime contractors listed them on a bid in order to meet a project goal, but did not communicate with the subcontractor that they had been included in the bid. Further, if awarded the contract, prime contractors may not actually use the subcontractors listed in the bid. Interviewees expressed concern regarding false reporting of their participation in contracts.

*The Hispanic American owner of a DBE-certified construction company stated, "We had our commitment letter to a company last year. They won the project and then they didn't award us anything." [#19]*

*The Hispanic American owner of a DBE-certified construction company stated, "Hard to know if they will actually use us if we bid and they win. ... Getting discouraged after a few times they win, we commit, then they don't call back. ... Even if they don't want to use us, the now knowing is hard. We only have four employees and can only bid some many jobs so we need to know if we are on the job or not." [#WT7]*

Some DBEs noted that as more agencies begin to accept GFEs in place of utilizing DBE subcontractors, prime contractors are more likely to choose to self-perform work that could otherwise be subcontracted to DBEs.

*The Hispanic American owner of a DBE-certified professional services company stated, "The first thing those large, large organization organizations did, the engineering companies, is they dropped us like a hot rock, because they have their internal people. So, as soon as there was a good faith effort, they just went, 'Okay, we don't have to do any.'" [#9]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Feels like for the Idaho side, it's just part of the process. Checking a box. ... There's a process, from my understanding in Idaho, that there's a process for the good faith effort, but with it being race-neutral and you not knowing which DBE they're using. ... Why am I even putting so much thought into this Idaho program if you don't have access to that information?" [#23]*

Interviewees said despite ITD's policy to accept the lowest bid if there are documented GFEs, the agency may be unfairly deeming low bids with documented GFEs as irregular if other bidders are able to meet the project's DBE goal. Some suggested this policy could lead to some prime contractors accepting

higher bids from DBE subcontractors with which they are apprehensive about working in order to win work, rather than engaging in genuine outreach.

*A representative of a majority-owned construction company stated, "At the end of the day, our good faith was deemed invalid because another bidder met the goal with the DBE firm that was considerably more money. And we're always told that money's not a factor. But in this situation, money was a factor ... [Now,] we make sure that even if it wasn't the best price that we picked enough DBE [subcontractors], [to] make sure we meet the goal. .... Where we're headed ... we might as well not do a good faith, because it's not worth taking the risk that I do a good faith than somebody else has a higher price that met the goal."* [#PT1]

DBE subcontractors said that once a contract's DBE goal is met, prime contractors may remove the DBE from the project and self-perform the remaining work in order to keep a larger portion of the budget.

*The Hispanic American owner of a DBE-certified professional services company stated, "If there is a hard percentage, we'll hit that percentage. And then it's like, 'Okay, you're done.' You get pushed off a cliff."* [#PT1]

**b. Good ol' boy club.** There is a strong sense amongst interviewees that the "good ol' boy club"—an informal system in which white men will use their connections to help each other gain businesses—is pervasive among prime contractors and trucking brokers, preventing new businesses and POC- and woman-owned businesses from breaking into these closed circles.

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Usually truck bosses, they have their old boys club that they want to hire the trucks out that they know, their buddies ... and give the work to their buddies"* [#14]

*The Hispanic American owner of a DBE-certified construction company stated, "It is a good old boys club out there. I went to that pre-bid yesterday, and everybody knew everybody, and I was the new guy."* [#19]

Interviewees said the exclusionary nature of business relationships extends to companies that recently moved to Idaho from other states.

*A representative of a majority-owned construction company stated, "I mean, there's people that look at out-of-town contractors and say, 'You're coming in our area. We're not going to sell to you, because you're taking work away from our local people.'"* [#5]

Business owners said agencies often have preferred vendors with which they have developed long-term relationships, which could be interpreted as another closed network from which they are excluded.

*A representative of a majority-owned professional services company stated, "You have three or four people picking who they're going to hire. They sit down in a room, and they go, 'Oh, we're not going to hire this guy. He's too small.' It's all behind closed doors."* [#4]

**c. Resistance to using DBEs.** Some interviewees said prime contractors compare DBE prices and rates to those of non-DBEs without considering that the cost of doing business as a DBE is often higher than

doing business as a majority-owned business or a medium-to-large business. This false equivalence leads prime contractors to believe DBEs may be using their certification status to inflate their budgets and increase their profit margins. DBE owners said prime contractors with low profit margins may direct their frustration toward DBEs and may resist using DBE-certified businesses if they are not required to do so.

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It ... just boils down to money for [prime contractors], but that's their excuse to try to dismantle the program like maybe it's not good because, 'Oh, these DBEs have way higher prices and they're not telling the full story.' Yeah, maybe we do have way higher prices, but you're comparing it not to another DBE trucking firm." [#14]*

Interviewees also said prime contractors may hold the view that DBEs have an unfair competitive advantage with public-sector work.

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "[Prime contractors] think that you're getting a free handout and that you're not just working." [#14]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's so funny because in the industry too, all my competition, they're just like, 'Oh God, look at him. ... Because he's a minority, look at him.' As though that's the only reason why [I'm] successful." [#23]*

**d. Stereotypical attitudes.** Interviewees said the belief that DBE-certified firms are less qualified than non-certified firms is prevalent in Idaho. Some said prime contractors view DBEs as line items used only to meet DBE goals on contracts, and they have little interest in developing relationships or long-lasting partnerships with DBEs.

*The Hispanic American owner of a DBE-certified professional services company stated, "I would say that there is an underlying [belief] about DBEs not being able to do good work." [#9]*

*The Hispanic American owner of a construction company stated, "I've been doing this for 13 years. My experience is mainly this, and I just felt like they didn't give me an equal opportunity. They just felt like I was unprofessional." [#3]*

*The Hispanic American owner of a DBE-certified construction company stated, "If they do decide to use [you], they'll ... treat you like crap. And then they'll never call you again. Even if they do want to use you. It's the dance you got to struggle with." [#19]*

DBEs working as subcontractors shared that prime contractors often treat DBEs as unknowledgeable, unprofessional, or inexperienced and ignore their comments and concerns. Some interviews suggested this could be racially motivated.

*The Hispanic American owner of a construction company stated, "They've made it seem like maybe I didn't have the knowledge or that I was unprofessional, when they had no clue that prior to being in business, ... I've been doing this for 13 years. My experience is mainly this, and I just felt like they didn't give me an equal opportunity. They just felt like I was*



*unprofessional. And mainly, too, because of my youth. ... I guess, part of it was me being Hispanic... Because of my ethnicity, they didn't give me the same treatment as they would everybody else. They would just put me off like, 'Hey, we'll get back to you,' and never got back to me. It got to a point where I realized they weren't taking me serious." [#3]*

If there is explicit racism from the employees of prime contractors, DBEs reported that there is usually no punishment or apology from the prime contractor.

*The Hispanic American owner of a construction company stated, "One of the guys ... he's African American, and he was doing some work. One of the concrete owners was there, but his employee used the n- word, which made my employee upset. ... I had talked to the contractor. ... Nothing was done about it, and people use it a lot. They use it freely. But I just made a point to them that they can't be using that type of language, especially when people of color are around. ... Not just the n-word, they've used certain words to kind of discriminate us, Hispanics, but I've dealt with that [before]. It's part of the reason why I started my company because I got tired of putting up with all those racist remarks. That was actually one of my main reasons why I started my company." [#3]*

Interviewees said many in the construction industry view women as less capable than men, and woman-owned businesses are taken less seriously than businesses owned by men, even if they have more experience.

*The owner of a woman-owned professional services company stated, "As a woman, you most certainly run into scenarios where others may not think that you're as capable as a male counterpart. You run into that kind of discrimination no matter where you go, in terms of being able to prove that you're as capable." [#13]*

*A representative of a woman-owned and DBE-certified construction company stated, "We do, every now and then, run into people that don't work with women." [#18]*

*A representative of a Native American woman-owned construction company stated, "I run into men that will not work with a woman as the boss. I've run into this several times and recognize it right off, and I back off and let my husband handle it." [#AV107]*

**8. Business assistance programs.** There are a variety of agencies and programs in Idaho that seek to support new businesses or those seeking to expand. Interviewees discussed their knowledge of and ability to access these programs, and identified areas where additional programming could benefit small, disadvantaged businesses.

**a. Awareness of existing programs.** Many interviewees reported they were unaware of programs in the state or offered by ITD that could help their businesses.

*The owner of a woman-owned professional services company stated, "There could be resources out there that we could take advantage of, but just not aware of them" [#13]*

*A representative of a volunteer organization in Idaho stated, "I think the biggest challenge is really not knowing about every resource and understanding what each one of them will do." [#FG2]*



Of the programs interviewees indicated being aware, they highlighted the United States Small Business Administration's (SBA's) 8(a) and 7(j) programs as being useful as well as the online webinars that the SBA hosts.

*The Hispanic American owner of a construction company stated, "The SBA [programs] is the only one that I know so far that I've reached out to that've been very helpful." [#3]*

*The Hispanic American owner of a DBE-certified professional services company stated, "I mean, I was in a 7(j) program, they actually helped me get ... my accounting system set up and stuff." [#9]*

*The Hispanic American owner of a DBE-certified construction company stated, "[One of my friends works for a company,] and they're just like, 'We're 8(a). We've got that clout.'" [#19]*

In addition to these national programs, interviewees mentioned several programs run by ITD or the State of Idaho that they found to be beneficial. For example, the State of Idaho offers the Idaho Public Purchasing Association reverse vendor fair as an opportunity for businesses to meet the procurement staff for various public agencies. ITD offers a reimbursement program for Business Development Group attendees that allows \$1,000 to be reimbursed if used for valid business expenses.

*The Hispanic American owner of a DBE-certified professional services company stated, "I have been to the Idaho Public Purchasing Association reverse vendor conference. ... I like the reimbursement program. Every little bit helps" [#WT3]*

**b. Experience with ITD's programs.** Business owners who had experience with ITD's programs generally viewed ITD's Office of Civil Rights (OCR) staff as helpful and quick to respond to questions, comments, or concerns.

*The woman owner of a DBE-certified professional services company stated, "ITD, their staff was so helpful. They worked with you." [#21]*

Businesses found "How to do Business with ITD" outreach events to be extremely helpful.

*The Hispanic American owner of a DBE-certified professional services company stated, "Need to have more 'How to do Business with ITD' [events]." [#WT3]*

Interviewees' experiences with ITD's implementation of the Federal DBE program were widely varied. Some DBE-certified firms received so much work that they had to turn down opportunities to bid, whereas others had not received work through the program in years.

*The woman owner of a DBE-certified professional services company stated, "I really think that the DBE program, I think probably because I'm a recipient of it overall, it's a really great program that is functioning the way it should. I think that I've been provided lots of opportunities to work with folks and established relationships which I have." [#21]*

*The owner of a DBE-certified professional services company stated, "I'll be candid with you, that [my wife] and I have been disappointed that no work, absolutely no work, has come our way from ITD that recognized our status as a qualified woman-owned business." [#22]*

Because ITD sets contract-specific DBE goals only on FHWA-funded projects, business owners said the use of DBEs was concentrated among a few businesses and industries, particularly in construction. Within construction, interviewees reported a concentration of DBE use in a small number of subindustries, such as flagging. Meanwhile, in other industries in which projects do not have DBE goals, being DBE certified is less valuable.

*The owner of a DBE- and WBE-certified professional services company stated, "I just did all the training in Idaho... and [the opportunities are] all construction." [#20]*

*The woman owner of a DBE- and 8(a)-certified professional services company stated, "I felt like it was hard to break into at first because a lot of the services weren't services that we provide. It was striping or it was construction flagging ... those kinds of things." [#25]*

**c. Bonding assistance.** Although subcontractors are not required to be bonded by ITD in order to perform work, interviewees that perform work as subcontractors reported that many large prime contractors prefer their subcontractors to be bonded. They shared that some prime contractors support their DBE subcontractors to become bonded by introducing them to their bonding agent and facilitating that relationship.

*The Hispanic American owner of a construction company stated, "[The bonding company] asked for a high credit score—really, really high—and they asked for money down. They made it very difficult as to acquire a work bond." [#3]*

*Representatives of a woman-owned construction company stated, "We prefer to get a subcontractor bond from our subs. ... Oftentimes, DBEs are going to tell us they can't get one. ... We did one mentor protegee where we got them hooked up with our bonding company and got them established such that they could get a bond. But that definitely can be a barrier for newer, smaller subcontractors, DBE or not. Some general contractors have 100 percent mandatory bonding requirement. We don't quite go there." [#10]*

**d. Mentoring.** Newer business owners said they would benefit from seeing what success looks like in their industry—that is, the financial status of "successful" prime contractors, their capacity for work, and other indicators of success—so that they can have a better sense of what areas of their business they need to strengthen.

*The co-owner of a majority-owned construction company stated, "How much you should be paying towards your cost of goods, how much you should be paying your labor as a percentage of the project or your revenue overall. Those are things that we had to figure out like trial and error. ... I suppose if there was insight or articles or in terms of providing value or ongoing updates annually. 'These are construction businesses' average profit margins or just information like that.'" [#11]*

Interviewees said newly founded companies would benefit from general business-related guidance, such as help establishing a limited liability company (LLC), getting a business registered with the state, navigating taxes and payroll, and other back-of-house administrative work. They noted that certain administrative tasks such as bookkeeping, estimating, and bidding involves a lot of trial and error, and that close relationships with other companies or mentors are important for learning these critical skills and helping businesses survive their errors.

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Especially when it comes to the bidding and estimating and how competitive that is. That aspect, you really need to learn that. If you had a mentor, you could learn it a lot faster and not have so many error[s] learning the hard way by bidding too high or this and that and the other. ... [As well as] filing your LLC, getting all your tax stuff right, getting filed with the IRS. All that stuff was a challenge at first, but it would be to anybody that didn't have a mentor showing them what to do." [#14]*

*The Hispanic American owner of a DBE-certified construction company stated, "I would always love help on bidding, though, and RFPs ... If there's a way for me to learn from somebody ... Sometimes you get a bid that's this thick, and I'm like, 'Who has time to read through that? Because the bid's due in a week and a half.'" [#19]*

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "If you don't have the mentor, how are you just supposed to know? You're not just going to magically know any of this, so you got to do your research, you got to do your due diligence. You can learn the hard way ... It's all trial and error if you don't have anybody helping you." [#14]*

*A representative of a volunteer organization in Idaho stated, "Some business owners need a mentor to invite them and take them with them so that they can benefit from some of these things, because they're a little timid to do it on their own." [#FG2]*

Business owners said mentor relationships also helped them network with other companies in their industry, which is vital to building project teams and obtaining future work.

*The woman owner of a DBE- and 8(a)-certified professional services company stated, "[Mentors] introduce you to someone else. So as a result of that, you're able to form joint ventures, mentor or protege with other women or just other businesses. [T]here's so many benefits to that because as you know, somebody just mentions your name to someone and now all of a sudden you're on a project." [#25]*

Multiple interviewees commented favorably on a mentoring program offered by the Washington State Department of Transportation. Some interviewees acknowledged that asking prime contractors to be mentors puts a burden on those businesses, and offering some sort of incentive may make it more appealing for them to help other companies.

*The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The other thing that Washington has ... they have a mentor protege program, and then you can get linked up with a prime. ... They make it beneficial for the prime as well to be in that program, because they're not going to do it out of the goodness of their hearts. ... There has to be an upside for [mentors] to take me under their wing and teach me all the ins and outs." [#23]*

**e. Financing assistance.** Interviewees emphasized the high cost of running a business and highlighted several types of financial assistance that would be most useful for starting or growing their businesses, such as support accessing capital or loans, networking with financial and insurance institutions, identifying the existing options and programs for businesses, and renting or buying equipment.

*The co-owner of a majority-owned construction company stated, "Being a newer business that doesn't have the number of years of profitability that would be required for consideration [to be eligible for a loan], it did become a barrier for us. ... If they're aware of options that would be non-traditional or have less barriers, if they were to provide connection to or just shine light on options that may not otherwise be known about, [that would be helpful]." [#11]*

*The woman owner of a DBE-certified professional services company stated, "I've just had to take out a line of credit from the bank to get to a big government project because it takes so long to get paid that I can't do it. So, I try to [build] that into my bid, that I'll be paying 7 percent interest to [the] bank to get through this project." [#17]*

*A representative of a trade organization in Idaho stated, "A lot of our entrepreneurs are long on ideas but short on capital and funding. So that's where we pair them with a lender that might have resources available to help them get startup cash for their new business." [#FG2]*

**9. Recommendations.** Interviewees shared a number of recommendations that could help ITD improve procurement and contract administration, the certification process, and business assistance programs, particularly programs for small, disadvantaged businesses.

**a. Procurement and contract administration.** Business owners said ITD could work to streamline the bidding process by reviewing the requirements for a responsive bid, which could encourage more businesses to bid on ITD work and support businesses in developing more responsive, successful bids. They said ITD could also streamline the paperwork required throughout the life of a project and minimize the total number of forms needed.

*A representative of a majority-owned professional services company stated, "I think that just an overall simplifying of contracting for big and small consultants and the requirements, I think they should consider. ... I'm talking about stuff that, to generate an invoice for a project I think should take 15 minutes. I have projects that I take hours [to create] 60-page invoices." [#26]*

*A representative of an Asian Pacific American-owned construction company stated, "Some of the bid processes are a bit of the pain, with all the cover letters and all the extra pages ITD was wanting." [#AV3078]*

Interviewees said ITD should work to reduce the overall time it takes for reviewing bids and should offer regular updates for bidders.

*A representative of a public agency in Idaho stated, "They have a big process that they have to go through. A lot of people have to review the [bid] package. Something that's happening recently, I'm understanding, is if one person in that chain of review is gone, it just stops. Things are just dead in the water. ... So, we had reached out to check on one that had sat for two weeks. ... 'It'll be another week before we can get past X step.' So again, just some communication with us on what's going on. Did you get it? Are we looking at normal timelines? Is somebody gone? Are we adding three weeks? That kind of thing would be nice." [#15]*

*A representative of a majority-owned professional services company stated, "One thing that could help would be on smaller projects to have a quicker or an abbreviated approval process." [#2]*

Interviewees also said ITD should carefully review construction windows in contracts to meet the needs of the project and account for any delays caused by the agency's contract administration process or residual supply chain issues from COVID-19.

*Representatives of a majority-owned construction company stated, "One thing that could help is ... more lead time or bigger work windows so you can give suppliers longer lead time." [#1]*

*A representative of a public agency in Idaho stated, "Over the last couple years, [we] have required work windows in our construction contracts. So it started out as a really great thing. What the contractors wanted was these wide-open windows, so you could start anywhere from March to June to give them flexibility in their schedules. So what's happened is we've turned this idea into a one-size-fits-all kind of rule for everything that doesn't always fit. So there's things now like the hard requirement that every project have an eight week window ... Now we're finding ourselves having to delay projects an entire year to fit this new one-size-fits-all that maybe isn't appropriate. I think it's kind of losing the intent of what the contractors were after and hamstringing us." [#15]*

Interviewees said ITD should prioritize clear and concise language when developing rules and regulations and issuing solicitations.

*A representative of a volunteer organization in Idaho stated, "I've got one small business owner here ... whose highest education level was ninth grade, and when they're trying to deal with some of the federal information and stuff, unless you have a master's degree, sometimes you can't sort through some of the stuff that [ITD's] asking for with the language and the jargon." [#FG2]*

*The Hispanic American owner of a DBE-certified professional services company stated, "Understanding the regulations and procedures can be daunting for small businesses and the business side (invoicing overhead rates, etc.) can exclude SDBE and small business[es] from even trying [to bid]." [#WT3]*

Businesses suggested ITD could offer more small projects in terms of both dollar value and scope.

*The owner of a woman-owned professional services company stated, "For most of the RFPs that we see, for the most part, they are geared more towards a larger company. And it would be nice to have those opportunities at those smaller pieces of business." [#13]*

*The Hispanic American owner of a DBE-certified construction company stated, "Wish there were smaller jobs that we could [perform] ourselves and get the chance to be the prime." [#WT7]*

**b. DBE support.** Interviewees stated that public agencies should not consider "as directed" items for contracts when assessing if a prime contractor has met the DBE goal, as there is no guarantee that those DBEs will be actually used in a project.

*The Hispanic American owner of a DBE-certified professional services company stated, "As directed' work items should not be considered toward the contract DBE goal. ... Often, this item goes unused. In assuming that this entire item is used in consideration of the DBE goal, the amount of available DBE work is skewed." [#WT2]*

**c. Certification.** Many interviewees suggested that ITD should increase awareness about the Federal DBE program, its benefits, and the certification process to encourage more businesses to become certified.

*The woman owner of a DBE-certified professional services company stated, "I don't think most small businesses are even aware that [the Federal DBE Program] exists, that there's help getting the DBE [certification], how it would benefit them." [#17]*

**d. Business assistance programs.** When implementing programs, interviewees said ITD should consider what groups they are targeting and how they can tailor the program appropriately to ensure those groups can access those services. For example, the agency should consider that startups and sole proprietorships with limited staff may not have time for training or events that occur in the middle of a workday.

*A Hispanic American representative of a trade organization in Idaho stated, "Small business owners, they're pretty much the jack of all trades. So they do everything, whether it's inventory, cleanup, manning the till, doing whatever the case may be, the books and all of that. So they don't tend to lean in on any program or activities that are generally in the middle of the day during their work hours. And so they either try to join something that's really early in the morning or in the evenings. And then, because of the population base that we deal with, with Latinos and Hispanics, they tend to have their weekends pretty full dealing with family and dealing with other projects. ... Timing is incredibly important whenever delivering a program or workshop information." [#FG1]*

*A representative of a trade organization in Idaho stated, "I think that it's really important that you get to know the communities that you're serving directly because that's an overall arching question that it's going to be very different for every community that we serve. ... [What] works in general businesses, but I wouldn't say that necessarily that's going to work in a Native American community directly or even a Black community. We have to ensure that we're reaching them in their communities and looking at their historical value as well." [#FG1]*



# CHAPTER 5.

## Collection and Analysis of Contract Data

Chapter 5 provides an overview of the contracts and procurements BBC Research & Consulting (BBC) analyzed as part of the 2023 Idaho Transportation Department (ITD) Disparity Study and the process we used to collect relevant prime contract, subcontract, and vendor data. Chapter 5 comprises five parts:

- A. Contract and procurement data;
- B. Vendor data;
- C. Relevant geographic market area (RGMA);
- D. Subindustry classifications; and
- E. Review process.

### A. Contract and Procurement Data

BBC collected data related to the contracts and procurements awarded between October 1, 2018 and September 30, 2021 (the *study period*). Those data served as the basis for key disparity study analyses, including the utilization, availability, and disparity analyses. BBC collected the most comprehensive data available on prime contracts and subcontracts administered by the Division of Aeronautics, the Division of Highways, the Consulting Division, and the Public Transportation Office. We sought data on prime contracts and subcontracts regardless of the race/ethnicity and gender of the owners of the businesses that performed the work or their statuses as disadvantaged business enterprises (DBEs). We collected data on construction; professional services; and transit services and non-professional services, goods, and supplies prime contracts and subcontracts.

**1. ITD Divisions.** ITD divisions—including the Highways, Consulting, Public Transportation, and Aeronautics Divisions—are responsible for awarding and administering projects according to their type of work and corresponding federal funding sources. The Highways Division is responsible for managing state- and Federal Highway Administration (FHWA)-funded construction projects, and the Consulting Division is responsible for managing state- and FHWA-funded professional services projects.<sup>1</sup> The Public Transportation Division is responsible for managing state- and Federal Transit Administration (FTA)-funded projects.<sup>2</sup> Finally, the Aeronautics Division is responsible for managing state- and Federal Aviation Administration (FAA)-funded projects.<sup>3</sup>

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<sup>1</sup> Professional services include architectural services, engineering services, traffic control, right of way services, environmental services, and other related services.

<sup>2</sup> Some of ITD's FTA-funded projects are awarded through subrecipient local agencies that either perform the work in-house or contract with third-party contractors.

<sup>3</sup> Airports in Idaho are direct recipients of FAA funding. However, ITD's Aeronautics Division awards a small number of FAA-funded statewide contracts.



**a. Division of Aeronautics.** The ITD Division of Aeronautics provided the signed consulting agreements for the contracts and procurements awarded during the study period and their associated subcontract agreements. The Division of Aeronautics also provided uniform reports for the years they had federally funded procurements and were required to submit a uniform report to the Federal Aviation Administration (FAA).

**b. Division of Highways and Consulting.** The ITD Division of Highways and Consulting provided contract and procurement data for contracts awarded during the study period. Those data are maintained in multiple systems including:

- ProjectWise (construction contracts);
- PATS (consulting agreements); and
- B2Gnow (federally funded contract and vendor information).

**c. Public Transportation Office.** ITD's Public Transportation Office handles transit-related statewide contracts and distributes funding to five subrecipient transit agencies. The Public Transportation Office collects procurement information from its subrecipient agencies to prepare uniform reports it submits to the Federal Transit Administration (FTA). The Public Transportation Office provided BBC with this procurement information along with its own contract information and uniform reports. These data contained information on construction; professional services; and transit services and non-professional services, goods, and supplies contracts and procurements, which BBC used to build prime contract and subcontract tables.

**2. Prime contract data.** ITD provided BBC with electronic data on relevant prime contracts it awarded during the study period. We requested the following prime contract information:

- Contract or purchase order number;
- Prime contractor name;
- Prime contractor identification number;
- Description of work;
- Award date;
- Award amount (including change orders and amendments);
- Amount paid-to-date; and
- Funding source (federal or local funding).

ITD advised the study team on how to interpret the data provided, including identifying unique bid opportunities and aggregating related payment amounts. When appropriate and possible, we aggregated associated payments or purchase order line items into larger contract elements (e.g., on work order-type contracts). In instances where payments or line items should not or could not be aggregated, we treated individual payments and line items as stand-alone contract elements.

**3. Subcontract data.** ITD provided BBC with data on subcontracts related to some of the prime contracts ITD awarded during the study period. The data originated from multiple sources including

B2Gnow, PATS, and ITD's internal record keeping. BBC collected additional subcontractor data through bid documents available on ProjectWise, which accounted for 67 prime contracts and approximately \$286 million of the contract dollars awarded during the study period.

**4. Prime contract and subcontract amounts.** For each contract element included in our analyses, BBC examined the dollars ITD awarded to each prime contractor and the dollars prime contractors committed to any subcontractors. If a contract did not include any subcontracts, we attributed the contract's or procurement's entire award amount to the prime contractor. If a contract or procurement included subcontracts, we calculated the prime contract amount as the total award amount less the sum of dollars committed to all subcontractors.

**5. Contracts and procurements included in study analyses.** Figure 5-1 presents the number of contract elements and associated dollars BBC included in our analyses.

**Figure 5-1.**  
**ITD contracts and procurements**  
**included in the disparity study**

Note: Numbers rounded to nearest thousand dollars and thus may not sum exactly to totals.

Source:

BBC from ITD data.

Organization and contract type	Number	Dollars (in thousands)
<b>Division of Highways and Consulting Division</b>		
Construction	1,701	\$1,139,800
Professional services	1,395	\$286,435
<b>Total</b>	<b>3,096</b>	<b>\$1,426,236</b>
<b>Public Transportation Office</b>		
Non-professional services, goods, and supplies	15	\$5,800
Construction	3	\$1,229
Professional services	14	\$236
<b>Total</b>	<b>32</b>	<b>\$7,265</b>
<b>Division of Aeronautics</b>		
Professional services	14	\$1,451
<b>Total</b>	<b>14</b>	<b>\$1,451</b>

## B. Vendor Data

BBC also compiled information on vendors performing prime contracts and subcontracts during the study period, including:

- Business name;
- Physical addresses and phone numbers;
- Ownership status (i.e., whether each business was person of color- (POC-) or woman-owned);
- Ethnicity of ownership (if POC-owned);
- DBE certification status;
- Primary lines of work;
- Business size; and
- Year of establishment.

We relied on a variety of sources for that information, including:

- ITD contract and vendor data; (e.g. AASHTOWare and B2Gnow)
- ITD’s DBE directory;
- Dun & Bradstreet (D&B) business listings and other business information sources;
- Surveys the study team conducted with business owners and managers; and
- Business websites and other secondary research.

## C. Relevant Geographic Market Area (RGMA)

BBC used ITD data to help determine the RGMA—the geographical area in which agencies spend the substantial majority of their contract and procurement dollars—for the disparity study. As shown in Figure 5-2, ITD awarded approximately 91.1 percent of relevant contract and procurement dollars to businesses located in Idaho; Asotin County, Washington; and Spokane County, Washington. Our analyses—including the availability analysis and quantitative analyses of marketplace conditions—focused on that region.

**Figure 5-2.**  
**Contract and procurement dollars ITD awarded to businesses located in the region**

Source:  
BBC from ITD data.

Market Area	Percent of in scope dollars
Idaho	79.3%
Asotin County, WA	4.7%
Spokane County, WA	7.0%
<b>Total</b>	<b>91.1%</b>

## D. Subindustry Classifications

For each prime contract and subcontract included in our analyses, BBC determined the *subindustry* that best characterized the vendor’s primary line of work (e.g., concrete work). We determined subindustries based on ITD contract and vendor data; surveys the study team conducted with prime contractors and subcontractors; business certification lists; D&B business listings; and other sources. Figure 5-3 presents subindustry classifications for the construction; professional services; and non-professional services; goods, and supplies contracts and procurements BBC included in our analyses as well as the dollars ITD awarded related to each subindustry during the study period.

BBC combined related subindustries that accounted for relatively small percentages of total contract and procurement dollars into five “other” subindustries: other construction services, other construction materials, other professional services, other goods, and other services. For example, the dollars that ITD awarded to contractors for landscaping services represented less than 1 percent of total dollars we examined as part of the study. So, we combined landscaping services with construction services that also accounted for relatively small percentages of total dollars into the “other construction services” subindustry. There were also various contracts and procurements we classified into subindustries that we did not ultimately include in our analyses:

- Purchases and grants ITD made with or awarded to government agencies, utility providers, hospitals, or nonprofit organizations (\$773,000);

- Contracts and procurements that reflected *national markets*—that is, subindustries dominated by large national or international businesses—or subindustries where ITD awarded the majority of dollars to businesses located outside the relevant geographic market (\$4.5 million);<sup>4</sup>
- Purchases that often include property purchases, leases, or other pass-through dollars (\$24,000);<sup>5</sup> or
- Types of work not typically included in disparity studies and that account for relatively small proportions of ITD's contract and procurement dollars (\$674,000).<sup>6</sup>

**Figure 5-3.**  
ITD contract and procurement  
dollars by subindustry

Note:

Numbers rounded to nearest dollar and thus may not sum exactly to totals.

Source:

BBC Research & Consulting from ITD data.

Industry	Total (in thousands)
<b>Construction</b>	
Highway, street, and bridge construction	\$887,235
Concrete, asphalt, sand, and gravel products	\$36,424
Electrical work	\$36,086
Traffic control and safety	\$31,979
Concrete work	\$28,861
Excavation, drilling, wrecking, and demolition	\$27,259
Fencing, guardrails, signals, and signs	\$23,363
Other construction materials	\$21,212
Painting, striping, marking, and weatherproofing	\$17,332
Building construction	\$11,074
Other construction services	\$10,272
Trucking, hauling and storage	\$5,596
Water, sewer, and utility lines	\$4,336
<b>Total construction</b>	<b>\$1,141,029</b>
<b>Professional services</b>	
Engineering	\$248,981
Environmental services	\$15,634
Surveying and mapmaking	\$12,621
Transportation planning services	\$5,470
Advertising, marketing and public relations	\$4,334
Other professional services	\$1,084
<b>Total professional services</b>	<b>\$288,123</b>
<b>Non-professional services, goods, and supplies</b>	
Transit services	\$3,544
Petroleum and petroleum products	\$1,915
Vehicle parts and supplies	\$232
Vehicle repair services	\$109
<b>Total non-professional services, goods, and supplies</b>	<b>\$5,800</b>
<b>GRAND TOTAL</b>	<b>\$1,434,952</b>

<sup>4</sup> Examples of such work include computer manufacturing and proprietary software.

<sup>5</sup> Examples of such work include real estate consultants.

<sup>6</sup> Examples of industries not typically included in disparity studies include pharmaceuticals and lodging.

## **E. Review Process**

ITD reviewed contract and vendor data throughout the study process. BBC consulted with ITD to discuss the data collection process, review information the study team gathered, and present summary results. We incorporated feedback from ITD in the final contract and vendor data used for our analyses.

# CHAPTER 6.

## Availability Analysis

BBC Research & Consulting (BBC) analyzed the availability of person of color (POC)- and woman-owned businesses *ready, willing, and able* to perform work on the contracts and procurements the Idaho Transportation Department (ITD) awards in the areas of construction; professional services; and non-professional services, goods, and supplies.<sup>1</sup> Chapter 6 describes the availability analysis in five parts:

- A. Purpose of the availability analysis;
- B. Available businesses;
- C. Availability database;
- D. Availability calculations; and
- E. Availability results.

Appendix E provides additional supporting information related to the availability analysis.

### A. Purpose of the Availability Analysis

BBC examined the availability of POC- and woman-owned businesses for ITD prime contracts and subcontracts to use as benchmarks against which to compare the actual participation of those businesses in organization work (i.e., assessing *disparities*). Assessing disparities between participation and availability allowed the study team to determine whether certain business groups were *substantially underutilized* during the study period relative to their availability for ITD work, which is crucial in determining whether the use of *race- and gender-conscious* measures is appropriate and, if so, ensuring their use meets the *strict scrutiny* standard of constitutional review (for details, see Chapter 2). In addition, estimating availability is useful to ITD in setting overall aspirational goals for the participation of POC- and woman-owned businesses in the work they award as well as setting *contract-specific goals* for the participation of those businesses in their work, if ITD determines the use of such measures is appropriate.

### B. Available Businesses

BBC's availability analysis focused on specific areas of work, or *subindustries*, associated with the contracts and procurements ITD awarded between October 1, 2018 and September 30, 2021 (the *study period*), which served as a proxy for the work it might award in the future. We began the analysis by identifying the specific subindustries in which ITD spends the majority of its contracting dollars as well as the geographic area in which the majority of the businesses with which ITD spends those contract

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<sup>1</sup> "Woman-owned businesses" refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.



and procurement dollars are located (i.e., the *relevant geographic market area*, or *RGMA*).<sup>2</sup> We then conducted extensive surveys with more than 700 businesses in the marketplace to develop a representative and unbiased database of potentially available businesses located in the RGMA that perform relevant types of work. The objective of the surveys was not to collect information from every relevant business operating in the local marketplace but rather to collect information from an unbiased subset of the relevant business population that appropriately represents the entire relevant business population. This approach allowed us to estimate the availability of POC- and woman-owned businesses for organization work in an accurate and statistically valid manner.

**1. Overview of availability surveys.** BBC worked with Davis Research to conduct telephone and online surveys with business owners and managers to identify local businesses potentially available for ITD prime contracts and subcontracts. We began the process by compiling a phone book of all types of businesses—regardless of ownership characteristics—that perform relevant work and are located within the RGMA, based primarily on information from Dun & Bradstreet (D&B) Marketplace. We compiled information about all business establishments D&B lists under 8-digit work specialization codes that were most related to the contracts and procurements ITD awarded during the study period. We obtained listings on 4,753 local businesses that perform work related to those work specializations. We did not have working phone numbers for 980 of those businesses, but we attempted availability surveys with the remaining 3,773 businesses.

**2. Survey information.** The study team conducted availability surveys with businesses listed in our phone book to collect various pieces of information about each business, including:

- Status as a private sector business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Interest in performing work for government organizations;
- Interest in performing work as a prime contractor or subcontractor;
- Largest prime contract or subcontract the business is able to perform;
- Whether the business is able to work or serve customers in Idaho;
- Business size in terms of revenue and number of employees; and
- Race/ethnicity and gender of the owner(s).

## C. Availability Database

After conducting availability surveys, BBC compiled an *availability database* that included information about businesses potentially available for relevant ITD contracts and procurements. We included businesses in the availability database if they reported possessing *all* the following characteristics:

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<sup>2</sup> BBC defined the RGMA for the project as the entire state of Idaho plus Asotin County, Washington and Spokane County, Washington.

- Being a private sector business;
- Having a location in the RGMA;
- Having bid on or performed construction; professional services; and non-professional services, goods, and supplies prime contracts or subcontracts in the RGMA in the past five years;
- Primary lines of work being in industries and subindustries directly relevant to ITD contracts and procurements;
- The largest prime contract or subcontract the business is able to perform;
- Being able to perform work in Idaho; and
- Being interested in working for government organizations.

Figure 6-1 presents the percentage of businesses in the availability database that were POC- or woman-owned. The database included information on 563 businesses potentially available for specific construction; professional services; and non-professional services, goods, and supplies contracts and procurements ITD awards. As shown in Figure 6-1, of those businesses, 14.0 percent were POC- or woman-owned, which reflects a simple count of businesses with no analysis of their availability for specific ITD contracts or procurements. It represents only a first step toward analyzing the availability of POC- and woman-owned businesses for that work.

**Figure 6-1.**  
**Percent of businesses in the**  
**availability database that were**  
**POC- or woman-owned**

Note:

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

Source:

BBC availability analysis.

Business group	Representation
White woman-owned	6.4 %
Asian Pacific American-owned	0.9 %
Black American-owned	0.7 %
Hispanic American-owned	3.2 %
Native American-owned	2.7 %
Subcontinent Asian American-owned	0.2 %
<b>Total POC-owned</b>	<b>7.6 %</b>
<b>Total POC- and woman-owned</b>	<b>14.0 %</b>

## D. Availability Calculations

BBC used a *custom census* approach—which accounts for specific business, contract, and procurement characteristics such as work type, role, size, capacity, and interest—to estimate the availability of POC- and woman-owned businesses for ITD work. We analyzed information from the availability database to develop dollar-weighted estimates of the degree to which POC- and woman-owned businesses are ready, willing, and able to perform ITD work. Those estimates represent the percentage of contracting and procurement dollars one would expect ITD to award to POC- and woman-owned businesses based on their availability for the specific types and sizes of corresponding contracts and procurements.

BBC only considered a portion of the businesses in the availability database as potentially available for any given ITD prime contract or subcontract. We first identified the characteristics of each prime contract or subcontract (referred to generally as a *contract element*), including type of work, contract size, and contract role and then took the following steps to estimate availability of POC- and woman-owned businesses for each one:

1. We identified businesses in the availability database that reported they:
  - Are interested in performing construction; professional services; or non-professional services, goods, and supplies work in that particular role for that type of work for government organizations;
  - Can perform work or serve customers in Idaho; and
  - Have the ability to perform work of that size or larger.
2. We then counted the number of POC-owned businesses, woman-owned businesses, and businesses owned by white men in the availability database that met the criteria in step 1.
3. We translated the counts of businesses in step 2 into percentages.

We repeated the above steps for each contract element included in the disparity study, and then multiplied the percentages of businesses for each contract element by the dollars associated with it. We then added results across all contract elements and divided by the total dollars for all contract elements. The result was dollar-weighted estimates of the percentage of relevant contract and procurement dollars one would expect ITD to award to POC- and woman-owned businesses based on their availability for specific types and sizes of that work. Figure 6-2 provides an example of how we calculated availability for a specific subcontract associated with a construction prime contract that ITD awarded during the study period.

BBC based availability calculations on the prime contracts and subcontracts ITD awarded between October 1, 2018 and September 30, 2021. A key assumption of the availability analysis is that the work ITD awarded during the study period is representative of the work the agency will award in the future. If the types and sizes of future work differs substantially from the work the agency awarded during the study period, then it should adjust availability estimates accordingly.

**Figure 6-2.  
Example of calculating  
availability for an ITD subcontract**

On a contract ITD awarded during the study period, the prime contractor awarded a subcontract worth \$100,098 for traffic control services. To determine the overall availability of POC- and woman-owned businesses for the subcontract, BBC identified businesses in the availability database that:

- a. Indicated they performed traffic control work;
- b. Reported being able to perform work of equal size or larger;
- c. Can perform work or serve customers in Idaho; and
- d. Reported interest in working as a subcontractor on government contracts or procurements.

We identified 144 businesses in the availability database that met those criteria, 21 of which were POC- or woman-owned. Thus, the availability of POC- and woman-owned businesses for the subcontract was 15.9 percent (i.e.,  $23/144 \times 100 = 14.5$ ).

## E. Availability Results

BBC estimated the availability of POC-and woman-owned businesses for the construction; professional services; and non-professional services, goods, and supplies work the Division of Highways and the Consulting Division, the Public Transportation Office, and the Aeronautics Division award. Because projects the Division of Highways and the Consulting Division award account for the vast majority of ITD's contracting and procurement activity, we also estimated the availability of POC-and woman-owned businesses separately for various subsets of those projects. For each set of contracts and procurements, we present availability estimates for all POC- and woman-owned businesses considered together and separately for each relevant business group: white woman-owned businesses, Asian Pacific

American-owned businesses, Black American-owned businesses, Hispanic American-owned business, Native American-owned businesses, and Subcontinent Asian American-owned businesses.

**1. ITD division.** Figure 6-3 presents dollar-weighted estimates of the availability of POC- and woman-owned businesses for ITD work the Division of Highways and the Consulting Division administers, which includes both projects funded by the Federal Highway Administration (FHWA) and projects that are wholly state-funded. Overall, the availability of POC- and woman-owned businesses for that work is 17.0 percent, indicating that one might expect the organization to award approximately 17.0 percent of its contract and procurement dollars to POC- and woman-owned businesses based on their availability for that work. The business groups that exhibit the greatest availability for Division of Highways and Consulting Division work are white woman-owned businesses (7.6%), Native American-owned businesses (4.4%), and Hispanic American-owned businesses (4.3%).

**Figure 6-3.**  
**Availability estimates for Division of Highways and Consulting Division work**

Note:

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

For more detail and results by group, see Figure F-1 in Appendix F.

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	7.6 %
Asian Pacific American-owned	0.4 %
Black American-owned	0.4 %
Hispanic American-owned	4.3 %
Native American-owned	4.4 %
Subcontinent Asian American-owned	0.0 %
Total POC-owned	9.4 %
<b>Total POC- and woman-owned</b>	<b>17.0 %</b>

Figure 6-4 presents the availability of POC- and woman-owned businesses for ITD work funded by the Federal Transit Administration (FTA) and administered by the Public Transportation Office. As shown in Figure 6-4, the availability of those businesses for ITD's FTA-funded work is 4.7 percent. The business groups that exhibit the greatest availability for that work are Hispanic American-owned businesses (4.1%), white woman-owned businesses (0.4%), and Native American-owned businesses (0.1%).

**Figure 6-4.**  
**Availability estimates for Public Transportation Office work**

Note:

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

For more detail, see Figure F-17 in Appendix F.

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	0.4 %
Asian Pacific American-owned	0.0 %
Black American-owned	0.0 %
Hispanic American-owned	4.1 %
Native American-owned	0.1 %
Subcontinent Asian American-owned	0.0 %
Total POC-owned	4.3 %
<b>Total POC- and woman-owned</b>	<b>4.7 %</b>

Figure 6-5 presents the availability of POC- and woman-owned businesses for ITD work administered by the Aeronautics Division, which includes both ITD work funded by the Federal Aviation Administration and wholly state-funded work. As shown in Figure 6-5, the availability of those businesses for Aeronautics Division work is 7.0 percent. The business groups that exhibit the greatest availability for

Aeronautics Division work are white woman-owned businesses (2.6%), Native American-owned businesses (2.2%), and Black American-owned and Hispanic American-owned businesses (1.1%).

**Figure 6-5.**  
**Availability estimates for**  
**Aeronautics Division work**

Note:

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

For more detail, see Figures F-18 in Appendix F.

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	2.6 %
Asian Pacific American-owned	0.0 %
Black American-owned	1.1 %
Hispanic American-owned	1.1 %
Native American-owned	2.2 %
Subcontinent Asian American-owned	0.0 %
Total POC-owned	4.4 %
<b>Total POC- and woman-owned</b>	<b>7.0 %</b>

**2. Funding source.** The Federal Disadvantaged Business Enterprise (DBE) Program applies specifically to ITD's federally funded projects.<sup>3</sup> As part of the program, the agency uses various *race- and gender-neutral* measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the federally funded projects it awards. It is instructive to examine availability of those businesses separately for ITD's FHWA-funded work to assess whether the availability of POC- and woman-owned businesses in those projects is different from that in projects the Division of Highways and the Consulting Division award without FHWA funds (i.e. exclusively state-funded). Figure 6-6 presents the overall availability of POC- and woman-owned businesses for both state-funded and FHWA-funded projects the Division of Highways and the Consulting Division awards. The groups that exhibit the greatest availability for state-funded work are white woman-owned businesses (8.2%), Hispanic American-owned businesses (5.9%), and Native American-owned businesses (5.7%). Similarly, the groups that exhibit the greatest availability for FHWA-funded work are white woman-owned businesses (7.4%), Native American-owned businesses (4%), and Hispanic American-owned businesses (3.8%).

<sup>3</sup> The study team considered a project to be federally funded if it included at least one dollar of federal funding.

**Figure 6-6.**  
Availability estimates for state- and FHWA-funded work the Division of Highways and Consulting Division award

Note:

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

For more detail and results by group, see Figure F-10 and F-11 in Appendix F.

Source:

BBC utilization analysis.

Business group	Funding	
	State-funded	Federally-funded
White woman-owned	8.2 %	7.4 %
Asian Pacific American-owned	0.5 %	0.4 %
Black American-owned	0.2 %	0.4 %
Hispanic American-owned	5.9 %	3.8 %
Native American-owned	5.7 %	4.0 %
Subcontinent Asian American-owned	0.0 %	0.0 %
Total POC-owned	12.2 %	8.7 %
<b>Total POC- and woman-owned</b>	<b>20.4 %</b>	<b>16.1 %</b>

**3. Industry.** BBC also examined availability analysis results separately for the construction and professional services work the Divisions of Highways and the Consulting Division awards to assess whether the availability of POC- and woman-owned businesses differed by industry. As shown in Figure 6-7, POC- and woman-owned businesses exhibit greater availability for construction work (18.9%) than for professional services work (9.7%).

**Figure 6-7.**  
Availability estimates for Division of Highways and Consulting Division construction and professional services work

Note:

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

Source:

BBC availability analysis.

Business group	Industry	
	Construction	Professional services
White woman-owned	8.7 %	3.2 %
Asian Pacific American-owned	0.5 %	0.0 %
Black American-owned	0.0 %	1.7 %
Hispanic American-owned	4.9 %	1.6 %
Native American-owned	4.7 %	3.2 %
Subcontinent Asian American-owned	0.0 %	0.0 %
Total POC-owned	10.2 %	6.5 %
<b>Total POC- and woman-owned</b>	<b>18.9 %</b>	<b>9.7 %</b>

**4. Contract role.** Many POC- and woman-owned businesses are small businesses and often work as subcontractors, so it is instructive to examine availability estimates separately for Division of Highways and Consulting Division prime contracts and subcontracts. As shown in Figure 6-8, the availability of POC- and woman-owned businesses is actually greater for Division of Highways and Consulting Division prime contracts (17.8%) than for subcontracts (15.4%).



**Figure 6-8.**  
**Availability estimates for Division**  
**of Highways and Consulting**  
**Division work by contract role**

Note:

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

For more detail, see Figures F-6 and F-7 in  
Appendix F.

Source:

BBC availability analysis.

Business group	Role	
	Prime contracts	Subcontracts
White woman-owned	8.5 %	5.6 %
Asian Pacific American-owned	0.0 %	1.3 %
Black American-owned	0.4 %	0.2 %
Hispanic American-owned	4.6 %	3.7 %
Native American-owned	4.3 %	4.6 %
Subcontinent Asian American-owned	0.0 %	0.0 %
Total POC-owned	9.3 %	9.8 %
<b>Total POC- and woman-owned</b>	<b>17.8 %</b>	<b>15.4 %</b>

# CHAPTER 7.

## Utilization Analysis

BBC Research & Consulting (BBC) measured the participation of person of color- (POC-) and woman-owned businesses in the construction; professional services; and non-professional services, goods, and supplies prime contracts and subcontracts the Idaho Transportation Department (ITD) awarded between October 1, 2018 and September 30, 2021 (i.e., the *study period*).<sup>1</sup> We measured participation in terms of *utilization*—the percentage of prime contract and subcontract dollars the organization awarded to those businesses during the study period. We measured the participation of POC- and woman-owned businesses in work the Division of Highways and the Consulting Division, the Public Transportation Office, and the Aeronautics Division awarded. Because projects that the Division of Highways and the Consulting Division award account for the vast majority of ITD’s contracting and procurement activity, we also measured the participation of POC- and woman-owned businesses separately for various subsets of those projects. Chapter 7 presents the utilization analysis in three parts:

- A. Purpose of the utilization analysis;
- B. Utilization analysis results; and
- C. Concentration of dollars.

### A. Purpose of the Utilization Analysis

Calculating the percentage of dollars ITD awarded to POC- and woman-owned businesses during the study period is useful to the agency in determining whether certain business groups are disadvantaged as it relates to its contracting and procurement processes. Moreover, assessing whether any business groups are *substantially underutilized* relative to their availability for ITD work allows the agency to determine whether the continued use of *race- and gender-conscious* measures is appropriate and ensure its use of such measures is tailored to those business groups for which compelling evidence of contracting barriers exist.

### B. Utilization Analysis Results

BBC calculated the overall participation of POC- and woman-owned businesses separately for Division of Highways and Consulting Division, Public Transportation Office, and Aeronautics Division projects as well as separately for various subsets of Division of Highways and Consulting Division work.

**1. ITD division.** Figure 7-1 presents the overall participation of POC- and woman-owned businesses in all relevant construction and professional services work the Division of Highways and the Consulting Division awarded, which includes work funded by the Federal Highway Administration (FHWA) and work that was wholly state-funded. As shown in Figure 7-1, ITD awarded 8.0 percent of relevant contract and procurement dollars to all POC- and woman-owned businesses considered together. The

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<sup>1</sup> “Woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

groups that exhibited the greatest levels of participation were white woman-owned businesses (5.1%), Hispanic American-owned businesses (1.5%), and Native American-owned businesses (1.1%).

**Figure 7-1.**  
**Utilization analysis results for Division of**  
**Highways and Consulting Division work**

Note:

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

For more detail, see Figure F-1 in Appendix F.

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	5.1 %
Asian Pacific American-owned	0.1 %
Black American-owned	0.1 %
Hispanic American-owned	1.5 %
Native American-owned	1.1 %
Subcontinent Asian American-owned	0.1 %
Total POC-owned	2.8 %
<b>Total POC- and woman-owned</b>	<b>8.0 %</b>

Figure 7-2 presents the participation of POC- and woman-owned businesses for ITD work funded by the Federal Transit Administration (FTA) and administered by the Public Transportation Office. As shown in Figure 7-2, the participation of those businesses for FTA-funded ITD work is 1.6 percent. Two groups participated in that work during the study period: white woman-owned businesses (1.6%) and Hispanic American-owned businesses (<0.1%).

**Figure 7-2.**  
**Utilization analysis results for**  
**Public Transportation Office work**

Note:

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

For more detail, see Figure F-17 in Appendix F.

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	1.6 %
Asian Pacific American-owned	0.0 %
Black American-owned	0.0 %
Hispanic American-owned	0.0 %
Native American-owned	0.0 %
Subcontinent Asian American-owned	0.0 %
Total POC-owned	0.0 %
<b>Total POC- and woman-owned</b>	<b>1.6 %</b>

Figure 7-3 presents the overall participation of POC- and woman-owned businesses for ITD work the Aeronautics Division administered, which includes work funded by the Federal Aviation Administration and worked that was wholly state-funded. As shown in Figure 7-3, the participation of those businesses for Aeronautics Division work during the study period was 0 percent.

**Figure 7-3.**  
**Utilization analysis results for**  
**Aeronautics Division work**

Note:

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

For more detail, see Figures F-18 in Appendix F.

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	0.0 %
Asian Pacific American-owned	0.0 %
Black American-owned	0.0 %
Hispanic American-owned	0.0 %
Native American-owned	0.0 %
Subcontinent Asian American-owned	0.0 %
Total POC-owned	0.0 %
<b>Total POC- and woman-owned</b>	<b>0.0 %</b>

**2. Funding source.** The Federal Disadvantaged Business Enterprise (DBE) Program applies specifically to ITD's federally funded projects.<sup>2</sup> As part of the program, the agency uses various *race- and gender-neutral* measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the federally funded projects it awards. It is instructive to examine utilization analysis results separately for the FHWA-funded and state-funded projects the Division of Highways and the Consulting Division awarded during the study period to assess whether the participation of POC- and woman-owned businesses in FHWA-funded projects—to which the Federal DBE Program applied—was different from that in state-funded projects, to which the Federal DBE Program did not apply. As shown in Figure 7-4, the participation of all POC- and woman-owned businesses considered together was slightly higher in FHWA-funded projects (9.1%) than state-funded projects (3.7%). Participation for individual business groups differed between funding source:

- The groups that exhibited the greatest levels of participation in FHWA-funded work were white woman-owned businesses (5.7%), Hispanic American-owned businesses (1.7%), and Native American-owned businesses (1.4%).
- The groups that exhibited the greatest levels of participation in state-funded work were white woman-owned businesses (3.2%) and Hispanic American-owned businesses (0.4%).

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<sup>2</sup> The study team considered a project to be federally funded if it included at least one dollar of federal funding.

**Figure 7-4.**  
**Utilization analysis results for**  
**state- and FHWA-funded work**

Note:

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

For more detail and results by group, see Figure F-10 and F-11 in Appendix F.

Source:

BBC utilization analysis.

Business group	Funding Source	
	State-funded	Federally-funded
White woman-owned	3.2 %	5.7 %
Asian Pacific American-owned	0.0 %	0.2 %
Black American-owned	0.0 %	0.1 %
Hispanic American-owned	0.4 %	1.7 %
Native American-owned	0.0 %	1.4 %
<u>Subcontinent Asian American-owned</u>	<u>0.0 %</u>	<u>0.1 %</u>
Total POC-owned	0.5 %	3.5 %
<b>Total POC- and woman-owned</b>	<b>3.7 %</b>	<b>9.1 %</b>

**3. Industry.** BBC also examined utilization analysis results separately for the construction and professional services contracts and procurements the Division of Highways and the Consulting Division awarded during the study period to determine whether the participation of POC- and woman-owned businesses differed by industry. As shown in Figure 7-6, the participation of POC- and woman-owned businesses considered together was greater in the organization's construction work (8.5%) than in its professional services work (6%). Participation for individual business groups differed across industries:

- The groups that exhibited the greatest levels of participation in construction work were white woman-owned businesses (5.4%), Hispanic American-owned businesses (1.5%), and Native American-owned businesses (1.4%).
- The groups that exhibited the greatest levels of participation in professional services work were white woman-owned businesses (4.0%), Hispanic American-owned businesses (1.1%), and Asian Pacific American-owned businesses (0.5%).

**Figure 7-6.**  
**Utilization analysis results for**  
**Division of Highways and**  
**Consulting Division construction**  
**and professional services contracts**

Note:

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

For more detail and results by group, see Figures F-4 and F-5 in Appendix F.

Source:

BBC utilization analysis.

Business group	Industry	
	Construction	Professional services
White woman-owned	5.4 %	4.0 %
Asian Pacific American-owned	0.0 %	0.5 %
Black American-owned	0.1 %	0.0 %
Hispanic American-owned	1.5 %	1.1 %
Native American-owned	1.4 %	0.1 %
<u>Subcontinent Asian American-owned</u>	<u>0.0 %</u>	<u>0.3 %</u>
Total POC-owned	3.0 %	2.0 %
<b>Total POC- and woman-owned</b>	<b>8.5 %</b>	<b>6.0 %</b>

**4. Contract role.** Many POC- and woman-owned businesses are small businesses and thus often work as subcontractors. In addition, ITD's use of DBE contract goals is designed to encourage the participation of POC- and woman-owned businesses in subcontracts rather than prime contracts. For those reasons, it is useful to examine utilization analysis results separately for the prime contracts and subcontracts the Division of Highways and the Consulting Division awarded during the study period. As shown in Figure 7-7, the participation of POC- and woman-owned businesses considered together was greater in

subcontracts (19.2%) than in prime contracts (3%). Participation for individual business groups differed between prime contracts and subcontracts:

- The groups that exhibited the greatest levels of participation in prime contracts were Native American-owned businesses (1.4%), white woman-owned businesses (1.0%), and Hispanic American-owned businesses (0.4%).
- The groups that exhibited the greatest levels of participation in subcontracts were white woman-owned businesses (14.5%), Hispanic American-owned businesses (3.9%), and Native American-owned businesses (0.4%).

**Figure 7-7.**  
**Utilization analysis results for**  
**Division of Highways and Consulting**  
**Division work by contract role**

Note:

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

For more detail, see Figures F-6and F-7 in Appendix F.

Source:

BBC utilization analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
White woman-owned	1.0 %	14.5 %
Asian Pacific American-owned	0.1 %	0.2 %
Black American-owned	0.0 %	0.2 %
Hispanic American-owned	0.4 %	3.9 %
Native American-owned	1.4 %	0.4 %
Subcontinent Asian American-owned	0.1 %	0.1 %
Total POC-owned	2.0 %	4.8 %
<b>Total POC- and woman-owned</b>	<b>3.0 %</b>	<b>19.2 %</b>

## C. Concentration of Dollars

BBC analyzed the degree to which relevant contract and procurement dollars the Division of Highways and the Consulting Division awarded to POC- and woman-owned businesses during the study period were spread across different businesses. We used that analysis as an indication of whether many businesses share in the aggregate success of their respective groups, or alternatively, whether only a few businesses account for each group's aggregate participation in that work. The study team assessed that question by calculating:

- The number of different businesses within each group to which the Division of Highways and the Consulting Division awarded contract and procurement dollars during the study period; and
- The number of different businesses within each group that accounted for 75 percent of the group's total contracting dollars during the study period.

Figure 7-8 presents those results for each relevant business group. In total, the Division of Highways and the Consulting Division awarded \$114 million to 100 different POC- and woman-owned businesses during the study period. However, only 14 of those businesses accounted for 75 percent of the corresponding contract and procurement dollars. Those results were similar for most relevant business groups. Most notably, although the Division of Highways and the Consulting Division awarded contract and procurement dollars to 11 different Native American-owned businesses, one of them accounted for 78 percent of those dollars. Similarly, although the Division of Highways and the Consulting Division awarded contract and procurement dollars to 69 white woman-owned businesses, 10 of them accounted



for 77 percent of those dollars. One white woman-owned business accounted for 25 percent of all dollars that went to white woman-owned businesses by itself. In general, those results indicate that a relatively small number of POC- and woman-owned businesses accounted for the majority of the total contract and procurement dollars the Division of Highways and the Consulting Division awarded to those businesses during the study period.

**Figure 7-8.**  
**Concentration of contract and procurement dollars Division of Highways and Consulting Division awarded to POC- and woman-owned businesses**

Source:  
 BBC utilization analysis.

Business group	Utilized businesses	Businesses accounting for 75% of contract dollars	
		Number	Percent
White woman-owned	69	10	77.1 %
Asian Pacific American-owned	5	3	86.2 %
Black American-owned	1	1	100.0 %
Hispanic American-owned	11	3	79.7 %
Native American-owned	11	1	78.2 %
<u>Subcontinent Asian American-owned</u>	<u>3</u>	<u>2</u>	<u>90.6 %</u>
Total POC-owned	31	5	79.8 %
<b>Total POC- and woman-owned</b>	<b>100</b>	<b>14</b>	<b>75.4 %</b>

# CHAPTER 8.

## Disparity Analysis

BBC Research & Consulting (BBC) compared the percentage of contract and procurement dollars the Idaho Transportation Department (ITD) awarded to person of color- (POC-) and woman-owned businesses during the study period (i.e., *utilization* or *participation*) with the percentage of contract and procurement dollars one might expect the agency to award to those businesses based on their *availability* for that work.<sup>1</sup> The analysis focused on construction; professional services; and non-professional services, goods, and supplies work ITD awarded between October 1, 2018 and September 30, 2021 (the *study period*). Chapter 8 presents the *disparity analysis* in three parts:

- A. Overview;
- B. Disparity analysis results; and
- C. Statistical significance.

### A. Overview

BBC expressed both utilization and availability as percentages of the total dollars associated with a particular set of contracts or procurements and then used the following formula to calculate a *disparity index* to help compare utilization and availability for relevant business groups and different sets of contracts and procurements:

$$\frac{\% \text{ participation}}{\% \text{ availability}} \times 100$$

A disparity index of 100 indicates *parity* between actual participation and availability. That is, the participation of a particular business group is in line with its availability. A disparity index of less than 100 indicates a *disparity* between participation and availability. That is, the group is considered to have been *underutilized* relative to its availability. Finally, a disparity index of less than 80 indicates a *substantial disparity* between participation and availability. That is, the group is considered to have been *substantially underutilized* relative to its availability. Many courts have considered substantial disparities as *inferences of discrimination* against particular business groups, and they often serve as justification for organizations to use relatively aggressive measures—such as *race- and gender-conscious* measures—to address corresponding barriers.<sup>2</sup>

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<sup>1</sup> “Woman-owned businesses” refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of their corresponding racial/ethnic groups.

<sup>2</sup> For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); and *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).

## B. Disparity Analysis Results

BBC assessed disparities between the participation and availability of POC- and woman-owned businesses separately for Division of Highways and Consulting Division, Public Transportation Office, and Aeronautics Division projects as well as separately for various subsets of Division of Highways and Consulting Division work.

**1. ITD division.** Figure 8-1 presents disparity indices for all relevant prime contracts and subcontracts the Division of Highways and the Consulting Division awarded during the study period, which includes both work funded by the Federal Highway Administration (FHWA) and work that was wholly state-funded. There is a line at the disparity index level of 100, which indicates parity, and a line at the disparity index level of 80, which indicates a substantial disparity. Substantial disparities are also highlighted with red borders. As shown in Figure 8-1, POC- and woman-owned businesses considered together exhibited a disparity index of 47 for all relevant Division of Highways and Consulting Division contracts and procurements, indicating a substantial disparity where POC- and woman-owned businesses only received \$0.47 for every dollar one might expect the agency to award to those businesses based on their availability for that work. Five relevant business groups exhibited substantial disparities for those projects: white woman-owned businesses (disparity index of 68), Asian Pacific American-owned businesses (disparity index of 33), Black American-owned businesses (disparity index of 16), Hispanic American-owned businesses (disparity index of 34), and Native American-owned businesses (disparity index of 26).

**Figure 8-1.**  
**Disparity analysis results for**  
**Division of Highways and**  
**Consulting Division work**

Note:

For more detail, see Figure F-1 in  
Appendix F.

Source:

BBC disparity analysis.

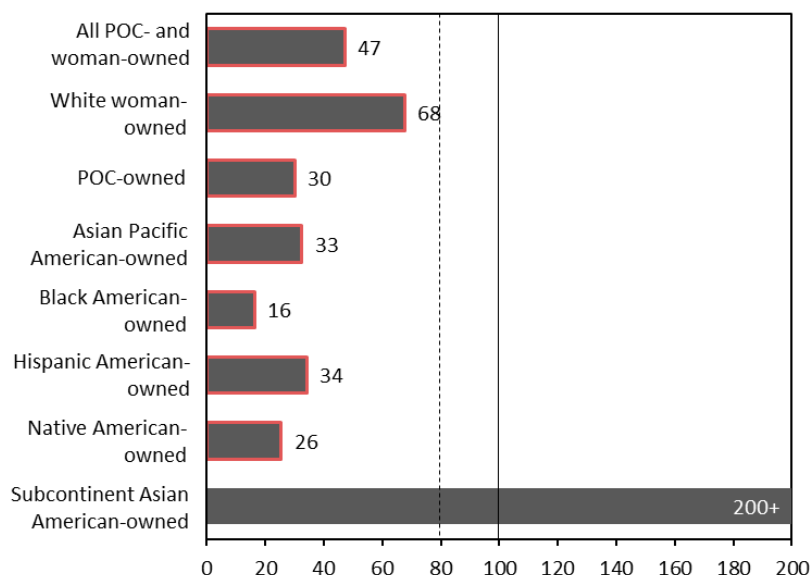


Figure 8-2 presents disparity indices for all relevant prime contracts and subcontracts the Public Transportation awarded during the study period, which all included Federal Transit Administration (FTA) funding. As shown in Figure 8-2, POC- and woman-owned businesses considered together exhibited a disparity index of 35 for all relevant FTA-funded work, which is a substantial disparity. Four business groups exhibited substantial disparities for that work: Asian Pacific American-owned businesses (disparity index of 0), Black American-owned businesses (disparity index of 0), Hispanic American-owned businesses (disparity index of 0) and Native American-owned businesses (disparity index of 0).

**Figure 8-2.**  
**Disparity analysis results for**  
**Public Transportation Office**  
**work**

Note:

For more detail, see Figure F-17 in  
Appendix F.

Source:

BBC disparity analysis.

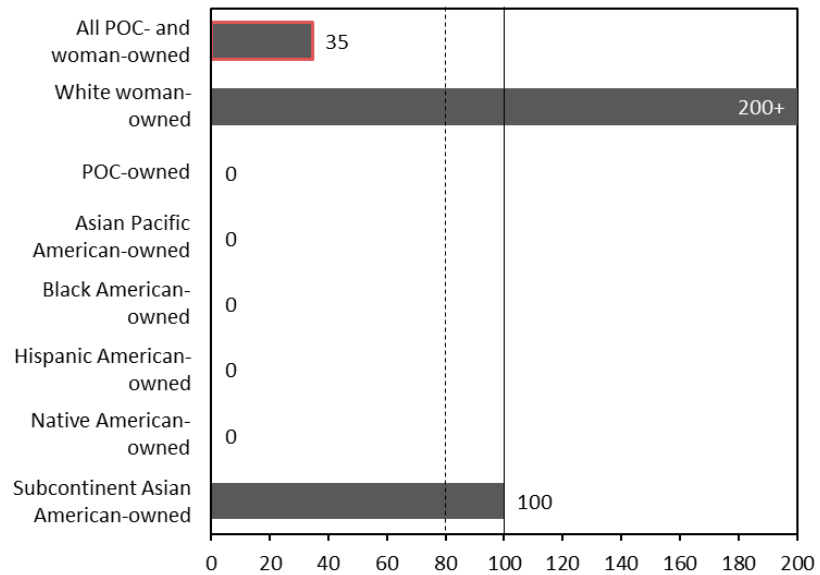


Figure 8-3 presents disparity indices for all relevant prime contracts and subcontracts administered by the Aeronautics Division during the study period, which includes both work funded by the Federal Aviation Administration and work that was wholly state-funded. As shown in Figure 8-3, POC- and woman-owned businesses considered together exhibited a disparity index of 0 for all projects the Aeronautics Division awarded, indicating a substantial disparity. Four business groups exhibited substantial disparities for that work: white woman-owned businesses (disparity index of 0), Black American-owned businesses (disparity index of 0), Hispanic American-owned businesses (disparity index of 0) and Native American-owned businesses (disparity index of 0).

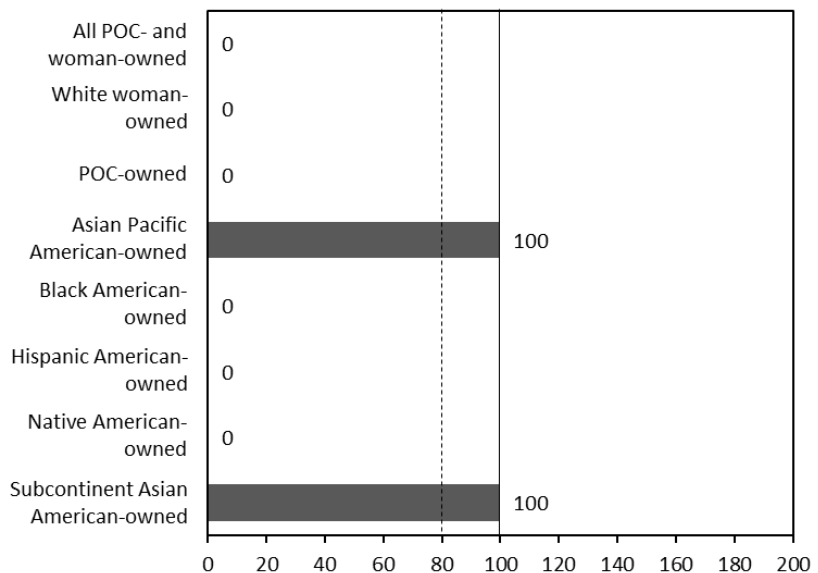
**Figure 8-3.**  
**Disparity analysis results for**  
**Aeronautics Division work**

Note:

For more detail, see Figure F-18 in  
Appendix F.

Source:

BBC disparity analysis.



**2. Funding source.** The Federal Disadvantaged Business Enterprise (DBE) Program applies specifically to ITD’s federally funded projects.<sup>3</sup> As part of the program, the agency uses various *race- and gender-neutral* measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the federally funded projects it awards. It is instructive to examine disparity analysis results separately for ITD’s FHWA-funded work, because any disparities for that work is most directly indicative of the efficacy of ITD’s implementation of the Federal DBE Program to encourage the participation of POC- and woman-owned businesses in that work relative to their availability.

As shown in Figure 8-4, POC- and woman-owned businesses considered together exhibited substantial disparities for both FHWA-funded work (disparity index of 57) and for state-funded work (disparity index of 18). The following groups exhibited substantial disparities regardless of funding source: white woman-owned businesses (disparity index of 76 for FHWA-funded work and 39 for state-funded work), Asian Pacific American-owned businesses (disparity index of 41 for FHWA-funded work and 9 for state-funded work), Black American-owned businesses (disparity index of 17 for FHWA-funded work and 10 for state-funded work), Hispanic American-owned businesses (disparity index of 45 for FHWA-funded work and 8 for state-funded work), and Native American-owned businesses (disparity index of 35 for FHWA-funded work and 1 for state-funded work).

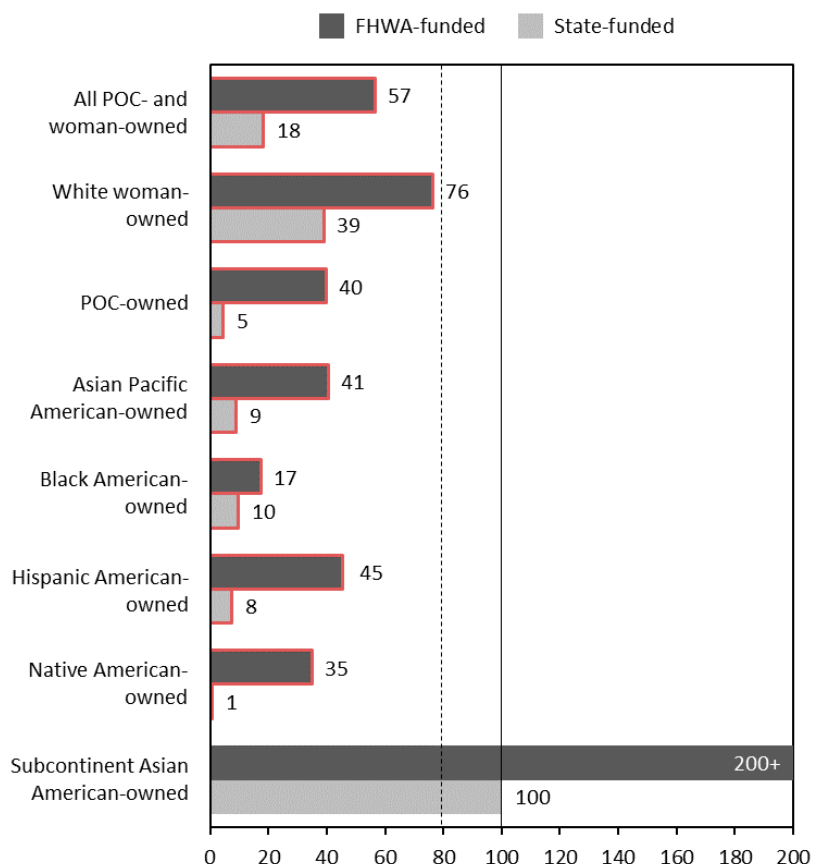
**Figure 8-4.**  
**Disparity analysis results for**  
**FHWA- and state-funded work**

Note:

For more detail and results by group, see Figure F-10 and F-11 in Appendix F.

Source:

BBC disparity analysis.



<sup>3</sup> The study team considered a project to be federally funded if it included at least one dollar of federal funding.

**3. Industry.** ITD can make different decisions about its implementation of the Federal DBE Program based on industry, including decisions about whether the continued use of race- and gender-conscious measures is appropriate for its FHWA-funded projects and which groups might be eligible to participate in those measures. Thus, BBC examined disparity analysis results separately for the construction and professional services contracts and procurements the Division of Highways and the Consulting Division awarded during the study period to determine whether outcomes for POC- and woman-owned businesses differed by industry. As shown in Figure 8-5, POC- and woman-owned businesses considered together exhibited substantial disparities on both construction contracts (disparity index of 45) and on professional services contracts (disparity index of 62). Disparity analysis results for relevant business groups differed by industry:

- For construction contracts, white woman-owned businesses (disparity index of 62), Asian Pacific American-owned businesses (disparity index of 9), Hispanic American-owned businesses (disparity index of 31), and Native American-owned businesses (disparity index of 29) exhibited substantial disparities.
- For professional services contracts, Black American-owned businesses (disparity index of 0), Hispanic American-owned businesses (disparity index of 70), and Native American-owned businesses (disparity index of 2) exhibited substantial disparities.

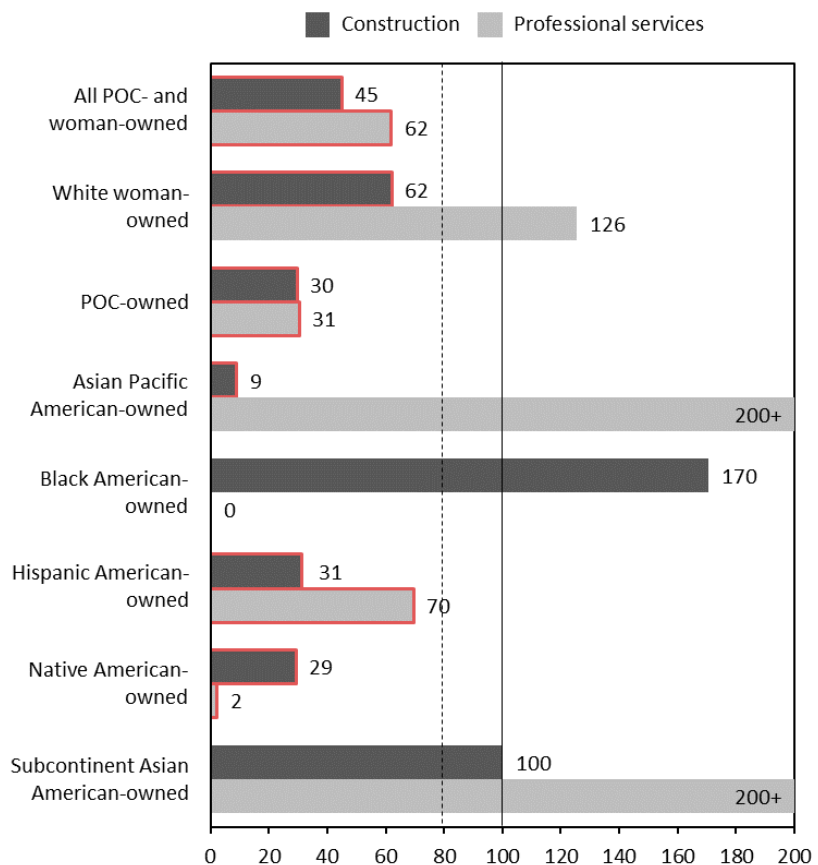
**Figure 8-5.**  
**Disparity analysis results for**  
**construction and professional**  
**services work**

Note:

For more detail and results by group, see  
Figures F-4 and F-5 in Appendix F.

Source:

BBC disparity analysis.



**4. Contract role.** Many POC- and woman-owned businesses are small businesses and thus often work as subcontractors. In addition, ITD's use of DBE contract goals is designed to encourage the participation of POC- and woman-owned businesses primarily in subcontracts rather than prime contracts. For those



reasons, it is useful to examine disparity analysis results separately for the prime contracts and subcontracts the Division of Highways and the Consulting Division awarded during the study period. As shown in Figure 8-6, POC- and woman-owned businesses considered together exhibited a substantial disparity for prime contracts (disparity index of 17) but did not exhibit a disparity for subcontracts (disparity index of 125). Disparity analysis results for relevant business groups differed by contract role:

- For prime contracts, white woman-owned businesses (disparity index of 12), Black American-owned businesses (disparity index of 0), Hispanic American-owned businesses (disparity index of 9), and Native American-owned businesses (disparity index of 34) all exhibited substantial disparities.
- For subcontracts, Asian Pacific American-owned businesses (disparity index of 17) and Native American-owned businesses (disparity index of 9) exhibited substantial disparities. Black American-owned businesses (disparity index of 91) exhibited a disparity for subcontracts, although that disparity was not substantial.

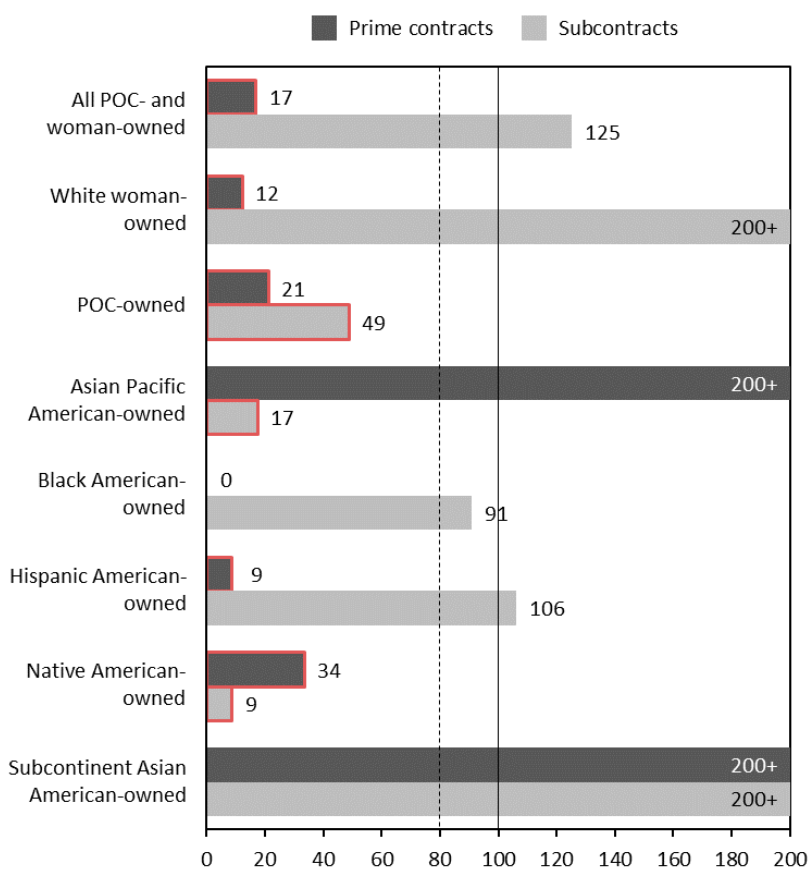
**Figure 8-6.**  
**Disparity analysis results**  
**for prime contracts and**  
**subcontracts**

Note:

For more detail, see Figures F-6 and F-7 in Appendix F.

Source:

BBC disparity analysis.



### C. Statistical Significance

Statistical significance tests allow researchers to assess the probability that any observed quantitative differences were due to *real* differences rather than to chance. In other words, a statistically significant difference is one that can be considered as statistically reliable or real. BBC used Monte Carlo analysis, which relies on repeated, random simulations of results, to examine the statistical significance of disparity indices we observed.

**1. Overview.** BBC used Monte Carlo simulations to randomly select businesses to win each individual contract element we analyzed in the disparity study. For each contract element, the availability analysis provided information on individual businesses potentially available to perform that contract element based on type of work, contractor role, contract size, and other factors. Then, using Monte Carlo, we randomly chose a business from the pool of businesses we considered available for that contract element to *win* the work. The chance of a business from a particular business group winning the contract element was equal to the number of businesses from that group available for it divided by the number of all businesses available for it.

BBC conducted a Monte Carlo analysis for all contract elements in a particular contract set. The output of a single simulation for all the contract elements in the set represented the *simulated participation* of POC- and woman-owned businesses for the contract set. The entire Monte Carlo simulation was then repeated 1 million times for each contract set. The combined output from all 1 million simulations represented a probability distribution of the overall participation of POC- and woman-owned businesses if contracts and procurements were awarded randomly based only on the estimated availability of relevant businesses working in the local marketplace. The output of Monte Carlo simulations represents the number of simulations out of 1 million that produced participation equal to or below the actual observed participation for each relevant business group for each applicable contract set. If that number was less than or equal to 50,000 (i.e., 5.0% of the total number of simulations, or  $p = .05$ ), then we considered the disparity index to be statistically significant at a 95 percent confidence level, using one-tailed tests.

**2. Results.** BBC ran Monte Carlo simulations on all Division of Highways and Consulting Division contracts and procurements considered together to assess whether the substantial disparities relevant business groups exhibited for that work were statistically significant. As shown in Figure 8-7, results from the Monte Carlo analysis indicated the disparity POC- and woman-owned businesses considered together exhibited for Division of Highways and Consulting Division work was statistically significant at the 95 percent confidence level. In addition, the disparities exhibited by Black American-, Hispanic American-, and Native American-owned businesses for that work were statistically significant at the 95 percent confidence level. The disparity exhibited by white woman-owned businesses was statistically significant at the 90 percent confidence level.

**Figure 8-7.**  
**Monte Carlo**  
**simulation results**

Note:

An asterisk indicates statistical significance at a 95 percent confidence level, and a plus sign indicates statistical significance at a 90 percent confidence level.

Source:

BBC disparity analysis.

Business Group	Disparity index	Probability that disparity is due to chance ( $p$ value)
POC-owned and woman-owned	47	0.00 *
White woman-owned	68	0.09 +
POC-owned	30	0.00 *
Asian Pacific American-owned	33	0.19
Black American-owned	16	0.01 *
Hispanic American-owned	34	0.00 *
Native American-owned	25	0.00 *
Subcontinent Asian American-owned	200+	N/A

# CHAPTER 9.

## Contracting Policies and Program Measures

Chapter 9 provides an overview of the policies and regulations guiding the Idaho Transportation Department's (ITD's) contracting and procurement processes and the programs ITD uses to encourage the participation of disadvantaged business enterprises (DBEs) as well as person of color (POC)- and woman-owned businesses in its United States Department of Transportation (USDOT)-funded contracting and procurement.<sup>1</sup> The chapter is organized in two parts:

- A. Contracting policies; and
- B. Business programs.

### A. Contracting Policies

ITD divisions—including the Highways, Consulting, Public Transportation, and Aeronautics Divisions—are responsible for awarding and administering projects according to their corresponding federal funding sources. The Highways Division is responsible for managing Federal Highway Administration (FHWA)-funded construction projects, and the Consulting Division is responsible for managing FHWA-funded professional services projects.<sup>2</sup> The Public Transportation Division is responsible for managing Federal Transit Administration (FTA)-funded projects.<sup>3</sup> Finally, the Aeronautics Division is responsible for managing Federal Aviation Administration (FAA)-funded projects.<sup>4</sup> In general, ITD's procurement methods vary for contracts and procurements of three different sizes:

- *Small purchases*, which are purchases worth less than or equal to \$10,000;
- *Requests for quotes or qualifications*, which are purchases worth more than \$10,000 but less than or equal to \$100,000; and
- *Competitive sealed purchases*, which are purchases worth more than \$100,000.

**1. Small purchases.** If a contract or procurement is worth \$10,000 or less, and if the price is deemed fair and reasonable, ITD may make a purchase without using competitive procurement processes. For

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<sup>1</sup> "Woman-owned businesses" refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

<sup>2</sup> Professional services include architectural services, engineering services, traffic control, right of way services, environmental services, and other related services.

<sup>3</sup> Some of ITD's FTA-funded projects are awarded through subrecipient local agencies that either perform the work in-house or contract with third-party contractors.

<sup>4</sup> Airports in Idaho are direct recipients of FAA funding. However, ITD's Aeronautics Division awards a small number of FAA-funded statewide contracts.

example, the agency can procure such work by directly soliciting or awarding contracts to vendors known to provide the needed goods or services.

**2. Requests for quotes or qualifications.** For procurements worth between \$10,000 and \$100,000, ITD is required to post a Request for Quotes for at least five business days on its online procurement platform or in newspapers of general circulation. Quotes must be obtained from at least three qualified vendors. For professional services projects, ITD's Consulting Division uses an informal selection process for agreements worth less than \$100,000. The Consulting Division identifies three qualified firms from a prequalification list it maintains to shortlist for the project. The contract administrator then relies on his or her knowledge of the firms' capabilities to select one of the firms to perform the work.

**3. Competitive sealed purchases.** ITD awards contracts and procurements worth more than \$100,000 using competitively sealed purchase requirements, or Invitations to Bid (ITBs), which vary between construction; professional services; and non-professional services, goods, and supplies contracts and procurements.

**i. Construction.** ITD follows Idaho Code § 40-902 for awarding construction projects worth more than \$100,000, which sets forth the following requirements:

- ITD must advertise the bid opportunity for at least two weeks prior to the bid submission date.
- Bids must be accompanied by a bid bond or cashier's check for 5 percent of the amount of the bid and a performance or payment bond worth the total amount of the bid.
- ITD must open the bids it receives publicly and award it to the lowest responsible bidder.

Idaho code also allows for the use of alternative delivery procurement processes such as design-build and construction manager agreements, if the ITD board determines it is appropriate. Idaho Code § 40-904 sets forth requirements for the use and scoring of design-build agreements, and Idaho Code § 40-905 sets forth requirements for construction manager/general contractor agreements.

**ii. Professional services.** For professional services projects worth \$100,000 or more but less than \$500,000, ITD establishes a committee of three Consulting Division staff members who identify three firms from the prequalification list to shortlist for the project. The committee then asks each firm to respond to project-specific questions and then selects a firm to perform the work based on the quality of its responses. For professional services projects worth \$500,000 or more, ITD uses ITB or Request for Proposal (RFP) processes, as described in the previous section.

**iii. Non-professional service, goods, and supplies.** ITD can use ITBs or RFPs to procure non-professional services, goods, and supplies worth \$100,000 or more. Both processes require ITD to post the opportunities on its electronic procurement platform or in newspapers of general circulation. ITBs must be posted for at least 30 days prior to submission dates, and RFPs must be posted for at least 45 days prior to submission dates. For some projects, ITD may require payment, performance, or bid bonds.

## **B. Business Programs**

As part of implementing the Federal DBE Program, ITD uses a combination of *race- and gender-neutral* and *race- and gender-conscious* measures to encourage the participation of POC- and woman-owned

businesses in the federally funded contracts and procurements it awards. Race- and gender-neutral measures are measures designed to encourage the participation of all businesses—or, all small businesses—in an organization’s work, regardless of the race/ethnicity or gender of business owners. In contrast, race- and gender-conscious measures are measures designed to specifically encourage the participation of POC- and woman-owned businesses in an organization’s contracting (e.g., using POC-owned business participation goals on individual contracts).

To meet the *narrow tailoring* requirement of the *strict scrutiny* standard of constitutional review, agencies that implement the Federal DBE Program must meet the maximum feasible portion of their overall DBE goals through the use of race- and gender-neutral measures.<sup>5</sup> If they cannot meet their overall DBE goal through the use of race- and gender-neutral measures alone, then they must consider also using race- and gender-conscious measures. When submitting documentation related to their overall DBE goal to USDOT, agencies must project the portion of their overall DBE goals they expect to meet through race- and gender-neutral measures and what portion they expect to meet through race- and gender-conscious measures. USDOT offers guidance concerning how transportation agencies should make such projections.

BBC reviewed the measures ITD’s Office of Civil Rights (OCR), which is responsible for managing the agency’s implementation of the Federal DBE Program, uses to encourage the participation of POC- and woman-owned businesses in the agency’s transportation-related work. We reviewed ITD’s program measures in four parts:

1. Overall DBE goal;
2. DBE certification;
3. Race- and gender-neutral measures; and
4. Race- and gender-conscious measures.

**1. Overall DBE goal.** Every three years, ITD is required to set separate overall aspirational goals for the participation of DBEs in its FHWA-, FTA-, and FAA-funded work. If DBE participation is less than its overall DBE goal for a particular funding type in a particular year, then the agency must analyze the reasons for the difference and establish specific measures that enable it to meet the goal in the next year. For federal fiscal years (FFYs) 2019 through 2021, ITD set an overall goal of 8.3 percent for the participation of DBEs in its FHWA-funded contracts and procurements that are competitively sealed (i.e., worth more than \$100,000), and in FFY 2022, the agency increased that goal to 10 percent.<sup>6</sup> The agency has projected that it will achieve 2.25 percent of its goal through the use of race- and gender-neutral measures and the remaining 7.75 percent of its goal through the use of race- and gender-conscious measures.

**2. DBE certification.** As part of the Federal DBE Program, ITD is required to report on the participation of certified DBEs in its USDOT-funded contracts and procurements. In addition, the agency

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<sup>5</sup> 49 CFR Section 26.51.

<sup>6</sup> ITD has set overall DBE goals of 2.89 percent for its FTA-funded work and 2.7 percent for its FAA-funded work.

conducts targeted outreach to DBEs and POC- and woman-owned businesses eligible for DBE certification to encourage their participation in that work.

ITD's OCR operates the Federal DBE Program on behalf of the agency, including certifying DBEs. Businesses interested in becoming DBE certified can apply online for free, apart from notarization fees in some cases. To be eligible, business owners must prove they are "socially and economically disadvantaged" as defined by 49 Code of Federal Regulations (CFR) Part 26, in which social disadvantage is presumed for businesses that are 51 percent owned and controlled by individuals who identify as Asian Pacific American, Black American, Hispanic American, Native American, Subcontinent Asian American, or as women.

To demonstrate economic disadvantage, business owners must have personal net worths of less than \$1.32 million, and the businesses themselves must have average revenues of less than \$30.4 million over the previous three years.<sup>7</sup> Finally, business owners must be United States citizens or legal residents, and the businesses must be independent of other entities. Once a business submits its application, ITD conducts an on-site visit, and then a DBE Certification Committee reviews the application before making a final decision. Once ITD certifies DBEs, they are added to the ITD DBE Directory. The directory is available on ITD's website and is one of the resources prime contractors can use to find DBEs with which to work.

**3. Race- and gender-neutral measures.** As part of its implementation of the Federal DBE Program, ITD uses the following race- and gender-neutral measures to encourage the participation of small businesses—including many POC- and woman-owned businesses—in its contracting:

- Advocacy and outreach efforts;
- Technical assistance programs;
- Bonding assistance;
- Prompt payment policies; and
- Aspirational contract goals.

**i. Advocacy and outreach efforts.** ITD participates in various advocacy and outreach efforts, including hosting DBE workshops and using communications targeted specifically to disadvantaged businesses.

**a. Communications.** ITD communicates with DBEs through e-mail and its website. The agency uses its website to announce contracting opportunities, special events, and new DBE program measures. ITD also contracts with an independent consultant that conducts additional outreach with DBEs through mailings, phone calls, and emails.

**b. Identification of potential DBEs.** ITD makes efforts to identify POC- and woman-owned businesses that are qualified to become certified as DBEs that are not currently certified and works to encourage them to complete the certification process.

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<sup>7</sup> Revenue limits are not considered as part of DBE certification as applied to FAA-funded work.

**ii. Technical assistance programs.** ITD offers small business development assistance, one-on-one consulting, training, events, and webinars to various businesses. Those efforts include technical workshops, bidding assistance, and other key educational topics to provide small businesses, including DBEs, with the resources required to participate in ITD work. In addition, ITD hosts workshops focused on helping businesses with project initiation, estimating, doing business with ITD, proposal writing, and other procurement topics.

**iii. Bonding assistance.** ITD coordinates with USDOT as part of the Bond Education Program to deliver race- and gender-neutral bonding assistance to support small businesses, including many POC- and woman-owned businesses. Small businesses, including DBEs, are offered one-on-one sessions with bonding representatives to help them compile the necessary documentation to complete bond applications.

**iv. Prompt payment policies.** ITD has policies in place to help ensure prompt payment to both prime contractors and subcontractors. The agency pays prime contractors within 30 days after it receives and approves invoices. Prime contractors are then required to pay their subcontractors within 20 days after receipt of payment from ITD. In addition, although ITD does not require retainage from prime contractors for projects, if prime contractors require retainage from subcontractors, they are required to pay subcontractors' retainage within 20 calendar days of the completion of their portions of work.

**v. Aspirational contract goals.** ITD's Public Transportation Office and the Division of Aeronautics have set aspirational goals of 2.89 percent and 2.7 percent, respectively, for the participation of DBE-certified businesses in its USDOT-funded projects that are competitively sealed (i.e., worth more than \$100,000). Prime contractors bidding on that work are encouraged to meet the goal either by making subcontracting commitments to DBEs or submitting documentation that they made *good faith efforts* (GFEs) to meet the goals but failed to do so. The Public Transportation Office and the Division of Aeronautics encourage bidders to meet the goal, but they are not required to do so as a matter of responsiveness or condition of contract awards.

**4. Race- and gender-conscious measures.** ITD uses race- and gender-conscious measures to award many of its FHWA-funded projects. As part of its implementation of the Federal DBE Program, the agency uses DBE contract goals to encourage the participation of DBEs in various FHWA-funded projects. It sets DBE contract goals on individual projects based on the availability of DBEs in marketplace for the types of services or materials projects require. Prime contractors bidding on the work must meet the goals by either making subcontracting commitments to DBEs or submitting documentation that they made GFEs to meet the goals but failed to do so. Examples of GFEs are:

- Advertising or attending pre-bid meetings and events to solicit the interest of DBEs that have the capability to perform the work involved;
- Identifying DBE subcontracting opportunities as part of the project;
- Soliciting bids from DBEs directly, including following up and negotiating when possible;
- Providing DBEs with information about the project, contract requirements, and other elements of the work; and
- Assisting DBEs with obtaining bonding, insurance, other finance requirements, and supplies and materials.



Bidders may also provide additional information regarding the efforts they made in finding DBE subcontractors if they feel they demonstrated genuine efforts to engage with them. If prime contractors do not meet the goals through subcontracting commitments or through approved GFEs documentation, ITD can reject prime contractors' bids.

# CHAPTER 10.

## Overall DBE Goal

As part of its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program, the Idaho Transportation Department (ITD) is required to set an overall goal for DBE participation in its United States Department of Transportation- (USDOT-) funded projects. Agencies are required to develop overall DBE goals every three years, but overall DBE goals are *annual* goals in that agencies must monitor DBE participation in their USDOT-funded work every year. If an agency's DBE participation for a particular year is less than its overall DBE goal for that year, then the agency must analyze the reasons for the difference and establish specific measures that enable it to meet the goal in the next year.

ITD must prepare and submit Goal and Methodology documents to USDOT that present its overall DBE goals for Federal Highway Administration- (FHWA-), Federal Transit Administration- (FTA-), and Federal Aviation Administration- (FAA-) funded work. Those goals must be supported by information about the steps the agency took to develop them and the factors they considered. ITD last developed overall DBE goals for federal fiscal years (FFYs) 2021 through 2023. In FFYs 2019 through 2021, ITD had a DBE goal of 8.3 percent on FHWA-funded projects. In FFY 2022, ITD increased its goal on FHWA-funded projects to 10 percent. In the most recent goal submissions, the agency established an overall DBE goal of 2.89 percent for FTA-funded projects and 2.7 percent for FAA-funded projects. ITD indicated to USDOT that it planned to meet the goals through the use of a combination of *race- and gender-neutral* and *race- and gender-conscious* program measures.

ITD is required to develop new overall DBE goals for FFYs 2024 through 2026. Chapter 10 provides information ITD might consider as part of setting its new overall DBE goal for FHWA-funded contracts and procurements in particular. It is organized in two parts based on the two-step goal-setting process set forth in 49 Code of Federal Regulations (CFR) Part 26.45 and a third part discussing DBE groups eligible for race- and gender-conscious measures based on 49 CFR Part 26.15:

- A. Establishing a base figure;
- B. Considering a step-2 adjustment; and
- C. DBE groups eligible for race- and gender-conscious measures.

### A. Establishing a Base Figure

Establishing a *base figure* is the first step in calculating an overall goal for DBE participation in ITD's FHWA-funded work, including work subrecipient local agencies award and manage. As presented in Figure 10-1, ITD might be expected to award 10.6 percent of its FHWA-funded prime contract and subcontract dollars to *potential DBEs*—that is, person of color- (POC-) and woman-owned businesses that are DBE-certified or appear they could be DBE-certified based on their ownership and annual revenue limits described in 13 CFR Part 121 and 49 CFR Part 26—based on their availability for that work (see Appendix F, Figure F-19 for more detail). ITD might consider 10.6 percent as the base figure for its overall DBE goal if it anticipates that the types and sizes of FHWA-funded projects it awards in the

future will be similar to the FHWA-funded projects it awarded during the *study period* (i.e., October 1, 2018 through September 30, 2021).

Figure 10-1 presents the construction and professional services components of the base figure for ITD's overall DBE goal, which are based on the availability of potential DBEs for FHWA-funded prime contracts and subcontracts. The overall base figure reflects a weight of 77.5 percent for construction contracts and 22.5 percent for professional services contracts based on the volume of dollars of FHWA-funded contracts that ITD awarded during the study period.

**Figure 10-1.**  
**Base figure components of ITD's next overall DBE goal (based on availability of potential DBEs for FHWA-funded contracts)**

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals. See Figures F-20 and F-21 in Appendix F for corresponding disparity results tables.

Source:

BBC availability analysis.

Potential DBEs	Construction	Professional services	Weighted average
Asian Pacific American	0.5	0.0	0.4 %
Black American	0.1	1.7	0.4
Hispanic American	2.3	1.7	2.2
Native American	4.3	3.1	4.0
Subcontinent Asian American	0.0	0.0	0.0
Non-Hispanic white woman	3.7	3.2	3.6
<b>Total potential DBEs</b>	<b>10.8 %</b>	<b>9.7 %</b>	<b>10.6 %</b>
<b>Industry weight</b>	<b>77.5 %</b>	<b>22.5 %</b>	

If ITD expects that the relative distributions of FHWA-funded construction and professional services contract dollars will change substantially in the future, the agency might consider applying different weights to the corresponding base figure components. Figure 10-2 provides availability estimates for the specific areas of work, or subindustries, considered in the analysis of ITD's FHWA-funded projects. Those data could help ITD estimate a base figure should the agency determine that the mix of subindustries expected on future FHWA-funded projects differs substantially from the projects analyzed in the disparity study. For additional details about the availability analysis, see Chapter 6.

**Figure 10-2.**  
**Availability of potential DBEs for ITD**  
**FHWA-funded contracts by subindustry**

Note:

Numbers rounded to nearest tenth of 1 percent.

Source:

BBC availability analysis.

Industry	Potential DBE Availability
<b>Construction</b>	
Highway, street, and bridge construction	9.6 %
Concrete, asphalt, sand, and gravel products	0.1 %
Concrete work	3.7 %
Electrical work	13.2 %
Traffic control and safety	30.9 %
Excavation, drilling, wrecking, and demolition	29.0 %
Fencing, guardrails, signals, and signs	10.3 %
Painting, striping, marking, and weatherproofing	24.7 %
Water, sewer, and utility lines	0.0 %
Building construction	22.3 %
Trucking, hauling and storage	22.3 %
Other construction materials	14.3 %
Other construction services	15.7 %
<b>Professional services</b>	
Engineering	9.5 %
Environmental services	13.5 %
Surveying and mapmaking	5.9 %
Transportation planning services	10.2 %
Advertising, marketing and public relations	15.6 %
Other professional services	9.6 %

## B. Considering a Step-2 Adjustment

The Federal DBE Program requires ITD to consider a potential *step-2 adjustment* to its base figure as part of determining its overall DBE goal. ITD is not required to make a step-2 adjustment as long as it considers appropriate factors and explains its decision in its Goal and Methodology document. The Federal DBE Program outlines several factors that an agency must consider when assessing whether to make a step-2 adjustment to its base figure:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training, and unions;
3. Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
4. Other relevant data.<sup>1</sup>

BBC Research & Consulting (BBC) completed an analysis of each of the above factors. Much of the information we examined was not easily quantifiable, and accounting for those factors using a quantified value may not result in any substantial changes to ITD's overall goal. However, this information is still relevant to ITD as it determines whether to make a step-2 adjustment.

<sup>1</sup> 49 CFR Section 26.45.

**1. Current capacity of DBEs to perform work.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded projects in recent years. Based on information from ITD’s Uniform Reports, the participation of certified DBEs in the USDOT-funded projects ITD awarded in FFYs 2017 through 2021 was 7.136 percent of total dollars on FHWA-funded projects. That information supports a downward adjustment to ITD’s base figure. If ITD adjusts its base figure based on past DBE participation, USDOT suggests it might take the average of its 10.6 percent base figure and the 7.136 percent past DBE participation for its FHWA-funded projects, yielding an adjusted overall DBE goal of 8.9 percent.

ITD staff and procurement officers have expressed concern about the ability of DBEs to meet recent goals due to the increase in the amount of work ITD contracts on an annual basis. According to those staff, fewer firms have bid on recent contracts that have DBE goals. Furthermore, some DBEs reported they were not able to take on additional work. Based on data from ITD, the dollar volume of FHWA-funded contracts increased by 44 percent between 2019 and 2023. Maintaining a DBE goal of 10 percent during that time period would have required an increase in total participation by DBEs of \$14.3 million.

**2. Information related to employment, self-employment, education, training, and unions.** Chapter 3 summarizes information about conditions in the relevant geographic market area (RGMA) for POCs, women, and POC- and woman-owned businesses. Additional information about quantitative and qualitative analyses of conditions in the RGMA are presented in Appendices C and D, respectively. BBC’s analyses indicate that there are barriers that certain POC groups and women face related to human capital, financial capital, business ownership, and business success throughout the region. Such barriers may decrease the availability of POC- and woman-owned businesses for the USDOT-funded projects ITD and subrecipient local agencies award, which supports an upward adjustment to ITD’s base figure. BBC used regression analyses to investigate whether race/ethnicity and gender are related to business ownership in relevant industries among workers in the ITD marketplace independent of various other personal characteristics, including familial status, education, and age. (Chapter 3 and Appendix C provide details about our regression analyses.) Based on the results of those analyses, ITD might consider adjusting its base figure for FHWA-funded contracts upward to 12.7 percent.

**3. Any disparities in the ability of DBEs to get financing, bonding, and insurance.** BBC’s analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in the region do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men. Any barriers to obtaining financing, bonding, and insurance might limit opportunities for POCs and women to successfully form and operate businesses in the RGMA. Any barriers that POC- and woman-owned businesses face in obtaining financing, bonding, and insurance would also place those businesses at a disadvantage in competing for ITD’s USDOT-funded prime contracts and subcontracts. Thus, information about financing, bonding, and insurance also supports an upward adjustment to ITD’s base figure.

**4. Other factors.** The Federal DBE Program suggests that federal fund recipients also examine “other factors” when determining whether to make step-2 adjustments to their base figures.<sup>2</sup>

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<sup>2</sup> 49 CFR Section 26.45.

**a. Success of businesses.** There is quantitative evidence that certain groups of POC- and woman-owned businesses are less successful than businesses owned by non-Hispanic white men and face greater barriers in the marketplace, even after accounting for race- and gender-neutral factors. Chapter 3 summarizes that evidence and Appendix C presents additional, corresponding results. There is also qualitative evidence of barriers to the success of POC- and woman-owned businesses, as presented in Appendix D. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects the success of POC- and woman-owned businesses in the RGMA. Thus, information about the success of businesses also supports an upward adjustment to ITD's base figure.

**b. Evidence from disparity studies conducted within the jurisdiction.** USDOT suggests that federal aid recipients also examine evidence from disparity studies conducted within their jurisdictions when determining whether to make adjustments to their base figures. ITD should review results from those disparity studies when determining its overall DBE goal. However, the agency should note that the results of those studies are tailored specifically to the projects and policies of the agencies that commissioned those studies, which may differ in many important respects from those of ITD.

**Summary.** The quantitative and qualitative evidence the study team collected as part of the disparity study may support an adjustment to the base figure as ITD considers setting its overall DBE goal. Based on information from the disparity study, there are reasons why ITD might consider an adjustment to its base figure:

- ITD might adjust its base figure upward to account for barriers that POCs and women face in human capital and business ownership in the local contracting industry.
- Evidence of barriers that affect POCs, women, and POC- and woman-owned businesses in obtaining financing, bonding, and insurance, and evidence that certain groups of POC- and woman-owned businesses are less successful than comparable businesses owned by non-Hispanic white men also supports an upward adjustment to ITD's base figure.
- ITD staff suggest that some DBEs working on ITD projects do not have capacity to take on additional work and fewer firms are bidding on projects with DBE goals.
- If ITD were to adjust its base figure based on information about DBE participation in FHWA-funded work the agency awarded during the study period, it might consider taking the average of its base figures and the participation of DBEs in that work, which would result in a downward adjustment to its base figure.

USDOT regulations state that an agency such as ITD is required to review a broad range of information when considering whether it is necessary to make a step-2 adjustment—either upward or downward—to its base figure. However, agencies are not required to make an adjustment as long as they can explain what factors they considered and can explain their decisions in their Goal and Methodology documents.

## **C. DBE Groups Eligible for Race- and Gender-Conscious Measures**

Several seminal court cases have indicated that, in order to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious program measures to those minority groups “that have actually suffered discrimination” within its transportation

contracting industry.<sup>3, 4</sup> Moreover, USDOT official guidance states that “even when discrimination is present in a state, a program is narrowly tailored only if its application is limited to those specific groups that have actually suffered discrimination or its effects.”<sup>5</sup> As provided in 49 CFR Part 26, such guidance is “valid, and express[es] the official positions and views of the Department of Transportation ... .”<sup>6</sup>

As part of the 2023 ITD Disparity Study, BBC assessed whether there were any disparities between the participation and availability of POC- and woman-owned businesses on ITD’s highway-related contracts (for details, see Chapter 8 and Appendix F). The study showed substantial disparities—that is, disparities whereby utilization was less than 80 percent of availability—for all POC- and woman-owned business considered together and for most individual racial/ethnic and gender groups. The only exception was Subcontinent Asian American-owned businesses, which exhibited a disparity index of 100 on contracts during the study period without DBE contract goals.

Consistent with key court rulings and USDOT official guidance, based on all available information including results from the 2023 ITD Disparity Study, ITD could consider the following groups eligible to participate in the race- and gender-conscious measures that will be part of the agency’s implementation of the Federal DBE Program for FHWA-funded contracts:

- Black American-owned businesses;
- Asian-Pacific American-owned businesses;
- Hispanic American-owned businesses;
- Native American-owned businesses; and
- Non-Hispanic white woman-owned businesses.<sup>7</sup>

ITD would need to request a waiver from USDOT to consider Subcontinent Asian American-owned businesses ineligible to participate in any race- and gender-conscious measures. Subcontinent Asian American-owned businesses will still be eligible to participate in the race- and gender-neutral measures that are part of ITD’s implementation of the Federal DBE Program for FHWA-funded contracts. If ITD submits and receives approval for its waiver request, the agency should monitor the participation of Subcontinent Asian American-owned businesses in its FHWA-funded contracts and reassess the appropriateness of the requested waiver regularly.

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<sup>3</sup> *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1191, 1199, 2013 WL 1607239 (9th Cir. April 16, 2013)

<sup>4</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006)

<sup>5</sup> United States Department of Transportation Official Questions and Answers (Q&A’s) Disadvantaged Business Enterprise Program Regulation (49 CFR 26),

<https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf>

<sup>6</sup> 49 CFR Section 26.9

<sup>7</sup> Courts have found that a substantial disparity index for white women-owned businesses may raise an inference of discrimination sufficient to support inclusion of all women in a recipient’s DBE program. See *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1195, 1198 (9th Cir. 2013).



# CHAPTER 11.

## Program Considerations

The disparity study provides substantial information the Idaho Department of Transportation (ITD) should examine as it considers potential refinements to its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program and ways to further encourage the participation of person of color (POC)- and woman-owned businesses in its contracts and procurements. BBC Research & Consulting (BBC) presents several key considerations ITD should make, organized in the following manner:

- A. DBE contract goals;
- B. Procurement policies;
- C. Contract administration policies; and
- D. ITD programs.

### A. DBE Contract Goals

The Federal DBE Program requires agencies to use *race- and gender-conscious* measures—such as DBE contract goals—to meet any portion of their overall DBE goals they do not project being able to meet using *race- and gender-neutral* measures alone. United States Department of Transportation (USDOT) guidance on the use of DBE contract goals, which are presented in 49 Code of Federal Regulations (CFR) Part 26.51(e), include the following requirements:

- Agencies may only use DBE contract goals on projects that have subcontracting possibilities.
- Agencies are not required to set DBE contract goals on every USDOT-funded project.
- During the time period their overall DBE goals cover, agencies must set DBE contract goals so they will cumulatively result in meeting the portions of their overall DBE goals they project being unable to meet through race- and gender-neutral measures alone.
- Agencies' DBE contract goals must provide for participation by all DBE groups eligible to participate in race- and gender-conscious measures and must not be subdivided into group-specific goals.
- Agencies must maintain and report data on DBE participation separately for projects they awarded with and without the use of DBE contract goals.

Because the use of DBE contract goals is a race- and gender-conscious measure, agencies must ensure their use meets the requirements of the *strict scrutiny* standard of constitutional review, including showing a *compelling governmental interest* for their use and ensuring their use is *narrowly tailored* (for details, see Chapter 2 and Appendix B). In addition, prior to using DBE contract goals, ITD should consider whether it has maximized its use of race- and gender-neutral measures, including fully leveraging existing race- and gender-neutral measures and whether additional measures might further

encourage the participation of POC- and woman-owned businesses in its contracts and procurements. ITD should also consider the staff and resources required to implement a DBE contract goals program effectively and in a legally defensible manner.

Some stakeholders participating in in-depth interviews and public meetings made comments related to the use of race- and gender-conscious measures, including DBE contract goals:

- Several POC- and woman-owned businesses commented that the use of race- and gender-conscious measures has helped small POC- and woman-owned businesses win work they would not have otherwise won. Some indicated that such measures help open doors to long-term teaming opportunities.
- Some prime contractors stated that DBE contract goals were their primary reason for finding and working with DBE-certified subcontractors, whereas others said they would partner with DBEs on projects regardless of whether there are DBE goals associated with the project.

**1. Group eligibility.** Disparity analysis results indicated that most relevant racial/ethnic and gender groups—Asian Pacific American-, Black American-, Hispanic American-, Native American-, and woman-owned businesses—showed substantial disparities on key sets of contracts and procurements ITD awarded during the study period. Because ITD already uses myriad race- and gender-neutral measures to encourage the participation of POC- and woman-owned businesses in its work, and because those measures have not sufficiently addressed disparities for those businesses, it might consider continuing to use DBE contract goals to award individual contracts and procurements in the future. To do so, ITD would continue to set goals on individual contracts based on the availability of POC- and woman-owned businesses for the types of work involved with the project, and, as a condition of award, prime contractors would have to meet those goals by making subcontracting commitments with eligible, certified DBEs—that is, DBEs whose owners identify with racial/ethnic or gender groups that are substantially underutilized on ITD contracts and procurements—as part of their bids or by demonstrating sufficient good faith efforts (GFEs) to do so.

**2. Overconcentration.** Small businesses as well as POC- and woman-owned businesses also noted challenges related to meeting DBE contract goals, such as overconcentration of DBEs in certain industries. Agencies implementing the Federal DBE Program are required to report and take corrective measures if they find that DBEs are so concentrated in certain work areas that they unduly burden non-DBEs working in those areas. Such measures may include:

- Developing ways to assist DBEs to move into other areas of work;
- Adjusting the use of DBE contract goals; and
- Working with contractors to find and use DBEs in other industry areas.

BBC investigated potential overconcentration in ITD work. There were five subindustries in which certified DBEs accounted for 50 percent or more of total subcontract dollars for projects the agency awarded between October 1, 2018 and September 30, 2021:

- Advertising, marketing, and public relations (91.8%);
- Building construction (79.3%);

- Traffic control and safety (64.5%);
- Other professional services (58.3%); and
- Electrical work (54.8%).

Because those figures are based only on subcontract dollars, they do not include work that prime contractors self-performed in those areas. If BBC had included self-performed work in those analyses, the percentages for which DBEs accounted would likely have decreased. In addition, the above figures are based on Federal Highway Administration (FHWA)-funded projects and would likely differ if expanded to include both FHWA- and state-funded projects. ITD should consider reviewing similar information and monitor the above types of work for potential overconcentration in the future.

## B. Procurement Policies

Based on our analysis of ITD policies and feedback we collected from stakeholders, BBC identified several areas of ITD's procurement processes the agency should consider refining to help increase the participation of POC- and woman-owned businesses in its contracts and procurements. The refinements we recommend below are all race- and gender-neutral in nature—that is, they might help make it easier for all businesses to participate in ITD work, regardless of the race/ethnicity or gender of their owners.

**1. Prompt payment.** Subcontractors reported experiencing payment delays in instances in which prime contractor invoices are in dispute with ITD, regardless of whether the disputed elements of the invoice involved subcontractors' work. ITD should consider developing alternative payment options for subcontractors' portions of disputed invoices if the disputes are not related to their work. Doing so might help ensure subcontractors receive payments in a timely manner and ensure POC- and woman-owned businesses have enough operating capital to remain competitive and successful.

**2. Teaming opportunities.** There are several considerations ITD could make to better facilitate meaningful partnerships between prime contractors and subcontractors, which could result in more work opportunities and growth for POC- and woman-owned businesses.

**a. DBE directories, plan holders lists, and bidders lists.** As part of the anecdotal evidence process, prime contractors indicated that they use a variety of resources—including recommendations from other prime contractors, certification lists, business mailers, trade associations, and various ITD resources—to find potential subcontractors. Likewise, subcontractors indicated they use similar resources to find prime contractors with whom they might like to work. ITD should continue to maintain the resources it has available to connect prime contractors and subcontractors, including plan holders lists, DBE request forms, and other information on its website.

In its bidders list, ITD could consider requesting additional information during the registration process to allow prime contractors to identify relevant subcontractors more easily and vice versa. For example, ITD might ask vendors to indicate the specific regions in Idaho where they are able to perform work and serve customers, information that is already collected for DBE-certified businesses in the DBE Directory. Many businesses noted that they can only perform work cost-effectively within a certain radius of their offices, usually 100 miles or less. Eliminating businesses unavailable for work in specific regions can help decrease the burden on prime contractors when building project teams. In addition, during the certification process, ITD could request a "Capabilities Narrative" similar to what the United States Small

Business Administration includes on its certification website in order to give small businesses the opportunity to describe the types of work they perform.

**b. Joint ventures.** Small businesses often work solely as subcontractors, preventing them from gaining the experience or capital to bid on future work as prime contractors. One way ITD could better support business growth is by identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures that include small businesses—including DBEs—to compete for and perform prime contracts. Encouraging joint ventures would allow businesses to gain experience working as prime contractors while mitigating some of the difficulties and costs of doing so, which would allow them to be more competitive on future projects.

**c. Working with new subcontractors.** The disparity study indicated that a substantial portion of the contract and procurement dollars ITD awarded to POC- and woman-owned businesses during the study period were largely concentrated with a relatively small number of businesses. ITD could consider using bid and contract language to encourage prime contractors to partner with subcontractors and suppliers with which they have never worked. For example, as part of the bid process, ITD might ask prime contractors to submit information about the efforts they made to identify and team with businesses with which they have not worked, and ITD could award evaluation points or price preferences based on the quality of those efforts. Increasing the number of new subcontractors involved in ITD's bid process could help many small businesses—including DBEs—become aware of and compete for ITD opportunities and grow the pool of small businesses involved in ITD work.

**3. Unbundling contracts.** As part of in-depth interviews and public meetings, several business owners reported that the size of ITD projects is sometimes a barrier to their success. To further encourage the participation of POC- and woman-owned businesses in its work, ITD should consider making efforts to unbundle relatively large prime contracts, and even subcontracts, into several smaller pieces. Such initiatives might increase contracting opportunities for all small businesses, including many POC- and woman-owned businesses. For example, the City of Charlotte, North Carolina encourages prime contractors to unbundle subcontract opportunities into smaller pieces, making them more accessible to small businesses and accepts such efforts as GFEs as part of its contract goals program.

**4. Small business set asides.** Disparity analysis results indicated substantial disparities for most relevant business groups on prime contracts ITD awarded during the study period. ITD might consider reserving, or *setting aside*, certain, small prime contracts exclusively for competition among small businesses, including DBEs. Doing so could encourage the participation of small businesses as prime contractors in ITD work. In addition to using small business set asides, ITD could consider requiring at least one quote from small businesses for certain, small procurements.

**5. Subcontracting minimums.** Subcontracts often represent accessible opportunities for small businesses—including DBEs—to become involved in an organization's contracting and procurement. However, subcontracting accounts for a relatively small percentage of the total contract and procurement dollars ITD awards. For example, during the study period, subcontracting represented only 30 percent of the total highway-related work ITD awarded. To increase subcontract opportunities, ITD could consider using subcontracting minimums to award certain types of work. For specific types of contracts and procurements for which subcontracting opportunities might exist, ITD could set a minimum percentage of work to be subcontracted. Prime contractors would then have to meet or exceed those minimums in order for their bids or proposals to be considered responsive. If ITD were to

implement such a program, it should include GFE provisions that would require prime contractors to document their efforts to identify and include potential subcontractors in their bids or proposals.

**6. Restrictive contract specifications.** Qualifications-based selection (QBS) for professional services includes assessments of the qualifications of both companies as well as their staff members as part of awarding projects. As part of in-depth interviews and public meetings, several business owners reported that QBS favors large companies with more employees who may not be the actual staff performing the work for the agency. In addition, anecdotal data suggested that sometimes prequalification or past experience requirements may not be in line with the difficulty or scope of the desired work. ITD might consider assigning less weight to business size and more weight to contractors' work on similar projects in its QBS assessments, even if businesses did not complete that work for ITD. ITD could also consider contracting out a larger number of small projects to build agency-specific experience among small businesses.

## **C. Contract Administration**

BBC also recommends ITD consider additional measures to support small businesses and POC- and woman-owned businesses as part of administering contracts and procurements. The refinements we recommend below are also all race- and gender-neutral in nature.

**1. Data collection.** ITD maintains comprehensive data on both the federally funded prime contracts and subcontracts it awards, and those data are generally well-organized and accessible. Although ITD also collects information on the state-funded subcontracts it awards, it does not maintain those data in an electronic format. The agency should continue its data collection efforts for federally funded projects and replicate its data collection efforts on state-funded subcontracts to ensure it is accurately tracking the participation of POC- and woman-owned businesses in its work and identifying future subcontracting opportunities for those businesses. In addition, ITD should consider tracking projects awarded through the Transportation Alternatives Program (TAPs) to the same extent it tracks the contracts and procurements it awards directly.

**2. Subcontractor participation.** Anecdotal evidence suggested prime contractors often reduce or eliminate subcontract work once they are awarded ITD projects, despite making specific commitments to subcontractors as part of their bids. ITD should consider regularly reviewing the participation of DBEs on projects with condition-of-award goals to ensure that DBEs are being used per their subcontract agreements. In addition to tracking subcontractor payments, establishing points of contact between subcontractors and ITD to address any underutilization or subcontractor substitutions may help ensure POC- and woman-owned businesses receive the work they were committed at the time of bid. Other measures ITD could consider include inviting subcontractors to contract negotiation meetings to discuss their expected portions of contracts, notifying the entire project team when projects have been awarded, establishing stricter regulations around subcontract changes and subcontractor substitutions, and considering prime contractors' past use of subcontractors relative to subcontract commitments as a factor during bid evaluations.

**3. Working with contracting staff.** Businesses with experience working with ITD rarely have issues navigating ITD's contract requirements. However, businesses with relatively limited experience working with the agency have various difficulties. Anecdotal evidence indicates that when businesses experience challenges during contract performance, finding the appropriate ITD employee to contact can be

difficult. The agency should increase the visibility of appropriate points of contact for contract issues and consider establishing district-specific small business liaisons for small business advocacy. Creating additional liaison positions, or expanding the responsibilities of existing staff, to resolve issues between prime contractors and subcontractors about payment, contract specifications, and other issues would help small businesses perform ITD work more successfully.

## **D. ITD Programs**

ITD should consider implementing or strengthening its programs related to encouraging the participation of POC- and woman-owned businesses in its work. The refinements we recommend below are also all race- and gender-neutral in nature.

**1. Bonding assistance.** Although subcontractors are not required by ITD to be bonded to perform work, interviewees that perform work as subcontractors reported that many large prime contractors prefer their subcontractors to be bonded. They shared that some prime contractors support their DBE subcontractors to become bonded by introducing them to their bonding agent and facilitating that relationship. ITD could extend that support by hosting vendor fairs for financial institutions such as banks, insurance agencies, and bonding agents. In addition, the agency could consider breaking up multiyear projects into smaller, annual pieces to help DBEs and other small businesses avoid reaching their bonding limits. For example, a three-year project worth \$6 million could be broken down into three annual pieces each worth \$2 million, which would reduce bonding requirements for each individual piece. Finally, ITD could partner with financial institutions to standardize bonding rates at more equitable levels.

**2. Mentor/protégé relationships.** Multiple interviewees discussed the value of mentor/protégé relationships, noting a number of benefits for small businesses in working with larger, more successful companies in similar industries. For example, the 8(a)-mentorship program works to properly match businesses based on size and industry. ITD should consider developing a mentor/protégé program or work with other local business assistance agencies to facilitate such efforts.

**3. Training and outreach.** Although most stakeholders who participated in the anecdotal evidence process recognize the value of ITD's training and outreach efforts, many contractors suggested ITD should improve its advertising and communication around those measures to reach more businesses across the state (for details about those measures, see Chapter 9). ITD could also consider more partnerships with trade organizations and other public organizations and offering events more frequently. ITD might consider tailoring some events to specific industries or business groups to further maximize their value and provide opportunities to foster more connections among participants.

**4. Certification and licensing.** ITD could consider requiring businesses to obtain a business license in Idaho when offering certification to businesses in other states, as Idaho businesses are often required to have active business licenses in Idaho to do work on ITD projects. In addition, the agency could consider providing information and resources regarding public works licenses to businesses during the certification process.

**5. New subcontractors.** ITD could consider using bid and contract language to encourage prime contractors to partner with subcontractors and suppliers with which they have never worked. For example, the agency might ask prime contractors to submit information about the efforts they made to

identify and team with businesses with which they have not previously worked as part of their bids. Such efforts could help businesses that have never worked with ITD develop relationships with prime contractors and also help reduce the effects of existing *good ol' boy* networks. In addition, ITD could award evaluation points or price preferences based on the degree to which prime contractors partner with subcontractors with which they have not previously worked.



# APPENDIX A.

## Definitions of Terms

Appendix A defines terms useful to understanding the 2023 Idaho Transportation Department Disparity Study.

### 49 Code of Federal Regulations (CFR) Part 26

49 CFR Part 26 are the federal regulations that set forth the Federal Disadvantaged Business Enterprise Program.

- Ensure nondiscrimination in the award and administration of United States Department of Transportation-funded contracts;
- Help remove barriers to the participation of Disadvantaged Business Enterprises in United States Department of Transportation-funded contracts;
- Promote the use of Disadvantaged Business Enterprises in all types of federally funded contracts and procurements;
- Assist in the development of businesses so they can compete outside the Federal Disadvantaged Business Enterprise Program;
- Create a level playing field on which Disadvantaged Business Enterprises can compete fairly for United States Department of Transportation-funded contracts;
- Ensure the Federal Disadvantaged Business Enterprise Program is narrowly tailored in accordance with applicable law;
- Ensure only businesses that fully meet eligibility standards are permitted to participate as Disadvantaged Business Enterprises; and
- Provide appropriate flexibility to agencies implementing the Federal Disadvantaged Business Enterprise Program.

### Anecdotal Information

Anecdotal information includes personal qualitative accounts and perceptions of specific incidents—including any incidents of discrimination—shared by individual interviewees, public meeting participants, and stakeholders in the Idaho marketplace.

### Availability Analysis

An availability analysis assesses the percentage of contract or procurement dollars one might expect a particular agency to award to a specific group of businesses. The availability analysis in this study is based on the match between various characteristics of potentially available businesses and prime contracts and subcontracts the Idaho Transportation Department and subrecipient local agencies awarded during the study period.

## Base Figure

In accordance with United States Department of Transportation requirements, establishing a base figure is the first step agencies must take in calculating overall Disadvantaged Business Enterprise goals. Agencies must base calculations of their base figures on demonstrable evidence of the availability of potential Disadvantaged Business Enterprises to participate in their United States Department of Transportation-funded projects.

## Business

A business is a for-profit enterprise, including sole proprietorships, corporations, professional corporations, limited liability companies, limited partnerships, limited liability partnerships, and any other partnerships. The definition includes the headquarters of the organization as well as all its other locations, if applicable.

## Business Listing

A business listing is a record in a database of business information. A single business can have multiple listings (e.g., when a single business has multiple locations listed separately).

## Compelling Governmental Interest

As part of the strict scrutiny standard of constitutional review, a government agency must demonstrate a compelling governmental interest in remedying past identified discrimination in order to implement race- or gender-conscious measures. That is, an agency that uses race- or gender-conscious measures as part of a contracting program has the initial burden of showing evidence of discrimination—including statistical and anecdotal evidence—that supports the use of such measures. The agency must assess such discrimination within its own *relevant geographic market area*.

## Consultant

A consultant is a business that performs professional services contracts.

## Contract

A contract is a legally-binding relationship between the seller of goods or services and a buyer. The study team sometimes uses the term *contract* synonymously with *procurement*.

## Contract Element

A contract element is either a prime contract or subcontract.

## Contractor

A contractor is a business that performs construction contracts.

## Control

Control means exercising management and executive authority of a business.

## Custom Census Availability Analysis

A custom census availability analysis is one in which researchers attempt surveys with relevant businesses working in the local marketplace to collect information about their characteristics. Researchers then take survey information about potentially available businesses and match them to the characteristics of prime contracts and subcontracts an agency actually awarded during the study period to assess the percentage of contract and procurement dollars one might expect an agency to award to a specific group of businesses. A custom census approach is accepted in the industry as the preferred method for conducting availability analyses because it takes several different factors into account, including businesses' primary lines of work and their capacity to perform on an agency's contracts or procurements.

## Disadvantaged Business Enterprise (DBE)

A DBE is a business certified to be owned and controlled by one or more individuals who are socially and economically disadvantaged according to the guidelines in 49 CFR Part 26. The following groups are presumed to be socially and economically disadvantaged according to the Federal DBE Program:

- Asian Pacific Americans;
- Black Americans;
- Hispanic Americans;
- Native Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.

A determination of economic disadvantage includes assessing businesses' gross revenues (maximum revenue limits ranging from \$2.5 million to \$28.48 million depending on work type) and business owners' personal net worth (maximum of \$1.32 million excluding equity in a home and in the business). Some person of color- and woman-owned businesses do not qualify as DBEs because of gross revenue or net worth requirements. Businesses owned by non-Hispanic white men can also be certified as DBEs if those businesses meet the economic requirements set forth in 49 CFR Part 26.

## Disparity

A disparity is a difference or gap between an actual outcome and some benchmark. In this report, the term *disparity* usually refers specifically to a difference between the participation of a specific group of businesses in Idaho Transportation Department (ITD) contracting and the estimated availability of the group for that work.

## Disparity Analysis

A disparity analysis examines whether there are any differences between the participation of a specific group of businesses in ITD contracting and the estimated availability of the group for that work.

## **Disparity Index**

A disparity index is computed by dividing the actual participation of a specific group of businesses in ITD contracting by the estimated availability of the group for that work and multiplying the result by 100. Smaller disparity indices indicate larger disparities between participation and availability.

## **Dun & Bradstreet (D&B)**

D&B is the leading global provider of lists of business establishments and other business information for specific industries within specific geographical areas. (For details, see [www.dnb.com](http://www.dnb.com).)

## **Federal DBE Program**

The Federal DBE Program was established by the United States Department of Transportation after enactment of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) as amended in 1998. It is designed to increase the participation of POC- and woman-owned businesses in United States Department of Transportation-funded contracts. Regulations for the Federal DBE Program are set forth in 49 CFR Part 26.

## **Federal Aviation Administration (FAA)**

FAA is an agency of the United States Department of Transportation that regulates all aspects of civil aviation in the country. Its functions include the oversight of standards for airport safety, inspection, design, construction, and operation.

## **Federal Highway Administration (FHWA)**

FHWA is an agency of the United States Department of Transportation that works with state and local governments to construct, preserve, and improve the National Highway System, other roads eligible for federal aid, and certain roads on federal and tribal lands.

## **Federal Transit Administration (FTA)**

FTA is an office of the United States Department of Transportation that provides financial and technical assistance to local public transportation systems.

## **Firm**

See *business*.

## **FTA-funded Contract**

An FTA-funded contract is any contract, procurement, or project funded in whole or in part with FTA financial assistance, including loans. The study team considered a contract to be FTA-funded if it included at least \$1 of FTA funding. FTA funding, as it pertains to the disparity study, can be categorized by which federal grant program it comes from.

## **Idaho Transportation Department (ITD)**

ITD is the owner/operator of Idaho's federal and state highway system.

## Industry

An industry is a broad classification for businesses providing related goods or services (e.g., *construction* or *professional services*).

## Inference of Discrimination

An inference of discrimination is the conclusion that businesses whose owners identify with particular race/ethnic or gender groups suffer from barriers or discrimination in the marketplace based on sufficient quantitative or qualitative evidence. When inferences of discrimination exist, government organizations sometimes use race- or gender-conscious measures to address barriers affecting those businesses.

## Intermediate Scrutiny

Intermediate scrutiny is the legal standard an agency's use of gender-conscious measures must meet to be considered constitutional. It is more rigorous than the rational basis test, which applies to business measures unrelated to race/ethnicity or gender, but less rigorous than the strict scrutiny test, which applies to business measures related to race/ethnicity. In order for a program to pass intermediate scrutiny, it must serve an important government objective, and it must be substantially related to achieving the objective.

## Local Marketplace

*See relevant geographic market area.*

## Majority-owned Business

A majority-owned business is a for-profit business that is at least 51 percent owned and controlled by white men.

## Marketplace Conditions

Marketplace conditions are factors that potentially affect outcomes for workers and businesses operating in that marketplace. The study team assessed conditions in the local marketplace in four primary areas: human capital, financial capital, business ownership, and business success.

## Narrow Tailoring

As part of the strict scrutiny standard of constitutional review, a government agency must demonstrate its use of race- and gender-conscious measures is narrowly tailored. There are several factors a court considers when determining whether the use of such measures is narrowly tailored, including:

- The necessity of such measures and the efficacy of alternative, race- and gender-neutral measures;
- The degree to which the use of such measures is limited to those groups that suffer discrimination in the local marketplace;
- The degree to which the use of such measures is flexible and limited in duration, including the availability of waivers and sunset provisions;
- The relationship of any numerical goals to the relevant business marketplace; and

- The impact of such measures on the rights of third parties.

## Overall DBE Goal

As part of the Federal DBE Program, every three years, agencies are required to set overall aspirational percentage goals for DBE participation in their United States Department of Transportation-funded contracts and procurements, which they must work towards achieving each year through various efforts. If DBE participation in their United States Department of Transportation-funded work is less than their overall DBE goals in a particular year, then they must analyze the reasons for any shortfalls and establish specific measures that will enable them to meet the goal in the next year. The United States Department of Transportation sets forth a two-step process agencies must use in establishing their overall DBE goals. First, agencies must develop *base figures* for their overall DBE goals. Second, agencies must consider whether *step 2 adjustments* are necessary to their base figures to ensure their overall DBE goals are as precise as possible.

## Participation

See *utilization*.

## Passive Participation

Passive participation in discrimination refers to government organizations perpetuating discrimination in their contract and procurement processes simply by operating in a marketplace where such discrimination exists.

## Person of Color (POC)

A person of color is an individual who identifies with one of the following racial/ethnic groups: Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or other non-white racial or ethnic groups.

## POC-owned Business

A POC-owned business is a business with at least 51 percent ownership and control by one or more individuals who identify with one of the following racial/ethnic groups: Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or other non-white racial or ethnic groups. The study team considered businesses owned by men of color and women of color as POC-owned businesses.

## Potential DBE

A potential DBE is a POC- or woman-owned business that is DBE-certified or appears it could be DBE-certified (regardless of actual DBE certification) based on revenue requirements specified in the Federal DBE Program.

## Prime Consultant

A prime consultant is a professional services business that performs professional services prime contracts directly for end users, such as ITD.

## **Prime Contract**

A prime contract is a contract between a prime contractor, prime consultant, or vendor and an end user, such as ITD.

## **Prime Contractor**

A prime contractor is a construction business that performs prime contracts directly for an end user, such as ITD.

## **Procurement**

See *contract*.

## **Project**

A project refers to a transit services, professional services, construction, or goods and other services endeavor ITD or subrecipient local agencies bid out during the study period. A project could include one or more prime contracts and corresponding subcontracts.

## **Race- and Gender-conscious Measures**

Race- and gender-conscious measures are contracting measures specifically designed to increase the participation of POC- and woman-owned businesses in government contracting. Businesses owned by members of certain racial/ethnic groups might be eligible for such measures but other businesses would not. Similarly, businesses owned by women might be eligible for such measures but businesses owned by men would not. An example of race- and gender-conscious measures is an agency's use of DBE participation goals on individual contracts.

## **Race- and Gender-neutral Measures**

Race- and gender-neutral measures are measures designed to remove potential barriers for businesses attempting to do work with an agency, regardless of the race/ethnicity or gender of the owners. Race- and gender-neutral measures might include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, and establishing programs to assist start-ups.

## **Rational Basis**

Government agencies that implement contracting programs that rely only on race- and gender-neutral measures must show a rational basis for their programs. Showing a rational basis requires agencies to demonstrate their contracting programs are rationally related to a legitimate government interest. It is the lowest threshold for evaluating the legality of government contracting programs. When courts review programs based on a rational basis, only the most egregious violations lead to programs being deemed unconstitutional.

## **Relevant Geographic Market Area**

The relevant geographic market area is the geographic area in which the businesses to which ITD and subrecipient local agencies award most of their contracting dollars are located. Case law related to contracting programs and disparity studies requires disparity study analyses to focus on the relevant



geographic market area. The relevant geographic market area for the 2023 ITD Disparity Study is the state of Idaho and two adjacent counties in Washington State, Asotin County and Spokane County.

## **Statistically Significant Difference**

A statistically significant difference refers to a quantitative difference for which there is a 0.95 or 0.90 probability that chance can be correctly rejected as an explanation for the difference (meaning that there is a 0.05 or 0.10 probability, respectively, that chance in the sampling process could correctly account for the difference).

## **Step-2 Adjustment**

In accordance with United States Department of Transportation requirements, in setting their overall DBE goals, agencies must consider conditions in the local marketplace for POC- and woman-owned businesses as well as other factors and determine whether upward or downward adjustments to their base figures are necessary to ensure their overall DBE goals are as precise as possible. The United States Department of Transportation sets forth several factors agencies must consider when assessing whether to make step-2 adjustments to their base figure:

- Current capacity of DBEs to perform work;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.

Agencies are not required to make step-2 adjustments to their base figures, but they are required to consider various relevant factors and explain their decisions to the United States Department of Transportation as part of the goal-setting process.

## **Strict Scrutiny**

Strict scrutiny is the legal standard a government agency's use of race- and gender-conscious measures must meet to be considered constitutional. Strict scrutiny is the highest threshold for evaluating the legality of race- and gender-conscious measures short of prohibiting them altogether. Under the strict scrutiny standard, an agency must:

- a) Have a compelling governmental interest in remedying past identified discrimination or its present effects; and
- b) Establish the use of any such measures is narrowly tailored to achieve the goal of remedying the identified discrimination.

An agency's use of race- and gender-conscious measures must meet both the compelling governmental interest and the narrow tailoring components of the strict scrutiny standard for it to be considered constitutional.

## Study Period

The study period is the time period on which the study team focused for the utilization, availability, and disparity analyses. ITD and subrecipient local agencies had to have awarded a contract during the study period for the contract to be included in the study team's analyses. The study period for the ITD Disparity Study is October 1, 2018 through September 30, 2021.

## Subconsultant

A subconsultant is a professional services business that performs services for prime consultants as part of larger professional services contracts.

## Subcontract

A subcontract is a contract between a prime contractor or prime consultant and another business selling goods or services to the prime contractor or prime consultant as part of a larger contract.

## Subcontractor

A subcontractor is a business that performs services for prime contractors as part of larger contracts.

## Subindustry

A subindustry is a specific classification for businesses providing related goods or services within a particular industry (e.g., *highway and street construction* is a subindustry of *construction*).

## Substantial Disparity

A substantial disparity is a disparity index of 80 or less, indicating that the actual participation of a specific business group in agency work is 80 percent or less of the group's estimated availability. Substantial disparities are considered *inferences of discrimination* in the marketplace against particular business groups. Government organizations sometimes use substantial disparities as justification for the use of race- or gender-conscious measures to address barriers affecting certain groups.

## United States Department of Transportation (USDOT)

USDOT is one of the executive departments of the United States federal government and comprises 13 offices, including FTA. It is responsible for developing and coordinating policies to provide an efficient and economical national transportation system. USDOT operates the Federal DBE Program.

## Utilization

Utilization refers to the percentage of total dollars associated with a particular set of contracts ITD or subrecipient local agencies awarded to a specific group of businesses. The study team uses the term *utilization* synonymously with *participation*.

## Vendor

A vendor is a business that sells goods and services either to a prime contractor or prime consultant or to an end user, such as ITD.

## **Woman-owned Business**

A woman-owned business is a business with at least 51 percent ownership and control by non-Hispanic white women. A business does not have to be certified as a DBE to be considered a woman-owned business. (The study team considered businesses owned by women of color as POC-owned businesses.)

# APPENDIX B.

## Legal Framework and Analysis

In this appendix, Holland & Knight LLP analyzes recent cases regarding the Federal Disadvantaged Business Enterprise (Federal DBE) Program,<sup>1</sup> reviews instructive guidance and authorities regarding the Federal Airport Concessions Disadvantaged Business Enterprise (Federal ACDBE) Program,<sup>2</sup> and provides an analysis of the implementation of the Federal DBE and ACDBE Programs by local and state governments.

The appendix also discusses recent cases involving local and state government minority-owned/woman-owned/disadvantaged business enterprise (MBE/WBE/DBE) programs, which are instructive to the disparity study and MBE/WBE/DBE programs. The appendix provides a summary of the legal framework for the disparity study as applicable to the Idaho Transportation Department (ITD).

Appendix B begins with a review of the landmark United States Supreme Court decision in *City of Richmond v. J.A. Croson (Croson)*.<sup>3</sup> *Croson* sets forth the strict scrutiny constitutional analysis applicable in the legal framework for conducting a disparity study. This section also notes the Supreme Court decision in *Adarand Constructors, Inc. v. Peña*,<sup>4</sup> (*Adarand I*), which applied the strict scrutiny analysis set forth in *Croson* to federal programs that provide federal assistance to a recipient of federal funds. The Supreme Court's decisions in *Adarand I* and *Croson*, as well as subsequent cases and authorities, provide the basis for the legal analysis in connection with the disparity study.

The legal framework analyzes, discusses, and includes significant recent court decisions that have followed, interpreted, and applied *Croson* and *Adarand I* to the present and that are applicable to this disparity study, the Federal DBE Program and the Federal ACDBE Program and their implementation by state and local governments and recipients of federal funds, MBE/WBE/DBE programs, and the strict scrutiny analysis. The State of Idaho and ITD are located in the U.S. Court of Appeals for the Ninth Circuit. In particular, this analysis discusses and references recent Ninth Circuit Court of Appeals decisions that are instructive to the study, including the recent decisions in *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation (AGC, San*

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<sup>1</sup> 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs [Federal DBE Program]). See the Transportation Equity Act for the 21st Century (TEA-21) as amended and reauthorized (MAP-21, SAFETEA and SAFETEA-LU), and the United States Department of Transportation (USDOT or DOT) regulations promulgated to implement TEA-21 the Federal regulations known as Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.; preceded by Pub L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1156; preceded by Pub L. 105-178, Title I, § 1101(b), June 9, 1998, 112 Stat. 107.

<sup>2</sup> 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions).

<sup>3</sup> *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

<sup>4</sup> *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

*Diego v. Caltrans*), et al.;<sup>5</sup> *Western States Paving Co. v. Washington State DOT (Western States Paving)*;<sup>6</sup> *Orion Insurance Group, Ralph G. Taylor v. Washington Minority & Women's Business Enterprise, United States DOT, et al. (Orion Insurance Group)*;<sup>7</sup> the recent non-published decision in *Mountain West Holding Co. v. Montana, Montana DOT, et al. (Mountain West)*;<sup>8</sup> and the District Court decision in *M.K. Weeden Construction v. Montana, Montana DOT, et al. (M.K. Weeden)*.<sup>9</sup>

In addition, the analysis includes and references recent federal cases from other jurisdictions that have considered the validity of the Federal DBE Program and its implementation by state departments of transportation (DOTs) and local or state government agencies and the validity of local and state DBE programs, including: *Dunnet Bay Construction Co. v. Illinois DOT (Dunnet Bay)*;<sup>10</sup> *Northern Contracting, Inc. v. Illinois DOT (Northern Contracting)*;<sup>11</sup> *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*;<sup>12</sup> *Geyer Signal, Inc. v. Minnesota DOT*;<sup>13</sup> *Adarand Constructors, Inc. v. Slater*<sup>14</sup> (*Adarand VII*); *Midwest Fence Corp. v. USDOT, Federal Highway Administration, Illinois DOT, Illinois State Toll Highway Authority, et al. (Midwest Fence)*;<sup>15</sup> *Geod Corporation v. New Jersey Transit Corp.*,<sup>16</sup> and *South Florida Chapter of the AGC v. Broward County, Florida*.<sup>17</sup>

The analysis also analyzes recent court decisions involving challenges to MBE/WBE/DBE programs and social and economic disadvantaged business programs in other jurisdictions, which are instructive to the study and ITD.

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<sup>5</sup> *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. 2013).

<sup>6</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

<sup>7</sup> *Orion Insurance Group, a Washington Corporation, Ralph G. Taylor, an individual, Plaintiffs v. Washington State Office of Minority & Woman's Business Enterprises, United States DOT, et al.*, 2018 WL 6695345 (9th Cir. 2018), Memorandum Opinion (not for publication), Petition for Rehearing denied, February 2019. Petition for Writ of Certiorari filed with the U.S. Supreme Court on April 22, 2019, which is pending.

<sup>8</sup> *Mountain West Holding Co., Inc. v. The State of Montana, Montana DOT, et al.*, 2017 WL 2179120 Memorandum Opinion (not for publication) (9th Cir. 2017). The case on remand voluntarily dismissed by stipulation of parties (March 14, 2018).

<sup>9</sup> *M. K. Weeden Construction v. State of Montana, Montana DOT*, 2013 WL 4774517 (D. Mont. 2013).

<sup>10</sup> *Dunnet Bay Construction Co. v. Borggren, Illinois DOT, et al.*, 799 F.3d 676, 2015 WL 4934560 (7th Cir. 2015), *cert. denied*, 2016 WL 193809 (2016); *Dunnet Bay Construction Co. v. Illinois DOT, et al.* 2014 WL 552213 (C. D. Ill. 2014), affirmed by *Dunnet Bay*, 2015 WL 4934560 (7th Cir. August 19, 2015).

<sup>11</sup> *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007).

<sup>12</sup> *Sherbrooke Turf, Inc. v. Minnesota DOT and Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

<sup>13</sup> *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014).

<sup>14</sup> *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147 (10th Cir. 2000) (*Adarand VII*).

<sup>15</sup> *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), *cert. denied*, 2017 WL 497345 (2017).

<sup>16</sup> *Geod Corp. v. New Jersey Transit Corp.*, 766 F. Supp.2d 642 (D. N.J. 2010).

<sup>17</sup> *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F. Supp.2d 1336 (S.D. Fla. 2008).

The appendix points out recent informative Congressional findings as to discrimination regarding MBE/WBE/DBEs, including relating to the Federal ACDBE Program<sup>18</sup> and the Federal DBE Program. The Federal DBE Program was continued and reauthorized by the Fixing America's Surface Transportation Act (2015 FAST Act), which set forth Congressional findings as to discrimination against MBE/WBEs/DBEs, including from disparity studies and other evidence.<sup>19</sup> In October 2018, Congress passed the Federal Aviation Administration (FAA) Reauthorization Act, which also provides Congressional findings as to discrimination against MBE/WBE/DBEs, including from disparity studies and other evidence.<sup>20</sup> Most recently, in November 2021, Congress passed the Infrastructure Investment and Jobs Act (H.R. 3684 – 117<sup>th</sup> Congress, Section 1101) that reauthorized the Federal DBE Program based on findings of continuing discrimination and related barriers posing significant obstacles for MBE/WBE/DBEs.<sup>21</sup>

The analyses of these and other recent cases discussed below, are instructive to the disparity study because they are the most recent and significant decisions by courts setting forth the legal framework applied to the Federal DBE and ACDBE Programs and their implementation by local and state governments receiving USDOT funds, disparity studies, MBE/WBE/DBE programs, and construing the validity of government programs involving MBE/WBE/DBE/ACDBEs. These cases also are pertinent in terms of an analysis and consideration and, if legally appropriate under the strict scrutiny standard, preparation of a narrowly tailored DBE program by a state DOT implementing the Federal DBE Program and local or state government MBE/WBE/DBE programs submitted in compliance with the case law, and applicable federal regulations, including Title 49 of the Code of Federal Regulations (49 CFR) Part 26.

## A. Ninth Circuit Court of Appeals Decisions

In *AGC, San Diego v. Caltrans*, the Ninth Circuit in 2013 upheld the validity of Caltrans' DBE Program implementing the Federal DBE Program. In *Western States Paving*, the Ninth Circuit upheld the validity of the Federal DBE Program, but the Court held invalid Washington State DOT's DBE Program implementing the DBE Federal Program. The Court held that mere compliance with the Federal DBE Program by state recipients of federal funds, absent independent and sufficient state-specific evidence of discrimination in the state's transportation contracting industry marketplace, did not satisfy the strict scrutiny analysis.

Following *Western States Paving*, the USDOT recommended the use of disparity studies by recipients of federal financial assistance—in particular for agencies, transportation authorities, airports and other governmental entities implementing the Federal DBE Program in states in the Ninth Circuit—to examine whether or not there is evidence of discrimination and its effects, and how remedies might be narrowly

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<sup>18</sup> 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions).

<sup>19</sup> Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

<sup>20</sup> Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.

<sup>21</sup> Pub L. 117-58, H.R. 3684, § 11101(e), November 15, 2021, 135 Stat 443-449.

tailored in developing their DBE programs to comply with the Federal DBE Program.<sup>22</sup> The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT instructs that recipients of federal funds should ascertain evidence for discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26.<sup>23</sup> The USDOT provides that recipients should consider evidence of discrimination and its effects.<sup>24</sup>

The USDOT's Guidance is recognized by the federal regulations as "valid, and express the official positions and views of the Department of Transportation"<sup>25</sup> for states in the Ninth Circuit.

In *Western States Paving*, the United States intervened to defend the Federal DBE Program's facial constitutionality, and, according to the Court, stated "that [the Federal DBE Program's] race conscious measures can be constitutionally applied only in those states where the effects of discrimination are present."<sup>26</sup> Accordingly, the USDOT advised federal aid recipients that any use of race-conscious measures must be predicated on evidence that there is concerning discrimination or its effects within the recipient's local transportation contracting marketplace.<sup>27</sup>

In *AGC, San Diego v. Caltrans*, the Ninth Circuit Court of Appeals and the United States District Court for the Eastern District of California held that Caltrans' implementation of the Federal DBE Program is constitutional.<sup>28</sup> The Ninth Circuit found that Caltrans' DBE Program implementing the Federal DBE Program was constitutional and survived strict scrutiny by: (1) having a strong basis in evidence of discrimination within the California transportation contracting industry based in substantial part on the evidence from the disparity study conducted for Caltrans; and (2) being "narrowly tailored" to benefit only those groups that have actually suffered discrimination.

The District Court had held that the "Caltrans DBE Program is based on substantial statistical and anecdotal evidence of discrimination in the California contracting industry," satisfied the strict scrutiny standard, and is "clearly constitutional" and "narrowly tailored" under *Western States Paving* and the Supreme Court cases.<sup>29</sup>

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<sup>22</sup> Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation* (January 2006) [hereinafter USDOT Guidance], available at 71 Fed. Reg. 14,775 and [http://www.fhwa.dot.gov/civilrights/dbe\\_memo\\_a5.htm](http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm); see 49 CFR § 26.9; see, also, 49 CFR Section 26.45.

<sup>23</sup> USDOT Guidance, available at [http://www.fhwa.dot.gov/civilrights/dbe\\_memo\\_a5.htm](http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm) (January 2006)

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, 49 CFR § 26.9; See, 49 CFR § 23.13.

<sup>26</sup> *Western States Paving*, 407 F.3d at 996; see, also, Br. for the United States, at 28 (April 19, 2004).

<sup>27</sup> DOT Guidance, available at 71 Fed. Reg. 14,775 and [http://www.fhwa.dot.gov/civilrights/dbe\\_memo\\_a5.htm](http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm) (January 2006).

<sup>28</sup> *Associated General Contractors of America, San Diego Chapter, Inc. v. California DOT*, 713 F.3d 1187 (9th Cir. April 16, 2013); *Associated General Contractor of America, San Diego Chapter, Inc. v. California DOT*, U.S.D.C. E.D. Cal., Civil Action No.S:09-cv-01622, Slip Opinion (E.D. Cal. April 20, 2011) appeal dismissed based on standing, on other grounds Ninth Circuit held Caltrans' DBE Program constitutional, *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. April 16, 2013).

<sup>29</sup> *Id.*, *Associated General Contractors of America, San Diego Chapter, Inc. v. California DOT*, Slip Opinion Transcript of U.S. District Court at 42-56.



In *Mountain West Holding*<sup>30</sup>, the Ninth Circuit and the District Court applied the decision in *Western States*<sup>31</sup> and the decision in *AGC, San Diego v. Caltrans*<sup>32</sup> as establishing the law to be followed in this case. The District Court noted that in *Western States*, the Ninth Circuit held that a state's implementation of the Federal DBE Program can be subject to an as-applied constitutional challenge, despite the facial validity of the Federal DBE Program.<sup>33</sup> The Ninth Circuit and the District Court stated the Ninth Circuit has held that whether a state's implementation of the DBE Program "is narrowly tailored to further Congress's remedial objective depends upon the presence or absence of discrimination in the State's transportation contracting industry."<sup>34</sup> The Ninth Circuit in *Mountain West Holding* also pointed out it had held that "even when discrimination is present within a State, a remedial program is only narrowly tailored if its application is limited to those minority groups that have actually suffered discrimination."<sup>35</sup>

Montana, the Court found, bears the burden to justify any racial classifications. In an as-applied challenge to a state's DBE contracting program, "(1) the state must establish the presence of discrimination within its transportation contracting industry, and (2) the remedial program must be 'limited to those minority groups that have actually suffered discrimination.'"<sup>36</sup> Discrimination may be inferred from "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."<sup>37</sup>

The Ninth Circuit reversed the District Court's grant of summary judgment to Montana based on issues of fact as to the evidence and remanded the case for trial. The *Mountain West* case was settled and voluntarily dismissed by the parties on remand in 2018.

The District Court decision in the Ninth Circuit *M.K. Weeden*,<sup>38</sup> followed the *AGC, San Diego v. Caltrans* Ninth Circuit decision, and held the Montana DOT's implementation of the Federal DBE Program as valid and constitutional.

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<sup>30</sup> 2017 WL 2179120 (9th Cir. 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).

<sup>31</sup> 407 F.3d 983 (9th Cir. 2005)

<sup>32</sup> 713 F.3d 1187 (9th Cir. 2013)

<sup>33</sup> 2014 WL 6686734 at \*2 (D. Mont. 2014)

<sup>34</sup> *Mountain West*, 2014 WL 6686734 at \*2, quoting *Western States*, at 997-998, and *Mountain West*, 2017 WL 2179120 at \*2 (9th Cir. 2017) Memorandum, at 5-6, quoting *AGC, San Diego v. California DOT*, 713 F.3d 1187, 1196. The case on remand voluntarily dismissed by stipulation of parties (March 14, 2018).

<sup>35</sup> *Mountain West*, 2017 WL 2179120 at \*2, Memorandum, at 6, and 2014 WL 6686734 at \*2, quoting *Western States*, 407 F.3d at 997-999.

<sup>36</sup> *Mountain West*, 2017 WL 2179120 at \*2 (9th Cir.), Memorandum, at 6-7, quoting *Assoc. Gen. Contractors of Am. v. Cal. Dep't of Transp.*, 713 F.3d 1187, 1196 (9th Cir. 2013) (quoting *W. States Paving*, 407 F.3d at 997-99).

<sup>37</sup> *Mountain West*, 2017 WL 2179120 at \*2 (9th Cir.), Memorandum, at 6-7, quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989).

<sup>38</sup> *M.K. Weeden*, 2013 WL 4774517.

Another recent case in the Ninth Circuit is *Orion Insurance Group; Ralph G. Taylor, Plaintiffs v. Washington State Office of Minority & Women's Business Enterprises (OMWBE), USDOT, et. al.*<sup>39</sup> Plaintiffs, Orion Insurance Group (Orion) and its owner Ralph Taylor, filed this case alleging violations of federal and state law due to the denial of their application for Orion to be considered a DBE under federal law.

Plaintiff Taylor received results from a genetic ancestry test that estimated he was 90% European, 6% Indigenous American, and 4% Sub-Saharan African. Taylor submitted an application to the OMWBE seeking to have Orion certified as an MBE under Washington state law, identifying himself as Black. His application was initially rejected, but after Taylor appealed, the OMWBE voluntarily reversed its decision and certified Orion as an MBE.

Plaintiffs submitted Orion's application for DBE certification to the OMWBE under federal law. Taylor identified himself as Black and Native American in the Affidavit of Certification. Orion's DBE application was denied because there was insufficient evidence that: he was a member of a racial group recognized under the regulations; was regarded by the relevant community as either Black or Native American; or that he held himself out as being a member of either group. The OMWBE found the presumption of disadvantage was rebutted and the evidence was insufficient to show Taylor was socially and economically disadvantaged.

The District Court held the OMWBE did not act arbitrarily or capriciously when it found the presumption was rebutted that Taylor was socially and economically disadvantaged because there was insufficient evidence he was either Black or Native American. By requiring individualized determinations of social and economic disadvantage, the Court found the Federal DBE Program requires states to extend benefits only to those who are actually disadvantaged.

The District Court dismissed the claim that, on its face, the Federal DBE Program violates the Equal Protection Clause, and the claim that the Defendants, in applying the Federal DBE Program to Taylor, violated the Equal Protection Clause. The Court found no evidence that the application of the federal regulations was done with an intent to discriminate against mixed-race individuals or with racial animus, or creates a disparate impact on mixed-race individuals. The Court held the Plaintiffs failed to show that either the State or Federal Defendants had no rational basis for the difference in treatment.

The District Court dismissed claims that the definitions of "Black American" and "Native American" in the DBE regulations are impermissibly vague. Plaintiffs' claims were dismissed against the State Defendants for violation of Title VI because Plaintiffs failed to show the State engaged in intentional racial discrimination. The DBE regulations' requirement that the State make decisions based on race was held constitutional.

On appeal, the Ninth Circuit in affirming the District Court held it correctly dismissed Taylor's claims against the acting director of the USDOT's Office of Civil Rights (OCR) in her individual capacity, Taylor's discrimination claims under 42 U.S. Code §1983, because the federal defendants did not act "under color or state law," Taylor's claims for damages because the United States has not waived its sovereign

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<sup>39</sup> 2018 WL 6695345 (9th Cir. December 19, 2018) (Memorandum)(Not for Publication).

immunity, and Taylor’s claims for equitable relief under 42 U.S.C. §2000d because the Federal DBE Program does not qualify as a “program or activity” within the meaning of the statute.

The Ninth Circuit held the OMWBE did not act in an arbitrary and capricious manner when it determined it had a “well-founded reason” to question Taylor’s claims to membership of a racial group, determined that Taylor did not qualify as a “socially and economically disadvantaged individual,” and when it affirmed the state’s decision was supported by substantial evidence and consistent with federal regulations. The Court held the USDOT “articulated a rational connection” between the evidence and the decision to deny Taylor’s application for certification.

Also, in a split in approach with the Ninth Circuit regarding the legal standard, burden, and analysis in connection with a state government implementing the Federal DBE Program, the Seventh Circuit Court of Appeals in *Midwest Fence*<sup>40</sup> and in *Dunnet Bay*,<sup>41</sup> upheld the implementation of the Federal DBE Program by the Illinois DOT (IDOT).<sup>42</sup> The Court held *Dunnet Bay* lacked standing to challenge the IDOT DBE Program, and that even if it had standing, any other federal claims were foreclosed by the *Northern Contracting* decision because there was no evidence IDOT exceeded its authority under federal law.<sup>43</sup> The Seventh Circuit in *Midwest Fence* also held the Federal DBE Program is facially constitutional, and upheld the implementation of that federal program by IDOT in its DBE Program following the *Northern Contracting* decision. The Seventh Circuit agreed with the Eighth, Ninth, and Tenth Circuits that the Federal DBE Program is narrowly tailored on its face, and thus survives strict scrutiny.<sup>44</sup>

These decisions regarding state DOTs and transit and transportation authorities implementing the Federal DBE Program and MBE/WBE/DBE cases throughout the country will be referenced and discussed in connection with the legal framework in the Appendix below.

**Department of Justice 2022 Compelling Interest report.** It is noteworthy and instructive to the disparity study that the U.S. Department of Justice (DOJ) in January 2022 issued a report titled, “The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence.” This report “summarizes recent evidence required to justify the use of race- and sex-conscious provisions in federal contracting programs.” The “Notice of Report on Lawful Uses of Race or Sex in Federal Contracting Programs” is published in the Federal Register, Vol. 87 at page 4955, January 31, 2022. This notice announces the availability on the DOJ’s website of the “updated report regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs.” The report is available on the DOJ’s website at: <https://www.justice.gov/crt/page/file/1463921/download>.

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<sup>40</sup> 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

<sup>41</sup> 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

<sup>42</sup> 799 F.3d 676, 2015 WL 4934560 (7th Cir. 2015).

<sup>43</sup> *Id.*

<sup>44</sup> 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016)

## B. U.S. Supreme Court Cases

The following section outlines U.S. Supreme Court decisions relevant to the legal framework for the disparity study.

**1. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).** In *Croson*, the U.S. Supreme Court struck down the City of Richmond’s “set-aside” program as unconstitutional because it did not satisfy the strict scrutiny analysis applied to “race-based” governmental programs.<sup>45</sup> J.A. Croson Co. challenged the City of Richmond’s minority contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more MBE. In enacting the plan, the city cited past discrimination and an intent to increase minority business participation in construction projects as motivating factors.

The Court determined that the plan neither served a “compelling governmental interest” nor offered a “narrowly tailored” remedy to past discrimination. The Court found no “compelling governmental interest” because the city had not provided “a strong basis in evidence for its conclusion that [race-based] remedial action was necessary.”<sup>46</sup> The Court held the city presented no direct evidence of any race discrimination on its part in awarding construction contracts or any evidence that the city’s prime contractors had discriminated against minority-owned subcontractors.<sup>47</sup> The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the city failed to demonstrate that the plan was “narrowly tailored” for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase minority business participation in city contracting, and because of the over-inclusiveness of certain minorities in the “preference” program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.<sup>48</sup>

The Court stated that reliance on the disparity between the number of prime contracts awarded to minority firms and the minority population of the City of Richmond was misplaced. There is no doubt, the Court held, that “[w]here gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination” under Title VII.<sup>49</sup> But it is equally clear that “[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value.”<sup>50</sup>

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<sup>45</sup> 488 U.S. 469 (1989).

<sup>46</sup> 488 U.S. at 500, 510.

<sup>47</sup> 488 U.S. at 480, 505.

<sup>48</sup> 488 U.S. at 507-510.

<sup>49</sup> 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307–308, 97 S.Ct. 2736, 2741.

<sup>50</sup> 488 U.S. at 501, quoting *Hazelwood*, 433 U.S. at 308, n. 13, 97 S.Ct., at 2742, n. 13.

The Court concluded that where special qualifications are necessary, the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of minorities qualified to undertake the particular task. 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.”<sup>51</sup> The Court added that “[n]or does the city know what percentage of total city construction dollars minority firms now receive as subcontractors on prime contracts let by the city.”<sup>52</sup>

The Supreme Court stated that it did not intend its decision to preclude a state or local government from “taking action to rectify the effects of identified discrimination within its jurisdiction.”<sup>53</sup> The Court held that “[w]here 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.”<sup>54</sup>

The Court said: “If the City of Richmond had evidence before it that nonminority contractors were systematically excluding minority businesses from subcontracting opportunities it could take action to end the discriminatory exclusion.”<sup>55</sup> “Under such circumstances, the city could act to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of 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.”<sup>56</sup>

The Court further found “if the City could show that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the City could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, 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.”<sup>57</sup>

**2. *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200 (1995).** In *Adarand I*, the U.S. Supreme Court extended the holding in *Croson* and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass a test of strict scrutiny in order to survive constitutional muster.

The cases interpreting *Croson* and *Adarand I* are the most recent and significant decisions by federal courts setting forth the legal framework for disparity studies as well as the predicate to satisfy the constitutional strict scrutiny standard of review, which applies to the implementation of the Federal DBE and ACDBE Programs by recipients of federal funds.

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<sup>51</sup> 488 U.S. at 502.

<sup>52</sup> *Id.*

<sup>53</sup> 488 U.S. at 509.

<sup>54</sup> *Id.*

<sup>55</sup> 488 U.S. at 509.

<sup>56</sup> *Id.*

<sup>57</sup> 488 U.S. at 492.

## C. The Legal Framework Applied to State and Local Government MBE/WBE/DBE Programs and Their Implementation of the Federal DBE and ACDBE Programs

The following provides an analysis for the legal framework focusing on recent key cases regarding state DOT DBE programs and state and local government DBE programs implementing the Federal DBE and ACDBE Programs and federal regulations, state and local government MBE/WBE/DBE programs, social and economic disadvantaged business programs, and their implications for a disparity study. The recent decisions involving these programs, the Federal DBE Program and its implementation by state DOTs, state and local government DBE programs, and social and economic disadvantaged business programs are instructive because they concern the strict scrutiny analysis, the legal framework in this area, challenges to the validity of MBE/WBE/DBE programs, an analysis of disparity studies, and implementation of the Federal DBE and ACDBE Programs by local and state government recipients of federal financial assistance (USDOT funds) based on 49 CFR Part 26 and 49 CFR Part 23.

**1. The Federal DBE Program (and ACDBE Program) implemented by state and local governments.** It is instructive to analyze the Federal DBE Program and its implementation by state and local governments because the program on its face and as applied by state and local governments has survived challenges to its constitutionality; concerned application of the strict scrutiny standard; considered findings as to disparities, discrimination and barriers to MBE/WBE/DBEs; examined narrow tailoring by local and state governments of their DBE programs implementing the Federal DBE Program; and involved consideration of disparity studies. The cases involving the Federal DBE Program and its implementation by state DOTs and state and local governments are informative, recent, and applicable to the legal framework regarding state DOT DBE programs, MBE/WBE/DBE state and local government programs, and disparity studies.

After the *Adarand* decision, the DOJ in 1996 conducted a study of evidence on the issue of discrimination in government construction procurement contracts, which Congress relied upon as documenting a compelling governmental interest to have a federal program to remedy the effects of current and past discrimination in the transportation contracting industry for federally funded contracts.<sup>58</sup>

Subsequently, in 1998, Congress passed the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), which authorized the USDOT to expend funds for federal highway programs for 1998 - 2003. [Pub.L. 105-178, Title I, § 1101(b), 112 Stat. 107, 113 (1998)]. The USDOT promulgated new regulations in 1999 contained at 49 CFR Part 26 to establish the current Federal DBE Program. The TEA-21 was subsequently extended in 2003, 2005, and 2012. The reauthorization of TEA-21 in 2005 was for a five-year period from 2005 to 2009. [Pub.L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1153-57 (SAFETEA)]. In July 2012, Congress passed the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21).<sup>59</sup> In December 2015, Congress passed the Fixing America's Surface Transportation Act (FAST Act).<sup>60</sup> In October 2018, Congress passed the FAA Reauthorization Act.<sup>61</sup> Most recently, in November 2021,

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<sup>58</sup> Appendix-The Compelling Interest for Affirmative Action in Federal Procurement, 61 Fed. Reg. 26,050, 26,051-63 & nn. 1-136 (May 23, 1996) (hereinafter "The Compelling Interest"); see *Adarand VII*, 228 F.3d at 1167-1176, citing The Compelling Interest.

<sup>59</sup> Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.

<sup>60</sup> Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

<sup>61</sup> Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.



Congress passed the Infrastructure Investment and Jobs Act (H.R. 3684 – 117<sup>th</sup> Congress, Section 11101) that reauthorized the Federal DBE Program based on evidence and findings of continuing discrimination and related barriers found to cause significant obstacles for MBE/WBE/DBEs.<sup>62</sup>

As noted above, the DOJ in January 2022 issued a report that updated its 1996 report, “The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence,” which “summarizes recent evidence required to justify the use of race- and sex-conscious provisions in federal contracting programs.” The “Notice of Report on Lawful Uses of Race or Sex in Federal Contracting Programs” is published in the Federal Register, Vol. 87 at page 4955, January 31, 2022. This “updated report regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs” is available on the DOJ’s website at: <https://www.justice.gov/crt/page/file/1463921/download>.

The Federal DBE Program provides requirements for federal aid recipients and accordingly changed how recipients of federal funds implement the Federal DBE Program for federally assisted contracts. The federal government determined that there is a compelling governmental interest for race- and gender-based programs at the national level, and that the program is narrowly tailored because of the federal regulations, including the flexibility in implementation provided to individual federal aid recipients by the regulations. State and local governments are not required to implement race- and gender-based measures where they are not necessary to achieve DBE goals and those goals may be achieved by race- and gender-neutral measures.<sup>63</sup>

The Federal DBE and ACDBE Programs established responsibility for implementing the DBE and ACDBE Programs to state and local government recipients of federal funds. A recipient of federal financial assistance must set annual DBE and/or ACDBE goals specific to conditions in the relevant marketplace. Even though an overall annual 10 percent aspirational goal applies at the federal level, it does not affect the goals established by individual state or local governmental recipients. The Federal DBE and ACDBE Programs outline certain steps a state or local government recipient can follow in establishing a goal, and the USDOT considers and must approve the goal and the recipient’s DBE and ACDBE programs. The implementation of the Federal DBE and ACDBE Programs are substantially in the hands of the state or local government recipient and is set forth in detail in the federal regulations, including 49 CFR Part 26 and § 26.45, and 49 CFR §§ 23.41-51.

Provided in 49 CFR § 26.45 and 49 CFR §§ 23.41-51 are instructions as to how recipients of federal funds should set the overall goals for their DBE programs. In summary, the recipient establishes a base figure for relative availability of DBEs.<sup>64</sup> This is accomplished by determining the relative number of ready, willing, and able DBEs and ACDBEs in the recipient’s market.<sup>65</sup> Second, the recipient must determine an appropriate adjustment, if any, to the base figure to arrive at the overall goal.<sup>66</sup> There are

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<sup>62</sup> Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

<sup>63</sup> 49 CFR § 26.51; see 49 CFR § 23.25.

<sup>64</sup> 49 CFR § 26.45(a), (b), (c); 49 CFR § 23.51(a), (b), (c).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at § 26.45(d); *Id.* at § 23.51(d).



many types of evidence considered when determining if an adjustment is appropriate, according to 49 CFR § 26.45(d) and 49 CFR §23.51(d). These include, among other types, the current capacity of DBEs and ACDBEs to perform work on the recipient's contracts as measured by the volume of work DBEs and ACDBEs have performed in recent years. If available, recipients consider evidence from related fields that affect the opportunities for DBEs and ACDBEs to form, grow, and compete, such as statistical disparities between the ability of DBEs and ACDBEs to obtain financing, bonding, and insurance, as well as data on employment, education, and training.<sup>67</sup> This process, based on the federal regulations, aims to establish a goal that reflects a determination of the level of DBE and ACDBE participation one would expect absent the effects of discrimination.<sup>68</sup>

Further, the Federal DBE and ACDBE Programs require state and local government recipients of federal funds to assess how much of the DBE and ACDBE goals can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts.<sup>69</sup> A state or local government recipient is responsible for seriously considering and determining race- and gender-neutral measures that can be implemented.<sup>70</sup>

Federal aid recipients are to certify DBEs and ACDBEs according to their race/gender, size, net worth, and other factors related to defining an economically and socially disadvantaged business as outlined in 49 CFR §§ 26.61-26.73.<sup>71</sup>

**2. Infrastructure Investment and Jobs Act of 2021, FAA Reauthorization Act of 2018, FAST Act, and MAP-21.** In November 2021, Congress passed the Infrastructure Investment and Jobs Act (H.R. 3684 – 117th Congress, Section 11101(e)) that reauthorized the Federal DBE Program based on findings of continuing discrimination and related barriers that cause significant obstacles for MBE/WBE/DBEs.<sup>72</sup> Previously, in October 2018, December 2015, and July 2012, Congress passed the FAA Reauthorization Act, FAST Act, and MAP-21, respectively, which made “findings” that “discrimination and related barriers continued to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets,” in “federally-assisted surface transportation markets,” and that the continuing barriers “merit the continuation” of the Federal ACDBE Program and the Federal DBE Program.<sup>73</sup> Congress also found in the Infrastructure Investment and Jobs Act of 2021, the FAA Reauthorization Act of 2018, the FAST Act, and MAP-21 that it received and reviewed testimony and documentation of race and gender discrimination, which “provide a strong

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<sup>67</sup> *Id.*

<sup>68</sup> 49 CFR § 26.45(b)-(d); 49 CFR § 23.51.

<sup>69</sup> 49 CFR § 26.51; 49 CFR § 23.51(a).

<sup>70</sup> 49 CFR § 26.51(b); 49 CFR § 23.25.

<sup>71</sup> 49 CFR §§ 26.61-26.73; 49 CFR §§ 23.31-23.39

<sup>72</sup> Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

<sup>73</sup> Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94, H.R. 22, §1101(b), December 4, 2015, 129 Stat 1312; Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.

basis that there is a compelling need for the continuation of the” Federal DBE and the Federal ACDBE Programs.<sup>74</sup>

**a. Infrastructure Investment and Jobs Act of 2021 (November 15, 2021)**

**SEC. 11101. Authorization of Appropriations.**

(e) Disadvantaged Business Enterprises-

(1) FINDINGS- Congress finds that—

(A) while significant progress has occurred due to the establishment of the disadvantaged business enterprise program, discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in federally assisted surface transportation markets across the United States;

(B) the continuing barriers described in subparagraph (A) merit the continuation of the disadvantaged business enterprise program;

(C) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits, which show that race- and gender-neutral efforts alone are insufficient to address the problem;

(D) the testimony and documentation described in subparagraph (C) demonstrate that discrimination across the United States poses a barrier to full and fair participation in surface transportation-related businesses of women business owners and minority business owners and has impacted firm development and many aspects of surface transportation-related business in the public and private markets; and

(E) the testimony and documentation described in subparagraph (C) provide a strong basis that there is a compelling need for the continuation of the disadvantaged business enterprise program to address race and gender discrimination in surface transportation-related business.

Therefore, Congress in the Infrastructure Investment and Jobs Act passed on November 15, 2022 found based on testimony, evidence and documentation updated since the FAST Act adopted in 2015 and MAP-21 adopted in 2012, as follows: (1) discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in federally assisted surface transportation markets across the United States; (2) the continuing barriers described in § 11101(e), subparagraph (A) above merit the continuation of the disadvantaged business enterprise program; and (3) there is a compelling need for the continuation of the disadvantaged business

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<sup>74</sup> *Id.* at Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94, H.R. 22, § 1101(b)(1) (2015).

enterprise program to address race and gender discrimination in surface transportation-related business.<sup>75</sup>

**b. FAA Reauthorization Act of 2018 (October 5, 2018)**

- Extended the FAA DBE and ACDBE programs for five years;
- Contains an additional prompt payment provision;
- Increases in the size cap for highway, street, and bridge construction for construction firms working on airport improvement projects; and
- Establishes Congressional findings of discrimination that provides a strong basis there is a compelling need for the continuation of the airport DBE program and the ACDBE Program to address race and gender discrimination in airport related business.

**SEC. 157 MINORITY AND DISADVANTAGED BUSINESS PARTICIPATION.**

(a) Findings. Congress finds the following:

(1) While significant progress has occurred due to the establishment of the airport disadvantaged business enterprise program (sections 47107(e) and 47113 of title 49, United States Code), discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets across the nation. These continuing barriers merit the continuation of the airport disadvantaged business enterprise program.

(2) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits. This testimony and documentation shows that race- and gender-neutral efforts alone are insufficient to address the problem.

(3) This testimony and documentation demonstrates that discrimination across the nation poses a barrier to full and fair participation in airport-related businesses of women business owners and minority business owners in the racial groups detailed in 49 C.F.R. Parts 23 and 26, and has impacted firm development and many aspects of airport-related business in the public and private markets.

(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the airport DBE program and the ACDBE program to address race and gender discrimination in airport related business.

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<sup>75</sup> Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

**c. USDOT Final Rule, 76 Fed. Reg. 5083 (January 28, 2011).** The USDOT promulgated a Final Rule on January 28, 2011, effective February 28, 2011, 76 Fed. Reg. 5083 (January 28, 2011) (2011 Final Rule) amending the Federal DBE Program at 49 CFR Part 26.

The department stated in the 2011 Final Rule with regard to disparity studies and in calculating goals, that it agrees “it is reasonable, in calculating goals and in doing disparity studies, to consider potential DBEs (e.g., firms apparently owned and controlled by minorities or women that have not been certified under the DBE program) as well as certified DBEs. This is consistent with good practice in the field as well as with DOT guidance.”<sup>76</sup>

The USDOT in the 2011 Final Rule stated that there was a continuing compelling need for the DBE program.<sup>77</sup> The USDOT concluded that, as court decisions have noted, the DOT’s DBE regulations and the statutes authorizing them, “are supported by a compelling need to address discrimination and its effects.”<sup>78</sup> The USDOT said that the “basis for the program has been established by Congress and applies on a nationwide basis...”, and noted that both the House and Senate FAA Reauthorization Bills contained findings reaffirming the compelling need for the program, and referenced additional information presented to the House of Representatives in a March 26, 2009 hearing before the Transportation and Infrastructure Committee, and a DOJ document entitled “The Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: A Decade Later An Update to the May 23, 1996 Review of Barriers for Minority- and Women-Owned Businesses.”<sup>79</sup> This information, the USDOT stated, “confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.”<sup>80</sup>

Thus, the implementation of the Federal DBE Program by state and local governments, the application of the strict scrutiny standard to the state and local government DBE programs, the analysis applied by the courts in challenges to state and local government DBE programs, and the evidentiary basis and findings relied upon by Congress and the federal government regarding the program and its implementation are informative and instructive to state DOTs and state and local governments and this study.

**3. Strict scrutiny analysis.** A race- and ethnicity-based program implemented by a state or local government is subject to the strict scrutiny constitutional analysis.<sup>81</sup> The strict scrutiny analysis is comprised of two prongs:

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<sup>76</sup> 76 F.R. at 5092.

<sup>77</sup> 76 F.R. at 5095.

<sup>78</sup> 76 F.R. at 5095.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Croson*, 448 U.S. at 492-493; *Adarand Constructors, Inc. v. Peña (Adarand I)*, 515 U.S. 200, 227 (1995); see, e.g., *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H.B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 990 (3d Cir. 1993).

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.<sup>82</sup>

**a. The compelling governmental interest requirement.** The first prong of the strict scrutiny analysis requires a governmental entity to have a “compelling governmental interest” in remedying past identified discrimination in order to implement a race- and ethnicity-based program.<sup>83</sup> State and local governments cannot rely on national statistics of discrimination in an industry to draw conclusions about the prevailing market conditions in their own regions.<sup>84</sup> Rather, state, and local governments must measure discrimination in their state or local market. However, that is not necessarily confined by the jurisdiction’s boundaries.<sup>85</sup>

The federal courts have held that, with respect to the Federal DBE Program, recipients of federal funds, such as state DOTs, do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.<sup>86</sup> The federal courts also have held that Congress had ample evidence of discrimination in the transportation contracting industry to justify the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 CFR Part 26).<sup>87</sup>

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<sup>82</sup> *Adarand I*, 515 U.S. 200, 227 (1995); *Midwest Fence v. Illinois DOT*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d 1187, 1195-1200 (9th Cir. 2013); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Northern Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991 (9th Cir. 2005); *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176 (10th Cir. 2000); *Associated Gen. Contractors of Ohio, Inc. v. Drabik (Drabik II)*, 214 F.3d 730 (6th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*, 122 F.3d 895 (11th Cir. 1997); *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 990 (3d Cir. 1993).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*; see, e.g., *Concrete Works, Inc. v. City and County of Denver (Concrete Works I)*, 36 F.3d 1513, 1520 (10th Cir. 1994).

<sup>85</sup> See, e.g., *Concrete Works I*, 36 F.3d at 1520.

<sup>86</sup> *N. Contracting*, 473 F.3d at 721; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 969; *Adarand VII*, 228 F.3d at 1176; See *Midwest Fence*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), and affirming, 84 F. Supp. 3d 705, 2015 WL 1396376.

<sup>87</sup> *Id.* In the case of *Rothe Dev. Corp. v. U.S. Dept. of Defense*, 545 F.3d 1023 (Fed. Cir. 2008), the Federal Circuit Court of Appeals pointed out it had questioned in its earlier decision whether the evidence of discrimination before Congress was in fact so “outdated” so as to provide an insufficient basis in evidence for the Department of Defense program (i.e., whether a compelling interest was satisfied). 413 F.3d 1327 (Fed. Cir. 2005). The Federal Circuit Court of Appeals after its 2005 decision remanded the case to the district court to rule on this issue. *Rothe* considered the validity of race- and gender-conscious Department of Defense (DOD) regulations (2006 Reauthorization of the 1207 Program). The decisions in *N. Contracting*, *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving* held the evidence of discrimination nationwide in transportation contracting was sufficient to find the Federal DBE Program on its face was constitutional. On remand, the district court in *Rothe* on August 10, 2007 issued its order denying plaintiff *Rothe*’s Motion for Summary Judgment and granting Defendant United States Department of Defense’s Cross-Motion for Summary Judgment, holding the 2006 Reauthorization of the 1207 DOD Program constitutional. *Rothe Devel. Corp. v. U.S. Dept. of Defense*, 499 F.Supp.2d 775 (W.D. Tex. 2007). The district court found the data contained in the Appendix (The Compelling Interest, 61 Fed. Reg. 26050 (1996)), the Urban Institute Report, and the Benchmark Study – relied upon in part by the courts in *Sherbrooke Turf*, *Adarand VII*, and *Western States Paving* in upholding the constitutionality of the Federal DBE Program – was “stale” as applied to and for purposes of the 2006 Reauthorization of the 1207 DOD Program. This district court finding was not appealed or considered by the Federal Circuit Court of Appeals. 545 F.3d 1023, 1037. The Federal Circuit Court of Appeals reversed the district court decision in part and held invalid the DOD Section 1207 program as enacted in 2006. 545 F.3d 1023, 1050. See the discussion of the 2008 Federal Circuit Court of Appeals decision below in Section G. see, also, the discussion below in Section G of the 2012 district court decision in *DynaLantic Corp. v. U.S. Department of Defense, et al.*, 885 F.Supp.2d 237, (D.D.C.). Recently, in *Rothe Development, Inc. v. U.S. Dept of Defense and U.S. S.B.A.*, 836 F.3d 57, 2016 WL 4719049 (D.C. Cir. Sept. 9, 2016), the United States Court of Appeals, District of Columbia Circuit, upheld the constitutionality of the Section 8(a) Program on its face, finding the Section 8(a) statute was race-neutral. The Court of Appeals

It is instructive to review the type of evidence utilized by Congress and considered by the courts to support the Federal DBE Program, and its implementation by local and state governments and agencies, which is similar to evidence considered by cases ruling on the validity of MBE/WBE/DBE programs. The federal courts found Congress “spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry.”<sup>88</sup> The evidence found to satisfy the compelling interest standard included numerous congressional investigations and hearings, and outside studies of statistical and anecdotal evidence (*e.g.*, disparity studies).<sup>89</sup> The evidentiary basis on which Congress relied to support its finding of discrimination includes:

- **Barriers to minority business formation.** Congress found that discrimination by prime contractors, unions, and lenders has woefully impeded the formation of qualified minority business enterprises in the subcontracting market nationwide, noting the existence of “good ol’ boy” networks, from which minority firms have traditionally been excluded, and the race-based denial of access to capital, which affects the formation of minority subcontracting enterprise.<sup>90</sup>
- **Barriers to competition for existing minority enterprises.** Congress found evidence showing systematic exclusion and discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies precluding minority enterprises from opportunities to bid. When minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. Congress found evidence of the same prime contractor using an MBE on a government contract not using that MBE on a private contract, despite being satisfied with that subcontractor’s work. Congress found that informal, racially exclusionary business networks dominate the subcontracting construction industry.<sup>91</sup>
- **Local disparity studies.** Congress found that local studies throughout the country tend to show a disparity between utilization and availability of minority-owned firms, raising an inference of discrimination.<sup>92</sup>
- **Results of removing affirmative action programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinued, minority business participation in the relevant market drops sharply or even disappears, which courts have found

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affirmed on other grounds the district court decision that had upheld the constitutionality of the Section 8(a) Program. The district court had found the federal government’s evidence of discrimination provided a sufficient basis for the Section 8(a) Program. 107 F.Supp. 3d 183, 2015 WL 3536271 (D. D.C. June 5, 2015).

<sup>88</sup> *Sherbrooke Turf*, 345 F.3d at 970, (citing *Adarand VII*, 228 F.3d at 1167 – 76 (10th Cir. 2000); *Western States Paving*, 407 F.3d at 992-93.

<sup>89</sup> See, *e.g.*, *Adarand VII*, 228 F.3d at 1167– 76 (10th Cir. 2000); see also *Western States Paving*, 407 F.3d at 992 (Congress “explicitly relied upon” the Department of Justice study that “documented the discriminatory hurdles that minorities must overcome to secure federally funded contracts”); *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>90</sup> *Adarand VII*, 228 F.3d. at 1168-70 (10th Cir. 2000); *Western States Paving*, 407 F.3d at 992; see *Geyer Signal, Inc.*, 2014 WL 1309092; *DynaLantic*, 885 F.Supp.2d 237.

<sup>91</sup> *Adarand VII*, at 1170-72 (10th Cir. 2000); see *DynaLantic*, 885 F.Supp.2d 237.

<sup>92</sup> *Id.* at 1172-74 (10th Cir. 2000); see *DynaLantic*, 885 F.Supp.2d 237; *Geyer Signal, Inc.*, 2014 WL 1309092.



strongly supports the government's claim that there are significant barriers to minority competition, raising the specter of discrimination.<sup>93</sup>

- **Infrastructure Investment and Jobs Act of 2021, FAA Reauthorization Act of 2018, FAST Act, and MAP-21.** In November 2021, October 2018, December 2015, and July 2012, Congress passed the Infrastructure Investment and Jobs Act of 2021, the FAA Reauthorization Act, FAST Act, and MAP-21, respectively, which made “findings” that “discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in “federally-assisted surface transportation markets,” in airport-related markets, and that the continuing barriers “merit the continuation” of the Federal DBE Program and the Federal ACDBE Program.<sup>94</sup> Congress also found in the Infrastructure Investment and Jobs Act of 2021, the FAA Reauthorization Act of 2018, the FAST Act, and MAP-21 that it received and reviewed testimony and documentation of race and gender discrimination that “provide a strong basis that there is a compelling need for the continuation of the” Federal DBE and Federal ACDBE Programs.<sup>95</sup>

And, as stated above, the U.S. DOJ in January 2022 issued a report entitled, “The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence,” which “summarizes recent evidence required to justify the use of race- and sex-conscious provisions in federal contracting programs.”<sup>96</sup> This updated report, is issued “regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs.”<sup>97</sup>

**i. Burden of proof to establish the strict scrutiny standard.** Under the strict scrutiny analysis, and to the extent a state or local governmental entity has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a strong basis in evidence (including statistical and anecdotal evidence) to support its remedial action.<sup>98</sup> If the government makes its initial showing, the

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<sup>93</sup> *Adarand VII*, 228 F.3d at 1174-75 (10th Cir. 2000); see, *H. B. Rowe*, 615 F.3d 233, 247-258 (4th Cir. 2010); *Sherbrooke Turf*, 345 F.3d at 973-4.

<sup>94</sup> Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021; Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94, H.R. 22, §1101(b), December 4, 2015, 129 Stat 1312; Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.

<sup>95</sup> *Id.* at Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021; Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186; Pub L. 114-94, H.R. 22, § 1101(b)(1) (2015).

<sup>96</sup> Vol. 87 Fed. Reg. 4955, January 31, 2022; located at <https://www.justice.gov/crt/page/file/1463921/download>.

<sup>97</sup> *Id.*; see <https://www.justice.gov/crt/page/file/1463921/download>.

<sup>98</sup> See *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242, 247-258 (4th Cir. 2010); *Rothe Development Corp. v. Department of Defense*, 545 F.3d 1023, 1036 (Fed. Cir. 2008); *N. Contracting, Inc. Illinois*, 473 F.3d at 715, 721 (7th Cir. 2007) (Federal DBE Program); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 990-991 (9th Cir. 2005) (Federal DBE Program); *Sherbrooke Turf, Inc. v. Minnesota DOT*, 345 F.3d 964, 969 (8th Cir. 2003) (Federal DBE Program); *Adarand Constructors Inc. v. Slater (Adarand VII)*, 228 F.3d 1147, 1166 (10th Cir. 2000) (Federal DBE Program); *Eng'g Contractors Ass'n*, 122 F.3d at 916; *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 713 (9th Cir. 1997); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092; *DynaLantic*, 885 F.Supp.2d 237, 2012 WL 3356813; *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County*, 333 F. Supp.2d 1305, 1316 (S.D. Fla. 2004).



burden shifts to the challenger to rebut that showing.<sup>99</sup> The challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of prior discrimination."<sup>100</sup>

In applying the strict scrutiny analysis, the courts hold that the burden is on the government to show both a compelling interest and narrow tailoring.<sup>101</sup> It is well established that "remedying the effects of past or present racial discrimination" is a compelling interest.<sup>102</sup> In addition, the government must also demonstrate "a strong basis in evidence for its conclusion that remedial action [is] necessary."<sup>103</sup>

Since the decision by the Supreme Court in *Croson*, "numerous courts have recognized that disparity studies provide probative evidence of discrimination."<sup>104</sup> "An inference of discrimination may be made with empirical evidence that demonstrates 'a significant statistical disparity between a number of qualified minority contractors ... and the number of such contractors actually engaged by the locality or the locality's prime contractors.'"<sup>105</sup> Anecdotal evidence may be used in combination with statistical evidence to establish a compelling governmental interest.<sup>106</sup>

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<sup>99</sup> *Adarand VII*, 228 F.3d at 1166; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Eng'g Contractors Ass'n*, 122 F.3d at 916; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>100</sup> See, e.g., *Adarand VII*, 228 F.3d at 1166; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Eng'g Contractors Ass'n*, 122 F.3d at 916; see also *Sherbrooke Turf*, 345 F.3d at 971; *N. Contracting*, 473 F.3d at 721; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>101</sup> *Id.*; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990; See also *Majeske v. City of Chicago*, 218 F.3d 816, 820 (7th Cir. 2000); *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>102</sup> *Shaw v. V. Hunt*, 517 U.S. 899, 909 (1996); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989); see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>103</sup> *Croson*, 488 U.S. at 500; see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242; *Sherbrooke Turf*, 345 F.3d at 971-972; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993); *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>104</sup> *Midwest Fence*, 2015 W.L. 1396376 at \*7 (N.D. Ill. 2015), *affirmed*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see, e.g., *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1195-1200; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Concrete Works of Colo. Inc. v. City and County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994), *Geyer Signal*, 2014 WL 1309092 (D. Minn. 2014); see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>105</sup> See e.g., *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 2015 W.L. 1396376 at \*7, quoting *Concrete Works*; 36 F.3d 1513, 1522 (quoting *Croson*, 488 U.S. at 509), *affirmed*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d 233, 241-242 (8th Cir. 2003); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

<sup>106</sup> *Croson*, 488 U.S. at 509; see, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1196; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-242 (4th Cir. 2010); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 WL 1396376 at \*7, *affirmed*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 596-598 (3d. Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP I)*, 6 F.3d 996, 1005-1007 (3d. Cir. 1993).

In addition to providing “hard proof” to support its compelling interest, the government must also show that the challenged program is narrowly tailored.<sup>107</sup> Once the governmental entity has shown acceptable proof of a compelling interest and remedying past discrimination and illustrated that its plan is narrowly tailored to achieve this goal, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional.<sup>108</sup> Therefore, notwithstanding the burden of initial production rests with the government, the ultimate burden remains with the party challenging the application of a DBE or MBE/WBE program to demonstrate the unconstitutionality of an affirmative-action type program.<sup>109</sup>

To successfully rebut the government’s evidence, the courts hold that a challenger must introduce “credible, particularized evidence” of its own that rebuts the government’s showing of a strong basis in evidence for the necessity of remedial action.<sup>110</sup> This rebuttal can be accomplished by providing a neutral explanation for the disparity between MBE/WBE/DBE utilization and availability, showing that the government’s data are flawed, demonstrating that the observed disparities are statistically insignificant, or presenting contrasting statistical data.<sup>111</sup> Conjecture and unsupported criticisms of the government’s methodology are insufficient.<sup>112</sup> The courts have held that mere speculation the government’s evidence is insufficient or methodologically flawed does not suffice to rebut a government’s showing.<sup>113</sup>

The courts have stated that “it is insufficient to show that ‘data was susceptible to multiple interpretations,’ instead, plaintiffs must ‘present affirmative evidence that no remedial action was

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<sup>107</sup> *Adarand Constructors, Inc. v. Peña*, (Adarand III), 515 U.S. 200 at 235 (1995); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Majeske v. City of Chicago*, 218 F.3d at 820; *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP II), 91 F.3d 586, 596-598 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP I), 6 F.3d 996, 1005-1007 (3d Cir. 1993).

<sup>108</sup> *Majeske*, 218 F.3d at 820; see, e.g. *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 277-78; *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Midwest Fence*, 2015 WL 1396376 \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); *Geyer Signal, Inc.*, 2014 WL 1309092; *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP II), 91 F.3d 586, 596-598; 603; (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP I), 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>109</sup> *Id.*; *Adarand VII*, 228 F.3d at 1166 (10th Cir. 2000).

<sup>110</sup> See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>111</sup> See, e.g., *H.B. Rowe v. NCDOT*, 615 F.3d 233, at 241-242(4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 959 (quoting *Adarand Constructors, Inc. vs. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP II), 91 F.3d 586, 596-598; 603; (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia* (CAEP I), 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Midwest Fence*, 84 F.Supp. 3d 705, 2015 W.L. 1396376 at \*7, affirmed, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016); see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; see, generally, *Engineering Contractors*, 122 F.3d at 916; *Coral Construction, Co. v. King County*, 941 F.2d 910, 921 (9th Cir. 1991).

<sup>112</sup> *Id.*; *H. B. Rowe*, 615 F.3d at 242; see also, *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Sherbrooke Turf*, 345 F.3d at 971-974; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

<sup>113</sup> *H.B. Rowe*, 615 F.3d at 242; see *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 991; see also, *Sherbrooke Turf*, 345 F.3d at 971-974; *Geyer Signal, Inc.*, 2014 WL 1309092; *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts.”<sup>114</sup> The courts hold that in assessing the evidence offered in support of a finding of discrimination, it considers “both direct and circumstantial evidence, including post-enactment evidence introduced by defendants as well as the evidence in the legislative history itself.”<sup>115</sup>

The courts have noted that “there is no ‘precise mathematical formula to assess the quantum of evidence that rises to the *Croson* ‘strong basis in evidence’ benchmark.”<sup>116</sup> The courts hold that a state need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in evidence for concluding that remedial action is necessary.<sup>117</sup> Instead, the Supreme Court stated that a government may meet its burden by relying on “a significant statistical disparity” between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.”<sup>118</sup> It has been further held by the courts that the statistical evidence be “corroborated by significant anecdotal evidence of racial discrimination” or bolstered by anecdotal evidence supporting an inference of discrimination.<sup>119</sup>

The courts have stated the strict scrutiny standard is applicable to justify a race-conscious measure, and that it is a substantial burden but not automatically “fatal in fact.”<sup>120</sup> In so acting, a governmental entity must demonstrate it had a compelling interest in “remedying the effects of past or present racial discrimination.”<sup>121</sup>

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<sup>114</sup> *Geyer Signal, Inc.*, 2014 WL 1309092, quoting *Sherbrooke Turf*, 345 F.3d at 970.

<sup>115</sup> *Id.*, quoting *Adarand Constructors, Inc.*, 228 F.3d at 1166; see, e.g., *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 597 (3d Cir. 1996).

<sup>116</sup> *H.B. Rowe*, 615 F.3d at 241, quoting *Rothe Dev. Corp. v. Dep’t of Def.*, 545 F.3d 1023, 1049 (Fed. Cir. 2008) (quoting *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 n. 11 (5th Cir. 1999)); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>117</sup> *H.B. Rowe Co.*, 615 F.3d at 241; see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *Concrete Works*, 321 F.3d at 958 (10th Cir. 2003); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>118</sup> *Croson*, 488 U.S. 509, see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *H.B. Rowe*, 615 F.3d at 241; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993).

<sup>119</sup> *H.B. Rowe*, 615 F.3d at 241, quoting *Maryland Troopers Association, Inc. v. Evans*, 993 F.2d 1072, 1077 (4th Cir. 1993); see, e.g., *Midwest Fence*, 840 F.3d 932, 952-954 (7th Cir. 2016); *AGC, San Diego v. Caltrans*, 713 F.3d at 1196; see also, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-598, 603 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 996, 1002-1007 (3d Cir. 1993); *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>120</sup> See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); see, e.g., *H. B. Rowe*, 615 F.3d at 241; 615 F.3d 233 at 241.

<sup>121</sup> See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); see, e.g., *H. B. Rowe*; quoting *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

Thus, courts have held that to justify a race-conscious measure, a government must identify that discrimination, public or private, with some specificity, and must have a strong basis in evidence for its conclusion that remedial action is necessary.<sup>122</sup>

**ii. Statistical evidence.** Statistical evidence of discrimination is a primary method used to determine whether or not a strong basis in evidence exists to develop, adopt, and support a remedial program (i.e., to prove a compelling governmental interest), or in the case of a state or local government recipient complying with the Federal DBE Program, to prove narrow tailoring of program implementation at the state or local government recipient level.<sup>123</sup> “Where gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination.”<sup>124</sup>

One form of statistical evidence is the comparison of a government’s utilization of MBE/WBEs compared to the relative availability of qualified, willing, and able MBE/WBEs.<sup>125</sup> The federal courts have held that a significant statistical disparity between the utilization and availability of minority- and women-owned firms may raise an inference of discriminatory exclusion.<sup>126</sup> However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.<sup>127</sup>

Other considerations regarding statistical evidence include:

- **Availability analysis.** A disparity index requires an availability analysis. MBE/WBE and DBE/ACDBE availability measures the relative number of MBE/WBE/DBEs and ACDBEs among all firms ready, willing, and able to perform a certain type of work within a particular geographic

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<sup>122</sup> See, e.g., *Concrete Works of Colorado v. City and County of Denver*, 321 F.3d at 957-959 (10th Cir. 2003); *Adarand VII*, 228 F.3d 1147 (10th Cir. 2000); *H. B. Rowe*, 615 F.3d 233 at 241 quoting, *Croson*, 488 U.S. at 504 and *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986) (plurality opinion); see, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993).

<sup>123</sup> See, e.g., *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1195-1196; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also, *Concrete Works*, 321 F.3d 950, 959 (10th Cir. 2003); *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016); *Geyer Signal*, 2014 WL 1309092.

<sup>124</sup> *Croson*, 488 U.S. at 501, quoting *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977); see *Midwest Fence*, 840 F.3d 932, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1196-1197; *N. Contracting*, 473 F.3d at 718-19, 723-24; *Western States Paving*, 407 F.3d at 991; *Sherbrooke Turf*, 345 F.3d at 973-974; *Adarand VII*, 228 F.3d at 1166; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999).

<sup>125</sup> *Croson*, 488 U.S. at 509; see *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041-1042; *Concrete Works of Colo., Inc. v. City and County of Denver (Concrete Works II)*, 321 F.3d 950, 959 (10th Cir. 2003); *Drabik II*, 214 F.3d 730, 734-736; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>126</sup> See, e.g., *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041; *Concrete Works II*, 321 F.3d at 970; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605 (3d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also *Western States Paving*, 407 F.3d at 1001; *Kossman Contracting*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>127</sup> *Western States Paving*, 407 F.3d at 1001.

market area.<sup>128</sup> There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.<sup>129</sup> “An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.”<sup>130</sup>

- **Utilization analysis.** Courts have accepted measuring utilization based on the proportion of an agency’s contract dollars going to MBEs/WBEs and DBEs.<sup>131</sup>
- **Disparity index.** An important component of statistical evidence is the “disparity index.”<sup>132</sup> A disparity index is defined as the ratio of the percent utilization to the percent availability times 100. A disparity index below 80 has been accepted as evidence of adverse impact. This has been referred to as “The Rule of Thumb” or “The 80 percent Rule.”<sup>133</sup>
- **Two standard deviation test.** The standard deviation figure describes the probability that the measured disparity is the result of mere chance. Some courts have held that a statistical disparity corresponding to a standard deviation of less than two is not considered statistically significant.<sup>134</sup>

In terms of statistical evidence, the courts, including the Ninth Circuit, have held that a state “need not conclusively prove the existence of past or present racial discrimination to establish a strong basis in

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<sup>128</sup> See, e.g., *Croson*, 448 U.S. at 509; 49 CFR § 26.35; *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *Rothe*, 545 F.3d at 1041-1042; *N. Contracting*, 473 F.3d at 718, 722-23; *Western States Paving*, 407 F.3d at 995; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 602-603 (3d Cir. 1996); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>129</sup> *Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 603 (3d Cir. 1996); see, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197, quoting *Croson*, 448 U.S. at 706 (“degree of specificity required in the findings of discrimination ... may vary.”); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>130</sup> *Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia (CAEP II)*, 91 F.3d 586, 603 (3d Cir. 1996); see, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197, quoting *Croson*, 448 U.S. at 706 (“degree of specificity required in the findings of discrimination ... may vary.”); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>131</sup> See *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Concrete Works*, 321 F.3d at 958, 963-968, 971-972 (10th Cir. 2003); *Eng’g Contractors Ass’n*, 122 F.3d at 912; *N. Contracting*, 473 F.3d at 717-720; *Sherbrooke Turf*, 345 F.3d at 973.

<sup>132</sup> *Midwest Fence*, 840 F.3d 932, 949-953 (7th Cir. 2016); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Concrete Works*, 321 F.3d at 958, 963-968, 971-972 (10th Cir. 2003); *Eng’g Contractors Ass’n*, 122 F.3d at 914; *W.H. Scott Constr. Co. v. City of Jackson*, 199 F.3d 206, 218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 602-603 (3d Cir. 1996); *Contractors Ass’n of Eastern Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990 at 1005 (3rd Cir. 1993).

<sup>133</sup> See, e.g., *Ricci v. DeStefano*, 557 U.S. 557, 129 S.Ct. 2658, 2678 (2009); *Midwest Fence*, 840 F.3d 932, 950 (7th Cir. 2016); *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *AGC, SDC v. Caltrans*, 713 F.3d at 1191; *Rothe*, 545 F.3d at 1041; *Eng’g Contractors Ass’n*, 122 F.3d at 914, 923; *Concrete Works I*, 36 F.3d at 1524.

<sup>134</sup> See, e.g., *H.B. Rowe, v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Eng’g Contractors Ass’n*, 122 F.3d at 914, 917, 923. The Eleventh Circuit found that a disparity greater than two or three standard deviations has been held to be statistically significant and may create a presumption of discriminatory conduct; *Peightal v. Metropolitan Eng’g Contractors Ass’n*, 26 F.3d 1545, 1556 (11th Cir. 1994). The Seventh Circuit Court of Appeals in *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359 (7th Cir. 2001), raised questions as to the use of the standard deviation test alone as a controlling factor in determining the admissibility of statistical evidence to show discrimination. Rather, the Court concluded it is for the judge to say, on the basis of the statistical evidence, whether a particular significance level, in the context of a particular study in a particular case, is too low to make the study worth the consideration of judge or jury. 255 F.3d at 363.



evidence,” but rather it may rely on “a significant statistical disparity” between the availability of qualified, willing, and able minority subcontractors and the utilization of such subcontractors by the governmental entity or its prime contractors.<sup>135</sup>

**iii. Marketplace discrimination and data.** The Tenth Circuit in *Concrete Works* held the District Court erroneously rejected the evidence the local government presented on marketplace discrimination.<sup>136</sup> The Court rejected the District Court’s “erroneous” legal conclusion that a municipality may only remedy its own discrimination. The Court stated this conclusion is contrary to the holdings in its 1994 decision in *Concrete Works II* and the plurality opinion in *Croson*.<sup>137</sup> The Court held it previously recognized in this case that “a municipality has a compelling interest in taking affirmative steps to remedy both public and private discrimination specifically identified in its area.”<sup>138</sup> In *Concrete Works II*, the Court stated that “we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination.”<sup>139</sup>

The Court stated that the local government could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination.<sup>140</sup> Thus, the local government was not required to demonstrate that it is “guilty of prohibited discrimination” to meet its initial burden.<sup>141</sup>

Additionally, the Court had previously concluded that the local government’s statistical studies, which compared utilization of MBE/WBEs to availability, supported the inference that “local prime contractors” are engaged in racial and gender discrimination.<sup>142</sup> Thus, the Court held the local government’s disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination.<sup>143</sup>

The Court held the District Court, *inter alia*, erroneously concluded that the disparity studies upon which the local government relied were significantly flawed because they measured discrimination in the overall local government MSA construction industry, not discrimination by the municipality itself.<sup>144</sup> The

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<sup>135</sup> *H. B. Rowe*, 615 F.3d 233 at 241, citing *Croson*, 488 U.S. at 509 (plurality opinion), and citing *Concrete Works*, 321 F.3d at 958; see, e.g.; *Croson*, 488 U.S. at 509; *Midwest Fence*, 840 F.3d 932, 935, 948-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1191-1197; *H. B. Rowe v. NCDOT*, 615 F.3d 233, 241-244 (4th Cir. 2010); *Rothe*, 545 F.3d at 1041; *Concrete Works II*, 321 F.3d at 970; *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206, 217-218 (5th Cir. 1999); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 596-605; *Concrete Works*, 36 F.3d at 1529 (10th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 999, 1002, 1005-1008 (3d Cir. 1993); see also *Western States Paving*, 407 F.3d at 1001; *Kossmann Contracting*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>136</sup> *Id.* at 973.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added).

<sup>139</sup> *Concrete Works*, 321 F.3d 950, 973 (10th Cir. 2003), quoting *Concrete Works II*, 36 F.3d at 1529 (10th Cir. 1994).

<sup>140</sup> *Id.* at 973.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 974, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 974.

Court found that the District Court's conclusion was directly contrary to the holding in *Adarand VII* that evidence of both public and private discrimination in the construction industry is relevant.<sup>145</sup>

In *Adarand VII*, the Tenth Circuit noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation.<sup>146</sup> "[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*"<sup>147</sup> Further, the Court pointed out that it earlier rejected the argument that marketplace data are irrelevant, and remanded the case to the District Court to determine whether the local government could link its public spending to "the Denver MSA evidence of industry-wide discrimination."<sup>148</sup> The Court stated that evidence explaining "the Denver government's role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*" was relevant to the local government's burden of producing strong evidence.<sup>149</sup>

Consistent with the Court's mandate in *Concrete Works II*, the local government attempted to show at trial that it "indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business."<sup>150</sup> The Tenth Circuit ruled that the local government can demonstrate that it is a "'passive participant' in a system of racial exclusion practiced by elements of the local construction industry" by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination.<sup>151</sup>

The Court in *Concrete Works* rejected the argument that the lending discrimination studies and business formation studies presented by the local government were irrelevant. In *Adarand VII*, the Tenth Circuit concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition between MBE/WBEs and majority-owned construction firms shows a "strong link" between a government's "disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination."<sup>152</sup>

The Court found that evidence that private discrimination resulted in barriers to business formation is relevant because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for public construction contracts. The Court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the local

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<sup>145</sup> *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67.

<sup>146</sup> *Concrete Works*, 321 F.3d at 976, citing *Adarand VII*, 228 F.3d at 1166-67.

<sup>147</sup> *Id.* (emphasis added).

<sup>148</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

<sup>149</sup> *Id.*, quoting *Concrete Works II*, 36 F.3d at 1530 (emphasis added).

<sup>150</sup> *Id.*

<sup>151</sup> *Concrete Works*, 321 F.3d at 976, quoting *Croson*, 488 U.S. at 492.

<sup>152</sup> *Id.* at 977, quoting *Adarand VII*, 228 F.3d at 1167-68.



government MSA construction industry, studies showing that discriminatory barriers to business formation exist in the local government construction industry are relevant to the municipality's showing that it indirectly participates in industry discrimination.<sup>153</sup>

The local government also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The Court held that the District Court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in *Adarand VII*. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion."<sup>154</sup>

In sum, the Tenth Circuit held the District Court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the local government's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary.<sup>155</sup>

**iv. Anecdotal evidence.** Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness' perspective. Anecdotal evidence of discrimination, standing alone, generally is insufficient to show a systematic pattern of discrimination.<sup>156</sup> But personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.<sup>157</sup> It has been held that anecdotal evidence of a local or state government's institutional practices that exacerbate discriminatory market conditions are often particularly probative, and that the combination of anecdotal and statistical evidence is "potent."<sup>158</sup>

Examples of anecdotal evidence may include:

- Testimony of MBE/WBE or DBE owners regarding whether they face difficulties or barriers;
- Descriptions of instances in which MBE/WBE or DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender or believe they were treated fairly without regard to race, ethnicity, or gender;

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<sup>153</sup> *Id.* at 977.

<sup>154</sup> *Id.* at 979, quoting *Adarand VII*, 228 F.3d at 1174.

<sup>155</sup> *Id.* at 979-80.

<sup>156</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *Eng'g Contractors Ass'n*, 122 F.3d at 924-25; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d Cir. 1993); *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); *O'Donnel Constr. Co. v. District of Columbia*, 963 F.2d 420, 427 (D.C. Cir. 1992).

<sup>157</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 953 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1192, 1196-1198; *H. B. Rowe*, 615 F.3d 233, 248-249; *Concrete Works*, 321 F.3d 950, 989-990 (10th Cir. 2003); *Eng'g Contractors Ass'n*, 122 F.3d at 925-26; *Concrete Works*, 36 F.3d at 1520 (10th Cir. 1994); *Contractors Ass'n*, 6 F.3d at 1003; *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991); see also, *Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (S.D. Tex. 2016).

<sup>158</sup> *Concrete Works I*, 36 F.3d at 1520; *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d Cir. 1993); *Coral Construction Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991).

- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from MBE/WBEs or DBEs on non-goal projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.<sup>159</sup>

Courts have accepted and recognize that anecdotal evidence is the witness' narrative of incidents told from his or her perspective, including the witness' thoughts, feelings, and perceptions, and thus anecdotal evidence need not be verified.<sup>160</sup>

**b. The narrow tailoring requirement.** The second prong of the strict scrutiny analysis requires that a race- or ethnicity-based program or legislation implemented to remedy past identified discrimination in the relevant market be "narrowly tailored" to reach that objective.

The narrow tailoring requirement has several components and the courts, including the Ninth Circuit Court of Appeals, analyze several criteria or factors in determining whether a program or legislation satisfies this requirement including:

- The necessity for the relief and the efficacy of alternative race-, ethnicity-, and gender-neutral remedies;
- The flexibility and duration of the relief, including the availability of waiver provisions;
- The relationship of numerical goals to the relevant labor market; and
- The impact of a race-, ethnicity-, or gender-conscious remedy on the rights of third parties.<sup>161</sup>

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of the Federal DBE Program, which is instructive to the study, the federal courts that have evaluated state and local DBE programs and their implementation of the Federal DBE Program, held the following factors are pertinent:

- Evidence of discrimination or its effects in the state transportation contracting industry;

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<sup>159</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242; 249-251; *Northern Contracting*, 2005 WL 2230195, at 13-15 (N.D. Ill. 2005), *affirmed*, 473 F.3d 715 (7th Cir. 2007); see also, *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1002-1003 (3d Cir. 1993); *Concrete Works*, 321 F.3d at 989; *Adarand VII*, 228 F.3d at 1166-76. For additional examples of anecdotal evidence, see *Eng'g Contractors Ass'n*, 122 F.3d at 924; *Concrete Works*, 36 F.3d at 1520; *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 915 (11th Cir. 1990); *DynaLantic*, 885 F.Supp.2d 237; *Florida A.G.C. Council, Inc. v. State of Florida*, 303 F. Supp.2d 1307, 1325 (N.D. Fla. 2004).

<sup>160</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1197; *H. B. Rowe*, 615 F.3d 233, 241-242, 248-249; *Concrete Works II*, 321 F.3d at 989; *Eng'g Contractors Ass'n*, 122 F.3d at 924-26; *Cone Corp.*, 908 F.2d at 915; *Northern Contracting, Inc. v. Illinois*, 2005 WL 2230195 at \*21, N. 32 (N.D. Ill. Sept. 8, 2005), *aff'd* 473 F.3d 715 (7th Cir. 2007).

<sup>161</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Rothe*, 545 F.3d at 1036; *Western States Paving*, 407 F.3d at 993-995; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181 (10th Cir. 2000); *W.H. Scott Constr. Co. v. City of Jackson, Mississippi*, 199 F.3d 206 (5th Cir. 1999); *Eng'g Contractors Ass'n*, 122 F.3d at 927 (internal quotations and citations omitted); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 91 F.3d 586, 605-610 (3d Cir. 1996); *Contractors Ass'n of E. Pa. v. City of Philadelphia*, 6 F.3d 990, 1008-1009 (3d Cir. 1993); see also, *Geyer Signal, Inc.*, 2014 WL 1309092.

- Flexibility and duration of a race- or ethnicity-conscious remedy;
- Relationship of any numerical DBE goals to the relevant market;
- Effectiveness of alternative race- and ethnicity-neutral remedies;
- Impact of a race- or ethnicity-conscious remedy on third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.<sup>162</sup>

The Eleventh Circuit described the “the essence of the ‘narrowly tailored’ inquiry [as] the notion that explicitly racial preferences ... must only be a ‘last resort’ option.”<sup>163</sup> Courts have found that “[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake.”<sup>164</sup>

Similarly, the Sixth Circuit Court of Appeals in *Associated Gen. Contractors v. Drabik (Drabik II)*, stated: “*Adarand* teaches that a court called upon to address the question of narrow tailoring must ask, ‘for example, whether there was ‘any consideration of the use of race-neutral means to increase minority business participation’ in government contracting ... or whether the program was appropriately limited such that it ‘will not last longer than the discriminatory effects it is designed to eliminate.’”<sup>165</sup>

The Supreme Court in *Parents Involved in Community Schools v. Seattle School District*<sup>166</sup> also found that race- and ethnicity-based measures should be employed as a last resort. The majority opinion stated: “Narrow tailoring requires ‘serious, good faith consideration of workable race-neutral alternatives,’ and yet in Seattle several alternative assignment plans—many of which would not have used express racial classifications—were rejected with little or no consideration.”<sup>167</sup> The Court found that the district failed to show it seriously considered race-neutral measures.

The “narrowly tailored” analysis is instructive in terms of developing any potential legislation or programs that involve MBE/WBE/DBEs or in connection with determining appropriate remedial measures to achieve legislative objectives.

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<sup>162</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 942, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 243-245, 252-255; *Western States Paving*, 407 F.3d at 998; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *Kornhass Construction, Inc. v. State of Oklahoma, Department of Central Services*, 140 F.Supp.2d at 1247-1248; see also *Geyer Signal, Inc.*, 2014 WL 1309092.

<sup>163</sup> *Eng’g Contractors Ass’n*, 122 F.3d at 926 (internal citations omitted); see also *Virdi v. DeKalb County School District*, 135 Fed. Appx. 262, 264, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion); *Webster v. Fulton County*, 51 F. Supp.2d 1354, 1380 (N.D. Ga. 1999), *aff’d per curiam* 218 F.3d 1267 (11th Cir. 2000).

<sup>164</sup> See *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509-10 (1989); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; see also *Adarand I*, 515 U.S. at 237-38.

<sup>165</sup> *Associated Gen. Contractors of Ohio, Inc. v. Drabik (Drabik II)*, 214 F.3d 730, 738 (6th Cir. 2000).

<sup>166</sup> 551 U.S. 701, 734-37, 127 S.Ct. 2738, 2760-61 (2007).

<sup>167</sup> 551 U.S. 701, 734-37, 127 S.Ct. at 2760-61; see also *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013); *Grutter v. Bollinger*, 539 U.S. 305 (2003).

**i. Implementation of the Federal DBE Program: Narrow tailoring.** The second prong of the strict scrutiny analysis requires the implementation of the Federal DBE Program by state DOTs and state and local government recipients of federal funds be “narrowly tailored” to remedy identified discrimination in the particular state or local government recipient’s contracting and procurement market.<sup>168</sup> The cases considering challenges to a state government’s implementation of the Federal DBE Program are instructive to the study, as stated above, in connection with establishing a compelling governmental interest and narrow tailoring, which are the two prongs of the strict scrutiny standard. The narrow tailoring requirement has several components. In *Western States Paving*, the Ninth Circuit held the recipient of federal funds must have independent evidence of discrimination within the recipient’s own transportation contracting and procurement marketplace in order to determine whether or not there is the need for race-, ethnicity-, or gender-conscious remedial action.<sup>169</sup> Thus, the Ninth Circuit held in *Western States Paving* that mere compliance with the Federal DBE Program does not satisfy strict scrutiny.<sup>170</sup>

In *Western States Paving* and in *AGC, SDC v. Caltrans*, the Court found that even where evidence of discrimination is present in a recipient’s market, a narrowly tailored program must apply only to those minority groups who have actually suffered discrimination. Thus, under a race- or ethnicity -conscious program, for each of the minority groups to be included in any race- or ethnicity-conscious elements in a recipient’s implementation of the Federal DBE Program, there must be evidence that the minority group suffered discrimination within the recipient’s marketplace.<sup>171</sup>

In the *Northern Contracting* decision, the Seventh Circuit Court of Appeals cited its earlier precedent in *Milwaukee County Pavers v. Fielder* to hold “that a state is insulated from [a narrow tailoring] constitutional attack, absent a showing that the state exceeded its federal authority. IDOT [Illinois DOT] here is acting as an instrument of federal policy and Northern Contracting (NCI) cannot collaterally attack the federal regulations through a challenge to IDOT’s program.”<sup>172</sup> The Seventh Circuit Court of Appeals distinguished both the Ninth Circuit Court of Appeals decision in *Western States Paving* and the Eighth Circuit Court of Appeals decision in *Sherbrooke Turf*, relating to an as-applied narrow tailoring analysis.

The Seventh Circuit Court of Appeals held that IDOT’s application of a federally mandated program is limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program.<sup>173</sup> The Seventh Circuit Court of Appeals analyzed IDOT’s compliance with the federal regulations regarding calculation of the availability of DBEs, adjustment of its goal based on local market

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<sup>168</sup> *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199 (9th Cir. 2013); *Western States Paving*, 407 F.3d at 995-998; *Sherbrooke Turf*, 345 F.3d at 970-71; see, e.g., *Midwest Fence*, 840 F.3d 932, 949-953.

<sup>169</sup> *Western States Paving*, 407 F.3d at 997-98, 1002-03; see *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

<sup>170</sup> *Id.* at 995-1003. The Seventh Circuit Court of Appeals in *Northern Contracting* stated in a footnote that the court in *Western States Paving* “misread” the decision in *Milwaukee County Pavers*. 473 F.3d at 722, n. 5.

<sup>171</sup> 407 F.3d at 996-1000; See *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

<sup>172</sup> 473 F.3d at 722.

<sup>173</sup> *Id.* at 722.

conditions, and its use of race-neutral methods set forth in the federal regulations.<sup>174</sup> The Court held NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 CFR Part 26).<sup>175</sup> Accordingly, the Seventh Circuit Court of Appeals affirmed the District Court's decision upholding the validity of IDOT's DBE program.<sup>176</sup>

The 2015 and 2016 Seventh Circuit Court of Appeals decisions in *Dunnet Bay* and *Midwest Fence* followed the ruling in *Northern Contracting* that a state DOT implementing the Federal DBE Program is insulated from a constitutional challenge absent a showing that the state exceeded its federal authority.<sup>177</sup> The Court held the IDOT DBE Program implementing the Federal DBE Program was valid, finding there was not sufficient evidence to show IDOT exceeded its authority under the federal regulations.<sup>178</sup> The Court found *Dunnet Bay* had not established sufficient evidence that IDOT's implementation of the Federal DBE Program constituted unlawful discrimination.<sup>179</sup> In addition, the Court in *Midwest Fence* upheld the constitutionality of the Federal DBE Program, and upheld the IDOT DBE Program and Illinois State Tollway Highway Authority DBE Program that did not involve federal funds under the Federal DBE Program.<sup>180</sup>

**ii. Race-, ethnicity-, and gender-neutral measures.** To the extent a “strong basis in evidence” exists concerning discrimination in a local or state government's relevant contracting and procurement market, the courts analyze several criteria or factors to determine whether a state's implementation of a race- or ethnicity-conscious program is necessary and thus narrowly tailored to achieve remedying identified discrimination. One of the key factors discussed above is consideration of race-, ethnicity- and gender-neutral measures.

The courts require that a local or state government seriously consider race-, ethnicity- and gender-neutral efforts to remedy identified discrimination.<sup>181</sup> And the courts have held unconstitutional those

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<sup>174</sup> *Id.* at 723-24.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*; See, e.g., *Midwest Fence*, 840 F.3d 932 (7th Cir. 2016); *Midwest Fence*, 84 F. Supp. 3d 705, 2015 WL 1396376 (N.D. Ill. 2015), affirmed, 840 F.3d 932 (7th Cir. 2016); *Geod Corp. v. New Jersey Transit Corp.*, et al., 746 F.Supp.2d 642 (D.N.J. 2010); *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F.Supp.2d 1336 (S.D. Fla. 2008).

<sup>177</sup> *Midwest Fence*, 840 F.3d 932 (7th Cir. 2016); *Dunnet Bay Construction Company v. Borggren, Illinois DOT, et al.*, 799 F.3d 676, 2015 WL 4934560 at \*\*18-22 (7th Cir. 2015).

<sup>178</sup> *Dunnet Bay*, 799 F.3d 676, 2015 WL 4934560 at \*\*18-22.

<sup>179</sup> *Id.*

<sup>180</sup> 840 F.3d 932 (7th Cir. 2016).

<sup>181</sup> See, e.g., *Midwest Fence*, 840 F.3d 932, 937-938, 953-954 (7th Cir. 2016); *AGC, SDC v. Caltrans*, 713 F.3d at 1199; *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Adarand VII*, 228 F.3d at 1179 (10th Cir. 2000); *Eng'g Contractors Ass'n*, 122 F.3d at 927; *Contractors Ass'n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608-609 (3d Cir. 1996); *Contractors Ass'n (CAEP I)*, 6 F.3d at 1008-1009 (3d Cir. 1993); *Coral Constr.*, 941 F.2d at 923.

race- and ethnicity-conscious programs implemented without consideration of race- and ethnicity-neutral alternatives to increase minority business participation in state and local contracting.<sup>182</sup>

The Court in *Croson* followed by decisions from federal courts of appeal found that local and state governments have at their disposal a “whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races.”<sup>183</sup>

Examples of race-, ethnicity-, and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial and financial assistance;
- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- “How to do business” seminars;
- Sponsoring networking sessions throughout the state acquaint small firms with large firms;
- Creation and distribution of MBE/WBE and DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.<sup>184</sup>

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<sup>182</sup> See, *Croson*, 488 U.S. at 507; *Drabik I*, 214 F.3d at 738 (citations and internal quotations omitted); see also, *Eng’g Contractors Ass’n*, 122 F.3d at 927; *Virdi*, 135 Fed. Appx. At 268; *Contractors Ass’n of E. Pa. v. City of Philadelphia (CAEP II)*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>183</sup> *Croson*, 488 U.S. at 509-510.

<sup>184</sup> See, e.g., *Croson*, 488 U.S. at 509-510; *H. B. Rowe*, 615 F.3d 233, 252-255; *N. Contracting*, 473 F.3d at 724; *Adarand VII*, 228 F.3d 1179 (10th Cir. 2000); 49 CFR § 26.51(b); see also, *Eng’g Contractors Ass’n*, 122 F.3d at 927-29; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).



The courts have held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race-, ethnicity-, and gender-neutral alternative, it does “require serious, good faith consideration of workable race-neutral alternatives.”<sup>185</sup>

**iii. Additional factors considered under narrow tailoring.** In addition to the required consideration of the necessity for the relief and the efficacy of alternative remedies (race- and ethnicity-neutral efforts), the courts require evaluation of additional factors as listed above.<sup>186</sup> For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility;<sup>187</sup> (2) good faith efforts provisions;<sup>188</sup> (3) waiver provisions;<sup>189</sup> (4) a rational basis for goals;<sup>190</sup> (5) graduation provisions;<sup>191</sup> (6) remedies only for groups for which there were findings of discrimination;<sup>192</sup> (7) sunset provisions;<sup>193</sup> and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.<sup>194</sup>

Several federal court decisions have upheld the Federal DBE Program and its implementation by state DOTs and recipients of federal funds, including satisfying the narrow tailoring factors.<sup>195</sup>

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<sup>185</sup> *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 732-47, 127 S.Ct 2738, 2760-61 (2007); *AGC, SDC v. Caltrans*, 713 F.3d at 1199, citing *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *H. B. Rowe*, 615 F.3d 233, 252-255; *Western States Paving*, 407 F.3d at 993; *Sherbrooke Turf*, 345 F.3d at 972; *Eng’g Contractors Ass’n*, 122 F.3d at 927.

<sup>186</sup> See *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 252-255; *Sherbrooke Turf*, 345 F.3d at 971-972; *Eng’g Contractors Ass’n*, 122 F.3d at 927; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 608-609 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>187</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1009; *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality (AGC of Ca.)*, 950 F.2d 1401, 1417 (9th Cir. 1991); *Coral Constr. Co. v. King County*, 941 F.2d 910, 923 (9th Cir. 1991); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 917 (11th Cir. 1990).

<sup>188</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *Sherbrooke Turf*, 345 F.3d at 971-972; *CAEP I*, 6 F.3d at 1019; *Cone Corp.*, 908 F.2d at 917.

<sup>189</sup> *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d 233, 253; *AGC of Ca.*, 950 F.2d at 1417; *Cone Corp.*, 908 F.2d at 917; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>190</sup> *Id.*; *Sherbrooke Turf*, 345 F.3d at 971-973; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 606-608 (3d. Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1008-1009 (3d. Cir. 1993).

<sup>191</sup> *Id.*

<sup>192</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *H. B. Rowe*, 615 F.3d 233, 253-255; *Western States Paving*, 407 F.3d at 998; *AGC of Ca.*, 950 F.2d at 1417; *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 91 F.3d at 593-594, 605-609 (3d. Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1009, 1012 (3d. Cir. 1993); *Kossman Contracting Co., Inc., v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016); *Sherbrooke Turf*, 2001 WL 150284 (unpublished opinion), *aff’d* 345 F.3d 964.

<sup>193</sup> See, e.g., *H. B. Rowe*, 615 F.3d 233, 254; *Sherbrooke Turf*, 345 F.3d at 971-972; *Peightal*, 26 F.3d at 1559; see also, *Kossman Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016).

<sup>194</sup> *Coral Constr.*, 941 F.2d at 925.

<sup>195</sup> See, e.g., *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016), cert. denied, 2017 WL 497345 (2017); *Dunnet Bay Construction Co. v. Borggren, Illinois DOT, et al.*, 799 F.3d 676, 2015 WL 4934560 (7th Cir. 2015), cert. denied, 2016 WL 193809 (2016); *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. 2013); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006); *Mountain West Holding Co., Inc. v. The State of Montana, Montana DOT, et al.*, 2017 WL 2179120 Memorandum Opinion (Not for Publication) (9th Cir. May 16, 2017); *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir.



**4. Intermediate scrutiny analysis.** Certain Federal Courts of Appeal, including the Ninth Circuit Court of Appeals, apply intermediate scrutiny to gender-conscious programs.<sup>196</sup> The Ninth Circuit and Idaho courts have applied “intermediate scrutiny” to classifications based on gender.<sup>197</sup> Restrictions subject to intermediate scrutiny are permissible so long as they are substantially related to serve an important governmental interest.<sup>198</sup>

The courts have interpreted this intermediate scrutiny standard to require that gender-based classifications be:

1. Supported by both “sufficient probative” evidence or “exceedingly persuasive justification” in support of the stated rationale for the program; and
2. Substantially related to the achievement of that underlying objective.<sup>199</sup>

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2007); *Sherbrooke Turf, Inc. v. Minnesota DOT* and *Gross Seed v. Nebraska Department of Roads*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147 (10th Cir. 2000) (*Adarand VII*); *Dunnet Bay Construction Co. v. Illinois DOT, et. al.* 2014 WL 552213 (C. D. Ill. 2014), affirmed by *Dunnet Bay*, 2015 WL 4934560 (7th Cir. 2015); *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014); *M. K. Weeden Construction v. State of Montana, Montana DOT*, 2013 WL 4774517 (D. Mont. 2013); *Geod Corp. v. New Jersey Transit Corp.*, 766 F. Supp.2d 642 (D. N.J. 2010); *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F. Supp.2d 1336 (S.D. Fla. 2008).

<sup>196</sup> *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); See generally, *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”); *Geyer Signal*, 2014 WL 1309092.

<sup>197</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); see, generally, *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see also, *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988), cert. denied, 489 U.S. 1067 (1989) (citing *Craig v. Boren*, 429 U.S. 190 (1976), and *Lalli v. Lalli*, 439 U.S. 259 (1978)); *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023) (Intermediate scrutiny is defined as “means-focus” test not related to gender); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho) 2021); *State v. Joslin*, 145 Idaho 75, 175 P.3d 764 (S.Ct Idaho 2007).

<sup>198</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *Western States Paving*, 407 F.3d at 990 n. 6; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see, also *Serv. Emp. Int’l Union, Local 5 v. City of Hous.*, 595 F.3d 588, 596 (5th Cir. 2010); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); see also, *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023) (Intermediate scrutiny is defined as “means-focus” test not related to gender); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho) 2021); *State v. Joslin*, 145 Idaho 75, 175 P.3d 764 (S.Ct Idaho 2007).

<sup>199</sup> *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe Co., Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Concrete Works*, 321 F.3d 950, 960 (10th Cir. 2003); *Concrete Works*, 36 F.3d 1513, 1519 (10th Cir. 1994); see, e.g., *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Contractors Ass’n of E. Pa. v. City of Philadelphia*, 6 F.3d at 1009-1011 (3d Cir. 1993); *Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F. Supp. 2d 613, 619-620 (2000); see also *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996) (“exceedingly persuasive justification.”); see also, *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the state actor has established a sufficient factual predicate for the claim that woman-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the state actor to present “sufficient probative” evidence in support of its stated rationale for the program.<sup>200</sup>

Intermediate scrutiny, as interpreted by federal circuit courts of appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective.<sup>201</sup> The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, it has been held that the intermediate scrutiny standard does not require a showing of government involvement, active or passive, in the discrimination it seeks to remedy.<sup>202</sup>

The Tenth Circuit in *Concrete Works* stated with regard evidence as to woman-owned business enterprises as follows:

“We do not have the benefit of relevant authority with which to compare Denver’s disparity indices for WBEs. See *Contractors Ass’n*, 6 F.3d at 1009–11 (reviewing case law and noting that “it is unclear whether statistical evidence as well as anecdotal evidence is required to establish the discrimination necessary to satisfy intermediate scrutiny, and if so, how much statistical evidence is necessary”). Nevertheless, Denver’s data indicates significant WBE underutilization such that the Ordinance’s gender classification arises from “reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.” *Mississippi Univ. of Women*, 458 U.S. at 726, 102 S.Ct. at 3337 (striking down, under the intermediate scrutiny standard, a state statute that excluded males from enrolling in a state-supported professional nursing school).”

The Fourth Circuit cites with approval the guidance from the Eleventh Circuit that has held “[w]hen a gender-conscious affirmative action program rests on sufficient evidentiary foundation, the government is not required to implement the program only as a last resort. ... Additionally, under intermediate

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(S. Idaho 2023)(Intermediate scrutiny is defined as “means-focus” test not related to gender); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho) 2021); *State v. Joslin*, 145 Idaho 75, 175 P.3d 764 (S.Ct Idaho 2007).

<sup>200</sup> *Id.* The Seventh Circuit Court of Appeals, however, in *Builders Ass’n of Greater Chicago v. County of Cook, Chicago*, did not hold there is a different level of scrutiny for gender discrimination or gender based programs. 256 F.3d 642, 644-45 (7th Cir. 2001). The Court in *Builders Ass’n* rejected the distinction applied by the Eleventh Circuit in *Engineering Contractors*.

<sup>201</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1195; *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233, 242 (4th Cir. 2010); *Western States Paving*, 407 F.3d at 990 n. 6; *Coral Constr. Co.*, 941 F.2d at 931-932 (9th Cir. 1991); *Equal. Found. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Eng’g Contractors Ass’n*, 122 F.3d at 905, 908, 910; *Ensley Branch N.A.A.C.P. v. Seibels*, 31 F.3d 1548 (11th Cir. 1994); *Assoc. Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, et al.*, 83 F.Supp 2d 613, 619-620 (2000); see, also, *U.S. v. Virginia*, 518 U.S. 515, 532 and n. 6 (1996)(“exceedingly persuasive justification.”)

<sup>202</sup> *Coral Constr. Co.*, 941 F.2d at 931-932; see *Eng’g Contractors Ass’n*, 122 F.3d at 910.

scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”<sup>203</sup>

The Supreme Court has stated that an affirmative action program survives intermediate scrutiny if the proponent can show it was “a product of analysis rather than a stereotyped reaction based on habit.”<sup>204</sup> The Third Circuit found this standard required the City of Philadelphia to present probative evidence in support of its stated rationale for the gender preference, discrimination against women-owned contractors.<sup>205</sup> The Court in *Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia (CAEP I)* held the City had not produced enough evidence of discrimination, noting that in its brief, the City relied on statistics in the City Council Finance Committee Report and one affidavit from a woman engaged in the catering business, but the Court found this evidence only reflected the participation of women in City contracting generally, rather than in the construction industry, which was the only cognizable issue in that case.<sup>206</sup>

The Third Circuit in *CAEP I* held the evidence offered by the City of Philadelphia regarding women-owned construction businesses was insufficient to create an issue of fact. The study in *CAEP I* contained no disparity index for women-owned construction businesses in City contracting, such as that presented for minority-owned businesses.<sup>207</sup> Given the absence of probative statistical evidence, the City, according to the Court, must rely solely on anecdotal evidence to establish gender discrimination necessary to support the Ordinance.<sup>208</sup> But the record contained only one three-page affidavit alleging gender discrimination in the construction industry.<sup>209</sup> The only other testimony on this subject, the Court found in *CAEP I*, consisted of a single, conclusory sentence of one witness who appeared at a City Council hearing.<sup>210</sup> This evidence the Court held was not enough to create a triable issue of fact regarding gender discrimination under the intermediate scrutiny standard.

**5. Rational basis analysis.** Where a challenge to the constitutionality of a statute or a regulation does not involve a fundamental right or a suspect class, the appropriate level of scrutiny to apply is the rational basis standard.<sup>211</sup> When applying rational basis review under the Equal Protection Clause of the

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<sup>203</sup> 615 F.3d 233, 242; 122 F.3d at 929 (internal citations omitted).

<sup>204</sup> *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

<sup>205</sup> *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

<sup>206</sup> *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993).

<sup>207</sup> *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> See, e.g., *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1096 (9th Cir. 2019); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir. 2012); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998); *Cunningham v. Beavers* 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a ‘highly deferential rational basis’ standard of review.”); *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233 at 254; *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct. Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

Fourteenth Amendment of the United States Constitution, a court is required to inquire whether the challenged classification has a legitimate purpose and whether it was reasonable for the legislature to believe that use of the challenged classification would promote that purpose.<sup>212</sup>

Courts in applying the rational basis test generally find that a challenged law is upheld “as long as there could be some rational basis for enacting [it],” that is, that “the law in question is rationally related to a legitimate government purpose.”<sup>213</sup> So long as a government legislature had a reasonable basis for adopting the classification, the law will pass constitutional muster.<sup>214</sup>

“[T]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.”<sup>215</sup> Moreover, “courts are compelled under rational-basis review to accept a legislature’s generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality.”<sup>216</sup>

Under a rational basis review standard, a legislative classification will be upheld “if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.”<sup>217</sup> Because

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<sup>212</sup> See, *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir. 2012); *Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988); see also *Lundeen v. Canadian Pac. R. Co.*, 532 F.3d 682, 689 (8th Cir. 2008) (stating that federal courts review legislation regulating economic and business affairs under a ‘highly deferential rational basis’ standard of review.”); *H. B. Rowe, Inc. v. NCDOT*, 615 F.3d 233 at 254; *Contractors Ass’n of E. Pa.*, 6 F.3d at 1011 (3d Cir. 1993); *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

<sup>213</sup> See, e.g., *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1998); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1110 (10th Cir. 1996); *White v. Colorado*, 157 F.3d 1226, (10th Cir. 1998) see also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985) (citations omitted); *Heller v. Doe*, 509 U.S. 312, 318-321 (1993) (Under rational basis standard, a legislative classification is accorded a strong presumption of validity); *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

<sup>214</sup> *Id.*; *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013), (citing *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993)); see e.g., *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

<sup>215</sup> *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *United States v. Timms*, 664 F.3d 436, 448-49 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 189 (2012) (citing *Heller v. Doe*, 509 U.S. 312, 320-21 (1993)) (quotation marks and citation omitted); see e.g., *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

<sup>216</sup> *Heller v. Doe*, 509 U.S. 312, 321 (1993); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); see e.g., *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho 2021).

<sup>217</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993); see, e.g., *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); *Hettinga v. United States*, 677 F.3d 471, 478 (D.C. Cir 2012); see e.g., *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v.*

all legislation classifies its objects, differential treatment is justified by “any reasonably conceivable state of facts.”<sup>218</sup>

Under the federal standard of review, a court will presume the “legislation is valid and will sustain it if the classification drawn by the statute is rationally related to a legitimate [government] interest.”<sup>219</sup>

A federal court decision, which is instructive to the study, involved a challenge to and the application of a small business goal in a pre-bid process for a federal procurement. *Firstline Transportation Security, Inc. v. United States (Firstline)* is instructive and analogous to some of the issues in a small business program. The case is informative as to the use, estimation, and determination of goals (small business goals, including veteran preference goals) in a procurement under the Federal Acquisition Regulations (FAR).<sup>220</sup>

*Firstline* involved a solicitation that established a small business subcontracting goal requirement. In *Firstline*, the Transportation Security Administration (TSA) issued a solicitation for security screening services at the Kansas City Airport. The solicitation stated that the: “Government anticipates an overall Small Business goal of 40 percent,” and that “[w]ithin that goal, the government anticipates further small business goals of: Small, Disadvantaged business[:] 14.5%; Woman Owned[:] 5 percent; HUBZone[:] 3 percent; Service Disabled, Veteran Owned[:] 3 percent.”<sup>221</sup>

The Court applied the rational basis test in construing the challenge to the establishment by the TSA of a 40 percent small business participation goal as unlawful and irrational.<sup>222</sup> The Court stated it “cannot say that the agency’s approach is clearly unlawful, or that the approach lacks a rational basis.”<sup>223</sup>

The Court found that “an agency may rationally establish aspirational small business subcontracting goals for prospective offerors....” Consequently, the Court held one rational method by which the government may attempt to maximize small business participation (including veteran preference goals) is to establish a rough subcontracting goal for a given contract, and then allow potential contractors to

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*Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho) 2021).

<sup>218</sup> *Id.*

<sup>219</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993); *Chance Mgmt., Inc. v. S. Dakota*, 97 F.3d 1107, 1114 (8th Cir. 1996); *Crawford v. Antonio B. Won Pat International Airport Authority*, 917 F.3d 1081, 1095-1096 (9th Cir. 2019); *Gallinger v. Becerra*, 898 F.3d 1012, 1016-1018 (9th Cir. 2018); see also *Lawrence v. Texas*, 539 U.S. 558, 580, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) (“Under our rational basis standard of review, legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. . . . Laws such as economic or tax legislation that are scrutinized under rational basis review normally pass constitutional muster.” (internal citations and quotations omitted)) (O’Connor, J., concurring); *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012) (“Under rational basis review, the classification must only be rationally related to a legitimate government interest.”); see e.g., *Planned Parenthood Great Northwest v. State*, 171 Idaho 374, 522 P.3d 1132 (S.Ct Idaho 2023); *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234 (S. Ct Idaho 2022); *Gomersall v. St. Luke’s Regional Medical Center, Ltd.*, 168 Idaho 308, 483 P.3d 365 (S.Ct Idaho) 2021).

<sup>220</sup> 2012 WL 5939228 (Fed. Cl. 2012).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*



compete in designing innovative ways to structure and maximize small business subcontracting within their proposals.<sup>224</sup> The Court, in an exercise of judicial restraint, found the “40 percent goal is a rational expression of the Government’s policy of affording small business concerns...the maximum practicable opportunity to participate as subcontractors....”<sup>225</sup>

**6. Pending cases (at the time of this report) and informative recent decisions.** There are recent court decisions and pending cases in the federal courts at the time of this report involving challenges to MBE/WBE/DBE programs and federal programs with minority and woman-owned business and social and economic disadvantaged business preferences that may potentially impact and are informative and instructive to the study, including the following:

- *Christian Bruckner et al. v. Joseph R. Biden Jr. et al.*, U.S. District Court for the Middle District of Florida, Case No. 8:22-cv-01582, filed July 13, 2022. Dismissed, 2023 WL 2744026 (March 31, 2023).
- *Antonio Vitolo, et al. v. Isabella Guzman, Administrator of the Small Business Administration* 993 F.3d 353, 2021 WL 2172181 (6th Cir. May 27, 2021).
- *Greer’s Ranch Café v. Guzman*, 2021 WL 2092995 (N.D. Tex. 5/18/21), U.S. District Court for the Northern District of Texas.
- *Faust v. Vilsack*, 2021 WL 2409729, US District Court, E.D. Wisconsin (June 10, 2021).
- *Wynn v. Vilsack* 2021 WL 2580678, (M.D. Fla. June 23, 2021), Case No. 3:21-cv-514-MMH-JRK, U.S. District Court for the Middle District of Florida.
- *Ultima Services Corp. v. U.S. Department of Agriculture, U.S. Small Business Administration, et. al.*, U.S. District Court for the Eastern District of Tennessee, 2:20-cv-00041-DCLC-CRW.
- *Circle City Broadcasting I, LLC (Circle City) and National Association of Black Owned Broadcasters (NABOB) (Plaintiffs) v. DISH Network, LLC (DISH or Defendant)*, U.S. District Court for the Southern District of Indiana, Indianapolis Division, Case NO. 1:20-cv-00750-TWP-TAB.
- *Mark One Electric Company, Inc. v. City of Kansas City, Missouri*, 2022 WL 3350525 (8th Cir. 2022).

The following summarizes the above listed pending cases and informative recent decisions:

**a. *Christian Bruckner, et al. v. Joseph R. Biden Jr., et al.***, U.S. District Court for the Middle District of Florida, Case No. 8:22-cv-01582, filed July 13, 2022. Dismissed, 2023 WL 2744026 (March 31, 2023). Federal Defendants’ Motion to Dismiss Granted and Plaintiffs’ Motion for Preliminary Injunction Denied on March 31, 2023. Judgment entered on April 3, 2023.

The Complaint filed on July 13, 2022 alleges that on November 15, 2021, President Biden signed into law the “Infrastructure Investment and Jobs Act,” a \$1.2 trillion spending bill to improve America’s infrastructure. As part of this bill, the Complaint alleges Congress authorized \$370 billion in new spending for roads, bridges, and other surface transportation projects. The Complaint asserts that Congress also implemented a set aside, or quota, requiring that at least 10% of these funds be reserved for certain “disadvantaged” small businesses. According to the White House, the Complaint alleges, the

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<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

law reserves more than \$37 billion in contracts to be awarded to “small, disadvantaged business contractors.”

The Complaint asserts that Plaintiff Bruckner cannot benefit from the program and compete for the projects because of his race and gender, that the \$37 billion fund is reserved for small businesses owned by certain minorities and women, and that Bruckner is a white male.

The Complaint alleges the Infrastructure Act sets an unlawful quota based on race and gender because at least 10% of all contracts for certain infrastructure projects must be awarded based on race and gender, that this quota is unconstitutional, that Defendants have no justification for the Act’s \$37 billion race-and-gender quota, and therefore the Court should declare this alleged quota unconstitutional and enjoin its enforcement, “just as other courts have similarly enjoined other race-and-gender-based preferences in the American Rescue against \$28.6 billion Restaurant Revitalization Fund priority period); *Faust v. Vilsack*, 519 F. Supp. 3d 470 (E.D. Wis. 2021) (injunction against \$4 billion Farmer Loan Forgiveness program Plan Act. E.g., *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021) (injunction).”

The Complaint alleges that Congress attempted to justify these race-and-gender classifications through findings of “race and gender discrimination” in the Infrastructure Act, “but none of these findings establish that Congress is attempting to remedy a specific and recent episode of intentional discrimination that it had a hand in.” The Complaint alleges that “because he is a white male, Plaintiff Bruckner and his business, PMC, cannot compete on an equal footing for contracts under the Infrastructure Act with businesses that are owned by women and certain racial minorities preferred by federal law.”

The Complaint alleges that the racial classifications under Section 11101(e)(2) & (3) of the Infrastructure Act are unconstitutional because they violate the equal protection guarantee in the United States Constitution, and that these racial classifications in the Infrastructure Act are not narrowly tailored to serve a compelling government interest. The Complaint alleges that the gender-based classification under Sections 11101(e)(2) & (3) of the Infrastructure Act is unconstitutional because it violates the equal protection guarantee in the United States Constitution. The Complaint asserts this gender-based classification is not supported by an exceedingly persuasive objective, and the discriminatory means employed are not substantially related to the achievement of that objective.

The Complaint requests the Court: a.) Enter a preliminary injunction removing all unconstitutional race and gender-based classification in Section 11101(e)(3) of the Infrastructure Act; b.) Enter a declaratory judgment that the race and gender-based classifications under Section 11101(e)(3) of the Infrastructure Act are unconstitutional; and, c.) Enter an order permanently enjoining Defendants from applying race- and gender-based classifications when awarding contracts under Section 11101(e)(3) of the Infrastructure Act.

The Plaintiffs filed in July 2022 an Amended Motion for Preliminary Injunction, which is pending. The Federal Defendants filed a Reply in Opposition to the Motion for Preliminary Injunction on August 29, 2022. On September 27, 2022, the Federal Defendants filed a Motion to Dismiss the Complaint, which is pending.

The Court issued an Order on November 21, 2022 requesting the parties to address certain listed questions describing the administration and implementation process of the Federal DBE Program. In



particular, the Court requested the parties submit a supplemental briefing describing the authorization of funds by Congress and explain how state and local recipients award federally funded contracts.

The Court ordered the Plaintiffs may clarify whether the complaint challenges the Federal DBE Program as it applies to direct contracting with the federal government. And the Court ordered the Defendants may file a statement certifying whether there are localities or federal agencies receiving funding from the Infrastructure Act that have set a DBE goal of 0 percent.

The parties responded on December 2, 2022. Bruckner filed a statement asserting that his complaint “challenges a single sentence in federal law: Section 11101(e)(3) of the Infrastructure Investment and Jobs Act, P.L. 117-58” and that his “requested remedy is therefore narrow and precise: an injunction preventing Defendants from enforcing and implementing this one sentence.” Plaintiffs’ Verified Complaint only challenges Section 11101(e)(3), which contains a \$37 billion race-and-gender preference.

The Defendants submitted a supplemental briefing describing the administration and implementation process of the Federal DBE Program and filed Declarations of DOT personnel attesting to the goals implemented by recipients. The Defendants also addressed: (a) how the DOT calculates and assesses whether recipients are fulfilling their DBE goals; (b) whether a recipient’s DBE goal influences the amount of federal funds awarded under the Act; (c) the race-neutral means used by recipients that employ only neutral means to award contracts; (d) whether recipients and prime contractors are aware of a bidder’s DBE status when determining whether to award a contract where a jurisdiction exclusively uses neutral means; (e) whether a subcontractor knows before bidding if the recipient or prime contractor is employing race- and gender-conscious or neutral means to award subcontracts; and (f) the certification process.

The District Court on March 31, 2023 issued an Order that granted the Federal Defendants’ Motion to Dismiss and denied the Plaintiffs’ Motion for Preliminary Injunction without prejudice. Judgment was issued in favor of Defendants by the Court on April 3, 2023. The Order of the Court was based on lack of standing by the Plaintiffs.

The Court stated: “Although the Plaintiffs raise compelling merits arguments based on the preliminary-injunction-stage record, they fail to demonstrate an injury-in-fact to satisfy Article III standing. Some recipients of the Infrastructure Act’s funds do not employ race- and gender-conscious means when awarding contracts. Others employ discriminatory means only with respect to some contracts. Because the Plaintiffs do not identify which contracts they intend to bid on, the Plaintiffs’ alleged harm is speculative and they fail to allege facts demonstrating a “certainly impending” “direct exposure to unequal treatment.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409, (2013); *Wooden v. Bd. of Regents of Univ. Sys. of Ga.*, 247 F.3d 1262, 1280 (11th Cir. 2001). “Without subject-matter jurisdiction, I deny the motion for a preliminary injunction and dismiss the case without prejudice.”

The Court held that the Plaintiffs fail to allege facts showing that they are “able and ready” to bid on Infrastructure Act-funded contracts. They also fail to allege facts, the Court found, demonstrating that they will necessarily be denied equal treatment based on Bruckner’s race and gender if and when they bid. The Court concluded that Plaintiffs therefore have not alleged an injury in fact.

**i. Conclusion.** The burden is on Bruckner and PMC to prove standing. Because the Plaintiffs failed to allege facts clearly demonstrating that they were able and ready to compete in a discriminatory scheme, the Plaintiffs failed to demonstrate standing. Accordingly, the Defendants' motion to dismiss was granted, and this action was dismissed without prejudice. The Plaintiffs' motion for a preliminary injunction was denied as moot.

**b. Antonio Vitolo, et al. v. Isabella Guzman, Administrator of the Small Business Administration**, 993 F.3D 353, 2021 WL 2172181 (6th Cir. May 27, 2021), on appeal to Sixth Circuit Court of Appeals from decision by United States District Court, E.D. Tennessee, Northern Division, 2021 WL 2003552, which District Court issued an Order denying Plaintiffs' motion for temporary restraining order on May 19, 2021, and Order denying Plaintiffs' motion for preliminary injunction on May 25, 2021. The appeal was filed in Sixth Circuit Court of Appeals on May 20, 2021. The Plaintiffs applied to the Sixth Circuit for an Emergency Motion for Injunction Pending Appeal and to Expedite Appeal. The Sixth Circuit, two of the three judges on the three-judge panel granted the motion to expedite the appeal and then decided and filed its Opinion on May 27, 2021. *Vitolo v. Guzman*, 2021 WL 2172181 (6th Cir. May 27, 2021).

**i. Background and District Court Memorandum Opinion and Order.** On March 27, 2020, § 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) created the Paycheck Protection Program (PPP), a \$349 billion federally guaranteed loan program for businesses distressed by the pandemic. On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act appropriated an additional \$310 billion to the fund.

The District Court in this case said that PPP loans were not administered equally to all kinds of businesses, however. Congressional investigation revealed that minority- and women-owned businesses had more difficulty accessing PPP funds relative to other kinds of business (analysis noting that Black-owned businesses were more likely to be denied PPP loans than white-owned businesses with similar application profiles due to outright lending discrimination, and that funds were more quickly disbursed to businesses in predominantly white neighborhoods). The Court stated from the testimony to Congress that this was due in significant part to the lack of historical relationships between commercial lenders and minority-owned and women-owned businesses. The historical lack of access to credit, the Court noted from the testimony, also meant that minority- and women-owned businesses tended to be in more financially precarious situations entering the pandemic, rendering them less able to weather an extended economic contraction of the sort COVID-19 unleashed.

Against this backdrop, on March 11, 2021, the president signed the American Rescue Plan Act of 2021 (ARPA). H.R. 1319, 117th Cong. (2021). As part of the ARPA, Congress appropriated \$28.6 billion to a Restaurant Revitalization Fund (RRF) and tasked the administrator of the Small Business Administration (SBA) with disbursing funds to restaurants and other eligible entities that suffered COVID-19 pandemic-related revenue losses. See *Id.* § 5003. Under the ARPA, the administrator "shall award grants to eligible entities in the order in which applications are received by the Administrator," except that during the initial 21-day period in which the grants are awarded, the administrator shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women, veterans, or socially and economically disadvantaged small business concerns.

On April 27, 2021, the SBA announced that it would open the application period for the RRF on May 3, 2021. The SBA announcement also stated, consistent with the ARPA, that "[f]or the first 21 days that the

program is open, the SBA will prioritize funding applications from businesses owned and controlled by women, veterans, and socially and economically disadvantaged individuals.”

Antonio Vitolo is a white male who owns and operates Jake’s Bar and Grill, LLC in Harriman, Tennessee. Vitolo applied for a grant from the RRF through the SBA on May 3, 2021, the first day of the application period. SBA emailed Vitolo and notified him that “[a]pplicants who have submitted a non-priority application will find their application remain in a Review status while priority applications are processed during the first 21 days.”

On May 12, 2021, Vitolo and Jake’s Bar and Grill initiated the present action against Defendant Isabella Casillas Guzman, the administrator of the SBA. In their complaint, Vitolo and Jake’s Bar and Grill assert that the ARPA’s 21-day priority period violates the United States Constitution’s Equal Protection Clause and due process clause because it impermissibly grants benefits and priority consideration based on race and gender classifications.

Based on allegations in the complaint and averments made in Vitolo’s sworn declaration dated May 11, 2021, Vitolo and Jake’s Bar and Grill request that the Court enter: (1) a temporary restraining order prohibiting the SBA from paying out grants from the RRF, unless it processes applications in the order they were received without regard to the race or gender of the applicant; (2) a temporary injunction requiring the SBA to process applications and pay grants in the order received regardless of race or gender; (3) a declaratory judgment that race- and gender-based classifications under § 5003 of the ARPA are unconstitutional; and (4) an order permanently enjoining the SBA from applying race- and gender-based classifications in determining eligibility and priority for grants under § 5003 of the ARPA.

**ii. Strict scrutiny.** The parties agreed that this system is subject to strict scrutiny. Accordingly, the District Court found that whether Plaintiffs are likely to succeed on the merits of their race-based equal-protection claims turns on whether Defendant has a compelling government interest in using a race-based classification, and whether that classification is narrowly tailored to that interest. Here, the Government asserts that it has a compelling interest in “remedying the effect of past or present racial discrimination” as related to the formation and stability of minority-owned businesses.

**iii. Compelling interest found by District Court.** The Court found that over the past year, Congress has gathered myriad evidence suggesting that small businesses owned by minorities (including restaurants, which have a disproportionately high rate of minority ownership) have suffered more severely than other kinds of businesses during the COVID-19 pandemic, and that the Government’s early attempts at general economic stimulus—i.e., the PPP—disproportionately failed to help those businesses directly because of historical discrimination patterns. To the extent that Plaintiffs argue that evidence racial disparity or disparate impact alone is not enough to support a compelling government interest, the Court noted Congress also heard evidence that racial bias plays a direct role in these disparities.

At this preliminary stage, the Court found that the Government has a compelling interest in remediating past racial discrimination against minority-owned restaurants through § 5003 of the ARPA and in ensuring public relief funds are not perpetuating the legacy of that discrimination. At the very least, the Court stated Congress had evidence before it suggesting that its initial COVID-relief program, the PPP, disproportionately failed to reach minority-owned businesses due (at least in part) to historical lack of relationships between banks and minority-owned businesses, itself a symptom of historical lending discrimination.

The Court cited the Supreme Court decision in *Croson*, 488 U.S. at 492 (“It is beyond dispute that any public entity, state or federal, 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.”); *Adarand VII*, 228 F.3d 1147, 1169 (10th Cir. 2000) (“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.”); and *DynaLantic Corp. v. United States Department of Defense*, 885 F. Supp. 2d 237, 258–262 (D.D.C. 2012) (rejecting facial challenge to the SBA’s 8(a) program in part because “the government [had] presented significant evidence on race-based denial of access to capital and credit”).

The Court said that the PPP—a government-sponsored COVID-19 relief program—was stymied in reaching minority-owned businesses because historical patterns of discrimination are reflected in the present lack of relationships between minority-owned businesses and banks. This, according to the Court, caused minority-owned businesses to enter the pandemic with more financial precarity, and therefore to falter at disproportionately higher rates as the pandemic unfolded. The Court found that Congress has a compelling interest in remediating the present effects of historical discrimination on these minority-owned businesses, especially to the extent that the PPP disproportionately failed those businesses because of factors clearly related to that history. Plaintiff, the Court held, has not rebutted this initial showing of a compelling interest, and therefore has not shown a likelihood of success on the merits in this respect.

**iv. Narrow tailoring found by District Court.** The Court then addressed the “narrow tailoring” requirement under the strict scrutiny analysis, concluding that: “Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still ‘constrained in how it may pursue that end: [T]he means chosen to accomplish the [government’s] asserted purpose must be specifically and narrowly framed to accomplish that purpose.’”

Section 5003 of the ARPA is a one-time grant program with a finite amount of money that prioritizes small restaurants owned by women and socially and economically disadvantaged individuals because Congress, the Court concluded, had evidence before it showing that those businesses were inadequately protected by earlier COVID-19 financial relief programs. While individuals from certain racial minorities are rebuttably presumed to be “socially and economically disadvantaged” for purposes of § 5003, the Court found Defendant correctly points out that the presumption does not exclude individuals like Vitolo from being prioritized, and that the prioritization does not mean individuals like Vitolo cannot receive relief under this program. Section 5003 is therefore time-limited, fund-limited, not absolutely constrained by race during the priority period, and not constrained to the priority period.

And while Plaintiffs asserted during the temporary restraining order hearing that the SBA is using race as an absolute basis for identifying “socially and economically disadvantaged” individuals, the Court pointed out that assertion relies essentially on speculation rather than competent evidence about the SBA’s processing system. The Court therefore held it cannot conclude on the record before it that Plaintiffs are likely to show that Defendant’s implementation of § 5003 is not narrowly tailored to the compelling interest at hand.

In support of Plaintiffs’ motion, they argue that the priority period is not narrowly tailored to achieving a compelling interest because it does not address “any alleged inequities or past discrimination.” However, the Court said it has already addressed the inequities that were present in the past relief programs. At the hearing, Plaintiffs argued that a better alternative would have been to prioritize

applicants who did not receive PPP funds or applicants who had “a weaker income statement” or “a weaker balance sheet.” But, the Court noted, “[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative,” only “serious, good faith consideration of workable race-neutral alternatives” to promote the stated interest. The Government received evidence that the race-neutral PPP was tainted by lingering effects of past discrimination and current racial bias.

Accordingly, the Court stated the race-neutral approach that the Government found to be tainted did not further its compelling interest in ensuring that public funds were not disbursed in a manner that perpetuated racial discrimination. The Court found the Government not only considered but actually used race-neutral alternatives during prior COVID-19 relief attempts. It was precisely the failure of those race-neutral programs to reach all small businesses equitably that the Court said appears to have motivated the priority period at issue here.

Plaintiffs argued that the priority period is simultaneously overinclusive and underinclusive based on the racial, ethnic, and cultural groups that are presumed to be “socially disadvantaged.” However, the Court stated the race-based presumption is just that: a presumption. Counsel for the Government explained at the hearing, consistent with other evidence before the Court, that any individual who felt they met § 5003’s broader definition of “socially and economically disadvantaged” was free to check that box on the application. (“[E]ssentially all that needs to be done is that you need to self-certify that you fit within that standard on the application, ... you check that box.”) For the sake of prioritization, the Court noted there is no distinction between those who were presumptively disadvantaged and those who self-certified as such. Accordingly, the Court found the priority period is not underinclusive in a way that defeats narrow tailoring.

Further, according to the Court, the priority period is not overinclusive. Prior to enacting the priority period, the Government considered evidence relative to minority-business owners generally as well as data pertaining to specific groups. It is also important to note, the Court stated, that the RRF is a national relief program. As such, the Court found it is distinguishable from other regional programs that the Supreme Court found to be overinclusive.

The inclusion in the presumption, the Court pointed out for example, of Alaskan and Hawaiian Natives is quite logical for a program that offers relief funds to restaurants in Alaska and Hawaii. This is not like the racial classification in *Croson*, the Court said, which was premised on the interest of compensating Black contractors for past discrimination in Richmond, Virginia, but would have extended remedial relief to “an Aleut citizen who moves to Richmond tomorrow.” Here, the Court found any narrowly tailored racial classification must necessarily account for the national scale of prior and present COVID-19 programs.

The District Court noted that the Supreme Court has historically declined to review sex-or gender-based classifications under strict scrutiny. The District Court pointed out the Supreme Court held, “[t]o withstand constitutional challenge, ... classifications by gender must serve important governmental objective and must be substantially related to achievement of those. ... [A] gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened.” However, remedying past discrimination cannot serve as an important governmental interest when there is no empirical evidence of discrimination within the field being legislated.

**v. Intermediate scrutiny applied to woman-owned businesses found by District Court.** As with the strict scrutiny analysis, the Court found that Congress had before it evidence showing that woman-owned businesses suffered historical discrimination that exposed them to greater risks from an economic shock like COVID-19, and that they received less benefit from earlier federal COVID-19 relief programs. Accordingly, the Court held that Defendant has identified an important governmental interest in protecting woman-owned businesses from the disproportionately adverse effects of the pandemic and failure of earlier federal relief programs. The District Court therefore stated it cannot conclude that Plaintiffs are likely to succeed on their gender-based equal-protection challenge in this respect.

To be constitutional, the Court concluded, a particular measure including a gender distinction must also be substantially related to the important interest it purports to advance. “The purpose of requiring that close relationship is to assure that the validity of a classification is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women.”

Here, as above, the Court found § 5003 of the ARPA is a one-time grant program with a finite amount of money that prioritizes small restaurants owned by veterans, women, and socially and economically disadvantaged individuals because Congress had evidence before it showing that those businesses were disproportionately exposed to harm from the COVID-19 pandemic and inadequately protected by earlier COVID-19 financial relief programs. The prioritization of women-owned businesses under § 5003, the Court found, is substantially related to the problem Congress sought to remedy because it is directly aimed at ameliorating the funding gap between women-owned and man-owned businesses that has caused the former to suffer from the COVID-19 pandemic at disproportionately higher rates. Accordingly, on the record before it, the District Court held it cannot conclude that Plaintiffs are likely to succeed on the merits of their gender-based equal-protection claim.

The Court stated: [W]hen reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.” However, the District Court did not conclude that Plaintiffs’ constitutional rights are likely being violated. Therefore, the Court held Plaintiffs are likely not suffering any legally impermissible irreparable harm.

The District Court said that if it were to enjoin distributions under § 5003 of the ARPA, others would certainly suffer harm, as these COVID-19 relief grants—which are intended to benefit businesses that have suffered disproportionate harm—would be even further delayed. In the constitutional context, the Court found that whether an injunction serves the public interest is inextricably intertwined with whether the plaintiff has shown a likelihood of success on the merits. Plaintiff, the Court held, has not demonstrated a likelihood of success on the merits. The District Court found that therefore it cannot conclude the public interest would be served by enjoining disbursement of funds under § 5003 of the ARPA.

**vi. Denial by District Court of Plaintiffs’ motion for preliminary injunction.** Subsequently, the Court addressed the Plaintiffs’ motion for a preliminary injunction. The Court found its denial of Plaintiffs’ motion for a temporary restraining order addresses the same factors that control the preliminary injunction analysis, and the Court incorporated that reasoning by reference to this motion.



The Court received from the Defendant additional materials from the Congressional record that bear upon whether a compelling interest justifies the race-based priority period at issue and an important interest justifies the gender-based priority period at issue. Defendant's additional materials from the Congressional record the Court found strengthen the prior conclusion that Plaintiffs are unlikely to succeed on the merits.

For example, a Congressional committee received the following testimony, which linked historical race and gender discrimination to the early failures of the PPP: "As noted by my fellow witnesses, closed financial networks, longstanding financial institutional biases, and underserved markets work against the efforts of women and minority entrepreneurs who need capital to start up, operate, and grow their businesses. While the bipartisan CARES Act got money out the door quickly [through the PPP] and helped many small businesses, the distribution channels of the first tranche of the funding underscored how the traditional financial system leaves many small businesses behind, particularly women- and minority-owned businesses."

There was a written statement noting that "[m]inority and women-owned business owners who lack relationships with banks or other financial institutions participating in PPP lacked early access to the program;" testimony observing that historical lack of access to capital among minority- and woman-owned businesses contributed to significantly higher closure rates among those businesses during the COVID-19 pandemic, and that the PPP disproportionately failed to reach those businesses; and evidence that lending discrimination against people of color continues to the present and contemporary wealth distribution is linked to the intergenerational impact of historical disparities in credit access.

The Court stated it could not conclude Plaintiffs are likely to succeed on the merits. The Court held that the points raised in the parties' briefing on Plaintiff's motion for preliminary injunction have not impacted the Court's analysis with respect to the remaining preliminary injunction factors. Accordingly, for the reasons stated in the Court's memorandum opinion denying Plaintiff's motion for a temporary restraining order, a preliminary injunction the Court held is not warranted and is denied.

**vii. Appeal by Plaintiff to Sixth Circuit Court of Appeals.** The Plaintiffs appealed the Court's decision to the Sixth Circuit Court of Appeals. Vitolo had asked for a temporary restraining order and ultimately a preliminary injunction that would prohibit the government from handing out grants based on the applicants' race or sex. Vitolo asked the District Court to enjoin the race and sex preferences until his appeal was decided. The District Court denied that motion too. Finally, the District Court denied the motion for a preliminary injunction. Vitolo also appealed that order.

**viii. Emergency motion for injunction pending appeal and to expedite appeal granted by Sixth Circuit.** The Plaintiffs applied to the Sixth Circuit for an Emergency Motion for Injunction Pending Appeal and to Expedite Appeal. The Sixth Circuit, two of the judges on the three-judge panel, granted the motion to expedite the appeal and then decided and filed its Opinion on May 27, 2021. *Vitolo v. Guzman*, 2021 WL 2172181 (6th Cir. May 27, 2021). The Sixth Circuit stated that this case is about whether the government can allocate limited coronavirus relief funds based on the race and sex of the applicants. The Court held that it cannot, and thus enjoined the government from using "these unconstitutional criteria when processing" Vitolo's application.



**ix. Standing and mootness.** The Sixth Circuit agreed with the District Court that Plaintiffs had standing. The Court rejected the Defendant Government’s argument that the Plaintiffs’ claims were moot because the 21-day priority phase of the grant program ended.

**x. Preliminary injunction. Application of strict scrutiny by Sixth Circuit.** Vitolo challenges the SBA’s use of race and sex preferences when distributing Restaurant Revitalization Funds. The Government concedes that it uses race and sex to prioritize applications, but it contends that its policy is still constitutional. The Court focused its strict scrutiny analysis under the factors in determining whether a preliminary injunction should issue on the first factor is typically dispositive: the factor of Plaintiffs’ likelihood of success on the merits.

**xi. Compelling interest rejected by Sixth Circuit.** The Court states that Government has a compelling interest in remedying past discrimination only when three criteria are met: First, the policy must target a specific episode of past discrimination. It cannot rest on a “generalized assertion that there has been past discrimination in an entire industry.” Second, there must be evidence of intentional discrimination in the past. Third, the Government must have had a hand in the past discrimination it now seeks to remedy. The Court said that if the Government “show[s] that it had essentially become a ‘passive participant’ in a system of racial exclusion practiced by elements of [a] local ... industry,” then the Government can act to undo the discrimination. But, the Court notes, if the Government cannot show that it actively or passively participated in this past discrimination, race-based remedial measures violate equal-protection principles.

The Government’s asserted compelling interest, the Court found, meets none of these requirements. First, the Government points generally to societal discrimination against minority business owners. But it does not identify specific incidents of past discrimination. And, the Court said, since “an effort to alleviate the effects of societal discrimination is not a compelling interest,” the Government’s policy is not permissible.

Second, the Government offers little evidence of past intentional discrimination against the many groups to whom it grants preferences. Indeed, the schedule of racial preferences detailed in the Government’s regulation—preferences for Pakistanis but not Afghans; Japanese but not Iraqis; Hispanics but not Middle Easterners—is not supported by any record evidence at all.

When the Government promulgates race-based policies, it must operate with a scalpel. And its cuts must be informed by data that suggest intentional discrimination. The broad statistical disparities cited by the government, according to the Court, are not nearly enough. But when it comes to general social disparities, the Court stated, there are too many variables to support inferences of intentional discrimination.

Third, the Court found the government has not shown that it participated in the discrimination it seeks to remedy. When opposing the plaintiffs’ motions at the District Court, the Government identified statements by members of Congress as evidence that race- and sex-based grant funding would remedy past discrimination. But rather than telling the Court what Congress learned and how that supports its remedial policy, the Court stated it said only that Congress identified a “theme” that “minority-and women-owned businesses” needed targeted relief from the pandemic because Congress’s “prior relief programs had failed to reach” them. A vague reference to a “theme” of governmental discrimination, the Court said is not enough.

To satisfy equal protection, the Court said, government must identify “prior discrimination by the governmental unit involved” or “passive participa[tion] in a system of racial exclusion.” An observation that prior, race-neutral relief efforts failed to reach minorities, the Court pointed out is no evidence at all that the government enacted or administered those policies in a discriminatory way. For these reasons, the Court concluded that the Government lacks a compelling interest in awarding Restaurant Revitalization Funds based on the race of the applicants. And as a result, the policy’s use of race violates equal protection.

***xii. Narrow tailoring rejected by Sixth Circuit.*** Even if the Government had shown a compelling state interest in remedying some specific episode of discrimination, the discriminatory disbursement of Restaurant Revitalization Funds is not narrowly tailored to further that interest. For a policy to survive narrow-tailoring analysis, the government must show “serious, good faith consideration of workable race-neutral alternatives.” This requires the government to engage in a genuine effort to determine whether alternative policies could address the alleged harm. And, in turn, a court must not uphold a race-conscious policy unless it is “satisfied that no workable race-neutral alternative” would achieve the compelling interest. In addition, a policy is not narrowly tailored if it is either overbroad or underinclusive in its use of racial classifications.

Here, the Court found that the Government could have used any number of alternative, nondiscriminatory policies, but it failed to do so. For example, the Court noted the Government contends that minority-owned businesses disproportionately struggled to obtain capital and credit during the pandemic. But, the Court stated an “obvious” race-neutral alternative exists: the Government could grant priority consideration to all business owners who were unable to obtain needed capital or credit during the pandemic.

Or, the Court said, consider another of the Government’s arguments. It contends that earlier coronavirus relief programs “disproportionately failed to reach minority-owned businesses.” But, the Court found a simple race-neutral alternative exists again: the Government could simply grant priority consideration to all small business owners who have not yet received coronavirus relief funds.

Because these race-neutral alternatives exist, the Court held the Government’s use of race is unconstitutional. Aside from the existence of race-neutral alternatives, the Government’s use of racial preferences, according to the Court, is both overbroad and underinclusive. The Court held this is also fatal to the policy.

The Government argues its program is not underinclusive because people of all colors can count as suffering “social disadvantage.” But, the Court pointed out, there is a critical difference between the designated races and the non-designated races. The designated races get a presumption that others do not.

The Government’s policy, the Court found, is “plagued” with other forms of underinclusivity. The Court considered the requirement that a business must be at least 51% owned by women or minorities. How, the Court asked, does that help remedy past discrimination? Black investors may have small shares in lots of restaurants, none greater than 51%. But does that mean those owners did not suffer economic harm from racial discrimination? The Court noted that the restaurant at issue, Jake’s Bar and Grill, is 50% owned by a Hispanic female. It is far from obvious, the Court stated, why that 1% difference in

ownership is relevant, and the Government failed to explain why that cutoff relates to its stated remedial purpose.

The dispositive presumption enjoyed by designated minorities, the Court found, bears strikingly little relation to the asserted problem the government is trying to fix. For example, the Court pointed out the government attempts to defend its policy by citing a study showing it was harder for Black business owners to obtain loans from Washington, D.C., banks. Rather than designating those owners as the harmed group, the Court noted, the government relied on the SBA's 2016 regulation granting racial preferences to vast swaths of the population. For example, individuals who trace their ancestry to Pakistan and India qualify for special treatment. But those from Afghanistan, Iran, and Iraq do not. Those from China, Japan, and Hong Kong all qualify. But those from Tunisia, Libya, and Morocco do not. The Court held this "scattershot approach" does not conform to the narrow tailoring strict scrutiny requires.

***xiii. Women-owned businesses. Intermediate scrutiny applied by Sixth Circuit.*** The Plaintiffs also challenge the Government's prioritization of woman-owned restaurants. Like racial classifications, sex-based discrimination is presumptively invalid. Government policies that discriminate based on sex cannot stand unless the Government provides an "exceedingly persuasive justification." To meet this burden, the Government must prove that (1) a sex-based classification serves "important governmental objectives," and (2) the classification is "substantially and directly related" to the Government's objectives. The Government, the Court held, fails to satisfy either prong. The Court found it failed to show that prioritizing women-owned restaurants serves an important Governmental interest. The Government claims an interest in "assisting with the economic recovery of women-owned businesses, which were 'disproportionately affected' by the COVID-19 pandemic." But, the Court stated, while remedying specific instances of past sex discrimination can serve as a valid governmental objective, general claims of societal discrimination are not enough.

Instead, the Court said, to have a legitimate interest in remedying sex discrimination, the Government first needs proof that discrimination occurred. Thus, the Government must show that the sex being favored "actually suffer[ed] a disadvantage" as a result of discrimination in a specific industry or field. Without proof of intentional discrimination against women, the Court held, a policy that discriminates on the basis of sex cannot serve a valid Governmental objective.

Additionally, the Court found, the Government's prioritization system is not "substantially related to" its purported remedial objective. The priority system is designed to fast-track applicants hardest hit by the pandemic. Yet under the Act, the Court said, all woman-owned restaurants are prioritized—even if they are not "economically disadvantaged." For example, the Court noted, that whether a given restaurant did better or worse than a male-owned restaurant next door is of no matter—as long as the restaurant is at least 51% woman-owned and otherwise meets the statutory criteria, it receives priority status. Because the Government made no effort to tailor its priority system, the Court concluded it cannot find that the sex-based distinction is "substantially related" to the objective of helping restaurants disproportionately affected by the pandemic.

***xiv. Ruling by Sixth Circuit.*** The Court held that Plaintiffs are entitled to an injunction pending appeal, thus reversing the District Court decision. Since the Government failed to justify its discriminatory policy, the Court found that Plaintiffs likely will win on the merits of their constitutional claim. And, the Court stated, similar to most constitutional cases, that is dispositive here.

The Court ordered the Government to fund the Plaintiffs' grant application, if approved, before all later-filed applications, without regard to processing time or the applicants' race or sex. The Government, however, may continue to give veteran-owned restaurants priority in accordance with the law. The Court held the preliminary injunction shall remain in place until this case is resolved on the merits and all appeals are exhausted.

**xv. Dissenting opinion.** One of the three judges filed a dissenting opinion.

**xvi. Amended complaint and second emergency motion for a temporary restraining order and preliminary injunction.** The Plaintiffs on June 1, 2021, filed an Amended Complaint in the District Court adding Additional Plaintiffs. Additional Plaintiffs' who were not involved in the initial Motion for Temporary Restraining Order, on June 2, 2021, filed a Second Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. The Court in its Order issued on June 10, 2021, found based on evidence submitted by Defendants that the allegedly wrongful behavior harming the Additional Plaintiffs cannot reasonably be expected to recur, and therefore the Additional Plaintiffs' claims are moot.

The Court thus denied the Additional Plaintiffs' motion for temporary restraining order and preliminary injunction. The Court also ordered the Defendant Government to file a notice with the Court if and/or when Additional Plaintiffs' applications have been funded, and the SBA decides to resume processing of priority applications.

The Sixth Circuit issued a briefing schedule on June 4, 2021 to the parties that requires briefs on the merits of the appeal to be filed in July and August 2021. Subsequently on July 14, 2021, the Plaintiffs-Appellants filed a Motion to Dismiss the appeal voluntarily that was supported and jointly agreed to by the Defendant-Appellee stating that Plaintiffs-Appellants have received their grant from Defendant-Appellee. The Court granted the Motion and dismissed the appeal terminating the case.

**c. Greer's Ranch Café v. Guzman**, 540 F. Supp. 3d 638, 2021 WL 2092995 (N.D. Tex. May 18, 2021). Plaintiff Philip Greer owns and operates Plaintiff Greer's Ranch Café—a restaurant which lost nearly \$100,000 in gross revenue during the COVID-19 pandemic (collectively, "Plaintiffs"). Greer sought monetary relief under the \$28.6 billion RRF created by the ARPA and administered by the SBA. See American Rescue Plan Act of 2021, Pub. L. No. 117-2 § 5003. Greer prepared an application on behalf of his restaurant, is eligible for a grant from the RRF, but has not applied because he is barred from consideration altogether during the program's first 21 days from May 3 to May 24, 2021. During that window, ARPA directed SBA to "take such steps as necessary" to prioritize eligible restaurants "owned and controlled" by "women," "veterans," and those "socially and economically disadvantaged." ARPA incorporates the definitions for these prioritized small business concerns from prior-issued statutes and SBA regulations.

To effectuate the prioritization scheme, SBA announced that, during the program's first 21 days, it "will accept applications from all eligible applicants, but only process and fund priority group applications"—namely, applications from those priority-group applicants listed in ARPA. Priority-group "[a]pplicants must self-certify on the application that they meet [priority-group] eligibility requirements" as "an eligible small business concern owned and controlled by one or more women, veterans, and/or socially and economically disadvantaged individuals."

Plaintiffs sued Defendants SBA and Isabella Casillas Guzman, in her official capacity as administrator of SBA. Shortly thereafter, Plaintiffs moved for a temporary restraining order, enjoining the use of race and sex preferences in the distribution of the fund.

***i. Substantial likelihood of success on the merits. Standing. Equal Protection Claims.*** The Court first held that the Plaintiffs had standing to proceed, and then addressed the likelihood of success on the merits of their equal protection claims. As to race-based classifications, Plaintiffs challenged SBA's implementation of the "socially disadvantaged group" and "socially disadvantaged individual" race-based presumption and definition from SBA's Section 8(a) government-contract-procurement scheme into the RRF distribution priority scheme as violative of the Equal Protection Clause. Defendants argued the race-conscious rules serve a compelling interest and are narrowly tailored, satisfying strict scrutiny.

The parties agreed strict scrutiny applies where government imposes racial classifications, like here where the RRF prioritization scheme incorporates explicit racial categories from Section 8(a). Under strict scrutiny, the Court stated, the Government must prove a racial classification is "narrowly tailored" and "furthers compelling governmental interests."

Defendants propose as the Government's compelling interest "remedying the effects of past and present discrimination" by "supporting small businesses owned by socially and economically disadvantaged small business owners ... who have borne an outsized burden of economic harms of [the] COVID-19 pandemic." To proceed based on this interest, the Court said, Defendants must provide a "strong basis in evidence for its conclusion that remedial action was necessary."

As its strong basis in evidence, Defendants point to the factual findings supporting the implementation of Section 8(a) itself in removing obstacles to government contract procurement for minority-owned businesses, including House Reports in the 1970s and 1980s and a D.C. District Court case discussing barriers for minority business formation in the 1990s and 2000s. The Court recognized the "well-established principle about the industry-specific inquiry required to effectuate Section 8(a)'s standards." Thus, the Court looked to Defendants' industry-specific evidence to determine whether the government has a "strong basis in evidence to support its conclusion that remedial action was necessary."

According to Defendants, "Congress has heard a parade of evidence offering support for the priority period prescribed by ARPA." The Defendants' evidence was summarized by the Court as follows:

A House Report specifically recognized that "underlying racial, wealth, social, and gender disparities are exacerbated by the pandemic," that "[w]omen—especially mothers and women of color—are exiting the workforce at alarming rates," and that "eight out of ten minority-owned businesses are on the brink of closure."

Expert testimony describing how "[b]usinesses headed by people of color are less likely to have employees, have fewer employees when they do, and have less revenue compared to white-owned businesses" because of "structural inequities resulting from less wealth compared to whites who were able to accumulate wealth with the support of public policies," and that having fewer employees or lower revenue made COVID-19-related loans to those businesses less lucrative for lenders.

Expert testimony explaining that “businesses with existing conventional lending relationships were more likely to access PPP funds quickly and efficiently,” and that minorities are less likely to have such relationships with lenders due to “pre-existing disparities in access to capital.”

House Committee on Small Business Chairwoman Nydia Velázquez’s evidence offered into the record showing that “[t]he COVID-19 public health and economic crisis has disproportionately affected Black, Hispanic, and Asian-owned businesses, in addition to women-owned businesses” and that “minority-owned and women-owned businesses were particularly vulnerable to COVID-19, given their concentration in personal services firms, lower cash reserves, and less access to credit.”

Witness testimony that emphasized the “[u]nderrepresentation by women and minorities in both funds and in small businesses accessing capital” and noted that “[t]he amount of startup capital that a Black entrepreneur has versus a White entrepreneur is about 1/36th.”

Other expert testimony noting that in many cases, minority-owned businesses struggled to access earlier COVID-19 relief funding, such as PPP loans, “due to the heavy reliance on large banks, with whom they have had historically poor relationships.”

Evidence presented at other hearings showed that minority and woman-owned business lack access to capital and credit generally, and specifically suffered from inability to access earlier COVID-19 relief funds, and also described “long-standing structural racial disparities in small business ownership and performance.”

A statement of the Center for Responsible Lending described present-day “overtly discriminatory practices by lenders” and “facially neutral practices with disparate effects” that deprive minority-owned businesses of access to capital.

This evidence, the Court found, “largely falters for the same reasoning outlined above—it lacks the industry-specific inquiry needed to support a compelling interest for a government-imposed racial classification.” The Court, quoting the *Croson* decision, stated that while it is mindful of these statistical disparities and expert conclusions based on those disparities, “[d]efining these sorts of injuries as ‘identified discrimination’ would give ... governments license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor.”

Thus, the Court concluded that the Government failed to prove that it likely has a compelling interest in “remedying the effects of past and present discrimination” in the restaurant industry during the COVID-19 pandemic. For the same reason, the Court found that Defendants have failed to show an “important governmental objective” or exceedingly persuasive justification necessary to support a sex-based classification.

Having concluded Defendants lack a compelling interest or persuasive justification for their racial and gender preferences, the Court stated it need not address whether the RRF is related to those particular interests. Accordingly, the Court held that Plaintiffs are likely to succeed on the merits of their claim that Defendants’ use of race-based and sex-based preferences in the administration of the RRF violates the Equal Protection Clause of the Constitution.



**ii. Conclusion.** The Court granted Plaintiffs' motion for temporary restraining order, and enjoins Defendants to process Plaintiffs' application for an RRF grant.

Subsequently, the Plaintiffs filed a Notice of Dismissal without prejudice on May 19, 2021.

**d. Faust v. Vilsack**, 519 F. Supp. 3d 470, 2021 WL 2409729, US District Court, E.D. Wisconsin (June 10, 2021). This is a federal district court decision that on June 10, 2021 granted Plaintiffs' motion for a temporary restraining order holding the federal government's use of racial classifications in awarding funds under the loan-forgiveness program violated the Equal Protection Clause of the US Constitution.

**i. Background.** Twelve white farmers, who resided in nine different states, including Wisconsin, brought this action against Secretary of Agriculture and Administrator of Farm Service Agency (FSA) seeking to enjoin United States Department of Agriculture (USDA) officials from implementing a loan-forgiveness program for farmers and ranchers under Section 1005 of the ARPA by asserting eligibility to participate in program based solely on racial classifications violated equal protection. Plaintiffs/Farmers filed a motion for temporary restraining order.

The District Court granted the motion for a temporary restraining order.

The USDA describes how the loan-forgiveness plan will be administered on its website. It explains, "Eligible Direct Loan borrowers will begin receiving debt relief letters from FSA in the mail on a rolling basis, beginning the week of May 24, 2021. After reviewing closely, eligible borrowers should sign the letter when they receive it and return to FSA." It advises that, in June 2021, the FSA will begin to process signed letters for payments, and "about three weeks after a signed letter is received, socially disadvantaged borrowers who qualify will have their eligible loan balances paid and receive a payment of 20% of their total qualified debt by direct deposit, which may be used for tax liabilities and other fees associated with payment of the debt."

**ii. Application of strict scrutiny standard.** The Court noted Defendants assert that the government has a compelling interest in remedying its own past and present discrimination and in assuring that public dollars drawn from the tax contributions of all citizens do not serve to finance the evil of private prejudice. "The government has a compelling interest in remedying past discrimination only when three criteria are met." *Citing, Vitolo*, F.3d at, 2021 WL 2172181, at \*4; *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (plurality opinion).

The Court stated the Sixth Circuit recently summarized the three requirements as follows:

"First, the policy must target a specific episode of past discrimination. It cannot rest on a 'generalized assertion that there has been past discrimination in an entire industry.'" *J.A. Croson Co.*, 488 U.S. at 498, 109."

"Second, there must be evidence of intentional discrimination in the past. *J.A. Croson Co.*, 488 U.S. at 503, 109 S.Ct. 706. Statistical disparities don't cut it, although they may be used as evidence to establish intentional discrimination..."

"Third, the government must have had a hand in the past discrimination it now seeks to remedy. So if the government 'shows that it had essentially become a 'passive participant' in a system of racial



exclusion practiced by elements of a local industry,” then the government can act to undo the discrimination. *J.A. Croson Co.*, 488 U.S. at 492, 109 S.Ct. 706. But if the government cannot show that it actively or passively participated in this past discrimination, race-based remedial measures violate equal protection principles.”

The Court found that: “Defendants have not established that the loan-forgiveness program targets a specific episode of past or present discrimination. Defendants point to statistical and anecdotal evidence of a history of discrimination within the agricultural industry. ... But Defendants cannot rely on a ‘generalized assertion that there has been past discrimination in an entire industry’ to establish a compelling interest.” *Citing, J.A. Croson Co.*, 488 U.S. at 498; *see also Parents Involved*, 551 U.S. at 731, (plurality opinion) (“remedying past societal discrimination does not justify race-conscious government action”). The Court pointed out “Defendants’ evidence of more recent discrimination includes assertions that the vast majority of funding from more recent agriculture subsidies and pandemic relief efforts did not reach minority farmers and statistical disparities.”

The Court concluded that: “Aside from a summary of statistical disparities, Defendants have no evidence of intentional discrimination by the USDA in the implementation of the recent agriculture subsidies and pandemic relief efforts.” “An observation that prior, race-neutral relief efforts failed to reach minorities is no evidence at all that the government enacted or administered those policies in a discriminatory way.” *Citing, Vitolo*, 2021 WL 2172181, at \*5. The Court held “Defendants have failed to establish that it has a compelling interest in remedying the effects of past and present discrimination through the distribution of benefits on the basis of racial classifications.”

In addition, the Court found “Defendants have not established that the remedy is narrowly tailored. To do so, the government must show “serious, good faith consideration of workable race-neutral alternatives.” *Citing, Grutter v. Bollinger*, 539 U.S. 306, 339, (2003). Defendants contend that Congress has unsuccessfully implemented race-neutral alternatives for decades, but the Court concluded, “they have not shown that Congress engaged “in a genuine effort to determine whether alternative policies could address the alleged harm” here. *Citing, Vitolo*, 2021 WL 2172181, at \*6.

The Court stated: “The obvious response to a government agency that claims it continues to discriminate against farmers because of their race or national origin is to direct it to stop: it is not to direct it to intentionally discriminate against others on the basis of their race and national origin.”

The Court found “Congress can implement race-neutral programs to help farmers and ranchers in need of financial assistance, such as requiring individual determinations of disadvantaged status or giving priority to loans of farmers and ranchers that were left out of the previous pandemic relief funding. It can also provide better outreach, education, and other resources. But it cannot discriminate on the basis of race.” On this record, the Court held, “Defendants have not established that the loan forgiveness program under Section 1005 is narrowly tailored and furthers compelling government interests.”

**iii. Conclusion.** The Court found a nationwide injunction is appropriate in this case. “To ensure that Plaintiffs receive complete relief and that similarly-situated nonparties are protected, a universal temporary restraining order in this case is proper.”

The Court on July 6, 2021 issued an Order that stayed the Plaintiffs’ motion for a preliminary injunction, holding that the District Court in *Wynn v. Vilsack* (M.D. Fla. June 23, 2021), Case No. 3:21-cv-514-MMH-

JRK, U.S. District Court, Middle District of Fla. (*see below*), granted the Plaintiffs a nationwide injunction, which thus rendered the need for an injunction in this case as not necessary; but the Court left open the possibility of reconsidering the motion depending on the results of the *Wynn* case. For the same reason, the Court dissolved the temporary restraining order.

Subsequently, the Defendants filed a Motion to Stay Proceedings, and the Court granted the Motion on August 20, 2021, requiring the Defendants to file a status report every six months on the progress of the *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.) case, which was a class action.

As a result of the federal government's recent repeal of ARPA Section 1005 and the subsequent dismissal of the related class action in *Miller v. Vilsack*, the parties filed a Stipulation of Dismissal, and the case in September 2022 was dismissed without prejudice by the Court.

**e. *Wynn v. Vilsack***, (M.D. Fla. June 23, 2021), 2021 WL 2580678, Case No. 3:21-cv-514-MMH-JRK, U.S. District Court, Middle District of Fla. In *Wynn v. Vilsack* (M.D. Fla. June 23, 2021), 2021 WL 2580678, Case No. 3:21-cv-514-MMH-JRK, U.S. District Court, Middle District of Fla., which is virtually the same case as the *Faust v. Vilsack*, 2021 WL 2409729 (June 10, 2021) case in district court in Wisconsin, the Court granted the Plaintiffs' Motion for Preliminary Injunction holding: "Defendants Thomas J. Vilsack, in his official capacity as U.S. Secretary of Agriculture and Zach Ducheneaux, in his official capacity as Administrator, Farm Service Agency... are immediately enjoined from issuing any payments, loan assistance, or debt relief pursuant to Section 1005(a)(2) of the American Rescue Plan Act of 2021 until further order from the Court."

The Court in *Faust* granted the Plaintiffs' Motion for Temporary Restraining Order for similar reasons and as discussed below in an Order issued on July 6, 2021, stayed a Motion for Preliminary Injunction and dissolved the Temporary Restraining Order as not necessary based on the *Wynn* holding imposing a nationwide injunction.

**i. Background.** In *Wynn*, Plaintiff challenges Section 1005 of the ARPA, which provides debt relief to "socially disadvantaged farmers and ranchers" (SDFRs). (Doc 1; Complaint). Specifically, Section 1005(a)(2) authorizes the Secretary of Agriculture to pay up to 120% of the indebtedness, as of January 1, 2021, of an SDFR's direct FSA loans and any farm loan guaranteed by the secretary (collectively, farm loans). Section 1005 incorporates 7 U.S.C. § 2279's definition of an SDFR as "a farmer or rancher who is a member of a socially disadvantaged group." 7 U.S.C. § 2279(a)(5). A "socially disadvantaged group" is defined as "a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." 7 U.S.C. § 2279(a)(6). Racial or ethnic groups that categorically qualify as socially disadvantaged are "Black, American Indian/Alaskan Native, Hispanic, Asian, and Pacific Islander." (See also U.S. Dep't of Agric., American Rescue Plan Debt Payments, <https://www.farmers.gov/americanrescueplan> [last visited June 22, 2021].) White or Caucasian farmers and ranchers do not.

Plaintiff is a white farmer in Jennings, Florida who has qualifying farm loans but is ineligible for debt relief under Section 1005 solely because of his race. He sues Thomas J. Vilsack, the current Secretary of Agriculture, and Zach Ducheneaux, the administrator of the USDA and head of the FSA, in their official capacities. In his two-count Complaint, Plaintiff alleges Section 1005 violates the equal protection component of the Fifth Amendment's Due Process Clause (Count I) and, by extension, is not in accordance with the law such that its implementation should be prohibited by the Administrative

Procedure Act (APA) (Count II). Plaintiff seeks (1) a declaratory judgment that Section 1005's provision limiting debt relief to SDFRs violates the law, (2) a preliminary and permanent injunction prohibiting the enforcement of Section 1005, either in whole or in part, (3) nominal damages, and (4) attorneys' fees and costs.

**ii. Strict scrutiny.** The Court, similar to the court in *Faust*, applied the strict scrutiny test and held that on the record presented, the Court expresses serious concerns over whether the Government will be able to establish a strong basis in evidence warranting the implementation of Section 1005's race-based remedial action. The statistical and anecdotal evidence presented, the Court stated, appears insufficient.

**iii. Compelling governmental interest.** The Government stated that its "compelling interest in relieving debt of [SDFRs] is two-fold: to remedy the well-documented history of discrimination against minority farmers in USDA loan (and other) programs and prevent public funds from being allocated in a way that perpetuates the effects of discrimination. In cases applying strict scrutiny, the Court said the Eleventh Circuit has instructed:

In practice, the interest that is alleged in support of racial preferences is almost always the same—remediating past or present discrimination. That interest is widely accepted as compelling. As a result, the true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest.

*Ensley Branch, N.A.A.C.P. v. Seibels*, 31 F.3d 1548, 1564 (11th Cir. 1994) (citations omitted). Thus, the Court found that to survive strict scrutiny, the Government must show a strong basis in evidence for its conclusion that past racial discrimination warrants a race-based remedy. *Id.* at 1565. The law on how a governmental entity can establish the requisite need for a race-based remedial program has evolved over time. In *Engineering Contractors Association of South Florida v. Metro Dade County (Eng'g Contractors)*, the Court noted the Eleventh Circuit summarized the kinds of evidence that would and would not be indicative of a need for remedial action in the local construction industry. 122 F.3d 895, 906-07 (11th Cir. 1997). The Court explained:

A strong basis in evidence cannot rest on an amorphous claim of societal discrimination, on simple legislative assurances of good intention, or on congressional findings of discrimination in the national economy. However, a governmental entity can justify affirmative action by demonstrating gross statistical disparities between the proportion of minorities hired and the proportion of minorities willing and able to do the work. Anecdotal evidence may also be used to document discrimination, especially if buttressed by relevant statistical evidence.

Here, to establish the requisite evidence of discrimination, the Court stated the Government relies on substantial legislative history, testimony given by experts at various congressional committee meetings, reports prepared at Congress' request regarding discrimination in USDA programs, and floor statements made by supporters of Section 1005 in Congress. Based on the historical evidence of discrimination, Congress took remedial measures to correct USDA's past discrimination against SDFRs.

Due to the significant remedial measures previously taken by Congress, for purposes of this case, the Court pointed out that historical evidence does little to address the need for continued remediation through Section 1005. Rather, for the Government to show that additional remedial action is warranted, it must present evidence either that the prior remedial measures failed to adequately remedy the harm

caused by USDA's past discrimination or that the Government remains a "passive participant" in discrimination in USDA loans and programs. (See *Eng'g Contractors*, 122 F.3d at 911.) The Court found that this is where the evidence of continued discrimination becomes crucial, and it may be inadequate.

The Government contends its prior measures were insufficient to remedy the effects of past discrimination, but the Court found the actual evidentiary support for the inadequacy of past remedial measures is limited and largely conclusory. Where a race-neutral basis for a statistical disparity can be shown, the Court concluded it can give that statistical evidence less weight. (See *Eng'g Contractors*, 122 F.3d at 923.) Here, the statistical discrepancies presented by the Government, the Court found, can be explained by non-race related factors—farm size and crops grown—and the Court finds it unlikely that this evidence, standing alone, would constitute a strong basis for the need for a race-based remedial program.

On the record presented here, the Court expressed "serious concerns over whether the Government will be able to establish a strong basis in evidence warranting the implementation of Section 1005's race-based remedial action. The statistical and anecdotal evidence presented appears less substantial than that deemed insufficient in *Eng'g Contractors*, which included detailed statistics regarding the governmental entity's hiring of minority-owned businesses for government construction projects; marketplace data on the financial performance of minority and nonminority contractors; and two studies by experts. *Id.* at 912."

The Court said to the extent remedial action is warranted based on the current evidentiary showing, it would likely be directed to the need to address the barriers identified in the Government Accountability Office (GAO) Reports such as providing incentives or guarantees to commercial lenders to make loans to SDFRs, increasing outreach to SDFRs regarding the availability of USDA programs, ensuring SDFRs have equal access to the same financial tools as nonminority farmers, and efforts to standardize the way USDA services SDFR loans so that it comports with the level of service provided to white farmers.

The Court held that nevertheless, at this stage of the proceedings, it need not determine whether the Government ultimately will be able to establish a compelling need for this broad, race-based remedial legislation. This is because, assuming the Government's evidence establishes the existence of a compelling governmental interest warranting some form of race-based relief, the Court found Plaintiff has convincingly shown that the relief provided by Section 1005 is not narrowly tailored to serve that interest.

**iv. Narrow tailoring.** Even if the Government establishes a compelling governmental interest to enact Section 1005, the Court stated Plaintiff has shown a substantial likelihood of success on his claim that, as written, the law violates his right to equal protection because it is not narrowly tailored to serve that interest. "The essence of the 'narrowly tailored' inquiry is the notion that explicitly racial preferences ... must be only a 'last resort' option." (*Eng'g Contractors*, 122 F.3d at 926.)

In determining whether a race-conscious remedy is appropriate, the Court noted the Supreme Court instructs courts to examine several factors, including the necessity for the relief and the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the numerical goals to the relevant labor market; and the impact of the relief on the rights of third parties." *U.S. v. Paradise*, 480 U.S. 149, 171 (1987).

The Court found that the necessity of debt relief to the group targeted by Section 1005, as opposed to a remedial program that more narrowly addresses the discrimination that has been documented by the Government, is anything but evident. More importantly, the Court stated Section 1005's rigid, categorical, race-based qualification for relief is the antithesis of flexibility. The debt relief provision applies strictly on racial grounds irrespective of any other factor. Every person who identifies him or herself as falling within a socially disadvantaged group who has a qualifying farm loan with an outstanding balance as of January 1, 2021, receives up to 120% debt relief—and no one else receives any debt relief.

Regardless of farm size, an SDFR receives up to 120% debt relief. And regardless of whether an SDFR is having the most profitable year ever and not remotely in danger of foreclosure, that SDFR receives up to 120% debt relief. Yet, the Court said, a small white farmer who is on the brink of foreclosure can do nothing to qualify for debt relief. Race or ethnicity is the sole, inflexible factor that determines the availability of relief provided by the Government under Section 1005.

The Government cited the Eleventh Circuit decision in *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 910 (11th Cir. 1990) (*Cone Corp.*). The Court in *Cone Corp.* pointed to several critical factors that distinguished the County's MBE Program in that case from that rejected in *Croson*: "(1) the county had tried to implement a less restrictive MBE program for six years without success; (2) the MBE participation goals were flexible in part because they took into account project-specific data when setting goals; (3) the program was also flexible because it provided race-neutral means by which a low bidder who failed to meet a program goal could obtain a waiver; and (4) unlike the program rejected in *Croson*, the county's program did not benefit 'groups against whom there may have been no discrimination,' instead its MBE program 'target[ed] its benefits to those MBEs most likely to have been discriminated against..." *Id.* at 916-17.

The Court found that "Section 1005's inflexible, automatic award of up to 120% debt relief only to SDFRs stands in stark contrast to the flexible, project by project *Cone Corp.* MBE program."

The Court noted that in *Cone Corp.*, although the MBE program included a minority participation goal, the County "would grant a waiver if qualified minority businesses were uninterested, unavailable, or significantly more expensive than non-minority businesses." In this way, the Court in *Cone Corp.* observed the County's MBE program "had been carefully crafted to minimize the burden on innocent third parties." (*citing Cone Corp.*, 908 F.2d at 911).

The Court concluded the "120% debt relief program is untethered to an attempt to remedy any specific instance of past discrimination. And unlike the *Cone Corp.* MBE program, Section 1005 is absolutely rigid in the relief it awards and the recipients of that relief and provides no waiver or exception by which an individual who is not a member of a socially disadvantaged group can qualify. In this way, Section 1005 is far more similar to the remedial schemes found not to be narrowly tailored in *Croson* and other similar cases."

Additionally, on this record, the Court found it appears that Section 1005 simultaneously manages to be both overinclusive and underinclusive. "It appears to be overinclusive in that it will provide debt relief to SDFRs who may never have been discriminated against or faced any pandemic-related hardship." The Court found "Section 1005 also appears to be underinclusive in that, as mentioned above, it fails to provide any relief to those who suffered the brunt of the discrimination identified by the Government. It

provides no remedy at all for an SDFR who was unable to obtain a farm loan due to discriminatory practices or who no longer has qualifying farm loans as a result of prior discrimination.”

Finally, the Court concluded there is little evidence that the Government gave serious consideration to, or tried, race-neutral alternatives to Section 1005. “The Government recounts the remedial programs Congress previously implemented that allegedly have failed to remedy USDA’s discrimination against SDFRs. ... However, almost all of the programs identified by the Government were not race-neutral programs; they were race-based programs that targeted things like SDFR outreach efforts, improving SDFR representation on local USDA committees, and providing class-wide relief to SDFRs who were victims of discrimination. The main relevant race-neutral program the Government referenced was the first round of pandemic relief, which did go disproportionately to White farmers.” However, the Court stated, “the underlying cause of the statistical discrepancy may be disparities in farm size or crops grown, rather than race.”

Thus, on the current record, in addition to showing that Section 1005 is inflexible and both overinclusive and underinclusive, the Court held Plaintiff is likely to show that Congress “failed to give serious good faith consideration to the use of race and ethnicity-neutral measures” to achieve the compelling interest supporting Section 1005. (*Ensley Branch*, 122 F.3d at 927.) Congress does not appear to have turned to the race-based remedy in Section 1005 as a “last resort,” but instead appears to have chosen it as an expedient and overly simplistic, but not narrowly tailored, approach to addressing prior and ongoing discrimination at USDA.

Having considered all of the pertinent factors associated with the narrow tailoring analysis and the record presented by the parties, the Court is not persuaded that the Government will be able to establish that Section 1005 is narrowly tailored to serve its compelling governmental interest. The Court holds “it appears to create an inflexible, race-based discriminatory program that is not tailored to make the individuals who experienced discrimination whole, increase participation among SDFRs in USDA programs, or irradiate the evils of discrimination that remain following Congress’ prior efforts to remedy the same.” Therefore, the Court holds that Plaintiff has established a strong likelihood of showing that Section 1005 violates his right to equal protection under the law because it is not narrowly tailored to remedy a compelling governmental interest.

**v. Conclusion.** Defendants Thomas J. Vilsack, in his official capacity as U.S. Secretary of Agriculture, and Zach Ducheneaux, in his official capacity as administrator of the Farm Service Agency, their agents, employees and all others acting in concert with them, who receive actual notice of this Order by personal service or otherwise, are immediately enjoined from issuing any payments, loan assistance, or debt relief pursuant to Section 1005(a)(2) of the American Rescue Plan Act of 2021 until further order from the Court.

The Defendants filed a Motion to Stay Proceedings and a Motion to Stay Administratively Timely Deadlines. The Court on August 2, 2021 denied the Motion to Stay Proceedings.

As a result of the federal government's recent repeal of ARPA Section 1005 in September 2022 and the subsequent Dismissal of the related Class Action in *Miller v. Vilsack*, the parties have filed a Stipulation of Dismissal, and the case was dismissed in September 2022 by the Court.



The Plaintiffs are seeking attorneys fees and costs of the litigation, which request is pending at the time of this report.

***f. Ultima Services Corp. v. U.S. Department of Agriculture, U.S. Small Business Administration, et. al.,*** U.S. District Court, E.D. Tennessee, 2:20-cv-00041-DCLC-CRW. Plaintiff, a small business contractor, recently filed this Complaint in federal district court in Tennessee against the USDA, SBA, et. al. challenging the federal Section 8(a) program, and it appears as applied to a particular industry that provide administrative and/or technical support to USDA offices that implement the Natural Resources Conservation Service (NRCS), an agency of the USDA.

Plaintiff, a non-qualified Section 8(a) Program contractor, alleges the contracts it used to bid on have been set aside for a Section 8(a) contractor. Plaintiff thus claims it is not able to compete for contracts that it could in the past.

Plaintiff alleges that neither the SBA or the USDA has evidence that any racial or ethnic group is underrepresented in the administrative and/or technical support service industry in which it competes, and there is no evidence that any underrepresentation was a consequence of discrimination by the federal government or that the government was a passive participant in discrimination.

Plaintiff claims that the Section 8(a) Program discriminates on the basis of race, and that the SBA and USDA do not have a compelling governmental interest to support the discrimination in the operation of the Section 8(a) Program. In addition, Plaintiff asserts that even if defendants had a compelling governmental interest, the Section 8(a) Program as operated by defendants is not narrowly tailored to meet any such interest.

Thus, Plaintiffs allege defendants' race discrimination in the Section 8(a) Program violates the Fifth Amendment to the United States Constitution. Plaintiff seeks a declaratory judgment that defendants are violating the Fifth Amendment, 42 U.S.C. Section 1981, injunctive relief precluding defendants from reserving certain Natural Resources Conservation Service contracts for the Section 8(a) Program, monetary damages, and other relief.

The defendants filed a Motion to Dismiss asserting *inter alia* that the Court does not have jurisdiction. Plaintiff has filed written discovery, which was stayed pending the outcome of the Motion to Dismiss.

The Court on March 31, 2021 issued an Memorandum Opinion and Order granting in part and denying in part the Motion to Dismiss. The Court held that plaintiffs had standing to challenge the constitutionality of the Section 8(a) Program as violating the Fifth Amendment, and held Plaintiff's claim that the Section 8(a) Program is unconstitutional because it discriminates on the basis of race is sufficient to state a claim. The Court also granted in part Defendants' Motion to Dismiss holding that plaintiff's 42 U.S.C. Section 1981 claims are dismissed as that section does not apply to federal agencies. Thus, the case proceeds on the merits of the constitutionality of the Section 8 (a) Program.

The Court on April 9, 2021 entered a Scheduling Order providing that defendants shall file an Answer by April 28, 2021 and set a Bench Trial for October 11, 2022 with Dispositive Motions due by June 6, 2022. Defendants filed their Answer to the Complaint on April 28, 2021. Plaintiffs on May 20, 2021 filed a Motion to Amend/Revise Complaint, Defendants filed their Response to Motion to Amend on June 4,



2021 and Plaintiffs filed on June 8, 2021 their Reply to the Response. The Motion was denied by the Court.

Dispositive motions for summary judgment have been filed by the parties in June and July 2022, which are pending.

The Court on December 8, 2022 issued an Order requesting the parties address whether a potential decision by the Supreme Court overruling the *Grutter v. Bollinger*, 539 U.S. 306 (2003) case in the pending Harvard University and University of North Carolina (UNC) admission cases would impact the issues in this case and, if so, whether this matter should remain stayed until the Supreme Court releases its decision in the Harvard and UNC Students for Fair Admissions (SFFA) cases challenging the use of race-conscious admissions processes.

The parties filed on December 22, 2022 their responses to the Court's Order both agreeing that the Court should not stay its decision in this case, but differing on the impact of the SFFA cases: The Federal Defendants stating a decision by the Supreme Court overruling *Grutter* in the SFFA cases would not impact this case because they involve fundamentally different issues and legal bases for the challenged actions. The Plaintiffs responded by saying it may or may not impact this case depending on the nature of the decision by the Supreme Court.

***g. Mark One Electric Company, Inc. v. City of Kansas City, Missouri***, 2022 WL 3350525 (8th Cir. 2022). In 2020, the Court stated that Kansas City began restricting participation in its MBE and WBE Programs to those entities whose owners satisfied a personal net worth limitation. Mark One Electric Co., a woman-owned business whose owner's personal net worth exceeded the limit, appealed the dismissal of its lawsuit challenging the Kansas City MBE/WBE Program as unconstitutional because of the personal net worth limitation. The Court held that under its precedent, the program's personal net worth limitation is a valid narrow tailoring measure, and therefore the Court affirmed the District Court's dismissal.

In 2016, the Court pointed out that the City conducted a disparity study to determine whether the MBE/WBE program followed best practices for affirmative action programs and whether the program would survive constitutional scrutiny. The 2016 Disparity Study analyzed data from 2008 to 2013 and provided quantitative and qualitative evidence of race and gender discrimination. The Court said the study concluded that the City had a compelling interest in continuing the program because "minorities and women continue to suffer discriminatory barriers to full and fair access to [Kansas City] and private sector contracts."

The study also provided recommendations to ensure the program would be narrowly tailored, including adding a personal net worth limitation like the net worth cap in the USDOT DBE program.

The Court stated the City enacted a new version of the MBE/WBE Program based on the 2016 Disparity Study on October 25, 2018. The amended program incorporated a personal net worth limitation, as recommended by the study, which would require an entity to establish that its "owner's or, for businesses with multiple owners, each individual owner's personal net worth is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program." [See Kan. City, Mo. Code of General Ordinances ch. 3, art. IV, § 3-421(a)(34), (47) (2021)].

On the day after the personal net worth limitation took effect, the Court said, that Mark One Electric initiated an action against the City under 42 U.S.C. § 1983, challenging the personal net worth limitation. Mark One had been certified as a WBE since 1996, but based on the new personal net worth threshold, it would lose its certification despite otherwise meeting the requirements of the WBE program.

Mark One, the Court noted, acknowledged that, based on the 2016 Disparity Study, there was a strong basis in evidence for the City to take remedial action, but alleged the study's recommendation that the City consider adding a personal net worth limitation was not supported by either qualitative or quantitative analysis. Mark One, the Court stated, claimed that the personal net worth limitation is not narrowly tailored to remedy past discrimination and that the program as a whole is not narrowly tailored because of the personal net worth limitation.

The Court pointed out that Mark One asserted, "[T]he City has adopted an arbitrary and capricious re-definition of who qualifies as a women [sic] or minority and seeks to remedy a discrimination of which there is no evidence." According to Mark One, the personal net worth limitation is "not specifically and narrowly framed to accomplish the city's purpose," and therefore the program is unconstitutional.

The City moved to dismiss the complaint, arguing that the personal net worth limitation is a valid measure to narrowly tailor the MBE/WBE program. The District Court granted the City's motion, finding that the personal net worth limitation was permissible as a matter of law.

The Court found that race-based affirmative action programs designed to remediate the effects of discrimination toward minority-owned subcontractors, such as Kansas City's, are subject to strict scrutiny, meaning that the program is constitutional "only if [it is] narrowly tailored to further compelling governmental interests." *Citing: Sherbrooke Turf, Inc. v. Minn. Dep't of Transp.*, 345 F.3d 964, 968–69 (8<sup>th</sup> Cir. 2003) (*quoting Grutter v. Bollinger*, 539 U.S. 306, 326, (2003)). The Court pointed out that although Mark One is a woman-owned business and not a minority-owned business, neither party contests review of the program under the strictest scrutiny.

The Court stated the legal standard: "To survive strict scrutiny, the government must first articulate a legislative goal that is properly considered a compelling government interest," such as stopping perpetuation of racial discrimination and remediating the effects of past discrimination in government contracting. [*Citing, Sherbrooke Turf*, 345 F.3d at 969]. The City must "demonstrate a 'strong basis in the evidence' supporting its conclusion that race-based remedial action [is] necessary to further that interest." *Id. citing City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500, (1989). The Court found that Mark One does not dispute that the City has a compelling interest in remedying the effects of race and gender discrimination on City contract opportunities for minority- and women-owned businesses. And Mark One, the Court said, has conceded the 2016 Disparity Study provides a strong basis in evidence for the MBE/WBE program to further that interest.

Second, the City's program must be narrowly tailored, which requires that "the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose." *Id. Citing Sherbrooke*, at 971. The Plaintiff, according to the Court, has the burden to establish that an affirmative action program is not narrowly tailored. In determining whether a race-conscious remedy is narrowly tailored, the Court held it looks at factors such as the efficacy of alternative remedies, the flexibility and duration of the race-conscious remedy, the relationship of the numerical

goals to the relevant labor market, and the impact of the remedy on third parties.” *Citing Sherbrook, at 971, and United States v. Paradise*, 480 U.S. 149, 171, 187, (1987).

The Court stated that Mark One attacked the personal net worth limitation from two angles. Mark One first argued that the personal net worth limitation in the City’s program should be independently assessed under strict scrutiny, separately from the program as a whole, and asks the Court to find the provision unenforceable through the program’s severability clause.

Under strict scrutiny, Mark One argued, the personal net worth limitation is unconstitutional in its own right because it was implemented by the City without a strong basis in evidence and excludes a subset of women and minorities based on a classification unrelated to the discrimination MBEs and WBEs face.

The Court found that Mark One offers no authority for the premise that an individual narrow tailoring measure that differentiates between individuals or businesses based on a nonsuspect classification, such as net worth, is subject to strict scrutiny in isolation. The Court pointed out the MBE/WBE program as a whole must be premised on a strong basis in evidence under strict scrutiny review. But, the Court held the City is not required to provide a separate individual strong basis in evidence for the personal net worth limitation because this limitation, on its own, is subject only to rational basis review.

Mark One also challenged the overall narrow tailoring of the MBE/WBE program, claiming that the personal net worth limitation makes the program unconstitutional because it excludes MBEs and WBEs that have experienced discrimination. The Court held that under its precedent, this argument is unavailing. The Court said that it has previously found the USDOT DBE personal net worth limitation—the limitation the City adopted for the program—to be a valid narrow tailoring measure that ensures flexibility in an affirmative action program and reduces the impact on third parties by introducing a race- and gender-neutral requirement for eligibility. *See Sherbrooke Turf*, 345 F.3d at 972–73 (finding the Federal DBE Program narrowly tailored on its face in part because “wealthy minority owners and wealthy minority-owned firms are excluded” through the personal net worth limitation, so “race is made relevant in the program, but it is not a determinative factor.”)

The Court found that Mark One had not plausibly alleged that the \$1.32 million personal net worth limitation in the City’s MBE/WBE Program is different, or serves a distinguishable purpose, from the personal net worth limitation in the federal program such that it is not likewise a valid narrow tailoring measure here.

Mark One claimed that its exclusion from the program despite its status as a woman-owned business shows that the program is unlawful. The Court noted that it did not minimize the fact that individuals and businesses may experience race- and gender-based discrimination in the marketplace regardless of wealth, and that a minority- or women-owned enterprise may be excluded from the program based solely on the owner’s personal net worth, despite having experienced discrimination in its trade or industry and regardless of the revenue of the enterprise itself or the financial status of any of its minority and women employees.

But, the Court found that the City does not have a constitutional obligation to make its program as broad as may be legally permissible, so long as it directs its resources in a rational manner not motivated by a discriminatory purpose.

Though Mark One argued that the personal net worth limitation is “arbitrary and capricious because the city chose to discriminate against the very minorities and women its [MBE]/WBE Program was designed to help,” the Court stated there was no allegation in the operative complaint that the City was motivated by a discriminatory purpose when it implemented the personal net worth limitation.

The Court concluded that under *Sherbrooke Turf*, 345 F.3d at 972-73, the City may choose to add this limitation in its program as a rational, race and gender-neutral narrow tailoring measure.

This list of pending and recent cases is not exhaustive, but in addition to the cases analyzed and referenced above, these cases may potentially have an impact on the study and implementation of MBE/WBE/DBE programs, related legislation, implementation of the Federal DBE Program by state and local governments and public authorities and agencies, and other types of programs impacting participation of MBE/WBE/DBEs/social and economic disadvantaged businesses.

It is noteworthy that there were other recent cases similar to *Faust v. Vilsack*, 21-cv.-548 (E.D. Wis.) and *Wynn v. Vilsack*, 3:21-cv-514 (M.D. Fla.) cited and discussed above, including a class action filed in *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.), and separate lawsuits seeking to enjoin USDA officials from implementing a loan-forgiveness program for farmers and ranchers under Section 1005 of the ARPA by asserting eligibility to participate in program based solely on racial classifications violated equal protection: *Carpenter v. Vilsack*, 21-cv-103-F (D. Wyo.); *Holman v. Vilsack*, 1:21-cv-1085 (W.D. Tenn.); *Kent v. Vilsack*, 3:21-cv-540 (S.D. Ill.); *McKinney v. Vilsack*, 2:21-cv-212 (E.D. Tex.); *Joyner v. Vilsack*, 1:21-cv-1089 (W.D. Tenn.); *Dunlap v. Vilsack*, 2:21-cv-942 (D. Or.); *Rogers v. Vilsack*, 1:21-cv-1779 (D. Colo.); *Tiegs v. Vilsack*, 3:21-cv-147 (D.N.D.); *Nuest v. Vilsack*, 21-cv-1572 (D. Minn.). Many of these cases had granted the federal Defendants Motions to Stay pending resolution of the of the class challenge to Section 1005 of the ARPA in the *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.) class action litigation.

As a result of the federal government's recent repeal of ARPA Section 1005 and the subsequent dismissal of the related class action in *Miller v. Vilsack*, the parties in many of these cases have filed Stipulations of Dismissal, and the cases in September 2022 have been dismissed by the Courts. Certain of these cases are pending based on the Plaintiffs having filed motions for attorneys fees and costs of the litigation.

**i. Ongoing review.** The above represents a summary of the legal framework pertinent to the study and implementation of DBE/MBE/WBE or race-, ethnicity-, or gender-neutral programs, the Federal DBE and ACDBE Programs, and the implementation of the Federal DBE and ACDBE Programs by state and local government recipients of federal funds. Because this is a dynamic area of the law, the framework is subject to ongoing review as the law continues to evolve.

# APPENDIX C.

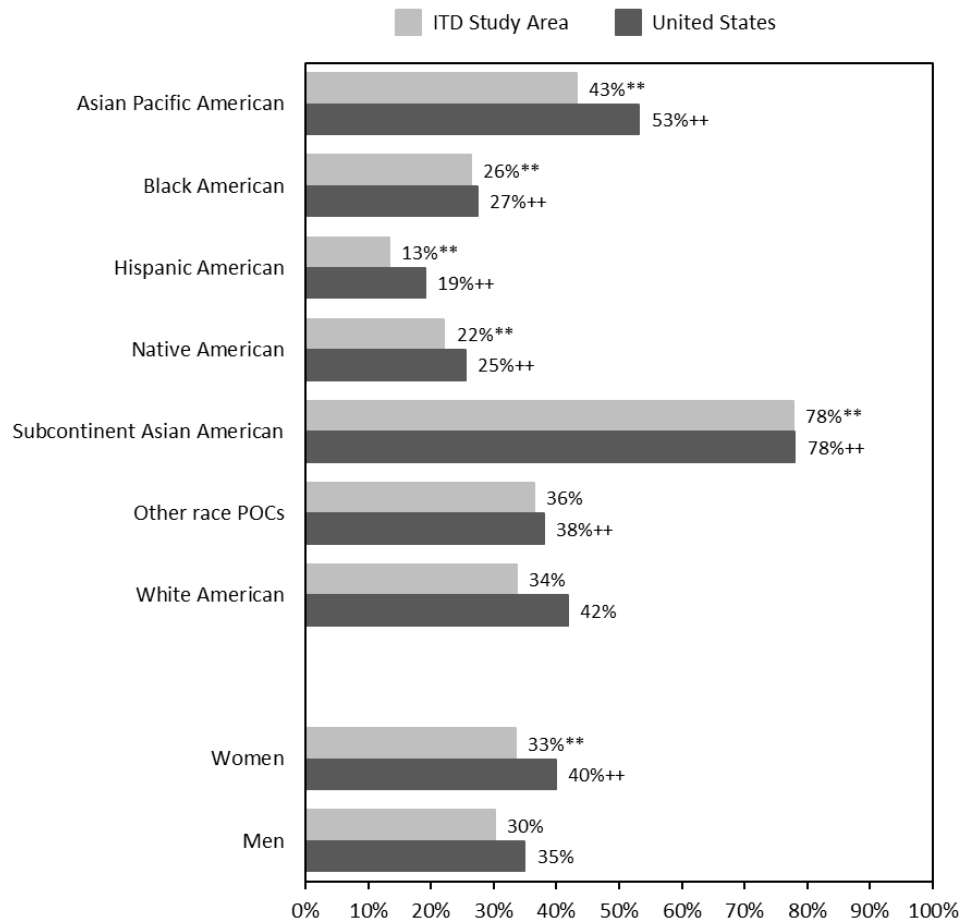
## Quantitative Analyses of Marketplace Conditions

BBC Research & Consulting (BBC) conducted quantitative analyses of marketplace conditions in the ITD Study Area to assess whether persons of color (POCs), women, and POC- and woman-owned businesses face any barriers in the state's transportation-related construction and professional services industries. For most analyses, the study team defined the ITD Study Area as the geographical area including Idaho; Asotin County, Washington; and Spokane County, Washington. We examined marketplace conditions in four primary areas:

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

Appendix C presents a series of figures that show results from those analyses. Key results along with information from secondary research are presented in Chapter 3.

**Figure C-1.**  
**Percentage of all workers age 25 and older with at least a four-year degree,**  
**ITD Study Area and the United States, 2015-2019**

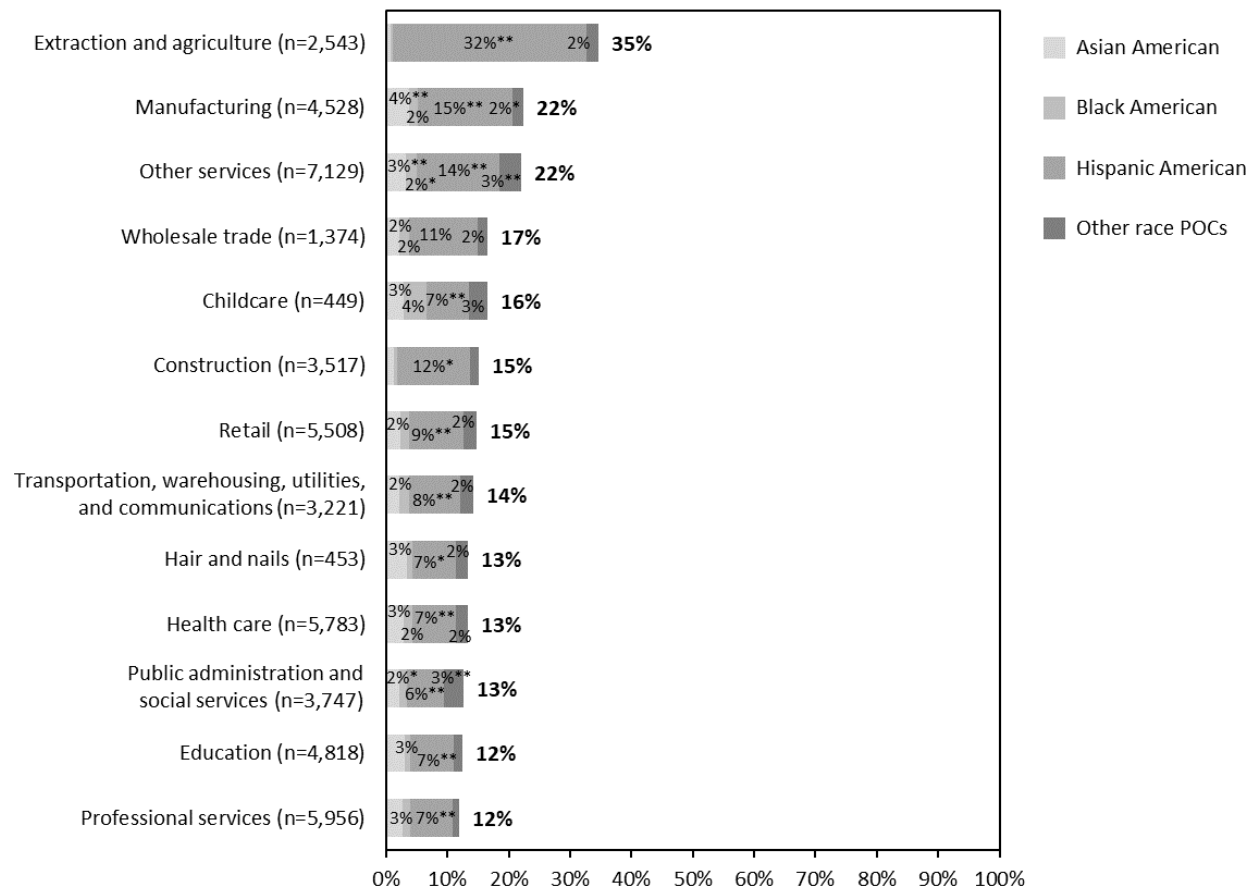


Note: \*\*, ++ Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 95% confidence level for the ITD Study Area and the United States, respectively.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-1 indicates that, compared to white American workers (34%), Black American (26%), Hispanic American (13%), and Native American workers (22%) are substantially less likely to have four-year college degrees in the ITD Study Area.

**Figure C-2.**  
**Percent representation of POCs in various industries in ITD Study Area, 2015-2019**



Notes: \*, \*\* Denotes that the difference in proportions between POC workers in the specified industry and all industries is statistically significant at the 90% and 95% confidence level, respectively.

The representation of POCs among all ITD Study Area workers is 3% for Asian Americans, 1% for Black Americans, 11% for Hispanic Americans, 2% for Other race POCs and 17% for all POCs considered together.

"Other race POCs" includes Native Americans and other races.

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services; Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services; Workers in child day care services, barber shops, beauty salons, nail salons, and other personal were combined into one category of childcare, hair, and nails.

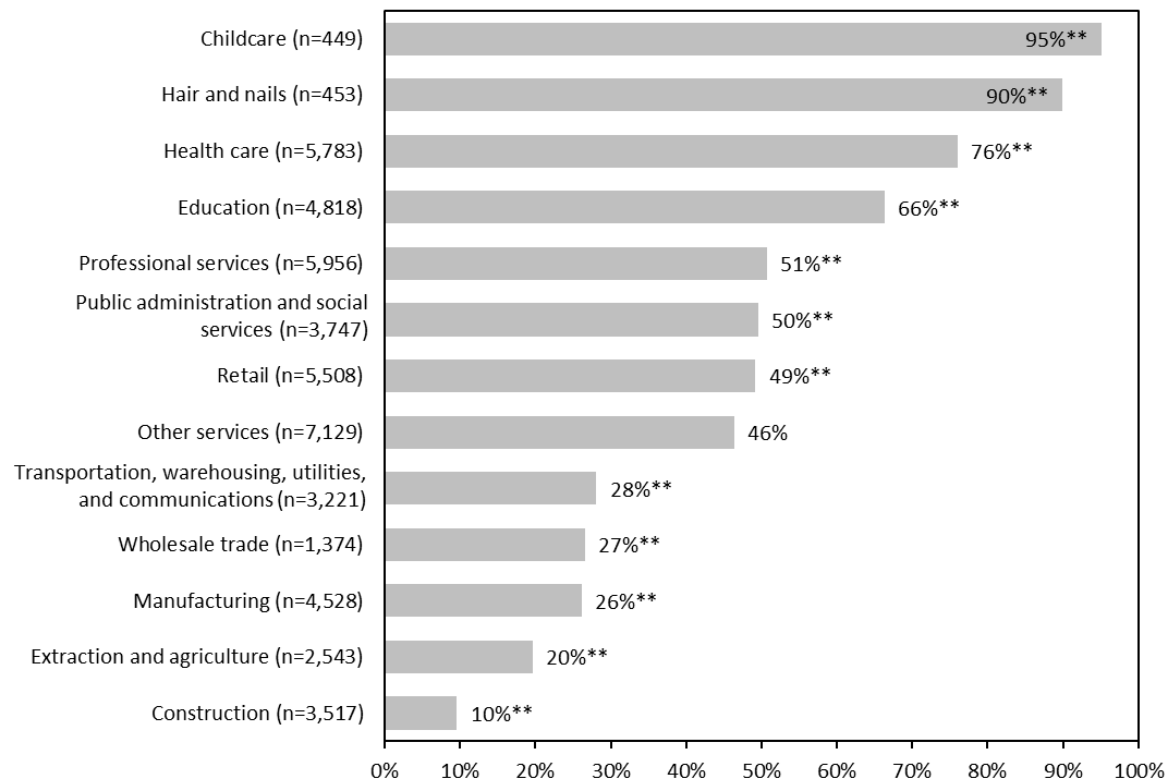
All labels less than 2% were removed due to poor visibility.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>

Figure C-2 indicates that the ITD Study Area industries with the highest representations of POC workers are extraction and agriculture (35%), manufacturing (22%), and other services (22%). The ITD Study Area industries with the lowest representations of POC workers are public administration and social services (13%), education (12%), and professional services (12%).



**Figure C-3.**  
**Percent representation of women in various industries in ITD Study Area, 2015-2019**



Notes: \*\* Denotes that the difference in proportions between women workers in the specified industry and all industries is statistically significant at the 95% confidence level.

The representation of women among all ITD Study Area workers is 46%

Workers in the finance, insurance, real estate, legal services, accounting, advertising, architecture, management, scientific research, and veterinary services industries were combined to one category of professional services; Workers in the rental and leasing, travel, investigation, waste remediation, arts, entertainment, recreation, accommodations, food services, and select other services were combined into one category of other services; Workers in barber shops, beauty salons, nail salons, and other personal were combined into one category of hair and nails.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-3 indicates that the ITD Study Area industries with the highest representations of women workers are childcare (95%), hair and nails (90%), and health care (76%). The industries with the lowest representations of women are manufacturing (26%), extraction and agriculture (20%), and construction (10%).

**Figure C-4.  
Demographic  
characteristics of  
workers in study-  
related industries  
and all industries,  
ITD Study Area  
and the United  
States, 2015-2019**

Notes:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 90% or 95% confidence level, respectively.

"Other race POCs" includes Native Americans and other races.

Source:

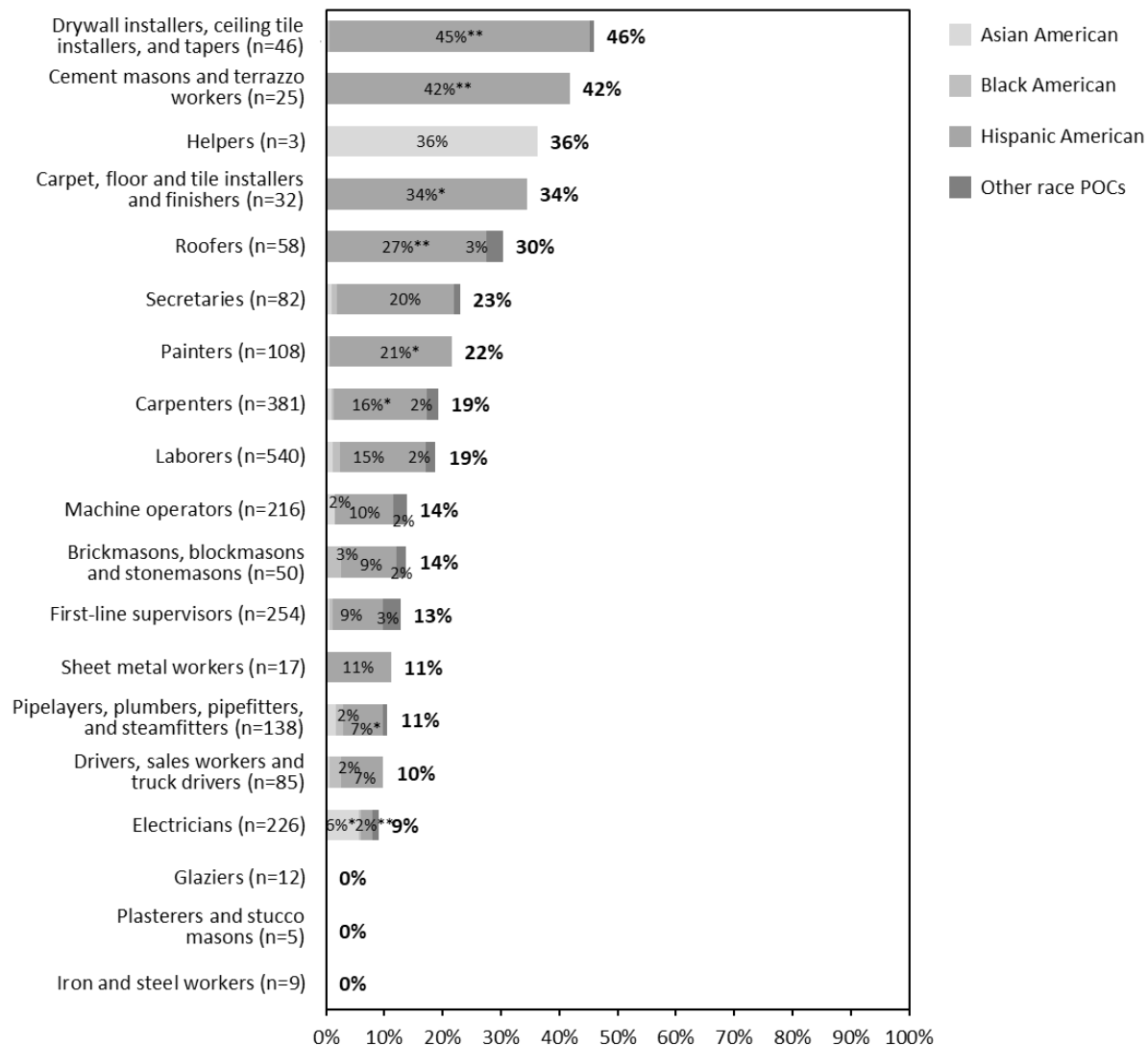
BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

ITD Study Area	All Industries (n=49,661)	Construction (n=3,517)	Professional Services (n=845)	Non-prof. services, goods, and supplies (n=193)
<b>Race/ethnicity</b>				
Asian American	2.6 %	1.2 % **	3.5 %	0.3 % **
Black American	1.4 %	0.6 % **	1.0 %	1.0 %
Hispanic American	10.6 %	11.8 % *	5.1 % **	3.5 % **
Other race POCs	2.1 %	1.4 % **	1.0 % **	2.5 %
<b>Total minority</b>	<b>16.6 %</b>	<b>15.1 %</b>	<b>10.7 %</b>	<b>7.3 %</b>
White American	83.4 %	84.9 % **	89.3 % **	92.7 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
<b>Gender</b>				
Women	46.1 %	9.6 % **	28.6 % **	36.1 % **
Men	53.9 %	90.4 % **	71.4 % **	63.9 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
United States	All Industries (n=7,818,941)	Construction (n=485,217)	Professional Services (n=170,585)	Non-prof. services, goods, and supplies (n=31,999)
<b>Race/ethnicity</b>				
Asian American	6.5 %	2.1 % **	9.2 % **	4.3 % **
Black American	12.6 %	5.9 % **	6.7 % **	28.5 % **
Hispanic American	17.3 %	28.6 % **	9.1 % **	15.3 % **
Other race POCs	1.4 %	1.6 % **	1.0 % **	1.7 % **
<b>Total minority</b>	<b>37.9 %</b>	<b>38.3 %</b>	<b>26.0 %</b>	<b>49.7 %</b>
White American	62.1 %	61.7 % **	74.0 % **	50.3 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>
<b>Gender</b>				
Women	47.2 %	9.7 % **	34.5 % **	36.8 % **
Men	52.8 %	90.3 % **	65.5 % **	63.2 % **
<b>Total</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>	<b>100.0 %</b>

Figure C-4 indicates that, compared to all industries considered together:

- Smaller percentages of Asian Americans (1.2%), Black Americans (0.6%), and other race POCs (1.4%) work in the ITD Study Area construction industry. In addition, a smaller percentage of women (9.6%) work in the ITD Study Area construction industry.
- Smaller percentages of Hispanic Americans (5.1%) and other race POCs (1.0%) work in the ITD Study Area professional services industry. In addition, a smaller percentage of women (28.6%) work in the ITD Study Area professional services industry.
- Smaller percentages of Asian Americans (0.3%) and Hispanic Americans (3.5%) work in the ITD Study Area non-professional services, goods, and supplies industry. In addition, a smaller percentage of women (36.1%) work in the ITD Study Area non-professional services, goods, and supplies industry.

**Figure C-5.**  
**Percent representation of POCs in selected construction occupations in ITD Study Area, 2015-2019**



Notes: \*, \*\* Denotes that the difference in proportions between POC workers in the specified occupation and all construction occupations considered together is statistically significant at the 90% and 95% confidence level, respectively.

The representation of POCs among all ITD Study Area construction workers is 1% for Asian Americans, 1% for Black Americans, 12% for Hispanic Americans, 1% for Other race POCs and 15% for all POCs considered together.

"Other race POCs" includes Native Americans and other races.

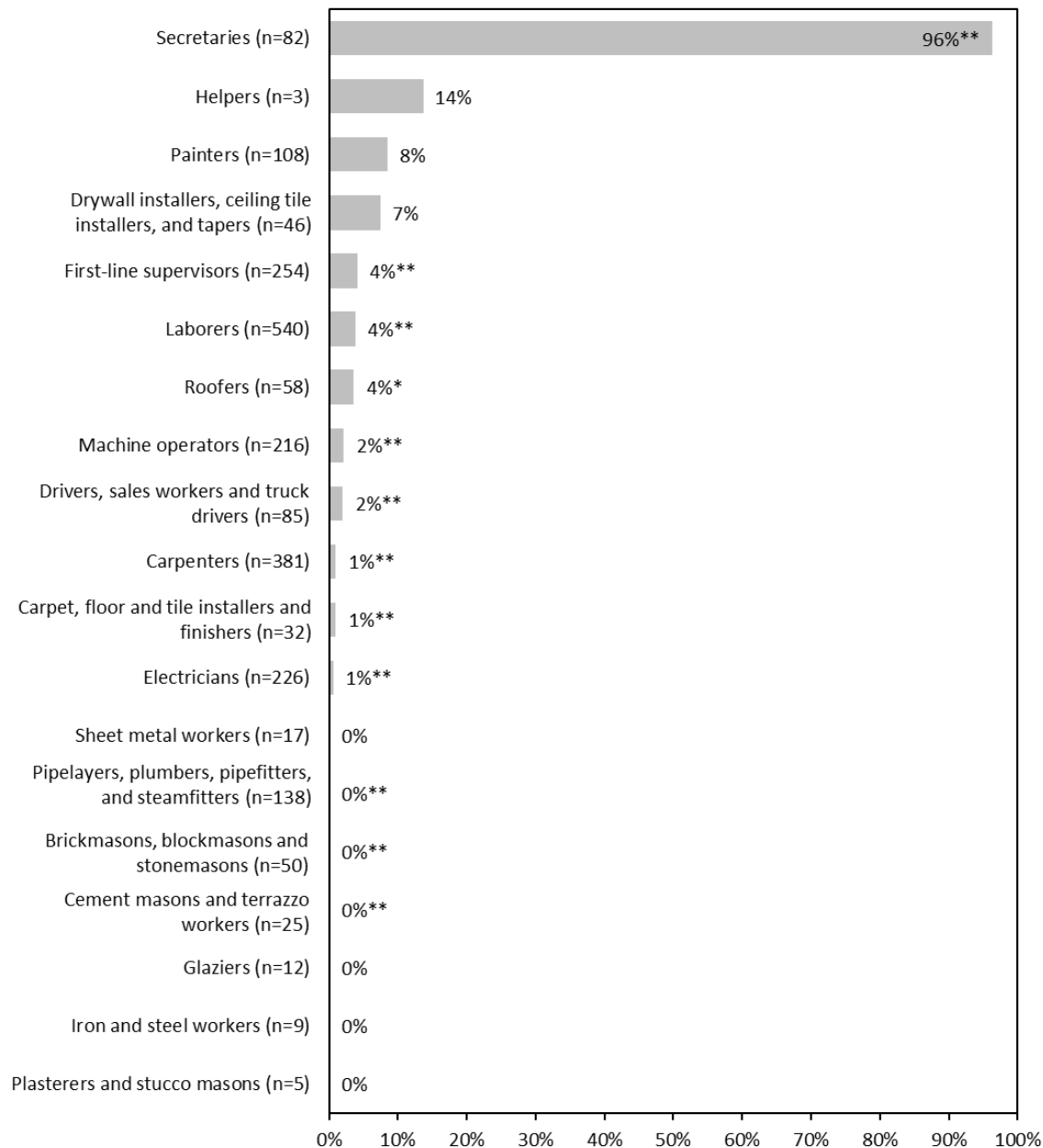
Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

All labels lower than 2% were removed due to poor visibility.

Source: BBC Research & Consulting from 2015-2019 ACS 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-5 indicates that the construction occupations with the highest representations of POC workers in the ITD Study Area are drywall installers, ceiling tile installers, and tapers (45.91%); cement masons and terrazzo workers (41.80%); and helpers (36.27%). The construction occupations with the lowest representations of POC workers are glaziers (0%), plasterers and stucco masons (0%), and iron and steel workers (0%).

**Figure C-6.**  
**Percent representation of women in selected construction occupations in ITD Study Area, 2015-2019**



Notes: \*\* Denotes that the difference in proportions between women workers in the specified occupation and all construction occupations considered together is statistically significant at the 95% confidence level.

The representation of women among all ITD study area construction workers is 10%

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of machine operators.

Source: BBC Research & Consulting from 2015-2019 ACS 5% sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-6 indicates that the construction occupations in ITD Study Area with the highest representations of women workers are secretaries (96%), helpers (14%), and painters (8%). The construction occupations with the lowest representations of women workers are glaziers (0%), iron and steel workers (0%), and plasterers and stucco masons (0%).

**Figure C-7.  
Percentage of non-owner  
workers who worked as a  
manager in each study-  
related industry, ITD Study  
Area and the United States,  
2015-2019**

Notes:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans (or between women and men) is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

"Other race POCs" includes Native Americans and other races.

Source:

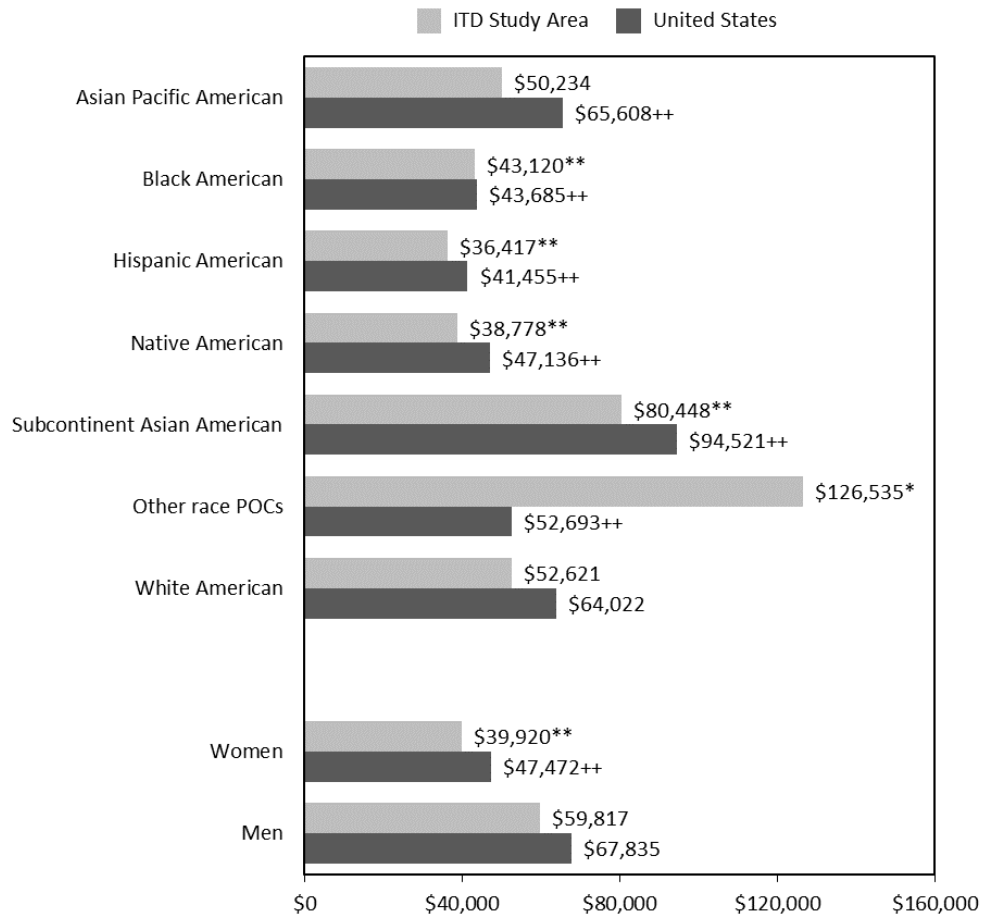
BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

ITD Study Area	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian American	1.8 % **	0.0 % †	0.0 % †
Black American	12.8 % †	0.0 % †	0.0 % †
Hispanic American	2.1 % **	5.0 %	0.0 % †
Other race POCs	5.5 %	16.2 % †	0.0 % †
White American	6.8 %	2.9 %	2.8 %
<b>Gender</b>			
Women	8.0 %	0.3 % **	0.0 %
Men	5.9 %	4.1 %	4.1 %
<b>All individuals</b>	<b>6.1 %</b>	<b>3.0 %</b>	<b>2.6 %</b>
<b>United States</b>			
<b>Race/ethnicity</b>			
Asian American	8.5 % **	2.2 % **	2.3 %
Black American	3.4 % **	1.8 % **	1.0 % **
Hispanic American	2.6 % **	2.3 % **	1.0 % **
Other race POCs	4.9 % **	3.4 %	1.9 %
White American	9.2 %	3.7 %	2.5 %
<b>Gender</b>			
Women	6.4 % **	2.0 % **	1.3 % **
Men	6.8 %	4.0 %	2.1 %
<b>All individuals</b>	<b>6.7 %</b>	<b>3.3 %</b>	<b>1.8 %</b>

Figure C-7 indicates that:

- Smaller percentages of Asian Americans (1.8%) and Hispanic Americans (2.1%) work as managers in the ITD Study Area construction industry than white Americans (6.8%).
- A smaller percentage of women (0.3%) than men (4.1%) work as managers in the ITD Study Area professional services industry.

**Figure C-8.**  
**Mean annual wages, ITD Study Area and the United States, 2015-2019**



Note: The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

\*\*/++ Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 95% confidence level for ITD Study Area and the United States as a whole, respectively.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-8 indicates that, compared to white Americans (\$52,621), Black Americans (\$43,120), Hispanic Americans (\$36,417), and Native Americans (\$38,778) in the ITD Study Area earn substantially less in wages. In addition, compared to men (\$59,817), women (\$39,920) earn less in wages.

**Figure C-9.  
Predictors of annual wages in the ITD  
Study Area, 2015-2019**

Notes:

The regression includes 26,481 observations.

The sample universe is all non-institutionalized, employed individuals aged 25-64 that are not in school, the military, or self-employed.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence levels, respectively.

The referent for each set of categorical variables is as follows: white Americans for the race variables, high school diploma for the education variables, manufacturing for the industry variables.

Source:

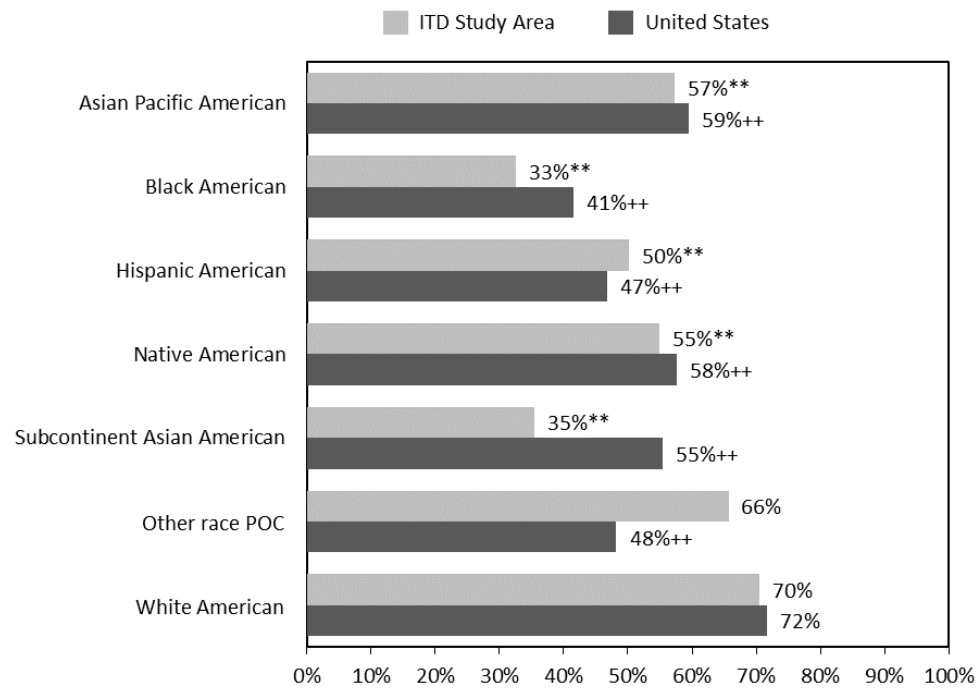
BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Variable	Exponentiated Coefficient
Constant	8339.817 **
Asian Pacific American	0.878 **
Black American	0.840 **
Hispanic American	0.917 **
Native American	0.932
Subcontinent Asian American	1.089
Other race POCs	1.723 *
Women	0.736 **
Less than high school education	0.875 **
Some college	1.161 **
Four-year degree	1.536 **
Advanced degree	2.096 **
Disabled	0.732 **
Military experience	0.949 **
Speaks English well	1.275 **
Age	1.054 **
Age-squared	1.000 **
Married	1.167 **
Children	0.993
Number of people over 65 in household	0.865 **
Public sector worker	1.118 **
Manager	1.295 **
Part time worker	0.354 **
Extraction and agriculture	0.930 **
Construction	0.967
Wholesale trade	0.998
Retail trade	0.810 **
Transportation, warehouse, & information	1.019
Professional services	1.083 **
Education	0.644 **
Health care	1.141 **
Other services	0.749 **
Public administration and social services	0.821 **

Figure C-9 indicates that, compared to being white American in the ITD Study Area, being Asian Pacific American, Black American, Hispanic American, or other race POC is related to lower annual wages, even after accounting for various other personal characteristics. (For example, the model indicates that being Black American is associated with making approximately \$0.84 for every dollar a white American makes, all else being equal.) In addition, compared to being a man in the ITD Study Area, being a woman is related to lower annual wages, even after statistically accounting for other personal characteristics.



**Figure C-10.**  
**Home ownership rates, ITD Study Area and the United States, 2015-2019**



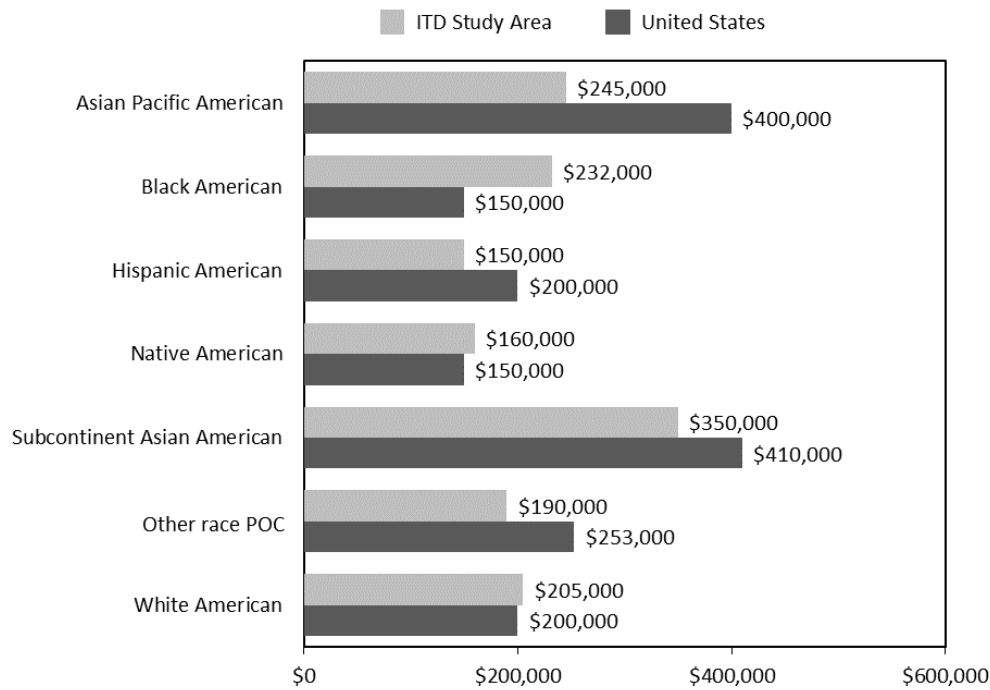
Note: The sample universe is all households.

\*\*, ++ Denotes statistically significant differences from white Americans at the 95% confidence level for ITD Study Area and the United States as a whole, respectively.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-10 indicates that Asian Pacific Americans (57%), Black Americans (33%), Hispanic Americans (50%), Native Americans (55%), and Subcontinent Asian Americans (35%) in the ITD Study Area exhibit homeownership rates lower than that of white Americans (70%).

**Figure C-11.**  
**Median home values, ITD Study Area and the United States, 2015-2019**



Note: The sample universe is all owner-occupied housing units.

Source: BBC Research & Consulting from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-11 indicates that Hispanic Americans (\$150,000), Native Americans (\$160,000), and other race POCs (\$190,000) in the ITD Study Area appear to own homes that, on average, are worth less than those of white American homeowners (\$205,000).

**Figure C-12.**  
**Denial rates of conventional**  
**purchase loans for high-income**  
**households, ITD Study Area and**  
**the United States, 2021**

Note:

High-income borrowers are those households with 120% or more of the HUD/FFIEC area median family income (MFI). For 2012 and forward, the MFI data are calculated by the FFIEC. For years 1998 through 2011, the MFI data were calculated by HUD.

Source:

FFIEC HMDA data 2011 and 2021. The 2011 raw data extract was obtained from the Consumer Financial Protection Bureau HMDA data tool: <https://www.consumerfinance.gov/data-research/hmda/>. The 2021 raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: <https://ffiec.cfpb.gov/data-browser/>.

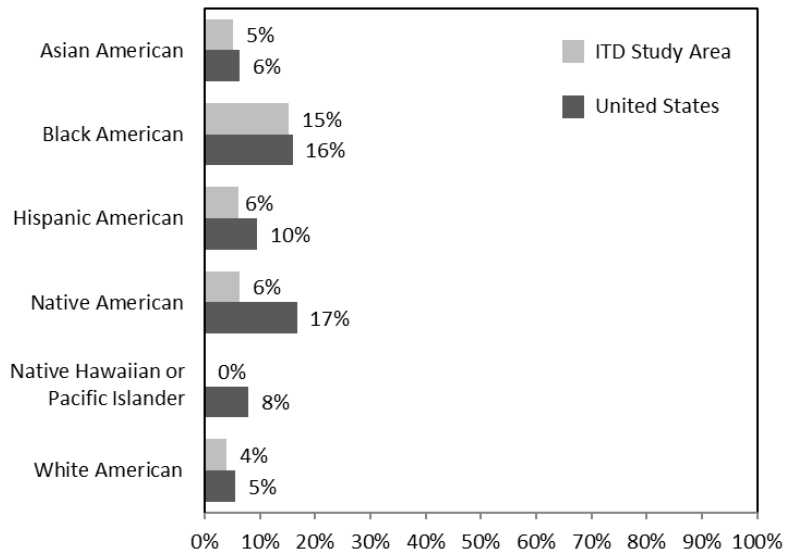


Figure C-12 indicates that, in 2021, Asian Americans (5%), Black Americans (15%), Hispanic Americans (6%), and Native Americans (6%) in the ITD Study Area appeared to be denied home loans at higher rates than white Americans (4%).

**Figure C-13.**  
**Percent of conventional home**  
**purchase loans that were**  
**subprime, ITD Study Area and**  
**the United States, 2021**

Note:

Subprime loans are those with a rate spread of 1.5 or more. Rate spread is the difference between the covered loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set.

Source:

FFIEC HMDA data 2011 and 2021. The 2011 raw data extract was obtained from the Consumer Financial Protection Bureau HMDA data tool: <https://www.consumerfinance.gov/data-research/hmda/>. The 2021 raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: <https://ffiec.cfpb.gov/data-browser/>.

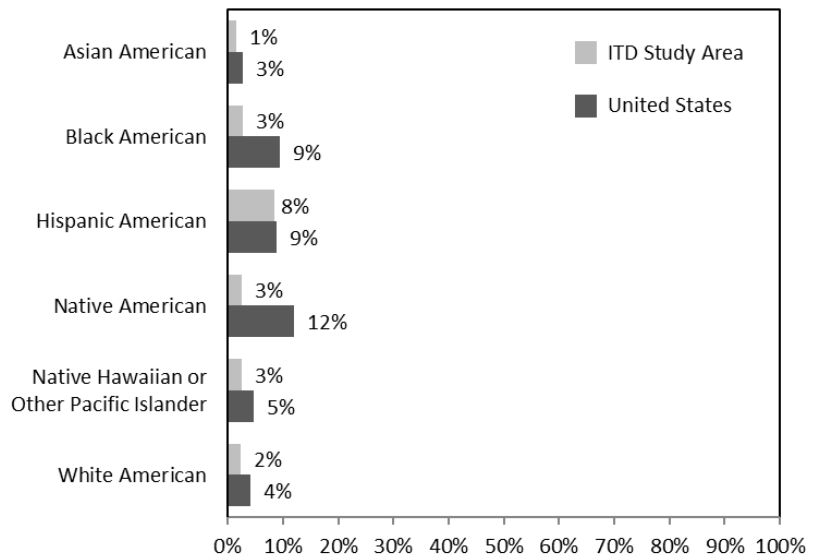


Figure C-13 indicates that, in 2021, Black Americans (3%), Hispanic Americans (8%), Native Americans (3%), and Native Hawaiian or other Pacific Islanders (3%) in the ITD Study Area appear to be awarded subprime conventional home purchase loans at greater rates than white Americans (2%).

**Figure C-14.**  
**Business loan denial rates,**  
**Mountain Division and the**  
**United States, 2003**

Notes:

\*\* Denotes that the difference in proportions from businesses owned by white American men is statistically significant at the 95% confidence level.

The Mountain Division consists of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

Source:

BBC from 2003 Survey of Small Business Finance.

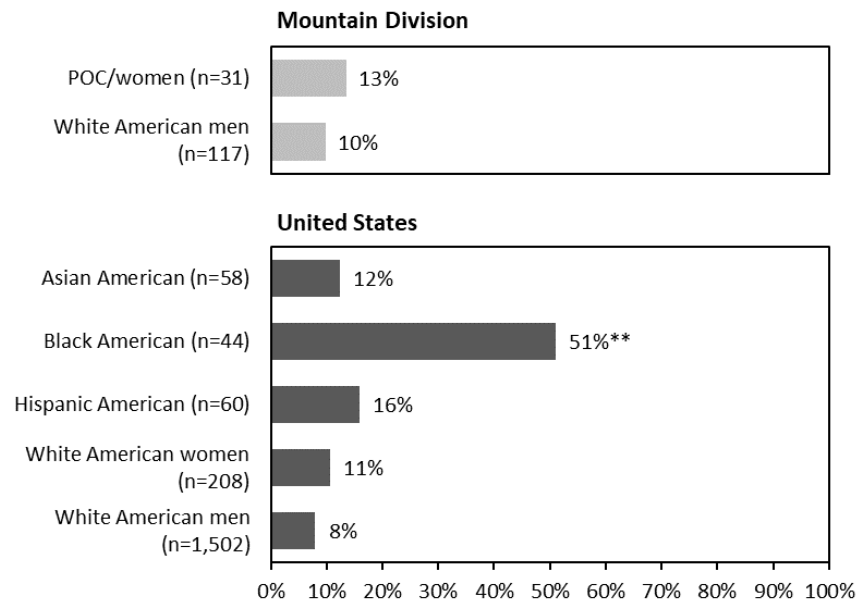


Figure C-14 indicates that, in 2003, POC- and woman-owned businesses in the Mountain Division were denied business loans at greater rates than businesses owned by white men.

**Figure C-15.**  
**Businesses that did not**  
**apply for loans due to fear**  
**of denial, Mountain**  
**Division and the United**  
**States, 2003**

Notes:

\*\* Denotes that the difference in proportions from businesses owned by white American men is statistically significant at the 95% confidence level.

The Mountain Division consists of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

Source:

BBC from 2003 Survey of Small Business Finance.

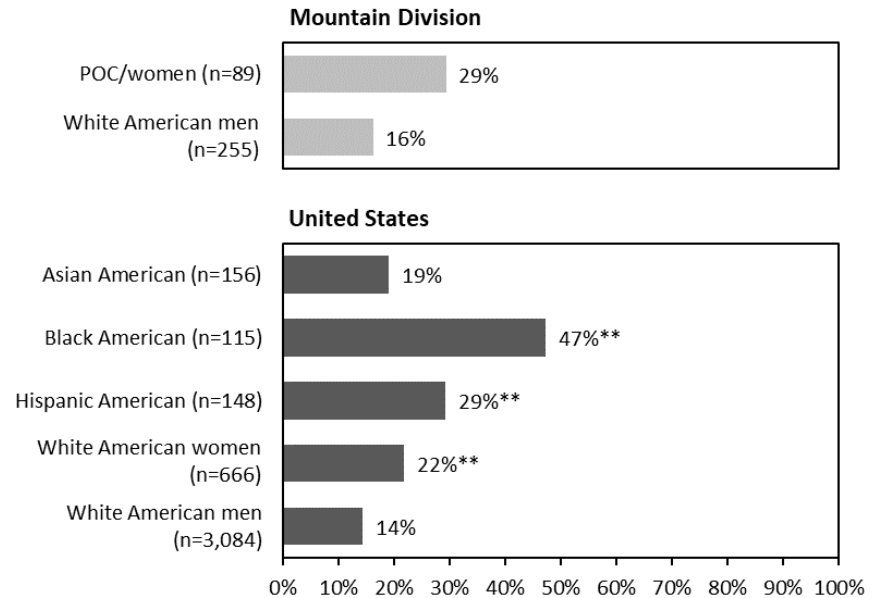


Figure C-15 indicates that, in 2003, POC- and woman-owned businesses in the Mountain Division were more likely than businesses owned by white men to not apply for business loans due to a fear of denial.

**Figure C-16.**  
**Mean values of approved business**  
**loans, Mountain Division and the**  
**United States, 2003**

Note:

\*\* Denotes statistically significant differences from white American men (for POC groups and women) at the 95% confidence level.

The Mountain Division consists of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

Source:

BBC from 2003 Survey of Small Business Finance.

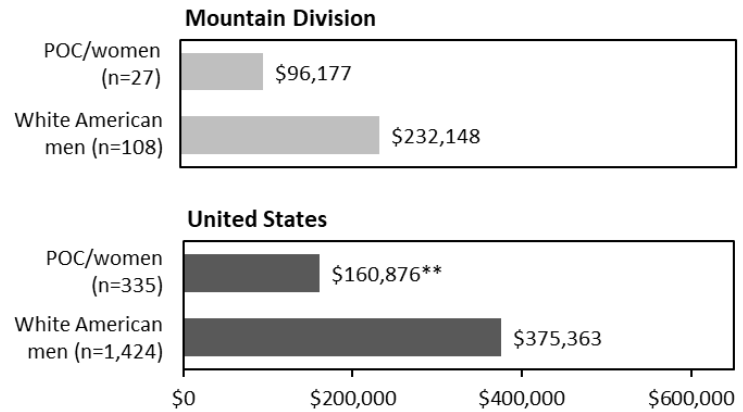


Figure C-16 indicates that, in 2003, POC- and woman-owned businesses in the Mountain Division that received business loans were approved for loans worth less on average than loans businesses owned by white men received.



**Figure C-17.**  
**Business ownership rates in**  
**study-related industries, ITD**  
**Study Area and the United**  
**States, 2015-2019**

Note:

\*, \*\* Denotes that the difference in proportions between the POC group and white Americans, or between women and men, is statistically significant at the 90% and 95% confidence level, respectively.

† Denotes significant differences in proportions not reported due to small sample size.

"Other race POCs" includes Native Americans and other races.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center:  
<http://usa.ipums.org/usa/>.

ITD Study Area	Construction	Professional Services	Non-prof. services, goods, and supplies
<b>Race/ethnicity</b>			
Asian American	14.1 % *	2.4 % †	0.0 % †
Black American	6.8 % †	31.5 % †	0.0 % †
Hispanic American	13.5 % **	9.5 % **	14.6 % †
Other race POCs	23.9 %	16.3 % †	7.6 % †
White American	27.2 %	26.3 %	2.9 %
<b>Gender</b>			
Women	21.9 %	21.2 %	2.3 %
Men	25.6 %	25.8 %	4.0 %
<b>All individuals</b>	<b>25.2 %</b>	<b>24.5 %</b>	<b>3.4 %</b>
<b>United States</b>			
<b>Race/ethnicity</b>			
Asian American	22.3 % **	13.2 % **	3.5 %
Black American	16.4 % **	17.1 % **	1.7 % **
Hispanic American	17.8 % **	15.3 % **	2.3 % **
Other race POCs	20.7 % **	18.9 % **	4.1 %
White American	25.3 %	22.7 %	3.5 %
<b>Gender</b>			
Women	16.0 % **	19.8 % **	2.2 % **
Men	23.2 %	21.2 %	3.2 %
<b>All individuals</b>	<b>22.5 %</b>	<b>20.8 %</b>	<b>2.8 %</b>

Figure C-17 indicates that, in the ITD Study Area:

- Asian Americans (14.1%) and Hispanic Americans (13.5%) own construction businesses at lower rates than white Americans (27.2%).
- Hispanic Americans (9.5%) own professional services businesses at lower rates than white Americans (26.3%).

**Figure C-18.**  
**Predictors of business ownership in construction,**  
**ITD Study Area, 2015-2019**

Note:

The regression included 3,119 observations.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

"Other race POCs" includes Native Americans and other races.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa>.

Variable	Coefficient
Constant	-3.3386 **
Age	0.0487 **
Age-squared	-0.0003
Married	0.2873 **
Disabled	0.0789
Number of children in household	0.0424
Number of people over 65 in household	-0.0766
Owns home	0.0062
Home value (\$000s)	0.0006 **
Monthly mortgage payment (\$000s)	-0.0590
Interest and dividend income (\$000s)	0.0102
Income of spouse or partner (\$000s)	0.0003
Speaks English well	0.9467 **
Less than high school education	-0.0807
Some college	-0.1561 *
Four-year degree	-0.2037
Advanced degree	-0.2690
Asian American	-0.4859
Black American	-0.5484
Hispanic American	-0.2918 *
Other race POCs	0.0624
Women	-0.2662 *

Figure C-18 indicates that being Hispanic American is associated with a lower likelihood of owning a construction business in the ITD Study Area, compared to being white American, even after statistically accounting for other personal factors. In addition, being a woman is associated with a lower likelihood of owning a construction business relative to being a man, even after statistically accounting for other personal characteristics.

**Figure C-19.**  
**Disparities in business ownership rates for ITD Study Area construction workers, 2015-2019**

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Hispanic American	13.6%	26.1%	52
White American women	23.2%	30.3%	77

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) dependent variable. Thus, BBC made comparisons between actual and benchmark self-employment rates only for the subset of the sample for which the dependent variable was observed.

Analyses are limited to those groups that showed negative coefficients that were statistically significant in the regression model.

Source: BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-19 indicates that, in the ITD Study Area:

- Hispanic Americans (13.6%) own construction businesses at a rate that is 52 percent that of similarly situated white American men (26.1%).
- White women (23.2%) own construction businesses at a rate that is 77 percent that of similarly situated white American men (30.3%).

**Figure C-20.**  
**Predictors of business ownership in**  
**professional services, ITD Study Area, 2015-**  
**2019**

Note:

The regression included 775 observations.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

Speaks English well omitted due to perfect correspondence with dependent variable.

"Other race POCs" includes Native Americans and other races.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Variable	Coefficient
Constant	-3.0365 **
Age	0.0686 **
Age-squared	-0.0004
Married	0.2179
Disabled	-0.0685
Number of children in household	0.1046 *
Number of people over 65 in household	0.0764
Owens home	-0.2951
Home value (\$000s)	0.0004
Monthly mortgage payment (\$000s)	0.0447
Interest and dividend income (\$000s)	0.0028
Income of spouse or partner (\$000s)	0.0000
Speaks English well	0.0000 †
Less than high school education	-0.5173
Some college	-0.4265
Four-year degree	0.0445
Advanced degree	-0.0834
Asian American	-1.5870 **
Black American	0.1030
Hispanic American	-0.5859
Other race POCs	-0.7700
Women	-0.0702

Figure C-20 indicates that being Asian American is associated with a lower likelihood of owning a professional services business in the ITD Study Area, compared to being white American, even after statistically accounting for other personal factors.

**Figure C-21.**

**Disparities in business ownership rates for ITD Study Area professional services workers, 2015-2019**

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Asian American	2.5%	30.6%	8

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) dependent variable. Thus, the study team made comparisons between actual and benchmark self-employment rates only for the subset of the sample for which the dependent variable was observed. Analyses are limited to those groups that showed negative coefficients that were statistically significant in the regression model.

Source: BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-21 indicates that Asian Americans (2.5%) own professional services businesses in the ITD Study Area at a rate that is 8 percent that of similarly situated white American men (30.6%).

**Figure C-22.**  
**Predictors of business ownership in goods and services, ITD Study Area, 2015-2019**

Note:

The regression included 132 observations.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

† Speaks English well, Less than high school education, Four-year degree, Advanced degree, Asian American, Black American omitted due to perfect correspondence with dependent variable.

"Other race POCs" includes Native Americans and other races.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata samples. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Variable	Coefficient
Constant	-10.4869
Age	0.4077
Age-squared	-0.0043
Married	-0.8764
Disabled	1.2911
Number of children in household	0.2979
Number of people over 65 in household	0.3215
Owens home	-1.5515
Home value (\$000s)	0.0038
Monthly mortgage payment (\$000s)	0.0080
Interest and dividend income (\$000s)	0.0245 **
Income of spouse or partner (\$000s)	0.0150 **
Speaks English well	0.0000 †
Less than high school education	0.0000 †
Some college	-0.3979
Four-year degree	0.0000 †
Advanced degree	0.0000 †
Asian American	0.0000 †
Black American	0.0000 †
Hispanic American	0.5540
Other race POCs	1.0146
Women	-0.8279

**Figure C-23.**  
**Rates of business closure,**  
**expansion, and contraction,**  
**Idaho and the United States,**  
**2002-2006**

Note:

Data include only non-publicly held businesses.

Equal Gender Ownership refers to those businesses for which ownership is split evenly between women and men.

Statistical significance of these results cannot be determined because sample sizes were not reported.

Source:

Lowrey, Ying. 2010. "Race/Ethnicity and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

Lowrey, Ying. 2014. "Gender and Establishment Dynamics, 2002-2006." U.S. Small Business Administration Office of Advocacy. Washington D.C.

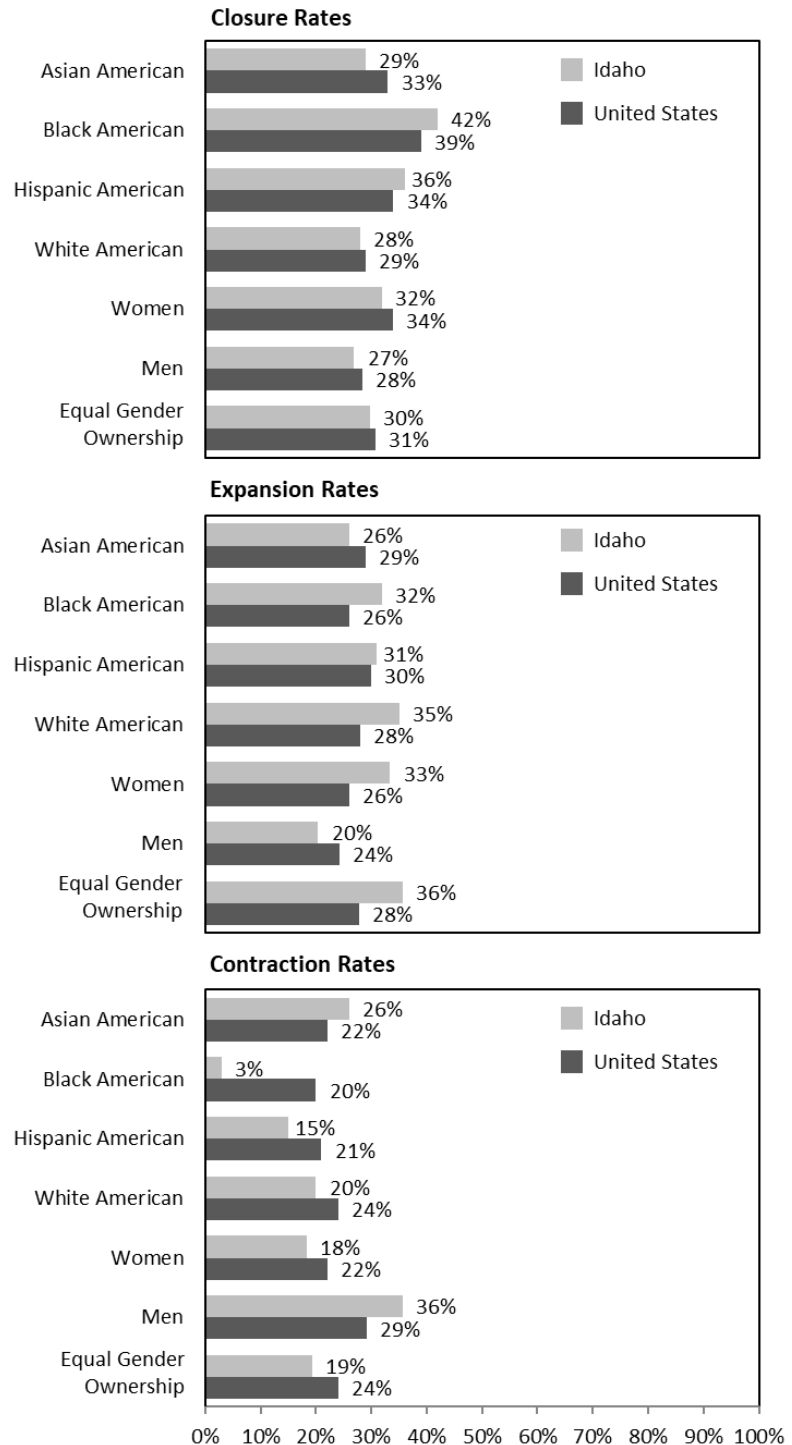
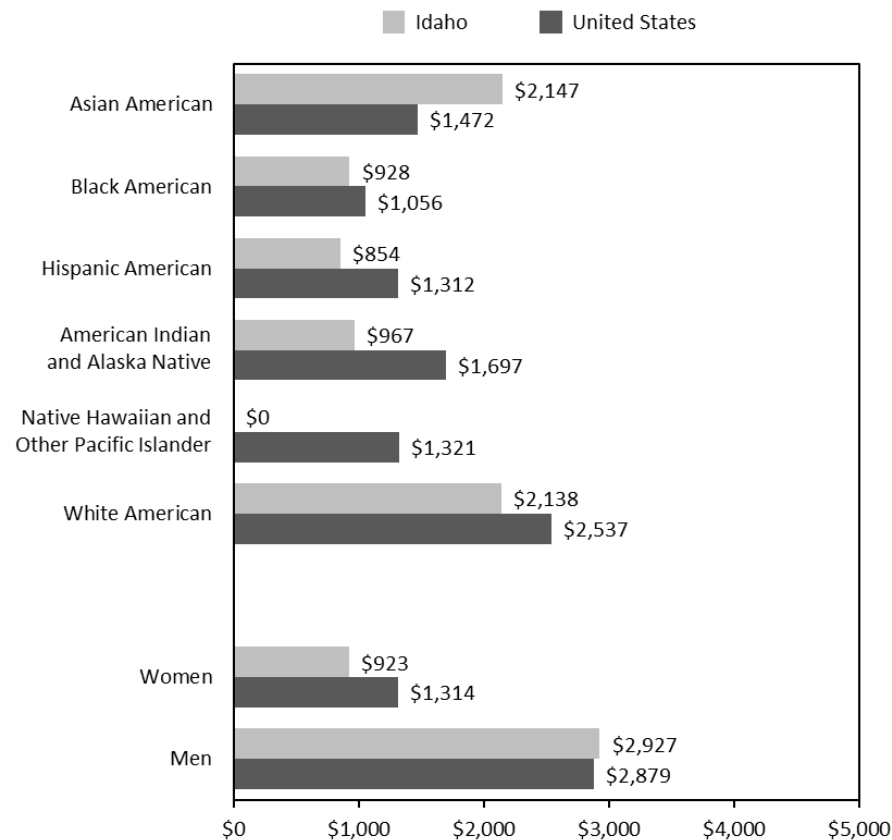


Figure C-23 indicates that Asian American- (29%), Black American- (42%), Hispanic American- (36%) owned businesses in Idaho appear to close at higher rates than white American-owned businesses (28%). In addition, woman-owned (32%) businesses appear to close at higher rates than businesses owned by men (27%). With regard to expansion rates, Asian American- (26%), Black American- (32%), Hispanic American- (31%) owned businesses in Idaho appear to expand at a lower rate than white American-owned businesses (35%).



**Figure C-24.**  
**Mean annual business receipts (in thousands), Idaho and the United States**

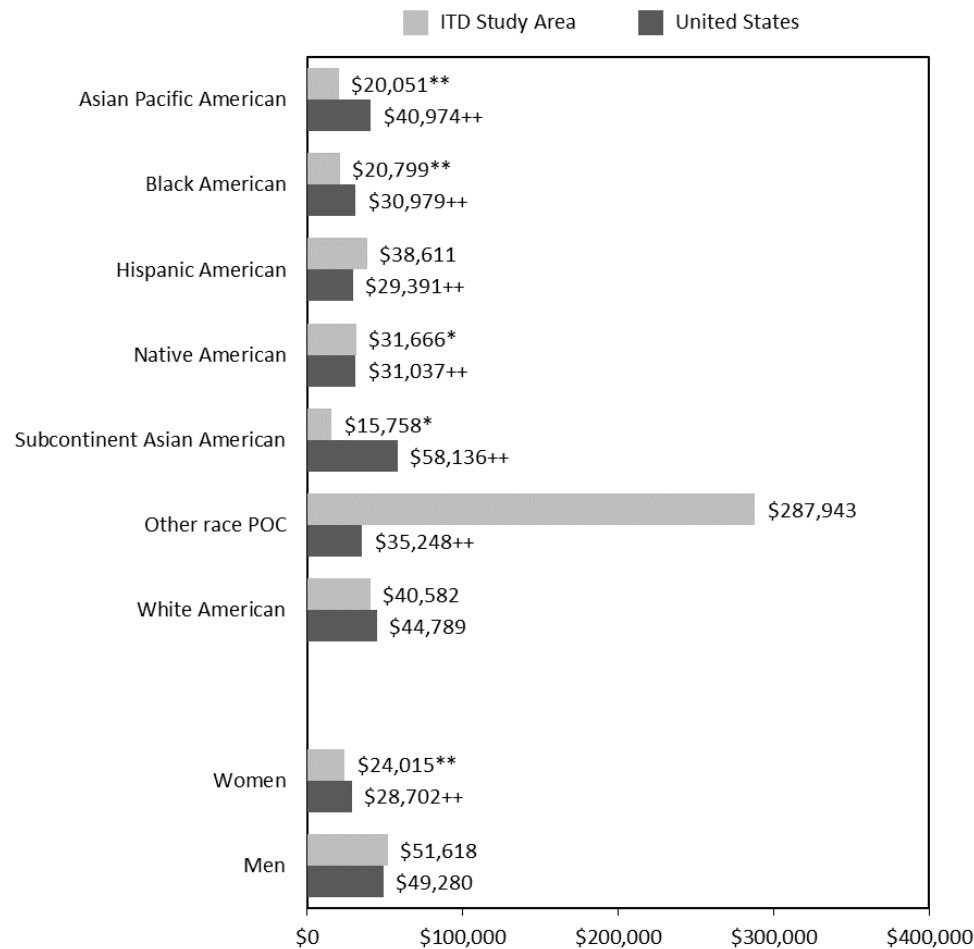


Note: Includes employer firms. Does not include publicly-traded companies or other firms not classifiable by race/ethnicity and gender.

Source: BBC Research & Consulting from 2018 Annual Business Survey.

Figure C-24 indicates that, in 2018, Black American-, Hispanic American-, American Indian-, Alaska Native American-, and Native Hawaiian and other Pacific Islander-owned businesses in Idaho appeared to show lower mean annual business receipts than businesses owned by white Americans (\$2.14 million). In addition, woman-owned businesses in Idaho showed lower mean annual business receipts than businesses owned by men (\$2.93 million).

**Figure C-25.**  
**Mean annual business owner earnings, ITD Study Area and United States, 2015-2019**



Note: The sample universe is business owners age 16 and over who reported positive earnings. All amounts in 2019 dollars.

\*\*, ++ Denotes statistically significant differences from white Americans (for POC groups) and from men (for women) at the 95% confidence level for ITD Study Area and the United States as a whole, respectively.

Source: BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Figure C-25 indicates that Asian Pacific American (\$20,051), Black American (\$20,799), Native American (\$31,666), and Subcontinent Asian American business owners (\$15,758) in the ITD Study Area earn less on average than white American business owners (\$40,582). In addition, women business owners (\$24,015) in the ITD Study Area earn less on average than male business owners (\$51,618).

**Figure C-26.**  
**Predictors of business owner earnings, ITD**  
**Study Area, 2015-2019**

Notes:

The regression includes 3,555 observations.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

The sample universe is business owners age 16 and older who reported positive earnings.

\*, \*\* Denotes statistical significance at the 90% and 95% confidence level, respectively.

† Denotes Subcontinent Asian American omitted from the regression due to small sample size

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2015-2019 ACS 5% Public Use Microdata sample. The raw data extract was obtained through the IPUMS program of the MN Population Center: <http://usa.ipums.org/usa/>.

Variable	Exponentiated Coefficient
Constant	457.950 **
Age	1.164 **
Age-squared	0.999 **
Married	1.710 **
Speaks English well	0.871
Disabled	0.517 **
Less than high school	0.556 **
Some college	0.912
Four-year degree	1.141
Advanced degree	1.431 **
Asian Pacific American	0.647
Black American	0.968
Hispanic American	1.428
Native American	0.861
Subcontinent Asian American	1.000 †
Other race POC	1.919
Women	0.472 **

Figure C-26 indicates that, compared to being a male business owner in the ITD Study Area, being a woman business owner is related to lower business earnings.

# APPENDIX D.

## Anecdotal Information about Marketplace Conditions

Appendix D presents anecdotal information that BBC Research & Consulting (BBC) collected from business owners and other stakeholders as part of the 2023 Idaho Department of Transportation (ITD) Disparity Study. Appendix D summarizes the key themes that emerged from their insights, organized into the following parts:

- A. **Marketplace conditions** presents information about business owners' current perceptions of economic conditions in Idaho and what it takes for businesses to be successful;
- B. **Certification** presents information about businesses' statuses as disadvantaged, person of color- (POC-), and woman-owned businesses; certification processes; and business owners' experiences with ITD certification programs;
- C. **Experiences in the private and public sectors** presents business owners' experiences pursuing private and public sector work;
- D. **Doing business as a prime contractor or subcontractor** summarizes information about businesses' experiences working as prime contractors and subcontractors, how they obtain that work, and experiences working with POC- and woman-owned businesses;
- E. **Doing business with public agencies** describes business owners' experiences working with or attempting to work with ITD and local agencies and identifies potential barriers to doing work for them;
- F. **Potential barriers to business success** describes barriers and challenges businesses face in the local marketplace;
- G. **Effects of race and gender** presents information about any experiences business owners have with discrimination in the local marketplace and how it affects POC- or woman-owned businesses;
- H. **Business assistance programs** describes business owners' awareness of, and opinions about, business assistance programs and other measures designed to ease barriers for businesses in Idaho;
- I. **Insights regarding race- and gender-based measures** includes business owners' comments about current or potential race- or gender-based programs; and
- J. **Other insights and recommendations** presents additional comments and recommendations for ITD to consider.

In an effort to protect the anonymity of individuals and businesses, we coded the source of each quotation with a random number and prefix that represents the individual who submitted the comment and the data collection method. We denote availability survey comments by the prefix "AV," focus group comments by the prefix "FG," public forum comments by the prefix "PT," and written comments by the

prefix “WT.” In-depth interview comments do not have a prefix. We also preface each quotation with a brief description of the race and gender of the business owner and the business’ line of work. In addition, we indicate whether each participant represents a certified DBE, a certified minority- or woman-owned business enterprise (MBE/WBE), a certified small business enterprise (SBE), or other relevant certification types. For more information on the qualitative data collection methods for the disparity study, please see Chapter 4.

## A. Marketplace Conditions

Part A summarizes business owners’ and managers’ perceptions of Idaho’s marketplace. It focuses on the following three topics:

1. Current marketplace conditions;
2. Effects of COVID-19 on businesses and industries; and
3. Keys to business success.

**1. Current marketplace conditions.** Interviewees offered thoughts on the marketplace across the public and private sectors. They also commented on changes in the Idaho marketplace that they have observed over time [#2, #4, #5, #6, #7, #8, #9, #10, #11, #12, #14, #24, #27, #28, #30, #AV, #FG2, #WT12, #WT14]. For example:

- A representative of a majority-owned professional services company stated, "The private work that we do with the land development kind of follows the housing market. ... Now that interest rates have risen, our private clients have pulled back quite a bit, and so they're kind of tapping the brakes a little bit. ... We've had a surplus, at least here in the state of Idaho, and they've passed some of that savings down and towards engineering work. For the most part, we've seen an increase in recent years really across the board. ... There was almost too much work. And I think it also drove up the prices on the construction side. So, the contractors had to pick and choose between which projects to go after. And I think it artificially created some inflation." [#2]
- A representative of a majority-owned professional services company stated, "[In] the last three years I have done no marketing at all. It's just on past relationships, and they're keeping enough workflow going for me to keep me busy." [#4]
- A representative of a majority-owned construction company stated, "It was pretty good. Now, I don't know what's going to happen in this housing market downtrend. Most of that work up there is residential work. ... I mean we have a store that does our residential business and it's been good up to the last couple of months. It sort of slowed down because of interest rates and the housing market and then some of the home builders down here [are] just going to complete what they've got without starting any new ones that they've got sold. ... [Growth is] going to drop down to probably about three to four [percent] here after the first year, because I don't see much big work coming out right now." [#5]
- The woman owner of a DBE-certified professional services company stated, "Yeah, it's been a busy time. ... I mean, it's been good for us. With the governor unleashing all the [Transportation Expansion and Congestion Mitigation Program] projects." [#6]

- The Native American owner of a professional services company stated, "We're growing. I would say just [because of our] quality of work and reputation. I mean, there's a need for good reputable companies in Idaho." [#7]
- The owner of a majority-owned professional services company stated, "The economy stinks." [#8]
- The Hispanic American owner of a DBE-certified professional services company stated, "I think that we will have a recession in this first quarter, but it'll be a small recession, like this smaller recession of 2001. But nonetheless, it's a slowdown and which probably isn't a bad thing either. I mean, we need those corrections in the market." [#9]
- Representatives of a woman-owned construction company stated, "It just depends on which jobs you win, but overall projects are getting bigger, therefore, the company's getting bigger." [#10]
- The co-owner of a majority-owned construction company stated, "I feel like where there's so much growth here and so much new development that there's a great demand for landscaping type of services. A lot of houses are built, and they don't even have backyards. They need it." [#11]
- The owner of a majority-owned professional services company stated, "The building boom that's certainly come down in all aspects across the board hasn't been too bad for us." [#12]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The last few [years]? Yeah, it's increased substantially. ... I attribute that to smart business sense, not biting off more than you can chew, paying off your debt before growing." [#14]
- The owner of an SBE-certified construction company stated, "The growth in revenue has increased. And it would be because of the market that we've got that we're in, the development market, the residential [market], and the increase in population of the area." [#24]
- The woman owner of a DBE-certified professional services company stated, "It's been pretty steady. COVID kind of slowed things down a little bit, but this last summer and this year, it's been pretty busy and getting a lot of proposals in right now. That's a good sign." [#27]
- The Hispanic American owner of an MBE- and DBE-certified professional services company stated, "[People moving to Idaho] has impacted us somewhat positively because they're building a lot of roads in this state to try to catch up the infrastructure and stuff because of all the people moving in." [#28]
- The woman co-owner of a DBE-certified construction company stated, "Our sales was down quite a bit from the year before and started coming up. Last year we had an okay [year], and this year I hope we have, I think we'll will have a better year than last year. It is coming back now, but we're hearing recession." [#30]
- A representative of a majority-owned professional services company stated, "Idaho is a busy market and the contractor pool is limited. There is too much work and not enough sub[consultants]." [#AV3]
- A representative of a majority-owned professional services company stated, "Everyone is trying to move to Idaho. It's easy to get work here. There are lots of projects." [#AV11]
- A representative of a majority-owned professional services company stated, "It's wide open, the market is crazy right now and it's not difficult to find work." [#AV16]

- A representative of a majority-owned professional services company stated, "There is a lot of activity in Idaho as a whole, so expansion in Idaho would be favorable." [#AV25]
- A representative of a majority-owned professional services company stated, "[We're] excited about growth in the region." [#AV36]
- A representative of a majority-owned professional services company stated, "Currently things are strong." [#AV43]
- A representative of a majority-owned professional services company stated, "Right now, business is good." [#AV53]
- A representative of a majority-owned construction company stated, "We are in an expanding process. I think Idaho is an ideal location, it seems like the whole state is growing." [#AV63]
- A representative of a majority-owned professional services company stated, "General economy conditions in the country are not good but Idaho is a pretty favorable state in just about any type of business." [#AV69]
- A representative of a majority-owned construction company stated, "There is plenty of work, construction in the Southern part of the State. If anything [it's] too much work, but [we] know a downturn [is] coming, so [we either have to] outbid or have to turn down work." [#AV75]
- A representative of a majority-owned construction company stated, "It's been a healthy market due to the transportation funding. District 1 has the strongest growth in the nation." [#AV81]
- A representative of a majority-owned construction company stated, "The jobs are still out there, [it's] a little more competitive." [#AV82]
- A representative of a majority-owned professional services company stated, "[The market is] pretty strong in northern Idaho right now. We do mostly private sector work and it is still going strong even though there are rumors of a recession." [#AV110]
- A representative of a majority-owned professional services company stated, "It seems to be busy. We are as busy as we want to be." [#AV116]
- A representative of a majority-owned construction company stated, "I believe [the market is] very good at the present time." [#AV117]
- A representative of a majority-owned professional services company stated, "There is a lot of growth." [#AV118]
- A representative of a majority-owned construction company stated, "Marketplace conditions are difficult, you need to know someone to get any business and you need to make a lot of money to stay in business. It's hard to charge a fair price because of fluctuation in the price of materials and fuel costs. It's difficult getting material you need sometimes because you can't get a part you need. The price of equipment is getting ridiculous." [#AV119]
- A representative of a majority-owned professional services company stated, "Seems to be plenty [of work] in the moment but [that] can change. Work hard and be smart." [#AV120]
- A representative of a Black American-owned professional services company stated, "I have over 15 years of experience working in [the] Boise area. Obtaining work is kind of hard. It's a growing



market and there's a lot of stuff going on. There are a lot of new companies coming to Idaho. Sometimes it's just about who you know." [#AV126]

- A representative of a majority-owned professional services company stated, "I think there's a good and healthy environment now, plenty of work. Both state and federal levels are supporting transportation." [#AV146]
- A representative of a majority-owned professional services company stated, "It is a reasonable business climate." [#AV148]
- A representative of a majority-owned construction company stated, "For the last several years we have had more work than we can get to which is good." [#AV149]
- A representative of a majority-owned construction company stated, "Growing construction area, work to be had." [#AV154]
- A representative of a majority-owned construction company stated, "Generally [there are] not a lot of things standing in your way. [It is] easy to get work." [#AV159]
- A representative of a majority-owned professional services company stated, "Idaho has been a good opportunity, and we have expanded our business." [#AV160]
- A representative of a majority-owned professional services company stated, "The current economy is strong." [#AV166]
- A representative of a majority-owned construction company stated, "I think Idaho is doing good compared to other states." [#AV167]
- A representative of a majority-owned professional services company stated, "We are expanding all the time." [#AV169]
- A representative of a majority-owned professional services company stated, "We have expanded [our number of] employees over the last two years, we [have] more employees than we have ever had. Why? More work coming in the door." [#AV170]
- A representative of a majority-owned professional services company stated, "We are expanding rapidly." [#AV174]
- A representative of a majority-owned professional services company stated, "I started about five years ago. I hit the economy right. There is more work out there than there are engineers. When the private sector work slows down, I plan to approach more public sector jobs. I try to run a 50/50 split between private and public work, but it is really busy on the private side right now. Public side too, actually." [#AV180]
- A representative of a majority-owned professional services company stated, "Business is just booming, but it is hard to find people, and structural engineers in particular." [#AV184]
- A representative of a majority-owned professional services company stated, "Right now would be a good time to start surveying, [there is] more work than the surveyors can handle." [#AV189]
- A representative of a majority-owned construction company stated, "Right now the market is really good. We fill the market in every way. We do everything in that area. We have taken a hit, like our call volume has dropped in the last two week with interest rates the way they are going." [#AV192]

- A representative of a majority-owned construction company stated, "[It is] definitely expanding in commercial [sector]. Also, the agricultural [sector] is expanding. It is still maintaining [in areas] like dairy work. Residential has a taken sharp decline in the last month and a half because of interest rates." [#AV193]
- A representative of a majority-owned professional services company stated, "We are still very busy. I hear some are slowing down. Personally, we are still busy." [#AV196]
- A representative of a majority-owned professional services company stated, "We need to expand and have tried to, but just can't do it. This has been for the last three years. The marketplace is very good. We've been selective, taking on larger and smaller projects, and the smaller projects are just as time-consuming and as much of a headache as the larger ones, without the payoff." [#AV213]
- A representative of a majority-owned construction company stated, "Right at this time there is a lot of work and people are busy." [#AV215]
- A representative of a majority-owned professional services company stated, "Since surveying is a high-demand profession right now, it is profitable to start a survey business at this time." [#AV225]
- A representative of a majority-owned professional services company stated, "Business is growing." [#AV226]
- A representative of a majority-owned professional services company stated, "We can still stay optimistic that plenty of work will be in the pipeline." [#AV228]
- A representative of a majority-owned professional services company stated, "I think there is ample opportunity to obtain work." [#AV231]
- A representative of a majority-owned professional services company stated, "I think there is a lot of opportunities, if people want to do this kind of work." [#AV233]
- A representative of a majority-owned construction company stated, "Expanding: hard, [it's] not a huge area but [there is] lots of work. Small communities make it harder." [#AV234]
- A representative of a majority-owned construction company stated, "[There is] more work than I can find employees to do the work. ... Costs are going through the roof, and we can't even compete. Costs just keep going up." [#AV235]
- A representative of a majority-owned professional services company stated, "[There is] work to be done. Peers [are] all staying busy." [#AV244]
- A representative of a majority-owned professional services company stated, "As far as our area, [there is] large amounts of growth." [#AV257]
- A representative of a majority-owned professional services company stated, "[The] market at this point has been robust but challenging probably to start a business because lack of manpower. Even for us it has been difficult to find qualified individuals." [#AV258]
- A representative of a majority-owned professional services company stated, "We see a lot of opportunities and good business for architectural services. We have some new work [because of the] federal funding bill." [#AV260]
- A representative of a majority-owned professional services company stated, "Plenty of work. [You] can acquire projects right now." [#AV265]

- A representative of a majority-owned construction company stated, "Very positive [experience] growing business here in Idaho. [There is] plenty of business to go around and other contractors feel [the] same." [#AV278]
- A representative of a majority-owned construction company stated, "The market is really good and now is your time to expand." [#AV279]
- A representative of a majority-owned professional services company stated, "I think everybody has a lot of work right now." [#AV281]
- A representative of a majority-owned professional services company stated, "It seems like it's an open environment for new business or someone to move into in that market." [#AV294]
- A representative of a majority-owned professional services company stated, "I think Idaho is [a] good place to do business, and [I am] happy with their philosophy and structures." [#AV301]
- A representative of a majority-owned construction company stated, "Our market is actually growing. Do not see a downturn for construction market." [#AV302]
- A representative of a Hispanic American woman-owned professional services company stated, "Work is better than average in Idaho as far as getting work and starting a business." [#AV223]
- A representative of a woman-owned professional services company stated, "I think it would be generally easy to start an environmental business. I don't know that there are many environmental businesses in the [Coeur d'Alene] area. I don't think there are many available to provide business. I don't run across a lot of environmental consulting firms where I am. They will come from Spokane or tri-cities area." [#AV8]
- A representative of a woman-owned professional services company stated, "Right now conditions are pretty good for our industry." [#AV90]
- A representative of a woman-owned construction company stated, "I think there [are] opportunities. I think there's a good market in steel for additional contractors. It's not based on data, just a gut feeling." [#AV106]
- A representative of a woman-owned construction company stated, "I think it would be fairly easy to start a business where we're at. There is plenty of work, conditions are favorable, especially in the private sector." [#AV115]
- A representative of a woman-owned construction company stated, "It's a very strong economy but geographically, we are isolated in that we have no large cities around us, so that lends itself to lower wages and lower rates than other parts of the country." [#AV134]
- A representative of a Native American woman-owned professional services company stated, "It is a viable option to start a business in Idaho." [#AV59]
- A representative of a majority-owned goods and services company stated, "I think it is a great place, plenty of work even during the recession." [#AV53]
- A representative of a majority-owned goods and services company stated, "We have lot of work available, however the biggest issue is getting operating capital. We did over a million dollars of revenue and finding a bank that will give us operating capital and being able to purchase our own land and building shop has been difficult in the current market." [#AV59]

- A representative of a woman-owned goods and services company stated, "It's been good over the last few years." [#AV11]
- A representative of a majority-owned professional services company stated, "We're as busy as ever." [#AV303]
- A representative of a Hispanic American-owned construction company stated, "Business is very good. There's lots of work out there." [#AV304]
- A representative of a majority-owned professional services company stated, "There's opportunity everywhere." [#AV3014]
- A representative of a majority-owned construction company stated, "Now we are super busy, all year round." [#AV3016]
- A representative of a majority-owned professional services company stated, "The market is great, I have all the work that I can possibly do. It just finds me, I don't have to advertise or market, just answer the phone. It won't always be that way, but it was last year anyways." [#AV3041]
- A representative of a majority-owned construction company stated, "We don't get the opportunity very often. It seems like bids go to national, rather than local, companies. Business is good right now. We are growing and are pretty bullish on our products and business." [#AV3045]
- A representative of a Hispanic American-owned construction company stated, "Work [is] easy to come by. [The] economy [is] booming southwestern Idaho." [#AV3058]
- A representative of a woman-owned construction company stated, "There's a lot of growth. Right now is a great time to progress." [#AV3062]
- A representative of an Asian Pacific American-owned construction company stated, "Things are pretty good now. There's lots of work out there. The biggest problem is that we are a union contractor. A lot of the competition pays pretty low wages and gives no benefits, so it's hard to compete." [#AV3072]
- A representative of a Black American-owned professional services company stated, "Obtaining work is kind of hard. It's a growing market and there's a lot of stuff going on. There are a lot of new companies coming to Idaho." [#AV126]
- A representative of a Hispanic American-owned professional services company stated, "Very difficult to be able to compete and participate in the bids. [There is a lot of] out of state competition and it's a price market, [it's] not clear about what the budget are for the projects being advertised." [#AV251]
- A representative of a majority-owned professional services company stated, "A lot is dictated by companies that have been around for 30 to 50 years. The market is hot right now for construction. We have competitors from other states putting pressure on us to produce more for less." [#AV24]
- A representative of a majority-owned construction company stated, "The jobs are still out there, [it's] a little more competitive." [#AV82]
- A representative of a majority-owned construction company stated, "[There are] a lot of small companies around us, everyone tries to fight for the same job." [#AV141]

- A representative of a majority-owned construction company stated, "We are just starting off and have had no difficulty. It is fairly competitive. It is hard to find bids and bid lists." [#AV155]
- A representative of a majority-owned construction company stated, "It's pretty hard because we are competing with a lot of big companies." [#AV177]
- A representative of a majority-owned construction company stated, "[It is] busy and competitive." [#AV302]
- A representative of a majority-owned construction company stated, "There's a lot of work where I'm at in Eastern Idaho. Definitely a lot of competition. I've been able to get work, but it's definitely a challenge." [#AV3060]
- A representative of a majority-owned construction company stated, "I think some addition of deregulating would enhance business. For [a] new business to start it is a significant expense. Deregulating would help new businesses and sometimes not discourage new business from starting. [It] would promote and enhance competition." [#AV5]
- A representative of a majority-owned construction company stated, "[There are] not many businesses like ours in the area that are licensed [and] bonded." [#AV10]
- A representative of a majority-owned construction company stated, "We are being very careful on not taking on any more debt due to the economy." [#AV20]
- A representative of a majority-owned construction company stated, "I would not recommend expanding or starting a business due to current market conditions. Just with economy going down, we are in a position [where we] do not want to expand currently." [#AV21]
- A representative of a majority-owned professional services company stated, "Until supply chain issue even out, there is going to be a shortage of work here." [#AV54]
- A representative of a majority-owned professional services company stated, "I'm fine right now but won't be later because of how things are poor nationwide." [#AV67]
- A representative of a majority-owned professional services company stated, "General economy conditions in the country are not good, but Idaho is a pretty favorable state in just about any type of business." [#AV69]
- A representative of a majority-owned construction company stated, "[I] have stopped working because [of] the price of building permits and impact fees in Bonneville County and City of Idaho Falls. [The] majority of [my] work is outside of that area because we cannot afford to get a permit." [#AV85]
- A representative of a majority-owned professional services company stated, "Work is slow at this time." [#AV105]
- A representative of a majority-owned construction company stated, "I was doing good until COVID hit. Difficulties have also been with regulations and all the things you have to do with insurance and paperwork. It's hard keeping everybody happy and afraid of getting sued. Marketplace conditions are difficult, you need to know someone to get any business and you need to make a lot of money to stay in business. It's hard to charge a fair price because of fluctuation in the price of materials and fuel costs. It's difficult getting material you need sometimes because you can't get a part you need. Price of equipment is getting ridiculous." [#AV119]

- A representative of a majority-owned professional services company stated, "Economy is slowing down right now and no new businesses would probably be established right now." [#AV122]
- A representative of a majority-owned professional services company stated, "Almost all work I do is not in Idaho, it's outside of Idaho." [#AV133]
- A representative of a majority-owned professional services company stated, "[It's a] poor time to start a business. The market has reached a tipping point." [#AV136]
- A representative of a majority-owned professional services company stated, "It would be a pretty risky venture [to start a business] right now given the state of the economy. Architectural work is just so different. But it is doable. If the money dries up, we don't collect any fees." [#AV152]
- A representative of a majority-owned construction company stated, "We've noticed a lot of the larger projects are on hold." [#AV161]
- A representative of a majority-owned professional services company stated, "Start[ing] and expanding is difficult due to inflation and the price of diesel. I think high interest rates are causing a slowdown in housing. The climate is not very good right now, definitely not for expanding but maybe just maintaining a business. There might be some shrinkage in business because of the pending recession." [#AV194]
- A representative of a majority-owned professional services company stated, "I would say my work has been primarily in land development and I'm uncertain where it is headed right now. I would like to be available to go outside of land development and ITD would be a good source to go outside of land development." [#AV200]
- A representative of a majority-owned professional services company stated, "Would not want to start a business in our area right now. Retaining work good." [#AV205]
- A representative of a majority-owned professional services company stated, "[It's] getting more difficult with the current economy, cost of projects, construction inflation, funding appropriation in relation to market conditions." [#AV206]
- A representative of a majority-owned professional services company stated, "Right now, Idaho is an [Occupational Safety and Health Administration] state. Regulations are not as stringent and therefore not as much work as like, say, in Washington." [#AV218]
- A representative of a majority-owned construction company stated, "Everything is slowing down because of the interest rates. It would not be a good time to start a business right now." [#AV270]
- A representative of a majority-owned construction company stated, "Things have been slow this year." [#AV291]
- A representative of a woman-owned professional services company stated, "It has been a little slow. Noticing if people don't know who you are they are going with who they do know." [#AV42]
- A representative of a woman-owned construction company stated, "The market has been very well, but with the economy now, people are tightening up, but so still bidding on jobs." [#AV176]
- A representative of a majority-owned professional services company stated, "Our area [is] rural, not a lot going on east of Lewiston." [#AV3010]



- A representative of a majority-owned construction company stated, "It is slow now, [with] interest rates, housing prices are very high." [#AV3018]
- A representative of a majority-owned construction company stated, "Materials and interest rates going up, buildings [are] going down in price, residential [and] even commercial buildings." [#AV3026]
- A representative of a majority-owned professional services company stated, "Being in southeastern Idaho, we are not in the seat of power, which is Boise. That's where ITD is headquartered. We don't get a lot of state accounts but have done some lotteries and such. ... The economic times are difficult because of the recession, or the cusp of a recession. Everyone is keeping their cards close to their vest. There are opportunities and I see young entrepreneurs making a go of it. Boise is a better place, has more business." [#AV3063]
- A representative of a woman-owned professional services company stated, "[With] the state of economy, advertent budgets [are the] first to go." [#AV3065]
- A representative of a trade organization in Idaho stated, "I can't think of any specific barriers that I'm seeing for women-owned businesses or minority-owned businesses in our community. There may be some challenges on the financing side that I'm not aware of, but I think the community in general, embraces the diversity here." [#FG2]
- A representative of a trade organization in Idaho stated, "Inflation is I think having an impact and slowing some of these opportunities down for people." [#FG2]
- The co-owner of a woman-owned and DBE-certified construction company stated, "Most of the funds are being allocated to Ada and Canyon counties when the rest of the state is also experiencing [an] unprecedent[ed] amount of population growth, which affects public infrastructure, especially roads." [#WT12]
- The owner of a WBE-, DBE-, and 8(a)-certified professional services company stated, "Business has been steady as usual. Development and ground disturbance continues to increase exponentially annually in Washington along with the recommendations for cultural resource assessments." [#WT14]

**2. Effects of COVID-19 on businesses and industries.** Interviewees offered a variety of thoughts about current marketplace conditions across the public and private sectors in light of the COVID-19 pandemic [#2, #5, #8, #10, #12, #13, #14, #17, #18, #19, #20, #21, #22, #23, #29, #AV, #FG2]. For example:

- A representative of a majority-owned professional services company stated, "People are now able to work remotely and in different places, and people could move to different states and stuff like that. So, I think it definitely has been a barrier in our industry. There's just so much turnover right now. And I think it probably ... didn't start with COVID, but it definitely accelerated everything. And I think that as a public agency, they don't make as good salaries maybe as some other places. ... It's been difficult in that regard to try to build some relationships and keep the projects on track and stuff." [#2]
- A representative of a majority-owned construction company stated, "Our shop didn't close down. Our office didn't shut down. You leave your area, work the area, you mask and stuff like [that]." [#5]



- The owner of a majority-owned professional services company stated, "You're going to find this amazing, but in Idaho, COVID drove a huge spike in our business. As people fled California and other restrictive states like Washington, particularly the Seattle area, we saw a huge influx of people from California and Seattle and a few from further east, but a majority of the folks that came in [during] those two years came from California and Seattle. We have had a huge percentage population growth that we've not been able to keep up with, and we are very short on housing currently." [#8]
- Representatives of a woman-owned construction company stated, "We were affected by COVID-19. In Washington state, all construction, including public works, was halted for about six weeks. Then once we got back to work, there were a whole lot of additional COVID safety requirements that greatly added to the cost of the projects." [#10]
- The owner of a majority-owned professional services company stated, "The office that you got sent home from back during COVID and now have no intentions of going back to unless they beat you with sticks. We only own two buildings that do that, and one of them has nice government leases that aren't going anywhere. And then the other one is a smaller building that I do think we'll see some problem with, but thankfully it's just one building in a pretty substantial portfolio." [#12]
- The owner of a woman-owned professional services company stated, "But as far as impact goes, I think you miss the personal contact with clients, but there hasn't been anything that we haven't been able to handle via Zoom or over the phone. And as far as billing goes, it really didn't affect us much. In the first year, it actually increased our sales simply because companies were handling communication in a different way, and so required more of our services in that respect." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The influx of people kind of means more private work, not public works like the residential home buildings, the apartment complexes, things like that. But that's all the private industry." [#14]
- The woman owner of a DBE-certified professional services company stated, "Certainly COVID had an effect. COVID, everybody wound down, but I was winding down a couple of years before COVID." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "COVID actually probably made us busier. I don't think it actually affected us at all. If anything, it made us busier." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "So it stayed pretty okay. It started slowing because of COVID, but I guess the biggest repercussion [has] been getting the concrete and all that weird stuff, the demand it all got backed up so much. So that's been the biggest thing." [#19]
- The owner of a DBE- and WBE-certified professional services company stated, "COVID hit my business hard. ... Colleges shut down ... And it took me forever to kind of shred, sort through, get some, and so I decided to go to school and do a post certification in clinical mental health, because a lot of my clients were just really struggling with all the stuff that they were forcing kids to do, the masks." [#20]
- The woman owner of a DBE-certified professional services company stated, "During COVID, I would say it felt like it didn't skip a beat. It actually just got busier. We were extremely busy. And the consultant mentality, it was like, 'Oh, we're all going home for two weeks.' But we still have

deliverables. And we still continued to push for those deliverables. They would not skip a beat. I guess as an owner, I had to embrace some technological stuff like Teams and stuff that I was [doing] a little bit, that people have been doing forever. But I needed to get on board to do it with me which has made things easier. But overall ... besides the workload and some technological improvements, I would say it didn't have a ton of impact. We still operate similar to how we did. ... It was really nice to say, 'We're working on this project for a year at least, or nice to know this project is in the state. And so that's one thing that was really great is knowing that the work was still there and would continue to be there.' [#21]

- The owner of a DBE-certified professional services company stated, "Remarkably little because most of our work is done out of our home office. The fieldwork is usually done on our own, without other people there to witness it. So, the only thing that's changed is meeting clients, rather than in person, meeting them remotely. But that's changed again as we become more accustomed to working with COVID and feel more comfortable meeting in person." [#22]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "A lot of people have been complaining, but trucking, it's actually, I don't know, my business has excelled through the COVID period because it's like we're not on the ground working in groups. The guys are out on the projects hauling, staying to themselves in their truck. And we were able to keep pushing through and earning and making money during the pandemic. We didn't get shut down." [#23]
- Representative of a DBE- and 8(a)-certified construction company stated, "I've spent a lot of time during COVID trying to just stay busy, learn everything that I could. ... Pre-COVID, our 2020 year we keep, [having work] rolling and flying in, you're going to be like, 'Oh my gosh, we're going to have to start hiring people and we cannot keep up with the workload that's like dropping down on top of us.' And then COVID hit, and everything stopped and then prices skyrocketed. So, all of the builders, ... everybody was like kind of bouncing back after lockdown and everything. They're like, 'Let's get this finished, let's get caught up.' And then the rest of them just stopped. ... And construction was booming, and interest rates were really low, so everybody's building projects started flying in again. And then with the interest rates here lately, we had so many projects that just [froze] and just stopped where we were designing three buildings. ... If construction is booming, we're booming. If construction takes a halt, then we feel it too." [#29]
- A representative of a majority-owned construction company stated, "I was doing good until COVID hit. ... Marketplace conditions are difficult, you need to know someone to get any business and you need to make a lot of money to stay in business. It's hard to charge a fair price because of fluctuation in the price of materials and fuel costs. It's difficult getting material you need sometimes because you can't get a part you need. The price of equipment is getting ridiculous." [#AV119]
- A representative of a woman-owned professional services company stated, "Since COVID I have never been busier." [#AV236]
- A representative of a volunteer organization in Idaho stated, "As far as the businesses that we've been seeing [go], we've been seeing a lot of big industries coming into our area. So, not so much with the smaller startups. We had a bunch of startups happening during COVID, but not a lot of new ones since then." [#FG2]

**3. Keys to business success.** Business owners and managers also discussed what it takes to be competitive in the Idaho marketplace, in their respective industries, and in general [#3, #4, #7, #9, #10, #11, #14, #17, #18, #25, #AV, #FG1, #FG2]. For example:

- The Hispanic American owner of a construction company stated, "In this line of business, [the] number one [predictor of success] I would say is relationships with contractors and relationships with who you know. The second thing in my line of work would be ... you have to learn how the work is and what you're getting yourself into. If you just get into the business of construction and not knowing how to do the work, then you're going to have a hard time bidding and submitting quotes and stuff." [#3]
- A representative of a majority-owned professional services company stated, "It just takes time to learn where your niche is and learn how to market, where to market, and who to market to." [#4]
- The Native American owner of a professional services company stated, "I have a pretty wide skillset and I have a lot of different qualifications. So that helps me when times change or things happen, where if you do one thing and that's all you do and you have one certification then you don't have many options or flexibility." [#7]
- The Hispanic American owner of a DBE-certified professional services company stated, "Everybody's complaining about the DBE program, but it's the law. Idaho, the only reason why we survived, that whole area, is that our niche was mid-sized to lower-sized engineering companies that didn't have an environmental group. So, we were able to slot in. ... There has to be a certain, what I call intrinsic humility when you're a subcontractor. ... Pick your clients well. ... I mean, no business is better than bad business." [#9]
- Representatives of a woman-owned construction company stated, "In this line of business, the work predominantly goes to the low bidder, so you're going to have to come up with a better plan. You're going to have to be more efficient, you're going to have to have a better scheme. You're going to have to have some edge that's going to allow you to beat out your competitors, who are probably just as good as you are at doing this. You'll have to have a lower number and still make money. Every job's different, sometimes you might have a better access plan." [#10]
- The co-owner of a majority-owned construction company stated, "What we've done to be competitive and be successful is we take exceptional care of our customers. Even if it comes at our own loss, we always ensure that customers are happy with what we've done for them and are fortunate to have nothing but five-star reviews. So, I think that has been huge for us in referral business as well as when people are looking up businesses to do work for them, that they're able to see that we have that track record. ... Husband and wife partners[hips] generally work very well ... there's a really healthy balance and communication is good, expectations are managed." [#11]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I have the relationships to put those trucks to work so that the trucks aren't just sitting while I have these massive payments. So, you have to do it wise. ... You've got to pick up the slack when you're building a business and [are] not established and you're shuffling through employees. Because you are a new business, you got to understand every aspect of it. Every aspect is difficult, and you have to play it smart, and have to know that you're an up-and-coming business. ... Guys that are good drivers, they are not looking to work for you. As a new business, trying to get employees in the truck driving thing, you're scraping the bottom of the barrel and trying to make it work, and that

takes time as well. ... So how do you gain the experience? You just get out there, trial and error. That's how anybody gains experience. ... I started out as a sole proprietor before I was registered as a DBE, then I was a sole prop even as a DBE, and then the next year, I turned into an LLC. I created a corporation, because I didn't know how it was going to work out for me, so I didn't want to just jump in guns blazing." [#14]

- The woman owner of a DBE-certified professional services company stated, "I don't want to fight it anymore. I still want to work, but I don't want to work that hard. I do what nobody else wants to do. And I think that was a result of being in a male firm for 12 years when I started out ... I would take the work that none of those guys wanted. Now it's turned out to be, I'm well-rounded ... and I think I'm well-respected and a leader in the industry here in Idaho by clawing my way up and doing what nobody else wanted to do. When I say no one else, I'm going to say the men in the industry wanted to do. That's not true anymore, but that's just because I earned the right to be equal to them." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "I went to work for [this company] when I was 19. ... I actually have made my own set of spreadsheets that do all my math for me and stuff. ... I just make it so anyone can call me on my phone, and I'm like, 'This is how much it's going to cost, so that's how much I'm going to pay.' ... I've had that for several years. I've been bidding jobs for [this company] since I was like 22 or 23. So, the biggest thing I would say we do ... is we don't say 'this is how much it costs per regular [hours] and this is how much costs per overtime.' I'm like, 'This is our wage. And I've figured out based on how many hours a week they're going to work, how much we need to charge per hour instead.'" [#18]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "Being able to adjust and adapt to whatever in the market's going to throw your way. Because I have a business plan from 2015 that doesn't look at anything like where we're at right now. It's kind of embarrassing. It's like, oh, it was really shortsighted. ... You've got to be responsive; you know this in your line of business and be ready to move into action and pull a group from somewhere if you need to have them somewhere else because you've got a fire going." [#25]
- A representative of a majority-owned professional services company stated, "Work hard and be smart." [#AV120]
- A Native American representative of a trade organization in Idaho stated, "The best way to have longevity is to have that true business plan as far as dealing with the ups and downs of just business itself and knowing where they're going to turn to and having a backup if they need to have a backup. ... Walking through that mental process of putting things down on paper in a plan holds them accountable in really thinking through the process of the next steps that they're going to take. ... The practice of developing it helps them walk through and it's there for them in writing if they need to do those different things." [#FG1]
- A representative of a trade organization in Idaho stated, "Very first and foremost, one of the biggest keys to success is having a business plan and a strategic plan on moving forward as far as growth." [#FG1]
- A representative of a volunteer organization in Idaho stated, "I think one of the biggest key[s] ... to any success of any business when they open up is how much they get involved in their community. When they get out and start participating at business after hours and really doing that networking aspect of it, is a huge thing when you see success versus failure, at least in my area." [#FG2]

## B. Certification

Business owners and managers discussed their experiences with ITD's and other agencies' certification programs. Part B captures their comments on the following topics:

1. Certification statuses;
2. Advantages of certification;
3. Disadvantages of certification;
4. Experiences with the certification process; and
5. Recommendations about certification.

**1. Certification statuses.** Business owners discussed their certification status with ITD and other certifying agencies and shared their thoughts about why they did or did not seek certification. Fourteen firms interviewed confirmed they were certified as a DBE, MBE, or WBE [#6, #9, #14, #17, #18, #19, #21, #23, #24, #25, #27, #28, #29, #30]. One firm interviewed was in the process of applying for certification [#17].

Four firms were not certified and explained why their firms had not pursued certification [#3, #7, #11, #13]. For example:

- The Hispanic American owner of a construction company stated, "I don't have those certifications because I haven't been able to find how to apply for those." [#3]
- The Native American owner of a professional services company stated, "I probably am a lot of these things, but I don't know that I'm certified. ... I don't understand it and I don't know that I understand the intent. And if I did take the time or did learn about it, I don't know that I would agree with it necessarily, it's not something I dealt with." [#7]
- The co-owner of a majority-owned construction company stated, "No, I'm not even familiar with [the certifications] that you listed." [#11]
- The owner of a woman-owned professional services company stated, "It had been some time since we'd actually done any business with the state and just had let [our certification] lapse." [#13]

**2. Advantages of certification.** Interviewees discussed how DBE/MBE/WBE certification is advantageous or has benefited their firms. Business owners and managers described the increased business opportunities brought by certification [#6, #9, #13, #14, #18, #19, #21, #29, #AV]. For example:

- The Hispanic American owner of a DBE-certified professional services company stated, "You can be the size of Ford Motor Company if you're [an] Alaska Native corporation and still be considered a DBE. There's an unlimited size." [#9]
- The owner of a woman-owned professional services company stated, "They [a potential client] had indicated that [certification] was a big bonus in our case. They liked our proposal, but that was a big benefit to them, utilizing our services because they got credit for that." [#13]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I've been certified since 2018. So when I first started, I didn't know about these programs and I was just going out there and hustling like anybody else, and then I heard about it and I'm like, 'Hey, I got to take advantage of any edge I can get on the competition.' I decided to sign up and go through the process, and the rest is history. If there's a 3%, 4% goal on a \$10 million project, how do you fulfill that with just one truck? A lot of these other DBE companies that are just starting out don't understand that aspect either. You have to have a prime [contractor] that's going to go, 'Okay, I'll do the extra work and I'll give you a shot,' because he has to get work out of you as a DBE, and then he has to go shop around for other DBEs to hit the goal." [#14]
- A representative of a woman-owned and DBE-certified construction company stated, "It gives us a lot more work, but sometimes it gives us too much work. ... Basically, by November or December, I have bid enough work that we don't need to do bidding anymore. ... It's just that there's so much work ... contractors just get too full too fast." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "Working with the government, I just met so many different avenues. It was quite amazing, the DBE [certification]. Even though we haven't got a ton of jobs from it, was definitely a game-changer." [#19]
- The woman owner of a DBE-certified professional services company stated, "I feel very fortunate as a DBE, because I don't have to put a lot of time into marketing like some of the larger firms and when I don't have the capital or the cash flow to do that. But my marketing has basically been built on previous relationships that I have developed while I was working in the transportation business. And also, by word of mouth." [#21]
- Representative of a DBE- and 8(a)-certified construction company stated, "I think once you have your [certification], it makes it easier. Like a pre-qualification, like the background foundational paperwork. ... We actually had a subcontract with [another 8(a) firm] on a different project and then we got our award and we're like, 'Hey, check it out.' We got awarded. And then she's like, 'Oh, awesome, let's talk about it.' So, we went and met with her and sat down with her ... We were like, 'Oh, this would be great.' We can partner with her. And kind of because she is a few years ahead of us in her progress. We're like, this'll be a great partnership that we can lean on each other, and she can teach us." [#29]
- A representative of a majority-owned professional services company stated, "I don't want you to take this the wrong way. I am not racist. I am a guy. I am not a vet. I am not a minority or disabled. If those boxes are checked it is easier to get the jobs. It is not better for me though. I don't go after work like that because of [that dynamic]. ... It is a lot easier to get the work when you check those boxes, like a vet, a minority, or a disabled person. My position is very different." [#AV217]
- A representative of a majority-owned professional services company stated, "I think a lot of the agencies and larger corporations are focused on hiring DBE business[es], [but] we are not a DBE. For example, when I contact an engineering firm, they would be less interested in partnering with us as a subcontracted [firm]." [#AV241]

**3. Disadvantages of certification.** Interviewees discussed the downsides to certification [#9, #18]. For example:

- The Hispanic American owner of a DBE-certified professional services company stated, "So with ITD, once you get a certain size, you have to go through an audit, which is extremely painful to get



an overhead rate. ... I would say that there is an underlying [belief] about DBEs not being able to do good work." [#9]

- A representative of a woman-owned and DBE-certified construction company stated, "I do personally think sometimes the DBE goal is a little too high for contractors. ... I'm a big advocate against the DBE, even though we have one, just because I feel like contractors get cheated a lot, because it's really hard to meet certain goals. I mean, I feel bad for a contractor. ... I've had contractors call me and say, 'I have to put \$20,000 on your bid so I can meet my DBE goal.' ... We're not out to get anyone. Most people that do business stuff and profit from it aren't going to be like, 'No, don't do that.' But at the end of the day, I don't think it's okay. I don't think it should be the way... It shouldn't have to be, 'Let's charge the state more so we can meet our goal.' And we have gotten jobs that way, unfortunately, that we've had to do it on." [#18]

**4. Experiences with the certification process.** Businesses owners shared their experiences with ITD's certification processes [#3, #6, #14, #17, #20, #27, #29]. For example:

- The Hispanic American owner of a construction company stated, "Getting the certifications to become a minority and being recognized is a barrier. ... Too many documents, and I guess... I don't know if they're too busy to reply or what. ... For example, I tried to become a minority-owned [-certified] company my first year, but they were giving me such a hard time that I just gave up on the procedure because they made it seem like they didn't recognize me in my position as a minority and starting out. Either it was too soon, or they also said that [I did not have] enough history with my company, and it was kind of... I don't know. It was difficult. It made it difficult to have my certification." [#3]
- The woman owner of a DBE-certified professional services company stated, "I mean, other than it's painful to go through the whole certification process, and doing all the paperwork, but it's worth it. We had a due date of February for our certification, so we obviously met the date. But we didn't hear [back] probably until June or July because they had staffing changes, and they didn't have time to review applications, and all the stuff. Even though we knew it wasn't a problem ... I guess it's important, because people are relying on us to be a DBE." [#6]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "DBE program's going to be great, and it is so much work to get certified, so much paperwork and stuff, but there's no guarantee that you're going to get work when you do that. So, a lot of people feel like, oh my gosh, I did all this work, now it should just come easy. And me, you realize shortly after that that's just the beginning of the hard work. The real hard work hasn't even started yet." [#14]
- The woman owner of a DBE-certified professional services company stated, "It's very time-consuming, because it's a detailed application and you have to pretty much tell them everything about yourself and your finances and your personal life. ... I have to go through the whole process again. It was only lapsed for a year. That started in November, and it still hasn't happened. The contractor that's asked me to get it, because they want to put it on their contract, says, 'We'll see which happens first—that ITD actually gets the contract for them together or I get my DBE first.' But we've both been waiting for both for quite a while. ... I'd say it took me to get the application going again six to eight hours maybe to get them everything they needed and then submit it ... in November. And since it's just been token emails from them: 'We're working on it. We'll get to it. Thank you for...' Maybe every couple of weeks I get something canned out of the email." [#17]



- The owner of a DBE- and WBE-certified professional services company stated, "The person who came to look at my business and look at my paperwork and everything, he said, 'I have never come to any place that is this organized. Your paperwork is perfect.' I passed with flying colors. No problem. And I did all my PR. I have everything in place. I know how to write up what they want you to write up." [#20]
- The woman owner of a DBE-certified professional services company stated, "Sometimes, it's a little confusing with the whole DBE thing and what y'all have to turn in and update. We just recently updated it, so it's like, 'Okay, what do we all need to turn in again?' ... It would be helpful to have a little more help with that, because I did email the person a bunch of times and ask, 'What do we need to do to fill out this no change form? What do you need?' Didn't hear back and didn't hear back. Finally, they're like, 'Oh, you can just do it online.' ... It was very confusing. The online platform that they have is not user-friendly at all." [#27]
- Representative of a DBE- and 8(a)-certified construction company stated, "He had to fight really hard to get the DBE certification. Also, he was originally denied, and the director of the program actually went to bat for him and helped him overturn the initial decision, but it took a really long time." [#29]

**5. Recommendations about certification.** Interviewees recommended a number of improvements to the certification process as well as recommendations to enhance the benefits of becoming certified [#3, #14, #17, #20]. For example:

- The Hispanic American owner of a construction company stated, "We should get some more resources to get on the bidding list. And if ITD can really award that 10% to small contractors, it would definitely help out with ... some new companies that are trying to start out." [#3]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Yeah, they could do a hotline tip to maybe hire an auditor or something that, if there's complaints about companies operating as a front as a DBE like that, then they could come up with a process how to investigate that a little bit more. ... And then you would just be getting people complaining all the time. ... But for the real wrongdoers of the program, I think it would be good to be able to set up some sort of auditing system." [#14]
- The woman owner of a DBE-certified professional services company stated, "I don't think most small businesses are even aware that [the Federal DBE Program] exists, that there's help getting the DBE [certification], how it would benefit them." [#17]
- The owner of a DBE- and WBE-certified professional services company stated, "Some of them may be talented and end up learning how to do it, but that's how I failed the DBE [certification process with ITD]. It is so weak compared to what they do over in Spokane ... They're just so much more prolific. They have more to offer. Idaho has to get their head out of the sand because you have how many people [are] moving there? Just look up north." [#20]

## C. Experiences in the Private and Public Sectors

Business owners and managers discussed their experiences with the pursuit of public- and private-sector work. Part C presents their comments on the following topics:

1. Trends toward or away from public-sector work;

2. Differences between public- and private- sector work; and
3. Profitability of public- and private-sector work.

**1. Trends toward or away from public-sector work.** Business owners or managers described the trends they have seen toward and away from public-sector work [#1, #4, #8, #9, #11, #14, #22, #AV]. For example:

- Representatives of a majority-owned construction company stated, "It's more driven on availability as projects present themselves. It's not really a decision on our part to steer one way or the other [between public and private work]." [#1]
- A representative of a majority-owned professional services company stated, "It's basically workload-dependent, but probably in the last six months I've seen less opportunity in the private sector and some opportunities have grown in the public sector that weren't there or weren't as readily available, I guess, in previous years. Part of that's due to some funding being released. Part of it's due to just growing relationships with public agencies and me having the personal opportunity to do some of that work." [#4]
- The owner of a majority-owned professional services company stated, "The public sector is getting really difficult to break into. I no longer even attempt to get work with public agencies in Idaho." [#8]
- The Hispanic American owner of a DBE-certified professional services company stated, "I'd say 90% of my business is ITD business for sure. I'm saying this, but ITD is a secondary client. So, the private sector is the primary client for a lot of these smaller companies and stuff." [#9]
- The co-owner of a majority-owned construction company stated, "We've remained busy with residential; I would say it's the number one reason. Number two, being that our understanding is that it would likely take significantly longer to get paid. And third being we haven't known where to look or haven't known to look ... or being a smaller business, if we would even be considered or if we'd be out of our league jumping into that. So, we've just not bridged it but those are the top few reasons that come to mind." [#11]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I started in the private sector, starting off that way with my trucks, and then I've been trying to learn the public sector aspect of it." [#14]
- The owner of a DBE-certified professional services company stated, "It fluctuates wildly." [#22]
- A representative of a majority-owned professional services company stated, "I have tried to work for [the] DOT in Washington state and they were awful. But I haven't tried to work with ITD. I have been busy with other jobs, so I haven't had the opportunity to approach ITD. I started about five years ago. I hit the economy right. There is more work out there than there are engineers. When the private sector work slows down, I plan to approach more public sector jobs. I try to run a 50/50 split between private and public work, but it is really busy on the private side right now. Public side too, actually." [#AV180]

**2. Differences between public- and private-sector work.** Ten business owners and managers commented on key differences between public- and private-sector work [#1, #5, #6, #7, #8, #13, #14, #28, #AV]. Their comments included:

- Representatives of a majority-owned construction company stated, "One of the biggest differences is your assurance of being paid on the public sector. We never worry that we're not going to get paid on a public project, because there are challenges there on the private side." [#1]
- A representative of a majority-owned construction company stated, "You'd really have to screw up a job or multiple jobs to have to produce a bond in this area, is my belief. Now on the commercial side, I mean the general contractor side, yeah, they've got a lot of people they've got to cover with." [#5]
- The woman owner of a DBE-certified professional services company stated, "I would say the biggest difference is all of the paperwork. ... Because private, you just don't have that, and you usually have one contact, and they sign off on it, and you're done." [#6]
- The Native American owner of a professional services company stated, "Public jobs take a full-time estimator. ... It's easier in the private sector. ... When you get into the public job and then there's just so much inefficiency in meetings and engineers." [#7]
- The owner of a majority-owned professional services company stated, "Marketing only really applies to the private sector. The public works is really about responding to SOQ [a statement of qualifications] or RFQ [request for qualifications] for statement and providing the statement of qualifications and passing the screening. Once you're through the screening, I mean, you're kind of in. But if you can't get past the statement of qualifications, get on the term agreement, get on the list, you don't really have a chance." [#8]
- The owner of a woman-owned professional services company stated, "You know that in the majority of the RFP [request for proposals] that you are responding to, chances are most RFPs are written to keep their current agency, or the person they're working for, or conversely, that if they're looking to make a change, that you can tell with how an RFP is written, whether or not they're happy with the incumbent or not." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Private-wise, of course it's a lot slower. I notice that the private is slower, and it's because when you're working for the private, you're not with necessarily a super established company. It could be a startup as well that you're hauling for, and you have to wait for them to get paid, and then hope they pay you and hope they're above board and all that. So private is a little bit more up and down like, are you going to get paid, or are you not going to get paid? And with the state, working with the state, when the prime gets paid, they have those clauses in effect that the subcontractor DBEs need to be paid out within 10 business days of the prime receiving payment." [#14]
- The Hispanic American owner of an MBE- and DBE-certified professional services company stated, "The private sector is the A-class of client. The private sector pays quickly, you're not really constrained by contracts, you don't have to go through an overhead audit. We have to go through an overhead audit every year to establish our overhead rates, which can be really quite punitive. And then the second-tier clients are the state clients, ITD. And so, to me, we've just kind of decided that we're just going to go and really maintain that second tier client. And then the third tier for me, if you're not in an 8(a) program or hub zone, is the federal government. Federal government, I don't work for them anymore. They're just not a good client." [#28]
- A representative of a majority-owned professional services company stated, "Biggest obstacle is contractual. Secondary is the high E&O [error and omissions] insurance requirements. I have

found that I am [working in the] private sector and working with DOT that government employees do not understand efficiency and budgets.” [#AV56]

- A representative of a woman-owned professional services company stated, "I'm more known for working in private sector so they hesitate to hire me because they think I am going to be biased or that I will not see things from their standpoint.” [#AV128]

**3. Profitability of public- and private-sector work.** Business owners and managers shared their thoughts on and experiences with the profitability of public- and private-sector work. Four business owners perceived public-sector work as more profitable [#3, #7, #8, #24]. Two business owners and managers perceived private-sector work as more profitable [#2, #10]. One business owner did not think profitability differed between sectors [#26].

## **D. Doing Business as a Prime Contractor or Subcontractor**

Part D summarizes business owners’ and managers’ comments related to the:

1. Prime contractors’ decisions to subcontract work;
2. Prime contractors’ preferences for working with certain subcontractors;
3. Subcontractors’ experiences with and methods for obtaining work from prime contractors; and
4. Subcontractors’ preferences for working with certain prime contractors.

**1. Prime contractors’ decisions to subcontract work.** Business owners and managers discussed how they decide to subcontract out work when they are the prime contractor. Business owners and managers also shared their experiences soliciting and working with certified subcontractors.

**a. Firms that serve as prime contractors explained why they do or do not hire subcontractors** [#1, #4, #5, #6, #8, #10, #11, #18, #19, #24, #AV]. For example:

- Representatives of a majority-owned construction company stated, "We sub[contract work] out to keep all of our equipment and people busy, besides just doing our projects that we're prime on. And then there's crushing that we'll do as a sub sometimes, but 80 to 90% of our projects, we are the prime. We obviously look at each project, make sure it fits and that we can get to the job. We're not too busy when they want to do it. But from a public and private standpoint, the way we look at it is just the nature of the work. Does it make sense for what we do to fit in as a sub or not? Whether it's public or private. ... From our standpoint we're very selective when we get sub, and it's usually a larger size project, teaming up with somebody we've worked with before and we have comfort with and trying to get work that way." [#1]
- A representative of a majority-owned professional services company stated, “Almost all of the public work stuff, I'm prime.” [#4]
- A representative of a majority-owned construction company stated, "[It] used to be more [like the] Wild West. Today it's more in place. I do have a couple that still want to pick and choose what they do, and I don't have a problem with that either because they're loyal customers. That's fine. If they weren't loyal, I'd probably say, 'Take it or leave it.'" [#5]

- The woman owner of a DBE-certified professional services company stated, "If we're the prime, or even if we're a sub to a prime, we don't really subcontract anything out. We do it all in-house." [#6]
- The owner of a majority-owned professional services company stated, "When somebody is told by the county or city, 'Oh, you need an engineer.' Well, they really need a surveyor, but they don't know the difference. And so, they Google engineer and I come up and usually I will get the project. ... And then I sub-consult the surveyors, the geotechnical engineers, all the proper people to do the project. I will hire and I am the prime, they are the subs. That doesn't mean I make the money; I bill it straight through in most cases." [#8]
- Representatives of a woman-owned construction company stated, "In highway work like ITD does or Washington State DOT does, typically the prime is either the bridge contractor or the earthwork contractor, depending on who has the most work on the project is, in general. It just depends on the type of job, but we choose to pursue jobs where we can be the prime." [#10]
- The co-owner of a majority-owned construction company stated, "One of the reasons that we focus more on residential versus seeking out more subcontractor work is because with our residential customers, we get half [of our payment] at the time of their signing or approving or when we go into contract for the project, and then we get the remaining half within five days. ... How this works with the public sector, ... with contractors, they generally are not going to pay anything down. So we're holding the entirety of the expenses and then they can take as much as a month to pay. So it's like really doesn't make sense for us. If we can stay busy ourselves, why wait for the money when we have a customer base that helps significantly with just our cash flow?" [#11]
- A representative of a woman-owned and DBE-certified construction company stated, "Traffic control is supposed to be for the safety of the road. And unfortunately, they're only seeing [the work] in [terms of] dollar signs. Now, don't get me wrong, I only see in dollar signs as well, to a certain extent. But, for example, down there, we were working. And they were flagging intersections. And they were like, 'It's contractors' convenience. So, we are not going to pay for the flaggers. The contractor has to.' And the contractor's like, 'That's literally what the [flagger's] hours are there for, is the safety of the public and the people.' And they just don't care. I would say the only place I have told people I will not bid them a job this year is down there. And it kills them because they don't have any DBEs to bid down there. ... We're busy enough everywhere else that it's just not worth doing." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "We're more sub but definitely want to gear towards more of the prime. ... It's a little more fun, kind of [like] the ball's in our court." [#19]
- The owner of an SBE-certified construction company stated, "I would say in the public realm, subcontractor. In the private realm, I am prime. I do subcontract to geotechnical and surveyors. ... I think pricing does play into it. If they have put lower-priced proposals out, usually my client will prefer to go with the lower prices. So, it always seems to come down to price, but then there has to be a level of service in there that is equal between them. I wouldn't go with a lower price for less service. And then a lot of that also has to do with relationships too. ... My experience hasn't been very congenial in the past. It's more about how they were selected by the developer prior to my coming in. So, I don't use them frequently, but I do work with them." [#24]

**b. Firms discussed their work with certified subcontractors and explained why they hire certified subcontractors** [#14, #24, #AV, #WT5]. Their comments included:

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "You have to have a prime that's going to go, okay, I'll do the extra work and I'll give you a shot, because he has to get work out of you as a DBE, and then he has to go shop around for other DBEs to hit the goal. And so now the primes, now that I grew my company, because I saw the potential to be utilized more by the primes with more equipment and being able to take a chunk out of the goal that is necessary for these contracts." [#14]
- The owner of an SBE-certified construction company stated, "Not intentionally. I do work with women-owned businesses, but in those cases, it's mostly because they were selected by someone else prior to me. And I don't select them because of that. Again, it comes to my relationship with that person, and the service that they provided. And the one woman-owned business that I can think of in surveying, she hasn't been very reliable as far as when I contact her. I just haven't gotten a good feeling that she's interested in serving me with what she does provide. But there are others that are in maybe in hydraulic analysis or river analysis that I know that are women-owned businesses, which are on my go-to [list]. And again, there's a relationship there. I get some positive energy from that person when I request information about another product coming online, and what their price might be. I don't have any bias based on sex of that person at all. It's just a matter of personality, I guess, and the service that they provide." [#24]
- A representative of a majority-owned construction company stated, "Design conflicts, inexperienced inspection staff, non-applicable specifications, some of the DBE's have been unattainable without sacrifice to the taxpayer." [#AV127]
- A representative of a majority-owned construction company stated, "[The] lack of DBE's when they have DBE thresholds, [makes it] hard to find DBE contractors that are competitive or even submit a bid. The [monopolies] buy out on a national level, aggravate sources and supply sources out of the area, for small independent business sources and supplies bought up by larger companies, bids against us on projects is an unfair advantage." [#AV3052]
- A representative of a majority-owned professional services company stated, "Another concern I see is the lack of DBEs provide[s] the existing DBEs an opportunity to seek or demand higher pricing creating an unfair market. ... This also leads to increased costs for the client and taxpayers. ... The DBE requirements also impact companies that can provide the requested services but are not afforded the opportunity, because the prime firms and contractors need to meet the minimum DBE requirements. This often results in using higher bids and less experienced firms and companies to meet the DBE requirements." [#WT5]

**2. Prime contractors' preferences for working with certain subcontractors.** Prime contractors described how they select and decide to hire subcontractors, and if they prefer to work with certain subcontractors on projects.

**a. Prime contractors described how they select and decide to hire subcontractors** [#1, #2, #4, #8, #10, #11, #14, #26, #AV, #WT5]. Prime contractors shared the methods they use to find subcontractors and the factors they consider when selecting a subcontractor. For example:



- Representatives of a majority-owned construction company stated, "Most public projects are a low bid process and so we select the subs in the same way ... based on low price. ... When it's a federal job with DBE requirements, typically those DBE requirements are set high enough that any DBE quotes we receive, we have to use regardless of what their price is. In those cases, we really don't have the option to go with a low bid." [#1]
- A representative of a majority-owned professional services company stated, "So whenever we [are a] prime, we always end up teaming with subconsultants and we use the DBE pre-approved list that ITD prepares a lot of times if a proposal is put out. For instance, down here [in] southern Idaho, there might be five consultants that put in for a proposal. Three, four, or five of those are all going to have the same environmental consultants on their team to try to meet their DBE goal as well ... just because they're one of the best here locally." [#2]
- A representative of a majority-owned professional services company stated, "Over the years, there are four or five different geotechnical engineers that I've worked with in a general area of Spokane. Ultimately, I'm just a conduit to introduce them to the owner. The owner generally selects them based off of price. If someone's \$1,000 cheaper than the next guy, they get the job. That's pretty much all there is to it on picking the subs for me." [#4]
- The owner of a majority-owned professional services company stated, "I'm usually hiring a surveyor. If I see a really nice survey by somebody I don't know, I'll contact them and see what it takes to get on their schedule." [#8]
- Representatives of a woman-owned construction company stated, "There's standard scopes of work. The asphalt pavers quote the asphalt scopes of work. The earthwork quotes the earthwork, the landscaper quotes the landscaping, rebar quotes the rebar. ... As long as you're the low bidder, unless there's a subcontracting goal, like an MWBE requirement. Or there's some subs that we've worked with before and we know they're a little tougher to deal with, so you don't necessarily use them if they're low. But nine times out of 10, you're using the low bid subcontractor. ... [Working with disadvantaged subs is] very similar to working with non-disadvantaged, some are really good, some are not. ... [W]e've been in this industry so long, we know most of them. But once in a while, we get a new sub that we haven't worked with and whether they're disadvantaged or not, they could really be a stellar performer or not. ... There are subs that we use repeatedly, [for] a combination of reasons. First of all, they are going to have to be cost competitive. ... [I]f they're 20% higher than somebody else, we can't afford to use them. But it just means we've succeeded on the job together. The more success you have on the project together, the more you understand how each other works, and the more successful you can be again in the future." [#10]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "You have to have a prime that's going to go, okay, I'll do the extra work and I'll give you a shot, because he has to get work out of you as a DBE, and then he has to go shop around for other DBEs to hit the goal." [#14]
- A representative of a majority-owned professional services company stated, "The [project managers] who are going to take the lead on the project and the team gets together. ... What they foresee is [what is] going to be required to complete the job and the task that we are not able to complete on our own. They would then say, 'Okay, we need an environmentalist,' for example. Then, they would say, 'Okay, so we've worked with these people, all these different environmental people.' Then, they'll say, 'Okay, this one's best located in this area.' Or they're going to team with



the best fit for the job, maybe location or previous knowledge of the project, or prior projects that butt up against it. They're always working to make the best team for the project, to make it a successful project." [#26]

- A representative of a majority-owned professional services company stated, "Idaho is a busy market and the contractor pool is limited. There is too much work and not enough subs." [#AV3]
- A representative of a majority-owned professional services company stated, "Another concern I see is the lack of DBEs provide[s] the existing DBEs an opportunity to seek or demand higher pricing creating an unfair market. ... This also leads to increased costs for the client and taxpayers. ... The DBE requirements also impact companies that can provide the requested services but are not afforded the opportunity, because the prime firms and contractors need to meet the minimum DBE requirements. This often results in using higher bids and less-experienced firms and companies to meet the DBE requirements." [#WT5]

**b. One prime contractor discussed the effect working in the public or private sector has on their decision to hire subcontractors** [#26]. For example:

- A representative of a majority-owned professional services company stated, "I think they basically would go through the same process of elimination for private or public [sector work]." [#26]

**c. Firms that work as prime contractors explained that they do not want to work with certain subcontractors.** Preferred subcontractors usually have a long-standing relationship with the prime contractor and are responsive to the needs of the project [#4, #7, #8, #WT1, #WT2]. For example:

- A representative of a majority-owned professional services company stated, "I would say it's basically because efficiencies in my industry are based on past work with these firms and how they and I can work together, and we can efficiently get a job done. So, once you've done a job or two with a firm that I would subcontract work to, they see what you can do. They get comfortable working with you. If things go smoothly, they want to hire you again because you made their job easier." [#4]
- The Native American owner of a professional services company stated, "Network and relationships, past jobs and I've kind of built a team to fill my needs and stuff that I need to basically have others kind of coordinate and, just like I said, I can't be in every location all the time." [#7]
- The owner of a majority-owned professional services company stated, "I've worked with enough people that I have preferred go-to people. And then a few people that I will probably not go back to." [#8]
- A representative from a public agency in Idaho stated, "There should be a formal process/form for reporting DBE non-performance. In addition, a project prime should be allowed to report, overall, on that DBE's performance and attendance. Habitually non-performing and/or absent DBEs should be removed from the program." [#WT2]

**3. Subcontractors' experiences with and methods for obtaining work from prime contractors.** Interviewees who worked as subcontractors had varying methods of marketing their businesses to prime contractors and obtaining work from prime contractors [#1, #3, #4, #5, #6, #14, #17, #23, #24, #29, #30, #AV, #WT7]. For example:

- Representatives of a majority-owned construction company stated, "We don't go out and market ourselves trying to gain more work. We already have a close relationship with that public sector market that we primarily deal with and their low bid, just like we are when we're sub to them, ... they're looking for the low [bidding] dirt guy to put with their package." [#1]
- The Hispanic American owner of a construction company stated, "100% of it is mainly making phone calls [and] looking up contractors that are in the area. I just reached out to them and let them know I'm available or have them add me to their bidding list." [#3]
- A representative of a majority-owned professional services company stated, "Since probably the last three years I have done no marketing at all. It's just on past relationships, and they're keeping enough workflow going for me to keep me busy." [#4]
- The woman owner of a DBE-certified professional services company stated, "We get calls all the time of projects that we may not know about that are out or they're coming out and they [are] like, 'Do you want a prime, or come be a sub to us?' It works both ways." [#6]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "That's all part of the learning process. It doesn't happen overnight. You could waste six months [or] a year not knowing [how to market yourself], just waiting for primes to reach out to you, which they do, but you can be more active yourself if you know the information now that I know." [#14]
- The woman owner of a DBE-certified professional services company stated, "I don't really have any contacts with any primes per se. And again, I typically deal directly with the state or the county. The government emails me directly for a proposal. It's only the big, big projects like this one that is coming up that has I think well over a hundred parcels to be purchased in the next year and acquired by the state that the state will reach out to a prime contractor, and then they'll reach out to their subs. My work mostly comes directly from the government. I'll get a notice from ... Ada County. They know me and I'm on the ITD list. So, they'll send out an RFP, and that's how I find out. I don't watch for them. I'm not looking for anything at this point." [#17]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Word of mouth, the mentor/protege program helped a lot, see[ing] me on projects, getting me out there, getting me recognized. But it's basically just been word of mouth. I really do have to work on marketing, but we're so busy already and I'm trying to just maximize my profits. It's just getting them to put us in the contract. That's probably the biggest goal is just getting them to accept. Because it all just comes down to whoever it is, making that decision, who they want to use, even if the values are good, they still have to pick you. Or even if your values are lower than the next person's bid, they still have to pick you. And they have the option to choose which company they're going to use. And so, it's like I've kind of realized that's where the relationship part comes in or it's not what it's comes down to. ... And then the other thing I realized is that so many stars have to align for you to even get on a project. So, there might be one project, there could be 10 to 15 plan holders, which are primes that bought the plans for the project and they're having their estimators and engineers go through it to see what they want to bid on. And then you have to solicit yourself to as many of those primes as possible." [#23]
- The owner of an SBE-certified construction company stated, "I think that what has helped me is the relationships that I have with people, the years of relationships in this valley. In this valley and outside this valley. I see that strong connection to people that know me and know my service. They appreciate my service and appreciate the sort of friendship that we have in this work." [#24]

- A representative of a DBE- and 8(a)-certified construction company stated, "Everybody gets their established teams or who they like to work with, so trying to come in and everybody goes to [their favorites], and it's like, 'Okay, well hey. We're over here.' And we hear people complain, oh, we don't want to work with them. We don't like working with them, but they're cheap. And then you're like, 'Okay, well, we can be competitively priced too, and we'll make your job a little bit easier, maybe try us out and see how we work together. And if you really hate going back to the other companies because you don't like working with them, well then why not come to us?' ... Sometimes breaking those barriers of reestablished teams is kind of a challenge too. ... We try to establish those relationships, build those relationships. Part of it is reaching out. ... [My assistant] and I [are] constantly looking at all of the websites, trying to find all of those opportunities out there, all the RFQs, RFPs, whatever we can get ahold of, we're constantly looking every day. If we find one, we're like, 'Oh, okay, this is the bio one that we can offer our services for.' And then we'll send them to our contacts and be like, 'Hey, check out this. Do you want to go after it?' Sometimes, yes. Most of the time, it's no. And then if they say no, then we move on to the next person." [#29]
- A representative of a majority-owned professional services company stated, "It's hard to find work in my area, most companies have their own in-house. They have their people working in their own entities." [#AV221]
- A representative of a majority-owned professional services company stated, "I've noticed that the state of Idaho in general likes to go out of state instead of teaming up with local architectural companies who are professional and extremely competent. This has been going on recently over the past five years. It's difficult to find employees. We don't get the projects that we used to. We would be doing better if the state of Idaho would hire within." [#AV267]
- The Hispanic American owner of a DBE-certified construction company stated, "[It's] hard to know if they will actually use us if we bid and they win. ... Getting discouraged after a few times they win, we commit, then they don't call back. ... Even if they don't want to use us, the now knowing is hard. We only have four employees and can only bid on so many jobs, so we need to know if we are on the job or not." [#WT7]

**4. Subcontractors' preferences to work with certain prime contractors.** Business owners whose firms typically work as subcontractors discussed whether they preferred working with certain prime contractors.

**a. Business owners and managers indicated that they prefer to work with prime contractors that are good business partners and pay promptly** [#21]. Examples of their comments included:

- The woman owner of a DBE-certified professional services company stated, "To be honest, [a prime I frequently work for] is great. They pay on time. They are really good to work with as a subcontractor. ... [T]hey treat me almost like an extension of themselves." [#21]

**b. One subcontractor discussed the effect working in the public or private sector has on their decision or ability to work with certain prime contractors** [#24]. For example:

- The owner of an SBE-certified construction company stated, "It depends on just my clientele, and whether they get a public project or not. And that would be architects and, in some cases, landscape

architects that [have] been good at writing proposals that gather [the] A team together. And civil [engineering]'s included in that. And then I get included in it." [#24]

## **E. Doing Business with Public Agencies**

Interviewees discussed their experiences working for public agencies and attempting to get work with public agencies. Section E presents their comments on the following topics:

1. General experiences working with public agencies in Idaho;
2. Barriers and challenges to working with public agencies in Idaho; and
3. ITD's bidding and contracting processes.

**1. General experiences working with public agencies in Idaho.** Interviewees spoke about their experiences with public agencies in Idaho.

**a. Nineteen business owners described the best procurement and contract administration policies they have experienced while working with or attempting to get work with public agencies** [#1, #2, #4, #10, #12, #13, #14, #15, #18, #23, #27, #AV, #FG2]. For example:

- Representatives of a majority-owned construction company stated, "No matter what agency we're working for, we stress the fact that they are progress estimates, and they should be progressed timely and without final quantity. Sometimes some agencies require you to have surveyed quantities or something before payment. That's something that we like to see is agencies making progress estimates based off a calculation, not necessarily a final survey or monthly, year[ly], bimonthly surveys." [#1]
- A representative of a majority-owned professional services company stated, "They will put out a list available to all the consultants and contractors for future work that's upcoming or anticipated. And I think it's really helped the contractor community so that they can start to plan for certain projects and strategize and team up for certain projects." [#2]
- A representative of a majority-owned professional services company stated, "There's a small works roster in Washington state. Maybe Idaho's the same way, but I've been mostly working in Washington state, even though I'm awful close to the state line. It's called a municipal research service center where you can basically register under a small works roster for a number of municipalities across the state. That's actually been a very good flow of work for me. ... I guess to be recognized as a small business without having to go through hours and days and weeks of paperwork would be kind of nice. It's fairly obvious that I fit the bill when I have consistently had between three and five employees, and I can show them my yearly income and all this." [#4]
- Representatives of a woman-owned construction company stated, "Washington is a little more liberal than Idaho, shall we say. Things they're contemplating here, I don't think Idaho would ever dream of, but they would like to add things. If you ever failed to meet your apprenticeship goal, maybe you're not allowed to bid. Things like that I don't see Idaho doing." [#10]
- The owner of a majority-owned professional services company stated, "Our other Class A building in downtown Boise is so ... profitable because ... it's loaded with government agencies, which while they're a hassle to go through checking all the boxes on all of the paperwork, they're certainly long-term reliable tenants." [#12]

- The owner of a woman-owned professional services company stated, "For the most part, [Idaho Public Television] have been very easy to work with over time. And we've been involved with their organizations in different capacities. ... We were one-tenth of the staff of the agency that bid against us, but [Idaho Public Television] know[s] what we're capable of. And so that didn't become a barrier in making that decision." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I feel like [in] Washington, the prime contractors are more accepting in understanding that this is the way it is, and this is what we have to do, so we might as well work with these guys with a more open mind, and I feel like Idaho hasn't reached that state yet with the primes. Yeah, they do understand that they do have to do what they have to do, but it leaves a worse taste in their mouth than it does with Washington prime contractors. ... I also do work with WSDOT [Washington State Department of Transportation] as a DBE, and they post it at the award on their website. When the project is awarded and the contract is awarded, it shows you who the prime was, the three lowest bids, the one that won it, and it shows you the DBE that they used and the dollar amount the DBE was contracted for, whether or not they even used trucking for their DBE. They could have used flagging for their DBE. But if ITD did show that when the contract was awarded, that would relieve a lot of anxiety on the DBEs. ... Washington is just easier, better in the transparency aspect of it, easier and better in almost every way. ... Even the cities are better to work with. You can reach out to their engineers. They kind of look at it as a necessary evil, but they're willing to help, because they just want it to go smooth and get done and get onto the next one too. ... And it's just their transparency, their willingness to help, the program rules. It's just better. It's the same structure as Idaho, but just better." [#14]
- A representative of a public agency in Idaho stated, "All these [resident engineers] have less than five years [of experience], and they just have to figure out what they think it means. So ITD's been trying to hold some [resident engineer] academies, which I think really, really important that they stick with that. I think the more that we can get all of us in a room, making sure that everybody understands how we're all interpreting things is important. Apparently [District 6] is doing, I think it was 12-session long training for new construction staff. And I've heard rave reviews. We talked about doing something for not only our staff, but consultant staff. If D6 would share what they've been doing, I think that could be really helpful for a lot of people." [#15]
- A representative of a woman-owned and DBE-certified construction company stated, "Actually, the state of Wyoming reached out to us and asked us to become a DBE there. But that's a lot of work and we haven't taken the time to do it yet." [#18]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "WSDOT has it streamlined a little bit better than Idaho. First off, Idaho [has] race-neutral goals and WSDOT [has] race conscious goals. So, it helps out, makes it a little easier working with WSDOT and being put on projects. The primes that are working with WSDOT, I guess they're more comfortable with the DBE process. It's like they don't really like it, I get that, but they're just more comfortable going through the process because it's established. They've done it before. ... That's the other thing with the Idaho DBE program, their transparency, it's so hard to get that information. With Washington, it's listed on Washington DOT's project website, I guess where they're listing projects. You can go into the awarded section and see who was awarded the project. You could see the DBE that they used and the amounts that they used them for. With Idaho, it makes it not even worth your time. You have to wait until the project is awarded and then you have to do a FOIA [Freedom of

Information Act] request to the state to figure out which DBE they used and the amount. You have to do a public records request after [that], and then however long that project takes, you're like okay, it's like three months after the project's already been awarded. Who cares at that point? But I used that Washington site to dial in my numbers. ... They used that DBE, whether it was flagging, that's how much they used, that's how much money they gave that DBE. ... There's a lot of information you can pull off that and you don't have access to that information with the Idaho side. Just with the public information request process. And it's just annoying and it makes it not even worth it to try to figure out who they used, how much they used. It's just much easier to gather information from Washington than it is in Idaho." [#23]

- The woman owner of a DBE-certified professional services company stated, "We've worked with IDL [Idaho Department of Lands] a lot. They're pretty good to work with. State parks, they're good to work with." [#27]
- A representative of a majority-owned professional services company stated, "Relatively, Idaho is our favorite state to work in. There are good opportunities and doing business there is easy. The employment laws, payroll requirements, and regulations are easier, reporting regulations and the red tape is less." [#AV3057]
- A representative of a trade organization in Idaho stated, "Our city offers an economic development office that is really trying to diversify our community as far as business ownership and things. I think Meridian is a pretty welcoming place for those type of things." [#FG2]
- A representative of a volunteer organization in Idaho stated, "At least in Jerome, they don't have to apply for a business license at the city level, it all comes from the state level. When it comes to the ones that are building in the county ... we do very well with working with the county people, but who do they go to after that?" [#FG2]
- A representative of a trade organization in Idaho stated, "And one enjoyable thing about working with the city [Boise] is they've created a culture of coaching where people have access to these resources. It's usually higher-level, department heads, managers, and sometimes supervisors, but generally, if you have a problem in your group or you don't know where to go for help related to day-to-day work issues and challenges, the City of Boise makes those resources available. And that can either be done through the HR department in the city, or a lot of departments have specific budgets available for coaching." [#FG2]
- A representative of a trade organization in Idaho stated, "One great thing about the City of Boise is that they understand there's going to be problems both in the public and private sector, but they also provide a solution by giving access to their people. That allows them to work through problems with a trained, certified private coach. And I think that's a big plus for any public entity, whether it's a city, county, State of Idaho, a school district, those tend to be very open to coaching and they make it accessible to many of their staff." [#FG2]

**b. Eleven business owners described the worst procurement and contract administration policies they have experienced while working with or attempting to get work with public agencies** [#1, #4, #9, #10, #13, #18, #AV #FG2]. For example:

- Representatives of a majority-owned construction company stated, "It's harder to find their work in the new SAM [System for Award Management] system [because it] is very cumbersome. It was a little better in the system before and they moved everything over to SAM. It's very hard to navigate



that system on the federal side. ... And if you do find it it's hard to know if it's a set-aside or ... if it's a pre-solicitation or if it's an RFP or what type of advertisement it actually is." [#1]

- A representative of a majority-owned professional services company stated, "So basically, I invested six months of wages and time into this employee, a lot of it at my cost, in training him and getting him up to speed where I could build him to where he would be an asset to my company. Washington State Department of Transportation hired him away from me in order to fill a racial hiring quota or a minority hiring quota when he was, by far, not the most qualified person for the job, and he will readily admit that. ...The other issue is DOT has what's called an approved overhead rate and other ways that they calculate your hourly fees for professional consulting services. Because of the way they calculate these fees, a company my size, I might be paid somewhere around \$90 or \$95 an hour for the same exact services where a company the size of [Business Name] would get paid \$165 an hour because they can doctor their paperwork and they can show a larger amount of overhead. DOT also requires very specific timekeeping software and processes to establish your overhead rate. Basically, last time I looked into it, I would have to hire an administrative person to track all this, and it'd take about a month or two of 40-hour weeks to get things up and rolling of just overhead time. ... When I'm in a meeting with them at the [Washington State Department of Transportation], they give everybody a warm, fuzzy feeling about how they're going to work with these small businesses and give them opportunities and all these kind of things. Then they pretty much just snub you when you walk out of the meeting." [#4]
- The Hispanic American owner of a DBE-certified professional services company stated, "ITD used to give money out and grants. ... I went after the grants because it's four or five grants and it's a thousand dollars. ... They ended up doing more one-on-one consulting and one-on-one help, which I don't know if that was very successful either. It's a challenge. ... And a lot of times the people that are advising you on your business ... they just don't really understand. And what do you do? They're trying to be helpful. ... It's kind of pro-business, but not necessarily pro-small business." [#9]
- The owner of a woman-owned professional services company stated, "I know that with Idaho Public Television, they're understaffed by three or four people, and I just know that that is the case in several different agencies." [#13]
- A representative of a woman-owned and DBE-certified construction company stated, "We work in Boise, that's probably one of the worst places in the world to work as far as sidewalks [because] they don't know all the rules that are going to be required when you get there. ... Ada County's rules are far stricter than ITD's rules will ever be." [#18]
- A representative of a majority-owned goods and services company stated, "My company deals with the City of Boise but also the Forest Service and my company has had difficulties such as lack of communication from the city of Boise. They tried to undermine my business. They tried to shut me down after five years of ownership. Obtaining work would not be a problem, but working with the city and Forest Service has been difficult." [#AV65]
- A representative of a majority-owned professional services company stated, "I've never worked with ITD, but I have worked with other Idaho agencies and the biggest issue is incompetence of a pretty serious range. Idaho is pretty much the number one location in the industry for mining." [#AV95]
- A representative of a volunteer organization in Idaho stated, "We all know that Twin Falls, Jerome County has needed a third bridge crossing [on] that canyon for decades. And there have been



meetings [over the last 18 months], there's been stuff about the third bridge, speculation has gone around, rumors have gone around on where that bridge is going to be put in. Then it all boils down to costs. But of course, the biggest problem, and I know it comes down to funding, the longer they wait, the more it costs. And just with the infrastructure between Twin Falls County and Jerome County, like I said, they needed this bridge three decades ago, and they're still talking about it, which means all of the money and the dollar's spent. And that's the other thing that the citizens are having a hard time with. They do all these studies, they spend all this money, and then nothing ever happens." [#FG2]

**c. Six business owners described their experiences getting paid by public agencies** [#14, #17, #18, #23, #PT1, #WT7]. For example:

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It was a WSDOT project, and I had to go through WSDOT, and they said, hey, it doesn't work like that. When the subcontractor's work is complete, he has to be reimbursed. ... The retainage gets paid when the work is done, and the prime wasn't understanding that and fighting me on it. ... So WSDOT got involved and had my back and said, no, you need to pay him his retainage, he's done. As long as all your paperwork's good and everything's turned in, they won't withhold it from you, but if they're requiring documents from you, they can withhold it, and I've learned that as well, not the easy way, but the hard way. It's like, if you had your stuff in order, we'd send payment out, but they're not required to while they still need documentation from you to prove that you were on the job. ... Working with the state, if you do your part, [it is] more than likely you're going to get paid. And these primes, they didn't get to where they were by being too shady. They have to pay their bills because they're going to want to continue bidding. ... The primes, I've realized they want to continue doing work with the states, and if they're not paying their subcontractors and there's a hold up, they're not going to be eligible to bid on the next one." [#14]
- The woman owner of a DBE-certified professional services company stated, "When I'm working directly with the government, it's slow, but when there's a middleman prime contractor, as you call them, it's a little quicker because the state will have their whip out to the prime, get them paid, get them paid, but the state... they don't do what they say. So, I'd rather work for a prime because I get paid quicker than I would for the government." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "District Four ... I've been very open and honest with ITD about my opinions of that district. ... I understand there's gray areas, but we have had some problems where they have signed paperwork and they don't want to pay it. And I actually have two jobs down there right now that I'm like, 'You signed it. I will get a lawyer involved.' I'm like, 'I will lose money to prove a point and I will win.'" [#18]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "For the most part, [with] WSDOT [we] got paid within the 10 business days of the prime getting paid. They're pretty good about doing that. But that's in their WSDOT specification book. ... It states the prime has 10 days to pay, otherwise there's repercussions. And the primes want to avoid the repercussions. ... There's this other thing that the primes try to do in Idaho, which is a loophole. And I think it's a myth really. But they say for the trucking, you only get paid prevail for when you show up on the project. ... I'm like, no, that's not how it works. Because they're like, 'Oh, that's how it works in Idaho.' Owner operators don't get prevailing wage prices. ... That's pushed a lot in Idaho, which isn't even an issue in Washington. You should be making prevail because you're hauling for

that project. ... It's a federally funded project. That's not how it works. Then they get the bill, but then you can get labeled a troublemaker and they won't want to use you again if you don't go along with it. So, there's this whole dance that you have to be conscious of when you're giving pushback or trying to fight for your rights or however it's supposed to work. It's like, why don't you guys just know this and why are you making an issue? You're making me out to be the bad guy." [#23]

- The Hispanic American owner of a DBE-certified professional services company stated, "The [federal government is] awful. I don't work for the Feds anymore. ... There's a lot of paperwork and then payment issues. That's a tough one too. ... Well, because to me it's like we are subcontractors to engineering companies. We get paid 15 days after making it, so we actually do bottoms and stuff and they're really, really pretty good. But a lot of them don't get paid for a long time. So, you got to carry that payroll. ... Substantial amounts of money. And I've just learned to eat mayonnaise sandwiches during that period of time and stuff until you get paid. But a lot of smaller companies just cannot." [#PT1]
- The Hispanic American owner of a DBE-certified construction company stated, "Payment with city government or private jobs, we always knew an estimated time of payment to let the concrete plant know. Some DBE jobs have been hard to get an accurate date to let them know. We continue to get late charges for the concrete when we can't let them know when they will be paid. [That] can add up for a small company!" [#WT7]

**2. Barriers and challenges to working with public agencies in Idaho.** Interviewees spoke about the challenges they face when working with public agencies in Idaho. Thirty business owners highlighted the differences across districts, communication with decision makers, and administrative burden in terms of paperwork, especially for small, disadvantaged firms [#3, #6, #9, #12, #13, #15, #17, #18, #AV, #FG1, #FG2]. For example:

- The Hispanic American owner of a construction company stated, "It's difficult to bid a job when they don't list [the required wages]. Because on certain areas, some of the wages may be higher or they may be lower according to the Davis-Bacon [wage rates]. And when I would try to reach out to find out what [are] the wages that I'm supposed to be paying for this area, ... I could never get answers. Literally, nobody knew." [#3]
- The woman owner of a DBE-certified professional services company stated, "Our only thing would be with the auditing process, which just sucks for us. ... We obviously have the volume of work. That's why we have to go through a federal audit every year. But we just don't have everything a big, monster engineering firm has, which is why they have to go through the audit. That's probably the one thing that we're not huge fans of. But we have to do it, and I do it every single year, and go through the pain of an audit every year. It's my favorite time of year." [#6]
- The Hispanic American owner of a DBE-certified professional services company stated, "Usually, contract officers, they have a limit on what they can do and stuff. He goes, 'Mine's unlimited,' and stuff. And he goes, 'I really worry a lot that we are so adept at making small businesses lose money on contracts that we're running them off.'" [#9]
- The owner of a majority-owned professional services company stated, "The City of Nampa has a bad reputation for lots of reasons, and a lot of them I'm not saying aren't deserved. ... I hate the politics, but that's personal. But as a county and as a city in terms of how we've worked with them, they've been fine. ... I know that a lot of builders and developers have different models than we do."

We were originally established as a REIT, a real estate investment trust. We aren't flippers, we aren't short-term investors. We are very much for the long haul. So, we haven't had the same sorts of pushback against our development as others have." [#12]

- A representative of a public agency in Idaho stated, "Something that's not clear across the districts is how they're intended to interface with us. ... I have districts that are awesome. [District 2] has turned around. ... They do a ton. District 1 could not want less to do with us. I don't know if there's kind of an ITD way, but it would be nice if they were all consistent. ... It would just be nice to have some consistency to understand our expectation from them." [#15]
- The woman owner of a DBE-certified professional services company stated, "Like everything in Idaho and states like this, until somebody pays attention, nothing's going to change." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "There is one district that I am basically refusing to work in except for TCMs [total construction management] and stuff. We have a lot of problems with [them]. ... We go out and they are just penny-pinching as much as possible. And so, sometimes, I'll see that it's going to be a [subinspector] job or something like that, and I will be very cautious. When we do the jobs, I won't do anything unless we get it in writing. It used to be 'Contractor, hey, come out here. Inspector, hey, come out here.' And then, we had inspectors call and say, 'Come do this.' And we go do it. And they're like, 'I never asked for that.' We refuse to do anything unless it's in writing, which it really shouldn't be that way, but unfortunately it is. They're very big on turning their paperwork in every week. ... And I'm like, 'Well, if you're not going to agree to what you asked us to do, I'm not going to take my time to do it and to make it a priority.' But yeah, I would say it's not ITD themselves, it's the people that they're subcontracting for. And I know, from talking to other contractors, I'm not the only one that feels that way." [#18]
- A representative of a majority-owned professional services company stated, "If it has to do with DPW [Department of Public Works], it is difficult to work with, as they want a drafting service and not an architectural firm." [#AV7]
- A representative of a majority-owned goods and services company stated, "The state insurance fund put me out of business I have no employees, I cannot afford them. ... I only operate it for four months of the year, and the insurance is too expensive for workman's comp[ensation] that is required by the state." [#AV12]
- A representative of a majority-owned professional services company stated, "We haven't worked with ITD too much. We've had no issues with government agencies. We haven't done many projects in Idaho, mostly [we work] in Washington. Governments prefer working within state lines." [#AV55]
- A representative of a majority-owned professional services company stated, "Biggest obstacle is contractual. Secondary is the high E&O insurance requirements. I have found that I am in the private sector and working with DOT that government employees do not understand efficiency and budgets." [#AV56]
- A representative of a majority-owned goods and services company stated, "I don't trust government, at all, period. I'm very pessimistic about it, because of the way that they've stomped on us." [#AV64]

- A representative of a majority-owned goods and services company stated, "My company deals with the City of Boise but also the Forest Service, and my company has had difficulties such as lack of communication from the City of Boise. They tried to undermine my business. They tried to shut me down after five years of ownership. Obtaining work would not be a problem, but working with the city and Forest Service has been difficult." [#AV65]
- A representative of a majority-owned construction company stated, "Getting on the approved provider list has been difficult. I just haven't completed the form. You've got to market and get contracts. That's the difficult part." [#AV93]
- A representative of a majority-owned professional services company stated, "The bigger, fancier firms seem to get the public works jobs." [#AV102]
- A representative of a woman-owned construction company stated, "I feel our company is a little small to be dealing with the paperwork that comes with a state or federal contract. I think there are opportunities, I think there's a good market in steel for additional contractors. I think it's not based on data, just a gut feeling." [#AV106]
- A representative of a majority-owned construction company stated, "Too much paperwork, stated in a joking laughter way, but with no real difficulties for us. I believe it is very good at the present time." [#AV117]
- A representative of a majority-owned construction company stated, "Too much paperwork." [#AV164]
- A representative of a majority-owned construction company stated, "It's pretty hard to get to work for any government agencies. [It is] hard to get to in touch with people. I don't like that everything is online as I'm not really a computer person. It's pretty hard because we are competing with a lot of big companies." [#AV177]
- A representative of a majority-owned professional services company stated, "It is hard to get traction with agencies to get in the door so to speak because they favor larger organizations." [#AV247]
- A representative of a majority-owned professional services company stated, "There is a lot of paperwork and [we] need to jump through the hoops. My hardest time is finding employees with experience, and getting anybody permanent in the small little area we are located is difficult." [#AV263]
- A representative of a majority-owned professional services company stated, "Half of government employees are working from home. I have a hard time getting in touch with government agencies. Calls are not being returned. Sometimes it takes up to five days for them to respond. Idaho, is not that bad." [#AV296]
- A representative of a majority-owned construction company stated, "The amounts of audits. State sales tax audits that last three years! We got money back, but it took an exorbitant amount of resources of money and time to fulfill the requirements for the audit. We built a new facility and ran into very expensive fees." [#AV3044]
- A representative of a majority-owned construction company stated, "No barriers, just additional hoops to jump through with city contracts." [#AV3079]

- A participant in a focus group stated, "[ITD is] pretty responsive when you call them and talk to them." [#FG1]
- A representative of a volunteer organization in Idaho stated, "I think the government agencies that I have had the pleasure of working with all the way up to the senator's offices, they are very helpful. And regardless of gender or nationality, I don't think that there's those barriers there at all." [#FG2]
- A representative of a volunteer organization in Idaho stated, "I've got one small business owner here ... whose highest education level was ninth grade, and when they're trying to deal with some of the federal information and stuff, unless you have a master's degree, sometimes you can't sort through some of the stuff that [ITD is] asking for with the language and the jargon." [#FG2]

**3. ITD's bidding and contracting processes.** Interviewees shared comments about ITD's contracting and bidding processes.

**a. Fifty-three business owners described their experiences working with or attempting to get work with ITD** [#1, #3, #5, #6, #9, #10, #14, #15, #17, #18, #21, #23, #24, #26, #27, #30, #AV, #FG2, #PT1, #PT2, #WT3, #WT7, #WT9, #WT14]. For example:

- Representatives of a majority-owned construction company stated, "ITD publishes all the plan holders. It's pretty easy for somebody who's wanting to bid as a sub to know who's pulled plans on that project. ... You can even get notified when new jobs are posted ... ITD is probably the easiest. They've got a very quick system in place. ... [But regarding districts,] it gets to where one district will do it one way, another district will do it another way." [#1]
- The Hispanic American owner of a construction company stated, "The offices for Idaho Transportation Department, they are so difficult to reach. Even in person, you have to make an appointment. And if you go in person, you have to go through so much just to talk to someone or find answers. It's really difficult. They have numbers to reach out to someone, but you contact the phone number, and the line has changed and it all goes to voicemail." [#3]
- A representative of a majority-owned construction company stated, "It's not fair to offer price increases to one industry and not all industries because we all have price increases, especially in 2021 when the prices damn near doubled in our industry. ... I know I reached out to them ... with another company, probably 10, 15 years ago trying to pick up labor and I'd have to say they weren't that great a help." [#5]
- The woman owner of a DBE-certified professional services company stated, "With ITD, you've got about seven layers of people that need to review it. You have lots of different forms and paperwork to fill out every project, and every invoice, and it's just different. ... We have not had very many challenges with ITD. They've been excellent. We love them." [#6]
- The Hispanic American owner of a DBE-certified professional services company stated, "For ITD, I mean, some of these larger companies, it's like ... you're running into an overhead rate of 0.45. So, you're paying degreed archeologists \$12 an hour, and you're applying a 0.45 overhead rate, including your fee, and that pumps you up to \$17 an hour. And that's what you're billing. it's just myself and my wife, and there's so much that you do and stuff that ITD has no clue about." [#9]
- Representatives of a woman-owned construction company stated, "You can tell if somebody hasn't worked for ITD before, and all of a sudden, they're like, 'Wait, I have to do what? I have to turn in

what?' Again, doesn't matter whether they're a MWBE or not. If they haven't done it before, they're going to have a steep learning curve. ... It's our job to help guide them through that because we got to manage the whole job and get it built. Well, once you have the job, there's always challenges and issues to overcome, but we haven't had any issues doing so. There can be differing site conditions that weren't anticipated, or their quantities could be wrong. Heck, we could screw something up and take too long or what have you, but we haven't had any problem resolving any of those issues. ... [I]t's pretty easy to figure out when the jobs are bidding. When you're bidding the job, they actually answer questions, which not all owners do, which greatly helps clarify because there's always questions. ... Even jobs you think are simple ... It definitely helps the bidders get more accurate [information], and that means ITD is saving themselves arguments down the road by answering questions." [#10]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Washington is just easier [than Idaho], better in the transparency aspect of it, easier and better in almost every way. ... One of the barriers ITD has is their transparency on when a project is awarded, to view who the prime contractor used as a DBE. As of my understanding right now, in order to get that information, you have to put in a [Freedom of Information Act] request. ... I could do a lot of things with that information, which should be public and should just be posted. ... And I say it should be, because I also do work with WSDOT as a DBE, and they post it at the award on their website." [#14]
- A representative of a public agency in Idaho stated, "There's only one gal for the entire state that does agreements. I think we feel it more because all of our projects are agreement led. ... Our big ask would be, please get her some help. ... I am on the construction side of the house, so they tend to make construction a priority because our schedules are a little bit tighter. I've heard our design staff say that it can take a month or two to even get things started. It's a huge workload that she's got for sure. We're centered in Boise, but we work in all six districts. When I started, I was in District 2, and I just assumed that what I learned was the ITD way. You get out of District 2, [and] everybody is so dang different. You work with different contractors and [Districts] 1 and 4 and 6 and everything is different." [#15]
- The woman owner of a DBE-certified professional services company stated, "The right-of-way coordinator as an employee of this state, will send out an RFP to appraisers to bid if you're on the list. And so I get the request for proposal and I'll choose whether I want to bid it or not. ... I think it's just such a small appraisal world in Idaho that the ones that want to be on ITD's approved appraiser list are, and they pretty much get notified if there's a project coming up across the board." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "[District 4 is] ran different than any other district, let's put it that way. Here locally, in the Boise area, if we go out on an ITD job, we go out, we turn in the hours, they're cool with it. But down there, the inspector's like, 'I didn't approve that you could have flaggers there.' And technically, according to most contractors, that's not how their contracts should work with ITD. ... One big thing that's becoming very hard is ITD is using a lot of ... subinspector-type people. ... Those companies seem to work the same as Twin Falls, where it is not how it used to be where we just went out and did a good job. We go out and they are just penny-pinching as much as possible. ... [District 4] are very bad at bad-mouthing the companies. ... It's hard to do a good job for somebody when they don't want to pay you to do a good job." [#18]



- The woman owner of a DBE-certified professional services company stated, "One thing that was really great is with ITD generally, [they're] longer-term contracts. So, the money's already set aside. ... And so that's one thing that was really great is knowing that the work was still there and would continue to be there. ... [W]e're more involved with some DBE work associated with the airports, like this auditor and monitoring of DBE during construction. ... I mean, even when I was figuring out overhead rates and things like that, ITD, their staff was so helpful. They worked with you." [#21]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "If they could just switch that verbiage or however it goes with these disparity studies and make it race-conscious DBE goals, then I would probably be inserted more into these projects. ... I don't know if Idaho has that specific north Idaho regional officer overseeing all the projects in this region, who knows the primes, knows the contracts, knows the DBEs. And if they do, it's like, do we have access to them? ... Acquiring the projects, being put on the projects. That's probably the biggest barrier. I feel like I have such a good understanding of how it's supposed to go. ... Doing the paperwork, turning it in, performing out on the jobs, getting the people out there to perform, I am very capable in all those aspects. But having everything come in alignment to get on the projects, that's what I find the most difficult, is probably competing." [#23]
- The owner of an SBE-certified construction company stated, "Well, it's been a while since I've done that. I'd have to look at those forms. But I think they were helpful. ... As I recall, they were helpful in helping us fill out those forms. But I felt at the time a little bit of shame for needing the help. ... I think they did everything they could for whatever requirements they have, whatever policies they have that require those extra efforts that are not typical in a private job. Well, I just can't really offer anything because they were helpful. I was just dealing with my own shame from my own experience and having to rely on them to help me through it." [#24]
- The woman owner of a DBE-certified professional services company stated, "We really haven't had very much work directly for ITD. There's been a few monitoring things that my husband has done, so I would say [that makes] less than 10% of our work. ... The BLM [Bureau of Land Management], a couple years ago put out, I guess it's the IDIQ [indefinite delivery/indefinite quantity] or a term agreement kind of thing, where you had to be on their list. We applied for it, but we didn't get on. It seems like most of their work is going to that right now. Definitely a lot of the BLM work dropped off. Then the Forest Service work, kind of the same thing. Then Region Nine had an IDIQ, and so I think a lot of the work is going to people that are on their term agreement kind of thing." [#27]
- A representative of a majority-owned construction company stated, "ITD has specifications that require that 90% of our employees have Idaho residency that work for us. We are a border state between Idaho and Washington and that can be difficult." [#AV13]
- A representative of a majority-owned professional services company stated, "We have never had issues with any municipalities. We have had to check in with monumentations. Every experience has been good, they reply quickly. I don't know if we have done any road work with them. They respond quickly. Not in Idaho specifically. We work in Idaho all the time, in areas like Coeur d'Alene and Lewiston. We work in Washington also. I have not run into any barriers in Idaho or Washington. ... It all goes smoothly." [#AV14]
- A representative of a woman-owned goods and services company stated, "Yes, super inconsistent. [For example] inspectors are different and [there is] no consistency to what is required or acceptable. You are required to have standards and they do not follow their standards." [#AV30]



- A representative of a woman-owned professional services company stated, "ITD [likes] to work with the same companies, over and over, [and are] very prejudiced toward women, I am a woman owned business. If they don't like you, they tell everyone, and no one will work with you." [#AV48]
- A representative of a majority-owned professional services company stated, "We haven't worked with ITD too much. We've had no issues with government agencies. We haven't done many projects in Idaho, mostly [we work] in Washington. Governments prefer working within state lines." [#AV55]
- A representative of a majority-owned professional services company stated, "Availability of personnel to discuss upcoming projects. We are very interested in providing additional CE&I [construction engineering and inspection] services." [#AV58]
- A representative of a woman-owned construction company stated, "[I've had] issues with the inspectors' availability to sign paperwork." [#AV61]
- A representative of a majority-owned construction company stated, "[It is] easier to work in Idaho than Washington. [For example, we] found that permit process is easy to navigate and requirements for electrical permits is easier than other states." [#AV62]
- A representative of a majority-owned professional services company stated, "The only thing is being aware of upcoming projects. There are unnecessary complex regulatory regulations." [#AV68]
- A representative of a majority-owned construction company stated, "There is a public works requirement to work with ITD and I'm in the middle of the application process now." [#AV94]
- A representative of a majority-owned professional services company stated, "I'd like to be able to better understand ITD's needs and requirements for new and emerging services. My capabilities are on the edge, and I'd like to discuss that with decision-makers at ITD." [#AV125]
- A representative of a majority-owned construction company stated, "[Some challenges are] design conflicts, inexperienced inspection staff, non-applicable specifications, some of the DBE's have been unattainable without sacrifice to the taxpayer." [#AV127]
- A representative of a majority-owned professional services company stated, "Yes, [it is] difficult working with ITD but not as a consultant but working in the private. [For example, it is difficult getting] in touch with department and getting information. ... The market has reached a tipping point." [#AV136]
- A representative of a majority-owned construction company stated, "It is sometimes hard. The only time I worked with government agencies is for snow removal and lawn maintenance. The website is hard to [navigate]. So far for the last several years we have had more work than we can get to which is good." [#AV149]
- A representative of a majority-owned construction company stated, "Our experience has been good. They liked our crews and equipment. I don't see any barriers. We are a progressive company and we're growing. The economy has its challenges, but we are able to adapt and respond to the challenges. We are pretty positive about where we are going." [#AV178]
- A representative of a majority-owned professional services company stated, "The projects are very interesting for me. ITD staff were delightful to work with, I have a subsidiary company as well. Every geotechnical engineering firm can use my services." [#AV210]

- A representative of a Native American woman-owned construction company stated, "I have experienced not getting called out in emergency situations. Time and time again ... I have been overlooked several times and would like to make sure I get adequate notice that work lists." [#AV229]
- A representative of a majority-owned construction company stated, "They're very difficult to work with. Their resident engineers are one-sided and sometimes very non-reciprocal. They hold us to a high standard, but don't hold the same standard themselves. [There is] more work than I can find employees for. I would like some feedback from contractors in ITD to hear our concerns. Costs are going through the roof, and we can't even compete. Costs just keep going up." [#AV235]
- A representative of a majority-owned professional services company stated, "We work with the ITD on a daily basis and have had no problems. Like everyone else, we are hurting for employees, especially in trucking and driving. A start-up wouldn't be too hard, and the industry needs it." [#AV238]
- A representative of a majority-owned construction company stated, "We don't have any problems and work with ITD all the time." [#AV253]
- A representative of a majority-owned professional services company stated, "When we try to get approval, [ITD is] slow to reply." [#AV268]
- A representative of a majority-owned professional services company stated, "We had a recent project, and the people are good to work with, but [we have] found a lot of administrative hurdles, like not getting an invoice, for example. When we submit an invoice, there are a lot of administrative hurdles that are difficult for a small company. The market has been reasonably good the last three or four years and a good place to do business." [#AV283]
- A representative of a majority-owned professional services company stated, "I would say it has been more difficult lately. Individuals with experience and knowledge are leaving ITD. The remaining employees are less experienced and less knowledgeable and don't quite understand concepts that previous employees who worked with them [understood]. There's opportunity everywhere." [#AV3014]
- A representative of a woman-owned construction company stated, "ITD was very difficult to work with. There seems to be some tension between ITD and Valley Regional Transit. There was a conflict regarding a permitting approval process and work was lost because they could never come to an agreement. There's a lot of growth. Right now is a great time to progress." [#AV3062]
- A representative of a volunteer organization in Idaho stated, "[If] the businesses [are] needing to work with something with a road-related issue, there's a lot of passing the buck. It's like, 'Well, the city doesn't do it, go to the county. The county doesn't do it, go to ITD.' So there's a lot of frustration happening when they're trying to get the permits and certain things needed with nobody [knowing] exactly where to send them to, so they go serve one referral, then the next person says, 'I'll go to so-and-so,' and it's a lot of bouncing them back and forth around, which leads to a lot of frustration before they finally get to the right person who can give them answers." [#FG2]
- The Hispanic American owner of a DBE-certified professional services company stated, "ITD is a difficult client, a very difficult client. ... To work for ITD is extremely odd. ... I remember engineers estimates in like 2006, 2007 were ... one-third of what the bids were coming at because everybody was doing private work. And then all of a sudden 2008 happened, everything stopped. Having been

in business for 30 years, I've seen this, and everything stopped. And all of a sudden everybody swings back to ITD and L[H]TAC [Local Highway Technical Assistance Council] and [the] math looked great and then all of a sudden, the bids were a third of what the engineering estimates were." [#PT1]

- The Hispanic American owner of a DBE-certified professional services company stated, "I've also mentored for companies that come on board and man, it's tough. I mean, I swear to God I try to sell ITD a little bit and stuff, but then I start describing the hoops [I] have to jump through. ... I've always tried to lobby ITD to do more directly with them and stuff. So prime contractor versus subcontract, I've always said, 'Hey ITD would be great.' But there's an issue, it's intractable in a way because of an issue with the barrier of success and the amount of paperwork it takes to work for ITD and the ITD personnel not having ... 30 hours in a day to [deal with] some of these contractors. I have a subcontractor right now, God bless him. ... This guy's what I call a boutique, which is he's out of his house and he's really good at what he does, technically and stuff. And so, I'm trying to help him and we're actually redoing his invoices for ITD because they're just so awful and stuff. And he probably won't be working for ITD even though technically he's great. ... It's just too difficult." [#PT1]
- A representative of a majority-owned construction company stated, "In Washington, we're a union contractor, which honestly makes it difficult for us to compete unless there's federal money involved in ITD." [#PT2]
- The Hispanic American owner of a DBE-certified professional services company stated, "The barrier of entry to work for ITD is extremely high for an SDBE [small, disadvantaged business enterprise] especially in the technical areas. Understanding the regulations and procedures can be daunting for small businesses and the business side (invoicing overhead rates, etc.) can exclude SDBE and small business[es] from even trying [to bid]. Many businesses have the expertise but not the business acumen to do business with ITD. ... [But] contracting opportunities as a subcontractor are good with ITD once you know the system." [#WT3]
- The Hispanic American owner of a DBE-certified construction company stated, "Pros: The efficiency of seeing the bid quantities, they are super easy to read, see and then follow with our bid. ... The website is VERY informative!" [#WT7]
- A representative of a majority-owned construction company stated, "There are a lot of specs for certificates on equipment but no consistent guidelines. So many times, an ITD inspector will ask for additional certifications as the job progresses and those are difficult to obtain—largely materials certifications." [#WT9]
- The owner of a WBE-, DBE-, and 8(a)-certified professional services company stated, "I really don't conduct much work for ITD primes. When I do, they really don't want to budget for an archaeologist. Oftentimes, folks proceed with their projects disregarding my role. For this reason, I prefer to do less ITD projects." [#WT14]

**b. Nine business owners described their experiences getting paid by ITD** [#6, #15, #21, #26, #27, #AV, #WT12]. For example:

- The woman owner of a DBE-certified professional services company stated, "On all of our direct contracts with ITD, we get paid within two weeks." [#6]

- A representative of a public agency in Idaho stated, "So recently ITD came to us and said, 'Anytime a local is over, we need to go get more match from them.' We pushed back a little bit, thinking this is a lot of work for oftentimes 50 bucks, 100 bucks, or 200 bucks. [We] lost the battle, which is okay. The frustration for us internally is if we're held to this level of accountability on match, they also need to be reimbursing our locals in a timely fashion. His project has been done since late 2019 and he doesn't have his match back yet. [The] typical timelines we're told to expect is two years. ... Two years is nuts. Our locals are little guys. These aren't giant jurisdictions. These people's budgets are really small. So, to hold a match for two years is tough. It would be really nice if we could see that turned around a little bit faster." [#15]
- The woman owner of a DBE-certified professional services company stated, "Probably the biggest thing though is it's really the payment. It's really nice. I work with some local municipalities, and they pay within 30 days. I'm like, 'Oh wow, that's great.' Or 45. But I think that would be something very difficult for ITD to try and streamline. And it's just 60 to 90 days is what's expected. Once it gets beyond that, that's when I think I start to see red flags. What happens is the prime submits, they review it. I mean, ITD probably reviews [and] approves it, and then the prime gets the money. And then within 20 business days, I have to be paid. And most ... primes are doing that. But who's to say if a prime delayed it, delayed submitting an invoice for two months, then that puts me out five months. I think that, like I said, there was only one challenging, really challenging time with payment." [#21]
- A representative of a majority-owned professional services company stated, "[Subcontractors we use that have not worked with ITD before are] used to submitting a memo and then they find out that there's all these other things that ITD is going to require them to do to meet their needs. I'm not saying it's not legitimate—stuff that needs to be done—but the education part of it is, I feel like, how can we educate these smaller businesses and encourage them to do the job? I'm dealing with a project right now that all of a sudden this last week, the client, the subconsultant, a small business, sent us an invoice and they said, 'We're going to be way over budget. We didn't budget enough for this project now. We know that, so we're just going to bill a flat amount for the remainder of the project.' I was like, 'No, you can't do that. That does not meet ITD requirements.' ... Then, it ended up costing even more money because they had to go back, redo this work or re-invoice. ... I have heard my project managers even say that they feel like they have to hold the hands of these smaller businesses and other businesses too. Because that's what it takes to get the job done right, to ITD right, and to meet their requirements. That cost is falling back on us as a large consultant on the project. I sense that a lot with our subs and the frustration that they're dealing with. ... Then, the other thing is, by the time you rework, you've already been out there, you've done the work a month ago, and then your invoices get rejected and stuff. Then, you're waiting 90 to 120 days to get paid." [#26]
- The woman owner of a DBE-certified professional services company stated, "ITD is really good ... with paying invoices in a timely manner. And all the federal agencies are really good about it." [#27]
- A representative of a woman-owned construction company stated, "We do have problems with ITD. [We] have difficulty getting paid." [#AV254]
- A representative of a Native American woman-owned construction company stated, "Getting paid by IDT. We give the bid, get ... awarded, then we get a timeframe for the work, you want your

deadline, but then you make us wait 45 to 90 days for pay. That is difficult for small business. We have payroll, supplies, you don't pay in." [#AV45]

- A representative of a woman-owned construction company stated, "I did a survey, we run into a lot of problems in certain districts, getting paid takes longer than it should for bid items. It's not the prime contractor, it is ITD's fault for not getting the items turned in." [#AV3076]
- The co-owner of a woman-owned and DBE-certified construction company stated, "ITD is not keeping up with payments: there is typically a three-month lag, and they need to pay their subcontractors. They have to sit on it all winter long." [#WT12]

**c. Five business owners shared recommendations as to how ITD or other public agencies could improve their contract notification or bid process** [#1, #3, #4, #WT2, #WT12]. For example:

- Representatives of a majority-owned construction company stated, "One thing that could help is ... more lead time or bigger work windows so you can give suppliers longer lead time. Take cement for example. We're going to do a job that requires a lot of cement. If we could give them several months of heads up if ITD gave us a bigger work window, not so if they bid it and say you can start any time this summer, that would allow us to better schedule materials. Rather than a project that we'd have to say, 'Okay we've got to start in two weeks.' I'd say by one suggestion would be allowing contractors larger work windows." [#1]
- The Hispanic American owner of a construction company stated, "I would say that if ITD can prioritize hiring our local companies first before they outsource it to outside companies." [#3]
- A representative of a majority-owned professional services company stated, "I would say accountability at public agencies for reviewing documents that are submitted and basically putting a time clock on. If you turn something in, you have one month to review it. If you don't get back to them in a month, they get a permit, regardless of whether you like it or not. Things like that would put a fire under them, I guess." [#4]
- A representative from a public agency in Idaho stated, "Work categories should align with ITD specification bid items. DBE contractors are categorized by NAICS Commodity Codes. These codes do not align closely with ITD work items." [#WT2]
- The co-owner of a woman-owned and DBE-certified construction company stated, "ITD needs to reconsider the prime contractor goal (for example change from 50% to 30%). ITD specs show a DBE goal of 14%. [Our company is one of] the only ones in Idaho that can do all aspects of the project work but no paving. And paving typically makes up most of the cost." [#WT12]

**d. Ten business owners shared recommendations as to how ITD or other public agencies could improve their contract administration practices** [#1, #3, #13, #14, #15, #26, #FG2, #WT2, #WT7]. For example:

- Representatives of a majority-owned construction company stated, "One of the challenges we've seen with B2G [business to government] is they're trying to make a direct line-item by line-item relationship. And sometimes we're actually paying subs ahead of time but there's no way to make that link because we haven't been paid yet but we paid the sub already, and that just throws the system into a tilt. ... We try to get them paid within a week of when we get paid. And so we feel that that's a value we provide to our subs that we would hope that we can get better pricing or better

comfort or make sure we're even getting quotes sometimes because that's a value we try to build that makes us stand out different than the other bidders that may be bidding as a prime. Sometimes that's frustrating because we feel like we're getting penalized because it won't fit in the system the way the system should work. ... On B2G in general, each district seems to do it their own way or a different way where it seems if they had some proper training, each district would do it the same so that when we go to a job we know what way they're going to be handling it." [#1]

- The Hispanic American owner of a construction company stated, "I would say they list them in some places, and they need an update for all the regions of Idaho." [#3]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "So I think ITD needs to be a little bit more transparent on that aspect of the program and the contracts. Maybe also a little bit more transparent with their good faith efforts. And that's the other thing. First off, if they were more transparent with which DBE they used and the dollar amount to reach the goal, I don't know that information, and honestly, I don't have time to do the FOIA request at the end of each bid to find out who was the DBE that they used. So, by not doing that and looking, it puts a lot of anxiety on you." [#14]
- A representative of a public agency in Idaho stated, "They have a big process that they have to go through. A lot of people have to review the [bid] package. Something that's happening recently, I'm understanding, is if one person in that chain of review is gone, it just stops. Things are just dead in the water. ... So, we had reached out to check on one that had sat for two weeks. ... 'It'll be another week before we can get past X step.' So again, just some communication with us on what's going on. Did you get it? Are we looking at normal timelines? Is somebody gone? Are we adding three weeks? That kind of thing would be nice." [#15]
- A representative of a majority-owned professional services company stated, "I would like to know if there is training. I know even as a big company, I've never been to any training with ITD. I've been with training for LHTAC, which we bill to ITD standards. But ITD, even if it was even online [in] PowerPoints or something like that, that made it easier to understand. I think their contracting wording sometimes is a little bit hard to understand and it's confusing. ... It's like you have to learn the ropes because there's all different styles for different types of work. ... I think that just an overall simplifying of contracting for big and small consultants and the requirements, I think they should consider. ... I'm talking about stuff that, to generate an invoice for a project I think should take 15 minutes. I have projects that I take hours [to create] 60-page invoices. ... You do it to the best of your ability and then you miss something. You have to rework your invoice and they have to rework your invoice. The hours and hours that go into that, it just seems to be a little... I think that through the years, ITD has actually become worse. I don't mean to be rude, but it's just like the logic of it is not there. It's like they've taken it to such an extreme that it's like they're spending state tax money to do things. Instead of making better roads, we're spending money to do invoices and stuff like that." [#26]
- A representative of a trade organization in Idaho stated, "I think there's a lot of state agencies that are out there that can be supportive. The workforce development group within the state has launched programs and things that will be very beneficial to businesses for startup as well." [#FG2]
- A representative of a volunteer organization in Idaho stated, "When they're working with some of the government entities, they get quite bogged down in the mire with the paperwork. Is there an easier way to do it where they're not having to repeat themselves two, three, four different times



depending on what it is that they're asking for with the government agencies just trying to make it a lot more seamless and simpler for them to do?" [#FG2]

- A representative from a public agency in Idaho stated, "'As directed' work items should not be considered toward the contract DBE goal. ... Often, this item goes unused. In assuming that this entire item is used in consideration of the DBE goal, the amount of available DBE work is skewed." [#WT2]
- The Hispanic American owner of a DBE-certified construction company stated, "More clear payment dates for the DBE." [#WT7]

## **F. Potential Barriers to Business Success**

Business owners and managers discussed a variety of barriers to business development. Part F presents their comments and highlights the most frequently mentioned barriers and challenges related to:

1. Obtaining financing;
2. Bonding;
3. Insurance;
4. Factors public agencies consider to award contracts;
5. Personnel and labor;
6. Unions;
7. Obtaining inventory, equipment, or other materials and supplies;
8. Prequalification requirements;
9. Experience and expertise;
10. Licenses and permits;
11. Learning about work or marketing;
12. Unnecessarily restrictive contract specifications;
13. Bid processes and criteria;
14. Bid shopping or bid manipulation;
15. Treatment by prime contractors or customers;
16. Approval of the work by the prime contractor or customer;
17. Payment issues;
18. Size of contracts;
19. Bookkeeping, estimating, and other technical skills;
20. Networking;
21. Electronic bidding and online registration with public agencies;
22. Barriers throughout the life of the contract;



23. Size of firm; and
24. Other comments about marketplace barriers and discrimination.

**1. Obtaining financing.** Six interviewees discussed their perspectives on obtaining financing. Many firms described how securing capital had been a challenge for their businesses [#23, #27, #28, #AV]. For example:

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's been difficult for me as it would be for anybody going through this whole process. It's taught me, me as an individual, you have to position yourself correctly in order to receive these loans. Just because you want one doesn't mean it's going to happen. You know, [you have] got to build your credit up, you [have] got to build your bank account up [and] your savings account so that they can see that you can do this. But that's across the board. ... I was using the banks to set my goals and set my marks. If they told me no, I'd ask, 'Well, where do I need to be?' ... And I would try to reverse-engineer the strategy off of their declining my offer. ... You [have] got to be very savvy just because you got told no. Find out the reasons why and then work towards what they want to see and then go apply again. And then it's fairly simple, but some people overcomplicate it. It might be just as simple as a debt-to-income ratio. Pay that off, then go apply again and build your savings up along the way and then you'll probably get it." [#23]
- The woman owner of a DBE-certified professional services company stated, "The only thing that was ... [a] cash flow issue was like when we do have to front big crews, sometimes we'll have a lot of people in the field, and we'll have to give them per diems up front. When we first started out, that was a cash flow issue. Now, we have enough money in reserves to be able to do that, but at the time, we really didn't. We were just having to take out loans and stuff on the credit card or whatever. It was pretty much just maxing out our credit cards. ... We tried to get a loan, and they wouldn't give us a loan because we didn't have enough money in the bank. You have to show that you're solid and that you actually have some cash flow." [#27]
- A representative of a majority-owned goods and services company stated, "We have lot of work available, however the biggest issue is getting operating capital. We did over a million dollars of revenue and finding a bank that will give us operating capital and being able to purchase our own land and building shop has been difficult in the current market." [#AV59]
- A representative of a majority-owned construction company stated, "No we had a great relationship all the way around. Generally great easy breezy. Right now, the market is really good. We fill the market in every way. We do everything in that area. We have taken a hit, like our call volume has dropped in the last two weeks with interest rates the way they are going." [#AV192]

**2. Bonding.** Public agencies in Idaho typically require firms working as prime contractors on construction projects to provide bid, payment, or performance bonds. Securing bonding can be difficult for some businesses. Two interviewees discussed their perspectives on bonding [#3, #25]. For example:

- The Hispanic American owner of a construction company stated, "They ask you for a high bondage or a high public works class, and those are difficult to acquire for new companies." [#3]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "A big stumbling block for a DBE is finances. When you get into construction, as you know, you've got a

bond. And if you're young and you don't have a lot, you're putting everything on the line, which I still had to do. My 401(k), my house, everything, you sign away. And I didn't know this, but unlike insurance where you wreck your car and they buy you a new one, with bonding, [if] you go toes up on a project, they don't pay for the project, they take the money from you and give it to the agency. So, they're the middleman. And when I learned that, and then I look at the cost of a bond, we might pay \$50,000 on one project just for the bonding, just for the ability of that person to come and take my stuff." [#25]

**3. Insurance.** Five business owners and managers discussed their perspectives on insurance requirements and obtaining insurance [#21, #27, #30, #AV]. For example:

- The woman owner of a DBE-certified professional services company stated, "I don't think it should be waived, but I think starting a business, sometimes the insurance can be a somewhat big cost as you're starting." [#21]
- The woman owner of a DBE-certified professional services company stated, "It's usually pretty easy. The only thing is sometimes, the insurance companies that we use are a little slow to get back to us on this." [#27]
- The woman co-owner of a DBE-certified construction company stated, "My insurance just went up [to an] extremely high [rate]. First it was health insurance. I think it's like \$17,000 a year my insurance went up. They just said that it is inflation. ... I didn't have any claims. They're just saying that inflation is driving the cost up everywhere. ... You can only raise your prices so high and then it has a big bearing on what jobs you get and what jobs you don't get." [#30]
- A representative of a majority-owned goods and services company stated, "The state insurance fund put me out of business I have no employees, I cannot afford them. ... I only operate it for four months of the year, and the insurance is too expensive for workman's comp[ensation] that is required by the state." [#AV12]
- A representative of a majority-owned construction company stated, "Difficulties have also been with regulations and all the things you have to do with insurance and paperwork. It's hard keeping everybody happy and afraid of getting sued." [#AV119]

**4. Factors public agencies consider to award contracts.** Nine business owners and managers discussed their perspectives on the factors public agencies consider when awarding contracts and discussed barriers these factors may present for their firms [#7, #10, #15, #AV, #PT1, #WT5]. For example:

- The Native American owner of a professional services company stated, "I'm more of a performance-based reputation. To me... it's more data-driven, more [about] can we make it look good on paper. The way I can simplify it is, everything's more virtual and less reality. Which I think can get things skewed or limit certain people or smaller businesses in general." [#7]
- Representatives of a woman-owned construction company stated, "Normally, they award to the lowest responsive, responsible bidder. There has been a movement to add some more instead of just the low bidder, add more criteria to what it means to be a responsible bidder. At the moment, none of those are a barrier, but some of them, depending on how far they take that concept, could become a barrier." [#10]

- A representative of a public agency in Idaho stated, "A lot of these locals have really strong relationships with certain consultants who have maybe been involved throughout the life of the project and they see a ton of value in that. So, not only is a consultant frustrated when you tell them they're not eligible, but locals are also frustrated that they can't work with the person that has all the history." [#15]
- A representative of a majority-owned professional services company stated, "I would say, we are always graded low and can't show ITD experience within the last five years, which devalues our ability, although we do local road work all of the time. The judgement bar is too high, and it is discouraging." [#AV203]
- A representative of a majority-owned professional services company stated, "The challenge is, regardless of what location you are in, the agencies are looking at previous experience working with them; however, if you have not worked with them previously, they don't look at you. To be competitive you have had to work with them before." [#AV224]
- A representative of a Hispanic American-owned construction company stated, "The last bid we submitted, we were not successful. We are a minority-owned business, and I would say there are no checks and balances in following up to see what happens with the outcome and selection of awarded bids. I know we would not be awarded every bid." [#AV274]
- A representative of a majority-owned construction company stated, "We don't get the opportunity very often. It seems like bids go to national, rather than local, companies." [#AV3045]
- A representative of a majority-owned construction company stated, "We went through the good faith effort because and made sure I spent more time putting our good faith effort together because I was very concerned, we weren't going to be able to meet the goal. And I spent more time on that than I actually spent on the bid. ... At the end of the day, our good faith was deemed invalid because another bidder met the goal with the DBE firm that was considerably more money. And we're always told that money's not a factor. But in this situation, money was a factor ... [Now,] we make sure that, even if it wasn't the best price, that we picked enough DBE [subcontractors to] make sure we meet the goal. .... Where we're headed ... we might as well not do a good faith, because it's not worth taking the risk that I do a good faith than somebody else has a higher price that met the goal. So, I understand there's a line and a reason for that. It's just, it's the time and effort to do that. We're just going to always go with them, even if it is a higher number, we're going to go with the higher number and make sure we're not thrown out because somebody else was able to meet the goal." [#PT1]
- A representative of a majority-owned professional services company stated, "I have been involved in managing projects which mandate DBE percentage participation during either the design process or the construction process. In the design engineering projects, the engineer selection process is quality based. In order to score highest to obtain the project, our teams need to include the most experienced and knowledgeable firms. Fortunately for us, we have DBE team members that have the knowledge and experience to help us get these projects." [#WT5]

**5. Personnel and labor.** Ninety-two business owners and managers discussed how challenges associated with finding and retaining qualified personnel and labor can be a barrier to business development [#1, #2, #5, #7, #8, #10, #11, #14, #17, #18, #19, #21, #22, #23, #24, #26, #27, #29, #30, #AV, #FG1, #FG2, #WT11]. For example:

- Representatives of a majority-owned construction company stated, "Increasing the Davis-Bacon wage rates to be more realistic to the market, which used to be based on the union rate and now is below the union rate because it pulls together everybody, not just the union rate to establish those rates. It's really similar to other work people could find at the same rates and stay [in] town. And ITD obviously has projects all over the state, so [there are] people chasing ITD work in a subcontractor capacity or traveling just like we are as a prime. ... We do have a higher labor cost, but even with us paying higher through our union agreement, it's still very, very difficult for us to find people there. The people out there just aren't available and especially not available and willing to travel as well." [#1]
- A representative of a majority-owned professional services company stated, "This is kind of a nationwide problem. There's an excess of work and really, just frankly, not enough staff or engineers to be able to hire those. That is a problem. ... The larger cities, the larger ones tend to be a little more sophisticated because they have more staff internally. They may have their own engineers even internally, whereas some of the highway districts and some of the others are pretty understaffed." [#2]
- A representative of a majority-owned construction company stated, "The biggest challenge is finding the right people. As a company grows, getting the right people in the right spots. Education. ... The unemployment rate is the lowest it's been in quite some time. But there's people that ... don't want to work." [#5]
- The Native American owner of a professional services company stated, "That is, well, a big challenge these days and I don't really understand it, it's very interesting. There's a lot of candidates that just ... honestly, they haven't been taught how to work." [#7]
- The owner of a majority-owned professional services company stated, "I hired a bunch of people. And just this last year, 2022, laid off all the interns and a couple of engineers as we see things grinding to a screeching halt, but it's what we did. I hired and had trouble finding anybody with actual skills and those that ... have any skills are gone. ... Finding people is a huge problem right now. At least here. That is our biggest current challenge. ... In this case, the state is willing to help us find somebody. We're going to have a meeting with the state here, and I don't know if that's today or tomorrow, to get their recommendation. Of course, they know people we don't know. Now they have to be careful, because they can't give preference to one consultant over another." [#8]
- Representatives of a woman-owned construction company stated, "Right now we have a very aging construction workforce. Even the people that are working for us tend to be over 50. Obviously working, building a bridge out in the field is challenging and heavy work. ... That's bad for everybody. That's a tough one. We're a union contractor, so in theory you'd think the unions are training them, but that really isn't the case anymore. It's just because they're so short of people and non-union folks are more responsible for their own training. But I would guess they would reply that they're also short people and having to do a lot of training." [#10]
- The co-owner of a majority-owned construction company stated, "I would say just finding candidates that have the work ethic and care about the quality of works to the level that we do [is a barrier]. Another challenge has been [the fact that] entry-level type of positions have entry-level type of pay. And so, it's understandable that it's a challenge to motivate people that are in entry-level careers, you know what I mean? But it's also equally a great challenge to pay more, because then you of course have to increase your prices. And so remaining competitive, I think, that's

always just a work in progress and an ongoing challenge of pricing. ... There's just a lot of factors that come into actually being able to make money on a project, and staffing is probably the biggest cog in that wheel that affects the success of that. So also, I would say being a newer company, we still don't offer benefits, so that's a challenge. And finding employees, in not being able to be as competitive in that area, has been a bit of a challenge for us. But we're still not in a position where ... it would actually be financially a good idea for our company to offer them in order for us to stay successful ourselves." [#11]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's a barrier for me just as it would be a barrier for any other company. I wish I could snap my fingers and get the best personnel, but how are you supposed to do that? You got to go through the application process like anybody else and throw out the bad ones and hire the good ones. But then, as a new company, the good ones probably aren't looking to come work for a small business. ... When you're first starting out, how do you promise a guy, 'Oh yeah, I'll keep you busy all year.'" [#14]
- The woman owner of a DBE-certified professional services company stated, "[The] industry is looking to get young people in. ... There's a shortage, yes." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "We could do a lot more work if we could find people that were willing to work. We could do a lot more. We turn down a lot of work because there's just not enough of a workforce for people. ... If we could get more people, we would have way more work." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "We'll just hire some buddies I've hired from the union, so maybe this year, we'll see. I think it'd be nice to have an Indeed, I suppose is what it's called, where you can just hire people online. But something like that in our field would be insane. I don't know if there's something created of that sort without going to one of those places that just hire people off the street. ... It's not easy to get help, and to get somebody that has a little experience is even a bigger difference." [#19]
- The woman owner of a DBE-certified professional services company stated, "One of my challenges though, and I think this has been about one being in a small town ... [is] that I'm competitive with what other companies provide. I mean there's benefits to small business, but there's also some challenges. ... And then you throw in COVID, and it was really hard to find good candidates. I mean, I think staffing aside, right now, that's kind of out of the equation. I feel like that's not really ITD's responsibility, I do feel like there's plenty of work out there. I could grow the firm, but what's limiting me is staffing right now. And also making sure it finds the right fit." [#21]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I'm doing everything myself and not hiring out anybody from wrenching on the trucks to billing, to invoicing, to payroll taxes. I'm doing all of that myself because I want to have a firm grasp on how the business should run before hiring out those positions. ... If I'm hiring you specifically for that job, you should be able to beat [me]. ... [There is] tons of turnover. Dump truck drivers ... don't care about your equipment. It's not theirs. And plus, just being a ... smaller business, even though I can offer them a lot of prevailing wage jobs with this public works, ... it's still such a small company and it's only a smaller percentage [of] the prevailing wage jobs for them. I do the hiring process too myself and everything. And it's like if you got a pulse all right and a CDL [commercial driver's license], get in the truck. But it's difficult. [I had] 21 employees last year and I didn't have to fire

anyone. They all fired themselves or quit. So, my unemployment percentage for my unemployment insurance is very low because I haven't had to pay out unemployment yet. ... It's very difficult to get somebody with the right attitude." [#23]

- The owner of an SBE-certified construction company stated, "It's been a barrier for me. And I say this just because [of] my own personal experience. And I think that part of it is that a smaller firm doesn't have as glamorous of a look to new engineers. So, they tend towards the bigger firms. And maybe there's other reasons. But I don't think pay is it because I've seen that that is the same or even better on my end." [#24]
- A representative of a majority-owned professional services company stated, "It feels like we just cannot hire enough people and get enough work done and out the door for our clients fast enough. ... We're trying to find employees with experience, which we find hard to get employees with experience to come to these small Idaho communities. Retaining employment seems to be [difficult]. ... Once we get them here, if they fit in and they like it, they seem to last for a long time, become committed long-term employees. But it seems to be hard to get people to want to come to Idaho, which is really weird because it's such a desired place to live also. ... The engineers and surveyors seem to be the people we have the hardest time finding. ... I just wonder sometimes if it's the small-town life that scares people away. Super small towns. Boise is probably the biggest area close by to us. The closest town to where I live in Idaho [has a population of] 50,000, and that's reasonably small." [#26]
- The woman owner of a DBE-certified professional services company stated, "I know my husband wants to grow it and have more full-time employees. ... That would free him up to not have to do all the administrative stuff himself, especially if he could hire someone to do the bookkeeping and all that. He is doing all that himself right now. It'd be nice if we could just have steady enough work so that we could hire people to do that for us." [#27]
- A representative of a DBE- and 8(a)-certified construction company stated, "It's next to impossible. ... It's really, really, really hard to find electrical engineers for one. But then an electrical engineer has to go through their four-year degree, but then they have to take another test to be an [engineer in training], so if they're an engineer in training, then they have to have so many hours under a certified electrician or a certified engineer before they can take their final for [licensing]. So, trying to find anybody that's even in that bubble is so, so difficult. We have even gone to the extent of headhunting on LinkedIn. Going out and like, 'Hey, friending a whole bunch of random people and sending out, 'Hey, check it out. We're hiring.' And nothing. Nothing. ... I think we're good now. But we have a whole bunch of projects up in limbo. So, it depends on how they fall, if they stagger themselves or if they all come at once. But at the same time, it's kind of like a guessing game of like, are any of these just going to drop off? ... Is this temporary? Can we get through the flood and then maintain because we don't want to over hire and then have no work. ... [W]here's that balance? Where do you find [employees]? ... It makes my head spin." [#29]
- A representative of a majority-owned construction company stated, "There are a lot of low-profit tract homes that create problems with the labor market. There are unskilled laborers that identify as skilled and are able to get skilled labor wages. It's hard to maintain and keep employees [because] they tend to get frustrated and tend to go to that larger company because they need extra bodies. Mid-range builders have been having trouble keeping employees." [#AV2]



- A representative of a majority-owned goods and services company stated, "The biggest problem is finding good and skilled help. ... Skilled help is hard to come by." [#AV22]
- A representative of a majority-owned goods and services company stated, "Too many job positions open and not enough people to fill them." [#AV29]
- A representative of a woman-owned professional services company stated, "There is a very talented pool of individuals that [do] work of high quality and on par with larger metropolitan areas." [#AV33]
- A representative of a majority-owned goods and services company stated, "It's hard to keep drivers or get them because of restrictions and the cost." [#AV46]
- A representative of a majority-owned construction company stated, "The workforce is dwindling and it's hard to find people qualified to work." [#AV80]
- A representative of a majority-owned construction company stated, "We can't fulfill [on projects because] we're short on laborers or young people going into the trade." [#AV97]
- A representative of a woman-owned construction company stated, "It is hard to expand because we can't get the people and we compete to get employees that are being paid higher wages from larger companies. We gave everyone about a 27% increase in wages this year to keep the people I have. I still can't attract new people, they just don't want to do the work. And we have full benefits too. It would be nice if they would go back to union for the concrete business where everyone is paying the same wage to level the field." [#AV132]
- A representative of a woman-owned construction company stated, "It's a very strong economy but geographically we are isolated in that we have no large cities around us, so that lends itself to lower wages and lower rates than other parts of the country." [#AV134]
- A representative of a majority-owned construction company stated, "Finding help in order to expand has been a challenge." [#AV140]
- A representative of a majority-owned construction company stated, "It is difficult to grow without the necessary employees. It is hard to hire." [#AV143]
- A representative of a majority-owned construction company stated, "It is hard to find and retain employees." [#AV162]
- A representative of a woman-owned construction company stated, "Qualified labor is extremely difficult to recruit. Our growth in business is only restricted and limited by lack of labor." [#AV175]
- A representative of a majority-owned professional services company stated, "It is hard to find people to grow the business, especially in engineering. Business is just booming, but it is hard to find people, and structural engineers in particular." [#AV184]
- A representative of a majority-owned construction company stated, "[It is] really hard to find labor." [#AV185]
- A representative of a majority-owned construction company stated, "It is difficult to find employees now." [#AV188]
- A representative of a majority-owned construction company stated, "[It is hard] finding workers who actually want to work." [#AV191]



- A representative of a majority-owned professional services company stated, "We've pulled out of Idaho because of lack of employees. It was costing us too much money, even though we only live 20 miles from the border. We could find no employees in Idaho." [#AV197]
- A representative of a majority-owned construction company stated, "Wages and cost of living are lower [than the rest of the country], but cost of living is getting higher now, so it's getting more difficult to find help." [#AV202]
- A representative of a majority-owned professional services company stated, "Getting qualified help is beginning to be more difficult." [#AV207]
- A representative of a majority-owned professional services company stated, "I would say, in expanding the business, we have tried [for] several years, and can't find people. We've turned to trying to teach in-house. We need to expand and have tried to, but just can't do it." [#AV213]
- A representative of a majority-owned construction company stated, "[There is] more work than I can find employees to do the work." [#AV235]
- A representative of a majority-owned professional services company stated, "Like everyone else, we are hurting for employees, especially in trucking and driving." [#AV238]
- A representative of a majority-owned construction company stated, "We are in the same boat as every other company – [there is a] lack of workers." [#AV239]
- A representative of a majority-owned construction company stated, "One of big issues is [the] lack of a competent workforce who are willing to work." [#AV240]
- A representative of a majority-owned professional services company stated, "I believe that it is difficult finding qualified individuals, engineers and surveyors [that are] licensed." [#AV257]
- A representative of a majority-owned professional services company stated, "[The] market at this point has been robust, but [it is] challenging probably to start a business because lack of manpower. Even for us, it has been difficult to find qualified individuals." [#AV258]
- A representative of a majority-owned professional services company stated, "My hardest time is finding employees with experience, and getting anybody permanent in the small little area we are located is difficult." [#AV263]
- A representative of a majority-owned professional services company stated, "The hardest thing for expanding is the labor pool." [#AV264]
- A representative of a majority-owned construction company stated, "Our biggest employment issue is finding people to work." [#AV273]
- A representative of a majority-owned construction company stated, "Labor rates in Idaho are lower than base rates are in Washington, so it's difficult to compete on labor-intensive projects." [#AV282]
- A representative of a majority-owned construction company stated, "Lack of qualified or willing employees. That is our biggest dilemma." [#AV284]
- A representative of a majority-owned construction company stated, "I've often thought about expanding in the Idaho market, but employees are hard to come by." [#AV287]

- A representative of a majority-owned professional services company stated, "We can't find employees, [there are] not enough people willing to work now." [#AV293]
- A representative of a majority-owned construction company stated, "Our biggest obstacle is getting workers." [#AV295]
- A representative of a majority-owned professional services company stated, "Right now, the biggest issue is finding qualified candidates to hire and filling open positions. Things are out-of-whack right now, especially with salary demands." [#AV299]
- A representative of a woman-owned professional services company stated, "The issue with any expansion in our area is a lack of available housing. That is our number one issue. It is hard to hire because there is no place to live. There is plenty of work available, though." [#AV300]
- A representative of a majority-owned construction company stated, "[It is] hard to get employees ... nobody wants to work. Wages have gone up, and it is hard to compete for experienced help." [#AV309]
- A representative of a majority-owned construction company stated, "Finding help is the most difficult thing we deal with. It is hard to find qualified equipment and truck drivers." [#AV3053]
- A representative of a trade organization in Idaho stated, "Everyone says they're short-staffed, and a lot has to do with the amount they're willing also to pay and what they can afford to pay. And with everything costing more. ... Specifically, here in the Magic Valley, it is very hard to find people that are willing to work for the amount that they're willing to pay." [#FG1]
- A representative of a trade organization in Idaho stated, "One of the things that we are definitely hearing about is the workforce availability. [It's a] tremendous challenge in Idaho. Some recent Idaho Department of Labor statistics show that ... for every employable person out there, there are two to three jobs. ... Currently, in the Treasure Valley alone, I think it's almost 30,000 jobs that need to be filled. So, one of the biggest barriers that businesses have is labor, the availability of labor, the availability to expand current lines of products." [#FG2]
- A representative of a trade organization in Idaho stated, "Not only did we just fly past the minimum wage, but now it's gotten so competitive that you have people sometimes leaving one job for a competitor just based on 50 cents or a dollar an hour or more pay increases. I think our labor market is one of the biggest barriers just because many of these places, you've got to have the workforce in order to do that." [#FG2]
- The co-owner of a Native American woman-owned and DBE-certified construction company stated, "It's tough to find people to work to fill the jobs. Finding employees is the most challenging part. [We] pay competitive wages in order to retain and compete. However, only larger state and federal contracts make that sustainable." [#WT11]

**6. Unions.** Eight business owners and managers described challenges they experienced working with unions, and challenges with being a union or non-union employer [#3, #10, #AV, #PT2]. Their comments are as follows:

- The Hispanic American owner of a construction company stated, "[For] public [work], sometimes the majority [of jobs are subject to] ... Davis-Bacon wages. ... I basically enrolled with them [the union], but I'm not seeing any benefit out of it, except me having to pay the wages that are part of

the union contract. Now, as far as barriers [are concerned], it puts me on a higher bidding bracket, which doesn't really allow me to win jobs sometimes because it's higher. ... I would say, if ITD can work with the union, to maybe reach out to the union to outsource or [solicit] some jobs. ... Make their jobs available, not just for union companies but companies that are non-union as well." [#3]

- Representatives of a woman-owned construction company stated, "We are a union contractor, it is a barrier for us to subcontract to non-union subs. That can be a challenge sometimes, because the unions don't love that. [In] eastern Washington, northern Idaho, it's not as big a deal. ... For prevailing wages, I don't see as a barrier to entry because everybody has to pay the same. It's not a barrier, it is what it is. You might think they're paying too much, but everybody has to pay the same amount. ... It doesn't make you less competitive in your bid." [#10]
- A representative of a Hispanic American-owned construction company stated, "Not being recognized due to being a small business, [in a] specialty trade. On the Davis-Bacon wage rate, it does not recognize our trade in a lot of regions in Idaho. I specialize in bridges and that's what I would like to start doing more. Having the access is kind of difficult." [#AV64]
- A representative of a majority-owned construction company stated, "We need to have public works license, which we do keep with. However, Davis-Bacon wages are too much for us to handle." [#AV86]
- A representative of a woman-owned construction company stated, "It is hard to expand because we can't get the people and we compete to get employees that are being paid higher wages from larger companies. We gave everyone about a 27% increase in wages this year to keep the people I have. I still can't attract new people, they just don't want to do the work. And we have full benefits too. It would be nice if they would go back to union for the concrete business where everyone is paying the same wage to level the field." [#AV132]
- A representative of an Asian Pacific American-owned construction company stated, "The biggest problem is that we are a union contractor. A lot of the competition pays pretty low wages and gives no benefits, so it's hard to compete." [#AV3072]
- A representative of a majority-owned construction company stated, "In Washington, we're a union contractor, which honestly makes it difficult for us to compete unless there's federal money involved in ITD." [#PT2]

**7. Obtaining inventory, equipment, or other materials and supplies.** Twenty-six business owners and managers discussed challenges with obtaining inventory or other materials and supplies [#1, #2, #7, #8, #19, #20, #30, #AV, #FG2, #WT9]. For example:

- Representatives of a majority-owned construction company stated, "It's a barrier to getting projects done on time. ... [W]e're getting material quotes, but sometimes that material's not available when it comes time to construct the project. There has been, I'd say, shortages." [#1]
- A representative of a majority-owned professional services company stated, "So kind of in a loose way, [inventory] does affect things. It certainly delayed construction and availability." [#2]
- The Native American owner of a professional services company stated, "When you're just a small guy ... my timeframes are typically short compared to big companies with one-, two-year backlogs on projects. They have time to prepare and order things in advance or schedule whatever. So, it

definitely can be a challenge, and depending on what it is, I don't necessarily have a lot of buying power because I don't have a huge volume." [#7]

- The owner of a majority-owned professional services company stated, "Well, with the supply chain problems, maybe. But we've gotten everything we've needed. We don't carry inventory, but getting equipment has taken a little bit of time as far as just waiting time." [#8]
- The Hispanic American owner of a DBE-certified construction company stated, "It started slow, because of COVID, but I guess the biggest repercussions [have] been getting the concrete and all that weird stuff. [With] the demand, it all got backed up so much. So that's been the biggest thing." [#19]
- The woman co-owner of a DBE-certified construction company stated, "[Inventory and materials] have a huge bearing. The pricing has gotten up a lot on the asphalt and emulsions, and stuff. And the market doesn't bear that increase. So, you just have to do more work to make up for that. ... You can only raise your prices so high and then it has a big bearing on what jobs you get and what jobs you don't get. ... I'm running into it this year right now that I only have one source for aggregate. ... But he's ended up having another source. But he said, that's my problem is getting my sources. It's a specialty product and getting that is a big issue. I bought the first truck, but didn't realize it was more than our home back then. ... And we thought, once we bought one, that it was going to be ... all we needed. And we realized we needed two more and a lot more stuff. But we just kept plugging along." [#30]
- A representative of a majority-owned goods and services company stated, "The biggest problem is finding good and skilled help. Also supply chain issues like getting parts and pieces." [#AV22]
- A representative of a majority-owned professional services company stated, "Our only difficulty is we are located in Washington state, on the border, and sometimes they want to use an Idaho [business] instead. Until supply chain issues [are resolved], even out there, [there] is going to be a shortage of work here." [#AV54]
- A representative of a majority-owned goods and services company stated, "We have lot of work available, however the biggest issue is getting operating capital. We did over a million dollars of revenue and finding a bank that will give us operating capital and being able to purchase our own land and building shop has been difficult in the current market." [#AV59]
- A representative of a majority-owned goods and services company stated, "Due to current new truck lead times, the public sector is slow to adapt to ordering equipment in a timely manner." [#AV68]
- A representative of a majority-owned construction company stated, "Getting materials is the biggest hurdle right now." [#AV109]
- A representative of a woman-owned construction company stated, "We just got a contract for a bridge, and I needed a quote for rebar. We are in the panhandle and could find no local suppliers. We found a prime supplier in Spokane, Washington, and Montana. The two contracts in Washington declined to provide a rebar quote." [#AV115]
- A representative of a majority-owned construction company stated, "It's hard to charge a fair price because of fluctuation in the price of materials and fuel costs. It's difficult getting material you need sometimes because you can't get a part you need. The price of equipment is getting ridiculous." [#AV119]

- A representative of a Hispanic American-owned construction company stated, " [ITD work is] equipment-heavy. There is a lot of investment that has to occur." [#AV121]
- A representative of a majority-owned construction company stated, "Delivery of materials is hard [to] predict at times. I think Idaho is doing good compared to other states." [#AV167]
- A representative of a Hispanic American woman-owned construction company stated, "The price of everything is going up including [the] fuel and product I use." [#AV171]
- A representative of a majority-owned construction company stated, "[We are] going through that now, actually. I know with [the] city, cement things are changing for certain reasons. Like, different specs have been an issue. We are working through that because of the supplies of material we get. Different chemicals have changed, so we have too." [#AV193]
- A representative of a majority-owned professional services company stated, "I have long experience working with the California Department of Transportation, but I don't have Idaho experience. Part of my plan is to get into work with them, I just haven't reached out to try to get contracts yet. Start[ing] and expanding is difficult due to inflation and price of diesel." [#AV194]
- A representative of a majority-owned professional services company stated, "We've pulled out of Idaho because of lack of employees ... and lack of material. We try to change providers, but never know if it will be lighting, solar panels, or racking that is hard to obtain." [#AV197]
- A representative of an Asian Pacific American woman-owned construction company stated, "It has been hard getting concrete since 2020. There are three major suppliers and mud is hard to get. We try to do all [of the] work when there is no snow." [#AV216]
- A representative of a majority-owned construction company stated, "Prices are through the roof on materials and diesel fuel." [#AV275]
- A representative of a majority-owned construction company stated, "[Challenges with] large contracts [include]: material cost up front, mass amount of material purchased, require[d] material fee upfront, [the] rest of bill at the end of project." [#AV3016]
- A representative of a trade organization in Idaho stated, "The cost of leasing and maintaining vehicle tractor to pull the large trailers, that came up a lot [with the businesses we work with]." [#FG2]
- A representative of a majority-owned construction company stated, "Not specific to ITD, but some material takes a huge amount of time to get." [#WT9]

**8. Prequalification requirements.** Public agencies sometimes require construction contractors to prequalify (meet a certain set of requirements) in order to bid or propose on government contracts. Ten business owners and managers discussed the benefits and challenges associated with prequalification [#1, #3, #8, #10, #24, #AV]. Their comments included:

- Representatives of a majority-owned construction company stated, "On the prequalification, the only thing that comes into a challenge there is having the experience. Sometimes the only people that are able to bid are people that have a lot of ... experience. And even with our history, sometimes we don't have those individuals that have been around in our company that long. I would think that would create challenges for a lot of people that would exclude them from certain work." [#1]

- The Hispanic American owner of a construction company stated, "They ask you for a high bondage or a high public works class, and those are difficult to acquire for new companies." [#3]
- The owner of a majority-owned professional services company stated, "If you've got a large staff, you can dedicate [time] to putting all of that together. Those tend to be the firms that get the projects." [#8]
- Representatives of a woman-owned construction company stated, "Idaho's [requirements] are pretty easy, so not a barrier there. Washington has a much more formal [prequalification process]." [#10]
- The owner of an SBE-certified construction company stated, "I've just never been called to do any work, so I've given up on that. But you're on a list. You're prequalified for up to a certain amount of work, [a certain] dollar amount. And I can't remember if ITD has any of that." [#24]
- A representative of a majority-owned professional services company stated, "We do not do much transportation work. Most of the work would be utilities or water related work. [It is] helpful that Idaho [has] qualification-based selection. It's helpful [to work in a] QBC state." [#AV28]
- A representative of a majority-owned professional services company stated, "A lot of the projects are awarded on qualification-based criteria. If we are not awarded the projects, we don't have the experience, so we won't get future projects. We can't get experience if we are not awarded the project." [#AV29]
- A representative of a majority-owned professional services company stated, "The barrier for entry for ITD is a QBS [qualification-based selection agency]. ITD is fairly rigid on using the same consultants." [#AV96]
- A representative of a majority-owned professional services company stated, "One of the problems is there is a law—Quality Based Selection—and it requires that ... engineering selection is based on the quality of ... staff. The result is that very large international companies have a vast pool of resources to choose from. Licensure is always a barrier to entry. [You need to] have minimum of three types of engineers of license. [There are] more hoops and costs for an engineering business than other business[es]. [It] make[s] it more difficult to get a business going that way and keep going that way. The state took license requirements for individuals and business from state Board of Engineers and Land Surveyors and moved to a different department and that dep[artment] does not understand what is involved in engineering. [They] have not been able to handle payments in cash also." [#AV104]
- A representative of a majority-owned professional services company stated, "With ITD, we have recently been qualified and are finding and getting projects that need us on occasion and from working with other government agencies, if we are going after a client and we don't have a history of experience with that client." [#AV158]

**9. Experience and expertise.** Interviewees noted that gaining the required experience and expertise to be competitive in the public sector can present a barrier for small, disadvantaged businesses [#3, #11, #14, #24, #26, #28, #AV, #WT3]. For example:

- The Hispanic American owner of a construction company stated, "The main problem establishing my business was getting the opportunity to do the work, to perform the work. Because ... I guess,



when you're a new company, they're not willing to give you a chance unless they know about you." [#3]

- The co-owner of a majority-owned construction company stated, "It may seem intimidating, but in reality, I think the process is pretty clear, you just need to provide what's being asked. And as long as you can do that, it's fine, but it may seem intimidating compared to residential, that can be less formal." [#11]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "But how do you get that experience? I guess you have got to get the experience in the private industry first before you can go and prove it on the public side. But I don't think that's a barrier. I understand why they do that. It's like, who wants to be driving on jacked up roads because they just gave the contract to somebody that doesn't know what they're doing?" [#14]
- A representative of a majority-owned professional services company stated, "I think [with regards to expertise and experience] there could be a barrier. Because if you've never done that style of work, where do you get it in the market if you have never done it before? I can honestly say, even with 15 years at [my current company], we've always been in that market, so I wouldn't know how to break into the market. I guess when they're going through the qualification statement and stuff like that, I'm not quite sure how the law reads, but I think they're supposed to take the most qualified and stuff like that. How can somebody become the most qualified if they've never been given the opportunity? I don't know. Is there any legal wording that could be used that possibly a lesser-qualified entity could put in for a project and maybe they start out at smaller-based projects to build that reputation with ITD?" [#26]
- The Hispanic American owner of an MBE- and DBE-certified professional services company stated, "I'll give you a recent catch-22 with ITD right now. And I'm not sure if you're aware of this or not, but you have to qualify yourself through the term agreement technically to be able to work for ITD, but you have to work for ITD to get the experience to qualify under the term agreement. Can you see the catch-22 yet? You have a lot of new companies that would potentially like to work for ITD, but they don't have the experience and they can't get the experience. ... I think a lot of times, especially with engineering companies, they don't really want to use you because you're too new. It's kind of a catch-22." [#28]
- A representative of a majority-owned professional services company stated, "A lot of the projects are awarded on qualification-based criteria. If we are not awarded the projects, we don't have the experience, so we won't get future projects. We can't get experience if we are not awarded the project." [#AV29]
- A representative of a Hispanic American-owned professional services company stated, "I've been in business for 30 years and I don't think I could start a business doing what I'm doing now. I think the barrier of entry to be able to work for ITD is too high." [#AV187]
- A representative of a majority-owned professional services company stated, "I think that my limitations might ... [include] lack of past experience with ITD. I would say my work has been primarily in land development and I'm uncertain where it is headed right now. I would like to be available to go outside of land development and ITD would be a good source to go outside of land development." [#AV200]



- A representative of a majority-owned professional services company stated, "I would say, we are always graded low and can't show ITD experience within the last five years, which devalues our ability, although we do local road work all of the time. The judgement bar is too high, and it is discouraging." [#AV203]
- A representative of a majority-owned professional services company stated, "The challenge is, regardless of what location you are in, the agencies are looking at previous experience working with them. However, if you have not worked with them previously, they don't look at you. To be competitive you have had to work with them before." [#AV224]
- A representative of a majority-owned professional services company stated, "It is hard to get traction with agencies to get in the door so to speak, because they favor larger organizations." [#AV247]
- A representative of a majority-owned professional services company stated, "When it comes to other local government agencies, [the] majority of our work is not public work, and other agencies or companies have more experience in this area and tend to get the work." [#AV258]
- A representative of a majority-owned professional services company stated, "Typically, the problem is that if you haven't been a prime contractor or a subcontractor, they won't take you." [#AV3057]
- The Hispanic American owner of a DBE-certified professional services company stated, "The barrier of entry to work for ITD is extremely high for an SDBE especially in the technical areas. Understanding the regulations and procedures can be daunting for small businesses and the business side (invoicing overhead rates, etc.) can exclude SDBE and small business[es] from even trying [to bid]. Many businesses have the expertise but not the business acumen to do business with ITD. ... [But] contracting opportunities as a subcontractor are good with ITD once you know the system." [#WT3]

**10. Licenses and permits.** Certain licenses, permits, and certifications are required for both public- and private-sector projects. Twenty-eight interviewees discussed whether licenses, permits, and certifications presented barriers to doing business [#4, #8, #10, #12, #14, #18, #20, #23, #AV, #FG1, #FG2, #WT9, #WT10, #WT12]. For example:

- A representative of a majority-owned professional services company stated, "Since COVID, the public agencies who issue the permits have become very unresponsive. What used to take me a month to two months ... has now been taken six to eight months ... and it's 100 percent because of lack of response from public agencies." [#4]
- The owner of a majority-owned professional services company stated, "For the majority of the stuff we do, you are required to have a professional license. For those that don't, I can see that as being a real problem." [#8]
- Representatives of a woman-owned construction company stated, "The states vary on contractor licenses and so forth, but neither Washington nor Idaho are that difficult. And permits, at least in my world, that's more of an owner problem. Typically, the owner has to get the permits, and then I just have to comply with them." [#10]
- The owner of a majority-owned professional services company stated, "With the sort of turndown in a lot of building, of course the real estate, the commercial ... or the home real estate market

doesn't quite do it, but we haven't had any problems getting what we need. So, except for those sorts of things, permitting's been fine." [#12]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I think anybody has the ability to get any of the licenses and get any of the permits, but do they know how to do it and put the time and work in there and apply?" [#14]
- A representative of a woman-owned and DBE-certified construction company stated, "So, you have to actually be certified to draw plans and run certain projects. So technically, for ITD, it used to just be someone that was of the status that was capable of doing the job. But now, they almost require that certification. So basically, when we get the people certified, we have to find the tests and everything like that. We have to find the classes. Our people went to Montana to take it. We actually tried to get them to sign up, but it's not an easy thing. If we could get it locally, we probably would've had 10 people go take it instead. But we can only afford for so many people to be gone." [#18]
- The owner of a DBE- and WBE-certified professional services company stated, "I have discovered a lot of the people who work for workforce development are not credentialed properly and I'm like, 'Why do they have this job?' I don't understand. ... The strategic planning should be, who the hell are they hiring? They lower the bar for anything that has to do with training or education, or they're even trying to wipe out what school counselors are. 'We can hire you with just a bachelors.' No, you can't. So, part of that I would look at, what are these people's credentials?" [#20]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I had an opportunity to go down to North Dakota and they're like, 'Hey, you got to get your CDL [commercial driver's license], though, if you want to drive these dump trucks.' And I went down to the DMV, grabbed the CDL handbook lit, read it two, three times in a week, went down, took my written test. Then you have to wait a week before you take your driving test, wait a week, they give you a list of certified driving instructors with their own equipment. Because I didn't have a truck either at that time to use for my test. And so, I waited a week, called him, set it up, went down there, did the driving test, passed, and then off we went. ... Licensing and permits. Same difficulty as anybody who's not a minority would have gone through it. No extra steps because they're like, 'Oh, you're a minority. Can you do a back flip? Can't get it.' It's the same process. I guess just having the [knowledge of] what process you have to do to get the permits or to get the licensing. What steps [you have to take]. Nobody's just born with the knowledge. You got to research and figure it out." [#23]
- A representative of a majority-owned construction company stated, "[I] have stopped working because [of] the price of building permits and impact fees in Bonneville County and City of Idaho Falls. [The] majority of [my] work is outside of that area because we cannot afford to get a permit." [#AV85]
- A representative of a majority-owned construction company stated, "We need to have public works license, which we do keep with." [#AV86]
- A representative of a majority-owned construction company stated, "Classification challenges are our main problem." [#AV91]
- A representative of a majority-owned professional services company stated, "Licensure is always a barrier to entry. [You need to] have minimum of three types of engineers of license. [There are]

more hoops and costs for an engineering business than other business[es]. [It] make[s] it more difficult to get a business going that way and keep going that way. The state took license requirements for individuals and business from state Board of Engineers and Land Surveyors and moved to a different department and that dep[artment] does not understand what is involved in engineering." [#AV104]

- A representative of a majority-owned construction company stated, "With the public work license, they set a limit sealing the cost of the project, where others cannot get in on the project." [#AV172]
- A representative of a majority-owned professional services company stated, "I have [professional engineer] license in the state of Washington. I can do some type of work not others in Idaho." [#AV230]
- A representative of a majority-owned construction company stated, "Getting a public works license in Idaho [is a barrier]." [#AV266]
- A representative of a Hispanic American-owned professional services company stated, "I would have to get a license to do work in Idaho and that is something I am thinking about." [#AV289]
- A representative of a majority-owned construction company stated, "Self-explanatory, you have to get licensed in areas they need. [It is] simple to go through the licensing department but it is slow, like steam coming off hot molasses. They requested the same document four times. My wife told them to go through their emails that she [sent]." [#AV3019]
- A representative of a majority-owned construction company stated, "Permitting takes too long, we have to hassle counties for permits." [#AV3056]
- A representative of a woman-owned construction company stated, "ITD was very difficult to work with. There seems to be some tension between ITD and Valley Regional Transit. There was a conflict regarding a permitting approval process and work was lost because they could never come to an agreement." [#AV3062]
- A representative of a woman-owned construction company stated, "What kind of public works license would I need, would ITD require of me? This would depend on the size of the public works project." [#AV3068]
- A representative of an Asian Pacific American-owned construction company stated, "The biggest issue in Idaho is public works licensing. It is hard to get a larger dollar amount when you are getting going. We are rated for \$200,000. It doesn't get you very much today. We are trying to get up to the next tier." [#AV3072]
- A Hispanic American representative of a trade organization in Idaho stated, "The processes that they use for licenses, for applications, and for when you're dealing with space, for example, if you're looking for commercial space. So, navigating through the different municipalities and their particular requirements, it seems a little daunting for them, especially if they have an ambulatory business where it's a vendor business that goes from one location to another and the uncertainty of having to deal with the city requirements and/or restrictions." [#FG1]
- A representative of a trade organization in Idaho stated, "The cost of obtaining interstate licensing, the regulatory issues for interstate transportation came up." [#FG2]
- A representative of a majority-owned construction company stated, "There are a lot of specifications for certificates on equipment, but no consistent guidelines. So many times, an ITD

inspector will ask for additional certificates as the job progresses and those are difficult to obtain—largely materials certs." [#WT9]

- The co-owner of a woman-owned and DBE-certified construction company stated, "If ITD wants DBEs to be successful, they need to change the public works dollar amount. They are limited to up to \$3 [million], based on their public works license, which is based on how much money they have in the bank. In order to jump to \$6 [million], you need \$2 [million] in your account. Under \$3 [million] contracts with lower percent of prime contractor would help be a player—it would benefit the state more while meeting goals that exceed DBE goal." [#WT12]

**11. Learning about work or marketing.** Seven business owners and managers discussed how learning about work opportunities is a challenge, especially for smaller firms, and the difficulties they have marketing their businesses [#24, #27, #29, #30, #AV]. For example:

- The owner of an SBE-certified construction company stated, "I wouldn't know where to even start, though. So that might be a little bit of a barrier in that maybe I go to an ITD website, and finding potential projects might be right there. I don't even know. ... It takes a lot of time, and it takes a special mentality. Oh, there's a creativity to it. There's a lot of formatting. And part of that is legitimate. Do you have the experience? And if you don't have a lot of experience, it's hard to really expand it and again, make it look better than what it is or as best you can, I guess. And I'm not a salesman, so that's a barrier for me. That is a challenge. And that's why for me personally, I end up being a subconsultant to others, because they have that experience in doing it. And that mentality, maybe that discipline in spending a lot of potential time that's going to be wasted because you don't end up with a project. ... Manpower [is also a concern]. People that would be experienced in that kind of a thing, formatting and such. I have a friend that has a business landscape architecture business. And he's into that. He's always been into that ever since I worked with him at another firm. And he has staff that can take that and run with it and put stuff together. ... And I've always wondered how it's worth it to spend all that time, because I've spent a lot of time helping a team when I've been look at other firms to create my resume, or maybe a picture of myself or that RFP." [#24]
- The woman owner of a DBE-certified professional services company stated, "[To do federal work,] you just have to get on their list of approved consultants. ... My husband looks at SAMs for the federal contracts, and then he just will get on the email list for different agencies, and then just a lot of word of mouth." [#27]
- A representative of a DBE- and 8(a)-certified construction company stated, "[My assistant] and I [are] constantly looking at all of the websites, trying to find all of those opportunities out there, all the RFQs, RFPs, whatever we can get ahold of, we're constantly looking every day. If we find one, we're like, 'Oh, okay, this is the bio one that we can offer our services for.' And then we'll send them to our contacts and be like, 'Hey, check out this. Do you want to go after it?' Sometimes, yes. Most of the time, it's no." [#29]
- A representative of a majority-owned construction company stated, "It is hard to find bids and bid lists." [#AV155]
- A representative of a Black American woman-owned professional services company stated, "I look at it positively. The marketing is definitely out there. We just hooked up with a company in Boise

that is going to work on rebranding us. We were asked by the City of Mountain Home to build a school out there. I think the opportunities are definitely out there." [#AV237]

**12. Unnecessarily restrictive contract specifications.** The study team asked business owners and managers if contract specifications presented a barrier to bidding, particularly on public-sector contracts. Sixteen interviewees commented on personal experiences with barriers related to bidding on public-sector and private-sector contracts [#1, #2, #8, #9, #10, #26, #AV]. Their comments included:

- Representatives of a majority-owned construction company stated, "ITD does not have that barrier. They rely strictly on the public works licensing requirements. That's the only thing you have to hold, a public works license that has the appropriate bid limit and scope work that you're bidding. They manage that through their public works licensing system, which I think works well. It's more on the private side where we see that, when we do bid private work." [#1]
- A representative of a majority-owned professional services company stated, "I think one thing that would help, I think that we've pushed for as an industry, would be to have lump sum contracts, where you basically scope the project and you do it as a lump sum, and the consultants got to get that work done for that amount of money. I think that would help the bottom line or the profitability for the consultants, as opposed to using the approved overhead audit rate. ... I think there's certain projects where it does make it a little bit difficult, where they maybe have a high DBE requirement. But as I mentioned, if it's not environmentally sensitive or requires a lot of public involvement, then there isn't a lot left to choose from." [#2]
- The owner of a majority-owned professional services company stated, "[Contract specification] is a barrier. But it's often a result of the people putting out the specifications and bidding documents are inexperienced and don't really understand. They're cut[ting and] pasting from another project. That scope may be way beyond what is really necessary. ... And whether it's appropriate or not is not really considered, and it gets put in the specifications of contracts. Now you're stuck with it." [#8]
- The Hispanic American owner of a DBE-certified professional services company stated, "It used to be if you owned your office building ... you could go out and do a market analysis on rent, and that could be your overhead. And ITD went, 'No, we don't want to do that anymore.' So, ... they had to sell it, and then they had to rent just to get their overhead rate." [#9]
- Representatives of a woman-owned construction company stated, "Restrictive contract specs happen routinely. It's not a barrier per se, but it can cause us to decide whether or not we're going to bid on a job. We actually worked for about a month on a job for Washington DOT here recently and got up to the end and said, 'You know what? We can't bid on this. We don't think it's possible.' Other people disagreed and had a different plan, but we didn't bid on it. That part, I don't think that's really a barrier, but it can influence whether or not you bid a job." [#10]
- A representative of a majority-owned professional services company stated, "I feel like there's an awful lot of requirements for people, agents, or businesses to go through the audits and everything annually. One thing that I find as a disadvantage to all engineering firms on the contracting side of things is, a lot of times, it's a cost-plus-fixed-fee. When you do that, you basically are telling anybody that we deal with, as a subconsultant, we have to give our private information about what we are charging and billing our employees out at their cost rates. ... I wonder if it's driving up the market costs because it's all out there for everybody to see. Then, it becomes a game between ... businesses

to try to be competitive, keep good employees and keep competitive wages, because it's out. It's supposed to be confidential, and I think ITD, to their best ability, I'm not accusing them by no means of letting this information out. But when you have to invoice on those terms, it becomes very obvious to your competitors or a larger firm. If we're a subconsultant, they know exactly what we're paying our employees. They may be able to come in and sneak an employee out from underneath a firm because that's such readily, easily obtainable information." [#26]

- A representative of a majority-owned construction company stated, "ITD has specifications that require that 90% of our employees have Idaho residency that work for us. We are a border state between Idaho and Washington and that can be difficult." [#AV13]
- A representative of a majority-owned construction company stated, "Some of the contracts are worded poorly in the supply end. There's a product that could meet [the requirements] that that aren't allowed to be bid on, because of contract verbiage. Your crack-seal product states that it has to have a Styrofoam container; that sole-sources." [#AV44]
- A representative of a majority-owned professional services company stated, "I can think of two barriers that we might come across. The first one would be the concern about audited rate, and not being able to be compensated at market value for our services. ... We do mostly private sector work, and it is still going strong even though there are rumors of a recession." [#AV110]
- A representative of a woman-owned professional services company stated, "No difficulties, just that sometimes the regulations more than meet the need. We've learned to be patient. We work a lot with Caltrans in California and on the high-speed railroad. Things often don't happen very quickly. We don't do a lot of work in Idaho, mostly [we work] internationally and in other parts of the USA. We hope to do more with potato processors in Idaho." [#AV186]
- A representative of a majority-owned professional services company stated, "The barrier is the audit requirements are the same for the smaller firms being the same for larger firms. ITD makes it hard financially in getting the work because larger companies have the financial advantage for audit requirements." [#AV211]
- A representative of a majority-owned professional services company stated, "It's just hard for local small businesses due to ITD's accounting practices. It favors big companies. They calculate everything based on the overhead rate, which is reduced for small businesses." [#AV262]
- A representative of a majority-owned construction company stated, "Everyone has a bit of difficulty, like [with] rules to contracts. Like DBE [rules], 17% to 20% [of the contract should] have disadvantaged small business [as subcontractors]. Pushing too hard. ... Finding work with some of these regulations [can be difficult]." [#AV285]
- A representative of a majority-owned construction company stated, "One [barrier] has been with the Idaho residency [requirements], because we are a border state. We have Washington employees and Idaho employees." [#AV286]
- A representative of a majority-owned professional services company stated, "I've always had a lot of help, sometimes as a small business it's difficult to navigate some of the requirements that are put in place for large firms." [#AV288]
- A representative of a majority-owned construction company stated, "The amounts of audits. State sales tax audits that last three years! We got money back, but it took an exorbitant amount of



resources of money and time to fulfill the requirements for the audit. We built a new facility and ran into very expensive fees." [#AV3044]

**13. Bid processes and criteria.** Thirteen interviewees shared comments about the bidding process for public agency work. Business owners or managers highlighted challenges with the process [#2, #21, #24, #26, #30, #AV, #PT1, #WT11]. For example:

- A representative of a majority-owned professional services company stated, "Maybe there's a mailer list, [or there] could be an idea where they just make a notification, so that the consultants don't necessarily have to log in every single day to go look and see which projects are being proposed. Sometimes we'll walk away from public work just because we simply can't make as much money, or potentially even lose money, by going through [with] it. The process of going through a proposal is expensive. And then the process of after you win the work, [you] have to go through the scoping process and the budgeting process to get under contract, [it's] expensive. And so going through all of that, it doesn't seem like, at least in my opinion, the public agencies recognize that. And I think it would help if they could streamline that process. I think that they may get more consultants [bidding] on their projects. I think competition would be good in that regard." [#2]
- The woman owner of a DBE-certified professional services company stated, "The bidding process ... because I had established relationships, it was somewhat easy to get it going. The bidding process for me is a proposal process, I don't do a lot of bidding. The proposal process is actually really easy because the primes are doing the heavy lift. I'm just feeding them some information. And then we do the man-hour estimates and I'm in those negotiations and the scopes and stuff. I think now too, after now I've been doing it for six years, a lot of it is just systematic and I know what to expect. ... I imagine people might be overwhelmed by the amount of work that it takes to get it going, just the setup. But I mean, you have to be willing to put that effort in." [#21]
- The owner of an SBE-certified construction company stated, "I've always wondered, how does this pay off? There's got to be a lot more money in it than a typical private job that we don't have to go through this process and then have a 10% chance of getting it. ... Should we really spend this time on this RFP versus that one? And I don't know, I think most of the time, the people I've worked with, they just figure 'We got to give it a shot.' And they just do it. But there's a lot of time and energy put in that people don't get paid for. And maybe somehow if they did the analysis, they would see that it pays off optimally to do that. And then obviously, it would get easier the more you do. But to me, it's an opportunity cost that I just haven't been convinced [is] worth it." [#24]
- A representative of a majority-owned professional services company stated, "One of the things that I think is a little bit more challenging in the public sector is jumping through all the statement of qualifications. Sometimes, we're required to do that in the private sector too, but it seems to be [that] Idaho law really requires anything over a certain dollar amount has to go through statement of qualifications, and they have to be selected by their qualifications. I think there is a lot of good to that, to bring quality work to our public entity or our public side. But ... putting in statement of works, especially for a large firm like ours, is very expensive. There's a lot of money and time that goes into that, [but for us] as a company, there's no way to get that back because we cannot bill our time to the project until we are under a signed contract. That's a deciding factor a lot of times when these guys review these projects is our level of effort and what it's going to cost us as a company to go after the job, [if it is] even going to benefit us as a company." [#26]



- The woman co-owner of a DBE-certified construction company stated, "Bids are extremely time-consuming. And then when you're a small business, you're making a lot of bids that don't actually come to fruition." [#30]
- A representative of a majority-owned construction company stated, "Generally not a lot of things stand in your way. [It is] easy to get work. Following rules and how to navigate to get everything prepared. Once [you] get it down, it is a simple process." [#AV159]
- A representative of a majority-owned professional services company stated, "[The] process for getting hired [is] tedious. Why: the package you have to put together, just to be considered." [#AV198]
- A representative of a Hispanic American-owned construction company stated, "The last bid we submitted [was] not successful. We are a minority-owned business, and I would say there are no checks and balances in following up to see what happens with the outcome and selection of awarded bids. I know we would not be awarded every bid." [#AV274]
- A representative of an Asian Pacific American-owned construction company stated, "Some of the bid processes are a bit of the pain, with all the cover letters and all the extra pages ITD was wanting." [#AV3078]
- A representative of a majority-owned construction company stated, "One of the things is they claim that they need a handwritten signature on quotes in order to make them valid. ... But just things like the signature having to be a handwritten signature in this day of digital everything [is a burden]." [#PT1]
- The co-owner of a Native American woman-owned and DBE-certified construction company stated, "Since they are a small shop, there isn't a lot of time between the bid and the time project starts." [#WT11]

**14. Bid shopping or bid manipulation.** Bid shopping refers to the practice of sharing a contractor's bid with another prospective contractor in order to secure a lower price for the services solicited. Bid manipulation describes the practice of unethically changing the contracting process or a bid to exclude fair and open competition and/or to unjustly profit. Seven business owners and managers described their experiences with bid shopping and bid manipulation in the Idaho marketplace [#1, #4, #8, #9, #10, #18, #26]. For example:

- Representatives of a majority-owned construction company stated, "We were deemed irregular [on a bid]. The highway district that did that project did not have the money to pay the second bidder's price that met the goal and they had to rebid the project, which cost them a whole year in building their rural highway district project. On the second go around, they adjusted the goal, and we were able to put together a team that could meet the goal and we ended up building the project the second year. But we will not attempt to spend the time and effort to go through everybody on the list because all it takes is one bidder that meets the goal regardless of their price and everybody else will be deemed irregular because their good faith [effort] wasn't adequate. ... Price is not a factor, is the story we learned from that. If we get DBEs regardless of the price, we've got to use it and ensure that we meet these goals that sometimes we think are set too high. And in a lot of cases the non-DBE subcontractors don't have any chance [of getting] any of that work. The whole project ends up being subcontracted to DBEs only." [#1]

- A representative of a majority-owned professional services company stated, "The other issue is DOT has what's called an approved overhead rate and other ways that they calculate your hourly fees for professional consulting services. Because of the way they calculate these fees, a company my size, I might be paid somewhere around \$90 or \$95 an hour for the same exact services where a company the size of [Business Name] would get paid \$165 an hour because they can doctor their paperwork and they can show a larger amount of overhead. But I have seen public agencies try to kind of go through the back door and work out lower bill rates. And then if they know you got those lower bill rates, you're the one that's going to get hired. Certainly, in the private world, everybody's always bid shopping in the private world, really not too sure how to remove that barrier though." [#4]
- The owner of a majority-owned professional services company stated, "When we were subconsulting, we had the primes tell us of another engineer's bid and they wanted us to match it or beat it. That is a problem. I don't think it's ethical. I was bidding on a municipal city engineer contract. And he was doing the same and I was aware that he was going to be bidding against us. And the mayor came to me and said, 'Well, here's what [another contractor] bid, can you beat that?' ... This is when I was first opening. I started to try to put together a competitive bid and realized this will never end. He'll just take this back to [the other contractor] and try to beat him down on his bid. And I could see quickly where it was going to go. ... I didn't know that law was out there, and we both withdrew our contracts, and the city went without an engineer for another year." [#8]
- Representatives of a woman-owned construction company stated, "I don't think [bid manipulation is] an issue because as the prime contractor, I'm not required to give anything to a certain sub just because they quoted. Even if they're low, I don't have to use them. There's no law that requires that, so I wouldn't need to do that. If I didn't choose your firm, I can just tell you I didn't choose you and that's it. I don't think that's a big deal. It's very competitive. That tends to self-correct over time because subcontractors will figure out if you're the one feeding their competitors their number, and all of a sudden, they aren't going to quote you anymore. We don't do it, most of the contractors that I'm aware of don't do it. But has it ever happened? Of course. Can I guarantee it'll never happen again in this world? No." [#10]
- A representative of a woman-owned and DBE-certified construction company stated, "So, I'm a strong believer in our price is our price. We don't bid for competition. We bid for what we'll do the work for. I have helped contractors locally that we work for. I have helped them set up a bidding thing like I do, but I am principal to traffic control companies. And so, I do know what some of their prices are for bids, but I always make sure that I turn over my stuff before I even think about looking at theirs. ... And they're very aware of that. And that's basically only for one person, locally. ... No one ever calls me and tells me 'This is how much they charged.'" [#18]
- A representative of a majority-owned professional services company stated, "I feel like there's an awful lot of requirements for people, agents, or businesses to go through the audits and everything annually. One thing that I find as a disadvantage to all engineering firms on the contracting side of things is, a lot of times, it's a cost-plus-fixed-fee. When you do that, you basically are telling anybody that we deal with, as a subconsultant, we have to give our private information about what we are charging and billing our employees out at their cost rates. ... I wonder if it's driving up the market costs because it's all out there for everybody to see. Then, it becomes a game between ... businesses to try to be competitive, keep good employees and keep competitive wages, because it's out. It's supposed to be confidential, and I think ITD, to their best ability, I'm not accusing them by no

means of letting this information out. But when you have to invoice on those terms, it becomes very obvious to your competitors or a larger firm. If we're a subconsultant, they know exactly what we're paying our employees. They may be able to come in and sneak an employee out from underneath a firm because that's such readily, easily obtainable information." [#26]

**15. Treatment by prime contractors or customers.** Seven business owners and managers described challenges associated with treatment by prime contractors or customers during performance of the work [#3, #4, #6, #9, #14, #AV, #WT7]. For example:

- The Hispanic American owner of a construction company stated, "They've made it seem like maybe I didn't have the knowledge or that I was unprofessional, when they had no clue that prior to being in business, ... I've been doing this for 13 years. My experience is mainly this, and I just felt like they didn't give me an equal opportunity. They just felt like I was unprofessional. And mainly, too, because of my youth. ... I guess, part of it was me being Hispanic. ... Because of my ethnicity, they didn't give me the same treatment as they would everybody else. They would just put me off like, 'Hey, we'll get back to you,' and never got back to me. It got to a point where I realized they weren't taking me serious. ... One of the guys ... he's African American, and he was doing some work. One of the concrete owners was there, but his employee used the n-word, which made my employee upset. ... I had talked to the contractor. ... Nothing was done about it. And people use it a lot. They use it freely. But I just made a point to them that they can't be using that type of language, especially when people of color are around. ... Not just the n-word, they've used certain words to kind of discriminate [against] us, Hispanics, but I've dealt with that [before]. It's part of the reason why I started my company, because I got tired of putting up with all those racist remarks. That was actually one of my main reasons why I started my company. To run the company I want, and not having to put up with stuff like that. ... He did threaten to kick me out, but the job was completed, and I ended up finishing up the job. I still showed up to the job site and completed the last 5% that was left. But that was the only incident where I had someone threaten to terminate my contract or kick me off the job site." [#3]
- A representative of a majority-owned professional services company stated, "Some primes will come to me, and they'll say, 'This is obviously not in your scope of work. We're happy to pay you the extra fees to complete this work.' Other primes will come to me, and they will say, 'Yep, guess what? You're going to do it for free, and that's the way it's going to be. If you don't like it, don't work with us anymore.' ... So, I don't work with them anymore. It's unfair to me, and the reality of it is, over time, I've found out they're hitting the owner with the change order. Then they're bulldogging me into doing work for free, and then they're pocketing the profit without sharing it with me. So basically, I do a bunch of free work and they get the money for it. So, I've identified a couple primes that that's happened with, and I'm either very aggressive about getting paid for my change orders when I work with them, or I just don't work with them anymore." [#4]
- The woman owner of a DBE-certified professional services company stated, "When we're a subconsultant, or a subcontractor to a prime, sometimes, they just ask for a scope, but then they go into their own meetings with the client, and they'll make decisions without getting our input." [#6]
- The Hispanic American owner of a DBE-certified professional services company stated, "'We can't get any DBE subs.' It's like, 'Well, yeah, because you don't develop them. You don't support them. They're just a line item [to you].'" [#9]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I've only had good experiences. And not everything has been sunshine and rainbows. When you make a mistake and you hear about it, you fix it, and then you just keep moving forward, and you don't take it as [an insult]. ... It's a constructive criticism. .... I don't think DBEs should feel like they need to be catered to, because it gives the rest of us a bad name. ... it's been informal. It'd be nice if there was a ... way [to communicate issues], but I haven't been through that process. ... It ... just boils down to money for [prime contractors], but that's their excuse to try to dismantle the program, like maybe it's not good because, 'Oh, these DBEs have way higher prices and they're not telling the full story.' Yeah, maybe we do have way higher prices, but you're comparing it not to another DBE trucking firm. ... So they're just trying to pull, I believe, the wool over the eyes of ITD, [saying] that this is a problem, when it's in fact not a problem. And it comes down to money, because they would rather get rid of that so that they can take in more money for themselves." [#14]
- A representative of a majority-owned construction company stated, "[We have had an] issue with inspector in Canyon County: not nice, nitpicky, condescending, does not treat our employees very well. Busy and competitive." [#AV302]
- The Hispanic American owner of a DBE-certified construction company stated, "[It is] very hard to communicate with primes sometimes. [You have to] bid jobs, send the commitment letter, they win, then we hear nothing [with] no communication sometimes after. The timeline on a few was hard, only gave us a few days' notice, then if we could not come right away, they gave some of our job away to someone else. Overall lack of communication with some primes has been hard, mostly when it came to payment." [#WT7]

**16. Approval of the work by the prime contractor or customer.** Six business owners described their experiences getting approvals of their work by the prime contractor or the customer [#1, #7, #8, #AV]. For example:

- Representatives of a majority-owned construction company stated, "Yes, ITD could make some improvement on being more uniform from district to district or resident to resident. But we're all having to work through that." [#1]
- The Native American owner of a professional services company stated, "I wouldn't see that as a barrier, because that's kind of one of the things I feel in the last year, or the last few years is the quality of work is just unacceptable and then people still want to pay and charge for it." [#7]
- The owner of a majority-owned professional services company stated, "I've been working with environmental quality, the EQ. And now that I think about it, it's probably happening in ITD as well. They're underfunded, so the only people they get are underqualified and afraid to make decisions because the decisions that they do make are wrong. They are generally unqualified for what they're doing, it's a bit discouraging." [#8]
- A representative of a woman-owned goods and services company stated, "Trying to get approval for transportation to and from doctors has been hard. Lack of staffing has been the biggest issue. COVID hit us hard, it was rough." [#AV35]
- A representative of a majority-owned professional services company stated, "We did a project, observed that our client and ITD did not agree on how they wanted to work. [For instance,] details on design. I think there are a lot of opportunities, if people want to do this kind of work." [#AV233]

- A representative of a majority-owned professional services company stated, "When we try to get approval, they are slow to reply." [#AV268]

**17. Payment issues.** Twenty business owners and managers described their experiences with late or delayed payments, noting how timely payment was often a challenge for small firms [#1, #2, #3, #6, #7, #8, #9, #11, #19, #21, #22, #24, #AV, #FG1, #WT3, #WT7]. For example:

- Representatives of a majority-owned construction company stated, "ITD pays very consistently. ... [W]e are allowed to, especially on a bigger project, ... bill twice a month. We can request progress payments twice a month. ... I guess we would encourage that they don't take that option away because that helps everybody get paid quicker, us and the subs. ... We would encourage [that] to help everybody's cash flow, especially on larger projects, that that bimonthly progress estimate option not be removed." [#1]
- A representative of a majority-owned professional services company stated, "We are usually paid within 120 days. We'd like to see that closer to 60 days, [that] would be better." [#2]
- The woman owner of a DBE-certified professional services company stated, "That's been a challenge. Getting paid timely when you're a sub is definitely a challenge, which we account for because we just know how it works. There are times where we won't get paid for six to eight months. ... When you're a sub, if there's an issue with the invoice when they submit it, whether it's your issue, or the prime's issue, or another sub's issue, everybody has to wait and suffer I guess. ... We just account for it in the business knowing that we've been the engineering company and [when we] invoice, we more than likely won't get paid for six months." [#6]
- The Native American owner of a professional services company stated, "I think understanding the client and breaking it into more phased payments or more progress payments could definitely help with a smaller business." [#7]
- The owner of a majority-owned professional services company stated, "That is my biggest heartburn right now. The coffers, all the people we work for must have dried up because everyone is dragging out the payments as long as they can." [#8]
- The Hispanic American owner of a DBE-certified professional services company stated, "One of the big issues when you're a subcontractor is you don't get paid until two weeks after the prime contractor gets paid. And it is challenging. ... So many small companies come and go, because they just can't handle not getting paid for 60, 90 days. ... You get those audit forms that say, 'Hey, were you paid 15 days after the contractor gets paid?' Yes, and I look at it, and I do an audit. Yeah, it looks good and stuff, but it might be the receivables 75 to 80 days out. But we did get paid. So, the contractors, the engineering companies, they're really good about making sure that you get paid according to ... those requirements and stuff, but that doesn't necessarily mean that you're getting paid in 30 days. It could be 90 days." [#9]
- The co-owner of a majority-owned construction company stated, "We've not been paid by the ones that we have worked for where we actually didn't get paid on the contract from one of the Hispanic organizations that we were working with. [They didn't say why] they just didn't. ... It wasn't anything due to our work. I think it was just their own cash flow challenges and they just continued to say they would pay, and it went on forever and ever and ever. We just finally wrote it off. ... Do not do business with that particular organization, though I don't know that him being a person of color had anything to do with that." [#11]

- The Hispanic American owner of a DBE-certified construction company stated, "The guys over here have taken care of us really well, and it was just a slow process. They kept blaming it on ITD and ITD's like, 'We've paid 'em.' I'm like, I know of you, 'I've seen you get paid, bro. I know you have money.' ... Well, you can look it up and see if the prime's been paid. So, we've seen it, I don't know, they'd be a few weeks out after that or a month or two." [#19]
- The woman owner of a DBE-certified professional services company stated, "There have been a couple [of times] and it was really challenging, especially as a small business, when I would get held out with a \$30,000 or \$40,000 payment that was pending. We are usually paid ... within 120 days ... I mean, we'd like to see that closer to 60 days ... I mean I had one payment that was out almost 180 days. ... that was a big project and when we were out \$30,000 or \$4,000, that was a lot. That always starts to impact, as a small business, my cash flow. I also worked a little bit with [a different prime] and those payments didn't seem to happen very often, but they were smaller, so it didn't really catch me as being a big deal. I do have employees and I have staff and that's the biggest thing. And we have an office and bills. ... So, it's like I need X amount of money to continue my operations. ... First starting out, what was limiting? In all honesty, sometimes it was the payment. ... Even if it was just a thousand bucks, it was a big deal. ... And so, one of the challenges is the prime. It just takes a while to get payment. I'm typically minimal 60, 90 days out on payment for ITD work. It's the minimum. And this part of it is the process." [#21]
- The owner of a DBE-certified professional services company stated, "For the most part, payments have been regular, on time, and much appreciated. There was a time when I had a few private clients who chose not to pay. That's just bad debt for the company." [#22]
- The owner of an SBE-certified construction company stated, "I have had issues there. ... It was surprising that I would be delayed on payment by the county, but I don't know. And I think it was just because it was going through an architect who hadn't reported properly and timely my invoice. ... It was probably on one invoice; it was over six months. It was almost a year, maybe nine months on one invoice. And that was at least six months on another." [#24]
- A representative of a woman-owned professional services company stated, "We submit vouchers and cannot get paid for 60 to 90 days ... that is a long time for payment for small business." [#AV76]
- A representative of a woman-owned construction company stated, "Being paid out is 45 to 60 days with the government. We need 30 days or less, I think that is fair. There is lots of work, but it is hard to get employees." [#AV124]
- A representative of a Native American woman-owned construction company stated, "This was not with ITD, but the only problem we've had is getting timely payments after invoices were submitted." [#AV3034]
- A Native American representative of a trade organization in Idaho stated, "Sometimes they're taking jobs where they might not get paid because of where they're going into contracting and different things working from a tribal perspective." [#FG1]
- A Native American representative of a trade organization in Idaho stated, "Contracts sometime can take a long time to pass through and the department head may need to have something done a lot faster. And getting that person paid though ends up taking a lot longer, [and] therefore may be pushing other projects back because they are relying on that payment to have product or what have you." [#FG1]



- A Hispanic American representative of a trade organization in Idaho stated, "Employees complain about not getting paid or not getting paid in a timely matter. So that's one of the things that they're hesitant about starting any kind of subcontracts with." [#FG1]
- The Hispanic American owner of a DBE-certified professional services company stated, "As a subcontractor, we get paid two weeks after the prime contractor gets paid and that can stretch out the receivable to an untenable time for a small business' cash flow." [#WT3]
- The Hispanic American owner of a DBE-certified construction company stated, "Payment has been hard too. One job we waited six months after we were done to get payment. When we asked the prime, they blamed someone else. With city, government, or private jobs, we always knew an estimated time of payment to let the concrete plant know and some DBE jobs have been hard to get an accurate date to let them know. We continue to get late charges for the concrete when we can't let them know when they will be paid, and that can add up for a small company!" [#WT7]

**18. Size of contracts.** Eight interviewees described challenges associated with the size of available contracts. [#2, #24, #30, #AV, #WT2] For example:

- A representative of a majority-owned professional services company stated, "The second suggestion would be to have a process in place [for] where they can hire, they can do a direct selection for consultants. And I think the limit is \$100,000. I think it would help if they raised that up to, I don't know, maybe \$250,000, something like that. ... And again, I think the limit on that is up to \$500,000. And I think if they raise that up to maybe a million, double that, something like that ... use either a lump sum contract where you have a fixed fee or a fixed amount, or to use loaded rates, which are more than the industry standard. I think that'd be my biggest takeaway." [#2]
- The owner of an SBE-certified construction company stated, "I think a lot of projects are really done with few staff members. And even if there's sizeable contracts, there's really only a small group working on those contracts in the office. But the larger firm gives the impression that they are more capable. So, I do think there is a barrier that way." [#24]
- The woman co-owner of a DBE-certified construction company stated, "Some of [the contracts] have gotten so big ... we're talking about \$3 million. We don't really want to do that big of a job. It's [a lot of] pressure. ... The smaller ones are better fits for us. What we're capable of doing and not be too stressed out on. ... There are just some other companies that are just a lot bigger, and they have a bigger crew, and they have more dump trucks to do the job. ... I would hope to see smaller contracts, but yes, if they keep staying bigger ... we'll have to make a big growth spurt." [#30]
- A representative of a majority-owned construction company stated, "Their projects are too large for small businesses." [#AV129]
- A representative of a majority-owned construction company stated, "The contracts now are \$5 million to \$20 million more than we can handle now." [#AV135]
- A representative of a majority-owned professional services company stated, "We've been selective, taking on larger and smaller projects, and the smaller projects are just as time-consuming and as much of a headache as the larger ones, without the payoff." [#AV213]
- A representative of a majority-owned construction company stated, "We are just limited by size. There are all kinds of projects available, that's a pretty open question. Finding help is the most difficult thing we deal with. It is hard to find qualified equipment and truck drivers." [#AV3053]



- A representative from a public agency in Idaho stated, "Smaller projects appear to be disproportionately carrying the burden of DBE goals. Because of the nature of DBE companies, smaller projects present more opportunity for a DBE contractor to take on whole items of work. Because of this, small size projects tend to see significantly higher DBE goals. Allowing goal setters to consider partial work items (percentages of work items), the expectation of DBE participation can be more equitably spread over the entire ITD/LHTAC/ACHD program and medium to large projects." [#WT2]

**19. Bookkeeping, estimating, and other technical skills.** Five interviewees discussed the challenges of back-office work such as bookkeeping, estimating, and other technical skills present [#2, #22, #26, #27, #AV]. For example:

- A representative of a majority-owned professional services company stated, "ITD does require an overhead rate audit to be done every year. That's just part of their bid process. ... They do it in terms of [what] you pay your labor, plus an approved overhead rate, plus a small fee on top of that. And so that can be a bit of a barrier. It's not fun to go through that audit every year. And for the amount of effort, doesn't seem like it's really worth it, at least in my eyes. Obviously, they got to have it every whatever, a couple years, two, three years or something like that. But every year seems maybe a little over the top." [#2]
- The owner of a DBE-certified professional services company stated, "Accounting work is critical. I do not have the expertise nor the credentials to do that. [My wife] does not either." [#22]
- A representative of a majority-owned professional services company stated, "Yes, I know it's a barrier for some. ... I find that, as a larger consultant, ITD relies on us basically to train our smaller companies. I'm not meaning even minority, but also the minority- or women-owned or small companies, they're relying on us to train them how to do ITD work, how to meet their standards and stuff like that. I think that is a disadvantage for the businesses because I think sometimes, they're coming in a little bit, I don't want to say blind, but they're coming in green maybe." [#26]
- The woman owner of a DBE-certified professional services company stated, "It's not too bad. Having to figure that [overhead rate] out, you just figure that out at the beginning, and then adjust it as you need to. I know my husband wants to grow it and have more full-time employees. I think that's definitely a possibility. We would ... need to hire a couple more full-time people, and that would free him up to not have to do all the administrative stuff himself, especially if he could hire someone to do the bookkeeping and all that. He is doing all that himself right now. It'd be nice if we could just have steady enough work so that we could hire people to do that for us." [#27]
- A representative of a majority-owned professional services company stated, "The greatest barrier is the financial side of your application of governmental work. Doing certified payroll. It is the most time consuming [part]." [#AV212]

**20. Networking.** Twenty-four interviewees discussed barriers they experienced when networking and building relationships [#1, #5, #8, #11, #19, #20, #22, #23, #25, #26, #29, #AV, #FG1, #FG2, #WT4]. For example:

- A representative of a majority-owned construction company stated, "I mean, there's people that look at out-of-town contractors and say, 'You're coming to our area. We're not going to sell to you, because you're taking work away from our local people.'" [#5]

- The owner of a majority-owned professional services company stated, "They overcame this barrier by hiring ITD retired employees to head up their efforts. I don't know if that makes sense, but you hire a former ITD employee, he's got all the connections inside the department, inside the agency, and they're virtually assured, if he left on good terms, of getting a project. And it really comes down to really who you know." [#8]
- The co-owner of a majority-owned construction company stated, "For the average service company, that's probably going to be one of their largest challenges is most service-related companies are started by servicemen that used to be in that field as a worker who branched off and created their own business. And they really are specialized in more in service and installation of whatever they've chosen to go into and probably have next to no experience running a business and especially marketing it." [#11]
- The Hispanic American owner of a DBE-certified construction company stated, "We've had three jobs in four years with DBE [certification], and I wish there was a lot more than that, but it's just, you don't get picked every time. I think general [contractors] kind of have their own buddies, and I know they do, but I don't blame anybody." [#19]
- The owner of a DBE-certified professional services company stated, "Knowing the right people is terribly important too. Something that can't be replicated." [#22]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's all relations. That was the other thing I used to put a lot of effort into—mingling with people that don't matter. It's like, 'Oh, you need to make the right friends. You need to mingle with the right people.' And so [I'm] slowly learning that." [#23]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "So much of it is connections. It's who you know, who knows you. And plus, I'm at a time in my life where I can afford to fly to every single conference in every single state, and I see the same core group of people. [Mentors] introduce you to someone else. So as a result of that, you're able to form joint ventures, mentor or protegee with other women or just other businesses. [T]here's so many benefits to that because as you know, somebody just mentions your name to someone and now all of a sudden you're on a project." [#25]
- A representative of a majority-owned professional services company stated, "I honestly think it's having those engineers and individuals who are your people that are out there. They're meeting face-to-face and getting to know those clients' needs, those agencies' needs, and being in front of them. It's relationship building." [#26]
- Representative of a DBE- and 8(a)-certified construction company stated, "It's been radio silence from Department of Public Works. They're like, 'Oh hey, well we need to get somebody on the seat because we've got this project and that project, and this project and you guys are perfect for them.' ... And then we don't hear anything. But then they have been giving our name out as referrals. That's how we got another small little contract in December. And then ITD contacted us and they're like, 'Oh, we got your name referred from Department of Public Works. But it's like, 'Okay, well they said that they had all these projects, but then nothing ever moves forward.' ... I feel like that's a huge barrier is contractors, architects, everybody ... don't know where to go to find information. Do they send out a sub solicitation of their contract and be like, 'Hey, we're looking for these just for fun.' If you're DBE, cool, but you only know if you're looking. I think those are some things that could possibly be improved. ... Search criteria and the availability of our information so that

contractors can find us. ... Making it easier to find us. Like, having someone like a search database or something that you can refer contractors to you or architects to." [#29]

- A representative of a woman-owned professional services company stated, "It has been a little slow. [I've been] noticing [that] if people don't know who you are, they are going with who they do know." [#AV42]
- A representative of a majority-owned goods and services company stated, "It's a tough road. I make organic contacts. I do not advertise, I mostly [use] word of mouth." [#AV44]
- A representative of a majority-owned professional services company stated, "We have done work for different government agencies in other states, but I just don't have the contacts here in Idaho. Idaho is a tough state. There is not a lot of environmental consulting going on, [it] could be [a] lack of people?" [#AV49]
- A representative of a woman-owned goods and services company stated, "Thoughts of obtaining work - a lot of advertising and word of mouth, we also use Facebook and Instagram." [#AV70]
- A representative of a Black American-owned professional services company stated, "I have over 15 years of experience working in the Boise area. Obtaining work is kind of hard. It's a growing market and there's a lot of stuff going on. There are a lot of new companies coming to Idaho. Sometimes it's just about who you know." [#AV126]
- A representative of a majority-owned professional services company stated, "I think that my limitations might be in the area of relationships. I don't have relationships that other firms have." [#AV200]
- A representative of a majority-owned professional services company stated, "I've noticed that the state of Idaho in general likes to go out of state instead of teaming up with local architectural companies [that] are professional and extremely competent. This has been what's been going on recently over the past five years. It's difficult to find employees. We don't get the projects that we used to. We would be doing better if the state of Idaho would hire within." [#AV267]
- A representative of a woman-owned professional services company stated, "If they have previous existing relationships with advertising and design agencies, often they will stay with that company, [there is] no opportunity for anyone else." [#AV3065]
- A representative of a trade organization in Idaho stated, "[For] Native American communities, it's also [a barrier] getting their name out there, but also [having] the trust in communities outside of their tribal entities. ... I think that relationships and networking are key to growth. If you don't have your name out there, you don't have the right marketing plan, which is part of the business plan, then how are they going to hear of you?" [#FG1]
- A representative of a trade organization in Idaho stated, "We see our networking events, the demand for those is just through the roof. As a matter of fact, we're having challenges [regarding], even where we can host them, because so many people want to turn out for them. And I think the reason for that is we are seeing a large number of new business startups and new business openings from people moving into the area and needing to build those relationships and those networks rather quickly. So, they're looking for these type of opportunities. I would say, probably, at least a half, if not more, of our new businesses that we signed up this last year were people that had moved into the area in the last two to three years, that were seeing the growth of our

community, seeing opportunities, and bringing their experience and their expertise from other areas to start those businesses." [#FG2]

**21. Electronic bidding and online registration with public agencies.** Nine business owners and representatives discussed online registration and electronic bidding with public agencies [#3, #7, #10, #13, #14, #26, #AV]. For example:

- The Hispanic American owner of a construction company stated, "Because it is public works, you have to jump through hoops to even get invited to certain jobs like that. And then, it gets pretty complicated to even find the resources to find the jobs. ... The only way you can get the advertisement for those public work jobs is you have to pay a yearly membership deal. Even on the Idaho Transportation Department website, it's kind of hard to navigate and they make it hard to find jobs." [#3]
- The Native American owner of a professional services company stated, "I think that [utilizing procurement technology] does create some more efficiency, more streamline." [#7]
- Representatives of a woman-owned construction company stated, "No, I guess I don't see that one as a big barrier. For subcontractors, if they're going to try and make their own proposals, then sure, just like anything else, if you've never done one before, there'll be a learning curve. The first time we did a proposal, we didn't know what we were doing." [#10]
- The owner of a woman-owned professional services company stated, "The reason we engage ... is we love the work, we love the people. ... Because the RFP process is so arduous and with only two people, between the two of us to complete something like that, an average RFP can take anywhere between 20 to 50 hours just to put the RFP together." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Well, as a prime, I don't know. And that's an aspect of it that I have to learn, but I'm not capable of taking that task on right now. Bidding as a subcontractor is very easy. You submit your bid to the prime, and then they do all the hard work and submit it to the state, and if theirs is the lowest bid, you're working." [#14]
- A representative of a majority-owned professional services company stated, "We do business in the private sector with a company that does that. We do understand it is out there and available, and we have to comply with whatever they choose to do. I will honestly say I am not against online. Once again, I think there's still barriers. Do people have the ability to get on and complete what's needed and required on those online submittals? But I'm not against it, and I think we've seen some that are better than others." [#26]
- A representative of a majority-owned goods and services company stated, "Trying to set up the SAM account was not easy, [I'm] not sure if I did set it up, the process is not user friendly." [#AV18]
- A representative of a majority-owned construction company stated, "It is sometimes hard—the only time I worked with government agencies is for snow removal and lawn maintenance. The website is hard to [navigate]." [#AV149]
- A representative of a majority-owned construction company stated, "It's pretty hard to get to work for any government agency. Hard too get to in touch with people. I don't like that everything is online as I'm not really a computer person. It's pretty hard because we are competing with a lot of big companies." [#AV177]

**22. Barriers throughout the life of the contract.** Sixteen businesses discussed various barriers they experience throughout a contract that may make it more difficult for them to perform work or may influence their decision to work with a client in the future [#5, #6, #7, #8, #9, #24, #AV]. For example:

- A representative of a majority-owned construction company stated, "Compare Idaho with other states ... [it's ranked] in the bottom. ... Their drawings I think are hard to work with. The people are hard to work with. They're hard-nosed about things. It's their way or the highway." [#5]
- The woman owner of a DBE-certified professional services company stated, "We have to go through and audit everything, and these massive ... engineering firms that are huge compared to us, they have all the people that deal with the [Federal Acquisition Regulations] and everything, and we've had to really come up to speed, and I don't think it's really geared to a small business like we are. But we've overcome it and have navigated and figured out all the laws in FARS and everything. But it's definitely a barrier." [#6]
- The Native American owner of a professional services company stated, "I mean I get all the paperwork and the checks, and we need a paper trail. I don't know, it just seems like there could be some simplification at times. ... The intent is to reduce risk to not have people take advantage of the situation or try to get money or charge for things that shouldn't be charged for. I understand the intent, but it can create a lot of work and hassle and time." [#7]
- The owner of a majority-owned professional services company stated, "It is the smaller companies like mine that just don't have the staff or don't want to dedicate the time to put that stuff together, that were excluded from being qualified. It's an exclusion based on really just we don't have the overhead, the time to do all the paperwork, the red tape." [#8]
- The Hispanic American owner of a DBE-certified professional services company stated, "We have to subcontract to them [certified subcontractors] because we had several projects that have [requirements to use] them. It's just a pass through, and then you just end up being able to bill the client. And then they're in the same boat we are in because we're not going to pay them until we get paid. ... Those are the invoices that he does in the private sector that he gets away with. ... And they're so screwed up that ITD just rejects it out of hand, and seeing that, and what are you going to do? ITD has to do what ITD does, but this guy's not going to work for them again. ... And he has a particular area of expertise that nobody in this state has. ... And so, what happens is that ITD ends up going to one of these major companies, and so they end up getting somebody from Florida that has to fly up and do the job, and they're incredibly expensive." [#9]
- The owner of an SBE-certified construction company stated, "I think it is somewhat of a barrier for a smaller firm, because there's a lot more paperwork involved in it that maybe takes other staff to handle. Barrier, barrier. I mean, it just adds another requirement, which I mean, I've seen others do it without. They got the system down, so they know how to get it done quickly. And I think their experience allows them to just focus on that. That extra paperwork that is required, that, to me, is sometimes a bit confusing. And I'm thinking back to one ITD project I did, and there were environmental reviews that were required for just an island in the middle of a road. Very simple, but it was this extra effort for some kind of environmental review impact that needed to be done. And some of that, unless you've done it multiple times, I think can be a barrier initially in getting warmed up to it. Unless maybe you have some connection that helps you get through it." [#24]

- A representative of a majority-owned professional services company stated, "The grand administration, projects by grants, how would it be put through accounts receivables and payables, we do not have that to proceed." [#AV32]
- A representative of a majority-owned professional services company stated, "Require a lot of information to do work for them, example paperwork." [#AV33]
- A representative of a majority-owned professional services company stated, "It is very difficult to get selected for the job. We have been receiving a lot of encouragement lately to go after some of these jobs and our only hang-up right now is our books meeting the state's bookkeeping requirements. We are super busy, and we like to service our clientele and are working towards that end. There is a shortage of engineers, and we are trying to service all areas of civil engineering including the state." [#AV35]
- A representative of a majority-owned professional services company stated, "The only thing is being aware of upcoming projects and unnecessary complex regulatory regulations." [#AV68]
- A representative of a majority-owned construction company stated, "Working with ITD has been risky due to 405 specification tests results by ITD and not the contractor. It's been a healthy market due to the transportation funding. District 1 has the strongest growth in the nation." [#AV81]
- A representative of a majority-owned construction company stated, "Getting on the approved provider list has been difficult. I just haven't completed the form. You've got to market and get contracts. That's the difficult part." [#AV93]
- A representative of a majority-owned construction company stated, "[We are] going through that now, actually. I know with city, cement things are changing for certain reasons. Like different specs have been an issue. We are working through that because of the supplies of materials we get. Different chemicals have changed so we have. Definitely expanding in commercial. Also agricultural is expanding. It is still maintaining like dairy work. Residential has a taken sharp decline in the last month and a half because of interest rates." [#AV193]
- A representative of a majority-owned construction company stated, "The hardest thing so far working with the city is having to work with everything remotely. I had to get an engineer and pay \$1,600 in what I already knew. I'm a general contractor and needed an engineer involved and had an inspector that did not know how to [inspect]... I've seen other work that has not been done correctly and my company has been called many times to do more state warranty jobs that were done less than a year ago to fix jobs that were not done correctly by other companies in the first place." [#AV276]

**23. Size of firm.** Fifteen interviewees mentioned barriers they experienced due to the size of their company [#2, #4, #7, #8, #13, #30, #AV]. For example:

- A representative of a majority-owned professional services company stated, "We've turned down a lot of work, just because we didn't want to overload our existing staff. And even if we won the work, we would not be able to meet our deadlines. So yeah, we've passed on several jobs, potential projects." [#2]
- A representative of a majority-owned professional services company stated, "Public sector has been, well, there's opportunity there but, for a small business, it's sometimes difficult to show clients and convince clients that you have the capability of handling the scope of work that they're



presenting to you when they've never worked with you before. The reality of it is firms my size get denied the opportunity to go after public work because of our size, as a sub anyway. Larger companies have a higher likelihood of being viewed as, I guess, more professional and more desirable to work with in the eyes of public agencies. So, I do miss out on opportunities because of the size of my company." [#4]

- The Native American owner of a professional services company stated, "The larger companies with full-time estimators with tons of experience ... typically, they're going to do better, which makes sense. So, when you're a small guy and you can't afford an estimator with one year's experience, [it's a challenge]." [#7]
- The owner of a majority-owned professional services company stated, "The better writers, the companies with larger staff dedicated to putting out those publications tend to win the proposals over those of us that are busy getting the stuff done and don't have time to write. ... Where the smaller companies like me that just don't have the staff or don't want to dedicate the time to put that stuff together were excluded from being qualified. It's an exclusion based on, really, just we don't have the overhead, the time to do all the paperwork, the red tape." [#8]
- The owner of a woman-owned professional services company stated, "The magnitude of the work that is being requested, the RFP, of course, is trying to discern whether or not you're capable of doing the work. And sometimes it is hard for individuals to imagine that two people can do the work of 30." [#13]
- The woman co-owner of a DBE-certified construction company stated, "I do know as a small contractor and a woman contractor, I can't compete with a lot of the projects with the bigger companies because the resources are way more. They have the asphalts, they have the aggregate, they own—my competitors own—aggregate pits, and they own multi-supplier companies. And so, for me to compete with a lot of the people on the ITD projects, asphalt is a hard one to compete with. ... I am a small fish in a big pot of big players. ... I'm a minnow. I'm not even a fish." [#30]
- A representative of a Hispanic American-owned construction company stated, "Not being recognized due to being a small business ... is kind of difficult." [#AV64]
- A representative of a woman-owned construction company stated, "I feel our company is a little small to be dealing with the paperwork that comes with a state or federal contract." [#AV106]
- A representative of a majority-owned professional services company stated, "A small company like ours is not chosen due to size. I feel it's kind of a barrier; they look to bigger companies rather than ours." [#AV122]
- A representative of a woman-owned construction company stated, "Sometimes we are overlooked because we are a small company. This sector tends to go for the large multi-states companies, not the small business. That's the way it is in the industry." [#AV179]
- A representative of a majority-owned professional services company stated, "The barrier is the audit requirements are the same for the smaller firms being the same for larger firms. ITD makes it hard financially in getting the work because larger companies have the financial advantage for audit requirements." [#AV211]
- A representative of a majority-owned professional services company stated, "It is hard to get traction with agencies to get in the door so to speak because they favor larger organizations." [#AV247]



- A representative of a majority-owned professional services company stated, "It's just hard for local small businesses due to ITD's accounting practices. It favors big companies. They calculate everything based on the overhead rate, which is reduced for small businesses." [#AV262]
- A representative of a majority-owned professional services company stated, "Sometimes as a small business it's difficult to navigate some of the requirements that are put in place for large firms." [#AV288]
- A representative of a majority-owned construction company stated, "We only employ five people, but we can get a job done, but it must be what we can provide. We are a small family-owned business." [#AV3027]

**24. Other comments about marketplace barriers and discrimination.** Four interviewees described other challenges in the marketplace and offered additional insights [#2, #AV]. For example:

- A representative of a majority-owned professional services company stated, "I think if we had more [than] four weeks to put a proposal together, I think it would free people up to be able to go after more work, including ourselves. ... Sometimes with their proposals that ITD puts out, they will have unrealistic deadlines of getting work done. ... The department has a goal and then project-specific goals. Sometimes it's difficult to meet those requirements sometimes. I think it would help to have maybe a little bit more selection of some of those." [#2]
- A representative of a majority-owned construction company stated, "I think some addition of deregulating would enhance business. For [a] new business to start it is a significant expense. Deregulating would help new businesses and sometimes not discourage new business from starting. [It] would promote and enhance competition." [#AV5]
- A representative of a majority-owned construction company stated, "We already work with ITD all of the time. It is extremely difficult to expand and for a gravel pit to be opened and operate. Gravel pits take up a lot of land, they are not attractive, have low taxes and they are usually on crying farmland or in areas where county rules are changing making it very difficult for a gravel pit to be opened." [#AV145]
- A representative of a majority-owned professional services company stated, "I have long experienced working with the California Department of Transportation but don't have Idaho experience. Part of my plan is to get into work with them I just haven't reached out to try to get contracts yet. Start and expanding is difficult due to inflation and price of diesel. I think high interest rates are causing a slowdown in housing. The climate is not very good right now, definitely not for expanding but maybe just maintaining a business. There might be some shrinkage in business because of the pending recession." [#AV194]

## G. Effects of Race and Gender

Business owners and managers discussed any experiences they have with discrimination in the local marketplace, and how this behavior affects person of color- (POC-) or woman-owned firms. Part G presents their comments on:

1. Price discrimination;
2. Unfair contract denials or terminations and denial of the opportunity to bid;

3. Stereotypical attitudes;
4. Double standards;
5. Unfavorable work environments for POCs and women;
6. Resistance to using MBEs/WBEs by government, prime contractors, or subcontractors;
7. Price discrimination;
8. MBE/WBE/DBE fronts or fraud;
9. False reporting of MBE/WBE/DBE participation; and
10. Other forms of discrimination against POCs and women.

**1. Price discrimination.** One business owner discussed how price discrimination affects small, disadvantaged businesses. [#30]. For example:

- The woman co-owner of a DBE-certified construction company stated, "I have a hard time with the competing with a lot of things. I had the opportunity to bid on some projects up in Spokane and it was a slurry seal, and I couldn't get any company to give me a bid for aggregate. And another one of the bigger companies came in, got aggregate and got the job done. So, I never even got to bid on it because nobody would give me an aggregate price. But I'm sure the company that got it done had maybe owned a company, a large source over there or something. Because I couldn't get nobody to get me a bid to be able to get my foot in the door up in Spokane to do even bid the project. ... I called up every rock source up there and [they] wouldn't do it. Somehow, one of the bigger companies got it done. I didn't. ... They're bigger people and who [can] make the right calls to or whatever they need to do. But I called everybody and sent the specifications, and nobody would make it for me." [#30]

**2. Unfair contract denials or terminations and denial of the opportunity to bid.** Four business owners and managers discussed if their firms had ever experienced unfair denial or termination of a contract or been denied the opportunity to work on a contract [#3, #9, #21 #30]. For example:

- The Hispanic American owner of a construction company stated, "They've made it seem like maybe I didn't have the knowledge or that I was unprofessional, when they had no clue that prior to being in business, ... I've been doing this for 13 years. My experience is mainly this, and I just felt like they didn't give me an equal opportunity. They just felt like I was unprofessional. And mainly, too, because of my youth. ... I guess, part of it was me being Hispanic... Because of my ethnicity, they didn't give me the same treatment as they would everybody else. They would just put me off like, 'Hey, we'll get back to you,' and never got back to me. It got to a point where I realized they weren't taking me serious. ... I have had denial of contracts, but it wasn't... I don't think it was much about ethnicity. It was mainly about, I would say, them not thinking that I was capable of running a job like that or keeping up with the finances. ... He did threaten to kick me out, but the job was completed, and I ended up finishing up the job. I still showed up to the job site and completed the last 5% that was left. But that was the only incident where I had someone threaten to terminate my contract or kick me off the job site." [#3]

- The Hispanic American owner of a DBE-certified professional services company stated, "What happened when I first started in business is that there were hard percentages that ITD had for engineering companies and stuff. So, you were slotted in. Back in the day, even though they weren't supposed to do this, if there was a 10% percentage and you hit that 10%, they pushed you off a cliff. That was it. You were done. It didn't matter where you were in the process." [#9]
- The woman owner of a DBE-certified professional services company stated, "I have never been denied at all. I think I've been fortunate because we've been in a period of time where most folks are calling me, and I haven't had to do a lot of outreach. But no, I've never been denied." [#21]
- The woman co-owner of a DBE-certified construction company stated, "I had one job I was supposed to be [on as a subcontractor], but that didn't work out. We ended up canceling the contract. They ended up wanting their own ... sister business ... to do it. ... I was a [low] bidder for that project and then they didn't get their job down the time, and they tried forcing me to do it at night when it was too cold. After the whole non-cooperative mess, we just decided in the spring, you can have your company do it. They made more money with their sister company doing it. It was a mess. It actually gave me a heart attack. I didn't know, but they kept trying to have us do a nighttime job with [low] temperatures, they tried to hand on their job not getting done in time, and they wanted us to move forward with it when the weather wasn't going to cooperate, we couldn't perform, and we just had to get attorneys and say, no, we're not going to." [#30]

**3. Stereotypical attitudes.** Six interviewees discussed their experiences with stereotypes that negatively affected small, disadvantaged businesses [#3, #9, #13, #14, #20, #23]. For example:

- The Hispanic American owner of a DBE-certified professional services company stated, "[There is a stereotype that,] 'Yeah, DBEs, they don't work very hard. They're not very aggressive.' Well, yeah, but there's two sides to that story. 'Yeah, I lost a bid to another company that used a DBE trucking company. They were very expensive, but they hit their DBE goal.' Okay. If you don't like the law, change the law. ... I would say that there is an underlying [belief] about DBEs not being able to do good work." [#9]
- The owner of a woman-owned professional services company stated, "As a woman, you most certainly run into scenarios where others may not think that you're as capable as a male counterpart. You run into that kind of discrimination no matter where you go, in terms of being able to prove that you're as capable." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's not all kumbaya out here. It's business and it's cutthroat. And once you kind of accept that, then you're able to just carry on without it affecting you. ... [Prime contractors] think that you're getting a free handout and that you're not just working. ... I just brush it off and I feel like I'm paving the way for future DBEs. ... Where Washington is more of, 'Oh, this is a necessary evil, we got to work with it.' ... It's accepted. Idaho, they haven't hit that spot up here yet, but everybody's getting used to it around this area by seeing my success." [#14]
- The owner of a DBE- and WBE-certified professional services company stated, "I ended up in northern Idaho. And then I was like, 'This area's a little weird.' And it's the haves and the have-nots. When you work with families, you've got all these retirees that have a very different mindset and money. And I felt like there is a very oppressive behavior around girls up there. And I thought that it was maybe because I'm from back east. I'm not sure. But my son came a couple times because he

was getting back from deployments and stuff, and he's like, 'What's the deal here? Are they a religious thing?' It was all the religions. And I'm Catholic. I'm a practicing Catholic, but I wasn't considered a real Catholic. Because I wore pants, or I showed my sleeves. It was just very oppressive. And I was like, 'I don't really like it here.' ... It's like, 'Why are these girls aren't allowed to work?' 'Oh, you can't work unless you're working for someone we know. Oh, you can't go off to college. If you go to college, it has to be only in this area.' And it just was really weird. But the boys, they can go elsewhere or, 'We don't want them losing their soul.' It's like, 'Okay, so just because you go to college doesn't mean you lose your soul.' I imagine they're not attracting a lot of people with DBEs because they're just in their mindset." [#20]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's so funny because in the industry too, all my competition, they're just like, 'Oh God, look at him. ... Because he's a minority, look at him.' As though that's the only reason why [I'm] successful. They just want to have an excuse. It's funny. But you got to tone out, you learn to mute the noise." [#23]

**4. Double standards.** One interviewee discussed whether there were double standards for small, disadvantaged firms [#3]. For example:

- The Hispanic American owner of a construction company stated, "It's not public works, but there was a job where they were really being anal with me and my guys to wear safety vest or with something fluorescent. But members of theirs or another company, they would allow them to get away with not using [them]." [#3]

**5. Unfavorable work environment for minorities or women.** Two business owners and managers commented on their experiences working in unfavorable environments [#3, #14]. For example:

- The Hispanic American owner of a construction company stated, "One of the guys ... he's African American, and he was doing some work. One of the concrete owners was there, but his employee used the n-word, which made my employee upset. ... I had talked to the contractor. ... Nothing was done about it, and people use it a lot. They use it freely. But I just made a point to them that they can't be using that type of language, especially when people of color are around. ... Not just the n-word, they've used certain words to kind of discriminate us, Hispanics, but I've dealt with that [before]. It's part of the reason why I started my company because I got tired of putting up with all those racist remarks. That was actually one of my main reasons why I started my company. To run the company I want, and not having to put up with stuff like that." [#3]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The other trucking companies that aren't minority-owned businesses, but that still haul for these big prime contractors and stuff, it's those guys that get the sewing circle talking. ... So that's a barrier, but it's all behind the curtain ... it's not in your face racism or whatever. ... They do know not to just come out and say s\*\*t like that, like, 'oh, look at this woman,' or 'look at this guy who's just here because of this.' They know not to, but you can feel the aura and you can hear it within the other trucking companies." [#14]

**6. 'Good ol' boy network' or other closed networks.** Seven firms shared their comments about the existence of a 'good ol' boy' network or other closed networks. [#4, #14, #17, #19, #20, #24, #29]. For example:

- A representative of a majority-owned professional services company stated, "You have three or four people picking who they're going to hire. They sit down in a room, and they go, 'Oh, we're not going to hire this guy. He's too small.' It's all behind closed doors. And then when they won't hire anybody with less than 50 people working under their roof, it becomes obvious that you're not going to be competitive for that type of work unless you're that big. The architects or whoever I would be subcontracting to, it becomes obvious to them and, all of a sudden, you just don't get any opportunity there. I really think it comes down to the individual who's selecting who to hire." [#4]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Usually truck bosses, they have their old boys club that they want to hire the trucks out that they know, their buddies ... and give the work to their buddies." [#14]
- The woman owner of a DBE-certified professional services company stated, "I think being a woman in two male-oriented fields ... has been a barrier for sure. I don't know. I think women professionally bid less in order to get the projects, or they're not part of the good-old-boy network and never will be. As far as my generation goes, I think, I won't say your generation, but my daughter-in-law's generation is much more forceful, and they don't mess around. They're not going to take less. Whereas my generation did in order to be a part." [#17]
- The Hispanic American owner of a DBE-certified construction company stated, "It is a good old boys club out there. I went to that pre-bid yesterday and everybody knew everybody, and I was the new guy. I'm like, okay, this is just strange. ... We've had three jobs in four years with DBE [certification], and I wish there was a lot more than that, but it's just, you don't get picked every time. I think generals kind of have their own buddies, and I know they do, but I don't blame anybody." [#19]
- The owner of a DBE- and WBE-certified professional services company stated, "He put a big thing together for the city where he was ... kind of making them their honorary people, the people who work for the college and everything that get paid. ... I don't get paid when I'm doing a networking event and I yelled at him for that after. I was like, ... 'You're treating them like they've done so much for this area. They've done nothing for this area, and they're here getting paid where there's a bunch of us who aren't, and you're not even acknowledging us and we're trying to help you with this.' ... He said, 'I didn't even know who you were and then I felt badly about that, and they tracked me down and showed up in my office.' And I'm like, 'Yeah, I'm pissed. Yeah, it's a good old boys club.' ... I said, 'You should be ashamed of yourself, and this isn't pulling the community together. We're business owners and we're trying, and you're not even [trying].' ... They want you to sit on boards and everything for free and then you're finding out they have these projects going on that you should be paid, but they want you to volunteer, and then you find out that three other people are getting paid who are doing it. This is the stuff I have experienced. And I'm not saying it's just Idaho, it's just this has been where I've been." [#20]
- The owner of an SBE-certified construction company stated, "I believe it's more about relationships than it is qualifications sometimes." [#24]
- Representative of a DBE- and 8(a)-certified construction company stated, "Everybody gets their established teams or who they like to work with, so trying to come in and everybody goes to [their favorites], and it's like, 'Okay, well hey. We're over here.' And we hear people complain, oh, we don't want to work with them. We don't like working with them, but they're cheap. And then you're like, 'Okay, well, we can be competitively priced too, and we'll make your job a little bit easier,

maybe try us out and see how we work together. And if you really hate going back to the other companies because you don't like working with them, well then why not come to us?' 'Oh, well, we just know what to expect with them.' 'Well, why are you making it harder on yourself?' ... Sometimes breaking those barriers of reestablished teams is kind of a challenge too." [#29]

## **7. Resistance to use of MBE/WBEs by government, prime contractors, or subcontractors.**

Eight interviewees shared their experience with the government, prime contractors, or subcontractors showing resistance to using a certified firm [#3, #9, #14, #18, #19, #20, #AV]. For example:

- The Hispanic American owner of a construction company stated, "They've made it seem like maybe I didn't have the knowledge or that I was unprofessional, when they had no clue that prior to being in business, ... I've been doing this for 13 years. My experience is mainly this, and I just felt like they didn't give me an equal opportunity. They just felt like I was unprofessional. And mainly, too, because of my youth. ... I guess, part of it was me being Hispanic... Because of my ethnicity, they didn't give me the same treatment as they would everybody else. They would just put me off like, 'Hey, we'll get back to you,' and never got back to me. It got to a point where I realized they weren't taking me serious." [#3]
- The Hispanic American owner of a DBE-certified professional services company stated, "I went to a breakfast meeting one time at the Associated General Contractors. ... They were mad because they didn't want to do those percentages. Then, finally, FHWA just came in and said, 'Enough's enough.' Now we have percentages." [#9]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I feel like [in] Washington, the prime contractors are more accepting in understanding that, 'hey, this is the way it is and this is what we have to do, so we might as well work with these guys with a more open mind,' and I feel like Idaho hasn't reached that state yet. ... They do understand that they do have to do what they have to do, but it leaves a worse taste in their mouth than it does with Washington prime contractors. I know a lot of the prime contractors like to complain about rates that the DBEs are setting, ... but then again, what I believe they're doing is, they're comparing say my rate versus ... we'll just say the good old boy [network], for lack of a better term, but say Jim's rate, but Jim only has one truck, and he is the driver of that truck. ... So, then you're on a prevailed job, and his rate is going to be way lower than when I have employees that you got to pay prevailing rate. And so, if there's a \$40 difference in rate, they act like that's the big end all, but when they're complaining about it, they don't want to let you know the details of it. They think, 'oh, well verse this company, that's \$40 less,' and in reality, it's Jim who's driving his own truck and is paying himself prevailing [wages]. I think that that's their excuse. ... It comes down to money. It ... just boils down to money for [prime contractors], but that's their excuse to try to dismantle the program, like maybe it's not good because, 'Oh, these DBEs have way higher prices and they're not telling the full story.' Yeah, maybe we do have way higher prices, but you're comparing it not to another DBE trucking firm, you're comparing it to Jim, like I said, with one truck. ... So, they're just trying to pull, I believe, the wool over the eyes of ITD, [saying] that this is a problem when it's in fact not a problem. And it comes down to money, because they would rather get rid of that so that they can take in more money for themselves." [#14]
- A representative of a woman-owned and DBE-certified construction company stated, "We do, every now and then, run into people that don't work with women." [#18]



- The Hispanic American owner of a DBE-certified construction company stated, "The general [contractors] also don't really commit to us, so you never know what you're kind of in for. They're just shopping you for numbers. ... We had our commitment letter to a company last year. They won the project and then they didn't award us anything. ... You want to call them and almost raise hell but then you're like, what's that going to matter if they're going to use you or not? If they do decide to use [you], they'll ... treat you like crap. And then they'll never call you again. Even if they do want to use you. It's the dance you got to struggle with." [#19]
- The owner of a DBE- and WBE-certified professional services company stated, "Idaho had this big Woman of the Year thing going on ... it was like five years ago. Big conference for women in business, and they have two male speakers. I was like, 'You have got to be kidding. Of all the women in business in Idaho, you're paying two men.' ... The men were almost apologetic. ... [One guy,] he had to keep talking about his wife because I think he felt so guilty. The women who were in charge of this big woman conference, la, la, la. They said, 'Okay, we're going to open up the floor to people giving questions.' But they wouldn't open up the floor, 'We've come up with our own questions.' ... Because you couldn't possibly come up with a question. ... I mean, it's like, 'This is what I get in Idaho? Oh, okay, whatever.'" [#20]
- A representative of a woman-owned professional services company stated, "Why it's difficult to get in, when I joined [the] DBE program, my goal was to work has an inspector. ... They only required DBE[s] for construction inspection, but nobody would hire a DBE inspector if they can handle inside their own [company]. ITD, they like to work with same companies, over and over, [and they are] very prejudiced toward women. I am a woman-owned business. If they don't like you, they tell everyone, and no one will work with you." [#AV48]
- A representative of a Native American woman-owned construction company stated, "I run into men that will not work with a woman as the boss. I've run into this several times and recognize it right off, and I back off and let my husband handle it." [#AV107]

**8. MBE/WBE/DBE fronts or fraud.** Three business owners and managers shared their experience with MBE/WBE/DBE fronts or frauds [#8, #14, #23]. For example:

- The owner of a majority-owned professional services company stated, "Well, the people that are successfully bidding on public projects generally put a disadvantaged person on their roster as the owner of the company. And that person may not ever step foot in the office, but that gets them 8(a) qualifications that virtually guarantee them the work, even if they're not truly qualified. ... I would say that most of the private companies working for public entities or contracting are doing something along those lines, such as an owner will put his wife on the registration of the business so that he appears to be woman owned." [#8]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I wish Idaho would investigate the women DBEs more, because I think it's more rampant in Idaho. ... It's very easy, and then maybe it's a little too easy to get certified, because a lot of these men are using their wives as fronts to run a DBE business. And by men, I mean white men using their wives to file in name, and then they're not doing any of the work. ... He's my competition now for the DBE, taking my work through his wife. And so yeah, I definitely don't like that, especially when the wife doesn't drive or operate equipment or do any of the main things that you need to do. I don't know. Maybe she just signs the checks, and then that's good enough. Really? And the husband is doing



everything else. It's like, okay, well that's not right. ... I don't want to single them out and say give more scrutiny to the women, but there has to be some sort of provability, not like, oh, I got my CDL. Yeah, you can go get it, but do you drive? Do you ever drive? No." [#14]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I'm onto them, the primes and all these other contractors that are bidding public works jobs, guaranteed for a fact, they're creating companies with their family involved as maybe a woman that's in their family. And they're starting flagging companies for them so that they can utilize them. I'm probably like 94% positive that's what a lot of these flagging companies derive from. They have familial connections with the primes and they're setting it up so that they don't have to go out of house to reach the DBE goal. ... There's even trucking companies up here that I know of where the [owner is] a DBE ... but he's a white guy, but his wife is the one who's running the business. ... And it's like, ... they're just using the program as a disguise so that he can get on more projects in his company. ... It needs to be stricter. ... It needs to be audited, because when I was going through the Idaho certification process for the DBE, for me it is pretty obvious, cut and dry. You don't have to look too hard. The guy came in and he is like, 'Well, okay, you're obviously not white. ... You're obviously not a woman trying to be a loophole through the system.' ... Where's the accountability or transparency there? You could fake it for the two hours that the guy is here verifying this stuff, but then right when he leaves the door and you get certified ...it's her husband doing everything. And it's like, are you a certified DBE if you get on five hours a week so you can do payroll? I'm just saying maybe she's like, 'no, I do payroll weekly or every other week and no, it's my business and the husband does everything else.'" [#23]

**9. False reporting of MBE/WBE/DBE participation.** Nine business owners and managers shared their experiences with the "good faith efforts" programs or experiences in which primes falsely reported certified subcontractor participation. Good faith efforts programs give prime contractors the option to demonstrate that they have made a diligent and honest effort to meet contract goals for MBE/WBE/DBE participation [#9, #14, #21, #23, #30, #AV, #PT1, #WT2, #WT3, #WT7]. For example:

- The Hispanic American owner of a DBE-certified professional services company stated, "The first thing those large, large organization organizations did, the engineering companies, is they dropped us like a hot rock, because they have their internal people. So, as soon as there was a good faith effort, they just went, 'Okay, we don't have to do any.' That's why the percentages dropped so quickly and dramatically, because they said, 'We don't have to do that. We'll have the mid-size companies take that slack.' ... I actually dropped out of the program for about a year because there was no benefit to it." [#9]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "How do you know if they're filing good faith efforts and they just decide not to use you? They used a different DBE. So we get told no all the time. ... I'm sure they already have things for the good faith effort but try to avoid the good faith efforts at all costs." [#14]
- The woman owner of a DBE-certified professional services company stated, "Primes may reach out to me and ask for me to team with them and maybe the timing doesn't work or maybe it's something that I'm not really interested in or, I mean, know it sounds bad, but maybe there's some things sometimes when I provided a letter that said, 'Hey, we appreciate that. Thanks for reaching out, but we're not going to team with you.'" [#21]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Feels like for the Idaho side, it's just part of the process. Checking a box. ... From my understanding in Idaho, there's a process for the good faith effort, but with it being race-neutral and you not knowing which DBE they're using. ... Why am I even putting so much thought into this Idaho program if you don't have access to that information?" [#23]
- A representative of a majority-owned construction company stated, "We went through the good faith effort because and made sure I spent more time putting our good faith effort together because I was very concerned, we weren't going to be able to meet the goal. And I spent more time on that than I actually spent on the bid. ... At the end of the day, our good faith was deemed invalid because another bidder met the goal with the DBE firm that was considerably more money. And we're always told that money's not a factor. But in this situation, money was a factor ... [Now,] we make sure that, even if it wasn't the best price, that we picked enough DBE [subcontractors to] make sure we meet the goal. .... Where we're headed ... we might as well not do a good faith, because it's not worth taking the risk that I do a good faith than somebody else has a higher price that met the goal. So, I understand there's a line and a reason for that. It's just, it's the time and effort to do that. We're just going to always go with them, even if it is a higher number, we're going to go with the higher number and make sure we're not thrown out because somebody else was able to meet the goal." [#PT1]
- The Hispanic American owner of a DBE-certified professional services company stated, "I think as far as percentages are concerned, one of the things that we've seen in the past is we will have a certain portion of a project. We do consulting, so we will have a portion of wetland delineation and mitigation. If there is a hard percentage, we'll hit that percentage. And then it's like, 'Okay, you're done.' You get pushed off a cliff. And so, I think a good compromise would be to have like a task percentage. ... When they became a good faith effort, the large engineering companies in Idaho, actually all in the Northwest, stop using us. And you can't blame them because they had their internal people they had to feed. All of a sudden, they stopped and then they felt like the medium-size companies would be able to pick up a slack while they didn't. So of course, those percentages went through the floor, which I think is somewhat like the FHWA [in that it] is a little bit on the punitive side right now because they had for years and years asked ITD to do something and just the percentage just never went up." [#PT1]
- A representative from a public agency in Idaho stated, "The expectations of an acceptable good faith effort should be clearly and formally established. The process should be that if a contractor meets the defined requirements, the effort will be accepted." [#WT2]
- The Hispanic American owner of a DBE-certified professional services company stated, "I would recommend that even though the disparity study shows ITD has hit its goal of participation for a particular group (for example, WBE consulting or Hispanic consulting), you still include them in a goal setting percentage. The history of Idaho [shows that] any 'good faith effort' goal setting is not successful. When good faith effort was implemented last time, many SDBE/WBE went out of business." [#WT3]
- The Hispanic American owner of a DBE-certified construction company stated, "[It's] hard to know if they will actually use us if we bid and they win. ... Getting discouraged after a few times they win, we commit, then they don't call back. ... Even if they don't want to use us, the now knowing is hard. We only have four employees and can only bid on so many jobs, so we need to know if we are on the job or not." [#WT7]

**10. Other forms of discrimination against minorities or women.** Five interviewees discussed various other factors that affect disadvantaged businesses' entrance and advancement in the industry [#3, #17, #20, #29, #FG2]. For example:

- The Hispanic American owner of a construction company stated, "The barrier is also, as a minority, we don't have the resources to get help." [#3]
- The woman owner of a DBE-certified professional services company stated, "It used to bother me, but it doesn't anymore. It doesn't bother me to be the only female at a professional party. I don't bid less to get a project. If I bid equal to what I think the boys are bidding them at and don't get it, that's okay. I'm not going to fight it and say it's because I'm a girl. But at the same time, I don't take less. They were talking diversity in the appraisal industry because there's been a lot of complaints about appraisals coming in less for houses with people of color and for houses that people were white and it's a big problem. And also, the diversity in the industry itself; 80% are white males nationwide, so they're working on that." [#17]
- A representative of a DBE- and 8(a)-certified construction company stated, "There's so many people that just have no idea, no concept of being ADA- [Americans with Disabilities Act-] compliant. ... We're always a subconsultant underneath them [prime contractors]. So, we're at their mercy. We try to establish those relationships, build those relationships. Part of it is reaching out, 'Hey, can we come do lunch and learn at your office and introduce ourselves and tell you a little bit about ourselves to try to establish new relationships and build that and see if we can get some kind of partnership going?' There was pretty early on, a firm [that the owner went to visit their building] ... and he got to their building, and they were like, 'I'm on the second or third floor.' And they were very annoyed and very inconsiderate off the bat. He had to call them and be like, 'Do you guys have a back entrance because I cannot get inside.' ... They just didn't care. ... Sometimes throughout the job process or [if we have to] assess site conditions to see what needs to be done during design or following up doing punch lists and how construction is progressing and things like that. [We have] to be careful of who we send because sometimes they have to go look at the electrical on the rooftop HVAC unit and he can't get up on the roof." [#29]
- A representative of a volunteer organization in Idaho stated, "Specifically in the Magic Valley, the Hispanic business owners face ... different challenges, mostly because of the cultural divide, and that's not on for the lack of trying with our part, it's their specific culture." [#FG2]

## H. Business Assistance Programs

Business owners and managers were asked about their views of potential race- and gender-neutral measures that might help all small businesses obtain work. Interviewees discussed various types of potential measures and, in many cases, made recommendations for specific programs and program topics. Part H presents their comments on:

1. Awareness of programs;
2. Technical assistance and support services;
3. On-the-job training programs;
4. Mentor/protégé relationships;
5. Joint venture relationships;

6. Financing assistance;
7. Bonding assistance;
8. Assistance in obtaining business insurance;
9. Other small business start-up assistance;
10. Information on public agency contracting procedures and bidding opportunities;
11. Pre-bid conferences;
12. Other agency outreach;
13. Streamlining/simplification of bidding procedures;
14. Unbundling contracts;
15. Small business set-asides; and
16. Mandatory subcontracting minimums.

**1. Awareness of programs.** Thirteen business owners discussed various programs and race- and gender-neutral programs with which they have experience. Multiple business owners said they were unaware of any available programs for small business assistance [#3, #10, #13, #14, #19, #29, #30, #FG1, #FG2, #WT3]. For example:

- The Hispanic American owner of a construction company stated, "They need to assign someone that handles the minority division or Hispanic division, and use them to reach out to minorities, reach out to those companies and inform them, 'Hey, this is what's available.' Because a lot of the times, the agencies, they know what's available and sometimes we don't. So, if they can make it their priority to have an individual to specialize in minorities, it would be very helpful." [#3]
- Representatives of a woman-owned construction company stated, "There are actually various organizations like HEC [Humanitarian Engineering Corps.] or the Design Build Institute, there's a reason they have their conferences. They have those sessions where people describe the challenges they overcame in a project, or how they did it or how they won the job. You sit there and you learn from what other people did." [#10]
- The owner of a woman-owned professional services company stated, "There could be resources out there that we could take advantage of, but just not aware of them. ... It would be nice if, in the purchasing process, you could identify that there are projects that would be more geared to a company our size versus that of a larger scale." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I don't even remember how I heard about the DBE program. I think just somebody said DBE and I Googled it or something, and I'm like, okay, if you can get this certification with the state, it'll help get my foot in the door. That's how I looked at it. It's like, what do they want to do, plaster it all over the news and advertisements and stuff? But otherwise, you could say, oh, go to all the farms with the minorities or the Mexicans in Idaho, go to the farms and start handing out flyers." [#14]
- The Hispanic American owner of a DBE-certified construction company stated, "[One of my friends works for a company,] and they're just like, 'We're 8(a). We've got that clout. ... So, of course, learning the process, we were gung ho. We didn't really understand the logistics of the 8(a) and it

seemed very similar to the DBE but on a larger scale. Well, then we were definitely not geared up to be a prime or general at the time. And we were fighting to get our 8(a) and then somebody was like, 'Hey, there's a nine-year shelf life of this and yada, yada, yada.' And I was like, oh. So, we pulled the reins back and that's definitely something in the forecast, but we are not 8(a) right now." [#19]

- Representative of a DBE- and 8(a)-certified construction company stated, "There's some pretty good training, they'll do it for free. Because if not, they're like \$75 of training." [#29]
- The woman co-owner of a DBE-certified construction company stated, "The SBA [small business administration] had a wonderful class, emerging leaders and I learned so much. ... There's a lot out there and everybody's willing to help, which is really nice." [#30]
- A Hispanic American representative of a trade organization in Idaho stated, "We obviously have not been exposed enough to the information to be able to then say, 'Hey, we want to guide our community and our members toward those programs and to figure out whether or not it's going to be effective or not.' Especially on the minority-based business opportunities, [we] definitely want to lean into that. We definitely want to do that and know how to do that. But for us in the landscape, we've [made a] foundation [for] it and created momentum for the last year, so it hasn't been a concentration of ours specifically with just targeting ... that particular type of program. But we'd definitely like to do more." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "A lot of these businesses ... don't know all the resources that are available to them. ... We just need to do a better job in making sure that people know what the resources are out there to help these business owners, specifically first-time business owners." [#FG1]
- A representative of a volunteer organization in Idaho stated, "I think the biggest challenge is really not knowing about every resource and understanding what each one of them will do. ... My biggest challenge is being able to be connected to you and knowing all of this stuff that's available. ... The [College of Southern Idaho] Workforce group does a lot of great jobs as far as connecting and helping some of the small businesses get up as well." [#FG2]
- A representative of a trade organization in Idaho stated, "I think Idaho Women Business Center has done an amazing job over its very short lifespan of making those services available to women entrepreneurs, women looking to start businesses. I know the Idaho Hispanic Chamber of Commerce has done quite a bit to specifically advance the Hispanic communities' opportunities, and we're starting to see more association specific to some of those minority groups. There is a group that's starting up specifically to help with the African American business owners, and then also we're seeing veterans. There's a Veterans Chamber of Commerce that's specifically helping the veterans look for opportunities." [#FG2]
- A representative of a trade organization in Idaho stated, "There's a lot of behind the scenes planning that goes in, and sometimes the public is not made aware of it until the project starts. And at that point, it's too late for other stakeholders to share concerns and things like that. And I know some outreach is done, but the more that can be done that broadens that outreach, mailing flyers or contacting people that are in this small impact zone that the developer or the engineer has identified, needs to be more encompassing." [#FG2]

- The Hispanic American owner of a DBE-certified professional services company stated, "I have been to the Idaho Public Purchasing Association reverse vendor conference. ... I like the reimbursement program. Every little bit helps." [#WT3]

**2. Technical assistance and support services.** Seven business owners and managers thought technical assistance and support services were helpful for small and disadvantaged businesses [#8, #11, #14, #18, #19, #26, #WT3]. Comments included:

- The owner of a majority-owned professional services company stated, "I've had to train myself on all [technical challenges]. And I feel pretty confident in my own skills. Really, for us, and we quite honestly are not bidding on ITD stuff because of the RFQ or SOQ, statement of qualification requirements usually takes somebody a week or so to put together and we just don't have the staff to dedicate that kind of time to, so I don't. ... It is a barrier because if you don't know of those sites and bulletin boards, those things are posted, how would you even know to go look and apply? So, I can see that as a barrier. It's not a difficult one to overcome. It takes a bit of research. There again, Google is your friend. ... Somebody who would come to your firm or your site and review your credentials or do that paperwork for you, that would be a big bonus. But I don't see that happening." [#8]
- The co-owner of a majority-owned construction company stated, "How much you should be paying towards your cost of goods, how much you should be paying your labor as a percentage of the project or your revenue overall? Those are things that we had to figure out like trial and error. ... I suppose if there was insight or articles or in terms of providing value or ongoing updates annually. These are construction businesses' average profit margins or just information like that." [#11]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "These are all barriers that every company and individual has to go through. So yeah, it is a barrier. If you don't have the mentor, how are you just supposed to know? You're not just going to magically know any of this, so you got to do your research, you got to do your due diligence. You can learn the hard way ... It's all trial and error if you don't have anybody helping you." [#14]
- A representative of a woman-owned and DBE-certified construction company stated, "There was a bid item. I had no idea what the bid item was... I threw \$15,000 on the bid item. It turns out it was for me to draw a traffic control plan. It took me 30 minutes. And they ended up having to pay us because they needed to meet their DBE goal. And I felt terrible." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "You can always use some good consultation in any direction. ... They're like, see, there's another way I look at it. So, there's other avenues that I think people have that not everybody does. We don't have ... one of those websites on our computer where we can just dial in and it tells us, breaks it down for us. Does that make sense? We do everything kind of old school on paper, and we sit and open wine and start figuring things out. ... I really think we need to move up in that a little bit and get some of that software. ... But I'm not opposed to even subbing that out to a consultant, somebody that does figure bids out for you. And I think a lot of people do that work with the bigger company. I would always love help on bidding, though, and RFPs ... If there's a way for me to learn from somebody ... Sometimes you get a bid that's this thick, and I'm like, 'Who has time to read through that? Because the bid's due in a week and a half.'" [#19]



- A representative of a majority-owned professional services company stated, "I think training, and not relying on your consultants to train and educate subconsultants and smaller businesses [would help]." [#26]
- The Hispanic American owner of a DBE-certified professional services company stated, "[There is a] need to have more 'How to do Business with ITD' [events]." [#WT3]

**3. On-the-job training programs.** Ten business owners and managers thought on-the-job training programs were helpful for small and disadvantaged businesses. Support varied across industries [#1, #2, #3, #7, #20, #29, #30, #AV]. For example:

- Representatives of a majority-owned construction company stated, "They should have probably been more trained on their end before throwing it out there and they should have trained us as to what they wanted." [#1]
- A representative of a majority-owned professional services company stated, "Well, one thing that we've talked about, or our industry's talked about a little bit, would be potentially building into our scope of work a certain amount of training. Or if we could have as part of that training, they could be working under an existing engineer on the project to be able to gain some of that experience." [#2]
- The Hispanic American owner of a construction company stated, "I, for one, don't have problems finding the labor. I do all the hiring. I do all the searching for labor. And as far as training, it's not really difficult because I train people on the job." [#3]
- The Native American owner of a professional services company stated, "One thing that I've always said, and I hear other people say, is engineers should have to go work for a construction company for a year. They have the book smarts, and it looks great on paper, but the logistics and the reality it's like nonexistent sometimes." [#7]
- The owner of a DBE- and WBE-certified professional services company stated, "One of my ideas is, 'Okay, you want to attract someone to Idaho. Well, a lot of people know they're not going to make as much in Idaho, so you're trying to attract them to your business. Well, what about if you offered educational consulting as one of your benefits?' They could not even grasp that. It's like no one helped." [#20]
- Representative of a DBE- and 8(a)-certified construction company stated, "Our other main position is like a drafter. So, they have to be very adept at AutoCAD. And then we use third-party software for the electrical side of it, like a plugin on it. And very few people know how to use that, which is not a problem. It's a very user-friendly [program] and we're willing to train, but even just finding qualified people that know enough about AutoCAD, that we're not going back to basics." [#29]
- The woman co-owner of a DBE-certified construction company stated, "We do certifications ... every year, we go to Las Vegas and do training there for chip seal, surrey seal, crack fill and stuff. So every year we get certified. And tests, that's every three years, a new test that they're trying to develop for all the states, not just a few states. But you're trying to get it fast for ITD and stuff." [#30]
- A representative of a majority-owned professional services company stated, "The State of Idaho needs to change the land surveying program so that it is more accessible and offered to more universities and allow for credit based on work experience, not necessarily schooling only. The



state has been short of surveyors for 15 years. It's because of restrictions, and requirements to get a land surveyors license." [#AV19]

- A representative of a Hispanic American-owned construction company stated, "No opportunities to work with them. Great industry but [there is a] lack of employees to do what we do. Need more hands on and found [it is] hard to train them and get them on their own." [#AV144]
- A representative of a majority-owned professional services company stated, "We have had no problems working with any government organizations. I would say, in expanding the business, we have tried for several years, and can't find people. We've turned to trying to teach in-house. We need to expand and have tried to, but just can't do it. This has been for the last three years." [#AV213]

**4. Mentor/protégé relationships.** Twelve business owners and managers thought mentor/protégé relationships were helpful for small and disadvantaged businesses or indicated they participated in unofficial mentoring relationships with other firms [#7, #9, #14, #19, #23, #24, #28, #FG1, #FG2, #PT1]. For example:

- The Native American owner of a professional services company stated, "[They should have] more of an outreach program, which that takes time and money. ... Maybe have some kind of internal program, 'Oh, this is a new company, this is why we know them. These are their qualifications; this is either good or bad feedback we have on them.' Then reach out to them, more of a mentoring program." [#7]
- The Hispanic American owner of a DBE-certified professional services company stated, "If you want to develop the DBE program or a federal program and stuff, you need to reach out to smaller businesses. You need to maybe have more mentor/protégé [programs], but not necessarily have a large business that does that." [#9]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Especially when it comes to the bidding and estimating and how competitive that is. That aspect, you really need to learn that. If you had a mentor, you could learn it a lot faster and not have so many error[s] learning the hard way by bidding too high or this and that and the other. ... [As well as] filing your LLC, getting all your tax stuff right, getting filed with the IRS. All that stuff was a challenge at first, but it would be to anybody that didn't have a mentor showing them what to do." [#14]
- The Hispanic American owner of a DBE-certified construction company stated, "Just knowing maybe step by step where to draw your attention and how to bring it all together. ... So that's a big deal figuring out how to do that. ... Like I said, I have [been a] general [on] smaller projects where it's like you need to be able to take this out the right time, when to put it back, how to make sure everything underground's good to go. So, I've done it on a smaller scale, but I don't know, maybe to read it and see how it would be done there on a bigger scale would just makes a lot of sense to me." [#19]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The other thing that Washington has ... they have a mentor/protégé program, and then you can get linked up with a prime. ... They make it beneficial for the prime as well to be in that program, because they're not going to do it out of the goodness of their hearts. ... There has to be an upside for [mentors] to take me under their wing and teach me all the ins and outs. And I went through

that with Washington with one of the primes just on the other side of the border. And it really got my foot in the door, and I got a really good understanding. And even that, the mentor/protégé program, it's not like you have weekly sit-downs, one-on-ones with the chief estimators and the engineers that bid on these projects and stuff. You[ve] got to be very savvy when you're going into it with them. ... It's not like they're sitting down saying, 'Hey, you need documents A, B, C, and D. Get these filled out for each project. You turn these in at the end of the week.' They're not saying that. It's kind of just a short email saying, 'Hey, get this filled out and signed and turned back in weekly' or something. And you just got to have a good understanding, okay, this is the information I need, this is what I'm going to need on the next project. Nobody's spelling it out for you. So, it's still helpful. But if you weren't savvy, I could see how it would just blow over other people's heads. They're not telling you this is what you need to do on every project. You just kind of have to have that understanding. ... Another aspect that I learned with the DBE process. ... Without the mentor/protégé program, it wouldn't have been beneficial for the primes to use me only having one piece of equipment, even if it is a 3% goal, you're just for easy numbers. If it's a 3% goal on a million-dollar project, that's whatever, \$30,000? ... But with one truck for that project, you wouldn't be able to reach the goal for the prime. So, I understood that it was paperwork nightmare for them to even utilize a small DBE company just starting out. So, the mentor/protégé program gave them some benefit to help me get my foot in the door. And so, then I was just focusing on dumping all my money back into the business, acquiring more equipment so that I could help the primes utilize one DBE to fulfill the \$150,000, \$300,000 goal instead of the primes going to eight different DBEs and then have to do the paperwork for all of us to reach that 3% goal." [#23]

- A Hispanic American representative of a trade organization in Idaho stated, "I find sometimes they have a lot of information, but not very specific process guidelines where you say, 'This is where you start, this is where you finish.' As opposed to, 'Hey, these are all the different things that you can possibly do.' And so that becomes a little convoluted for a small business owner not knowing exactly, especially if they've never been in that space before." [#FG1]
- A representative of a volunteer organization in Idaho stated, "I think the biggest thing is helping people be aware of what's available and where they can go. Some business owners need a mentor to invite them and take them with them so that they can benefit from some of these things, because they're a little timid to do it on their own." [#FG2]
- A participant in a public meeting stated, "I've also mentored for companies that come on board and man, it's tough. I mean, I swear to God, I try to sell ITD a little bit and stuff, but then I start describing the hoops have to jump through, and man." [#PT1]

**5. Joint venture relationships.** Five business owners and managers thought joint venture relationships were helpful for small and disadvantaged businesses or had successful experiences with joint ventures [#2, #10, #18, #19, #25]. For example:

- A representative of a majority-owned professional services company stated, "I think one thing that would help, I think that we've pushed for as an industry, would be to have lump sum contracts, where you basically scope the project and you do it as a lump sum, and the consultants have to get that work done for that amount of money. I think that would help the bottom line or the profitability for the consultants, as opposed to using the approved overhead audit rate." [#2]

- Representatives of a woman-owned construction company stated, "Yes, a joint venture can be a way to break through on a size barrier. ... [W]e actually did a smaller joint venture, but it was for a type of work that we didn't know a lot about but wanted to get into. We had a joint venture with another company, and it was too big for them, but they knew a lot about it. Sometimes you can mix and match sizes and specialties to create a team." [#10]
- A representative of a woman-owned and DBE-certified construction company stated, "So, we are doing way more small jobs instead of a lot of those larger projects. And I would say that, as far as the DBE stuff [goes], I know that really affects a lot of contractors. ... So, I think lump sum jobs are wonderful. I make far more money on any lump sum job than I ever will on a quantity job because I will never lose money. And from a business point, I think that's a terrible thing for ITD. I don't think they should do it because I don't think it's good, because it's taxpayer's dollars." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "But doing all that and figuring out that process and getting to know people out there, working with the government was huge. That was one of the biggest, coolest things that we ever got to get into and learn from. But getting out there and working with those guys has been a good time." [#19]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "We're the only non-native 8(a) [on a project we're working on in Alaska], so they had kind of wanted a smaller group, so they'd encouraged us to go after that. And we did it with a joint venture partner up there that I've known for decades." [#25]

**6. Financing assistance.** Thirteen business owners and managers thought financing assistance could be helpful for small and disadvantaged businesses [#2, #3, #8, #11, #14, #17, #18, #AV, #FG1, #FG2]. For example:

- The Hispanic American owner of a construction company stated, "I would say, offering grants to small businesses that are trying to do work with ITD [would be helpful]. Because most of the contractors that win these jobs have, they're corporate companies and they got a lot of money. ... I would say some grants available to help out small companies get into the market, and grants for buying equipment." [#3]
- The owner of a majority-owned professional services company stated, "Well [obtaining financing] certainly is [a barrier] for me. But it's not really ITD cause, that's generally banking." [#8]
- The co-owner of a majority-owned construction company stated, "Being a newer business that doesn't have the number of years of profitability that would be required for consideration [to be eligible for a loan], it did become a barrier for us. ... If they're aware of options that would be non-traditional or have less barriers, if they were to provide connection to or just shine light on options that may not otherwise be known about, [that would be helpful]." [#11]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "To start any business, you're going to have to accumulate some funds. In the beginning, you have to come in with something. So for me, ... it just starts with credit. You have got to have good credit. You got to get money somehow, either working or saving and getting a loan. Everybody has an idea where I just want to get ten trucks and I'll be a DBE, and it's like, well, then you got to go through the process of applying for a loan. And they're going to check your credit, and they're going to do what they would do for anybody if we're talking about just getting a loan. I have the same barriers as anybody else trying to get a loan. You got to work on your credit, you got to build that stuff up, put

yourself in a position where you're able to take advantage of opportunities. And it doesn't happen at the snap of a finger just because you're a DBE." [#14]

- The woman owner of a DBE-certified professional services company stated, "I've just had to take out a line of credit from the bank to get to a big government project because it takes so long to get paid that I can't do it. So, I try to [build] that into my bid, that I'll be paying 7 percent interest to [the] bank to get through this project." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "I would say the hardest thing, as far as public works projects have gone, the problem is how public works work is while ... we have to keep paying people more and more, that makes our prices go up. Right? But the public work should, in my opinion, naturally adjust for that as well. Something that I used to bid for \$100,000 costs us \$150,000 now." [#18]
- A representative of a majority-owned goods and services company stated, "We have lot of work available, however, the biggest issue is getting operating capital. We did over a million dollars of revenue and finding a bank that will give us operating capital and being able to purchase our own land and building shop has been difficult in the current market." [#AV59]
- A representative of a trade organization in Idaho stated, "You need that business plan in order to access capital and know how much capital you need. So that is also a challenge I see." [#FG1]
- A representative of a volunteer organization in Idaho stated, "Some of the other obstacles at least is the cost. If they're looking at a brick-and-mortar location, the cost of rent of some of the available buildings in Jerome is so sky-high that they can't afford to do it. Land, of course, is at a premium. If you're looking at some of these bigger industries that are wanting to come in, it's trying to not only get the land, but work with the cities and stuff to make sure that they have the water and the infrastructure and the stuff that's needed." [#FG2]
- A representative of a trade organization in Idaho stated, "A lot of our entrepreneurs are long on ideas but short on capital and funding. So that's where we pair them with a lender that might have resources available to help them get startup cash for their new business." [#FG2]

**7. Bonding assistance.** Five business owners and managers thought bonding assistance could be helpful for small and disadvantaged businesses [#3, #7, #9, #10, #14]. For example:

- The Hispanic American owner of a construction company stated, "[The bonding company] asked for a high credit score—really, really high—and they asked for money down. They made it very difficult as to acquire a work bond. ... They need to give at least a couple more options of agencies that offer bonding. There's only a limited number of companies that get offers. And those, they need to offer several more ... Sometimes it's hard to get ahold of them, and they don't reach out to you. You almost have to go in person and find them ... if they have programs for small companies that if they know that they don't have the financials like corporate companies, that they can work with them with a payment plan or at least help them have a payment plan so they can get the bondage." [#3]
- The Native American owner of a professional services company stated, "I have to figure out ways to make it work and you're limited as far as hiring personnel or obtaining funds ahead of time. It's funny you ask, because I actually had a conversation today saying, 'Hey, can I submit a partial invoice until we get final approval so I can pay my vendors?' ... I haven't gone after bigger projects,

which I would say is a barrier. I mean I understand why it is the way it is, it makes sense. You need to make sure that the contractor is capable of certain projects." [#7]

- The Hispanic American owner of a DBE-certified professional services company stated, "They'll bid on projects and then they don't come out with the amount of equipment that they said they had. And it's like, 'Well, yeah, because they're probably stretched.'" [#9]
- Representatives of a woman-owned construction company stated, "Obtaining bonding is not a barrier for us. That is often a barrier for DBE subs. We prefer to get a subcontractor bond from our subs. ... Oftentimes, DBEs are going to tell us they can't get one. ... We did one mentor/protégé [relationship] where we got them hooked up with our bonding company and got them established such that they could get a bond. But that definitely can be a barrier for newer, smaller subcontractors, DBE or not. Some general contractors have 100 percent mandatory bonding requirement. We don't quite go there. Washington state has the Office of Minority Women Business Enterprise, they have a division of WSDOT that specifically works with the DBE subs. I don't know if ITD has the same, but certainly, I would think that should be one of the things they could be a resource for is just the process of how you go about getting that relationship. But one of the ways that DBE subs can overcome it is there's a condition of award mandatory goal jobs. We need to get 10% subcontracted to DBE firms, and ITD doesn't care if the subcontractor has a bond. They only care if I have a bond. That's my decision, as part of ... subcontractor comparisons. But we regularly use subs that can't get a bond if we have to meet a goal. That can help them get established and hopefully down the road, they can provide the bond." [#10]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I've heard a lot of people talking about how it is hard to get bonded or get bonding, but I've never been through that process." [#14]

**8. Assistance in obtaining business insurance.** Five business owners and managers thought assistance in obtaining business insurance could be helpful for small and disadvantaged businesses [#2, #9, #14, #AV]. For example:

- A representative of a majority-owned professional services company stated, "[Insurance] is not a barrier. It's part of just, again, part of doing business, so it has not been a problem." [#2]
- The Hispanic American owner of a DBE-certified professional services company stated, "I'm talking to the local guy I'm working for here, and he goes, 'Well, the Geotech company that they're using, they had \$10,000 of additional insurance requirements.' ... I've got an employee manual. And the safety plan I sent to these guys, and they said it's not sufficient. And I'm like, 'What about it is not sufficient?' And they wouldn't tell me. They just said, 'This is an insufficient safety plan. You need to sign a document saying that you have an insufficient safety plan.' ... Maybe grants to hire a health and safety company [would help businesses overcome that barrier,] but how would you do that? ... I don't know." [#9]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "The insurance requirements are high for the trucking industry, but ITD doesn't put the insurance requirements on you. It's the prime contractors that require a certain level of insurance in order to haul for them on these projects. They want you to have \$3 million general liability, and they want you to have umbrella and excess coverage and things that I normally would not have if I was just hauling for somebody in the private sector, or I would have those, but I wouldn't have such high

amounts. ... It's a barrier for me, but they're running a business as well, and it protects them. ... Again, it makes sense. I see both sides. It's a barrier for me, but if one of my trucks ran into their asphalt plant, blew something up, or their equipment. And these things are not cheap inside the pits and stuff. So, I guess I get it. They want to be covered if there's a million-dollar mistake or you take something out. Of course, it's a barrier, but they have got to protect themselves as well. One of the things for my industry is they require you to have—which is a significant increase in insurance—but it is hired and non-owned vehicles. It's a box that you have to check, and that really raises your insurance, because now I'm insuring my employee's personal vehicles, basically any non-owned vehicle that I could potentially use on a job. ... I'm like, well, I'm going to have only my trucks on these contracts working with you, and my guys are going to park their trucks over at my shop, and I'm never going to have a non-owned or hired auto on the job site. So that's one thing that they could specifically get rid of for the dump trucking aspect of it, because that increases my insurance substantially, and it's not necessary." [#14]

- A representative of a majority-owned construction company stated, "I think the insurance market for our sector is hindered by a lack of requirements for licensing." [#AV1]
- A representative of a majority-owned goods and services company stated, "The state insurance fund put me out of business I have no employees, I cannot afford them. ... I only operate it for four months of the year, and the insurance is too expensive for workman's comp[ensation] that is required by the state." [#AV12]

**9. Other small business start-up assistance.** Business owners and managers shared thoughts on other small business start-up assistance programs. Eleven owners agreed that start-up assistance was helpful [#3, #7, #AV, #FG1, #FG2, #WT3]. For example:

- The Hispanic American owner of a construction company stated, "The barrier is also, as a minority, we don't have the resources to get help." [#3]
- The Native American owner of a professional services company stated, "You need somebody sitting at a desk just being able to do [financial] paperwork, which I mean, me personally, I don't enjoy that all the time. But yeah, it's just once you get to a level where you can justify salary and do that basically." [#7]
- A representative of a majority-owned construction company stated, "I do everything. I even work directly with ITD, and I have no problems. A problem is only a problem if you don't solve it. I started in 1972, like everything else it is hard to get started." [#AV50]
- A representative of a majority-owned construction company stated, "Easy to work, they set me up online, [and I was] able to get permitting done quick and easily." [#AV70]
- A participant in a focus group stated, "The public works contractor license is fairly straightforward in Idaho, but I'm speaking from a native English-speaking standpoint and someone familiar with financial statements and being able to submit those and show that information. But to work on a public works project in Idaho, you need to submit financial statements and complete a licensing process there with the state. So, I think some assistance is probably needed for some contractors." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "Startups or man-on-top, one- or two-person operations ... when they're dealing with state agencies, the barriers that



they find is knowing and identifying clearly what is actually required and what is actually recommended, and then pulling together a package. It actually revolves more around financial literacy than it does necessarily the process. Some of the processes are quite simple, but they're hesitant because they've never had to deal with these processes before." [#FG1]

- A Hispanic American representative of a trade organization in Idaho stated, "A lot of the barriers that you see is that they just don't know who [to] speak to. And having a network where they can actually lean into and ask a question and not feel like they're dumb or they don't know what they're doing; they want to always appear like they know what they're doing. But a lot of times with small businesses is they are not networked into the mainstream piece of the economy of these larger businesses that may have been doing business with the cities or municipalities or ITD or other agencies." [#FG1]
- A representative of a trade organization in Idaho stated, "So one thing that helped me initially was just having access to the resources and training materials of an employer." [#FG2]
- The Hispanic American owner of a DBE-certified professional services company stated, "The barrier of entry to work for ITD is extremely high for an SDBE especially in the technical areas. Understanding the regulations and procedures can be daunting for small businesses and the business side (invoicing overhead rates, etc.) can exclude SDBE and small business[es] from even trying [to bid]. Many businesses have the expertise but not the business acumen to do business with ITD. ... [But] contracting opportunities as a subcontractor are good with ITD once you know the system." [#WT3]

**10. Information on public agency contracting procedures and bidding opportunities.** Seven business owners and managers provided their thoughts on the accessibility of information about public agencies' contracting procedures and bidding opportunities. Businesses noted it was generally easy to get set up online, but also highlighted that there was confusion in the marketplace over bidding procedures. Others were unaware of how to access necessary information on an agency's contracting and procurement regulations and thought the information would be helpful for small and disadvantaged businesses [#3, #5, #10, #18, #AV]. For example:

- The Hispanic American owner of a construction company stated, "Because they are public works, you have to jump through hoops to even get invited to certain jobs like that. And then, it gets pretty complicated to even find the resources to find the jobs. They mostly list them where you have to pay a yearly fee. ... And that's the only way you can get the advertisement for those public work jobs, is you have to pay a yearly membership deal. Even on the Idaho Transportation Department website, it's kind of hard to navigate and they make it hard to find jobs. They're not being solicited to the public, or it's hard to find them. I guess they only want certain companies with a high amount of money, and they'd do an evaluation to determine if your company's able to keep up with the net 30 terms. ... I would say just reach out to companies, and ITD just stops being so exclusive and secretive. Make the attempt to reach out to companies that are registered to the state and invite them to come and bid." [#3]
- A representative of a majority-owned construction company stated, "I mean if you can get through all their bid items and stuff, it isn't bad. You just got to understand their bid items." [#5]
- Representatives of a woman-owned construction company stated, "[The owner will] get phone calls from companies saying, 'How do I bid this?' They don't even know where to get the plans. They



don't know, 'No, you can't ask me what I want you to quote.' ... We've run into subs with issues and again, not knowing how to estimate work. That is a skill, not everybody knows how to do it." [#10]

- A representative of a woman-owned and DBE-certified construction company stated, "There was a bid item. I had no idea what the bid item was ... I threw \$15,000 on the bid item. It turns out it was for me to draw a traffic control plan. It took me 30 minutes. And they ended up having to pay us because they needed to meet their DBE goal. And I felt terrible." [#18]
- A representative of a Hispanic American-owned construction company stated, "We don't know who to talk to start the bidding process with ITD." [#AV121]
- A representative of a Hispanic American-owned construction company stated, "I don't know how much experience I need to have." [#AV199]
- A representative of a Hispanic American-owned professional services company stated, "[It's] very difficult to be able to compete and participate in the bids. [There is a lot of] out-of-state competition and it's a price market, [it's] not clear about what the budgets are for the projects [being advertised]. Obtaining work and workers is a challenge." [#AV251]

**11. Pre-bid conferences.** One business owner thought pre-bid conferences in which prime contractors, subcontractors, and agencies meet would be helpful for small and disadvantaged businesses to network and develop relationships with project managers and prime contractors. [#3]. For example:

- The Hispanic American owner of a construction company stated, "If they can maybe reach out to business owners, and if ITD can make meetings with contractors or business owners how to set up meetings in the local [market]. ... Let's say, for example, Boise is our capital. If they can set up meetings where it's open to the public, they can get more job opportunities for new upcoming business owners that want to do work in the ITD. ... Make a meeting with that individual, so they can educate them or answer any questions. I would say too, set up meetings for the public. Set up meetings at a library or certain places where people can come and join those. ... I would say, somehow teach business owners how to get in and bid on those jobs." [#3]

**12. Other agency outreach.** Ten business owners and managers thought other agency outreach could be helpful for small and disadvantaged businesses. Many shared their experiences with ITD's outreach efforts [#7, #11, #25, #FG1, #FG2, #WT3]. For example:

- The Native American owner of a professional services company stated, "Just reach out to smaller engineering firms or construction companies and maybe keep it simple and brief. But ask what their qualifications are, what their experiences are, and then in future projects they could notify them of projects. It'd almost be the reverse of how it works now, where the contractors are going and finding all the job listings and then bidding them. ITD could maybe put some effort into binding contractors, just informing them, 'Hey, this job's coming up. It looks like your qualifications would be in line with it.'" [#7]
- The co-owner of a majority-owned construction company stated, "There's something for me to learn about where to look for that kind of work or how to get ourselves in consideration of that. Which it's just not something we've gone out and looked for and not something that we've been contacted about either." [#11]

- The woman owner of a DBE- and 8(a)-certified professional services company stated, "[I] think providing an avenue like this where they're willing to listen to what business owners are saying. And then when I go to federal—I'll be in Bremerton next week for a conference—they have matchmaking sessions. ITD does this, but I haven't seen one. So, I'm going to be sitting down with different agencies and you get 10 minutes to talk about anything you want to talk about. Maybe you sell your business, but also maybe you say, 'Look, I can't figure out a way to break into the National Park Service, and I need you to help me with that.' They'll give you their card, but they're taking all of that feedback and then hopefully digging it back and making something useful happen because of it. ... And you know what? It doesn't take that much time. I feel like because I worked in government, I have worked in government before. I feel like everything's a big enchilada, but it really isn't. It's five minutes here, 10 minutes here, you and I, 40 minutes, whatever our time turned into and then taking away and just thinking about it. And we're back to, you're just gleaned from so many different sources, all of these things. If ITD is going to be in Boise next month, which I'm sure they will be because they always have a table, then that would be the time to have that. Whoever's sitting at that table, hopefully not just a warm body, but somebody who [has authority], and makes suggestions to make changes to a program and just sitting and talking with them one-on-one for five minutes." [#25]
- A Hispanic American representative of a trade organization in Idaho stated, "When they do their recruitment and when they're trying to do all of that, it's not just translating forms. They need to be out there talking on radio, not just buying ads, but actually doing interviews so people when they hear them in Spanish radio, they can hear that person actually talking. Because when it's an ad, it's still not the same. But when you're actually doing a live interview or even a recorded interview, they'll be like, 'Oh yeah, I heard such and such talking about this. ... By printing something in our newspaper in Spanish, it's not going to do as much as going on the radio. And for example, we have radio stations that we have an enormous reach here and they need to do a lot more of that outreach and they just need to do a lot more outreach in general across the state." [#FG1]
- A representative of a trade organization in Idaho stated, "In addition to one-on-one mentoring, which is all scheduled through a planning software that we partner with the SBA, to provide easy access to coaching and mentoring, we also have an outreach program to local universities." [#FG2]
- A representative of a trade organization in Idaho stated, "That's a 20-year outreach program where small companies agree to take on interns with the direction and mentorship of ... volunteers. We have outreach programs to financial institutions, so that the entrepreneur can have access to capital through small business lending and small business loans through the SBA. And some of our largest corporate supporters are lenders, credit unions, and banks." [#FG2]
- A representative of a trade organization in Idaho stated, "I think people start with cities and then not necessarily realizing that there's county agencies that they can work with or state agencies for opportunities. So, I think it's just the awareness that we're having to try and help create about who to work with, when to look for those type of opportunities, whether things are being put out to bid, contract renewals, the process of who they go through. ... It's just an education process that they need to understand. And part of that too is, some of the smaller companies, they don't necessarily have the resources to be on the outlook for those type of jobs when they're posted." [#FG2]
- A representative of a trade organization in Idaho stated, "I've worked in the media business, and I know the bare minimum is done sometimes when it comes to putting out notices and things for opportunities and legal requirements of a public notice." [#FG2]

- The Hispanic American owner of a DBE-certified professional services company stated, "I have been to the Idaho Public Purchasing Association reverse vendor conference. ... I like the reimbursement program. Every little bit helps." [#WT3]

**13. Streamlining/simplifying bidding procedures.** Eight business owners and managers thought streamlining or simplifying bidding procedures would be helpful for small and disadvantaged businesses [#1, #2, #13, #19, #26, #AV, #FG2]. For example:

- Representatives of a majority-owned construction company stated, "The quotes, it's got their letterhead on it, why does it matter how they titled the quote. ... We think projects may have been deemed irregular for something that's costing taxpayers [a] significant amount of money on one project." [#1]
- A representative of a majority-owned professional services company stated, "Whereas in the public sector, it's much more competitive. You have to prepare proposals. Those proposals are ranked. Occasionally there's interviews and that sort of thing. But that whole process of having to go through to win the work, to scope the work and all that kind of stuff, takes a pretty good hit on the profitability. ... It's not fun to go through that audit every year. And for the amount of effort, [it] doesn't seem like it's really worth it, at least in my eyes. ... Obviously they got to have it every whatever, a couple years, two, three years or something like that. But every year seems maybe a little over the top. ... Oftentimes by the time we've gone through all of that process on a smaller project, we really can't make any money for all practical purposes. ... One thing that could help would be, on smaller projects, to have a quicker or an abbreviated approval process. Sometimes we'll walk away from public work just because we simply can't make as much money, or potentially even lose money by going through it. The process of going through a proposal is expensive. And then the process of after you win the work you've been selected to have to go through the scoping process and the budgeting process to get under contract is expensive. And so going through all of that, it doesn't seem like, at least in my opinion, the public agencies recognize that. And I think it would help if they could streamline that process. I think that they may get more consultants to put in on their projects. I think competition would be good in that regard." [#2]
- The owner of a woman-owned professional services company stated, "So it's the investment of time to compete with the expectation of being able to have the opportunity to win a bid like that. The time is extensive, and so that part of it does most certainly weigh on the type of business that we go after. If you are going to have to invest that amount of time, in our opinion, we need to feel fairly confident that we have a good chance of being able to compete for that bid realistically. So other than that, sometimes it can be the approval process of making the presentation, putting together a buy, and that there are several people that may be a part of that decision-making process. Sometimes that can get delayed, and you know, you may miss out on an opportunity, on a special rate or timing because you can't get that answer back in time. But for the most part, I mean, at least our experience with Idaho Public Television, really the TikTok issue is probably one of the only scenarios that we've had any kind of problem. ... I would assume that they want to streamline their process as well. And if you're doing smaller projects, I mean, it's more work for them as well. And there aren't many people currently that don't share the problem of staffing." [#13]
- The Hispanic American owner of a DBE-certified construction company stated, "For us, so there was one that just come out the other day. We bid it, said we had won it and then they said we had the wrong bid bond form." [#19]

- A representative of a majority-owned professional services company stated, "I think that just an overall simplifying of contracting for big and small consultants and the requirements, I think they should consider. ... I'm talking about stuff that, to generate an invoice for a project I think should take 15 minutes. I have projects that I take hours [to create] 60-page invoices. They'll come back to you for rounding a penny, stuff like that. That's hard. The smaller businesses or ... our subcontractors, the fact that we need to go through their stuff and catch their errors, too. You do it to the best of your ability and then you miss something. You have to rework your invoice and they have to rework your invoice. The hours and hours that go into that, it just seems to be a little ... I think that through the years, ITD has actually become worse. I don't mean to be rude, but it's just like the logic of it is not there. It's like they've taken it to such an extreme that it's like they're spending state tax money to do things. Instead of making better roads, we're spending money to do invoices and stuff like that." [#26]
- A representative of a majority-owned professional services company stated, "Not interested in working with ITD due to the paperwork involved." [#AV26]
- A representative of a majority-owned professional services company stated, "Require a lot of information to do work for them, [for] example, paperwork." [#AV33]
- A representative of a volunteer organization in Idaho stated, "When they're working with some of the government entities, they get quite bogged down in the mire with the paperwork. So, is there an easier way to do it where they're not having to repeat themselves two, three, four different times depending on what it is that they're asking for with the government agencies just trying to make it a lot more seamless and simpler for them to do?" [#FG2]

**14. Unbundling contracts.** Four business owners and managers shared mixed thoughts on breaking up large contracts into smaller pieces. Many expressed a desire to see smaller contracts be made available for smaller firms to be able to work on as the prime consultant. [#2, #13, #19, #WT7]. For example:

- A representative of a majority-owned professional services company stated, "One thing that could help would be, on smaller projects, to have a quicker or an abbreviated approval process." [#2]
- The owner of a woman-owned professional services company stated, "For most of the RFPs that we see, for the most part, they are geared more towards a larger company. And it would be nice to have those opportunities at those smaller pieces of business." [#13]
- The Hispanic American owner of a DBE-certified construction company stated, "So smaller opportunities for DBE guys, because then it kind of weeds us out of the generals. And the guys that are so big when a project like this just doesn't really appeal to them, just because it's so much smaller than they're used to. ... So smaller projects for guys in our realm, I think would be wonderful." [#19]
- The Hispanic American owner of a DBE-certified construction company stated, "[I] wish there were smaller jobs that we could [perform] ourselves and get the chance to be the prime." [#WT7]

**15. Small business set-asides.** One business representative thought small business set-asides for minorities and women were an abuse of the program [#AV]. For example:

- A representative of a majority-owned construction company stated, "A lot of work set-aside programs, for minorities and women, I think [are an] abuse of this program." [#AV3013]

**16. Mandatory subcontracting minimums.** Two business owners and managers shared their thoughts on mandatory subcontracting minimums. [#AV, #WT5]. For example:

- A representative of a Hispanic American-owned construction company stated, "Make a minimum of what concrete guys should be making. They are low-balling it here. There is a lot of work with minimum profit. There is enough work for all, but there needs to be a minimum put into place." [#AV12]
- A representative of a majority-owned professional services company stated, "There are a lot of qualified firms and construction companies that can provide DBE services. My experience is that creating a minimum DBE requirement has a negative impact on the project schedules and budgets. There are great DBE firms and contractors that get used to them because they are good, not just because they are DBE. I truly believe that if there were no DBE requirements, the DBE firms would still be busy and successful. Eliminating or reducing the DBE requirement would provide opportunity for non-DBE firms and companies to propose and bid on projects, creating an equal opportunity, which is the goal for the DBE program. Unfortunately, the DBE program does not create an equal opportunity for all." [#WT5]

## I. Insights Regarding Race- and Gender-based Measures

Business owners and representatives shared their experience with ITD's certification, minority business programs, and small business programs and provided recommendations for making the programs more inclusive. Part I presents their comments on:

1. Experience with ITD's DBE programs;
2. Experience with federal programs; and
3. Recommendations about race- and gender-based programs.

**1. Experience with ITD's DBE programs.** Twenty-one business owners and representatives shared their experiences with ITD's programs for certified businesses [#3, #9, #14, #15, #20, #21, #22, #23, #25, #27, #29, #30, #AV, #PT1, #WT12, #WT3, #WT5, #WT7]. For example:

- The Hispanic American owner of a construction company stated, "I would say the main barrier is the 10% that ITD claims that they give to minorities, that they follow up with that, and make an effort to award 10% like they said. But I haven't seen that because I've been on the bidding list, and I've made multiple attempts to get on jobs and I have not received any of that 10% that they claimed they gave out." [#3]
- The Hispanic American owner of a DBE-certified professional services company stated, "The first thing those large, large organization organizations did, the engineering companies, is they dropped us like a hot rock, because they have their internal people. So, as soon as there was a good faith effort, they just went, 'Okay, we don't have to do any. [effort to include certified businesses]' That's why the percentages dropped so quickly and dramatically, because they said, 'We don't have to do that. We'll have the mid-size companies take that slack.' ... I actually dropped out of the program for about a year because there was no benefit to it." [#9]

- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I'm just really grateful for the program existing in the first place, for the opportunity." [#14]
- A representative of a public agency in Idaho stated, "We use a lot of ITD's internal programs. They can get into those [computer programs] pretty easily because it's just on their network. We have to remote in and it's really, really difficult to get that access. ... We often lose access to the programs that we get into daily. And it's really hard to make them understand how important it is to get those reestablished for us. So, I don't know what the answer is other than to help somebody understand that these programs are just as important for us as anybody else, and it's vital that we be able to access them consistently and in a way that's easier than it is now." [#15]
- The owner of a DBE- and WBE-certified professional services company stated, "I just did all the training in Idaho ... and [the opportunities are] all construction. 'Oh, well, you don't do anything other than construction.' And the trainings were horrible, sorry to say. ... The trainings were with these men who were just so inappropriate and, 'Oh, my wife and...' It just was gross. And even when I went to the office, the guy was like, 'Yeah, there's so much we can do.' And I just thought, what a waste of money. They couldn't wrap their brain around the idea that, 'Okay, here we have COVID hitting.' It's atypical. You have all these men, and then there's one woman who I went to talk to, and she's like, 'Yeah, well, we just do this.' Any workshop I went to was a joke. It was all construction. Idaho [has] decided that it's the Transportation Department who's in charge of it. And you have no other services that count. They don't help push you. I mean, honestly, I could give their webinars on how to put your paperwork together. I mean, [external organization] is constantly using my stuff, and then they call me to ask if I want someone to come do [a training]. I'm like, 'You are aware you're using all my paperwork? You're using my employee handbook and everything.' I said, 'I'm the person that did that myself.' So, I don't know what their problem is. I think they're very shortsighted. ... I mean, it was always like, 'No, we can't help you. How can other states be doing this? Well, we don't do it in Idaho.' That's what I kept hearing. 'There's a bunch of states, Washington is doing it. So why aren't you? Is it because you get a ton of money?' I mean, number one, you need to get rid of the dead weight because those men, I mean, I'm sorry, but I don't want to go to a workshop where a guy's telling me how he couldn't even get his stuff together without his wife. I mean, sorry, but that's so unappealing to me. You know what I mean? ... I just felt like no one cares in Idaho. They really don't. I mean, they like to have you re-cert[ify] every year, because it makes them look good. But they have not once ever, 'Oh, we're giving a workshop.' Well, it's the same guys that you're having do it." [#20]
- The woman owner of a DBE-certified professional services company stated, "I really think that the DBE program, I think probably because I'm a recipient of it overall, it's a really great program that is functioning the way it should. I think that I've been provided lots of opportunities to work with folks and established relationships which I have. I definitely appreciate that they are putting the requirements for designers on the design side for DBEs. That helps lessen the barrier to entry, it still costs money, but it's not like I have to ... you can start out as a single person working from home, doing plans. The capital cost to start that and really, it's not much. Or you don't have to have a lot of capital to do that. So that's really great. Where it's on the construction side, it's a little different. You need facilities, you need product and it's a lot bigger investment, I think. So that's great. I totally support that they're continuing to hire this on the design side, and I hope that they continue to do so." [#21]



- The owner of a DBE-certified professional services company stated, "I'll be candid with you, that [my wife] and I have been disappointed that no work, absolutely no work, has come our way from ITD that recognized our status as a qualified woman-owned business. I think that's largely because the program focuses quite intensely on construction projects ... who can lay pavement, install guardrail, do pavement markings. ... No one has ever reached out to us and said, as a consulting outfit, 'How can we help you acquire work for ITD?' ... Well, right now the DBE program is a bit of a black box. So, one thing they could do is better describe to qualified DBEs what it is that ITD requires. Every once in a while, we'd get an email that says there's a certain percentage of a project that has to be performed by a qualified DBE. But again, those notices seem to be focused on the construction, not the planning and design basis of a project before it goes out to bid. I would like to better understand how it is that they recognize us as a planning and design firm and how they can steer us towards projects that we might be awarded. That may be an engineering firm or a larger firm that would hire us as a subconsultant would benefit from having us to work for them. I'd like to emphasize that it appears from our point of view that the companies that provide planning and design services are not sought after by the DBE program. And I think it's a large sector of the business community, that if they have goals that need to be fulfilled, could be fulfilled by that group." [#22]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It wouldn't have been beneficial for the primes to use me, only having one piece of equipment, even if it is a 3% goal, you're just for easy numbers. If it's a 3% goal on a million-dollar project, that's whatever, \$30,000. So, we'll say it's a small goal. But with one truck for that project, you wouldn't be able to reach the goal for the prime. So, I understood that it was paperwork nightmare for them to even utilize a small DBE company just starting out. So, they don't want to do that either. I understood that. So, then I was just focused on scaling up to make myself more valuable to the primes. Like, 'Hey, I got five trucks. The project's 45 days long. We only have a small gap for the trucking.' Say it's four weeks or something with five trucks, we can hit [the] \$150,000, \$200,000 goal in the four weeks we have available for the trucking for this percentage." [#23]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "I felt like it was hard to break into at first because a lot of the services weren't services that we provide. It was striping or it was construction flagging ... those kinds of things. The services we usually see on the things that come through aren't really a tidy fit for us. ... That really limits us in Idaho, right? Because there aren't many women-owned businesses that are in that particular construction field, other than flaggers." [#25]
- The woman owner of a DBE-certified professional services company stated, "When I first started, when it was back at [Boise State University], we did [participate in some of the DBE programming]. We did some of the workshops, but since it's been turned back over to ITD, we haven't. It wasn't just ITD, it was federal, Forest Service, BLM, other agencies too, that they were helping you market to or helping you to get out there and build your resume and for those kinds of jobs. It was through the ... Small Business Development Center. People have reached out to me, but it's usually construction companies who are just looking for anybody, and they just do an email blast to everybody. It's not like, 'Oh, this person does [consulting], so we need someone to do [consulting].' I haven't really noticed at all that it's helped me, helped our company. They need to hit their DBE goal, and so they're trying to get the biggest bang for their buck. Whoever can do the most out of a contract to meet that percentage goal, and usually us just doing the [consulting], that's not going to meet their goal. They'd rather go with the pavers or the people doing the traffic control or



somebody like that, who actually can meet that goal of whatever it is, 7% of the contract or whatever it is. What I've noticed now is for what we do, the firms that get the majority of the work are one-stop shops, that they do the [National Environmental Policy Act], and the biology, and the archeology, and the wetlands, and they do all of that. They are able to charge upwards of \$70,000, \$100,000, and that way, they can meet their DBE goals. Those kinds of companies get the majority of the work, but I don't know what to do to change that." [#27]

- A representative of a DBE- and 8(a)-certified construction company stated, "The only time we've ever got contacted about Idaho DBE is from [a local large company]. They will send out mass emails. But they don't really know how to do a [subset], so they just include everybody's email list on there, so it's like ten pages. But my favorite there is construction, so anything and everything that we ever get contacted for ... [is] traffic control or signage or painting stripes in the parking lot. ... I mean there's design all over the place, but why are we not being contacted? Is it small business inclusion goals are not applicable to the design side of it?" [#29]
- The woman co-owner of a DBE-certified construction company stated, "People reach out to me when they need to meet their DBE goals, but I do know this, I've been part of AGC, and they're only doing it because they have to. That's the only reason they're doing it. You hear them complaining, well, we have to do this. They would definitely self-perform everything themselves if they could. I'm a paving contractor, so they can do all that work themselves. And I do think we got that because of the 35% [DBE goal] ... it was a great size job because it was like six hundred and some thousand. So, [they] can self-perform that easy. So, the larger companies will only hire the smaller companies if they have to. They won't hire you unless they absolutely have you. I have not been into the training classes and the videos that I normally have. In the past they've been great." [#30]
- A representative of a majority-owned construction company stated, "Minority percentages ... when they put out 11% on paving but need to hit minority percentage, we do not get the job." [#AV131]
- A representative of a Hispanic American-owned professional services company stated, "ITD is not coming close to their goals. The [Federal Highway Administration] had hard percentages that ITD had in their request for proposals that went away about 15 years ago, and so the large companies were not using small DBE/WBE/MBEs, causing many of those businesses to go out of business." [#AV187]
- A representative of a majority-owned construction company stated, "A lot of work set-aside programs, for minorities and women, I think it is abuse of this program way too much." [#AV3013]
- The Hispanic American owner of a DBE-certified professional services company stated, "It seems like Idaho is really struggling with DBEs. There was a period of time that ITD said 'We're just going to have good faith efforts.' And their goals were like a fraction. ... I think they had a 12% goal and I think they were at about a 1% to 2%." [#PT1]
- A representative of a public agency in Idaho stated, "The staff at ITD has been wonderful to work with. When we have issues that we want to work with them on and have concerns or problems, they've been very open to when we call them or where we have a problem on site." [PT1]
- A representative of a majority-owned construction company stated, "We went through the good faith efforts and made sure I spent more time putting our good faith effort together because I was very concerned we weren't going to be able to meet the goal. And I spent more time on that than I actually spent on the bid. .... Where we're headed ... we might as well not do a good faith, because

it's not worth taking the risk that I do a good faith than somebody else has a higher price that met the goal. ... Right now, the policy is that the percentage you turn in on your confirmation on bid day becomes the new contractual goal for that contract. Do they see more upfront actual participation if that goal was not adjusted based on what was submitted? ... I guess I would ask that we look at whether that goal gets modified in the contract based on what you submit. If there's a way to not do that, you may see more participation up front. Like I said, should you have a DBE that you just didn't turn in because you had the goal without them, that will show up or should show up through the B2G process eventually. It does seem that we're seeing goals set fairly high for what we feel the availability for a particular project may be in the case where all of the subs on the project would have to be DBEs in order for us to meet the goal. ... How do we assess the marketplace and what is a reasonable goal on a project and is the intent that if all subs needed on that project could be DBEs, that they should be DBEs and the non-DBE subcontractors don't have an opportunity for work as well?" [#PT1]

- The Hispanic American owner of a DBE-certified professional services company stated, "I like the reimbursement program, every little bit helps." [#WT3]
- A representative of a majority-owned professional services company stated, "Another concern I see is the lack of DBEs provide[s] the existing DBEs an opportunity to seek or demand higher pricing, creating an unfair market ... This also leads to increased costs for the client and taxpayers. ... The DBE requirements also impact companies that can provide the requested services but are not afforded the opportunity, because the prime firms and contractors need to meet the minimum DBE requirements. This often results in using higher bids and less experienced firms and companies to meet the DBE requirements." [#WT5]
- The Hispanic American owner of a DBE-certified construction company stated, "We are happy with the DBE program. Only a few things were hard to deal with when we actually won and performed our job." [#WT7]
- The co-owner of a woman-owned and DBE-certified construction company stated, "We are disappointed with ITD that they don't consult with us on projects to know whether the DBE goal could even be met (excavation, roads). I think ITD should lower the DBE percentages because there wasn't really a lot a DBE could do. ITD should know their DBE list, or reach out to DBEs to know their availability, and know whether or not there are DBEs to do the job before putting a DBE goal together. Our company is 100% full in 2023. The good faith effort (GFE) is a fluke compared to a low bidder with a DBE." [#WT12]

**2. Experience with federal programs.** Ten business owners and representatives shared their experiences with federal programs [#3, #8, #9, #19, #25, #27, #28, #29, #FG1, #PT2]. For example:

- The Hispanic American owner of a construction company stated, "The SBA [programs] is the only one that I know so far that I've reached out to that've been very helpful." [#3]
- The owner of a majority-owned professional services company stated, "Well, the people that are successfully bidding on public projects generally put a disadvantaged person on their roster as the owner of the company. And that person may not ever step foot in the office, but that gets them 8(a) qualifications that virtually guarantee them the work, even if they're not truly qualified. ... Seeing the disparity was pretty interesting, because they were mostly based on my qualifications in both cases. And to see a 90% win because a supposed disadvantaged person held the company versus

the less than 50% or about 50% was disturbing when the qualifications are the same. The only difference is one business is owned by someone who's registered on the 8(a) list or whatever that is, and the other was not." [#8]

- The Hispanic American owner of a DBE-certified professional services company stated, "There was an S[B]DC counseling session, so it's about four or five of us. ... And her whole talk was on how to manage employees successfully. And she ran off 80% of her employees within six months. ... And you're just thinking, 'This is two to three hours of my life I'll never get back.' ... I mean, I was in a 7(j) program, they actually helped me get ... my accounting system set up and stuff. And what they did is they subcontracted out to an accounting firm here in Boise, Idaho. ... What happens a lot with 8(a)s, ... I never got that big. I got to say about a dozen, 14, 15 people. And that was my sweet spot. But if you get really big ... you have got to sell out. ... Because once you graduate from the program, you'll collapse." [#9]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "I was trying to get in the federal 8(a) program, but my late husband was still alive, and I couldn't meet the economic threshold, which is a pretty low ceiling. Then when we knew he was going to pass away, he was like, 'Get your 8(a), crush it. I don't want to have to worry about you.' So, I did receive it about six months later. My application had been in process, but it looked like it was going to be denied for that reason. And I did get accepted. It took a full year for us to get our first project because nobody wanted engineers or planners in the 8(a) world. ... So, you know you're only in the program for nine years, but they gave ten because of COVID. I have a little over two years left. And now I can see why you get the nine. It takes you nine years to figure out all the nuances. And for me, my testimony ... is that I'm unique, [first], because of my age, so I'm not home raising children. [And second], my spouse is gone, so I'm not wanting to be home at night. I had the ability to go out and market to a significant degree. ... One of my biggest pet peeves with the federal government is they'll set aside things for woman-owned [firms]. We shop on there every day. We look to see what's the latest woman-owned set-aside, and they aspire to equalize things for men and women in the federal marketplace. ... You see other things, but those never go to male[-owned businesses]." [#25]
- The woman owner of a DBE-certified professional services company stated, "I've heard it's really hard when you almost need to hire somebody to lead you through it and help you [get the 8(a) certification]. It's kind of like getting your GSA contracts. [For GSA contracts,] you have to have been in business for a certain number of years, and you have to have had a certain amount of government contracts, and then you have to ... be audited, and you have to have all this backup of everything you've done. It sounds very rigorous ... I know a lot of people hire people to help them through it and apply." [#27]
- The Hispanic American owner of an MBE- and DBE-certified professional services company stated, "I've been in the 8(a) program. I was a HUBZone. I was in the mentor protege program and the Fed through the Department of Defense and stuff. So yeah, I've been in every program they've ever had." [#28]
- A representative of a trade organization in Idaho stated, "SBA has had online webinars and stuff for government contracting, but like I said, it needs to be a hands-on approach, more interpersonal. Because online is not always the best concept when it comes to filling out government contracting jobs and the requirements of those." [#FG1]

- A representative of a majority-owned construction company stated, "We are a large family-owned company, women owned, majority shareholder company. Our gross revenue is such that we are not a DBE. I know that this is a federal requirement, but when they're evaluating this and you graduate out of the DBE program, they don't take that into effect. They're not looking at that point even though we are majority women owned, they don't evaluate that percentage, which I don't think is honestly fair and reasonable. ... I just meant that they don't take that value into that threshold. It just seems one-sided. If you're a woman owned or you're a minority company and you eclipse the threshold, it's not representing those values to see... It's all one-sided, the companies that are smaller, that are DBEs, that are under that against the people that aren't, when there are other entities that are inside that are women owned or that might have the ethnic background such that that value should contribute. I guess the point that I was trying to make that the other side that I would say from being the Post Falls Spokane line is just the availability of DBEs. When the feds require a higher percentage, it's very, very difficult to get the DBEs to fill the prime contracts." [#PT2]

**3. Recommendations about race- and gender-based programs.** Interviewees provided other suggestions to ITD about how to improve its certification process and programs for certified firms [#2, #3, #9, #13, #14, #20, #21, #23, #24, #26, #27, #29, #FG1, #FG2, #PT1, #WT1, #WT2, #WT3, #WT5, #WT7]. For example:

- A representative of a majority-owned professional services company stated, "They went through a lot of project management training. They brought in a consultant from the outside. In fact, I was at ITD at that time, and it was some of the best training I've ever gone through in my career. And I think that might be beneficial again to do that with a new generation of project managers. I think they could continue to do more training on that DBE reporting system. ... we all tend to use some of the same ones. And so, I think if we're going to have a DBE requirement, it would help our engineering community just to be able to have a little bit more selection for some of the other categories." [#2]
- The Hispanic American owner of a construction company stated, "I would say the main barrier is the 10% that ITD claims that they give to minorities, that they follow up with that, and make an effort to award 10% like they said. But I haven't seen that because I've been on the bidding list, and I've made multiple attempts to get on jobs and I have not received any of that 10% that they claimed they gave out. ... They set up public meetings to train and teach individuals with the small businesses. But I feel like ITD should put the effort of doing the same thing to set classes, or at least meetings for business owners that want to participate in public works or private sectors, or stuff like that. ... One of them is if they have an office that they need to make it available, where if someone's trying to reach out to them and that they follow up with to those individuals or make it accessible for people to talk to someone and get answers if they have a question. ... That they need to assign someone that handles the minority division or Hispanic division, and use them to reach out to minorities, reach out to those companies and inform them, 'Hey, this is what's available.' Because a lot of the time, the agencies know what's available and sometimes we don't. If they can make it their priority to have an individual to specialize in minorities, it would be very helpful." [#3]
- The Hispanic American owner of a DBE-certified professional services company stated, "The construction companies, they're challenged, because they don't have a lot of opportunities to go

after to meet their DBE goals. ... I would not restrict any minorities, any women business, or disadvantaged businesses. I would just say this is the percentage and you need to hit it. Do things like that and then all of a sudden it bites you across the board." [#9]

- The owner of a woman-owned professional services company stated, "It would be nice if, in the purchasing process, you could identify where there are projects that would be more geared to a company our size versus that of a larger scale." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "It's hard for a small business to vet, but that's your job. But if ITD took that on to where they had this agency that we could sign up with to accept for my industry drivers, qualified drivers, then that would help out. [It would be] cool if I could just go onto their database or their website and apply and say, 'Hey, I need drivers,' and then you get an actual qualified vetted candidate. ... If ITD wanted to hire me for millions of dollars, I could come up with a program and a procedure that they could put on their website that it would help every DBE, like a step by step, 'Hey, this is what you need to do, this is where you need to go to get registered, and then this is how you find the primes that are bidding on the contracts.' The stuff that I had to figure out on my own, I could put that together, and if ITD did it, would help a lot of new people. Help us out with the transparency on the contracts, which I've already stated. Oh, here's a good idea. ... Instead of one contractor, multiple contractors getting to use the same DBE for each project, put up a system where they have to shuffle, instead of using the same one every time. If you did that, then they would have to go out and find a different avenue, because most of it is just flagging. So, the flagging companies are just on every project, which I know a couple DBE flagging companies, and when I go and haul on those projects, they're out there. And so, make the prime contractors switch it up. Like you can use this DBE twice in a row, and then on the next project that you're bidding on or that you're awarded, we look at your past DBEs, and it has to be different than your last one. Implement something like that, some sort of shuffling process. And that would open the door for different firms to get utilized." [#14]
- The owner of a DBE- and WBE-certified professional services company stated, "They should be visiting businesses, and they should be thinking outside of just construction. They could Google, 'What are other states doing for other small businesses?'" [#20]
- The woman owner of a DBE-certified professional services company stated, "There's this whole part of business, which I don't think it's ITD's responsibility at all. But I mean, I think as a business owner, and they may already do this, ... but [they could provide a course on] hiring employees 101 or something? Like I said, I feel like they do good outreach. I don't necessarily think it's ITD's responsibility to tell me how to run and develop a business, but they're helping facilitate opportunities. ... That's just another thing, 'Hey, here's some other resources that are beneficial to your businesses, to small business.' Something like that." [#21]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "In the WashDOT program, they also have a[n underutilized disadvantaged business enterprise] tag. .... If you're certified DBE, but stars aren't aligning, primes already have the DBEs that they want to use, WashDOT will put out these projects with UDBE requirements so that they have to go outside of the norm. .... If you have a DBE flagging company, it's like, okay, we'd rather use the flagging company because they don't interfere with our own personal trucks. Because each prime, each pit, a lot of them have their own fleet of dump trucks to pave and haul material and all that. So I see that I'm interfering with their employees getting the prevailing wage job. It creates conflict in their own company with their union drivers, because then their union drivers don't like us on the projects



because their buddy's sitting at home instead of being out there with them driving, making the good... But that UDBE kind of makes them go out of their norm to get me, if I got that underutilized [certification]. ..... Idaho should utilize something like that. ... Underutilized DBEs, kind of break up the norm, make it race-conscious instead of race-neutral -." [#23]

- The owner of an SBE-certified construction company stated, "If there was some kind of a basic training on the processes within ITD, maybe a one or two-hour course once a year that you could go to where they went through a couple of different types of projects and the paperwork involved, and gave a little bit of a talk on what the concerns are with certain questions, how you go about finding us, how to answer them. The importance of different documents, the timing of the processes. Just trained people on how to work the system, and not feel so intimidated by and shameful because they don't know that much. ... they could probably pick and say, 'This applies to certain sizes of projects that we give out. And we're having a little training session on how to acquire it, how to manage it.' Maybe even some kind of an idea on how to assess the time demands, staff demands. Because maybe a new business would be looking at it and saying, 'I think we can do that.' Or maybe, 'I don't think we can. But we're thinking in the private sector that we get things done quickly. But in the public sector, this piece, this can be gone for a year. Whereas in the private sector it might be done in months because we're trying to meet deadlines for developers.' So yeah, some kind of a course that would get people comfortable with all that's involved." [#24]
- A representative of a majority-owned professional services company stated, "I would like to know if there is training. I know even as a big company, I've never been to any training with ITD. I've been with training for LHTAC, which we bill to ITD standards. But ITD, even if it was even online PowerPoints or something like that, that made it easier to understand. I think their contracting wording sometimes is a little bit hard to understand and it's confusing. ... It's like you have to learn the ropes because there's all different styles for different types of work. Sometimes a lump sum is allowed and sometimes loaded rates are allowed, and sometimes it's a cost-plus-fixed-fee and stuff. There are so many variables that go into it. Almost like you start out as a beginning, a small business as an entry level and then you can earn experience, and so that you can climb a ladder or something. I feel bad because you don't want to limit somebody who may already have experience, too. It's just a really hard thing for ITD to try to keep fair, but also include these small businesses and give them the ability to go after these larger projects and stuff." [#26]
- The woman owner of a DBE-certified professional services company stated, "If they did some training on how to market as a DBE, or how to network, and how to perhaps get a GSA [General Service Administration] contract, or how to get an 8(a) contract or your 8(a) qualifications or whatever. That would probably be helpful. ... Just because from working here with L[H]TAC, the whole DBE goal is a stickler sometimes. It's hard for them to negotiate or figure out what the DBE goal should be. ... [S]ome more training on that would be helpful. Maybe figuring out how to come up with your DBE goal. ... Is there some way to spread the wealth versus just a small number of companies getting all the contracts? Maybe after they get a certain number of contracts or a certain dollar amount in a year or whatever, then they don't get any more for a little while or something." [#27]
- Representative of a DBE- and 8(a)-certified construction company stated, "Does the state of Idaho have a database where contractors or anybody can go in there and look it up and say, 'Hey, I need to find an electrical engineer.' I can go on their website and boom, boom, boom and put in my

search criteria, and here's a list of DBE electrical engineers. I don't know of any of those that exist." [#29]

- A representative of a trade organization in Idaho stated, "I think that it's really important that you get to know the communities that you're serving directly because that's an overall arching question that it's going to be very different for every community that we serve. ... [What] works in general businesses, but I wouldn't say that necessarily that's going to work in a Native American community directly or even a Black community. We have to ensure that we're reaching them in their communities and looking at their historical value as well." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "Helping people do these trainings has been so beneficial. But we still have a lot of people that don't know what they need as far as, so they're using a lot of their own cash up upfront and not realizing that they can apply and actually qualify for credit." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "We need these organizations to help train a lot of, especially our first-time business owners. And so, these trainings that they provide are really important and crucial." [#FG1]
- A representative of a trade organization in Idaho stated, "I was going to speak on the government contracting. I think that probably one of the biggest barriers in a program that is needed is them getting help with their EIN [Employer Identification Number]. We find a huge struggle with registration for that. And honestly, I think if ITD really wanted to build a business program to assist membership in minority populations [they should] do more of a hands-on approach when it comes to all the requirements of government contracting and what they have to sign up for. Because even though you have organizations like SBDC [Small Business Development Center], Idaho Connect, someone that actually works within the government system and sees it day in and day out, it might be really helpful to have that type of program integrated. It also would take further conversations than just today in those communities on how to reach their populations as well." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "The radio, make sure that there's presence within the community, that they hear who you are. And then when an opportunity does come up to connect personally with them, they're more likely to do that. And for me, it could take two or three visits before they actually feel comfortable enough to give me the information needed for me to be able to help them because they don't know me." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "Small business owners, they're pretty much the jack of all trades. So they do everything, whether it's inventory, cleanup, manning the till, doing whatever the case may be, the books and all of that. So they don't tend to lean in on any program or activities that are generally in the middle of the day during their work hours. And so they either try to join something that's really early in the morning or in the evenings. And then, because of the population base that we deal with, with Latinos and Hispanics, they tend to have their weekends pretty full dealing with family and dealing with other projects. ... Timing is incredibly important whenever delivering a program or workshop information." [#FG1]
- A representative of a volunteer organization in Idaho stated, "It's really hard to get some of the Hispanic business owners to be on board with being chamber members and to be participating in some of these networking events to help them spread their word out." [#FG2]



- A representative of a trade organization in Idaho stated, "The only thing I would maybe put out there is, if the Department of Transportation could do more public-facing programs to educate people more, [particularly educating] the business community about the funding process that goes into theirs, the planning process that they go into." [#FG2]
- A representative of a trade organization in Idaho stated, "I'm having just a brief look at the homepage for ITD, and there's the standard offerings, motor vehicles, press releases, travel information, upcoming projects. There's not a lot that says, 'How do I get more information about these programs?' on the homepage. There's an Accessibility-Title VI heading at the bottom right of Inside ITD. But as far as specific groups who might need extra help, I don't see really any at least initial offering about that. So I would probably start with their website and make some changes that point out the availability of these programs or opportunities for disadvantaged groups." [#FG2]
- A representative of a trade organization in Idaho stated, "I think public safety is always an ongoing concern. I know a lot of the legislative activities that are going on now affect public safety, road safety, accidents rates, fatality rates, and so forth. But anything the department could do to expand their educational base, or program offerings, or different resources to the public, that to me would be a good use of their time and money." [#FG2]
- A representative of a majority-owned construction company stated, "Right now, the policy is that the percentage you turn in on your confirmation on bid day becomes the new contractual goal for that contract. Do they see more upfront actual participation if that goal was not adjusted based on what was submitted? If the project would bid with 6%, you leave it at 6%, even if you turned in 7% because we face challenges when we're building a job, if for some reason some of that work went away and then we have to try to find a DBE work, we're going to only submit to get us over the goal. Even though we may have had another sub that was a DBE, that will come out in the end through the B2G tracking system. But that may be a year or two before you see a hitch or you're tracking for percentages. So, there's a timing issue there, but I don't know why. I guess I would ask that we look at whether that goal gets modified in the contract based on what you submit. If there's a way to not do that, you may see more participation up front. Like I said, should you have a DBE that you just didn't turn in because you had the goal without them, that will show up or should show up through the B2G process eventually." [#PT1]
- A representative of a majority-owned construction company stated, "It does seem that we're seeing goals set fairly high for what we feel the availability for a particular project may be in the case where all of the subs on the project would have to be DBEs in order for us to meet the goal we got set. We've heard that in the past there was a factor that was used in determining what the goal should be on any given project and that they can't do that anymore, per federal highway. ... How do we assess the marketplace and what is a reasonable goal on a project, and is the intent, that if all subs needed on that project could be DBEs, that they should be DBEs and the non-DBE subcontractors don't have an opportunity for work as well?" [#PT1]
- A representative from a public agency in Idaho stated, "We really need a quality factor added to DBE. For a great DBE, I think we should calculate their cost the project by a factor of less than or equal to 1.0 to reflect the quality of the product they deliver. For someone... that takes two, three, sometimes even four attempts, it should be somewhere between 1.75 - 2.0, adding 0.25 for each redo they need on average. Sure, they only get paid a fixed amount by the prime, but we, the customer, need to have our people out there two, three, maybe even four times to witness and

accept/reject the work. Our employees' time adds cost to the project's bottom line, directly attributable to poor quality DBEs, and causes project to run over!" [#WT1]

- A representative from a public agency in Idaho stated, "Many DBE contractors are listed on the ITD DBE directory and have no or very limited history of working on applicable projects. DBE contractors should have to show a history of actively participating in ITD/LHTAC/ACHD work to maintain their DBE certification. Many DBE contractors note their willingness to work in multiple or every ITD district. DBE contractors should have to actively participate over a specified time period in each of those districts in order to maintain their certifications across the state. ... We recommend that ITD construction staff be consulted during the ITD DBE goal establishment for contractors. ... DBE contractor availability should be tracked and taken into consideration when setting goals. The DBE contractor's realistic work capacity and ability to complete the work should be established and made available to prime contractors and owner representatives. This capacity should be used in determining whether a DBE should be considered toward a project item's goal. When goal setting, a percentage of work items should be considered toward the DBE goal establishment. Presently, ITD consideration is restricted to either none or all of a work item. This does not reflect real-world DBE application. ... When establishing goals, previously, a 70% multiplier was applied to overall established goals to account for things like potential quantity underruns, lack of contractor availability, etc. That 70% has now been removed and 100% of work items found to be completed by DBE's is considered toward the goal. Without an ability to ever develop a perfect program and associated goal analysis, we suggest reintroducing a multiplier. Smaller projects appear to be disproportionately carrying the burden of DBE goals. Because of the nature of DBE companies, smaller projects present more opportunity for a DBE contractor to take on whole items of work. Because of this, small size projects tend to see significantly higher DBE goals. Allowing goal setters to consider partial work items (percentages of work items), the expectation of DBE participation can be more equitably spread over the entire ITD/LHTAC/ACHD program and medium to large projects. ... While we all support the DBE program's goal, we would like to see increased transparency by way of information provided by DBE's, their ability and capacity, efforts made by contractors, performance of DBEs, and consideration toward goals overall." [#WT2]
- The Hispanic American owner of a DBE-certified professional services company stated, "[There is a] need to have more 'How to do Business with ITD' [events]. Leadership and marketing classes are a tough sell. ... I would recommend that even though the disparity study shows ITD has hit its goal of participation for a particular group (for example, WBE consulting or Hispanic consulting), you still include them in a goal setting percentage. The history of Idaho [shows that] any 'good faith effort' goal setting is not successful. When good faith effort was implemented last time, many SDBE/WBE went out of business." [#WT3]
- A representative of a majority-owned professional services company stated, "There are a lot of qualified firms and construction companies that can provide DBE services. My experience is that creating a minimum DBE requirement has a negative impact on project schedules and budgets. There are great DBE firms and contractors that get utilized because they are good, not just because they are DBEs. I truly believe that if there were no DBE requirements, the DBE firms would still be busy and successful. Eliminating or reducing the DBE requirement would provide opportunity for non-DBE firms and companies to propose and bid on projects, creating an equal opportunity which is the goal for the DBE program. Unfortunately, the DBE program does not create an equal opportunity to all. ... I believe eliminating or reducing the DBE requirement will result in lower bids,

which in turn would provide more funding to be used on additional projects which currently are not being funded or built. I also believe that the DBE firms will still be called upon on proposals and bids without the DBE requirement. My experience in Idaho is that prime firms and contractors select companies based on what they can do and do not factor if they are DBE or not. The only time this is a factor is when the DBE percentage is required. My recommendation is the DBE percentage be eliminated or strongly reduced to less than 3%." [#WT5]

- The Hispanic American owner of a DBE-certified construction company stated, "The DBE program's efficacy and ways to make it more useful for small companies - giving DBE[s] more smaller bids to [act as] general [contractor], knowing who to call or email when we can't get answers from a prime. More clear payment dates for the DBE." [#WT7]

## K. Other Insights and Recommendations.

Interviewees shared other insights or recommendations for ITD or other public agencies in Idaho to improve the availability and participation of small businesses [#2, #3, #4, #5, #6, #7, #8, #9, #10, #12, #13, #14, #16, #17, #18, #19, #20, #23, #25, #30, #AV, #FG1, #FG2, #WT2, #WT6]. For example:

- A representative of a majority-owned professional services company stated, "There was almost too much work. And I think it also drove up the prices on the construction side. So the contractors were having to pick and choose between which projects to go after. And I think it artificially created some inflation. In fact, I know it did on the construction side. And I think the solution would be, if they ever do get a big chunk of money like that, would be to help just spread it out over time. And I think it would eliminate some of that inflation and some of the supply issues that we're all dealing with." [#2]
- The Hispanic American owner of a construction company stated, "My main responsibility is estimating and bidding jobs. Once the bidding is done and I am awarded with the job, my responsibility is to get the man labor and to complete the job and run it as a foreman. Sometimes, if it's a big enough job, I have a foreman that helps me out or in a situation like that. It all depends [on] the size of the job. ... In the state of Idaho, my knowledge is from all the work that they do, they need to award at least 5% or 10% to minority[-owned businesses]. I believe that 10% is still too low. I would say that between 25% and 50% should be awarded to minority companies. That ITD focus on making sure that the contractors that are doing the work, that they hire companies that specialize in that type of work." [#3]
- A representative of a majority-owned professional services company stated, "So I guess the effect of these hiring quotas and things like that, basically, I paid to train a guy over the course of six months, and he was taken away from me. I lost an employee, and I lost a lot of money after training him to fill a racial hiring quota after I was the only guy in the whole Spokane area who would give him a shot because he's a foreigner. If I hadn't done what I'd done, he never would have had a shot at getting his job over at DOT. I would say if they removed hiring quotas and, when you're getting hired, there is no box that you check your race, national origin, sex, religion, anything like that. You remove all that from the equation and even the playing field for everyone. I think that would be the most fair, and I think that would be the most equitable to everyone." [#4]
- A representative of a majority-owned construction company stated, "That would be number one on my list right now. When prices go up, we're allowed to put in for price increase, especially after last year. Now I'm not saying we do it all the time, every time there's a price increase. If there's multiple

price increases, then yes, we should be able to recoup our losses, especially when the base price gets higher than your selling price. ... I think if the AGC, Associated General Contractors, would do more of this type of what you're doing today with their membership and talking out and then reporting back. I mean, I think the AGC is an organization that could benefit [from] listening to the members and being the mediator between here and the state. ... And I know there's a subcontractor organization out there. I've attended some of their meetings. Same thing. If they would be that mediator between the state and their membership, I think that would go a long way." [#5]

- The Hispanic American owner of a DBE-certified professional services company stated, "[DBEs] are that kind of odd cousin that you have to invite to the birthday party. You've still got to give that odd cousin a little piece of cake or something. We slot under, and now we're invited to the party with the big companies now too, by golly." [#9]
- Representatives of a woman-owned construction company stated, "There are a whole lot of initiatives both from the labor side, and the employer side, and the government side, frankly, trying to encourage, entice people to get into the construction trades. There's a whole lot of different groups trying to work on that." [#10]
- The owner of a majority-owned professional services company stated, "It's the city's arts and history department, and they're a fine tenant. ... It's a great spot for the city. We are more than happy to not charge them any more than we absolutely have to. And they agree to stay for a very long time and write the checks promptly. So, everybody wins. But then what happens is when the city decides to not fund its arts properly, which I don't know if you know what you know about Idaho politics, but that is pretty much the definition of it. ... It's nice to work for a company that understands that taking a long view is always the best option, whether it's reinvesting in energy savings, reinvesting in greener technologies or greener business practices." [#12]
- The owner of a woman-owned professional services company stated, "Currently it's just my business partner and myself. ... We were at one time, kind of back in our heyday, we had over 20 employees. And what you find is when you are at that size, you're no longer able to do what you love. ... I wasn't able to do any of that because I was too busy managing the people and clients, versus being able to actually do the work. And so, with the advent of computers, we probably do the work of probably 10 and just simply because computers allow us to streamline that process. Because the governor made it that they are not allowing any of the state agencies to have anything to do with TikTok, we're not able to leverage that platform to reach our teens. ... TikTok is one of the primary platforms that teens connect with, so unfortunately, we're not able to leverage that because of that scenario, and we have to be respectful of that. So, we have to look at other alternatives, in terms of how we're going to communicate." [#13]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "Since I became certified in 2018, I have not worked with a disadvantaged prime in my career. ... The more work I do with ITD, the better it's going to get. ... I thought the DBE program was federal ... I just don't understand." [#14]
- A representative of a public agency in Idaho stated, "Most of the funds are being allocated to Ada and Canyon counties when the rest of the state is also experiencing unprecedented[ed] amount of population growth, which affects public infrastructure, especially roads. ... \$200 million has been allocated to Ada and Canyon counties while infrastructure in other counties is getting worse as they are put on the back burner." [#16]

- The woman owner of a DBE-certified professional services company stated, "I think your generation is grabbing the bull by the horns a little more than my generation did. My mom's generation didn't at all. So, it's been a transition. ... And your daughter will be even better off, I think." [#17]
- A representative of a woman-owned and DBE-certified construction company stated, "Everyone thinks they can do it, but they just think that being the boss on the job is sitting around eating chips all day and it's not." [#18]
- The Hispanic American owner of a DBE-certified construction company stated, "I know once the season kicks in, we're going to be extremely busy, but I would do this every six months just to kind of touch base and if you learn something new, I could always fill you in too." [#19]
- The owner of a DBE- and WBE-certified professional services company stated, "They've hired a third party to call people to tell their experience. They're not going to change. They're going to say, 'Oh well, it's Idaho Transportation, we're construction.' Well, you're missing out on a ton of grants and things like that for the state of Idaho. I mean, they just did this huge internship grant, and they have all these people working for it. ... They're like, 'You can volunteer for us.' They could open their eyes to the idea that if you want to keep people in Idaho, educate them, train them. Think beyond just, 'We only do...' I mean, all the stuff I get in my email from the knife company or this or that company, 'And we're looking for someone who can pave the road,' or do this or do that. But I get stuff from Chicago and everywhere else who are looking for educators." [#20]
- The Hispanic American owner of an MBE- and DBE-certified construction company stated, "I don't know why would you have a DBE program that is race-neutral? See, I don't understand Idaho's thought process there. ... There was a whole lot of group disparity studies through this year. That's why I wanted to jump on it with you real quick because I've already been in a few from WSDOT and a college. ... I'm like, 'Well guys, oh, whatever industry you're in, you got to make it work privately just like everybody else. The DBE part is more like a bonus,' is the way I look at it. ... It would be nice in a perfect world, if I could line my season out with nothing but ITD and WSDOT projects, that would be fantastic. And that's the goal. But that's so hard to line up when projects start, when projects stop and then making them hit back-to-back. And then you don't have to fill in the work with private work, like every other trucking company. It's like, no. That's why I say probably 25% of my income is public works. 85% is just hauling around privately like everybody else is doing." [#23]
- The woman owner of a DBE- and 8(a)-certified professional services company stated, "Right when I got into the DBE program. I was down in Boise with [my husband], and we heard a young woman speak who was ... at the PTAC conference, and she was speaking about how much she had grown this business ... hearing somebody like that speak and say, 'This is what I did, and if I can do this, you can do this.' It's such an encouragement. ... Whatever path you take, there's no right or wrong. It's just you better be moving forward every day, taking a path of some sort. And because you don't know where they're going to lead..." [#25]
- The woman co-owner of a DBE-certified construction company stated, "I believe to keep the DBE program, because I think without it, there's a lot of bigger businesses that would force out the smaller companies. ... It is a benefit and probably it benefits a lot of smaller companies because if it wasn't for the DBE program—and I know it's a pain in the neck for people because that's what they



complain about. It's pain in the neck and we should do it. The larger companies will only hire the smaller companies if they have [the chance] to." [#30]

- A Native American representative of a trade organization in Idaho stated, "Having that imposter syndrome of not wanting to charge their value. I mean, the cost that they're putting to that client is a lot less than what they really should be. And in the time things are more expensive now and taking all of those things into factor, their pricing strategy just is not maybe even updated from a few years ago." [#FG1]
- A Hispanic American representative of a trade organization in Idaho stated, "[There is an] inability to understand their target market and to diversify their target market for revenue streams. A lot of times they'll focus on one segment of their market ... but they don't do any segment market research. So, they don't know exactly where their revenue is going to [and] from. And what that does is it gives them the inability to be able to do projections well enough to be able to put together a really strong business plan because they haven't done the market research. So, one of the barriers is access to that research." [#FG1]
- A representative of a trade organization in Idaho stated, "A lot of the things that we do in the community for business advocacy benefits not only our members directly, but the entire business community. So definitely, the chambers. ... I think there's just a lot of nonprofits that can be very supportive of businesses in the community as well." [#FG2]
- A representative of a volunteer organization in Idaho stated, "[There is] such a divide between the Hispanic and the Anglo, and so there's the language barrier." [#FG2]
- A representative of a volunteer organization in Idaho stated, "[We need] a builder's association, where they all knew that that's where you go to. But there isn't one here where they say, 'Okay, this is where all the projects go into, and you can go in and check the database and find out what's available for bidding.' So, each community, and of course the Magic Valley's very different than the Treasure Valley when it comes to stuff like that, but I still think it comes down to how do we compile that list of all of the resources, keep it up to date is one of the biggest challenges." [#FG2]
- A representative of a trade organization in Idaho stated, "We have an initiative ongoing to recruit all kinds of members ... but we don't score favorably on a national basis based on our somewhat rural location and less diverse community in the state and in the city." [#FG2]
- A representative of a trade organization in Idaho stated, "This ongoing discussion between the City of Boise and Ada County Highway District and ITD just seems inefficient and contentious at times. Everybody has a different view of the world and how they want to move people around the valley, but it's pretty obvious to just even a layperson that some type of coordination or working better would be favorable, acceptable behavior." [#FG2]
- A representative of a volunteer organization in Idaho stated, "Education, education, education, and making an easier way to find those resources. A lot of it comes from word of mouth." [#FG2]
- A representative from a public agency in Idaho stated, "Defend-ability through process and transparency is sought by all. While we all support the DBE program's goal, we would like to see increased transparency by way of information provided by DBE's, their ability and capacity, efforts made by contractors, performance of DBEs, and consideration toward goals overall." [#WT2]
- The Hispanic American owner of a DBE-certified professional services company stated, "The danger of the disparity study showing that you can have race-neutral (good faith effort/GFE)

percentages for fields where there are enough MBE/WBE/DBE companies. My example would be WBE public involvement companies. Making that GFE would make those companies go out of business and hurt your overall percentage goals. Please keep the 'tent' as wide as possible.” [#WT6]



# APPENDIX E.

## Availability Analysis Approach

BBC Research & Consulting (BBC) used a *custom census* approach to analyze the availability of Idaho businesses for construction, professional services, and goods and other services prime contracts and subcontracts the Idaho Transportation Department (ITD) award.<sup>1</sup> Appendix E expands on the information presented in Chapter 6 to further describe:

- A. Availability Data;
- B. Representative Businesses;
- C. Availability Survey Instrument;
- D. Survey Execution; and
- E. Additional Considerations.

### A. Availability Data

BBC partnered with Davis Research to conduct telephone and online surveys with hundreds of business establishments throughout the *relevant geographic market area* (RGMA). BBC identified the RGMA for ITD as Idaho; Asotin County, Washington; and Spokane County, Washington. Business establishments Davis Research surveyed were businesses with locations in the RGMA that BBC identified as doing work in fields closely related to the types of contracts and procurements ITD awarded between October 1, 2018 and September 30, 2021 (i.e., *the study period*). BBC began the survey process by determining the work specializations, or *subindustries*, relevant to each prime contract and subcontract and identifying eight-digit Dun & Bradstreet (D&B) work specialization codes that best corresponded to those subindustries. We then compiled information about local business establishments D&B listed as having their primary lines of business within those work specializations.

As part of the survey effort, the study team attempted to contact 4,753 local business establishments that perform work relevant to ITD's contracting and procurement. The study team was able to successfully contact 987 of those business establishments, 719 of which completed availability surveys.

### B. Representative Businesses

The objective of BBC's availability approach was not to collect information about each and every business operating in the RGMA, but rather to collect information from a large, unbiased subset of local businesses that appropriately represents the entire relevant business population. That approach allowed BBC to estimate the availability of POC- and woman-owned businesses in an accurate, statistically valid manner. In addition, BBC did not design the survey effort so the study team would

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<sup>1</sup> "Woman-owned businesses" refers to white woman-owned businesses. Information and results for businesses owned by minority women are included along with their corresponding racial/ethnic groups.

contact every local business possibly performing construction, professional services, and goods and nonprofessional services work. Instead, BBC determined the types of work most relevant to ITD contracting by reviewing prime contract and subcontract dollars that went to different types of businesses during the study period. Figure E-1 lists eight-digit work specialization codes within construction, professional services, and goods and nonprofessional services most related to the relevant contract dollars ITD awarded during the study period, which BBC included as part of the availability analysis. The study team grouped those specializations into distinct subindustries, which are presented as headings in Figure E-1.

## C. Availability Survey Instrument

BBC created an availability survey instrument to collect information from relevant business establishments located in the RGMA. As an example, the survey instrument the study team used with construction establishments is presented at the end of Appendix E. BBC modified the construction survey instrument slightly for use with establishments working in professional services to reflect terms more commonly used in that industry.<sup>2</sup> (For example, BBC substituted the words “prime contractor” and “subcontractor” with “prime consultant” and “subconsultant” when surveying professional services establishments.)

**1. Survey structure.** The availability survey included 13 sections, and Davis Research attempted to cover all sections with each business establishment the firm successfully contacted.

**a. Identification of purpose.** The surveys began by identifying ITD as the survey sponsor and describing the purpose of the study. (e.g., “ITD is conducting a survey to develop a list of companies potentially interested in providing construction-related services to government organizations or that have provided such services in the past.”)

**b. Verification of correct business name.** The surveyor verified he or she had reached the correct business. If the business was not correct, surveyors asked if the respondent knew how to contact the correct business. Davis Research then followed up with the correct business based on the new contact information (see areas “X” and “Y” of the availability survey instrument).

**c. Verification of for-profit business status.** The surveyor asked whether the organization was a for-profit business as opposed to a government or nonprofit organization (Question A2). Surveyors continued the survey only with those businesses that responded “yes” to that question.

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<sup>2</sup> BBC also developed e-mail versions of the survey instruments for business establishments that preferred to complete the survey online.

**Figure E-1.**  
**Subindustries included in the availability analysis**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Construction</b>			
<b>Concrete work</b>		<b>Highway, street, and bridge construction</b>	
17710000	Concrete work	16110000	Highway and street construction
<b>Concrete, asphalt, sand, and gravel products</b>		16110200	Surfacing and paving
14420000	Construction sand and gravel	16110202	Concrete construction: roads, highways, sidewalks
29110505	Road materials, bituminous	16110204	Highway and street paving contractor
29510000	Asphalt paving mixtures and blocks	16110205	Resurfacing contractor
29510201	Asphalt and asphaltic paving mixtures	16119901	General contractor, highway and street construction
32720000	Concrete products, nec	16119902	Highway and street maintenance
32720303	Concrete products, precast, nec	16220000	Bridge, tunnel, and elevated highway construction
32730000	Ready-mixed concrete	16229900	Bridge, tunnel, and elevated highway, nec
50320100	Paving materials	16229901	Bridge construction
50320101	Asphalt mixture	16229902	Highway construction, elevated
<b>Electrical work</b>		16229903	Tunnel construction
17310000	Electrical work	16290000	Heavy construction, nec
<b>Excavation, drilling, wrecking, and demolition</b>		17710301	Blacktop (asphalt) work
17940000	Excavation work	17910000	Structural steel erection
<b>Fencing, guardrails, signals, and signs</b>		17919905	Iron work, structural
16110100	Highway signs and guardrails	17919907	Precast concrete structural framing or panels
16110101	Guardrail construction, highways	<b>Painting, striping, marking, and weatherproofing</b>	
16110102	Highway and street sign installation	17210302	Bridge painting
17999912	Fence construction	17210303	Pavement marking contractor
34460108	Railings, prefabricated metal	<b>Traffic control and safety</b>	
36690203	Pedestrian traffic control equipment	32310302	Reflector glass beads, for highway signs
50399914	Metal guardrails	50990304	Reflective road markers
		73599912	Work zone traffic equipment (flags, cones, barrels)
		73899921	Flagging service (traffic control)

**Figure E-1.**  
**Subindustries included in the availability analysis (continued)**

Industry Code	Industry Description	Industry Code	Industry Description
<b>Professional services</b>			
<b>Advertising, marketing and public relations</b>		<b>Surveying and mapmaking</b>	
73119901	Advertising consultant	13890200	Testing, measuring, surveying, and analysis
87430000	Public relations services	87130000	Surveying services
87439903	Public relations and publicity	87139900	Surveying services, nec
87480300	Communications consulting	87139901	Photogrammetric engineering
		87139902	Aerial digital imaging
<b>Engineering</b>		<b>Transportation planning services</b>	
87110000	Engineering services	87420410	Transportation consultant
87110400	Construction and civil engineering	87480200	Urban planning and consulting services
87110402	Civil engineering	87480201	City planning
87110404	Structural engineering	87480204	Traffic consultant
87119903	Consulting engineer		
87120100	Architectural engineering		
87120101	Architectural engineering		
<b>Environmental services</b>			
87489905	Environmental consultant		
89990700	Earth science services		
89990701	Geological consultant		
89990702	Geophysical consultant		
<b>Non-professional services, goods, and supplies</b>			
<b>Transit services</b>		<b>Petroleum and petroleum products</b>	
41110000	Local and suburban transit	28690400	Fuels
41110100	Bus transportation	51710000	Petroleum bulk stations and terminals
41110101	Bus line operations	51719901	Petroleum bulk stations
41110102	Commuter bus operation	51719902	Petroleum terminals
41110200	Street and trolley car transportation	51720200	Engine fuels and oils
41110201	Streetcar operation	51720202	Diesel fuel
41110202	Trolley operation	51720203	Gasoline
41119900	Local and suburban transit, nec	51720205	Service station supplies, petroleum
41190000	Local passenger transportation, nec	51729905	Petroleum brokers
41199900	Local passenger transportation, nec		
41199906	Vanpool operation	<b>Vehicle parts and supplies</b>	
41310000	Intercity and rural bus transportation	50149905	Truck tires and tubes
41319901	Intercity bus line	55310107	Truck equipment and parts
41410000	Local bus charter service		
41420000	Bus charter service, except local	<b>Vehicle repair services</b>	
47299901	Carpool/vanpool arrangement	75389902	General truck repair

**d. Confirmation of main lines of business.** Businesses confirmed their main lines of business according to D&B (Question A3a). If D&B's work specialization codes were incorrect, businesses described their main lines of business (Questions A3b). Businesses were also asked to identify the other types of work they perform beyond their main lines of business (Question A3c). BBC subsequently coded information on main lines of business and additional types of work into appropriate eight-digit D&B work specialization codes.

**e. Locations and affiliations.** The surveyor asked business owners or managers if their businesses had other locations (Question A4) and if their businesses were subsidiaries or affiliates of other businesses (Questions A5 through A6).

**f. Past bids or work with government agencies and private sector organizations.** The surveyor asked about bids and work on past contracts and procurements in connection with both prime contracts and subcontracts (Questions B1 and B2).

**g. Interest in future work.** The surveyor asked businesses about their interest in future prime contract and subcontract work with ITD and other government agencies (Questions B3 through B5).

**h. Geographic area.** The surveyor asked businesses whether they could serve customers in various regions of Idaho (Questions C1 through C6).

**j. Capacity.** The surveyor asked businesses about the values of the largest prime contracts and subcontracts they have the ability to perform (Question D1).

**k. Ownership.** The surveyor asked whether businesses were at least 51 percent owned and controlled by persons of color (POCs) or women (Questions E1 and E2). If businesses indicated they were POC-owned, they were also asked about the race/ethnicity of the business' owner (Question E3). The study team confirmed that information through several other data sources, including:

- ITD contract and vendor data; (e.g. B2Gnow)
- ITD's DBE directory;
- Dun & Bradstreet (D&B) business listings and other business information sources;
- Information from other available certification directories and business lists; and
- Business websites and other secondary research.

**l. Business revenue.** The surveyor asked questions about businesses' size in terms of their revenues and number of employees across all locations (Questions F1 through F4).

**m. Potential barriers in the marketplace.** The surveyor asked an open-ended question concerning working with ITD and other local government agencies as well as general insights about conditions in the local marketplace (Questions G1a and G1b). In addition, the survey included a question asking whether respondents would be willing to participate in a follow-up interview about conditions in the local marketplace (Question G2).

**n. Contact information.** The survey concluded with questions about the participant's name, position, and contact information with the organization (Questions H1 through H3).

## D. Survey Execution

Davis Research conducted all availability surveys between October 2022 and February 2023. The firm made multiple attempts during different times of the day and on different days of the week to successfully reach each business establishment. The firm attempted to survey the owner, manager, or other officer of each business establishment who could provide accurate responses to survey questions.

**1. Establishments the study team successfully contacted.** Figure E-2 presents the disposition of the 4,753 business establishments the study team attempted to contact for availability surveys and how that number resulted in the 987 establishments the study team was able to successfully contact.

**Figure E-2.**  
**Disposition of attempts to contact**  
**business establishments**

Source:  
BBC Research & Consulting availability analysis.

	Number of businesses
Beginning list	4,753
Less duplicate phone numbers	55
Less non-working phone numbers	602
Less wrong number/business	323
Unique business listings with working phone numbers	3,773
Less no answer	2,176
Less could not reach responsible staff member	606
Less language barrier	4
<b>Businesses successfully contacted</b>	<b>987</b>

**a. Non-working or wrong phone numbers.** Some of the business listings BBC purchased from D&B and Davis Research attempted to contact were:

- Duplicate phone numbers (55 listings);
- Non-working phone numbers (602 listings); or
- Wrong numbers for the desired businesses (323 listings).

Some non-working phone numbers and wrong numbers resulted from businesses going out of business or changing their names and phone numbers between the time D&B listed them and the time the study team attempted to contact them.

**b. Working phone numbers.** As shown in Figure E-2, there were 3,773 business establishments with working phone numbers Davis Research attempted to contact. They were unsuccessful in contacting many of those businesses for various reasons:

- The firm could not reach anyone after multiple attempts for 2,176 establishments.
- The firm could not reach a responsible staff member after multiple attempts for 606 establishments.
- The firm could not conduct the availability survey due to language barriers for 4 businesses.

Thus, Davis Research was able to successfully contact 987 business establishments.

**2. Establishments included in the availability database.** Figure E-3 presents the disposition of the 987 business establishments Davis Research successfully contacted and how that number resulted in the businesses BBC included in the availability database and considered potentially available for ITD work.

**Figure E-3.**  
**Disposition of successfully**  
**contacted business**  
**establishments**

Source:  
BBC Research & Consulting availability  
analysis.

	Number of Establishments
Businesses successfully contacted	987
Less businesses not interested in discussing availability for work	268
Businesses that completed surveys	719
Less not a for-profit business	26
Less line of work outside of study scope	13
Less no interest in future work	76
Less companies no longer in business	7
Less multiple locations of same business	34
<b>Businesses potentially available for ITD work</b>	<b>563</b>

**a. Establishments not interested in discussing availability for ITD work.** Of the 987 business establishments the study team successfully contacted, 268 establishments were not interested in discussing their availability for ITD work. In total, 719 successfully contacted business establishments completed availability surveys.

**b. Establishments available for ITD work.** BBC deemed only a portion of the business establishments that completed availability surveys as potentially available for the prime contracts and subcontracts the ITD awarded during the study period. The study team excluded many of the business establishments that completed surveys from the availability database for various reasons:

- BBC excluded 26 establishments that indicated they were not-for-profit businesses.
- BBC excluded 13 establishments that reported their main lines of business were outside of the study scope.
- BBC excluded 76 establishments that reported they were not interested in contracting opportunities with ITD or other government organizations.
- BBC excluded 7 companies that had gone out of business and were no longer in operation.
- Thirty-four establishments represented different locations of the same businesses. Prior to analyzing results, BBC combined responses from multiple locations of the same business into a single data record according to several rules:
  - If any of the establishments reported bidding or working on a contract or procurement within a particular subindustry, BBC considered the business to have bid or worked on a contract or procurement in that subindustry.
  - BBC combined the different roles of work (i.e., prime contractor or subcontractor) establishments of the same business reported into a single response. For example, if one establishment reported that it works as a prime contractor and another establishment



reported that it works as a subcontractor, then BBC considered the business as available for both prime contracts and subcontracts.

- BBC considered the largest contract any establishments of the same business reported being able to perform as the business' capacity (i.e., the largest contract for which the business could be considered available).

After those exclusions, BBC compiled a database of 563 businesses we considered potentially available for ITD work.

## E. Additional Considerations

BBC made additional considerations related to its approach to measuring availability to ensure estimates of the availability of businesses for ITD work were accurate and appropriate.

**1. Providing representative estimates of business availability.** The purpose of the availability analysis was to provide precise and representative estimates of the percentage of ITD contracting dollars for which POC- and woman-owned businesses are ready, willing, and able to perform. The availability analysis did not provide a comprehensive listing of every business that could be available for ITD work and should not be used in that way.

**2. Using a custom census approach to measuring availability.** Federal guidance around measuring availability recommends dividing the number of POC- and woman-owned businesses in an organization's certification directory by the total number of businesses in the marketplace (for example, as reported in United States Census data). As another option, organizations could use a list of prequalified businesses or a bidders list to estimate the availability of POC- and woman-owned businesses for its prime contracts and subcontracts. BBC rejected such approaches when measuring the availability of businesses for ITD work, because dividing a simple count of certified businesses by the total number of businesses does not account for business characteristics crucial to estimating availability accurately. The methodology BBC used in this study takes a custom census approach to measuring availability and adds several layers of refinement to a simple counting approach. For example, the availability surveys the study team conducted provided data on qualifications, business capacity, and interest in ITD work for each business, which allowed BBC to take a more detailed approach to measuring availability.

**3. Selection of specific subindustries.** Defining subindustries based on specific work specialization codes (e.g., D&B industry codes) is a standard step in analyzing businesses in an economic sector. Government and private sector economic data are typically organized according to such codes. As with any such research, there are limitations to assigning businesses to specific D&B work specialization codes. Specifically, some industry codes are imprecise and overlap with other business specialties. Some businesses span several types of work, even at a very detailed level of specificity. That overlap can make classifying businesses into single main lines of business difficult and imprecise. In addition, when the study team asked business owners and managers to identify their main lines of business, they often gave broad answers. For those and other reasons, BBC collapsed work specialization codes into broader subindustries to more accurately classify businesses in the availability database.

**4. Response reliability.** Business owners and managers were asked questions that may be difficult to answer, including questions about their revenues. For that reason, the study team collected

corresponding D&B information for their establishments and asked respondents to confirm that information or provide more accurate estimates. Further, respondents were not typically asked to give absolute figures for difficult questions such as revenue and capacity but were asked to answer such questions in terms of ranges of dollar figures. Where possible, BBC verified survey responses in a number of ways:

- BBC compared data from the availability surveys to information from other sources such as vendor information the study team collected from ITD. For example, certification databases include data on the race/ethnicity and gender of the owners of certified businesses.
- BBC examined ITD contract data to further explore the largest contracts and subcontracts awarded to businesses that participated in the availability surveys for the purposes of assessing capacity. BBC compared survey responses about the largest contracts businesses are able to perform with actual contract data.
- ITD reviewed contract and vendor data the study team collected and compiled as part of study analyses and provided feedback regarding its accuracy.

# DRAFT Availability Survey Instrument [Construction]

Hello. My name is [interviewer name] from Davis Research. We are calling on behalf of the Idaho Transportation Department, also known as ITD.

This is not a sales call. The Idaho Transportation Department is conducting a survey to develop a list of companies who have worked with or are interested in providing construction-related services to ITD and other local public agencies.

The survey should take between 10 and 15 minutes to complete. Who can I speak with to get the information that we need from your firm?

*[AFTER REACHING AN APPROPRIATELY SENIOR STAFF MEMBER, THE INTERVIEWER SHOULD RE-INTRODUCE THE PURPOSE OF THE SURVEY AND BEGIN WITH QUESTIONS]*

*[IF ASKED, THE INFORMATION DEVELOPED IN THESE INTERVIEWS WILL ADD TO EXISTING DATA ON COMPANIES WHO HAVE WORKED WITH OR ARE INTERESTED IN WORKING WITH ITD]*

**X1. I have a few basic questions about your company and the type of work you do. Can you confirm that this is [firm name]?**

1=RIGHT COMPANY – **SKIP TO A2**

2=NOT RIGHT COMPANY

99=REFUSE TO GIVE INFORMATION – **TERMINATE**

**Y1. What is the name of this firm?**

1=VERBATIM

**Y2. Is [new firm name] associated with [old firm name] in anyway?**

1=Yes, same owner doing business under a different name

2=Yes, can give information about named company

3=Company bought/sold/changed ownership

98=No, does not have information – **TERMINATE**

99=Refused to give information – **TERMINATE**

**Y3. Can you give me the complete address or city for [new firm name]?**

*[NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT]:*

- . STREET ADDRESS
- . CITY
- . STATE
- . ZIP
- 1=VERBATIM

**A2. Let me confirm that [firm name/new firm name] is a for-profit business, as opposed to a non-profit organization, a foundation, or a government office. Is that correct?**

- 1=Yes, a business
- 2=No, other – **TERMINATE**

**A3a. Let me also confirm what kind of business this is. The information we have from Dun & Bradstreet indicates that your main line of business is [SIC Code description]. Is that correct?**

*[NOTE TO INTERVIEWER – IF ASKED, DUN & BRADSTREET OR D&B, IS A COMPANY THAT COMPILES INFORMATION ON BUSINESSES THROUGHOUT THE COUNTRY]*

- 1=Yes – **SKIP TO A3c**
- 2=No
- 98=(DON'T KNOW)
- 99=(REFUSED)

**A3b. What would you say is the main line of business at [firm name/new firm name]?**

*[NOTE TO INTERVIEWER – IF RESPONDENT INDICATES THAT FIRM'S MAIN LINE OF BUSINESS IS "GENERAL CONSTRUCTION" OR "GENERAL CONTRACTOR," PROBE TO FIND OUT IF MAIN LINE OF BUSINESS IS CLOSER TO BUILDING CONSTRUCTION OR HIGHWAY AND ROAD CONSTRUCTION.]*

- 1=VERBATIM

**A3c. What other types of work, if any, does your business perform?**

*[ENTER VERBATIM RESPONSE]*

- 1=VERBATIM

**A4. Is this the sole location for your business, or do you have offices in other locations?**

- 1=Sole location
- 2=Have other locations
- 98=(DON'T KNOW)
- 99=(REFUSED)

**A5. Is your company a subsidiary or affiliate of another firm?**

- 1=Independent – **SKIP TO B1**
- 2=Subsidiary or affiliate of another firm
- 98=(DON'T KNOW) – **SKIP TO B1**
- 99=(REFUSED) – **SKIP TO B1**

**A6. What is the name of your parent company?**

- 1=VERBATIM
- 98=(DON'T KNOW)
- 99=(REFUSED)

**B1. Next, I have a few questions about your company's role in doing work or providing materials related to construction, maintenance, or design. During the past five years, has your company submitted a bid or received an award-for either the public or private sector-for any part of a contract as either a prime contractor or subcontractor?**

*[NOTE TO INTERVIEWER – THIS INCLUDES PUBLIC OR PRIVATE SECTOR WORK OR BIDS]*

- 1=Yes
- 2=No – **SKIP TO B3**
- 98=(DON'T KNOW) – **SKIP TO B3**
- 99=(REFUSED) – **SKIP TO B3**

**B2. Were those bids or awards to work as a prime contractor, a subcontractor, a trucker/hauler, a supplier, or any other roles?**

*[MULTIPUNCH]*

- 1=Prime contractor
- 2=Subcontractor
- 3=Trucker/hauler
- 4=Supplier (or manufacturer)
- 5= Other - SPECIFY \_\_\_\_\_
- 98=(DON'T KNOW)
- 99=(REFUSED)

**B3. Please think about future construction, maintenance, or design-related work as you answer the following few questions. Is your company *interested* in working with public agencies such as ITD, cities, counties, or other local agencies in Idaho as a prime contractor?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**B4. Is your company *interested* in working with public agencies as a subcontractor, trucker/hauler, or supplier?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**B5. Is your company *interested* in working with ITD specifically in the future?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**Now I want to ask you about the geographic areas your company serves within Idaho. Please think about the geographic areas in which your company has worked, submitted bids, or serves customers as you answer the following questions.**

**C0. Is your company able to serve all regions of Idaho or only certain regions of the state?**

1=All of the state

2=Only parts of the state **SKIP to D1**

98=(DON'T KNOW)

99=(REFUSED)

Now I'm going to read to you several regions of Idaho. After I read each region, please tell me if your company is able to do work in that region.

**C1. Is your company able to do work or serve customers in any part of the northern panhandle, ITD District 1, which is based in Coeur D'Alene?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**C2. Is your company able to do work or serve customers in any part of the southern panhandle, ITD District 2, which is based in Lewiston?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**C3. Is your company able to do work or serve customers in any part of southwestern Idaho, ITD District 3, which is based in Boise?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**C4. Is your company able to do work or serve customers in any part of south-central Idaho, ITD District 4, which is based in Shoshone and includes Twin Falls?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**C5. Is your company able to do work or serve customers in any part of southeastern Idaho, ITD District 5, which is based in Pocatello?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)



**C6. Is your company able to do work or serve customers in any part of central Idaho, ITD District 6, which is based in Rigby and includes Idaho Falls?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**D1. What is the largest prime contract or subcontract your company is able to perform? This includes contracts in either the public sector or private sector.**

*[NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY]*

1=\$100,000 or less

2=More than \$100,000 to \$250,000

3=More than \$250,000 to \$500,000

4=More than \$500,000 to \$1 million

5=More than \$1 million to \$2 million

6=More than \$2 million to \$5 million

7=More than \$5 million to \$10 million

8=More than \$10 million to \$20 million

9=More than \$20 million to \$50 million

10=More than \$50 million to \$100 million

11= More than \$100 million to \$200 million

12=Greater than \$200 million

97=(NONE)

98=(DON'T KNOW)

99=(REFUSED)

**E1. My next questions are about the ownership of the business. A business is defined as woman-owned if more than half—that is, 51 percent or more—of the ownership and control is by women. By this definition, is [*firm name / new firm name*] a woman-owned business?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

**E2. A business is defined as minority-owned if more than half—that is, 51 percent or more—of the ownership and control is by Black American, Asian American, Hispanic American, or Native American individuals. By this definition, is [*firm name/new firm name*] a minority-owned business?**

1=Yes

2=No – **SKIP TO F1**

98=(DON'T KNOW) – **SKIP TO F1**

99=(REFUSED) – **SKIP TO F1**

**E3. Would you say that the minority group ownership of your company is mostly Black American, Asian-Pacific American, Subcontinent Asian American, Hispanic American, or Native American?**

1=Black American

2=Asian Pacific American (persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race)

4=Native American (American Indians, Alaska Native, Aleuts, or Native Hawaiians)

5=Subcontinent Asian American (persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka)

6=(OTHER - SPECIFY) \_\_\_\_\_

98=(DON'T KNOW)

99=(REFUSED)

**F1. Dun & Bradstreet indicates that your company has about [number] employees working in your company across all locations. Is that an accurate estimate of your company's average employees, both full-time and part-time, over the last three years?**

(NOTE TO INTERVIEWER - INCLUDES FULL- AND PART-TIME EMPLOYEES WHO WORK ACROSS ALL THEIR LOCATIONS)

1=Yes – **SKIP TO F3**

2=No

98=(DON'T KNOW) – **SKIP TO F3**

99=(REFUSED) – **SKIP TO F3**

**F2. About how many full-time and part-time employees did you have working in your company across all locations, on average, over the last three years?**

VERBATIM (CODE INTO CATEGORIES)

[READ LIST IF NECESSARY]

1= 100 employees or fewer

6=501-750 employees

2=101-150 employees

7=751-1,000 employees

3=151-200 employees

8=1,001-1,250 employees

4=201-250 employees

9=1,251-1,500 employees

5=251-500 employees

10=1,501 or more employees

**F3. Dun & Bradstreet lists the average annual gross revenue of your company to be [*dollar amount*]. Is that an accurate estimate for your company's average annual gross revenue, including all locations, over the last three years?**

1=Yes – **SKIP TO G1**

2=No

98=(DON'T KNOW) – **SKIP TO G1**

99=(REFUSED) – **SKIP TO G1**

**F4. What was the average annual gross revenue of your company, including all locations, over the last three years? Would you say . . .**

**[READ LIST]**

1=\$1 Million or less

2=More than \$1 Million to \$2.25 Million

3=More than \$2.25 Million to \$3.5 Million

4=More than \$3.5 Million to \$4.5 Million

5=More than \$4.5 Million to \$6 Million

6=More than \$6 Million to \$8 Million

7=More than \$8 Million to \$12 Million

8=More than \$12 Million to \$16.5 Million

9=More than \$16.5 Million to \$19.5 Million

10=More than \$19.5 Million to \$22 Million

11=More than \$22 Million but less than \$28.48 Million

12=\$28.48 Million or more

98= (DON'T KNOW)

99= (REFUSED)

**G1a. We're interested in whether your company has experienced barriers or difficulties related to working with, or attempting to work with, the Idaho Transportation Department or other local government organizations. Do you have any thoughts to share?**

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97=(NOTHING/NONE/NO COMMENTS)

98=(DON'T KNOW)

99=(REFUSED)

**G1b. Do you have any additional thoughts to share regarding general marketplace conditions in Idaho, starting or expanding a business in your industry, or obtaining work?**

1=VERBATIM (PROBE FOR COMPLETE THOUGHTS)

97=(NOTHING/NONE/NO COMMENTS)

98=(DON'T KNOW)

99=(REFUSED)

**G2. Would you be willing to participate in a follow-up interview about any of those issues?**

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED) **H1. What is your name?**

1=VERBATIM NAME

**H2. What is your position at [*firm name / new firm name*]?**

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

10=(OTHER - SPECIFY) \_\_\_\_\_

99=(REFUSED)

**H3. And at what email address can you be reached?**

1=VERBATIM

**Thank you very much for your participation. If you have any questions or concerns, please contact Ronnie Winks, DBE Program Coordinator from the Idaho Transportation Department at 208-334-8567.**

# APPENDIX F.

## Disparity Analysis Results Tables

As part of the disparity analysis, BBC Research & Consulting (BBC) compared the actual participation, or *utilization*, of person of color- (POC-) and woman-owned businesses in construction; professional services; and non-professional services, goods, and supplies prime contracts and subcontracts the Idaho Transportation Department (ITD) awarded between October 1, 2018 and September 30, 2021 (i.e., the *study period*) with the percentage of contract dollars those businesses might be expected to receive based on their *availability* for that work.<sup>1</sup> Appendix F presents detailed results from the disparity analysis for relevant business groups and various sets of projects ITD awarded during the study period.

### A. Format and Information

Each table in Appendix F presents disparity analysis results for a different set of projects. For example, Figure F-1 presents disparity analysis results for all projects the Division of Highways and the Consulting Division awarded during the study period. A review of Figure F-1 introduces the calculations and format of all disparity analysis tables in Appendix F. As shown in Figure F-1, the tables present information about each relevant business group in separate rows:

- “All businesses” in row (1) pertains to information about all businesses regardless of the race/ethnicity and gender of their owners.
- Row (2) presents results for all POC- and woman-owned businesses considered together, regardless of whether they were certified as disadvantaged business enterprises (DBEs).
- Row (3) presents results for all non-Hispanic white woman-owned businesses, regardless of whether they were certified as DBEs.
- Row (4) presents results for all POC-owned businesses, regardless of whether they were certified as DBEs.
- Rows (5) through (9) present results for businesses of each relevant racial/ethnic group, regardless of whether they were certified as DBEs.
- Rows (10) through (17) present utilization analysis results for businesses of each relevant racial/ethnic and gender group that were certified as DBEs.

**1. Utilization analysis results.** Each results table includes the same columns of information:

- Column (a) presents the total number of prime contracts and subcontracts (i.e., *contract elements*) BBC analyzed as part of the set. As shown in row (1) of column (a) of Figure F-1, BBC analyzed 3,096 contract elements the Division of Highways and the Consulting Division awarded during the study period. The values presented in column (a) represent the number of contract elements in which businesses of each group participated. For example, as shown in row (5) of column (a), Asian

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<sup>1</sup> “Woman-owned businesses” refers to white woman owned businesses. Information and results for businesses owned by women of color are included along with those of their corresponding racial/ethnic groups.

Pacific American-owned businesses participated in 46 prime contracts or subcontracts the two divisions awarded during the study period.

- Column (b) presents the dollars (in thousands) associated with the set of contract elements. As shown in row (1) of column (b) of Figure F-1, BBC examined approximately \$1.4 billion that was associated with the 3,096 contract elements the Division of Highways and the Consulting Division awarded during the study period. The value presented in column (b) for each individual business group represents the dollars businesses of that particular group received on the set of contract elements. For example, as shown in row (5) of column (b), Asian Pacific American-owned businesses received approximately \$1,878,000 of the prime contract and subcontract dollars the two divisions awarded during the study period.
- Column (c) presents the participation of each business group as a percentage of total dollars associated with the set of contract elements. BBC calculated each percentage in column (c) by dividing the dollars going to a particular group in column (b) by the total dollars associated with the set of contract elements shown in row (1) of column (b), and then expressing the result as a percentage. For example, for Asian Pacific American-owned businesses, the study team divided \$1,878,000 by \$1.4 billion and multiplied by 100 for a result of 0.1 percent, as shown in row (5) of column (c).

**2. Availability results.** Column (d) of Figure F-1 presents the availability of each relevant group for all contract elements BBC analyzed as part of the contract set. Availability estimates, which are represented as percentages of the total contracting dollars associated with the set of contract elements, serve as benchmarks against which to compare the participation of specific groups for specific sets of contracts. For example, as shown in row (5) of column (d), the availability of Asian Pacific American-owned businesses for Division of Highways and Consulting Division work is 0.4 percent. That is, Asian Pacific American-owned businesses might be expected to receive 0.4 percent of relevant Division of Highways and Consulting Division contract dollars based on their availability for that work.

**3. Disparity indices.** BBC calculated a disparity index, or ratio, for each relevant racial/ethnic and gender group, which compares the participation of POC- and woman-owned businesses in agency work to their estimated availability for that work. Column (e) of Figure F-1 presents the disparity index for each group. For example, as reported in row (5) of column (e), the disparity index for Asian Pacific American-owned businesses was 32.5, indicating that the Division of Highways and the Consulting Division awarded approximately \$0.33 to Asian Pacific American-owned businesses for every dollar one might expect the two divisions to award to those businesses based on their availability for that work. For disparity indices exceeding 200, BBC reported an index of “200+.” When there was no participation and no availability for a particular group for a particular set of projects, BBC reported a disparity index of “100,” indicating parity.

## B. Index and Tables

The table of contents presents an index of the sets of projects for which BBC analyzed disparity analysis results. In addition, the heading of each table in Appendix F provides a description of the subset of projects BBC analyzed for that particular table.

## Table of Contents

Table	Division	Characteristics							
		Time period	Contract area	Contract role	Contract size	Funding Source	Goals	Potential DBE	Region
F-1	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-2	Highway	<b>10/01/18 - 03/31/20</b>	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-3	Highway	<b>04/01/20 - 09/30/21</b>	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-4	Highway	10/01/18 - 09/30/21	<b>Construction</b>	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-5	Highway	10/01/18 - 09/30/21	<b>Professional services</b>	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-6	Highway	10/01/18 - 09/30/21	All industries	<b>Prime contracts</b>	N/A	All funding sources	N/A	N/A	All regions
F-7	Highway	10/01/18 - 09/30/21	All industries	<b>Subcontracts</b>	N/A	All funding sources	N/A	N/A	All regions
F-8	Highway	10/01/18 - 09/30/21	All industries	<b>Prime contracts</b>	<b>Large Prime</b>	All funding sources	N/A	N/A	All regions
F-9	Highway	10/01/18 - 09/30/21	All industries	<b>Prime contracts</b>	<b>Small Prime</b>	All funding sources	N/A	N/A	All regions
F-10	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	N/A	All regions
F-11	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	<b>State</b>	N/A	N/A	All regions
F-12	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	<b>Yes</b>	N/A	All regions
F-13	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	<b>No</b>	N/A	All regions
F-14	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	<b>Northern</b>
F-15	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	<b>Boise-area</b>
F-16	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	<b>Eastern</b>
F-17	Public Transit	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-18	Aeronautics	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A	All regions
F-19	Highway	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	<b>Potential DBE</b>	All regions
F-20	Highway	10/01/18 - 09/30/21	<b>Construction</b>	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	<b>Potential DBE</b>	All regions
F-21	Highway	10/01/18 - 09/30/21	<b>Professional services</b>	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	<b>Potential DBE</b>	All regions
F-22	Public Transit	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	<b>Potential DBE</b>	All regions
F-23	Aeronautics	10/01/18 - 09/30/21	All industries	Prime contracts and subcontracts	N/A	<b>Federal</b>	N/A	<b>Potential DBE</b>	All regions



**Figure F-1.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	3,096	\$1,426,236			
(2) POC- and woman-owned businesses	722	\$113,756	8.0	17.0	46.8
(3) Non-Hispanic white woman-owned	439	\$73,354	5.1	7.6	67.7
(4) POC-owned	283	\$40,402	2.8	9.4	30.0
(5) Asian Pacific American-owned	46	\$1,878	0.1	0.4	32.5
(6) Black American-owned	5	\$884	0.1	0.4	16.3
(7) Hispanic American-owned	203	\$20,889	1.5	4.3	34.2
(8) Native American-owned	21	\$15,888	1.1	4.4	25.5
(9) Subcontinent Asian American-owned	8	\$864	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	653	\$92,602	6.5		
(11) Non-Hispanic white woman-owned DBE	382	\$67,112	4.7		
(12) POC-owned DBE	271	\$25,490	1.8		
(13) Asian Pacific American-owned DBE	46	\$1,878	0.1		
(14) Black American-owned DBE	5	\$884	0.1		
(15) Hispanic American-owned DBE	201	\$20,792	1.5		
(16) Native American-owned DBE	14	\$1,628	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-2.**  
**Division: Highway**  
**Time period: 10/01/2018 - 03/31/2020**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,746	\$847,219			
(2) POC- and woman-owned businesses	410	\$65,845	7.8	16.8	46.2
(3) Non-Hispanic white woman-owned	256	\$38,058	4.5	7.5	59.6
(4) POC-owned	154	\$27,787	3.3	9.3	35.3
(5) Asian Pacific American-owned	25	\$1,032	0.1	0.5	22.6
(6) Black American-owned	5	\$884	0.1	0.4	29.0
(7) Hispanic American-owned	107	\$10,343	1.2	4.1	30.0
(8) Native American-owned	13	\$15,149	1.8	4.3	41.4
(9) Subcontinent Asian American-owned	4	\$380	0.0	0.0	200+
(10) POC-owned or woman-owned DBE	371	\$46,308	5.5		
(11) Non-Hispanic white woman-owned DBE	224	\$33,066	3.9		
(12) POC-owned DBE	147	\$13,242	1.6		
(13) Asian Pacific American-owned DBE	25	\$1,032	0.1		
(14) Black American-owned DBE	5	\$884	0.1		
(15) Hispanic American-owned DBE	106	\$10,272	1.2		
(16) Native American-owned DBE	8	\$944	0.1		
(17) Subcontinent Asian American-owned DBE	3	\$111	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-3.**  
**Division: Highway**  
**Time period: 04/01/2020 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,350	\$579,016			
(2) POC- and woman-owned businesses	312	\$47,911	8.3	17.3	47.7
(3) Non-Hispanic white woman-owned	183	\$35,296	6.1	7.7	79.3
(4) POC-owned	129	\$12,615	2.2	9.7	22.6
(5) Asian Pacific American-owned	21	\$846	0.1	0.2	70.5
(6) Black American-owned	0	\$0	0.0	0.4	0.0
(7) Hispanic American-owned	96	\$10,547	1.8	4.6	39.8
(8) Native American-owned	8	\$739	0.1	4.5	2.9
(9) Subcontinent Asian American-owned	4	\$484	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	282	\$46,294	8.0		
(11) Non-Hispanic white woman-owned DBE	158	\$34,046	5.9		
(12) POC-owned DBE	124	\$12,248	2.1		
(13) Asian Pacific American-owned DBE	21	\$846	0.1		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	95	\$10,520	1.8		
(16) Native American-owned DBE	6	\$684	0.1		
(17) Subcontinent Asian American-owned DBE	2	\$197	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-4.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: Construction**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,701	\$1,139,800			
(2) POC- and woman-owned businesses	474	\$96,494	8.5	18.9	44.9
(3) Non-Hispanic white woman-owned	316	\$61,791	5.4	8.7	62.3
(4) POC-owned	158	\$34,704	3.0	10.2	29.9
(5) Asian Pacific American-owned	6	\$509	0.0	0.5	8.8
(6) Black American-owned	5	\$884	0.1	0.0	170.4
(7) Hispanic American-owned	128	\$17,616	1.5	4.9	31.3
(8) Native American-owned	19	\$15,695	1.4	4.7	29.4
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	434	\$80,832	7.1		
(11) Non-Hispanic white woman-owned DBE	284	\$60,467	5.3		
(12) POC-owned DBE	150	\$20,365	1.8		
(13) Asian Pacific American-owned DBE	6	\$509	0.0		
(14) Black American-owned DBE	5	\$884	0.1		
(15) Hispanic American-owned DBE	126	\$17,519	1.5		
(16) Native American-owned DBE	13	\$1,453	0.1		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-5.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: Professional services**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,395	\$286,435			
(2) POC- and woman-owned businesses	248	\$17,262	6.0	9.7	62.0
(3) Non-Hispanic white woman-owned	123	\$11,563	4.0	3.2	125.6
(4) POC-owned	125	\$5,698	2.0	6.5	30.6
(5) Asian Pacific American-owned	40	\$1,369	0.5	0.0	200+
(6) Black American-owned	0	\$0	0.0	1.7	0.0
(7) Hispanic American-owned	75	\$3,273	1.1	1.6	69.4
(8) Native American-owned	2	\$193	0.1	3.2	2.1
(9) Subcontinent Asian American-owned	8	\$864	0.3	0.0	200+
(10) POC-owned or woman-owned DBE	219	\$11,770	4.1		
(11) Non-Hispanic white woman-owned DBE	98	\$6,646	2.3		
(12) POC-owned DBE	121	\$5,125	1.8		
(13) Asian Pacific American-owned DBE	40	\$1,369	0.5		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	75	\$3,273	1.1		
(16) Native American-owned DBE	1	\$174	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.1		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-6.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,103	\$990,275			
(2) POC- and woman-owned businesses	92	\$29,882	3.0	17.8	17.0
(3) Non-Hispanic white woman-owned	50	\$10,337	1.0	8.5	12.3
(4) POC-owned	42	\$19,545	2.0	9.3	21.3
(5) Asian Pacific American-owned	20	\$883	0.1	0.0	200+
(6) Black American-owned	0	\$0	0.0	0.4	0.0
(7) Hispanic American-owned	15	\$3,979	0.4	4.6	8.8
(8) Native American-owned	4	\$14,128	1.4	4.3	33.5
(9) Subcontinent Asian American-owned	3	\$556	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	67	\$10,382	1.0		
(11) Non-Hispanic white woman-owned DBE	32	\$5,520	0.6		
(12) POC-owned DBE	35	\$4,862	0.5		
(13) Asian Pacific American-owned DBE	20	\$883	0.1		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	15	\$3,979	0.4		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-7.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,993	\$435,961			
(2) POC- and woman-owned businesses	630	\$83,874	19.2	15.4	125.2
(3) Non-Hispanic white woman-owned	389	\$63,017	14.5	5.6	200+
(4) POC-owned	241	\$20,857	4.8	9.8	48.8
(5) Asian Pacific American-owned	26	\$995	0.2	1.3	17.4
(6) Black American-owned	5	\$884	0.2	0.2	91.0
(7) Hispanic American-owned	188	\$16,910	3.9	3.7	106.0
(8) Native American-owned	17	\$1,760	0.4	4.6	8.7
(9) Subcontinent Asian American-owned	5	\$308	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	586	\$82,220	18.9		
(11) Non-Hispanic white woman-owned DBE	350	\$61,592	14.1		
(12) POC-owned DBE	236	\$20,628	4.7		
(13) Asian Pacific American-owned DBE	26	\$995	0.2		
(14) Black American-owned DBE	5	\$884	0.2		
(15) Hispanic American-owned DBE	186	\$16,813	3.9		
(16) Native American-owned DBE	14	\$1,628	0.4		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.1		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.



**Figure F-8.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts**

**Funding source: All funding sources**

**Large contracts**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	242	\$839,143			
(2) POC- and woman-owned businesses	8	\$19,589	2.3	18.2	12.8
(3) Non-Hispanic white woman-owned	5	\$5,479	0.7	8.8	7.4
(4) POC-owned	3	\$14,110	1.7	9.4	17.9
(5) Asian Pacific American-owned	0	\$0	0.0	0.0	100.0
(6) Black American-owned	0	\$0	0.0	0.4	0.0
(7) Hispanic American-owned	0	\$0	0.0	4.6	0.0
(8) Native American-owned	3	\$14,110	1.7	4.4	38.3
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	3	\$2,367	0.3		
(11) Non-Hispanic white woman-owned DBE	3	\$2,367	0.3		
(12) POC-owned DBE	0	\$0	0.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	0	\$0	0.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-9.

Division: Highway

Time period: 10/01/2018 - 09/30/2021

Contract area: All industries

Contract role: Prime contracts

Funding source: All funding sources

Small contracts

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	861	\$151,132			
(2) POC- and woman-owned businesses	84	\$10,293	6.8	15.4	44.2
(3) Non-Hispanic white woman-owned	45	\$4,857	3.2	6.8	47.5
(4) POC-owned	39	\$5,435	3.6	8.6	41.6
(5) Asian Pacific American-owned	20	\$883	0.6	0.0	200+
(6) Black American-owned	0	\$0	0.0	0.7	0.0
(7) Hispanic American-owned	15	\$3,979	2.6	4.3	60.8
(8) Native American-owned	1	\$18	0.0	3.6	0.3
(9) Subcontinent Asian American-owned	3	\$556	0.4	0.0	200+
(10) POC-owned or woman-owned DBE	64	\$8,015	5.3		
(11) Non-Hispanic white woman-owned DBE	29	\$3,153	2.1		
(12) POC-owned DBE	35	\$4,862	3.2		
(13) Asian Pacific American-owned DBE	20	\$883	0.6		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	15	\$3,979	2.6		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-10.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: Federal**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	2,389	\$1,120,549			
(2) POC- and woman-owned businesses	604	\$102,306	9.1	16.1	56.7
(3) Non-Hispanic white woman-owned	353	\$63,584	5.7	7.4	76.3
(4) POC-owned	251	\$38,721	3.5	8.7	39.8
(5) Asian Pacific American-owned	41	\$1,746	0.2	0.4	40.5
(6) Black American-owned	3	\$816	0.1	0.4	17.3
(7) Hispanic American-owned	179	\$19,545	1.7	3.8	45.3
(8) Native American-owned	20	\$15,751	1.4	4.0	35.0
(9) Subcontinent Asian American-owned	8	\$864	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	542	\$81,367	7.3		
(11) Non-Hispanic white woman-owned DBE	303	\$57,558	5.1		
(12) POC-owned DBE	239	\$23,809	2.1		
(13) Asian Pacific American-owned DBE	41	\$1,746	0.2		
(14) Black American-owned DBE	3	\$816	0.1		
(15) Hispanic American-owned DBE	177	\$19,448	1.7		
(16) Native American-owned DBE	13	\$1,491	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-11.**  
**Division: Highway**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: State**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	707	\$305,687			
(2) POC- and woman-owned businesses	118	\$11,450	3.7	20.4	18.4
(3) Non-Hispanic white woman-owned	86	\$9,770	3.2	8.2	39.1
(4) POC-owned	32	\$1,681	0.5	12.2	4.5
(5) Asian Pacific American-owned	5	\$132	0.0	0.5	9.0
(6) Black American-owned	2	\$67	0.0	0.2	9.8
(7) Hispanic American-owned	24	\$1,344	0.4	5.9	7.5
(8) Native American-owned	1	\$137	0.0	5.7	0.8
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	111	\$11,235	3.7		
(11) Non-Hispanic white woman-owned DBE	79	\$9,554	3.1		
(12) POC-owned DBE	32	\$1,681	0.5		
(13) Asian Pacific American-owned DBE	5	\$132	0.0		
(14) Black American-owned DBE	2	\$67	0.0		
(15) Hispanic American-owned DBE	24	\$1,344	0.4		
(16) Native American-owned DBE	1	\$137	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-12.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: All funding sources**

**Goals**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	1,929	\$1,097,337			
(2) POC- and woman-owned businesses	536	\$99,920	9.1	16.3	56.0
(3) Non-Hispanic white woman-owned	317	\$61,934	5.6	7.5	75.1
(4) POC-owned	219	\$37,986	3.5	8.7	39.6
(5) Asian Pacific American-owned	24	\$1,325	0.1	0.4	30.9
(6) Black American-owned	3	\$816	0.1	0.4	18.8
(7) Hispanic American-owned	165	\$19,249	1.8	3.9	44.9
(8) Native American-owned	19	\$15,732	1.4	4.0	35.5
(9) Subcontinent Asian American-owned	8	\$864	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	487	\$79,411	7.2		
(11) Non-Hispanic white woman-owned DBE	279	\$56,318	5.1		
(12) POC-owned DBE	208	\$23,092	2.1		
(13) Asian Pacific American-owned DBE	24	\$1,325	0.1		
(14) Black American-owned DBE	3	\$816	0.1		
(15) Hispanic American-owned DBE	163	\$19,152	1.7		
(16) Native American-owned DBE	13	\$1,491	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-13.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: All funding sources**

**No Goals**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	1,167	\$328,899			
(2) POC- and woman-owned businesses	186	\$13,836	4.2	19.6	21.4
(3) Non-Hispanic white woman-owned	122	\$11,420	3.5	7.9	44.2
(4) POC-owned	64	\$2,416	0.7	11.8	6.2
(5) Asian Pacific American-owned	22	\$553	0.2	0.4	37.4
(6) Black American-owned	2	\$67	0.0	0.3	6.4
(7) Hispanic American-owned	38	\$1,641	0.5	5.5	9.0
(8) Native American-owned	2	\$155	0.0	5.5	0.9
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	166	\$13,191	4.0		
(11) Non-Hispanic white woman-owned DBE	103	\$10,794	3.3		
(12) POC-owned DBE	63	\$2,397	0.7		
(13) Asian Pacific American-owned DBE	22	\$553	0.2		
(14) Black American-owned DBE	2	\$67	0.0		
(15) Hispanic American-owned DBE	38	\$1,641	0.5		
(16) Native American-owned DBE	1	\$137	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-14.****Division: Highway****District 1 and 2****Time period: 10/01/2018 - 09/30/2021****Contract area: All industries****Contract role: Prime contracts and subcontracts****Funding source: All funding sources**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	987	\$404,965			
(2) POC- and woman-owned businesses	239	\$49,437	12.2	16.6	73.6
(3) Non-Hispanic white woman-owned	147	\$29,501	7.3	9.5	76.4
(4) POC-owned	92	\$19,935	4.9	7.0	70.0
(5) Asian Pacific American-owned	37	\$1,172	0.3	0.1	200+
(6) Black American-owned	5	\$884	0.2	0.4	51.9
(7) Hispanic American-owned	35	\$3,053	0.8	3.0	25.4
(8) Native American-owned	10	\$14,518	3.6	3.6	100.4
(9) Subcontinent Asian American-owned	5	\$308	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	211	\$34,483	8.5		
(11) Non-Hispanic white woman-owned DBE	128	\$28,905	7.1		
(12) POC-owned DBE	83	\$5,579	1.4		
(13) Asian Pacific American-owned DBE	37	\$1,172	0.3		
(14) Black American-owned DBE	5	\$884	0.2		
(15) Hispanic American-owned DBE	33	\$2,956	0.7		
(16) Native American-owned DBE	3	\$258	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.1		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research &amp; Consulting Disparity Analysis.



Figure F-15.

Division: Highway

District 3

Time period: 10/01/2018 - 09/30/2021

Contract area: All industries

Contract role: Prime contracts and subcontracts

Funding source: All funding sources

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,067	\$596,330			
(2) POC- and woman-owned businesses	236	\$35,321	5.9	15.2	39.0
(3) Non-Hispanic white woman-owned	145	\$25,171	4.2	7.7	54.6
(4) POC-owned	91	\$10,150	1.7	7.5	22.8
(5) Asian Pacific American-owned	4	\$445	0.1	0.7	10.5
(6) Black American-owned	0	\$0	0.0	0.4	0.0
(7) Hispanic American-owned	81	\$8,585	1.4	2.7	53.2
(8) Native American-owned	3	\$564	0.1	3.6	2.6
(9) Subcontinent Asian American-owned	3	\$556	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	212	\$32,046	5.4		
(11) Non-Hispanic white woman-owned DBE	124	\$22,451	3.8		
(12) POC-owned DBE	88	\$9,595	1.6		
(13) Asian Pacific American-owned DBE	4	\$445	0.1		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	81	\$8,585	1.4		
(16) Native American-owned DBE	3	\$564	0.1		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-16.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: All funding sources**

**District 4, 5, and 6**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	1,057	\$444,084			
(2) POC- and woman-owned businesses	248	\$29,299	6.6	19.5	33.9
(3) Non-Hispanic white woman-owned	147	\$18,681	4.2	5.4	78.4
(4) POC-owned	101	\$10,618	2.4	14.1	17.0
(5) Asian Pacific American-owned	5	\$260	0.1	0.3	20.7
(6) Black American-owned	0	\$0	0.0	0.3	0.0
(7) Hispanic American-owned	88	\$9,552	2.2	7.4	29.0
(8) Native American-owned	8	\$806	0.2	6.1	3.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	231	\$26,374	5.9		
(11) Non-Hispanic white woman-owned DBE	130	\$15,757	3.5		
(12) POC-owned DBE	101	\$10,618	2.4		
(13) Asian Pacific American-owned DBE	5	\$260	0.1		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	88	\$9,552	2.2		
(16) Native American-owned DBE	8	\$806	0.2		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-17.**  
**Division: Public Transit**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	32	\$7,265			
(2) POC- and woman-owned businesses	8	\$117	1.6	4.7	34.5
(3) Non-Hispanic white woman-owned	7	\$117	1.6	0.4	200+
(4) POC-owned	1	\$0	0.0	4.3	0.1
(5) Asian Pacific American-owned	0	\$0	0.0	0.0	0.0
(6) Black American-owned	0	\$0	0.0	0.0	0.0
(7) Hispanic American-owned	1	\$0	0.0	4.1	0.1
(8) Native American-owned	0	\$0	0.0	0.1	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	5	\$91	1.2		
(11) Non-Hispanic white woman-owned DBE	4	\$91	1.2		
(12) POC-owned DBE	1	\$0	0.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	1	\$0	0.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-18.**  
**Division: Aeronautics**  
**Time period: 10/01/2018 - 09/30/2021**  
**Contract area: All industries**  
**Contract role: Prime contracts and subcontracts**  
**Funding source: All funding sources**

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	14	\$1,451			
(2) POC- and woman-owned businesses	0	\$0	0.0	7.0	0.0
(3) Non-Hispanic white woman-owned	0	\$0	0.0	2.6	0.0
(4) POC-owned	0	\$0	0.0	4.4	0.0
(5) Asian Pacific American-owned	0	\$0	0.0	0.0	100.0
(6) Black American-owned	0	\$0	0.0	1.1	0.0
(7) Hispanic American-owned	0	\$0	0.0	1.1	0.0
(8) Native American-owned	0	\$0	0.0	2.2	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	0	\$0	0.0		
(11) Non-Hispanic white woman-owned DBE	0	\$0	0.0		
(12) POC-owned DBE	0	\$0	0.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	0	\$0	0.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-19.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: Federal**

**Analysis of potential DBEs**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	2,389	\$1,120,549			
(2) POC- and woman-owned businesses	604	\$102,306	9.1	10.6	86.4
(3) Non-Hispanic white woman-owned	353	\$63,584	5.7	3.6	157.9
(4) POC-owned	251	\$38,721	3.5	7.0	49.6
(5) Asian Pacific American-owned	41	\$1,746	0.2	0.4	40.5
(6) Black American-owned	3	\$816	0.1	0.4	17.3
(7) Hispanic American-owned	179	\$19,545	1.7	2.2	81.0
(8) Native American-owned	20	\$15,751	1.4	4.0	35.1
(9) Subcontinent Asian American-owned	8	\$864	0.1	0.0	200+
(10) POC-owned or woman-owned DBE	542	\$81,367	7.3		
(11) Non-Hispanic white woman-owned DBE	303	\$57,558	5.1		
(12) POC-owned DBE	239	\$23,809	2.1		
(13) Asian Pacific American-owned DBE	41	\$1,746	0.2		
(14) Black American-owned DBE	3	\$816	0.1		
(15) Hispanic American-owned DBE	177	\$19,448	1.7		
(16) Native American-owned DBE	13	\$1,491	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-20.**

**Division: Highway**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: Construction**

**Contract role: Prime contracts and subcontracts**

**Funding source: Federal**

**Analysis of potential DBEs**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	1,211	\$867,883			
(2) POC- and woman-owned businesses	377	\$86,452	10.0	10.8	92.1
(3) Non-Hispanic white woman-owned	241	\$53,057	6.1	3.7	165.0
(4) POC-owned	136	\$33,395	3.8	7.1	54.1
(5) Asian Pacific American-owned	6	\$509	0.1	0.5	11.8
(6) Black American-owned	3	\$816	0.1	0.1	168.7
(7) Hispanic American-owned	109	\$16,512	1.9	2.3	82.8
(8) Native American-owned	18	\$15,558	1.8	4.3	42.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	343	\$70,936	8.2		
(11) Non-Hispanic white woman-owned DBE	215	\$51,879	6.0		
(12) POC-owned DBE	128	\$19,057	2.2		
(13) Asian Pacific American-owned DBE	6	\$509	0.1		
(14) Black American-owned DBE	3	\$816	0.1		
(15) Hispanic American-owned DBE	107	\$16,415	1.9		
(16) Native American-owned DBE	12	\$1,317	0.2		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-21.

Division: Highway

Time period: 10/01/2018 - 09/30/2021

Contract area: Professional services

Contract role: Prime contracts and subcontracts

Funding source: Federal

Analysis of potential DBEs

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1,178	\$252,666			
(2) POC- and woman-owned businesses	227	\$15,853	6.3	9.7	64.8
(3) Non-Hispanic white woman-owned	112	\$10,527	4.2	3.2	129.9
(4) POC-owned	115	\$5,326	2.1	6.5	32.6
(5) Asian Pacific American-owned	35	\$1,237	0.5	0.0	200+
(6) Black American-owned	0	\$0	0.0	1.7	0.0
(7) Hispanic American-owned	70	\$3,033	1.2	1.7	72.3
(8) Native American-owned	2	\$193	0.1	3.1	2.4
(9) Subcontinent Asian American-owned	8	\$864	0.3	0.0	200+
(10) POC-owned or woman-owned DBE	199	\$10,431	4.1		
(11) Non-Hispanic white woman-owned DBE	88	\$5,678	2.2		
(12) POC-owned DBE	111	\$4,753	1.9		
(13) Asian Pacific American-owned DBE	35	\$1,237	0.5		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	70	\$3,033	1.2		
(16) Native American-owned DBE	1	\$174	0.1		
(17) Subcontinent Asian American-owned DBE	5	\$308	0.1		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.



**Figure F-22.**

**Division: Public Transit**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: Federal**

**Analysis of potential DBEs**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	32	\$7,265			
(2) POC- and woman-owned businesses	8	\$117	1.6	4.7	34.6
(3) Non-Hispanic white woman-owned	7	\$117	1.6	0.4	200+
(4) POC-owned	1	\$0	0.0	4.3	0.1
(5) Asian Pacific American-owned	0	\$0	0.0	0.0	0.0
(6) Black American-owned	0	\$0	0.0	0.0	0.0
(7) Hispanic American-owned	1	\$0	0.0	4.1	0.1
(8) Native American-owned	0	\$0	0.0	0.1	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	5	\$91	1.2		
(11) Non-Hispanic white woman-owned DBE	4	\$91	1.2		
(12) POC-owned DBE	1	\$0	0.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	1	\$0	0.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.

**Figure F-23.**

**Division: Aeronautics**

**Time period: 10/01/2018 - 09/30/2021**

**Contract area: All industries**

**Contract role: Prime contracts and subcontracts**

**Funding source: Federal**

**Analysis of potential DBEs**

<b>Business Group</b>	<b>(a) Number of contract elements</b>	<b>(b) Total dollars (thousands)</b>	<b>(c) Utilization percentage</b>	<b>(d) Availability percentage</b>	<b>(e) Disparity index</b>
(1) All businesses	9	\$1,081			
(2) POC- and woman-owned businesses	0	\$0	0.0	6.8	0.0
(3) Non-Hispanic white woman-owned	0	\$0	0.0	2.3	0.0
(4) POC-owned	0	\$0	0.0	4.4	0.0
(5) Asian Pacific American-owned	0	\$0	0.0	0.0	100.0
(6) Black American-owned	0	\$0	0.0	1.1	0.0
(7) Hispanic American-owned	0	\$0	0.0	1.1	0.0
(8) Native American-owned	0	\$0	0.0	2.2	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	0	\$0	0.0		
(11) Non-Hispanic white woman-owned DBE	0	\$0	0.0		
(12) POC-owned DBE	0	\$0	0.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	0	\$0	0.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	0	\$0	0.0		

Note: Numbers are rounded to the nearest thousand dollars or tenth of 1 percent.

\*DBE certified Non-Hispanic white male-owned businesses are not included in the DBE subgroups of this table.

Source: BBC Research & Consulting Disparity Analysis.