



2023 Harry Reid International Airport Disparity Study

FINAL REPORT

Final Report

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2023 Harry Reid International Airport Disparity Study

Prepared for

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SECTION ES.

Executive Summary

BBC Research & Consulting (BBC) conducted a *disparity study* to evaluate whether person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientation (LGBTQ+)-owned businesses face any barriers in Harry Reid International Airport's (LAS') construction, professional services, and non-professional services and supplies contracts and procurements. As part of the disparity study, we examined whether there are any disparities, or differences, between:

- The percentage of contract and procurement dollars LAS awarded to POC-, woman-, veteran-, and LGBTQ+-owned businesses during the *study period*, which was July 1, 2017 through June 30, 2022 (i.e., *utilization* or *participation*); and
- The percentage of contract and procurement dollars one might expect LAS to award to POC-, woman-, veteran-, and LGBTQ+-owned businesses based on their availability to perform specific types and sizes of LAS contracts and procurements (i.e., *availability*).

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

A. Disparity Study Results

BBC analyzed \$419 million worth of contracts and procurements LAS awarded during the study period to measure the participation and availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for LAS work to assess whether any disparities exist between those measures. We summarize key results from those analyses below and identify sections of the report that provide more details about the methodology and results of each analysis.

1. Availability analysis (Chapter 5 and Appendix E of the report). BBC conducted a custom census availability analysis to estimate the availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for LAS work while accounting for the specific characteristics of relevant businesses that exist in Clark County and the specific characteristics of the relevant prime contracts and subcontracts LAS awards. Figure ES-1 presents the availability of each relevant group of POC- and woman-owned businesses for relevant LAS contracts and procurements overall. The availability of those businesses is 34.6 percent. The business groups that exhibit the greatest availability for LAS work are Hispanic

American-owned businesses (11.1%), white woman-owned businesses (9.1%), and Black American-owned businesses (6.9%).¹

BBC also examined the overall availability of Middle Eastern and North African (MENA) American-, veteran-, and LGBTQ+-owned businesses for LAS work, the results for which are not shown in Figure ES-1.² The analysis indicated that the availability of MENA American-owned businesses for LAS work is 2.7 percent, the availability of veteran-owned businesses is 12.4 percent, and the availability of LGBTQ+-owned businesses is 2.1 percent.

Figure ES-1.
Overall availability
estimates for LAS work

Note:

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

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	9.1 %
Asian Pacific American-owned	4.7 %
Black American-owned	6.9 %
Hispanic American-owned	11.1 %
Native American-owned	2.0 %
Subcontinent Asian American-owned	0.7 %
Total POC-owned	25.5 %
Total POC- and woman-owned	34.6 %

2. Utilization analysis (Chapter 6 of the report). BBC also calculated the participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in relevant contracts and procurements LAS awarded during the study period. As shown in Figure ES-2, during the study period, LAS awarded 9.2 percent of its relevant contract and procurement dollars to POC- and woman-owned businesses. The groups that exhibited the greatest levels of participation in that work were white woman-owned businesses (3.4%), Black American-owned businesses (2.7%), and Hispanic American-owned businesses (1.8%).

BBC also examined the overall participation of MENA American-, veteran-, and LGBTQ+-owned businesses for LAS work, the results for which are not shown in Figure ES-2. LAS awarded 0.3 percent of relevant contract and procurement dollars to MENA American-owned businesses, 1.5 percent to veteran-owned businesses, and 0.0 percent to LGBTQ+-owned businesses.

¹ The overall availability estimates presented in ES-1 are based on all relevant contracts and procurements LAS awarded during the study period, regardless of funding source. Availability estimates for United States Department of Transportation (USDOT)-funded contracts and procurements are presented in Chapter 5, and information related to the agency's next triennial Federal Disadvantaged Business Enterprise (DBE) goal is presented below and in Chapter 10.

² The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

Figure ES-2.
Overall utilization analysis
results for LAS work

Note:

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

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	3.4 %
Asian Pacific American-owned	0.8 %
Black American-owned	2.7 %
Hispanic American-owned	1.8 %
Native American-owned	0.2 %
Subcontinent Asian American-owned	0.3 %
Total POC-owned	5.8 %
Total POC- and woman-owned	9.2 %

3. Disparity analysis (Chapter 7 and Appendix F of the report). The crux of the disparity study was to assess whether any disparities exist between the participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in LAS work and the availability of those businesses for that work. A disparity index of 100 indicates *parity* between actual participation and availability. That is, the participation of a particular business group is in line with its availability. A disparity index of less than 100 indicates a *disparity* between participation and availability. That is, the group is considered to have been underutilized relative to its availability. Finally, a disparity index of less than 80 indicates a *substantial disparity* between participation and availability. A *substantial disparity* for a particular racial/ethnic or gender group is interpreted by courts as an inference of discrimination against that group in the marketplace and often serves as evidence that the organization of interest could consider using race- or gender-conscious measures to address barriers for that group (for details, see Chapter 2).

a. Overall. Figure ES-3 presents disparity indices for POC- and woman-owned businesses for all relevant prime contracts and subcontracts LAS awarded during the study period considered together. As shown in Figure ES-3, POC- and woman-owned businesses considered together exhibited a disparity index of 27 for all relevant contracts and procurements LAS awarded during the study period, indicating a disparity where LAS awarded POC- and woman-owned businesses \$0.27 for every dollar one might expect the agency to award to those businesses based on their availability for that work. All POC- and woman-owned business groups exhibited substantial disparities for LAS work: white woman-owned businesses (disparity index of 37), Asian Pacific American-owned businesses (disparity index of 17), Black American-owned businesses (disparity index of 39), Hispanic American-owned businesses (disparity index of 16), Native American-owned businesses (disparity index of 10), and Subcontinent Asian American-owned businesses (disparity index of 41).

BBC also assessed whether MENA American-, veteran-, and LGBTQ+-owned businesses exhibited disparities between their participation and availability for LAS work, the results for which are not shown in Figure ES-3. MENA American-owned businesses (disparity index of 10), veteran-owned businesses (disparity index of 12), and LGBTQ+-owned businesses (disparity index of 0) all exhibited substantial disparities for all relevant LAS contracts and procurements considered together.

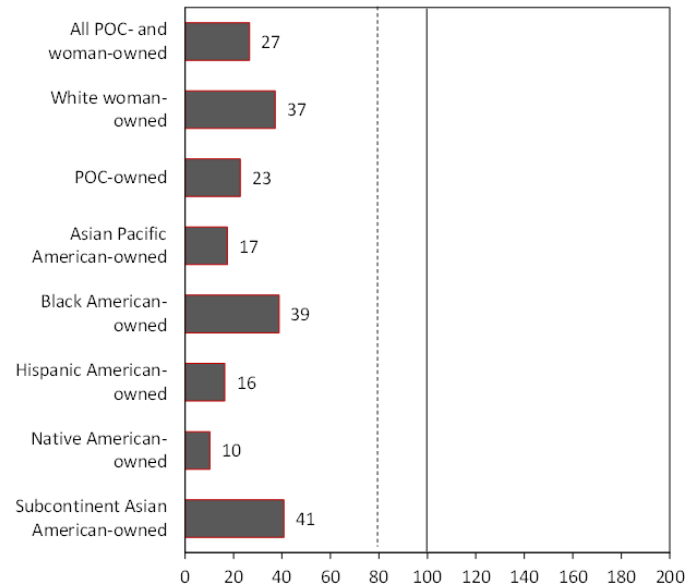
Figure ES-3.
Overall disparity analysis
results for LAS work

Note:

Substantial disparities
highlighted with red borders.

Source:

BBC disparity analysis.



b. Funding source. The Federal DBE Program applies specifically to LAS' United States Department of Transportation (USDOT)-funded projects.³ As part of the program, the agency uses various race- and gender-neutral measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the USDOT-funded projects it awards. Comparing disparity analysis results separately for USDOT- and non USDOT-funded projects may be indicative of the efficacy of LAS' implementation of the Federal DBE Program as well as its use of race- and gender-conscious measures to encourage the participation of POC- and woman-owned businesses in its work relative to their availability for it. As shown in Figure ES-4, POC- and woman-owned businesses considered together exhibited substantial disparities for both USDOT-funded work (disparity index of 34) and non USDOT-funded work (disparity index of 26). In addition, all individual POC- and woman-owned business groups exhibited substantial disparities for both USDOT- and non USDOT-funded work: white woman-owned businesses (USDOT-funded work disparity index = 52; non USDOT-funded work disparity index = 36), Asian Pacific American-owned businesses (USDOT-funded work disparity index = 56; non USDOT-funded work disparity index = 13), Black American-owned businesses (USDOT-funded work disparity index = 69; non USDOT-funded work disparity index = 37), Hispanic American-owned businesses (USDOT-funded work disparity index = 23; non USDOT-funded work disparity index = 14), Native American-owned businesses (USDOT-funded work disparity index = 0; non USDOT-funded work disparity index = 11), and Subcontinent Asian American-owned businesses (USDOT-funded work disparity index = 9; non USDOT-funded work disparity index = 42).

³ BBC considered a project to be USDOT-funded if it included at least \$1 of USDOT funding.

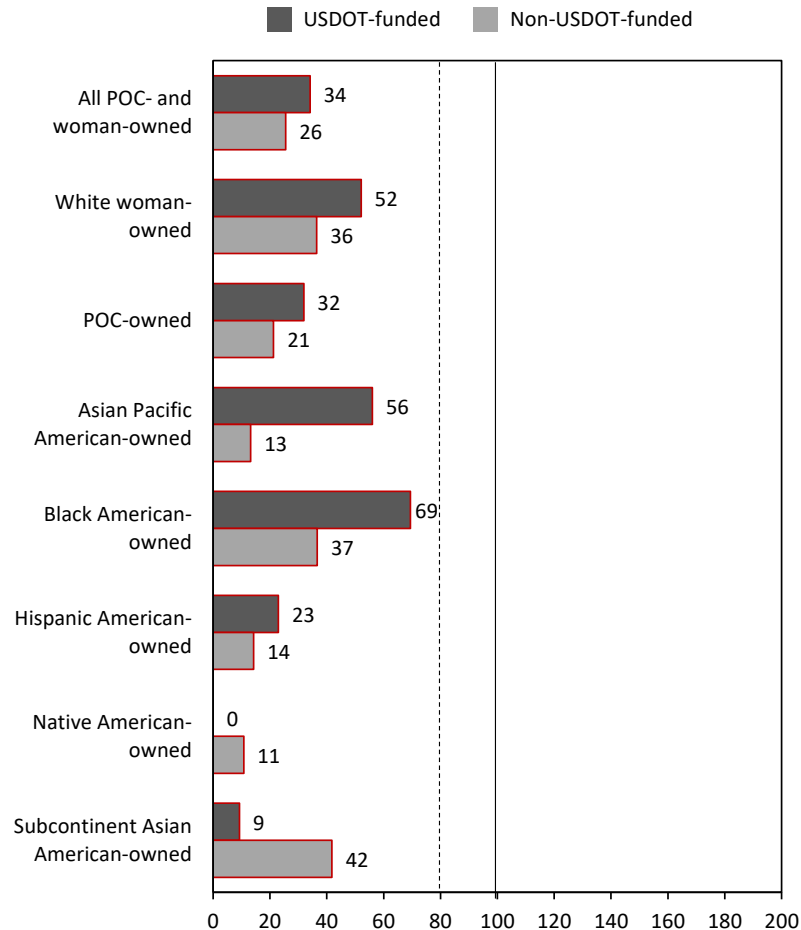
Figure ES-4.
Disparity analysis results by
funding source

Note:

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

Source:

BBC disparity analysis.



c. Goal status. As part of its implementation of the Federal DBE Program, LAS uses race- and gender-conscious DBE contract goals to encourage the participation of certified DBE subcontractors in some, but not all, of its USDOT-funded projects. BBC assessed disparity analysis results for POC- and woman-owned businesses for contracts and procurements LAS awarded with the use of DBE contract goals (goals projects) and contracts and procurements LAS awarded without the use of race- and gender-conscious goals, which includes both USDOT-funded projects and non USDOT-funded projects (no goals projects). As shown in Figure ES-5, POC- and woman-owned businesses exhibit substantial disparities on both goals projects (disparity index of 40) and no goals projects (disparity index of 25). Disparity analysis results differed by group and goal status.

- White woman-owned businesses (disparity index of 66), Hispanic American-owned businesses (disparity index of 23), Native American-owned businesses (disparity index of 0), and Subcontinent Asian American-owned businesses (disparity index of 13) exhibited substantial disparities for goals projects.
- All relevant business groups exhibited substantial disparities for no goals projects: white woman-owned businesses (disparity index of 36), Asian Pacific American-owned businesses (disparity index of 12), Black American-owned businesses (disparity index of 36), Hispanic American-owned businesses (disparity index of 14), Native American-owned businesses (disparity index of 11), and Subcontinent Asian American-owned businesses (disparity index of 41).

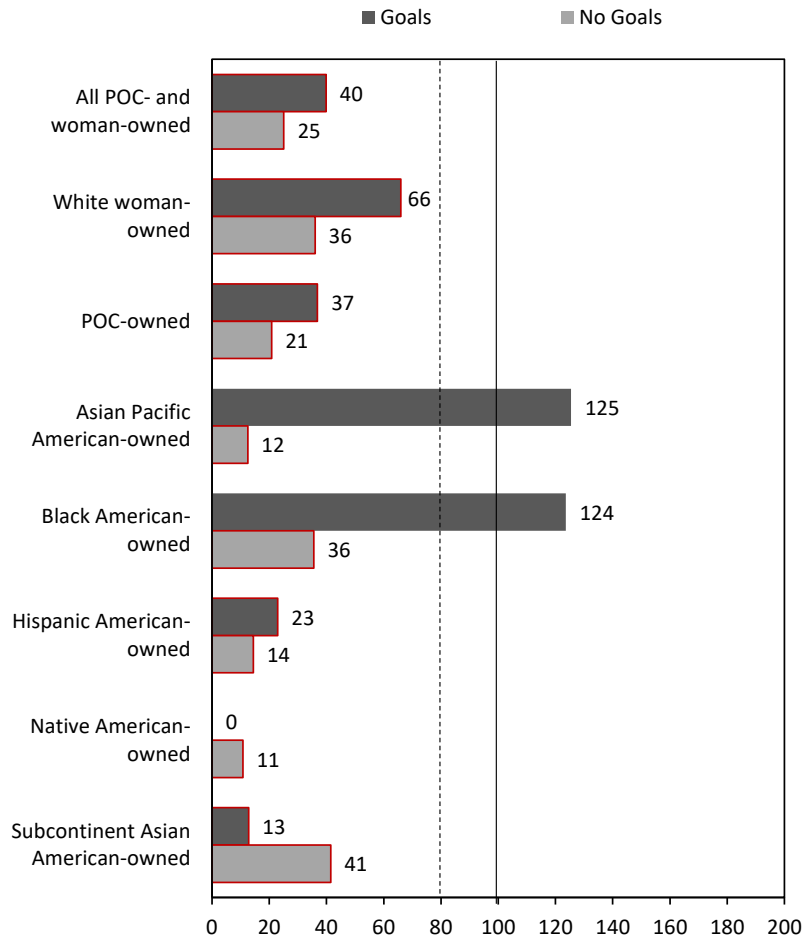
Figure ES-5.
Disparity analysis results for
LAS work by goal status

Note:

For more detail, see Figures F-13 and F-14 in Appendix F.

Source:

BBC disparity analysis



d. Summary. Figure ES-6 presents a visualization of the various sets of LAS contracts and procurements for which relevant POC- and woman-owned business groups exhibited substantial disparities, as indicated by black circles. Most relevant POC- and woman-owned business groups showed substantial disparities for most—if not all—the project sets BBC examined as part of the disparity study. Substantial disparities indicate inferences of discrimination against relevant POC- and woman-owned business groups in the Clark County marketplace and as part of LAS’ contracting and procurement.

Figure ES-6.
Substantial disparities observed for LAS work

Contract set	Business group							
	All POC and white woman	All POC	White woman	Asian Pacific American	Black American	Hispanic American	Native American	Subcontinent Asian American
All work	●	●	●	●	●	●	●	●
Construction	●	●	●	●		●	●	●
Professional services	●	●	●	●	●	●	●	●
Non-prof. svcs. and goods	●	●	●	●	●	●	●	
Prime contracts	●	●	●	●	●	●	●	●
Subcontracts	●	●	●		●	●	●	●
USDOT-funded	●	●	●	●	●	●	●	●
Non USDOT-funded	●	●	●	●	●	●	●	●
Goals	●	●	●			●	●	●
No goals	●	●	●	●	●	●	●	●

Notes: ● indicates substantial disparity

Source: BBC disparity analysis.

B. Marketplace Conditions

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

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

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

BBC's analyses of marketplace conditions in Clark County indicate that POCs and women face various barriers in industries relevant to LAS' contracting and procurement. Existing research and primary research we conducted indicate that disparities exist in acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence those disparities exist even after accounting for various personal and business factors. There is also evidence that many disparities are due—at least, in part—to race- or gender-based discrimination. Barriers in the marketplace likely have important effects on the ability of POCs and women to start businesses in relevant industries—construction, professional services, and goods and other services—and to operate

those businesses successfully. Any difficulties those individuals face in starting and operating businesses may reduce their availability for public work and the degree to which they are able to successfully compete for such projects.

C. Overall DBE Goal

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

1. Base figure. In accordance with USDOT requirements, BBC assessed the availability of potential DBEs—that is, POC- and woman-owned businesses that are currently DBE-certified or appear they could be DBE-certified according to size limits specified in the Federal DBE Program—for the USDOT-funded projects LAS awarded during the study period. That analysis indicated that the availability of potential DBEs for LAS’ USDOT-funded work is 18.6 percent, which LAS could consider as its base figure for its next overall DBE goal.

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

- Current capacity of DBEs to perform agency work;
- Information related to employment, self-employment, education, training, and unions;
- Disparities in the ability of DBEs to access financing, bonding, or insurance; and
- Other relevant factors.⁴

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

- **Current capacity of DBEs to perform agency work.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded projects in recent years. Based on information from LAS, the participation of certified DBEs in the USDOT-funded projects LAS awarded during the study period was 7.6 percent of total dollars on USDOT-funded projects. That information supports a downward adjustment to LAS’ base figure.
- **Information related to employment, self-employment, education, training, and unions.** BBC’s analyses of barriers in the local marketplace indicate barriers that certain POC groups and women face related to human capital, financial capital, business ownership, and business success. Such barriers may decrease the availability of POC- and woman-owned businesses for the USDOT-funded projects LAS awards. For example, BBC used regression analyses to investigate whether

⁴ 49 CFR Section 26.45.

race/ethnicity and gender are related to business ownership in relevant industries among workers in the Clark County 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, LAS might consider an upward adjustment of its base figure for USDOT-funded contracts to account for marketplace barriers.

- **Any disparities in the ability of DBEs to get financing, bonding, or insurance.** BBC's analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in the region do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men. Any barriers to obtaining financing, bonding, or insurance might limit opportunities for POCs and women to successfully form and operate businesses in the *relevant geographic market area*. Any barriers that POC- and woman-owned businesses face in obtaining financing, bonding, or insurance would also place those businesses at a disadvantage in competing for LAS' USDOT-funded projects. Thus, those results also support an upward adjustment to LAS' base figure.
- **Other relevant data.** Marketplace analyses also indicate that POC- and woman-owned businesses are less successful than other businesses in the local marketplace in terms of business closures, business receipts, business owner earnings, and other metrics. Barriers in business success among POC- and woman-owned businesses can limit their growth, which may depress their availability for LAS' USDOT-funded work. Thus, those results also support an upward adjustment to the agency's base figure.

The agency should consider the above information carefully as part of setting its next triennial DBE goal for federal fiscal years 2026 through 2028, if anticipated future contracts are similar to the contracts reviewed as part of the disparity study. LAS is not required to make a step-2 adjustment, but it must explain its decision to make or not make an adjustment in goal documentation it submits to USDOT.

D. Guidance

BBC observed substantial disparities between the participation and availability of POC- and woman-owned businesses for the contracts and procurements LAS awarded during the study period. We present guidance on how LAS can use that information and other information from the disparity study to further encourage the participation of those businesses in its work and address the disparities we observed effectively and in a legally defensible manner, including potentially using race- and gender-conscious measures to do so. In considering the guidance we provide, LAS should be mindful of the legal requirements surrounding the use of race- and gender-conscious measures in particular, including state and federal regulations as well as relevant case law. The organization should consult closely with its legal counsel in developing any new policies or programs related to POC- and woman-owned businesses to ensure they are consistent with the requirements of the strict scrutiny and intermediate scrutiny standards of constitutional review, respectively. We present key recommendations below and present additional recommendations and more information relevant to those recommendations in Chapter 9 of the report.

1. Vendor selection. Comments from in-depth interviews indicate that LAS' contract and evaluation requirements often favor larger companies and inhibit the ability of small businesses to win work with the organization. In addition, results from the utilization analysis indicated that 21 percent of all POC- and woman-owned businesses that participated in LAS projects during the study period were awarded

75 percent of all the dollars associated with that work. LAS should consider reviewing its evaluation criteria to ensure they are not unduly restrictive for small or newly established businesses. In addition, LAS should consider expanding its vendor pool through targeted advertising and outreach and revising evaluation criteria and policies to encourage the use of vendors with which the organization or prime contractors have never worked.

2. Small business set asides. Disparity analysis results indicated substantial disparities for all relevant business groups on prime contracts LAS awarded during the study period. LAS could consider setting aside select prime contracts for bidding from small businesses, including many POC- and woman-owned businesses, to encourage their participation in that work as prime contractors. Small business set asides could help small businesses work directly with LAS and build the technical skills and capacity to perform as prime contractors on larger contracts and procurements, both with LAS and other organizations.

3. Bid and evaluation preferences. During the study period, LAS awarded 90 percent of its relevant contract and procurement dollars to businesses located in Clark County, Nevada. State law allows bid preferences to be applied to locally funded construction projects if at least 50 percent of bidders' workforces are located in the county. BBC recommends that LAS explore ways it can expand its use of bid and evaluation preferences and, to the extent allowable by state law, consider applying them to locally funded professional services and non-professional services and supplies as well. Doing so might help small and diverse businesses participate in LAS projects as prime contractors.

4. Finance, bonding, and insurance assistance. As part of the qualitative evidence process, many business representatives noted difficulties obtaining financing to start, grow, or expand their businesses. Many businesses also commented that having access to capital is crucial to business success, but obtaining financing can be challenging for small businesses. The State of Nevada offers multiple financial assistance programs through the Office of Economic Development that are available to small businesses. LAS could consider partnering with the Office of Economic Development to advertise these programs and help vendors apply for them. LAS could also consider providing guarantees for loans, encouraging contract-backed loans with lenders, or facilitating lender fairs. It could develop such programs with the support of local, regional, or statewide financial institutions or other business assistance organizations. Regardless of the type of program LAS uses, such programs should take into account the burden high-interest rates place on small businesses.

In addition, small businesses typically obtain bonds at higher rates than other businesses, making it more difficult for them to access bonding opportunities and compete for relatively large projects. LAS requires payment and performance bonds of varying amounts for construction projects worth \$100,000 or more for both prime contractors and subcontractors performing substantial proportions of the total cost of those projects. LAS could consider partnering with financial institutions to encourage standardized bonding rates at more equitable levels for its vendors. Alternatively, LAS could develop relationships with bonding companies that provide adequate levels of bonding and provide information on these companies to its vendors.

LAS should also consider the insurance it requires on projects relative to the risks associated with them, and in situations where associated risks are relatively low, reduce its insurance requirements accordingly. The agency could also consider allowing small businesses to build the cost of additional

insurance into their bids or develop relationships with insurance companies to reduce rates for small businesses.

5. Data collection. LAS does not collect comprehensive information on subcontractors that participate in its projects. The agency should consider collecting comprehensive subcontract data—that is, for all subcontractors regardless of the races or genders of their owners or certification status—on all projects, including:

- Associated prime contract or purchase order numbers;
- Subcontractor names, addresses, phone numbers, and email addresses;
- Types of work involved in the subcontract; and
- Award and paid-to-date amounts.

LAS should consider collecting those data at the time of award and requiring prime contractors to submit data on the payments they make to subcontractors as part of monthly invoicing. Doing so will improve the agency's monitoring of the participation of small businesses, including many POC- and woman-owned businesses—regardless of certification—in its work and could also help the agency identify future subcontracting opportunities for those businesses. Collecting comprehensive subcontract data might require upgrading to a different data management system that allows LAS to collect and maintain that information efficiently and effectively.

CHAPTER 1.

Introduction

The Harry Reid International Airport (LAS), located in Las Vegas, Nevada, is owned by the Clark County Commission and is operated by the Clark County Department of Aviation. It serves more than 50 million passengers each year to and from various domestic and international destinations. As a recipient of United States Department of Transportation (USDOT) funds via the Federal Aviation Administration (FAA), LAS 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.¹

LAS retained BBC Research & Consulting (BBC) to conduct a *disparity study* to evaluate whether person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientation (LGBTQ+)-owned businesses face any barriers in competing for or obtaining agency work. We examined USDOT-funded and non USDOT-funded projects covering work in construction, professional services, and non-professional services and supplies. As part of the study, we examined whether there are any *disparities*, or differences, between:

- The percentage of contract and procurement dollars LAS awarded to POC-, woman-, veteran-, and LGBTQ+-owned businesses during the *study period*, which was July 1, 2017 through June 30, 2022 (i.e., *utilization or participation*); and
- The percentage of contract and procurement dollars one might expect LAS to award to POC-, woman-, veteran-, and LGBTQ+-owned businesses based on their availability to perform specific types and sizes of the agency's prime contracts and subcontracts (i.e., *availability*).

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

- The legal framework surrounding LAS' contracting and procurement practices, policies, and statutes; other business programs; and the implementation of the Federal DBE Program;
- Conditions in the marketplace for POCs; women; veterans; members of the LGBTQ+ community; and POC-, woman-, veteran-, and LGBTQ+-owned businesses; and
- Contracting practices and business assistance programs LAS has in place or could consider implementing in the future to better encourage the participation of POC-, woman, veteran-, and LGBTQ+-owned businesses.

There are several ways in which information from the disparity study could be useful to LAS:

- The study provides information about whether POC-, woman-, veteran-, and LGBTQ+-owned businesses face any barriers in competing for or obtaining agency work.

¹ BBC Research & Consulting defines a USDOT-funded contract or procurement as any contract or procurement that includes at least \$1 of USDOT funding.

- The study identifies barriers POCs; women; veterans; members of the LGBTQ+ community; and POC-, woman-, veteran-, and LGBTQ+-owned businesses face in the marketplace that might affect their ability to compete for or obtain agency work.
- The study provides an evaluation of the effectiveness of LAS' implementation of the Federal DBE Program in encouraging POC-, woman-, veteran-, and LGBTQ+-owned business participation in the agency's USDOT-funded contracts and procurements.
- The study provides insights into how the agency could refine contracting processes and implementation of the Federal DBE Program to better encourage the participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in its work and help address any barriers those businesses face in the marketplace.

BBC introduces the 2023 Harry Reid International Airport Disparity Study in three parts:

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

A. Background

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

1. Overall DBE goal. As part of the Federal DBE Program, LAS is required to set an overall aspirational goal for the participation of DBEs in its USDOT-funded work every three years. If DBE participation in a particular year is less than its overall DBE goal, then the agency must analyze the reasons for the difference and establish specific measures that enable it to meet the goal in the next year. The Federal DBE Program specifies the steps an agency must follow to establish its overall DBE goal. To begin, the agency must develop a *base figure* for its goal based on demonstrable evidence of the availability of *potential DBEs* to participate in its USDOT-funded projects. Then, the agency must consider conditions in its *relevant geographic market area (RGMA)* and other factors to determine whether an *adjustment* to its base figure is necessary to ensure its overall DBE goal accurately reflects current contracting conditions for POC- and woman-owned businesses in the marketplace and as part of the agency's contracting process (referred to as a *step-2 adjustment*). LAS is not required to make an adjustment to its base figure, but it is required to consider relevant factors and explain its adjustment decision to USDOT.

2. Program measures. The Federal DBE Program also requires LAS to project the portions of its overall DBE goal it will meet through the use of *race- and gender-neutral* and *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 or gender of business owners. If an agency cannot meet its goal 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).

If an agency determines that race- or gender-conscious measures—such as DBE contract goals—are appropriate for its implementation of the Federal DBE Program, then it must also determine which race or gender groups are eligible for participation in those measures. Eligibility for such measures is limited to only those groups for which compelling evidence of discrimination exists in the local marketplace. USDOT provides a waiver provision if an agency determines that its implementation of the Federal DBE Program should only include certain race or gender groups in the race- or gender-conscious measures it uses.

3. DBE certification. 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 are Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, and women of any race. Business owners who identify as members of those groups must establish 51 percent “real and substantial ownership,” in their businesses, and they must also possess the power and expertise to control the daily operations and management of their businesses.

B. Study Scope

BBC conducted the disparity study based on relevant construction, professional services, and non-professional services and supplies contracts and procurements LAS awarded between July 1, 2017 and June 30, 2022, including both USDOT-funded and non USDOT-funded projects.

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

a. POC-owned businesses. BBC defined a POC-owned business as a business with at least 51 percent ownership and control by individuals who identify with one of the following race groups, which are presumed to be disadvantaged as part of the Federal DBE Program: Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, or Subcontinent Asian Americans. We considered businesses to be POC-owned based on the known races 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. BBC defined a woman-owned business as a business with at least 51 percent ownership and control by white women. As described above, we classified businesses owned by women of color along with businesses owned by men of color according to their corresponding race groups.

c. Veteran-owned businesses. BBC defined a veteran-owned business as a business with at least 51 percent ownership and control by veterans of the United States military.

d. LGBTQ+-owned businesses. BBC defined a LGBTQ+-owned business as a business with at least 51 percent ownership and control by individuals who identify as lesbian, gay, bisexual, transgender, queer, or other gender or sexual orientation.

e. DBEs. DBEs are POC- and woman-owned businesses specifically certified as such by LAS or the Nevada Department of Transportation as part of the Nevada Unified Certification Program. A determination of DBE eligibility includes assessing businesses' gross revenues and business owners' personal net worth.

f. 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 to help LAS calculate a base figure for its next overall DBE goal.

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-, woman-, veteran-, or LGBTQ+-owned businesses for the contracts and procurements LAS awarded, including both USDOT-funded and non USDOT-funded construction, professional services, and non-professional services and supplies prime contracts and subcontracts the agency awarded between July 1, 2017 and June 30, 2022. The study also includes various analyses related to outcomes for POCs; women; veterans; members of the LGBTQ+ community; and POC-, woman-, veteran-, and LGBTQ+-owned businesses throughout the marketplace. BBC presents disparity study analyses in the report as follows:

a. Legal framework and analysis. The study team conducted a detailed analysis of relevant laws, legal decisions, and other information to guide the methodology for the study and inform our recommendations and LAS' implementation of the Federal DBE Program. BBC presents the legal framework and analysis for the study in **Chapter 2** and **Appendix B**.

b. Marketplace conditions. The study team conducted extensive quantitative analyses of conditions and potential barriers in the marketplace for POCs; women; veterans; members of the LGBTQ+ community; and POC-, woman-, veteran-, and LGBTQ+-owned businesses. In addition, we collected qualitative evidence about potential barriers POC-, woman-, veteran-, and LGBTQ+-owned businesses face in the marketplace through in-depth interviews, focus groups, public meetings, and other engagement sessions. BBC presents quantitative information about marketplace conditions in **Chapter 3** and **Appendix C** and qualitative evidence in **Appendix D**.

c. Data collection. BBC examined contract, procurement, and vendor data from multiple sources to complete the utilization and availability analyses. We present the study team's contract, procurement, and vendor data collection process in **Chapter 4**.

d. Availability analysis. BBC analyzed the percentage of contract and procurement dollars one might expect LAS to award to POC-, woman-, veteran-, and LGBTQ+-owned businesses based on their availability to perform specific types and sizes of agency work. That analysis was based on agency data and surveys we conducted with more than 800 businesses in the local marketplace that work in industries related to the types of contracts and procurements the agency awards. We present results from the availability analysis in **Chapter 5** and **Appendix E**.

e. Utilization analysis. BBC analyzed contract and procurement dollars LAS awarded to POC-, woman-, veteran-, and LGBTQ+-owned businesses during the study period, including information about associated subcontracts. We present results from the utilization analysis in **Chapter 6**.

f. Disparity analysis. The study team examined whether there were any disparities between the participation and availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses on contracts and procurements LAS awarded during the study period. We also assessed whether any observed disparities were statistically significant and explored potential explanations for those disparities. BBC presents results from the disparity analysis in **Chapter 7** and **Appendix F**.

g. Program measures. BBC reviewed measures LAS uses to encourage the participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in its contracts and procurements as well as its implementation of the Federal DBE Program. We present that information in **Chapter 8**.

h. Recommendations. The study team provided guidance related to additional program options and changes to current contracting practices the agency could consider, including information related to its next overall DBE goal for USDOT-funded work. BBC presents our recommendations in **Chapter 9**.

C. Study Team Members

The BBC study team was made up of five firms that, collectively, possess decades of experience related to conducting disparity studies in connection with disadvantaged business programs.

1. BBC (prime consultant). BBC is a Denver-based disparity study and economic research firm that had overall responsibility for the study and performed all the quantitative and qualitative analyses.

2. Exstare Federal Services. (Exstare). Exstare is a Black American woman-owned disparity study and management consulting firm based in Alexandria, Virginia. Exstare provided guidance and recommendations related to program development and implementation.

3. MYS Firm (MYS). MYS is a Black American woman-owned project management and community programming consulting firm based in Henderson, Nevada. MYS conducted in-depth interviews with business owners and other key stakeholders and assisted with providing guidance and recommendations related to program development and implementation.

4. Davis Research. Davis Research is a survey firm based in Calabasas, California. The firm conducted telephone and online surveys with thousands of businesses in the marketplace to gather information to serve as the basis for the utilization and availability analyses.

5. Holland & Knight. Holland & Knight is a law firm with offices throughout the country. Holland & Knight conducted the legal analysis that provided the basis for the study.

CHAPTER 2.

Legal Analysis

As a recipient of United States Department of Transportation (USDOT) funds, the Harry Reid International Airport (LAS) 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.¹ As part of the Federal DBE Program, an agency is required to set an overall goal for DBE participation in its USDOT-funded projects every three years. Regulations that govern an agency's implementation of the Federal DBE Program require that the agency meets the maximum feasible portion of its overall DBE goal through the use of *race- and gender-neutral measures*. If an agency cannot meet its overall DBE goal solely through race- and gender-neutral means, then it is permitted to use *race- and gender-conscious measures*. Race- and gender-neutral measures are measures designed to encourage the participation of small businesses in an organization's contracting regardless of the race or gender of businesses' owners. In contrast, race- and gender-conscious measures are measures designed to encourage the participation of POC- and woman-owned businesses, specifically, in an organization's contracting (e.g., participation goals for POC- and woman-owned businesses on individual contracts or procurements).

It is instructive to review information related to the legal standards governing the use of both race- and gender-neutral and race- and gender-conscious measures. This chapter reviews the legal standards related to the use of these measures in three parts:

- A. Legal Standards for Different Types of Measures;
- B. Seminal Court Decisions; and
- C. Addressing Legal Requirements.

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 POC- and woman-owned business programs, depending on whether they rely solely on race- and gender-neutral measures or if they also include race- and gender-conscious measures.

1. Programs that rely solely on race- and gender-neutral measures. Organizations that implement POC- and woman-owned business programs that rely solely on race- and gender-neutral measures must show a *rational basis* for their programs. 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 organizations to demonstrate that their contracting and procurement programs are rationally related to legitimate

¹ BBC Research & Consulting defines a USDOT-funded contract or procurement as any contract or procurement that includes at least \$1 of USDOT funding.

government interests (e.g., increasing the participation of local small businesses in its work). It is the least rigorous standard for evaluating the constitutionality of business programs.

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

a. Strict scrutiny. The strict scrutiny standard presents the highest threshold for evaluating the legality of contracting programs that could impinge on the rights of others, short of prohibiting them altogether. Under the strict scrutiny standard, organizations must show a *compelling governmental* interest in using race-conscious measures and ensure that the use of such measures is *narrowly tailored*.

i. Compelling governmental interest. Organizations using race-conscious measures have the initial burden of showing evidence of discrimination within their own *relevant geographic market areas* (RGMA)—including statistical and qualitative evidence—that supports the use of such measures.² 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 governmental interest for their programs. They must also present evidence tailored specifically to the marketplaces in which they operate.

It is not necessary for organizations themselves to have discriminated against POC-owned businesses for them to demonstrate a compelling governmental interest and take remedial action. They could take action if evidence indicates they are *passive participants* in race-based discrimination that exists in their RGMA.³ 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.

ii. Narrow tailoring. In addition to demonstrating a compelling governmental interest, organizations must also demonstrate that their use of race-conscious measures is narrowly tailored to meet their objectives. There are a number of factors that a court considers 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;

² See e.g., *Concrete Works, Inc. v. City and County of Denver* (“Concrete Works I”), 36 F.3d 1513, 1520 (10th Cir. 1994).

³ See e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492 (1989); *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1048 (Federal Cir. 2008).

- 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. The intermediate scrutiny standard is less rigorous than strict scrutiny but more rigorous than the rational basis standard. Certain courts apply the intermediate scrutiny standard to gender-conscious programs although many courts apply the strict scrutiny standard to both race- and gender-conscious programs. In order for a program to pass intermediate scrutiny, it must:

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

The United States Supreme Court first accepted intermediate scrutiny for programs that discriminate based on gender or sex in 1976, and other courts have also applied it to assessing the constitutionality of programs based on gender or sex.⁴

B. Seminal Court Decisions

Two Supreme Court cases established the *strict scrutiny* standard for evaluating the constitutionality of contracting programs that use race-conscious measures:

- *City of Richmond v. J.A. Croson Company (Croson)*;⁵ and
- *Adarand Constructors, Inc. v. Peña (Adarand)*.⁶

Many subsequent decisions in federal district or appellate courts have refined the requirements for the use of race- and gender-conscious measures as part of POC- and woman-owned business programs, including several cases in the Ninth Circuit, the jurisdiction in which LAS 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)*;⁷
- *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al. (AGC, San Diego)*;⁸ and
- *Mountain West Holding Co., Inc. v. State of Montana, Montana DOT, et al. (Mountain West Holding)*.⁹

⁴ *Craig v. Boren*, 429 U.S. 190 (1976).

⁵ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

⁶ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

⁷ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

⁸ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187 (9th Cir. 2013).

⁹ *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,

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 the use of race-conscious measures in contracting and procurement 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:

- 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 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, most importantly requiring that those programs 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

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).

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 qualitative evidence are necessary to demonstrate the need for race- and gender-conscious measures.

3. AGC, San Diego. *AGC, San Diego* represents the only other time the Ninth Circuit Court of Appeals has considered the constitutionality of a state department of transportation's implementation of the Federal DBE Program. In contrast to its decision in *Western States*, the court upheld the California Department of Transportation's (Caltrans') use of race- and gender-conscious measures and its implementation of the Federal DBE Program as constitutional, ruling that it 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 to be moot, because by the time of the case, MDT was no longer using race- or gender-conscious 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;
- The agency relying on qualitative 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 Legal Requirements

Many organizations have used information from disparity studies to:

- Determine whether their contracting practices are affected by race- or gender-based discrimination;
- Design efforts to encourage the participation of POC- and woman-owned businesses in their work; and

- Ensure their use of any race- or gender-conscious measures meets the strict scrutiny and intermediate scrutiny standards, respectively.

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

- The disparity study includes extensive econometric analyses and analyses of qualitative evidence to assess whether any discrimination exists for POCs, women, and POC- and woman-owned businesses in the RGMA and whether LAS is actively or passively participating in that discrimination.
- The study accounts for various characteristics of the prime contracts and subcontracts LAS 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 in and availability for LAS' contracts and procurements, indicating whether any inferences of discrimination exist for individual race or gender groups.
- The study includes specific recommendations to help ensure LAS' potential use of any race- or gender-conscious measures is narrowly tailored to meet the organization's equity objectives, including recommendations related to:
 - Identifying which race/ethnic or gender groups exhibit substantial barriers;
 - Maximizing the use of race- and gender-neutral measures to address any barriers;
 - Implementing race- and gender-conscious measures that are flexible, rationally related to marketplace conditions, and not overly burdensome on third parties; and
 - Setting overall aspirational goals for the participation of POC- and woman-owned businesses in LAS work that are consistent with federal regulations and case law.

CHAPTER 3.

Marketplace Conditions

Historically, there have been many 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, 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 education, workplace experience, and building wealth.^{1, 2, 3, 4, 5} Similarly, many women have been restricted to either being homemakers or taking gender-specific jobs with low pay and little chance for advancement. They have also faced barriers related to education, workplace experience, and building wealth.^{6, 7, 8} POCs and women in Clark County, Nevada have faced barriers similar to the ones nationwide. Black Americans and Hispanic Americans lived in impoverished, racially segregated neighborhoods that offered poor living conditions.⁹ They also attended racially segregated schools with few POC teachers and were barred from using the same lunch counters and movie theater seating as white Americans.¹⁰ Disparate treatment also extended into the labor market. Hispanic Americans and Black Americans were concentrated in low-wage work in the extraction, agriculture, and railroad industries with few advancement opportunities. They were even barred from working in casinos until the 1970s.

In the middle of the 20th 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.¹¹ Those reforms increased diversity in workplaces and reduced educational and employment disparities for POCs and women.^{12, 13, 14, 15} 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.^{16, 17, 18, 19}

Federal Courts have considered barriers POCs, women, and POC- and woman-owned businesses face in a marketplace as evidence for race- and gender-based discrimination in that marketplace.^{20, 21, 22} The United States Supreme Court and other federal courts have held that analyses of conditions in a 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 marketplaces where such discrimination exists. Many courts have held that passive participation in any race- or gender-based discrimination can help to establish a *compelling governmental interest* for agencies to take remedial action to address such discrimination.^{23, 24, 25}

BBC Research & Consulting (BBC) conducted analyses to assess whether POCs, women, and POC- and woman-owned businesses face any barriers in the Clark County construction, professional services, and goods and other services industries. We 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 Harry Reid International Airport (LAS) awards. We examined local marketplace conditions in four primary areas:

- **Human capital**, to assess whether POCs and women face barriers related to education, employment, and gaining 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.

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. Factors such as education, business experience, and managerial experience have been shown to be related to business success.^{26, 27, 28, 29} 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, education is a strong predictor of both income and personal wealth, which are both shown to be related to business formation and success.^{30, 31, 32} Nationally, POCs lag behind white Americans in terms of both educational attainment and the quality of education they receive.^{33, 34, 35} POCs are more likely than white Americans to attend schools that do not provide access to core classes in science and math.³⁶ In addition, Black American students are more likely than white Americans to be expelled or suspended from high school.³⁷ For those and other reasons, POCs are far less likely than white Americans to attend college, enroll at moderately or highly selective four-year college institutions, and earn college degrees.³⁸

Educational outcomes for POCs in Clark County are similar to those for POCs nationwide. BBC's analyses of the Clark County labor force indicate that people who identify with certain POC groups are less likely than white Americans to earn college degrees. Figure 3-1 presents the percentage of workers in Clark County who have earned four-year college degrees. As shown in Figure 3-1, Black American (24%), Hispanic American (13%), and Native American (24%) workers are substantially less likely than white American workers (36%) to have four-year college degrees. We also conducted regression analyses to assess whether race- or gender-related barriers in obtaining college degrees exist even after accounting for various personal factors, such as age and family status. Those analyses indicated that, even after accounting for such factors, Black Americans, Hispanic Americans, and Native Americans are less likely to obtain college degrees compared to white Americans (see Appendix C, Figure C-2 for more details).

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

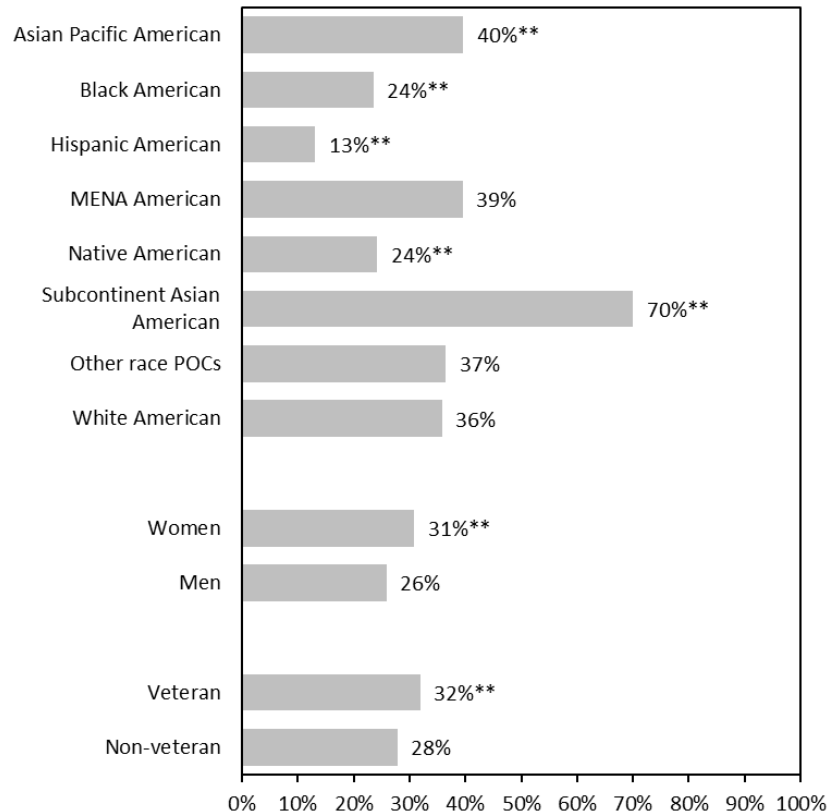
Figure 3-1.
Percentage of all workers 25
and older with at least a
four-year degree, Clark
County, 2017-2021

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 2017-2021 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/>.



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.^{39, 40, 41} When employed, they are often relegated to peripheral positions in the labor market and to industries that already exhibit high concentrations of POCs and women.^{42, 43, 44, 45, 46, 47} In addition, Black Americans, Hispanic Americans, and Native Americans are incarcerated at greater rates than white Americans in Nevada and nationwide, which contributes to many labor difficulties, including difficulties finding jobs and slow wage growth.^{48, 49, 50, 51, 52, 53, 54} BBC assessed the representation of POC and woman workers in the Clark County construction, professional services, and goods and other services industries compared to their representation in all Clark County industries considered together. We present the results of that analysis in Figure 3-2. Compared to their representation in all industries considered together:

- Smaller percentages of Asian Pacific Americans (2.6%), Black Americans (5.6%), Middle Eastern and North African (MENA) Americans (0.3%), and Subcontinent Asian Americans (0.3%) work in the construction industry. A smaller percentage of women (10%) also work in construction.¹

¹ The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

- Smaller percentages of Hispanic Americans (16.3%) work in the professional services industry. In addition, a smaller percentage of women (34.6%) work in the professional services industry.
- A smaller percentage of Asian Pacific Americans (5.7%), MENA Americans (0.2%), and Subcontinent Asian Americans (0.1%) work in the goods and other services industry. In addition, a smaller percentage of women (37.8%) work in the goods and other services industry.

Figure 3-2.
Demographic characteristics of workers in study-related industries and all industries, Clark County, 2017-2021

Group	All Industries (n=49,422)	Construction (n=3,305)	Professional Services (n=1,940)	Goods and Other Services (n=1,351)
Race/ethnicity				
Asian Pacific American	11.6 %	2.6 % **	10.8 %	5.7 % **
Black American	12.4 %	5.6 % **	12.8 %	15.9 % **
Hispanic American	31.7 %	52.2 % **	16.3 % **	42.4 % **
MENA American	1.0 %	0.3 % **	1.5 %	0.2 % **
Native American	1.5 %	1.2 %	1.2 %	1.3 %
Subcontinent Asian American	0.8 %	0.3 % **	2.1 % **	0.1 % **
Other race POCs	0.9 %	0.7 %	1.5 %	0.9 %
Total minority	59.9 %	62.7 %	46.1 %	66.5 %
White American	40.1 %	37.3 % **	53.9 % **	33.5 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %
Gender				
Women	46.1 %	10.0 % **	34.6 % **	37.8 % **
Men	53.9 %	90.0 % **	65.4 % **	62.2 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %
Veteran Status				
Veteran	5.8 %	5.5 %	9.4 % **	9.4 % **
Non-veteran	94.2 %	94.5 %	90.6 % **	90.6 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 95% confidence level.

Source: BBC from 2017-2021 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 examined the relationships between race and gender and unemployment. Figure 3-3 presents unemployment rates among POCs and women compared to those of white Americans and men, respectively. Compared to white American workers (7%), Black American (13%), MENA American (11%), Native American (10%), and other race POC American (11%) workers are substantially more likely to be unemployed in Clark County. We also conducted regression analyses to assess whether there are relationships between race and gender and unemployment even after accounting for various personal factors such as age, education, and family status. Those analyses indicated that, even after accounting for such factors, Black Americans, MENA Americans, and Native Americans are more likely to be unemployed compared to white Americans. In addition, women are more likely to be unemployed compared to men (see Appendix C, Figure C-5 for more details).

b. Management experience. Managerial experience is an important predictor of business ownership and success, but discrimination remains an obstacle to greater diversity in management positions.^{55, 56, 57, 58} Nationally, POCs and women are far less likely than white men to work in management positions.^{59, 60, 61} Similar outcomes exist for POCs and women in Clark County. BBC examined the representation of POCs and women in management positions in the Clark County construction, professional services, and goods and other services industries.

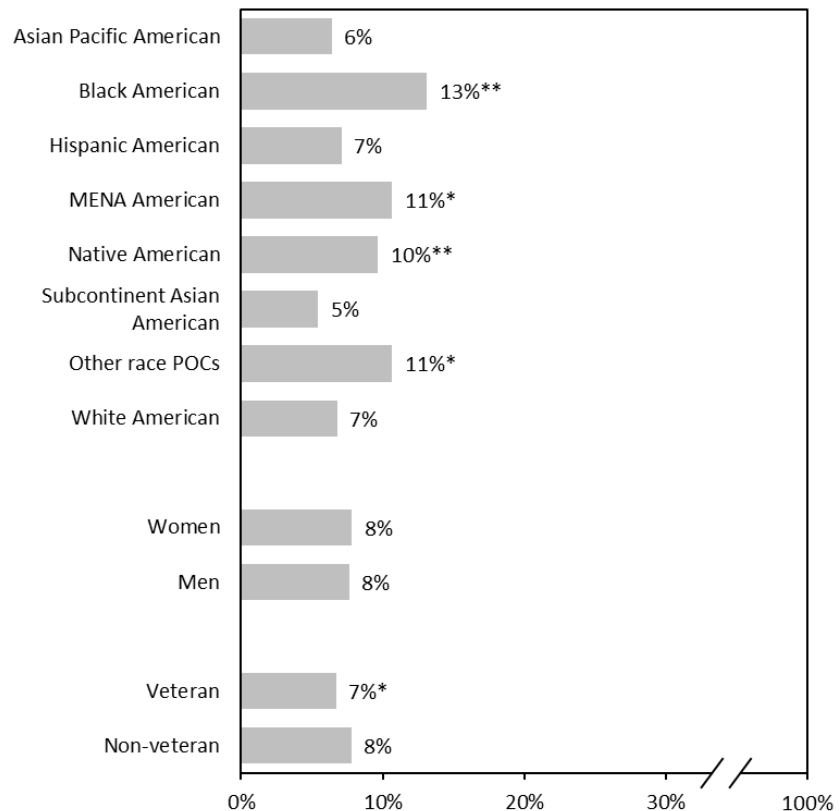
Figure 3-3.
Unemployment rates, Clark County, 2017-2021

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 levels, respectively.

Source:

BBC from 2017-2021 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/>.



As shown in Figure 3-4:

- Smaller percentages of Asian Pacific Americans (3.6%), Black Americans (7.0%), Hispanic Americans (3.6%), and Native Americans (3.5%) than white Americans (12.9%) work as managers or supervisors in the Clark County construction industry. A smaller percentage of women (4.3%) than men (7.7%) work as managers or supervisors in the Clark County construction industry.
- Smaller percentages of Black Americans (1.9%) and Hispanic Americans (1.6%) than white Americans (4.5%) work as managers or supervisors in the Clark County professional services industry. A smaller percentage of women (1.8%) than men (5.4%) work as managers or supervisors in the Clark County professional services industry.
- Smaller percentages of Black Americans (0.7%) than white Americans (2.9%) work as managers or supervisors in the Clark County goods and other services industry.

B. Financial Capital

In addition to human capital, financial capital has been shown to be an important indicator of business formation and success.^{62, 63, 64} Individuals can acquire capital through many sources, including wages, personal wealth, homeownership, and loans. If barriers exist in financial 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 exist nationwide, even when researchers have accounted for various personal factors.^{65, 66, 67, 68} For example, nationally, on average, Black Americans and Hispanic Americans have household incomes less than two-thirds and three-fourths, respectively, those of white Americans.⁶⁹ Women have also faced wage and income gaps relative to men. Nationally, the median hourly wage of women is only 84 percent that of men, even after accounting for various personal factors.⁷⁰ Such disparities make it difficult for POCs and women to use wages as a source of business capital.

Figure 3-4.
Percentage of non-owner workers who worked as a manager or supervisor in each study-related industry, Clark County, 2017-2021

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 2017-2021 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/>.

Group	Construction	Professional Services	Goods and Other Services
Race/ethnicity			
Asian Pacific American	3.6 % **	4.3 %	0.9 %
Black American	7.0 % *	1.9 % *	0.7 % **
Hispanic American	3.6 % **	1.6 % **	2.6 %
MENA American	0.0 % †	0.0 % †	0.0 % †
Native American	3.5 % **	7.3 %	0.0 % †
Subcontinent Asian American	16.7 % †	0.0 %	0.0 % †
Other race POCs	20.2 % †	42.9 % †	0.0 % †
White American	12.9 %	4.5 %	2.9 %
Gender			
Women	4.3 % **	1.8 % **	1.8 %
Men	7.7 %	5.4 %	2.4 %
Veteran Status			
Veteran	13.2 % **	5.6 %	0.5 % **
Non-veteran	7.0 %	3.9 %	2.4 %
All individuals	7.3 %	4.1 %	2.2 %

BBC observed wage disparities in Clark County consistent with those observed nationally. Figure 3-5 presents mean annual wages for Clark County workers by race and gender. Asian Pacific American (\$54,067), Black American (\$47,948), Hispanic American (\$42,996), Native American (\$52,489), and other race POC workers (\$59,741) earn less than white Americans (\$70,262). In addition, women (\$49,446) earn less than men (\$63,060). We also conducted regression analyses to assess whether wage gaps for POCs and women exist even after accounting for various personal factors such as age and family status. Those analyses indicated that, even after accounting for such factors, Asian Pacific American, Black Americans, Hispanic Americans, and Native Americans earn less than white Americans, and women earn less than men (see Appendix C, Figure C-11 for more details).

2. Personal wealth. Another source of business capital is personal wealth, and there are substantial disparities between POCs and white Americans and between women and men in personal wealth, even after accounting for various personal characteristics.^{71, 72, 73, 74} For example, in 2019, Black Americans

and Hispanic Americans across the country exhibited average household net worth that was 14 percent and 17 percent, respectively, that of white Americans.⁷⁵ In addition, approximately 22 percent of Black Americans and 18 percent of Hispanic Americans in the United States are living in poverty compared to less than 10 percent of white Americans. In Nevada, 26 percent of Black Americans and 16 percent of Hispanic Americans are living in poverty compared to 11 percent of white Americans.⁷⁶ In addition, the median wealth of non-married women nationally is approximately one-third that of non-married men.⁷⁷

3. Homeownership. Home equity has also been shown to be a key source of business capital, but POCs appear to face substantial barriers nationwide in owning homes, and those disparities appear to be at least partly due to discrimination.^{78, 79, 80} Research indicates that POCs continue to be given less information on prospective homes and have their purchase offers rejected because of their races.^{81, 82} In addition, POC homeowners tend to own homes worth less than those of white Americans and tend to accrue less equity.^{83, 84, 85} Differences in home values and equity can be attributed—at least, in part—to the depressed property values that tend to exist in racially segregated neighborhoods.^{86, 87, 88}

Figure 3-5.
Mean annual wages, Clark
County, 2017-2021

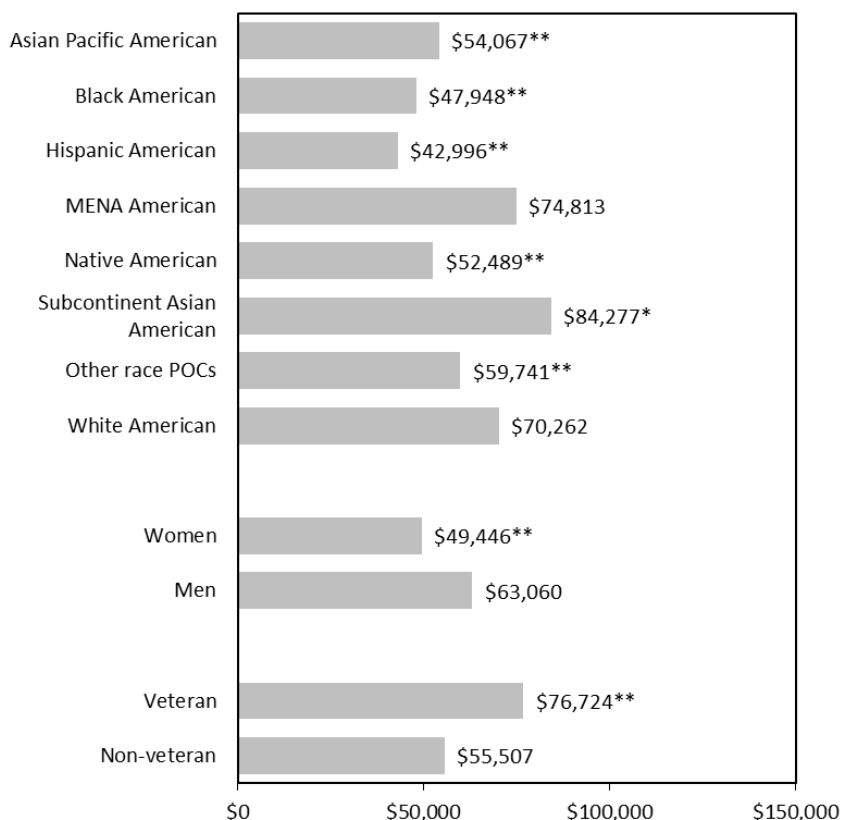
Note:

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), from men (for women), and from non-veterans (for veterans) at the 90% and 95% confidence level, respectively.

Source:

BBC from 2017-2021 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/>.



POCs appear to face homeownership barriers in Clark County similar to those observed nationally. As shown in Figure 3-6, Black Americans (31%), Hispanic Americans (47%), Native Americans (47%), and other race POCs (51%) own homes at rates that are less than that of white Americans (64%).

Figure 3-6.
Home ownership rates, Clark County, 2017-2021

Note:

The sample universe is all households.

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

Source:

BBC from 2017-2021 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/>.

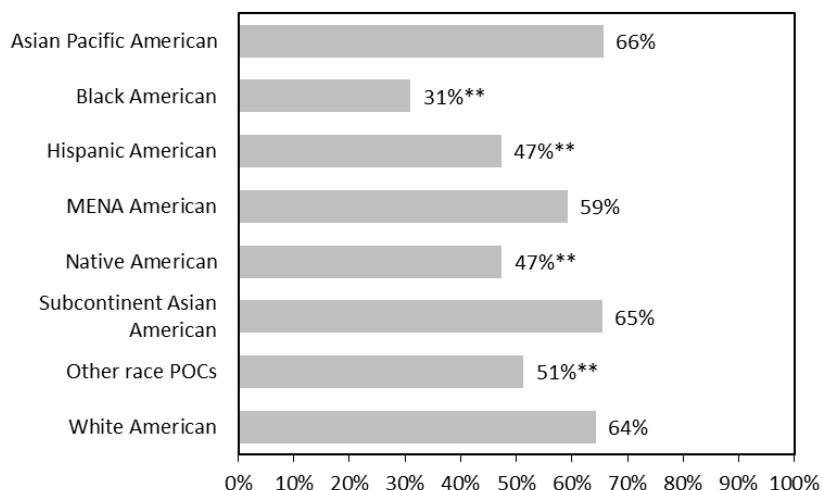


Figure 3-7 presents median home values among POC homeowners in Clark County. Those data indicate that Black American (\$290,000), Hispanic American (\$260,000), and Native American (\$290,000) own homes that, on average, are worth less than those of white Americans (\$310,000).

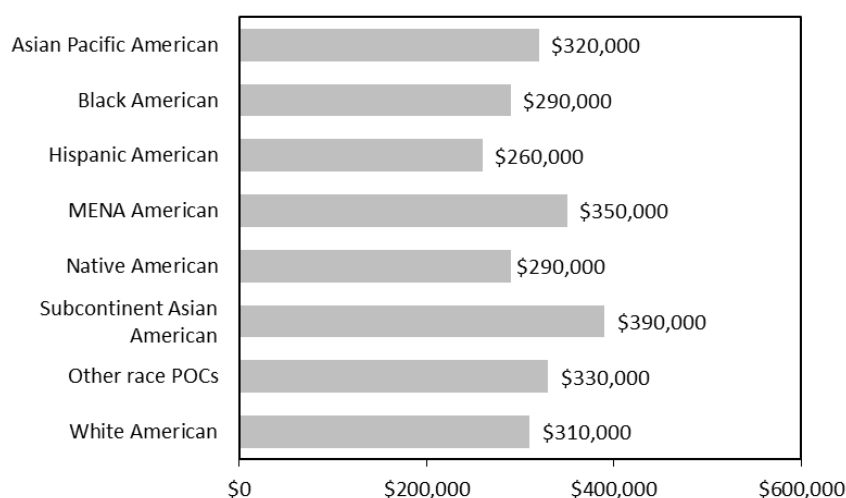
Figure 3-7.
Median home values, Clark County, 2017-2021

Note:

The sample universe is all owner-occupied housing units.

Source:

BBC from 2017-2021 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 and business capital. Researchers have often attributed those barriers to various forms of race- and gender-based discrimination that exist in credit markets.^{89, 90, 91, 92, 93, 94} BBC assessed difficulties POCs and women face in home and business credit markets.

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 processes and less favorable loan terms when POC and woman borrowers are approved for home loans.^{95, 96} Disparities in home loan denial rates and in mortgage costs may prevent POCs and women from accessing the wealth-building potential of homeownership.^{97, 98, 99, 100, 101} To examine how POCs fare in the home credit market relative to white Americans in Clark County, we analyzed home loan denial rates for high-income households by race in the county. As shown in Figure 3-8, Asian Americans, Black Americans, Hispanic Americans, Native Americans, and Native Hawaiian or Pacific Islander Americans in Clark County are denied home loans at greater rates than white Americans (7%).

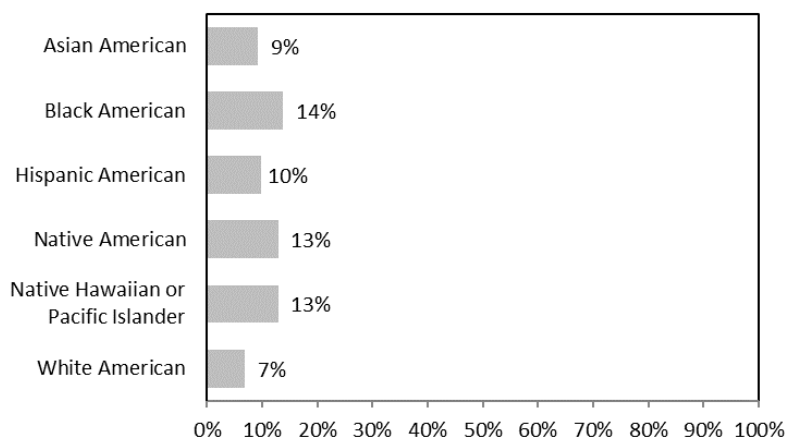
Figure 3-8.
Denial rates of conventional
purchase loans for high-income
households, Clark County, 2022

Note:

High-income borrowers are those households with 120% or more of the HUD/FFIEC area median family income (MFI). The MFI data are calculated by the FFIEC.

Source:

FFIEC HMDA data 2022. The raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool: <https://ffiec.cfbp.gov/data-browser/>.

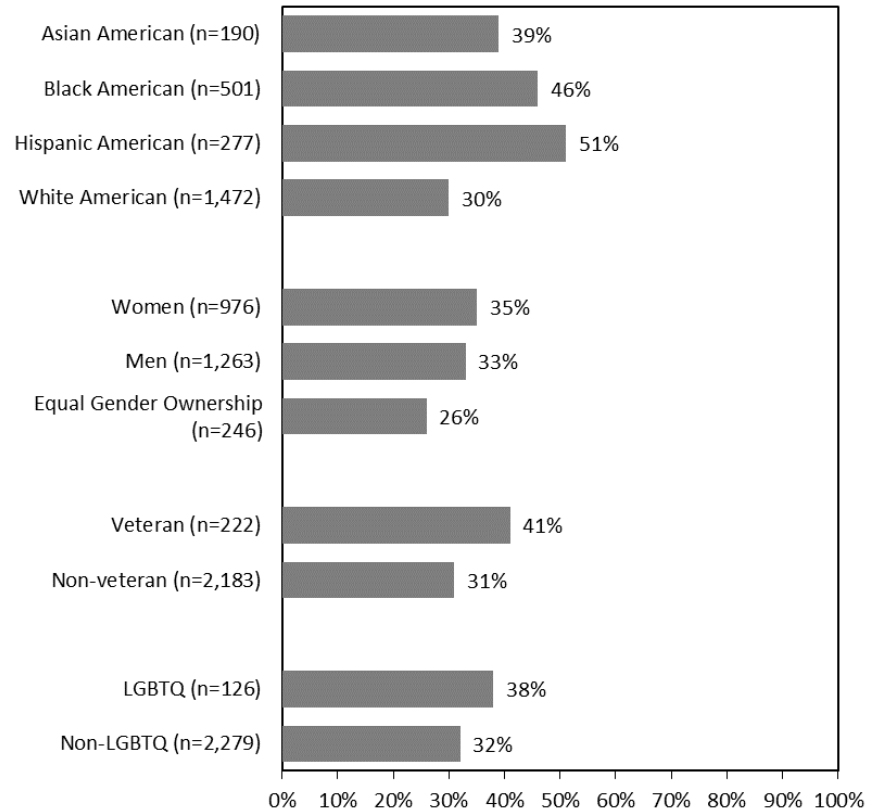


b. Business credit. POC- and woman-owned businesses also face difficulties accessing business credit. For example, during pre-application meetings, POC-owned businesses are given less information about loan, are subjected to more information requests, and are offered less support than businesses owned by white Americans.¹⁰² In addition, POC- and woman-owned businesses are more likely to forego submitting business loan applications because of fears of denial.^{103, 104, 105} They are also more likely to be denied business credit when they do seek loans and are less likely to receive all the financing they originally sought if their loans are approved.^{106, 107, 108, 109, 110, 111} Finally, POC and women business owners face worse loan outcomes even after accounting for creditworthiness.^{112, 113, 114} Without equal access to capital, POC- and woman-owned businesses must operate with less capital than businesses owned by white Americans and men, respectively, and must rely more on personal finances.^{115, 116, 117, 118}

BBC analyzed denial rates for loans, lines of credit, and cash advances for POCs and women relative to white Americans and men, respectively, at a national level. As shown in Figure 3-9, relevant groups of POC-owned businesses are denied loans at greater rates than businesses owned by white Americans. In addition, woman-owned businesses are denied loans at greater rates than businesses owned by men.

Figure 3-9.
Loan, line of credit, and
cash advance denial rates,
United States, 2021

Source:
 BBC from 2021 Small Business Credit
 Survey.

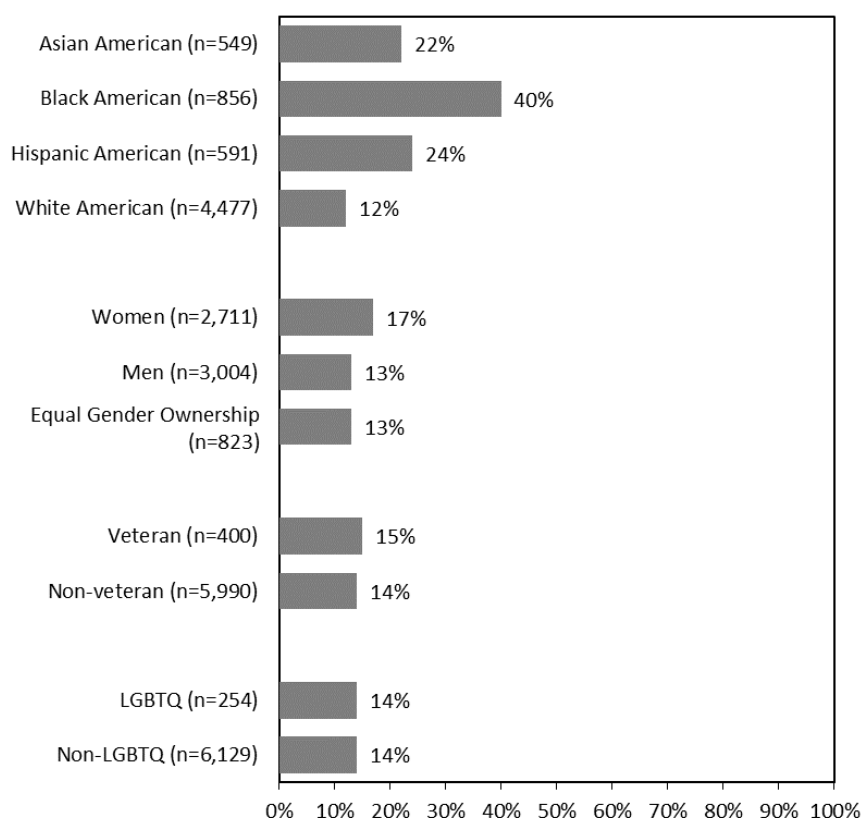


We also analyzed the degree to which POC- and woman-owned businesses do not apply for loans due to a fear of denial. Figure 3-10 presents the rates at which those businesses forego loan applications due to fears of denial relative to businesses owned by white Americans and men. Nationally, POC-owned businesses are more likely than businesses owned by white Americans and woman-owned businesses are more likely than businesses owned by men to not apply for loans due to a fear of denial.

Figure 3-10.
Businesses that did not apply
for loans due to fear of
denial, United States, 2021

Source:

BBC from 2021 Small Business Credit Survey.



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 with employees increased by 9 percent, Black American-owned businesses increased by 14 percent, and Hispanic American-owned businesses increased by 17 percent.^{119, 120} 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.^{121, 122, 123, 124, 125} In addition, POCs and women have not been able 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.^{126, 127, 128} BBC examined rates of self-employment (i.e., business ownership) in Clark County for each relevant industry by race and gender. As shown in Figure 3-11:

- Black Americans (7.5%) and Hispanic Americans (9.5%) own construction businesses at rates less than that of white Americans (12.2%), and women (7.8%) own construction businesses at a rate less than that of men (11.0%).
- Asian Pacific Americans (11.7%), Black Americans (7.4%), Hispanic Americans (16.0%), and Native Americans (2.7%) own professional services businesses at rates less than that of white Americans (22.7%), and women (14.7%) own such businesses at a rate less than that of men (20.6%).
- Black Americans (7.6%) own goods and other services businesses at a rate less than that of white Americans (17.5%).

Figure 3-11.
Self-employment rates in study-related industries, Clark County, 2017-2021

Group	Construction	Professional Services	Goods and Other Services
Race/ethnicity			
Asian Pacific American	17.9 %	11.7 % **	10.5 %
Black American	7.5 % **	7.4 % **	7.6 % **
Hispanic American	9.5 % *	16.0 % **	16.2 %
Native American	9.3 %	2.7 % **	14.0 % †
MENA American	14.4 % †	57.2 % **	10.7 % †
Subcontinent Asian American	18.9 % †	14.0 %	0.0 % †
Other race POC	14.7 % †	22.2 % †	16.3 % †
White American	12.2 %	22.7 %	17.5 %
Gender			
Women	7.8 % **	14.7 % **	20.6 % **
Men	11.0 %	20.6 %	11.5 %
Veteran Status			
Veteran	11.6 %	15.6 %	4.6 % **
Non-veteran	10.6 %	18.9 %	16.0 %
All individuals	10.7 %	18.6 %	14.9 %

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 2017-2021 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/>.

BBC also conducted regression analyses to determine whether differences in business ownership rates in Clark County exist based on race and gender even after statistically controlling for various personal factors such as income, education, and familial status. Even after accounting for various personal factors:

- Women are less likely to own construction businesses than men.
- Asian Pacific Americans and Black Americans are less likely to own professional services businesses relative to white Americans. Women are also less likely to own professional services businesses than men.

D. Business Success

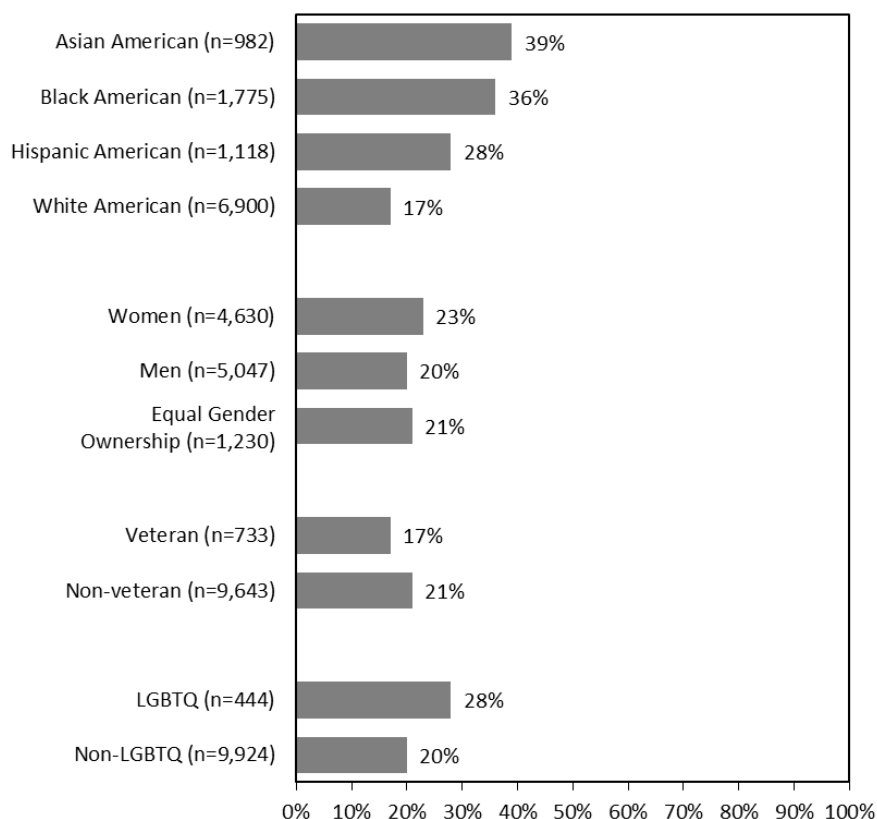
Research indicates that, nationally, POC- and woman-owned businesses fare worse than businesses owned by white American men. For example, POC- and woman-owned businesses are more likely to experience financial challenges relative to those owned by white Americans and men, respectively.^{129, 130} In addition, POC- and woman-owned businesses have been shown to be less successful than those owned by white Americans and men, respectively, based on a number of different indicators such as profits and business size.^{131, 132, 133, 134} BBC examined data on business financial conditions, business receipts, and business owner earnings to further explore business success.

1. Financial condition. BBC examined the reported *financial condition* of businesses in the United States by the race and gender of their owners. Financial condition refers to a business' increase or

decrease in revenue and number of employees in the past 12 months as well as anticipated increase in revenue and number of employees over the next 12 months, as reported in the Small Business Credit Survey. Financial condition also assesses financial challenges a business may have experienced in the past 12 months including weak sales, difficulty paying expenses, uneven cash flow, and credit availability. As shown in Figure 3-12, Asian American- (39%), Black American- (36%), and Hispanic American-owned businesses (28%) are more likely than white American-owned businesses (17%) to report being in poor financial condition. In addition, woman-owned businesses (23%) are more likely to report being in poor financial condition than businesses owned by men (20%).

Figure 3-12.
Businesses in poor financial
condition in the United
States, 2021

Source:
BBC from
2021 Small Business Credit Survey.



2. Business receipts. BBC also examined data on business receipts to assess whether POC- and woman-owned businesses in Clark County earn as much as those owned by white Americans and men, respectively. Figure 3-13 indicates that Asian American-, Black American-, Hispanic American-, and Native Hawaiian and other Pacific Islander-owned businesses have mean annual business receipts less than those owned by white Americans (\$2.6 million). In addition, woman-owned businesses (\$1.1 million) have mean annual business receipts less than those owned by men (\$2.8 million).

3. Business owner earnings. BBC also analyzed the earnings of business owners to assess whether owners who are POCs and women in Clark County earn as much as business owners who are white Americans and men, respectively. As shown in Figure 3-14:

- Black American (\$39,667), Hispanic American (\$34,988), and Native American (\$24,013) business owners earned less on average than white American business owners (\$59,666); and
- Woman business owners (\$33,233) earned less on average than male business owners (\$65,170).

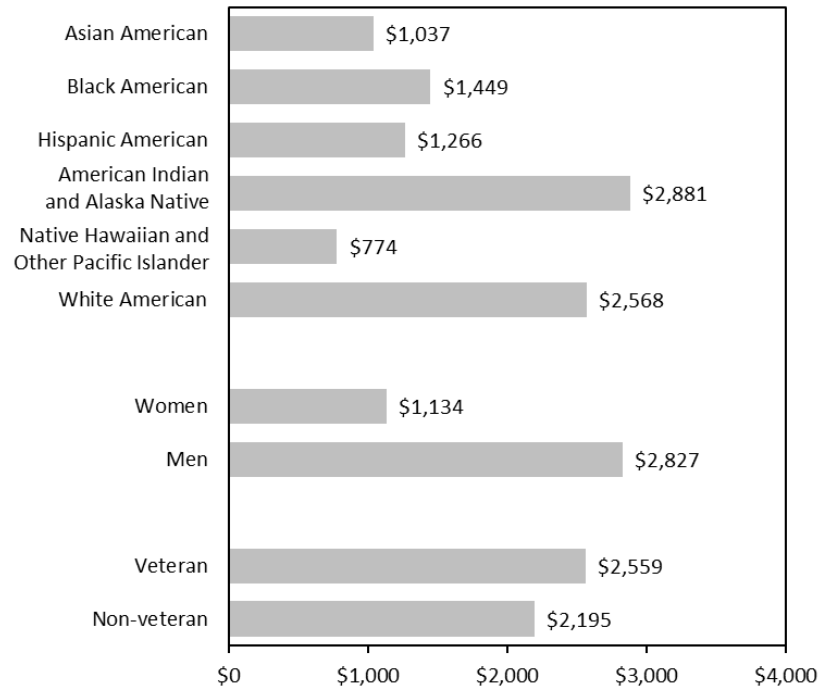
Figure 3-13.
Mean annual business receipts
(in thousands), Clark County

Note:

Includes employer firms. Does not include publicly-traded companies or other firms not classifiable by race and gender.

Source:

BBC from 2017 Annual Business Survey.



BBC also conducted regression analyses to determine whether race- and gender-based differences in business owner earnings in Clark County 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 male business owners, woman business owners earn substantially less.

Figure 3-14.
Mean annual business owner
earnings, Clark County, 2017-
2021

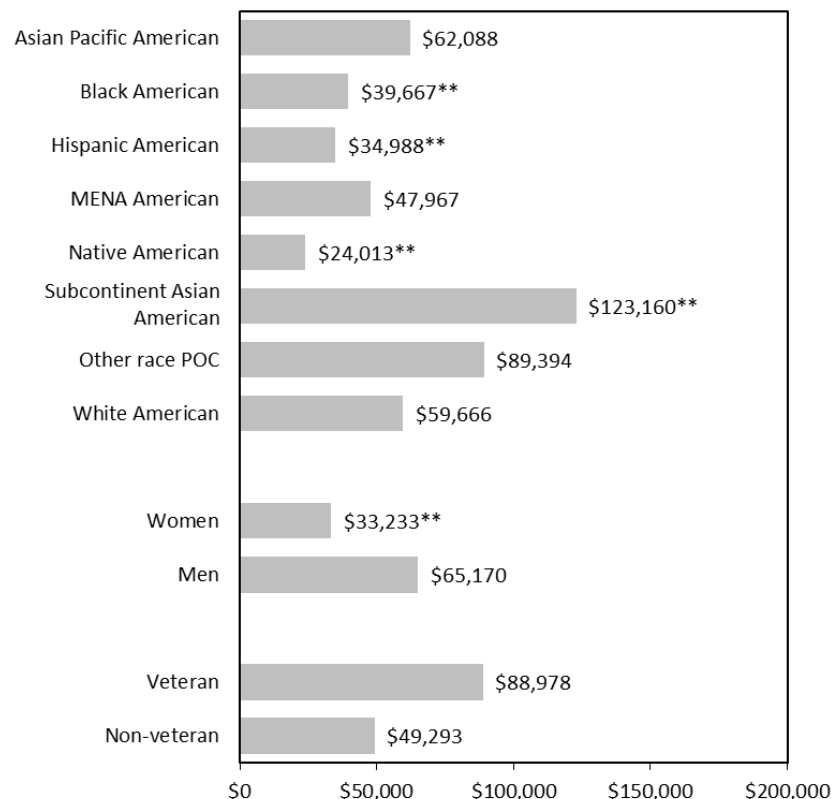
Note:

The sample universe is business owners age 16 and older who reported positive earnings. All amounts in 2021 dollars.

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

Source:

BBC from 2017-2021 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/>.



E. Summary

BBC's analyses of marketplace conditions indicate that POCs and women face barriers in industries relevant to LAS' contracting and procurement. Both existing and primary research we conducted indicate that disparities exist in acquiring human capital, accruing financial capital, owning businesses, and operating successful businesses. In many cases, there is evidence those disparities exist even after accounting for various personal factors. 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—construction, professional services, and goods and other services—and to operate those businesses successfully. Any difficulties those individuals face in starting or operating businesses may reduce their availability for government work and the degree to which they are able to successfully perform such work.

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- ¹⁹ Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.
- ²⁰ *Adarand VII*, 228 F.3d at 1167–76; 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”); *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 2015 WL 1396376, appeal pending.
- ²¹ *Adarand VII*, 228 F.3d at 1168–70; *Western States Paving*, 407 F.3d at 992; see *DynaLantic*, 885 F.Supp.2d 237; *Midwest Fence Corp. v. U.S. DOT, Illinois DOT, et al.*, 2015 WL 1396376, appeal pending; *Geyer Signal*, 2014 WL 130909297 at *14.
- ²² *Adarand VII* at 1170–72; see *DynaLantic*, 885 F.Supp.2d 237; *Geyer Signal*, 2014 WL 1309092 at *14.
- ²³ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).
- ²⁴ *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994).
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CHAPTER 4.

Data Collection and Analysis

Chapter 4 provides an overview of the contracts and procurements BBC Research & Consulting (BBC) analyzed as part of the 2023 Harry Reid International Airport (LAS) Disparity Study and the processes we used to collect relevant prime contract, subcontract, and vendor data from LAS. Chapter 4 is organized in 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 construction, professional services, and non-professional services and supplies contracts and procurements LAS awarded between July 1, 2017, and June 30, 2022 (the study period) from its SAP Financial Management (SAP) and ProCore Construction Management (ProCore) systems. 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 the prime contracts and subcontracts LAS awarded during the study period. We sought those data regardless of the race/ethnicity and gender of the owners of the businesses that performed the work or their statuses as person of color (POC)-; woman-; veteran-; or lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses.

1. Prime contract data. LAS provided BBC with the following information about each relevant prime contract it awarded during the study period:

- 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 (as of December 31, 2022);
- Funding source [Federal Aviation Administration (FAA)-funded or non FAA-funded]; and
- Goal status (i.e., whether disadvantaged business enterprise goals were used to award the project).

LAS advised BBC on how to interpret the data it provided, including how to best identify unique bid opportunities and how to aggregate related award or payment amounts, where appropriate.

2. Subcontract data. LAS does not collect comprehensive data on the subcontracts associated with most of the projects it awards. The Construction and Design Division at LAS provided BBC with data on subcontracts related to 11 prime contracts, which accounted for approximately \$54 million of the contract and procurement dollars LAS awarded during the study period. That information was obtained primarily through bid documents. To gather information on additional subcontracts, BBC conducted surveys with prime contractors to collect data on the subcontracts associated with the projects LAS awarded to them during the study period and that we deemed to likely have included subcontract opportunities. We made that determination based on the work types involved in each project and project sizes, primarily including relatively large construction and professional services projects. We requested the following information from prime contractors about each subcontract associated with each relevant project LAS awarded to them:

- Associated prime contract number;
- Award amount for the project;
- Amount paid-to-date for the project (as of December 31, 2022);
- Commitment amount for each subcontract;
- Amount they paid on each subcontract (as of December 31, 2022);
- Description of work;
- Subcontractor name; and
- Subcontractor contact information.

BBC requested subcontract data associated with 170 prime contracts LAS awarded during the study period. Through our survey and numerous follow-up efforts, we collected information on subcontractor participation for more than 44 percent of the associated contracting dollars for those projects.

3. Prime contract and subcontract amounts. For each contract element included in our analyses, BBC examined the dollars LAS 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.

4. Contracts and procurements included in study analyses. Figure 4-1 presents the number of contract elements and associated dollars BBC included in our analyses.

Figure 4-1.
Contracts and procurements
and associated dollars
included in the disparity study

Note:

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

Source:

BBC from LAS data.

Contract type	Number	Dollars
Construction	12,003	\$205,666,406
Professional services	729	\$77,168,235
Non-professional services and supplies	11,263	\$136,200,147
Total	23,995	\$419,034,787

B. Vendor Data

BBC also compiled information on the businesses that participated in relevant prime contracts and subcontracts LAS awarded during the study period, including:

- Business name;
- Physical addresses and phone numbers;
- Ownership status (i.e., whether each business was POC-, woman-, veteran-, or LGBTQ+-owned);
- Ethnicity of ownership (if POC-owned);
- Status as certified Minority-owned Business Enterprises, Woman-owned Business Enterprises, Veteran-owned Business Enterprises, and LGBTQ+-owned Business Enterprises ;
- Primary lines of work;
- Business size; and
- Year of establishment.

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

- LAS contract and vendor data;
- Surveys the study team conducted with business owners and managers;
- The Nevada Unified Certification Program directory;
- Dun & Bradstreet (D&B) business listings and other business information sources; and
- Business websites and other secondary research.

C. RGMA

BBC used LAS data to determine the RGMA—the geographical area in which the airport spends the substantial majority of its contract and procurement dollars—for the disparity study. LAS awarded approximately 90.4 percent of relevant contract and procurement dollars to businesses located in Clark County, Nevada. As a result, our analyses—including the availability analysis and quantitative analyses of marketplace conditions—focused on that region.

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 LAS 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 4-2 presents subindustry classifications for the construction, professional services, and non-professional services and supplies contracts and procurements BBC included in our analyses as well as the dollars LAS 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 LAS awarded to contractors for scaffolding services represented less than 1 percent of the total dollars we examined as part of the study. So, we combined scaffolding 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 LAS made with or awarded to government agencies, utility providers, hospitals, or nonprofit organizations (\$10.6 million);
- Contracts and procurements that reflected “national markets”—that is, subindustries dominated by large national or international businesses—or subindustries where LAS awarded most of the dollars to businesses located outside the RGMA (\$150.8 million);¹
- Purchases that often include property purchases, leases, or other pass-through dollars (\$16.2 million);² or
- Types of work not typically included in disparity studies and that account for relatively small percentages of LAS’ contract and procurement dollars (\$61.5 million).³

E. Review Process

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

¹ Examples of such work include computer manufacturing and proprietary software.

² An example of such work is real estate consulting.

³ Examples of industries not typically included in disparity studies include legal services and jet fuel.

Figure 4-2.
Contract and procurement
dollars by subindustry

Note:

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

Source:

LAS data

Industry	Total
Construction	
Highway, street, and bridge construction	\$52,349,796
Building construction	\$51,581,608
Electrical work	\$21,916,232
Concrete work and materials	\$19,456,660
Electrical equipment and supplies	\$13,030,122
Plumbing and HVAC	\$6,382,435
Excavation, drilling, wrecking, and demolition	\$4,691,797
Vertical building trades	\$4,647,016
Heavy construction equipment rental	\$3,037,581
Landscape services	\$3,015,809
Painting, striping, marking, and weatherproofing	\$2,183,872
Water, sewer, and utility lines	\$2,023,851
Fencing, guardrails, barriers, and signs	\$1,561,205
Rebar and reinforcing steel	\$1,076,612
Other construction services	\$7,016,080
Other construction materials	\$11,695,731
Total construction	\$205,666,406
Professional services	
Engineering	\$31,427,594
IT and data services	\$12,362,041
Advertising, marketing and public relations	\$9,913,286
Architectural and design services	\$6,813,678
Business services and consulting	\$4,188,099
Testing and inspection	\$3,769,877
Transportation planning and environmental services	\$3,320,868
Human resources and job training services	\$1,335,802
Surveying and mapmaking	\$455,668
Construction management	\$348,605
Other professional services	\$3,232,717
Total professional services	\$77,168,235
Non-professional services and supplies	
Security systems services	\$24,707,311
Elevator goods and services	\$13,185,738
Cleaning and janitorial supplies	\$11,768,438
Petroleum and petroleum products	\$7,541,466
Automobiles	\$7,252,688
Industrial equipment and machinery	\$6,182,342
Cleaning and janitorial services	\$3,307,280
Security guard services	\$3,007,459
Office equipment and supplies	\$2,301,022
Communications equipment	\$1,921,478
Uniforms and apparel	\$1,896,977
Security systems	\$1,732,973
Safety equipment	\$879,853
Printing, copying, and mailing	\$283,459
Vehicle repair services	\$28,600
Other services	\$37,287,196
Other goods	\$12,915,866
Total non-professional services and supplies	\$136,200,147
GRAND TOTAL	\$419,034,787

CHAPTER 5.

Availability Analysis

BBC Research & Consulting (BBC) analyzed the availability of person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses “ready, willing, and able” to perform work on the construction, professional services, and non-professional services and supplies contracts and procurements Harry Reid International Airport (LAS) awards.¹ Chapter 5 describes the analysis in five parts:

- A. Purpose of the Availability Analysis;
- B. Potentially Available Businesses;
- C. Availability Database;
- D. Availability Calculations; and
- E. Availability Analysis Results.

Appendix E provides more information about the availability analysis and the methodology we used to conduct it.

A. Purpose of the Availability Analysis

BBC examined the availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for LAS’ prime contracts and subcontracts to use as benchmarks against which to compare the actual participation of those businesses in its work to assess whether any disparities exist between participation and availability. Assessing disparities between the participation and availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses allowed us to determine whether certain business groups were substantially underutilized during the study period, which is crucial in determining whether the use of *race- or gender-conscious* measures is appropriate and, if so, ensuring their use meets the *strict scrutiny* and *intermediate scrutiny* standards of constitutional review, respectively (for details, see Chapter 2). In addition, estimating availability is useful to LAS in setting its next overall Disadvantaged Business Enterprise (DBE) goal for the participation of POC- and woman-owned businesses in the United States Department of Transportation (USDOT)-funded projects it awards as well as setting contract-specific goals for the participation of those businesses in USDOT-funded work, if LAS determines the use of such measures is appropriate.

B. Potentially Available Businesses

BBC’s availability analysis focused on specific areas of work, or *subindustries*, associated with the contracts and procurements LAS awarded between July 1, 2017, and June 30, 2022 (the study period), which serves as a proxy for the work it might award in the future. We began the analysis by identifying the specific subindustries in which LAS spends most of its contracting dollars as well as the geographic

¹ “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 race/ethnic groups.

area in which most of the businesses with which LAS spends those dollars are located (i.e., *the relevant geographic market area*, or *RGMA*). Our analyses showed that LAS awarded approximately 90 percent of relevant contract and procurement dollars to businesses located in Clark County, Nevada, which indicates that the RGMA for the study should be Clark County.

After identifying the RGMA, BBC conducted extensive surveys with more than 700 businesses in the marketplace to develop a representative and unbiased database of businesses located in the RGMA that perform types of work relevant to LAS projects. The objective of the survey process was not to collect information from every relevant business located in the RGMA, but rather, to collect information from an unbiased subset of the relevant business population that appropriately represents the entire relevant business population.

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 LAS 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 in Clark County, based primarily on information from Dun & Bradstreet (D&B) Marketplace. We compiled information about businesses based on 8-digit work specialization codes most related to the contracts and procurements LAS awarded during the study period. We obtained listings on 7,015 local businesses that perform work related to those work specializations. We did not have working phone numbers for 1,230 of those businesses, but we attempted availability surveys with the remaining 5,785 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 one, 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 Clark County;
- Business size in terms of revenue and number of employees;
- Race of the owner(s);
- Gender of the owners(s);
- Whether the owners(s) are veterans; and
- Whether the owner(s) identify as LGBTQ+.

C. Availability Database

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

- Being a private sector business that is active and operational;
- Primary lines of work being relevant to LAS projects;
- Being able to perform work in Clark County; and
- Being interested in working for government organizations.

Figure 5-1 presents the percentage of businesses in the availability database that were POC-, woman-, veteran-, or LGBTQ+-owned. The database included information on the 727 businesses with which Davis Research completed availability surveys and provided responses that met the above criteria. As shown in Figure 5-1, 40.2 percent of the businesses in the database were POC- or woman-owned, 10.5 percent were veteran-owned, and 2.3 percent were LGBTQ+-owned. In addition, BBC included Middle Eastern and North African (MENA) American-owned businesses in the analysis but categorized them separately from the other race/ethnic groups, because MENA American-owned businesses are not recognized under the Federal DBE Program as being presumptively disadvantaged.² As shown in Figure 5-1, an additional 2.1 percent of businesses in the database were MENA American-owned businesses.³

D. Availability Calculations

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

² The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

³ Businesses could be both POC-, woman-, or MENA American-owned *and* veteran-or LGBTQ+-owned. Thus, the percentages shown in Figure 5-1 corresponding to veteran-and LGBTQ+-owned businesses should not be added to the percentages shown for POC-, woman-, or MENA-owned businesses due to potential double counting.

Figure 5-1.
Percent of businesses in the availability
database by relevant business group

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	10.9 %
Asian Pacific American-owned	4.1 %
Black American-owned	8.1 %
Hispanic American-owned	14.0 %
Native American-owned	2.1 %
Subcontinent Asian American-owned	1.0 %
Total POC-owned	29.3 %
Total POC- and woman-owned	40.2 %
Veteran-owned	10.5 %
LGBTQ+-owned	2.3 %

BBC only considered a portion of the businesses in the availability database as potentially available for any given LAS 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 the availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for each one:

1. We identified businesses in the availability database that reported they:
 - Perform work in that particular role (i.e., as a prime contractor or a subcontractor);
 - Perform that type of work; and
 - Can perform work of that size or larger.
2. We then counted the number of POC-owned businesses, woman-owned businesses, veteran-owned businesses, LGBTQ+-owned businesses, and all other businesses 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 analysis and then multiplied the percent availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for each contract element by the dollars associated with it. We then added results across all contract elements and divided by the total corresponding dollars. The result was estimates of the percent of relevant project dollars one would expect LAS to award to POC-, woman-, veteran-, and LGBTQ+-owned businesses based on their availability for specific types and sizes of that work. Figure 5-2 provides an example of how we estimated availability for a subcontract associated with a project LAS awarded during the study period.

E. Availability Results

BBC estimated the overall availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for the construction, professional services, and non-professional services and supplies work LAS awards as well as separately for various subsets of LAS work. For each set of projects, we present availability estimates for all POC- and woman-owned businesses together and separately for each business group relevant to the Federal DBE Program: white woman-owned businesses, Asian Pacific American-owned businesses,

Black American-owned businesses, Hispanic American-owned businesses, Native American-owned businesses, and Subcontinent Asian American-owned businesses. We also present availability estimates for MENA American-, veteran-, and LGBTQ+-owned businesses for all relevant LAS projects considered together.

BBC based availability estimates on the prime contracts and subcontracts LAS awarded between July 1, 2017, and June 30, 2022. A key assumption of the availability analysis is that the work LAS awarded during the study period is representative of the work it will award in the future. If the types and sizes of the projects LAS awards in the future differ substantially from the work it awarded during the study period, then the agency should adjust availability estimates accordingly.

1. Overall. Figure 5-3 presents dollar-weighted estimates of the overall availability of POC- and woman-owned businesses for LAS work. As shown in Figure 5-3, the availability of POC- and woman-owned businesses for all LAS work considered together is 34.6 percent, indicating that one might expect LAS to award approximately 34.6 percent of its project dollars to POC- and woman-owned businesses based on their availability for that work. The business groups that exhibit the greatest availability for LAS work are Hispanic American-owned businesses (11.1%), white woman-owned businesses (9.1%), and Black American-owned businesses (6.9%).

BBC also examined the overall availability of MENA American-, veteran-, and LGBTQ+-owned businesses for LAS work, the results for which are not shown in Figure 5-3. The analysis indicated that the availability of MENA American-owned businesses for LAS work is 2.7 percent, the availability of veteran-owned businesses is 12.4 percent, and the availability of LGBTQ+-owned businesses is 2.1 percent.

Figure 5-2. Example of calculating availability for a LAS subcontract

On a contract LAS awarded during the study period, the prime contractor awarded a subcontract worth \$115,149 for architectural and design services work. To determine the overall availability of POC- and woman-owned businesses for the subcontract, BBC identified businesses in the availability database that indicated they:

- Perform architectural and design services work;
- Perform work as subcontractors; and
- Are able to perform work of equal size or larger than the size of contract element.

We found 24 businesses in the availability database that met those criteria, eight of which were POC- or woman-owned. Thus, the availability of POC- and woman-owned businesses for the subcontract was 33.3 percent (i.e., $8/24 \times 100 = 33.3$).

Figure 5-3. Availability estimates for LAS work

Note:

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

Source:

BBC availability analysis.

Business group	Availability
White woman-owned	9.1 %
Asian Pacific American-owned	4.7 %
Black American-owned	6.9 %
Hispanic American-owned	11.1 %
Native American-owned	2.0 %
Subcontinent Asian American-owned	0.7 %
Total POC-owned	25.5 %
Total POC- and woman-owned	34.6 %

2. Industry. BBC also examined the availability of POC- and woman-owned businesses separately for LAS construction, professional services, and non-professional services and supplies work to assess whether the availability of those businesses differed by industry. As shown in Figure 5-4, POC- and woman-owned businesses exhibit greater availability for LAS' non-professional services and supplies work (42.1%) than for the agency's professional services (38.1%) or construction work (28.3%). Availability for individual business groups differs across industries:

- The groups that exhibit the greatest availability for construction work are Hispanic American-owned businesses (15.2%) and white woman-owned businesses (5.3%).
- The groups that exhibit the greatest availability for professional services work are Black American-owned businesses (11.3%), white woman-owned businesses (9.1%), and Asian Pacific-owned businesses (8.0%).
- The groups that exhibit the greatest availability for non-professional services and supplies work are white woman-owned businesses (14.7%), Black American-owned businesses (10.6%), and Hispanic American-owned businesses (8.0%).

Figure 5-4.
Availability estimates for construction, professional services,
and non-professional services and supplies work

Business group	Industry		
	Construction	Professional services	Non-professional services and supplies
White woman-owned	5.3 %	9.1 %	14.7 %
Asian Pacific American-owned	2.8 %	8.0 %	5.8 %
Black American-owned	2.8 %	11.3 %	10.6 %
Hispanic American-owned	15.2 %	5.7 %	8.0 %
Native American-owned	1.7 %	1.3 %	3.1 %
Subcontinent Asian American-owned	0.4 %	2.8 %	0.0 %
Total POC-owned	22.9 %	29.0 %	27.5 %
Total POC- and woman-owned	28.3 %	38.1 %	42.1 %

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

Source: BBC availability analysis.

3. Contract role. Many POC- and woman-owned businesses are small businesses, and thus, often work as subcontractors, so it is instructive to examine availability estimates separately for LAS prime contracts and subcontracts. In addition, prime contracts are usually bigger in size than subcontracts, and project size is typically inversely related to the availability of POC- and woman-owned businesses for agency work (i.e., the larger the project, the less the availability of POC- and woman-owned businesses). As shown in Figure 5-5, the availability of POC- and woman-owned businesses for LAS subcontracts (33.0%) is comparable to that for LAS prime contracts (34.9%). This result is likely due to the fact that LAS awarded a large number of stand-alone purchase orders during the study period that were smaller in size than traditional prime contracts or subcontracts. Additionally, availability for construction work—which often has more subcontract opportunities than other types of work—was lower than availability for professional services and non-professional services and supplies work, which could explain why availability is similar for prime contracts and subcontracts. The groups that exhibit the

greatest levels of availability for prime contracts and subcontracts are the same: Hispanic American-owned businesses (prime contracts = 10.3%; subcontracts = 15.3%), white woman-owned businesses (prime contracts = 9.3%; subcontracts = 8.1%), and Black American-owned businesses (prime contracts = 7.3%; subcontracts = 5.0%).

Figure 5-5.
Availability estimates for LAS
prime contracts and
subcontracts

Note:

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

Source:

BBC availability analysis.

Business group	Role	
	Prime contracts	Subcontracts
White woman-owned	9.3 %	8.1 %
Asian Pacific American-owned	5.2 %	2.7 %
Black American-owned	7.3 %	5.0 %
Hispanic American-owned	10.3 %	15.3 %
Native American-owned	2.2 %	1.5 %
Subcontinent Asian American-owned	0.8 %	0.4 %
Total POC-owned	25.7 %	24.9 %
Total POC- and woman-owned	34.9 %	33.0 %

4. Prime contract size. BBC examined the availability of POC- and woman-owned businesses separately for “large” prime contracts—that is, construction contracts worth \$2 million or more and professional services and non-professional services and supplies contracts worth \$1 million or more—and “small” prime contracts—that is, construction contracts worth less than \$2 million and professional services and non-professional services and supplies contracts worth less than \$1 million—that LAS awarded during the study period. That analysis helped assess whether prime contract size was related to the availability of POC- and woman-owned businesses for LAS work. As shown in Figure 5-6, the availability of POC- and woman-owned businesses is greater for small prime contracts (40.6%) than large prime contracts (29.9%). Availability for individual business groups differed by contract size:

- The groups that exhibit the greatest levels of availability for small prime contracts are Hispanic American-owned businesses (13.1%), Black American-owned businesses (10.1%), and white woman-owned businesses (8.0%).
- The groups that exhibit the greatest levels of availability for large prime contracts are white woman-owned businesses (10.3%), Hispanic American-owned businesses (7.8%), and Black American-owned businesses (4.8%).

5. Funding source. The Federal DBE Program applies specifically to LAS’ USDOT-funded projects.⁴ As part of the program, the agency uses various race- and gender-neutral measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the USDOT-funded projects it awards (specifically Federal Aviation Administration-funded work). It is instructive to examine the availability of POC- and woman-owned businesses separately for LAS’ USDOT-funded work to assess whether the availability of those businesses for those projects is different than their availability for the non USDOT-funded projects it awards. Figure 5-7 presents the

⁴ BBC considered a project to be USDOT-funded if it included at least \$1 of federal funding.

availability of POC- and woman-owned businesses separately for LAS' USDOT- and non USDOT-funded projects.

Figure 5-6.
Availability estimates for large and small prime contracts

Note:

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

Source:

BBC availability analysis.

Business group	Size	
	Small	Large
White woman-owned	8.0 %	10.3 %
Asian Pacific American-owned	5.7 %	4.7 %
Black American-owned	10.1 %	4.8 %
Hispanic American-owned	13.1 %	7.8 %
Native American-owned	2.2 %	2.2 %
Subcontinent Asian American-owned	1.5 %	0.2 %
Total POC-owned	32.5 %	19.6 %
Total POC- and woman-owned	40.6 %	29.9 %

As shown in Figure 5-7, the availability of POC- and woman-owned businesses is greater for the non USDOT-funded projects (36.7%) LAS awards than for the USDOT-funded projects (24.5%) it awards. Availability for individual business groups differed between funding sources:

- The groups that exhibit the greatest availability for USDOT-funded work are Hispanic American-owned businesses (15.8%), Asian Pacific American-owned businesses (2.7%), and white woman-owned businesses (2.7%).
- The groups that exhibit the greatest availability for non USDOT-funded work are white woman-owned businesses (10.4%), Hispanic American-owned businesses (10.2%), and Black American-owned businesses (7.8%).

Figure 5-7.
Availability estimates for LAS work by funding source

Note:

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

Source:

BBC availability analysis.

Business group	Funding	
	USDOT	Non USDOT
White woman-owned	2.7 %	10.4 %
Asian Pacific American-owned	2.7 %	5.2 %
Black American-owned	2.6 %	7.8 %
Hispanic American-owned	15.8 %	10.2 %
Native American-owned	0.6 %	2.4 %
Subcontinent Asian American-owned	0.1 %	0.9 %
Total POC-owned	21.8 %	26.3 %
Total POC- and woman-owned	24.5 %	36.7 %

6. Goal status. As part of its implementation of the Federal DBE Program, LAS uses race- and gender-conscious DBE contract goals to encourage the participation of certified DBE subcontractors in some, but not all, of its USDOT-funded projects. BBC assessed differences in the availability of POC- and woman-owned businesses for contracts and procurements LAS awards with the use of DBE contract goals (goals projects) and contracts and procurements LAS awards without the use of race- and gender-conscious goals, which includes both USDOT-funded projects and non USDOT-funded projects (no goals projects). As shown in Figure 5-8, POC- and woman-owned businesses exhibit greater availability for no

goals projects (36.6%) than for goals projects (23.2%). Availability for individual business groups differed between goal status:

- The groups that exhibit the greatest levels of availability for goals projects are Hispanic American-owned businesses (17.1%), white woman-owned businesses (2.4%), and Black American-owned businesses (1.6%).
- The groups that exhibit the greatest levels of availability for no goals projects are white woman-owned businesses (10.3%), Hispanic American-owned businesses (10.1%), and Black American-owned businesses (7.8%).

Figure 5-8.
Availability estimates for
LAS work by goal status

Note:

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

Source:

BBC availability analysis.

Business group	Goal status	
	Goals	No Goals
White woman-owned	2.4 %	10.3 %
Asian Pacific American-owned	1.4 %	5.3 %
Black American-owned	1.6 %	7.8 %
Hispanic American-owned	17.1 %	10.1 %
Native American-owned	0.7 %	2.3 %
Subcontinent Asian American-owned	0.1 %	0.8 %
Total POC-owned	20.8 %	26.4 %
Total POC- and woman-owned	23.2 %	36.6 %

CHAPTER 6.

Utilization Analysis

BBC Research & Consulting (BBC) measured the participation of person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses in the construction, professional services, and non-professional services and supplies contracts and procurements Harry Reid International Airport (LAS) awarded between July 1, 2017, and June 30, 2022 (study period).¹ We measured participation in terms of *utilization*—the percentage of contract and procurement dollars LAS awarded to those businesses during the study period. We measured the overall participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in all relevant contracts and procurements LAS awarded during the study period as well as the overall participation of POC- and woman-owned businesses in various subsets of LAS projects. Chapter 6 presents the analysis in four 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 LAS awarded to POC-, woman-, veteran-, and LGBTQ+-owned businesses during the study period is useful in determining whether certain business groups face barriers as it relates to LAS' contracting and procurement processes. Moreover, assessing whether any business groups are substantially underutilized relative to their availability for LAS work allows the agency to determine whether the use of *race- or gender-conscious* measures is appropriate and ensure that its use of such measures is tailored to those business groups for which compelling evidence of such barriers exist.

B. Utilization Analysis Results

BBC calculated the overall participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in all LAS contracts and procurements combined. In addition, we included Middle Eastern and North African (MENA) American-owned businesses in the analysis but categorized them separately from the other race/ethnic groups, because MENA American-owned businesses are not recognized under the Federal Disadvantaged Business Enterprise (DBE) Program as being presumptively disadvantaged.² For POC- and woman-owned businesses, we also present utilization analysis results separately for various subsets of the projects LAS awarded during the study period, because that level of information is instructive to LAS as it makes decisions about its implementation of the Federal DBE Program. For each

¹ "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 race/ethnic groups.

² The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

subset of projects, we present utilization results for all POC- and woman-owned businesses together and separately for each business group relevant to the Federal DBE Program: white woman-owned businesses, Asian Pacific American-owned businesses, Black American-owned businesses, Hispanic American-owned businesses, Native American-owned businesses, and Subcontinent Asian American-owned businesses.

1. Overall. Figure 6-1 presents the overall participation of POC- and woman-owned businesses for LAS work. Overall, LAS awarded 9.2 percent of relevant contract and procurement dollars to all POC- and woman-owned businesses considered together. The groups that exhibited the greatest levels of participation in that work were white woman-owned businesses (3.4%), Black American-owned businesses (2.7%), and Hispanic American-owned businesses (1.8%).

BBC also examined the overall participation of MENA American-, veteran-, and LGBTQ+-owned businesses for LAS work, the results for which are not shown in Figure 6-1. LAS awarded 0.3 percent of relevant contract and procurement dollars to MENA American-owned businesses, 1.5 percent to veteran-owned businesses, and 0.0 percent to LGBTQ+-owned businesses.

Figure 6-1.
Utilization analysis
results for LAS work

Note:

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

Source:

BBC utilization analysis.

Business group	Utilization
White woman-owned	3.4 %
Asian Pacific American-owned	0.8 %
Black American-owned	2.7 %
Hispanic American-owned	1.8 %
Native American-owned	0.2 %
Subcontinent Asian American-owned	0.3 %
Total POC-owned	5.8 %
Total POC- and woman-owned	9.2 %

2. Industry. BBC also examined the participation of POC- and woman-owned businesses separately for LAS construction, professional services, and non-professional services and supplies work to assess whether the participation of those businesses differed by industry. As shown in Figure 6-2, the participation of POC- and woman-owned businesses considered together was greater for LAS' construction work (13.5%) than for the agency's professional services work (9.2%) or non-professional services and supplies work (2.7%). Participation for relevant business groups differed across industries:

- The groups that exhibited the greatest levels of participation in construction work were Black American-owned businesses (5.2%), white woman-owned businesses (4.2%), and Hispanic American-owned businesses (3.2%).
- The groups that exhibited the greatest levels of participation in professional services work were white woman-owned businesses (4.8%), Asian Pacific American-owned businesses (2.8%), and Hispanic American-owned businesses (0.9%).
- The groups that exhibited the greatest levels of participation in non-professional services and supplies work were white woman-owned businesses (1.3%), Subcontinent Asian American-owned businesses (0.7%), and Black American-owned businesses (0.4%).

Figure 6-2.
Utilization analysis results
for construction,
professional services, and
non-professional services
and supplies work

Note:

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

Source:

BBC utilization analysis.

Business group	Industry		
	Construction	Professional services	Non-professional services and supplies
White woman-owned	4.2 %	4.8 %	1.3 %
Asian Pacific American-owned	0.6 %	2.8 %	0.0 %
Black American-owned	5.2 %	0.1 %	0.4 %
Hispanic American-owned	3.2 %	0.9 %	0.3 %
Native American-owned	0.3 %	0.2 %	0.0 %
Subcontinent Asian American-owned	0.0 %	0.3 %	0.7 %
Total POC-owned	9.4 %	4.3 %	1.3 %
Total POC- and woman-owned	13.5 %	9.2 %	2.7 %

3. Contract role. Many POC- and woman-owned businesses are small businesses, and thus, often work as subcontractors. For that reason, it is useful to examine participation separately for the prime contracts and subcontracts LAS awarded during the study period. As shown in Figure 6-3, the participation of POC- and woman-owned businesses considered together was greater for LAS' subcontracts (13.9%) than for its prime contracts (8.2%). Participation for individual business groups differed between prime contracts and subcontracts:

- The groups that exhibited the greatest levels of participation in prime contracts were white woman-owned businesses (3.4%), Black American-owned businesses (2.5%), and Hispanic American-owned businesses (1.2%).
- The groups that exhibited the greatest levels of participation in subcontracts were Hispanic American-owned businesses (4.8%), Black American-owned businesses (3.3%), and white woman-owned businesses (3.2%).

Figure 6-3.
Utilization analysis results for LAS
prime contracts and subcontracts

Note:

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

Source:

BBC utilization analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
White woman-owned	3.4 %	3.2 %
Asian Pacific American-owned	0.5 %	2.4 %
Black American-owned	2.5 %	3.3 %
Hispanic American-owned	1.2 %	4.8 %
Native American-owned	0.3 %	0.0 %
Subcontinent Asian American-owned	0.3 %	0.1 %
Total POC-owned	4.8 %	10.6 %
Total POC- and woman-owned	8.2 %	13.9 %

4. Prime contract size. BBC examined the participation of POC- and woman-owned businesses separately for “large” prime contracts—that is, construction contracts worth \$2 million or more, and professional services and non-professional services and supplies contracts worth \$1 million or more—and “small” prime contracts—that is, construction contracts worth less than \$2 million, and professional services and non-professional services and supplies contracts worth less than \$1 million—that LAS

awarded during the study period. That analysis helped assess whether prime contract size was related to the participation of POC- and woman-owned businesses for LAS work. As shown in Figure 6-4, the participation of POC- and woman-owned businesses was greater for small prime contracts (12.9%) than large prime contracts (4.2%). Participation for individual business groups differed by contract size:

- The groups that exhibited the greatest levels of participation in small prime contracts were white woman-owned businesses (6.2%), Hispanic American-owned businesses (2.6%), and Black American-owned businesses (1.7%).
- The only groups that exhibited participation in large prime contracts were Black American-owned businesses (3.3%) and white woman-owned businesses (0.9%).

Figure 6-4.
Utilization analysis results for
large and small prime contracts

Note:

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

Source:

BBC utilization analysis.

Business group	Contract size	
	Small	Large
White woman-owned	6.2 %	0.9 %
Asian Pacific American-owned	1.1 %	0.0 %
Black American-owned	1.7 %	3.3 %
Hispanic American-owned	2.6 %	0.0 %
Native American-owned	0.5 %	0.0 %
Subcontinent Asian American-owned	0.7 %	0.0 %
Total POC-owned	6.6 %	3.3 %
Total POC- and woman-owned	12.9 %	4.2 %

5. Funding source. The Federal DBE Program applies specifically to LAS' United States Department of Transportation (USDOT)-funded projects (specifically Federal Aviation Administration-funded work).³ As part of the program, the agency uses various race- and gender-neutral measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the USDOT-funded projects it awards. It is instructive to examine the participation of those businesses separately for LAS' USDOT-funded work to assess whether the participation of POC- and woman-owned businesses in those projects is different from the non USDOT-funded projects it awards. As shown in Figure 6-5, the participation of POC- and woman-owned businesses considered together for LAS' USDOT-funded work (8.4%) was slightly less than that of its non USDOT-funded work (9.4%). Participation for individual business groups differed between funding source:

- The groups that exhibited the greatest levels of participation in USDOT-funded work were Hispanic American-owned businesses (3.6%), Black American-owned businesses (1.8%), and Asian Pacific American-owned businesses (1.5%).
- The groups that exhibited the greatest levels of participation in non USDOT-funded work were white woman-owned businesses (3.8%), Black American-owned businesses (2.8%), and Hispanic American-owned businesses (1.5%).

³ BBC considered a project to be USDOT-funded if it included at least \$1 of federal funding.

Figure 6-5.
Utilization analysis results for
LAS work by funding source

Note:

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

Source:

BBC utilization analysis.

Business group	Funding Source	
	USDOT	Non-USDOT
White woman-owned	1.4 %	3.8 %
Asian Pacific American-owned	1.5 %	0.7 %
Black American-owned	1.8 %	2.8 %
Hispanic American-owned	3.6 %	1.5 %
Native American-owned	0.0 %	0.3 %
Subcontinent Asian American-owned	0.0 %	0.4 %
Total POC-owned	7.0 %	5.6 %
Total POC- and woman-owned	8.4 %	9.4 %

6. Goal status. As part of its implementation of the Federal DBE Program, LAS uses race- and gender-conscious DBE contract goals to encourage the participation of certified DBE subcontractors in some, but not all, of its USDOT-funded projects. BBC assessed differences in the participation of POC- and woman-owned businesses for contracts and procurements LAS awards with the use of DBE contract goals (goals projects) and contracts and procurements LAS awards without the use of race- and gender-conscious goals, which includes both USDOT-funded projects and non USDOT-funded projects (no goals projects). As shown in Figure 6-7, POC- and woman-owned businesses exhibited similar levels of participation in goals projects (9.3%) and no goals projects (9.2%). Participation for individual business groups differed between goal status:

- The groups that exhibited the greatest levels of participation in goals projects were Hispanic American-owned businesses (3.9%), Black American-owned businesses (2.0%), and Asian Pacific American-owned businesses (1.7%).
- The groups that exhibited the greatest levels of participation in no goals projects were white woman-owned businesses (3.7%), Black American-owned businesses (2.8%), and Hispanic American-owned businesses (1.5%).

Figure 6-6.
Utilization analysis results for
LAS work by goal status

Note:

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

Source:

BBC utilization analysis.

Business group	Contract goals	
	Goals	No Goals
White woman-owned	1.6 %	3.7 %
Asian Pacific American-owned	1.7 %	0.7 %
Black American-owned	2.0 %	2.8 %
Hispanic American-owned	3.9 %	1.5 %
Native American-owned	0.0 %	0.2 %
Subcontinent Asian American-owned	0.0 %	0.3 %
Total POC-owned	7.7 %	5.5 %
Total POC- and woman-owned	9.3 %	9.2 %

C. Concentration of Dollars

BBC analyzed the degree to which relevant contract and procurement dollars LAS 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 collective success of their respective groups or whether only a few businesses account for each group's aggregate participation in LAS work. We assessed that question by calculating:

- The number of businesses within each group to which LAS awarded contract and procurement dollars during the study period; and
- The number of businesses within each group that accounted for 75 percent of the group's total contracting dollars during the study period after ordering them from most to least awarded dollars.

Figure 6-6 presents those results for each relevant group of POC- and woman-owned businesses. In total, LAS awarded approximately \$38.5 million to 97 different POC- and woman-owned businesses during the study period (not including MENA American-owned businesses). However, only 20 of those businesses (20.6%) accounted for 75.7 percent of the corresponding contract and procurement dollars. Most notably, although LAS awarded contract and procurement dollars to 28 different Hispanic American-owned businesses, five of them accounted for 75.7 percent of those dollars by themselves. Similarly, although LAS awarded contract and procurement dollars to five different Subcontinent Asian American-owned businesses, one of them accounted for 78.4 percent of those dollars by itself. In addition, two Black American-owned businesses accounted for 81.8 percent of all dollars that went to Black American-owned businesses by themselves. Those results indicate that a small number of POC- and woman-owned businesses accounted for most of the total contract and procurement dollars LAS awarded to those businesses during the study period.

Figure 6-6.
Concentration of contract and procurement dollars LAS 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	43	12	76.4 %
Asian Pacific American-owned	8	2	77.6 %
Black American-owned	9	2	81.8 %
Hispanic American-owned	28	5	75.7 %
Native American-owned	4	1	74.8 %
Subcontinent Asian American-owned	5	1	78.4 %
Total POC-owned	54	9	75.1 %
Total POC- and woman-owned	97	20	75.7 %

CHAPTER 7.

Disparity Analysis

BBC Research & Consulting (BBC) compared the percentage of contract and procurement dollars Harry Reid International Airport (LAS) awarded to person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses during the study period (i.e., *utilization* or *participation*) with the percentage of contract and procurement dollars one might expect LAS award to those businesses based on their *availability* for that work.¹ The analysis focused on construction, professional services, and non-professional services and supplies work LAS awarded between July 1, 2017 to June 30, 2022 (the study period).

A. Overview

BBC expressed utilization and availability as percentages of the total dollars associated with a particular set of projects 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 projects:

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

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.²

B. Disparity Analysis Results

BBC measured overall disparities between the participation and availability of POC-, woman-, veteran-, and LGBTQ+-owned businesses for all relevant contracts and procurements considered together. In addition, BBC included Middle Eastern and North African (MENA) American-owned businesses in the analysis but categorized them separately from the other race/ethnic groups, because MENA American-owned businesses are not recognized under the Federal Disadvantaged Business Enterprise (DBE)

¹ “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 race/ethnic groups.

² 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).

Program as being presumptively disadvantaged.³ For POC- and woman-owned businesses, we also measured disparities separately for various subsets of contracts and procurements LAS awarded during the study period. We provide detailed disparity analysis results in Appendix F.

1. Overall. Figure 7-1 presents disparity indices for POC- and woman-owned businesses for all relevant prime contracts and subcontracts LAS awarded during the study period. 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. The substantial disparities we observed are highlighted with red borders. As shown in Figure 7-1, POC- and woman-owned businesses considered together exhibited a disparity index of 27 for all relevant contracts and procurements LAS awarded during the study period, indicating a disparity where LAS awarded POC- and woman-owned businesses \$0.27 for every dollar one might expect the agency to award to those businesses based on their availability for LAS work. All POC- and woman-owned business groups exhibited substantial disparities for LAS work: white woman-owned businesses (disparity index of 37), Asian Pacific American-owned businesses (disparity index of 17), Black American-owned businesses (disparity index of 39), Hispanic American-owned businesses (disparity index of 16), Native American-owned businesses (disparity index of 10), and Subcontinent Asian American-owned businesses (disparity index of 41).

Figure 7-1.
Overall disparity analysis
results for LAS work

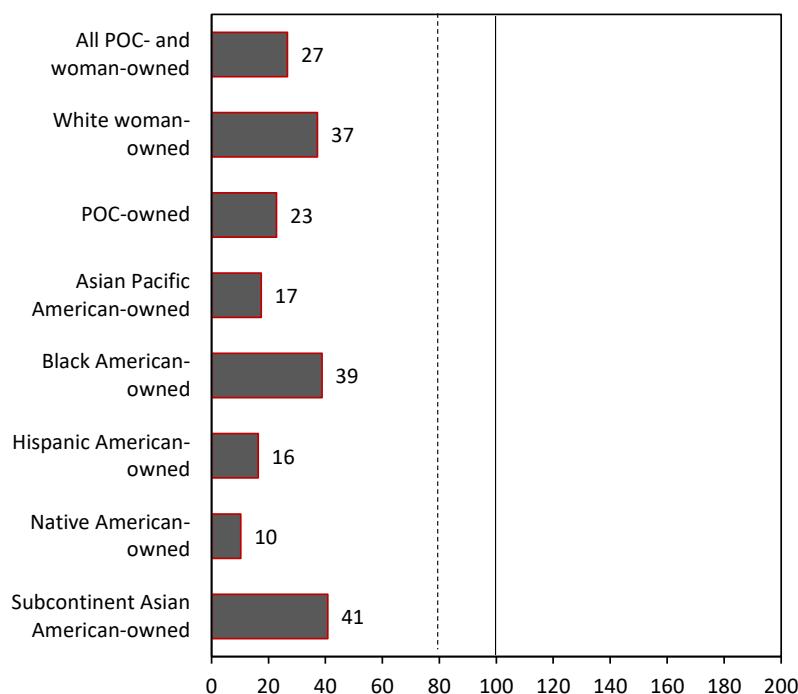
Notes:

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

Substantial disparities highlighted with red borders.

Source:

BBC disparity analysis.



BBC also assessed whether MENA American-, veteran-, and LGBTQ+-owned businesses exhibited disparities between their participation and availability for LAS work, the results for which are not shown in Figure 7-1. MENA American-owned businesses (disparity index of 10), veteran-owned

³ The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

businesses (disparity index of 12), and LGBTQ+-owned businesses (disparity index of 0) all exhibited substantial disparities for all relevant LAS contracts and procurements considered together.

2. Industry. LAS can implement the Federal DBE Program in a manner that is tailored specifically to different industries. For example, if LAS determines that it is appropriate to continue to use race- or gender-conscious measures as part of the Federal DBE Program, it can determine which groups might be eligible to participate in those measures separately for construction, professional services, and non-professional services and supplies projects based on information about which groups face substantial disparities in each industry. BBC examined disparity analysis results separately for the construction, professional services, and non-professional services and supplies work LAS awarded during the study period to determine whether outcomes for POC- and woman-owned businesses differed by industry.

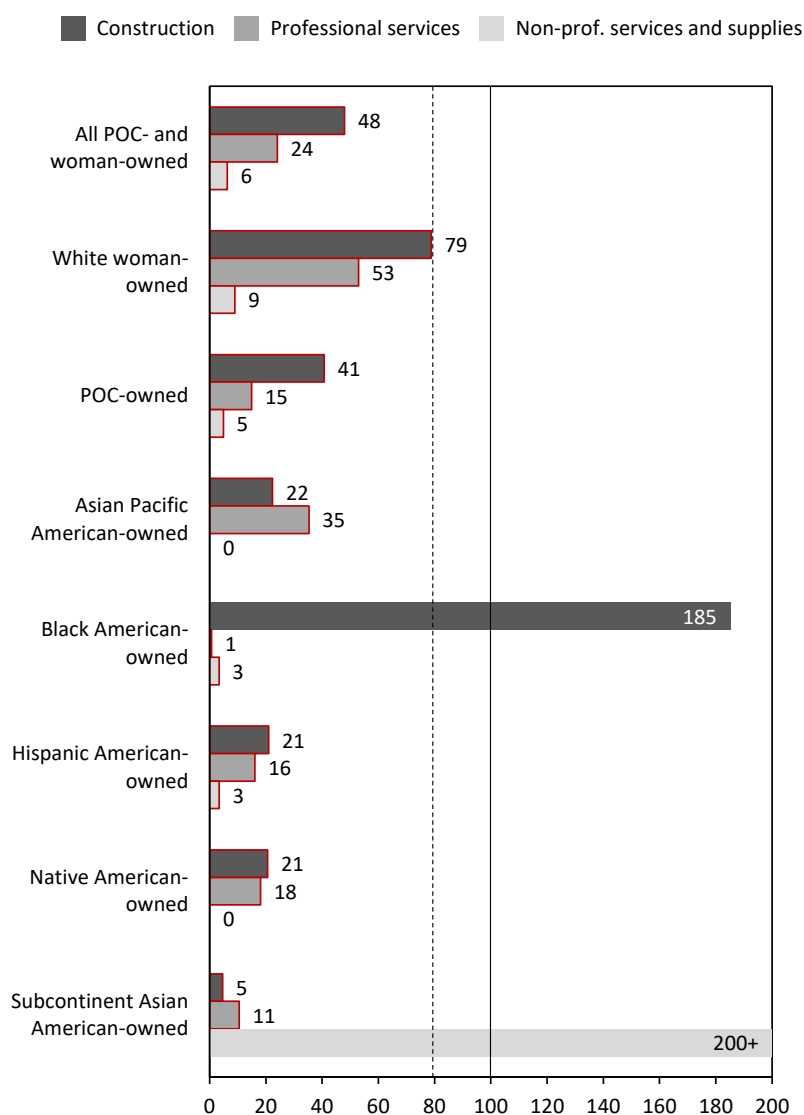
Figure 7-2.
Disparity analysis results
for construction,
professional services, and
non-professional services
and supplies work

Note:

For more detail, see Figures F-4, F-5,
and F-6 in Appendix F.

Source:

BBC disparity analysis.



As shown in Figure 7-2, POC- and woman-owned businesses considered together exhibited substantial disparities for construction (disparity index of 48), professional services (disparity index of 24), and non-professional services and supplies projects (disparity index of 6). Disparity indices varied by business group and industry:

- White woman-owned businesses (disparity index of 79), Asian Pacific American-owned businesses (disparity index of 22), Hispanic American-owned businesses (disparity index of 21), Native American-owned businesses (disparity index of 21), and Subcontinent Asian American-owned businesses (disparity index of 5) exhibited substantial disparities for construction work. Notably, Black American-owned businesses did not show a disparity for construction work (disparity index of 185).
- All POC- and woman-owned business groups exhibited substantial disparities for professional services work: white woman-owned businesses (disparity index of 53), Asian Pacific American-owned businesses (disparity index of 35), Black American-owned businesses (disparity index of 1), Hispanic American-owned businesses (disparity index of 16), Native American-owned businesses (disparity index of 18), and Subcontinent Asian American-owned businesses (disparity index of 11).
- White woman-owned businesses (disparity index of 9), Asian Pacific American-owned businesses (disparity index of 0), Black American-owned businesses (disparity index of 3), Hispanic American-owned businesses (disparity index of 3), and Native American-owned businesses (disparity index of 0) exhibited substantial disparities for non-professional services and supplies work.

3. Contract role. Many POC- and woman-owned businesses are small businesses, and thus, often work as subcontractors. For that reason, it is instructive to examine disparity analysis results separately for the prime contracts and subcontracts LAS awarded during the study period. As shown in Figure 7-3, POC- and woman-owned businesses considered together exhibited substantial disparities for prime contracts (disparity index of 24) and subcontracts (disparity index of 42). Disparity indices differed by business group and contract role:

- All POC- and woman-owned business groups exhibited substantial disparities for prime contracts: white woman-owned businesses (disparity index of 37), Asian Pacific American-owned businesses (disparity index of 10), Black American-owned businesses (disparity index of 35), Hispanic American-owned businesses (disparity index of 12), Native American-owned businesses (disparity index of 12), and Subcontinent Asian American-owned businesses (disparity index of 43).
- White woman-owned businesses (disparity index of 40), Black American-owned businesses (disparity index of 67), Hispanic American-owned businesses (disparity index of 31), Native American-owned businesses (disparity index of 0), and Subcontinent Asian American-owned businesses (disparity index of 19) exhibited substantial disparities for subcontracts. Asian Pacific American-owned businesses (disparity index of 89) exhibited a disparity for prime contracts, but that disparity was not substantial.

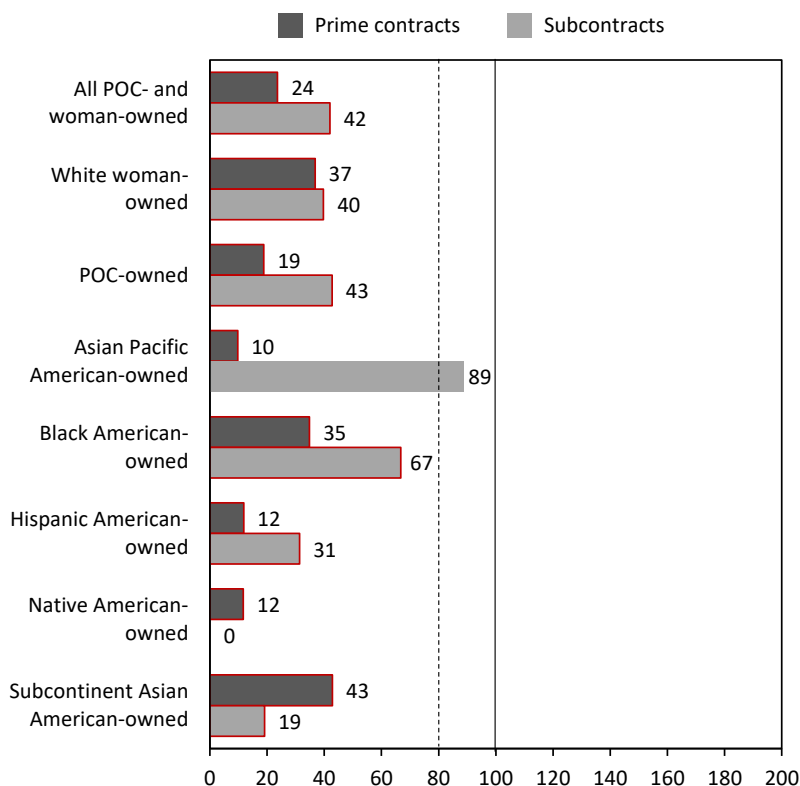
Figure 7-3.
Disparity analysis results
for LAS prime contracts
and subcontracts

Note:

For more detail, see Figures F-7 and F-8 in Appendix F.

Source:

BBC disparity analysis.



4. Prime contract size. BBC examined disparity analysis results for POC- and woman-owned businesses separately for “large” prime contracts—that is, construction contracts worth \$2 million or more and professional services and non-professional services and supplies contracts worth \$1 million or more—and “small” prime contracts—that is, construction contracts worth less than \$2 million, and professional services and non-professional services and supplies contracts worth less than \$1 million—LAS awarded during the study period to examine whether prime contract size was related to outcomes for POC- and woman-owned businesses for that work.

As shown in Figure 7-4, POC- and woman-owned businesses considered together exhibited substantial disparities on both small (disparity index of 32) and large prime contracts (disparity index of 14). In addition, all individual POC- and woman-owned business groups exhibited substantial disparities for both small and large prime contracts: white woman-owned businesses (small prime contracts disparity index = 78; large prime contracts disparity index = 9), Asian Pacific American-owned businesses (small prime contracts disparity index = 19; large prime contracts disparity index = 0), Black American-owned businesses (small prime contracts disparity index = 17; large prime contracts disparity index = 69), Hispanic American-owned businesses (small prime contracts disparity index = 20; large prime contracts disparity index = 0), Native American-owned businesses (small prime contracts disparity index = 25; large prime contracts disparity index = 0), and Subcontinent Asian American-owned businesses (small prime contracts disparity index = 48; large prime contracts disparity index = 0).

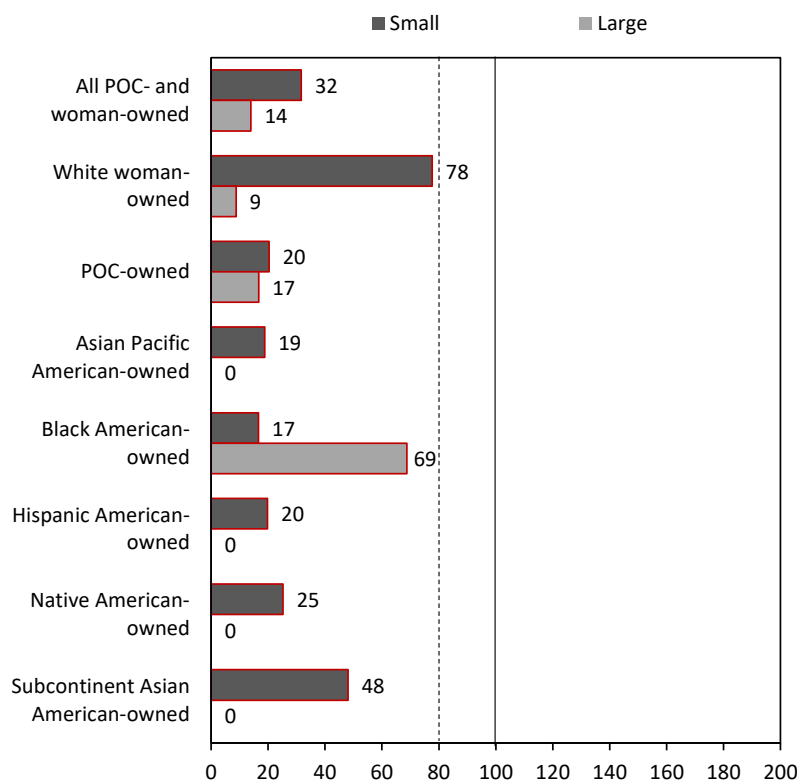
Figure 7-4.
Disparity analysis
results for large and
small prime contracts

Note:

For more detail, see Figures F-9 and F-10 in Appendix F.

Source:

BBC disparity analysis.



5. Funding source. The Federal DBE Program applies specifically to LAS' United States Department of Transportation (USDOT)-funded projects (specifically to its Federal Aviation Administration-funded projects).⁴ As part of the program, the agency uses various race- and gender-neutral measures as well as race- and gender-conscious DBE contract goals to encourage the participation of POC- and woman-owned businesses in the USDOT-funded projects it awards. It is instructive to assess disparities separately for LAS' USDOT- and non USDOT-funded work to assess whether outcomes for POC- and woman-owned businesses differ by funding source.

As shown in Figure 7-5, POC- and woman-owned businesses considered together exhibited substantial disparities on both USDOT-funded contracts (disparity index of 34) and non USDOT-funded contracts (disparity index of 26). In addition, all individual POC- and woman-owned business groups exhibited substantial disparities for both USDOT- and non USDOT-funded work: white woman-owned businesses (USDOT-funded work disparity index = 52; non USDOT-funded work disparity index = 36), Asian Pacific American-owned businesses (USDOT-funded work disparity index = 56; non USDOT-funded work disparity index = 13), Black American-owned businesses (USDOT-funded work disparity index = 69; non USDOT-funded work disparity index = 37), Hispanic American-owned businesses (USDOT-funded work disparity index = 23; non USDOT-funded work disparity index = 14), Native American-owned businesses (USDOT-funded work disparity index = 0; non USDOT-funded work disparity index = 11),

⁴ BBC considered a project to be USDOT-funded if it included at least \$1 of federal funding.

and Subcontinent Asian American-owned businesses (USDOT-funded work disparity index = 9; non USDOT-funded work disparity index = 42).

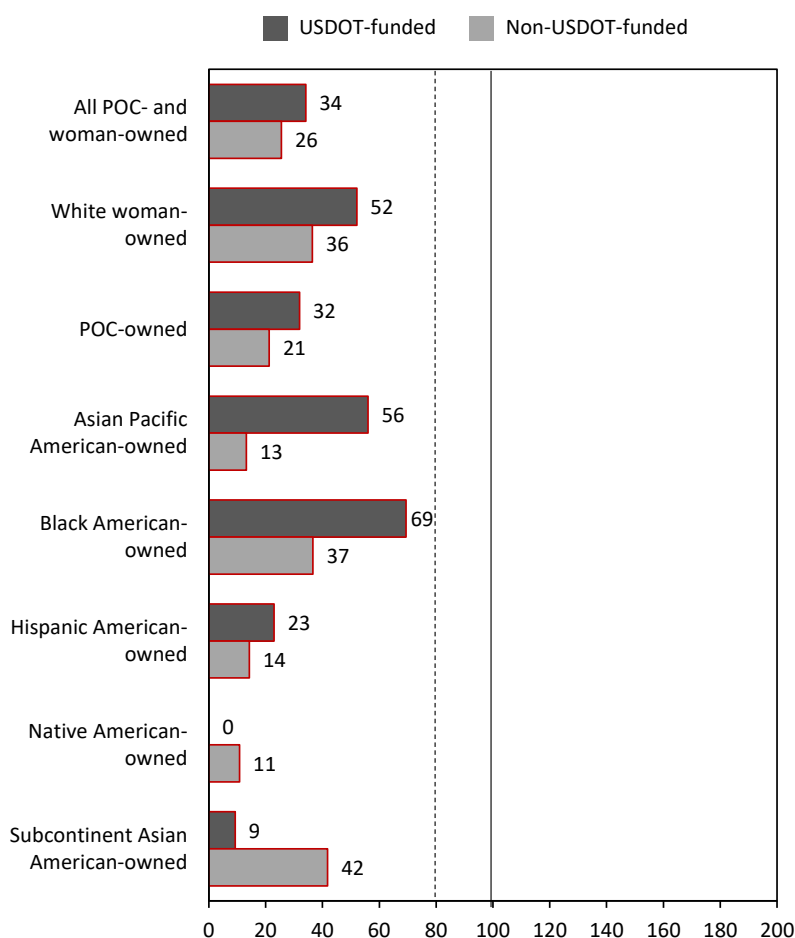
Figure 7-5.
Disparity analysis results for
LAS work by funding source

Note:

For more detail, see Figures F-11 and F-12
in Appendix F.

Source:

BBC disparity analysis.



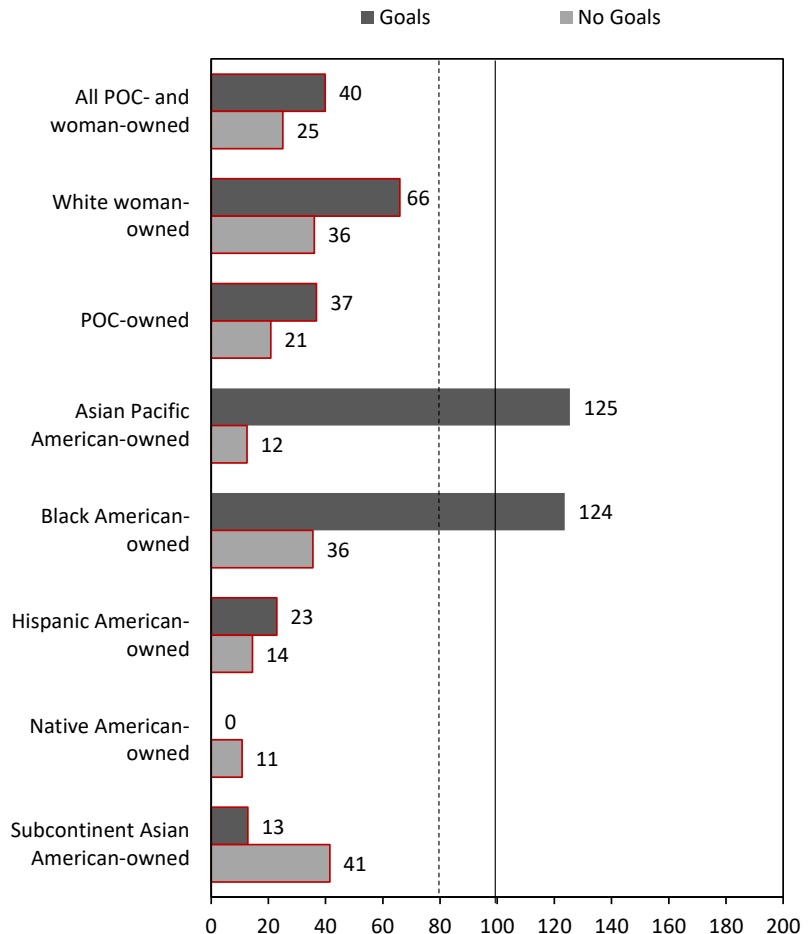
6. Goal status. As part of its implementation of the Federal DBE Program, LAS uses race- and gender-conscious DBE contract goals to encourage the participation of certified DBE subcontractors in some, but not all, of its USDOT-funded projects. BBC assessed disparity analysis results for POC- and woman-owned businesses for contracts and procurements LAS awarded with the use of DBE contract goals (goals projects) and contracts and procurements LAS awarded without the use of race- and gender-conscious goals, which includes both USDOT-funded projects and non USDOT-funded projects (no goals projects). As shown in Figure 7-6, POC- and woman-owned businesses exhibit substantial disparities on both goals projects (disparity index of 40) and no goals projects (disparity index of 25). Disparity analysis results differed by group and goal status.

- White woman-owned businesses (disparity index of 66), Hispanic American-owned businesses (disparity index of 23), Native American-owned businesses (disparity index of 0), and Subcontinent Asian American-owned businesses (disparity index of 13) exhibited substantial disparities for goals projects.

- All relevant business groups exhibited substantial disparities for no goals projects: White woman-owned businesses (disparity index of 36), Asian Pacific American-owned businesses (disparity index of 12), Black American-owned businesses (disparity index of 36), Hispanic American-owned businesses (disparity index of 14), Native American-owned businesses (disparity index of 11), and Subcontinent Asian American-owned businesses (disparity index of 41).

Figure 7-6.
Disparity analysis results for
LAS work by goal status

Note:
For more detail, see Figures F-13 and F-14 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. BBC used Monte Carlo analysis, which relies on repeated, random simulations of the data to assess the statistical significance of key disparity analysis results.

1. Overview of Monte Carlo. BBC used Monte Carlo simulations to randomly select businesses to “win” individual contract elements included in disparity study analyses. For each contract element, the availability analysis provided information on businesses potentially available to perform that contract element based on type of work, contractor role, contract size, and other factors. Then, we randomly chose a business from the pool of available businesses to win the contract element. 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 Monte Carlo simulations for all contract elements included in the disparity study. The output of the simulation for all the contract elements represented simulated participation of POC- and woman-owned businesses for all relevant LAS projects. The entire Monte Carlo simulation was then repeated 1 million times. The combined output from all 1 million simulations resulted in 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 less than the actual, observed participation of POC- and woman-owned businesses in LAS work. If that number was less than or equal to 25,000 (i.e., 2.5% of the total number of simulations, or $p = .025$), then we considered the disparity index to be statistically significant at $\alpha = .05$, using two-tailed tests.

2. Results. BBC ran Monte Carlo simulations on all relevant LAS 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 7-7, results from the Monte Carlo analysis indicated that the disparity we observed for POC- and woman-owned businesses considered together on all LAS contracts and procurements was statistically significant at the 99 percent confidence level. In addition, the disparities we observed for all individual business groups were significant at the 99 percent confidence level.

Figure 7-7.
Statistical significance of
disparities for LAS work

Note:

A double asterisk indicates statistical significance at a 99 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	27	0.00 **
White woman-owned	37	0.00 **
POC-owned	23	0.00 **
Asian Pacific American-owned	17	0.00 **
Black American-owned	39	0.00 **
Hispanic American-owned	16	0.00 **
Native American-owned	10	0.00 **
Subcontinent Asian American-owned	41	0.00 **

CHAPTER 8.

Contracting Policies and Program Measures

Chapter 8 provides an overview of the policies and regulations guiding Harry Reid International Airport's (LAS') contracting and procurement processes and the programs LAS uses to encourage the participation of disadvantaged business enterprises (DBEs) as well as person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses in its United States Department of Transportation (USDOT)- and locally funded contracting and procurement.¹ The chapter is organized in two parts:

- A. Contracting Policies; and
- B. Business Programs.

A. Contracting Policies

The Clark County Department of Aviation (CCDOA) is responsible for awarding and administering contracts and procurements funded through the County budget process for LAS.² CCDOA is required to follow Nevada Revised Statutes (NRS) for the procurement of construction services, professional services, and goods and non-professional services. In general, all contracts and procurements are made with purchase orders and methods vary by anticipated contract value, funding source, and the type of good or service to be procured. These methods include informal bid or quote procedures and competitive sealed purchases.

1. Informal bid or quote procedures. As illustrated in Figure 8-1, for construction services worth less than or equal to \$25,000, goods and non-professional services contracts or procurements worth less than or equal to \$50,000, professional services not directly related to a Capital Improvement Project (CIP) worth less than or equal to \$100,000, and information technology services worth less than or equal to \$100,000, CCDOA requires one written quote, and purchasing agents must make all efforts to solicit disadvantaged businesses for the work, whenever possible. For construction services, purchasing agents are required to solicit quotes from disadvantaged businesses using the Disadvantaged Business Directory, whenever possible.³ However, as long as one quote has been received, the purchasing agent must only demonstrate that they directly solicited disadvantaged businesses.

For construction services worth more than \$25,000 but less than \$100,000, CCDOA requires two written quotes, and purchasing agents are required to solicit quotes from a disadvantaged business whenever possible. For goods and non-professional services contracts and procurements worth more than

¹ "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 race/ethnic groups.

² Authority to procure goods and services is granted to Clark County and CCDOA per NRS 333.165.

³ Disadvantaged businesses include minority-owned business enterprises (MBEs); woman-owned business enterprises (WBEs); veteran-owned business enterprises (VET); disabled veteran-owned business enterprises (DVET); physically challenged business enterprises (PBEs); small business enterprises (SBEs), emerging small businesses (ESBs); and lesbian, gay, bisexual, and transgender businesses (LGBTs).

\$50,000 but less than \$100,000, professional services not directly related to a CIP worth more than \$100,000 but less than \$500,000, and information technology services worth more than \$100,000 but less than \$500,000, CCDOA requires two written quotes, and purchasing agents must make all efforts made to solicit disadvantaged businesses for the work, whenever possible.

Figure 8-1.
Informal procurement policies by contract type and dollar threshold

Contract Type	Dollar Threshold	Number of Quotes	Soliciting Disadvantaged Businesses**
Construction	≤ \$25,000	1	Required
Construction	\$25,001 - \$99,999	2	Required
Professional Services*	≤ \$100,000	1	Encouraged
Professional Services*	\$100,001 - \$499,999	2	Encouraged
Goods and Non-professional Services	≤ \$50,000	1	Encouraged
Goods and Non-professional Services	\$50,001 - \$99,999	2	Encouraged
Information Technology Services	≤ \$100,000	1	Encouraged
Information Technology Services	\$100,001 - \$499,999	2	Encouraged

Note: *Professional services contracts not directly related to a Capital Improvement Project.

**Disadvantaged businesses include minority-owned business enterprises (MBEs); woman-owned business enterprises (WBEs); veteran-owned business enterprises (VET); disabled veteran-owned business enterprises (DVET); physically challenged business enterprises (PBEs); small business enterprises (SBEs); emerging small businesses (ESBs) and lesbian, gay, bisexual, and transgender businesses (LGBTs). Purchasing agents are encouraged to use the Disadvantaged Business Directory as a resource to find these businesses.

Source: LAS procurement policies.

For professional services projects directly related to a CIP worth \$1 million or less, such as projects for design, engineering, land surveying, architecture, or landscape architecture, CCDOA requires purchasing agents to either solicit work from DBEs or use previously established statement of qualifications (SOQ) lists.

For all procurements worth more than \$100,000, NRS 332.045 requires the solicitation to be advertised in a locally circulated newspaper or on its online procurement platform, the Nevada Government eMarketplace (NGEM), for at least seven days before closing.

2. Competitive sealed purchases. CCDOA awards relatively large contracts and procurements using competitively sealed purchase requirements or invitations to bid (ITBs), depending on whether the projects are related to construction; professional services; information technology; or non-professional services, goods, and supplies work. CCDOA is allowed to require performance or payment bonds for any contracts or procurements it awards. However, should it decide to do so, the department may not require the submission of detailed financial information.

a. Construction. For construction projects worth more than \$100,000, CCDOA adheres to the following requirements:

- CCDOA must advertise the ITB for at least three weeks prior to the bid submission date;
- The ITB must provide information on the prevailing wage requirements applicable to the solicitation;

- Bidders must be prequalified pursuant to the requirements detailed in NRS 338.1379, either by CCDOA or the Nevada Department of Transportation. In addition, subcontractors that will perform more than 3 percent of the work identified by CCDOA must be prequalified and listed in the bid packet; and
- CCDOA must open the bids it receives publicly and award the project to the lowest responsible bidder.⁴

Once the bid is awarded, the awarded vendor must furnish a payment bond and performance bond, the value of which will be fixed by CCDOA but will be at least 50 percent of the total contract value. Subcontractors that perform more than \$50,000 of work or 1 percent of the total contract value, whichever is greater, must also furnish a bond in a value fixed by CCDOA.⁵ In addition to providing bonds, the awarded vendor must also provide a list of all first-tier subcontractors that will perform work worth more than \$250,000 on the contract; if no first-tier subcontractor will perform work valued at more than \$250,000, all first-tier subcontractors that will perform work worth more than 1 percent of the base bid or \$50,000, whichever is greater, must be listed.⁶ If upon award the awardee fails to perform, the contract may be re-awarded to the second lowest and responsible bidder without putting the solicitation back out to bid.

b. Professional services. For professional services not directly related to a CIP worth more than \$500,000 or for professional services directly related to a CIP worth more than \$1 million, formal request for proposals (RFP), request for qualifications (RFQ), or SOQ processes must be used. At minimum, RFPs/RFQs/SOQs must be advertised for seven days, and should be distributed to the NGEM supplier database, the County's Small Business Utilization Directory, the Disadvantaged Business Directory, and any businesses known by CCDOA. Once all proposals are submitted, CCDOA establishes a committee of at least two CCDOA staff members to evaluate proposals. CCDOA may also recruit subject matter experts to help evaluate proposals, however, the committee must be majority CCDOA staff.⁷ Evaluation criteria should be included with the solicitation, and a scoring rubric is used to evaluate proposals.

c. Non-professional services, goods, and supplies. Non-professional services, goods, and supplies contracts and procurements worth more than \$100,000 must be solicited using formal competitive bid processes as outlined by NRS 332. The ITB must be advertised in the NGEM supplier database and in a local newspaper of general circulation for at least seven days. CCDOA must open bids publicly and award the contract or procurement to the lowest responsible bidder. Preferences are given to recycled materials, should the value and cost of the recycled material be equivalent to non-recycled materials.⁸

d. Information technology. The procurement of software, hardware, and implementation services worth more than \$500,000 may be preceded by a request for information (RFI) to obtain general pricing information prior to solicitation. Regardless, if an RFI is used to obtain information, contracts and

⁴ NRS 332.065 sets forth the requirements to be considered the lowest responsive bidder for competitively solicited bids.

⁵ NRS 339.025.2.

⁶ NRS 338.141.

⁷ NRS 333.335.

⁸ NRS 332.066.

procurements of this size must be solicited using the RFP process as detailed for professional services. Should the solicited project relate to the processing, storing, or transmittal of criminal history information, justice information, health information, payment card industry information, or personal information, the purchasing agent must contact the IT security administrator for further guidance.

B. Business Programs

As part of implementing the Federal DBE Program, LAS 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 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.⁹ 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.

BBC Research & Consulting reviewed the measures CCDOA, which is responsible for managing LAS’ implementation of the Federal DBE Program, uses to encourage the participation of POC-, woman-, veteran-, and LGBTQ+-owned businesses in the agency’s work. We reviewed CCDOA’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, LAS is required to set overall aspirational goals for the participation of DBEs in its Federal Aviation Authority (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) 2023 through 2025, LAS set an overall goal of 15.0 percent for the participation of DBEs in its FAA-funded contracts and procurements. The agency has projected that it

⁹ 49 CFR Section 26.51.

will achieve 6.4 percent of its goal through the use of race- and gender-neutral measures and the remaining 8.6 percent of its goal through the use of race- and gender-conscious measures.

2. DBE certification. CCDOA is a member of the Nevada Unified Certification Program (NUCP)’s Review Board. The NUCP consists of six member agencies that meet monthly to review applications for certification. CCDOA recognizes DBE certification status from all members of the NUCP. 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. Business owners who identify as members of those groups must establish 51 percent “real and substantial ownership” in their businesses and must possess the power and expertise to control the daily operations and management of their businesses.

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.¹⁰ Finally, business owners must be United States citizens or legal residents, and the businesses must be independent of other entities. Certified DBEs must submit a “no change” affidavit every year, on the anniversary date of their certification, affirming that there have been no changes to the business in the previous year that would affect that business’ ability to qualify as a DBE. DBEs must also submit documentation of the firm’s size and gross receipts annually along with the affidavit. The NUCP Directory is available online 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, LAS uses, or facilitates vendor access to, the following race- and gender-neutral measures to encourage the participation of small businesses—including many POC-, woman-, veteran-, and LGBTQ+-owned businesses—in its contracting:

- Advocacy and outreach efforts;
- Small business program;
- Financial assistance;
- Bid preferences;
- Reporting;
- Subcontractor commitments;
- Technical assistance;
- Bonding and insurance assistance;
- Prompt payment policies;
- On-the-job training and workforce development;

¹⁰ Revenue limits are not considered as part of DBE certification as applied to USDOT-funded work.

- Unbundling projects; and
- Aspirational contract goals.

a. Advocacy and outreach efforts. CCDOA has established outreach efforts in its procurement policies, requiring direct solicitation from businesses on its Disadvantaged Business Directory for contracts and procurements bid through informal procurement processes.

i. Communications. CCDOA communicates with DBEs through email and its website. The agency uses its website to announce special events and new DBE program measures. CCDOA provides information on projected procurements, information on certification, and bonding requirements. Outside of its website, CCDOA also disseminates information to DBEs and potential DBEs at trade fairs and other outreach events.

ii. Disadvantaged Business Directory. CCDOA is a member of the NUCP, which maintains a DBE/Airport Concessionaires Disadvantaged Business Enterprise (ACDBE) Directory on its website. The directory is updated monthly and contains contact information for all certified businesses along with information pertaining to the type(s) of work each certified business has been approved to perform.

In addition to maintaining a formal DBE directory, CCDOA maintains a Disadvantaged Business Directory, which contains information on certified MBEs, WBEs, VETs, DVETs, PBEs, SBEs, ESBs, and LGBTs that have expressed interest in working with CCDOA or have participated in the Small Business Opportunity Program (SBOP). All efforts are made to use this directory to directly solicit disadvantaged businesses for all quotes and formal solicitations.

iii. Bidders lists. CCDOA maintains a bidders list of all prime contractors and subcontractors that bid on federally funded contracts let by CCDOA. The bidders list includes the name, address, DBE status, age, and information about the annual gross receipts of the firms.

iv. Identification of potential DBEs. CCDOA and LAS make 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.

v. ESB outreach. The Nevada Office of Economic Development offers an outreach program for local ESBs to connect with state agencies.¹¹ To facilitate this outreach, a list of local ESBs is posted on the Office's website and state agencies are encouraged to use this directory to establish outreach programs within their offices.

b. Small business program. CCDOA operates the SBOP, which is used as a race- and gender-neutral tool to achieve the annual aspirational goal on federally funded projects. SBEs are certified through the NUCP and must meet the income and personal net worth requirements set forth by the United States Small Business Administration (SBA). SBE contract goals may be set for a federally funded contract when it has been determined that a race-conscious goal will not be set. In addition, when the race- and gender-conscious portion of the aspirational goal has been met, CCDOA then sets SBE goals on each project,

¹¹ NRS 231.14065

which must either be met through subcontractor commitments or through good faith efforts (GFEs) to do so. The participation of SBEs that are also certified as DBEs will then be counted toward the achievement of the race- and gender-neutral portion of CCDOA's annual aspirational goal. The SBOP does not allow for geographic preferences offered by the state in its use, nor does it limit the number of contracts that can be awarded to participating vendors.

c. Financial assistance. The State of Nevada certifies local ESBs that are then eligible for the following financial assistance programs through the state's Office of Economic Development:^{12, 13}

- Grants or loans of money from the "Catalyst Account;"¹⁴
- The issuance of revenue bonds for industrial development;¹⁵
- The Nevada Collateral Support Program;¹⁶
- The Nevada Microenterprise Initiative Program;¹⁷
- The Nevada New Markets Jobs Act;¹⁸ and
- The Nevada Silver State Opportunities.¹⁹

In addition to these programs, the Office of Economic Development has developed the Small Business Enterprise Loan Account, a revolving loan fund available for certified SBEs, POC-owned businesses, woman-owned businesses, and DBEs to finance expansion. As part of the program, the Office of Economic Development may provide loans directly or offer grants to facilitate private lending. Businesses may also apply for tax credits through the Office of Economic Development.

CCDOA has also developed a list of financial institutions owned by women and POCs available to prime contractors and subcontractors on its website. CCDOA encourages prime contractors to use these institutions to obtain financial assistance.

d. Bid preferences. Bid preferences are allowed for construction projects governed by NRS 338 if the bidder's workforce is at least 50 percent local,²⁰ all vehicles used on the contract are registered with the Nevada Department of Motor Vehicles, and the vendor shares its payroll data with the contracting agency. Local service-disabled veterans (SDVs) are also eligible for bid preferences; both local businesses and local SDV-owned businesses can receive a 5 percent discount on bids or a 5 percent increase in evaluation points for proposals. Inverse bid preferences are applied for out-of-state bidders

¹² To qualify as a local ESB, a business must maintain its principal place of business in Nevada; must have less than 30 employees; and must not have average annual gross receipts that exceed \$3.5 million (construction), or \$1.3 million (all other industries).

¹³ NRS 231.14055 2.b.1-8

¹⁴ NRS 231.1573

¹⁵ NRS 349.400 to 349.670

¹⁶ 12 U.S.C. §§ 5701 et seq.

¹⁷ 12 U.S.C. §§ 5701 et seq.

¹⁸ NRS 231A

¹⁹ NRS 355.275

²⁰ Has a Nevada Department of Motor Vehicles issued driver's license or identification card.

whose state provides local bid preferences. The amount of the preference they would receive from their home state is added to the value of their bid.

e. Subcontractor commitments. Within two working days of receiving written notice that a vendor is the low bidder, CCDOA requires the awardee to submit information about all certified SBEs, MBEs, WBEs, and DBEs that will participate in the contract. The awardee must list the name and address of each certified subcontractor, the subcontractor's certification/ethnicity information and a copy of their certification, the description of work to be performed, and the dollar value of the associated subcontract. The S/M/W/DBE Subcontractor/Vendor Information form must be signed by an authorized representative of the certified subcontractor.

In addition to the S/M/W/DBE Subcontractor/Vendor Information form, for competitively bid construction projects, the three apparent low bidders must submit a list of the first-tier subcontractors that will be paid more than \$250,000. Should no subcontractor be paid more than \$250,00, the bidder must submit the name of each first-tier subcontractor that will be paid 1 percent of the total bid or \$50,000, whichever is greater.²¹

Throughout the life of the contract, subcontractor commitments are tracked through monthly payment information submitted by the prime contractor to the DBE Liaison Officer (DBELO). The DBELO verifies with each DBE on the contract on a quarterly basis to confirm the payments reported by the prime contractor. DBE subcontractors fill and submit verification forms to DBELO to confirm their payments. The DBELO or the Project Engineer for each contract conduct periodic site visits to confirm that the work committed to DBEs is actually performed by those DBEs.

f. Technical assistance programs. CCDOA provides technical assistance to DBEs by offering instructions and clarifications on bid specifications, procurement policy, procedures, and bidding requirements. It also maintains a file of successful bids from past procurements provided to interested parties to review and evaluate to improve their bids or proposals. After each procurement, CCDOA debriefs bidders on why their bids were or were not successful.

In addition to providing technical assistance, CCDOA also maintains a list of other technical assistance programs available to its vendors. These include the programs offered by the Office of Economic Development, the Procurement Outreach Program, the SBA Nevada Office, the University of Nevada Small Business Development Center, the United States Department of Commerce's Nevada Minority Business Enterprise Center, and the Nevada Minority Supplier Development Council.

g. Bonding and insurance assistance. CCDOA offers information to DBEs and subcontractors on how to obtain bonding and insurance. The DBELO works with CCDOA to simplify the bonding process, reduce bonding requirements, eliminate the impact of surety costs from bids, and support DBEs and other small businesses to obtain bonding.

h. Prompt payment policies. CCDOA has policies in place to help ensure prompt payment to subcontractors. Prime contractors are required to pay their subcontractors either by the scheduled date provided within their subcontract or within 10 days of receiving payment, whichever is earlier. In

²¹ NRS 338.141.

addition, prime contractors must pay retainage within 30 days of receipt of the request for retainage, or within 10 days of the date the contractor receives payment for all of the subcontractor's work and materials, whichever is earlier.

i. On-the-job training and workforce development. The Office of Economic Development has established a Workforce Innovation for a New Nevada (WINN) Account, through which it may authorize and fund (with payment matching of at least 25 percent of the awarded funds required by the program provider) third-party workforce development programs.²² In order to qualify for funding, an organization must be either an institution within the Nevada System of Higher Education, a state or local agency, a school district, a charter school, a nonprofit organization, a labor organization, or a private postsecondary education institution that provides a workforce development program that has been reviewed by and approved by the Office of Economic Development. Organizations seeking funding must submit a detailed application to the Office of Economic Development. Organizations may use funding for administrative and personnel costs (personnel costs must not exceed 10 percent of the total grant), equipment, marketing, and facilities rental costs. In 2023, WINN granted nearly \$6 million to programs to support workforce development.

j. Unbundling projects. As part of the Small Business Program, CCDOA is required to review multi-trade projects over \$5 million. Should the project offer a sufficient number of SBE opportunities, the DBELO will recommend that the Project Engineer unbundle the project to allow greater SBE participation.

4. Race- and gender-conscious measures. As part of its implementation of the Federal DBE Program, the agency uses race- and gender-conscious contract goals to encourage the participation of DBEs in various FAA-funded projects it awards. The agency sets DBE contract goals on individual projects based on the availability of DBEs in the marketplace for the types of services or materials involved. 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 or partnering with DBEs if they feel they demonstrated genuine efforts to engage with them. If prime

²² NRS 231.141-152

contractors do not meet the goals through subcontracting commitments or through approved GFE documentation, LAS can reject their bids.

CHAPTER 9.

Program Considerations

The disparity study provides substantial information the Harry Reid International Airport (LAS) should examine as it considers potential refinements to its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program, the Small Business Program, and other efforts 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 considerations LAS should make, organized in the following sections:

- A. DBE Contract Goals;
- B. Procurement Policies;
- C. Contract Administration Policies;
- D. Supportive Services and Capacity Building; and
- E. Supplier Diversity 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 them and cannot 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, LAS must consider whether it has maximized its use of race- and gender-neutral measures, including fully leveraging existing measures and whether additional measures might further encourage the participation of POC- and woman-owned businesses in its work.

1. Group eligibility. Disparity analysis results indicated that all race and gender groups relevant to the Federal DBE Program—Asian Pacific American-, Black American-, Hispanic American-, Native American-, Subcontinent Asian American-, and white woman-owned businesses—showed substantial disparities on key sets of contracts and procurements LAS awarded during the study period. Because LAS 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 addressed disparities for those businesses, the agency might consider continuing to use DBE contract goals to award USDOT-funded projects. To do so, LAS would continue to set goals on individual projects based on the availability of POC- and woman-owned businesses for the types of work involved in the project, and, as a condition of award, prime contractors would have to meet those goals by making subcontracting commitments with eligible DBEs—that is, DBEs whose owners identify with race/ethnic or gender groups that are substantially underutilized on LAS work—as part of their bids or by demonstrating good faith efforts (GFEs) to do so.

2. Overconcentration. 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 for different work types.

BBC investigated potential overconcentration in LAS work. The results of that analysis, which we based only on subcontract participation in USDOT-funded projects, indicated that there were four subindustries in which certified DBEs accounted for 50 percent or more of total subcontract dollars for projects LAS awarded between July 1, 2017, and June 30, 2022:

- Fencing, guardrails, barriers, and signs (100.0%);
- Other construction services (100.0%);
- Other goods (100.0%); and
- Testing and inspection services (95.5%).

As shown above, there are several subindustries in which DBEs account for the vast majority of subcontracting dollars LAS awarded during the study period. The agency is required to consider the effects that such participation might have on non-DBEs attempting to perform similar work on LAS projects. LAS could consider offering training programs to help certified DBEs further diversify their lines of work and expand into other industries. The agency should also consider reviewing similar information and monitoring the above types of work for potential overconcentration in the future.¹

¹ As stated above, the overconcentration analysis did not include prime contract work in relevant subindustries. If BBC had included prime contract work in our analyses, the percentages of dollars for which DBEs accounted in each subindustry would likely have decreased. In addition, the analysis was only based on USDOT-funded projects. Results would likely have differed if we had expanded it to include both USDOT- and non USDOT-funded projects.

B. Procurement Policies

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

1. Vendor selection. Comments from in-depth interviews indicate that LAS' contract and evaluation requirements often favor larger companies and inhibit the ability of small businesses to win work with the organization. LAS should consider reviewing its contract and evaluation criteria to ensure they are not unduly restrictive for small or newly established businesses. LAS should pay particular attention to minimum requirements related to number of employees or experience—those of both the company and key personnel—and any bonding, insurance, or other financial requirements. As part of the anecdotal information we collected as part of the study, two business owners stated:

"Micro and small-scale businesses face limited opportunities in Southern Nevada. Both the City of Las Vegas and Clark County require companies to have a minimum of three people in their team to qualify for their statement of qualifications, which makes it difficult for micro and small businesses to participate."

"The biggest issue is that public entities look at employee count when we try to get work with them and that becomes a judgement on how much work we can handle."

In addition, qualitative evidence demonstrates that stakeholders perceive local agencies to award work to a limited number of repeat vendors. Consistent with that belief, utilization analysis results show that nine POC-owned businesses and 12 woman-owned businesses received 75 percent and 78 percent, respectively, of the dollars LAS awarded to POC- and woman-owned businesses during the study period. For example, as part of the anecdotal information we collected, a business owner stated:

"I'd love to get in the airport, but I know in my industry [one company] has the airport completely locked down."

"My experiences with LAS ... I've done a couple of interviews and it's damn near impossible to get in there. [...] It's the same people over and over."

Although LAS conducts robust business outreach, LAS should consider ways it can expand its vendor pool, including through increased targeted advertising and outreach and revising evaluation criteria and policies to further encourage the use of vendors with which the organization or prime contractors have never worked.

2. Bid process. As part of in-depth interviews and public meetings, business owners and representatives discussed barriers they have experienced in LAS' bid process, such as excessive paperwork, lack of training to navigate the process, and the organization's timeline for awarding projects. Several businesses provided insights related to such barriers:

"Every time I get a proposal with the LAS and RTC [the Regional Transportation Commission of Southern Nevada], they never acknowledge my proposal or call me to say that they received my proposal."

"The lengthy procurement process for government agencies in Southern Nevada is the biggest obstacle to working with them, especially for small businesses that have limited cash flows. Such extended procurement timeframes are unsustainable for small businesses."

"We have a small business and the dedication required for the whole proposal process is just too time-consuming. We would have to hire a person just to do proposals, as the process is really a job in itself."

LAS should consider streamlining the paperwork required for bidding and contract administration. While LAS currently offers technical assistance related to procurement policies, procedures, and general bidding requirements, it should consider providing additional guidance on preparing and submitting bids and proposals, offering trainings on how to interpret evaluation criteria, and automatically providing feedback to unsuccessful bidders. Finally, LAS should also consider ways it can minimize time between bid and proposal due dates, the length of time it takes to award contracts, and the length of time it takes to begin projects.

3. Advertising. Anecdotal comments collected as part of the disparity study suggest that many business owners experience difficulties learning about upcoming opportunities with LAS and other local agencies. For example:

"I have not [attempted to work with RTC or LAS]. I don't know where those entry points are."

"If Harry Reid is redoing a lounge or needing some furniture, how can we get that information to bid on those things?"

Nevada state law requires all projects worth more than \$100,000 to be advertised for a minimum of seven days with the exception of construction projects, which must be advertised for at least three weeks before bid closing. LAS should consider implementing longer windows to advertise upcoming projects and advertise small projects directly to small and diverse businesses registered with the agency. In addition to increasing advertising timelines, LAS could consider providing forecasts of future contracting opportunities, to the extent practical, to all contractors and post that information on its website. Although LAS' website contains a wealth of project information, supplementing that information with planned procurements, at least on a quarterly basis, could be a useful tool for businesses in planning and establishing potential partnerships before project solicitations are issued.

4. Bid and evaluation preferences. As shown in Chapter 4, LAS awarded 90 percent of its relevant contract and procurement dollars to businesses located in Clark County, Nevada. State law allows bid preferences to be applied to locally funded construction projects if at least 50 percent of bidders' workforces are located in the county. However, some business owners indicated that LAS could do more to encourage participation in agency work from local businesses. For example:

"[You get] a 5 percent bid in construction but not in any other type of services. ... You don't get that local bidder's preference."

BBC recommends that LAS explore ways it can expand its use of bid and evaluation preferences and, to the extent allowable by state law, consider applying them to locally funded professional services and

non-professional services and supplies as well. Doing so might help small and diverse businesses participate in LAS projects as prime contractors.

5. Small business set asides. Disparity analysis results indicated substantial disparities for all relevant business groups on prime contracts LAS awarded during the study period. In addition, as part of in-depth interviews and public meetings, several business owners indicated that small business set-asides would help businesses become involved with agency work and build capacity. For example:

“Opportunities for small businesses at [LAS] are limited. To address this, LAS or RTC should provide direct procurement opportunities for small diverse businesses.”

“More opportunities should be set aside for minority companies based on size or demographics.”

To the extent permitted by state and local law, LAS could consider setting aside select prime contracts for bidding from small businesses, including many POC- and woman-owned businesses, to encourage their participation in that work as prime contractors. Small business set asides could help small businesses work directly with LAS and build the technical skills and capacity to perform as prime contractors on larger contracts and procurements, both with LAS and other organizations.

C. Contract Administration

BBC also recommends LAS consider additional measures to support small businesses, including many POC- and woman-owned businesses, as part of administering its projects. The refinements we recommend below are race- and gender-neutral in nature.

1. Data collection. LAS does not collect comprehensive information on subcontractors that participate in its projects. The agency should consider collecting comprehensive subcontract data—that is, for all subcontractors regardless of the races or genders of their owners or certification status—on all projects, including:

- Associated prime contract or purchase order numbers;
- Subcontractor names, addresses, phone numbers, and email addresses;
- Types of work involved in the subcontract; and
- Award and paid-to-date amounts.

LAS should consider collecting those data at the time of award and requiring prime contractors to submit data on the payments they make to subcontractors as part of monthly invoicing. Doing so will improve the agency’s monitoring of the participation of small businesses, including many POC- and woman-owned businesses—regardless of certification—in its work and could also help the agency identify future subcontracting opportunities for those businesses. Collecting comprehensive subcontract data might require upgrading to a different data management system that allows LAS to collect and maintain that information efficiently and effectively.

2. Prompt payment. As part of in-depth interviews and surveys, several businesses, including many POC- and woman-owned businesses, reported difficulties with receiving payment in a timely manner on government work, particularly when they work as subcontractors and suppliers. Many businesses also

commented that having capital on hand is crucial to business success and often a challenge for small businesses. For example:

"We've worked for the government before, and the problem we have with them is that they just pay us too late. It's a 90-day waiting period after the work is done. We're a small company, so we can't wait that long for our money, because we put out a lot of money on projects pertaining to overhead."

"One of the problems with being a sub is that you don't get paid until they [the prime contractors] get paid. ... I can put in my invoice for that month, and I've had to wait four months to get paid."

LAS should consider reviewing and strengthening its current prompt payment policies to ensure timely payment to prime contractors and from prime contractors to subcontractors or suppliers. The agency should consider making efforts to further enforce those requirements, such as including late fees for delayed payments to prime contractors and requiring prime contractors to remit late fees for delayed payments to subcontractors. To track those payments, LAS could consider creating electronic systems to track and confirm subcontractor payments to all subcontractors.

3. Contracting policy manual. LAS has substantial documentation of its contracting policies and procedures. However, this documentation is spread across a variety of documents rather than a single, centralized document. LAS should consider consolidating this information (e.g., standard solicitation provisions, contract administration procedures and DBE requirements) into a contracting policies and procedures manual. This manual would serve as both an internal tool to provide overall guidance to LAS staff on policies and implementation practices as well as a public resource to the LAS business community. The manual should be publicly available on LAS' website. Additionally, LAS could also consider conducting webinars or in-person informational events to share detailed information on its procurement policies.

D. Supportive Services and Capacity Building

Based on our analysis of LAS policies and feedback we collected from stakeholders, BBC identified several policies and programs the agency should consider implementing or refining to help increase the participation of POC- and woman-owned businesses in its work. The refinements we recommend below are race- and gender-neutral in nature.

1. Financial assistance. As part of the qualitative evidence process, many business representatives noted difficulties obtaining financing to start, grow, or expand their businesses. Many businesses also commented that having access to capital is crucial to business success, but obtaining financing can be challenging for small businesses. For example:

"Sixty to 70 percent of everyone pays late. And that is a tremendous hindrance. [We] wouldn't have the issues if we would be able to have a line of credit with the bank, but now the bank doesn't allow us or doesn't want to do that at this time. So, we now run into these issues where we're depleting our savings account and we're depleting our other accounts to make payroll."

"You're not given the capital because ... you don't have enough contracts. ... [But,] you can't get the contracts because you don't have the money to get more contracts."

The State of Nevada offers multiple financial assistance programs through the Office of Economic Development that are available to small businesses. LAS could consider partnering with the Office of Economic Development to advertise these programs and help vendors apply for them. LAS could also consider providing guarantees for loans, encouraging contract-backed loans with lenders, or facilitating lender fairs. It could develop such programs with the support of local, regional, or statewide financial institutions or other business assistance organizations. For example, the City of Los Angeles, the United States Small Business Administration (SBA), and the Maryland Department of Transportation (DOT) have programs providing loan guarantees. The Mississippi Development Authority, the Arkansas Economic Development Commission, and the City of Philadelphia host contract-backed loan programs. In addition, Maryland DOT provides term loans, lines of credit, and equity investments, which could serve as another model for LAS' consideration. Regardless of the type of program LAS uses, such programs should take into account the burden high-interest rates place on small businesses.

Business owners and representatives also discussed how limited access to financing affects their ability to obtain inventory, materials, and qualified staff. For example:

"Let's say the contract's a million dollars. And they [could] say, 'Here's \$100,000 for your startup expenses for purchasing two or three vehicles and for your hiring and that stuff. And then here's another \$100,000 to put through payroll for your net 30,' that pushes you through 60 days of work if the contract is a net 30 or if not."

a. Bonding assistance. As part of the anecdotal evidence process, several business representatives reported that bonding requirements were a barrier for small businesses, particularly for POC- and woman-owned businesses. Small businesses typically obtain bonds at higher rates than other businesses, making it more difficult for them to access bonding opportunities and compete for relatively large projects. For example:

"It is insane the stuff with the barriers to bonding, and this and that, and trying to learn about it, and finding someone who even knows how to do bonds right or lend for the construction industry. ... The information is not there. It's very hard to find."

"Our biggest job was a \$800,000 job. So, the most they're probably going to bond us for is probably like \$1.5 million, maybe \$2 million. So now in order to get to any further amount, I need to try to figure out somewhere in the space of the next 12 months, I need to get a job at \$850,000 or \$900,000, complete it, prove that I've completed it. That way they could bond me for hire. So, it's a delicate matching game. What I've completed versus what I need to go out and complete and do in order to get bonding, in order to grow."

LAS requires payment and performance bonds of varying amounts for construction projects worth \$100,000 or more for both prime contractors and subcontractors performing substantial proportions of the total cost of those projects. LAS could consider partnering with financial institutions to encourage standardized bonding rates at more equitable levels for its vendors. Some examples of bonding assistance programs include the SBA bonding program, the Los Angeles Contractor Development and Bonding Program, the Maryland DOT and Maryland Small Business Development Financing Authority Management Group's Bonding and Contract Financing Program, and the Ohio Development Services

Agency's Minority Business Bonding Program. Alternatively, LAS could develop relationships with bonding companies that provide adequate levels of bonding and provide information on these companies to its vendors.

b. Insurance assistance. Business representatives who shared qualitative information with the study team discussed difficulties they have encountered with insurance requirements on many public sector projects, including those let by LAS. For example:

"Another engineering firm wanted us to do work with them, but the insurance requirement was double what we had. I think we had \$1 million of coverage, and they were saying that if we can up that to \$2 million that they would guarantee us some work, but when I received the quote for the \$2 million, it was ... almost triple what I was paying."

"[Clark County's] insurance requirements are too high. General liability for CCSD [Clark County School District] was \$5 million of general liability insurance. I couldn't afford it for the amount of work I was going to get."

LAS should consider the insurance it requires on projects relative to the risks associated with them, and in situations where associated risks are relatively low, reduce its insurance requirements accordingly. The agency could also consider allowing small businesses to build the cost of additional insurance into their bids or develop relationships with insurance companies to reduce rates for small businesses.

2. Mentor/protégé relationships. Many business representatives who provided qualitative insights as part of the study spoke highly of mentor/protégé programs, noting the benefits of working with and learning from larger, more successful companies in similar industries. Multiple interviewees favorably discussed the Nevada Department of Transportation's (NDOT's) mentor/protégé program. For example:

"We should have some mentoring/protégé programs. At least RTC or LAS should establish that program. I know NDOT has that."

"To work with someone who had experience [and] that wasn't threatened or whatever and realized there's enough for everyone to just train and grow and work together. That would be amazing."

LAS should consider coordinating with NDOT to facilitate access to mentorship opportunities for its vendors as part of NDOT's mentor/protégé program or consider developing its own program.

3. Disadvantaged Business Enterprise Liaison. Business representatives emphasized the importance of connecting to different LAS departments that may procure their services and having opportunities to learn about various bid opportunities from those departments. For example:

"RTC and [LAS] ... [have], at least once a year, the meet and greets, meet the generals, meet our people, come talk about what your small business can do. That is so helpful in many ways because our time is valuable and when we're running the business, running our employees and trying to market, it's very tough to get out there and spend the time to actually meet the end users who would use our company's expertise."

"I would very much be interested in a sit down with someone from their contracting office or something like that, that would present a class that would be just that, working with LAS. A one

hour or however long, an hour or two, whatever it would be, briefing on what is required to work for them and how you obtain that.”

LAS has a specialized role, the Disadvantaged Business Enterprise Liaison (Liaison), whose primary responsibilities are to enforce the DBE Program and ensure that internal LAS staff have the necessary documentation and access to information to successfully implement the program. LAS should consider making efforts to further connect with the business community, perhaps by expanding the responsibilities of its Disadvantaged Business Enterprise liaison or conducting additional “meet and greets” between local businesses and department decisionmakers.

4. Personnel and labor. Several business owners and managers mentioned difficulties finding qualified personnel, especially staff members who have experience in their industries. For example:

“If there are agencies that can identify the individuals that are truly working for work and trying to expand their capabilities in my practice, and they’re being sponsored. ... I cannot afford to bring someone and spend a lot of time and resources training. So, if there is some kind of assistance in their training process, yeah, I would welcome that.”

“The Workforce Opportunities and Development Program that they offered through Clark County. [That was helpful].”

LAS should consider coordinating with Nevada agencies with existing workforce programs that focus on intern and staffing connections to ensure the types of work the agency procures are represented in those programs and that vendors are aware of the opportunities to participate in them.

5. Technical assistance. Qualitative evidence indicated that businesses find training and technical assistance programs—when implemented well—to be valuable in helping them build capacity for larger projects and learning the necessary skills required to compete in their industries. For example:

“If they can give us some [accounting and bookkeeping] training, that would be awesome.”

“There’s definitely a bottleneck when it comes to the estimating side and the bookkeeping side. That’s probably my single biggest frustration in the business growth cycle right now, is dealing with the accounting side.”

LAS should consider offering additional online training resources as an efficient and economical way to help provide business training. The agency should also consider implementing consistent technical assistance programs or supporting existing programs from organizations such as the SBA or the Small Business Development Center. Lastly, LAS could also encourage prime contractors to offer similar activities to help enhance outreach to small, local, and diverse businesses by offering “How to Do Business with LAS” workshops and other training and networking opportunities.

E. Supplier Diversity Programs

LAS has myriad programs in place to help small businesses, including many POC- and woman-owned businesses, successfully compete for and participate in its projects. Despite the relative success of those business programs, LAS should consider refining its current program measures to further encourage the participation of POC- and woman-owned businesses in its work. The refinements we recommend below are race- and gender-neutral in nature.

1. Outreach. Although LAS has robust business outreach practices, the agency could consider ways it can continue to strengthen and broaden its current practices, including by providing additional details to the broader business community about the agency's business opportunities, resources available to small businesses, and the community and economic benefits of its supplier diversity programs to vendors in the Southern Nevada marketplace. For example, general information about the supplier diversity programs could include brief summaries explaining the Federal DBE Program and Small Business Program, definitions of businesses eligible to participate in the programs, and links to partner agencies that provide services to assist small, local, and diverse businesses. Additionally, LAS could post any informational documents distributed or presented at outreach events on its website to give businesses access to that information, even if they did not attend the events. Those documents and presentations might include information about upcoming projects, solicitation requirements, and who to contact at relevant organizations for more information.

2. Certification. As part of anecdotal information we collected, business owners highlighted the need for improvements to the Nevada Unified Certification Program (NUCP) process, stating:

"The NUCP certification process is available on different agencies' website, so they [could] centralize one website or something where it's available and [shows] ... where [the] application [is] and ... how much time ... it takes. That will be very helpful."

"There's no way to improve [the NUCP certification process] ... but they could market [the certification] to these small businesses."

LAS should consider ways it can improve the visibility of the certification options available to vendors and how businesses interested in applying for certification can seek assistance with the process. As an initial step, LAS could encourage NDOT to create a more robust certification platform with the ability for applicants to track the progress of their applications.

CHAPTER 10.

Overall DBE Goal

As part of its implementation of the Federal Disadvantaged Business Enterprise (DBE) Program, the Harry Reid International Airport (LAS) is required to set an overall goal for DBE participation in its United States Department of Transportation (USDOT)-funded projects [specifically, its Federal Aviation Administration (FAA)-funded projects]. Agencies are required to develop overall DBE goals every three years, but they 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, 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.

LAS must prepare and submit a Goal and Methodology document to USDOT that presents its overall DBE goal for USDOT-funded work. The goal must be supported by information about the steps the agency took to develop it and the factors it considered. LAS last developed an overall DBE goal for federal fiscal years (FFYs) 2023 through 2025. In FFYs 2020 through 2022, LAS had a DBE goal of 10.2 percent on FAA-funded projects. In FFY 2023, the agency increased its overall DBE goal to 15.0 percent. LAS 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.

LAS is required to develop new overall DBE goals for FFYs 2026 through 2028. Chapter 10 provides information the agency might consider as part of setting its new overall DBE goal for its FAA-funded contracts and procurements. It is organized in three parts, based on guidance set forth in 49 Code of Federal Regulations (CFR) Part 26:

- 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 LAS' FAA-funded work. As presented in Figure 10-1, the agency might be expected to award 18.6 percent of its FAA-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 according to the 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-15 for more detail). The agency might consider 18.6 percent as the base figure for its overall DBE goal if it anticipates that the types and sizes of FAA-funded projects it awards in the future will be similar to the FAA-funded projects it awarded during the study period (i.e., July 1, 2017 through June 30, 2022).

The calculation of the overall base figure reflects weights of 86.1 percent for construction projects, 13.4 percent for professional services projects, and 0.6 percent for non-professional services and supplies projects based on the volume of dollars of FAA-funded work LAS awarded during the study period

related to each industry. If LAS expects that the relative distributions of FAA-funded contract dollars by industry 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 LAS' FAA-funded projects. Those data could help LAS estimate a base figure should the agency determine that the relative distributions of FAA-funded contract dollars by subindustry will change substantially in the future. For additional details about the availability analysis, see Chapter 5.

Figure 10-1.
Base figure
components of
LAS' next overall
DBE goal

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals. See Figures F-16, F-17, and F-18 in Appendix F for corresponding disparity results tables.

Source:

BBC availability analysis.

Potential DBEs	Construction	Professional services	Non-prof. svcs. and supplies	Weighted average
Asian Pacific American	1.3 %	9.7 %	6.7 %	2.4 %
Black American	1.0	12.1	12.2	2.6
Hispanic American	11.0	5.1	8.9	10.2
Native American	0.7	0.0	1.1	0.6
Subcontinent Asian American	0.1	0.3	0.0	0.1
Non-Hispanic white woman	2.3	4.5	10.0	2.7
Total potential DBEs	16.5 %	31.7 %	38.9 %	18.6 %
Industry weight	86.1 %	13.4 %	0.6 %	

B. Considering a Step-2 Adjustment

The Federal DBE Program requires LAS to consider a potential *step-2 adjustment* to its base figure as part of determining its overall DBE goal. LAS 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 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.¹

BBC Research & Consulting (BBC) completed an analysis of each of the above factors, although much of the information we examined was not easily quantifiable. However, this information is still relevant to LAS as it determines whether to make a step-2 adjustment.

¹ 49 CFR Section 26.45.

Figure 10-2.
Availability of potential DBEs
for LAS USDOT-funded
contracts by subindustry

Note:

Numbers rounded to nearest tenth of 1 percent.

Source:

BBC availability analysis.

Industry	Potential DBE Availability
Construction	
Fencing, guardrails, barriers, and signs	57.1 %
Landscape services	50.0 %
Concrete work and materials	43.6 %
Electrical equipment and supplies	38.7 %
Other construction materials	35.0 %
Other construction services	34.8 %
Electrical work	14.7 %
Highway, street, and bridge construction	7.5 %
Rebar and reinforcing steel	0.0 %
Professional services	
Transportation planning and environmental services	35.7 %
Engineering	32.3 %
Testing and inspection	29.5 %
Surveying and mapmaking	21.9 %
Non-prof. svcs. and supplies	
Other goods	38.9 %

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 FAA-funded projects in recent years. Results from the utilization analysis indicate that LAS awarded 7.6 percent of its FAA-funded project dollars to certified DBEs during the study period, which supports a downward adjustment to the agency’s base figure. If the agency adjusts its base figure based on past DBE participation, USDOT suggests it might take the average of its 18.6 percent base figure and the 7.6 percent past DBE participation in its FAA-funded projects, yielding an adjusted overall DBE goal of 13.1 percent.

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. BBC’s analyses of conditions in the RGMA are presented in Appendices C and D, respectively. They indicate that there are barriers 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 FAA-funded projects LAS awards, which supports an upward adjustment to the agency’s base figure. In addition, BBC used regression analyses to investigate whether race/ethnicity and gender are related to business ownership in relevant industries among workers in the Clark County marketplace independent of various other personal characteristics, including familial status, education, and age. (Chapter 3 and Appendix C provide details about our regression analyses.) Those analyses indicate that, even after accounting for such factors, POCs are less likely to own businesses in certain industries relative to white Americans, and women are less likely to own businesses in certain industries than men. Based on the results of those analyses, LAS might consider an upward adjustment to its base figure.

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 such barriers might limit opportunities for POCs and women to successfully form and operate businesses in the RGMA. They would also place those businesses at a disadvantage in competing for LAS' FAA-funded prime contracts and subcontracts. Thus, information about financing, bonding, and insurance also supports an upward adjustment to the 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.²

a. Business success. 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 various business and owner characteristics. 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 business success supports an upward adjustment to LAS' base figure.

b. Evidence from disparity studies conducted within the region. USDOT suggests that USDOT fund recipients also examine evidence from disparity studies conducted within their RGMAs when determining whether to adjust their base figures. LAS 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 them, which may differ in many important respects from those of LAS.

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

- LAS might adjust its base figure upward to account for barriers 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 LAS' base figure.
- If LAS were to adjust its base figure based on information about DBE participation in FAA-funded work the agency awarded during the study period, it might consider taking the average of its base figure and the participation of DBEs in that work, which would result in a downward adjustment to its base figure.

USDOT regulations state that USDOT fund recipients are required to review a broad range of information when considering whether it is necessary to make step-2 adjustments—either upward or

² 49 CFR Section 26.45.

downward—to their base figures. However, agencies are not required to make adjustments 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 decisions 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 business groups “that have actually suffered discrimination” within their RGMAs.^{3, 4} 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.”⁵ As provided in 49 CFR Part 26, such guidance is “valid, and express[es] the official positions and views of the Department of Transportation ...”.⁶

As part of the 2023 Harry Reid International Airport Disparity Study, BBC assessed whether there were any disparities between the participation and availability of POC- and woman-owned businesses for LAS’ FAA-funded contracts and procurements (for details, see Chapter 7 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 businesses considered together as well as for all individual racial/ethnic and gender groups relevant to the Federal DBE Program. Consistent with key court rulings and USDOT official guidance, based on available information, including results from the 2023 Harry Reid International Airport Disparity Study, LAS 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 FAA-funded projects:

- Black American-owned businesses;
- Asian-Pacific American-owned businesses;
- Hispanic American-owned businesses;
- Native American-owned businesses;
- Subcontinent Asian-American-owned businesses; and
- Non-Hispanic white woman-owned businesses.⁷

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

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

⁵ 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>

⁶ 49 CFR Section 26.9

⁷ Courts have found that a substantial disparity 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).

APPENDIX A.

Definitions of Terms

Appendix A defines terms useful to understanding the 2023 Harry Reid International Airport (LAS) Disparity Study report.

49 Code of Federal Regulations (CFR) Part 26

49 CFR Part 26 are the federal regulations that set forth requirements for the Federal Disadvantaged Business Enterprise (DBE) Program. The objectives of 49 CFR Part 26 are to:

- Ensure nondiscrimination in the award and administration of United States Department of Transportation (USDOT)- funded work;
- Help remove barriers to the participation of DBEs in USDOT-funded work;
- Promote the use of DBEs in USDOT-funded work;
- Assist in the development of businesses so they can compete outside the Federal DBE Program;
- Create a level playing field on which DBEs can compete fairly for USDOT-funded work;
- Ensure the Federal DBE Program is narrowly tailored in accordance with applicable law;
- Ensure only businesses that fully meet eligibility standards are permitted to participate as DBEs; and
- Provide appropriate flexibility to agencies implementing the Federal DBE 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, focus group participants, and other stakeholders in the Southern Nevada marketplace.

Base Figure

In accordance with USDOT requirements, establishing a base figure is the first step agencies must take in calculating their overall DBE goals. Agencies must calculate their base figures from demonstrable evidence of the availability of potential DBEs to participate in their USDOT-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 other business structures. The definition includes the headquarters of the organization as well as all its other locations, as applicable.

Commercially Useful Function

A commercially useful function refers to a business performing real and distinct work for which it has demonstrable skills, experience, and responsibilities. Businesses that prime contractors use to meet contract goals are often required to demonstrate that they will serve commercially useful functions on applicable projects.

Compelling Governmental Interest

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

Construction

Construction refers to the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. “Buildings, structures, or other real property” includes bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, channels, and other structures.

Consultant

A consultant is a business that performs professional services work.

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* interchangeably with *procurement* or *project*.

Contract Goals

Contract goals are often a race- or gender-conscious effort whereby organizations set percentage goals for the participation of person of color- (POC-) or woman-owned businesses in individual contracts or procurements they award. As a condition of award, prime contractors have to meet contract goals as part of their bids, quotes, or proposals by making participation commitments with eligible, certified businesses, or, if they fail to do so, by demonstrating they made genuine and sufficient good faith efforts to do so. The use of contract goals as they apply to POC- and woman-owned businesses must meet the strict scrutiny and intermediate scrutiny standards of constitutional review, respectively.

Contract Element

A contract element is either a prime contract or subcontract.

Contractor

A contractor is a business that performs construction work.

Control

Control means exercising management and executive authority over a business.

Custom Census Availability Analysis

A custom census availability analysis is one in which researchers attempt surveys with potentially available businesses working in the RGMA 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 various different characteristics of businesses and agency projects into account.

Disadvantaged Business Enterprise (DBE)

A DBE is a business certified as owned and controlled by one or more individuals who are socially and economically disadvantaged according to the guidelines in 49 CFR Part 26. USDOT presumes the following race and gender groups to be socially and economically disadvantaged as part of 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 \$2.25 million to \$30.4 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 POC- and woman-owned businesses do not qualify as DBEs because they do not meet gross revenue or net worth requirements. Businesses owned by white men can also be certified as DBEs if they meet the economic requirements set forth in 49 CFR Part 26 and if they suffer from certain social disadvantages, such as having physical or mental disabilities. Businesses must be certified as DBEs to fully participate in all the measures LAS uses as part of its implementation of the Federal DBE Program.

Disparity

A disparity is a difference between an actual outcome and some benchmark such that the actual outcome is less than the benchmark. In this report, "disparity" refers specifically to a difference between the participation of a specific group of businesses in LAS work 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 agency contracts and procurements and the estimated availability of the group for that work.

Disparity Index

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

Federal DBE Program

USDOT established the Federal DBE Program after the enactment of the Transportation Equity Act for the 21st Century, as amended in 1998. It is designed to increase the participation of POC- and woman-owned businesses in USDOT-funded work. Regulations for the Federal DBE Program are set forth in 49 CFR Part 26.

Federal Aviation Administration (FAA)

FAA is an office of USDOT that regulates all aspects of civil aviation across the country and administers federal funding to support the construction and operation of local airports.

Federally Funded Project

A federally funded project is any project funded in whole or part with USDOT funding, including loans. The study team considered a project to be federally funded if it included at least \$1 of USDOT funding.

Firm

See *business*.

Harry Reid International Airport (LAS)

LAS, located in Las Vegas, Nevada, is owned by the Clark County Commission and is operated by the Clark County Department of Aviation. It serves more than 50 million passengers each year to and from various domestic and international destinations. As a recipient of USDOT funds, LAS implements the Federal DBE Program and other programs to encourage the participation of POC- and woman-owned businesses in its work.

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 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 or gender, but less rigorous than the strict scrutiny test, which applies to business measures related to race. In order for a gender-conscious program to comply with intermediate scrutiny, it must serve an important government objective, and it must be substantially related to achieving that objective.

Lesbian, Gay, Bisexual, Transgender, Queer, and Other Sexual or Gender Orientations (LGBTQ+)-owned Business

An LGBTQ+-owned business is a business with at least 51 percent ownership and control by individuals who identify as lesbian, gay, bisexual, transgender, queer, intersex, or asexual.

Middle Eastern and North African (MENA) American

A MENA American is an individual whose origins are from Afghanistan, Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

Narrow Tailoring

As part of the strict scrutiny standard of constitutional review, a government organization must demonstrate its use of race-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-neutral measures;
- The degree to which the use of such measures is limited to those groups that suffer barriers or 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.

Nevada Unified Certification Program (NUCP)

The NUCP is responsible for certifying DBEs on behalf of all USDOT fund recipients in Nevada.

Non-professional Services and Supplies

A non-professional services and supplies business engages in providing goods, supplies, or services not elsewhere classified. Non-professional services typically do not require a license or high degree of expertise and training. Procurement rules and regulations for awarding non-professional services and supplies contracts or procurements often place emphasis solely on cost. Examples of non-professional services and supplies industries include cleaning and janitorial services and supplies; office equipment

and supplies; printing, copying, and mailing services; safety equipment; security systems; security guard services; uniforms and apparel; automobiles; and vehicle repair services.

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 USDOT-funded work, which they must work towards achieving each year through various efforts. If DBE participation in their USDOT-funded work is less than their overall DBE goals in a particular year, then they must analyze reasons for the shortfall and establish specific measures that will enable them to meet the goal in the next year. USDOT 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, and then second, they must consider whether making *step-2 adjustments* to their base figures is necessary to ensure their overall DBE goals accurately reflect conditions in the local marketplace and within their contracting and procurement processes.

Participation

See *utilization*.

Person of Color (POC)

A POC is an individual who identifies with one of the following race groups: Asian Pacific American, Black American, Hispanic American, MENA American, Native American, Subcontinent Asian American, or other non-white race group.

POC-owned Business

A POC-owned business is a business with at least 51 percent ownership and control by individuals who identify with one of the following race groups: Asian Pacific American, Black American, Hispanic American, MENA American, Native American, Subcontinent Asian American, or other non-white race group. The study team considered businesses owned by POC men or POC women as POC-owned businesses. A business does not have to be certified as a DBE or hold any other type of certification to be considered a POC-owned business.

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 LAS.

Prime Contract

A prime contract is a contract between a prime contractor or prime consultant and an end user, such as LAS.

Prime Contractor

A prime contractor is a construction business that performs prime contracts directly for an end user, such as LAS.

Procurement

See *contract* or *project*.

Professional Services

Professional services refers to the professional, scientific, or technical services that require a high degree of expertise and training. Frequently—but not always—individuals that perform professional services are required to have a license or specific educational background. Procurement rules and regulations for professional services often place emphasis on qualifications in addition to cost. Examples of professional services include legal advice and representation; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.

Project

A project refers to a construction; professional services; or non-professional services and supplies endeavor an agency bids out. A project could include one or more prime contracts and corresponding subcontracts. The study team sometimes uses the term project interchangeably with *contract* or *procurement*.

Race- and Gender-conscious Measures

Race- and gender-conscious measures are contracting measures designed to increase the specific participation of POC- and woman-owned businesses in government work. Businesses owned by individuals who identify with particular race groups might be eligible for such measures whereas others would not. Similarly, businesses owned by individuals who identify as women might be eligible for such measures whereas businesses owned by individuals who identify as men would not. An example of race- and gender-conscious measures is an organization's use of POC- or woman-owned business contract goals on individual contracts or procurements.

Race- and Gender-neutral Measures

Race- and gender-neutral measures are measures designed to remove potential barriers for businesses attempting to perform work with an agency, regardless of the race 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 that their contracting programs are rationally related to a legitimate government interest. It is the lowest threshold for evaluating the legality of government contracting programs.

Relevant Geographic Market Area (RGMA)

The RGMA is the geographic area in which the businesses to which agencies award most of their contracting dollars are located. Case law related to contracting programs and disparity studies requires analyses to focus on the RGMA. The RGMA for the disparity study is Clark County, Nevada.

State-/Locally-funded Project

A state-/locally-funded project is any contract or procurement wholly funded by state or local sources. That is, the project does not include any USDOT or other federal funds.

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. In other words, there is a 0.05 or 0.10 probability, respectively, that chance in the sampling process could correctly account for the difference.

Strict Scrutiny

Strict scrutiny is the legal standard a government agency's use of race-conscious measures must meet to be considered constitutional. Strict scrutiny is the highest threshold for evaluating the legality of measures that might impinge on the rights of others, short of prohibiting them altogether. Under the strict scrutiny standard, an organization must:

- Have a compelling governmental interest in remedying past identified discrimination or its present effects; and
- Establish that the use of any such measures is narrowly tailored to achieve the goal of remedying the identified discrimination.

An organization's use of race-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. The study period for the disparity study was July 1, 2017 to June 30, 2022. LAS had to have awarded a contract or procurement during the study period for it to be included in the study team's analyses.

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 project.

Subcontractor

A subcontractor is a business that performs services for prime contractors as part of larger contracts or projects.

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.

Utilization

Utilization refers to the percentage of total dollars associated with a particular set of contracts or procurements LAS awarded to a specific group of businesses during the study period. The study team uses the term *utilization* synonymously with *participation*.

Veteran-owned Business Enterprise (VBE)

A VBE is a business with at least 51 percent ownership and control by individuals who are veterans of the United States military.

Woman-owned Business

A woman-owned business is a business with at least 51 percent ownership and control by white women. A business does not have to be certified as a DBE or hold any other type of certification 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

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APPENDIX B.

Legal Framework and Analysis

Executive Summary

A. Introduction

In this appendix, Holland & Knight LLP analyzes recent cases regarding the Federal Disadvantaged Business Enterprise (Federal DBE) Program¹ and provides an analysis of the implementation of the Federal DBE Program by local and state governments. The Federal DBE Program was continued and reauthorized by the 2015 Fixing America's Surface Transportation Act (FAST Act).² In October 2018, Congress passed the Federal Aviation Administration (FAA) Reauthorization Act.³ In November 2021, Congress passed the Infrastructure Investment and Jobs Act of 2021, which reauthorized the Federal DBE Program based on findings of continuing discrimination and related barriers posing significant obstacles for minority-owned business enterprises, woman-owned business enterprises, and disadvantaged business enterprises (MBE/WBE/DBEs).⁴

The appendix also discusses recent cases involving local and state government MBE/WBE/DBE programs, which are instructive to the study and MBE/WBE/DBE programs. The appendix provides a summary of the legal framework for the disparity study as applicable to the Harry Reid International Airport (LAS) and the Regional Transportation Commission of Southern Nevada (RTC).

Appendix B begins with a review of the landmark United States Supreme Court decision in *City of Richmond v. J.A. Croson* (*Croson*).⁵ *Croson* sets forth the *strict scrutiny* constitutional analysis applicable in the legal framework for conducting a disparity study. This section also notes the United States Supreme Court decision in *Adarand Constructors, Inc. v. Peña*,⁶ (*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 study.

¹ 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.

² Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

³ Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.

⁴ Pub. L. 117-58, H.R. 3684, § 11101(e), November 15, 2021, 135 Stat 443-449.

⁵ *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

⁶ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

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 its implementation by state and local governments and recipients of federal funds, MBE/WBE/DBE programs, and the strict scrutiny analysis. The Harry Reid International Airport and Regional Transportation Commission of Southern Nevada are 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, et al.* (AGC, SDC v. Caltrans),⁷ *Western States Paving Co. v. Washington State Department of Transportation (DOT), (Western States)*,⁸ *Orion Insurance Group, Ralph G. Taylor v. Washington Minority & Women's Business Enterprise, United States Department of Transportation (USDOT), et al. (Orion)*,⁹ the recent non-published decision in *Mountain West Holding Co. v. Montana, Montana DOT, et al. (Mountain West)*,¹⁰ and the District Court decision in *M.K. Weeden Construction v. Montana, Montana DOT, et al. (M.K. Weeden)*.¹¹

The significant 2005 decision in *Western States Paving v. Washington DOT, USDOT and Federal Highway Administration (FHWA)* set forth legal standards in the Ninth Circuit Court of Appeals for state departments of transportation (DOTs) to satisfy the strict scrutiny standard for determining whether there is a compelling governmental interest to have a *narrowly tailored* race- and ethnic-conscious DBE program in compliance with the Federal DBE Program, and for cases involving challenges to the Federal DBE Program and its implementation by state DOTs. As noted in this Executive Summary below, the *Western States Paving* decision resulted in a specific United States Department of Transportation (USDOT) Official Guidance for recipients of federal financial assistance from the FHWA, Federal Transit Administration (FTA), and FAA located in the states comprising the Ninth Federal Judicial Circuit, including Nevada, to follow.

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 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)*,¹² *Northern Contracting, Inc. v. Illinois DOT (Northern Contracting)*,¹³ *Sherbrooke Turf, Inc. v. Minnesota DOT* and *Gross Seed v. Nebraska Department of Roads*

⁷ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, (9th Cir. 2013).

⁸ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

⁹ *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.

¹⁰ *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).

¹¹ *M. K. Weeden Construction v State of Montana, Montana DOT*, 2013 WL 4774517 (D. Mont. 2013).

¹² *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).

¹³ *Northern Contracting, Inc. v. Illinois DOT*, 473 F.3d 715 (7th Cir. 2007).

(*Sherbrooke Turf*),¹⁴ *Geyer Signal, Inc. v. Minnesota DOT (Geyer Signal)*,¹⁵ *Adarand Constructors, Inc. v. Slater*¹⁶ (*Adarand VII*), *Midwest Fence Corp. v. USDOT, FHWA, Illinois DOT, Illinois State Toll Highway Authority, et al. (Midwest Fence)*,¹⁷ *Geod Corp. v. New Jersey Transit Corp.*¹⁸ and *South Florida Chapter of the AGC v. Broward County, Florida*.¹⁹

The analysis also discusses and analyzes recent court decisions that involved challenges to MBE/WBE/DBE programs and social and economic disadvantaged business programs in other jurisdictions, which are instructive to the study and the Harry Reid International Airport and Regional Transportation Commission of Southern Nevada.

The appendix points out recent informative Congressional findings as to discrimination regarding MBE/WBE/DBEs²⁰ including relating to the Federal DBE Program that 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/WBE/DBEs, including from disparity studies and other evidence.²¹ In October 2018, Congress passed the FAA Reauthorization Act, which also provides Congressional findings as to discrimination against MBE/WBE/DBEs, including from disparity studies and other evidence.²² Most recently, in November 2021, Congress passed the Infrastructure Investment and Jobs Act (H.R. 3684 – 117th 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.²³

The analyses of these and other recent cases discussed below, including the Ninth Circuit decisions in *AGC, SDC v. Caltrans*, *Western States Paving*, *Mountain West Holding*, *M.K. Weeden*, and *Orion* 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 Program and its 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/DBEs. They 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 49 Code of Federal Regulations (CFR) Part 26.

¹⁴ *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).

¹⁵ *Geyer Signal, Inc. v. Minnesota DOT*, 2014 W.L. 1309092 (D. Minn. 2014).

¹⁶ *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147 (10th Cir. 2000) ("*Adarand VII*").

¹⁷ *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).

¹⁸ *Geod Corp. v. New Jersey Transit Corp.*, 766 F. Supp.2d. 642 (D. N.J. 2010).

¹⁹ *South Florida Chapter of the A.G.C. v. Broward County, Florida*, 544 F. Supp.2d 1336 (S.D. Fla. 2008).

²⁰ 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions).

²¹ Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

²² Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.

²³ Pub L. 117-58, H.R. 3684, § 11101(e), November 15, 2021, 135 Stat 443-449.

Finally, the appendix discusses and analyzes in Section D.4. below significant pending and very recent cases instructive and informative to the study and MBE/WBE/DBE and social and economic disadvantaged business type programs. These cases may potentially have an impact on the implementation of MBE/WBE/DBE programs; related legislation; implementation of the Federal DBE Program by state and local governments, airports, transportation and public authorities and agencies; and other types of programs involving the participation of MBE/WBE/DBEs/social and economic disadvantaged businesses.

B. Ninth Circuit Court of Appeals decisions

As stated above and discussed below, the *Western States Paving* decision is a leading case in the Ninth Circuit establishing legal standards for satisfying the strict scrutiny test regarding whether there is the *compelling governmental interest* in a state's transportation marketplace to have a narrowly tailored race- and ethnic-conscious DBE program in compliance with the Federal DBE Program, that the DOT DBE Program by the state or local government or recipient of federal funds is narrowly tailored and properly implements the federal regulations at 49 CFR Part 26 and the Federal DBE Program, and the standard relevant to cases involving challenges to the Federal DBE Program and its implementation by state DOTs. 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—in particular for agencies, transportation authorities, airports and other governmental entities implementing the Federal DBE Program in states in the Ninth Circuit Court of Appeals—recommended the use of disparity studies by recipients of federal financial assistance to examine whether or not there is evidence of discrimination and its effects, and how remedies might be narrowly tailored in developing their DBE Program to comply with the Federal DBE Program.²⁴ The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT instructs that recipients should ascertain evidence for discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26.²⁵ The USDOT's Guidance provides that recipients should consider evidence of discrimination and its effects.²⁶

The USDOT's Guidance is recognized by the federal regulations as “valid, and express the official positions and views of the Department of Transportation”²⁷ 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

²⁴ *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; see 49 CFR § 26.9; see, also, 49 CFR Section 26.45.

²⁵ USDOT Guidance, available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm (January 2006).

²⁶ *Id.*

²⁷ *Id.*, 49 CFR § 26.9; See, 49 CFR § 23.13.

present.”²⁸ Accordingly, the USDOT advised federal aid recipients that any use of race-conscious measures must be predicated on evidence that the recipient has concerning discrimination or its effects within the local transportation contracting marketplace.²⁹

In *AGC, SDC v. Caltrans*, which is a leading case after *Western States Paving*, the Ninth Circuit in 2013 upheld the validity of Caltrans’ DBE Program implementing the Federal DBE Program. The Ninth Circuit Court of Appeals and the United States District Court for the Eastern District of California in *AGC, SDC v. Caltrans* held that Caltrans’ implementation of the Federal DBE Program is constitutional.³⁰ 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.³¹

There are other recent cases in the Ninth Circuit instructive for the study, including as follows:

In *Mountain West*,³² the Ninth Circuit and the District Court applied the decision in *Western States*,³³ and the decision in *AGC, SDC v. Caltrans*,³⁴ 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.³⁵ 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.”³⁶ The Ninth Circuit in *Mountain West* also pointed out it had held that “even when

²⁸ *Western States Paving*, 407 F.3d at 996; see, also, *Br. for the United States*, at 28 (April 19, 2004).

²⁹ DOT Guidance, available at 71 Fed. Reg. 14,775 and http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm (January 2006).

³⁰ *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).

³¹ *Id.*, *Associated General Contractors of America, San Diego Chapter, Inc. v. California DOT*, Slip Opinion Transcript of U.S. District Court at 42-56.

³² 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).

³³ 407 F.3d 983 (9th Cir. 2005)

³⁴ 713 F.3d 1187 (9th Cir. 2013)

³⁵ 2014 WL 6686734 at *2 (D. Mont. 2014)

³⁶ *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).

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.”³⁷

Montana, the Court found, bears the burden to justify any racial classifications. *Id.* 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.’”³⁸ 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.”³⁹

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 in *M.K. Weeden*,⁴⁰ which also involved Montana, followed the *AGC, SDC v. Caltrans* Ninth Circuit decision, and held as valid and constitutional the Montana DOT’s implementation of the Federal DBE Program.

Another recent case in the Ninth Circuit is *Orion*.⁴¹ 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 percent European, 6 percent Indigenous American, and 4 percent Sub-Saharan African. Taylor submitted an application to the Washington Office of Minority and Women’s Business Enterprises (OMWBE) seeking to have Orion certified as an MBE under Washington State law. Taylor identified 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 to the OMWBE Orion’s application for DBE certification 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.

³⁷ *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.

³⁸ *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).

³⁹ *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).

⁴⁰ *M.K. Weeden*, 2013 WL 4774517.

⁴¹ 2018 WL 6695345 (9th Cir. December 19, 2018)(Memorandum)(Not for Publication).

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 him, 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 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 Acting Director of the USDOT’s Office of Civil Rights, in her individual capacity, Taylor’s discrimination claims under 42 U.S. Code (USC) §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 immunity, and Taylor’s claims for equitable relief under 42 USC §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 membership claims, 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.

In *Braunstein v. Arizona DOT* (ADOT),⁴² Paul Braunstein brought this suit in federal court against ADOT and employees of the DOT alleging that ADOT violated his right to equal protection by using race and gender preferences in its solicitation and award of the 2005 contract. The District Court dismissed as moot Braunstein’s claims for injunctive and declaratory relief because ADOT had suspended its DBE program in 2006 following the Ninth Circuit’s 2005 decision in *Western States Paving*. This left only Braunstein’s damages claims against the state and ADOT and against the named individual defendants in their individual capacities.

The District Court concluded that Braunstein lacked Article III standing to pursue his remaining claims because he had failed to show that ADOT’s DBE program had affected him personally. The court noted that “Braunstein was afforded the opportunity to bid on subcontracting work, and the DBE goal did not

⁴² 683 F. 3d 1177 (9th Cir. 2012).

serve as a barrier to doing so, nor was it an impediment to his securing a subcontract.”⁴³ The District Court found that Braunstein’s inability to secure utility location work stemmed from his past unsatisfactory performance, not his status as a non-DBE.⁴⁴

The Ninth Circuit Court of Appeals held that Braunstein lacked Article III standing and affirmed the entry of summary judgment in favor of ADOT and the individual employees of ADOT. The Court found that Braunstein had not provided any evidence showing that ADOT’s DBE program affected him personally or that it impeded his ability to compete for utility location work on an equal basis.⁴⁵ The Court noted that Braunstein did not submit a quote or a bid to any of the prime contractors bidding on the government contract.⁴⁶

The Court also pointed out that Braunstein did not seek prospective relief against the government “affirmative action” program, noting the District Court dismissed as moot his claims for declaratory and injunctive relief since ADOT had suspended its DBE program before he brought the suit.⁴⁷ Thus, Braunstein’s surviving claims were for damages based on the contract at issue rather than prospective relief to enjoin the DBE Program. Accordingly, the Court held he must show more than that he is “able and ready” to seek subcontracting work, which the Court found he did not do.⁴⁸

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 Corp.*⁴⁹ and in *Dunnet Bay*⁵⁰ upheld the implementation of the Federal DBE Program by the Illinois DOT (IDOT).⁵¹ 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 v. Illinois DOT, et al.* decision because there was no evidence IDOT exceeded its authority under federal law.⁵² 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.⁵³

These decisions regarding state DOTs, transit and transportation authorities, and recipients of federal financial assistance 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.

⁴³ *Id.* at 1183.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1185.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1186.

⁴⁸ *Id.*

⁴⁹ 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

⁵⁰ 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

⁵¹ 799 F. 3d 676, 2015 WL 4934560 (7th Cir. 2015).

⁵² *Id.*

⁵³ 840 F.3d 932, 2016 WL 6543514 (7th Cir. 2016).

Congressional findings. The appendix points out recent informative Congressional findings as to discrimination regarding MBE/WBE/DBEs, including relating to the Federal DBE Program that 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/WBE/DBEs, including from disparity studies and other evidence.⁵⁴ And, Congress recently passed legislation in November 2021, which was signed by the president, (H.R. 3684 - 117th Congress, Section 11101, Infrastructure Investment and Jobs Act of 2021)⁵⁵ that again reauthorized the Federal DBE Program and its implementation by local and state governments based on evidence and findings of continuing discrimination and related barriers posing significant obstacles for MBE/WBE/DBEs. It also is instructive that recently there were Congressional findings as to discrimination regarding MBE/WBE/DBEs relating to the Federal ACDBE Program.⁵⁶

Department of Justice 2022 Compelling Interest report. It is noteworthy and instructive to the study that the U.S. Department of Justice (DOJ) in January 2022 issued a report: "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>.

C. U.S. Supreme Court Cases

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.⁵⁷ J.A. Croson Co. (Croson) 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 Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the "strict scrutiny" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination and that any program adopted by a local or state government must be "narrowly tailored" to achieve the goal of remedying the identified discrimination.

⁵⁴ Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312 49 CFR Part 26.

⁵⁵ Pub. L. 117-58; H.R. 3684 – 117th Congress (2021), § 11101(e), November 15, 2021, 135 Stat 443-449.

⁵⁶ 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions).

⁵⁷ 488 U.S. 469 (1989).

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.”⁵⁸ 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.⁵⁹ 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.⁶⁰

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 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.⁶¹ 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.”⁶²

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.”⁶³ “Nor does the city know what percentage of total city construction dollars minority firms now receive as subcontractors on prime contracts let by the city.”⁶⁴

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.”⁶⁵ 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

⁵⁸ 488 U.S. at 500, 510.

⁵⁹ 488 U.S. at 480, 505.

⁶⁰ 488 U.S. at 507-510.

⁶¹ 488 U.S. at 501, *quoting Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-308, 97 S.Ct. 2736, 2741.

⁶² 488 U.S. at 501 *quoting Hazelwood*, 433 U.S. at 308, n. 13, 97 S.Ct., at 2742, n. 13.

⁶³ 488 U.S. at 502.

⁶⁴ *Id.*

⁶⁵ 488 U.S. at 509.

engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise."⁶⁶

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."⁶⁷ "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."⁶⁸

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."⁶⁹

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 Program by recipients of federal funds.

Note: *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (June 29, 2023)

In *Students for Fair Admissions, Inc. (SFFA) v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (June 29, 2023) (*SFFA v. Harvard et al.*), the Supreme Court held unconstitutional under the Equal Protection Clause of the Fourteenth Amendment the admissions systems used by Harvard College and the University of North Carolina. The majority decision of the Court referenced, cited, and applied the Supreme Court decisions in *Croson* and *Adarand*—including the strict scrutiny standard—to the university admissions systems in these cases. The majority decision of the *SFFA* case did not specifically rule on or address the constitutionality of MBE/WBE/DBE contracting programs or the implementation of the Federal DBE Program by local or state governments, airports, transit or transportation authorities, or other government agencies.

It is noteworthy that, subsequent to the Supreme Court decision in *SFFA v. Harvard et al.*, attorneys general from 13 states sent a letter, dated July 13, 2023, to "Fortune 100 CEOs" in which, among other

⁶⁶ *Id.*

⁶⁷ 488 U.S. at 509.

⁶⁸ *Id.*

⁶⁹ 488 U.S. at 492.

statements, they urged businesses, to “immediately cease any unlawful race-based quotas or preferences your company has adopted for its employment and contracting practices.”

On July 19, 2023, attorneys general from 20 states sent a letter to “Fortune 100 CEOs” in which they responded to and opposed the statements in the July 13, 2023 letter sent by the attorneys general from the 13 states. Among the state attorneys general signing the letter, and the author of the letter, was the Nevada Attorney General. This letter provides that “*SFFA* does not directly address or govern the behavior or the initiatives of private sector businesses.” In addition, the letter provides that “*SFFA* acknowledges that our society has a compelling interest in ‘remediating specific, identified instances of past discrimination that violated the Constitution or a statute.’ *SFFA*, slip op. at 15.”

D. The Legal Framework Applied to State and Local Government MBE/WBE/DBE Programs and Their Implementation of the Federal DBE Program

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 Program 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, and an analysis of disparity studies, and implementation of the Federal DBE Program by local and state government recipients of federal financial assistance (USDOT funds) based on 49 CFR Part 26 and 49 CFR Part 23.

a. The Federal DBE 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 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 and MBE/WBE/DBE state and local government programs, and disparity studies.

After the *Adarand I* 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.⁷⁰

⁷⁰ 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.”

Subsequently, in 1998, Congress passed the Transportation Equity Act for the 21st Century (TEA-21), which authorized USDOT to expend funds for federal highway programs for 1998-2003. Pub.L. 105-178, Title I, § 1101(b), 112 Stat. 107, 113 (1998). USDOT promulgated new regulations in 1999 contained at 49 CFR Part 26 to establish the current Federal DBE Program. 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 21st Century Act (MAP-21).⁷¹ In December 2015, Congress passed the Fixing America's Surface Transportation Act (FAST Act).⁷² In October 2018, Congress passed the FAA Reauthorization Act.⁷³ Most recently, in November 2021, Congress passed the Infrastructure Investment and Jobs Act (H.R. 3684 – 117th 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.⁷⁴

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.⁷⁵

The Federal DBE Program established responsibility for implementing the DBE Program to state and local government recipients of federal funds. A recipient of federal financial assistance must set an annual DBE goal 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 Program outlines certain steps a state or local government recipient can follow in establishing a goal, and USDOT considers and must approve the goal and the recipient’s DBE program. The implementation of the Federal DBE Program is substantially in the

⁷¹ Pub L. 112-141, H.R. 4348, § 1101(b), July 6, 2012, 126 Stat 405.

⁷² Pub. L. 114-94, H.R. 22, § 1101(b), December 4, 2015, 129 Stat. 1312.

⁷³ Pub L. 115-254, H.R. 302 § 157, October 5, 2018, 132 Stat 3186.

⁷⁴ Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

⁷⁵ 49 CFR § 26.51; see 49 CFR § 23.25.

hands of the state or local government recipient and is set forth in detail in the federal regulations, including 49 CFR Part 26 § 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.⁷⁶ This is accomplished by determining the relative number of ready, willing, and able DBEs in the recipient's market.⁷⁷ Second, the recipient must determine an appropriate adjustment, if any, to the base figure to arrive at the overall goal.⁷⁸ There are 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 to perform work on the recipient's contracts as measured by the volume of work DBEs performed in recent years. If available, recipients consider evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, such as statistical disparities between the ability of DBEs to obtain financing, bonding, and insurance, as well as data on employment, education, and training.⁷⁹ This process, based on the federal regulations, aims to establish a goal that reflects a determination of the level of DBE participation one would expect absent the effects of discrimination.⁸⁰

Further, the Federal DBE Program requires state and local government recipients of federal funds to assess how much of the DBE goals can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts.⁸¹ A state or local government recipient is responsible for seriously considering and determining race- and gender-neutral measures that can be implemented.⁸²

Federal aid recipients are to certify DBEs 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 §§ 26.61-26.73.⁸³

b. 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.⁸⁴ Previously, in October 2018, December 2015, and in 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

⁷⁶ 49 CFR § 26.45(a), (b), (c); 49 CFR § 23.51(a), (b), (c).

⁷⁷ *Id.*

⁷⁸ *Id.* at § 26.45(d); *Id.* at § 23.51(d).

⁷⁹ *Id.*

⁸⁰ 49 CFR § 26.45(b)-(d); 49 CFR § 23.51.

⁸¹ 49 CFR § 26.51; 49 CFR § 23.51(a).

⁸² 49 CFR § 26.51(b); 49 CFR § 23.25.

⁸³ 49 CFR §§ 26.61-26.73; 49 CFR §§ 23.31-23.39.

⁸⁴ Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

transportation markets,” and that the continuing barriers “merit the continuation” of the Federal DBE Program.⁸⁵ 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 basis that there is a compelling need for the continuation of the” Federal DBE Program.⁸⁶

c. 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

⁸⁵ 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.

⁸⁶ *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).

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 enterprise program to address race and gender discrimination in surface transportation-related business.⁸⁷

d. 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.
- 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 CFR 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.

⁸⁷ Pub. L. 117-58, H.R. 3684 § 11101(e), November 15, 2021, 135 Stat 443-449.

e. USDOT Final Rule, 76 Fed. Reg. 5083 (January 28, 2011). 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.”⁸⁸

USDOT in the 2011 Final Rule stated that there was a continuing compelling need for the DBE program.⁸⁹ The USDOT concluded that, as court decisions have noted, the USDOT’s DBE regulations and the statutes authorizing them, “are supported by a compelling need to address discrimination and its effects.”⁹⁰ The DOT 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 Department of Justice 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.”⁹¹ This information, the USDOT stated, “confirms the continuing compelling need for race- and gender-conscious programs such as the DOT DBE program.”⁹²

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.

1. Strict scrutiny analysis. A race- and ethnicity-based program implemented by a state or local government is subject to the strict scrutiny constitutional analysis.⁹³ The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and

⁸⁸ 76 F.R. at 5092.

⁸⁹ 76 F.R. at 5095.

⁹⁰ 76 F.R. at 5095.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *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); *Eng’g Contractors Ass’n of South Florida, Inc. v. Metro. Dade County*,

- The program must be narrowly tailored to achieve that compelling government interest.⁹⁴

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.⁹⁵ 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.⁹⁶ 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.⁹⁷

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.⁹⁸ 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).⁹⁹

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).

⁹⁴ *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).

⁹⁵ *Id.*

⁹⁶ *Id.*; see, e.g., *Concrete Works, Inc. v. City and County of Denver* (“Concrete Works I”), 36 F.3d 1513, 1520 (10th Cir. 1994).

⁹⁷ See, e.g., *Concrete Works I*, 36 F.3d at 1520.

⁹⁸ *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.

⁹⁹ *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 also the 2012 district court decision in *DynaLantic Corp. v. U.S. Department of Defense*, et al., 885 F.Supp.2d 237, (D.D.C.). In the 2016 decision 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 affirmed on other grounds the district court decision that had upheld the constitutionality of the Section 8(a) Program. The district court had

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.”¹⁰⁰ 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).¹⁰¹ 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.¹⁰²
- **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 a minority business enterprise on a government contract not using that minority business enterprise 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.¹⁰³
- **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.¹⁰⁴
- **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

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).

¹⁰⁰ *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.

¹⁰¹ 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.

¹⁰² *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.

¹⁰³ *Adarand VII*, at 1170-72 (10th Cir. 2000); see *DynaLantic*, 885 F.Supp.2d 237.

¹⁰⁴ *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.¹⁰⁵

- 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 or 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.¹⁰⁶ 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 basis that there is a compelling need for the continuation of the” Federal DBE Program.¹⁰⁷

And, as stated above, the 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.”¹⁰⁸ This “updated report” by the DOJ 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.”¹⁰⁹

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.¹¹⁰ If the government makes its initial showing,

¹⁰⁵ *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.

¹⁰⁶ 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.

¹⁰⁷ *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).

¹⁰⁸ Vol. 87 Fed. Reg. 4955, January 31, 2022; located at <https://www.justice.gov/crt/page/file/1463921/download>.

¹⁰⁹ *Id.*; see <https://www.justice.gov/crt/page/file/1463921/download>.

¹¹⁰ 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 II”)*, 91 F.3d 586, 596-598 (3^d Cir. 1996); *Contractors Ass’n of E. Pa. v. City of Philadelphia (“CAEP I”)*, 6 F.3d 996, 1005-1007 (3^d 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).

the burden shifts to the challenger to rebut that showing.¹¹¹ The challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of prior discrimination."¹¹²

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.¹¹³ It is well established that "remedying the effects of past or present racial discrimination" is a compelling interest.¹¹⁴ In addition, the government must also demonstrate "a strong basis in evidence for its conclusion that remedial action [is] necessary."¹¹⁵

Since the decision by the Supreme Court in *Croson*, "numerous courts have recognized that disparity studies provide probative evidence of discrimination."¹¹⁶ "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.'"¹¹⁷ Anecdotal evidence may be used in combination with statistical evidence to establish a compelling governmental interest.¹¹⁸

¹¹¹ *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.

¹¹² 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.

¹¹³ *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.

¹¹⁴ *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).

¹¹⁵ *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.

¹¹⁶ *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).

¹¹⁷ 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).

¹¹⁸ *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.¹¹⁹ 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.¹²⁰ 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.¹²¹

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.¹²² 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 is flawed, demonstrating that the observed disparities are statistically insignificant, or presenting contrasting statistical data.¹²³ Conjecture and unsupported criticisms of the government’s methodology are insufficient.¹²⁴ 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.¹²⁵

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 necessary because minority-owned small businesses enjoy non-discriminatory access to and

¹¹⁹ *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).

¹²⁰ *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).

¹²¹ *Id.*; *Adarand VII*, 228 F.3d at 1166 (10th Cir. 2000).

¹²² 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.

¹²³ 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).

¹²⁴ *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.

¹²⁵ *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).

participation in highway contracts.”¹²⁶ 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.”¹²⁷

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.”¹²⁸ 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.¹²⁹ 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.¹³⁰ 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.¹³¹

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.”¹³² In so acting, a governmental entity must demonstrate it had a compelling interest in “remedying the effects of past or present racial discrimination.”¹³³

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.¹³⁴

¹²⁶ *Geyer Signal, Inc.*, 2014 WL 1309092, quoting *Sherbrooke Turf*, 345 F.3d at 970.

¹²⁷ *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).

¹²⁸ *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).

¹²⁹ *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).

¹³⁰ *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).

¹³¹ *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).

¹³² 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.

¹³³ 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).

¹³⁴ 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).

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.¹³⁵ “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.”¹³⁶

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.¹³⁷ 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.¹³⁸ However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.¹³⁹

Other considerations regarding statistical evidence include:

iii. Availability analysis. A disparity index requires an availability analysis. MBE/WBE and DBE availability measures the relative number of MBE/WBEs/DBEs among all firms ready, willing, and able to perform a certain type of work within a particular geographic market area.¹⁴⁰ There is authority that measures of availability may be approached with different levels of specificity and the practicality of

¹³⁵ 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.

¹³⁶ *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).

¹³⁷ *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).

¹³⁸ 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).

¹³⁹ *Western States Paving*, 407 F.3d at 1001.

¹⁴⁰ See, e.g., *Croson*, 488 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).

various approaches must be considered.¹⁴¹ “An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach.”¹⁴²

iv. Utilization analysis. Courts have accepted measuring utilization based on the proportion of an agency’s contract dollars going to MBE/WBEs and DBEs.¹⁴³

v. Disparity index. An important component of statistical evidence is the “disparity index.”¹⁴⁴ 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.”¹⁴⁵

vi. 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.¹⁴⁶

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 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.¹⁴⁷

¹⁴¹ *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*, 488 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).

¹⁴² *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*, 488 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).

¹⁴³ 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.

¹⁴⁴ *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).

¹⁴⁵ 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.

¹⁴⁶ 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.

¹⁴⁷ *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.*

vii. 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.¹⁴⁸ 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*.¹⁴⁹ 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.”¹⁵⁰ 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.”¹⁵¹

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.¹⁵² Thus, the local government was not required to demonstrate that it is “guilty of prohibited discrimination” to meet its initial burden.¹⁵³

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.¹⁵⁴ 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.¹⁵⁵

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 metropolitan statistical area (MSA) construction industry, not discrimination by the municipality itself.¹⁵⁶ The 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.¹⁵⁷

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.¹⁵⁸ (“[W]e may consider public and private discrimination not only in the

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).

¹⁴⁸ *Id.* at 973.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529 (emphasis added).

¹⁵¹ *Concrete Works*, 321 F.3d 950, 973 (10th Cir. 2003), quoting *Concrete Works II*, 36 F.3d at 1529 (10th Cir. 1994).

¹⁵² *Id.* at 973.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 974, quoting *Concrete Works II*, 36 F.3d at 1529.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 974.

¹⁵⁷ *Id.*, citing *Adarand VII*, 228 F.3d at 1166-67.

¹⁵⁸ *Concrete Works*, 321 F.3d at 976, citing *Adarand VII*, 228 F.3d at 1166-67.

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.*"¹⁵⁹) 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."¹⁶⁰ 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.¹⁶¹

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."¹⁶² 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.¹⁶³

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."¹⁶⁴

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 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.¹⁶⁵

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

¹⁵⁹ *Id.* (emphasis added).

¹⁶⁰ *Id.*, quoting *Concrete Works II*, 36 F.3d at 1529.

¹⁶¹ *Id.*, quoting *Concrete Works II*, 36 F.3d at 1530 (emphasis added).

¹⁶² *Id.*

¹⁶³ *Concrete Works*, 321 F.3d at 976, quoting *Croson*, 488 U.S. at 492.

¹⁶⁴ *Id.* at 977, quoting *Adarand VII*, 228 F.3d at 1167-68.

¹⁶⁵ *Id.* at 977.

(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.¹⁶⁶

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.¹⁶⁷

viii. 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.¹⁶⁸ But personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.¹⁶⁹ 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."¹⁷⁰

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;
- 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.¹⁷¹

¹⁶⁶ *Id.* at 979, quoting *Adarand VII*, 228 F.3d at 1174.

¹⁶⁷ *Id.* at 979-80.

¹⁶⁸ 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).

¹⁶⁹ 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).

¹⁷⁰ *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).

¹⁷¹ 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).

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.¹⁷²

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.¹⁷³

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;
- 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.¹⁷⁴

¹⁷² 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).

¹⁷³ 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.

¹⁷⁴ 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;

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.”¹⁷⁵ 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.”¹⁷⁶

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.’”¹⁷⁷

The Supreme Court in *Parents Involved in Community Schools v. Seattle School District*¹⁷⁸ 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.”¹⁷⁹ 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.

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.¹⁸⁰ 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.

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.

¹⁷⁵ *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).

¹⁷⁶ 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.

¹⁷⁷ *Associated Gen. Contractors of Ohio, Inc. v. Drabik (“Drabik II”)*, 214 F.3d 730, 738 (6th Cir. 2000).

¹⁷⁸ 551 U.S. 701, 734-37, 127 S.Ct. 2738, 2760-61 (2007).

¹⁷⁹ 551 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).

¹⁸⁰ *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.

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.¹⁸¹ Thus, the Ninth Circuit held in *Western States Paving* that mere compliance with the Federal DBE Program does not satisfy strict scrutiny.¹⁸²

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.¹⁸³

In *Northern Contracting* decision (2007) 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."¹⁸⁴ 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 the state DOT's (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.¹⁸⁵ 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 conditions, and its use of race-neutral methods set forth in the federal regulations.¹⁸⁶ The court held NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 CFR Part 26).¹⁸⁷ Accordingly, the Seventh Circuit Court of Appeals affirmed the District Court's decision upholding the validity of IDOT's DBE program.¹⁸⁸

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

¹⁸¹ *Western States Paving*, 407 F.3d at 997-98, 1002-03; see *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

¹⁸² *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.

¹⁸³ 407 F.3d at 996-1000; See *AGC, SDC v. Caltrans*, 713 F.3d at 1197-1199.

¹⁸⁴ 473 F.3d at 722.

¹⁸⁵ *Id.* at 722.

¹⁸⁶ *Id.* at 723-24.

¹⁸⁷ *Id.*

¹⁸⁸ *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).

authority.¹⁸⁹ The court held the IDOT DBE Program implementing the Federal DBE Program was valid, finding there was not sufficient evidence to show the Illinois DOT exceeded its authority under the federal regulations.¹⁹⁰ The court found Dunnet Bay had not established sufficient evidence that IDOT's implementation of the Federal DBE Program constituted unlawful discrimination.¹⁹¹ In addition, the court in *Midwest Fence* upheld the constitutionality of the Federal DBE Program, and upheld the Illinois DOT DBE Program and Illinois State Tollway Highway Authority DBE Program that did not involve federal funds under the Federal DBE Program.¹⁹²

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.¹⁹³ And the courts have held unconstitutional those race- and ethnicity-conscious programs implemented without consideration of race- and ethnicity-neutral alternatives to increase minority business participation in state and local contracting.¹⁹⁴

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.”¹⁹⁵

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;

¹⁸⁹ *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).

¹⁹⁰ *Dunnet Bay*, 799 F.3d 676, 2015 WL 4934560 at **18-22.

¹⁹¹ *Id.*

¹⁹² 840 F.3d 932 (7th Cir. 2016).

¹⁹³ 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 (3^d Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1008-1009 (3^d Cir. 1993); *Coral Constr.*, 941 F.2d at 923.

¹⁹⁴ 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 (3^d Cir. 1996); *Contractors Ass’n (CAEP I)*, 6 F.3d at 1008-1009 (3^d Cir. 1993).

¹⁹⁵ *Croson*, 488 U.S. at 509-510.

- 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 to 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.¹⁹⁶

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.”¹⁹⁷

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.¹⁹⁸ For example, to be considered narrowly tailored, courts have held that a MBE/WBE- or DBE-type program should include: (1) built-in flexibility;¹⁹⁹ (2) good faith efforts provisions;²⁰⁰ (3) waiver provisions;²⁰¹ (4) a rational basis for

¹⁹⁶ 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).

¹⁹⁷ *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.

¹⁹⁸ 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).

¹⁹⁹ *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).

²⁰⁰ *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.

²⁰¹ *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).

goals;²⁰² (5) graduation provisions;²⁰³ (6) remedies only for groups for which there were findings of discrimination;²⁰⁴ (7) sunset provisions;²⁰⁵ and (8) limitation in its geographical scope to the boundaries of the enacting jurisdiction.²⁰⁶

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.²⁰⁷

2. Intermediate scrutiny analysis. Certain Federal Courts of Appeal, including the Ninth Circuit Court of Appeals, apply intermediate scrutiny to gender-conscious programs.²⁰⁸ The Ninth Circuit and Nevada courts have applied “intermediate scrutiny” to classifications based on gender.²⁰⁹ Restrictions

²⁰² *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).

²⁰³ *Id.*

²⁰⁴ *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); *Kossmann 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.

²⁰⁵ *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, Kossmann Contracting Co., Inc. v. City of Houston*, 2016 WL 1104363 (W.D. Tex. 2016).

²⁰⁶ *Coral Constr.*, 941 F.2d at 925.

²⁰⁷ *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. 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).

²⁰⁸ *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.

²⁰⁹ *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)); *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

subject to intermediate scrutiny are permissible so long as they are substantially related to serve an important governmental interest.²¹⁰

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.²¹¹

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 female-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.²¹²

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.²¹³ 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.²¹⁴

²¹⁰ 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, *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²¹¹ *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, *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²¹² *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*.

²¹³ 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.”).

²¹⁴ *Coral Constr. Co.*, 941 F.2d at 931-932; see *Eng’g Contractors Ass’n*, 122 F.3d at 910.

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 scrutiny, a gender-conscious program need not closely tie its numerical goals to the proportion of qualified women in the market.”²¹⁵

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.”²¹⁶ 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.²¹⁷ The Court in *Contractors Association of Eastern Pennsylvania 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.²¹⁸

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.²¹⁹ 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.²²⁰ But the record contained only one three-page affidavit alleging

²¹⁵ 615 F.3d 233, 242; 122 F.3d at 929 (internal citations omitted).

²¹⁶ *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

²¹⁷ *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1010 (3d. Cir. 1993).

²¹⁸ *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993).

²¹⁹ *Contractors Ass’n of E. Pa. (CAEP I)*, 6 F.3d at 1011 (3d. Cir. 1993).

²²⁰ *Id.*

gender discrimination in the construction industry.²²¹ 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.²²² This evidence, the Court held, was not enough to create a triable issue of fact regarding gender discrimination under the intermediate scrutiny standard.

3. 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.²²³ When applying rational basis review under the Equal Protection Clause of the 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.²²⁴

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.”²²⁵ So long as a government legislature had a reasonable basis for adopting the classification the law will pass constitutional muster.²²⁶

“[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.”²²⁷ Moreover, “courts

²²¹ *Id.*

²²² *Id.*

²²³ 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; *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁴ 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); *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁵ See, e.g., *Kadmas 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); *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁶ *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. *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁷ *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., *Nevada Wildlife Alliance v. Department*

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."²²⁸

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."²²⁹ Because all legislation classifies its objects, differential treatment is justified by "any reasonably conceivable state of facts."²³⁰

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."²³¹

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).²³²

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 percent; Woman Owned[:] 5 percent; HUBZone[:] 3 percent; Service Disabled, Veteran Owned[:] 3 percent."²³³

of Wildlife, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁸ *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., *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²²⁹ *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., *Nevada Wildlife Alliance v. Department of Wildlife*, 497 P.3d 622 (Nev. 2021); *Rico v. Rodriguez*, 120 P. 3d 812 (Nev. 2005); *Tarango v. State Indus. Ins. System*, 25 P.3d 175 (Nev. 2001).

²³⁰ *Id.*

²³¹ *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.").

²³² 2012 WL 5939228 (Fed. Cl. 2012).

²³³ *Id.*

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.²³⁴ The court stated it “cannot say that the agency’s approach is clearly unlawful, or that the approach lacks a rational basis.”²³⁵

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 compete in designing innovative ways to structure and maximize small business subcontracting within their proposals.²³⁶ 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”²³⁷

4. 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:

i. 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).

ii. 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).

iii. 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.

iv. Faust v. Vilsack, 2021 WL 2409729, US District Court, E.D. Wisconsin (June 10, 2021).

v. 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.

vi. Ultima Services Corp. v. U.S. Department of Agriculture, U.S. Small Business Administration, et. al., 2023 WL 4633481 (July 19, 2023), U.S. District Court for the Eastern District of Tennessee, 2:20-cv-00041-DCLC-CRW.

vii. Mark One Electric Company, Inc. v. City of Kansas City, Missouri, 2022 WL 3350525 (8th Cir. 2022).

viii. Nuziard, et al. v. MBDA, et al., 2023 WL 3869323 (June 5, 2023), U.S. District Court for the N.D. of

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

Texas, Fort Worth Division, Case No. 4:23-cv-00278. Complaint filed March 20, 2023.

The following summarizes the above listed pending cases and informative recent decisions:

- i. ***Christian Bruckner et al. v. Joseph R. Biden Jr. et al.***, 2023 WL 27744026 (M.D. Fla. March 31, 2023), 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 Joe 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 percent of these funds be reserved for certain “disadvantaged” small businesses. According to the White House, the Complaint alleges, the law reserves more than \$37 billion in contracts to be awarded to “small, disadvantaged business contractors.”

The Complaint asserts that Plaintiff Christian 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 percent 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 [Plan Act] against \$28.6 billion Restaurant Revitalization Fund (RRF) 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 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. The court also 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.

Order and Opinion in *Bruckner v. Biden*, 2023 WL 2744026 (March 31, 2023). 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.

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.

- ii. ***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).

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-owned 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-owned 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 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. The 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 requested that the Court enter: (1) a temporary restraining order prohibiting the SBA from paying out grants from the Restaurant Revitalization Fund, 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.

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.

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.”); and *Adarand Constructors, Inc. v. Slater*, 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.”); *DynaLantic Corp v. U.S. Dep’t of Def.*, 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 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 has 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.

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 (TRO) 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 objectives. ...” “[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.

Intermediate scrutiny applied to women-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 women-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 men-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.

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 TRO 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

women-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.

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.

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 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). 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.

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.

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 the is typically dispositive: the factor of Plaintiffs' likelihood of success on the merits.

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.

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 argues its program is not underinclusive because people of all colors can count as suffering “social disadvantage.” But, the Court said, 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 under inclusivity. The Court considered the requirement that a business must be at least 51 percent 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 percent. 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 percent owned by a Hispanic female. It is far from obvious, the Court stated, why that 1 percent 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.

Women-owned businesses. Intermediate scrutiny applied by Sixth Circuit. The plaintiffs also challenge the government's prioritization of women-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." 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 women-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 percent women-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.

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.

Dissenting opinion. One of the three judges filed a dissenting opinion.

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 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.

- iii. ***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 and 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 the SBA to “take such steps as necessary” to prioritize eligible restaurants “owned and controlled” by “women,” by “veterans,” and by 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 TRO, enjoining the use of race and sex preferences in the distribution of the RRF.

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, 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-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 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 hearing showing that minority- and women-owned business lack access to capital and credit generally, and specifically suffered from inability to access earlier COVID-19 relief funds and also describing “long-standing structural racial disparities in small business ownership and performance;” and
- A statement of the Center for Responsible Lending describing 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.

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.

- iv. 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 U.S. Constitution.

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 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. 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 percent of their total qualified debt by direct deposit, which may be used for tax liabilities and other fees associated with payment of the debt.”

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.”

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.

- v. **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.

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 percent 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 USC § 2279's definition of an SDFR as "a farmer or rancher who is a member of a socially disadvantaged group." 7 USC § 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 USC § 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.

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.

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—remedying 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 *Eng’g Contractors Ass’n of S. Fla. v. Metro. Dade Cnty.*, 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 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. *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.

Narrowly 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 percent debt relief—and no one else receives any debt relief.

Regardless of farm size, an SDFR receives up to 120 percent 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 percent 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 Cnty. (Cone Corp.)*, 908 F.2d 908, 910 (11th Cir. 1990). 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 percent 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 percent 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 irradicate 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.

Conclusion. 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, 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.

vi. *Ultima Services Corp. v. U.S. Department of Agriculture, U.S. Small Business Administration,*

et. al., 2023 WL 4633481 (E.D. Tenn. July 19, 2023), 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 U.S. Constitution. Plaintiff seeks a declaratory judgment that defendants are violating the Fifth Amendment, 42 USC Section 1981, injunctive relief precluding defendants from reserving certain NRCS 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 a 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 USC 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 Oct. 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.

December 8, 2022 order requesting parties to address whether Supreme Court's decision expected in June 2023 would impact this case. 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 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 (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 SCOTUS 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 SCOTUS.

The court on May 2, 2023 issued an order denying both parties' motions to exclude expert testimony and reports by their experts.

July 19, 2023 opinion and order on motions for summary judgment. On July 19, 2023, the District Court issued its order that granted in part and denied in part Plaintiffs' motion for summary judgment and denied Defendants' motion for summary judgment.

The court stated the case concerns whether, under the Fifth Amendment's guarantee of equal protection, Defendants the USDA and SBA may use a "rebuttable presumption" of social disadvantage for certain minority groups to qualify them for inclusion in a federal program that awards government contracts on a preferred basis to businesses owned by individuals in those minority groups.

Defendant SBA also applies a rebuttable presumption of social disadvantage to individuals of certain minority groups applying to the Section 8(a) program. The rebuttable presumption treats certain minority groups as socially disadvantaged, and it applies to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, "and members of other groups designated from time to time by [Defendant] SBA." *Id.* To qualify for the presumption, members of those groups must hold themselves out as members of their group. Individuals who qualify for the rebuttable presumption do not have to submit evidence of social disadvantage through an individual process for those who are not members of these groups.

The court, citing Supreme Court precedent, stated that certain classifications are subject to strict scrutiny—meaning they are constitutional "only if they are [(1)] narrowly tailored measures that further [(2)] compelling governmental interests." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). When examining racial classifications, courts apply strict scrutiny. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2162 (2023); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493–94 (1989) (applying strict scrutiny to the city of Richmond's racial classification); *Adarand Constructors, Inc.*, 515 U.S. at 224 (plurality holding that racial classifications are subject to strict scrutiny).

Ultima argued that the rebuttable presumption in the Section 8(a) Program cannot survive strict scrutiny because Defendants cannot show that the rebuttable presumption is narrowly tailored to achieve a compelling governmental interest. The court addressed each prong of the strict scrutiny test, beginning with the compelling-interest prong.

Lack of a compelling governmental interest. To satisfy the compelling interest prong, the court held the government “must both identify a compelling interest and provide evidentiary support concerning the need for the proposed remedial action. *See Croson*, 488 U.S. at 498–504; *see also Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 735 (6th Cir. 2000) (*citing Croson* for the proposition that the government must establish either that it “discriminated in the past” or “was a passive participant in private industry’s discriminatory practices”). The Supreme Court has held that the government has a compelling interest in “remediating specific, identified instances of past discrimination that violated the Constitution or a statute.” *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2162). Additionally, the government must present goals that are “sufficiently coherent for purposes of strict scrutiny.” *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2166.

Defendants assert that their use of the rebuttable presumption in the Section 8(a) program is to remedy the effects of past racial discrimination in federal contracting. But, the court stated Defendant USDA admits it does not maintain goals for the Section 8(a) program. And Defendant SBA admits that it does not require agencies to have goals for the Section 8(a) Program. Defendants also do not examine whether any racial group is underrepresented in a particular industry relevant to a specific contract in the Section 8(a) Program. The court found that without stated goals for the Section 8(a) Program or an understanding of whether certain minorities are underrepresented in a particular industry, Defendants cannot measure the utility of the rebuttable presumption in remedying the effects of past racial discrimination. In such circumstances, the court said, Defendants’ use of the rebuttable presumption “cannot be subjected to meaningful judicial review.” The lack of any stated goals for Defendants’ continued use of the rebuttable presumption, the court concluded does not support Defendants’ stated interest in “remediating specific, identified instances of past discrimination[.]” *Quoting Students for Fair Admissions, Inc.*, 143 S. Ct. at 2162. If the rebuttable presumption were a tool to remediate specific instances of past discrimination, the court noted, Defendants should be able to tie the use of that presumption to a goal within the Section 8(a) Program.

The court stated the Sixth Circuit addressed a challenge similar to the one Ultima raises here in *Vitolo*, 999 F.3d at 361 (6th Cir. 2021). The court said: “The Sixth Circuit held that “[t]he government has a compelling interest in remedying past discrimination only when three criteria are met.” *Id.* at 361. First, the government’s policy must “target a specific episode of past discrimination [and] ... cannot rest on a generalized assertion that there has been past discrimination in an entire industry.” *Id.* (*quoting J.A. Croson Co.*, 488 U.S. at 498–99).”

The court found that: “Defendants do not identify a specific instance of discrimination which they seek to address with the use of the rebuttable presumption. Defendants instead rely on the disparities faced by MBEs nationally as sufficient to justify the use of a presumption that certain minorities are socially disadvantaged. ...” “[A]n effort to alleviate the effects of societal discrimination is not a compelling interest,” and the court concluded Defendants’ reliance on national statistics shows societal discrimination rather than a specific instance.

Second, the court pointed out that the Sixth Circuit explained that the government must support its asserted compelling interest with “evidence of *intentional* discrimination in the past.” *Vitolo*, 999 F.3d at 361 (quoting *J.A. Croson Co.*, 488 U.S. at 503) (emphasis in original). According to the Sixth Circuit, the court noted, “statistical disparities alone are insufficient but can be used with other evidence to establish intentional discrimination. “The Sixth Circuit, the court said, reasoned that when the government uses a race-based policy, it must operate with precision and support the policy with “data that suggest intentional discrimination.” *Id.* The court also stated that the Sixth Circuit further reasoned that evidence of general social disparities are insufficient because “there are too many variables to support inferences of intentional discrimination” when there are multiple decision makers “behind the disparity.” *Id.* at 362.

Here, the court concluded, Defendants primarily offer evidence of national disparities across different industries. They do not offer further evidence to show that those disparities are tied to specific actions, decisions, or programs that would support an inference of intentional discrimination that the use of the rebuttable presumption allegedly addresses. Moreover, the court said that Plaintiffs’ expert noted that Defendants’ evidence did not eliminate other variables that could explain the disparities on which they rely. Defendants cannot affirmatively link those disparities to intentional discrimination because they also cannot eliminate all variables that could account for the disparities. The court stated that the Sixth Circuit in *Vitolo* did not equivocate, cautioning that “broad statistical disparities ... are not nearly enough” to show intentional discrimination. *Id.*

Third, the court pointed out, the Sixth Circuit reasoned that the government must show that it participated in the past discrimination it seeks to remedy, such as by demonstrating it acted as a “passive participant in a system of racial exclusion practiced by elements of [a] local ... industry[.]” *Id.* (quoting *J.A. Croson Co.*, 488 U.S. at 492) (internal quotations omitted). It explained that the government must identify “prior discrimination by the governmental unit involved” or “passive participation in a system of racial exclusion.” *Id.* (quoting *J.A. Croson Co.*, 488 U.S. at 492) (alteration adopted).

The court noted that additionally, in her opinion in *J.A. Croson Co.*, Justice O'Connor reasoned that the government could show passive participation in discrimination by compiling evidence of marketplace discrimination and then linking its spending practices to private discrimination. *J.A. Croson Co.*, 488 U.S. at 492 (O'Connor, J., joined by Rehnquist, C.J., and White, J).

Although the Court does not doubt the persistence of racial barriers to the formation and success of MBEs, Defendants’ evidence does not show that the government was a passive participant in such discrimination in the relevant industries in which Ultima operates. As evidence of passive participation, Defendants note that Congress found MBEs lacked access to “capital, bonding, and business opportunities” because of discrimination. Defendants further note that Congress found that MBEs faced “outright blatant discrimination directed at disadvantaged and minority business people by majority companies, financial institutions, and government at every level.” Those examples, however, relate broadly to the federal government’s actions in different areas of the national economy. They do not show that the federal government allowed discrimination to occur in the industries relevant to Ultima.

The court found that because the court must determine whether the use of racial classifications is supported with precise evidence, “examples of the federal government’s passive participation in areas other than the relevant industries do not support Defendants’ use of the rebuttable presumption here. *See Vitolo*, 999 F.3d at 361.” Accordingly, the court held that Defendants have failed to show a compelling interest for their use of the rebuttable presumption as applied to Ultima. Even if Defendants could establish a compelling interest, the court found the rebuttable presumption is not narrowly tailored to serve the asserted interest.

Rebuttable presumption is not narrowly tailored. To determine whether the government’s use of a racial classification is narrowly tailored, the court examines several factors, including the necessity for the race-based relief, the efficacy of alternative remedies, the flexibility and duration of the relief, the relationship of the numerical goals to the relevant labor market, and the impact of the relief on the rights of third parties. The court noted the Supreme Court in *Croson* held that courts also should consider whether the governmental entity considered race-neutral alternatives prior to adopting a program that uses racial classifications, the program does not presume discrimination against certain minority groups and, if the program involves a set-aside plan, the plan is based on the number of qualified minorities in the area capable of performing the scope of work identified.

a. Whether the Section 8(a) program is flexible and limited in duration. The court states that the Sixth Circuit in *Vitolo* noted, “[because] proving someone else has *never* experienced racial or ethnic discrimination is virtually impossible, this ‘presumption’ is dispositive.” *Vitolo*, 999 F.3d at 363 (emphasis in original). Individuals who do not receive the presumption must show both economic disadvantage *and* discrimination that have negatively impacted their advancement in the business world and caused them to suffer chronic and substantial social disadvantage. In effect, the court said, individuals who do not receive the presumption must put forth double the effort to qualify for the Section 8(a) program.

The court cites to the decision in *Drabik*, in which the Sixth Circuit held that as an aspect of narrow tailoring, a race-conscious government program “must be appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate.” *Drabik*, 214 F.3d at 737–38 (quoting *Adarand*, 515 U.S. at 238). The court then points out that recently, the Supreme Court reaffirmed that racially conscious government programs must have a “logical end point.” *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2170 (quoting *Grutter*, 539 U.S. at 342).

It is noteworthy that the court in footnote 8 states the following: “The facts in *Students for Fair Admissions, Inc.* concerned college admissions programs, but its reasoning is not limited to just those programs. *See Adarand Constructors, Inc.*, 515 U.S. at 215 (applying the reasoning in *Bolling*, 347 U.S. at 497, which discussed school desegregation, to a federal program designed to provide highway contracts to disadvantaged business enterprises).”

Defendants concede, the court stated, that “the 8(a) program has no termination date,” necessarily meaning there is no temporal limit on the use of the rebuttable presumption. The court found that such a “boundless use of a racial classification exceeds the concept of narrow tailoring as explained by Sixth Circuit and Supreme Court precedents.”

b. Whether the Section 8(a) program is necessary. Defendants acknowledge that the program lacks a remedial objective. The court found that the lack of a specific objective shows that

Defendants are not using the rebuttable presumption in a narrow or precise manner. And the Sixth Circuit has held, according to the court, that Defendants must present “the most exact connection between justification and classification. Here, the court said, Defendants admit that they do not have any specific objectives linked to their use of the rebuttable presumption, and such unbridled discretion counsels against a racial classification being narrowly tailored.

c. Whether the Section 8(a) program is both over and underinclusive. Defendant SBA determines which groups receive the rebuttable presumption of social disadvantage. Some of those groups match the groups listed in the statute enacting the Section 8(a) Program. But, the court found that Defendant SBA has added more groups since that time that appear underinclusive when compared with groups that do not receive the rebuttable presumption.

The court stated that Defendants’ “arbitrary line drawing for who qualifies for the rebuttable presumption shows that the “categories are themselves imprecise in many ways.” *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2167. Thus, the court held that the determination of which groups of Americans are presumptively disadvantaged compared with others “necessarily leads to such a determination being underinclusive because certain groups that could qualify will be left out of the presumption.”

Conversely, the court found the rebuttable presumption “sweeps broadly by including anyone from the specified minority groups, regardless of the industry in which they operate.” The court said that Defendant SBA is not making specific determinations as to whether certain groups in certain industries have faced discrimination. The court noted that it instead applies Congress’s nationwide findings to all members of the designated minority groups. Thus, the court held that such “an application of the presumption proves overinclusive by failing to consider the individual applicant to the 8(a) program and the industries in which they operate.”

d. Whether Defendants considered race-neutral alternatives to the rebuttable presumption.

For a policy to survive narrow-tailoring analysis, the court stated the government must show “serious, good faith consideration of workable race-neutral alternatives” to promote the stated interest but need not exhaust every conceivable race-neutral alternative. *Grutter*, 539 U.S. at 333, 339 (citing *Croson*, 488 U.S. at 507). But, the court said that in *Vitolo*, “the Sixth Circuit reasoned that ‘a court must not uphold a race-conscious policy unless it is “satisfied that no workable race-neutral alternative” would achieve the compelling interest.’” *Vitolo*, 999 F.3d at 362 (quoting *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013)).

The court found that Defendant SBA has not revisited the use of the rebuttable presumption since 1986 and insists that the presumption remains workable under the Supreme Court’s precedents. The court held that because of Defendant SBA’s “failure to review race-neutral alternatives in the wake of the Supreme Court’s precedents, the Court cannot conclude that “no workable race-neutral alternative would achieve the compelling interest.” *Vitolo*, 999 F.3d at 362.

e. Whether the rebuttable presumption impacts third parties. The court rejected Defendants’ assertion that the rebuttable presumption presents only a slight burden on third parties and Ultima because a minor amount of all national federal contracting dollars is eligible for small businesses. Ultima operates within a specific set of industries and the Mississippi contract, as well as others like it, represent a substantial amount of revenue. The court found that national statistics do not lessen

the burden that the rebuttable presumption places on Ultima. Defendants, the court held, have failed to show that the use of the rebuttable presumption in the Section 8(a) Program is narrowly tailored.

Conclusion. The court held as follows: Ultima's Motion for Summary Judgment is granted in part and denied in part, and Defendants' Motion for Summary Judgment is denied. The Court declared that Defendants' use of the rebuttable presumption violates Ultima's Fifth Amendment right to equal protection of the law. The court ordered that Defendants are enjoined from using the rebuttable presumption of social disadvantage in administering Defendant SBA's Section 8(a) Program. The court reserved ruling on any further remedy subject to a hearing on that issue. The court scheduled a hearing on the issue of any potential further remedies is set for August 31, 2023.

vii. *Mark One Electric Company, Inc. v. City of Kansas City, Missouri*, 2022 WL 3350525 (8th Cir. 2022). In 2020, the court in *Mark Smith* stated that Kansas City began restricting participation in its Minority Business Enterprises and Women's Business Enterprises Program 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 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.

Background. 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).

Suit challenging the personal net worth limitation. 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 USC § 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.

Strict scrutiny applied. 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 (8th 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.

Narrow tailoring, rational basis, and the personal net worth limitation. 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 which differentiates between individuals or businesses based on a non-suspect 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.

Conclusion. 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.

viii. *Nuziard, et al. v. MBDA, et al.*, 2023 WL 3869323 (N.D. Tex. June 5, 2023), U.S. District Court for the N.D. of Texas, Fort Worth Division, Case No. 4:23-cv-00278. Complaint filed March 20, 2023.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (Infrastructure Act), creating the newest federal agency: the Minority Business Development Agency (MBDA). Plaintiffs allege this agency is dedicated to helping only certain businesses based on race or ethnicity.

Plaintiffs assert that because it relies on racial and ethnic classifications to help some individuals, but not others, the MBDA violates the Constitution’s core requirement of equal treatment under the law.

Plaintiffs allege they are small businesses interested in finding new ways to grow their business and would value the advice, grants, consulting services, access to programs, and other benefits offered by the MBDA. But, Plaintiffs assert that agency will not help them because of their race.

The MBDA’s statutes, regulations, and website all speak a clear message of discrimination: Defendants refuse to help white business owners like Plaintiffs, as well as many other businesses owned by other non-favored ethnicities.

Plaintiffs claim that they therefore seek an order declaring the MBDA to be unconstitutional and an injunction prohibiting Defendants from discriminating against business owners based on race or ethnicity.

Plaintiffs seek the following Relief:

A. Enter a judgment declaring that the Minority Business Development Agency is unconstitutional and in violation of 5 USC § 706(2)(B) to the extent it provides Business Center Program services or other benefits and services based on race or ethnicity; and

B. Enter a preliminary and then permanent injunction prohibiting Defendants from imposing the racial and ethnic classifications defined in 15 USC § 9501 and implemented in 15 USC §§ 9511, 9512, 9522, 9523, 9524, and 15 CFR § 1400.1 and/or as otherwise applied to the MBDA Business Center Program and other MBDA programs and services, and additionally enjoining Defendants from using the term “minority” to advertise or reference their statutorily authorized programs and services.

Plaintiffs filed a motion for preliminary injunction and defendants have replied. The court held a hearing on May 12, 2023.

June 5, 2023 order and opinion. The court issued an order and opinion on June 5, 2023 as follows:

The Constitution demands equal treatment under the law. Any racial classification subjecting a person to unequal treatment is subject to strict scrutiny. To withstand such scrutiny, the government must show that the racial classification is narrowly tailored to a compelling government interest. In this case, the MBDA's business center program provides services to certain races and ethnicities but not to others. The court held that "because the Government has not shown that doing so is narrowly tailored to a compelling government interest, it is preliminary enjoined from providing unequal treatment to Plaintiffs."

a. Defendants lack a compelling interest. Defendants contend that it has a compelling interest in remedying the effects of past discrimination faced by minority-owned businesses.

The court stated that the government may establish a compelling interest in remedying racial discrimination if three criteria are met: "(1) the policy must target a specific episode of past discrimination, not simply relying on generalized assertions of past discrimination in an industry; (2) there must be evidence of past intentional discrimination, not simply statistical disparities; and (3) the government must have participated in the past discrimination it now seeks to remedy." *Miller v. Vilsack*, No. 4:21-CV-0595-O, 2021 WL 11115194, at *8 (N.D. Tex. July 1, 2021) (O'Connor, J.) (citing *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) (summarizing U.S. Supreme Court precedents)). The court found the government's asserted compelling interest meets none of these requirements.

First, the court said that the government "points generally to societal discrimination against minority business owners." *Vitolo*, 999 F.3d at 361. Defendants, the court stated, point to congressional testimony on the effects of redlining, the G.I. Bill, and Jim Crow laws on Black wealth accumulation as evidence of a specific episode of discrimination. But, the court noted the program does not target Black wealth accumulation. It targets some minority business owners. Defendants, the court found, also identify no specific episode of discrimination for any of the other preferred races or ethnicities. Instead, the court concluded, they point to the effects of societal discrimination on minority business owners. But "an effort to alleviate the effects of societal discrimination is not a compelling interest." *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996).

Second, the court held the "Government fails to offer evidence of past intentional discrimination. The Government offers no evidence of discrimination faced by some preferred races and ethnicities. And for those it does, the Government relies on studies showing broad statistical disparities with business loans, supply chain networks, and contracting among some minorities." These studies, according to the court, do not involve all of Defendants' preferred minorities or every type of business. But even if they did, the court said: "statistical disparities don't cut it." (quoting *Vitolo*, 999 F.3d at 361).

Because the court concluded: "when it comes to general social disparities, there are simply too many variables to support inferences of intentional discrimination." (quoting *Vitolo*, 999 F.3d at 362. "While the Court 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.'" (quoting *Greer's Ranch Cafe*, 540 F. Supp. 3d at 650 (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 499 (1989)).

Third, the court found the government “has not shown that it participated in the discrimination it seeks to remedy.” (*quoting Vitolo*, 999 F.3d at 361). The court pointed out that the government can show that it participated in the discrimination it seeks to remedy either actively or passively. Defendants, the court said, however, provide no argument on how they participated in the discrimination it seeks to remedy.

The court noted that “perhaps the argument could be made that the Government passively discriminated by failing to address the economic inequities among minority business owners. But to be a passive participant, it must be a participant. *See Croson*, 488 U.S. at 492 (government awarding contracts to those who engaged in private discrimination).” But, the court held there is no evidence that the government passively participated by “financ[ing] the evil of private prejudice” faced by minority-owned businesses.

In sum, the court found: “the Government has failed to show that the Program targets a specific episode of discrimination, offer evidence of past intentional discrimination, or explain how it participated in discrimination against minority business owners. The Government thus lacks a compelling interest in remedying the effects of past discrimination faced by some minority-owned businesses.”

b. The program is not narrowly tailored. Even if the government had shown a compelling state interest in remedying some specific episode of discrimination, the court held the program is not narrowly tailored to further that interest for at least two reasons. First, the court stated the government has not shown “that ‘less sweeping alternatives—particularly race neutral-ones—have been considered and tried.’ *Walker*, 169 F.3d at 983. ... This requires the government to show that ‘no workable race-neutral alternative’ would achieve the compelling interest. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013).”

Defendants contend that: “absent race-based remedies, ‘the needle did not move’ in efforts to remedy the effects of discrimination on the success outcomes of minority business owners.” To support this statement, the court said: “Defendants rely on a single review of various disparity studies. See U.S. Dep’t of Commerce, Minority Business Development Agency, Contracting Barriers and Factors Affecting Minority Business Enterprise: A Review of Existing Disparity Studies (Dec. 2016).”

But this review, the court found, “cuts against the Government. It ‘emphasize[s] the need for both race-neutral and race-conscious remedial efforts’ to move the needle and states that the disparity studies ‘fail to detail the extent to which agencies have actually implemented and measured the success or failure of these recommendation.’ ... Thus, the review of contracting disparities Defendants rely on does not show that race-neutral alternatives ‘have been considered and tried.’ See *Walker*, 169 F.3d at 983. Nor has the Government shown a ‘serious, good faith consideration of workable race-neutral alternatives’ in any other business context. See *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003).”

Second, the court concluded, the program is not narrowly tailored “because it is underinclusive and overinclusive in its use of racial and ethnic classification. See *Croson*, 488 U.S. at 507–08; *Gratz*, 539 U.S. at 273–75. It is underinclusive because it arbitrarily excludes many minority-owned business owners—such as those from the Middle East, North Africa, and North Asia. For example, the court

noted, it excludes those who trace their ancestry to Afghanistan, Iran, Iraq, and Libya. But it includes those from China, Japan, Pakistan, and India. The Program is also underinclusive, the court found, because it excludes every minority business owner who owns less than 51 percent of their business. “This scattershot approach does not conform to the narrow tailoring strict scrutiny requires.” (quoting *Vitolo*, 999 F.3d at 364).

The program, the court stated, is also overinclusive. “It helps individuals who may have never been discriminated against. See *Croson*, 488 U.S. at 506–08 (holding that a minority business plan is overinclusive because it includes ethnicities in which there is no evidence of discrimination).” And, the court said that it “also helps all business owners, not just those in which disparities have been shown.”

The program, the court found, is thus not narrowly tailored to the government’s asserted interest.

Because the government has not shown a compelling interest or a narrowly tailored remedy under strict scrutiny, the court held that Plaintiffs are likely to succeed on the merits.

Conclusion. The court granted Plaintiffs’ motion for preliminary injunction and enjoined Defendants, the Wisconsin MBDA Business Center, the Orlando MBDA Business Center, the Dallas-Fort Worth MBDA Business Center, and the officers, agents, servants, and employees, and anyone acting in active concert or participation with them from imposing the racial and ethnic classifications defined in 15 USC § 9501 and implemented in 15 USC §§ 9511, 9512, 9522, 9523, 9524, and 15 CFR § 1400.1 against Plaintiffs or otherwise considering or using Plaintiffs’ race or ethnicity in determining whether they can receive access to the Center’s services and benefits.

July 25, 2023 scheduling order. The court on July 25, 2023, set the case for trial in April 2024, and established dates for discovery by the end of November 2023 and for motions by the end of October 2023.

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 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.

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 Program, and the implementation of the Federal DBE Program 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 Clark County to assess whether POCs, women, veterans, and the businesses they own face any barriers in the local construction, professional services, and goods and other services industries. We examined marketplace conditions in four primary areas:

- **Human capital**, to assess whether POCs, women, and veterans face barriers related to education, employment, or gaining relevant work experience;
- **Financial capital**, to assess whether POCs, women, and veterans face barriers related to wages, homeownership, personal wealth, or financing;
- **Business ownership**, to assess whether POCs, women, and veterans own businesses at rates comparable to other individuals; and
- **Business success**, to assess whether POCs, women, and veterans have outcomes similar to those of other businesses.

Appendix C presents a series of figures and tables that show results from those analyses. We highlight statistically significant results and results that demonstrate marketplace barriers for relevant race, gender, and veteran groups. Key results and their implications are presented in Chapter 3.

Figure C-1.
Percentage of all workers 25 and older with at least a four-year degree, Clark County, 2017-2021

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.

"MENA American" includes Middle Eastern and North African Americans.

Source:

BBC from 2017-2021 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/>.

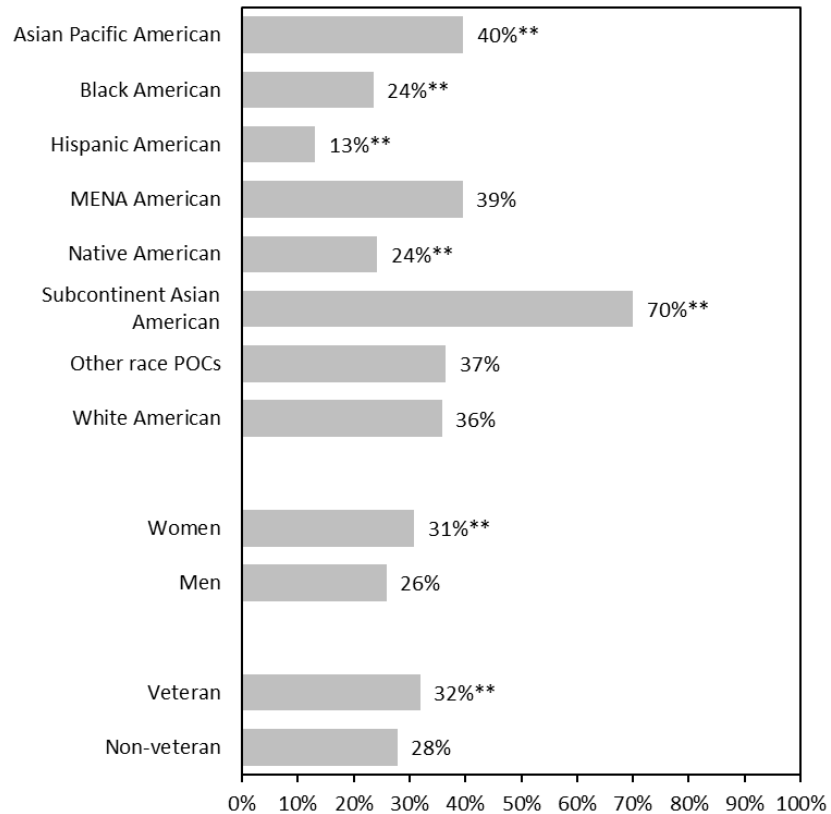


Figure C-1 indicates that, compared to white American workers (36%), Black American (24%), Hispanic American (13%), and Native American (24%) workers in Clark County are substantially less likely to have four-year college degrees.

Figure C-2.
Predictors of college completion, Clark County, 2017-2021

Note:

The regression included 39,607 observations.

** Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables is as follows: white Americans for the race variables.

Source:

BBC from 2017-2021 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
Age	0.0100 **
Age-squared	-0.0001 **
Disabled	-0.2570 **
Speaks English well	0.6882 **
Asian Pacific American	0.1144 **
Black American	-0.3760 **
Hispanic American	-0.6665 **
MENA American	0.1082
Native American	-0.4076 **
Subcontinent Asian American	0.9448 **
Other race POC	-0.0026
Women	0.1470 **
Veteran	0.1244 **
Constant	-1.2945 **

Figure C-2 indicates that, in Clark County, Black Americans, Hispanic Americans, and Native Americans are less likely to complete college compared to white Americans, even after statistically accounting for other personal factors.

Figure C-3.
Demographic characteristics of workers in study-related industries and all industries, Clark County, 2017-2021

Group	All Industries (n=49,422)	Construction (n=3,305)	Professional Services (n=1,940)	Goods and Other Services (n=1,351)
Race/ethnicity				
Asian Pacific American	11.6 %	2.6 % **	10.8 %	5.7 % **
Black American	12.4 %	5.6 % **	12.8 %	15.9 % **
Hispanic American	31.7 %	52.2 % **	16.3 % **	42.4 % **
MENA American	1.0 %	0.3 % **	1.5 %	0.2 % **
Native American	1.5 %	1.2 %	1.2 %	1.3 %
Subcontinent Asian American	0.8 %	0.3 % **	2.1 % **	0.1 % **
Other race POCs	0.9 %	0.7 %	1.5 %	0.9 %
Total minority	59.9 %	62.7 %	46.1 %	66.5 %
White American	40.1 %	37.3 % **	53.9 % **	33.5 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %
Gender				
Women	46.1 %	10.0 % **	34.6 % **	37.8 % **
Men	53.9 %	90.0 % **	65.4 % **	62.2 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %
Veteran Status				
Veteran	5.8 %	5.5 %	9.4 % **	9.4 % **
Non-veteran	94.2 %	94.5 %	90.6 % **	90.6 % **
Total	100.0 %	100.0 %	100.0 %	100.0 %

Note: ** Denotes that the difference in proportions between workers in each study-related industry and workers in all industries is statistically significant at the 95% confidence level.

Source: BBC from 2017-2021 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, compared to all industries considered together:

- Smaller percentages of Asian Pacific Americans (2.6%), Black Americans (5.6%), Middle Eastern and North African (MENA) Americans (0.3%), and Subcontinent Asian Americans (0.3%) work in the construction industry. ¹ In addition, a smaller percentage of women (10%) work in the construction industry. Moreover, of women who work in the construction industry, 40 percent work in office and administration occupations compared to 1 percent of men.
- A smaller percentage of Hispanic Americans (16.3%) work in the professional services industry. In addition, a smaller percentage of women (34.6%) work in the professional services industry.
- Smaller percentages of Asian Pacific Americans (5.7%), Black Americans (15.9%), MENA Americans (0.2%), and Subcontinent Asian Americans (0.1%) work in the goods and other services

¹ The MENA American category includes persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen.

industry. In addition, a smaller percentage of women (37.8%) work in the goods and other services industry.

Figure C-4.
Unemployment rates, Clark
County, 2017-2021

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 levels, respectively.

Source:

BBC from 2017-2021 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/>.

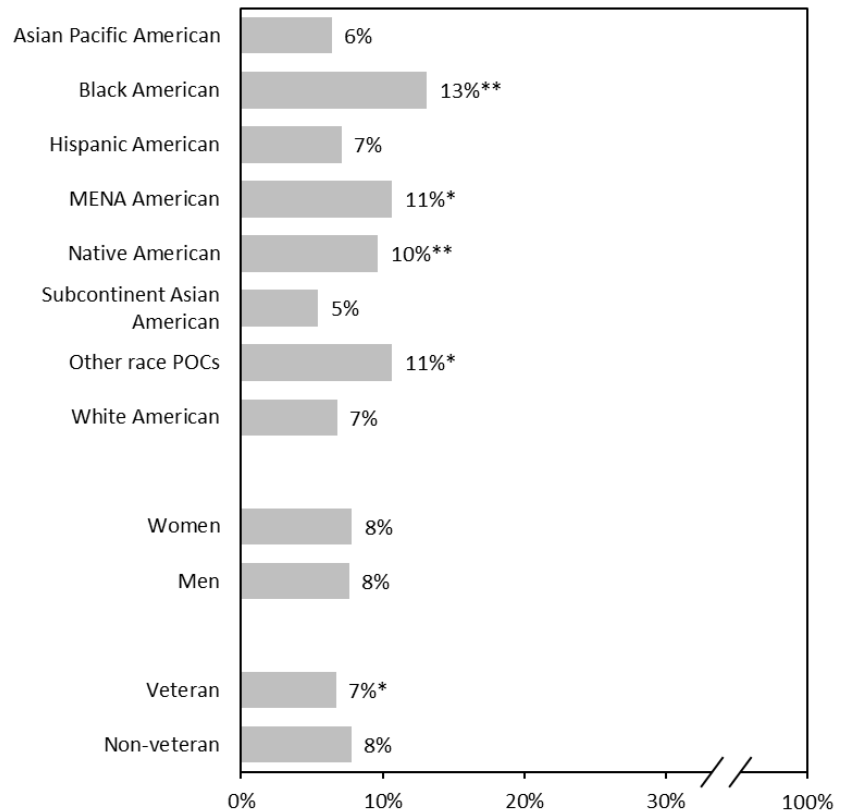


Figure C-4 indicates that Black Americans (13%), MENA Americans (11%), Native Americans (10%), and other race POC Americans (11%) exhibit greater unemployment rates than white Americans (7%) in Clark County.

**Figure C-5.
Predictors of unemployment,
Clark County, 2017-2021**

Note:

The regression included 44,521 observations.

** Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables variable is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2017-2021 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
Age	-0.0292 **
Age-squared	0.0003 **
Married	-0.2094 **
Disabled	0.3030 **
Number of children in household	0.0193
Number of people over 65 in household	0.1372 **
Speaks English well	0.1605 **
Less than high school education	0.0309
Some college	-0.1112 **
Four-year degree	-0.1917 **
Advanced degree	-0.3597 **
Asian Pacific American	-0.0313
Black American	0.3063 **
Hispanic American	-0.0609
MENA American	0.2481 **
Native American	0.1735 **
Subcontinent Asian American	0.0748
Other race POC	0.1825
Women	0.0632 **
Veteran	-0.0613
Extraction and agriculture	-0.2676
Construction	-0.5407 **
Wholesale trade	-0.7011 **
Retail trade	-0.6465 **
Transportation, warehouse, & information	-0.5572 **
Professional services	-0.5117 **
Education	-0.8940 **
Health care	-0.9342 **
Other services	-0.5469 **
Public administration and social services	-0.8093 **
Constant	-0.3579 **

Figure C-5 indicates that Black Americans, MENA Americans, and Native Americans are more likely to be unemployed compared to white Americans, even after statistically accounting for other personal factors. In addition, women are more likely to be unemployed relative to men, even after statistically accounting for other personal characteristics.

**Figure C-6.
Percentage of non-owner
workers who worked as
managers or supervisors in
each study-related industry,
Clark County, 2017-2021**

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 2017-2021 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/>.

Group	Construction	Professional Services	Goods and Other Services
Race/ethnicity			
Asian Pacific American	3.6 % **	4.3 %	0.9 %
Black American	7.0 % *	1.9 % *	0.7 % **
Hispanic American	3.6 % **	1.6 % **	2.6 %
MENA American	0.0 % †	0.0 % †	0.0 % †
Native American	3.5 % **	7.3 %	0.0 % †
Subcontinent Asian American	16.7 % †	0.0 %	0.0 % †
Other race POCs	20.2 % †	42.9 % †	0.0 % †
White American	12.9 %	4.5 %	2.9 %
Gender			
Women	4.3 % **	1.8 % **	1.8 %
Men	7.7 %	5.4 %	2.4 %
Veteran Status			
Veteran	13.2 % **	5.6 %	0.5 % **
Non-veteran	7.0 %	3.9 %	2.4 %
All individuals	7.3 %	4.1 %	2.2 %

Figure C-6 indicates that:

- Smaller percentages of Asian Pacific Americans (3.6%), Black Americans (7.0%), Hispanic Americans (3.6%), and Native Americans (3.5%) than white Americans (12.9%) work as managers or supervisors in the Clark County construction industry. In addition, a smaller percentage of women (4.3%) than men (7.7%) work as managers or supervisors in the Clark County construction industry.
- Smaller percentages of Black Americans (1.9%) and Hispanic Americans (1.6%) than white Americans (4.5%) work as managers or supervisors in the Clark County professional services industry. In addition, a smaller percentage of women (1.8%) than men (5.4%) work as managers or supervisors in the Clark County professional services industry.
- Smaller percentages of Black Americans (0.7%) than white Americans (2.9%) work as managers or supervisors in the Clark County goods and other services industry.

Figure C-7.
Predictors of management in
construction, Clark County, 2017-2021

Note:

The regression included 2,371 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

† MENA American omitted due to a perfect correlation with the dependent variable.

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 2017-2021 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	-3.8422 **
Age	0.0371
Age-squared	-0.0002
Married	-0.0402
Disabled	0.0449
Number of children in household	0.0822
Number of people over 65 in household	-0.1248
Part time	-0.2002
Speaks English well	1.1290 **
Less than high school education	-0.2234
Some college	0.5324 **
Four-year degree	1.0646 **
Advanced degree	0.6113 *
Asian Pacific American	-0.3956
Black American	-0.3105
Hispanic American	-0.1327
MENA American	0.0000 †
Native American	-0.4806
Subcontinent Asian American	1.9615 **
Other race POC	0.8728
Women	-0.5627 **
Veteran	-0.0278

Figure C-7 indicates that women are less likely to work as managers or supervisors in the Clark County construction industry relative to men, even after statistically accounting for other personal characteristics.

Figure C-8.
Predictors of management in professional services, Clark County, 2017-2021

Note:

The regression included 1,118 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

† Disabled, Speaks English well, Less than high school education, MENA American, and Subcontinent Asian American omitted due to perfect correlations with the dependent variable.

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 2017-2021 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	-2.1152 **
Age	0.0018
Age-squared	0.0001
Married	0.3687 *
Disabled	0.0000 †
Number of children in household	0.1376
Number of people over 65 in household	0.1288
Part time	-0.9776 *
Speaks English well	0.0000 †
Less than high school education	0.0000 †
Some college	-0.2458
Four-year degree	-0.1159
Advanced degree	0.0959
Asian Pacific American	0.2567
Black American	-0.1966
Hispanic American	-0.1264
MENA American	0.0000 †
Native American	0.3744
Subcontinent Asian American	0.0000 †
Other race POC	-0.5636
Women	-0.4998 **
Veteran	-0.1099

Figure C-8 indicates that women are less likely to work as managers or supervisors in the Clark County professional services industry relative to men, even after statistically accounting for other personal characteristics.

Figure C-9.
Predictors of management in goods and other services, Clark County, 2017-2021

Note:

The regression included 684 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

† Speaks English well, Less than high school education, MENA American, Native American, Subcontinent Asian American, and Other race POC omitted due to perfect correlations with the dependent variable.

The referent for each set of categorical variables variable is as follows: high school diploma for the education variables and white Americans for the race variables.

Source:

BBC from 2017-2021 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	-3.2128 **
Age	0.0471 *
Age-squared	-0.0004
Married	0.1496
Disabled	-0.1970
Number of children in household	0.0136
Number of people over 65 in household	-0.3278 **
Part time	-0.5060 **
Speaks English well	0.2417
Less than high school education	-0.4418 *
Some college	0.0509
Four-year degree	0.5664 **
Advanced degree	0.4094 **
Asian Pacific American	-0.2974 **
Black American	-0.2740
Hispanic American	-0.4943 **
Native American	-0.1765
Subcontinent Asian American	-0.1189
Other race POC	-0.2880
Women	-0.1080

Figure C-9 indicates that Asian Pacific Americans and Hispanic Americans are less likely to work as managers or supervisors in the Clark County goods and other services industry compared to white Americans, even after statistically accounting for other personal factors.

Figure C-10.
Mean annual wages,
Clark County, 2017-2021

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), from men (for women), and from non-veterans (for veterans) at the 90% and 95% confidence level, respectively.

Source:

BBC from 2017-2021 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/>.

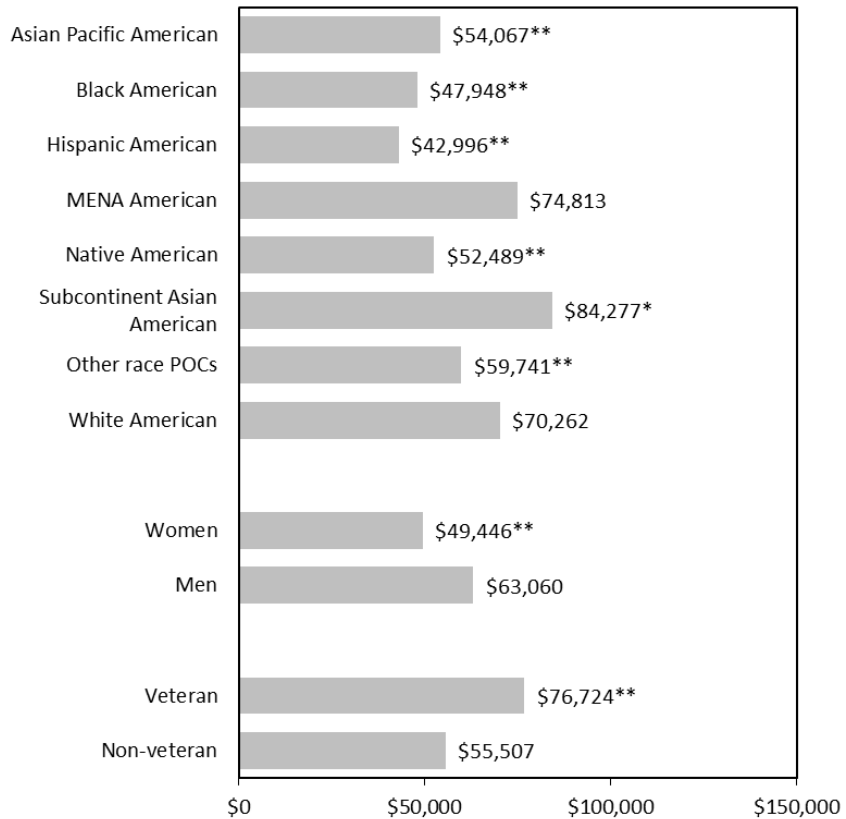


Figure C-10 indicates that Asian Pacific American (\$54,067), Black American (\$47,948), Hispanic American (\$42,996), Native American (\$52,489), and other race POC (\$59,741) workers in Clark County earn substantially less in wages than white American workers (\$70,262). In addition, women (\$49,446) earn substantially less than men (\$63,060) in Clark County.

Figure C-11.
Predictors of annual wages (regression),
Clark County, 2017-2021

Notes:

The regression includes 24,080 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 95% confidence level.

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 industry variables.

Source:

BBC from 2017-2021 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	10823.340 **
Asian Pacific American	0.855 **
Black American	0.818 **
Hispanic American	0.855 **
MENA American	0.932
Native American	0.826 **
Subcontinent Asian American	0.944
Other race POCs	0.906
Women	0.841 **
Less than high school education	0.889 **
Some college	1.122 **
Four-year degree	1.407 **
Advanced degree	2.000 **
Disabled	0.792 **
Veteran	1.062 **
Speaks English well	1.260 **
Age	1.052 **
Age-squared	1.000 **
Married	1.120 **
Children	1.004
Number of people over 65 in household	0.894 **
Public sector worker	1.225 **
Manager	1.330 **
Part time worker	0.428 **
Extraction and agriculture	1.008
Construction	1.137 **
Wholesale trade	1.073
Retail trade	0.782 **
Transportation, warehouse, & information	0.962
Professional services	1.076 **
Education	0.642 **
Health care	1.119 **
Other services	0.885 **
Public administration and social services	0.919 **

Figure C-11 indicates that, compared to white American workers in Clark County, Asian Pacific Americans, Black Americans, Hispanic Americans, and Native American workers earn less in annual wages, even after accounting for various other personal characteristics. (For example, the model indicates that being a Black American worker is associated with making approximately \$0.82 for every dollar a white American worker makes, all else being equal.) In addition, compared to men workers in Clark County, women workers earn less in annual wages, even after accounting for various other personal characteristics.

Figure C-12.
Median family net worth
(in thousands) in the United
States, 2019

Note:

2019 dollars.

Source:

Federal Reserve Survey of Consumer Finances
data 2019.

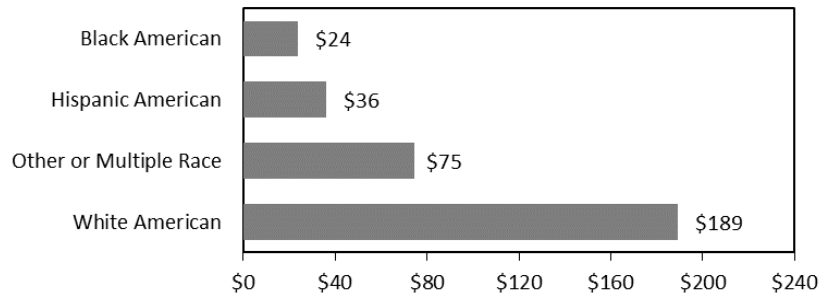


Figure C-12 indicates that Black American (\$24,000), Hispanic American (\$36,000), and other or multiple race Americans (\$75,000) in the United States have a lower median net worth than white Americans (\$189,000).

Figure C-13.
Home ownership rates, Clark
County, 2017-2021

Note:

The sample universe is all households.

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

Source:

BBC from 2017-2021 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/>.

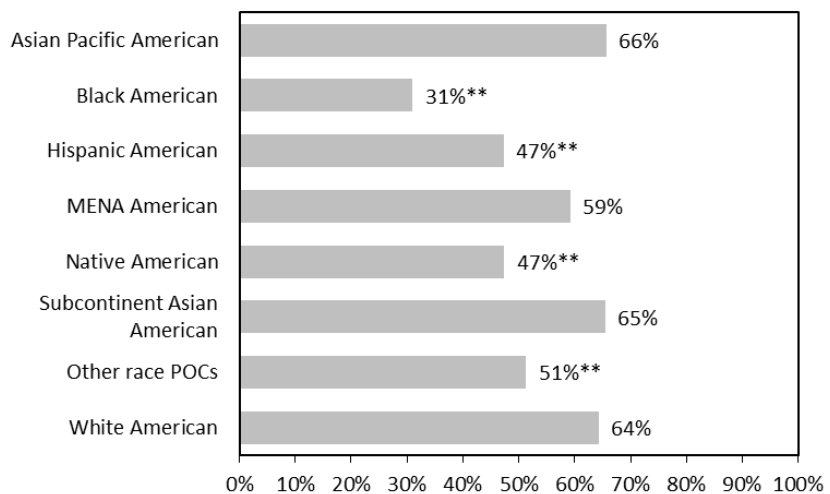


Figure C-13 indicates that Black Americans (31%), Hispanic Americans (47%), Native Americans (47%), and other race POCs (51%) in Clark County exhibit homeownership rates less than that of white Americans (64%).

Figure C-14.
Median home values, Clark County, 2017-2021

Note:

The sample universe is all owner-occupied housing units.

Source:

BBC from 2017-2021 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/>.

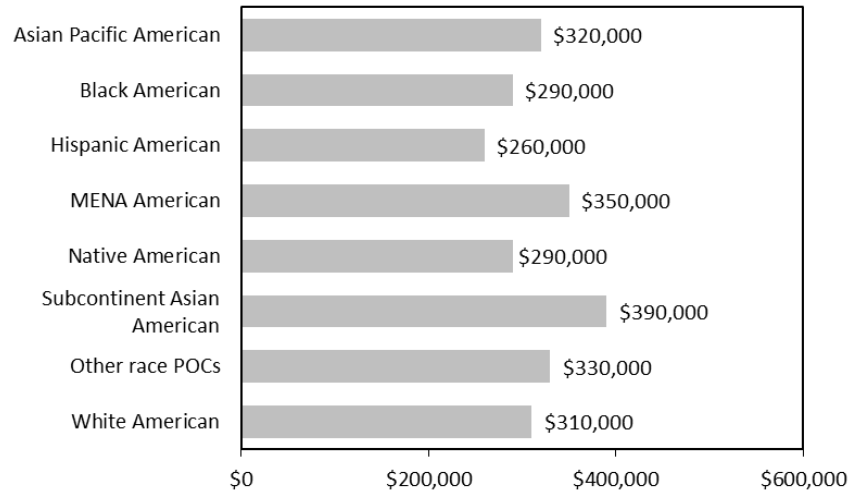


Figure C-14 indicates that, in Clark County, Black American (\$290,000), Hispanic American (\$260,000), and Native American (\$290,000) homeowners own homes that, on average, are worth less than those of white American homeowners (\$310,000).

Figure C-15.
Denial rates of conventional purchase loans for high-income households, Clark County, 2022

Note:

High-income borrowers are those households with 120% or more of the HUD/FFIEC area median family income (MFI). The MFI data are calculated by the FFIEC.

Source:

FFIEC HMDA data 2022. The raw data extract was obtained from the Federal Financial Institutions Examination Council's HMDA data tool:
<https://ffiec.cfbp.gov/data-browser/>.

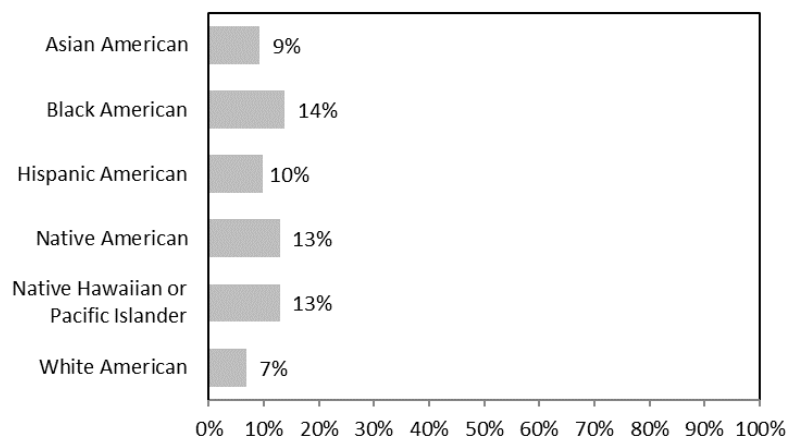


Figure C-15 indicates that Asian Americans (9%), Black Americans (14%), Hispanic Americans (10%), Native Americans (13%), and Native Hawaiian or Pacific Islanders (13%) in Clark County are denied home loans at greater rates than white Americans (7%).

Figure C-16.
Loan, line of credit, and
cash advance denial rates,
United States, 2021

Source:
BBC from 2021 Small Business Credit
Survey.

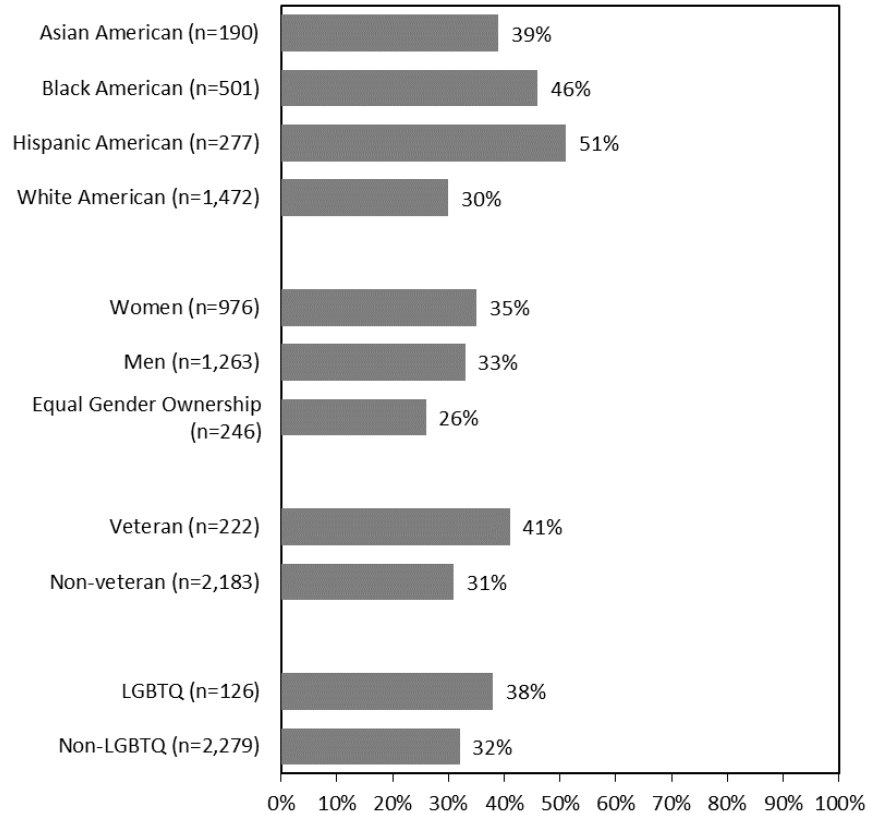


Figure C-16 indicates that Asian Pacific American- (39%), Black American- (46%), and Hispanic American- (51%) owned businesses in the United States are denied loans at greater rates than white American-owned businesses (30%). In addition, woman-owned businesses (35%) are denied loans at greater rates than businesses owned by men (33%).

Figure C-17.
Businesses that did not
apply for loans due to fear
of denial, United States,
2021

Source:
 BBC from 2021 Small Business Credit
 Survey.

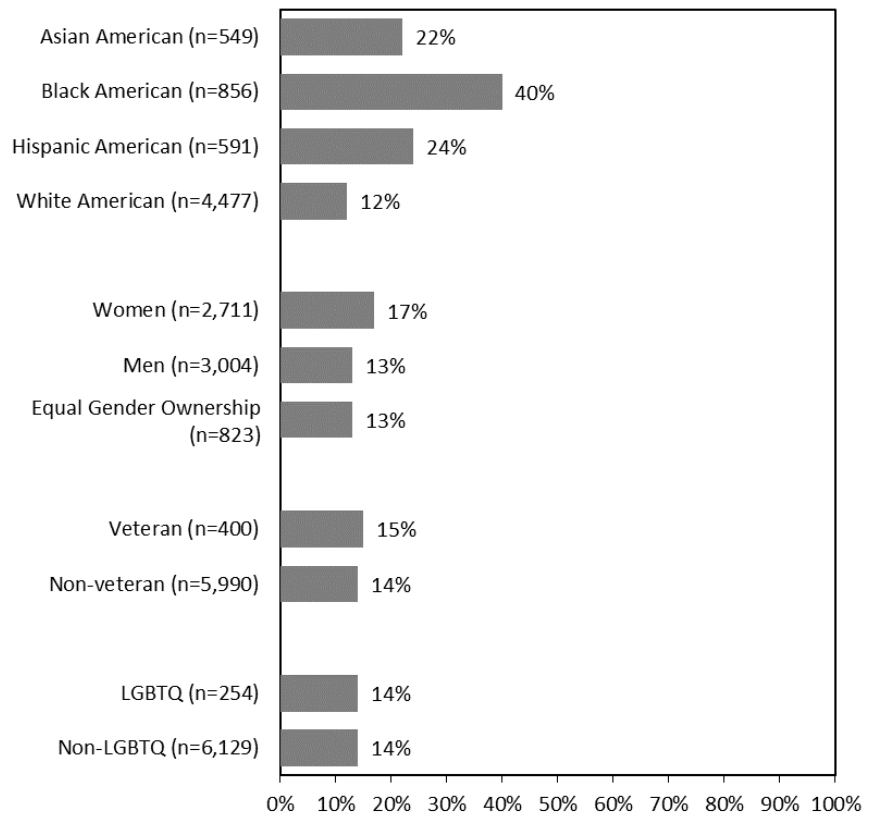


Figure C-17 indicates that Asian American- (22%), Black American- (40%), and Hispanic American- (24%) owned businesses in the United States are more likely than white American-owned businesses (12%) to not apply for loans due to a fear of denial. In addition, woman-owned businesses (17%) are more likely than businesses owned by men (13%) to not apply for loans due to a fear of denial.

Figure C-18.
Owner demographic characteristics of businesses in study-related industries and all industries, Las Vegas-Henderson-Paradise Metropolitan Statistical Area (MSA), 2018

Las Vegas-Henderson-Paradise, NV Metro Area	All Industries (225,252)	Construction (12,778)	Professional Services (31,205)	Non-prof. services, goods, and supplies (4,764)
Race/ethnicity				
POC	42.2 %	S %	26.1 % **	28.1 % **
White American	52.7 %	53.4 %	67.2 % **	59.8 % **
Equally POC/White American	0.9 %	D %	0.9 %	D %
Gender				
Women	38.5 %	10.4 % **	33.1 % **	26.2 % **
Men	52.6 %	83.0 % **	57.8 % **	57.0 %
Equally Men/Women	4.5 %	4.3 %	3.8 % *	6.7 %
Veteran Status				
Veteran	5.8 %	S %	7.2 % **	5.0 % *
Nonveteran	89.3 %	91.0 %	86.2 % **	83.4 %
Equally veteran/nonveteran	S %	D %	0.6 %	D %

Note: *, ** Denotes that the difference in proportions between businesses in each study-related industry and businesses in all industries is statistically significant at the 90% and 95% confidence level, respectively.

S Denotes proportion not reported because data did not meet US Census publication standards.

D Denotes proportion not reported to avoid disclosing data for individual companies.

Source: BBC from 2018 Nonemployer Statistics by Demographics series: Statistics for Employer and Nonemployer Firms.

Figure C-18 indicates that, compared to all industries considered together:

- A smaller percentage of construction businesses are owned by women (10.4%) in the Las Vegas-Henderson-Paradise MSA.
- A smaller percentage of professional services businesses are owned by POCs (26.1%) in the Las Vegas-Henderson-Paradise MSA. In addition, a smaller percentage of professional services businesses are owned by women (33.1%) in the Las Vegas-Henderson-Paradise MSA.
- A smaller percentage of goods and other services businesses are owned by POCs (28.1%) in the Las Vegas-Henderson-Paradise MSA. In addition, a smaller percentage of goods and other services businesses are owned by women (26.2%) in the Las Vegas-Henderson-Paradise MSA.

Figure C-19.
Self-employment rates in study-related industries, Clark County, 2017-2021

Group	Construction	Professional Services	Goods and Other Services
Race/ethnicity			
Asian Pacific American	17.9 %	11.7 % **	10.5 %
Black American	7.5 % **	7.4 % **	7.6 % **
Hispanic American	9.5 % *	16.0 % **	16.2 %
Native American	9.3 %	2.7 % **	14.0 % †
MENA American	14.4 % †	57.2 % **	10.7 % †
Subcontinent Asian American	18.9 % †	14.0 %	0.0 % †
Other race POC	14.7 % †	22.2 % †	16.3 % †
White American	12.2 %	22.7 %	17.5 %
Gender			
Women	7.8 % **	14.7 % **	20.6 % **
Men	11.0 %	20.6 %	11.5 %
Veteran Status			
Veteran	11.6 %	15.6 %	4.6 % **
Non-veteran	10.6 %	18.9 %	16.0 %
All individuals	10.7 %	18.6 %	14.9 %

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.

"MENA American" includes Middle Eastern and North African Americans.

Source: BBC from 2017-2021 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 Clark County:

- Black Americans (7.5%) and Hispanic Americans (9.5%) own construction businesses at rates less than that of white Americans (12.2%), and women (7.8%) own construction businesses at a rate less than that of men (11.0%).
- Asian Pacific Americans (11.7%), Black Americans (7.4%), Hispanic Americans (16.0%), and Native Americans (2.7%) own professional services businesses at rates less than that of white Americans (22.7%), and women (14.7%) own professional services businesses at a rate less than that of men (20.6%).
- Black Americans (7.6%) own goods and other services businesses at a rate less than that of white Americans (17.5%).

Figure C-20.
Predictors of business ownership in
construction (regression), Clark County,
2017-2021

Note:

The regression included 2,807 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

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 2017-2021 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	-2.1459 **
Age	0.0292
Age-squared	-0.0001
Married	-0.0292
Disabled	0.1171
Number of children in household	0.0178
Number of people over 65 in household	0.0506
Owns home	0.0115
Home value (\$000s)	0.0002 *
Monthly mortgage payment (\$000s)	-0.0483
Interest and dividend income (\$000s)	0.0062
Income of spouse or partner (\$000s)	-0.0006
Speaks English well	-0.0450
Less than high school education	-0.0588
Some college	-0.0295
Four-year degree	-0.0468
Advanced degree	0.1068
Asian Pacific American	0.3332 *
Black American	-0.2777
Hispanic American	-0.0911
MENA American	0.5150
Native American	-0.1277
Subcontinent Asian American	0.8323
Other race POC	0.3361
Women	-0.3571 **
Veteran	-0.1816

Figure C-20 indicates that women are less likely to own construction businesses in Clark County relative to men, even after statistically accounting for other personal characteristics.

Figure C-21.
Predictors of business ownership in
professional services (regression), Clark
County, 2017-2021

Note:

The regression included 1,684 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

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 2017-2021 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	-0.9960
Age	-0.0015
Age-squared	0.0002
Married	0.0098
Disabled	0.1737
Number of children in household	-0.0112
Number of people over 65 in household	0.0448
Owns home	-0.4083 **
Home value (\$000s)	0.0002
Monthly mortgage payment (\$000s)	0.1102 *
Interest and dividend income (\$000s)	-0.0019
Income of spouse or partner (\$000s)	0.0011
Speaks English well	-0.2673
Less than high school education	-0.2754
Some college	0.2981 *
Four-year degree	0.2252
Advanced degree	0.1967
Asian Pacific American	-0.4716 **
Black American	-0.7781 **
Hispanic American	-0.1153
MENA American	0.9101 **
Native American	-1.0296
Subcontinent Asian American	-0.2443
Other race POC	0.5973
Women	-0.2363 *
Veteran	-0.4911 **

Figure C-21 indicates that Asian Pacific Americans and Black Americans are less likely to own professional services businesses in Clark County compared to white Americans, even after statistically accounting for other personal factors. Women are also less likely to own professional services businesses relative to men, even after statistically accounting for other personal factors.

Figure C-22.
Predictors of business ownership in
goods and other services (regression),
Clark County, 2017-2021

Note:

The regression included 1,124 observations.

*, ** Denotes statistical significance at the 90% and 95% confidence level, respectively.

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 2017-2021 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	-2.8425 **
Age	0.0436
Age-squared	-0.0003
Married	0.2858 *
Disabled	-0.1920
Number of children in household	-0.0617
Number of people over 65 in household	-0.1376
Owns home	0.4467 **
Home value (\$000s)	0.0002 *
Monthly mortgage payment (\$000s)	-0.1025
Interest and dividend income (\$000s)	0.0088 **
Income of spouse or partner (\$000s)	-0.0018
Speaks English well	0.3316 *
Less than high school education	-0.0559
Some college	0.1193
Four-year degree	-0.0001
Advanced degree	-0.6384
Asian Pacific American	-0.0376
Black American	-0.1478
Hispanic American	0.0691
MENA American	-0.1532
Native American	-0.3245
Subcontinent Asian American	0.0000 †
Other race POC	-0.1562
Women	0.3669 **
Veteran	-0.7452 *

Figure C-22 indicates that no groups of POCs, women, or veterans are less likely to own goods and other services businesses in Clark County compared to white Americans, men, or non-veterans, respectively, after statistically accounting for other personal factors.

Figure C-23.
Disparities in business ownership rates for Clark County construction workers, 2017-2021

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
White women	6.1%	12.7%	48

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) values of the 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 2017-2021 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-23 indicates that white women working in construction in Clark County own businesses at a rate that is 48 percent that of similarly situated white men.

Figure C-24.
Disparities in business ownership rates for Clark County professional services workers, 2017-2021

Group	Self-Employment Rate		Disparity Index (100 = Parity)
	Actual	Benchmark	
Asian Pacific American	10.7%	20.5%	52
Black American	6.7%	22.2%	30
White women	18.2%	25.1%	72

Note: The benchmark figure can only be estimated for records with observed (rather than imputed) values of the 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 2017-2021 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-24 indicates that Asian Pacific Americans, Black Americans, and white women working in professional services in Clark County own businesses at rates that are 52 percent, 30 percent, and 72 percent, respectively, that of similarly situated white men.

Figure C-25.
Businesses in poor financial condition in the United States, 2021

Source:
BBC from 2021 Small Business Credit Survey.

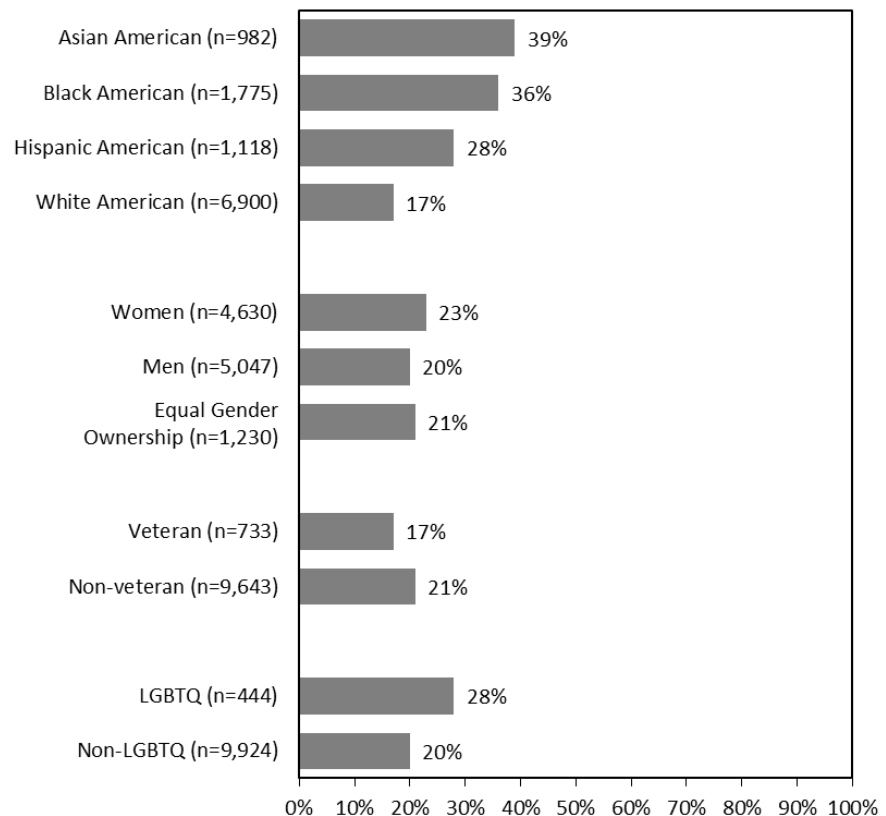


Figure C-25 indicates that, nationally, Asian American- (39%), Black American- (36%), and Hispanic American-owned businesses (28%) are more likely than white American-owned businesses (17%) to report being in poor financial condition. In addition, woman-owned businesses (23%) are more likely to report being in poor financial condition than businesses owned by men (20%).

Figure C-26.
Mean annual business receipts
(in thousands), Clark County

Note:

Includes employer firms. Does not include publicly-traded companies or other firms not classifiable by race and gender.

Source:

BBC from 2017 Annual Business Survey.

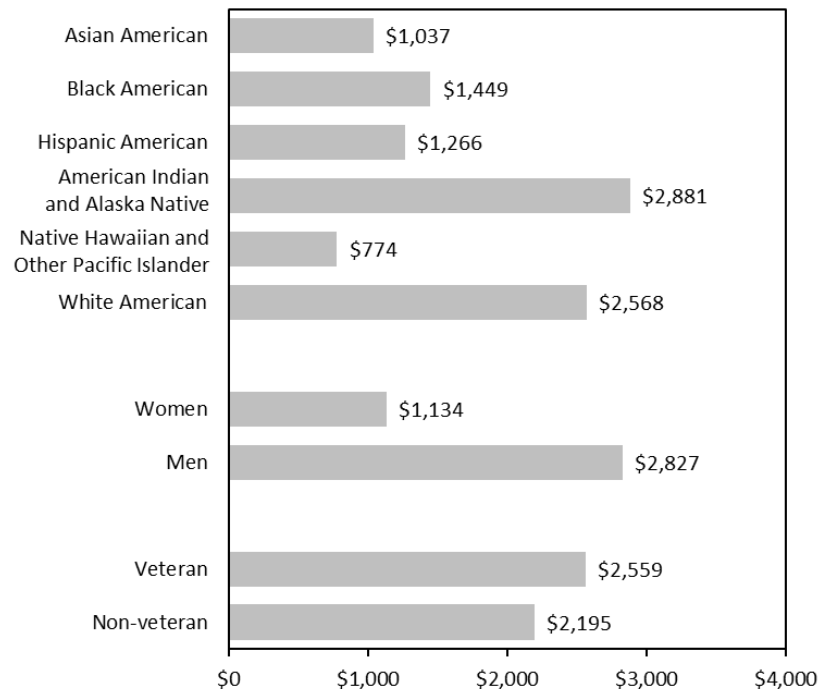


Figure C-26 indicates that Asian American-, Black American-, Hispanic American-, and Native Hawaiian and other Pacific Islander-owned businesses in Clark County have mean annual business receipts less than that of white American-owned businesses (\$2.6 million). In addition, woman-owned businesses (\$1.1 million) have mean annual business receipts less than that of businesses owned by men (\$2.8 million).

Figure C-27.
Mean annual business owner
earnings, Clark County, 2017-
2021

Note:

The sample universe is business owners age 16 and over who reported positive earnings. All amounts in 2021 dollars.

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

Source:

BBC from 2017-2021 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/>.

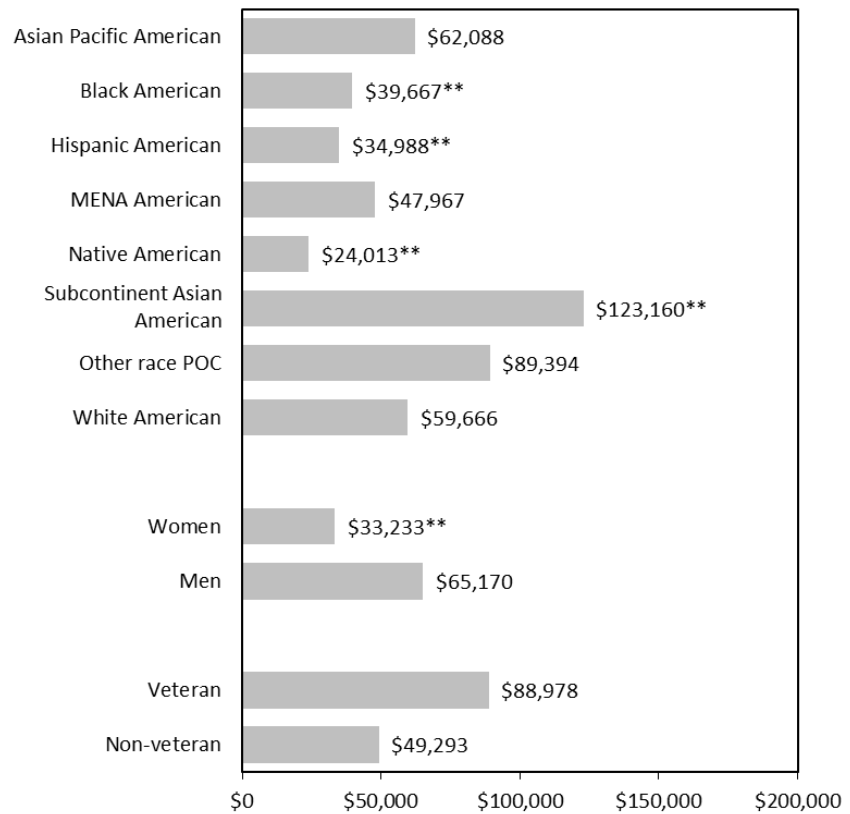


Figure C-27 indicates that, in Clark County, Black American (\$39,667), Hispanic American (\$34,988), and Native American (\$24,013) business owners earn less on average than white American business owners (\$59,666). In addition, woman business owners (\$33,233) earn less on average than male business owners (\$65,170).

Figure C-28.
Predictors of business owner earnings
(regression), Clark County, 2017-2021

Notes:

The regression includes 2,399 observations.

For ease of interpretation, the exponentiated form of the coefficients is displayed in the figure.

The sample universe is business owners 16 years old or older who reported positive earnings.

** Denotes statistical significance at the 95% confidence level.

The referent for each set of categorical variables is as follows: high school diploma for the education variables and white American for the race variables.

Source:

BBC from 2017-2021 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	2,149.275 **
Age	1.103 **
Age-squared	0.999 **
Married	0.988
Speaks English well	1.174
Disabled	0.509 **
Less than high school	1.046
Some college	1.083
Four-year degree	1.284
Advanced degree	2.604 **
Asian Pacific American	1.008
Black American	0.783
Hispanic American	0.952
MENA American	0.851
Native American	0.727
Subcontinent Asian American	1.810 **
Other race POC	0.876
Women	0.531 **
Veteran	1.196

Figure C-28 indicates that woman business owners earn less than man business owners in Clark County, even after accounting for various personal characteristics.

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 Harry Reid International Airport (LAS) & Regional Transportation Commission of Southern Nevada (RTC) Disparity Studies. Appendix D summarizes the key themes that emerged from their insights, organized into the following parts:

- A. **Data collection** describes the process for gathering and analyzing the anecdotal information summarized in Appendix D;
- B. **Marketplace conditions** presents information about business owners' current perceptions of economic conditions in Clark County and what it takes for businesses to be successful;
- C. **Certification** presents information about businesses' statuses as disadvantaged; person of color- (POC)-; woman-; lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientation (LGBTQ+)-; and veteran-owned businesses; certification processes; and business owners' experiences with the Nevada Unified Certification Program (NUCP) and RTC's Resources, Involvement, Support, and Education (RiSE) certification program;
- D. **Experiences in the private and public sectors** presents business owners' experiences pursuing private and public sector work;
- E. **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-, woman-, veteran-, and LGBTQ+-owned businesses;
- F. **Doing business with public agencies** describes business owners' experiences working with or attempting to work with LAS, RTC, and local agencies and identifies potential barriers to doing work for them;
- G. **Potential barriers to business success** describes barriers and challenges businesses face in the local marketplace;
- H. **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;
- I. **Business assistance programs** describes business owners' awareness of, and opinions about, business assistance programs and other measures designed to ease barriers for businesses in Clark County;
- J. **Insights regarding race- and gender-based measures** includes business owners' comments about current or potential race- or gender-based programs; and
- K. **Other insights and recommendations** presents additional comments and recommendations for LAS and RTC to consider.

A. Data Collection

Throughout the study, business owners, trade association representatives, and other stakeholders had the opportunity to discuss their experiences working with LAS, RTC, and other organizations in the region. That information was collected through one of the following methods, which the study team facilitated between January and November 2023:

- In-depth interviews (30 participants);
- Availability surveys (528 participants who submitted anecdotal information);
- Oral or written testimony during a public forum (16 participants); and
- Written testimony via fax or e-mail (six participants).

In order to protect the anonymity of individuals or businesses mentioned in interviews, the study team has generalized any comments that could potentially identify specific individuals or businesses. We also 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, and 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), a certified emerging small business (ESB), a certified veteran-owned business enterprise (VBE), a certified service-disabled veteran-owned small business (SDVOSB), a business certified as owned by a member of the LGBTQ+ community (LGBTBE), or other relevant certification types.

1. In-depth interviews. From April to November 2023, the study team conducted 30 in-depth interviews with owners and representatives of Clark County businesses. The interviews included discussions about interviewees' perceptions of, and experiences with, the local contracting industry, LAS and RTC's certification programs, and businesses' experiences working, or attempting to work, with other public agencies in Southern Nevada.

Interviewees included individuals representing construction businesses, professional services businesses, and non-professional services and supplies businesses. BBC identified interview participants primarily from a random sample of businesses stratified by business type, location, and the race/ethnicity and gender of the business owners. The study team conducted most of the interviews with the owner or another high-level manager of the business. All of the businesses that participated in the interviews conduct work in Clark County, Nevada. All interviewees are identified by random interviewee numbers (i.e., #1, #2, #3, etc.). In-depth interview comments do not have a prefix.

2. Availability surveys. The study team conducted availability surveys for the disparity study from March to October 2023. As a part of the availability surveys, the study team asked business owners and managers whether their companies have experienced barriers or difficulties starting or expanding businesses in their industries or with obtaining work in the Clark County marketplace. A total of 528 businesses provided anecdotal information as part of the surveys. Availability survey comments are denoted by the prefix "AV."

3. Public forums. LAS, RTC, and the study team solicited written and verbal testimony at two public forums for the disparity study. Both meetings were held on January 17, 2023. The study team reviewed

and analyzed all public comments from the two meetings and included many of those comments in Appendix D. Those comments are denoted by the prefix "PT."

4. Written testimony. Throughout the study, interested parties had the opportunity to submit written testimony directly to the BBC team via fax or email. Written testimony is denoted by the prefix "WT."

B. Marketplace Conditions

Part B summarizes business owners' and managers' perceptions of the Clark County 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. Eighteen interviewees offered thoughts on the marketplace across the public and private sectors. They also commented on changes in the Clark County marketplace that they have observed over time [#6, #12, #13, #14, #27, #30, #AV, #WT5]. For example:

- The Hispanic American owner of an MBE-certified professional services company stated, "2008 really hurt us for a long time, but we're recovered and actually we're up by a couple more people than we've had for years. We're actually growing right now." [#6]
- A representative of a majority-owned professional services company stated, "Yeah, it's a little bit bigger than RTC and LAS I feel. I think what we feel is that the engineering education community is not getting enough people interested. So, there's not enough people coming out of school. So, in this regard it wasn't COVID that caused this problem. It was actually the Great Recession. I guess we're close to almost 20 years now. 18 years. What happened during that time is the engineering community got hit really hard because at that time it was a housing depression. So, a lot of those people who were working at that time went off because they got laid off and whatnot and went off and found new careers. They never returned. And engineering education has always, for many decades, suffered from a lack of students coming out to meet the demand. So, that is getting exasperated by the baby boomers retiring." [#12]
- A representative of a majority-owned professional services company stated, "Supply chain's a big one when it comes to construction. Financing based on clients being able to move forward based on rates." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "No. I think with the public sector, they bid out everything. Everything has to be most of the time bid out. So, if you are not selling it for only 10 cents above your cost or something, you know there's going to be one. But the volumes are large. But I think the competition is [greater] also, because everybody can see the public bids. Everybody in this world can bid on it. So, the competition is [very high]." [#14]
- The LGBTQ+ owner of a goods and services company stated, "Yeah, every challenge a small business could possibly have. The challenge of going into what was typically already a very large business industry, and being a small business made it very difficult. We had almost no credit. We

had to pay for our fuel upfront in cashier's checks and give our customers 10 days to pay. It was almost impossible to get insurance for many years, and we couldn't even operate for so long without having to use ... Some of those bigger competitions I described, we had to use them to deliver just because for several years in the beginning, nobody would insure our trucks at all. And that made it incredibly difficult, the insurance. ... The biggest barrier is probably in growing the business. Competition is always the biggest barrier. In the oil sector, most companies are multi-billion if not a hundred billion [dollar] behemoths. So that's often hard for a small nine-employee business to compete with." [#27]

- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "Currently there are lots of opportunities for engineering consulting like ours due to multiple ongoing construction projects in Southern Nevada. In the last two-three years the government agencies in Southern Nevada must have issued around a billion dollar[s] worth of contracts especially special district agencies such as Las Vegas Valley Water District (LVVWD), Clark County Water Reclamation District (CCWRD) as well as Clark County. But there are hardly any opportunities in the Southern Nevada marketplace for small diverse businesses like ours due to discriminatory factors and nonexistence of policies for small diverse businesses in the procurement of government agencies of Southern Nevada." [#WT5]
- A representative of a woman-owned goods and services company stated, "Las Vegas is a higher-crime city and with the tourism, there's a lot of security companies here and, as a further result, there's a lot of underbidding. We're trying to get out and break away from paying people minimum wage. We'd like to scale more into working with the government." [#AV4]
- A representative of a majority-owned construction company stated, "In terms of competition, we struggle with Las Vegas Paving which are taking a lot of the work. We're a smaller business. They're huge. They have equipment that we don't have, so we can't necessarily take on all of those jobs. We're the only company in Southern Nevada which is certified to deliver potable water, so that's a plus." [#AV12]
- A representative of an Asian Pacific American veteran-owned professional services company stated, "It's tremendous competition, I have found that the time invested and training to work in the local area has not returned any investment for me ... don't know why. Robust and will continue to be robust in the future." [#AV36]
- A representative of a majority-owned goods and services company stated, "No barriers or difficulties, we work well with others. Obtaining work is difficult at best. On the burglar alarm side we have do-it-yourself systems. Commercial burglar alarms and fire alarm competition is huge. We set certain standards and charge higher because of the cost we have to bear. The customer decides if the service is better." [#AV47]
- A representative of a majority-owned construction company stated, "Difficulty of working with government entities. The bidding process and nature of projects in general. Broad market conditions seem strong in the face of impending economic turmoil. Construction seems to be fairly resilient. Interest rates and construction materials and labor pricing are affecting the conversations of new work, but not to a degree that is concerning at this time." [#AV65]
- A representative of a majority-owned construction company stated, "We worked with other state entities. It was a good relationship. The biggest challenge was once our proposal was sent out, we

didn't hear back for many months. Market condition with the employment sector is opening up. The market itself is tightened up and prices are stable, but not coming down." [#AV70]

- A representative of a Black American woman-owned professional services company stated, "It is a little bit harder in Southern Nevada because there are so many people bidding. Usually, the people getting the contracts are those who already have contracts." [#AV92]
- A representative of a Black American woman-owned professional services company stated, "We are in an industry that is very competitive, hard to get nurses, so many players in the nursing industry. They could hit big profits when COVID hit. COVID caused a high demand for nurses, and that pushed the rates through the roof. Anywhere from \$50 [an hour]." [#AV111]
- A representative of a Hispanic American woman-owned, VBE-certified professional services company stated, "As a small company I am unable to compete with large businesses for professional services on a qualifications basis. I will never have better qualifications than a large business. I feel that the public agencies in Nevada do not encourage or offer a competitive advantage for small businesses to compete for their work. They give no preferences to small local businesses over large national firms." [#AV184]
- A representative of a majority-owned professional services company stated, "We're a small business and it's hard to compete with big companies, so if the government could help us, that would be appreciated. We have submitted proposals in the past and we weren't very lucky. Most of our work comes from repeat clients because we work very closely with the client to fully understand their needs and make sure they are completely satisfied with our work." [#AV235]

2. Effects of COVID-19 on businesses and industries. Forty-four interviewees offered a variety of thoughts about current marketplace conditions across the public and private sectors in light of the COVID-19 pandemic [#1, #2, #3, #4, #6, #7, #8, #9, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #27, #28, #AV]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "We were seven employees, but since the pandemic we've dropped to five. We're still looking right now. I still need to order another two people, but it's just been difficult finding the right people now to do the job. So, we've shrunk compared to 2019. ... No [we do not view the effects of COVID on our business as permanent], we're trying to grow now. Like I said, if two people were to walk into my store, I would hire them today to start working. It's just been difficult. [COVID-19] impacted me and the staff. Obviously, some of them left for personal reasons because they've left town, or they had to leave their homes. Supplies-wise, we were short. We're still short of supplies right now. So, that was a difficult situation for us. Obviously, some of our customers we lost because they closed ... I've also bought more machines as well so that we can take on any jobs that come in the door and not lose any revenue by outsourcing these jobs. So, a lot of things now have been brought in-house. And that way, our revenue is getting more and more now. So, those are the stages that I've taken since [the pandemic]. ... We've also gathered new customers as well due to the fact that other businesses have closed, because I've known other print companies that have closed their doors as well. Now, we're getting those people coming to us. So, it's an up-and-down thing. COVID hurt in one area, but then also it allows us to enter into new market as well of products if that makes sense. ... During the pandemic, we did [have issues with timely payment release or retainage of customers], which was understandable. But everybody caught up afterwards. And I forgot to mention that the PP[P]

[federal Paycheck Protection Program] helped us a lot with the employees. The idle loan, as well, helped a lot with the business to keep us afloat. So, those helped." [#1]

- A representative of a Native American-owned, MBE-certified construction company stated, "There was a little bit of lull in some of the projects [during COVID]. No [we do not view the impacts of COVID on our business as permanent]." [#2]
- The owner of a majority-owned goods and services company stated, "[We were] temporarily [affected by COVID], but the temporary was really long. It's still a really long time. ... We don't see this continuing on in the next couple of years, but it's definitely made an impact for the few years that it has been around. ... Honestly, we actually closed up the whole front of our shops and made it to where we were only dealing at the front to avoid any extra cleaning, for the most part [during COVID]. ... [COVID] definitely [affected] the industry as a whole." [#3]
- The white woman owner of a goods and services company stated, "I would say so, [we view the impacts of COVID as permanent] yeah. Our business has definitely changed since COVID, and I don't see it going back to the way that it was. We used to do a lot of different work and we are not really doing that at this point. ... I mean, we'd like to get back into it. We did a lot of servicing of work on the [Las Vegas] Strip [before COVID]. ... So now it's getting better but there were a lot of supply chain issues, getting equipment. It was very hard to get equipment during COVID and right after COVID. ... In my opinion, I would think that the whole industry changed [as a result of COVID]." [#4]
- The Hispanic American owner of an MBE-certified professional services company stated, "Not too much [of an effect from COVID] because we were considered critical industry. We do a lot of critical infrastructure protection and in hospitals. Those businesses kept running so they needed us." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "So we're union, and I had the most bizarre stuff. I wouldn't say we were really impacted that bad, but I had employees that wouldn't even come in my office to fill out paperwork. They didn't want to be close to other human beings at all. Then I had people on the job site, didn't want to wear a mask because it was 115 [degrees]. They're sweating, they can't breathe through their mask. How are they supposed to do their work? And the OSHA [Occupational Safety and Health Administration] guy is out there, 'Put your mask on.' Well, he's 15 feet in a trench. Why? ... It was just insane the stuff that went on. But I would say no, that my business was not impacted because we were already working at the convention center. We had the work, and that site was well run and they had it all under control and everything. I would say construction was not that badly impacted. And then I applied for the PPP loan and I got that. So that definitely helped out. Okay. Yeah, I would say it wasn't that badly affected." [#7]
- A representative of a VBE-certified goods and services company stated, "The only thing that [COVID] affected was people wanting to work. ... The industry as a whole [was affected by COVID]." [#8]
- The Hispanic American owner of a goods and services company stated, "We grew during that time, [during COVID]. Our hiring standards and pricing have had to change [because of COVID]. We offer some of the highest hourly rates and the best benefits for our industry. So that does cost a lot of money from obviously the partners and clients who take us on board. So, we've had to adapt our way of invoicing, as well to obtain money faster because a lot of people pay very late. So, it's just things that we've had to transition from financials." [#9]

- A representative of a Hispanic American-owned construction company stated, "Yes, [our business] was [affected by COVID]. We were working on ... We've been working on this project for three years as to the extent of we were not able to do a lot of travel and there were a lot of restrictions, but the good thing is that the project never really took a start during that time. [Now we don't view the effects of COVID as permanent]." [#11]
- A representative of a majority-owned professional services company stated, "It was six to nine months later. We had a big enough backlog that we had enough work to get us through the initial shutdown. But as it proceeded on, the opportunity for work did suffer a little bit. So, we felt that in the nine-to-12-month range we did notice a decrease in our billing potential and our earnings potential. That has since rebounded. It was really, I would say, a six- to nine-month hit. Nothing really. There was temporary work from home, but we've been back in the office for, I don't know, two years now. As far as from a[n] operation standpoint, I don't think anything changed. The sale of our company to this parent company happened at the same time and that was a more significant change than COVID. So, any changes that I've seen during that time period I was more attribute to our sale of our company." [#12]
- A representative of a majority-owned professional services company stated, "Well, I mean, there were ups and downs, but we pivoted quickly and adjusted with the market. It was hard to know what projects were going to move forward and which ones weren't. We stayed consistently busy and our thriving company, [we made some adjustments, but I think everything is 100% back to normal]. ... The industry [was overall affected by COVID]." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "Yes, it was [affected by COVID]. I mean, there was a period of time, obviously [there were] mandatory closures and less traffic, I guess. The regular daily traffic, that reduced. And then also, as we started to open up again, we were not, I guess, pricewise as competitive anymore, because of the cost effect of the supply chain issue, the freight, that impacted our cost structure. So, we lost a big opportunity. ... Aside from supply chain? I mean, I guess, the COVID itself, right? I mean because of the isolation, or not isolation, but the being more careful of who you work with in close proximity. So that affected, I guess, also my decision not to hire or be careful with hires. So, it affected in that regard, the hiring decision. ... I think industry as a whole [was affected]. ... The cost affected the industry." [#14]
- A representative of a Black American-owned goods and services company stated, "It was [affected by COVID]. We were hit pretty hard with it. You can't go into a building to ... Because I mean, we also do some design builds. We also do retrofits. So, if there's no building going on, which things really slowed down during COVID, that definitely impacted our business and that was a negative impact of course. And then if you cannot go into a building because of the retrofits, that impacts our business. ... People weren't working from their normal job sites, which also we sell product that has to do with maintenance. So, if maintenance can't go into the building either and there's nobody going into work, it impacts us. ... Realistically, there were a couple of things that we did to overcome and adapt. Luckily, we had some business that was still going on that was not impacted by COVID. It was stuff that needed to be finished. ... We were also looking for other things, other items that can be sold during that time. So I mean, there was some stuff that we were able to continue to do and then there was definitely things that we weren't able to continue to do, and we had more than a few jobs that were put on the back burner." [#15]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yeah, it's affected because there was ... Actually, we started our business during COVID pandemic, and so there were not that many opportunities for us as everything was kind of put on a hold or there were not many infrastructure projects going on. So, we did not have that many business opportunities Yeah. So, it's definitely affected us." [#16]
- The Black American owner of a woman-owned goods and services company stated, "I do see [COVID] as a permanent impact for the market that I was targeting. ... Because they were seniors and that's all that I could grab at the time. ... I didn't know how to go into, say, the bank and say, 'hey, can I clean for you?' How do I go to the airport and say, 'hey, how can I clean for you or make you a company lunch or something?' And so, I was working with the seniors who, of course, were very susceptible to COVID. So that just closed me out, period. Thank God that I picked up a job with the Small Business Administration for the next two years and that held me over from having to do that." [#17]
- The Black American owner of a DBE-certified professional services company stated, "Yeah. I would say that, at the beginning of COVID, it created a lot of opportunities because business was busy still Our company had us working from home and we became confident just being on that island, and independent, but we became self-sufficient. We basically were running our own projects. Two people were running a project that usually would take four or five people." [#18]
- A representative of a woman-owned professional services company stated, "Yes [COVID affected us], for sure. We were working in the casino. Our number one client was a major casino owner and operator. When they shut down, we lost the account and then when it came back, everything was taken in house. Business stopped for quite a while. It took us about a year to recover, actually. Well, my wife and I had some health issues, so we had to actually deal with that. Fortunately, unfortunately, COVID hid what we were going through. So, the PPP loans certainly helped us and [we were] able to keep our employees. We did not lay off anybody and really have never have, other than [for] poor performance. But during down times, we were very dedicated to our employees. We had to cut back their hours a little bit. But most of our employees had been with us [at] minimum three years up to over 20 years." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Yeah, business picked up during COVID." [#20]
- The owner of a DBE-certified, woman-owned construction company stated, "Absolutely, it was. My work at the airports and the hotels and both were shut down. So all my team, almost everybody was laid off for a period of time. I kept a few people on to continue estimating as well as myself." [#21]
- The MENA American owner of a professional services company stated, "The clients were not seeking services [because of COVID], and we just experienced, like any other business, that there was a downtime. ... In conjunction with COVID we experienced other issues that led to where we are today, yes. The fee that we had submitted to the school was prior to COVID, [and] after COVID, everything was double. We had to pay double for everything, for everything. And then, in the meantime, I have to pay for insurance, staff, rent, to turn the lights on, all of that." [#22]
- The white woman owner of a construction company stated, "The size of my company has fluctuated many times in the last few years. Some of it is related to the pandemic, so there was a lot of fluctuation in that period of time. People changed after the pandemic, so people wanting to work

has generated some personnel inadequacies. But we've come to a place where we've overcome most of those obstacles and have grown quite a bit in the last three months and plan to continue to grow through the rest of this year. ... I know for a fact it's for the industry as a whole. And beyond my industry, all of the other similar service-type industries are experiencing the same issues [with labor challenges]." [#23]

- The owner of a SDVOSB-certified construction company stated, "No, I'm very fortunate that that project that I just mentioned, that two-and-a-half-, three-year project had just started, and it was a federal project on military Air Force base that was fully funded. And that went on the whole duration of COVID, so it really carried us throughout COVID where we weren't affected." [#24]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "[COVID affected us] just in terms of the contract opportunities were a little bit more challenging to secure because we were not able to do any kind of in-person [meetings] or making any kind of connections that way." [#25]
- The LGBTQ+ owner of a goods and services company stated, "Extremely, yeah. We had most of our customers close down, or many went out of business, never to reopen. We were lucky to survive the pandemic." [#27]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "Yes [we have about 20 employees now]. After COVID, we were down to three people. ... The main thing [from COVID] was the reduction of staff. And then, the other was, previously, I like to carry more inventory, and post-COVID, it just became cumbersome and too expensive. So, we've definitely gone to a streamlined model where we don't carry nearly the amount of inventory. ... I would say [the] industry as a whole [was influenced by COVID]. Another change was, previously, I didn't want to do as many things in-house. I wanted to sub out, let's say, the sewing or the woodworking or the metal fabrication. But post-COVID, getting anything done, what would normally take two to three weeks has now taken eight, ten weeks. And even getting the raw materials, it's just a different business world out there now, and that hasn't come back to normal for us. So, unfortunately, that means that we have to bring all these things in-house, which then requires capital investments, which requires more overhead. And when you have a slowdown in business or in-between projects or something like that, it's definitely more stressful when your monthly expenses are double, triple what they were before." [#28]
- A representative of a Hispanic American woman-owned professional services company stated, "We work with a lot of overseas [firms], everything is coming back to normal and running smoothly after COVID." [#AV11]
- A representative of a majority-owned goods and services company stated, "We have done work for the Air Force base, Nellis, and the VA [Department of Veterans Affairs], but have had no issues. No problems. We did quite well during COVID. After COVID, there was a struggle, with everything including manufacturing delays, price increases, and the economy is as it is. Our primary clients are seniors or people on fixed income, sometimes they are." [#AV60]
- A representative of a majority-owned professional services company stated, "We're booming again in Southern Nevada because they reopened the economy after the lockdown. It's amazing what can happen when you reopen the economy." [#AV93]

- A representative of a majority-owned professional services company stated, "We work with a lot of local agencies actively, so we have not experienced barriers or difficulties. We are having a wonderful year, we are very busy. Seems to have bounced back from the pandemic." [#AV109]
- A representative of a majority-owned goods and services company stated, "It's been tough, because COVID, 2020 really hurt our business." [#AV114]
- A representative of a VBE-certified goods and services company stated, "Local economy has done really well rebounding from COVID. We sell a lot of essential items which helped us get through COVID. In the process of COVID, many small businesses didn't survive. It thinned out the competition and gave us many opportunities." [#AV130]
- A representative of a woman-owned goods and services company stated, "I try to do residential and small commercial. The biggest project I did was for a few big car dealerships here in Vegas, and it was very stressful. So now I just try to focus on residential and small commercial work, seeing as we're a small business. The work is starting to come back. The previous lack of work was because of the lockdown. I went from having 70 employees, to having only 10." [#AV155]
- A representative of a Black American-owned professional services company stated, "I have a state license and a Clark County business license. No problems working with Clark County whatsoever. I'm a little surprised at how quickly an area like this that's so tourist-driven has bounced back from the pandemic so quickly. I hope we can keep the growth going. Since the end of 2021 it's really been picking up." [#AV163]
- A representative of a majority-owned professional services company stated, "I think the biggest mistake was shutting everything down for COVID. Now it is a disaster. People switched careers out of the hospitality industry, and we can't get people now." [#AV241]

3. Keys to business success. Twenty-seven business owners and managers also discussed what it takes to be competitive in the Clark County marketplace, in their respective industries, and in general [#1, #2, #3, #4, #5, #6, #7, #8, #10, #11, #13, #14, #15, #16, #19, #20, #21, #22, #23, #24, #25, #26, #28, #AV]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "[You can] be competitive with speed and pricing and quality and customer service. Those are the things. A lot of companies right now lack the customer service because they're short of staff. And they do hire people who are not properly trained." [#1]
- A representative of a Native American-owned MBE-certified construction company stated, "We sought out new clients and resourced our existing clients to see what projects they were working on and how we could participate. So, it was just a lot more networking. ... Well, [for a firm to be competitive in our line of business,] I guess in a nutshell it would be low overhead and competitive estimates for the project." [#2]
- The owner of a majority-owned goods and services company stated, "Quality repairs and customer service [are keys to success], especially the customer service. We get a lot of return customers just because we try our best and we are told we're pretty nice. ... As more companies come out for aftermarket parts and whatnot, it makes competitive pricing a lot easier. I guess that's the end result is competitive part pricing would definitely ... influence our business." [#3]

- The white woman owner of a goods and services company stated, "Both my husband and I run the business. We are hands-on and I think that it's important for an owner to be involved." [#4]
- The owner of a VBE-certified professional services company stated, "Trust is mainly the main thing, and building trust with your customers. ... Word of mouth, mostly, other companies that can back up the work I've done. [Those are] the contributing factors to the biggest success." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "As far as [being] competitive in getting business, ... we have to be competitive with our price and we have to deliver good service. I'd say our performance, making the most of the opportunities awarded to us, and it was finding people to be able to do the work. I usually have enough work, it's a matter of hiring and maintaining, finding talented people, but the job market has improved in the last six months. The employees I just hired, or the applicant pool I pulled from for the last two employees I hired is much better than it was six, nine months ago." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "I can't be competitive. My work is all by low bid. The only way to get work is by low bid. And I have union employees that are expensive. So, there's really no way I can bid on private work. There's no way I could compete. ... [one key to success is] having good union employees that are highly skilled and they're careful. They're OSHA-trained. They're just top of the line." [#7]
- A representative of a VBE-certified goods and services company stated, "We adapted by requesting higher bidding. When we were asked to bid on something, it was at a higher rate to compensate or to try to get them to make an average of what they were getting from the government. It takes to be able to get the amount of money that we need, if that makes sense, to be able to pay a good rate. But unfortunately, with RTC, the DOA [Department of Administration] and all of those, it's the lowest bidder. So we're trying to base it off the rate, what we're going to bid the rate based off of what we can pay to be competitive. ... Even though we have positions available, I don't get the job seekers again because they can make more at an In-N-Out, Starbucks, Target. So it's not just within our industry, it's as an employer. I think any business right now is struggling because of that. And not only that, it's the quality of the work too." [#8]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "Like in the Air Force base, you have to have contacts there. A lot of people know us already. I've had phone calls, where the people tell me, 'Oh, we were told to call you, that if we didn't call you, it would be a big mistake on our part, because you guys do great work.' Because I've also been told that a lot of times, when contractors bid a job, the owners will be there, or the top guy will be there, then they never see him again. The difference with me is that I actually do the work. So I'm there. ... I was taught that you have to treat people how you want to be treated. I wouldn't want anyone to do that to me, so I can't do that to them, you know what I'm saying? So that helps us a lot because people know that we do our best. We won't do a crappy job. If something's not right, we fix it." [#10]
- A representative of a Hispanic American-owned construction company stated, "Well, pricing is probably the main thing. Having good labor makes it a lot more challenging. In our case, a lot of times, we're forced to use unions and being able to have union projects, which can make it a little bit more challenging, but it's part of the dynamics of the business. ... In our case, I will say mainly the growth in infrastructure projects, the opportunities that are out there, I think that's the main influence right now." [#11]

- A representative of a majority-owned professional services company stated, "I would say consistent work history and ethics [are key for being competitive in our industry]." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "The experience, the trust that we have built, what you call reputation. And so, that has helped my company to be successful. And, as I said, experience in that industry, having done that for 20-plus years, supply chain. So, what does it take for a company in general? Everybody has their own secret sauce. For a food service company like US Foods or Cisco, it's a very different kind of factors than it is for me, I'm more a boutique and niche. We have a customized service type of approach. We look at things as a whole. Like, with US Foods or these broadliners, they are called, they warehouse 1,000s of SKUs [stock keeping units] in their warehouse and they push out the products. We approach our customers differently, the other way around, where we're asking them, 'what is it that you need? What is it that you require? What are [your] desires?' And then, we go from there and then bake the dishes after that in a way. And then, US Foods, they bake it first and then they tell you, 'This is what we have.' We ask you what ingredients you want, bake it, and then we will deliver the cake, based on what your needs are. So, it's a customized approach." [#14]
- A representative of a Black American-owned goods and services company stated, "Realistically, it's understanding the business, understanding the different models, if you will, that ... each distributor is different. Each distributor does work with different electrical contractors and are really good with certain ones. So sometimes what you have to do is you have to understand those symbiotic connections and make sure that you're talking to the right people and understand what's needed from each job to have those people look at your package, your lighting package over others. ... I think relationships can affect us the most. As I said, understanding and having the understanding of where you need to go and what you need to do It's really having an understanding of where you need to be with those guys and understanding who's getting the job and where their pricing was. I wouldn't say it's any different than being competitive in reality. ... You can spend a lot of time stabbing people in the back and getting a bad rep in town, that's what's going to doom you. Or you could spend a lot of time making sure that everything you told somebody, you tried your damndest and they know you tried everything you could to do exactly what you said you were going to. And that's going to really rack it up for you. Yes, you can make your mistake and they're going to be all over you for that mistake. But the fact of the matter is, at the end of the day, guess who they're coming back to for their very next job?" [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Basically, you need to have a staff. We are a service provider, so to get our work done, we need to add additional staff. And for that, of course, staffing is one factor. And to get staffing, we need projects. So, that's a catch-22, because we don't have any projects, then we can't have staff, and we don't have staff, we cannot work on the projects. And we are the engineering business, and our goal is to pursue public works projects onto the government side and not much onto the private side. So, most of the agencies here, they do [a] statement of qualifications in Southern Nevada for all the engineering consulting. And as an engineering, small micro business, then sometimes we don't qualify. ... Some of these agencies, they require [a] minimum [of] three people when they put out any qualifications out. So, with [us] as such as a small micro business, we won't be eligible for those qualifications. And then, as a small business, we are competing with all large- and medium-sized companies, like large corporations. Then, if we get ranked, we are ranked somewhere at the bottom, so by the time we get projects, all the projects for that fiscal year are gone to other companies." [#16]

- A representative of a woman-owned professional services company stated, "Good business practices and we've really honed our marketing efforts to try to get more business. It all starts with messaging and who we are and why people would use our services. Hard work. I mean, really, just putting the word out that we're available. There were a lot of Zoom calls, as you know, and so educating people on what business is like, because everything went further online than it was. I'd say traditional advertising was slowed, but digital advertising was accelerated quite a bit, and anything digital in marketing your business. So over time, that really came into play. I really feel that getting involved with the community, getting involved with companies and the community really helped us [grow] our business. And just meeting people and sharing our story, learning about them having conversations and joining network associations." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "I definitely think to be competitive, certain staffing positions. Like for us right now, one of the things we're realizing is we need a full-time estimator. Because we've outsourced that for the last three years, and every year we look on our balance sheets and that's becoming a heavier and heavier burden. And we're putting more resources to it, but yet we're not winning as many jobs. ... Right now, just getting in the doors and understanding because each agency that we deal with, they all have different ways of doing business. Again, everyone is different. The purchasing managers, they like things a certain way. And just getting to know that and know who those people are. And even again, with Clark County for instance, everything is mostly electronic with them. So, meeting somebody is usually at the bid walks for five or ten minutes, which doesn't really give [much time] ... not that we need to go out and have lunch. But to be able to set an appointment, sit down and go in and talk to them about the job and get to know what they know and like. That would be a huge help for a new small business or emerging small business to be able to go in and not eat up a whole day of their time. ... Some of these people who have had relationships with these long-running companies, they like to call on them first or go to them first before they go to outside new construction companies." [#20]
- The owner of a DBE-certified, woman-owned construction company stated, "We keep evolving and getting better at our craft that allows people to want us to continue doing their work. So, our client base is expanding. ... It takes a big team, a lot of support in every aspect of a business and a lot of marketing and just getting out there and being recognized in the industry. I spend a lot of money on marketing and a lot of that surrounds lunches, dinners, and just establishing relationships so that there's a comfort level so that they know their work will get complete and I'll do what it takes. I had to develop relationships." [#21]
- The MENA American owner of a professional services company stated, "Obviously [you need] the backlog of projects, ongoing projects. And have repeat clients. And marketing, obviously, marketing the firm. And having funding to deal with ups and downs, the economy, recessions, COVID, and many other factors. It's very hard. Our profession is a small community for what we do. Everybody knows everybody, more or less. And so, I had established relationships with some of the decision makers prior to going on my own, so that came handy and was instrumental on me getting on my own." [#22]
- The white woman owner of a construction company stated, "I think the ultimate thing comes back to the same thing. It's staffing. Ultimately, being able to pay enough and offer enough benefits to entice people to want to join the company. And also having the right culture and attitude is a big deal. Overcoming those is a regular challenge. It never seems to go away. It just seems to mutate

until we learn something new, and we make changes. I would say reputation, access to resources, including personnel, business loans, partners. The entire thing that you could determine is an asset. We have problems acquiring certain parts of materials because of the shipping problems. And all of those things have been challenges to overcome. But for us as a company, mostly it's finding the right people, getting in the right jobs, being able to give them the right pay and being able to give them a good culture that encourages them to want to stay and grow within the company." [#23]

- The owner of a SDVOSB-certified construction company stated, "Having the SDVO[SB] status, the service-disabled veteran-owned status, that sets [us] aside from a lot of other organizations out there. ... We also have partners, and certifications, and our dealers for certain access control companies like LINEL, SX and a few others, and then also partner with Evisiolon, which is the camera and BMS [building management] systems and things of this nature. And those are some of the top-of-the-line access control systems and companies that are out there. ... Some things we can get, if it's specific enough that maybe we're the only one that can provide it, then they can sole source it. ... The difficult times come whenever you are bidding certain projects that you know that there's probably going to be 20 or 30 companies looking at it. And there are a lot of companies out there that are change order specialists. And what I say and mean by that is, they are experts at looking at a contract that's written by a client and can find loopholes that they know they don't have to put a price to, because once they're awarded the contract, they can go back to that organization and say, 'Oh, by the way, I think you might have missed this and we're going to give you change orders because we need this to make it happen.' I'm the opposite. I don't like change orders and I'm not about trying to make all my money up on change orders. I want to bid it to do the job accurately and I want to bid it to make sure it's a successful, complete, 100% turnkey project. And sometimes that's my devil on the shoulder that ends up not winning projects because I'm trying to do that, and in the end, it'll come back and bite. ... We rely heavily on return business. We're not a one project and done. If I work somewhere, they are now my customer, and we'll do anything they need done. They call me for anything. I have landscaping contracts, janitorial contracts, we make doors, hardware, whatever the customer needs done, I'll find a way to get it done for them. And that's why they keep coming back and that's why I have the long-term customers that I have since day one." [#24]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I think having more subcontracting opportunities and access to capital [leads to success]." [#25]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "To be competitive in terms of if you want to make money, you have to value your services accurately, and cross-reference that with the fair market trade value as well. Then, to hit it home and seal the deal, you really want to treat all of your clients as if they were family, in terms of you're doing work on your home, or you're doing a favor for your family member, regardless [of] if they're a client you just met or a client you've had for many years. I just do the work as if it were my own. If there's extra I got to put in, then there's extra I put in. I don't have very many commitments other than one in my life, so it's easy for me to put in that extra free time and really give the client that extra. ... Everybody wants something for free. If I can give extra time, then I can afford it." [#26]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "We don't spend the money that larger companies do on marketing and trade shows and such, so that's not baked into our costing. So, I think cost-wise, we're very competitive. It's a matter of getting our

capabilities in front of people or having the right sales reps who can find out what projects are going on and where we can successfully bid on things as opposed to just randomly calling X, Y, Z companies and hoping that they have a need. I would say finding and retaining the right people is key. And then, secondly, it is having enough access to capital or financing to weather the storms. If we get a \$200,000 order and we have to put out deposits and such to the factories, and then we don't get paid until we deliver, or in the case with a lot of larger entities, you're on net 30 terms, well then we're out what could be hundreds of thousands of dollars for 90-plus days. And being a small business, that could be very expensive. Sometimes you have to get a short-term bridge loan or something, and the interest rates on those are just incredibly cumbersome that can really eat away a lot of the profits." [#28]

- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "In construction, as much as I hate to say it, the factors that make you most successful in construction are being able to understand and navigate the legalities around contracts and bidding with the municipalities and government entities in this town. That is a huge hindrance, especially if you consider the demographics of construction. Not all of them are females that go work in the field in 1995, go to college, get an MBA, and then come back and run companies. It's dudes that really don't know. It's super hard to navigate those parts of it." [#30]
- A representative of a VBE-certified construction company stated, "Your work better be good. Sometimes it is a matter of getting in front of the right people for an opportunity in Clark County. Paying all your subcontractors and suppliers will get you a good reputation." [#AV10]
- A representative of a majority-owned construction company stated, "We try to do quality work. It's all about keeping the client happy. It's all about customer service." [#AV109]
- A representative of a majority-owned construction company stated, "To be successful you have to be able to think outside the box, for example, with electrical especially, a lot of the bigger components are upwards of a year and a half lead time so we get a lot of projects because we can redesign the system and parts quicker than one and a half years." [#AV149]
- A representative of a Black American woman-owned, VBE-certified goods and services company stated, "As far as being successful you just have to keep following the rules and following the client in not letting them fall in a hole they don't want to be in." [#AV15]

C. Certification

Business owners and managers discussed their experiences with LAS, RTC, and other agencies' certification programs. Part C 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 LAS, RTC, and other certifying agencies and shared their thoughts about why they did or did not seek certification.

Fifteen firms interviewed confirmed they were certified as a DBE, MBE, WBE, LGBTBE, ESB, or other relevant certifications [#1, #2, #6, #7, #10, #13, #14, #16, #18, #20, #21, #24, #25, #27, #28]. Two firms interviewed were in the process of applying for certification [#4, #15].

Thirteen firms were not certified [#3, #4, #5, #8, #9, #11, #12, #15, #17, #19, #22, #23, #26] and two explained why their firms had not pursued certification [#19, #29]. For example:

- A representative of a woman-owned professional services company stated, "We just got too busy doing business for other people or for ourselves, so we just haven't done it. We probably should, but we heard the processes was quite cumbersome. We looked at it once and then put it aside." [#19]
- The Asian Pacific American owner of a construction company stated, "I went through the process [of trying to get certified]. I tried to get some of that. I got lost in some of the red tape." [#29]

2. Advantages of certification. Nine interviewees discussed how certification is advantageous or has benefited their firms. Business owners and managers described the increased business opportunities brought by certification [#2, #3, #4, #7, #14, #18, #21, #28, #30, #PT2]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "If a project has specific requirements for a minority participation, we may get invites based on that requirement from the general [contractor] so they can fulfill that requirement." [#2]
- The owner of a majority-owned goods and services company stated, "In our situation, having limits on the resale license, it's definitely been more beneficial for us to have those certifications to increase the, I guess, the amount of products we can deal with in general. Because we can also deal with gold, silver, and a lot of the, like I said, luxury items that doesn't normally come with the standard business license." [#3]
- The white woman owner of a goods and services company stated, "I know that the government actually is giving a lot of money at this point. So, that's one of the reasons why I do want to get certified. I think it would give me a competitive edge. ... I can go after these government contracts, and I honestly don't think that there are too many women-owned business security companies here in Las Vegas." [#4]
- The owner of an SBE-certified woman-owned construction company stated, "I think my certifications have helped me a lot lately, but before I took the company over, they were included as part of the union, [and] companies ... would just hire them on to do utilities on various projects. By low bid though. By low bid, for sure. But a lot of the contracts I've been signing now lately, they are very inclusive of the women-owned thing. And the small business enterprise. ... Well, any contract that has federal money, it's written in there what the goal for DBE participation. We're just looking at one, it's a road job that has 8.5%. That's what they want." [#7]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "What are the benefits of the certifications? First of all, it's an additional value potentially to certain customers. Not even everyone, right? Not everybody cares about diversity, having a quota, increasing their spend with them. So, it really is valuable to certain type of customers that track it. But, for me, it is adding that additional value to the customer, if they are seeking diversified supplier. ... I never go into any customer and say, 'I'm certified and that's why I earn your business.'

Most of the time I don't even mention that. But, if I know a corporation or customer, I know it's important to them, then I just say, 'We are also certified in WM and those things.' So it helps in that regard to have a conversation with those corporations or companies that are seeking diversified suppliers. So definitely there is a benefit to it." [#14]

- The Black American owner of a DBE-certified professional services company stated, "Basically, I was able to put that on my company resume, and that, I believe, allowed a few more doors to open up as far as marketability things goes. ... We were able to get pretty good offers to come to work for [a large prime contractor], I think partly based on the fact that we became DBE certified." [#18]
- The owner of a DBE-certified woman-owned construction company stated, "It gets you through a door. That's about it. There used to be a 5% rule that we as a DBE certified [firm] ... if we were within 5% of a bid, we would be the chosen one. That's not there anymore. But if you have a good name in the industry, then it'll get you through doors. People will listen to you." [#21]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "Honestly, I haven't felt any yet. I understand that certain groups have corporate things. If it's an MBE, they could be even up to 10% more or they're required to get certain bids, a percentage of bids from MBEs and such. But there's not a single time that I have won something because of that, or I got my foot in the door because of that. It's all just been through normal business channels and such. The other thing is networking amongst other MBEs is something that we're now in a position to start doing. When you're fighting for survival and just paying the bills, making payroll, you sometimes don't have the leeway to invest your time and energies in networking nor the additional expenses. But I think now, we're at the point where we can start networking amongst MBEs and, hopefully, that will bear some fruit." [#28]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "So, I haven't really used my certifications per se to apply for jobs, but the certifications have given me confidence and some training and some knowledge, and have allowed me to apply for other opportunities with those certifications. For example, there's programs out here that will... Community programs, like the Allegiant Community Program, if you're a DBE, MBE, they have a gridiron pitch. So I got to apply for that, which put me directly in front of the procurement people for my industry and I got to pitch to them, the head chief over at Allegiance Stadium and everything, and I did get jobs from that. So, it's helped me in that way to be able to apply for programs with those certifications outside of LAS and RTC, that have helped grow my company." [#30]
- A participant in a public meeting stated, "Over the 30 years from when I first started my company, these disparity studies, the pushing to get local involvement in the businesses has been a hundred, a thousand-fold increase of what it was 30 years ago. Where they looked at you, you've been in business three years, 'Oh yeah, well, just give us your information,' and then you never heard again. Whereas now we actually have the opportunity. And also, that RiSE Certification and giving us the one-on-one chance has been very positive in my opinion. I know of other people who have gotten contracts." [#PT2]

3. Disadvantages of certification. Seven interviewees discussed the downsides to certification, if any [#3, #6, #10, #16, #20, #25, #AV]. For example:

- The owner of a majority-owned goods and services company stated, "No [we haven't experienced any disadvantages to being certified]. Really, I forget it's even there." [#3]
- The Hispanic American owner of an MBE-certified professional services company stated, "Yeah. I mean, I can get certified. That doesn't mean I'll get a chance to get public sector work because, like I think I mentioned before, our industry matters who does the work and it's relationship-based and who people are comfortable with. ... Most of these government entities have their integrators that they use." [#6]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I'll tell you what, that guy who owes me the money for the refrigerators, and the microwave stuff, I told him, when I was trying to get him to get to pay me, I go, 'Hey, I'm a small business. I can't have money out there. I'm a small business, disadvantaged, woman-owned [business].' You know what he told me? He told me, 'That doesn't matter. That just means that you should get [work], that's just an excuse to get jobs easier.'" [#10]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Disadvantage, people see as a DBE firm, so sometimes they have a phobia. Or [they think,] 'This is a DBE firm, so he is trying to use that certification for his advantage, as a DBE,' so that, sometimes, people see us as a ... [problem]." [#16]
- The Black American owner of a DBE- and VBE-certified construction company stated, "I haven't seen any [disadvantages to being certified]." [#20]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "Yeah, but it's a waste of time. It's very demeaning. I don't need to prove that I'm female. And I guess now with everybody's going through whatever transfer of identity. But even before that, for me to prove that I'm Black is ridiculous. So a person, they don't have to prove that they're white, but I have to prove that I'm female and Black and disabled or whatever they want to prove that they are. They want you to check off all these boxes for what? So they can get their government funding, and so they can say... Even what you're starting the interview off with, 'What are you?' and ... it's to the point where now... What's interesting, my birth certificate actually says that I'm white. So I've even thought about just writing on all applications I'm white. I have a legal document that says that I'm white. Well, back in whenever they made a mistake, did they or did they not? So I'm saying, why do you have to know what I am? And so even starting this interview, asking all of those questions are totally offensive." [#25]
- A representative of a Black American-owned professional services company stated, "We thought that getting registered under the disadvantage program would benefit us starting our business, [but] it does not. There is not enough incentive for bigger companies [to want to] work with us. They don't know we exist. A company told us by working with us, other companies thought they did not have enough staff, so they hired us. The bigger company felt like they were looked down on because they hired a DBE company. They felt like they would lose their ranking. Same issue has before. We have to lower our fees to compete with bigger companies. We cannot compete with bigger companies in marketing. We feel like we are being ignored in our community." [#AV71]

4. Experiences with the certification process. Fourteen businesses owners shared their experiences with various agencies' certification processes [#1, #2, #6, #7, #13, #16, #20, #24, #25, #27, #30, #AV, #WT1, #WT3, #WT5]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "If you're going to register as a minority[-owned] business, you have to show that you're a minority-owned business. And that's with any, like the Black chamber, the Black certification business, I have to give everything to them, birth certificate, whatever. So, when you first start, there's a lot of paperwork, but that's understandable. And now, I just renewed my minority certificate. All they need is your tax return and an affidavit and your profit and loss. That's it. So, the first step, anything, you got to prove who you are to be able to get it. And once you get past that, then it's easy then." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "It is pretty easy. We actually have a portal online and it pretty much saves all of the information from the year before. So, you're just confirming if there has been any changes or if everything is still accurate." [#2]
- The Hispanic American owner of an MBE-certified professional services company stated, "I know NDOT [the Nevada Department of Transportation] has a certification as well that's supposed to be a good one to have here. I'd definitely be open to it. It's a matter of time and priorities." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "I haven't seen any benefits really from [RiSE certification] yet. It's only been like two years or something. Year and a half. I didn't have it that long. ... I had a lady, ... she was great and she helped me through the process with the WBE [certification]. But you pay for that. That one you pay \$500 a year for, so the WBE was way easier for me. ... [When I tried to get the DBE certification] I just fought with them and fought. And they finally turned down my application. That was in 2017. ... At that time she was like, 'Oh, I have people that work on this for nine years.' And I'm like, well, I don't really want to be working on this for nine years. I really would like the DBE to go through, but you won't tell me what I need to change or how do I need to attain that." [#7]
- A representative of a majority-owned professional services company stated, "I have not seen any direct benefit from it. I think it adds some letters to the end. I don't believe anybody has specifically said, 'We're doing business with you because you have this certification.' ... With the Emerging Small Business certification, because it's not one of the disadvantaged certifications, there is no category that it generally falls into. Because it's a self-certification versus one with a qualifying process by an agency." [#13]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "It's a lengthy process, and we had to submit lot of documentation with that. But the support we received from the airport certification staff and the guidance we received from them, that was very helpful, and it made it easy. ... We were able to certify within four months after we submitted our application. ... Yeah, it was easier for us, because we already had prepared the DBE certification, and they almost required the same documentation for RiSE certification. So, that was easier for us. But if we go other way, if we go RiSE first, then maybe it may be challenging. But same thing, we received guidance from the RTC staff. But we already had a documentation prepared, so there was not much hurdle." [#16]
- The Black American owner of a DBE- and VBE-certified construction company stated, "We spoke to [a representative from the certification office], at first I was kind of a little petrified. I was like, man, this is going to be ... it was a lot. Don't get me wrong, the paperwork was a lot. But he came, he sat with us, went over the list, told us what to expect, what to provide if we provided something. He

was, again, absolutely far and beyond what we have experienced and expected. And it was free because we were actually going through another agency that was charging us \$950 until we found [the representative]. And he is like, 'No, it's free.' And yeah, it was just actually a really good experience." [#20]

- The owner of a SDVOSB-certified construction company stated, "With the Center of Veterans Enterprise, it was a whole panel of lawyers that set up and the certification they had for that took six to eight months. They would come out annually to your office on a surprise visit. And they would show up and be there within the hour and look at your operation, see how you're functioning. They were full-fledged, legitimate, you're not going to pull anything over their eyes type of organization. They recently, as of January this year, that certification went away and is now being done by the Small Business Administration, the SBA." [#24]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "It's laborious, it has gotten very taxing. And the first time going through, you don't know what you're doing, you don't know what it's going to entail. I've done multiple certifications over the years, so I know in itself it is a demeaning process, so I've already have that in my mind. The first time [is hard], but to renew ... the paperwork is less because you've already gone through the process, god forbid you let it expire, that's a whole other animal, you don't even want that to happen. So, you're staying on them and hoping ... You're like, 'Who can I contact above that person to get an answer?' And it's like, when you're constantly in a mode of you have to try to fend for to try to make business and then you're going through this certification process hoping [and] ... knowing that it hasn't done anything in the years, but that's what the system says you should do, so you continue to do it, and you don't want to have to start it all over, so you just fight to keep it up. But yeah, that process, the people that's working there, even when they come out to those meetings... it's just really fake, it's very fake, they're just doing it to placate that whole, whatever they call that, diversity pool." [#25]
- The LGBTQ+ owner of a goods and services company stated, "I found the process to be really good. They definitely required a lot of proof, and I don't really have any problem with that." [#27]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "Yes. So, I am still waiting from October for my WBENC certification. It's much longer, way more backed up. And the NUCP is, in my opinion, much easier. You have more direct access to your certifiers, it's more local. And they're actually a resource, not just a certifier. So, I do feel like the NUCP program is really ahead of the game in regard to my only other experience on the other side with the other women certifying organization. ... My experience with NUCP and David Eclips at LAS, honestly it wasn't very difficult. I feel like it's stuff that you have to have anyways for your business, and I also feel like if you don't know it, they help you." [#30]
- A representative of a VBE-certified construction company stated, "It's impossible. I've tried multiple times in the past 10 years to get our business registered as veteran-owned. I mean, if you want to register your business as woman-owned or minority-owned, there are places to go to register them as such." [#AV47]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "We have obtained DBE, MBE, SBE [certifications] through the Nevada Unified Certification Program, ESB certifications through the State of Nevada's Business & Industry Department, and RiSE certification through RTC of Southern Nevada. The documentation required

for certification can be extensive, but the Nevada Unified Certification Program personnel provided valuable guidance to simplify the process. Speaking with the Nevada Unified Certification Program staff and following their guidance on the required documents is crucial for a successful certification process.” [#WT1]

- A representative of a DBE-, SBE-, and 8(a)-certified construction company stated, "The certification process can be pretty cumbersome but it's to be expected. Request for there to be a pending status to submitting proposals.” [#WT3]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The most overwhelming part of this certification process is the list of documents required. But with guidance from the Nevada Unified Certification Program personnel, the process became easier. The most important part in this certification process is to speak with the Nevada Unified Certification Program staff and take their guidance on the required documents.” [#WT5]

5. Recommendations about certification. Seven interviewees recommended a number of improvements to the certification process as well as recommendations to enhance the benefits of becoming certified [#1, #7, #13, #16, #18, #20, #WT1]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "There's no way to improve [the NUCP certification process] ... but they could market [the certification] to these small businesses.” [#1]
- The owner of an SBE-certified, woman-owned construction company stated, "[It was] super easy [to do the certification process] because I just took my WBE and copied it over.” [#7]
- A representative of a majority-owned professional services company stated, "I think a lot of the processes with the state are very old. I think whatever can be done digitally and submitted [should be]. There's a lot of other states that you could submit something in live time, it says, 'It's been received, it's being reviewed, here's your review timeline, your document's been processed,' whatever it might be. And with the State of Nevada, it's by e-mail, [and you] hope somebody responds.” [#13]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "The NUCP certification process is available on different agency's website, so they could centralize [onto] one website or something where it's available and that processes where application [is] and ... how much time it takes. That will be very helpful.” [#16]
- The Black American owner of a DBE-certified professional services company stated, "I feel like what would really help us is if the different public agencies would get together and figure out how to incentivize companies better that try to work with minorities. It feels like they're checking boxes but not really giving incentives. ... Just overall responsiveness to it. I think if they could review those applications a little quicker and approve [them] quicker. It's all about time, and then I'm not sure if there's anything ... I do believe that some amount of information needs to be presented. I'm not sure all that information should've been necessary to just get approval, but I know you want to make sure nobody's doing fraudulent applications If we can minimize the number of documents with only the necessary [documents] to get to the heart of that issue.” [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "I think advertising. ... If they had as many advertising spots around the airport about the services that they

offer versus the shows in town, a lot of other small businesses would take advantage of it because they just don't know. I didn't know until ... I don't even know who pointed me in [that] direction. But yeah, we didn't know because we were going to go to another company, like I said, that was charging us \$950 and like \$1,200 to do the same thing that [a consultant in the certification office] did it for us for free." [#20]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "The RiSE certification program offered by RTC supports small and diverse businesses, but the RFP/RFQ/Bids[request for proposals/request for quotes/request for bids] issued by RTC do not require or include a goal for the participation of RiSE certified firms. This has led to a lack of interest from primes in hiring RiSE-certified firms as subcontractors/subconsultants. To encourage the participation of diverse small businesses in contracts, RTC should include a participation goal for RiSE certified firms in their RFP/RFQ/Bids." [#WT1]

D. Experiences in the Private and Public Sectors

Business owners and managers discussed their experiences with the pursuit of public- and private-sector work. Part D presents their comments on the following topics:

1. Differences between public- and private- sector work; and
2. Profitability of public- and private-sector work.

1. Differences between public- and private-sector work. Forty-eight business owners and managers commented on key differences between public- and private-sector work [#1, #2, #4, #6, #7, #8, #9, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #28, #AV]. Their comments included:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "I've got jobs from [a contact at the airport] who's trying to support me, but I haven't got anything else come through saying, 'Hey, these are the bids that we're looking for, so even for us to bid on.' ... There's enough to go around, you know what I mean? And just give us the opportunity. If I bid on it, I don't get it, that's great. The city, Las Vegas city, I've bid on jobs, I get some and I don't get some, but I get the opportunity to bid on it. And that's all I ask. That's all I ask for. No, I get more support from a small business than a public [agency]. The small business is what keeps me going. ... I don't know how they pick. All I do is put the bid in. When I bid on something, I put the bid in, and I wait to see if I win. Some you win, some you don't. That's just the game. That's the playfield that I like to be part of. Everybody gets the bid, so I don't see a barrier there. ... I haven't really pushed it to try and work with those [public] agencies because [as a] small business we got to fill out all this paperwork. We go, 'I ain't got time for that.' They have people actually do that in [a] corporation. But [as] a small business owner, we don't have time to fill out all this paper and when we do it, they want your blood, your DNA, and everything. And we just tend to quit on that, which is a shame. ... The casino themselves, I never went after the casinos. And I was honest with them. I heard a lot of stories about people not getting paid. Well, MGM, they put me on a six-month course for them, which I was excited about. They gave me a mentor. ... To me it just turned out that everybody wanted to pat themselves on the back and do a check-the-box, saying, 'Hey, we helped a minority[-owned] business here. We're done [with] that. Now, let's move on.' And that's what I got. ... I focus

on networking to the small business owners, and they pay me right away and they need me now, and we support one another. And it's been great that way. That works a lot better for me than waiting for a job to come from the casinos." [#1]

- A representative of a Native American-owned, MBE-certified construction company stated, "It does fluctuate based on budgets within the city, county, state and what improvements they're going to do. The private work is [based on] the availability of money for private development. So that is the primary factor that affects that work. If the work's out there, we pretty much have our, I guess, fair share of the market, as competitive as we can be in obtaining that work. ... Each [sector] has their own set of challenges. In the public sector, they have very rigid specifications requirements. However, every contractor is provided what all those requirements are, and those expectations are. In the private realm, that can vary greatly [depending] on what those expectations are. I don't know if I would say one is easier than the other. ... A lot of private work is probably relationship-based in being invited to bid. Not getting a job, but being invited to bid. With the public, of course, it's broadcast for everyone, so it can be a little bit more competitive in the public realm because there could be a varied number of players from a lot of different regions." [#2]
- The white woman owner of a goods and services company stated, "So when we did work [with] Clark County, [we mainly provided] equipment. We didn't provide any services, just equipment. So, it was basically just we were allowed to add like 30% to the cost of the equipment straight across the board." [#4]
- The Hispanic American owner of an MBE-certified professional services company stated, "In my industry, the public sector seems to be locked up by particular companies. It seems to be relationship-based on the public sector work [side]. ... I had a good relationship at the Convention Center, but then I think things changed. Things got forced down on the people I was working with from up at management level, telling them who they had to deal with. That's been my experience. ... I mean, the only thing I would say is public sector work usually requires the higher wage scale. Probably a couple years ago we did some work for the city, the new court building for the city of Las Vegas. They just required us to pay more for our employees, but other than that it was just coordinating with another general contractor." [#6]
- A representative of a VBE-certified goods and services company stated, "It's just different hours of operation. A lot of the privates, when their offices are closed, they want us to secure the properties during more of an overnight shift. With the county, it's more of the daytime during their business hours. So that would be the only thing that's different." [#8]
- The Hispanic American owner of a goods and services company stated, "We're bridging the gap between those two [sectors]. Where we don't have law enforcement response, we're the ones that are being called upon to answer a lot of the calls for service, even from law enforcement themselves. So that's why I try to tread lightly on how I answer it, because there's so much that we do that is pioneering our industry in what we are and kind of how we're operating with a different animal." [#9]
- A representative of a Hispanic American-owned construction company stated, "I will say yes, definitely, private [work] is easier. Obviously the public, the government side, it could be a little bit more challenging, it could be a little bit more difficult. ... There's also, just to give you an example, this project in the U.S., it's a private sector [job]. The train is owned by a private company. But they'll be taking federal funds for the construction of it. [So] even though it's private, you are

adding a government side. ... Anytime they're giving you funding, even though it's private, the rules completely change. There's a lot of things that, if it was a true private type of project, you wouldn't have to go through those rules, and whenever you have any project that is government-related, there's a lot of different things, that complexity that gets added to the project, contractual and you have to abide by prevailing wage, you have unions. ... We're used to working on both environments, but if you ask me the question, which one is easier and the reasons, those are all things that kind of go into this type of projects that make them a little bit more complicated." [#11]

- A representative of a majority-owned professional services company stated, "Obviously the public sector has a lot more progress updates that need to be done beforehand. The private sector typically lets you go forward with the project without the ... progress reports and status reports [that need to be done on the public side]. The work that we do for both sides is pretty applicable to both sides. It's the same base engineering. So, I wouldn't say if you looked at [from that way] that one side is easier than the other." [#12]
- A representative of a majority-owned professional services company stated, "Working in the public sector, there are a lot of different hoops that you have to jump through in order to look for the work, get the work, and then complete the work. ... There's a definite learning curve to get into the public sector side of things. With private sector, usually a recommendation is a strong enough reason for an owner to move forward with us and our recommendations with public sector projects, it's a qualification process. And our subconsultants usually have to submit similar qualifications that would help determine if, not only them, but us as a team have worked together and can perform the type of work that is being asked. So, it's often a full package submittal that shows what our qualifications are. Versus in private work, they usually say, 'Hey, who do you recommend?' 'Okay, great. Let's go.' ... [It's] easier [to perform work] in private. ... You're usually dealing with one owner or a very small group of people. Versus public work where there are levels of authority that have to be reported up and down. I mean, it's just a completely different process." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "There's a bigger hurdle with the public sector, because of the regulations that they have in place. ... Everything has to be most of the time bid out. So, if you are not selling it for only 10 cents above your cost or something, you know there's [someone else] going to have it. But the volumes are large. But, ... everybody can see the public bids. Everybody in this world can bid on it. So, the competition is [very high]. ... We work with NDOT, for example ... because I met them at one of those [networking] events and then they invited us to bid. ... All of these opportunities are because we are being invited. But, that's what I'm saying, if you're not being invited and you're not aware of it, how can I even prove to you that I can do it? ... Maybe it would be very good to be able to get more information, if there would be a suggestion to better understand what their processes are ... and then the regulations [as well]." [#14]
- A representative of a Black American-owned goods and services company stated, "It's a little bit more difficult in the public sector because you're bidding that job and sometimes you have no feedback on what's going on with it at all until all of a sudden somebody's asking or sending you a PO [purchase order]. ... This is going to sound weird, but the public sector seems to give you more time. [The] private sector is very much under a time crunch. Both are equally as challenging. It's one of those ... One of my favorite sayings, 'Hurry up and wait,' and then all of a sudden it's, 'Okay, now just hurry up. We need it.' So you hurry up, you got it to them, you got everything they needed,

pricing, everything, and you seem to be fine. And then it's, 'Okay, now wait.' And then you're like, 'Okay,' go about your business, doing other things, and then all of a sudden you get that call, 'Okay, we got the PO, and we need to get that stuff here as quick as possible.' It's like, 'Okay.' That's the kind of ongoing theme that we see repeatedly.” [#15]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Most of the [time on the] private side, they don't have any diversity goals. But we try to always include a [diverse] subconsultant. But ... on the government side, there are diverse goals, right? Then, definitely, we need to satisfy those. ... As a small business, we try to team up onto the private side with some companies. But as a new business, they were hesitant because our business is based on qualifications. ... As an employee, I have qualifications, but as a company, we don't have that much project background, then those private companies are hesitant to hire us for any of their projects. ... [In the] private sector, they need quick work, so there is no bureaucracy involved in there, and their payment are sometime faster than the public. [The] public sector takes [a] long time to receive contracts, and so as a small business, we need to have cash flow going on. ... For this RTC project, it took like eight months since we got interviewed and submitted proposal till we get a contract in our hand. And also, it takes minimum 30 days to get our payment [in the public sector]." [#16]
- The Black American owner of a woman-owned goods and services company stated, "I would send a capability statement and an introduction letter to the airport, and then the specialist, if she feels that my criteria or whatever matches or whatever, then I guess, from what I understand, then I'll be contacted, that part. I just feel in that particular case that I'm one in a million. I don't feel very confident that ... I feel like I would have to put a bell and a whistle or have a jack-in-the-box pop out." [#17]
- The Black American owner of a DBE-certified professional services company stated, "It's very competitive right now in the private sector. ... We would do a lot of proposals, and we would do proposals for all various potential clients. It's, basically, free labor when you do those proposals. You research what's going on with the site that you're proposing on and you try to present to the client all the issues and that you have solutions to those issues, and you try to specify how much it's going to cost to deal with the issues. ... [Working in the public sector is easier] because you usually have longer schedules, fair pay to do the work and you don't have as much bias within the public organizations. We got more government help to make sure things are fair. So, public work becomes less stressful. It's a more diverse sector. Private [work] is really ... can get aggressive, especially when you're given the work that nobody wants to do, or they cannot do. Every project we were given when I was on my own was pretty ... would be stressful for someone working in a company that only puts in eight hours a day, but for us, since we were working on our own, we were able to work all through the night, and we were doing ... I mean, we'd put in tons of hours to meet their ridiculous schedule and, basically, if we couldn't do that, then why even give us the work?" [#18]
- A representative of a woman-owned professional services company stated, "At times, we have answered some RFPs and haven't gotten any [response]. ... It's pretty much the same [between sectors] once you get the project. There might be a little bit more reporting, depending on the type of project, than normal. But we're very good at communicating and being part of the whole process, so there's no guesswork and meetings are concise." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "In the private sector, I might see a house three or four times and they might shop my rates and prices

three or four times. And they might pick me solely because there was nobody else that they would come out. And then in other cases, if it's a high-cost job where you're building a semi-custom home from ground up, they're shopping five or six people and it takes them ... six months to make a decision. ... I think the public sector is definitely [easier], once you actually win the bids, you acquire the jobs. Because again, [once] scopes of works are written, there's very little change. In our experience, the change orders are minimal or limited, if any. I think the public sector is easier in the scope of work. ... [On private sector work] you open it and now they're like, 'Oh, well it doesn't look the way I thought it would.' It doesn't look the way you thought it would, but now you want to change it to putting a wall back and that's going to be another 15 grand. Okay, well now that's a change order and they freak out." [#20]

- The owner of a DBE-certified woman-owned construction company stated, "In the public sector, you pretty much are run by rules and regulations. And in the private sector, it's at the whim of the owner, and I don't do well with that. For me it's absolutely much easier for the public sector than it is for me to deal with private sector." [#21]
- The white woman owner of a construction company stated, "[The biggest barrier and challenge for me is finding the decision makers for the markets that I want to pursue.] For example, the LAS and RTC are really great examples. Even the Clark County School District are good examples of places where I would like to have the opportunity to do business. But finding the right person to get in contact [with] to establish a relationship and see about available opportunities is very challenging. I don't have any resources. I haven't figured out the resources just yet, but I'm working on it. Well, my first question would be, how do I become eligible for those opportunities? I know that I signed up, went through the lengthy process of becoming a GSA [General Services Administration] contractor for one contract that I've gotten so far. And it was very involved, and it requires renewal. So that would be a great resource to know. I don't know if I have to get certified to be able to bid these jobs, if I have to be on a bid list. I really don't have any knowledge of what the requirements would be. The most difficult part of the process was figuring out what the billing process was, what information was needed, where it needed to be sent to. I had to sign up for a special login so that I was able to get in there to see the purchase order. It was a lengthy and sometimes confusing process." [#23]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "We've tried quite a few. After the diverse supplier, there was one up in North Vegas at a library. I went there, went to all the booths, collected all the business cards and such, turned them over to our sales team to continually email them, see if there's any projects going and such. But as of yet, there's been no success. ... I've done a couple [public sector jobs] when I was based out of LA with the housing authority, and there was an initiative called Measure HHH, where they put a lot of money toward resolving the homeless issue. So someone who was previously homeless, when they get their first apartment, they don't have furniture appliances and such. And so, we were awarded that contract, and so we would put the furniture and appliances in. So that would be about the extent of public sector [work] for me." [#28]
- A representative of a Hispanic American-owned professional services company stated, "It does not seem like there are a lot of contracts in the \$100,000 to \$200,000 range [in the public sector]. When they come up, the bigger firms tend [to] get them. Although they seem to be advertising, ... when we do get them, they have categories and we do not seem to qualify if it is based on the number of engineers, surveyors or, generally, the number of staff." [#AV112]

- A representative of a Hispanic American-, LGBTQ+-, woman-owned construction company stated, "It is difficult to get in and started with [the public sector]. It seems like you have to know the right people. You have to know who is bidding, before going to the GC [general contractor] and bidding through them." [#AV116]
- A representative of a woman-owned professional services company stated, "We don't pursue work with [public agencies]. They are already determined to work with larger firms that are politically connected." [#AV120]
- A representative of a Hispanic American woman-owned professional services company stated, "There is one website for Nevada regarding bidding that I have trouble with. [We have] difficulty getting the right information at the right time from the right people." [#AV121]
- A representative of a Black American-owned, VBE-certified construction company stated, "It is very difficult to get work [in the public sector]. I recently got into the certified program for DOT [the Department of Transportation] and LAS. And have only been to one site visit. I've never landed any government work. Most of the work we do is for private homes. ... A \$1 million company can't really compete with companies with no bid limit. They need to find a carve out for disadvantaged businesses so that they can compete. When they issue contracts to big companies, a part of it should be insured to go to disadvantaged businesses. That would help greatly." [#AV130]
- A representative of a majority-owned construction company stated, "The only issue I had on one job [in the public sector] was that I was unclear with what the bid limit was and I overbid my limit so they called me and let me know. I bid over my limit because they had broken the project into pieces. I bid under my bid limit for each piece but they counted it all as a lump sum." [#AV148]
- A representative of a majority-owned construction company stated, "There's more paperwork and red tape when you work with government agencies." [#AV163]
- A representative of a majority-owned construction company stated, "I haven't seen any opportunities that would allow us to bid on those [public] projects. It just doesn't seem like it's easy to get a good look at some of these projects going on. The field that we specialize is low-voltage systems, security systems. It's hard to be invited to those types of things unless you're part of the proprietary distributorship of the equipment that they use on those projects. It would be nice to be able to talk to the project development people for the county and the airport and have an opportunity to make a presentation of our talent and capabilities and what we could do for their projects. ... The waiting system that they use to award projects based on percentage using the four-minority categories seems to disqualify us for these projects. It limits how competitive we can be if we have to hire a third-party company in order to satisfy the minority requirements for those types of projects." [#AV28]
- A representative of a majority-owned professional services company stated, "The [public sector] application process is lengthy and costly. As a small business owner I don't have the sources to pursue projects that that will be awarded to big firms anyway." [#AV29]
- A representative of a majority-owned construction company stated, "The government is very difficult to work with. The projects are very paperwork heavy. I had a time when there were two of my guys welding at the airport and five government people inspecting, watching, and nitpicking the heck out of our work. We're busy doing private work. We only do government work when we really need to." [#AV242]

2. 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. One interviewee perceived public-sector work as more profitable [#18]. Ten business owners and managers perceived private-sector work as more profitable [#1, #2, #7, #8, #9, #12, #14, #20, #21, #28]. Four business owners and managers did not think profitability differed between sectors [#6, #13, #15, #16].

E. Doing Business as a Prime Contractor or Subcontractor

Part E 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. Eleven firms that serve as prime contractors explained why they do or do not hire subcontractors [#1, #2, #5, #6, #7, #12, #15, #16, #23, #26, #28]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Yes, [we work with other certified businesses]. We have to support one another." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "If there was an element of work that somebody proposed a bid to us, whatever that element may be, we would entertain using a sub for that. But if we can self-perform it, we do." [#2]
- The owner of a VBE-certified professional services company stated, "Yes, I do solo subcontract work for myself, usually as a 1099 employee or something like that. ... Just the type of work and the scope of the work. Those are the deciding factors for me." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "There might be occasions where we're required to [subcontract work out], but generally not." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "Yes. We usually sub out all of our concrete work. So, if you build a storm drain system, it usually has an outlet structure or something that has a concrete head wall or something like that, or drop inlet structures. We sub those all out." [#7]
- A representative of a majority-owned professional services company stated, "For some highly specialized things [we subcontract work out], yes." [#12]
- A representative of a Black American-owned goods and services company stated, "Yes, we have [subcontracted work out]." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Of course, as a prime, you need to have more financing, more staffing to manage all these subconsultants and all other aspects of the project. And as a subconsultant, I'm just

working on the small work, which I have to do, as a technical portion of it. So, that's very feasible. As a prime, there are all other factors involved, there is financing, accounting and everything. Then, business development, and marketing, and all others. So, at the prime, sometimes, it's challenging for small businesses." [#16]

- The white woman owner of a construction company stated, "Company size, firm reputation, but again, responsiveness to the needs of us and our clients [are the usual factors for how we make the choice to subcontract work out]." [#23]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "That's easy. The hard stuff [is what I subcontract out]." [#26]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "So if an interior design company is hired by a hotel to remodel something, they bring me on to do certain components. So, whether it be furniture or wallpaper or fire pits or such, then I would be the vendor that they select to make certain products for them. And another way, an architect or a landscape architect would be the same thing. Another way would be a purchasing company is hired to purchase set items that the design firm laid out, and they take that to several different firms such as myself to bid on, to get the best price and best value, and then I bid on those and win some of those projects." [#28]

b. One firm discussed its work with certified subcontractors and explained why they hire certified subcontractors [#13]. Their comments included:

- A representative of a majority-owned professional services company stated, "Yes [we solicit subcontractors considered to be disadvantaged]. ... [It] goes back to the specific type of project in public work. It depends on if there is a percentage [disadvantaged business] requirement, whereas in private work, [that is] not as often required. However, I want to say generally always, but we seek to work with local and small business because we know what that's like to be able to support locally and small. ... No, I don't think [there's a difference in working with disadvantaged and non-disadvantaged firms]. I think if it's a good, qualified business, it doesn't matter." [#13]

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. Twenty-one prime contractors shared the methods they use to find subcontractors and the factors they consider when selecting a subcontractor [#1, #2, #5, #6, #7, #10, #11, #12, #13, #15, #16, #20, #21, #22, #23, #24, #26, #27, #28, #AV]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Yeah, [we solicit subcontractors on] large jobs that we can't do. [We use the same subs], because we build a relationship with them now, and if we need anything, they get it done for us ASAP. ... There's nobody I could think of that I wouldn't work with. We're all in the same industry, and we support one another. ... [We find the disadvantaged partners we work with through] networking events, or they use my business, and we find out we're part of the group. So, like the MBA event, we meet one

another, exchange information, and we support one another. ... With a disadvantage[d business enterprise], sometimes we give one another discounts. That's the only difference, really." [#1]

- A representative of a Native American-owned, MBE-certified construction company stated, "We don't perform asphalt paving, so if our scope includes that, then we'll hire a paving subcontractor. We don't build manholes. If it requires that, we'll hire a sub to build the manhole. Those are a couple of examples [of when we hire subcontractors]. ... We typically have a few [subcontractors] that we work with. We'll solicit them for numbers and then evaluate how competitive their bids are. ... We have a lot of contacts in the industry, so we know what vendors and what subs supply what services. But anything more proactive I don't think has been the norm here. ... Depending on the requirements, some public works jobs have requirements for solicitations of subs. Typically, private work does not. So, we use the same, I guess, solicitation methods for both. ... We solicit any available contractor. We haven't specifically targeted any [disadvantaged businesses]. ... Because public sectors have to advertise everything on openly, so there's different sites that you go through to look at those or different locations to look at all available public works jobs. Private is, you've got to search out the company, figure out who is bidding the job, you've got to look at their websites to see what projects they may have coming up for bid or you have to scour the emails they send you soliciting sub bids." [#2]
- The owner of a VBE-certified professional services company stated, "I don't disqualify because of [gender, veteran, or minority status], and I'll usually pick those first. ... Usually I look it up [to find disadvantaged businesses], when I find a company, I'll do research on what their qualifications are. [I look for disadvantaged businesses first because] usually they're a better business to work ... if they are willing to do this kind of work. And I do like those kind of businesses." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "I generally deal with people I know. ... Obviously because I'm a minority subcontractor, I would be happy to deal with other minority subcontractors, but it's more about who you know and you're comfortable with and you know the quality of their work and that." [#6]
- The owner of an SBE-certified woman-owned construction company stated, "[Selecting subcontractors in the public sector is different] because it has to be low bid." [#7]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I do [use subcontractors]. If I don't have a guy on my staff that does the work, then I will get [a subcontractor], because I have a lot of friends who do [different types of work]." [#10]
- A representative of a Hispanic American-owned construction company stated, "Obviously, they've got to have the expertise. They've got to have the proper license and all of that, but normally, we're very open as to evaluating expertise in the area and what they're able to do. It all depends, obviously, what kind of job we're subcontracting. In our type of [work], we have lots of opportunities for subcontracting. Normally, we just look at companies that have experience in the areas. We don't use any third-party resources." [#11]
- A representative of a majority-owned professional services company stated, "It's our existing relationships. We have a set of people that we worked over the years that we trust." [#12]
- A representative of a majority-owned professional services company stated, "[We pick subcontractors] based on reputation, past performance, past relationship, pricing, availability, project schedule. There's a lot of factors that go into [selecting subcontractors]. ... [The] same

factors that would go into the public side of things. However, it's not documented in such detail for every project as it would be in a public requirement. Yes [we solicit subcontractors considered to be disadvantaged]. ... It depends on if there is a percentage [disadvantaged business] requirement, whereas in private work, [that is] not as often required. However, I want to say generally always, but we seek to work with local and small business because we know what that's like to be able to support locally and small. I would say it's pretty similar with one addition. So the networking, the face-to-face, the search engine optimization, we are a client of APEX Accelerator. And they do quite a bit of outreach and they've shared resources for reaching out to disadvantaged businesses. And so there are resources that we go to and or connect with. For example, yesterday I reached out and was at an event, one specifically for Native American Indians. ... No, I don't think [there's a difference in working with disadvantaged and non-disadvantaged firms]. I think if it's a good, qualified business, it doesn't matter." [#13]

- A representative of a Black American-owned goods and services company stated, "[We select subcontractors] pretty much the same way it has been. I mean, you ask for the bids. And a lot of times when we get a bid to do the install, we will throw out the low bidder because usually they've missed something, and we throw out the high bidder and go with somebody in the middle. And it's also, we talk to them about their background, and have they done jobs, like what we're trying to get for our customer. ... So, we know contractors and subcontractors that we've been doing business with. I mean, I've been selling in the Vegas Valley now for 30 years. There's not a whole lot of people in the Vegas Valley that I don't know. ... There are some subs that we know very well and we have done work with in the past, and we try to look at what's going on with them from a busy standpoint, too, because if they're busy, it doesn't make any sense for us to naturally go with them right off the bat because ... we know that it's going to take them longer to get the job done. ... We will sub to anyone regardless of anything." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Basically, through my contacts, industry contacts, I just call them and ask them about their interest working on this project. ... Yes, we do [solicit disadvantaged subcontractors]. As a minority diverse business, we try to give preference to other diverse businesses." [#16]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Yep. We use a ton of [subcontractors] for all our electrical, plumbing, mechanical. ... Based on their bid and how complete their bid language is and what they're excluding, is one of the biggest things I look for. And price, obviously. We use a lot of the private outlets. We use the Construction Notebook. ... When we're not getting enough bids, we'll dig into the actual contractors board list of whoever's licensed in there and we'll go through it and just send emails to a couple of the subs that we would need work from to see if they reply. ... On the public sector jobs you're required, depending on the cost of the job, your subs, they need to bond you, they need to bond a job also, they need to insure. Whereas on a private sector job ... they're not asking for that. We have established relationships with our plumbing, our electrical, and our mechanical. But I try not to be so narrow focused because somebody gave me a shot, so I always try to [do the same]. ... So, we always farm it out to unknown subs first, before we go to our regular subs. Because we know what we're going to get from them and what we can expect and the workmanship and the cost. ... Diversity's important to me. It's important to me because I want to give everyone a shot. Because again, like I said, somebody gave us a chance on our first job and we had no references, had not done any work in our new current business model. So that's always important to me and I never want to forget that. ... It's a different approach [for diverse subconsultants]. We try to go to the outlets where they are

primarily at, because some of them don't subscribe to some of the other services because of the expenses of those services. So, it's definitely a different approach to where they would normally advertise themselves." [#20]

- The owner of a DBE-certified woman-owned construction company stated, "Well, we tried to get three bids for their craft. We also have a nice group of subs that we've been working with for many years, so that weighs a lot in our decision making. It's not always the low bid [that wins]. ... We're on most of the bid platforms that identify other subcontractors. We reach out based on word of mouth and a lot of times on job walks we meet new contractors, but for the most part, it's the same subs on every project. About 80% of my subs are certified [disadvantaged businesses]." [#21]
- The MENA American owner of a professional services company stated, "There are a variety of reasons and factors for selection of the subcontractors, because we do a lot of expansion, renovation, retrofit, alterations. I try to look for the original consultants on the project, because it obviously makes it easier, it makes more sense. It's in the best interest of the owner that we bring the original team or the ones that are available [and] still in business. And sometimes because we have had a good relationship with the consultants, we keep on using them on multiple projects. So, trying to go cold with someone new, it's a little bit risky. So, I try to avoid risks as much as possible, try to play very conservatively. ... It's a small town [and] I'm quite familiar with who is who and who is doing what. ... Qualifications, I would say sit on top of the list, because we have to protect the interest of the client. And sometimes you're talking about top dollars. And now firms may have minorities on their list of employees that obviously that makes no difference to us whatsoever, as long as the employees are performing, or consultants are performing to meet our expectations." [#22]
- The white woman owner of a construction company stated, "Subcontractors are selected by a few factors, reputation, performance of work, their standards, responsiveness, attitude, and culture with their company. I don't want to work with somebody that has a bad attitude, that doesn't care about their customers. So, we seek out vendors in a certain sector, subcontractors, and then we'll find two, three or four of them, work with them a little bit and see how responsive they are to our needs and to the needs of our clients. And then we tend to sort of dwindle that down to a smaller number, say typically for any kind of a sub, we may have two vendors that we work with at any time because they both have skin in the game. We all have a stake in the job. I use resources such as referrals, that's a big one. Networking and referrals are [two] huge one[s]. I'll also go to other sources. For example, maybe our local distributor who pretty much deals with all of the businesses that do the same or similar things to my company. For example, we don't do overhead doors. So if I have a project that needs an overhead door, I might go to somebody that I know is a door person and has contacts with other businesses. But then I might also go to my distributor and ask who they think is the best one or two options to reach out to. And that's kind of how I start the process." [#23]
- The owner of a SDVOSB-certified construction company stated, "I've got a core base of subcontractors that I've worked with for 11 years now, and I don't ever even have anybody else bid the work. ... It's word of mouth. I'll ask other companies or even maybe some other subs that I've worked with who they know or who they've worked with themselves on other projects. So, word of mouth and reputation. ... To me it's about performance. I don't care who you are or what you are, if you've got a good reputation for performing and being good at what you do, then that's all that matters to me." [#24]

- The non-Hispanic white male owner of a VBE-certified construction company stated, "I normally need subcontractors for landscaping, and the resources I use, I go online. I try to find small businesses like myself who are landscapers, yet they hold a landscaping license. They hold their own business license and their insurance. So, they're legit in terms of being a small business, and not just some person off the street or some person at Home Depot. Although I have employed some of those people just because they're convenient, I do use internet searching a lot for my subcontracting. Usually, it's landscaping because it's really hot in Vegas, and nobody likes to do landscaping. Routinely, I do use a couple of subs. I use a guy who is his own small business. I got him from TaskRabbit. ... There's a subcontracting company called PeopleReady, which they have laborers. I want to be so fair. I actually want to give the underdog a chance. I want to know why he's the underdog, so I want to give him a chance. Unfortunately, taking that approach to a lot of things is not the right business plan. It's not going to make me money. It's going to actually create more problems for me, as it has. But I do have a soft side for an underdog, so I try to find somebody who needs an opportunity." [#26]
- The LGBTQ+ owner of a goods and services company stated, "We have established relationships, and we give all of our work to usually the same contractors, and they give us 25% discount, is one that comes to mind, on everything. So, like, hey, if we have that existing relationship, we can get cheaper products made, and that helps us." [#27]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "I would say that there was more red tape. There was a lot more paperwork involved. There was a lot more this had to get approved, that had to get approved. So I would say it was way more intensive in terms of paperwork [when it comes to the public sector]. [We choose subcontractors] based on geography, and price, and ease to work with. If someone is, let's say, a painter or a plumber, an electrician, they can be very flaky sometimes. It could be hard to get them to the job site or get the estimates timely, things of that nature. So, it's people who are reliable. And sometimes it is just geography, find someone local who can get this done for you. We vet two or three people, get quotes, and then make a decision. ... Word of mouth in network and Google [are the tools we use to find subs]." [#28]
- A representative of a majority-owned construction company stated, "We have to be wary of our subcontractors, because good subcontractors are critical to our performance on the job." [#AV25]
- A representative of a VBE-certified goods and services company stated, "We're an equal-opportunity employer. If they can do the job, we hire them. We don't discriminate against anyone." [#AV40]

b. Three prime contractors discussed the effect working in the public or private sector has on their decision to hire subcontractors [#2, #20, #28]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "Depending on the requirements, some public works jobs have requirements for solicitations of subs. Typically, private work does not. So we use the same, I guess, solicitation methods for both. So yes it does, because public sectors have to advertise everything openly, so there's different sites that you go through to look at those or different locations to look at all available public works jobs. Private is, you've got to search out the company, figure out who is bidding the job, you've got to

look at their websites to see what projects they may have coming up for bid or you have to scour the emails they send you soliciting sub bids." [#2]

- The Black American owner of a DBE- and VBE-certified construction company stated, "Yes, definitely. Because on the public sector jobs you're required, depending on the cost of the job, your subs, they need to bond you, they need to bond a job also, they need to insure. Whereas on a private sector job, most of the private sector job ... or resident work, they're not asking for that." [#20]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "I would say that there was more red tape. There was a lot more paperwork involved. There was a lot more this had to get approved, that had to get approved. So, I would say it was way more intensive in terms of paperwork [when it comes to the public sector]." [#28]

c. Seven 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 [#1, #2, #13, #15, #20, #26, #27]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Yes [we use the same subcontractors], because we build a relationship with them now, and if we need anything, they get it done for us ASAP. Well, with a disadvantage[d business], sometimes we give one another discounts. That's the only difference, really." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "Here in Southern Nevada, we have a lot of contacts in the industry, so we know what vendors and what subs supply what services. But anything more proactive I don't think has been the norm here." [#2]
- A representative of a majority-owned professional services company stated, "Ones that we work with, that goes back to what I said is we have been through a process together of prequalification, their availability, their past performance with us, how quick they are to respond, their pricing. Same factors that would go into the public side of things. However, it's not documented in such detail for every project as it would be in a public requirement." [#13]
- A representative of a Black American-owned goods and services company stated, "Yes and no. There are some subs that we know very well, and we have done work with in the past, and we try to look at what's going on with them from a busy standpoint, too, because if they're busy, it doesn't make any sense for us to naturally go with them right off the bat because ... we know that it's going to take them longer to get the job done. ... We will sub to anyone regardless of anything. When we're subcontracting, if they are the person that is obviously not low and not high, we're having conversations with them. Yeah. We have no problem with that. We've subbed out stuff to ... there used to be, I don't know if he's still here, but there used to be a Black-owned [business]. Actually, there's two Black-owned [businesses] that I can think of right now, electrical contractors, and we've used both." [#15]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Yes and no. We have established relationships with our plumbing, our electrical, and our mechanical [subcontractors]. But I try not to be so narrow focused because somebody gave me a shot, so I always try to ... and I've explained those relationships to owners, 'Hey, I love you guys, I love the work you do. But I always want to give somebody else a shot because I got a shot.' So, we always farm it out to unknown subs first, before we go to our regular subs. Because we know what we're

going to get from them and what we can expect and the workmanship and the cost. Whereas we want to try to always give somebody else a chance. So, we're very cognizant about that." [#20]

- The non-Hispanic white male owner of a VBE-certified construction company stated, "Routinely, I do use a couple of subs. I use a guy who is his own small business. I got him from TaskRabbit. I had met him on a job one day, and he just was a spitfire. He has his wife and kids and family, and he's running his business himself, like a business. He keeps office hours, and then he shuts his phone off at five o'clock. I admired that about his discipline. Wish I could have been a little more disciplined like that. Yeah. I use him routinely. There's a subcontracting company called PeopleReady, which has laborers." [#26]
- The LGBTQ+ owner of a goods and services company stated, "No, we have established relationships and we give all of our work to usually the same contractors, and they give us 25% discount, is one that comes to mind, on everything. So, if we have that existing relationship, we can get cheaper products made, and that helps us." [#27]

3. Subcontractors' experiences with and methods for obtaining work from prime

contractors. Fifteen interviewees who worked as subcontractors had varying methods of marketing their businesses to prime contractors and obtaining work from prime contractors [#3, #4, #7, #10, #11, #12, #13, #16, #17, #22, #24, #28]. For example:

- The owner of a majority-owned goods and services company stated, "[We find the bids for being a subcontractor through the following process]. They call me. I know a few people that they have large companies. They want service. And bids also. There is a website that usually I bid over there. ... We were part of a website that would basically send us offers and contracts to bid on. ... That's definitely one way that we got our bids. A lot of them were through our own email and website services. We do get emails on the regular of people asking for bulk contracts and whatnot." [#3]
- The white woman owner of a goods and services company stated, "I have stopped looking for primes until I do get certified." [#4]
- The owner of an SBE-certified woman-owned construction company stated, "So we are on the internet all the time, just looking for jobs, looking for jobs. And then contacting the GCs." [#7]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "They call me, [that's how I learn about subcontracting work]. ... The problem that I have, is because I am a small company, and I don't know if it's because I am a woman-owned company, but I've had two prime contractors take advantage [of me]. ... One's trying to take advantage of me right now, and one did. Well, I lost out \$58,000 that he never paid me, just because he [didn't] even feel like it. And then [another] guy ... owes me \$7,000, and he doesn't want to pay me. Because I did a lot of time and material jobs for him, because no one else would do them for him. I have e-mails and everything, where he says, 'Do the job, and then send me the invoice, and then I'll do a change order.'" [#10]
- A representative of a majority-owned professional services company stated, "What will happen is somebody will issue a request for a proposal. That will funnel through the architect and then the architect will go and they'll pick, I guess, their subs for each discipline that's going to need to be fulfilled underneath that contract. And then they ask us for a proposal, which is then, either it's a proposal they accept or a proposal where you compete against other civil engineers. And then from there, the contract between the owner and the architect, that's finalized, and then we get the job if

we're selected to be the sub underneath the architect. I think it keeps our name [out] there, so we don't lose people as people change and whatnot. I don't know if it has a significant impact of bringing new work in because the way Las Vegas Valley is, even though it has 2 million people living here, our community is still like a small-town community. So, everybody knows all the firms. Everybody knows who works where and whatnot. ... People directly contract with us for proposals, and it's actually keeping our workload pretty big. So, there hasn't been a need per se to try to reach out to people and get work. ... [The best primes have] good communication. Probably maintaining realistic expectations. I joke about the billing, but that's also a big part of it. That's where a lot of our friction comes through is the lack of payment and having to chase down payment. But yeah, good communication, reliability, knowing a relationship with [prime contractors] ... If we know who the PM's [project manager is] going to be, so we know that's a good PM and whatnot." [#12]

- A representative of a majority-owned professional services company stated, "As an architectural firm, we're often invited by a developer, a general contractor, somebody in the construction industry. It's generally a developer or a contractor. There are some tools that I use on a regular basis to connect with what projects have been posted in the public sector, SAM.gov and NGEM [Nevada Government eMarketplace]. And it's quite old school, but the local newspaper has to also publish based on some of the projects. So it's dependent on where specifically a project might be posted. Sometimes it is directly to a website of those doing business, but I can say like the airport and RTC are all funneled through NGEM. So I have that, that I can look at on a regular basis. But the PTAC [Procurement Technical Assistance Center] provides, or APEX Accelerator, provides a notification system that will sort based on our qualifications and what we're seeking. So that's one way. And then there are bid networks and things like that, but I don't generally subscribe to them, but there are many that you can subscribe to." [#13]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "As a subconsultant, ... if I already know a project is coming out, then I try to contact ... my engineering consulting primes, [my] connections, and then I approach them through email or phone, and then that's how I pursue those contacts. ... But sometimes, then, it's already late because they already have team from before that project comes out from the prime site. So, it's always better to know what it's coming on the horizon, so you can go and follow up with those." [#16]
- The Black American owner of a woman-owned goods and services company stated, "I don't know what I need to be a subcontractor because a lot of the YouTube channels say you can start off like that, and it's like, 'Okay, well, where do I go? Who do I talk to?'" [#17]
- The MENA American owner of a professional services company stated, "It's been extremely difficult. We haven't, like I said, about maybe 10% [of the time I act as a subcontractor]. Maybe I've been very generous with that percentage. I think maybe even less than that. In recent years, just because we hired the consultants on one project and then they had a need for our services where they were the prime. So, they asked us to join as the subconsultants." [#22]
- The owner of a SDVOSB-certified construction company stated, "Again, word of mouth. It's probably nine times out of 10, it's other companies that I've used as a sub and now they're using me as a sub, so it's a give and take. You've got a core group of people, especially out on the base at Nellis and Creech Air Force Base that do a lot of work together and you get to know each other and you work well together, so you give and take each other work. You know what I mean, you share the wealth." [#24]

- The Asian Pacific American owner of an MBE-certified goods and services company stated, "So I've subscribed to a bunch of different websites like BidNet. We just started another one, Construction Notebook. There's several for Nevada and Vegas that post things. So, we're definitely scouring those, but we've a success rate of 1% or 2% with some of those. And the rest of them, it's, I would say, word of mouth and repeat customers. ... I would say knowing what the projects are and being able to bid on them. I would say that that would be the single most important thing. If someone had a magical list that they could show me of everything that we can bid on, would be amazing." [#28]

4. Subcontractors' preferences to work with certain prime contractors. Eight business owners whose firms typically work as subcontractors discussed whether they preferred working with certain prime contractors. Business owners and managers indicated that they prefer to work with prime contractors that are good business partners and pay promptly [#2, #4, #7, #10, #12, #13, #16, #28, #29]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "Yes [we have primes we prefer working with over others]. I'm hoping you don't have me start naming names. ... Well, the number one thing [that determines which primes we prefer] would be how they pay their bills and how quickly they pay and manage a project and how they manage the subs. So there's a lot of mitigating factors, but those are the two primary factors. ... [There are primes we prefer not to work with]. Just through reputation of how they treat subs and how they pay their bills, is not something I would want to get involved in. No, there's no difference [between disadvantaged and non-disadvantaged prime contractors]." [#2]
- The white woman owner of a goods and services company stated, "No [we do not have preferred prime contractors], as long as we get paid, they're all equally fine." [#4]
- The owner of an SBE-certified woman-owned construction company stated, "Well, yeah, our big three are [a local paving company]. They've been around. They're the biggest in town, and they're really good to us. They're on top of it, their contracts, their payments. They're really, really good. And we have [another paving company], which is owned by [a parent company] now. So, we work for them a lot. We work for [a company] a lot, which happens to be a non-union company, but they do a lot of public stuff with prevailing. They pay prevailing wage to their guys." [#7]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "No, there is. Like with [...], my old boss, and like I said, he's one of my mentors. I'll work for him any time, because ... Let's say that he tells me, 'Okay, I'm going to pay you this much,' but then they don't let him, and he has to pay me less, or they give him less money for that job? He'll make it up to me at another job." [#10]
- A representative of a majority-owned professional services company stated, "Yes, we have established relationships with a number of architectural firms and owners/developers who come to us on a yearly basis. So, I would say yes, we do have established [relationships]." [#12]
- A representative of a majority-owned professional services company stated, "I would think it's just it goes back to relationship building. I think once you've done the introductions, there's some dating and then there's something that happens before you get married on a contract." [#13]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "I prefer some primes which I worked with. Because some of those primes

promote supplier diversity in their contracts. And also, they treat other small businesses, minorities well." [#16]

- The Asian Pacific American owner of an MBE-certified goods and services company stated, "Yes. I would say there's a couple different hotel owners, operators, certain purchasing companies, design firms that we've become very close with, because you know each other, work with each other for years, consider each other friends, that [are] way easier to work with and deal with. When certain people, they're very disorganized, and so we submit a lot of quotes and they ask for changes or edits and too many chiefs, not enough Indians. So this person is saying they want it this way, this person is saying they want it that way, changes are made, we have it documented in writing, but yet when the product shows up, it's our fault. So then, we have to show them, 'No, this is what was laid down.' And so, when you have those kinds of customers who are very chaotic or very nitpicky about things and are rude to my staff or whatever, then we basically say, 'No, thank you for your business.'" [#28]
- The Asian Pacific American owner of a construction company stated, "One of my longer relationships with the prime was about two years and then earlier this year they gave me a project, it was a tower project in SoCal and they didn't do any of their backend admin, they didn't do any of that stuff. The price that we talked about, they didn't actually pay me any of that. They took two months to pay me. I had to follow up with them super hard. And then they just had some thinly veiled legal threats that they wanted to do for some minuscule thing in a project. And I was just like, 'Okay, I'm going to send you back this piece of equipment that I'm borrowing from you guys and you guys need to pay me, but I'm never working for you again because I don't appreciate the way that you treated me in this relationship. This project wasn't profitable for me, you guys didn't do it. And the biggest reason is that you didn't support me on the backend.' And I just don't want to work with that. I don't want to deal with that." [#29]

F. Doing Business with Public Agencies

Interviewees discussed their experiences working for public agencies and attempting to get work with public agencies. Part F presents their comments on the following topics:

1. General experiences working with public agencies in Clark County;
2. Barriers and challenges to working with public agencies in Clark County;
3. RTC's bidding and contracting processes;
4. LAS's bidding and contracting processes; and
5. Bidding and contracting recommendations.

1. General experiences working with public agencies in Clark County. Interviewees spoke about their experiences with public agencies in Clark County.

a. Four business owners described the best procurement and contract administration policies they have experienced while working with or attempting to get work with public agencies [#2, #13, #15, #WT4]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "Boulder City still has a small town feel, even though they have very strict specifications, how they

administer the projects are one-on-one. You sit down with the people that make decisions, you work through problems across the table. And a lot of times with other entities, it doesn't happen that way, at least not initially. It's just the format that it's set up. But Boulder City has retained a lot of its small town feel and how they work through challenges and or normal project management issues." [#2]

- A representative of a majority-owned professional services company stated, "We actually are preferred architects for the City of Reno, City of Boulder City, City of North Las Vegas. Let's see, Clark County and North Las Vegas specifically, we have special certifications to bypass some of the building department review because of the additional coursework and/or certifications that we've received from those two verifications. ... Being as I haven't personally gotten any work since I've been here with LAS. However, I think his name is David Eclips. He does a lot of outreach specifically to get small businesses and disadvantaged businesses certified. And I think he does a really good job of trying to make those connections that help businesses with the process." [#13]
- A representative of a Black American-owned goods and services company stated, "I would say the city and county and school district are very upfront, which I really like. You don't have a ton of changes with them. Once the bid is out, they don't ask you to do a bunch of changes. They have their scope of work pretty much in hand and what they're looking for as soon as the bid goes out. So, I love that about them. There's not a bunch of changes that we have to be cognizant of when bidding with them." [#15]
- A representative of a DBE-, WBE-, and SBE-certified construction company stated, "NDOT is the best to work with small businesses, [the] two week pay schedule is amazing, quantiles are on line a week before checks are cut, if there is a discrepancy they fix it." [#WT4]

b. Two business owners described the worst procurement and contract administration policies they have experienced while working with or attempting to get work with public agencies [#AV, #WT4].

For example:

- A representative of a DBE-, WBE-, and SBE-certified construction company stated, "Clark County is the most difficult. Some projects are over 90 days pay. I have had change orders that were approved by the county inspector and third-party inspector with a written notice to proceed and it can take over 120 days to be paid. This kills the small businesses. ... I just picked up money owed to us in December '22, For work done in June, July and August. [We're] still waiting on September." [#WT4]
- A representative of a Hispanic American woman-owned construction company stated, "I have no interest in working with them, I don't want to deal with government work, too much paperwork." [#AV17]

c. Four business owners described their experiences getting paid by public agencies [#2, #20, #22, #PT1]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "If you follow all of the criteria, you get paid. So I would say it's not hard." [#2]

- The Black American owner of a DBE- and VBE-certified construction company stated, "And payment, getting the payment sources on the government side, even when you've done everything you are supposed to do, it's still a challenge in waiting 60 or 90 days to get paid." [#20]
- The MENA American owner of a professional services company stated, "Knowing that you can expect to get paid when you did the work, as long as you work for the entities. Sometimes it did drag on, sometimes it was delayed ... sometimes for whatever reason, we wouldn't get paid 60, 90 days or even longer. But all in all, we knew where to go to and knock on the door to get paid." [#22]
- A participant in a public meeting stated, "I know I'm going to get paid, sometimes 90 days, but I'm going to get paid, sometimes 120 days, sometimes two years on your retention. I don't know if you guys have dealt with that, but that's a real thing, but I'm going to get paid." [#PT1]

2. Barriers and challenges to working with public agencies in Clark County. Interviewees spoke about the challenges they face when working with public agencies in Clark County. Fifteen business owners highlighted the differences across districts, communication with decision makers, and administrative burden in terms of paperwork, especially for small, disadvantaged firms [#2, #5, #7, #16, #19, #20, #23, #AV, #WT1]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "I'm sure it's the same with most businesses, but it's just, in construction in particular, is finding qualified help. And that is helpful in the terms of field labor, maintaining that and trying to be as cost-effective as possible. As far as getting business, I don't think there's any real barrier. It's just a matter of putting in the time and sourcing people to bid with or companies to bid with. ... It's always a challenge [working with public agencies] with the rigid set of specifications, but we kind of know that going into it. So, it's not extraordinary, but it's a challenge." [#2]
- The owner of an SBE-certified, woman-owned construction company stated, "Getting permits? It just takes longer. The inspectors for the county have been horrible at times. Right now, they're not too bad, but just crazy requirements on inspections. And what else? On the engineering side too. It's getting reviews of plans and things throughout the county right now. Pretty hard." [#7]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Another thing is, also, there is a lack of diverse business utilization plan in government agencies in Southern Nevada. None of the agencies has a plan [for] how they will implement the diverse businesses. So, they need to implement some diverse business utilization plan. ... Yeah. There is also lack of transparency in procurement process of government agencies in Southern Nevada, so these agencies should publish monthly or quarterly data showing the utilization of diverse small businesses in their procurement process." [#16]
- A representative of a woman-owned professional services company stated, "We, in all honesty, have not submitted proposals because of what I mentioned before, because the proposal process that you all put out or they put out is just so hard to understand. It's very cumbersome. They don't really say, 'We need a proposal that contains this.' You have to go through it and figure out who's it with ... I hope they understand they've got to simplify the RFP process." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "[With all the government agencies, McCarran, Harry Reid, RTC] they're working on limited staff and I'm sure for some of them, for every one counselor they have, they probably have 15 or 20 other businesses that need their attention or trying to go. And I know that becomes a financial constraint. It's about how

many counselors do we have. And it seems like one of the reasons I think we've got so much help is because I stay engaged. I'm consistently emailing, calling, texting. Not in a bothersome way, but in a way to let them know that, hey, I'm here, I'm interested. I'm working towards, I have a goal, we have a goal. And if it takes you two weeks to get back to me, I'm still going to be waiting for you to e-mail me or call me. But I'm still working towards that goal. And I'm still looking for other resources, whether it be paid resources or free resources through those associations that we are so working to get better and improve and grow as a company." [#20]

- The white woman owner of a construction company stated, "The company was relatively small. I started with two field personnel and myself. We stayed in that kind of configuration for about three, almost four years. And then we began to grow as our reputation became more solid and we were able to go out and hire and retain more people to help grow the business further. And then over time, just continuing to grow, which required different perspectives. Rather than being a single manager running everybody, we've had transition to a more traditional organizational structure with management and team members under management members." [#23]
- A representative of a majority-owned professional services company stated, "A lot of the public agencies right now seem to have a goal of using local small businesses. But when it comes time to actually award those contracts, they seem to go with the larger engineering companies. Locally, I'm not sure why. I assume the larger companies can afford lobbyists in [Washington] D.C., while the smaller companies obviously can't; so political pressure is my best guess." [#AV5]
- A representative of a Hispanic American woman-owned professional services company stated, "We have not been able to get any contracts that we bid on, any state contracts, and we don't know why. They have not told us. I think maybe through a few of the city organizations we could have outreach or aid to help us thrive. Just finding the work through word of mouth, it is nonexistent." [#AV34]
- A representative of a majority-owned construction company stated, "We have a problem in coordination with traffic plans and scheduling. It takes a lot of time to get documentation for that sort of work, and public works projects in general, [to get] approved." [#AV37]
- A representative of a majority-owned professional services company stated, "I don't think they are helpful at all, unless you are a big business. More of a casino type thing, that is my belief. Being successful. We are the only one in the Vegas Valley area, we have the market for that, thank god." [#AV44]
- A representative of a majority-owned construction company stated, "I have never been asked. I have not had the opportunity because I am a white straight male. I think it is a lot of bureaucrats and unions and a lot of red tape for small companies not being invited." [#AV45]
- A representative of a majority-owned construction company stated, "Difficulty of working with government entities. The bidding process and nature of projects in general. Broad market conditions seem strong in the face of impending economic turmoil. Construction seems to be fairly resilient. Interest rates and construction materials and labor pricing are affecting the conversations of new work, but not to a degree that is concerning at this time." [#AV65]
- A representative of a woman-owned construction company stated, "I find Clark County to be one of the most difficult to work with. What works on paper vs what works in the field." [#AV155]
- A representative of a majority-owned construction company stated, "Agencies don't really understand the federal guidelines for how road work is supposed to be set up. It is leaving them

open to a lot of liability if someone gets hurt. The quality of training is really bad down here.”
[#AV258]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "None of the government agencies in Southern Nevada are easy to work with for small and diverse businesses, as none of them have policies or plans for the utilization of small and diverse businesses in their procurement." [#WT1]

3. RTC's bidding and contracting processes. Interviewees shared comments about RTC's contracting and bidding processes.

a. Thirty-nine business owners described their experiences working with or attempting to get work with RTC [#1, #2, #5, #6, #7, #8, #9, #10, #12, #15, #16, #17, #19, #21, #22, #24, #25, #27, #AV, #PT1]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Well, I went down and I met a young lady years ago with RTC. I went over there and we sat down, we talked, and explained what we can do. She did use us for some work and ... is now funneling their business to us. And they know us very well. ... [Being successful is] on the small business owner. I mean, if they want to get something from RTC and the airport, they have to come with everything ready. And that comes on your side of knowledge and knowing what you have to come to the table with." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "I've had no negative experiences [with LAS or RTC]. So in public works projects, there's like a website that's a clearinghouse for projects with all the entities in Southern Nevada, whether it be the state, city, which city, and which county, that type of thing. So we can look on that for a list of projects that are currently bidding. If it's private, again, their website would list which projects they have coming up for bid and what crafts they're looking for solicitations for." [#2]
- The owner of a VBE-certified professional services company stated, "I have not [attempted to work with RTC or LAS]. I don't know where those entry points are at." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "I think I've attended bid meetings for RTC in the past. ... When we showed up there, there was a lot of people there. I don't even remember if we bid it or not." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "RTC is just a funding source really. So, I'm sure that we've worked on RTC funded jobs because we do road jobs a lot." [#7]
- A representative of a VBE-certified goods and services company stated, "No, we have not worked or have tried to work [with RTC], no." [#8]
- The Hispanic American owner of a goods and services company stated, "We were contacted by LAS to assist with the parking security, and they ended up going with somebody who was significantly cheaper. And with RTC, we've spoken to them multiple times and we've provided them costs and they don't move forward. So, I think that on our end we would love to be a specialty add-on. ... If we were to have a formal mutual aid agreement or an MOU [memorandum of understanding], we would be able to assist in reducing [crime on their locations]. And obviously there's a cost

associated to it, but if I'm not mistaken, I think it's like \$150,000 it's the threshold of an emergency contract. That's what the housing authority did. ... In the cases of LAS and RTC, we are requesting to do an emergency essentially support of resources, so our officers and our team can assist on these security contracts side from the main operation as a whole." [#9]

- A representative of a majority-owned professional services company stated, "We have attempted to [work with RTC], yes. We have bid. I think we've bid on a couple projects over the years, and we have been denied. ... One of the problems is the way they do it is sort of enshrined ... in state law that for engineering services you need to be qualified. So, is there a way to tweak that definition within the qualified to have an opening for these companies and people who are seeking these opportunities to get in on a contract, taking it, looking at it more from a skill base than a fancy resumes base?" [#12]
- A representative of a Black American-owned goods and services company stated, "I've seen very few bids from RTC and whether it's public services or whoever is asking for the bid that has asked us to get a certification or qualification to do their bids. Let's see. We did a few of the bus stops, the lighting and the bus stops. ... I would say the only piece from all of them that is kind of the same is that the urgency unfortunately isn't always with them to get the contracts done, but then the urgency seems to be on the backside when they're trying to get the work done. And I wish that if there was urgency and everything that we kind of know about it now. Here we are in construction and finger pointing goes on all the time because they will ... have told the GC, 'This is our drop-dead, our schedule. This is when we need the work to be done by, period.' And then for whatever reason we don't always hear about that. Or supposedly it's been changed and moved up. So now all of a sudden the urgency is that much greater for us to get the product over to them for installation. Well, if we knew that that was a situation ahead of time, we would've then been able to expedite things. To try to expedite it on the backside is not always the easiest. To expedite it on the front side with any manufacturer is much easier. ... I don't think they're any more difficult to work with than anyone." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "We are basically truly grateful to RTC for they have that RiSE program, and it is really helping us. And that RiSE program has [a] 10% goal for small and diverse businesses. But for services categories, they have just like [a] 2% goal. So, there are not that many opportunities for services category. I will suggest they should increase that goal from 2% to 8% or whatever, something like that. ... With 2%, there are very negligible opportunities at RTC. ... They issue all these RFPs, RFQs or bids, but they don't mention anything about[the program]. So, none of these prime contractors are looking for RiSE-certified [businesses], so even though we have a certification, we can't use that certification if there is no requirement. ... The process is okay, but after that, it took eight months for them to issue a contract." [#16]
- The Black American owner of a woman-owned goods and services company stated, "I have [tried to work with RTC and LAS], but I chicken out because I'm not clear on all of what I need to have in place to even do it and I know the one thing that is my issue is that I don't know how to write a bid. ... So then having the capital to pay one of these bid writers \$1,200-\$1,500 to do it and then, once I get the bid, then they want extra 10%, that part I don't know. I could use some more resources or e-mails for something for me to sign up for that lets me know when they come because once I got acclimated and got all my certifications with the government and stuff, I did get a call from the LAS

and RTC immediately. I was so shocked and excited, but then ... they asked me a few questions and then I never heard back." [#17]

- A representative of a woman-owned professional services company stated, "I have applied for a couple projects with the RTC, but it's years ago. And I'm not saying it was the RTC, but I'd say one of the barriers is that most of the times when those RFPs come out that they already have in mind who they want to work with and they get two other bids and you're just there. It's a lot of time to fill those out, and it's a waste of time in some instances." [#19]
- The owner of a DBE-certified woman-owned construction company stated, "We did a project for RTC. We did a remodel project about four years ago over there. Most of their work is civil work. So as a GC, we're vertical. We don't necessarily always do civil. So, there hasn't really been a whole lot for me to do with them since that time." [#21]
- The MENA American owner of a professional services company stated, "RTC does not have a whole lot of vertical construction or design, but the limited ones that I have seen, it goes to a one or two particular firm in town all the time." [#22]
- The owner of a SDVOSB-certified construction company stated, "Yeah, it seemed to be easy in that nature. One of the gentlemen that I had working for me at the time had a relationship with them. He had worked there before, so they knew his work, so it was easy for them just to keep calling him, and it was part of me at that time to continue doing work. And it was mostly door repair and door hardware and things of this nature, a little bit of access control work there as well. We started getting more into the access control with them, but we since haven't worked with them for a couple of years now. They got a little difficult to work with. And I don't know how I would describe that, but I guess the best way to describe it is the personalities that were there. Too suspicious, too blaming, too expecting things, not fully understanding what they're really paying for and expecting more than what they're paying for. It just causes a lot of conflict there and misinterpretation of things, no matter how clearly it's written, leads to, 'Well, I thought it was this and not that, or I thought we're going to get this too.' Well clearly states in here, it's all this and nothing else. But yeah. So I don't know how you would correct that. From what I can tell, because everybody else that we ever met with on site and built with on site was fine. It was the one instance." [#24]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I think that Nevada is not really friendly. LAS or RTC, if you look at who's getting the majority of the contracts, they're constantly doing studies and surveys, they know what the problem is, they know it's an equity gap, it's a wealth gap, it's an access to capital gap, it's an old boy system. They know what it is, they just keep doing the same thing over and over again as an answer, that even the companies that they have doing the studies are majority companies. Accelerator companies, when they have programs for accelerators or helping, even RTC has a relationship where they're doing these trainings, you go to the training, you're spending three and four hours, you see the same people getting the same contracts. And you know the order that the money is going to flow, it's going to be Caucasian, white men, white women, and then Asians, Hispanics. And then African American [men] and women are at the bottom of the pool, and you're scraping the barrel. ... When it's all said and done, African-American females, you're getting less than 1%, if that. ... I would say stop with the, 'I'm doing diversity, equity and inclusion now.' They dismembered that. And so now it's under the guise of, 'Oh, we're doing equity only.' So, it's always, they already know five years in advance or 10 years in advance how things are going to move and how they're going to shift, and it's really, unfortunately, about keeping those that are

underrepresented to stay in that marginalized space. You want to say they should stop with the games, but it's all part of greed and it's all part of power, and to continue to keep those on top and those at the bottom. Yes, I've gone to several of the meetings that they've had, the RTC meetings, the LAS meetings, the various trainings that they've had, and made contact, sent my capability statement, what they ask, and crickets. ... Even going through the certification process, that over the years has been a very laborious process. Even the renewal process, when you see the people that's in those positions, and we know that workers are stressed out now, I will say even before COVID, but even more so now, workers are extremely stressed out." [#25]

- The LGBTQ+ owner of a goods and services company stated, "I never got a call back. I have sent them e-mails with no reply ever before. And I tried and got no response, no feedback. ... The way that RTC can help now is, typically, all of the state contracts for fuel go to [a local oil company]. And they've never given me a chance. I've bid very competitively. I don't really get to see if I'm winning or losing, I just know that what often happens in these public bid contracts is they'll get a recommendation to use Rebel Oil, and then typically, the commissioners or the city council people, they'll go like, 'Oh, well, they want to use Rebel Oil, go use the big super giant company and forgo giving a chance to the smaller company' like myself, the smaller disadvantaged company. And that's just why we haven't really had the opportunity to do a lot of government contracts. We only got one government contract one time [and that was COVID-related]." [#27]
- A representative of a woman-owned professional services company stated, "The only barriers we've experienced is that we're not in those early conversations for projects. We are limited in that we are a specialized practice. Being at the table early would help. In our field, larger enterprises get the government projects and work with RTC. In matchups between larger and smaller firms, it is beneficial when there are larger projects. RTC had an event to bring together businesses and RTC, which is valuable." [#AV100]
- A representative of a Middle Eastern-owned, VBE-certified professional services company stated, "Based on our experience and skills we have not had any issues working with LAS, RTC etc." [#AV107]
- A representative of a Black American-owned professional services company stated, "I've had extensive talks about having magazine ads for the RTC published in the Urban Voice and even had the RTC purchasing staff on the front cover of the magazine and never received any feedback or anything. RTC is not a solid community partner." [#AV108]
- A representative of a woman-owned professional services company stated, "We do a significant amount of work with the RTC as well as other local and state governmental entities. No difficulties when working with them." [#AV11]
- A representative of a majority-owned construction company stated, "We have a great working relationship with RTC. We're in the middle of a project, as we speak. No billing or corresponding issues. It flows very well." [#AV135]
- A representative of a majority-owned goods and services company stated, "The problem is ... let's go with the RTC. They prefer not to work with independent companies. They'd rather work with a national company. When a bid goes out, the bid reads 'lowest responsive bidder.' So, once the majority of us see that, we walk away. That's why we're for-profit companies. ... We buy everything from local vendors, including uniforms. It's not from a warehouse shipped into Nevada. We buy

everything and spend dollars with local vendors. There was a time when I called the RTC and the person said, 'We don't need to go out to bid.' I said, 'I think you're wrong' and I hung up." [#AV14]

- A representative of a Hispanic American-owned construction company stated, "We seem to have a good relationship with the airport and RTC, however, when there is a management change then it feels like a restart." [#AV156]
- A representative of a majority-owned goods and services company stated, "RTC is more of a funding source than a design source. ... We would like to work with RTC, but they seem to use the same firms over and over again. We have worked with them in the past, but not recently." [#AV177]
- A representative of a majority-owned professional services company stated, "I love working with RTC and local agencies, because of the quality of the projects." [#AV181]
- A representative of an Asian Pacific American woman-owned construction company stated, "We've worked with RTC and LAS through their subcontractors as a supplier, and the RTC and LAS have been very nice to us." [#AV189]
- A representative of a Hispanic American-owned goods and services company stated, "I do think at some point RTC called me for a tire change on a bus. I answered the call and did the work. It was fine." [#AV28]
- A representative of a Black American woman-owned professional services company stated, "RTC and LAS spend a lot of money on surveys. They contract a lot with majority companies on surveys and studies. All of it is a dog and pony show. They've been doing it for years. They give the same contracts to the same Caucasian men and women." [#AV36]
- A representative of a Hispanic American-owned construction company stated, "Every time I get a proposal with the LAS and RTC, they never acknowledge my proposal or call me to say that they received my proposal." [#AV61]
- A representative of a majority-owned professional services company stated, "We love working with LAS and RTC." [#AV69]
- A representative of a majority-owned goods and services company stated, "We have worked in the past and currently work with LAS and RTC. No difficulties. I'd like more work." [#AV76]
- The owner of a majority-owned professional services company stated, "I did have an opportunity to meet with RTC's CFO. ... They are doing business with one particular firm, who the principal there used to be an official at the county treasurer. So now, he's going to open his own firm and they are all doing business with him. The airport, the convention center, RTC, the school district, they're all doing business with this one firm. So, it's extremely difficult. You're doing business here and it's quite clique-ish. It seems like something nefarious is going on, actually. [It] has truly been a huge challenge getting in the door." [#PT1]

b. One business owner described their experiences getting paid by RTC [#PT1]. For example:

- The Black American woman owner of a company stated, "One of my clients is actually doing business with the RTC. As a small business, she went through the packet that was sent over to them. We ran into a problem halfway through the packet, and when it came to submitting the documents, everything got through and everything was fantastic and fine. And then we found out later, about

when the payment was actually due, that part of the packet was incomplete and there was no notification to let us know that there was something that was not right or was missing on the application documents or the paperwork that was submitted. So, that's a barrier for people wanting to interact from a small business, because of the fact that if you run into an issue when it comes to payment, you may go onto the next week's check run or the next month's check run." [#PT1]

3. LAS's bidding and contracting processes. Interviewees shared comments about LAS's contracting and bidding processes.

a. Forty-six business owners described their experiences working with or attempting to get work with LAS [#1, #2, #5, #6, #8, #9, #10, #12, #13, #14, #15, #17, #21, #22, #25, #30, #AV, #PT1, #WT2, #WT6]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "The airport ... [has] been great. Like [our contact] said, 'I'm trying to get you as much of these business as I can to support your business,' because we've had a long relationship, because I've supported her and she supports me." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "I've had no negative experiences [with LAS or RTC]. ... In public works projects, there's like a website that's a clearinghouse for projects with all the entities in Southern Nevada, whether it be the state, city, which city, and which county, that type of thing. So, we can look on that for a list of projects that are currently bidding." [#2]
- The owner of a VBE-certified professional services company stated, "I have not [attempted to work with RTC or LAS]. I don't know where those entry points are at." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "I'd love to get in the airport, but I know in my industry [a company] has the airport completely locked down. ... I know there's no opportunities there [with LAS]." [#6]
- A representative of a VBE-certified goods and services company stated, "Again, there are really no issues working with [LAS] at all. I think it's funny that we're having this today. We actually just had a meeting with them today, this morning. And I can't say nothing but good things about them. They've been very patient with us." [#8]
- The Hispanic American owner of a goods and services company stated, "We were contacted by LAS to assist with the parking security, and they ended up going with somebody who was significantly cheaper. And with RTC, we've spoken to them multiple times and we've provided them costs and they don't move forward. So, I think that on our end we would love to be a specialty add-on and this is kind of what the housing authority did as an emergency contract. So, LAS and RTC both are having significant personnel issues as well as criminal activities on their jurisdictions. ... If we were to have a formal mutual aid agreement or an MOU, we would be able to assist in reducing that. And obviously there's a cost associated to it, but if I'm not mistaken, I think it's like \$150,000, it's the threshold of an emergency contract. That's what the housing authority did. Before we picked that contract up and before we bid for it, we were actually brought on as an emergency because of the staffing issues with their current provider. So they split the contract in maybe five or six different properties and gave them. And we took it over under the \$150,000 threshold for that time period. So when the emergency contract was coming up for renewal was the same time for the new bid.

We've already proven ourselves working with them there and we were successful, and then we built the bid for it and then were awarded the contract. So, in the cases of LAS and RTC, we are requesting to do something similar of an emergency essentially support of resources, so our officers and our team can assist on these security contracts side from the main operation as a whole." [#9]

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "If I could get work on the airport, I probably would go there too. ... I guess, just finding out ... Honestly, I know I can't do state work, because you have to have a carpenter's license. But I'd like to find out what other government agencies I can work for, with just a handyman license." [#10]
- A representative of a majority-owned professional services company stated, "I haven't heard of any complaints [when we work with LAS]. ... One of the problems is the way they do it is sort of enshrined, my understanding of what I've been told, and I haven't checked this out, that it's been enshrined in state law that for engineering services you need to be qualified. So, is there a way to tweak that definition within the qualified to have an opening for these companies and people who are seeking these opportunities to get in on a contract, taking it, looking at it more from a skill base than a fancy resumes base?" [#12]
- A representative of a majority-owned professional services company stated, "An example specifically with the airport I have, they used to do quite a few outreach events. And at one of the outreach events, they actually told me that they won't consider doing work with ... my company and one other company. They're like, 'Oh, it's you guys. No, probably not.' So, getting some history on it, having some additional conversations, we've basically been blacklisted from the airport. ... I think that if the airport looked internally at their process and selection process [it would help]." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "I go to these annual ... supplier meetings where you can meet also the host. ... They bring these big guys in, or that they're contracted with and introduce. So, I've done that for a few years. But, what else can you do? I'm not aware of other things that you can do. I mean, at the beginning, I also try to find out, okay, if they have promotional items, who does that? So, I have tried." [#14]
- A representative of a Black American-owned goods and services company stated, "So yes, I've done a few things out at the airport, but I've also been shut down for many of them. ... Yeah. And I will be very upfront. When [the former primary general contractor] was running all the construction at the airport, they were horrible. They were impossible to work with. ... And as far as I'm concerned, there's a bunch of stuff that [that GC] let go on that was in my mind a little bit of a price gouging. But that was the way that we were told we had to do stuff. And [the GC] had their favorites and their favorites got all the jobs. Now that [they are] no longer part of Harry Reid Airport, I'll be very upfront and honest and say I have not had the opportunity to bid with the new general. Not yet." [#15]
- The Black American owner of a woman-owned goods and services company stated, "I have [tried to work with RTC and LAS], but I chicken out because I'm not clear on all of what I need to have in place to even do it and I know the one thing that is my issue is that I don't know how to write a bid. ... So then having the capital to pay one of these bid writers \$1200-\$1,500 to do it and then, once I get the bid, then they want extra 10%, that part I don't know. I could use some more resources or e-mails for something for me to sign up for that lets me know when they come because once I got

acclimated and got all my certifications with the government and stuff, I did get a call from the LAS and RTC immediately. I was so shocked and excited, but then ... they asked me a few questions and then I never heard back.” [#17]

- The owner of a DBE-certified woman-owned construction company stated, "Yeah, it's pretty cut and dry. We get an RFP, we put a bid together, we do job walks, we put the bid together and we send it in. We have great relationships over at LAS. We're currently doing about 10 projects there now. So it's seasoned in how to bid over there." [#21]
- The MENA American owner of a professional services company stated, "I went to that meeting. Two individuals from the airport that are still there, and it was me and a female associate in the office that we went over there. And from the get-go, they started pointing fingers, pointing fingers. And I just kept on trying to tell them, 'Hey, give us an opportunity. Why don't you give us an opportunity? You're telling us the problem, but you don't give us the opportunity to rectify the problem.' But they just wanted to basically hold us at fault where there was really nothing to put the blame on anybody. And then I was further perplexed as why wouldn't they let me have these consultants so that they can also weigh in on this issue? So it was basically a meeting that was designed to put me on notice. So that's the airport for you. And I should mention that there has been a handful of workshops by [the] airport. I even have gone, even though I was screwed really bad. I did bite my tongue. I approached the airport staff, same individual multiple times, and I asked them to reconsider using my services. I even wrote the emails and [got] no response. No response. It's as though you have leprosy. We don't want to come near. I just don't know. Please someone, I mean, for cry out loud, someone please explain to me what happened. Why? Because they were trying to find something to put it on me, and what they put on me was ridiculous. And if I failed to perform, which absolutely that's not the case on project number two, well, then why did I continue working on project number three through completion with no issues? ... Well, I know that the airport doesn't have a selection process, okay? So, they choose whomever they want to choose. It's entirely up to the airport. ... I tried to get projects, assignments from the airport, but they wouldn't even give me any attention whatsoever, whatsoever. I spoke with different administrators over the years. I explained to them that my background, I worked on the airport. I know the airport. When they were even thinking about doing terminal three, it was given to a local firm as the prime architect. And that firm was desperate to find anyone, anyone, let alone someone with the airport experience. And when I went to interview with them, they didn't even hire me. Well, all I can tell you is because anything that has to do with architecture and design goes before these two individuals. And if these two individuals decide they don't want it, it's not going to go nowhere beyond that." [#22]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I think that Nevada is not really friendly. LAS or RTC, if you look at who's getting the majority of the contracts, they're constantly doing studies and surveys, they know what the problem is, they know it's an equity gap, it's a wealth gap, it's an access to capital gap, it's an old boy system. They know what it is, they just keep doing the same thing over and over again as an answer, that even the companies that they have doing the studies are majority companies. Accelerator companies, when they have programs for accelerators or helping, even RTC has a relationship where they're doing these trainings, you go to the training, you're spending three and four hours, you see the same people getting the same contracts. And you know the order that the money is going to flow, it's going to be Caucasian, white men, white women, and then Asians, Hispanics. And then African American men and women [are] at the bottom of the pool, and you're scraping the barrel. It's always, even with us looking at the Infrastructure Bill or the different bills

the Biden-Harris administration has put in place, when you follow the money and you see at the end of it, when it's all said and done, African-American females, you're getting less than 1%, if that. And so, it's just the constant placating what's already happening. I would say stop with the, 'I'm doing diversity, equity and inclusion now.' They dismembered that. And so now it's under the guise of, 'Oh, we're doing equity only.' So, it's always, they already know five years in advance or 10 years in advance how things are going to move and how they're going to shift, and it's really, unfortunately, about keeping those that are underrepresented to stay in that marginalized space. You want to say they should stop with the games, but it's all part of greed and it's all part of power, and to continue to keep those on top and those at the bottom. Yes, I've gone to several of the meetings that they've had, the RTC meetings, the LAS meetings, the various trainings that they've had, and made contact, sent my capability statement, what they ask, and crickets. ... Even going through the certification process, that over the years has been a very laborious process. Even the renewal process, when you see the people that's in those positions, and we know that workers are stressed out now, I will say even before COVID, but even more so now, workers are extremely stressed out." [#25]

- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "I bid one job at the airport with a prime and it was difficult. ... I've been out on a couple of job walks. [But] it's hard to navigate LAS. They just want specific things and ... they require a lot and it's hard to navigate a lot of the paperwork. Even the badging process or different things. Their processes are really long, and it takes too long to do it. You lose interest or you can't spend that much of your resources to apply for a job that's going to take forever to come to fruition." [#30]
- A representative of a Black American-owned professional services company stated, "Yes, we are working with RTC now and have worked with LAS in the past, many years ago. We've not been able to work with LAS on a public works basis for about 10 to 15 years, however. ... We've been getting projects out there to be on, but haven't qualified, because as a firm of 10 they may think we don't have the capacity. ... I truly believe that if a public entity has a project, make it mandatory for the architect to bring in smaller firms to partner with." [#AV100]
- A representative of a Middle Eastern-owned, VBE-certified professional services company stated, "Based on our experience and skills we have not had any issues working with LAS, RTC etc. Our goal is to be part of other firms and project[s] and provide our professional services." [#AV107]
- A representative of a majority-owned professional services company stated, "We had done some work for the airport and felt we were not treated honestly and fairly. We did work about 20 years ago and they said if we did well we would get more work, but they gave it to someone else." [#AV140]
- A representative of a Middle Eastern-owned professional services company stated, "We use the word constantly, and infirmly we have been experiencing difficulties with government and entities issues. We have difficulties, and in the past we have experienced Harry Reid Airport before it was McCarran International Airport; they stoned walled us after two successful projects we completed for them. ... Southern Nevada is a robust community as far as obtaining work, but unfortunately we have not been able to benefit from this current opportunity. The community does not allow someone with my background to perform. We can't even make a living right now." [#AV151]

- A representative of a Hispanic American-owned construction company stated, "We seem to have a good relationship with the airport and RTC, however, when there is a management change then it feels like a restart." [#AV156]
- A representative of a Black American woman-owned construction company stated, "With LAS, we never get the job. The small jobs are bid by both small and large companies, making it inaccessible. We have asked and tried for three years. It seems like jobs are put out as one big lump billion-dollar project, so a small company cannot bid. Make the jobs available and give them to small businesses, versus big businesses getting both." [#AV172]
- A representative of an Asian Pacific American woman-owned construction company stated, "I haven't had any issues or barriers. We've worked with RTC and LAS through their subcontractors as a supplier, and the RTC and LAS have been very nice to us. We have seen a slight downturn since the 2022 calendar year. Perhaps that's due to inflation or reduced budgets for certain agencies and project ... but that's just pure speculation on my part." [#AV189]
- A representative of a majority-owned professional services company stated, "We had issues regarding work at LAS and their prevailing wage contract. We paid our employees prevailing wage including benefits. At the end of the project, we were audited and told we owed the union for the benefits. I ended up having to pay \$15,000 out of pocket for benefits the employees didn't get." [#AV204]
- A representative of a majority-owned construction company stated, "The only time I've had problems is when I was bidding at Harry Reid International Airport, and they were limited on the information they would provide. They wanted me to bid blindly, and I turned down the proposal because I can't bid on anything blindly." [#AV211]
- A representative of a majority-owned construction company stated, "We try to stay away from the airport because of the restrictions associated with it. You have to have a yellow badge and if one guy goes to get something or goes to the bathroom, then everyone has to get something or go to the bathroom." [#AV253]
- A representative of a majority-owned construction company stated, "We work for the Nevada test site and at the airport. I haven't heard anything good, bad or indifferent." [#AV26]
- A representative of a majority-owned construction company stated, "Our main focus, however, is the development, leasing, and selling of private aircraft hangars. We've had a long relationship with the LAS in that capacity." [#AV33]
- A representative of a Black American woman-owned professional services company stated, "RTC and LAS spend a lot of money on surveys. They contract a lot with majority[-owned] companies on surveys and studies. All of it is a dog and pony show. They've been doing it for years. They give the same contracts to the same Caucasian men and women." [#AV36]
- A representative of a majority-owned professional services company stated, "We have worked with [the] airport in the past. There is a lot of work to be done. ... I stopped working [at] the airport because they said it is waste of our time. People do not want to work for the airport. They make it very difficult to work for them. I don't understand why there is a lot of red tape and the application." [#AV59]

- A representative of a Hispanic American-owned construction company stated, "Every time I get a proposal with the LAS and RTC, they never acknowledge my proposal or call me to say that they received my proposal." [#AV61]
- A representative of a majority-owned professional services company stated, "We love working with LAS and RTC. I honestly can say, we are truly blessed, we love the marketplace, it is very good for our industry." [#AV69]
- A representative of a majority-owned goods and services company stated, "We have worked in the past and currently work with LAS and RTC. No difficulties." [#AV76]
- A representative of a Hispanic American-owned construction company stated, "The last contract we bid on at LAS was given to another company that didn't meet the parameters of the RFP. They didn't have enough employees. They are still working for LAS. They don't appear to be performing the job. It seems that there is favoritism at LAS and RTC. People that don't perform get contracts and it is ok that they don't perform." [#AV78]
- The Black American woman owner of a company stated, "We've never interacted with LAS. I've had other people who've tried to get into the airport as a minority-owned business, and we don't know any minority-owned businesses that have gotten in. So, almost nobody even bothers applying with LAS anymore." [#PT1]
- The owner of a WBE-, DBE-, and MBE-certified construction company stated, "My experiences with LAS ... I've done a couple of interviews and it's damn near impossible to get in there. All of them are the same woman-owned companies that aren't even license holders for the companies or different things. And, it's the same people over and over. You sit down to meet with them. I did get in and a couple interviews and they're like, 'What's your experience here at the airport?' Well, none. I'm trying to get in here, so then I don't get hired. So, that seems to be their problem. And, it's like they want you to have experience, but you don't have experience, but you can't get in. And then, you see, literally everyone does. I see the same damn woman-owned company go in there doing construction project after construction project." [#PT1]
- The non-Hispanic white owner of an ESB-certified goods and services company stated, "I use to speak to somebody at the airport at a networking event such as this, and they're just playing lip service to what we're doing." [#PT1]
- A participant in a public meeting stated, "[LAS is] very difficult and really it comes down to the prime. I would think it comes down to the prime on that one. They have their niche of contractors, where I get so frustrated with the airport, and this is absolutely something I hope you guys address. I am right down the street. My employees live in Henderson, North Las Vegas, Las Vegas, Clark County. Those are my guys. They've been with me 15 years. And, I'm bidding on a project at the airport and the guy from California gets it, and they bring their guys in from California. How does that help our community? I'm like, 'They shipped guys in from my competitor and put them up at the Holiday Inn.' And I'm like, 'Really?' That's super difficult to me to know that I'm a local DBE. I'm capable of doing the work. I'm on time, on schedule. I'm accountable. I'm there. And, they send it to an out-of-state contractor, an out-of-state DBE. We're here. We should be taking care of each other." [#PT1]
- A participant in a public meeting stated, "There currently is no one who they can call and ask questions to that's widely known that, at least the RTC that is encouraging people to reach out to.

So, we hear about the RiSE Program. We see that there is a new initiative to get more riders, outfitting the buses with Wi-Fi and all of these things. We see those forward-facing things. But when it comes to what businesses that are trying to support the community are looking for, they're running into huge walls when it comes to being able to do that. And then, the same thing when it comes to people who are trying to actually offer employment opportunities. The airport is one of the big places that's in town. Everybody knew McCarran, now Harry Reid. But, for a small business to try to get in to Harry Reid to be able to offer services that are actually going to help to support our community, it's like a ghost town." [#PT1]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "I learned that LAS does not have similar procurement processes for professional services. This indicates that there are inconsistent procurement policies at LAS, which do not support DBE/MBE certified professional services firms such as ours." [#WT2]
- A representative of an ESB-certified professional services company stated, "Yes & yes, [we experienced discrimination with] LAS. Our firm worked successfully on a number of projects at LAS a few years. We completed several successful projects that speak for themselves. It is very easy for the local entities to blame us because we are defenseless. For some reason, our small firm was blamed for some minor issues that were blown out of proportion and provided an opportunity to get my firm unfairly booted out by LAS newly appointed management team. It was really sad and disappointing for me to see how we got stepped on and completely marginalized." [#WT6]

b. Two business representatives described their experiences getting paid by LAS [#12, #13]. For example:

- A representative of a majority-owned professional services company stated, "As far as I know, the couple projects we worked for LAS, [delayed payment] was not a problem." [#12]
- A representative of a majority-owned professional services company stated, "Well, I'll say the airport specifically [is difficult to work with]. And I have one that's currently pending if they're going to pay us for the work that we've already done. And I have to figure out how we're going to approach that because how we approach it will be dependent on how things bear [out] in the future." [#13]

5. Bidding and contracting recommendations. Thirty-seven business owners shared recommendations as to how LAS, RTC, or other public agencies could improve their contract notification, bid process, or contract administration practices [#1, #2, #4, #6, #10, #11, #12, #14, #15, #16, #18, #20, #21, #22, #26, #27, #29, #AV, #PT2, #WT1, #WT4, #WT5]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Just put the bids out so everybody else could see it. Like the city does, they send it out to everybody. And the top three that bids on it are the ones who go onto whoever the first person who win the bid gets the bid. But you know who they are. Just put the bids out so everybody else could do it, no matter what the job is. Give us all the opportunity to bid on the job." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "Maybe this is for both parties, whether it be the general, the sub or the owner, is better communication." [#2]

- The white woman owner of a goods and services company stated, "Well, the first thing I need to do is get help becoming certified. That's the first thing. The second thing would be, I do get emails from a company, a prime [construction firm]. So they use some kind of bidding software. So, I would definitely need help learning about the software and how to use it [in order to get involved in the bidding and contracting process]. ... Just to get certified [would make it easier to work with RTC or LAS]." [#4]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "It all depends on how you word it, you know what I'm saying? You can word together, 'repair drywall and paint,' or, 'repair drywall texture and paint.' Or you can do it separate, 'repair drywall,' and then, you go to the next line, 'texture,' 'repair,' go to the next line, 'paint.' And it actually gives you a higher price if you do it separately. Yeah, if there was more grants that we could apply for, that would help us do that. Or maybe even the classes could be free to the low-income small businesses, women-owned business. I think I would need someone to help me with [contract administration]." [#10]
- A representative of a Hispanic American-owned construction company stated, "I wish that they would be able to expedite. That's why you have contractual obligations and you kind of set them up. But a lot of times, I just feel that when you're dealing with this kind of project, they're always looking as to how can we not pay or hold payment rather than how do I make it simpler and not evaluating or considering that, hey, you holding payment or making it more difficult create challenges to the other party. I feel that normally that's not seen or considered, but if it's a government project they have normally a lot that goes into the contractual obligations for that area." [#11]
- A representative of a majority-owned professional services company stated, "I really think they need to look at the qualification criteria and look more from a skill-based than a project-based. Because in the end, it's all engineering. Engineering doesn't change if you're doing any of that for somebody or somebody else. It's the same fundamentals. It's the same science that backs it no matter who you do it for. So, if you're looking for, 'Well, did so-and-so work on a similar roadway projects and whatnot,' of course that's the excuse of people who've been working on it for 20 years. And that makes people who are trying to break in much more difficult. Or what they have to do is they have to go and spend money upfront to bring in staff in the hopes that one day they'll get something. ... One of the problems is the way they do it is sort of enshrined, my understanding of what I've been told, and I haven't checked this out, that it's been enshrined in state law that for engineering services you need to be qualified. So, is there a way to tweak that definition within the qualified to have an opening for these companies and people who are seeking these opportunities to get in on a contract, taking it, looking at it more from a skill base than a fancy resumes base? ... I would say more toward RTC because I feel that LAS work that we are looking at is more toward the standard land development public works stuff that we do now, is that LAS will ask for an architect to propose a proposal and then we'll get subcontracted out. Meanwhile, the RTC work would be more that we have to stand on our own merits." [#12]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "I think it would be helpful for these purchasing departments to maybe sometimes have a more open type of approach and invite smaller or diversified suppliers in that, even though maybe they have not tried out. ... Well, if they want, they can process the invoices sooner. For example, David [Eclips] sent out e-mails almost daily to the entire group that he has, a distribution list. And a

lot of times there's also jobs that he sends out about, jobs that are at the airport. It would totally be helpful if there would be something like that, a simple e-mail saying, 'Here this is purchasing ... Is looking right now for that.' I mean, it's nothing rocket science, but that could be done as well. It's the same thing, same e-mail, but postings about jobs at the airport. But, what about the opportunities?" [#14]

- A representative of a Black American-owned goods and services company stated, "I think that if a job needs to be bonded and it needs to go through an individual company that RTC and some of these bigger companies that are financially sound should be able to back those smaller companies that they've chosen to do the work. ... And I'm not saying as a hundred percent but do it as a co-op. Allow these smaller companies to be able to get the bonding and what they need to move forward. I mean, it doesn't make sense that if you want pricing to be competitive in Vegas when it comes to, and I can only point to electrical, I'm not going to talk about construction. But if you want to get out of the same electrical companies bidding on the same work and having the higher prices, then the only thing you can do is to offer to help out smaller companies so that way they can be more competitive in the situation. ... I believe they have a bid depository or something that you can already go look at them individually. But the hard part about that is, when we're talking about this, I think that the overall competition within the scope of work that we're talking about, the problem is RTC and these guys, they are not a big enough piece for us as even some of the smaller companies to really hang our hat on and say we don't need some of the other jobs, because we do." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yeah. Basically, for LAS, I can say, in my engineering side of it, there are not that many opportunities at the airport for these service categories. They do engineering projects, but they are not small-size projects, sometimes. They did some presentation in February for small and diverse business, and there was no category in their procurement process for professional services. There were only three categories they talked about was, construction, goods, and non-professional services. And so, I inquire them about why there is no category, so they don't have any policies put together for professional services. So, I have been pursuing for a long time with the airport to give us any opportunities, and we haven't received any single opportunity. Yeah. Another recommendation is, basically, they should implement ... small and diverse business procurement policies. ... They all follow NRS [Nevada Revised Statutes] 332, 333, and 338 for their procurement. And this NRS doesn't have those small and diverse business procurement policies. Still, we don't have any changes in that. Agencies can't do anything. ... If they put some diverse business participation goal in these RFPs or RFQs when they issue, then they will put attention to these small businesses or diverse businesses. That's the way to go and implement all those diverse business utilization plans with some goals in it. ... There are challenges as there are no opportunities [for] small or micro businesses in our engineering services category or professional services category. ... My suggestion is, they should do this informal procurement based on less than \$100,000 and provide some opportunities. ... Basically, if they put some goals in their RFPs or bids for any diverse business goals, that would help. So then, prime will start looking at those. But the thing is, I know, for them, they go by the NRS 332 and 338, and those NRS doesn't have any requirements. So, till we have any changes and the airport suggests those recommendations to our legislatures, till then, we can't see any opportunities at the airport. ... LAS has so many opportunities for engineering projects. And basically, we don't see their projects get posted anywhere on NGEM or any other [place]. ... Specifically, engineering related. So, we would like to see those. So, that's one thing, and they should consider that professional services category in their procurement. ... Contract value for

\$50,000 to \$100,000, they do informal bid process, minimum three return quotes, one from DBE. And contract value for \$100,000, they do formal competitive bidding process. ... This is for professional services, too. That's my recommendation, to give opportunities for small and micro businesses. ... I don't know if RTC has any of this kind of contract arrangement, based on this contract value for small and micro businesses, so I will suggest the same thing. They should provide goods and services, like professional services, non-professional services, provide the contract based on this contract value, so there will be opportunities for small and micro businesses." [#16]

- The Black American owner of a DBE-certified professional services company stated, "And then for the number of proposals that we put out, can we make sure we get a better return rate for how many we win? I think those are the biggest things, is just making sure we have steady flow coming in. Insurance is what it's going to cost based on the supply and demand and market variables. There's nothing I don't think any one agency could do to deal with the market right now, but I do think we can give our people more opportunities to win work that way. If they're bringing more money in, then it's not as big a deal to pay these high insurance costs. Yeah, and I keep going back to the same thing, but it covers everything. I would say just encourage them to work more with DBEs, and have other agencies standardizes. It's not just one or two groups. It'd be nice if Clark County Public Works was doing the same thing, the City of Las Vegas was doing the same thing, and NDOT, RTC. Somehow, it'd be nice if we can standardize the incentive for companies looking to work with diverse groups." [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Definitely electronic payments are the way of now in the future. I would hope every government agency [starts doing that]. ... LAS and RTC could only maybe publish a list of available people or companies that do that bond for the type of work that they're looking for. I want to be able to work at LAS and RTC, it just needs to be, for me, again, as a small business owner, for me to pull out an hour or two of my day or schedule that, it's got to be something I see that is beneficial to me and I understand it has to be beneficial to the agency. It's got to make sense for both of us. But it has to be lumped in a room with store owners and people that are not. And the information is just very generic. It's really good for me to come back a second or third time because that time is so valuable for me." [#20]
- The owner of a DBE-certified, woman-owned construction company stated, "Yes, so if it's a project, like this project is a public project and they could have ordered these pieces of equipment last year because they already know that they had a bid, they were going to put out an RFP for it. So, they could have had the order in and they would have to also pay the pay for the equipment. And that's why they don't do it, I believe. But if they did order all the equipment that they're looking to do to remodel or whatever it is that they're doing, that would be a big, huge asset." [#21]
- The MENA American owner of a professional services company stated, "Something that pops in my head is that I think that a debriefing of the people that are in the decision-making roles and also the ones that apply themselves, the minorities, a debriefing maybe of some value. And find out like, 'So, you decided not to hire company or firm A, B, C. What was the reason for it?' And then there's same question from the minority firms. ... Well, the only thing I can say is that all the design professionals that are to perform for public entities are required to carry errors and omissions. We call it E and O. Depending on the agency, it could be \$1 million, \$2 million, \$5 million or more. And all these firms are owned and operated by design professionals, people with licenses. These firms are liable for the work they do, and I think this is one way to control their projects, is to hold individuals with the firms liable and try not to come up with stuff that would unfairly prevent a clear and free

participation in the process for small firms or minority-owned firms. Well, in order to further simplify this, I would suggest having an appeal process incorporated into the selection process. And it should be not just for dog and pony purposes, it should be a real appeal process. In other words, they should announce the preliminary selection list and then allow firms that they feel like they have not been fairly accounted for to have their voices heard before they publish the panel list. I mean, if you want to put some teeth into the contracts and the laws, I think that's the only way you can enforce [timely payment]. I mean, figure out a way to take individual and personal decisions out of the process." [#22]

- The non-Hispanic white male owner of a VBE-certified construction company stated, "If they don't have it, they need to establish it. It would be just a general, maybe a person or an office dedicated to vetting subcontractors for the projects that they have. If we had that information like that business card, that would be great, because I'd like to give my information to them and get on their list." [#26]
- The LGBTQ+ owner of a goods and services company stated, "If you consider our business, the solution to every problem is more revenue. So, if you're choosing a small disadvantaged business like my own or something like mine, just the selection is helpful. Just getting past the good old boys network of [a local oil company] owning all the work, that's helpful. More revenue solves every problem. Our conversation today is not going to change the taxes levied on my industry by any stretch, but giving me the opportunity, makes it possible for me to adhere to all of that. Feedback would be incredibly helpful in the bidding process because, as I have to go figure everything out for myself, if I don't know the result, if I don't know where I went wrong, if I don't know if I was too expensive, or just not experienced enough, or I didn't do something right on my application, I could do it again the next time, and maybe have a better opportunity of being seen in the way that they want me to present. I would recommend if it's a disadvantaged business to pay some form of late fee or interest if RTC or some government entity goes past 30 days. That's very difficult for any fuel company who has to pay in 10 days or less to float a government entity for so long. So that would be my recommendation for disadvantaged small businesses, but I'm sure that they have it figured out with [a local oil company] who gets more than 50% of the work." [#27]
- The Asian Pacific American owner of a construction company stated, "Yeah, I guess as a public facing entity, you have to really set good guidelines and set good expectations on when payments are going to be due. I don't know what it's like competing in public sector jobs and performing on those bids and whatnot, but if they say that they're going to pay it, then they should pay it. ... I think that's all we really need." [#29]
- A participant in a public meeting stated, "A couple comments. So, one was if in the future they can include details about the diversity inclusion requirement or goal in the RFP, because she had an experience where it was not listed and she submitted three questions, that being one of them, what was the goal or requirement? And two of her three questions were answered, but the other question wasn't answered until weeks later. So, her comment was just about getting that information clearly defined in the RFP process as well as timely responses to inquiries. ... LAS and RTC could both consider doing what Clark County does, after contractors are awarded, they announce the awardees on Clark County's website. And she asked if that would be something that the airport and RTC would be considering doing, listing the top three lowest bids, so that contractors can review that information and approach their follow-up actions based on being able to see what they missed or where they may have been too high or too low." [#PT2]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Currently, there is a lack of transparency in the procurement process of government agencies in Southern Nevada. These agencies should publish monthly or quarterly data showing the utilization of diverse small businesses in their procurement process. Opportunities for small businesses at LAS are limited. To address this, LAS or RTC should provide direct procurement opportunities for small diverse businesses." [#WT1]
- A representative of a DBE-, WBE-, and SBE-certified construction company stated, "Joint checks for the small businesses when the primes get paid. Ask for sub pay applications to ensure that all items on [a] contract are billed and paid in a timely manner." [#WT4]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "Currently there is no transparency by any government agencies in Southern Nevada. The government agencies in Nevada shall publish a quarterly data showing utilization of diverse small businesses in their procurement." [#WT5]
- A representative of a Hispanic American-owned goods and services company stated, "Barrier: 5 % bid in construction but not in any other type of services janitorial, pest control, etc. You don't get that local bidders preference. More opportunities should be set aside for minority companies based on size or demographics." [#AV24]
- A representative of a majority-owned construction company stated, "We would like to be notified of possible projects to bid on them." [#AV48]
- A representative of a Native American woman-owned construction company stated, "No barriers per se, we have been a good customer of RTC and have done quite a bit of work at Harry Reid. We haven't kept up on paperwork, as it is cumbersome and actually outweighs doing the work. If they'd streamline and make the paperwork easier to process, we'd do more work there. We bid work as it comes and advertise on the internet. We don't advertise in periodical and get work through word-of-mouth, people who have heard good things about us. Nevada is a right work state, so it's tougher to win a bid in this valley. Dog-eat-dog applies here." [#AV90]
- A representative of a majority-owned construction company stated, "We're fine, but some of the smaller companies have a hard time contacting people in different positions in the government. It would be nice if there were a list of people to contact for government projects. Some of us can spend days, hours, and weeks ... If Clark County and/or the City could put out a bulletin about upcoming projects, that would be helpful." [#AV97]
- A representative of an LGBTBE-certified, woman-owned professional services company stated, "It helps more with RFPs. I don't have a staff to help me write RFPs. So, a little more attention on behalf of the government to young, small businesses would be nice. Writing RFPs is the hardest challenge, as well as the grading process. We're just as qualified as the bigger firms, but, as a small business, I can't spend 50 hours a week on a proposal. We've actually been over-successful for the last few years, and the economy has been booming. It's material and labor force ... there are not enough subs out there with qualified people, whether it's union or prevailing wage jobs. And material delays are going from eight weeks to 16 weeks. Scheduling is not a problem, however." [#AV191]

G. Potential Barriers to Business Success

Business owners and managers discussed a variety of barriers to business development. Part G 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. Payment issues;
17. Size of contracts;
18. Bookkeeping, estimating, and other technical skills;
19. Networking;
20. Electronic bidding and online registration with public agencies;
21. Formal complaint and grievance procedures;
22. Size of firm;
23. Obtaining the first contract;
24. Finding potential project partners; and
25. Other comments about marketplace barriers and discrimination.

1. Obtaining financing. Fifteen interviewees discussed their perspectives on obtaining financing [#1, #7, #9, #10, #17, #18, #20, #22, #25, #26, #27, #28, #30, #AV]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "You always want to have funding. You always want to have more money to take on bigger jobs. And that still is my problem now. Even though my tax return is good, my credit scores are good, I have

money in the bank, I still find it hard. And I'll put it this way, I find it hard for minority[-owned] business to get funded, because I know of other printers who walk in the bank and can get a credit for \$250,000. And I do everything they've told me to do. ... I even went to the SBA asking for funding, and they came back and said, 'Well, we can't give you funding because there could be another recession and you might not be able to pay us back.' ... That's why I'm disheartened, that part of getting funding, and I can't grow as big as I want because nobody will give the funding. Even though you've done everything they say to do, they come up with these feeble excuses that, in the end, I just leave it alone. ... I've done everything I was told to do, but I still can't get the funding. And they give me ridiculous reasons why I don't qualify. But yet, I know of printers who could walk in and just get money right away who don't look like me. That's the part that really hurts me. So, that's been a struggle for me" [#1]

- The owner of an SBE-certified, woman-owned construction company stated, "Keeping that same crews under our employment, because once you get employees that have been working for you, and you can count on them and they know what they're doing and they work well with your superintendent and things like that, you want to keep them employed so they don't go work somewhere else. So, you[ve] got to keep the work coming in. And that is a challenge when I'm so limited on what I can bid on. ... We had a road job in the middle of an intersection, so it had to be night work. We had three people on the crew. They showed up at 9:00 PM. They were working for three hours. They got shut down by the inspector. Something about permits, and it wasn't us, it was the state permit. ... So you got to pay these employees several hours of getting pretty much [getting] nothing done. So, the second night they go out there at nine o'clock, same thing happened. This happened for three nights. We had to absorb all this cost and risk just because of a permitting thing, and it wasn't even our deal. So, for a small business, it's things like that that just, they're hard to absorb it. It's really hard to absorb. ... The certified payroll, ... it is an ordeal and it keeps [one of our employees] busy two days a week. Two days a week for union and certified payroll. [In addition,] you have to have apprentice on the site if you have more than three employees on the same trade. And if you don't and it gets reported on certified payroll that you don't have an apprentice out there, then you can get fined and it's huge. It's like \$5,000 or something. So that, again, for a small business that is just killer because if you don't have an apprentice available, you have to get paperwork and the paperwork has to go through the union, and then it has to come out and you have to get the city to sign, or whoever the client is. ... It's just a stumbling block to production." [#7]
- The Hispanic American owner of a goods and services company stated, "Capital and personnel. ... We are at the whim of the clients paying. So at the beginning of the business, we would start invoicing at a 30-day net, so we would do 30 days' worth of work and invoice them and then have another 30 days. So essentially we just did 60 days of work without getting paid if they paid on time. So, a lot of the time they won't pay on time and we had to restructure our invoicing to get capital, because we would've to float payroll essentially for those, I don't know four or five payrolls. ... In the current climate, obtaining financial assistance ... nobody's doing it. We were able to get the SBA assistance, the loan for PPP. ... Even though we're profitable on paper, the banks don't want to assist us. And then when we contact SBA for other things, it's kind of [like] we're just thrown to the wayside. We don't get any assistance from them. And then the other aspect, a significant burden is insurance. ... We pay outrageous amounts of insurance money, and I can't reinvest that back to the employees, the team, the business. So, it's challenging that every year, even though you don't have incidents or things are being closed out, everyone just piles on increases and increases and

increases and you can't provide the same increases to your partners and the clients that you have if something were to occur, right?" [#9]

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "Yeah, the funds. Because one of the problems with being a sub is that you don't get paid till they get paid. ... I had a loan from the SBA that I needed to pay back, and I haven't been able to. Because this guy took so long to pay me, and is [still] taking so long to pay me, it's stopping me from having the funds to do other jobs. I've had to borrow money from my aunt, so that I can keep on doing some small ones, at least. But I haven't been able to bid any big ones, because it took so long for him to pay me part of it. Like I said, he still owes me money." [#10]
- The Black American owner of a woman-owned goods and services company stated, "Okay, I'm going to answer it like this. I am clear on where to go [for inventory and supplies], but the capital is the barrier." [#17]
- The MENA American owner of a professional services company stated, "I think the big hurdle is the financial assistance." [#22]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "When the State of Nevada has given grant money, ... you can't even get the grant money until you put out money. So, they had a grant where they were giving small businesses \$75,000, but they were controlling the \$75,000, and they would give it out in spoonfuls. So, you would have to go buy a computer, which you don't have the influx of capital anyway to buy the computer. ... The real answer, it's really the infusion of cash. I can tell you as a media company, for the last seven years, I've interviewed the most successful Black entrepreneurs across the globe, and it's the same problem, access to capital. And they have amazing ideas, but you're undercapitalized and they know it, and that's the problem. ... Well, you're not given the capital because ... you don't have enough contracts. So, you can't get the contracts because you don't have the money to get more contracts. ... I don't have someone ... that I can say, 'Give me \$25,000 or \$100,000 or \$1 million that I can start this business.' You see it every day with VCs [venture capitalists], they just have an idea, but they know someone that knows someone, they're in that circle. So, you're not in that circle, and you don't have access to capital, you don't have access to influence. And a case in point, during the pandemic there were a group of people that had gone through [an investment bank] one of their cohorts. And so, what happened was they were talking amongst themselves about problems they were having getting the PPP loans or the EIDL [Economic Injury Disaster Loans] loans. Well, [the investment bank] picks up the phone and tells this bank, 'Anyone that calls you, you give them that money.' We don't have access to that. ... I would say the infusion of access to capital and contracts [present the most barriers for us]. Yeah, so in terms of looking at having to do, if you're doing traditional financing, I think the biggest thing is you have to do more creative financing, not going to the major banks. And if in fact you are going after any type of grant monies that they're having available, some of the challenges they want you to ... [meet] their requirements in terms of the threshold for the income amount that you're making ... annually, as well as having full-time employees. Meeting those requirements can be a barrier also." [#25]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "I had to learn the hard way, save budget and keep a nice, steady flow of income, and not spend all the money on one project. That's why I don't bid on high-profile projects. To get business financing, you have to have somebody who's giving you business credit. Well, in order to get business credit, I have to have a history of business financing. So, it's a circular argument there. How do you get credit if

nobody's going to give you credit, but you need credit to get credit? Even personal finances. There need to be more opportunities for small businesses to get that from lenders. Whether it's \$1,000 or \$10,000, just give an opportunity for new businesses to prove their business credit worthiness. Now they look at your personal credit report. ... My credit report now is good, but it wasn't ever good. Long story short, I couldn't get business financing because of having bad personal credit. There just needs to be more opportunity there for small businesses, I think." [#26]

- The LGBTQ+ owner of a goods and services company stated, "Some banks, some insurance companies, won't work with petroleum companies regardless of size, regardless of disadvantage[d enterprise status], regardless of anything." [#27]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "And as a small business owner, three months ago, I had damn near a perfect credit score. And then, today, my credit score tanked by 200 points because ... the cash cycle of my business doesn't have enough in working capital or business line of credit, so then I'm pulling my own funds or putting it on my personal credit cards. My utilization goes up, my credit score goes down. And it's these continuous cycles that are difficult. And then, right now, we're trying to get an SBA loan to buy a building as opposed to what I deemed wasting \$7,000 a month on rent. But that proves difficult, too. So, I would say, to really make that leap from a mom-and-pop-type entity to more of a corporate growth structure, I would say the number one impediment would be the capital to weather the storms when business gets a little tight or slow or when business is great and, 'Oh, my gosh. I got to shell out a lot of cash here.'" [#28]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "Finance [is the biggest barrier]. Construction is expensive. ... I have personal barriers. It's hard for me to get financing at all as a woman in construction. ... Even with doubling my annual sales every year over the last five years, even with all of that, there is just a lack of capital, finance, equipment; all of the access is very limited for women." [#30]
- A representative of a Black American-owned construction company stated, "Having the money to take on bigger jobs is a barrier. Financing is a problem sometimes." [#AV151]
- A representative of a Native American-owned goods and services company stated, "The taxes are a bit high, especially for small businesses like mine." [#AV82]

2. Bonding. Public agencies in Clark County 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. Six interviewees discussed their perspectives on bonding [#10, #11, #15, #20, #24, #30]. For example:

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I've always been able to get bonding and insurance." [#10]
- A representative of a Hispanic American-owned construction company stated, "For us, it's been a challenge just to get bonding and as a U.S. startup company with a big project. ... We're still going to go through that process, to the extent that there's any potential things that I should consider, I'd be willing to get feedback on that, but the bonding side for a mega project, it's a big barrier to entry." [#11]

- A representative of a Black American-owned goods and services company stated, "Bonding and insurance, I did have [challenges]. Years ago, I did have a very big issue with that for a job that we were trying to do. And I wound up having to put my house on the line for it." [#15]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Bonding was a major hurdle. The bonding [is a challenge]. ... Realizing, hey, our biggest job was a \$800,000 job. So, the most they're probably going to bond us for is probably like \$1.5 million, maybe \$2 million. So now in order to get to any further amount, I need to try to figure out somewhere in the space of the next 12 months, I need to get a job at \$850,000 or \$900,000, complete it, prove that I've completed it. That way they could bond me for hire. So, it's a delicate matching game. What I've completed versus what I need to go out and complete and do in order to get bonding, in order to grow." [#20]
- The owner of a SDVOSB-certified construction company stated, "So that's the sweet spot, and that's only limited by bonding. So if a project is going to require bonding, then my bonding capacity right now is about \$1 million, \$1.5 million. So that's what limits me on what I can bid and not bid. If they don't require any bonding, I'm good with looking at something that's \$3 million to \$5 million. ... Well, the catch-22 with bonding is that most companies have to build your bonding capacity up. You might start with \$100,000 or whatever, and you can do a few projects that are \$100,000 and you successfully do those projects and contracts, and they'll bump you up to you \$200,000 or \$500,000. And you keep growing your bonding capacity by proving yourself, by doing those projects, if that makes sense to you. So that's why I say majority of the work that I've done, the biggest projects have all been around \$1 million give or take \$400,000 or \$500,000 either way. So that's why my bonding capacity is what it is, they base it from the companies that I'm using, they base it all on your past performance and what have you done. 'Well, how many projects have you done for a million? Well, you've done three. Hey, we're going to bump you up now. You need a \$1.5 million or \$2 million, we'll do that.' So that's kind of the barrier when it comes to bonding." [#24]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "Have you ever seen anything about bonding? That is the worst crap in the world, and I even took a class. ... It is insane the stuff with the barriers to bonding, and this and that, and trying to learn about it, and finding someone who even knows how to do bonds right or lend for the construction industry. ... The information is not there. It's very hard to find." [#30]

3. Insurance. Fifteen business owners and managers discussed their perspectives on insurance requirements and obtaining insurance [#3, #6, #7, #9, #10, #13, #15, #18, #27, #28, #AV]. For example:

- The owner of a majority-owned goods and services company stated, "Insurance companies seem like they don't want to completely cover cell phone stores anymore, and that has been a thing." [#3]
- The Hispanic American owner of an MBE-certified professional services company stated, "Never had any problem getting insurance. We're dealing with a large local agency and they've always been very good to us." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "The insurance is killer. It is just killer for a small business because we have to carry the umbrella. And for example, one of our projects, we had to bore a tunnel under the railroad. Well, if just coming within a hundred feet of the right of way, not even the actual rail, but the right of way width. If you're a hundred feet away from that, you can't have crews in that area. You have to have this railroad

insurance. So, the railroad insurance is \$6 million coverage. It's substantial. And so we were able to, and because it was [a large prime contractor], they worked with us and they were able to allow us to put that fee into our bid." [#7]

- The Hispanic American owner of a goods and services company stated, "[A] significant burden is insurance. ... We pay outrageous amounts of insurance money, and I can't reinvest that back to the employees, the team, the business. So, it's challenging that every year, even though you don't have incidents or things are being closed out, everyone just piles on increases and increases and increases and you can't provide the same increases to your partners and the clients that you have if something were to occur, right? ... Actually, some of the contract[s] that we have for the Housing Authority, that actually significantly increases our insurance costs because it's low-income housing. So that actually was never accounted for in the original ... discussions and proposals, because it was never proposed. So, we didn't know that [because] we were a new company [and] it wasn't explained correctly. And then we have after the fact when we come from renewals and the carrier discovers, or if we have to switch carriers and they discover you do low-income housing. Even though Southern Nevada is completely not on the radar in low-income housing incidents like, for instance Chicago or Oakland, we still pay those type of prices because of the industry. And I wholeheartedly believe that is a bias. ... I think it deals with racial issues. And it is a form of discrimination that these areas we have to pay for. I think that everyone deserve[s] a safe environment. So why are you making it so difficult for us to be able to provide safety and security operations by charging us an arm and a leg? We couldn't even barely afford doing operations at one point because of insurance, only because you have higher percentage of African Americans or higher percentage of Hispanics. And there's no crime statistics to back up that kind of stuff. So that played a huge role and I really think that that should be taken a look at legislatively." [#9]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "No. I've always been able to get bonding and insurance." [#10]
- A representative of a majority-owned professional services company stated, "As far as insurance, public work often has higher limits and requirements in the public sector. A lot of public sector [work] doesn't even ask if we have insurance, which we do. But some we've had to increase for certain public works, public projects." [#13]
- A representative of a Black American-owned goods and services company stated, "Bonding and insurance, I did have [challenges]. Years ago, I did have a very big issue with that for a job that we were trying to do. And I wound up having to put my house on the line for it." [#15]
- The Black American owner of a DBE-certified professional services company stated, "Yeah, it's expensive [to gain bonding or insurance]. It adds to the cost. There was one time where we were going to upgrade. We were looking at upgrading our insurance, because another engineering firm wanted us to do work with them, but the insurance requirements was double what we had. I think we had \$1 million of coverage, and they were saying that if we can up that to \$2 million that they would guarantee us some work, but when I received the quote for the \$2 million, it was ... almost triple what I was paying." [#18]
- The LGBTQ+ owner of a goods and services company stated, "Yeah, we went through a multi-year process to get hazmat commercial auto insurance. And then at the same time, we also had banks close us out because some banks won't do business with petroleum companies, namely, ... [banks]

that have made a commitment to net-zero. That typically means, 'Oh, we don't do business with petroleum companies.' That's me." [#27]

- The Asian Pacific American owner of an MBE-certified goods and services company stated, "The insurances that we carry, business liability, umbrella work comp[ensation], things of that nature, when we go into the public sector, the requirements are quite higher. So, in order to bid on one of the university, the public education sector, I think it was a \$3,000 increase in my annual premium, but I had to do it, otherwise I couldn't put the bid in. And then, I didn't get it, so then I dropped it back down. And then, there was another project recently where they required a surety bond in order to even bid, but the a surety bond was cost-prohibitive. So, we ended up not even putting a bid in because we thought the chances of getting it were slim. So why fork out that money to do it?" [#28]
- A representative of a Hispanic American-, woman-owned construction company stated, "We've gotten RFPs from the State of Nevada, and they're oftentimes very time-consuming to read, sometimes difficult to understand, and specifically the insurance requirements are very large, sometimes astronomical to a smaller business." [#AV270]
- A representative of a Hispanic American woman-owned construction company stated, "I believe that the requirements of the insurances restrict with some of the jobs." [#AV42]
- A representative of a majority-owned construction company stated, "I tried to do some work for LAS, but I didn't have the insurance requirements needed. I've since increased the size of our insurance policy." [#AV46]
- A representative of a majority-owned goods and services company stated, "Their insurance requirements are too high. General liability for CCSD [Clark County School District] was \$5 million of general liability insurance. I couldn't afford it for the amount of work I was going to get. I only have \$1 million in general liability insurance." [#AV6]
- A representative of a majority-owned goods and services company stated, "The few times we haven't qualified is for not having enough umbrella insurance. We would like to have more opportunities to be part of the bids taking into account that some small businesses may not have enough of the insurance coverage required." [#AV72]

4. Factors public agencies consider to award contracts. One business manager discussed their perspective on the factors public agencies consider when awarding contracts and discussed barriers these factors may present for their firm [#AV]. For example:

- A representative of a woman-owned professional services company stated, "The biggest issue is that public entities look at employee count when we try to get work with them and that becomes a judgement on how much work we can handle. But it's not a problem for our business at all, as we have extra employees to whom we can reach out if, for example, we need more drafters. We can expand our employee base as needed per project. We're also DBE-certified. We approach projects with a return-on-investment approach. So, we always try to get the most return for our clients in terms of whatever their construction budget might be." [#AV161]

5. Personnel and labor. Thirty-eight business owners and managers discussed how challenges associated with finding and retaining qualified personnel and labor can be a barrier to business

development [#2, #3, #4, #5, #6, #8, #9, #10, #11, #12, #13, #16, #17, #19, #20, #22, #23, #24, #26, #28, #30, #AV, #WT3]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "It is just a challenge at times to find qualified people who would show up every day. Well, I guess there's the rudimentary skills of, say, a specific equipment operator and what that skill set, or their interpretation of what that skillset is, versus the practical application of it. Sometimes there's a difference between what that is. For example, if you're digging for a waterline around live electric and or live gas lines, it takes quite a skillful operator to do that. If a person is a journeyman and comes out and they primarily worked in a big pit, just loading trucks with raw material, they may be a qualified operator, but they don't have a skillset to dig around live utility lines." [#2]
- The owner of a majority-owned goods and services company stated, "We do get a lot of applicants here, so I will admit there probably is maybe an oversaturation of the stores. I know a lot of them closed down recently due to just the markets and the changes that we were talking about earlier. So, I guess in that regard they might have some issues staying open just when they focus on maybe just cell phones and whatnot." [#3]
- The white woman owner of a goods and services company stated, "Yes [we have experienced barriers with personnel and labor]. Las Vegas is a very transient state, and it's very hard to keep somebody. You want to train them. You want to teach them. My husband wants to teach them everything that he knows, but yet there's really no loyalty for some reason. They always seem to have one foot out the door." [#4]
- The owner of a VBE-certified professional services company stated, "I haven't experienced any [personnel or labor barriers] yet, no." [#5]
- The Hispanic American owner of an MBE-certified professional services company stated, "Yeah, my hardest part is retaining people because I bring people in, I train them up, and then they usually ... My customers hired away a few of my techs. ... I think retention is a common problem throughout the industry. ... For me it's just what we discussed before, just hiring and retaining employees [are the biggest challenges]." [#6]
- A representative of a VBE-certified goods and services company stated, "Any barriers? Again, the barrier would be just the qualified workers. The quality. I hate to say it, I'm sure you've probably heard it. But this COVID really changed the mindset of these job seekers. They got to stay home, they got to get paid for staying home, and now they want to work from home. That's not this kind of job too. So that's not going to work. And it's just the, 'I don't feel like going to work today, so I'm going to call out.' There's no sense of, 'I want to do good, I want to move up. I want to have something for myself.' There's no drive." [#8]
- The Hispanic American owner of a goods and services company stated, "Yes [we are still growing]. The only thing that's hindering us is personnel, Capital and personnel. Finding qualified people to do the job, even though we have ... Our guys are starting at mid-20s and then financially. We are at the whim of obviously the clients paying. So at the beginning of the business, we would start invoicing at a 30-day net, so we would do 30 days' worth of work and invoice them and then have another 30 days. So essentially, we just did 60 days of work without getting paid if they paid on time. So, a lot of the time they won't pay on time and we had to restructure our invoicing to get capital, because we would've to float payroll essentially for those, I don't know four or five payrolls.

Yes, definitely finding, I think everyone can attest to the workforce. It's not the same since we came back out of COVID. ... Especially in our specific position, almost 90% of our team is armed. We have specific credentials. We have the government contract that we have to have, so we can't have anybody who has prior gross misdemeanors, felonies. If you can't be armed, you can't be a part of our team. And a lot of these things we're finding that so many people have intense criminal backgrounds, and we can't train them because we work so closely with the police department and have these government contracts. It makes it very difficult to find these individuals because the only other industry we're competing in is with the casinos. We had the private sector security industry on our end, but the casinos are starting them out like \$28, \$29 an hour now. Yeah, they'll go over there for a dollar more, even though they'll be miserable, and they don't care. It's just getting paid a dollar more." [#9]

- A representative of a Hispanic American-owned construction company stated, "We're definitely going to have lots of those. We know there's a shortage of qualified people and there's a lot of mega projects in the infrastructure, electrical side of things. We know when we anticipate that it's going to be a challenging area, a lot of work out there." [#11]
- A representative of a majority-owned professional services company stated, "There's not enough staff. There's not enough people out there available to bring in to staff. ... Yes. Yeah, we do have problems with [finding and training personnel and labor]." [#12]
- A representative of a majority-owned professional services company stated, "There's a worker shortage and the industry is hurting for qualified candidates." [#13]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yeah, definitely. There are barriers [regarding personnel]. We don't have strong project background, like workflow going on. We don't have much cashflow going on. And as we don't have much cashflow going on, we [aren't] able to hire more staff or ... be able to spend much on their training" [#16]
- The Black American owner of a woman-owned goods and services company stated, "Well, I would say yes, although I hadn't yet sought that out because with me thinking that I needed capital to hire people, I was then going to train them, but not clear on what to be training them on." [#17]
- A representative of a woman-owned professional services company stated, "Well, I'm sure that you're finding that most companies are looking for people and it's hard to find people, so the process becomes longer and stretched out. I usually start with our network and say, 'We're looking for X person.' If that doesn't work, I recently reached out to Employ Nevada, which they gave us a couple candidates and we placed an ad with them. So, that's been helping a little bit." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "We went from the four of us working to, like I said, we have eight other full-time employees, to being able to actually win bids, win other bids, and hire on more people. I think my reservation is I don't like high turnover. I like to keep my employees and try to keep them as happy as they can. But in the skill trades, that's very hard because the pay is so competitive, whether you're union, non-union, shop, all those things matter." [#20]
- The MENA American owner of a professional services company stated, "I do have a small operation and I find it difficult to find qualified individuals that are willing to get away from larger firms, bigger firms, because bigger firms tend to offer different social settings. If and when I look for

someone, I always look for someone that is self-motivated and self-starter. And typically, it's very hard to find those individuals to come and work for a small firm. ... I have trained a ton of people while working for other firms here in my own office. I have trained a lot of people, a lot of people. And I personally don't have any problem getting in trenches with them and help them to train them as long as they're willing to learn and apply themselves. And as long as it's not putting a big burden on my business." [#22]

- The white woman owner of a construction company stated, "Certainly it's a challenge that I don't really have all the answers [for]. Some of the things that we've tried is, we've tried different resources such as recruitment services such as Indeed. We've used Craigslist. We've brought personnel in and done frequent evaluations, 30, 60, 90 days to make sure that we're staying out in front of the force. Mostly, it's been people that apply for a job and follow up, but then set an appointment and don't show up. And so really, we've just had to keep hammering at the process to get the right candidates in the door." [#23]
- The owner of a SDVOSB-certified construction company stated, "I think it all comes down to workload, the amount of projects you can keep in the pipeline. I don't ever worry about staffing issues with having the union. ... If all of a sudden we get another three-year project and I need 20 carpenters, I can call the hall and have 20 carpenters show up Monday morning. So I don't really worry about staff and hiring that way. If I wasn't union, then that might be one of the barriers that I would look at as possibly not getting qualified or enough hands to do the job." [#24]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "Yeah. A lot of the laborers are unskilled. Just the other day I showed somebody how to caulk a bathtub and to caulk around the toilet. I had my example of the bathroom I did. Then I walked into the bathroom the laborer was doing. He said he was done. I looked at it, and I thought he was joking because it was terrible. Terrible. Caulking is a real easy thing to do. It's real easy to make it nice and clean. I just couldn't believe it that he thought he was done. It looked great, but it looked very, very not good. So yes, I have that problem running into training people." [#26]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "Post-COVID, it seems like people don't want to work or there's a bit of an entitled persona or something we call it where that work ethic, I think in today's environment, is definitely different than it was pre-COVID." [#28]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "That's across-the-board trouble with everyone. We have a very hard time attracting labor, and we're actually pretty good about it. I do get actually a couple calls a week ... but it's hard to find people in the construction industry to work." [#30]
- A representative of a Native American-owned construction company stated, "There is a new regulation that you need to have so many apprentices or journeymen. By default, if that regulation is in there, you have to be union to do that work. Or, it has to be a very small component. We are predominantly in the federal space and don't actively go after work for the State of Nevada, but would love to. Market conditions dictate a large volume of work is always being done. The resources for construction are limited, but that's why its future is bright - because it has lots of demand but not a lot of people." [#AV117]
- A representative of a majority-owned construction company stated, "We have no issues. We have not had any in the past. We are doing some work with NDOT. There is definitely a lack of skilled

labor, and the supply chain issues continue to hamper the ability to perform work, but we are managing that as well as any contractor in town. I believe the future looks bright for Southern Nevada." [#AV127]

- A representative of a majority-owned construction company stated, "The price of supplies is high and finding labor has been difficult." [#AV138]
- A representative of a majority-owned construction company stated, "Finding trained labor is difficult. We need skilled labor, as opposed to unskilled labor." [#AV14]
- A representative of a majority-owned construction company stated, "New employees are hard to find. We've been having trouble hiring new employees; their requested range of wage is extremely high." [#AV15]
- A representative of a Hispanic American woman-owned and LGBTE-certified goods and services company stated, "Labor market is very challenging right now. Biggest hurdle, finding good people willing to work at wages we're willing to offer." [#AV159]
- A representative of a VBE-certified goods and services company stated, "Biggest challenge is finding and retaining a workforce." [#AV168]
- A representative of a majority-owned construction company stated, "Labor conditions and wage rates. Just that labor retention is difficult, and it is hard to hire and retain staff at competitive wages." [#AV202]
- A representative of a majority-owned professional services company stated, "Right now there is a lot of work out there. The biggest problem is getting enough help." [#AV3]
- A representative of a Hispanic American-owned construction company stated, "Still difficult to attract good employees. There is a lot of competition to secure talent." [#AV45]
- A representative of a majority-owned construction company stated, "Qualified personnel and availability are a problem. In the Las Vegas industry, we can always find painters and can use union manpower. Paper hangers, who hang wall coverings, come at a premium. We might be able to get work, but we can't staff it. Everybody's busy, and there's no one in town. This has been a part of the Las Vegas cycle as long as I can remember." [#AV57]
- A representative of a majority-owned construction company stated, "There are some barriers with the paperwork. Supply chain disruption and labor force are very challenging." [#AV73]
- A representative of a majority-owned goods and services company stated, "We've been involved with projects for the airport in the past and have had no problems whatsoever. The general marketplace is busy, but we do have manpower concerns, which is the case, I believe, nationally. There's just a shortage of skilled workers." [#AV79]
- A representative of a majority-owned construction company stated, "We are pretty busy right now, but labor is hard to come by." [#AV82]
- A representative of a majority-owned goods and services company stated, "We've been having problems getting employees to work. They come, but don't stay. That's the only problem we're having here." [#AV84]
- A representative of a DBE-, SBE-, and 8(a)-certified construction company stated, "Higher cost to operate and increased wages to keep workforce make it difficult to balance lower contribution

margins and the constant threat of liquidated damages. Supply chain delays continue to constrict construction windows." [#WT3]

6. Unions. Four business owners and managers described challenges they experienced working with unions, and challenges with being a union or non-union employer [#AV]. Their comments are as follows:

- A representative of a Hispanic American-owned construction company stated, "We'd love more work from the government and/or private sectors. We're non-union, which is why we stay away from the PLA [Project Labor Agreement] type of work because the union gets involved." [#AV58]
- A representative of a majority-owned construction company stated, "We are not union, they want union, don't know why. We can't work on the strip, because it is union, and we can work everywhere else." [#AV85]
- A representative of a majority-owned construction company stated, "Prevailing wages: On government projects you have to pay employees higher labor rates than on regular jobs. They want you to pay nonunion companies to pay union rates." [#AV115]
- A representative of a Hispanic American-owned construction company stated, "We're a non-union contractor. We've been doing work for [a utility] for 20 years. They've recently changed their policy and just want union contractors, so we haven't worked with them for about a year. They'd love for us to come back but they don't know when that might happen. But the policy may change back to non-union workers, so there is hope." [#AV217]

7. Obtaining inventory, equipment, or other materials and supplies. Twenty business owners and managers discussed challenges with obtaining inventory or other materials and supplies [#1, #4, #9, #11, #13, #21, #22, #24, #27, #28, #AV, #WT3, #WT4]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "So, every time I want to purchase equipment, if it's something I need to finance, ... I will go through the [agency's] lender to get it, which is a lot easier than going through the banks." [#1]
- The white woman owner of a goods and services company stated, "Now it's getting better but there were a lot of supply chain issues, getting equipment. It was very hard to get equipment during COVID and right after COVID. ... Definitely [inventory and supply can be an issue for businesses in Southern Nevada]." [#4]
- The Hispanic American owner of a goods and services company stated, "Yes, to a certain extent [we've had difficulties with supplies and inventory]. For instance, our patrol vehicles, we have to hunt for them. We don't have access to government to the auction. So, whereas a dealership can go and purchase a used police cruiser in great shape, and then the dealership purchases it for \$2,000 and then they turn around and sell it for \$12,000 to us. And we can't personally go through the auction without a dealer's license or whatever the heck there is. So, it greatly hinders us to be able to grow in that aspect and then expend resources on that. So, there is challenges when it comes to that." [#9]
- A representative of a Hispanic American-owned construction company stated, "Things have changed so much after COVID that even buying a truck is not how it used to be. We expect that we're going to have some challenges in some of those areas." [#11]

- A representative of a majority-owned professional services company stated, "The supply chain has been severely challenged over the last three plus years. Our interior designers will again work locally whenever possible, but a lot of product is made outside of our country, so it needs to be shipped. The specifics in relation to electronics and electrical panels and things like that, that have been backlogged a year and a half on some projects. So, it is holding up some projects." [#13]
- The owner of a DBE-certified, woman-owned construction company stated, "Yep, yep, yep [we face inventory and supply challenges]. We have a project where we have 365-day lead time. Seven items that were for our project right now." [#21]
- The MENA American owner of a professional services company stated, "One of the things that I do experience is that in our practice, just like anything else, the technology [is] very hard to keep up with, both in terms of hardware and software. So, as a small firm with limited resources, we have to stick sometimes with the old technology because we just don't have the resources to upgrade and stay up with everybody else. So, we're just treading the water as best as we can." [#22]
- The owner of a SDVOSB-certified construction company stated, "The only issue with that is the supply chain right now, obviously everybody is aware of is microchips have been an issue. And a lot of the work that we do, access control, a lot of the camera systems we install, some of those have ... we did a project at the VA, the camera system that we needed three or four different types of cameras, they were on back order for 16 months. So it's more supplier issue than anything else. I've always been fortunate that the suppliers that I use, that I have accounts with, if I have a big project come up, I usually can take that contract with me to them and show them, 'Say listen, I've just awarded this contract. I know my credit limit with you guys might be \$200,000, but I've got \$900,000 worth of cameras I need to order. I need you to extend this out. Here's my contract.' Usually if I present that to them, they show them the work, then they'll grant me that extension for that project, get me the equipment I need and I get them paid." [#24]
- The LGBTQ+ owner of a goods and services company stated, "Well, yes, because availability changes so drastically, so quickly in the nature of our business. Today, we experience that nobody can get diesel, and that's just total surprise. Like, 'Oh, wow, you can't get diesel today from anywhere.' And we've since worked those out and we're catching up, but some shocks like that now occur. They haven't occurred in several years, but now they occur all the time, all the time." [#27]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "That's the biggest challenge. For me, it's always been you have to earn the money via profits and have enough saved up to be able to make that investment in a new machine or in inventory. Trying to break into, let's say, to be an approved vendor for them, for [a casino group] I'm still not an approved vendor with my new company and I've been here for five, six years. Whereas with my old company, I was, and the way that I did it was I had certain things in stock in inventory that they needed last minute. So instead of me having to go through the channels to become an approved vendor, if they want what you got, you're approved immediately type of thing. So now, I'm back to that of, 'Man, I need to backdoor it that way.' And in the same way, there's a couple different machines where if we had them or more space, then we could really be more efficient, but that takes the capital or financing required to do that. So that's why we're currently trying to get the SBA loan." [#28]
- A representative of a woman-owned construction company stated, "Supply chain issues are my biggest problem." [#AV110]

- A representative of a majority-owned construction company stated, "The supply chain issues continue to hamper the ability to perform work but we are managing that as well as any contractor in town." [#AV127]
- A representative of a majority-owned construction company stated, "The price of supplies is high." [#AV138]
- A representative of a majority-owned construction company stated, "It takes longer to obtain steel and glass because of the supply chain issues. For example, it's taken a year to get electrical service distribution switchgear." [#AV14]
- A representative of a veteran-owned construction company stated, "Since the last administration came in, parts have been a little more difficult than they were previously. If you go to Home Depot, some parts are not available and some of the shelves are empty. It has gotten a little better but is not as good as it was previously. If including electrical suppliers, obtaining the correct electrical gear to install on any given job is sometimes taking a year. Supplies' availability has not gone back to pre-COVID conditions and, sometimes, I think that is being used as an excuse. Also, the bidding process has tightened up somewhat with the inflation that is going on." [#AV141]
- A representative of a majority-owned construction company stated, "Currently availability of employees, equipment and material costs keep getting worse. I attribute the material cost to inflation. ... The equipment manufacturers have slowed down. The availability of used equipment have gone overseas and regulations around environmental air quality compliance has made it difficult to use older equipment, especially on public works projects." [#AV148]
- A representative of a Native American-owned, VBE-certified professional services company stated, "Material-wise, I'm having to go outside to acquire certain things." [#AV87]
- A representative of a DBE-, SBE-, and 8(a)-certified construction company stated, "Supply chain delays continue to constrict construction windows." [#WT3]
- A representative of a DBE-, WBE-, and SBE-certified construction company stated, "Fuel, material cost. The prime gets the fuel escalation even on subs' line items. We bid [a] project with the fuel index set by the state of Nevada. Currently, we have several projects that we bid at under \$2 a gallon; prices now can be over \$5 a gallon. I actually have several projects that we are paying double for materials even with a PO. I have changed vendors and fought hard to hold pricing and they get their money up front and my buying power as a small business is not as strong as larger businesses." [#WT4]

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. One business owner discussed the benefits and challenges associated with prequalification [#14]. Their comments included:

- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "We work with CCSD [Clark County School District]. So, they have 350 schools and I'm sure their requirements are for a public entity strict as well. But we are able to service them or sell their products. So, I would then question, why we wouldn't be able to, or wouldn't have the capability to skills and capability and everything else to meet the airport. However, I do know the one big difference is the security reason, the security part. But, again, you just need to be cleared from a

safe security standpoint. But that is an external factor. That has nothing to do with us being capable of servicing them.” [#14]

9. Experience and expertise. Four interviewees noted that gaining the required experience and expertise to be competitive in the public sector can present a barrier for small, disadvantaged businesses [#1, #13, #22, #WT]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, “That was it, just funding and knowledge, was my obstacle when I first started.” [#1]
- A representative of a majority-owned professional services company stated, “I would say that goes back to past performance. I’ll use the airport as an example. You often can’t get airport experience unless you’ve done airport work. At the event I was at yesterday, it was for government contracting with NASA and you often cannot become a contractor of NASA unless you have subcontracted with a contractor that has an agreement. So yeah, there are steps that have to be taken at times based on certain projects or agencies.” [#13]
- The MENA American owner of a professional services company stated, “[Some of the agencies do require recent experience with certain project types.] And they use this factor not for what it’s intended by. It’s a manipulative part that they play, used to play you. They know that, for instance, they have a selection process every two or three years. And they know that they have excluded you from the last two selections. Therefore, they know that you did not build certain project types, or the odds are that you haven’t done those projects because those projects are so specific. Not everybody, not even private sector, goes and builds those projects all the time. So, knowing that, they put that as a criteria into their new selection process.” [#22]
- A representative of a DBE-, SBE-, and 8(a)-certified construction company stated, “Incumbent contractors seem to have an increased advantage in information and preference.” [#WT3]

10. Licenses and permits. Certain licenses, permits, and certifications are required for both public- and private-sector projects. Six interviewees discussed whether licenses, permits, and certifications presented barriers to doing business [#20, #AV]. For example:

- The Black American owner of a DBE- and VBE-certified construction company stated, “We’ve only been prime, we’ve never been a sub to any other contractor. We’ve tried that, but we were told that they wouldn’t take us because our license was higher than what they wanted to work with.” [#20]
- A representative of a majority-owned construction company stated, “Plan checks and permitting can be a bit difficult. It used to be one month before you got the plan checks and permits you needed, now it’s sometimes three to four months, because the work is outsourced to Utah or California, so it’s not handled in-state.” [#AV14]
- A representative of a majority-owned professional services company stated, “I wish it was easier to get a CPCN [Certificate of Public Convenience and Necessity] license. It takes over a year and bigger companies do not want you in. There are too many larger limousine companies in Nevada and they don’t let smaller companies in and try to shut you down. They have a monopoly on transportation.” [#AV81]

- A representative of a Black American-owned professional services company stated, "One of the most disappointing [things] was I went through the long arduous process of post-secondary license. It is a state license and would give me the opportunity to teach. I teach customer service, which is considered a soft skill. I applied to be on the ETPL [Eligible Training Provider List]. Customer service is something that should be put at the top of the list. Especially in Las Vegas, which is based on hospitality. It should be highlighted that we treat you well. LAS gets that. How do you market your company if you aren't on the ETPL list?" [#AV100]
- A representative of a majority-owned construction company stated, "We encounter unnecessary gridlock with county and city agencies in terms of plan approvals and permits. There's a lot of red tape involved in the process." [#AV154]
- A representative of a majority-owned goods and services company stated, "Daunting process to get started. Very difficult to meet the board standards constant license requirements, license by country by city." [#AV158]

11. Learning about work or marketing. Fourteen 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 [#1, #4, #6, #8, #10, #12, #13, #14, #15, #16, #18, #19, #24, #PT1]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "The barriers for marketing comes down to funding again." [#1]
- The white woman owner of a goods and services company stated, "Marketing is a big issue for me. We don't have the funds to hire someone just specifically to do marketing, so it's kind of left on my shoulders. And there are so many companies that are out of the country that contact me. I mean, their prices are so much cheaper than companies that are local here. But you just don't know. I don't know enough about it, who to use. But we actually, we just hired [a marketing company] so we're going to try marketing through [that company]." [#4]
- The Hispanic American owner of an MBE-certified professional services company stated, "Most of our work is word of mouth customers, referring customers, and also we're dealers for a specific product so when there's customers who need that specific product, then we have a good relationship with the manufacturer representatives. So we get work that way." [#6]
- A representative of a VBE-certified goods and services company stated, "No, we actually have a marketing team [so no barriers learning about work opportunities]." [#8]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "If I did work all over Las Vegas, then I think I would need marketing, probably a webpage. I don't even have a webpage, because I just don't need it, because I do work on the airport base. I guess it's just getting around. I think I need a better ... statement, where it shows all your work that you've done, and where you've done it." [#10]
- A representative of a majority-owned professional services company stated, "Well, it goes down to qualifications. So, it's extremely difficult to get work for infrastructure-type projects both on the local and state level. I wouldn't say there's anything easy about getting work from public agencies. Because they all have a process. So, we found it virtually impossible to break into the public agency sector from an infrastructure standpoint because we're not willing to pay \$200,000 in salaries and

hoping that the work will follow. And then the other side, the land development side and stuff, it's really driven by the architect. So, if they don't have the work to give us, then I guess it would be difficult for our end." [#12]

- A representative of a majority-owned professional services company stated, "I don't think there's many barriers [for learning about work]. I do believe that, again, there's a learning curve of identifying first your ideal client and then identifying where to find that client. I am very resourceful. I would say that not everybody in a position either starting out or with less experience would know where to start for some of that." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified goods and services company stated, "It's the marketing piece. And, that's why it has been taking me so long now. First of all, marketing is one of those things that you have to decide, you have to spend money in there to market your company. So, I finally hired somebody actually and who's that doing that, pretty much all of our marketing pieces. ... You know how when you have a team and you have the resources, the people, they can put a perfect brand together. They know, okay, how to create the mission and envision statements. And then create the logo with everything [that] comes with that. And then, if you have that, you can just go online really right away and look so professional. When you don't have that as a small business, you're doing everything on your own, ... I mean it doesn't look bad. ... But there's still a difference when you go to market, when you have the resources, the people behind you, and you're like, 'Bam! Here it is.' And then, everything is perfect. For a small business, they don't put or can't afford to put money in there. ... So, I have to just always now think about two sides, right? Because public is different. So, public side, if they have spent below a certain criteria, ... they can go out and just use their purchasing card and just purchase stuff. So, there's no exposure. Or how does a supplier, can be aware of these type of purchases? I've never met anyone that does those. And I know there are many of these agencies in schools, or, they do that. They don't have to go bid it out. But there's no exposure or platform where we would be aware or have the opportunity to see these opportunities. So, we're not being then also invited in a way. But, if they don't know us, then obviously they don't know who to reach out to. But, if there was, for example, a platform where these opportunities would be visible, it would be helpful as well. ... So, the opportunities, visibility into opportunities, I would say, is an obstacle." [#14]
- A representative of a Black American-owned goods and services company stated, "Everything that you want to do as far as looking at jobs usually goes through one of the Dodge Reports or something. And a lot of these things you have to pay for. A lot of them, if not all of them. And one of the biggest hangups for a smaller firm, would be the fact that ... they don't have the monies necessarily to pay for that stuff because, I mean, for Vegas alone, I'd have to double-check on the pricing. But nationally, some of these companies are paying in excess of \$30,000 to utilize their services." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yeah, that's always challenging. As a small micro business, we don't have resources to do our marketing and business development. It's always challenging to find additional work or to connect with the people. So, if with RTC or LAS to [hold] some more workshops or events, to connect with small and prime business, that would be great." [#16]
- The Black American owner of a DBE-certified professional services company stated, "I would say there are barriers because I'm sure there's unlimited ways to market yourself, and I'm not sure I was doing the best at that." [#18]

- A representative of a woman-owned professional services company stated, "Getting the larger projects so we're able to have more revenue to hire more people. I'd say we've been working on that and it's actually working, but we'd like to hire more people and grow the business. I think that's probably the biggest challenge." [#19]
- The owner of a SDVOSB-certified construction company stated, "It's funny, a lot of people will try to get you to market your firm in different ways. With the federal government, there's really no way to market your firm. The closest thing I've seen to that is there's some organizations that do base or military-based papers, in newspapers or magazines. And they'll try to get companies to advertise in those just to get your name seen around the base. I've never done that. Again, with federal work, I don't think there's any way to advertise it. SAM.gov is where everything is mostly posted project-wise and that's where you find the stuff. So it's an open playing field that everybody has the same opportunity to see all those same jobs if you look in the right spot." [#24]
- A participant in a public meeting stated, "We have to hear about this from other people to know what's going on or even to know what's going out in the city. They have all these properties and stuff that they've demolished, and then all of a sudden months later they have something up that's already being built. I mean, how does that help us small business try to get something when you have everyone else building around it without anybody knowing? It's down one day and then the next day something else is being built without anybody knowing anything. How do we as people new into the business or trying to purchase something or trying to even bid on something, get into something like this without having to go to people, you know, and just being the face of saying, 'Hey, I'm so and so. How did you hear about this?' It's always a name dropping. If you don't have a name dropping, you can't get anywhere." [#PT1]

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. Three interviewees commented on personal experiences with barriers related to bidding on public-sector and private-sector contracts [#AV, #WT5]. Their comments included:

- A representative of a woman-owned professional services company stated, "Barrier comes from the contract requirements. [For] example: insurance requirements, certain amount in the union, time frame, can you get access to materials they need, [it all] depends on [the] contract." [#AV26]
- A representative of a majority-owned construction company stated, "The requirements for CAD [computer-aided design] drawings is burdensome for a smaller shop that doesn't have a CAD person or the software." [#AV102]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "There are not many opportunities in Southern Nevada for micro/small scale businesses. The City of Las Vegas and Clark County need a minimum of three people in the company to be qualified in their statement of qualifications (SOQ). The micro and small businesses do not get an opportunity to participate in the SOQ due to this requirement." [#WT5]

13. Bid processes and criteria. Nine interviewees shared comments about the bidding process for public agency work. Business owners or managers highlighted challenges with the process [#8, #12, #14, #30, #AV, #WT5, #PT1, #PT2]. For example:

- A representative of a VBE-certified goods and services company stated, "So far, to my knowledge, no. We haven't had any issues [with meeting bid requirements from agencies]." [#8]
- A representative of a majority-owned professional services company stated, "No, because our side is different from the contractor side. At least on the public side, what you'll find is it's based on a qualification sampling. So, that is more of our criteria than trying to get a bid in. Especially the infrastructure projects, there will be a list that'll be generated. ... So, I guess this is a barrier. I guess this would be a barrier. It's a different contracting barrier because what happens in the public side, especially for the infrastructure, is they create these lists on experience, and so they rank you on your past work and who you have in your office. And the ranking is skewed toward the public side. They don't consider the private side equivalent service to the public side as far as infrastructure goes. So, to us, we have skills that are directly related to providing those services. But since we are focused on the private side and not the public infrastructure side, we might be number 20 on the list. So, we never get up opportunity to get up there because we're so far down the list because of that skew toward the public sector experience." [#12]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "Yes. For sure. I mean that is for sure. And, I think I would say in the private sector, especially because it is a very, I guess, selective kind of. ... It is not even selective, almost a personal matter, because if you are a buyer or if you are a sourcing manager, if you like vendors or you know vendors, but you don't know me, or you never want to give me a chance, what does it come down to? I don't know. Personal preference of the person that makes a decision? If you don't have the buyer or the person on the other side, not on your side, then you don't have the opportunity. So, I don't know if that's right or wrong, but that's how the private sector is. Right?" [#14]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "I can speak from myself and a few other people, we just would rather not bid those jobs, because it's a lot of BS. It really is. ... That's the barrier. It's just a lot to learn. You got to think about the demographics of most of us. Not everyone has gone to college. They're just people that have worked in the field and have minimal technology skills. ... And I hate saying that, but that's what you're working with [in] construction, and they make it not so friendly for that. ... You have government entities and everyone, and all this oversight, they tend to pile on too much crap with stuff, and people cannot navigate it. It's not readily accessible. You have to go through layers of stuff to get the information you need." [#30]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The biggest hurdle for working with government agencies in Southern Nevada is that the procurement for the agencies takes a long time. The small businesses are very tight on their cash flows. The long procurement time is not sustainable for small businesses." [#WT5]
- A representative of a majority-owned professional services company stated, "The Nevada Department of Transportation, their bidding process is a bit cumbersome. They have a grading system for their request of proposals, and I feel like it's a bit subjective. That is to say, the people in their departments feel to me like they have their selections for the projects at hand already made before the bidding process begins. In my particular field, we're one of the preferred providers for Nevada Energy. We're one of their main contractors." [#AV180]
- A representative of a majority-owned goods and services company stated, "We've bid on quite a lot of work in the past. The RFPs lack specifics and details. The proposal documents that are sent out

don't match the RFPs. It is difficult to provide an accurate response because the details are not accurate. They don't match. ... We've been pretty happy with our ability to do business in Nevada. The city, county and state are pretty good at supporting local businesses. There is always room for improvement, but we are pretty happy." [#AV207]

- A representative of a Hispanic American-owned construction company stated, "We've tried to bid with the government on projects, but our bids have apparently been too high." [#AV23]
- The owner of a WBE-, DBE-, and MBE-certified construction company stated, "You can't go through 300 pages of RFPs and everything. I'm a small business owner. I do everything myself; I work in the fields. I manage everything. I'm the project manager and the estimator. I can't go through 333 pages just to submit an estimate." [#PT1]
- A participant in a public meeting stated, "A couple comments. So, one was if in the future they can include details about the diversity inclusion requirement or goal in the RFP, because she had an experience where it was not listed and she submitted three questions, that being one of them, what was the goal or requirement? And two of her three questions were answered, but the other question wasn't answered until weeks later. So, her comment was just about getting that information clearly defined in the RFP process as well as timely responses to inquiries." [#PT2]

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. Ten business owners and managers described their experiences with bid shopping and bid manipulation in the Clark County marketplace [#2, #3, #5, #6, #7, #15, #20, #21, #30, #AV]. For example:

- A representative of a Native American-owned MBE-certified construction company stated, "I mean, I have heard of those things [like bid manipulation], but I haven't directly seen it. You just hear of it happening, but it's something I've personally [never] seen." [#2]
- The owner of a majority-owned goods and services company stated, "It's called also window shopping. ... Yeah. The first one where they come back with, 'Yeah, we have someone bidding at this price, could you beat it or whatnot,' we've definitely experienced that one. That's just what we consider window shopping in a regard, checking prices. The second one, not so much. You said that was bid manipulation? We haven't really experienced that one. ... If they're shopping with us, I assume there's other industries that do similar things that we do, so I would assume they would see the same problems." [#3]
- The Hispanic American owner of an MBE-certified professional services company stated, "No [experience with bid shopping or bid manipulation], I wouldn't say so because most of my work is relationship-based, so no. Most of my customers are good, loyal customers." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "So only on the few private jobs we've submitted bids on. It's just like, why did we even do that? Because we're just making it easier for the private companies to up their bid to something like what we would bid." [#7]
- A representative of a Black American-owned goods and services company stated, "And the reason that I say that is when it comes to contract and bidding on projects, there's always going to be the

unscrupulous. There's always going to be the companies that [do unethical things.] ... And to have this on a record is not something that I would say is a bad thing, but it's not the greatest thing. It's something that everybody in the Vegas Valley understands, which is, there are some people out there that share numbers and it creates a problem and it also creates a lot of animosity. So that's not something that regulatory ... bodies can do anything about because that's just them being unscrupulous. And it's not like we don't know about it. We do. Anybody here in Vegas will tell you, for bid time, there's a street number that goes out to everybody and they call it a street number on purpose because that way it's out there for bid. And then there's going to be a number following that for whoever gets the project. Because in reality, people share numbers too easily. ... But I know that there's been some, shall we say, backroom deals that were made and it doesn't allow for that, because it's based on the bid that truly nobody has a hand in and no numbers can be fed. Everybody understands the situation and you're given your discounts, period. And you have to prove those things to get those discounts and that way you know exactly where you stand." [#15]

- The Black American owner of a DBE- and VBE-certified construction company stated, "I know a lot of the subs, they are going to go with the GCs that they're comfortable [with], that know are paying them. And I don't know if it would be considered bid manipulation, but I know for a fact on one of the jobs that we bid on for Clark County, the painter gave us a different price than he gave another GC. Because he was used to working with that GC, he knew that GC would pay, he had never done a job with us. And our bid was higher than what he had given to them. But he was all right to do that, there's no law or rule saying [they cannot do that]." [#20]
- The owner of a DBE-certified, woman-owned construction company stated, "There's not any specific one RFP that I can refer to [...]. That's why I quit subcontracting because GCs would shop my number, they'd get other numbers, they'd go to the person they're more comfortable with instead of giving me a shot. So, I just quit doing subcontract bidding." [#21]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "I hate when people ask me for my bid, they get it, they show it to their friends, they come under that, and then they give the job to them, and that happens all the time ... They let their trusted people that they know and work with have last look at all of the contracts that come in to see if that they can beat those prices." [#30]
- A representative of a Black American woman-owned professional services company stated, "The barrier is that there are unsavory bidding practices taking place on the part of government entities; more specifically, there are government portal-released bidding opportunities that already have pre-selected winners. That is, the government portal is used to release bidding opportunities, but those opportunities are skewed because the government entities have already selected the final winner of the bidding before the bidding is started. The biggest barrier is the choice by government entities to use out-of-state contractors to perform the work for government projects. It's an oxymoron because these are projects designed for in-state companies, but the government selects out-of-state companies to do the projects." [#AV127]

15. Treatment by prime contractors or customers. Three business owners and managers described challenges associated with treatment by prime contractors or customers during performance of the work [#10, #WT1, #WT4]. For example:

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "The problem that I have, is because I am a small company, and I don't know if it's because I am a woman-owned company, but I've had two prime contractors take advantage [of me]. ... One's trying to take advantage of me right now, and one did. Well, I lost out \$58,000 that he never paid me, just because he'd even feel like it. And then the guy, right now, the last job we did right now ... owes me \$7,000, and he doesn't want to pay me. Because I did a lot of time and material jobs for him, because no one else would do them for him. I have e-mails and everything, where he says, 'Do the job, and then send me the invoice, and then I'll do a change order.'" [#10]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Prime contractors are not likely to hire diverse subcontractors if there are no ... goals in place. In Southern Nevada, 99% of engineering consulting companies are owned by white males, and they are generally not interested in working with diverse businesses unless there is a diverse business utilization goal included in the contract." [#WT1]
- A representative of a DBE-, WBE-, and SBE-certified construction company stated, "Very hard for small business [in Southern Nevada]. At the mercy of the prime contractor, some are great and some hold payment, [do] not pay, or change quantities installed with very little communication." [#WT4]

16. Payment issues. Twenty-seven 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, #4, #5, #7, #8, #9, #10, #11, #13, #14, #15, #16, #18, #20, #21, #22, #24, #26, #27, #29, #AV]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "During the pandemic, we did [have issues with timely payment release or retainage of customers], which was understandable. But everybody caught up afterwards." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "Oh yeah, I've experienced slow pay and slow release of retention, yes. ... So, with the private, it's probably more prevalent, because with the public, they have set criteria of how quickly a prime is supposed to pay a sub. So I would say it's better with the public works." [#2]
- The owner of a VBE-certified professional services company stated, "Yeah, that's the nature of the business, slow to pay, fast to buy. ... Oh yeah, [delayed payment is] rampant now with the economy the way it is, with small business failing all the time." [#5]
- The owner of an SBE-certified woman-owned construction company stated, "Yeah. And so like I said, our clients have been so good, so good with payment." [#7]
- A representative of a VBE-certified goods and services company stated, "The only thing is working with the county is just their work schedules, they're on I believe four tens. And then if there's a holiday, that's the only thing that has slowed it down, but not so much anymore." [#8]
- The Hispanic American owner of a goods and services company stated, "Last week we had one partner of ours owe us \$377,000 and they're still outstanding about \$120,000. It's probably 60% to 70% of everyone pays late. And that is a tremendous hindrance. [We] wouldn't have the issues if we would be able to have a line of credit with the bank, but now the bank doesn't allow us or doesn't want to do that at this time. So we now run into these issues where we're depleting our

savings account and we're depleting our other accounts to make payroll. Me as a business owner, I'm infusing and our legal team's going to have to write letters to say, "Here's a loan from the owner." I'm putting in \$50,000 on my own savings account just to [get by], because there are people who are not paying on time and the banks are not helping with financial assistance." [#9]

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "One of the problems with being a sub is that you don't get paid till they get paid. ... I can put in my invoice for that month, and I've had to wait four months to get paid. And luckily ... a lot of my employees are related to me. They know that they're going to have to wait for me to get paid, so I can pay them, and they're okay with that. ... But I'd rather be able to pay him right away. And then, when the money comes in, put that back." [#10]
- A representative of a Hispanic American-owned construction company stated, "Personal experience with slow payments? Yes. [Both in the public sector and private sector]." [#11]
- A representative of a majority-owned professional services company stated, "Yes. In fact, the City of Las Vegas was at an event that I was at yesterday and they used that example as why one small business didn't want to do business with them. And so, they started a beta program and reduced the net pay process down to 15 days. And they found great success and it worked out for the particular [project] that they were looking at. So yeah, I think anytime you can cut out some of the red tape. And they said they actually questioned, 'Why was it net 30?' Nobody could answer the question, it's just that's what they've always said. So they got it down to two weeks." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "Yes [I've had problems with slow payment]. In the private sector. And, I don't know if you want to know who they are. But, yeah. In [the] private sector, I mean, one corporation is better definitely than the other." [#14]
- A representative of a Black American-owned goods and services company stated, "Oh, yeah, we've dealt with [delayed payment] plenty of times. It is a situation where the first time, you kind of play it with kid gloves and the second time it gets a little bit harder. And right down to the point that there was a few companies that we refused to bid [with] because of that situation." [#15]
- The Black American owner of a DBE-certified professional services company stated, "Yes, I did [experience delays in payment]. [Certain clients have that problem] more than others, but I don't believe that my problems were worse because I was a minority-owned company. I believe that most companies tried to work to pay us quicker because of them knowing our status, but not all companies were able, and we got caught up in the bureaucracy sometimes of getting paid, and it's just different departments dealing with different departments within their organization that were dropping the ball." [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "Most of the paperwork says 30 days from completion, but it's 30 days from completion when all your subs have turned in all their stuff to you, you've turned it into them. And then they have time to review it and make corrections. And those corrections take 30 days, sometimes 45 to 60. So now that pushes out your payment. And us as a small ... well, me as a small business owner, I still have to pay myself, my guys and my local staff. And I'm still waiting 90 days to get paid. That's been one of the major hurdles." [#20]

- The owner of a DBE-certified, woman-owned construction company stated, "Yeah, we've dealt with [delayed payment]. Sometimes it's 90 days, sometimes longer and smaller. I'm not a big company. Our revenue's probably around \$20 million a year, but when I was a very small company, not getting paid every 30 days was tough." [#21]
- The MENA American owner of a professional services company stated, "Oh, yes. I noticed that once that gets started in one entity and they realize they can get away with it? There are many, many ways to go around you. Meaning that the entity can manipulate you. The entity can come up with excuses. The entity can just make circles around you. There was one entity that I worked [with] for a long, long time. The new management, I know what was the reason so on and so forth. But, I did not get fully paid. I was out of the project and their pretense of, 'Oh, we ran out of money on that project where the project continued behind the scenes.'" [#22]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "There was an eight-hour cleaning job that we did. There was two of my employees doing it. We authorized the card for just a couple hours that the client had asked for. Turns out it was an eight-hour job. The client had authorized her to be billed for eight hours, but when we went to authorize the card for the entire amount, it failed. ... I believe she knew what she was doing. She wasn't very good ... at hiding it. We know. We know what's up. So she never paid. Then, most recently, she tried to ask us for the same job again. She must have thought that there's so many of those specific people who happened to fit her description and everything, because she was pregnant, so she didn't want to clean her house. It was a big house, so again, she reached out to us, 'Can you come clean my house? I'm pregnant. I can't do this.' I was like, 'Wait a minute. You're going under a different name now, but it's the same house and the same address.' I told her, 'You didn't pay your invoice last time.' 'Oh, no. You must have me mistaken. You must be confused.' 'Okay. Well, I'm sure you'll find somebody else elsewhere, but here's not the place.'" [#26]
- The LGBTQ+ owner of a goods and services company stated, "In that particular instance, first, it was the city, and then the city passed it off to the county, and then the county slow paid because ... whatever reason they had and they didn't pay their late fees. And the reason I say it, in the private sector, we see every single excuse under the book. We do a fine job delivering a product. We can deliver any product, any size, any parameters, that's our business. We handle custom delivery orders, no problem, whatever it is. It's payment that we care about." [#27]
- The Asian Pacific American owner of a construction company stated, "When they weren't paying me, I had this piece of equipment that they lent me to perform this work, and I basically [had to] use that as leverage in order to get my payment. But if I didn't have that, I don't know if I would've got paid. In terms of other people, I mean clients are always waiting until the last day or whatever, and I do that too. I can't really hold that against them. ... That's certainly a skill that you have to develop is accounts receivable and sending out the emails, sending out the text messages, making sure I'm getting paid." [#29]
- A representative of a majority-owned construction company stated, "It does seem as if a lot of retail customers don't have cash these days. They want to go on credit. Seems like a lot more of them are like that in 2023." [#AV31]
- A representative of a woman-owned construction company stated, "Pay is an issue. If I go out on a project, a lot of times we are out 90 days before first payment because we're a small business. I'm a DBE and small business owner. We're just getting paid now by Clark County for the work we did for

RTC in January. As a small contractor, the overhead is our biggest barrier and going 90 days without getting paid. It would help if they held the prime contractor—since we do more subcontracting than prime contracting at this time—accountable to the sub in a joint-check situation. We have a lot of out-of-pocket expenses. I think the biggest situation is the increase in the supply chain, that is, both getting our supplies from vendors and the rising costs of such. As a subcontractor, I have to bear increases in prices, while the prime contractor does not have to follow those rules. It's hard for small businesses to be competitive and not have the structure behind them as a form of security of payment as the prime contractor has. But I do want to say that the State has done a good job in terms of trying to take care of the small businesses, but the money we have to put out does prohibit a lot of small business from taking on the work." [#AV78]

- A representative of an Asian Pacific American-owned construction company stated, "We've worked for the government before, and the problem we have with them is that they just pay us too late. It's [a] 90-day waiting period after the work is done. We're a small company, so we can't wait that long for our money because we put out a lot of money on projects pertaining to overhead." [#AV97]
- A representative of a majority-owned goods and services company stated, "It would be nice if we got payment when services are rendered. It is hard for small businesses to take on fleet maintenance when you don't get payment in a timely manner. I am basically floating monthly payments." [#AV257]

17. Size of contracts. Three interviewees described challenges associated with the size of available contracts. [#1, #4, #13] For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "I won't pick a job that I know I'm going to have problems with. ... If it's \$100,000 and I know my machine's not going to run it, I'm not going to bid on it." [#1]
- The white woman owner of a goods and services company stated, "It's kind of a double-edged sword because either we have the work and I don't have enough help, enough technicians, or I have too many technicians and I don't have the work. So, I'm not really sure what size contract we could bid on. I mean, if it's large enough, then I could hopefully hire more help. It's just very hard right now finding qualified technicians for some reason." [#4]
- A representative of a majority-owned professional services company stated, "Sure, sometimes in a request for qualification, they're very specific that, let's just say you need something [in a specific price range]. And you have to provide how many projects fit in that category. For example, CCSD, the school district here locally, if you don't have past experience to build the entire school, which could be up there, [could have a] \$80 million budget, then you can't apply for that category and show that you have experience that you could do the project. Even though you might have done similar work. So, in architecture, the construction cost is not always relative to the design cost. ... Yeah, I think they can look at it more specifically to the role of the prime or the sub. Because let's just say if I go in for a public project at the airport and let's just say it has a \$2 million amount, our design fees have nothing to do specifically with that \$2 million construction price." [#13]

18. Bookkeeping, estimating, and other technical skills. Eight interviewees discussed the challenges of back-office work such as bookkeeping, estimating, and other technical skills present [#4, #5, #10, #14, #16, #20, #23, #28]. For example:

- The white woman owner of a goods and services company stated, "So as far as bookkeeping during COVID, I did go through a lot [of barriers]." [#4]
- The owner of a VBE-certified professional services company stated, "Those were some of the challenges [with bookkeeping, estimating, bidding, and other technical skills] at the beginning, but I worked those out, but not anymore, no." [#5]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "Estimating? I used to know it more when I was in California, but when I stopped doing it for maybe four years, and now it's longer, so I lost it. That's where my friend helps me out. ... What I need to do is, I need to buy a program, because they have programs, Xactimate, we used to use in California. There's different programs that you can use." [#10]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "Bookkeeping is one of those things ... I don't think it's an obstacle, but I think to find a trusted partner, because finances and having somebody look at your books is, it's a very sensitive type of matter." [#14]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yes, I do [have bookkeeping barriers]. Basically, we do our in-house bookkeeping." [#16]
- The Black American owner of a DBE- and VBE-certified construction company stated, "It took us three bookkeepers to finally get to a good one. It took us three attempts by three different accountants to finally get to someone who understood the construction trade. Because like everything else, not all doctors are made equally, not all mechanics, not all GCs are made equally. So it took us some time to get to people that we felt comfortable with and felt comfortable with us, and understood what we were trying to accomplish. So again, I think as much as everyone wants complete help, you've got to help yourself too in some of those things. Because even if SBDC [Small Business Development Centers] or SBA were to give me a list of great accountants, the onus is upon me to sit and talk to them. But again, the financing ... and I know there's a ton of different financing workshops. ... [The] SBA had a class, it was like a six-month or nine-month class last year." [#20]
- The white woman owner of a construction company stated, "The barriers that I have [had with bookkeeping, estimating, and bidding] is I have had to learn them all." [#23]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "We have to run a lot of the business through Google spreadsheets, and I'm trying to get us geared more to running the business on QuickBooks so that we can pull the regular reports and such. And the estimating is a very painful process. I have to get eyes on every estimate, and such as opposed to having people on the team, like I did years before where they can handle the estimating, and then I'm just signing off on it. So there's definitely a bottleneck when it comes to the estimating side and the bookkeeping side. That's probably my single biggest frustration in the business growth cycle right now, is dealing with the accounting side." [#28]

19. Networking. Three interviewees discussed barriers they experienced when networking and building relationships [#21, #28, #AV]. For example:

- The owner of a DBE-certified, woman-owned construction company stated, "I spend a lot of money on marketing and a lot of that is surrounds lunches, dinners, and just establishing relationships so

that there's a comfort level so that they know their work will get complete and I'll do what it takes. I had to develop relationships." [#21]

- The Asian Pacific American owner of an MBE-certified goods and services company stated, "What could help? There's been mixers and there's been supplier diversity fairs that I've probably attended a half dozen of them, and we do some follow-ups and whatnot, but as of yet, nothing has really come up them. So, we'll be persistent and we're going to keep on it." [#28]
- A representative of a Black American woman-owned professional services company stated, "It is more about who you know that what you know. It is hard to break in and to show your capabilities." [#AV47]

20. Electronic bidding and online registration with public agencies. One business representative discussed online registration and electronic bidding with public agencies [#AV]. For example:

- A representative of a majority-owned goods and services company stated, "The online portal, NGEMNV.com, is a bit hard to navigate. I've tried numerous times without luck and it disconnects frequently." [#AV269]

21. Formal complaint and grievance procedures. Sixteen business owners and managers felt formal complaint and grievance procedures are helpful for small and disadvantaged businesses. Most firms stressed the need for confidentiality in these procedures [#10, #AV]. For example:

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "The one company that screwed me [out of] the \$58,000, they finished a job last year. Their profit was going to be \$8 million, but they're a big company. They have the funds to pay out what they have to pay out." [#10]
- A representative of a VBE-certified construction company stated, "The prevailing wage structure systems use which are not sticking with one proven system, makes it difficult to bill and be involved. If the general contractor or subcontractor does not provide it, we are stuck spinning man hours administratively figuring it out." [#AV224]

22. Size of firm. Three interviewees mentioned barriers they experienced due to the size of their company [#16, #22, #WT1]. For example:

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "And then, another challenge is, we are a small business and we based on the qualifications, so we don't have a stronger qualification established, yet, so all these government agencies we work with, they do not have any policies for small or micro businesses." [#16]
- The MENA American owner of a professional services company stated, "See, one of the things, though, is that small firms, if they run into a [legal issue] ... they get caught between a rock and a hard place. They really cannot retain legal services because they can't afford it. So, they find themselves in a situation that hopefully this interview would lead us for you to see a classic example of it. And the sophisticated clients know that and they know they can take advantage of you." [#22]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Micro and small-scale businesses face limited opportunities in Southern Nevada. Both the City of Las Vegas and Clark County require companies to have a minimum of three people in their team to qualify for their statement of qualifications (SOQ), which makes it difficult for micro and small businesses to participate. While public entities in Southern Nevada are required to provide direct procurement contracts under \$100,000 for small businesses, the lack of specific procurement policies for small businesses is a significant barrier." [#WT1]

23. Obtaining the first contract. Two interviewees shared the difficulties they faced as they attempted to break into the public or private sector, and the challenges experienced when obtaining their first contract [#21, #22]. For example:

- The owner of a DBE-certified, woman-owned construction company stated, "Just getting those first contracts and in my industry, being [in] construction, being a woman as an owner, it's a challenge to get past that stigma that some people have." [#21]
- The MENA American owner of a professional services company stated, "Well, obviously we were new on the scene, and it was very hard to convince the entities [to give us our first contract]. ... Also having resources available to survive after a year, while I was knocking on the doors to reach out to people and convince them ... was a big issue." [#22]

24. Finding potential project partners. One business representative discussed challenges they have faced meeting potential project partners [#WT5]. For example:

- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "Another barrier for new startup business is that the primes only choose the subs or small business from their specific community and do not provide opportunities for new businesses." [#WT5]

25. Other comments about marketplace barriers and discrimination. Ten interviewees described other challenges in the marketplace and offered additional insights [#4, #8, #10, #15, #22, #24, #26, #27, #AV]. For example:

- A representative of a VBE-certified goods and services company stated, "[in terms of barriers, competition is] definitely one of them. And then being able to pay right is another one, being able to pay the guards at a good rate. Believe it or not, a lot of people don't want to deal with any issues. They don't want to work a site that they could have problems, potential theft or being held up and don't want to put themselves in a dangerous situation. We oftentimes don't know what we're going to encounter. But that's another issue is that we're very specific when someone calls for a retailer. Right now, we really are trying to stay away from retailers because they're all the grab and goes. There's more the potential of a higher threat. So we try to stay away from those. And we definitely don't want to do anything with the medical marijuana or dispensaries industry. That's not something that we want to either get into." [#8]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "If it's a credit card payment, they'll give it to you right away. But if it's a bigger contract, it'll take months, even years, sometimes, to get it." [#10]

- A representative of a Black American-owned goods and services company stated, "Getting by the thought of you being too small to handle a job. We have handled multiple jobs and done very large jobs in the past and/or my partners between us have all taken care of jobs that were in the multimillion-dollar range with no problem. To me the biggest issue that you have to overcome is: are you big enough to handle this? And we've literally been asked that." [#15]
- The MENA American owner of a professional services company stated, "Well, almost 100% of the clients are local agencies, governmental entities. And obviously during COVID, they did not have full house, staff were working remotely. The projects were moving very slowly. So, we just had to adapt to that situation. And then with further reduction in projects, just by letting employees go and scaling down more and more just to survive." [#22]
- The owner of a SDVOSB-certified construction company stated, "Well, as I mentioned, I did want to be certified as a service-disabled veteran-owned business to start and that was the biggest hurdle I had, because it was again, about an eight-month process to get approved, not because they were took that long. It did take a while for them to do the first review, but it was review after review and 'okay, now this document shouldn't say that, it should say this, and we need to document that shows all the shareholders, or if there's none, then you are 100%.' It was just a slew of legal documents that these lawyers wanted to set us up as that organization and certify us. And that process was the biggest hurdle that I had. After that, just from going in meeting customers and getting to know them and getting a few projects under my belt, that was the easy part. This really isn't a barrier, but maybe more of a frustration, being federal work, you're not allowed to typically request any money up front. And I have, well, one in particular sub that I wish I could find another one, but unfortunately are not really out there is cabinet makers. Cabinet makers seem like they always want 50% down to do a job. And depending on the job size, that can be a burden ... you need to get credit with your suppliers just like I do, and we'll work together, otherwise we're not going to work together." [#24]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "Barriers [include] being too people friendly, too understanding or compassionate towards people, that causes my business to suffer financially. I lose a lot of time that way. I give a lot of free labor away that way. So, I would say just walking the fine line of being a good business owner and a good human being. Then time constraints, doing the work and not trying to perfect it as much as possible because that takes up too much time. Then it causes the next scheduled job to be delayed. That's bad for business. Great for the current client. Bad for the next client. So I've been working on evaluating that challenge, navigating that." [#26]
- The LGBTQ+ owner of a goods and services company stated, "Yeah, we've had a lot of stifled growth from different taxing authorities that have levied different kinds of penalties for late pays or non files, especially as those times made things hard. Those penalties, of course, are steep and hard to pay. So that stifled our growth a lot. ... I told you about [how] certain banks won't do business with petroleum companies ... [and] a lot of insurance companies. This was actually super strange for me too, most insurance companies will not do business with petroleum companies. Period. We have more taxes levied on us in different sets than any other industry. We have excise tax, federal diesel tax, gas tax, PPI [producer price index], taxing county option ... a long list just in fuel. And then we have the EPA [Environmental Protection Agency], and then we have the fire department for our tanks, and then we have the DOT for our trucks, and then we have the weights and measures for

our pumps, on and on and on. We have more taxes and different sets of taxes than any other industry." [#27]

- A representative of a majority-owned professional services company stated, "The only barrier is that ... a lot of our work is for the U.S. Dept. of Energy (DOE) and the work is confidential in nature, so that makes it difficult to discuss with potential clients. We can't really put our work for the DOE in detail on our resume. It's hard to see solicitations for larger projects, so having smaller projects in architecture and having \$5 million projects is rare. We do get that kind of work, which is great. But, as a small business, it's still relatively hard to compete with the bigger architecture firms." [#AV125]
- A representative of a Hispanic American woman-owned construction company stated, "You have your name on the list, but I don't find there is a lot of opportunity. As a small business, I think they should have more opportunities." [#AV71]

H. 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 H presents their comments on:

1. Good ol' boy network or other closed networks;
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/DBEs by government, prime contractors, or subcontractors;
8. MBE/WBE/DBE fronts or fraud;
9. Predatory business practices; and
10. Other forms of discrimination against POCs and women.

1. 'Good ol' boy network' or other closed networks. Nineteen firms shared their comments about the existence of a 'good ol' boy' network or other closed networks. [#1, #2, #4, #10, #12, #14, #15, #16, #17, #18, #20, #21, #22, #23, #25, #26, #27, #30, #PT1]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "There's barriers there [in the good ol' boy network]. Every event I go to in the printing world, 99% of the time I'm the only Black face at the table. And sometimes, you could feel it and sometime, it's a room, depending on who's controlling the room. The sales rep, they control the room, everybody gets along, but if you walk into room. ... They're all from the Midwest, I guess, because they all seem to know one another. And it's an industry where you should know one another. But it does feel like the good old boys' club. ... I'm sure there is [issues with a good ol' boys network] if they're Black business. But again, majority in my industry, I go to these events, and I don't see a lot of Black folks there. So, I can't say to them, 'Hey, do you experience this?' Because they're not in my field. And in

their world, I don't know what they experience. But I'm sure if there's a good old boys' club there." [#1]

- A representative of a Native American-owned, MBE-certified construction company stated, "When I moved here 35 years ago, I came with a company from Southern California. It was a private company and breaking into Southern Nevada, there was a little bit of the good old boy network. So it's been 30 years since I've really experienced that. No, no, [the good ol' boy network] was more relevant 35 years ago." [#2]
- The white woman owner of a goods and services company stated, "No, I've never experienced anything with the good old boy network. No. My mom was actually the first woman on the board of directors of the Metropolitan Burglar and Fire Alarm Association. So, we've never had any kind of prejudice against women." [#4]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "Yeah, they can't stand when a woman knows more than they do. ... Sometimes, I just let them slap their mouths out, and then I have to show them. And they can't stand that a woman can outwork them. They can't stand that I care about my job. They can't stand that I did something right. ... That's the kind of stuff I would get all the time, that just, you follow their orders. Then, if it's wrong, they want to blame you. The thing is that I always had to prove, to show them, 'Look, this is what you said.' All my life on that one [dealing with the good ol boy network]." [#10]
- A representative of a majority-owned professional services company stated, "So, our company's going through a little transition right now. So, I would say there were some elements of the good old boys and we were in the good old boys. So, I would say no. From what we do and what we did, I have not experienced that firsthand [when it comes to problems of getting work]." [#12]
- A representative of a Black American-owned goods and services company stated, "Have I ever been on the outside looking in [when it comes to the good ol' boys network]? Yes. Has that changed? Yes. I don't know how else I can put that. What I can say is they're definitely [here], Vegas as big as we're getting, it's still a good old boy network. And realistically to get in to be part of that good old boy network does not take a ton of work to be done. It's just a matter of people having faith in what you're doing. ... Your performance is everything. And anybody who says it's not, they're lying. And I hate to put it that way, but after being in Vegas and working in the construction industry for 32 years, starting off in AC, going to plumbing and now on electrical, I've covered the gamut and it has been the exact same. If you want to be part of the good old boy network and you want them to work with you, do what you say you're going to do. That's it." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yeah. Of course, as a small business, a small, micro business, as well as startup business, there is challenges to get into as already this established engineering market. And most of the engineering companies are owned by the, I can say, old boys club or some ... church group here, so there are not opportunities for us as a small minority[-owned] business to enter into that group. We have noticed that they keep on giving those projects to each other. And it means, of course, there are no goals for any diverse participation. So, that's also one of the hurdles. But that's the challenge for us. ... Yeah. Most of the engineering companies here in Vegas are owned by the good old boy network. They're mostly 98% of the company owners. We still never had received a single opportunity from any of them, even contacting multiple times with them for any of those project

teaming or be as a subconsultant on their project. And that's always been challenging portion, being as a minority engineering company in this state." [#16]

- The Black American owner of a woman-owned goods and services company stated, "I have been very fortunate is where that hasn't really happened to me that I'm aware of because I've been tending to stay in my lane, but now that I'm coming out of it and going into another direction, I don't necessarily feel like there's a good old boy network. I just lack the experience that I want to be able to get started and I don't care who gives it to me or where it comes from in the sense, I just want to gain it. So not really [any experience with a 'good ol boys' club]." [#17]
- The Black American owner of a DBE-certified professional services company stated, "I think the good-old-boy network is helping the folks on the other side. The big companies and the older people that work for those big companies, they have a network outside that allows them to get some information inside, and they're able to do more direct, face-to-face talk with some of the people that make those decisions on what work is being awarded. So, it's almost like if you haven't been around that long or if you didn't grow up with certain people in this community, then you would be out of the loop in those social gatherings where a lot of those decisions are being made. I feel like a lot of us, it's very difficult for us to socially connect on that level to give us that same edge, because you'd have to be willing to hang out with people you normally wouldn't, during times you normally wouldn't. I don't know how you correct that, but I believe that's what's creating the good old boy network sometimes. ... That good old boy network needs to change to something that's more inclusive. Not all of us grew up on a ranch in the middle of Nevada." [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "There's been a couple jobs where, again, because the firms were older firms, they got preferential treatment, and we were not even asked three of the five questions that needed to be asked to see if we were even qualified." [#20]
- The owner of a DBE-certified, woman-owned construction company stated, "I think there's only one thing that I had bid a project as a DBE. I was awarded the project. We were performing the project and then we get a call saying that they want to replace my company. I said, 'Why?' They wouldn't give me an answer. I asked why via e-mail, a certified document to their facility as well as to where I was working at. It was a public project and ultimately they replaced me, but they would never give me a reason why. So contractors have a right to remedy but they wouldn't tell me that I was performing poorly. If my team was performing poorly, they wouldn't give me an answer for anything. I wrote all the way up to directors, nobody would answer my e-mails, nobody answered my letter. And it's still a thorn in my side. And had I taken it further to complain, I would've had to go in front of the county commission. And I just thought, I don't want to lose the relationships that I have with this entity, so I'll just bite the bullet and deal with it. But it was not right, it was a \$42 million project to this company and it's been about four years. That has transpired. And it was cronyism because the contractor that replaced me was a typical sub for the GC. And so they were buddies and had been buddies for a very long time. I don't know that they can truly address the cronyism network because as a GC, as a prime, we have subs that we know we can rely on. They're the same way. But what happened to me when I did go above and beyond and tried to speak to the director, the assistant director, and all the people below, it was crickets. I could not get responses from anybody, and that I don't know how to remedy." [#21]
- The MENA American owner of a professional services company stated, "Where I can put on display a variety of successful projects that I have accomplished, and yet some of these entities ... Because

it's either the old mentality that was in town, the good old boys. That some of these good old boys are still having their hands in there, either as part time or they have appointed their own protégé to pretty much follow the same policies as before. Where these policies and ideas are so old, antiquated and they don't work in this day and age. And some of them retired just to come back and become third-party consultants. And they come in and behind the scenes take over the operation and the implementation of policies according to the way they were doing it 30 years ago. But they have some fronts, some young kids that they put as now 'he's the manager or he's in charge.' But the reality behind that young kid, there is that old-timer that is making all the decisions. Vegas is a different animal and it's a small community and it's a good old boy community and it will continue to be this way. And I don't know how you can change that. I don't know if you can ever change that. ... Well, I have spoken to people from time to time, colleagues, peers, and I know that they have concerns. They have issues with this individual, that organization, so on and so forth. But then I go to seminars and luncheons or functions where these entities come and put on a show for upcoming projects or past performance or patting themselves on the back or many, many different reasons. And then I still see these individuals sitting in their seats totally silent, totally silent. They don't dare to say a word. They don't express themselves. They don't identify the problems. And everybody pretty much kicks the can down the road. And some of these problems never get resolved." [#22]

- The white woman owner of a construction company stated, "Absolutely. When I started my business, everybody in this industry is the Las Vegas good old boy network, and I'm a female and if I go into a meeting and it's a bunch of men, not always [but] typically, I enter a meeting and it's mostly predominantly male. They're substantially older than me and they see me as a woman and automatically discount me. So the way that I've learned to overcome that obstacle is I determine that that's the kind of person it is and I make sure to bring a male team member with me and allow that person to take the lead." [#23]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I think that Nevada is not really friendly. LAS or RTC, if you look at who's getting the majority of the contracts, they're constantly doing studies and surveys, they know what the problem is, they know it's an equity gap, it's a wealth gap, it's an access to capital gap, it's an old boy system. They know what it is, they just keep doing the same thing over and over again as an answer, that even the companies that they have doing the studies is majority companies." [#25]
- The LGBTQ+ owner of a goods and services company stated, "That's the biggest thing in the oil industry, by far, the good old boys network. And that was also the biggest barrier when I started this company, is the good old boys, they all buy from the same place, they're only interested in selling to certain suppliers, and they're not taking new suppliers. Gosh, the good boys networks hit me every single which way. Certain large companies will only buy from their buddy that takes them to sporting events. I don't know how many different ways I can answer how much that's astounding yes." [#27]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "Absolutely. Do you know where we're at? We're in Vegas, it is the wild-wild West, and good old boy network out here [is] 100%. The other barrier in addition to that is also being a female in construction. So, I literally walk into rooms all the time, and just get completely ignored. Contracts passed over. My husband who literally comes from a manufacturing background of women's cosmetics and not construction, gets talked to before I do, even though I'm

the owner. I've had other mentors and big primes in this town that were mentoring me, literally talk to me and say certain words like girl to girl, this and that, and just super rude, constantly. And that was a male to me, not a female to female, a male telling me things like that." [#30]

- A participant in a public meeting stated, "We know that Las Vegas is a network of good old boys and you're not going to get in unless somebody dies." [#PT1]

2. Unfair contract denials or terminations and denial of the opportunity to bid. Three 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 [#6, #23, #AV]. For example:

- The Hispanic American owner of an MBE-certified professional services company stated, "Yeah [I've had problems with denial of an opportunity to bid and price quotes]. I've had situations in the past where that's happened where all of a sudden, there's personal politics involved and preferred vendors where we stop getting invited." [#6]
- The white woman owner of a construction company stated, "I feel like it wasn't due to denial to bid. Moreover, it was discounted. So for example, if I submitted a proposal and there were two other proposals and they were predominantly male in industry, known to certain entities, that I was just sort of automatically discounted because I was a female." [#23]
- A representative of an Asian Pacific American-owned, VBE-certified professional services company stated, "There's just been a lack of opportunity and lack of invitation to bid." [#AV113]

3. Stereotypical attitudes. Three interviewees discussed their experiences with stereotypes that negatively affected small, disadvantaged businesses [#1, #21, #29]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "I even mentioned it yesterday, my staff, 'The reason why we work this hard is because we got to show people out there, we can do it as a Black business. We want to get that stigma away, to show them that [a] Black business can be as good as a white business.'" [#1]
- The owner of a DBE-certified, woman-owned construction company stated, "Yeah, yeah, so yeah, just getting those first contracts and in my industry, being construction, being a woman as an owner, it's a challenge to get past that stigma that some people have. ... Probably being a woman [is my biggest challenge]. I put men on the frontline because it's easier to accept instead of me for that reason." [#21]
- The Asian Pacific American owner of a construction company stated, "Yeah, so I mentioned that female pilot who does some work for me. We were together on a drone delivery project for Walmart and she's a little bit older ... but she came to work every single day trying her best. And I noticed when I became the team lead, everyone started talking to me and reporting to me ... and they would often come to me and complain about her and how she wasn't doing her job and all that stuff. And I'm like, yeah, there's some technical issues, because she's trying to learn it just like everybody else is. But I can see that she's coming here and doing her best every single day. That's all we can ask for. ... And they try to use that as a way to discount her and her work and I didn't really appreciate that." [#29]

4. Double standards. Seven interviewees discussed whether there were double standards for small, disadvantaged firms [#10, #14, #15, #16, #18, #27, #30]. For example:

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yes, we do [have experience with double standards]. Sometimes, we submit our qualifications two times for this engineering projects, and then we do not get selected." [#16]
- The Black American owner of a DBE-certified professional services company stated, "Yep. I've experienced [double standards] too." [#18]
- The LGBTQ+ owner of a goods and services company stated, "Definitely [I have experienced discrimination related to double standards]. Yeah." [#27]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "As a female in the industry, you have to work harder. And just even as a minority, I know we're Hispanic and I look white, but all of my people do not and they get discriminated against a lot just because they instantly think that they're beneath them, or ignorant or something, because of the color of their skin." [#30]

5. Unfavorable work environment for POCs and women. Thirteen business owners and managers commented on their experiences working in unfavorable environments [#1, #10, #15, #16, #22, #25, #AV, #WT3]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Certain business that don't look like me, I know they don't have a problem [in Southern Nevada]. But I don't know. I know people who look like me, the majority of the time they have a problem getting their equipment. ... I've had been called an ugly [racial slur] in my shop before by a lady. But like I said, it's just part of it now. You're judged all the time. I said to minority-owned business, 'You have to be 150% right every time because if you're wrong one time, people are gone.' And I've seen it. I could do a hundred jobs, and then one time somebody didn't get done on time because they didn't do their job, they're done with you. So, it's a battle every day." [#1]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I still think the fact that I'm a woman is a barrier. ... I'm just tired of getting screwed. You know what I'm saying? I'm just tired of going and doing an honest day's work, and then, someone taking advantage of the fact that we're too honest." [#10]
- A representative of a Black American-owned goods and services company stated, "Yes, [we've experienced a sense of exclusion] in the past." [#15]
- The MENA American owner of a professional services company stated, "What is happening is that the big design and construction engine in Southern Nevada, and I'm talking about big firms, they're bashful to work with the smaller firms. They don't think that the small firms can perform, which is not true at all. Because for instance, if I know I cannot handle a project, I will not take it, for whatever the reason. But the other thing is that there's plenty of politics. This town is notorious for politics playing such a huge role in everything that we do here. And of course it doesn't help it when you are coming from a background where in general, people in the community do not have a favorable views of where you came from. So ... it's a double whammy for a firm. My firm is totally unique because I take it from both ends. There are other minority firms that are getting shorthanded the sticks because of different reasons. But ... I get it from both ends. Nothing is

transparent and the reason it's not transparent is because the big favorable firms that are getting jobs all the time, they love it. It works great for them." [#22]

- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I've been here 31 years and Vegas is not friendly to African Americans, and definitely not business. So, I've had to scrape for everything that I've gotten. I don't want to put a lot of energy into something that is going to be even more frustrating." [#25]
- A representative of an Asian Pacific American woman-owned, LGBTBE- and VBE-certified goods and services company stated, "[My] wife is the owner, she has had issues when she goes into the conventions. They tend to take her comments [and] not put trust in what she says, trying to [in]validate her. She has difficulty building new contracts [because she has] a communication barrier, being Japanese, causing her [be] discredit[ed] as opposed to [being judged by] the quality of her work." [#AV1]
- A representative of a Black American-owned construction company stated, "We can be minority-owned, but we still have to compete. LAS takes the lowest bid. It is a monopoly. This entire city is monopolized. The same companies get all the work. It is all by design. A new company coming in and trying to get work is nearly impossible." [#AV147]
- A representative of a Black American-owned professional services company stated, "A level playing field. I don't believe minorities get an equal opportunity to get projects that non-minorities do. If there was a level playing field, you would get more minority participation in projects." [#AV196]
- A representative of a Black American woman-owned construction company stated, "It is strange that a Las Vegas local [company] is not preferred over an LGBTBE or minority company. Especially since whites are a global minority." [#AV50]

6. Resistance to use of MBE/WBEs by government, prime contractors, or subcontractors.

Four interviewees shared their experience with the government, prime contractors, or subcontractors showing resistance to using a certified firm [#1, #10, #16, #17]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "I'm a minority-owned business, and I'm only minority storefront business in Vegas and union print shop in Vegas. So, you can't tell me there's nothing that you need from me when you sat there and told me, 'Yes, we need all this stuff,' but then they just move on. And that is what I don't understand. And it's discouraging." [#1]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I think the fact that again, that I'm a woman, and then, they don't think that we're capable of running the bigger jobs. So, they always try to just give me the smaller jobs." [#10]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Disadvantage, people see as a DBE firm, so sometimes they have a phobia. Or [they think] 'This is a DBE firm, so he is trying to use that certification for his advantage.' ... When we are going for any private side opportunities based on our race, then I see some discrimination there. ... Yes. When we submitted our proposal or to approach them and they do not consider, because maybe we are minority, or we are a small consulting startup company. So, that's discrimination we face." [#16]

- The Black American owner of a woman-owned goods and services company stated, "I have [experienced discrimination] because I started out when I got here, non-commercial, going into people's homes and things, wanting to go into people's homes and help them work, there was rejection like, 'okay, thank you,' and I would show that I'm bonded and I'm licensed. A couple of occasions, I pulled out my driver's license and let people take a picture of it so that they could feel comfortable because it was just me. ... I'm African-American, my clients tended to be African-American, when I wanted to help all seniors of all nationalities, if that makes sense." [#17]

7. MBE/WBE/DBE fronts or fraud. Four business owners and managers shared their experience with MBE/WBE/DBE fronts or frauds [#16, #21, #27, #30]. For example:

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Yes. We are trying to be on construction management for indoor projects, and most of the indoor projects for the construction management goes to the one specific company here in the valley, and they have a kind of in-house DBE firm in their company, and they always give their work to that specific company. They do not want to give that work to other companies. And we specifically try to contact or connect with them for so many times on various projects and did not receive any response from them." [#16]
- The owner of a DBE-certified woman-owned construction company stated, "No, it was related to, I spearheaded the Diversity and Inclusion Council for the Nevada Contractors Association. So, we would've people come in saying they were certain certifications and this and that and they were not. But we remedied that." [#21]
- The LGBTQ+ owner of a goods and services company stated, "[A local oil company] is considered a woman-owned business, despite the fact it was founded by [a white gentleman] in the '50s. And I believe that they used that woman-owned certification on so many of their things, despite the fact that they're a multi-billion-dollar business, they have every advantage I just described, like those suppliers who we already have, our preferred distributor, it's Rebel Oil, and it's been Rebel Oil since the '50s. And now, they're using the same thing that's supposed to help disadvantaged people, like me or other people, they're using it for their big business." [#27]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "Yep. Since day one, since I first started the company, I feel like a lot of the males will put their wives on the company and say that they're woman owned as contractors. Specifically, there's one company I actually know them personally, and I thought they're female owned. And my understanding is you have to work within your company a certain percentage to even get that certification. And she straight up lied. She has a full-time job making six figures a year while her husband's running it, but she's certified, and she's funding her company that way and then still getting the woman on certification but does not work or even 30 hours a week in her company." [#30]

9. Predatory business practices. Two business owners and managers commented about their experiences with predatory business practices [#18, #PT1]. For example:

- The Black American owner of a DBE-certified professional services company stated, "We call that buying the work when you charge less than what it costs to do the work, and if you're a bigger company, you can afford to do that kind of thing, and so they ended up trying to go low on a few

projects and they won those jobs that we were thinking we had in the bag, to be honest with you. We went as low as we could, so we knew they were selling or buying the work. Basically, what that does is, if I have to be on an island for so long, I'm eventually going to have to close up shop." [#18]

- A participant in a public meeting stated, "We're going through a situation right now where if the primes can throw you under the bus, they're going to. I'm on a project right now, where the prime left me. They changed the schedule. They did it, and they're wanting to charge me \$200,000 in fees, on their schedule that they directed me on. And, you know why? So, they don't have to use me on the next contract, because then we're not capable. So, really it's a large versus small situation that we have to do our due diligence every day." [#PT1]

10. Other forms of discrimination against minorities or women. Six interviewees discussed various other factors that affect disadvantaged businesses' entrance and advancement in the industry [#4, #15, #16, #25, #WT1, #AV]. For example:

- The white woman owner of a goods and services company stated, "So I do get, which it is kind of feels like reverse discrimination to me. I do get e-mails that they're offering grants specifically for Hispanic-owned businesses. Or Yelp actually promoted Black-owned businesses. So I find that it's discriminatory against me as a women, female small business owner." [#4]
- A representative of a Black American-owned goods and services company stated, "Again, a situation that's not going to be handed to us readily and openly. Definitely stuff that is decided behind closed doors and I've had my suspicions [regarding discrimination in financing]. ... Well, if you don't know where your bid was, or worse yet, you're told you were the low guy but you didn't get it, that is, most of the time that comes from either the electrical contractor or the distributor. We don't know for sure whether that's truth or not. So when you don't have any idea about these bids, and they'll tell you, 'Oh, well, we do a bid reading.' Yes you do. And if you're at the bid reading, they tell you who is on the distributor side, who got the job. They don't tell you on the agency side because what if that distributor used three different companies just like these guys do, right? They take in minimum three bids. Distributors do the same. So, were we discriminated against at the distributor level? Were we discriminated against at the level for the bid opening from these people? We have no idea. So that question in itself is not something I feel anybody can answer. And if we aren't looking at these situations to understand it, then as a small business, how could you honestly say whether or not you were discriminated against? Now the government does things differently when I did procurement work with them. When you were a small business, or excuse me, a minority-held business, then you got a discount off your bid, that was automatic. So that way when they said they wanted to work with disadvantaged, minority-held, whatever, you got a certain discount off of your bid to make sure that you were competitive, to make sure that everybody knew, and they would tell you who won the bid and why." [#15]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "Another discrimination happens in all these public agencies is through, sometimes, not based on the qualifications but based on the, whom do you know? If you know that, for a person, then sometimes, more favor to those people or company. That's one of the [instances of] discrimination I saw." [#16]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "You know that it's discriminating, but it's so sophisticated and so institutionalized, proving

that, or even having a conversation about it, is the person is looking at you like, 'You're really crazy, we don't discriminate.' So, I would say absolutely, absolutely, I've seen it over the years. Proving it, that's a whole other animal. You already know that you are going to be classed out and placed below because of your race and gender." [#25]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "During our conversations with procurement departments of various government agencies in Southern Nevada, most of them cited limitations imposed by Nevada Revised Statutes (NRS) 332, 333, 334, 336, and 338, which regulate purchasing by local and state governments, public works, and fleet services. Unfortunately, none of these NRS have policies that support small and diverse businesses, preventing public agencies in Nevada from providing equitable opportunities for these businesses." [#WT1]
- A representative of a Hispanic American-owned construction company stated, "I've heard that the government grants the jobs to people whom they know. The government has to keep bringing new businesses to bid, but they keep giving the jobs to the same people. I bid on a few jobs, but then I stopped, because they were giving the jobs to the same people, and I just got tired of trying. I guess it's just politics." [#AV175]

I. 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 I 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. Administrative burden;
6. Financing assistance;
7. Information on public agency contracting procedures and bidding opportunities;
8. Other agency outreach;
9. Streamlining/simplification of bidding procedures;
10. Unbundling contracts; and
11. Small business set-asides.

1. Awareness of programs. Twelve 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 [#4, #5, #9, #13, #14, #16, #17, #18, #19, #20, #24, #PT1]. For example:

- The white woman owner of a goods and services company stated, "Back in 2013, I took a business owners workforce development class through Clark County. So, they did help us get some awards. Since 2013 though, we haven't received any. ... I started getting involved with SCORE and I asked them for a mentor to help me. But the person that they connected me with, I don't know if we just didn't get along together, but after the first initial meeting, I didn't want to move forward. But I think I'm going to try again and see if I can get someone else. So, companies like that that offer free-of-charge help, I really do find beneficial. ... The Workforce Opportunities and Development program that they offered through Clark County [was helpful]. ... They discussed that there are set asides for women-owned business [in the Clark County program]." [#4]
- The Hispanic American owner of a goods and services company stated, "There was something that the SBA held, and it was like a small business, I don't want to say incubator, but they brought a bunch of small businesses together once a month and we were able to do homework and all that stuff. ... I pulled myself out of the program because it did not help me in any way, shape, or form. For our operation and our size of the business it wasn't feasible to stay in there and continue the program." [#9]
- A representative of a majority-owned professional services company stated, "[At the] SBDC, I have a dedicated contact person. There are a lot of webinars available that go through SBDC and SBA. Some of which I actually have our marketing intern learning and gaining some information from. Also, it's been, it was pre-pandemic, Clark County had SBOP [Small Business Opportunity Program]. And I believe that was about an eight- or a 12-week course that I went to. And they have not restarted that program. Two of their employees left, one retired, and actually one went to work for RTC. So, they have not brought that project or that coursework back, but I think that was really helpful." [#13]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "I mean, there are some of that that I've seen now that are geared towards African American[s]. They are geared towards maybe Hispanic [Americans]. But, as I mentioned before, I have not seen anything where they say, 'Okay. [This is] Asian-specific, apply for this program.' I'm not sure why there would be an offering to a certain ethnicity group, ... but then, as [an] Asian [American], I would then say, 'Why are they not also creating [programs] for the Asian community, or just Asians? ... We [have] been fortunate receiving some grants as well. So, that has been helpful.'" [#14]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "We are aware of this MGM ... supplier diversity program, but we are not aware of any other programs." [#16]
- The Black American owner of a woman-owned goods and services company stated, "The SBA had good videos and things like that on how to obtain a loan. ... I don't want a loan, I don't want to get in debt. I just want to get my business started, get acclimated to working with the government. But they did have some other tools and pointers to help you out." [#17]
- The Black American owner of a DBE-certified professional services company stated, "I was trying to look for programs that was beneficial, especially if some that would maybe allow us to get approved for a loan, but there was nothing that really helped us in that, to be honest with you. I'm trying to think of the group that I signed up under. It was through the SBA. There is another group that helped me fill out my company statement and qualifications, basically." [#18]

- A representative of a woman-owned professional services company stated, "I belong to a group called CEO Stars, and it's an organization started by a gentleman that put together, there's about 10 companies like myself, like our company, across the United States. We don't compete with each other, but we talk once a month about different things that we're going through and how to learn and try to build our business. We either share business or we share information and processes and financials and all kinds of things. It's totally invaluable." [#19]
- The Black American owner of a DBE- and VBE-certified construction company stated, "The SBA has been helpful. Again, they are what they are, they're shorthand[ed]. I don't even know what the number of businesses are in Vegas, but I'm sure there's a ton. SBA and SBDC have been probably the most helpful. ... Access, yeah. Because we did the loan, got the loan, paid it off through Access. [Someone] sent me a class, it's called Building for Growth. And it's a community of just construction contractors, subs, minorities, LGBTQ, everybody in that field. ... It's like an 18-week program, but it's been super beneficial to help. ... [It] is construction-specific and our program has been super helpful because you're hearing from other contractors, smaller than you, bigger than you, same size. And they're bringing on ... we had a bonding company come on last week, we had a two-part series on financing. Upcoming, we have a legal, two lawyers coming in to speak to us. But it's construction and our industry-specific. So that has been, for me, a way better use of my time. And again, as an owner, ... for me to take time away to do things that are not moving or pushing my business forward is really, really hard. But when I know that there's a potential for growth and earning more, because this is a continuous learning process every day, that's how I see it. So, I can never have enough knowledge and I'm never going to know everything, but at least have the resources, know where to reach out to. So that, SBDC and again, SBA. But the connections that I'm making in the different places, and most of them, again, have all stem from SBDC." [#20]
- The owner of a SDVOSB-certified construction company stated, "Well, the VA I guess, since it is almost solely all their solicitations are set aside specifically for SDVO, not all of them, but most of them are. That was particularly helpful knowing that, depending on the solicitation, if there's certain requirements in there that dictate like a service response time of one hour, then either somebody from out of town's going to have to get with me to do that, or I'm going to be the only one that's going to be qualified to meet that solicitation." [#24]
- The Black American woman owner of a DBE-certified professional services company stated, "One of the things that I like that Goldman Sachs has done is they designate specifically for Black people. Because when we're lumped in, even though we have the longest history in terms of all of the laws that are in place, systematically these discriminatory processes are put in place. So, all these other minority groups get the funding, and we are left out." [#PT1]

2. Technical assistance and support services. Five business owners and managers thought technical assistance and support services were helpful for small and disadvantaged businesses [#4, #10, #16, #AV, #WT5]. Comments included:

- The white woman owner of a goods and services company stated, "Well I need more education on the internet and how to use it, [on] SEO [search engine optimization] and [how to develop] more of an internet presence. And I think that I'm the barrier. I just have to find time to learn more about it. Or my company needs to grow so I can hire someone to help me." [#4]

- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "Probably learning how to read the blueprints more [would be helpful]. I can read them a little bit, but not really like I should." [#10]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "I'm not aware of that trades program. Basically, they can help with the technical support, then connecting with the primes, training to satisfy what primes are looking for. If they can give us some [accounting and bookkeeping] training to do that, that would be awesome." [#16]
- A representative of a Hispanic American woman-owned professional services company stated, "My experience is that there is a shortage of technical support among staff members in the government. There's a definite need for that kind of expertise. Otherwise, everything has been great in terms of our work with the city and state." [#AV206]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The LAS and RTC [should] develop a mentor-protégé program and offer supportive services." [#WT5]

3. On-the-job training programs. Fourteen business owners and managers thought on-the-job training programs were helpful for small and disadvantaged businesses. Support varied across industries [#2, #4, #6, #7, #8, #9, #10, #12, #13, #20, #22, #23, #26, #28]. For example:

- A representative of a Native American-owned, MBE-certified construction company stated, "Yes and no [regarding whether on-the-job-training programs would be helpful]. Some of it boils down to work ethic and not so much knowledge. ... It would improve someone's skillset probably dramatically. It's just they would have to put in the time. There's a cost associated with it." [#2]
- The white woman owner of a goods and services company stated, "So we tried [an on-the-job training program]. ... I don't know if it was through Job Connect, but we did take somebody that was never in the locksmith industry and my husband trained him to be a locksmith. ... Well, they actually paid for his salary for the first couple of weeks, so that was very nice. So, it made it easier for us because he wasn't actually able to do the physical work he was learning. But yet, we didn't have to pay him out of our pocket to learn. So that was beneficial." [#4]
- The Hispanic American owner of an MBE-certified professional services company stated, "That's basically what I do, is I bring in people outside the industry and train them. I look for attitude and aptitude and bring in my own people and train them up in the industry. That's probably why I have the retention issue because I bring them in green and when I'm done with them after two, three years, they're very highly skilled and valuable employees. ... One of my biggest challenges is because I'm in this security industry and we work on critical infrastructure, I need to have people who can pass background checks, we work in construction environments so I need people who can pass background screenings, and I put people in company vehicles so I need people with a clean driving record. In this day and age, that's a very high bar to finding people." [#6]
- The owner of an SBE-certified, woman-owned construction company stated, "No, we don't train them. We help with their OSHA training if they don't have it. But really they've come up through the program and their journeymen and their trades." [#7]
- A representative of a VBE-certified goods and services company stated, "Yes and no. There's always the no, because at times there's the guards that come in and do the whole application, do the whole

interview. We onboard them, we explain all the policies and procedures, and then the first day they don't show up. So now I've invested, or my people have invested time and money into this person only for that person not to show up. ... But at the same time, it's having that additional money to say, 'Okay, it's okay to hire,' or the profits coming in from clients that are willing to pay the right amount to be able to say, 'Okay, now we have just a little bit more extra to be able to, or growth too to be able to continue to hire.' So, we're not at a hiring freeze, but at the same time, the potential, I can tell you right now we have ads on Indeed and everybody applies and we invite them to come in and we will probably get 10% of those people." [#8]

- The Hispanic American owner of a goods and services company stated, "We do have those [on-the-job training programs]. It really doesn't work out all the time because it's such a large workload that we have. We actually have an academy going on right now upstairs and we had to transition our academy from being a full training week or two to one day a week for eight weeks. So, every Tuesday we had to adapt our training because if the officers get pulled from site or from their duties, we can't invoice. So, a huge challenge is we need to work to get paid, but I now need to train them and nobody's paying me to train them. So, this all goes back into an investment back into the company. That's why I said it's probably about millions and millions of dollars now. We're at a \$12.3 or \$12.4 million operation and almost significant amount of it goes to training. So, we had to adapt and one day a week we pull the people that are in the academy to go and train. And then they'll put back the next day back on their shifts, so we can invoice and not cause overtime. ... So it's very difficult in that aspect because nobody helps out there." [#9]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "I don't know, I don't think [on-the-job training programs would help]. It's just finding ... Because I always try to, people who work directly for me, I always try to cross-train them, so I can use them anywhere. That's like me, I know how I have my finger in a bunch of different fields, and it's always good to have an extra person doing something else. Because if this one's not here, I can move people around." [#10]
- A representative of a majority-owned professional services company stated, "[On-the-job-training would help] to a limited standpoint. I think the main hurdle to that from us is we have so much work, it's hard to take people off the work to train somebody with it. It's a balancing act between training somebody up but making still sure that the staff who has the experience can still get work done. Because you do still have a heavy workload." [#12]
- A representative of a majority-owned professional services company stated, "I would say it would be dependent on the specific role. If you're talking RTC and somebody actually driving a bus versus RTC and somebody working in the architectural division, that helps determine how a building's going to be put on a site for one of their projects. That would be two different types of educational plans. So one of our interns is from out of state and seeking for her college degree, the number of required hours. One of our interns is a local UNLV [University of Nevada, Las Vegas] student that's also getting the work experience. One of our interns is a high school student that is employed through Clark County on Clark County payroll through the Summer Business Institute program, SBI for short. And Clark County pays that intern for eight weeks to learn and work with us. So, there's a multitude of different process[es] based on where the interns come from and what they're seeking. I think it's a great opportunity if there is a paid internship opportunity." [#13]
- The Black American owner of a DBE- and VBE-certified construction company stated, "We tried hiring because when we were doing the historical West Side project, a lot of the neighbors who

were looking for work and guys who said they had been in construction. And just again, trying to give back to the community, would come around, we would hire them as day laborers to see what their experience was. But it slowed down the jobs too much. A guy spent too much time teaching and again, we're a small company, so it's not like we have a classroom or somewhere to take them to teach them. And it slowed down the progress of the work. As the GC, I have a deadline and I have to cover cost every day that I'm late delivering that project. So the on-[the]-job training was, again, it wasn't a formal on job training and it wasn't something we [had] done before. It was kind of an instantaneous thing of trying to give back, but it just slowed us down too much." [#20]

- The MENA American owner of a professional services company stated, "If there are agencies that can identify the individuals that are truly working for work and trying to expand their capabilities in my practice, and they're being sponsored. Because see, I cannot afford to bring someone and spend a lot of time and resources training. So, if there is some kind of assistance in their training process, yeah, I would welcome that. I think that's a good idea." [#22]
- The white woman owner of a construction company stated, "Yes, I think that an external training program would be fantastic. It would be very beneficial to me and my company and onboarding employees who would help establish standards and appropriate actions of business. When we're talking about customer-facing interactions, the most important factor that I think is not just easily taught across the board is the technical aspect. So, what we do is different than HVAC companies or plumbing companies or overhead door companies. There's parallels between us and overhead doors, but it's that technical aspect which is the biggest obstacle. There are certification programs out there, but what's lacking is mechanical, technical experience at the entry level. So say if there was a way for that to be integrated back into the school system where they used to have shop and automotive and wood shop and all of those things so that people can learn life skills, it would be amazing if there was something at that level for our industry, which would encourage young people to pursue that as a career because there's lots of opportunity within this industry." [#23]
- The non-Hispanic white male owner of a VBE-certified construction company stated, "Very much so. Especially with skilled trades." [#26]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "Absolutely [on-the-job training programs would be helpful]. ... So that would be definitely certain skillsets. If it's my office manager getting trained on a higher aptitude of accounting, let's say, or project management, when we have five or six projects going on and the credit cards are being utilized, staff tracking has to go across three different billable projects and all that. There's many 2:00 AM nights where I'm sitting there punching numbers into a spreadsheet and calculator that I wish people in the office could be more trained to do. And then, specific skill sets. We have welding or we have sewing, we have upholstery, certain trades that ... Yeah, we can handle this job for a mid-tier hotel, but, man, if [certain hotels] were to come knocking, I wouldn't feel confident that our team could perform to the standards required unless I'm watching every detail. But if I'm watching the execution of every detail, then who's out there selling and bringing in the next job?" [#28]

4. Mentor/protégé relationships. Five 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 [#1, #10, #16, #30, #WT1, #WT5]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "[A casino group], they put me on a six-month course for them, which I was excited about. They gave me a mentor. She came to my shop several times. She was amazed by the jobs we do. And she's like, 'There's a niche here for you and your company. You could do really well. We'll put you on our network so that people can find you.' And we spent a lot of time together. And then, we had the graduation. Everybody shook hands." [#1]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "No, there is. Like with [...], my old boss, and like I said, he's one of my mentors. I'll work for him any time, because ... Let's say that he tells me, 'Okay, I'm going to pay you this much,' but then they don't let him, and he has to pay me less, or they give him less money for that job? He'll make it up to me at another job." [#10]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "We should have some mentoring/protégé program. At least, RTC or LAS should establish that program. I know NDOT has that. But we submitted our application two years back, they still haven't found us any mentor." [#16]
- The Hispanic American owner of a DBE-, WBE-, WOSB-, MBE-, and SBE-certified woman-owned construction company stated, "A joint venture program or a protege program like that, for me, I would love that. To work with someone who had experience [and] that wasn't threatened or whatever and realized there's enough for everyone to just train and grow and work together. That would be freaking amazing." [#30]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "LAS and RTC should also establish a mentor-protégé program and provide supportive services to further assist small diverse businesses." [#WT1]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The LAS and RTC shall develop a mentor-protégé program and offer supportive services." [#WT5]

5. Administrative burden. Twelve business owners and managers discussed measures to reduce administrative burden throughout the life of a contract [#25, #27, #AV, #WT1]. For example:

- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "So a great example would be for me to get a contract, I have to prove that I'm Black, and I have to go through 65 pages. Then for a majority company to get the contract, they should have to go through 1,065 pages before they get the contract. So that would be holding them accountable to what they say they're doing, opposed to just granting them the contract and they jump through no hoops. But we jump through thousands of hoops and still you're getting scraps and crumbs, and most of the time you're getting nothing." [#25]
- The LGBTQ+ owner of a goods and services company stated, "And then of course, there's so much regulation around fuel storage. For instance, in Clark County, Nevada, gasoline must be stored in bullet-resistant containers. So that's incredibly expensive, incredibly heavy. And then they require permits and they require \$1,600 a year for the right to be able to store flammables. So those barriers are ... they're difficult, we overcome them, we price it in, but that's just an unnecessary barrier that I've seen. ... One of the barriers, at least for Las Vegas Water District and City of Henderson, is they have these pipeline certifications that they require that is pulling teeth for us to

even get. We're not the pipeline company, and getting that from them is very, very difficult on most occasions." [#27]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "The lengthy procurement process for government agencies in Southern Nevada is the biggest obstacle to working with them, especially for small businesses that have limited cash flows. Such extended procurement timeframes are unsustainable for small businesses." [#WT1]
- A representative of a woman-owned construction company stated, "I would only entertain doing government work in the perfect scenario. It comes with a massive amount of administration, and I'm not geared for that at the moment." [#AV2]
- A representative of a woman-owned construction company stated, "There is a lot of specific paperwork, and not a lot of instruction. The process to get badges and parking are not very streamlined, and our bids are higher due to the increased delays that the airport causes. They just are not work friendly." [#AV18]
- A representative of a majority-owned construction company stated, "We have a small business and the dedication required for the whole proposal process is just too time-consuming. We would have to hire a person just to do proposals, as the process is really a job in itself." [#AV39]
- A representative of a majority-owned professional services company stated, "Difficulties with procedures for submitting documents, availability of staff to answer questions. Getting a hold of them is the problem. It may take a week or two to get a response or no response at all." [#AV44]
- A representative of a Black American woman-owned and VBE-certified construction company stated, "The process is kind of daunting in terms of the paperwork. It's almost like you need a mentor to walk you through the process. The application part of it all is really intense in terms of the amount of information to put together properly ... It's easier working with private clients, but government, state, city ... it's like pulling teeth sometimes. Some of these guys are better than others in terms of bidding for a project. I have more success dealing with private clients. I'm also licensed in." [#AV48]
- A representative of a majority-owned construction company stated, "I am perfectly happy with my relationship with government entities. I like it here. No complaints, other than the bureaucracy is getting worse and worse." [#AV131]
- A representative of a VBE-certified construction company stated, "It is not easy anymore - paperwork is very heavy." [#AV176]
- A representative of a majority-owned goods and services company stated, "There are challenges working with government agencies due to paperwork, favoritism and pricing. They try to make it so you don't make any money." [#AV185]
- A representative of a Black American woman-owned professional services company stated, "Paperwork and bureaucracy. There is too much paperwork to do, it is not an easy process and needs to be streamlined. They need better web facing, and lower fees for state registration in Nevada." [#AV278]

6. Financing assistance. One business owner thought financing assistance could be helpful for small and disadvantaged businesses [#28]. For example:

- The Asian Pacific American owner of an MBE-certified goods and services company stated, "We're currently going through the process. This is my first time applying for an SBA loan. Prior, it's always just been getting a business line of credit or a business loan, which is then always personally guaranteed by me as opposed to being a true corporate loan. So, every time I've gone through the process, it's been an ordeal. A lot of documentation and paperwork. And then, sometimes the terms are so outrageous that when you need it most, you feel like you're being gouged. A \$60,000 loan, pay off in six months, it'd be \$75,000. So, I have to pay \$15,000 for a six-month loan. It's like, 'Oof. Ouch.'" [#28]

7. Information on public agency contracting procedures and bidding opportunities. Two business owners and managers provided their thoughts on the accessibility of information about public agencies' contracting procedures and bidding opportunities [#4, #PT1]. For example:

- The white woman owner of a goods and services company stated, "I would definitely need help learning about the software and how to use it [in order to get involved in the bidding and contracting process]." [#4]
- The Black American woman owner of a company stated, "I run into issues when it comes to new businesses knowing that there are opportunities out there. And, they know that they exist, but the pathway to get to them is incredibly difficult. So, you may know that there are government jobs that are available, but that's the only thing that you may know on how to get there." [#PT1]

8. Other agency outreach. One business owner shared their experiences with LAS's or RTC's outreach efforts [#22]. For example:

- The MENA American owner of a professional services company stated, "I have gone to many of these workshops. These workshops are very general. They're not one-on-one and they have resulted in zero benefit." [#22]

9. Streamlining/simplifying bidding procedures. Two business representatives thought streamlining or simplifying bidding procedures would be helpful for small and disadvantaged businesses [#AV]. For example:

- A representative of a majority-owned goods and services company stated, "We've struggled in the past due to the opaqueness of the bidding process. It's extremely burdensome, contractually, and administratively. The small-business certification process is quite challenging on the federal level in terms of hundreds of documents which you have to submit. We're definitely open to government work, however, and we've been looking for it in various avenues. More work is welcome. We do plenty of business all over Nevada, and we're open for more." [#AV95]
- A representative of a Hispanic American woman-owned construction company stated, "The barriers are the lengthy contracts. I receive a 300-plus page contract and I have three other bids to do. There is so much extra education you have to learn in order to complete the contract process, it is just too much. I don't have all of the extra hours. I feel like there needs to be more openness for woman-owned and minority-owned businesses. The old guard needs to step aside for the new companies. When the minority- and women-owned businesses get the credit they deserve, it will be great." [#AV135]

10. Unbundling contracts. One business owner discussed breaking up contracts into smaller pieces [#1]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "And RTC, I've never had that problem. But if they got big jobs like that, they can put that in there as well, that if you cannot handle the whole job on your own, we don't mind you partnering up with somebody in Vegas. That would be a good thing." [#1]

11. Small business set-asides. Two business representatives thought small business set-asides for minorities and women were an abuse of the program [#PT1, #WT5]. For example:

- A participant in a public meeting stated, "As an interior designer, if she were to go and talk to a person at the Las Vegas airport and they don't see a need for a whole large-scale renovation at the time, at the very least, we would like to be able to see the opportunities extended to say, 'Hey, maybe we've got an office or two that needs to be renovated, to see what your capacity is, to see what you're capable of.' But, those olive branches aren't being extended to these small businesses, so that we could at the very least, get that one thing on our resumes to show that we can at the very least participate on some level as the prime." [#PT1]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The public entities in Southern Nevada should provide direct procurement under \$100,000 contracts for small businesses." [#WT5]

J. Insights Regarding Race- and Gender-based Measures

Business owners and representatives shared their experience with the NUCP, RTC's RiSE program, minority business programs, and small business programs and provided recommendations for making the programs more inclusive. Part J presents their comments on:

1. Experience with DBE programs;
2. Recommendations about race- and gender-based programs.

1. Experience with DBE programs. Thirteen business owners and representatives shared their experiences with LAS's and RTC's programs for certified businesses [#1, #2, #12, #16, #18, #21, #AV, #PT1, #PT2, #WT2, #WT5]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "Like I said, the only reason why I'm getting business from the airport is because [an advocate in the airport] is the only one pushing business my way to support. So, those are the only business that we're getting now, from [her] department. ... LAS, the airport, or RTC, they ... have websites that were registered already, that people could go in and pick who they want to, pick people, and put a bid in. ... They have a website that you're registered on there and people could go on there and search for you, and search for companies that are certified, or a small business, and put a bid in with them." [#1]
- A representative of a Native American-owned, MBE-certified construction company stated, "Actually, years ago, four or five years ago, we were bidding on projects that RTC was involved in that had certain criteria or requirements for minority[-owned] business. RTC has an advisor that

comes out to the office and talks to us about working through the solicitation process, that kind of thing. Maybe being involved with them more would benefit that, that aspect of bidding." [#2]

- A representative of a majority-owned professional services company stated, "Well, I know the RTC has started a program trying to get some of these, at least from the contractor side, getting some of these businesses hooked up with some of the bigger prime contractors. So, that seems like a good start. I know that in the contracts they talk about [how] a certain percentage has to be minority- or women-owned or all the rest of those categories, but it seems like it's more, at least it's been a while since we looked at it, but it seems like it's been more voluntary. I don't know what the success rate of their side has been to actually get that voluntary [participation] being done. So, I don't know if there's stuff in the law or whatnot that they can try to be more forceful in saying, 'Hey, you guys need to use these people out there who are seeking an opportunity.'" [#12]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "RTC did excellent with the program for connecting with all these diverse group or diverse businesses with their various departments. ... They did one-on-one session[s], and that was very helpful to know what's in various departments or requirements and what kind of opportunities are there. So, I will suggest [that the] airport should also do that. But also, I will suggest, RTC is a funding agency, so they provide funding to all these various government cities and counties in Nevada. So, they should do kind of similar program, one-on-one with these agencies, for these various small and diverse businesses." [#16]
- The Black American owner of a DBE-certified professional services company stated, "There's only so much LAS or RTC can really do to [to help businesses like ours]. It's a much more complicated issue that's internal to these companies that we're going to work with." [#18]
- The owner of a DBE-certified woman-owned construction company stated, "I know that LAS, they've a department for diversity. They're excellent people, they're really easy to work with and if you show initiative, they're going to back you a hundred percent. They're going to try to make sure you get where you need to go in terms of who to meet or when a bid's coming out. So we get a lot of support that way. The same with just about every entity is supportive if you just have a relationship, if you go in and say hi. That's been my experience." [#21]
- The Black American woman owner of a DBE-certified professional services company stated, "There's a lot of meetings. They have meetings and they do the matching, but that's it. ... When they do the grants or whatever, it's always about in-kind. They're always giving you some type of training, but it's never a contract for you to elevate. And then, in terms of them talking about getting in and talking to the subcontractors, that is the door. It's always a barrier trying to get in. When you try to make contact after those meetings, you can't really get past that. ... Once you have the certification, it's just that. Even if you reach out to the various agencies, it's more like they're just going through the motions ... they placate you in terms of making you believe that they're really helping." [#PT1]
- A participant in a public meeting stated, "I've noticed with RTC and McCarran is they're doing a lot more outreach. They're having at least once a year the meet and greets, meet the generals, meet our people, come talk about what your small business can do. That is so helpful in many ways because our time is valuable and when we're running the business, running our employees and trying to market, it's very tough to get out there and spend the time to actually meet the end users who would use our company's expertise." [#PT2]

- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "I had the opportunity to attend the 'How to do Business at the Airport' event, which was organized by the Harry Reid International Airport (LAS). During the event, I gained a better understanding of their procurement process, which included information on goods, non-professional, and construction procurement processes. However, there was no discussion about professional services procurement processes." [#WT2]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "If there are no DBE goals, then prime contractors do not hire any DBE/MBE subcontractors. In Southern Nevada, 99% of engineering consulting companies are owned by white males, and they are generally not interested in working with diverse businesses unless there is a diverse business utilization goal included in the contract." [#WT5]
- A representative of a Hispanic American-, woman-owned goods and services company stated, "I've tried multiples years to get into LAS and RTC, I know that they use my services I provide, for repairs and what not. I think it's successful, its work. It's just the departments not knowing to get into the end users." [#AV35]
- A representative of a majority-owned goods and services company stated, "We have had conversations with the RTC and put in bids with the airport patrol for parking enforcement, and we were not contacted back because of the cost of services that we offer. We're at the premium range of cost services. But you get what you pay for. I know that they're having problems with crime at the airport, as is the RTC. Our main goal and mission is to support existing security operations." [#AV62]

2. Recommendations about race- and gender-based programs. Twenty-one interviewees provided other suggestions to LAS and RTC about how to improve its programs for certified firms [#1, #4, #5, #6, #8, #11, #14, #16, #17, #18, #20, #21, #22, #23, #24, #26, #28, #AV, #WT5]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "[Financing assistance] would be good. That would be something that'd be great. ... I could say [LAS and RTC] could put on training programs It comes back to finance. And if the airport or the RTC want to help, again, if they put a budget to something away for small business and say, 'Well, we'll give you a grant or we'll give you a loan, but it has to be used for marketing,' then that's an incentive right there." [#1]
- The white woman owner of a goods and services company stated, "Yeah, we were considered an emergency business, so we stayed open during COVID. I would like to figure out if I could get assistance in figuring out how to do my bookkeeping remotely. It would probably make it easier for me because I don't know how long my daughter's going to stay here. So, if I ever do need to hire a new bookkeeper, that would definitely be a help. ... Well, I need more education in the internet and how to use it. SEO and more of an internet presence. And I think that I'm the barrier. I just have to find time to learn more about it. Or my company needs to grow so I can hire someone to help me." [#4]
- The owner of a VBE-certified professional services company stated, "Yes, of course. Those would be great if I knew how to get to this and they were beneficial in some way. ... What are the entry points to get information and how to get out of bid on contracts and those kind things would be helpful." [#5]

- The Hispanic American owner of an MBE-certified professional services company stated, "I just think an opportunity to bid on getting with some of the larger customers in my particular industry, security systems integration." [#6]
- A representative of a VBE-certified goods and services company stated, "I know Metro [the Las Vegas Metropolitan Police Department] will come out. For example, Metro will come out and do training and I know that they will do it for free. So, there aren't many barriers, but there's also the barrier of the time. And then there's also the barrier of scheduling these people and then have them actually show up. And even though it's a paid training, and even though we might even say it's a requirement, again we may not get the turnout that we are anticipating or have said that are going to be here." [#8]
- A representative of a Hispanic American-owned construction company stated, "It might be helpful for navigating the bid process. I would imagine that ... How should I say this? Normally they don't make it very easy. That's based on previous experience of working on similar types of projects. I find it interesting that Nevada's actually kind of going through this process to go through this study and getting feedback. I think there's a lot of opportunities from the government side and from the state to improve in those areas." [#11]
- The Asian Pacific American owner of a DBE-, WBE-, and MBE-certified good and services company stated, "Yes. I mean, they could, I guess, provide resources, I guess, the companies, because marketing companies are expensive, as we all know. Because, even though I have been taking some webinars ... everybody's offering that. I understand that and we go there. But, I'm not the expert in marketing. And as much as I learn and listen to these people and they tell you these general strategies, at the end of the day ... it is hard to know without being the expert, what strategy do I need to apply? I still don't know. And it's not that I'm dumb, but I'm not the expertise. And, I'm running a business and I can't focus on that. I try to generate revenue, I try to close sales. So, marketing is not at that time. So, they could maybe do actually have a company provide the service and actually pay maybe for that. ... It would be good maybe if there's a list of qualified, recommended [companies], listing where they have been vetted [for bookkeeping]. Because, as I said, there are so many companies out there, but how do you know who is trustworthy or reliable, or does a good job? So, if there can maybe be a vetted list." [#14]
- The Subcontinent Asian American owner of a DBE-, MBE-, and SBE-certified professional services company stated, "If they provide any resources with some low interest rate for this small and micro businesses, that will definitely help. ... Yeah. And then, another thing is, as we are DBE certified in another states, other states have very excellent training programs for professional services businesses such as Florida, Colorado, and there is nothing here in Nevada for professional services, any training. Everything, it just goes to construction side of it, but nothing for professional services. So, I will suggest, putting together some training program for professional services." [#16]
- The Black American owner of a woman-owned goods and services company stated, "I just worked with the vibe of the person that I liked, they were informative, but I don't know. I would think the only thing that I could suggest maybe if they made a YouTube [channel or video]. ... I don't know if I need to have the capital ... I just jump on in there. A lot of the YouTube information is general government state contracts, so it gets a little botchy, but if the airport or RTC says, 'Hey, this is our bidding process' ... I would love some classes where even if we come in or virtual, if everybody's virtual, but some classes that, some sample classes, they don't even have to tell all the secrets, but that would help me out a great deal. I think that they should take our e-mail address and anytime

something comes up, send us something that says, 'Hey, we got this bid, this, this, that and the other thing,' so that we can say 'Oh, I want to go for this one, the housekeeping one. Oh, somebody wants to go for construction, somebody wants to build a ramp,' whatever. I just think that e-mail should be sent to let us know that we just got a new RFP, here's the list." [#17]

- The Black American owner of a DBE-certified professional services company stated, "Yeah, definitely marketing strategies. Definitely marketing strategies that would help us be able to bid on more work that LAS or RTC has out there, and like I said, the biggest way I see is to encourage the big companies to work more with smaller companies." [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "The financing, for me, would probably be the biggest help and maybe more of it. But more specialized financing help, meaning having someone or having options for people to guide me and say, 'Okay, we've used this bank. This is probably based on your years of experience where you're trying to get to these three or four people, might be people you want to talk to.' So we're also a member of National Construction Association here in town. They do kind of monthly meetings ... where they bring out the bigger contractors, they bring out the smaller contractors. And I think that would probably be a possibility, because I'm sure LAS has a lot more potential partners than a trade association does. So mixers or even educational stuff because again, as a small business owner, it is a continuous process to always to keep learning what's out there, what's coming up, and who is going after it. So you could potentially partner up with some of those people. Because the one event, and again, I've only been to one event at LAS, it was just they had a mix of store owners, contractors, finance people. It was just too broad of a range, you didn't know who was who, and who was there for what. And the information was not very specific, it was super, super general." [#20]
- The owner of a DBE-certified woman-owned construction company stated, "I do think more training on how to do business with the prime contractors and the governing entities. I think that's out there. And I know that there's other diverse groups out there that are afraid to tackle that because they don't have a comfort level. And I would say this, you've got the big primes that offer these free programs and try to train people. So it's not for lack of trying." [#21]
- The MENA American owner of a professional services company stated, "Yeah, grants for technology [would be helpful]." [#22]
- The white woman owner of a construction company stated, "I think potentially showing some way somehow to people at large that this industry exists and there is a demand for people to work in it and there's a clear career path potential. But I don't know how that relates across the board to all of the people that you are talking to in your study. I can really just speak to my industry. Where I think it could be helpful is, I don't see that there's a lot of resources out there to teach people how to do estimating and read a blueprint. And those are more, you're an engineer, you've gone to school for that. But not everybody's going to go to college for that stuff. So, it would be really nice if there were resources for small businesses like me who come from another industry or just entering an industry where they need to be able to have those skills. And if there was some place, they could go learn them, that would be stellar." [#23]
- The owner of a SDVOSB-certified construction company stated, "They may already offer this, but I would very much be interested in a sit down with someone from their contracting office or something like that, that would present a class that would be just that, working with LAS. A one

hour or however long, an hour or two, whatever it would be, briefing on what is required to work for them and how you obtain that. Again, all I've ever heard is that, you've got to have clearance to work out there and it costs the company \$20,000 per employee to get clearance to work at the airport. I'm like, well, unfortunately I'm not going to come up with \$40,000, \$60,000, or \$80,000 to clear these guys with potential I might get some work to work at the airport." [#24]

- The non-Hispanic white male owner of a VBE-certified construction company stated, "Well, I'm still a Teamster. They have a lot of opportunity for newcomers to learn skilled trades. You can really branch out. If you just join one union, you can learn a lot, especially the Teamsters Union because they do so many different trades. They do carpentry, painting, I mean, show management. They do a lot. They have a lot of opportunity available to new people. If we were able to work with or partner with somehow with Teamsters Union for some sort of, I don't know, apprenticeship programs, that would be phenomenal. I would say a mentorship or some sort of networking with people who are seasoned and experienced with respect to these types of barriers. Not just short-term mentorship, but somehow connecting the newcomers or the rising stars with the shining stars. If there was some sort of open line of communication, I know they have the ... What is it called? I'm trying to remember the name of it. They're in every county and every township. The Joint Commission. They're expensive, though. They're very expensive to get on their list. I guess they put out a newsletter, and they talk about and network with other people, and they let people know, 'Here's who are on our list as our new contractors or whatever we need.' I guess it's some sort of list they have or a newsletter. Yeah. That's hard to get into. ... Yes. If somebody could create a platform where we can all meet virtually and just mull over any idea that comes to mind, any invention that comes to mind, any service or product or any way to improve upon any processes, anybody's business, or to help figure out how to pick somebody else's industry up, or utilize their industry if they're underutilized, I don't know. There's some sort of platform where all of this can be freely shared and communicated with each other, or some venue or some annual or monthly meeting or whatever, somewhere where it brings everybody together in the small business world. We can share what works for our business and get ideas from other people. Now, understanding with respect to competitors, there's so much opportunity in my field that we wouldn't be competitors. We would be partners, most likely. They have their area or their people, and I have my people. Sometimes we overlap, and it's great because we pick up more people that way. If we had something like that going on, we can always pick up each other as people. It would work." [#26]
- The Asian Pacific American owner of an MBE-certified goods and services company stated, "I would say the last one would just be when dealing with ... Let's say I'm trying to get in with Harry Reid or get in with the public transportation, coming across people who are very unhelpful, like, 'Can we get the information for the purchasing department?' or this and that, 'We're a diverse supplier.' It's never easy. You get the run around or it's not a very welcoming thing. My sales reps dislike it. They talk about it's like dealing with the DMV sometimes. So if we had an opportunity or a liaison or someone who was actually an advocate for us, that would be huge." [#28]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "The RTC has a RiSE certification program for small and diverse businesses. But the RFP/RFQ/bids issued by RTC do not require or include the RiSE-certified firms participation goal. Therefore, primes are not at all interested in hiring a RiSE-certified firm as a subcontractor/subconsultant. To promote participation of diverse small businesses in the contracts, RTC shall include RiSE-certified firms participation goal in their RFP/RFQ/bids." [#WT5]

- A representative of a majority-owned construction company stated, "We've done work for Metro, the airport, the county, North Las Vegas, and the Housing Authority, and we've had no problems with any of those entities. I think they don't do enough to reach out to small companies. I think they should start a program to reach out to small companies, then the small companies would become bigger companies and they could reach out to other small companies. They should have a program where they show a smaller company how to grow." [#AV43]
- A representative of a Hispanic American-owned, LGBTBE- and VBE-certified goods and services company stated, "Centralized place where we could call agencies to let us know about the opportunities, more recruiting, at least for veteran- and LGBTQ-owned business, we compete with large firms, they get to those contracts, purely based [on the] ability of [the] company, we can compete with anybody." [#AV63]
- A representative of a Black American, VBE-certified goods and services company stated, "The biggest problem is, we don't have the availability to open the door to work for government entities. I think you need to know someone or be friends with someone to get government work, so I don't even seek them out anymore. I believe that from the U.S. government on down to state and city agencies could do a better job at assisting the transportation industry - specifically trucking with fuel, legislation for additional parking assistance in the city, cost per mile for freight, and cost of insurance. Those are the four issues that are most important for us to continue to be in business." [#AV92]

K. Other Insights and Recommendations.

Interviewees shared other insights or recommendations for LAS, RTC, or other public agencies in Clark County to improve the availability and participation of small businesses [#1, #3, #4, #8, #9, #10, #11, #13, #15, #17, #18, #20, #23, #24, #25, #26, #27, #AV, #PT1, #WT5, #WT6]. For example:

- The Black American owner of a DBE- and MBE-certified goods and services company stated, "They just need to take a chance. They need to take a chance on minority[-owned] business. And if they have everything lined up, help them. Because I felt I've had everything lined up that they told me what to do, and I still couldn't get it. ... Like I've said to several small businesses, especially minority[-owned] business, they need to get an accountant. And I know a lot of them don't have it. And a lot of them spend their money without recording it, or they don't keep track of it because that comes with lack of education. They need to be educated on this the same way I was when I first started. ... That's on the small business owner. I mean, if they want to get something from RTC and the airport, they have to come with everything ready. And that comes [from] your side of knowledge and knowing what you have to come to the table with. ... They'll put the bid out, I have to be able to match what they required me to do." [#1]
- The owner of a majority-owned goods and services company stated, "If we're talking about small business in general, I think our largest barrier would definitely just be corporations. It seems like a lot of small businesses had trouble through COVID. We got lucky, but I've seen so many businesses really closed down. And the larger corporations seemed to have picked up the slack in all the extra funding from around us. Honestly, any sort of, I guess, advertising towards small businesses over things like Walmart and the larger places would definitely be a huge help with keeping us around. Being as cell phones are a standard in everybody's hands now, I assume a lot of these corporations that aren't reaching out to us probably have accounts with Apple and Microsoft and whatnot. Giving

us the opportunity to at least bid on some of their repairs and whatever they would need electronically would definitely help us out.” [#3]

- The white woman owner of a goods and services company stated, "I think that I just need some more encouragement. I need somebody just bothering me to get done when I need to get done. ... I think that Southern Nevada's actually giving small businesses opportunities with their government contracts. We appreciate the grants that are offered, even though my particular company doesn't apply to the grants, but they are doing a good job." [#4]
- A representative of a VBE-certified goods and services company stated, "If anything ... other programs as far as training or just working closer, having a better relationship, that's what I would say. If you have anything to that capacity, to that matter that would be something that I would say, 'Hey, let's better learn each other first,' building a relationship so that once we are in established contract, that it is easier communication. It's like when we merged with the LAS, it's like we really didn't know expectations. And even though we were aware of the expectations on paper, it's a lot different when you get the opportunity to meet these people and walk throughs and talk. ... It's just a better way for us to communicate. I mean, I know they're just as busy. I know LAS, they're short-staffed in some of their locations, so what can you do at that point? They're in the same situation we are." [#8]
- The Hispanic American owner of a goods and services company stated, "I think that if they were able to maybe pay a percentage of the contract ahead of time. ... Let's say the contract's \$1 million dollars. And they say, 'Here's \$100,000 for your startup expenses for purchasing two or three vehicles and for your hiring and that stuff. And then here's another \$100,000 to put through payroll for your net 30, that pushes you through 60 days of work if the contract is a net 30 or if not.' So, I think allocating specific payroll resources to make sure that the team is successful in paying, and then once those payments come on time, it's great. Or they transition to net 30 into weekly pay. And we are doing that in many of our contracts as moving towards weekly pay, as well as we transition our payroll to weekly, which significantly reduces overtime, and it makes the employees happy. So, I would recommend them moving either a portion of payment upfront to allocate equipment and payroll, or just completely go to weekly payment and that would greatly assist operations like mine for continuous resources and payroll coming in. ... Maybe for instance allocating, if there is a contract for a large operation, whether it's like landscaping or painting or construction, maybe do the same mentorship program that the federal government has to allow a smaller organization to join in and work with the larger one as a support bracket like that." [#9]
- The Hispanic American owner of a DBE-, WBE-, MBE-, and SBE-certified construction company stated, "There's no organization that can help you, when a big company's trying to take advantage of you. ... Yeah, they need to have the men take classes, and have them understand that [they have to learn to work as a team]. ... And then, just having an agency that will help you go through these problems, if there is a problem, help you solve a problem. I just wish there was an agency that was more available to help you, to teach you the different routes that you can take, different programs that they have. And more than anything, again, a resource that where you can go to get help, whether it's those free clinics that have the lawyers help you, or a government agency that can go and look into something, that when you have a complaint about something that's going on. It's just, people like that guy, and that guy at the stock company, and the other company, those people should be kicked out of the industry, and not even let them work again, because of the way they

treated us, the way they treated me. Because I feel like, because I was a woman, they did that.”
[#10]

- A representative of a Hispanic American-owned construction company stated, "I think the fact that they're kind of going through this process is a good indication to me that they're looking for ways to improve and have those resources. That's a good thing." [#11]
- A representative of a majority-owned professional services company stated, "I think one of the biggest things is having a direct mentor and/or connection that can help answer or direct in areas of these types of questions. So, like I said, I have that with the PTAC. I have directed others based on the resources that I've gathered. I think each time that a small business knows how to source some of this information, that's helpful. I'm also a member of [the] local Chamber of Commerce. So being connected to a network of people that are also business-minded, business focused, and the resources that that brings is also helpful. The biggest thing I think with small businesses is somebody has a passion for something that often doesn't translate into a business, because they're passion-focused instead of business-focused. I think once you become business-focused and you have a good business plan, business goals, your resources and/or who can be a resource to help you find that, it makes a big difference." [#13]
- A representative of a Black American-owned goods and services company stated, "I understand why RTC and why they're trying to do this. They want to do more business with minority-held businesses, which is, I find to be fantastic. I think that the overall is, we've got a little bit of ... an assumption in Vegas that minority-held businesses don't get their equal share. And I would say, I can't speak to every business in Vegas and every type of business in Vegas. What I can say is ... when I got into the electrical industry, knowing that it was a good old boy network, knowing that the majority of the decision-makers were, and I'm going to stereotype this a little bit, older white men, it was a fear of mine because I didn't think I would get accepted being one of the first outside sales reps of color here in town, even back when I was doing plumbing. What I found out very quickly is almost all of them could care less about your background. They want to know the individual. And a mentor of mine told me a long time ago, if you want to make inroads in this business, sell yourself first. Not the company, not the business, yourself. Let them see who you are. Because once you create a commonality and you find that common ground, it opens doors. And I'll be the first to tell you they were not lying. And when we talked about doing this whole thing with basically two Black guys being out front of our business, there were people that we talked to that were like, 'Oh, we're going to back you a thousand percent,' because of who we are, period. ... Realistically, in my eyes, it's not rocket science. I think that people should be judged on what their abilities are. And in a perfect world there would be no discrimination for whatever. ... For myself, I don't see the prejudice there that is keeping us from doing business. We've all known each other for 20-plus years. So if there was somebody from the outside looking in, might consider some of the stuff we talk about as being a little closer, off the cuff. But that's because we're friends outside of what's going on. And so friendships come into play quite a bit and we give each other a lot of crap. But that's all part of being a piece of that, quote-unquote, 'good old boy network.' You have those friends within the business where almost all the guys that I deal with, I've gone out with, hung out with, gone on a vacation with and/or camping with them to go side-by-side riding, to do all kinds of stuff. ... Definitely not RTC. Definitely not any of the city or county or anybody that I've worked with that I can sit here and tell you I've had any problems with as far as discrimination is concerned. I think that what could be asked, especially if we're talking about public works, if we're talking about RTC, we're talking about Harry Reid Airport, I think what could be asked is, what are the jobs that

you ... know of that are coming up for these facilities or these places? And how many jobs have you bid on compared to how many of you won? What's your close rate? Because that's going to give you an indication as far as who is working with these types of places as a better overall piece of a survey. I mean, realistically, if you're a smaller company, smaller business, whether it's minority-held or veteran-owned or disadvantaged, whatever, if you're not discussing the jobs that were like, you were asking about, well, how do you find out about these jobs and whatnot? If they can't tell you about the jobs that are out there now, how are they going to bid on them? So it gives you an insight of what's being missed and who's bidding on these jobs, right? If these small businesses aren't because they don't know about them, why don't they know about them? ... For me, what wound up happening was, small businesses couldn't be past a certain size to be considered a small business. So you got a discount on your bid for being a small business. I don't know, can't remember the percentages. And then you got another percent discount for being minority-held or veteran-owned or disadvantage[d], disabled vet-owned, whatever. So that way they knew. And what it did was the manufacturers who would normally bid on this and jack their prices around and the government would pay a lot more, it brought pricing down, but it also allowed some of these small businesses to work with these major manufacturers because they did not meet the qualification of a small business. ... And what was even better was when the government went to the 20 days paid [...]. For us, there are some of these manufacturers, [one] comes to mind, we had a \$2 million credit line with them. As a small business, we should never have had that much, but because we're doing procurement work for the government and [the manufacturer] knew we were paid within 20 days, we always made sure that we paid them on a net 30. So, it allowed us to gain that credit with them." [#15]

- The Black American owner of a woman-owned goods and services company stated, "Just a little bit more information. I understand that on bidding on what opportunities are available, on certifications that are needed, a list of certifications that are needed. ... We should be on somebody's list to be getting notified what's current, what's happening, any changes, that kind of stuff." [#17]
- The Black American owner of a DBE-certified professional services company stated, "When I was working at my previous company, I felt like the issues we were having involving race wasn't really being addressed, because of the programs they had in place for inclusiveness really didn't directly get to the heart of the issue. It really just allowed them to check a box, and instead of saying that the company need training or the particular person that was being a problem, instead of saying that person need training, they were basically saying the minority is the person who need training. They put us in groups, but they never really get to the heart of the problem, which is the person that needs training. Because that's what it takes. It takes a company believing in you as a person to hire you and want to invest in you to train you, and I was fortunate to have that when I first started. I'm afraid that there's probably less companies willing to do what was done for me. That's what I would guess, because I'm not seeing young African Americans getting in there, and I'm not sure why. I would've thought that it would be more opportunity since we had a Black president at one point, but it's not. And maybe that's why. Maybe people think they don't really need to pay attention to that because we did have a Black president, and they don't feel like they need to do that outreach, but some of us are lonely." [#18]
- The Black American owner of a DBE- and VBE-certified construction company stated, "One of the two man shop electricians I know, ... we've had a chance to sit down and talk, [and] had I not known the funding side and the financial responsibility of what it takes, that [would have been] definitely a

huge burden. Because not both professionally and personally, because when you're starting something like this, most of the money is coming from out of your own pocket. Because most contractors generally, typically are working for somebody else or have worked for somebody else, till they decide to go off on their own. But the money that they're using came from the salary they were making from the same person. So now they enter their arena. And same with us, you enter their arena, you figure, hey, I'll do some jobs, small jobs, work my way up and save the money from those jobs to propel me to another job. I've not had any contracts that were similar in scope, range, price, or cost. And no one tells you that. You don't really think about it ... until you think, 'Hey, I can work, put 20% aside from each job, which will let me build into bigger jobs, hire people.' But there's always something that comes up, always. And number always changes, so you have to be able to adjust financially. I think the financial side is something. ... There's plenty of better carpenters, better drywallers than I am. But the thing is, they don't know how to run an offense, they don't know what it takes to have somebody to review the paperwork. Because all they've done is carpentry or all they've done is drywall or framing. And the office and the paperwork side trips them up, which it did me in the beginning too. But I have found a great support staff and they've been with me from before day one. And they're great at their job, but without them, I can't go out into their world and do what I need to do." [#20]

- The white woman owner of a construction company stated, "I would say probably more resources in the financial space. A small business getting started is very, very difficult. I'm sure you've probably looked at some of the statistics. Most of them don't make it a year. Many make it three years, not past five. I think a lot of that has to do with either education, resources, or finances. I have been very fortunate in my business thus far that those have not been huge challenges that I was unable to overcome. But cashflow is always a problem. So I don't know what other resources could be made available, but knowing that those are problematic. Maybe if we were contracting with LAS and RTC, if they had more shorter payment terms, for example, if they would pay in a net 15 or something rather than net 30, that might be a good way to help overcome that small business obstacle." [#23]
- The owner of a SDVOSB-certified construction company stated, "There's a lot of service-disabled veteran-owned business out there that perform a lot of different types of work now. And I think those mandates of federal agencies having to award a certain percentage of their dollars should be raised up to 10% or 15% for SDVO[B]s. I think the state should try to seek out much like what this survey is doing, seeking out companies that have different capabilities that are ... disadvantaged business[es] and set up the same thing, mandates for elective percentages that they're going to try to award those dollars to and hire the people to do it because it takes work for them to find the company sometimes that have those qualifications with that set-aside position." [#24]
- The Black American owner of a WBE-, MBE-, and SBE-certified professional services company stated, "I think we can learn from anyone and everyone, if not what to do, what not do. So I think that it has definitely been beneficial in terms of realizing after a while, like they will program you to death. It's another class, it's another program. They will give you training and certificates all day, and I just put them in a box, it's like, 'I can't do another...' And some of them are absolutely beautiful, glass, and you can tell they've invested a lot of money in that. But if they took that money that they invested and even gave a grant to the small business, it would be a cash infusion, [instead of] all of this colored paper that they're killing all the poor trees." [#25]

- The non-Hispanic white male owner of a VBE-certified construction company stated, "All of a sudden I had a business. At first it was a little bit of this and that for somebody making some money with some partnerships, but then it became a big clientele where people [needed] me routinely. ... I have to put everybody on a schedule. Now I have this business I have to run. People are asking me about insurance. Companies want to subcontract me for jobs in my genre. I have to be professional with them. They require a certain amount of insurance. They require a certain dollar amount that I've done business previously for reference purposes. I've had to learn all that on my own and do my own research. ... It's a hard part to wrap my whole mind around, in addition to being the secretary, everything. It's a very small business that does a lot. I enjoy it. I mean, it works me hard." [#26]
- The LGBTQ+ owner of a goods and services company stated, "Yeah, if either of those gave me, my business, the opportunity to supply fuel to see if we meet their service requirements, their expectations, which we meet and exceed for our private customers all the time, that would be complete game changer." [#27]
- A representative of a DBE-, MBE-, SBE-, and ESB-certified professional services company stated, "During our conversations with procurement departments of various government agencies in Southern Nevada, most of them cited limitations imposed by Nevada Revised Statutes (NRS) 332, 333, 334, 336, and 338, which regulate purchasing by local and state governments, public works, and fleet services. Unfortunately, none of these NRS have policies that support small and diverse businesses, preventing public agencies in Nevada from providing equitable opportunities for these businesses." [#WT5]
- A representative of an ESB-certified professional services company stated, "We would very much welcome to have an independent agency or entity to look into the management and practices of some of the local agencies when it comes to small disadvantage[d] business. We can truly bring a lot to the table if we are given the fair opportunity to perform. Please watch and monitor the local agencies and be an advocate for the voiceless." [#WT6]
- A representative of a majority-owned professional services company stated, "ChatGPT has killed all the work." [#AV158]
- A participant in a public meeting stated, "Vegas is still considered Mississippi of the west, and only a handful, like the government, is going to be the haves and the have nots. And a lot of people get left behind that shouldn't be." [#PT1]

APPENDIX E.

Availability Analysis Approach

BBC Research & Consulting (BBC) used a custom census approach to estimate the availability of businesses located in Clark County, Nevada for the construction, professional services, and non-professional services and supplies prime contracts and subcontracts Harry Reid International Airport (LAS) awards. Appendix E expands on the information presented in Chapter 5 to further describe:

- A. Availability Data;
- B. Representative Businesses;
- C. Availability Survey Instrument; and
- D. Survey Execution.

A. Availability Data

BBC partnered with Davis Research to conduct telephone and online surveys with hundreds of businesses throughout the relevant geographic market area (RGMA), which we identified as Clark County, Nevada. Davis Research surveyed businesses with locations in the RGMA that perform work in fields closely related to the types of contracts and procurements LAS awarded between July 1, 2017, and June 30, 2022 (i.e., the study period). We began the survey process by determining the work specializations, or subindustries, relevant to each prime contract and subcontract LAS awarded during the study period and identifying 8-digit Dun & Bradstreet (D&B) work specialization codes that best corresponded to those subindustries. We then compiled information about local businesses D&B listed as having their primary lines of business within those work specializations, and Davis Research attempted surveys with each business multiple times on different days of the business week and at different times of the business day to maximize response rates. In total, the study team attempted to contact 7,015 local businesses that perform work relevant to LAS' contracting and procurement. We were able to successfully contact 1,434 of those businesses, 878 of which completed availability surveys.

B. Representative Businesses

The objective of the availability analysis was not to collect information about every business operating in the RGMA but instead was to collect information from a large, unbiased subset of local businesses that appropriately represented the entire relevant business population. That approach allowed BBC to estimate the availability of person of color (POC)-; woman-; veteran-; and lesbian, gay, bisexual, transgender, queer, and other sexual or gender orientations (LGBTQ+)-owned businesses for LAS work in an accurate, statistically valid manner.¹ In addition, we did not design the survey effort to contact every local business possibly performing construction, professional services, or non-professional services or supplies work. Instead, we reviewed the relevant prime contract and subcontract dollars LAS awarded during the study period, determined the types of work most relevant to those projects, and

¹ "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 race/ethnic groups.

limited our survey efforts to those businesses that perform work consistent with those work types. Figure E-1 lists 8-digit work specialization codes within construction, professional services, and non-professional services and supplies most related to the relevant contract and procurement dollars LAS awarded during the study period, which BBC included as part of the availability analysis. We grouped those specializations into distinct subindustries, which are shown as headings in Figure E-1.

C. Availability Survey Instrument

BBC created an availability survey instrument to collect extensive information from relevant businesses located in the RGMA. As an example, the instrument the study team used with construction businesses is presented at the end of Appendix E. BBC modified the construction survey instrument slightly for use with businesses working in professional services and non-professional services and supplies to reflect terms more commonly used in those industries and to collect information specifically relevant to those industries.² (For example, BBC substituted the words “prime contractor” and “subcontractor” with “prime consultant” and “subconsultant” when surveying professional services businesses.)

1. Survey structure. The availability survey included 14 sections, and Davis Research attempted to cover all sections with each business the firm successfully contacted.

a. Identification of purpose. The surveys began by identifying LAS, as well as the Regional Transportation Commission of Southern Nevada (RTC), as the survey sponsors and describing the purpose of the study. (e.g., “LAS and RTC are conducting a disparity study to assess barriers that businesses might face in the local marketplace. As part of that research, LAS and RTC want to understand the availability of different types of businesses for the contracts and procurements they award. We are conducting a survey to collect information about businesses qualified and interested in performing construction-related work for government and other public agencies, entities, and offices in Southern Nevada.”)

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 if the business representative provided it (see areas “X” and “Y” of the survey).

c. Verification of for-profit business status. The surveyor asked whether the entity was a for-profit business as opposed to a government or nonprofit organization (Question A1). Surveyors continued the survey only with those entities that responded “yes” to that question.

d. Verification of active business status. The surveyor asked whether the entity was in business and operational (Question A2). Surveyors continued the survey only with those entities that responded “yes” to that question.

e. Confirmation of primary lines of work. Businesses confirmed their primary lines of work according to D&B (Question A3a). If D&B’s work specialization codes were incorrect, they described their primary lines of work (Question A3b). Businesses were also asked to identify other types of work they perform

² BBC also developed e-mail versions of the survey instruments for businesses that preferred to complete the survey online.

beyond their primary lines of work (Question A3c). BBC coded information on primary lines of work and additional types of work (if any) into appropriate 8-digit D&B work specialization codes.

f. Locations and affiliations. The surveyor asked participants if their businesses had other locations (Question A4) and if their businesses were subsidiaries or affiliates of other businesses (Questions A5 through A6).

g. Willingness and ability to work. The surveyor asked businesses whether they were willing and able to work in various roles (Questions B1-B3).

h. Interest in future work. The surveyor asked businesses about their interest in future prime contract and subcontract work with LAS or other government agencies (Question B4).

i. Geographic area. The surveyor asked businesses whether they could serve customers in Clark County (Question C1).

j. Capacity. The surveyor asked businesses about the values of the largest prime contracts and subcontracts they can perform as well as the maximum volume of work they can perform at any given time (Questions D1 and D2).

k. Ownership. The surveyor asked whether businesses were at least 51 percent owned and controlled by POCs or women (Questions E1 and E2). If businesses indicated they were POC-owned, they were also asked about the race of the business' owner(s) (Question E3). The surveyor also asked whether businesses were at least 51 percent owned and controlled by veterans of the United States military (Question E4) or by individuals that identify as lesbian, gay, bisexual, transgender, queer, or other sexual or gender orientations (Question E5). BBC confirmed that information through several other data sources, including:

- LAS contract and vendor data;
- The Nevada Unified Certification Program directory;
- 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' sizes in terms of their revenues and number of employees across all their locations (Questions F1 through F4).

m. Potential barriers in the marketplace. The surveyor asked an open-ended question about their experiences working with LAS 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 follow-up interviews about conditions in the local marketplace, which BBC used to recruit participants for in-depth interviews (Question G2).

n. Contact information. The survey concluded with questions about the participant's name, position, and contact information (Questions H1 through H3).

Figure E-1.
Subindustries included in the availability analysis

Industry Code	Industry Description	Industry Code	Industry Description
Construction			
Building construction		Electrical equipment and supplies	
15410000	Industrial buildings and warehouses	36259904	Control equipment, electric
15419905	Industrial buildings, new construction	36439904	Lightning protection equipment
15419909	Renovation, remodeling and repairs: industrial buildings	36480100	Outdoor lighting equipment
15420100	Commercial and office building contractors	36480110	Street lighting fixtures
15420101	Commercial and office building, new construction	36690200	Transportation signaling devices
15420103	Commercial and office buildings, renovation and repair	36690201	Highway signals, electric
15420302	Service station construction	36690206	Traffic signals, electric
15420400	Specialized public building contractors	36740103	Light emitting diodes
17910000	Structural steel erection	36799908	Liquid crystal displays (LCD)
Concrete work and materials		36990000	Electrical equipment and supplies
14420000	Construction sand and gravel	39930100	Electric signs
16110206	Sidewalk construction	39930102	Scoreboards, electric
17410100	Foundation and retaining wall construction	50460106	Signs, electrical
17710103	Guniting contractor	50630000	Electrical apparatus and equipment
17710200	Curb and sidewalk contractors	50630205	Electrical construction materials
17710201	Curb construction	50630206	Electrical supplies
17710202	Sidewalk contractor	50630300	Wire and cable
17719900	Concrete work	50630304	Electronic wire and cable
17719901	Concrete pumping	50630403	Lighting fixtures, commercial and industrial
17959901	Concrete Breaking For Streets and Highways	50630504	Signaling equipment, electrical
17999917	Fountain installation	50650300	Electronic parts
29510000	Asphalt paving mixtures and blocks	57190202	Lighting fixtures
29510201	Asphalt and asphaltic paving mixtures (not from refineries)	Electrical work	
32730000	Ready-mixed concrete	17310000	Electrical work
50320100	Paving materials	17319903	General electrical contractor
50320101	Asphalt mixture		
50320102	Paving mixtures		

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Construction (continued)			
Excavation, drilling, wrecking, and demolition		Highway, street, and bridge construction (continued)	
17940000	Excavation work	16110202	Concrete construction: roads, highways, sidewalks,
17950000	Wrecking and demolition work	16110204	Highway and street paving contractor
17959902	Demolition, buildings and other structures	16110205	Resurfacing contractor
17990900	Building site preparation	16119901	General contractor, highway and street construction
		16119902	Highway and street maintenance
Fencing, guardrails, barriers, and signs		16220000	Bridge, tunnel, and elevated highway construction
16110100	Highway signs and guardrails	16229901	Bridge construction
16110101	Guardrail construction, highways	16290000	Heavy construction
16110102	Highway and street sign installation	17710301	Blacktop (asphalt) work
17999912	Fence construction		
Heavy construction equipment rental		Landscape services	
35310000	Construction machinery	07110000	Soil preparation services
35319901	Aerial work platforms: hydraulic/elec. truck/carrier mounted	07829902	Highway lawn and garden maintenance services
35319902	Airport construction machinery	07829903	Landscape contractors
35319908	Road construction and maintenance machinery	07830105	Tree trimming services for public utility lines
50820000	Construction and mining machinery	07839902	Removal services, bush and tree
50820100	Road construction equipment		
50820102	Road construction and maintenance machinery	Other construction materials	
50820304	Excavating machinery and equipment	32310302	Reflector glass beads, for highway signs or reflectors
73530000	Heavy construction equipment rental	36690203	Pedestrian traffic control equipment
73539900	Heavy construction equipment rental	50990304	Reflective road markers
73539901	Cranes and aerial lift equipment, rental or leasing	73599912	Work zone traffic equipment (flags, cones, barrels, etc.)
73539902	Earth moving equipment, rental or leasing	08510101	Forest management plans, preparation of
Highway, street, and bridge construction		17990800	Decontamination services
16110000	Highway and street construction	17990801	Asbestos removal and encapsulation
16110200	Surfacing and paving	49590302	Environmental cleanup services
16110201	Airport runway construction	73899921	Flagging service (traffic control)
		87449904	Environmental remediation

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Construction (continued)			
Painting, striping, marking, and weatherproofing		Plumbing and HVAC (continued)	
17210200	Commercial painting	17110404	Ventilation and duct work contractor
17210201	Exterior commercial painting contractor		
17210300	Industrial painting	Vertical building trades	
17210302	Bridge painting	17619903	Sheet metal work
17210303	Pavement marking contractor		
17210400	Wallcovering contractors	Water, sewer, and utility lines	
17210401	Commercial wallcovering contractor	16230000	Water, sewer, and utility lines
17990608	Paint and wallpaper stripping	16230300	Water and sewer line construction
		16230303	Water main construction
Plumbing and HVAC		16239904	Pipeline construction, nsk
17110301	Fire sprinkler system installation	16239906	Underground utilities contractor
17110401	Mechanical contractor		
Professional services			
Advertising, marketing and public relations		Business services and consulting	
73119901	Advertising consultant	87429902	Business management consultant
73129901	Billboard advertising	87429904	General management consultant
73890300	Advertising, promotional, and trade show services	87480300	Communications consulting
73890309	Trade show arrangement		
79410200	Stadium event operator services	Construction management	
79410202	Sports field or stadium operator, promoting sports	73899907	Contractors' disbursement control
87430000	Public relations services	87419902	Construction management
87439903	Public relations and publicity	87420402	Construction project management consultant
Architectural and design services		Engineering	
73891801	Design, commercial and industrial	87110000	Engineering services
87120000	Architectural services	87110400	Construction and civil engineering

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Professional services (continued)			
Engineering (continued)		Surveying and mapmaking	
87110401	Building construction consultant	87130000	Surveying services
87110402	Civil engineering		
87119905	Electrical or electronic engineering	Testing and inspection	
87120100	Architectural engineering	73890200	Inspection and testing services
87120101	Architectural engineering	73890204	Commodities sampling
		73890205	Commodity inspection
Human resources and job training services		73890209	Pipeline and power line inspection service
73610000	Employment agencies	73890211	Sewer inspection service
73610100	Placement agencies	73899960	Estimating service, construction
73610102	Labor contractors (employment agency)	87340200	Product testing laboratories
73639903	Engineering help service	87340202	Product certification, safety or performance
87420201	Compensation and benefits planning consultant	87340203	Product testing laboratory, safety or performance
87420206	Training and development consultant	87340300	Pollution testing
		87340301	Hazardous waste testing
IT and data services		Transportation planning and environmental services	
73710100	Custom computer programming services	73890201	Air pollution measuring service
73730102	Systems engineering, computer related	87110101	Pollution control engineering
73730200	Systems integration services	87310302	Environmental research
73749902	Data processing service	87420410	Transportation consultant
73780000	Computer maintenance and repair	87480200	Urban planning and consulting services
73790100	Computer related maintenance services	87480201	City planning
87480400	Systems analysis and engineering consulting services	87480204	Traffic consultant
Other professional services		87489905	Environmental consultant
87210100	Auditing services	89990702	Geophysical consultant
87210200	Accounting services, except auditing	89990703	Natural resource preservation service
87330201	Archeological expeditions		

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Non-professional services and supplies			
Automobiles		Industrial equipment and machinery	
50120208	Trucks, commercial	30520300	Rubber belting
55110000	New and used car dealers	35890201	Car washing machinery
55119901	Automobiles, new and used	35990000	Industrial machinery
Cleaning and janitorial services		50840000	Industrial machinery and equipment
73490101	Building cleaning service	50840505	Industrial machine parts
73499902	Cleaning service, industrial or commercial	50840900	Processing and packaging equipment
26760104	Toilet paper: made from purchased paper	50840905	Packaging machinery and equipment
50840901	Cleaning equipment, high pressure, sand or steam	50840907	Pneumatic tools and equipment
50870300	Cleaning and maintenance equipment and supplies	50849905	Hydraulic systems equipment and supplies
50870304	Janitors' supplies	50850000	Industrial supplies
51690400	Specialty cleaning and sanitation preparations	50850202	Packing, industrial
51690402	Sanitation preparations	50850303	Valves and fittings
Communications equipment		50850500	Bearings, bushings, wheels, and gears
36630000	Radio and t.v. communications equipment	50850501	Bearings
36630100	Radio broadcasting and communications equipment	50850502	Gears
50650200	Communication equipment	50859904	Filters, industrial
57319907	Radios, two-way, citizens band, weather, short-wave, etc.	76990500	Industrial equipment services
59990602	Communication equipment	Office equipment and supplies	
59990605	Mobile telephones and equipment	25220102	Chairs, office: padded or plain: except wood
Elevator goods and services		26310300	Container, packaging, and boxboard
17919903	Elevator front installation, metal	50210100	Office and public building furniture
17969901	Elevator installation and conversion	50440200	Copying equipment
35350000	Conveyors and conveying equipment	51120000	Stationery and office supplies
50840801	Conveyor systems	59439902	Office forms and supplies
76992501	Elevators: inspection, service, and repair	Other goods	
		25420000	Partitions and fixtures, except wood
		26760000	Sanitary paper products

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Non-professional services and supplies (continued)			
Other goods (continued)		Petroleum and petroleum products (continued)	
26760100	Towels, napkins, and tissue paper products	51720203	Gasoline
26760103	Napkins, paper: made from purchased paper	51720205	Service station supplies, petroleum
26760105	Towels, paper: made from purchased paper	51729902	Fuel oil
47830000	Packing and crating	51729905	Petroleum brokers
51910102	Fertilizer and fertilizer materials	59830000	Fuel oil dealers
73590702	Furniture rental	59840000	Liquefied petroleum gas dealers
		59849902	Liquefied petroleum gas, delivered to customers' p
Other services		Printing, copying, and mailing	
49530200	Refuse collection and disposal services	27520100	Offset and photolithographic printing
49530201	Garbage: collecting, destroying, and processing	27520103	Photolithographic printing
58120305	Delicatessen (eating places)	27520300	Business form and card printing, lithographic
58120314	Snack bar	27540200	Business form and card printing, gravure
58120502	Restaurant, family: independent	27590000	Commercial printing
58129905	Commissary restaurant		
58129906	Contract food services		
Petroleum and petroleum products		Security guard services	
28690400	Fuels	73810100	Guard services
29110100	Gases and liquefied petroleum gases	73810101	Armored car services
29110302	Diesel fuels	73810104	Protective services, guard
51710000	Petroleum bulk stations and terminals	73810105	Security guard service
51719901	Petroleum bulk stations		
51719902	Petroleum terminals	Security systems	
51720000	Petroleum products	36690100	Emergency alarms
51720100	Gases	36690101	Burglar alarm apparatus, electric
51720102	Gases, liquefied petroleum (propane)	36690102	Fire alarm apparatus, electric
51720200	Engine fuels and oils	36690103	Fire detection systems, electric
51720202	Diesel fuel	36690104	Metal detectors
		36990501	Electric fence chargers

Figure E-1.
Subindustries included in the availability analysis (continued)

Industry Code	Industry Description	Industry Code	Industry Description
Non-professional services and supplies (continued)			
Security systems (continued)		Uniforms and apparel (continued)	
36990502	Security control equipment and systems	23260202	Industrial garments, men's and boys'
50630500	Electric alarms and signaling equipment	23379901	Uniforms, except athletic: women's, misses', and juniors'
50630501	Alarm systems	31439905	Work shoes, men's
50630502	Burglar alarm systems	51360000	Men's and boy's clothing
50650403	Closed circuit TV	51360603	Uniforms, men's and boys'
50659903	Security control equipment and systems	51360604	Work clothing, men's and boys'
59990100	Alarm and safety equipment stores	51379905	Uniforms, women's and children's
59990101	Alarm signal systems	56619903	Men's boots
Security systems services		56990100	Uniforms and work clothing
17310400	Safety and security specialization	56990102	Uniforms
17310402	Closed circuit television installation	56990103	Work clothing
48419902	Closed circuit television services	72130204	Uniform supply
73820000	Security systems services	72180203	Industrial uniform supply
73829900	Security systems services	72180206	Work clothing supply
73829901	Burglar alarm maintenance and monitoring	Vehicle repair services	
73829903	Protective devices, security	75320300	Customizing services, nonfactory basis
Uniforms and apparel		75349903	Tire repair shop
23110300	Men's and boys' uniforms	75380101	Diesel engine repair: automotive
23110303	Policemen's uniforms: made from purchased material	75380104	Truck engine repair, except industrial
23260000	Men's and boy's work clothing	75389902	General truck repair
23260100	Work uniforms	75490100	Automotive maintenance services
23260101	Medical and hospital uniforms, men's		

D. Survey Execution

Davis Research conducted all availability surveys between March and October 2023. The firm attempted to survey the owner, manager, or other officer of each business that could provide accurate responses to survey questions.

1. Businesses the study team successfully contacted. Figure E-2 presents the disposition of the 7,015 businesses the study team attempted to contact for availability surveys and how that number resulted in the 1,434 businesses the study team was able to successfully contact.

Figure E-2.
Disposition of attempts
to contact businesses
for availability surveys

Source:
BBC availability analysis.

	Number of businesses
Beginning list	7,015
Less duplicate phone numbers	135
Less non-working phone numbers	743
Less wrong number/business	352
Unique business listings with working phone numbers	5,785
Less no answer	2,823
Less could not reach responsible staff member	1,519
Less language barrier	9
Businesses successfully contacted	1,434

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 (135 listings);
- Non-working phone numbers (743 listings); or
- Wrong numbers for the desired businesses (352 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 5,785 businesses 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 2,823 businesses.
- The firm could not reach a responsible staff member after multiple attempts for 1,519 businesses.
- The firm could not conduct the availability survey due to language barriers for nine businesses.

Thus, Davis Research was able to successfully contact 1,434 businesses.

2. Businesses included in the availability database. Figure E-3 presents the disposition of the 1,434 businesses Davis Research successfully contacted and how that number resulted in the 727 businesses BBC considered potentially available for LAS work.

a. Businesses not interested in discussing availability for LAS work. Of the 1,434 businesses the study team successfully contacted, 556 businesses were not interested in discussing their availability for LAS (or RTC) work. In total, 878 successfully contacted businesses completed availability surveys.

Figure E-3.
Disposition of successfully contacted businesses

Source:
BBC availability analysis.

	Number of Establishments
Businesses successfully contacted	1,434
Less businesses not interested in discussing availability for work	556
Businesses that completed surveys	878
Less no longer in business	7
Less not a for-profit business	8
Less no interest in future work	85
Less line of work outside of study scope	25
Less cannot perform work in Clark County	2
Less multiple locations of same business	24
Businesses potentially available for LAS work	727

b. Businesses available for LAS work. BBC deemed only a portion of the businesses that completed availability surveys as potentially available for the prime contracts and subcontracts LAS (and RTC) awarded during the study period. We excluded many of the businesses that completed surveys from the availability database for various reasons:

- BBC excluded seven businesses that indicated they were no longer in business.
- We excluded eight businesses that indicated they were not-for-profit businesses.
- BBC excluded 85 businesses that reported they were not interested in contracting opportunities with LAS or other government organizations.
- We excluded 25 businesses that reported primary lines of work outside the study scope.
- We excluded two businesses that reported they were not able to perform work in Clark County.
- Twenty-four survey participants 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 participants reported bidding or working on a contract or procurement within a particular subindustry, we considered the business to be interested in participating in contracts and procurements in that subindustry.
 - BBC combined the different roles of work (i.e., prime contractor or subcontractor) different participants representing the same business reported into a single response. For example, if one participant reported that the business works as a prime contractor and another

participant reported that the business works as a subcontractor, then BBC considered the business as available for both prime contracts and subcontracts.

- BBC considered the largest project any participants representing the same business reported being able to perform as the business' capacity (i.e., the largest project for which the business could be considered available).

After those exclusions, BBC compiled a database of 724 businesses we considered potentially available for LAS (and RTC) work.

AVAILABILITY SURVEY INSTRUMENT

Construction

Hello. My name is [INTERVIEWER NAME] from Davis Research, calling on behalf of the Harry Reid International Airport (LAS) and the Regional Transportation Commission of Southern Nevada (RTC). This is not a sales call. LAS and RTC are conducting a disparity study to assess barriers that businesses might face in the local marketplace. As part of that research, LAS and RTC want to understand the *availability* of different types of businesses for the contracts and procurements they award. We are conducting a survey to collect information about businesses qualified and interested in performing construction-related work for government and other public agencies, entities, and offices in Southern Nevada.

The survey is designed only to gather information and will have no impact on present or future work opportunities with LAS and RTC. Your participation in the survey would be very valuable to the process, and it should only take 15 minutes to complete.

Whom can I speak with to gather information about your business' characteristics and potential interest in working with government and other public agencies, entities, and offices in Southern Nevada?

[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 THE SURVEYS WILL RESULT IN DATA ON BUSINESSES QUALIFIED AND INTERESTED IN WORKING WITH GOVERNMENT AND OTHER PUBLIC AGENCIES, ENTITIES, AND OFFICES IN THE REGION AND WILL INFORM VARIOUS ANALYSES AS PART OF THE RESEARCH.]

Please answer each question as honestly and accurately as possible so LAS and RTC can develop a realistic understanding of the businesses potentially available for government and other public agency work in Southern Nevada.

X1. I have a few basic questions about your business and the type of work you do. Can you confirm this is [BUSINESS NAME]?

1=Correct business [SKIP TO Y4]

2=Incorrect business

99=Refused [TERMINATE]

Y1. What is the name of this business?

1=Verbatim

Y2. Is [NEW BUSINESS NAME] associated with [OLD BUSINESS NAME] in any way?

1=Yes, same owner doing business under a different name

2=Yes, can give information about new business

3=Business bought/sold/changed ownership

98=No, does not have information [TERMINATE]

99=Refused to give information [TERMINATE]

Y3. Do you work for [NEW BUSINESS NAME]?

1=Yes

2=No [TERMINATE]

Y4. Can you give me the address for [BUSINESS NAME/NEW BUSINESS NAME]?

[NOTE TO INTERVIEWER - RECORD IN THE FOLLOWING FORMAT]:

. STREET ADDRESS

. CITY

. STATE

. ZIP

1=[VERBATIM]

A1. Let me confirm [BUSINESS NAME/NEW BUSINESS NAME] is a for-profit business, as opposed to a non-profit organization, a foundation, or government office. Is that correct?

1=Yes, a for-profit business

2=No, other [TERMINATE]

A2. Is your company in business and operational?

1=Yes

2=No [TERMINATE]

A3a. Let me also confirm what kind of business this is. The information we have from Dun & Bradstreet indicates your main line of work is [SIC 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 work at [BUSINESS NAME/NEW BUSINESS NAME]?

[NOTE TO INTERVIEWER – IF RESPONDENT INDICATES BUSINESS' MAIN LINE OF WORK IS "GENERAL CONSTRUCTION" OR "GENERAL CONTRACTOR," PROBE TO FIND OUT MORE DETAIL ABOUT TYPES OF WORK THEY PERFORM.]

1=VERBATIM

A3c. What other types of work, if any, does your business perform?

1=VERBATIM

97=(NONE)

A4. Is this the sole location of 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 business a subsidiary or affiliate of another business?

1=Independent [SKIP TO B1]

2=Subsidiary or affiliate of another business

98=Don't know [SKIP TO B1]

99=Refused [SKIP TO B1]

A6. What is the name of the parent company?

1=VERBATIM

98=Don't know

99=Refused

A prime or general contractor is a business that contracts directly with the project owner. In contrast, a subcontractor is a business that contracts with a prime or general contractor as part of a larger project. Some businesses work in both roles on different projects. Based on these definitions:

B1. Is your business willing and able to work as a prime contractor or general contractor?

1=Yes

2=No

98=Don't know

99=Refused

B2. Is your business willing and able to work as a subcontractor?

1=Yes

2=No

98=Don't know

99=Refused

B3. What about as a supplier? Is your business willing and able to supply construction materials or goods?

1=Yes

2=No

98=Don't know

99=Refused

B4. I'm also interested in the sectors in which your business works. Specifically, is your business interested in performing work on projects for government or other public agencies, entities, or offices in Southern Nevada?

1=Yes

2=No

98=Don't know

99=Refused

[NOTE TO INTERVIEWER: IF ASKED, EXAMPLES INCLUDE STATES, CITIES, COUNTIES, PUBLIC SCHOOLS AND UNIVERSITIES, TRANSPORTATION ORGANIZATIONS, AND OTHERS]

Now, I want to ask you about the geographic areas your business works within Southern Nevada. Please think about the geographic areas in which your business is able to perform work or serve customers as you answer the following question.

C1. Is your company able to work in Clark County, Nevada?

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

Now I'd like to ask you a few questions about the size of work your business is able to compete for or perform.

D1. What is the largest prime contract, subcontract, or other piece of work your company is able to compete for or perform?

1=VERBATIM

[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)

D2. Approximately what is the maximum volume of work your business can take on or perform at any given time?

1=VERBATIM

[NOTE TO INTERVIEWER - READ CATEGORIES IF NECESSARY.]

[NOTE TO INTERVIEWER – FOR EXAMPLE, IS THERE SOME AMOUNT OF TOTAL WORK THAT IF YOUR FIRM OBTAINED IT, YOU WOULD HAVE TO START TURNING DOWN ADDITIONAL WORK BECAUSE YOU SIMPLY COULDN'T TAKE ON ANYMORE?]

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)

My next questions are about the ownership of your business.

E1. A business is defined as a woman-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by individuals who identify as women. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a woman-owned business?

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

E2. A business is defined as a person of color-, or POC-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by individuals who identify as Asian, Black, Hispanic, Native American, or another non-white race or ethnicity. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a POC-owned business?

1=Yes

2=No [SKIP TO E4]

98=(DON'T KNOW) [SKIP TO E4]

99=(REFUSED) [SKIP TO E4]

E3. Which of the following best represents the race/ethnicity of the business' owner(s)?

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 Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong)

3=Hispanic or Latin 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 Natives, 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=Middle Eastern or North African (persons whose origins are from Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, or Yemen)

7=(OTHER - SPECIFY) _____

98=(DON'T KNOW)

99=(REFUSED)

E4. A business is defined as veteran-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by veterans of the United States military. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] a veteran-owned business?

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

E5. A business is defined as an LGBTQ+-owned business if more than half—that is, 51 percent or more—of the ownership and control of daily management and operations is by people that identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, or Asexual. By this definition, is [BUSINESS NAME/NEW BUSINESS NAME] an LGBTQ+-owned business?

1=Yes

2=No

98=(DON'T KNOW)

99=(REFUSED)

Now I want to ask you a few questions about your business' size.

F1. Dun & Bradstreet indicates that your business has about [number] employees across all its locations. Is that an accurate estimate of the number of employees who work at your business, including both full-time and part-time employees?

1=Yes [SKIP TO F3]

2=No

98=Don't know [SKIP TO F3]

99=Refused [SKIP TO F3]

F2. About how many employees work at your business, including both full-time and part-time employees, across all your locations?

1=VERBATIM

[NOTE TO INTERVIEWER – READ CATEGORIES IF NECESSARY]

1=100 employees or fewer

2=101-150 employees

3=151-200 employees

4=201-250 employees

5=251-500 employees

6=501-750 employees

7=751-1,000 employees

8=1,001-1,250 employees

9=1,251-1,500 employees

10=1,501 or more employees

F3. Dun & Bradstreet lists the average annual gross revenue of your business, including all your locations, to be [dollar amount]. Is that an accurate estimate of your business' annual gross revenue?

1=Yes [SKIP TO G1a]

2=No

98=Don't know [SKIP TO G1a]

99=Refused [SKIP TO G1a]

F4. What is an accurate estimate of your company's annual gross revenue, including all of your locations?

1=VERBATIM

[READ LIST IF NECESSARY]

1=\$1 Million or less

2=More than \$1 Million to \$3 Million

3=More than \$3 Million to \$6 Million

4=More than \$6 Million to \$8 Million

5=More than \$8 Million to \$12 Million

6=More than \$12 Million to \$16 Million

7= More than \$16 Million to \$19 Million

8= More than \$19 Million to \$22 Million

9= More than \$22 Million to \$28 Million

10=More than \$28 Million

98= (DON'T KNOW)

99= (REFUSED)

G1a. We're interested in whether your business has experienced barriers or difficulties related to working with, or attempting to work with, LAS, RTC, or other government or public agencies, entities, or offices in Southern Nevada. Do you have any thoughts to share?

1=VERBATIM [PROBE FOR COMPLETE THOUGHTS]

97=(NOTHING/NONE/NO COMMENTS)

G1b. Do you have any additional thoughts to share regarding general marketplace conditions in Southern Nevada, being successful in your industry, or obtaining work?

1=VERBATIM [PROBE FOR COMPLETE THOUGHTS]

97=(NOTHING/NONE/NO COMMENTS)

G2. Would you be willing to participate in a follow-up interview about any of those topics?

1=Yes

2=No

Just a few final questions.

H1. What is your name?

1=VERBATIM

H2. What is your position at [BUSINESS NAME/NEW BUSINESS NAME]?

1=Receptionist

2=Owner

3=Manager

4=CFO

5=CEO

6=Assistant to Owner/CEO

7=Sales manager

8=Office manager

9=President

9=(OTHER - SPECIFY) _____

99=(REFUSED)

H3. 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:

Amy Shaw

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(t) 702-261-5123

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If you have any questions for the disparity study project team or wish to submit written questions, comments, or insights on the Southern Nevada marketplace, please email LASRTCDisparityStudy@bbcresearch.com.

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 and supplies prime contracts and subcontracts the Harry Reid International Airport (LAS) awarded between July 1, 2017 and June 30, 2022 (study period) with the percentage of contract and procurement dollars one might expect LAS to award to those businesses based on their availability for that work.¹ Appendix F presents results from the disparity analysis for relevant business groups and various sets of projects LAS 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 relevant projects LAS awarded during the study period. A review of Figure F-1 introduces the calculations and format of all disparity analysis tables in Appendix F. Figure F-1 presents 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 or 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 race/ethnic group, regardless of whether they were certified as DBEs.
- Rows (10) through (17) present utilization analysis results for businesses of each relevant race/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 (contract elements) BBC analyzed as part of the set. As shown in row (1) of column (a) of Figure F-1, BBC analyzed 23,995 contract elements LAS 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 (6) of column (a), Black American-owned businesses participated in 24 prime contracts and subcontracts LAS awarded during the study period.

¹ “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 race/ethnic groups.

- 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 \$419 million that was associated with the 23,995 relevant contract elements LAS awarded during the study period. The value presented in column (b) for each individual business group represents the dollars LAS awarded to businesses of that particular group on the set of contract elements. For example, as shown in row (6) of column (b), LAS awarded approximately \$11.2 million of its prime contract and subcontract dollars to Black American-owned businesses 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 Black American-owned businesses, the study team divided \$11.2 million by \$419 million and multiplied by 100 for a result of 2.7 percent, as shown in row (6) of column (c).

2. Availability results. Column (d) of Figure F-1 presents the availability of each relevant group for all the contract elements BBC analyzed as part of the project set. Availability represents the percentage of dollars one might expect LAS to award to businesses of a particular group based on their specific characteristics and the characteristics of the contract elements included in a particular set of projects. Availability estimates, which are represented as percentages of the total dollars associated with the project set, serve as benchmarks against which to compare the participation of specific groups in those projects. For example, as shown in row (6) of column (d), the availability of Black American-owned businesses for LAS work is 6.9 percent. That is, one might expect LAS to award 6.9 percent of relevant contract dollars to Black American-owned businesses based on their availability for that work.

3. Disparity indices. BBC calculated a disparity index, or ratio, for each relevant race/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 (6) of column (e), the disparity index for Black American-owned businesses was 39, indicating that LAS awarded approximately \$0.39 to Black American-owned businesses for every dollar one might expect LAS 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 set of projects.

Table of Contents

Table	Organization	Characteristics						
		Time period	Contract area	Contract role	Contract size	Funding Source	Goals	Potential DBE
F-1	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-2	LAS	07/01/17 - 12/31/19	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-3	LAS	01/01/20 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-4	LAS	07/01/17 - 06/30/22	Construction	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-5	LAS	07/01/17 - 06/30/22	Professional services	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-6	LAS	07/01/17 - 06/30/22	Non-professional services and supplies	Prime contracts and subcontracts	N/A	All funding sources	N/A	N/A
F-7	LAS	07/01/17 - 06/30/22	All industries	Prime contracts	N/A	All funding sources	N/A	N/A
F-8	LAS	07/01/17 - 06/30/22	All industries	Subcontracts	N/A	All funding sources	N/A	N/A
F-9	LAS	07/01/17 - 06/30/22	All industries	Prime contracts	Large Prime	All funding sources	N/A	N/A
F-10	LAS	07/01/17 - 06/30/22	All industries	Prime contracts	Small Prime	All funding sources	N/A	N/A
F-11	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	USDOT	N/A	N/A
F-12	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	Non-USDOT	N/A	N/A
F-13	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	All funding sources	Yes	N/A
F-14	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	All funding sources	No	N/A
F-15	LAS	07/01/17 - 06/30/22	All industries	Prime contracts and subcontracts	N/A	USDOT	N/A	Potential DBE
F-16	LAS	07/01/17 - 06/30/22	Construction	Prime contracts and subcontracts	N/A	USDOT	N/A	Potential DBE
F-17	LAS	07/01/17 - 06/30/22	Professional services	Prime contracts and subcontracts	N/A	USDOT	N/A	Potential DBE
F-18	LAS	07/01/17 - 06/30/22	Non-professional services and supplies	Prime contracts and subcontracts	N/A	USDOT	N/A	Potential DBE

Figure F-1.
Time period: 07/01/2017 - 06/30/2022
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	23,995	\$419,035			
(2) POC- and woman-owned businesses	1,880	\$38,563	9.2	34.6	26.6
(3) White woman-owned	983	\$14,140	3.4	9.1	37.2
(4) POC-owned	897	\$24,423	5.8	25.5	22.8
(5) Asian Pacific American-owned	92	\$3,472	0.8	4.7	17.5
(6) Black American-owned	24	\$11,171	2.7	6.9	38.8
(7) Hispanic American-owned	220	\$7,649	1.8	11.1	16.4
(8) Native American-owned	551	\$882	0.2	2.0	10.3
(9) Subcontinent Asian American-owned	10	\$1,249	0.3	0.7	40.8
(10) POC-owned or woman-owned DBE	178	\$20,764	5.0		
(11) White woman-owned DBE	28	\$4,973	1.2		
(12) POC-owned DBE	150	\$15,791	3.8		
(13) Asian Pacific American-owned DBE	10	\$2,058	0.5		
(14) Black American-owned DBE	20	\$10,014	2.4		
(15) Hispanic American-owned DBE	119	\$3,710	0.9		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-2.
Time period: 07/01/2017 - 12/31/2019
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	13,855	\$258,053			
(2) POC- and woman-owned businesses	1,143	\$26,467	10.3	35.2	29.2
(3) White woman-owned	592	\$7,847	3.0	9.3	32.9
(4) POC-owned	551	\$18,620	7.2	25.9	27.8
(5) Asian Pacific American-owned	55	\$2,215	0.9	5.1	16.8
(6) Black American-owned	18	\$10,336	4.0	7.0	57.4
(7) Hispanic American-owned	139	\$5,045	2.0	10.8	18.1
(8) Native American-owned	332	\$435	0.2	2.3	7.3
(9) Subcontinent Asian American-owned	7	\$588	0.2	0.7	31.1
(10) POC-owned or woman-owned DBE	116	\$14,927	5.8		
(11) White woman-owned DBE	15	\$2,334	0.9		
(12) POC-owned DBE	101	\$12,593	4.9		
(13) Asian Pacific American-owned DBE	5	\$1,280	0.5		
(14) Black American-owned DBE	14	\$9,180	3.6		
(15) Hispanic American-owned DBE	82	\$2,133	0.8		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-3.
Time period: 01/01/2020 - 06/30/2022
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	10,140	\$160,982			
(2) POC- and woman-owned businesses	737	\$12,097	7.5	33.6	22.3
(3) White woman-owned	391	\$6,293	3.9	8.8	44.7
(4) POC-owned	346	\$5,804	3.6	24.9	14.5
(5) Asian Pacific American-owned	37	\$1,257	0.8	4.1	18.9
(6) Black American-owned	6	\$834	0.5	6.7	7.7
(7) Hispanic American-owned	81	\$2,604	1.6	11.7	13.9
(8) Native American-owned	219	\$447	0.3	1.7	16.8
(9) Subcontinent Asian American-owned	3	\$661	0.4	0.7	56.4
(10) POC-owned or woman-owned DBE	62	\$5,837	3.6		
(11) White woman-owned DBE	13	\$2,639	1.6		
(12) POC-owned DBE	49	\$3,198	2.0		
(13) Asian Pacific American-owned DBE	5	\$778	0.5		
(14) Black American-owned DBE	6	\$834	0.5		
(15) Hispanic American-owned DBE	37	\$1,577	1.0		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-4.
Time period: 07/01/2017 - 06/30/2022
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	12,003	\$205,666			
(2)	POC- and woman-owned businesses	1,370	\$27,864	13.5	28.3	47.9
(3)	White woman-owned	631	\$8,618	4.2	5.3	78.8
(4)	POC-owned	739	\$19,246	9.4	22.9	40.8
(5)	Asian Pacific American-owned	79	\$1,300	0.6	2.8	22.4
(6)	Black American-owned	19	\$10,630	5.2	2.8	185.2
(7)	Hispanic American-owned	91	\$6,570	3.2	15.2	21.0
(8)	Native American-owned	548	\$705	0.3	1.7	20.6
(9)	Subcontinent Asian American-owned	2	\$41	0.0	0.4	4.6
(10)	POC-owned or woman-owned DBE	99	\$14,982	7.3		
(11)	White woman-owned DBE	18	\$1,888	0.9		
(12)	POC-owned DBE	81	\$13,093	6.4		
(13)	Asian Pacific American-owned DBE	0	\$0	0.0		
(14)	Black American-owned DBE	16	\$9,544	4.6		
(15)	Hispanic American-owned DBE	65	\$3,549	1.7		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-5.
Time period: 07/01/2017 - 06/30/2022
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	729	\$77,168			
(2) POC- and woman-owned businesses	63	\$7,073	9.2	38.1	24.0
(3) White woman-owned	21	\$3,731	4.8	9.1	53.0
(4) POC-owned	42	\$3,342	4.3	29.0	14.9
(5) Asian Pacific American-owned	13	\$2,172	2.8	8.0	35.3
(6) Black American-owned	3	\$57	0.1	11.3	0.7
(7) Hispanic American-owned	18	\$707	0.9	5.7	16.1
(8) Native American-owned	3	\$177	0.2	1.3	18.1
(9) Subcontinent Asian American-owned	5	\$230	0.3	2.8	10.5
(10) POC-owned or woman-owned DBE	28	\$5,296	6.9		
(11) White woman-owned DBE	10	\$3,085	4.0		
(12) POC-owned DBE	18	\$2,211	2.9		
(13) Asian Pacific American-owned DBE	10	\$2,058	2.7		
(14) Black American-owned DBE	3	\$57	0.1		
(15) Hispanic American-owned DBE	4	\$87	0.1		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-6.
Time period: 07/01/2017 - 06/30/2022
Contract area: Non-professional services and supplies
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	11,263	\$136,200			
(2) POC- and woman-owned businesses	447	\$3,627	2.7	42.1	6.3
(3) White woman-owned	331	\$1,792	1.3	14.7	9.0
(4) POC-owned	116	\$1,835	1.3	27.5	4.9
(5) Asian Pacific American-owned	0	\$0	0.0	5.8	0.0
(6) Black American-owned	2	\$484	0.4	10.6	3.4
(7) Hispanic American-owned	111	\$372	0.3	8.0	3.4
(8) Native American-owned	0	\$0	0.0	3.1	0.0
(9) Subcontinent Asian American-owned	3	\$979	0.7	0.0	200+
(10) POC-owned or woman-owned DBE	51	\$487	0.4		
(11) White woman-owned DBE	0	\$0	0.0		
(12) POC-owned DBE	51	\$487	0.4		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	1	\$413	0.3		
(15) Hispanic American-owned DBE	50	\$74	0.1		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-7.
Time period: 07/01/2017 - 06/30/2022
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	23,646	\$347,636			
(2) POC- and woman-owned businesses	1,814	\$28,670	8.2	34.9	23.6
(3) White woman-owned	955	\$11,835	3.4	9.3	36.8
(4) POC-owned	859	\$16,834	4.8	25.7	18.9
(5) Asian Pacific American-owned	84	\$1,741	0.5	5.2	9.7
(6) Black American-owned	18	\$8,797	2.5	7.3	34.8
(7) Hispanic American-owned	199	\$4,215	1.2	10.3	11.8
(8) Native American-owned	551	\$882	0.3	2.2	11.7
(9) Subcontinent Asian American-owned	7	\$1,199	0.3	0.8	42.8
(10) POC-owned or woman-owned DBE	153	\$15,077	4.3		
(11) White woman-owned DBE	24	\$4,325	1.2		
(12) POC-owned DBE	129	\$10,752	3.1		
(13) Asian Pacific American-owned DBE	4	\$940	0.3		
(14) Black American-owned DBE	17	\$8,726	2.5		
(15) Hispanic American-owned DBE	108	\$1,086	0.3		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-8.
Time period: 07/01/2017 - 06/30/2022
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	349	\$71,399			
(2) POC- and woman-owned businesses	66	\$9,894	13.9	33.0	42.0
(3) White woman-owned	28	\$2,305	3.2	8.1	39.7
(4) POC-owned	38	\$7,589	10.6	24.9	42.7
(5) Asian Pacific American-owned	8	\$1,732	2.4	2.7	88.8
(6) Black American-owned	6	\$2,374	3.3	5.0	66.8
(7) Hispanic American-owned	21	\$3,434	4.8	15.3	31.3
(8) Native American-owned	0	\$0	0.0	1.5	0.0
(9) Subcontinent Asian American-owned	3	\$49	0.1	0.4	19.1
(10) POC-owned or woman-owned DBE	25	\$5,687	8.0		
(11) White woman-owned DBE	4	\$647	0.9		
(12) POC-owned DBE	21	\$5,040	7.1		
(13) Asian Pacific American-owned DBE	6	\$1,118	1.6		
(14) Black American-owned DBE	3	\$1,289	1.8		
(15) Hispanic American-owned DBE	11	\$2,625	3.7		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-9.
Time period: 07/01/2017 - 06/30/2022
Contract area: All industries
Contract role: Prime contracts
Funding source: All funding sources

Large contracts

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	60	\$184,870			
(2) POC- and woman-owned businesses	3	\$7,748	4.2	29.9	14.0
(3) White woman-owned	1	\$1,685	0.9	10.3	8.8
(4) POC-owned	2	\$6,063	3.3	19.6	16.7
(5) Asian Pacific American-owned	0	\$0	0.0	4.7	0.0
(6) Black American-owned	2	\$6,063	3.3	4.8	68.7
(7) Hispanic American-owned	0	\$0	0.0	7.8	0.0
(8) Native American-owned	0	\$0	0.0	2.2	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.2	0.0
(10) POC-owned or woman-owned DBE	3	\$7,748	4.2		
(11) White woman-owned DBE	1	\$1,685	0.9		
(12) POC-owned DBE	2	\$6,063	3.3		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	2	\$6,063	3.3		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-10.

Time period: 07/01/2017 - 06/30/2022

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	23,586	\$162,766			
(2) POC- and woman-owned businesses	1,811	\$20,921	12.9	40.6	31.7
(3) White woman-owned	954	\$10,150	6.2	8.0	77.6
(4) POC-owned	857	\$10,771	6.6	32.5	20.3
(5) Asian Pacific American-owned	84	\$1,741	1.1	5.7	18.8
(6) Black American-owned	16	\$2,733	1.7	10.1	16.6
(7) Hispanic American-owned	199	\$4,215	2.6	13.1	19.8
(8) Native American-owned	551	\$882	0.5	2.2	25.2
(9) Subcontinent Asian American-owned	7	\$1,199	0.7	1.5	48.1
(10) POC-owned or woman-owned DBE	150	\$7,329	4.5		
(11) White woman-owned DBE	23	\$2,641	1.6		
(12) POC-owned DBE	127	\$4,688	2.9		
(13) Asian Pacific American-owned DBE	4	\$940	0.6		
(14) Black American-owned DBE	15	\$2,662	1.6		
(15) Hispanic American-owned DBE	108	\$1,086	0.7		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-11.
Time period: 07/01/2017 - 06/30/2022
Contract area: All industries
Contract role: Prime contracts and subcontracts
Funding source: USDOT

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	68	\$71,817			
(2) POC- and woman-owned businesses	20	\$6,007	8.4	24.5	34.1
(3) White woman-owned	3	\$1,007	1.4	2.7	52.1
(4) POC-owned	17	\$5,000	7.0	21.8	31.9
(5) Asian Pacific American-owned	5	\$1,100	1.5	2.7	56.0
(6) Black American-owned	3	\$1,289	1.8	2.6	69.5
(7) Hispanic American-owned	8	\$2,603	3.6	15.8	23.0
(8) Native American-owned	0	\$0	0.0	0.6	0.0
(9) Subcontinent Asian American-owned	1	\$9	0.0	0.1	9.3
(10) POC-owned or woman-owned DBE	17	\$5,448	7.6		
(11) White woman-owned DBE	1	\$496	0.7		
(12) POC-owned DBE	16	\$4,953	6.9		
(13) Asian Pacific American-owned DBE	5	\$1,100	1.5		
(14) Black American-owned DBE	3	\$1,289	1.8		
(15) Hispanic American-owned DBE	7	\$2,555	3.6		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-12.
Time period: 07/01/2017 - 06/30/2022
Contract area: All industries
Contract role: Prime contracts and subcontracts
Funding source: Non-USDOT

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	23,927	\$347,218			
(2) POC- and woman-owned businesses	1,860	\$32,556	9.4	36.7	25.6
(3) White woman-owned	980	\$13,133	3.8	10.4	36.4
(4) POC-owned	880	\$19,423	5.6	26.3	21.3
(5) Asian Pacific American-owned	87	\$2,372	0.7	5.2	13.2
(6) Black American-owned	21	\$9,882	2.8	7.8	36.7
(7) Hispanic American-owned	212	\$5,047	1.5	10.2	14.3
(8) Native American-owned	551	\$882	0.3	2.4	10.8
(9) Subcontinent Asian American-owned	9	\$1,240	0.4	0.9	41.8
(10) POC-owned or woman-owned DBE	161	\$15,316	4.4		
(11) White woman-owned DBE	27	\$4,477	1.3		
(12) POC-owned DBE	134	\$10,839	3.1		
(13) Asian Pacific American-owned DBE	5	\$958	0.3		
(14) Black American-owned DBE	17	\$8,726	2.5		
(15) Hispanic American-owned DBE	112	\$1,155	0.3		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-13.

Time period: 07/01/2017 - 06/30/2022

Contract area: All industries

Contract role: Prime contracts and subcontracts

Funding source: All funding sources

DBE Goal

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	58	\$63,778			
(2) POC- and woman-owned businesses	17	\$5,903	9.3	23.2	39.9
(3) White woman-owned	3	\$1,007	1.6	2.4	66.0
(4) POC-owned	14	\$4,895	7.7	20.8	36.9
(5) Asian Pacific American-owned	5	\$1,100	1.7	1.4	125.5
(6) Black American-owned	3	\$1,289	2.0	1.6	123.6
(7) Hispanic American-owned	5	\$2,498	3.9	17.1	23.0
(8) Native American-owned	0	\$0	0.0	0.7	0.0
(9) Subcontinent Asian American-owned	1	\$9	0.0	0.1	12.8
(10) POC-owned or woman-owned DBE	15	\$5,391	8.5		
(11) White woman-owned DBE	1	\$496	0.8		
(12) POC-owned DBE	14	\$4,895	7.7		
(13) Asian Pacific American-owned DBE	5	\$1,100	1.7		
(14) Black American-owned DBE	3	\$1,289	2.0		
(15) Hispanic American-owned DBE	5	\$2,498	3.9		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-14.

Time period: 07/01/2017 - 06/30/2022

Contract area: All industries

Contract role: Prime contracts and subcontracts

Funding source: All funding sources

No DBE Goals

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	23,937	\$355,256			
(2) POC- and woman-owned businesses	1,863	\$32,661	9.2	36.6	25.1
(3) White woman-owned	980	\$13,133	3.7	10.3	36.0
(4) POC-owned	883	\$19,528	5.5	26.4	20.8
(5) Asian Pacific American-owned	87	\$2,372	0.7	5.3	12.5
(6) Black American-owned	21	\$9,882	2.8	7.8	35.6
(7) Hispanic American-owned	215	\$5,151	1.5	10.1	14.4
(8) Native American-owned	551	\$882	0.2	2.3	10.8
(9) Subcontinent Asian American-owned	9	\$1,240	0.3	0.8	41.5
(10) POC-owned or woman-owned DBE	163	\$15,373	4.3		
(11) White woman-owned DBE	27	\$4,477	1.3		
(12) POC-owned DBE	136	\$10,896	3.1		
(13) Asian Pacific American-owned DBE	5	\$958	0.3		
(14) Black American-owned DBE	17	\$8,726	2.5		
(15) Hispanic American-owned DBE	114	\$1,212	0.3		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-15.

Time period: 07/01/2017 - 06/30/2022

Contract area: All industries

Contract role: Prime contracts and subcontracts

Funding source: USDOT

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	68	\$71,817			
(2) POC- and woman-owned businesses	20	\$6,007	8.4	18.6	44.9
(3) White woman-owned	3	\$1,007	1.4	2.7	52.9
(4) POC-owned	17	\$5,000	7.0	16.0	43.6
(5) Asian Pacific American-owned	5	\$1,100	1.5	2.4	62.5
(6) Black American-owned	3	\$1,289	1.8	2.6	69.5
(7) Hispanic American-owned	8	\$2,603	3.6	10.2	35.4
(8) Native American-owned	0	\$0	0.0	0.6	0.0
(9) Subcontinent Asian American-owned	1	\$9	0.0	0.1	9.3
(10) POC-owned or woman-owned DBE	17	\$5,448	7.6		
(11) White woman-owned DBE	1	\$496	0.7		
(12) POC-owned DBE	16	\$4,953	6.9		
(13) Asian Pacific American-owned DBE	5	\$1,100	1.5		
(14) Black American-owned DBE	3	\$1,289	1.8		
(15) Hispanic American-owned DBE	7	\$2,555	3.6		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.0		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-16.

Time period: 07/01/2017 - 06/30/2022

Contract area: Construction

Contract role: Prime contracts and subcontracts

Funding source: USDOT

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	47	\$61,809			
(2) POC- and woman-owned businesses	10	\$4,381	7.1	16.5	43.0
(3) White woman-owned	3	\$1,007	1.6	2.3	70.3
(4) POC-owned	7	\$3,373	5.5	14.1	38.6
(5) Asian Pacific American-owned	0	\$0	0.0	1.3	0.0
(6) Black American-owned	2	\$876	1.4	1.0	136.5
(7) Hispanic American-owned	5	\$2,498	4.0	11.0	36.6
(8) Native American-owned	0	\$0	0.0	0.7	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.1	0.0
(10) POC-owned or woman-owned DBE	8	\$3,869	6.3		
(11) White woman-owned DBE	1	\$496	0.8		
(12) POC-owned DBE	7	\$3,373	5.5		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	2	\$876	1.4		
(15) Hispanic American-owned DBE	5	\$2,498	4.0		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-17.

Time period: 07/01/2017 - 06/30/2022

Contract area: Professional services

Contract role: Prime contracts and subcontracts

Funding source: USDOT

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	20	\$9,595			
(2) POC- and woman-owned businesses	9	\$1,213	12.6	31.7	39.9
(3) White woman-owned	0	\$0	0.0	4.5	0.0
(4) POC-owned	9	\$1,213	12.6	27.2	46.4
(5) Asian Pacific American-owned	5	\$1,100	11.5	9.7	118.8
(6) Black American-owned	0	\$0	0.0	12.1	0.0
(7) Hispanic American-owned	3	\$105	1.1	5.1	21.4
(8) Native American-owned	0	\$0	0.0	0.0	0.0
(9) Subcontinent Asian American-owned	1	\$9	0.1	0.3	27.0
(10) POC-owned or woman-owned DBE	8	\$1,166	12.2		
(11) White woman-owned DBE	0	\$0	0.0		
(12) POC-owned DBE	8	\$1,166	12.2		
(13) Asian Pacific American-owned DBE	5	\$1,100	11.5		
(14) Black American-owned DBE	0	\$0	0.0		
(15) Hispanic American-owned DBE	2	\$58	0.6		
(16) Native American-owned DBE	0	\$0	0.0		
(17) Subcontinent Asian American-owned DBE	1	\$9	0.1		

Note: | Numbers are rounded to the nearest thousand dollars or tenth of one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.

Figure F-18.

Analysis of potential DBEs

Time period: 07/01/2017 - 06/30/2022

Contract area: Non-professional services and supplies

Contract role: Prime contracts and subcontracts

Funding source: USDOT

Business Group	(a) Number of contract elements	(b) Total dollars (thousands)	(c) Utilization percentage	(d) Availability percentage	(e) Disparity index
(1) All businesses	1	\$413			
(2) POC- and woman-owned businesses	1	\$413	100.0	38.9	200+
(3) White woman-owned	0	\$0	0.0	10.0	0.0
(4) POC-owned	1	\$413	100.0	28.9	200+
(5) Asian Pacific American-owned	0	\$0	0.0	6.7	0.0
(6) Black American-owned	1	\$413	100.0	12.2	200+
(7) Hispanic American-owned	0	\$0	0.0	8.9	0.0
(8) Native American-owned	0	\$0	0.0	1.1	0.0
(9) Subcontinent Asian American-owned	0	\$0	0.0	0.0	100.0
(10) POC-owned or woman-owned DBE	1	\$413	100.0		
(11) White woman-owned DBE	0	\$0	0.0		
(12) POC-owned DBE	1	\$413	100.0		
(13) Asian Pacific American-owned DBE	0	\$0	0.0		
(14) Black American-owned DBE	1	\$413	100.0		
(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 one percent. "Woman-owned" refers to non-Hispanic white woman-owned businesses.

Source: BBC Research & Consulting Disparity Analysis.