Final Report

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A Study to Determine DBE Availability and Analyze Disparity in the Transportation Contracting Industry in Idaho

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SECTION ES.
Executive Summary

The Idaho Transportation Department (ITD) must implement the Federal Disadvantaged Business Enterprise (DBE) Program in order to receive U.S. Department of Transportation (USDOT) funds. Recent legal decisions and guidance from USDOT have led ITD to reexamine how it implements the Program. ITD retained BBC Research & Consulting (BBC) to conduct a Disparity Study to assist the Department in its implementation of the Federal DBE Program.

Study Overview

This Disparity Study examines the transportation construction and engineering industry in Idaho and related contracts awarded by ITD. The Study focuses on Federal Highway Administration (FHWA)- and state-funded contracts, but also makes recommendations concerning implementation of the Federal DBE Program for Federal Transit Administration (FTA)- and Federal Aviation Administration (FAA)-funded contracts.

BBC examined more than 4,500 construction and engineering contracts and subcontracts from 2002 through 2006. To examine relative availability of minority- and women-owned firms for this work, BBC completed telephone interviews with more than 3,000 business establishments potentially involved in the local transportation contracting industry. The study team reviewed thousands of bids and proposals submitted for construction and engineering contracts. In addition, the study team conducted in-depth interviews with firm owners and trade association representatives across the state. BBC also examined public hearing testimony and written comments received after publication of a preliminary disparity study report.

This summary discusses:

- Data concerning the overall annual goal for DBE participation in federally-funded contracts;
- Information on how much of the annual goal can be achieved through neutral means; and
- Specific measures ITD should consider to implement the program.

Overall Annual DBE Goal

ITD must develop an overall goal for DBE participation whether or not it implements race- or gender-conscious programs or only neutral programs. The Federal DBE Program calls for a "base figure analysis" and consideration of any "step 2" adjustments in deriving an overall annual goal for DBE participation in federally-funded contracts.

Base figure analysis. After considering type, contract role, location and size of work involved in federally-funded projects, and the relative availability of firms to perform that work, BBC determined that 15.3 percent of dollars on federally-funded contracts would be expected to go to minority- and women-owned firms (MBE/WBEs) if available MBE/WBEs received the same amount of work as similarly situated majority-owned firms. However, some of the largest MBE/WBEs would not meet the federal eligibility requirements for DBE certification. After removing these firms from the set of

potentially DBE-certified firms, the revised analysis indicates a base figure of 10.5 percent DBE participation.

Step 2 adjustments. ITD could consider adjustments in the base figure through a "step 2" process. This process considers whether or not there is any indication that, but for discrimination, current availability of DBEs might be higher and therefore warrant a higher overall DBE goal. The step 2 process also reviews any information suggesting that the base figure for the overall DBE goal might be too high. Relevant types of information to be considered in making a step 2 adjustment are outlined in the Federal DBE Program. BBC's review of the information suggests that any factors indicating downward adjustments in the base figure would be offset by factors indicating upward adjustments in the base figure.

Percentage of the Annual Goal to be Achieved through Neutral Means

The Federal DBE Program requires ITD to assess the percentage of its overall annual DBE goal that can be achieved through neutral means, and if necessary, the percentage to be achieved through race- and gender-conscious measures.

Evidence of disparities when ITD implements an all-neutral program. To help ITD make decisions on the extent to which it can implement the DBE Program solely through neutral means, BBC examined utilization of minority- and women-owned firms on past ITD contracts with and without DBE contract goals. The "without-goals" contracts include all state-funded contracts as ITD has not implemented any race- or gender-conscious measures for non-federally-funded projects. They also include federally-funded contracts awarded after January 2006, when ITD discontinued setting DBE contract goals on these contracts.

Federally-funded contracts. From 2002 through 2006, minority- and women-owned firms (including firms not DBE certified) were awarded 13.1 percent of prime contract and subcontract dollars for federally-funded transportation construction and engineering contracts. This level of MBE/WBE utilization fell slightly below what would be expected based on overall analysis of MBE/WBEs available to perform that work (15.3 percent). However, about 12 percent of federally-funded contract dollars went to women-owned firms and 1 percent went to minority-owned firms. There were substantial disparities between utilization and availability for minority-owned firms (for each race/ethnic group) even for the time period with DBE contract goals in place.

When BBC examined only those federally-funded contracts after January 2006, MBE/WBE utilization was only 10.8 percent of contract dollars. This was substantially below the utilization expected based on MBE/WBE availability for these contracts and subcontracts.

State-funded contracts. MBE/WBE utilization on state-funded contracts from 2002 through 2006 was 14.6 percent, less than what would be expected based on MBE/WBE availability for these contracts (about 20 percent).

Results for subcontracting versus prime contracts. In general, BBC found that minority- and women-owned firms received a relatively large share of subcontract dollars on construction contracts whether or not DBE goals were in place. With DBE goals, MBE/WBEs received one-quarter of construction subcontract dollars. Without DBE goals, minority- and women-owned firms obtained nearly one-third of this work. However, most of the subcontract volume went to white women-

owned firms. There were disparities between actual utilization of minority-owned firms and what would be expected given MBE availability for these subcontracts.

For engineering-related subcontracts, utilization of minority- and women-owned firms was substantially below availability for these subcontracts.

BBC identified the largest disparities for construction and engineering prime contracts, even when just examining smaller contracts. The past DBE contract goals program focused on opening opportunities for subcontractors, not prime contractors.

Qualitative information. The study team collected and reviewed qualitative information from in-depth personal interviews conducted with minority-, women- and majority-owned firms across the state, from interviews with trade association representatives, and from open-ended questions included in a large survey of local firms. There were some instances in which minority and female business owners reported that they were treated differently because of their race or gender. Many minority and female business owners identified disadvantages that were not directly related to race or gender of the firm owner.

Remedies available to ITD. As described below, ITD has a number of race- and gender-neutral remedies that can address identified barriers to minority- and women-owned firms.

ITD Implementation of the Federal DBE Program

The Federal DBE Program requires ITD to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. However, some targeted efforts toward DBEs may be needed in the future.

General technical assistance. ITD should continue efforts to build capabilities of minority- and women-owned firms. BBC recommends multiple tiers of assistance depending upon the age, size, line of work and other business factors to make assistance most useful for firms in different stages of development. Specialized assistance to reservation-based Native American-owned firms may be needed.

Construction subcontracting. BBC does not recommend reintroduction of the DBE contract goals program for construction contracts at this time. However, ITD should not only monitor DBE and MBE/WBE utilization as subcontractors on both federally- and state-funded projects, but it should also track MBE/WBE utilization for the individual prime contractors obtaining a large dollar volume of ITD construction contracts. If needed, ITD can further investigate whether there are particular barriers for minority- and women-owned subcontractors seeking work from individual prime contractors. ITD has the authority to ensure that its prime contractors are not discriminating against potential subcontractors based on subcontractors' race, ethnicity or gender. ITD should consider holding mandatory pre-bid conferences for certain contracts as a forum to introduce subcontractors to primes. ITD should automatically inform first-tier subcontractors of ITD payment to prime contractors.

Without DBE project goals, there is some potential for prime contractors to self-perform work they previously subcontracted. ITD could consider setting minimum percentages for work to be subcontracted on a project if self-performance negatively affects opportunities for small subcontractors, or minority- and women-owned firms.

Construction prime contracts. Even though BBC's analysis found that ITD already has many small construction contracts (and that disparities in MBE/WBE utilization remain on small contracts), ITD should attempt to further unbundle its large contracts to encourage bidding by smaller MBE/WBEs.

ITD should consider identifying a limited number of construction projects as joint venture "demonstration projects" for larger contractors teaming with small, emerging prime contractors. Bidding would be limited to joint venture partners. ITD can also encourage additional mentor-protégé efforts by Associated General Contractors, other associations and individual prime contractors.

Technical assistance and other efforts to build strong MBE/WBE prime contractors will be needed for many years in order to address the disparities identified in MBE/WBE participation as construction prime contractors. ITD should closely monitor MBE/WBE bidding and contract awards to gauge the success of these efforts, and assess whether stronger programs are needed in the future.

Engineering contracts. BBC does not recommend reintroduction of the DBE contract goals program for engineering contracts at this time. ITD should consider the following program elements related to its engineering contracts:

- Develop systems to better identify and communicate ITD engineering opportunities;
- Require prime consultants competing for certain term agreement categories to include subconsultants as part of a team submission (and encouraging DBE participation among subconsultants);
- Periodically hold mandatory pre-proposal conferences where subconsultants can introduce themselves to prime consultants;
- On certain RFPs, set minimum percentages of work that prime consultants must joint venture or subcontract out and encourage use of small businesses on these joint ventures and subcontracts;
- Monitor individual prime consultants' use of minority- and women-owned subconsultants on ITD work and further investigate certain prime consultants when warranted;
- Provide intensive technical assistance to encourage proposals for term agreements from minority- and women-owned firms and work with MBE/WBE firms to improve the quality of their proposals;
- In the scoring of proposals for term agreements, award points for firms that have not been successful in competing for a type of work (or term agreement category) in the past but have a proven track record as a subconsultant; and
- Automatically inform first tier subconsultants when prime consultants have been paid.

ITD should consider this information in determining whether any portion of the overall annual goal for the next fiscal year should be achieved through race- or gender-conscious means.

Tracking MBE/WBE as well as DBE utilization. ITD needs additional metrics to track success beyond those suggested in the Federal DBE Program, including careful tracking of MBE/WBEs (not just DBE participation) in both federally-funded and state-funded contracts. For example, one measure of ITD's success should be the number of minority- and women-owned firms that grow too large to be eligible for DBE certification. These steps are critical for ITD to be in compliance with the Federal DBE Program and ensure that it is not an active or passive participant in race or gender discrimination against minority- and women-owned firms.

Conclusions

Analysis of ITD prime contracts and subcontracts, and the availability of minority- and women-owned firms to perform this work, suggests a base figure for an overall DBE goal of 10.5 percent. ITD must implement the Federal DBE Program, and set an overall DBE goal, whether or not it operates any race- or gender-conscious programs such as DBE contract goals.

BBC identified disparities between utilization and availability of minority- and women-owned firms on ITD contracts, especially as prime contractors. ITD will need strong programs to remove barriers to MBE and WBE participation as prime contractors and must continue its efforts to open subcontracting opportunities. The Department can build on past successes in developing innovative programs.

Reintroduction of the DBE contract goals program is not recommended at this time because other strategies appear to better address the disadvantages facing minority- and women-owned firms in the Idaho transportation contracting industry. This should not imply an end to ITD's efforts to build a successful minority and female contracting community. It does mean a new direction for ITD's implementation of the Federal DBE Program that will require time and resources to be successful.

SECTION I.
Introduction

This report provides information to assist the Idaho Transportation Department (ITD) in determining how it will implement the Federal Disadvantaged Business Enterprise (DBE) Program related to USDOT-funded transportation contracts.

Study Scope

The Disparity Study examines the transportation construction and engineering industry in Idaho and related contracts awarded by ITD.

The Study focuses on FHWA- and state-funded contracts; however, Section IX of this report also discusses implementation of the DBE Program for FTA- and FAA-funded contracts. The analysis includes firms receiving prime contracts and subcontracts as well as suppliers and truckers. The study team examined contracts in each ITD district. (Figure I-1 on the following page identifies ITD districts and also divides the state into Northern Idaho and Southern Idaho, which is important for BBC's disparity analysis by region.)

ITD awards and administers certain federally-funded contracts for cities, counties or other local agencies. These contracts are included in the data reviewed by BBC.

Federal DBE Program

After enactment of the Transportation Equity Act for the 21st Century (TEA-21) in 1998, the U.S. Department of Transportation (USDOT) established a new Federal DBE Program.

Program elements. The elements of the Program are set forth in 49 CFR Part 26. Race- and gender-conscious measures such as DBE contract goals may be used if necessary, but are not required in a state's implementation of the Federal DBE Program. Until January 2006, ITD had used DBE contract goals for federally-funded construction contracts and some professional services contracts. In response to new guidance from the courts and from USDOT, ITD changed it implementation of the program to no longer require meeting DBE contract goals or showing good faith efforts to do so. ITD made this change for contracts advertised after January 10, 2006.

Race/ethnic/gender groups. Disadvantaged business enterprises (DBEs) are defined in the Federal DBE Program (49 CFR Section 26.5). A DBE is a small business owned and controlled by one or more individuals who are socially and economically disadvantaged, as explained in Appendix A (Definitions). The Federal DBE Program specifies the race, ethnic and gender groups that can be presumed to be disadvantaged. These groups are:

- Black Americans (or "African Americans" in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.

There is a gross revenue limit (not more than $20,410,000 and lower limits for certain lines of business) and a personal net worth limit ($750,000, not including equity in the business and in personal residence) that firms and firm owners must fall below to be able to be certified as a DBE (49 CFR Subpart D). In this study:

- "DBEs" refers to disadvantaged business enterprises according to the federal definitions in 49 CFR Part 26 that have been certified as such.
- "MBEs" and "WBEs" refer to firms owned and controlled by minorities or women, according to the race/ethnicity definitions listed above, whether or not they are certified.
- When considering an overall annual goal, BBC also considers existing minority- and women-owned firms that could potentially be certified as DBEs given BBC's information about the size of these firms.

Appendix A examines additional key terms and their definitions for this study.

Figure I-1. ITD districts and regions

Legal Requirements for ITD Implementation of the Federal DBE Program

The new Federal DBE Program that the federal government developed in 1999 responded to the 1995 U.S. Supreme Court decision in *Adarand Constructors, Inc. v. Pena*.[1] The Court held that a federal program utilizing a racial classification is only constitutional if it serves a "compelling interest" and is "narrowly tailored" to achieve that objective. "Narrow tailoring" has a number of components, which are discussed in Appendix B.

Difference between implementing a federal program and a state or local program. In *Adarand*, the U.S. Supreme Court extended the same standard for review of federal programs that the Court had earlier applied to state and local governments in *City of Richmond v. J.A. Croson*.[2] After the 1989 *Croson* decision, many state and local minority- and women-owned business enterprise programs (non-federal programs) were held to be unconstitutional by the courts.

Appendix B (Legal Environment for ITD DBE Program) summarizes certain key federal court decisions affecting race- and gender-conscious programs implemented by public agencies, including the implementation by state transportation departments of the Federal DBE Program.

Requirements for implementing the Federal DBE Program. As a recipient of USDOT funds, ITD is required to implement the Federal DBE Program, and to narrowly tailor its implementation given factors affecting the Idaho transportation construction and engineering marketplace. The current Federal DBE Program provides regulations that state and local governments must follow. ITD must:

- Set an overall annual goal for DBE participation in ITD's federally-funded contracts;
- Examine whether or not the annual DBE goal can be attained solely through neutral measures or whether race- or gender-based measures are needed;
- Choose the measures it will apply in an attempt to meet the annual DBE goal; and
- Identify the specific race, ethnic and gender groups that will be eligible for any race- or gender-conscious measures such as contract goals.

Overall annual DBE goal. Even though the Federal DBE Program outlined in 49 CFR Part 26 includes an overall 10 percent aspirational goal for DBE participation across the nation, state and local governments receiving USDOT funds must set an annual DBE goal specific to conditions in their relevant marketplace. The Federal DBE Program requires an agency such as ITD to set an annual DBE goal whether or not its program utilizes race- or gender-conscious measures such as DBE contract goals, or just race- and gender-neutral measures.

Measures required to attempt to meet the goal. The Federal DBE Program requires state and local governments to assess how much of the annual DBE goal can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts such as DBE contract goals. The state or local government must then select specific measures it will use in implementing the Program.

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[1] 515 U.S. 200 (1995).

[2] 488 U.S. 469 (1989).

***Western States* decision.** The 2005 Ninth Circuit decision in *Western States Paving Co. v. Washington State DOT* sets requirements that ITD must follow in implementing the Federal DBE Program.[3] In this decision, the court held that state and local governments are responsible for determining whether or not there is discrimination in the local transportation contracting industry, and for developing narrowly tailored measures if a need exists, in order to comply with the Federal DBE Program. The court found that sufficient evidence of discrimination exists nationwide to hold that the Federal DBE Program was constitutional. The court also held that narrow tailoring of the program depends on each state or local government evaluating conditions within its own contracting markets.

Accordingly, the USDOT has advised state and local agencies that any use of race- or gender-conscious remedies as part of its DBE program must be based on evidence the recipient has concerning discrimination affecting the local transportation contracting industry[4]:

- The state or local agency determines whether or not there is evidence of discrimination in its transportation contracting industry.
- The USDOT recommends the use of disparity studies to examine whether or not there is evidence of discrimination, and how remedies might be narrowly tailored.
- The USDOT suggests consideration of both statistical and anecdotal evidence. "Disparity analysis," or comparisons of DBE utilization with the relative availability of DBEs to perform the work, is an important part of the statistical information.
- Evidence must be considered for individual race, ethnic and gender groups.

This Disparity Study provides information to ITD on whether or not there is evidence of discrimination affecting the local transportation contracting industry, which groups are affected, and the need for specific program elements.

Study Team

The study team for the Availability and Disparity Study is:

- BBC Research & Consulting, a Denver-based economic and policy research firm (prime consultant);
- Holland & Knight LLP, a national law firm;
- Galena Consulting, a Boise-based research firm; and
- Customer Research International, a telephone survey firm in San Marcos, Texas.

BBC Research & Consulting has overall responsibility for this study and performed most of the required quantitative analyses. Holland & Knight conducted the legal analysis that provides the basis for this study. Holland & Knight also performed in-depth personal interviews of business owners.

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[3] *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005)

[4] Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation* [hereinafter DOT Guidance], available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm. (January 2006).

Galena Consulting conducted a detailed review of ITD contracting practices. Customer Research International conducted telephone surveys with business managers and owners in the transportation contracting industry.

Organization of the Report

BBC begins by providing information on availability of minority- and women-owned firms in the transportation contracting industry. Section II concludes with a suggested "base figure" for ITD's goal for DBE participation for the next fiscal year.

ITD can consider "step 2" adjustments to the base figure. BBC analyzed a number of factors, some indicating a downward adjustment in the base figure and some suggesting an upward adjustment. Section III presents this information.

ITD must decide how much of its overall annual DBE goal can be met through neutral means and how much through race-conscious measures. Section IV compares past utilization of minority- and women-owned firms for work with DBE contract goals and utilization under an all race-neutral program.

BBC explores possible explanations for any overall disparities in the utilization of minority- and women-owned firms. Combining qualitative and quantitative information, BBC separately examines MBE/WBE opportunities as subcontractors on transportation construction projects (Section V) and as prime contractors on these projects (Section VI). Sections VII and VIII analyze similar information for transportation engineering subcontracts and prime contracts. Section IX presents BBC's analysis of possible remedies as well as other actions ITD should take to successfully implement the Federal DBE Program. Section X summarizes overall study results.

Note that a number of appendices provide supporting information for the Final Report. ITD should review the detailed discussion of study methodology and results presented in the appendices as it considers future implementation of the Federal DBE Program.

This final report incorporates analysis of oral testimony and written comments received as part of public hearings held by ITD after publication of a preliminary disparity study report.

SECTION II.
Analysis of MBE/WBE Availability

BBC collected and analyzed data on the relative availability of minority- and women-owned businesses for two purposes: (a) setting a base figure for the overall annual DBE goal, and (b) developing a benchmark for expected utilization in the disparity analyses. Disparity analysis is one tool to determine how much of the overall annual DBE goal can be achieved through race- and gender-neutral measures.

The study team performed a statistical analysis of ITD contracts to determine the percentage of work expected to go to minority- and women-owned firms. The data required for this statistical analysis came from telephone interviews with firms potentially available for transportation construction and engineering work in the Idaho marketplace, and BBC's compilations of data on more than 4,500 ITD prime contracts and subcontracts.

Figure II-1.
Definitions of MBE/WBEs, DBEs and potential DBEs

Minority- and women-owned firms. Firms that reported they were owned and controlled by minorities or women (or identified as such in relevant databases) are counted as MBEs and WBEs in the utilization and availability analysis. "Minority" follows the definitions in the Federal DBE Program, as outlined in Appendix A of this report.

Certified Disadvantaged Business Enterprises (DBEs). BBC counted a firm as a certified DBE if it was identified as certified in the ITD DBE Directory at the time that a contract was awarded.

Potential DBEs. To formulate the overall annual DBE goal, BBC excluded high-revenue minority- and women-owned firms. Firms that appeared that they could be potentially certified as DBEs based on ownership and revenue were counted in the overall goal. Note that this excluded some high-revenue firms that were DBE certified in 2006. (Construction-related firms with annual revenue of less than $10 million and engineering-related firms with annual revenue of less than $5 million were counted as potential DBEs. This is below the revenue limit of $20,410,000 because of lower Small Business Administration size limits for certain construction and engineering disciplines, the revenue size categories in the availability survey, and to account for the fact that firms above these lower revenue limits are more likely to exceed the net worth limit of $750,000.)

The balance of Section II describes availability analysis methods, results and implications for ITD's implementation of the Federal DBE Program. Appendix C (Availability Survey) provides additional information on the survey effort.

Measuring MBE/WBE Availability

Definitions. The availability analysis considers three definitions of minority- and women-owned firms:

- Firms that are owned and controlled by minorities or women, whether or not they are certified as disadvantaged business enterprises ("MBE and WBEs");
- Businesses that have been certified as disadvantaged business enterprises ("DBEs"), which means that they are below certain revenue and personal net worth limits; and
- Minority- and women-owned firms that are certified or potentially could be certified as DBEs ("potential DBEs").

BBC's analysis starts by examining relative availability of MBEs and WBEs as defined above (and discussed in Figure II-1).

Because implementation of the Federal DBE Program requires tracking of DBE utilization (and may extend certain program benefits solely to firms certified as DBEs), BBC also reports certain utilization data based on DBE status of the firm. Minority- and women-owned firms not certified as DBEs are not counted in the latter method for estimating DBE utilization.

Finally, ITD must set an overall annual goal for DBE utilization, but many firms that could be certified as DBEs are not currently certified. Consistent with court-reviewed availability analysis in states such as Illinois and Minnesota, BBC analyzes the base figure for the overall DBE goal based primarily on relative availability of minority- and women-owned firms that are potential DBEs, not just those that are currently certified. BBC excludes the highest-revenue MBEs and WBEs from the base figure analysis because they may exceed the revenue ceiling for eligibility for DBE certification.

Why disparity analysis for MBE/WBEs and not DBEs? Comparing utilization and availability of minority- and women-owned firms (by race/ethnicity/gender) is the way a researcher should analyze whether or not there are disparities affecting minority- and women-owned firms. The potential that race or gender discrimination affects utilization of firms should be studied by comparing outcomes for firms based on their ownership, not certification status. Firms may be discriminated against based on the race and gender of the business owner regardless of whether they have applied for DBE certification.

Further, the disparity analysis should include the most successful, highest-revenues minority- and women-owned firms in the statistics for MBE/WBE utilization and availability. A disparity analysis for just DBEs excludes these highly successful firms from the statistics for DBEs. Utilization and availability for DBE-certified firms would reflect data for "economically disadvantaged" minority- and women-owned firms compared with results for all firms. One might find disparities for any group of firms for which membership is limited to low-revenue firms.[1]

Finally, white male-owned firms can be certified as DBEs (even though few seek such certification). Disparity analysis based just on certified DBEs is not purely an analysis of disparities by race and gender.

ITD currently only tracks information concerning certified DBEs, as this is what USDOT requires. For purposes of this study, BBC required information on all minority- and women-owned firms whether or not they are currently certified or could be certified (were below revenue and net worth limits), as explained in Figure II-1.

Survey of businesses potentially related to transportation construction and engineering. The availability analysis encompassed firms that had done transportation construction- or engineering-related business or had attempted to do business with ITD. BBC attempted to reach every firm on ITD's bidder list and the study team contacted business establishments in Idaho, Eastern Washington and Northern Utah that were listed in the Dun & Bradstreet (D&B) directory for primary lines of work potentially related to transportation construction and engineering.

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[1] An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the statistics for minorities, any comparison of wages between minorities and non-minorities would likely show disparities in wage levels. A disparity analysis that only includes certified DBEs in the statistics for minority-owned firms suffers from the same flaw.

Relevant geographic market area. BBC selected the Idaho-Eastern Washington-Northern Idaho region as the relevant geographic market area because more than 85 percent of the dollars going to prime contractors or subcontractors on ITD transportation construction and engineering projects from 2002 through 2006 went to firms with locations in this area (85 percent for construction and 88 percent for engineering). In addition to all counties in Idaho, the relevant geographic market area includes Spokane and Asotin counties in Washington and Cache County in Utah, as shown in Figure II-2.

Figure II-2. ITD geographic relevant market area for transportation construction and engineering

Source:

BBC Research and Consulting from analysis of ITD transportation construction and engineering prime contract and subcontract dollars, 2002-2006.

Identification of firms potentially working in the Idaho transportation construction and engineering marketplace. The study team purchased all D&B listings for business establishments in the Idaho-Eastern Washington-Northern Utah region listed under the Standard Industrial Classification (SIC) codes that BBC determined to be most pertinent to ITD transportation construction and engineering contracts. The study team attempted to contact each of these potential businesses. BBC and Customer Research International (CRI) conducted the telephone interviews from May through July 2007. CRI is a telephone survey research firm in Texas that has substantial expertise conducting these types of surveys. (BBC also sent surveys via fax and e-mail to firms that had requested receiving hard copy versions.)

- These telephone interviews began by confirming that the interviewer had reached the correct business.
- Interviewers then asked the firm owner or manager, "First, I want to confirm that your firm does work related to transportation construction, maintenance or design. Is this correct?" Interviewees were told that this included trying to sell this work, not just successfully performing this work. Interviews continued with firms responding "yes" to this question.
- Interviewers also confirmed or refined the D&B information concerning each firm's primary line of work.
- The survey collected information on the geographic scope of that work within the state, specific interest in ITD work, and past bidding and performance of transportation construction and engineering contracts for ITD, local governments and the private sector.
- Firms were asked to identify the largest contract or subcontract performed or bid on in the past five years.
- Interviewers asked firms whether they were qualified and interested in work for ITD and/or local governments. Separate questions asked about qualifications and interest in this work as a prime contractor and as a subcontractor.
- The survey asked firms whether they were owned and controlled by minorities and/or women.
- Other firm characteristics were collected as well (see Appendix C).

Figure II-3. Strengths of a "custom census" approach

Federal courts have reviewed and upheld "custom census" approaches to availability that begin with D&B data. The study team's methodology for analyzing MBE/WBE availability took the previous court-reviewed custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation construction and engineering work.

Some of the reasons for using this approach to measuring relative MBE/WBE availability are summarized in Figure II-3.

Survey performance. The study team attempted to complete surveys with all firms in Idaho-Eastern Washington-Northern Utah whose primary lines of business were within transportation construction and engineering-related SIC codes. (There was no "sampling" from the sample frame in preparing the list of firms to be surveyed.)

The study team obtained completed surveys from 3,058 business establishments, or about 45 percent of the business establishments in the sample frame, which is high for this type of research. Not all of theses businesses were included as available for ITD work and some establishments were multiple locations of the same firm. After screening potentially available firms and merging responses for firms with multiple locations, there were 560 for-profit firms reporting that they:

- Perform work related to transportation construction, maintenance or design (in the lines of business pertinent to this study);
- Are qualified and interested in performing transportation-related work for ITD in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Have attempted to obtain this work in the past (in the public or private sector);
- Indicated the regions of Idaho in which they can perform work; and
- Reported MBE/WBE/majority ownership status.

Appendix C provides additional information about survey performance.

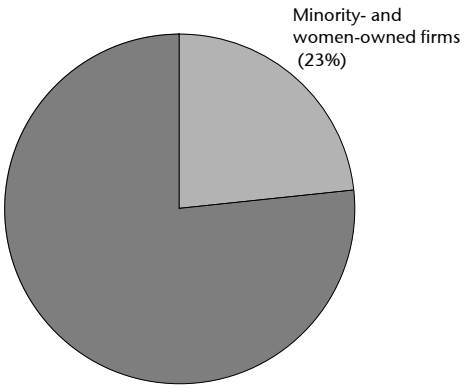
Results of the Availability Analysis

Of the 560 firms satisfying the conditions discussed above, 23 percent reported that they were minority- or women-owned (see Figure II-4). As this percentage is based on a simple "headcount" of firms, it is just a starting point for the availability analysis. Nearly one-half of the minority- and women-owned firms were certified as DBEs at the time of the survey.

Figure II-4.
MBE/WBEs as a share of firms available for transportation contracting work

Note:
Unweighted.
n=560

Source:
BBC Research and Consulting from 2007 Availability Survey.



Firms available by location. Relative MBE/WBE availability does not vary considerably between ITD districts. This is because firms located in one district often work across a number of districts.

Firms available by sector and work role. BBC also examined MBE/WBE availability by sector, work role and discipline. (Note that statistics for WBEs refers to white women-owned firms, as discussed in Figure II-5.) Figure II-6 on the following page shows the percentage of all firms available within these sub-categories that are minority- or women-owned. (All of the results reported in Figure II-6 are based on headcounts of firms prior to any weighting.) Results show that minority- and women-owned firms comprise a larger share of total firms available for engineering contracts than for construction projects, and for ITD subcontracting work than for prime contracts.

Among transportation construction industry firms reporting qualifications and interest in future ITD transportation work as a prime (and had bid or received work as a prime on past transportation work in the public or private sectors), 21 percent are MBEs or WBEs. MBEs and WBEs are 23 percent of transportation construction industry firms reporting past work as well as qualifications and interest in future ITD work as a subcontractor or supplier.

Among engineering-related firms that had bid or received work as a prime in the past, MBEs and WBEs comprise 25 percent of transportation engineering industry firms qualified and interested in future ITD work as a prime consultant. Among transportation engineering industry firms with past subconsultant experience and qualifications and interested in future ITD work as a subconsultant, 26 percent are MBEs or WBEs.

Figure II-5.
Coding of firms owned by minority women

Firms owned by minority women present a challenge in coding for purposes of both the availability analysis and the utilization analysis. BBC considered four options for coding and analysis of firms owned by minority women:

a. coding these firms as both minority- and women-owned;

b. creating a unique group of minority female-owned firms;

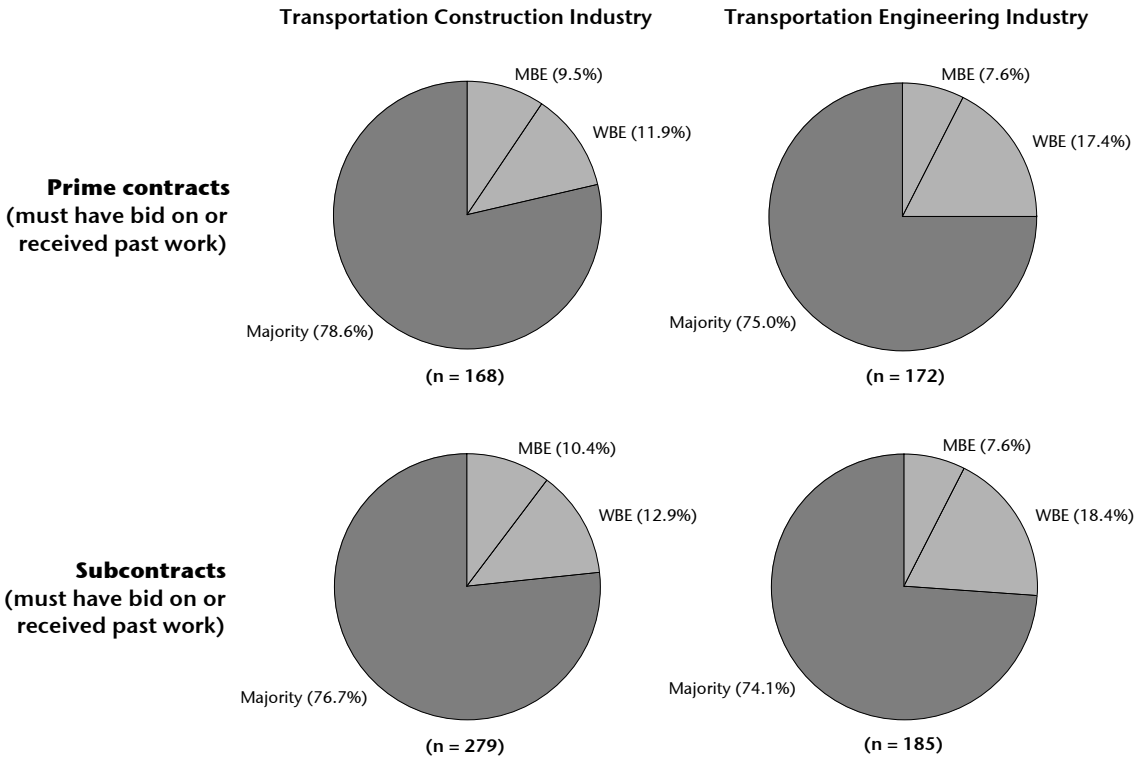
c. grouping minority female owned firms with all women-owned firms; and

d. grouping minority female-owned firms with the relevant race/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each race/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis. Some minority groups had utilization and availability so low even when combining men and women that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose to group African American women-owned firms with all African American-owned firms, etc. "WBE" refers to white women-owned firms. Evidence of discrimination against white women-owned firms should be considered evidence of discrimination against women of any race or gender. This definition of WBEs gives ITD information to answer questions that often arise pertaining to utilization of white women-owned firms. There have been questions of whether disproportionate share of work goes to this set of firms.

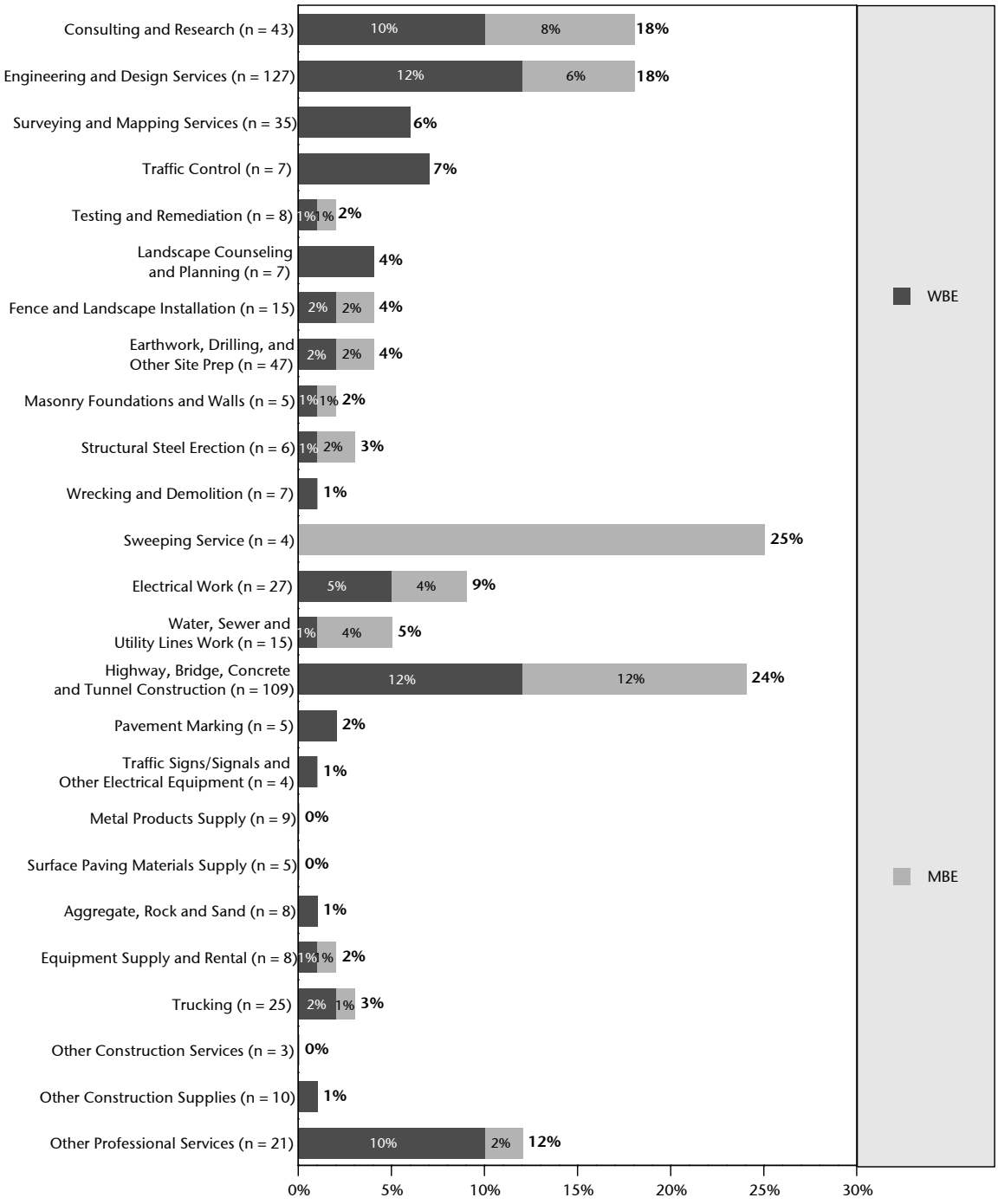
Figure II-6.
MBEs/WBEs as a percentage of transportation construction and engineering-related firms available for ITD transportation contracting



Note: WBE is white woman-owned firms.
Source: BBC Research and Consulting from 2007 Availability Survey.

Firms available by discipline. BBC grouped different types of work involved in ITD construction and engineering contracts into 25 disciplines shown in Figure II-7. For example, one-third of electrical firms involved in transportation construction work are minority- or woman-owned. It is important to note that the reported MBE and WBE share of total firms comes from data on firms successfully contacted and surveyed as part of the 2007 Availability Survey. There may be some firms that are minority-, women- or majority-owned operating in these fields that did not complete surveys.

Figure II-7.
MBE/WBEs as a percentage of transportation construction and engineering industry firms available for ITD and local government transportation work, by discipline



Source: BBC Research & Consulting from 2007 Availability Survey.

Firms by race/ethnicity/gender. Figure II-8 reports the number of MBE/WBE firms by group from the availability analysis. Most of the available MBE/WBE businesses are white women-, Hispanic American-, or Native American-owned firms.

Figure II-8.
MBE/WBEs as a percentage of transportation construction and engineering industry firms available for ITD and local government transportation work, by race, ethnicity and gender

Race, ethnicity and gender	Percent of total
African American-owned	0.5%
Asian-Pacific American-owned	0.7
Subcontinent Asian American-owned	0.4
Hispanic American-owned	3.6
Native American-owned	3.6
Total MBE	**8.8%**
WBE (white women-owned)	14.5
Total MBE/WBE	**23.2%**

Note:
Numbers may not add to total because of rounding.
n = 560.

Source:
BBC Research and Consulting from 2007 Availability Survey.

Dollar-weighted MBE/WBE Availability

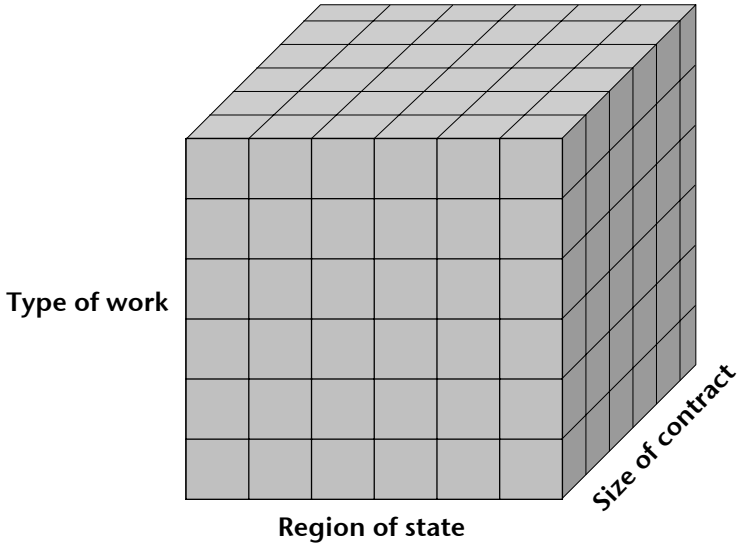
BBC conducted a statistical analysis that examined thousands of prime contracts and subcontracts for ITD projects from 2002 through 2006. For each contract element, BBC estimated the number of minority- and woman-owned firms and the total number of firms surveyed that were available for that work based on:

- Specialization of work;
- Prime contract versus subcontract role;
- Location of work;
- Size of contract or subcontract element; and
- Contract date.

As described in the following pages, BBC then weighted the relative MBE/WBE availability for each contract element by the dollars for that element. Appendix D provides additional information on this process.

Matrix of relative MBE/WBE availability estimates. Figure II-9 shows a matrix of the database developed through this availability analysis. The study team separately tracked available firms for each cell of this matrix. Relative MBE/WBE availability within a cell is determined by dividing the number of MBEs and WBEs in that cell by the total number of firms in the cell.

Figure II-9.
Matrix for the MBE/WBE availability analysis



If ABC Company is qualified and interested in performing electrical work as a subcontractor on ITD contracts in the Boise area and performs only small subcontracts, it is shown as an available firm for only that type and size of work as a subcontractor for that geographic area. If a company is qualified and interested in working as both a prime contractor and a subcontractor, and operates across a broad geographic area, then the firm may count as an available business in many different cells of the matrix. The relative MBE/WBE availability for each cell of the matrix is given by the number of MBEs and WBEs in that cell divided by the total number of firms in the cell.

Specialization of work. The USDOT suggests considering the availability of firms based on their ability to perform specific types of work. The example USDOT gives in Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, which is cited in the *Northern Contracting* court decision[2], is as follows: If 90 percent of an agency's contracting dollars is spent on heavy construction and 10 percent on trucking, the agency would calculate the percentage of heavy construction firms that are MBEs or WBEs and the percentage of trucking firms that are MBEs or WBEs, and weight the first figure by 90 percent and the second figure by 10 percent when calculating overall MBE/WBE availability.[3]

[2] 473 F.3d at 723.

[3] Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, http://osdbu.dot.gov/?TabId=133.

Qualifications and interest in prime contractor versus subcontractor work. Although not a requirement in the Federal DBE Program (and not done by the Illinois Department of Transportation in the information reviewed by the Seventh Circuit in *Northern Contracting*[4]), BBC colleted information on whether firms reported qualifications and interest in working as a *prime contractor* and as a *subcontractor*. In BBC's statistical model, only firms qualified and interested in prime contracts are counted as available for prime contracts. Firms reporting qualifications and interest in subcontracts are counted as available for these contract components. Many firms reported qualifications and interest in both contract roles, and are counted as available when considering both prime contracts and subcontracts.

Location of work. BBC considered the specific regions within Idaho in which firms work in the availability analysis. For example, firms that report they could work in the Northern Panhandle, but not other regions of the state, are only considered available for work in that geographic area (ITD District 1 contracts). Firms operating throughout the state are considered available for work in all regions.

BBC examined work in six different regions that correspond to individual ITD districts. The effect of this geographic weighting is that firms working throughout the state figure more prominently in the availability calculation than firms working in just one part of the state. The weighting process is described in more detail later in this section.

Size of contract or subcontract element. In counting available firms, BBC also considered whether a firm had previous experience working or bidding on a project of equivalent size (in dollars) to the specified contract or subcontract element. To be counted as available for subcontract elements, a firm must have been awarded or bid on a past contract or subcontract of similar or greater size to that contract element. For prime contract elements, a firm must have been awarded or bid on a past contract or subcontract of similar or greater size to the entire contract amount.

Contract date. To be counted as available for a contract element, a firm must have been in business during or prior to the year in which that prime contract began. Firms that could not recall or did not report an establishment date were presumed to have been founded prior to the study period.

Weighting of individual availability estimates. The final step of the availability analysis is to combine the MBE/WBE availability figures for multiple cells to develop aggregate availability figures across many different types of contracts across regions in the state. In general terms, the study team weighted the MBE/WBE availability in a cell by the relative dollars of work in that cell and then summed the weighted availability data to determine an aggregate figure. BBC performed this analysis for each of the prime contract and subcontract elements examined in the study, and then combined results across thousands of contract elements on a dollar-weighted basis. Appendix D explains the collection and analysis of ITD contract data necessary to perform this dollar weighting.

[4] 473 F.3d at 723.

Results of the analysis of MBE/WBE availability. BBC's analysis indicates that MBEs and WBEs would receive 15.3 percent of prime contract and subcontract dollars for federally-funded transportation construction and engineering contracts for 2002 through 2006. This means that 15.3 percent of dollars on federally-funded contracts would go to minority- and women-owned firms (MBE/WBEs) if available MBE/WBEs received the same amount of work as similarly-situated majority-owned firms available for such work. This analysis considered the type of work, contract role, location and size of work involved in each federally-funded prime contract and subcontract and the types, contract roles, locations and contract sizes for work performed by available firms.

Consistent with the non-weighted availability reported in Figure II-8, white women-owned firms comprise the largest portion of the overall dollar-weighted availability. As shown in Figure II-10, dollar-weighted availability of WBEs for federally-funded contracts is 11.6 percent. Native American-owned firms and Hispanic American-owned firms show dollar-weighted availability of 2.2 percent and 1.0 percent, respectively.

Figure II-10.
Dollar-weighted availability of MBE/WBEs for federally-funded ITD construction and engineering contracts, by race, ethnicity and gender

Note:
For more detail, see Figure E-38 in Appendix E.

Source:
BBC Research and Consulting from 2007 Availability Survey.

Race, ethnicity and gender	Percent of total
African American-owned	0.1%
Asian-Pacific American-owned	0.2
Subcontinent Asian American-owned	0.2
Hispanic American-owned	1.0
Native American-owned	2.2
Total MBE	**3.7%**
WBE (white women-owned)	11.6
Total MBE/WBE	**15.3%**

Base Figure for Overall Annual DBE Goal

The 15.3 dollar-weighted availability statistic pertains to all minority- and women-owned firms. Many minority- and women-owned firms are not currently DBE certified, and some of the largest MBE/WBEs might not meet the federal eligibility requirements for DBE certification. BBC identified two sets of firms that should not be coded as potential DBEs for purposes of establishing the overall annual goal:

- Firms that had been certified as DBEs but were no longer certified because they exceeded the revenue limits or net worth limits (e.g., they had graduated from the DBE Program).

- High-revenues firms (construction-related firms that reported 2006 gross revenue of more than $10 million and engineering-related firms with 2006 gross revenue of more than $5 million). These size categories from the Availability Survey most closely matched U.S. Small Business Administration size thresholds for these disciplines and also account for the fact that firms above these revenue limits are more likely to exceed the net worth limit of $750,000 than firms below these revenue limits.

Removing these firms reduced the availability statistic by about 5 percentage points to a revised base figure of 10.5 percent. This availability statistic represents utilization expected on ITD federally-funded contracts for firms that are potentially DBEs.

Figure II-11.
Dollar-weighted availability of potential DBEs for federally-funded ITD construction and engineering contracts, by race, ethnicity and gender

Race, ethnicity and gender	Percent of total
African American-owned	0.1%
Asian-Pacific American-owned	0.1
Subcontinent Asian American-owned	0.2
Hispanic American-owned	0.8
Native American-owned	2.0
Total MBE	**3.2%**
WBE (white women-owned)	7.3
Total MBE/WBE	**10.5%**

Note:

Removes construction firms with reported 2006 gross revenue of more than $10 million and engineering-related firms with gross revenue of more than $5 million, and firms formerly certified by ITD as DBEs that had graduated from the program by summer 2007 because they exceeded revenue or net worth limits.

For more detail, see Figure E-155 in Appendix E.

Source:

BBC Research and Consulting.

ITD should consider the 10.5 percent availability statistic when establishing a base figure for its overall annual goal for DBE participation. Section III of the report, which follows, reviews possible step 2 adjustments to the base figure that may be important to consider before determining a final goal for DBE participation.

SECTION III.
Summary of Marketplace Conditions and Possible Step 2 Adjustments to the Overall DBE Goal

The 10.5 percent statistic emerging from the base figure analysis is in the range of ITD overall goals for DBE participation in recent years. ITD could consider adjustments in its base figure for its overall annual DBE goal through a "step 2" process described in 49 CFR Section 26.45. BBC reviewed relevant types of information for a step 2 adjustment that are outlined in the Federal DBE Program, including:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
- Data on employment, self-employment, education, training and union apprenticeship programs;
- Information on the ability of DBEs to get financing, bonding and insurance; and
- Other relevant data.

Because BBC's base figure analysis includes minority- and women-owned firms that are not currently DBE certified, BBC considered this factor as well.

Factors that Suggest a Downward Adjustment to the Overall Goal

BBC examined whether or not the 10.5 percent base figure should be adjusted downward.

Past volume of work performed. DBEs were awarded 7.3 percent of contract dollars based on BBC's analysis of ITD federally-funded contracts from 2002 through January 2006. This demonstrated participation is lower than the possible base figure of 10.5 percent DBE participation. Recent DBE participation in these contracts is further discussed in Section IV of this report.

ITD could consider this information in assessing whether and how to make any step 2 adjustments in determining an overall annual goal.

Current DBE certification of minority- and women-owned firms. The 10.5 percent figure counts minority- and women-owned firms that could potentially be certified as DBEs. About one-half of the minority- and women-owned firms in the BBC availability analysis were DBE certified in 2006. It may be a challenge for ITD to encourage these business owners to obtain certification. ITD would also need the resources to explain and review certification applications.

ITD should include the fact that many of the firms counted in the base figure analysis are not currently DBE-certified when considering any step 2 adjustments.

Factors that Suggest an Upward Adjustment to the Overall Goal

BBC completed an analysis of other issues identified in 49 CFR Section 26.45 that tend to suggest upward adjustments in the overall goal for DBE participation. BBC's analysis suggests that there are barriers to entry and expansion in the transportation construction and engineering industries that may begin with education and training and continue through forming a business and gaining access to capital. Appendix F describes this information in detail.

Analysis of possible barriers to entry and other factors potentially affecting MBE/WBE businesses necessarily focuses on Hispanic Americans, Native Americans and women. Hispanic Americans comprised about 6 percent of the Idaho workforce in 2000. The relatively low numbers of Asian-Pacific Americans, African Americans and Subcontinent Asian Americans affects the types of analyses that BBC could perform using U.S. Census data. About 2 percent of Idaho workers were Native Americans. Asian-Pacific Americans were 1.4 percent of the workforce and African Americans were 0.8 percent of the workforce. Subcontinent Asian Americans were 0.2 percent of the workforce.

The analysis below refers to the Idaho marketplace. As described in Section II, BBC included Cache County, Utah (Logan area) and Spokane and Asotin counties in Eastern Washington in certain analyses of the Idaho marketplace.

Entry into the construction industry. BBC examined education, employment and advancement for the construction industry in Idaho. Race and ethnic minorities comprised 9 percent of employees in the Idaho construction industry in 2000.

Education. Formal education beyond high school is not a prerequisite for most jobs in the construction industry.

Employment. Based on people counted in the 2000 Census of Population, Hispanic Americans, African Americans and Asian-Pacific Americans working in Idaho were relatively less likely to work in construction than other race/ethnic groups. About 11 percent of construction workers in Idaho are women, about the same percentage as found for the U.S. as a whole. There may be barriers to construction employment for these groups in Idaho.[1]

Advancement. There are large differences in the racial, ethnic and gender makeup of workers in different trades related to highway construction based on the 2000 U.S. Census of Population. This suggests possible barriers to advancement for minorities and women.

For example, only 2 percent of front-line supervisors in 2000 were Hispanic Americans compared with 13 percent of cement masons, concrete finishers and terrazzo workers and 9 percent of iron and steel workers. Educational differences cannot explain fully these differences. There were some construction trades in which women comprised only 1 percent of the workforce.

Entry into the engineering industry. BBC examined education and employment and in the Idaho engineering industry. Only 6 percent of employees were race/ethnic minorities in 2000. Women accounted for one-third of industry employment.

[1] Native Americans are more likely to work in construction over other industries in Idaho; Three percent of construction workers are Native Americans.

Education. About one-half of the individuals working in the engineering industry have at least a four-year college degree. More than three-quarters of people working as engineers have this level of education. Educational attainment may be a barrier for Hispanic Americans and Native Americans working in the Idaho because they are less likely to have a college degree than other groups.

Other disparities in employment. About 5 percent of engineers working in Idaho in 2000 were race/ethnic minorities, slightly less than the share of all adults with a four-year college degree in the state. However, only 12 percent of engineers in Idaho are women, far less than women's share of people with college degrees (44 percent). This difference is statistically significant. Figure F-8, on page 12 of Appendix F, presents these results.

Business formation and ownership. BBC examined U.S. Census data on business ownership rates using similar methods to the information reviewed in the court cases involving state departments of transportation in Illinois and Minnesota.

Construction. Hispanic Americans and Native Americans working in the Idaho construction industry are less likely than non-Hispanic whites to own construction businesses. There are also large differences in business ownership rates for women working in construction. BBC, through regression analysis, found that factors other than race, ethnicity and gender largely explained these disparities. As presented in Appendix H, there were no statistically significant disparities after controlling for neutral factors.

Engineering. Due to limited data on minorities working in the Idaho engineering industry, the study team was unable to develop a separate engineering-only business ownership model.

Rates of business closure. Rates of closure among minority-owned firms are higher in Idaho than for non-Hispanic white-owned firms, and they are substantially higher for African American-owned firms (see Appendix F).

Access to capital. BBC's analysis of available data indicate that minority-owned firms are more likely to experience problems accessing capital than non-Hispanic white-owned firms Appendix F and Appendix H provide these results.

Business capital from home equity. Home equity is an important source of capital for business start-up and growth.

- Relatively fewer African Americans and Hispanic Americans in Idaho own homes in Idaho compared with non-Hispanic whites.
- Home values for Hispanic American and Native American homeowners in Idaho are considerably lower than for non-Hispanic whites.
- Rates of loan denials for African Americans, Hispanic Americans and Native Americans applying for home mortgages in Idaho are nearly twice as high as for non-minorities.
- African American, Hispanic American and Native American mortgage borrowers are more likely to have subprime loans.

Business loans. Minority-owned businesses have higher denial rates when applying for business loans. After accounting for certain neutral influences, firms owned by minorities remain significantly more likely to have their loans denied than other firms (see Appendix H).[2]

Bonding. During in-depth interviews with a variety of business owners and trade association leaders, several interviewees reported that bonding was a barrier to bidding public sector work for small companies. Several contractors said that bonding was a barrier to doing business with ITD. Interviewees reported that bonding and access to capital was a particular problem for Native American-owned firms located on a reservation.

Largest bids of minority- and women-owned firms. In the Availability Survey, BBC asked firms in the transportation construction and engineering industry to identify the largest contract/subcontract a firm had received or bid on in the past five years. There were no statistically significant disparities after controlling for firm specialization and age.[3]

Business earnings. BBC examined U.S. Census data on earnings of business owners in construction and engineering using similar methods to the information reviewed in the court cases involving state departments of transportation in Illinois and Minnesota. After accounting for neutral factors, BBC found statistically significant disparities in earnings for female business owners. The model also indicates that differences in the earnings of minority business owners were not statistically significant after controlling for other factors.

Summary

There are reasons for ITD to consider downward and upward adjustments to the base figure for overall DBE participation. It will be difficult for ITD to encourage the many non-DBE-certified firms to apply for certification. However, analysis of certain local marketplace data reveals reasons for upward adjustments to the base figure. This information indicates barriers to entry into the Idaho construction and engineering industries, low rates of business ownership for women, and other barriers such as access to capital.

ITD should include all of the above information in its consideration of whether or not to make any step 2 adjustment to a base figure for the overall annual DBE goal. It may be that ITD does not need to make any adjustment to the base figure given the mix of factors analyzed in this section. Any factors indicating downward adjustment may be offset by factors indicating upward adjustments.

[2] BBC's statistical analysis of business loans could control for location of firms in the Rocky Mountain Region. The dataset could not be used to examine firms just in Idaho.

[3] The extent to which minority- and women-owned firms tend to be younger and in different subindustries than majority-owned firms may not be an entirely "neutral" explanation for disparities in bid capacity if past discrimination has influenced whether there are relatively few older MBE/WBE firms or the relative concentration of MBE/WBEs in different subindustries.

SECTION IV.
Summary of Utilization and Disparity Analysis for ITD Contracts

The Federal DBE Program requires states to determine the percentage of the overall annual DBE goal that can be achieved through neutral means and the percentage, if any, to be achieved through race- and gender-based measures. Relative utilization of minority- and women-owned firms on state-funded transportation construction and engineering contracts, which do not have DBE contract goals, is one way of examining what is achieved through neutral means.

ITD Requests for Bids and Proposals advertised after January 10, 2006 did not have DBE contract goals. Therefore, state contracts, and federally-funded contracts with bid open or award dates after February 1, 2006, are examined as the sets of contracts without DBE goals.[1] Utilization on these subsets of contracts can be compared with utilization of minority- and women-owned firms for federally-funded contracts when the DBE contract goals program was in effect.

As outlined in Figure IV-1, "utilization" of minority- and women-owned firms refers to the percentage of contract dollars going to MBE/WBEs. BBC examined utilization of minority- and women-owned firms as prime contractors and subcontractors in ITD construction and engineering contracts. The study period was 2002 through 2006.

Figure IV-1.
Defining and measuring "utilization"

"Utilization" of minority- and women-owned firms refers to the share of contract dollars going to these MBEs and WBEs. BBC reports results for both certified DBEs (firms certified as disadvantaged business enterprises in the year of the specific contract), and for all minority- and women-owned firms. BBC also examines results by race/ethnic/gender group.

Utilization is expressed as a percentage of prime contract and subcontract *dollars*. "Prime contract dollars" are total contract dollars less the money identified as going to subcontractors. For example, WBE utilization of 5 percent means that 5 percent of the contract dollars examined went to women-owned firms. Expressed another way, 5 cents of every contract dollar went to WBEs.

Information concerning utilization of minority- and women-owned firms is useful on its own, but is even more instructive when compared with a benchmark for the level of utilization expected given relative availability of minority- and women-owned firms for a particular set of contracts. BBC introduces this "disparity analysis" at the end of this section of the report.

Figure IV-2.
MBE/WBE utilization and DBE utilization

To analyze the issues raised in implementing the Federal DBE Program, BBC examined minority- and women-owned in two ways:

Minority- and women-owned firms. Firms that reported they were owned and controlled by minorities or women (or identified as such in relevant databases) are counted as MBEs and WBEs in the utilization and availability analysis. "WBEs" refers to white women-owned firms.

Certified Disadvantaged Business Enterprises (DBE). BBC counted a firm as a certified DBE if it was identified as certified in the ITD DBE Program database at the bid open date.

[1] Most contracts advertised in early January, which may have had DBE contract goals, would have been awarded before February 1, 2006. ITD sometimes reported aspirational levels of participation for DBEs on federally-funded contracts after January 9, 2007, which were for information purposes and did not require any action on the part of the bidder.

BBC's analysis of MBE/WBE utilization goes far beyond what ITD currently reports to the USDOT:

- In addition to utilization of certified DBEs, BBC examined utilization of minority- and women-owned firms including firms that are too large to be certified as DBEs and those that have never sought DBE certification. (Reasons for studying MBE/WBEs including those not currently certified as DBEs are discussed in Section II.) The disparity analysis performed at the end of this section focuses solely on minority- and women-owned firms, not DBE-certified firms.
- The study team collected data on subcontractor utilization in a consistent fashion for DBEs, MBE/WBEs and majority-owned firms to be able to accurately report DBE and MBE/WBE share of subcontract dollars for sets of contracts with and without DBE contract goals. Data collection procedures are summarized in Figure IV-3 and explained in greater detail in Appendix D.

Figure IV-3.
Utilization data collection

The utilization information the BBC study team collected for construction and engineering contracts is based primarily on dollars at time of award and requests to sublet to specific subcontractors. BBC obtained electronic records of requests to sublet from ITD contract files. Utilization based on dollars at time of award and request to sublet may not perfectly match utilization based on actual payments to prime contractors and subcontracts at the end of the project. These payment data were not consistently available for construction contracts.

In total, BBC collected and analyzed information for 4,561 prime contracts and subcontracts pertaining to ITD transportation construction and engineering projects. This total includes task orders for engineering-related work issued under term agreements with ITD consultants. Utilization on ITD construction and engineering contracts is based on BBC's attempts to obtain information on all federally- and state-funded contracts for 2002 through 2006, including federally-funded contracts administered through ITD on behalf of local governments.

The BBC study team coded information concerning prime contract/subcontract status, type of work performed, size of contract element, location of contract, and funding based on information collected for each contract element. Appendix D provides additional information as to how these data elements were collected.

Results of Utilization Analysis

Federally-funded transportation contracts when DBE goals were in place. Prior to moving to an all race- and gender-neutral implementation of the Federal DBE Program, ITD was setting DBE contract goals for federally-funded contracts. Prime contractors bidding on ITD projects would need to include DBE participation at a level to meet the goals or show good faith efforts to do so. ITD set 0 percent DBE goals on some federally-funded contracts. For engineering contracts, ITD only set DBE project goals for federally-funded contracts awarded through Requests for Proposals (RFPs).

BBC examined 3,003 prime contracts and subcontracts for federally-funded ITD contracts from 2002 through January 2006. During this period, 13.6 percent of prime contract and subcontract dollars went to minority- and women-owned firms.

In Figure IV-4 on the following page (and similar figures in Sections V through VIII), DBE utilization is shown in the bottom portion of the bar. The difference between total MBE/WBE utilization (the statistic shown on top of the bar) and DBE utilization is utilization of MBE/WBEs that were not certified as DBEs at the time of the corresponding contract. For example, from 2002 through 2006, BBC found that 7.3 percent of federally-funded contract dollars went to firms certified as DBEs at the time of the contract. Almost as much work went to MBEs/WBEs that were not DBE-certified (6.3 percent of total dollars) as went to DBEs (7.3 percent).

DBEs and MBE/WBE utilization on state-funded contracts. ITD has implemented race- and gender-neutral measures to encourage MBE/WBE participation on state-funded contracts. The 2002 through 2006 state-funded contracts awarded by ITD reflect MBE/WBE utilization for contracts without DBE contract goals. BBC studied MBE/WBE utilization for 1,118 state-funded transportation construction and engineering contracts and subcontracts for this time period.

Comparison of MBE/WBE utilization on state-funded contracts with MBE/WBE utilization on federally-funded contracts suggests that, without goals, utilization of minority- and women-owned firms is similar to the level found when goals were applied. As shown in Figure IV-4, MBE/WBE utilization was 14.6 percent on state-funded contracts, one percentage point higher than utilization on federally-funded contracts through January 2006. Utilization of certified DBEs was 5.4 percent for state-funded contracts. MBE/WBEs not certified as DBEs received a greater share of state-funded contract dollars than firms certified as DBEs.

Figure IV-4.
MBE/WBE share of prime contract/subcontract dollars for transportation construction and engineering contracts, federal vs. state funding

Note:

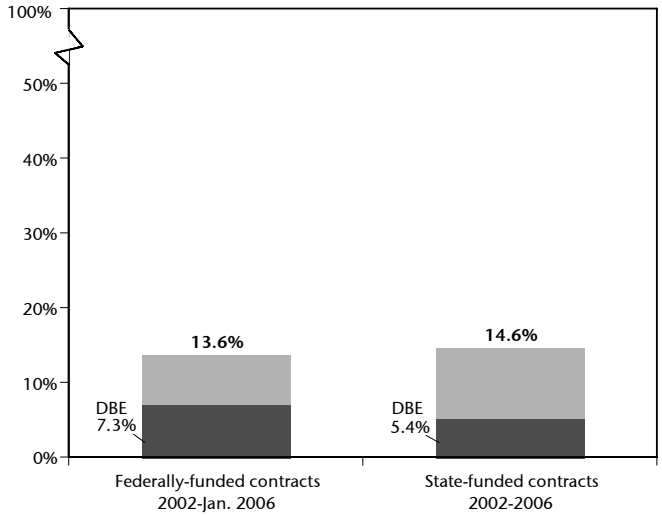
Certified DBE utilization.

For more detail, and for results by DBE group, see Figures E-40 and E-39 in Appendix E.

Number of contracts/subcontracts analyzed is 3,003 for 2002–Jan. 2006 federally-funded contracts and 1,118 for 2002–2006 state-funded contracts.

Source:

BBC Research and Consulting from data on ITD contracts.



Federally-funded contracts after January 2006. ITD moved to an all race- and gender-neutral program in January 2006. Based on the federally-funded construction and engineering contracts BBC identified between February 1 and the end of December 2006, ending contract goals on federally-funded contracts may have decreased MBE/WBE participation in these contracts. Overall MBE/WBE utilization on federally-funded contracts from February through December 2006 was 10.8 percent. Certified DBEs received 4.9 percent of federally-funded contract dollars after discontinuing DBE contract goals compared with 7.3 percent DBE utilization through January 2006.

Figure IV-5 portrays DBE and MBE/WBE utilization on federally-funded contracts before and after January 2006. It is important to note that MBE/WBE utilization for these two time periods may differ because of the contract types, sizes and locations in theses two time periods. The disparity analysis at the close of this report section makes comparisons in utilization after adjusting for these and other factors. In addition, the data for February through December 2006 are based on a smaller number of prime contracts and subcontracts (440) than for 2002 through January 2006 (3,003).

Figure IV-5.
MBE/WBE share of prime/ subcontract dollars for federally-funded transportation construction and engineering contracts, before and after January 2006

Note:

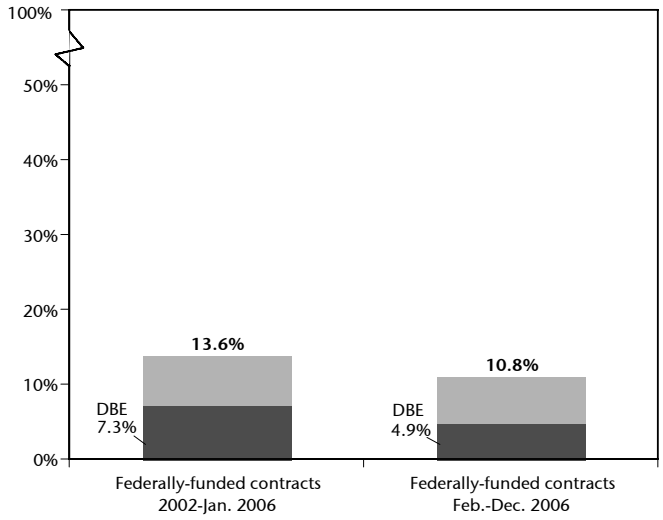
Certified DBE utilization.

For more detail, and for results by DBE group, see Figures E-40 and E-39 in Appendix E.

Number of contracts/subcontracts analyzed is 3,003 for 2002–Jan. 2006 federally-funded contracts and 440 for Feb.–Dec. 2006 federally-funded contracts.

Source:

BBC Research and Consulting from data on ITD contracts.



Utilization of firms by race and gender group. White women-owned firms received the largest share of WBE/MBE prime/subcontract dollars on ITD federally- and state-funded contracts. Minority-owned firms received a much smaller share of contract dollars. Figure IV-6 on the following page reports these results.

Women-owned firms. The share of ITD contract dollars going to WBEs was 12 percent for both federally-funded contracts through January 2006 and state-funded contracts for 2002-2006. WBE utilization was 9.5 percent for federally-funded contracts in February through December 2006. Only counting white women-owned firms that were DBE-certified, utilization was about 6 percent for federally-funded contracts through January 2006 and about 4 percent for later federally-funded contracts and for state-funded contracts. (Note that "women-owned firms" in this report refers to businesses owned by white women. Utilization of firms owned by minority women is included in the utilization figures for the specific race or ethnic group.)

Native American-owned firms. Native American-owned firms received 0.7 percent of federally-funded contract dollars for 2002 through January 2006 and 1.2 percent of dollars for state-funded contracts. Almost all of the utilization of Native American-owned firms pertains to firms that are certified as DBEs.

Hispanic American-owned firms. On federally-funded contracts for 2002-January 2006, 0.5 percent of combined prime contract and subcontract dollars went to Hispanic American-owned firms, similar to what BBC found for state-funded contracts. Utilization of Hispanic American-owned firms was 1.0 percent for federally-funded contracts from February through December 2006. Most of the utilization of Hispanic American-owned firms on federally-funded contracts went to DBE-certified firms (see Figure IV-6).

Asian-Pacific American-owned firms. Asian-Pacific American-owned firms received 0.8 percent of total state-funded contract dollars and about 0.1 percent of federally-funded contract dollars for contracts through January 2006. Non-certified firms accounted for nearly all of the utilization of Asian-Pacific American-owned firms.

Subcontinent Asian American-owned firms. Subcontinent Asian American-owned firms received $239,000 of federally-funded contract dollars for 2002 through January 2006, less than one-tenth of one percent of the $702 million in federally-funded contract dollars for this time period. About $7,000 of state-funded contract dollars went to Subcontinent Asian American-owned firms, which also accounts for less than one-tenth of one percent of the total for state contracts.

African American-owned firms. No firms identified as African American-owned received any ITD prime contracts or subcontracts among the transportation construction and engineering contracts researched by the study team.

DBEs owned by white males. No white male firms certified as DBEs received any ITD prime contracts or subcontracts among the transportation construction and engineering contracts researched by the study team.

Figure IV-6.
DBE and MBE/WBE share of prime/subcontract dollars for transportation construction and engineering contracts, by race/ethnicity/gender

	Federally-funded contracts		State-funded contracts 2002–2006
	2002–Jan. 2006	Feb.–Dec. 2006	
MBE/WBEs			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.1	0.0	0.8
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.5	1.0	0.4
Native American-owned	0.7	0.2	1.2
Total MBE	**1.3%**	**1.3%**	**2.4**
WBE (white women-owned)	12.3	9.5	12.3
Total MBE/WBE	**13.6%**	**10.8%**	**14.6%**
DBEs			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.5	0.6	0.1
Native American-owned	0.6	0.2	1.0
Total MBE	**1.1%**	**0.8%**	**1.0%**
WBE (white women-owned)	6.1	4.1	4.3
White male-owned DBE	0.0	0.0	0.0
Total DBE	**7.3%**	**4.9%**	**5.4%**

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
For more detail, see Figures E-40, E-39 and E-80 in Appendix E.
Number of contracts/subcontracts analyzed is 3,003 for 2002–Jan. 2006 federally-funded, 440 for Feb.–Dec. 2006 federally-funded and 1,118 for 2002–2006 state-funded contracts.

Source: BBC Research and Consulting from data on ITD contacts.

Overall Disparity Analysis

Interpreting any differences in MBE/WBE utilization for contracts with and without goals is difficult because the types, sizes and locations of contracts and subcontracts may differ. Federally-funded contracts through January 2006 could also be different from contracts from February through December 2006. In addition, simple comparisons of MBE/WBE utilization for contracts with and without goals do not show whether minority- and women-owned firms are under- or over-utilized relative to the utilization expected based on MBE/WBE availability for those specific sets of contracts and subcontracts. It may be that utilization of MBE/WBEs is below what would be expected even with DBE goals in place. Alternatively, MBE/WBE utilization could exceed availability for contracts without goals.

The following disparity analysis controls for differences in types, sizes and locations of contracts and subcontracts. By comparing actual utilization with the relative availability of minority- and women-owned firms to perform a specific set of prime contracts and subcontracts, BBC can determine how contract goals affect MBE/WBE utilization and whether current neutral remedies are sufficient to bring MBE/WBE utilization in line with relative MBE/WBE availability. If disparities exist, disparity analysis helps to identify the types of contracts and subcontracts and the race/ethnicity/gender groups showing disparities.

Methodology. BBC compared percentage utilization of minority- and women-owned firms by race/ethnicity/gender with the share of contract dollars that might go to minority- and women-owned firms based on BBC availability analysis.

Example of a disparity analysis table. The balance of this section of the report, and the disparity results presented in the sections that follow, are based on the detailed disparity tables found in Appendix E. Therefore, it is useful to describe the detailed analysis from which BBC draws results.

Figure IV-7 on page 8 presents an example of a disparity table from Appendix E (it is labeled Figure E-38 in Appendix E). This disparity table pertains to ITD federally-funded construction and engineering contracts awarded for the entire 2002-2006 study period. It includes dollars for prime contractors and subcontractors (and suppliers when data were available) for contracts throughout Idaho. The parameters of the set of contracts being examined are noted in the heading of each table. Appendix E contains more than 150 similar tables for different sets of contract elements. Each set of contract elements is for a specific:

- Funding source (all funding sources, federally-funded or state-funded);
- Type of work (combined transportation construction and engineering, all construction, all engineering, and two subsets of engineering depending on whether or not the contract was awarded through an RFP process);
- Time period (years), which is how BBC knows whether or not the DBE contract goals program was in operation;
- Contract role (combined prime/sub, only prime contracts, and only subcontracts); and
- Region (contracts statewide in Northern Idaho and in Southern Idaho).

Certain analyses focus on small contracts, which is also noted. The final table in Appendix E presents availability information limited to firms that have not graduated from the DBE Program and did not appear to have 2006 revenues exceeding the size limits for DBE certification.

Each of the disparity tables includes the same columns and rows.

Utilization. Column (a) of this table notes the number of prime contracts and subcontracts in the specific set of contracting data under examination, in this case, 3,443 total contracts and subcontracts.

Column (b) identifies the dollars examined in that set of contract elements. Because "prime contract dollars" refers to the dollars retained by the prime contractor after subtracting subcontract dollars, the combined prime/subcontract analyses should equal the total contract amounts. Dollars are reported in thousands. This disparity table examines contract dollars totaling $853,212,000.

Figure IV-7 also has rows for each firm type. "All firms" in row (1) pertains to combined majority-, minority- and women-owned firms. "MBEs" refers to all minority-owned firms, whether or not they are DBE-certified. "WBEs" are white women-owned firms. Utilization and availability data for individual minority groups add up to the total for MBEs (in some cases, numbers may not perfectly add due to rounding).

The bottom half of Figure IV-7 reports utilization for firms that were certified as DBEs in the years in which the contract was awarded. BBC included a row for white male-owned DBEs even though no such DBE-certified firms appeared to have received ITD contracts or subcontracts examined in this study. DBE utilization data reported in the bottom half of Figure IV-7 were prepared independently from ITD and will not match DBE utilization reports prepared by ITD.

Column (c) portrays relative utilization by group on a percentage basis. Each percentage in column (c) is calculated by dividing dollars going to that group in column (b) by the total dollars in the set of contracts or subcontracts as shown in row (1) of column (b).

Figure IV-7.
MBE/WBE utilization, availability and disparity analysis for prime contracts/subcontracts on federally-funded transportation construction and engineering contracts, 2002-2006

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	3,443	$853,212				
(2) MBE/WBE	901	$111,532	13.1	15.3	-2.2	85.4
(3) WBE	687	$100,646	11.8	11.6	0.2	101.3
(4) MBE	214	$10,886	1.3	3.7	-2.4	34.8
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	11	$666	0.1	0.2	-0.1	46.4
(7) Subcontinent Asian American-owned	5	$239	0.0	0.2	-0.1	15.8
(8) Hispanic American-owned	155	$5,068	0.6	1.0	-0.4	58.7
(9) Native American-owned	43	$4,913	0.6	2.2	-1.6	26.5
(10) DBE-certified	668	$58,270	6.8			
(11) Women-owned DBE	488	$49,207	5.8			
(12) Minority-owned DBE	180	$9,062	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	139	$4,102	0.5			
(17) Native American-owned DBE	35	$4,719	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Relative availability. BBC developed an estimate of relative availability of firms for each race/ethnicity/gender group following the procedures described in Section II. Availability is also represented as a percentage. The availability figure for a particular group represents a benchmark with which to evaluate relative utilization for that group for a particular set of contracts. BBC separately calculated relative availability for each group and set of contracts and subcontracts according to the procedures outlined in Section II (and described in more detail in Appendix D).

Column (d) of Figure IV-7 reports relative availability for this disparity table. Based on the types of work involved in the prime contracts and subcontracts included in the Figure IV-7 analysis, plus the sizes of these contract elements and their geographic location, BBC estimated that 15.3 percent of federally-funded contract dollars from 2002 through 2006 would be expected to go to minority- and women-owned firms after considering each firm's specialization, interest and qualifications in prime versus subcontract work, geographic reach and bid capacity of firms to perform this work (and whether or not the firm was in business in the year of the contract). The 15.3 percent overall MBE/WBE availability figure reported in row (2) of column (d) is the same percentage that is used as the starting point for the base figure analysis discussed in Section II.

Differences between utilization and availability. The first step in analyzing whether there was a disparity between the relative utilization of a particular group and its relative availability is to subtract percentage utilization from percentage availability. When examining all MBE/WBEs in Figure IV-7, utilization was 2.2 percentage points below availability. This difference is reported in column (e).

It is sometimes difficult to interpret absolute differences between relative utilization and relative availability, especially when utilization and availability are very small. Therefore, BBC also calculated a "disparity index," which divides percentage utilization by percentage availability and multiplies the result by 100. An index of "100" means that there is "parity" between relative utilization and availability for a particular group. An index below 100, especially below 80, may indicate a substantial disparity. Column (f) in the disparity tables provides the disparity index for each group. For example, the disparity index of 85.4 means that overall MBE/WBE utilization for federally-funded contracts was 85 percent of what would be expected given the relative availability of minority- and women-owned firms to perform that work.

Note that all percentages in the disparity tables were rounded to the nearest tenth of 1 percent after making all calculations. Percentages correctly add and subtract, even though the rounding may make actual sums appear to differ by one tenth of 1 percent. In addition, the disparity index is derived from the detailed data for percentage utilization and availability before any rounding.

BBC applied the following rules when the disparity indices calculated were exceedingly large or could not be calculated because no firms were identified as available for the contracts under examination:

- When BBC's calculations showed a disparity index exceeding 200, BBC reported an index of "200+".
- When there was no utilization and 0 availability for a particular group for a set of contracts, BBC reported "parity" between utilization and availability (indicated by a disparity index of "100").
- When BBC identified utilization for a group but 0 availability (which could occur for many reasons, including the fact that one or more utilized firms were out of business by the time of BBC's availability survey), BBC reported a disparity index of "200+".

The DBE utilization statistics at the bottom of Figure IV-7 are provided as reference. BBC did not conduct disparity analyses for certified DBEs for the reasons described in Section II.

Results of a disparity analysis. The disparity analysis shown in Figure IV-7 reflects the influence of DBE contract goals for the first four out of the five years of contracts examined. Any lack of disparity for a particular MBE/WBE group could suggest that the DBE contract goals program was effective in increasing utilization for that group. Any disparities might indicate that the DBE contract goals program was not fully effective in addressing barriers for a particular group.

Column (c) indicates that the combined prime contract and subcontract utilization of MBE/WBEs was 13.1 percent for these contracts. This utilization was slightly below what would be anticipated based on relative availability to perform the work involved in these contracts — 15.3 percent — as shown in column (d). Utilization of MBE/WBEs was 2.2 percentage points below availability, a statistic presented in column (e).

Dividing 13.1 percent utilization by 15.3 percent availability and multiplying by 100 yields a disparity index of 85. There is a disparity between overall utilization and availability of minority- and women-owned firms even with the DBE contract goals program in place, but because the index exceeds a value of 80, this disparity is not substantial.

Figure IV-7, and the other disparity tables in Appendix E, allow exploration of the components of any overall disparity for MBE/WBEs. As Figure IV-7 demonstrates, utilization of women-owned firms (11.8 percent) is about the same as the relative availability of women-owned firms to perform the work involved in this set of contracts (11.6 percent). The disparity index for women-owned firms is 101. There is no disparity for the utilization of women and firms for this set of contracts. This might indicate that the DBE contract goals program implemented for most of the 2002-2006 time period was effective in increasing utilization of women-owned firms.

On the other hand, only 1.3 percent of prime and subcontract dollars on federally-funded contracts went to minority-owned firms, far short of the 3.7 percent expected based on relative availability of MBEs to perform this work. The disparity index for MBEs for federally-funded contracts is 34.8, a substantial disparity. Even with DBE contract goals in place for most of the 2002-2006 time period, utilization of minority-owned firms was about one-third of what would be expected. Large disparities are evident for each minority group shown in Figure IV-7.

Figure IV-8 summarizes the disparity indices from Figure IV-7. A line down the center of the graph shows an index of 100, which indicates "parity" between relative utilization and relative availability for a group. Indices under 100 may indicate a disparity between utilization and availability. The graph ends at a disparity index of 200 even though, in some cases, disparity indices exceed 200. For reference, a line is drawn at an index of 80. As previously explained, some courts use 80 as a benchmark for what may indicate a substantial disparity.

As Figure IV-8 shows, minority- and women-owned firms, overall, received 85 percent of what would be expected based on overall MBE/WBE availability for these contracts, and utilization of women-owned firms was essentially "parity." Utilization of each minority group is below what would be expected for that group, ranging from 0 for African American-owned firms to 59 for Hispanic American-owned firms.

The information presented in balance of this report section, as well as the next four sections, explores (a) whether or not there would be disparities in ITD's utilization of WBEs absent a DBE goals program and (b) why any overall disparities between utilization and availability for MBEs may be occurring.

Figure IV-8. Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on federally-funded transportation construction and engineering contracts, 2002-2006

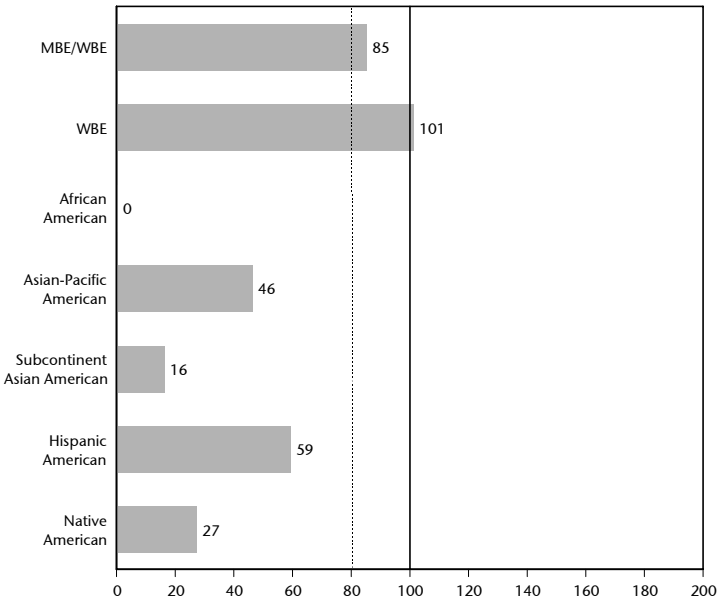
Note:

3,443 contracts/subcontracts.

For more information, see Figure E-38 in Appendix E.

Source:

BBC Research and Consulting.



Disparity analysis for contracts with and without DBE contract goals. BBC first separated ITD's federally-funded contracts into two time periods: 2002 through January 2006 (when the DBE contract goals program applied), and February through December 2006. BBC then compared disparity results for federally-funded contracts through January 2006 and state-funded contracts. ITD did not set DBE contract goals for contracts that had no federal funding.

Federally-funded contracts after January 2006. Figure IV-9 presented disparity indices for federally-funded contracts before and after ITD discontinued setting DBE contract goals on certain contracts.[2] (Figures E-39 and E-40 in Appendix E provide a more detailed analysis.) As Figure IV-9 indicates, there were disparities in the utilization of women-owned firms on federally-funded contracts after discontinuing the DBE contract goals program. During the time period of DBE contract goals, WBEs received a slightly higher share of contract dollars than would be expected from their relative availability (disparity index of 108). For the eleven months after discontinuing DBE contract goals, utilization of women-owned firms fell short of the share expected based on availability for that work (disparity index of 75).

[2] Not all of the federally-funded contracts for 2002 through January 2006 had DBE contract goals. Engineering-related work that was not awarded through an RFP process were not subject to DBE contract goals. ITD could also set 0 percent goals on certain projects. ITD reported anticipated levels of DBE participation for some federally-funded contracts after January 2006.

Figure IV-9.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on federally-funded transportation construction and engineering contracts, 2002–Jan. 2006 and Feb.–Dec. 2006

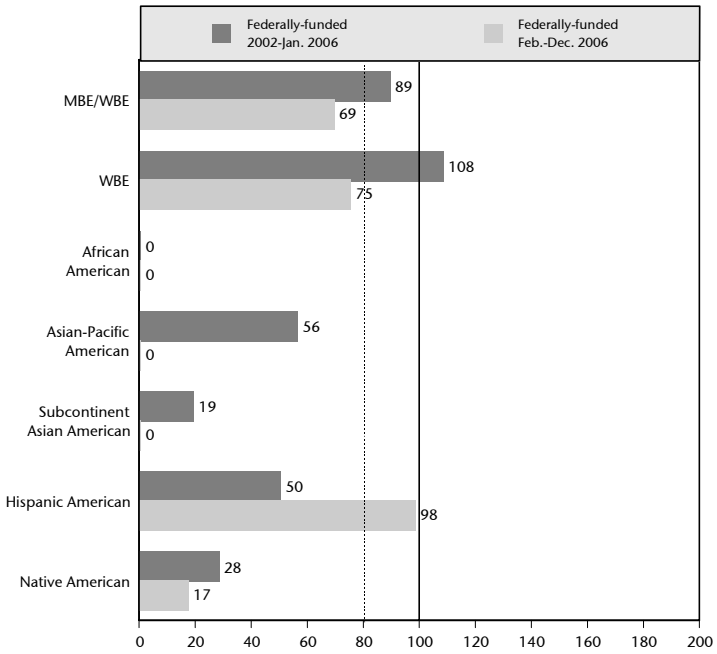
Note:

3,003 contracts/subcontracts for 2002–Jan. 2006 and 440 for Feb.–Dec. 2006.

For more information, see Figures E-40 and E-39 in Appendix E.

Source:

BBC Research and Consulting.



Discontinuing DBE contract goals may have also negatively affected utilization of certain minority groups:

- None of the February through December 2006 federally-funded contracts or subcontracts went to firms identified as Asian-Pacific American-owned;
- Utilization of Subcontinent Asian American-owned firms also dropped to zero for this time period;
- The disparity identified for Native American-owned firms for all federally-funded contracts was more severe for the eleven months after DBE contract goals were discontinued; and
- No firms identified as African American-owned received any of the federally-funded contracts or subcontracts examined before or after January 2006.

Firms that BBC identified as Hispanic American-owned received 23 contracts or subcontracts for February through December 2006 totaling $1.5 million, or 1 percent of the federally-funded contract dollars examined for this time period. The 1 percent utilization is on par with what would be expected based on relative availability of Hispanic American-owned firms to perform the federally-funded work in these eleven months.

State-funded contracts. Because ITD's state-funded contracts have not included DBE contract goals, BBC also examined this set of contracts to further explore the impact of the DBE goals program. BBC was able to examine 1,118 prime contracts and subcontracts totaling $239 million for 2002 through 2006.

Relative MBE/WBE availability is higher for state-funded contracts and subcontracts than for federally-funded contracts. State-funded contracts tend to be smaller than federally-funded contracts, and minority- and women-owned firms form a larger portion of the pool of firms that bid on smaller contracts, BBC calculated the overall utilization benchmark for MBE/WBE utilization for state-funded contracts to be about 20 percent of total contract dollars.

MBE/WBE utilization for state-funded contracts was 14.6 percent. Minority- and women-owned firms received about three-quarters of the state-funded contract dollars that would be expected based on their availability for this work. Figure IV-10 compares disparity indices for federally-funded contracts for 2002 through January 2006 and state-funded contracts for 2002-2006.

Results for women-owned firms show further evidence that utilization of WBEs falls short of what would be expected when the DBE contract goals program is not in place. The disparity index for WBEs for state-funded contracts was 81, close to the level of a "substantial disparity."

Disparity indices for individual minority groups are similar for federally-funded contracts and state-funded contracts. Because disparities are large for each group with and without the DBE program, it suggests that the DBE goals did not have much effect on MBE utilization. The one exception to the consistent disparities for minority groups is that Asian-Pacific American-owned firms received more work on state-funded contracts than what would be expected from their availability to perform these contracts (disparity index of 151).

Figure IV-10.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on federally- and state-funded transportation construction and engineering contracts

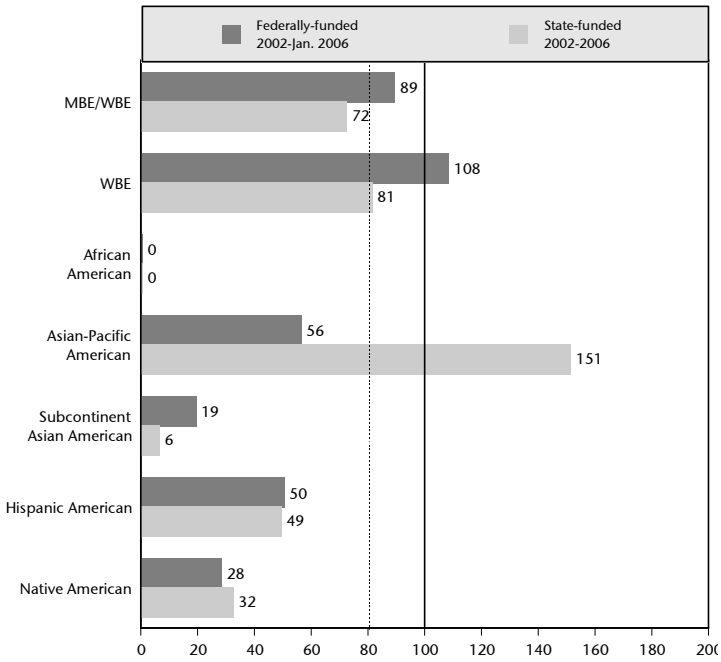
Note:

3,003 contracts/subcontracts for federally-funded and 1,118 for state-funded contracts.

For more detailed information, see Figure E-40 and E-80 in Appendix E.

Source:

BBC Research and Consulting.



Analysis of Statistical Significance of Any Disparities

Statistical significance of any disparities relates to the degree a researcher can reject "random chance" as a cause of the disparities. Often, chance in sampling of data is the factor that researchers consider in determining statistical significance of results. However, BBC attempted to contact every firm on the ITD bidders list or in the relevant set of firms identified by Dun & Bradstreet, as described in Appendix C. The utilization analysis also approaches a "population" of contracts. Therefore, any disparity found when comparing overall utilization with availability would be "statistically significant." BBC used a more sophisticated analytical tool to examine statistical significance of disparity results.

Figure IV-11.
Defining and Measuring "Utilization"

BBC conducted telephone interviews with 3,058 business establishments—a number of completed interviews that is so large as to often be treated as a "population," not a sample. BBC's analysis of the confidence interval around the estimate of MBE/WBEs representation among all firms available for ITD and local government transportation work, 23 percent, is accurate within about +/- 1.6 percentage points at the 95 percent confidence level (BBC applied the finite population correction factor when determining confidence intervals). At this level of accuracy in the availability analysis, a disparity index of 90 could technically be "statistically significant." BBC's availability figures for most minority groups are even more accurate. (By comparison, most survey results for proportions reported in the popular press are +/- 5 percentage points or, at best, +/- 3 percentage points.)

Monte Carlo simulation. There are many opportunities in the sets of prime contracts and subcontracts BBC analyzed for minority- and women-owned firms to be awarded work. Some contract elements involve large dollars and others may be only a few thousand dollars. Monte Carlo analysis is a useful tool because there are many individual chances at winning work and each has a different payoff.

The technique works as follows:

- The statistical analysis starts by examining an individual contract element (a prime contract or subcontract).
- BBC determined from the Availability Survey the individual firms "available" for that contract element based on type of work, prime versus subcontract role, size of the prime contract or subcontract, and location of the work. Each firm meeting those criteria in the Availability Survey were assumed to have an equal chance of receiving that contract element.
- The Monte Carlo simulation randomly chooses a firm for a contract element from the pool of available firms for that element. For example, the odds of a woman-owned firm receiving that contract element are equal to the number of women-owned firms available for that work divided by the total number of firms available for that contract element based on what is known about the contract element and the firms in the Availability Survey that meet those criteria.
- A single Monte Carlo simulation run then repeats the above process for all other contract elements in that set of contracts. The output of a single Monte Carlo run is simulated utilization of minority- and women-owned firms, by group, for that set of contract elements for that run.
- The Monte Carlo simulation is then repeated 1 million times for each set of contracts.

The output of a Monte Carlo simulation is the number of runs out of 1 million that produce a result observed in the actual data. For federally-funded contracts, about 200,000 out of the 1 million runs produced a level of overall MBE/WBE utilization that was equal to or below the actual utilization of 13.6 percent. However, for just Native American-owned firms, 3 of the 1 million simulation runs replicated a utilization level of Native American-owned firms of 0.7 percent or below.

BBC applied a 95 percent confidence level statistical standard, which is equivalent to a "two standard deviation test" sometimes applied by the courts when evaluating the statistical significance of the disparity results. Applying a two-tailed test, the maximum number of simulations that could equal or fall below actual utilization is 25,000 out of 1 million, or 2.5 percent of total simulation runs, for a result to found to be statistically significant. Because about 200,000 of the 1 million simulation runs for MBE/WBEs were equal to or below actual utilization of 13.6 percent, the overall disparity for MBE/WBEs is not statistically significant.

Results for federally-funded contracts. For federally-funded contracts from 2002 through January 2006, BBC can reject chance in contract and subcontract awards as an explanation of observed disparities for all groups with the exception of WBEs and Asian-Pacific American-owned firms based on the Monte Carlo simulations. Figure IV-12 presents results for federally-funded contracts through January 2006.

Figure IV-12.
Statistical significance of any observed disparities in MBE/WBE utilization for federally-funded construction and engineering contracts, 2002-Jan. 2006

MBE/WBE Group	Disparity Index	Number of simulation runs out of 1 million that replicated observed utilization	Odds of observed disparity occurring due to "chance"	Reject chance in awards of contract elements as cause of disparity?
MBE/WBE	89	204,128	20.41%	No
WBE	108	N/A	n/a	N/A
African American	0	0	*	Yes
Asian-Pacific American	56	95,271	9.53%	No
Subcontinent Asian American	19	9,894	0.99%	Yes
Hispanic American	50	3,950	0.40%	Yes
Native American	28	3	*	Yes

Note: Includes ITD contracts. Utilization and availability includes non-DBE-certified firms.
*=less than one hundredth of 1 percent.

Source: BBC Research and Consulting.

Results for federally-funded contracts after January 2006 are presented in Figure IV-13. Note that based on the Monte Carlo results, BBC can only reject chance as an explanation for Asian-Pacific American-owned businesses even though the disparity indices in Figure IV-13 are lower for most groups than the indices in Figure IV-12. The lack of "statistical significance" for these groups is due in part to the number of contract elements analyzed for Figure IV-13 (440 total contract elements, compared with 3,003 for Figure IV-12).

Figure IV-13.
Statistical significance of any observed disparities in MBE/WBE utilization for federally-funded construction and engineering contracts, Feb.-Dec. 2006

MBE/WBE Group	Disparity Index	Number of simulation runs out of 1 million that replicated observed utilization	Odds of observed disparity occurring due to "chance"	Reject chance in awards of contract elements as cause of disparity?
MBE/WBE	69	253,836	25.38%	No
WBE	75	399,866	39.99%	No
African American	0	38,168	3.82%	No
Asian-Pacific American	0	18,756	1.88%	Yes
Subcontinent Asian American	0	77,377	7.74%	No
Hispanic American	98	724,631	72.46%	No
Native American	17	98,279	9.83%	No

Note: Includes ITD contracts. Utilization and availability includes non-DBE-certified firms.
Source: BBC Research and Consulting.

Results for state-funded contracts. Figure IV-14 presents results of these statistical significance tests for state-funded contracts. BBC can also reject chance in contract and subcontract awards as an explanation of observed disparities on state-funded contracts for Native American-owned firms.

Lack of "statistical significance" in the disparity for African American-, Subcontinent Asian American- and Hispanic American-owned firms for state-funded contracts must be interpreted with caution. This is an issue with a statistical significance test for disparities involving small numbers. Some courts have recognized this issue when interpreting statistical results.

Figure IV-14.
Statistical significance of any observed disparities in MBE/WBE utilization for state-funded construction and engineering contracts, 2002-2006

MBE/WBE Group	Disparity Index	Number of simulation runs out of 1 million that replicated observed utilization	Odds of observed disparity occurring due to "chance"	Reject chance in awards of contract elements as cause of disparity?
MBE/WBE	72	16,004	1.60%	Yes
WBE	81	130,909	13.09%	No
African American	0	43,433	4.34%	No
Asian Pacific American	151	N/A	N/A	N/A
Subcontinent Asian American	6	160,188	16.02%	No
Hispanic American	49	88,081	8.80%	No
Native American	32	5,632	0.56%	Yes

Note: Includes ITD contracts. Utilization and availability includes non-DBE-certified firms.
*=less than one hundredth of 1 percent.
Source: BBC Research and Consulting.

Summary

Key information from the summary analysis of MBE/WBE utilization and availability includes:

- Firms certified as DBEs obtained 7.3 percent of contract dollars for federally-funded contracts awarded from 2002 through January 2006. However, a large portion of overall MBE/WBE utilization went to firms that were not certified as DBEs. Including all minority- and women-owned firms, MBE/WBE utilization on federally-funded contracts through January 2006 was 13.6 percent.

- Utilization of MBE/WBEs on federally-funded contracts fell to 10.8 percent for the eleven months following January 2006 when ITD discontinued the DBE contract goals program.

- Opportunities for white women-owned firms to participate in ITD contracts may be more favorable than minority-owned firms.

    - WBEs received 12.3 percent of federally-funded contract dollars for the time period when the program was in place, somewhat higher than what would be expected based on availability of white women-owned firms to perform this work.

    - Utilization of MBEs was 1.3 percent of federally-funded contract dollars through January 2006, only one-third of what would be expected for these contracts even with the DBE contract goals program in place. There were large disparities for each minority group.

    - Utilization of women-owned firms on state-funded contracts (without DBE goals) was about 81 percent of what would be expected based on WBE availability to perform this work. WBE utilization was 75 percent of what would be expected on federally-funded contracts after ITD discontinued setting DBE contract goals. BBC found much larger disparities for most minority groups.

This information, alone, may not be sufficient for ITD to make decisions as to future implementation of the Federal DBE Program. Using additional disparity analysis, other quantitative research and qualitative information, BBC explores why these overall disparities may be occurring in the following four sections of the report. Also, Appendix E provides considerable additional information concerning utilization of MBE/WBEs and certified DBEs on ITD projects. For example, Appendix E analyzes MBE/WBE and DBE utilization by year, and for each ITD district.

In sum, the disparity analysis presented in Section IV forms a starting point for BBC's analysis of MBE/WBE participation in ITD transportation contracting. The following four sections analyze MBE/WBE opportunities in:

- Construction subcontracts (Section V);
- Construction prime contracts (Section VI);
- Subcontracts on engineering-related contracts (Section VII); and
- Engineering-related prime contracts (Section VIII).

SECTION V.
Construction Subcontracts

As discussed in Section IV, it is important to understand why any overall disparities in utilization of minority- and women-owned firms may be occurring and to explore whether there may be neutral explanations for the disparities. This research can also identify potential remedies for any disparities, first considering measures that are race- and gender-neutral. BBC combined qualitative and quantitative information to explore these issues.

Section V examines MBE/WBE opportunities in construction subcontracting. BBC begins here because past race- and gender-conscious remedies under the Federal DBE Program were primarily focused on DBE participation as subcontractors in construction contracts.

Section VI analyzes MBE/WBE participation as prime contractors in ITD construction contracts. Sections VII and VIII perform similar analyses for engineering-related subcontracts and prime contracts.

Information on Subcontracting in the Transportation Construction Industry

The study team collected qualitative information concerning potential barriers to MBE/WBE participation as subcontractors in transportation construction contracts through in-depth interviews with minority-, women- and majority-owned firms as well as representatives of trade associations.[1] BBC also included questions regarding work with ITD and in the Idaho marketplace at the end of the Availability Survey. In addition, BBC examined public hearing testimony received after publication of a preliminary disparity study report. Some of these results are summarized here. Appendix I provides much more information from the in-depth interviews. Appendix F includes results from the Availability Survey.

Public sector subcontracting work. A number of MBE/WBEs and majority-owned firms reported good experiences working with ITD and other public sector agencies.

Several interviewees said that public sector subcontracting experience, sometimes gained through the DBE Program, led to other opportunities in the public and private sectors. Other interviewees did not see that ITD experience led to other work.

Why many minority- and women-owned firms focus on subcontracting when pursuing public sector work. Many of the minority and women business owners completing in-depth interviews in this study reported that they work as both prime contractors and subcontractors. They may work as subcontractors to perform a specialized component of a large project.

Several MBE/WBE businesses interviewed reported that they exclusively operate as subcontractors because "it's a lot less hassle." Representatives from two white female-owned subcontractors noted bonding as a constraint to working as a prime contractor in the public sector. Several subcontractors

[1] Most firms working on an ITD construction project (other than the prime) are deemed by ITD to be "subcontractors." This includes construction firms, suppliers and truckers (unless the prime hires the trucker as an owner/operator or under a lease agreement).

offered that they do not have the experience to perform work as a prime. These barriers to prime work in the public sector drive some firms into subcontract roles. Section VI, which follows, describes barriers to participation as prime contractors in ITD and other public sector work.

Methods to identify subcontracting opportunities. ITD makes extensive efforts to publicize construction contracting opportunities. ITD publishes requests for bids in newspapers, a monthly ITD newsletter and on the ITD website. ITD provides 90-day forecasts whereby ITD informs contractors of jobs that will be let within the next 90 days. ITD also mails and emails information to the list of registered contractors and those on the bidder list. The information ITD provides through these sources includes the work items involved in a particular project, the location of the project, time frame for completing the project, and in the past, information on any DBE goal for the contract.

ITD also uses 32 plan centers throughout the state. Notices of bids are sent to Intermountain Contractor. Other organizations also publish information on ITD opportunities and planholders.

The information on the ITD website provides who is bidding and which contractors purchased a set of plans. This information is passed along to DBEs within two to three weeks before the bid date. ITD lists all work items for each contract, identifies the resident engineers that can be contacted directly for each project, and, in the past, provided any requirement for DBE utilization.

Firm owners reported getting information through each of these sources. They generally reported that it was easy to learn of ITD opportunities and the prime contractors bidding on the work. Some interviewees suggested ways to enhance the flow of bid information, including passing along bid opportunities to TERO offices. One contractor noted that not everyone has Internet access, and that ITD needed to do more to distribute information on contracting opportunities. One organization providing outreach to small businesses would like ITD to set up video conference discussions every two weeks where DBEs could ask the DBE Support Services Office questions regarding the DBE Program or address concerns regarding current bids or projects.

Lists of potential subcontractors. ITD maintains a DBE directory and makes it available to prime contractors and others in both hard copy form and on the ITD website. Prime contractors can call ITD for names of DBEs that can do certain types of work. ITD also assists primes in setting up advertisements on the EEO website to solicit DBEs for price quotes. Several contractors and subcontractors said that the directory and website are helpful in identifying potential subcontractors. Other contractors said that Idaho is a small state and everyone knows everyone, so they just rely on word of mouth to find DBEs (or already know them).

A few prime contractors and subcontractors knew of a DBE list but had not used it. Several interviewees were not familiar with the list (including one trade association representative).

Non-bidders plans. DBEs can request "non-bidders plans" (or free plans) on a particular job so that they can review them and submit price quotes to primes who have expressed interest in a particular RFP. ITD maintains a list of all the DBEs that have contacted it for non-bidders plans, which it provides to primes who wish to know which DBEs have expressed interest.

A number of contractors were familiar with this ITD service.

Restriction on firms working as subcontractors on ITD construction projects. Compared with bidding on ITD contracts as a prime contractor, there are relatively few requirements to bid and perform work as a subcontractor. ITD has very few requirements concerning subcontractors that may work on its projects and how subcontractors are selected:

- Construction trade subcontractors must have appropriate public works and contractors licenses;
- Subcontractors must not be debarred from doing business with the federal government or with ITD;
- The project needs to be bonded but all of the bonding can be provided by prime contractors; and
- Other contract provisions between ITD and the prime contractor often flow down to subcontractors, and primes may put in additional conditions.

Prime contractors do not need to have open solicitation of subcontractors for price quotes, nor must they select the lowest bidder. On ITD federally-funded contracts, any requirements relating to opening subcontracting opportunities to DBE firms were discontinued in January 2006.

By state law, each prime bidder must identify the subcontractors that will be involved in electrical, heating, plumbing and HVAC work at time of bid. Other subcontractors need not be identified with the prime contractor's bid. ITD only requires identification of subcontractors after contract award. Bid shopping by prime contractors was widely reported in the industry. For example, a WBE subcontractor stated that when she first started her business in 1996, a person at ITD told her to hold her bid until the day before in order to avoid bid manipulation or bid shopping.

Prime contractor solicitation of subcontractors for quotes. Since January 2007, ITD has sometimes included an aspirational DBE goal in the bidder's package as an "encouragement" for DBE participation. Nevertheless, prime contractors are under no obligation to solicit quotes from any particular subcontractor.

Effect of the past DBE contract goals program. Several interviewees reported that prime contractors frequently solicited them for projects with DBE contract goals and less often or never for other projects. Other representatives of MBE/WBE construction firms said that they have opportunities on projects without goals.

Several MBE subcontractors reported that they used to receive work due to their DBE status, but feared that contractors will no longer give them subcontracting opportunities after ITD discontinued the DBE contract goals program. They also reported that they had yet to see this change.

Preferred areas to meet DBE goals. One interviewee stated that many prime contractors in the construction industry only wanted a DBE flagger or fencer to meet DBE requirements and were not interested in other types of firms. Because of these limited opportunities he stopped marketing to construction prime contractors. Other prime contractors confirmed that the areas that they solicit DBE subcontractor participation are relatively narrow (e.g., urban gutter work, painting, landscaping and traffic control for one prime, even though he subcontracts other types of work). A trade association representative indicated that DBEs tend to specialize in certain areas where they are needed (guardrail, landscaping, flagging). This representative said that it was easy for prime contractors to meet DBE goals using subs from these disciplines.

The study team also received feedback that prime contractors took "the easy way out" by working with the same DBEs with whom they are familiar (and not liking to venture out and give new firms a chance). One interviewee suggested that ITD organize more "meet and greet" type activities to facilitate meetings between prime contractors and subcontractors.

Good faith efforts to meet goals. Prior to January 2006, prime contractors were required to meet DBE goals on federally-funded construction contracts with goals or make good faith efforts to meet the goals. After January 2007, ITD sometimes has included an aspirational DBE goal in project bid packages, but contractors do not need to meet the goal or show good faith efforts to close.

As reported in Appendix I, MBE/WBEs, trade associations and majority-owned firms indicated that some prime contractors abused the past good faith efforts process. Some interviewees said that they learned that prime contractors had reported to ITD that the prime had solicited their firm for a bid on an ITD project but in fact had never been contacted by the prime. One WBE subcontractor said that a prime reported to ITD that no DBE subcontractors had responded to its requests for bids when the WBE had in fact submitted a bid for that project.

Other interviewees indicated that prime contractors made calls to firms and trade associations only to document that they had recruited MBE/WBE subcontractors, with no intention of using these firms.

One trade association representative stated that the good faith effort requirement was an added expense to bid on ITD jobs. He reported that uncertainty as to what ITD would accept (what level of DBE participation, what level of good faith effort) was difficult for prime contractors.

ITD staff reported that when good faith effort was required, DBEs sometimes complained that prime contractors were not making genuine efforts to utilize DBEs. In some instances, DBEs complained that they were contacted too late for them to put together a price quote. They noted that in most cases prime contractors would meet the program requirements by showing DBE participation. Prime contractors have submitted (and ITD has approved) good faith efforts, but this occurred rarely.

Front companies. Some interviewees reported that they knew of "front companies" that fraudulently obtained DBE status.

Good old boy network. A substantial barrier reported by interviewees, both MBE/WBEs and majority-owned firms, was the perceived inability to "break into the market" due to pre-existing relationships between prime contractors and subcontractors. More than one white male-owned firm interviewed reported that a good old boy network exists in Idaho and people tend to work with preferred subcontractors and suppliers. Some contractors said that this is not because of race or gender, but that it is typical to work with people whom you have worked with for a long time.

A trade association representative stated that there is a good old boy network and there is "prevalent cronyism." He said there are two restaurants where prime contractors in the transportation industry go to discuss business, and that being at one of these restaurants is better than any bidders list.

A representative of a minority-owned construction company said that there is a good old boy network and stated, "that's one of my goals, is to be a part of that." He added, "they're all inter-married or relatives, and it's just getting into those type of groups of people."

A female owner of a construction company noted that there are favorite companies in the industry, but things are better than they used to be and that the good old boy network has changed for the "good." An MBE construction subcontractor stated that he believes the good old boy network is fading away because "a lot of it is coming to light." A female contractor said that the DBE Program in Idaho has helped to break down negative perceptions about women (she also urged reinstatement of project goals).

Race and gender discrimination. Several interviewees reported discriminatory treatment.

- An African American male-owned traffic control subcontractor stated that he has been pretty successful working on ITD jobs; however, he reported that it became very difficult for him when the definition of DBE was expanded to include women because they were then his direct competitors. He stated that many prime contractors would prefer to work with a white woman than with an African-American man, but "that's life."

- One white female-owned subcontractor stated that she generally had very positive experiences with ITD but that one new inspector was particularly hard on her (which she said was recognized by the prime contractor as well). She stated that the ITD inspector was "fine with all the men" but was "real hard on her."

- A manager with a trade association representing general contractors and subcontractors stated, "Everyone will take anyone they can get with a qualified crew. If there is discrimination it is based on somebody who is undercapitalized and can't deliver the job on time and on budget." However, he observed, "If there's anything at all, it's that construction is a male-dominated area and so I would say females have had a bit of a "rough time", "but that is based on perceptions of competence in construction." He went on to say that one of the best contractors in the state is a female owner of construction subcontractor. "She probably had a tough time in the beginning." He thinks she is too large now to be a DBE, "and she still gets used."

The ITD EEO office receives complaints occasionally. According to ITD staff, almost all of these complaints are verbal and most of the time the caller simply wants a "sounding board." The EEO office always offers the caller the option on filing a formal complaint. The callers seldom follow through. DBEs often report that they don't feel they are being treated fairly or were yelled at. These are usually relationship issues with the prime. Very rarely do they say it is due to being a DBE, and the complaints generally are not alleging discrimination. When the EEO makes suggestions (i.e. filing against bond), some DBEs generally say, "No, I can't do that, I can't make waves."

The ITD EEO office received one formal complaint from a DBE in the past year. His complaint was investigated by ITD and determined to be a non-issue. The DBE made a phone call to FHWA with a similar result. He did not formally appeal. This is the only formal written complaint ITD has received in the last several years.

Potential stigma of DBE certification. Several interviewees suggested that DBE certification carried a negative stigma. DBE status may carry a stereotype of being less competent.

Prompt payment. After each ITD payment is made (ITD progress payments are made about every two weeks), prime contractors are required to fill out a "certification of payment" form whereby they certify that they have paid their subcontractors. This is in a sense an "honor system" in that it is the prime's word that the payment was made. Subcontractors must also submit verifications that they have paid all of their liabilities. Subcontractors provide the certification of payment form to the prime who provides it to ITD.

Many contractors reported that payment on ITD jobs, especially for subcontractors, was slow. Some expect a two to three month lag (or more) in receiving payment. Private sector work paid quicker. Other subcontractors reported that they received payment as subs on ITD projects relatively quickly. One subcontractor reported that ITD was a "stickler" in telling primes that when they are paid by ITD subs must be quickly paid. One trade association observed that miscommunication between the prime contractor and subcontractor as to the scope of work and completion of the work was a frequent barrier to receiving payment, but that prime contractors who are notoriously slow at paying have a difficult time finding subcontractors willing to work for them.

Comments from the Availability Survey were specific to ITD as well as prime contractors. One respondent stated, "ITD needs to reimburse companies faster." "ITD does not enforce prompt payment clauses," said another. One women-owned business representative stated, "It's often extremely difficult to work as only a subcontractor because the prime contractors do not pay on time or reliably."

Several firms recommended that ITD institute a process to inform subs when ITD has paid the prime.

Treatment by ITD staff. Many firms had favorable comments on how they were treated by ITD staff when performing work on ITD projects or interacting with DBE staff. Everyone at ITD is "just wonderful" in the words of one WBE subcontractor. A few contractors had mixed comments. One WBE business owner had negative comments about ITD inspectors.

ITD technical assistance. ITD offers a broad range of training, marketing and financial assistance, as discussed in detail in Section VI. Many MBE/WBE construction subcontractors are aware of this assistance and say they have benefited from these efforts (see Section VI).

Effect of DBE Contract Goals on Utilization

BBC's analysis of projects with and without goals found that minority- and women-owned firms obtain a greater percentage of construction subcontract dollars without goals than with project goals.

Federally-funded subcontracts before and after January 2006. BBC compared MBE/WBE utilization on federally-funded contracts based on awards (at time of contract award and subcontractors added later in the contract) for 2002 through January 2006 and for February through December 2006. MBE/WBEs' and DBEs' share of subcontract dollars on federally-funded construction contracts increased after ITD discontinued setting DBE contract goals in January 2006:

- Prior to discontinuing the DBE contract goals program, MBE/WBEs obtained 25 percent of the subcontract dollars on federally-funded contracts. MBE/WBE utilization was 31 percent of subcontract dollars for February through December 2006.

- Certified DBEs received about 20 percent of construction subcontract dollars for 2002 through January 2006 and 29 percent after January 2006.

Figure V-1 examines these trends. Subcontractor utilization on federally-funded construction contracts after ITD discontinued setting DBE goals is based on 111 subcontracts awarded through the end of 2006. As such, one must be cautious in judging whether or not the data indicate a longer-term trend.

Figure V-1.
MBE/WBE share of subcontract dollars for federally-funded transportation construction contracts, before and after January 2006

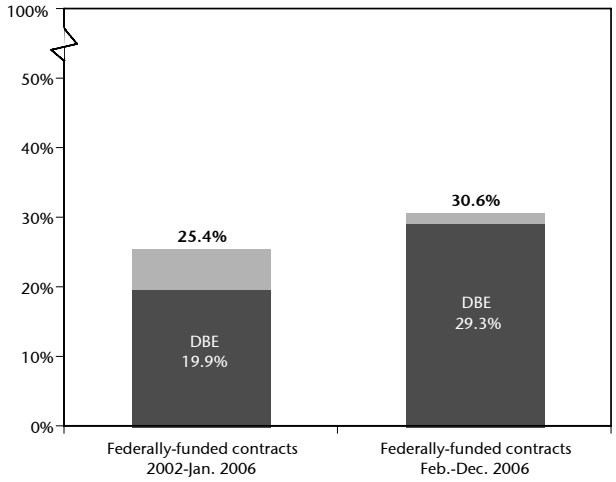
Note:

For more detail and for results by MBE/WBE group, see Figures E-55 and E-54 in Appendix E.

1,237 subcontracts for 2002–Jan. 2006 and 111 for Feb–Dec. 2006.

Source:

BBC Research and Consulting from data on ITD contracts.



State-funded subcontracts. BBC also compared the MBE/WBE share of subcontracting dollars for federally-funded and state-funded construction contracts. The 691 subcontracts on state-funded projects provide a relatively large set of information on subcontracts without DBE goals.

MBE/WBEs obtained a larger amount of subcontract dollars on state-funded contracts than the federally-funded contracts for which DBE contract goals applied. MBE/WBEs were awarded 32 percent of subcontract dollars for state-funded construction contracts, similar to what was found for post-DBE goals federally-funded contracts.

DBEs obtained 19 percent of subcontract dollars on state-funded contracts, about the same as found for federally-funded contracts generally subject to DBE contract goals. Figure V-2 presents these results.

Figure V-2.
MBE/WBE share of subcontract dollars for transportation construction contracts, federal vs. state funding

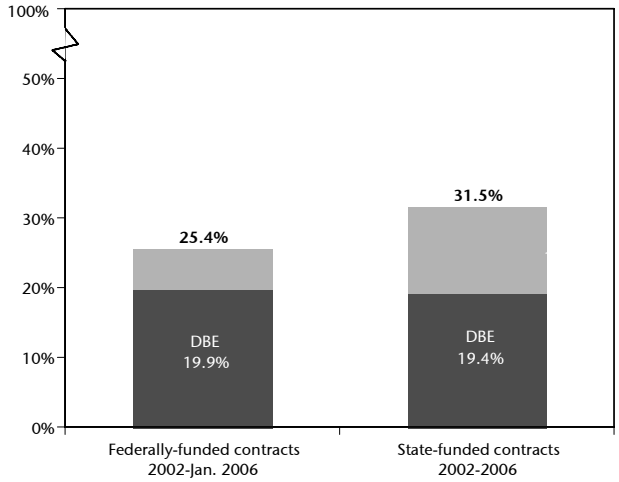
Note:

For more detail and for results by MBE/WBE group, see Figures E-55 and E-95 in Appendix E.

1,237 subcontracts on federally-funded contracts and 691 on state-funded contracts.

Source:

BBC Research and Consulting from data on ITD contracts.



Utilization of firms by race and gender group. Most of the construction subcontracts that went to MBE/WBEs and DBEs were to white women-owned firms. WBEs accounted for 22 percentage points of the 25 percent MBE/WBE subcontractor utilization for federally-funded contracts through January 2006. MBEs received 3 percent of subcontract dollars. Similarly, WBE utilization as subcontractors on state-funded contracts was about 27 percent while MBE utilization was 5 percent. MBEs obtained less than 1 percent of the subcontract dollars for federally-funded contracts after January 2006. Most of the dollars going to WBEs on federally-funded contracts were firms that were DBE-certified at the time of the contract.

Among MBEs, Native American-owned firms received the greatest share of subcontract dollars for federally-funded contracts before February 2006 and for state-funded from 2002 through 2006. There was very little utilization of Asian-Pacific American- and Subcontinent Asian American-owned firms, and no utilization of African American-owned firms on the subcontracts examined.

Figure V-3.
DBE and MBE/WBE share of subcontract dollars for transportation construction contracts, by race/ethnicity/gender

	Federally-funded contracts		State-funded contracts 2002–2006
	2002–Jan. 2006	Feb.–Dec. 2006	
MBE/WBEs			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0	0.1
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.8	0.2	1.2
Native American-owned	2.1	0.0	3.5
Total MBE	**3.0%**	**0.2%**	**4.8%**
WBE (white women-owned)	22.4	30.3	26.7
Total MBE/WBE	**25.4%**	**30.6%**	**31.5%**
DBEs			
African American-owned	0.0%	0.0%	0.0%
Asian-Pacific American-owned	0.1	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.8	0.2	0.2
Native American-owned	2.1	0.0	2.7
Total MBE	**2.9%**	**0.2%**	**2.9%**
WBE (white women-owned)	17.0	29.1	16.5
White male-owned DBE	0.0	0.0	0.0
Total DBE	**19.9%**	**29.3%**	**19.4%**

Note: Numbers rounded to nearest tenth of 1 percent.
For more detail, see Figures E-55, E-54 and E-95 in Appendix E.
1,237 subcontracts for 2002—Jan. 2006 federally-funded contracts, 111 for Feb.—Dec. 2006 federally-funded contracts, and 691 for state-funded contracts.

Source: BBC Research and Consulting from data on ITD contracts.

Disparity Analysis

BBC performed a disparity analysis for construction subcontracts to determine whether there were any differences between MBE/WBE utilization and the availability of MBE/WBEs for these subcontracts.

Federally-funded subcontracts before and after January 2006. Utilization of white women-owned firms as subcontractors on federally-funded construction contracts exceeded or was roughly in line with what would be expected based on WBE availability to perform these subcontracts. Disparity indices for WBEs were 119 through January 2006 and 105 after January 2006.

On the other hand, there were substantial disparities for each minority group whether or not the DBE contract goals program applied.

Exhibit V-4. Disparity indices for MBE/WBE utilization on federally-funded transportation construction subcontracts, 2002–Jan. 2006 and Feb.–Dec. 2006

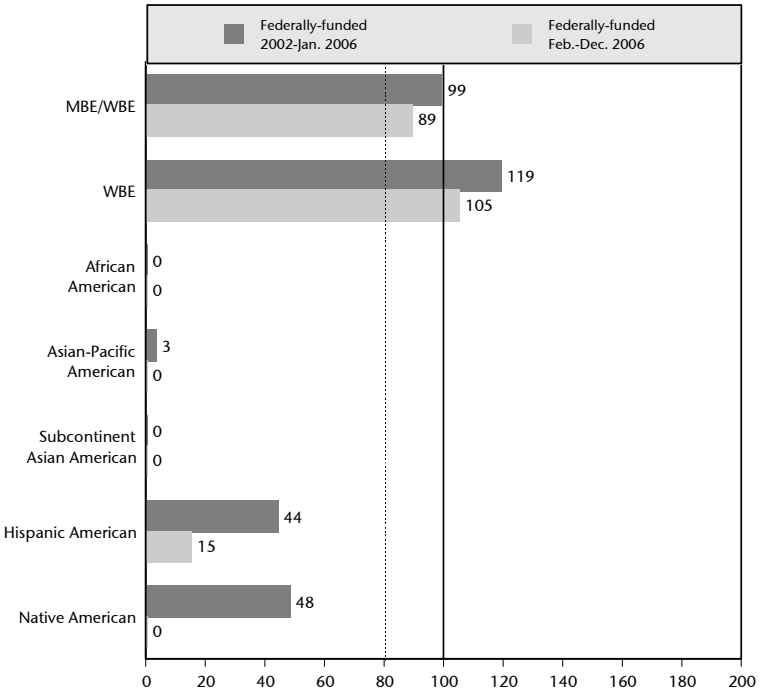
Note:

For more detailed information, see Figures E-55 and E-54 in Appendix E.

1,237 subcontracts for 2002–Jan. 2006 and 111 for Feb.–Dec. 2006.

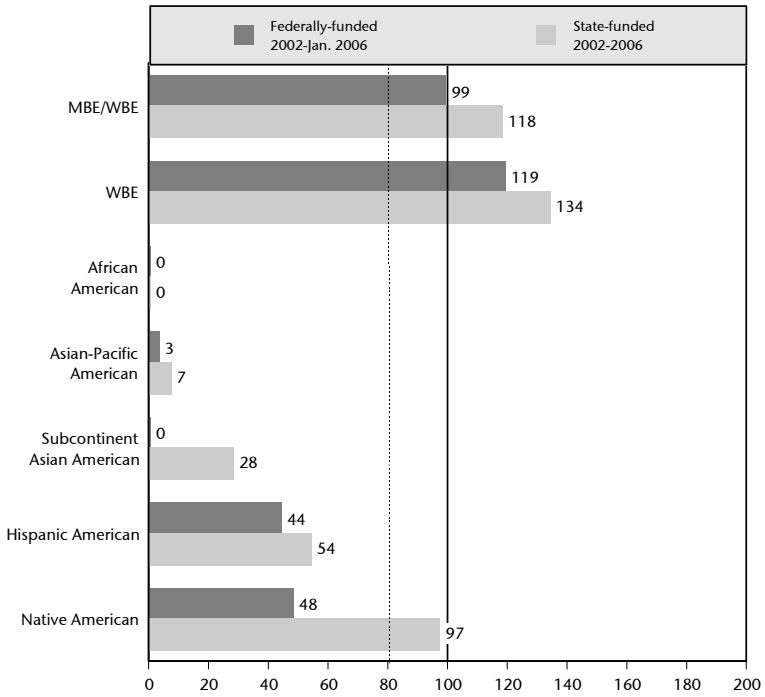
Source:

BBC Research and Consulting.



State-funded subcontracts. Utilization of WBEs exceeded what would be expected based on availability for state-funded subcontracts. For each MBE/WBE, group disparity indices were the same or higher for state-funded subcontracts compared with subcontracts on federally-funded projects.

Figure V-5. Disparity indices for MBE/WBE utilization on federally- and state-funded transportation construction subcontracts, 2002–Jan. 2006 and 2002–2006



Note:

For more detailed information, see Figures E-55 and E-95 in Appendix E.

1,237 subcontracts for federally-funded contracts and 691 for state-funded contracts.

Source:

BBC Research and Consulting.

Conclusions for Construction Subcontracting

Based on examination of subcontracting opportunities on ITD construction contracts, and review of qualitative information, BBC offers the following conclusions.

1. Several MBE/WBE subcontractors interviewed by the study team indicated a fear that they would not be solicited for subcontracting opportunities now that the old DBE contract goals program had been discontinued. Some indicated that the work they perform would now be self-performed by the prime contractor. Some of the subcontractors expressing these fears had not seen any decline in opportunities, however. In fact, the share of construction subcontracting dollars going to minority- and women-owned firms was greater on ITD projects without DBE goals than projects with goals. In part, this is explained by the greater relative availability of MBE/WBEs for non-goals projects. However, MBE/WBE utilization as a share of contract dollars increased for February through December 2006. There was no evidence of disparities for white women-owned construction subcontractors without the DBE contract goals. WBEs constitute most of the MBE/WBE firms available for these subcontracts.

2. Utilization of minority-owned firms is relatively low regardless of whether or not DBE contract goals were applied. BBC identified disparities between utilization and availability across MBE groups.

3. Interviewees including white men indicated that a good old boy network existed in the Idaho transportation contracting industry. This may affect subcontracting opportunities for firms that are not part of this network, including some minority- and women-owned firms.

4. ITD has implemented a strong array of efforts to encourage development of minority- and women-owned construction subcontractors and encourage participation in ITD projects. These efforts include continuing to publish recommended levels of participation for DBEs for certain federally-funded construction contracts. BBC's review of ITD's contracting processes found that information on subcontracting opportunities was readily available to MBE/WBEs and majority-owned firms. There may be opportunities to further address barriers to MBE/WBE development and to further address potential bid shopping and late payments for subcontractors on ITD jobs.

It does not appear that reintroduction of the former DBE goals program is needed at this time. ITD should monitor both DBE and MBE/WBE utilization as subcontractors on both federally- and state-funded projects. This information will be essential in gauging the success of ITD programs for subcontracting and determining whether or not ITD would need to reintroduce DBE contract goals at a future date (perhaps only for certain groups of DBE firms).

ITD should continue efforts to build capabilities of WBEs, and redouble efforts to assist minority-owned firms. Specialized assistance to reservation-based Native American-owned firms may be needed. ITD should consider holding mandatory pre-bid conferences for certain contracts as a forum to introduce subcontractors to primes. ITD should automatically notify first-tier subcontractors of ITD payment of prime contractors. This broad-reaching approach may be the best avenue to address long-term disparities in utilization of minority-owned businesses as subcontractors in ITD construction contracts.

In addition, ITD should track MBE/WBE utilization by specific prime contractors obtaining a large dollar volume of ITD construction contracts. If needed, ITD can further investigate whether there are particular barriers to use of minority- and women-owned firms for individual prime contractors. ITD has the authority to ensure that its prime contractors are not discriminating against potential subcontractors based on subcontractors' race, ethnicity or gender.

Finally, ITD could introduce contract requirements that a minimum percentage of the contract be subcontracted if it found that prime contractors were now self-performing most work items that had previously been subcontracted.

SECTION VI.
Construction Prime Contracts

BBC examined prime contractor participation in ITD transportation construction contracts. As discussed below, transportation construction contracts tend to be large (below $50,000, contracts go through Procurement). Even though many small contractors perform both subcontracts and prime contracts, and certain requirements such as construction licenses pertain to both sets of work, other barriers may apply when competing for transportation prime contracts. This section examines both qualitative and quantitative information related to prime contracting.

Qualitative Information on Prime Contracting in the Transportation Construction Industry

Based on in-depth interviews and surveys with business owners and managers, interviews with trade associations, and review of ITD bid processes, the study team identified several possible barriers to participation as prime contractors for transportation work.

General comments. Several contractors reported that "the big 10" prime contractors in the area receive all ITD work, which was reported to be somewhat discouraging to other contractors. When BBC examined the firms receiving the most contract dollars, we found that the top ten firms received 58 percent of the construction contract dollars (combining state- and federally-funded contracts) from 2002 through 2006. (Note that one of the top 10 prime contractors is woman-owned.)

Figure VI-1. Distribution of ITD construction contract dollars 2002-2006

Rank	Company	Dollars (millions)	Percent of Total Contract Dollars
1	Western Construction, Inc.	$149	13.5%
2	Staker & Parson Companies	110	10.0
3	H-K Contractors, Inc.	84	7.6
4	Scarsella Brothers, Inc.	62	5.6
5	Central Paving	52	4.7
6	LeGrand Johnson Construction Co.*	43	3.9
7	Idaho Construction Company	40	3.7
8	Max J. Kuney Co.	35	3.2
9	Boise Concrete Sawing	34	3.1
10	Poe Asphalt Paving, Inc.	32	2.9
	Total Top 10	$641	58.2%
	All others	460	41.8
	Total	$1,101	100.0%

Note:

Total dollars based on awards before deducting any subcontracts.

*LeGrand Johnson Construction Company in Logan, Utah was founded by LeGrand and Renee Johnson in 1935 and continues to involve female family members in the operation of the company. The company reported that it was woman-owned in a 2007 telephone interview with BBC.

Source:

BBC Research and Consulting from data on ITD contracts.

Licensing. With certain exceptions, construction contractors performing jobs of more than $2,000 must be registered with the Idaho State Contractors Board or if in certain trades such as electrical, plumbing or HVAC, must be licensed with the State of Idaho Division of Building Safety. If performing public works construction (or any construction work for public entities), contractors must be licensed with the Public Works Contractors Licensing Board. The Board issues different classes of licenses according to net worth and working capital guidelines and can issue a license for Type 4 Specialty Construction that allows firms to bid as primes or subs for specialized work as long as the majority of the work is that specialization. Firms do not need a State of Idaho license to work on an Indian Reservation.

On state-funded contracts, ITD requires contractors to have the appropriate license when submitting a bid. A contractor can obtain the license after bid award on federal projects.

Many construction firms interviewed by the study team reported that the licensing process was straightforward and fair. Other representatives of construction firms and trade associations said that licensing could be a barrier. One respondent to the Availability Survey noted the difficult requirements associated with increasing a firm's public work license. Based on study team interviews, it appears that licensing requirements can slow firms from expanding into new areas or taking on larger jobs.

Prequalification. ITD does not normally pre-qualify contractors for construction projects.

Minimum amount of contract to be performed by prime. ITD's normal standard is that one-half of a construction project be performed by the prime. ITD can sometimes relax this requirement to 30 percent or to 20 percent. State law requires a minimum of 20 percent participation by the prime.

Capital, financing and bonding. Contractors and trade association representatives explained that operating as a highway prime contractor requires substantial capital. By state law, ITD requires performance as well as payment or bonds on its public works contracts (state statute also requires bid bonds). Several interviewees attributed the lack of DBE prime contractors to the capital required to bid as a prime. "DBEs are undercapitalized to be prime contractors."

Some contractors and trade associations reported that firms have moderate difficulty obtaining financing and have more trouble obtaining bonding. In some cases, interviewees indicated that minorities and women faced additional barriers than would white men. Some minority and female interviewees contrasted their experiences with those of white men that they knew. One female contractor said that it took her five years to obtain financing and she had good credit. However, it took her male friend only three months to obtain financing. She stated she has encountered barriers to obtaining financing except with the SBA. "If a white guy walks in [to a bank], his chance of getting financing is better than me walking in," reported a representative of a Hispanic trade association. Other contractors disagreed saying that race, ethnicity and gender did not put them at a disadvantage.

Some contractors were more successful when seeking financing but still had difficulty obtaining bonding. For example, WBE contractor reported that financing "has been a piece of cake" but that getting bonding "is a pain—a royal pain."

Several contractors and trade association representatives reported that obtaining financing and bonding is particularly difficult for Native American-owned firms that are located on a reservation due to concerns about sovereign immunity. If the businesses default, sureties worry that they will not be able to collect against them (which she said was not the case). A Native American contractor recounted similar experiences. This contractor was eventually able to overcome this barrier.

There are a number of initiatives in place to address financing and bonding for small contractors. ITD offers classes dealing with bonding, insurance, financing and programs on how to do business with ITD. Other local organizations such as the Hispanic Chamber of Commerce and Associated General Contractors were also cited as sources of training on bonding, financing and insurance. Several contractors indicated that ITD's training was very valuable. Some contractors who had not attended classes were still aware of this assistance. ITD also covers the cost for DBEs to attend other organizations' training.

After the USDOT DBE Bonding Assistance Program was suspended, ITD has referred DBEs to The Bond Shop in Everett, Washington. The Small Business Administration also offers bonding assistance which is available at SBA offices in Idaho.

Insurance. ITD requires proof of insurance for contractors performing its work. Difficulties in obtaining insurance were mentioned in the study team's industry interviews. One respondent specifically commented on difficulties for small businesses, stating: "Insurance requirements for small businesses are prohibitive." Another said ". . . insurance [costs] make it difficult to stay and grow our business."

Specifications and inspections. One majority-owned contractor stated that the specifications on ITD projects are too rigid and ITD is not flexible enough with contractors regarding changes. He said that he has not received any of the ITD projects he has bid on because he has to "pad" his prices to account for poor specifications and the difficulty of working with ITD. A trade association representative agreed that the specifications on ITD projects are sometimes not in line with the scope of the work.

Other contractors complained about what they viewed as a lack of flexibility and consistency in ITD inspections.

Size of contracts. Size of contracts was identified as a barrier to doing business with ITD. Many contractors urged ITD to "unbundle" large projects. One majority-owned firm reported that several years ago ITD broke up projects into $1 to $5 million pieces but does not do this anymore. His firm does not bid on $10 to $30 million projects.

BBC researched sizes of ITD contracts, finding that some are very large but that most are less than $1 million. BBC identified 19 federally-funded and one state-funded construction contracts of $10 million or more out of a total of 302 federally-funded and 204 state-funded contracts from 2002 through 2006.

In terms of dollars, federally-funded contracts are evenly split between $1-10 million projects and those that are $10 million and larger. Contracts of $1-10 million account for most of the total dollars of state-funded contracts.

Bidding process, paperwork and "red tape." Although relatively few contractors complained about the ITD bidding process or excessive paperwork required to bid, some interviewees identified certain barriers.

- One MBE subcontractor did note that the firm had the knowledge to do the job, but did not know how to submit a bid to ITD.

- A representative of a trade association for minority women indicated that relatively few of her members currently do business with ITD even though some are capable of this work. The interviewee stated that the "average individual doesn't know how to bid, how to do paperwork … the bidding process can be overwhelming for the average small business." She urged ITD to offer more assistance to DBEs in preparing bids.

- One Native American organization representative was concerned about ITD introducing electronic bidding ("Bid Express"). Although she was aware that ITD has offered training to contractors (and a software credit to DBEs), she was concerned that her members had not taken advantage of these opportunities. "If our people can't afford the software or have the technical savvy to understand how to use it, that is again a missed opportunity." (Although she represents Native American-owned businesses, she reported that only one of her members is DBE certified.)

Information on potential bids. ITD widely advertises construction projects as described in Section V. Prime contractors had favorable comments about the ease of finding out about bidding opportunities, especially using the ITD website.

Payment. As reported in Section V, some contractors perceive ITD as "slow pay," but not necessarily different from other public sector entities. Some point to the change order process as slowing payment.

Some contractors reported no problems getting paid for ITD projects within a reasonable time. Others say that public sector work is attractive because payment is more guaranteed. Prompt payment requirements apply to state and federal contracts.

Working with ITD. A number of MBE/WBE and majority-owned prime contractors had positive comments regarding working with ITD.

Unions. Idaho is a right to work state. The northern Idaho market works somewhat differently as some contractors come from Washington, which is unionized. Southern and southeastern Idaho have mostly non-union contractors.

Participation of MBE/WBEs in the private sector. A number of MBE/WBEs interviewed reported success working in the private sector. Some contractors say they prefer to work in the private sector because they are paid more promptly.

ITD technical assistance. Several MBE/WBE firms found ITD's technical assistance to be very helpful. The DBE Program "brought an engineer in and helped me go through plans and learn how to read things and read the bids …. They were just really helpful in that area." He added, "the Transportation Department has a really good system."

ITD assistance includes:

- Workshops around the state that explain topics such as environmental issues, contract provisions, and payment issues (open to non-DBEs);
- Working to get all DBEs online including offering a rebate for software and training ($400 if no Internet capacity, $300 for bidding or estimating software);
- Scholarships for the "next level entrepreneurial training series" put on by the SBA (Small Business Administration) that allow DBEs to go to a 6 to 12 week training series. If they go through the series, DBEs get a $500 marketing allowance as well; this is just one example of ITD training reimbursements and marketing allowances;
- On-line construction business management training through a state university which covers issues such as the lien laws, safety topics, HR issues, bidding and estimating. To date, there has been only one firm that has participated through ITD;
- Full reimbursement or partial reimbursement on classes, Governor's business conference and other educational and marketing opportunities;
- Reimbursement of some expenses incurred to upgrade financial statements (e.g., $300 reimbursement if they go to a CPA to get professional prepared financials or a bond); and
- Short-term loan program through a Native American-owned bank in Montana.

MBE/WBE Utilization as Prime Contractors

BBC examined utilization of minority- and women-owned firms as prime contractors on ITD construction contracts. The utilization analysis is based on dollars that appeared to be retained by the prime after BBC subtracted dollar amounts for each subcontractor identified for the project.

Federally-funded and state-funded prime contracts. BBC analyzed utilization in dollars going to prime contractors for federally-funded and state-funded ITD construction projects from 2002 through 2006.[1]

MBE/WBEs received 33 of the 302 federally-funded contracts and obtained $45 million of the $502 million in work retained by the prime contractor (after deducting subcontract dollars). MBE/WBE utilization based on prime contractor dollars was 8.9 percent.

[1] Because of the similarity in results before and after January 2006 for federally-funded contracts, the relatively small number of prime contracts awarded from February through December 2006 (42) and the fact that the DBE contract goals program focused for subcontractor participation, BBC analyzed MBE/WBE utilization as prime contractors on federally-funded contracts on the entire 2002 through 2006 time period. Results before and after January 2006 can be found in Figures E-52 and E-51 in Appendix E.

Minority- and women-owned firms obtained a similar share of state-funded construction prime contracts. MBE/WBEs were the prime contractors for 24 of the 205 state-funded prime contracts examined for 2002 through 2006. Of the $174 million in contract dollars going to the primes, MBE/WBEs received 9.7 percent. White women-owned firms accounted for 8.1 percentage points of the total MBE/WBE prime contractor utilization.

Only 1 percent of the total prime contractor dollars for both federally-funded and state-funded contracts went to certified DBEs. Figure VI-2 presents overall MBE/WBE and DBE utilization as prime contractors on ITD construction projects.

Figure VI-2.
MBE/WBE share of prime contract dollars for federally- and state-funded transportation construction contracts, 2002-2006

Note:

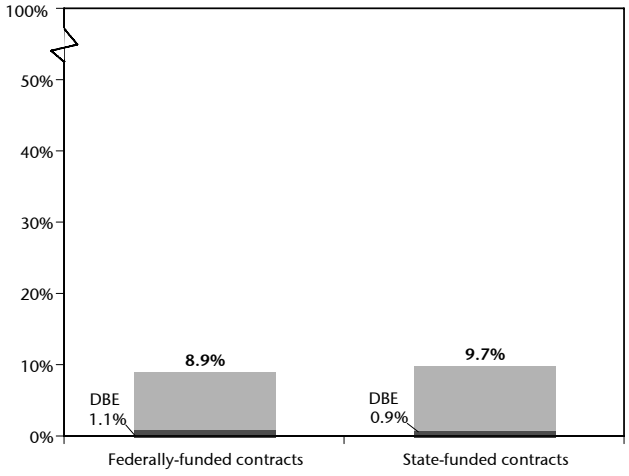
Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detail and for results by MBE/WBE group, see Figures E-50 and E-92 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

Source:

BBC Research and Consulting from data on ITD contracts.



Utilization of firms by race and gender group. BBC explored the share of prime contract dollars going to each MBE/WBE group for federally- and state-funded construction projects. Figure VI-3 shows that white women-owned firms accounted for nearly all of the MBE/WBE utilization. MBEs obtained five federally-funded prime contracts for only 0.4 percent of the total dollars. Minority-owned firms were awarded seven state-funded prime contracts for 1.6 percent of the prime contract dollars.

Figure VI-3.
DBE and MBE/WBE share of prime contract dollars for transportation construction contracts, 2002-2006, by race/ethnicity/gender

Note:

Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detail, see Figures 50 and E-92 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

Source:

BBC Research and Consulting from data on ITD contracts.

	Federally-funded contracts	State-funded contracts (2002-2006)
MBE/WBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.1	1.1
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.2	0.1
Native American-owned	0.1	0.4
Total MBE	**0.4%**	**1.6%**
WBE (white women-owned)	8.6	8.1
Total MBE/WBE	**8.9%**	**9.7%**
DBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.1	0.0
Native American-owned	0.1	0.4
Total MBE	**0.2%**	**0.4%**
WBE (white women-owned)	0.9	0.5
White male-owned DBE	0.0	0.0
Total DBE	**1.1%**	**0.9%**

Disparity Analysis

BBC compared utilization of minority- and women-owned firms as construction prime contractors with what would be expected given MBE and WBE availability to perform this work.

All federally-funded and state-funded construction prime contracts. The disparity analysis results for construction prime contracts differ by MBE/WBE group

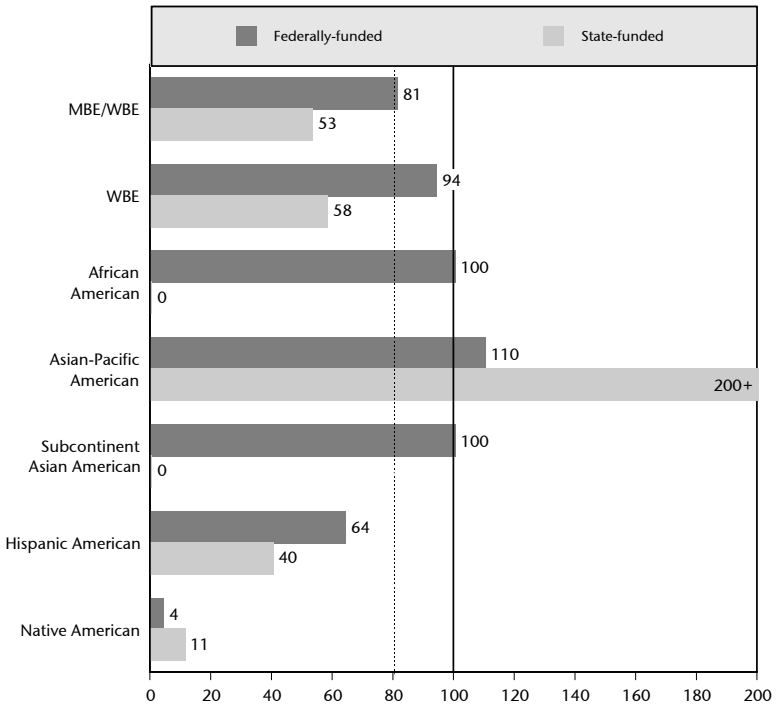
- WBE prime contractors received a share of federally-funded contract dollars roughly in line with what would be expected based on the availability of white women-owned firms to perform these prime contracts (disparity index of 94). WBEs, however, received a small share of state-funded prime contract dollars relative to their availability for these contracts (disparity index of 58).

- Utilization of Asian-Pacific American-owned firms exceeded what would be expected from availability of these firms (disparity indices exceeding 100 for both federally- and state-funded prime contracts).

- Utilization of Hispanic American- and Native American-owned prime contracts was relatively low given the availability of such firms for construction prime contract work.

- Disparity results for African American- and Subcontinent Asian American-owned firms are difficult to interpret due to the very limited availability of firms to perform construction prime contracts. The disparity indices of "100" for both groups for federally-funded contracts are based on 0 percent utilization and 0 percent availability for this work. African American- and Subcontinent Asian American-owned firms received no state-funded prime contracts but had some very limited availability for those contracts (rounding to 0.0 percent). The resulting disparity indices were 0 for state-funded prime contracts for these two groups.

Figure VI-4. Disparity indices for MBE/WBE utilization on federally- and state-funded transportation construction prime contracts, 2002–2006



Note:

Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detailed information, see Figures E-50 and E-95 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

Source:

BBC Research and Consulting.

Small construction prime contracts. BBC further explored the effect of contract size on MBE/WBE participation by conducting disparity analysis for construction contracts under $1 million. Of the 302 ITD federally-funded construction contracts analyzed for 2002 through 2006, 181 were for amounts under $1 million. BBC also examined 123 small state-funded construction contracts (out of 205 total state-funded construction contracts).

MBE/WBE utilization as prime contractors on small federally-funded and state-funded construction contracts was 12.5 percent for each set of small contracts. This level of MBE/WBE utilization as prime contractors was somewhat higher than for all federally-funded construction contracts (8.9 percent) and all state-funded construction contracts (9.7 percent).

Although utilization of minority- and women-owned firms as prime contractors was higher for small construction contracts, relative availability of MBE/WBEs to perform these contracts was greater as well. Figure VI-4 examines disparity study results for prime contractor utilization on small construction contracts.

BBC's comparison of utilization and availability for small contracts only helps to explain disparities for Hispanic American-owned firms that BBC identified when analyzing all contracts. On small construction contracts, use of Hispanic American-owned prime contractors met or exceeded what would be expected based on availability for theses small prime contracts. There are still mixed results for African American- and Subcontinent Asian American-owned firms due to the very limited (and sometimes zero) availability of firms to perform these prime contracts. Utilization of white women- and Native American-owned firms still fell far short of what would be expected based on availability for ITD construction prime contracts.

Figure VI-5.
Disparity indices for MBE/WBE utilization on federally- and state- funded transportation construction prime contracts under $1 million, 2002–2006

Note:

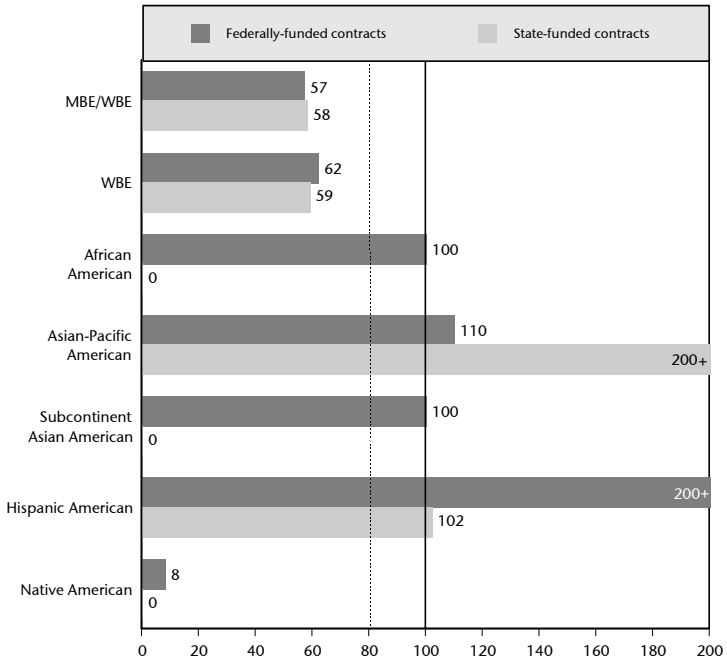
For contracts under $1 million, utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detailed information, see Figures E-140 and E-143 in Appendix E.

181 federally-funded and 123 state-funded contracts under $1 million.

Source:

BBC Research and Consulting.



Analysis of Bidding on ITD Construction Contracts

BBC further explored why disparities in utilization of MBE/WBE prime contractors might be occurring by examining data on construction contract bids. BBC analyzed bidders on 444 ITD federally- and state-funded construction contracts from 2002 through 2006. ITD construction contracts typically go to the lowest bidder.

There were 176 different firms bidding on ITD construction contracts, of which 12 percent were WBEs and 5 percent were MBEs.

BBC found no difference in the winning percentage of WBEs and MBEs submitting bids compared with majority-owned firms. WBEs and majority-owned firms bid on the same sizes of contracts, and MBEs bid on smaller contracts, on average, than either majority-owned firms or women-owned firms.

Conclusions for Construction Prime Contracting

Based on examination of ITD construction prime contracts, BBC prepared the following conclusions.

1. Overall, MBE/WBE utilization as prime contractors on ITD federally-funded construction projects is somewhat below what would be expected based on availability for these contracts. For state-funded contracts, there is a substantial disparity between utilization and availability of MBE/WBEs as prime contractors. It is difficult to interpret the disparity analysis for certain MBE groups due to the very limited availability of firms to perform construction prime contracts.

2. ITD widely informs potential prime contractors of opportunities to bid and has a relatively straightforward bidding process. Awards typically go to the lowest bidder.

3. Because of the time needed to build prime contractor capabilities, capital, bonding capacity and other resources, it may take longer to build strong MBE/WBE prime contractors than strong subcontractors.

    - The WBE firm that receives the largest volume of prime contract work among MBE/WBEs was founded by a husband and wife in the 1930s. Many of the other large prime contractors obtaining ITD contracts are old, established firms. Ten firms account for 58 percent of ITD contract dollars.

    - When BBC analyzed bid capacity of construction prime contractors based on length of time in business, there was a strong correlation between size of contracts firms would bid on and the age of the firm. There was no statistically significant relationship between "bid capacity" and race/ethnicity/gender of the business ownership (see Appendix F and Appendix H).

    - Race or gender discrimination that may have occurred many decades ago could still affect the current availability and bid capacity of minority- and women-owned firms.

4. ITD has implemented efforts to encourage development of minority- and women-owned construction firms. However, ITD's past implementation of the Federal DBE Program has concentrated on participation of DBEs as subcontractors, only some of which have emerged as prime contractors. In the future, ITD may need to devote more efforts to directly developing MBE/WBE prime contractors.

ITD has limited tools to encourage MBE/WBE participation as prime contractors in its construction contracts. Reintroduction of the former DBE goals program would not be an effective remedy. ITD should consider the following actions:

- Even though BBC's analysis found that ITD already has many small construction contracts and that disparities in MBE/WBE utilization remain on small contracts, ITD should attempt to further unbundle its large contracts to encourage bidding by smaller MBE/WBEs.

- ITD should also provide intensive technical assistance to introduce firms to prime contracting roles on ITD projects and to build strong MBE/WBE prime contractors capable of completing larger projects. As discussed in Section V, specialized assistance to reservation-based Native American-owned firms may be needed.

- ITD should consider identifying a limited number of construction projects as joint venture "demonstration projects" for large contractors teaming with small, emerging prime contractors. Bidding would be limited pre-qualified joint venture partners.

- ITD can also encourage additional mentor-protégé efforts by Associated General Contractors, other associations and individual prime contractors.

Strong prime contractor development programs will be needed for many years in order to address the disparities identified in MBE/WBE participation as construction prime contractors. ITD should closely monitor MBE/WBE bidding and contract awards to gauge the success of these efforts, and assess whether stronger programs are needed in the future.

SECTION VII.
Engineering Subcontracts

Some of the issues identified for firms pursuing construction subcontracts (Section V) also pertain to engineering firms seeking subconsulting work. However, different processes apply when competing for public sector engineering prime contracts or subcontracts.

Qualitative Information on Subcontracting in the Transportation Engineering Industry

The study team collected qualitative information concerning potential barriers to MBE/WBE participation as subconsultants through interviews with minority-, women- and majority-owned firms, interviews with trade associations and questions in the Availability Survey.

Focus on public sector subconsulting. MBE/WBEs often participate as subconsultants rather than prime consultants in public sector work for several reasons:

- A trade association representative observed DBEs tend to specialize and establish niche practices such as environmental engineering. The interviewee concluded that DBEs end up working as subconsultants to larger, more generalized engineering firms.
- Both MBE and majority-owned engineering-related firms complained that ITD projects are too large, which may limit opportunities for smaller firms.
- Some firms complained that certain engineering work was bundled into large construction contracts (and urged ITD to unbundle the engineering-related work).
- A number of firm owners said that there are more subcontracting opportunities on public sector engineering contracts than in the private sector. Engineering firms indicated that they less frequently subcontract work on private sector jobs.

Some engineering firms reported that they started as subconsultants to large engineering firms but have grown to the point that they now pursue small prime contracts. Some MBE/WBEs are also very successful in the private sector. One MBE consultant said that after he was DBE certified he had so much private sector work that he did not actively pursue ITD subcontracts.

Section VIII discusses some of the barriers that steer some firms to initially compete as subconsultants rather than as primes on public sector work.

Opportunities to work as a subconsultant on an ITD engineering project. Firms can obtain subcontracts by responding as part of a team to an ITD Request for Proposal or being used as a subconsultant by a firm that has received a task order under a term agreement.

Other than proper licensing, there are few other requirements to work as a subconsultant on an ITD engineering contract. The process used to select prime consultants for term agreements described in Section VIII does not apply for subconsultants working for firms that obtain task orders. However, one MBE consultant said that primes will look for firms that have term agreements for certain disciplines when selecting subconsultants for a project.

Methods to identify subcontracting opportunities. Similar to the process for advertising construction contracts discussed in Section V, ITD publishes requests for proposals (RFPs) in newspapers, a monthly ITD newsletter and on the ITD website. There is no established process, however, of learning about any subcontracting opportunities on ITD task orders.

ITD received some positive and some negative comments from in-depth interviews on its efforts to make opportunities known to engineering-related firms. One consultant reported that there is "no way to find out what is coming down the pipeline …. We have to call each of the districts and have a face-to-face with project development engineer and they will tell us about the projects." ITD should "sit down with 30 consultants and review the same information" with each one. She also recommended posting upcoming design projects on the ITD website.

A relatively large number of transportation engineering firms interviewed in the Availability Survey commented on the difficulty in obtaining information on bidding opportunities and bidding on ITD projects. Minority-owned engineering firms were more likely than other firms to identify this as a problem.

Prime consultant solicitation of subconsultants for bids. Prime consultants are currently under no obligation to solicit bids from subconsultants for any ITD engineering-related contracts. Prior to discontinuing the program, ITD established DBE project goals for certain Requests for Proposals and required documentation of good faith efforts to meet the goal for primes that did not reach the target level of DBE participation. No contract goals were applied to task orders awarded under the term agreement system.

Effect of the past DBE contract goals. A number of MBE/WBE engineering firms reported that the DBE Program and project goals were very important to the early success of their businesses. For example, [the DBE Program] "was invaluable to us … I couldn't have survived without it. If I were starting a firm right now I couldn't do it." Now that her firm is well-known in her area, this business owner says that primes continue to solicit her for public and private sector work.

An MBE firm reported that the absence of an incentive to use DBE companies creates an obstacle for new DBE firms who were not "in the system" before January 2006. A DBE company certified before that, time may have established connections through the DBE Program and have the advantage of prior experience.

A WBE firm recalled several isolated incidents in which she felt her gender affected her ability to obtain work. She concluded, "If I didn't have the DBE hook to break the ice, I wouldn't have gotten in." She stated that it is difficult to get your foot in the door, but once you do and provide good work, you are going to be a success.

Other interviewees reported that large engineering firms will just do the previously subcontracted work themselves now that they don't have to meet DBE goals.

A relatively large percentage of minority-owned transportation engineering firms interviewed as part of the Availability Survey mentioned difficulty in obtaining subconsulting opportunities.

One majority-owned engineering firm thought that the old DBE program gave unfair advantage to DBEs. He stated that the DBE Program should be disbanded and the ITD bidding process be strictly qualifications-based.

Frequency of solicitations on projects without goals. One MBE firm stated that the same prime contractors do not use him in both the private sector and the public sector. Another MBE indicated that they were targeted for subcontracting work because they are DBE. A WBE reported that, since January 2006, she is not getting any work based on her DBE status. Another WBE reported that, without DBE goals, she now has to go "head to head" against firms with more experience with ITD. However, other MBE/WBE engineering firms report being used as subconsultants regardless of whether DBE goals apply. MBE/WBE and majority-owned prime consultants report using DBE subconsultants on engineering contracts even when it is not required. Some MBE/WBE engineering firms say they make a point of using MBE/WBE subconsultants; others say that they just use them because they do good work.

Lists of potential subcontractors. The same lists available for construction are available to identify subconsultants for ITD engineering-related projects (see Section V). One WBE prime who was aware of the DBE Directory said that she didn't use it to find DBEs because Idaho is a small market and she knows who is available to perform subcontracts. Other firms reported that they were aware of the DBE Directory but had never seen one.

One MBE recommended that ITD do more to provide lists of DBEs to primes seeking subconsultants.

Good faith efforts. One MBE environmental consultant indicated that the firm had been asked to submit bids for subcontracting work on ITD projects but felt that these efforts were insincere. The prime contractors do not tell him the scope of the project and it seemed clear to him that the primes were not interested in using him.

Front companies. Several engineering-related firms reported knowledge of sham DBEs. For example one interviewee stated that he is aware of companies where the husband owns the company, but it is in his wife's name. A majority-owned engineering firm reported that this phenomenon is more prevalent with minority-owned businesses, particularly those operated by Native Americans.

One WBE engineering firm stated that she has heard of DBE fronts (husbands operating supposedly female-owned companies) but that ITD does a good job of sending someone out to interview the DBEs when they are trying to get certified.

Other barriers. One interviewee reported that it was difficult to get work in certain parts of the state because she was of a different religious background than the dominant culture in Southeast Idaho. This affected her ability to receive work as a subconsultant.

Stigma associated with DBE status. Several firms reported that there was a stigma associated with being a DBE. As one interviewee put it, the stigma is "you're small, you're in the DBE Program, and therefore you don't know what you're doing." He stated that prime contractors are skeptical that DBEs have the necessary expertise.

An MBE firm stated that there is a certain amount of animosity toward DBEs and other small businesses. He stated that he has never seen overt discrimination, but he could see it occurring covertly. He also stated that he has experienced stereotyping because "there is a requirement to use you."

Payment. Some firm owners reported that it took a long time to be paid as a subconsultant on an ITD engineering project. One WBE reported that ITD will pay a prime within 30 days of invoice but that it can take up to eight weeks to receive payment as a sub. "We don't know when ITD pays the primes so we don't know when the clock starts ticking. If ITD could tell us that would give us more leverage to know when to start calling the prime."

Other firm owners had favorable comments about payment on ITD contracts. Some interviewees reported that they preferred public sector work because of the risks of not being paid in the private sector.

ITD technical assistance. As with construction firms (reported in Section V), a number of MBE/WBE engineering firms reported that they are aware of and appreciate ITD technical assistance efforts. One MBE said that Idaho has the best outreach of any state. Even if firms had not participated in a particular opportunity, they were impressed that ITD offered these services. Some interviewees were aware that funding had been cut off for certain ITD programs (e.g., certain reimbursements).

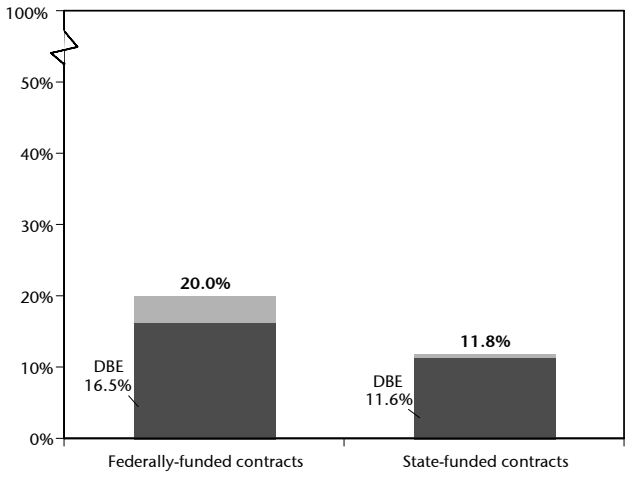
Effect of DBE Contract Goals on Utilization

As with construction subcontracts in Section V, BBC examined MBE/WBE and DBE utilization as subconsultants on engineering-related projects with and without DBE contract goals.

Federally-funded and state-funded subcontracts. BBC analyzed utilization for 832 subcontracts from federally-funded contracts and 62 subcontracts from state-funded contracts across the entire study period. Figure VII-1 reports the results of these analyses.

On federal contracts, minority- and women-owned businesses received 20 percent of all subcontract dollars. Most of the dollars going to an MBE or WBE went to a certified DBE firm. On state-funded contracts, MBE/WBEs received about 12 percent of total subcontracting dollars. Certified DBEs also received most of the subcontract work going to MBE/WBEs on state-funded contracts.

Figure VII-1.
MBE/WBE share of subcontract dollars for transportation engineering contracts, federal vs. state funding 2002-2006



Note:

For more detail and for results by MBE/WBE group, see Figures E-62 and E-104 in Appendix E.

832 federally-funded and 62 state-funded contracts.

Source:

BBC Research and Consulting from data on ITD contracts.

Utilization of firms by race and gender group. Women-owned firms received 13.8 percent of subcontract dollars on federally-funded contracts and 8.5 percent of subcontract dollars on state-funded contracts. The only minority group to receive substantial subcontract dollars were Hispanic American-owned firms (about 5 percent on federally-funded contracts and 3 percent for state-funded contracts). Figure VII-2 presents these results.

Figure VII-2. DBE and MBE/WBE share of subcontract dollars for transportation engineering contracts, by race/ethnicity/ gender

Note:

Numbers rounded to nearest tenth of 1 percent.

For more detail, see Figures E-62 and E-104 in Appendix E.

832 subcontracts federally-funded and 62 for state-funded contracts.

Source:

BBC Research and Consulting from data on ITD contracts.

	Federally-funded contracts	State-funded contracts
MBE/WBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.4	0.0
Subcontinent Asian American-owned	0.8	0.0
Hispanic American-owned	4.8	3.3
Native American-owned	0.2	0.0
Total MBE	**6.2%**	**3.3%**
WBE (white women-owned)	13.8	8.5
Total MBE/WBE	**20.0%**	**11.8%**
DBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0
Subcontinent Asian American-owned	0.8	0.0
Hispanic American-owned	4.6	3.3
Native American-owned	0.1	0.0
Total MBE	**5.5%**	**3.3%**
WBE (white women-owned)	11.0	8.3
White male-owned DBE	0.0	0.0
Total DBE	**16.5%**	**11.6%**

Disparity Analysis

The overall rate at which MBE/WBEs are utilized as subconsultants exceeds the expected level given availability for federally-funded engineering contracts, but is below the expected level for state-funded engineering contracts.

Federally-funded and state-funded subcontracts. Figure VII-3 examines disparity indices for subcontracts on both federally- and state-funded engineering contracts. On federally-funded contracts, WBEs received subcontract dollars somewhat exceeding what would be expected from WBE availability (disparity index of 110). BBC found a disparity between WBE utilization and availability for subcontracts on state-funded engineering contracts (disparity index of 66).

There were disparities for each minority group except for Hispanic American-owned firms for subcontracts on both federally- and state-funded engineering contracts. Hispanic American-owned firms received more subcontract dollars than expected for both federally- and state-funded contracts.

Figure VII-3. Disparity indices for MBE/WBE utilization on federally- and state-funded transportation engineering subcontracts, 2002–2006

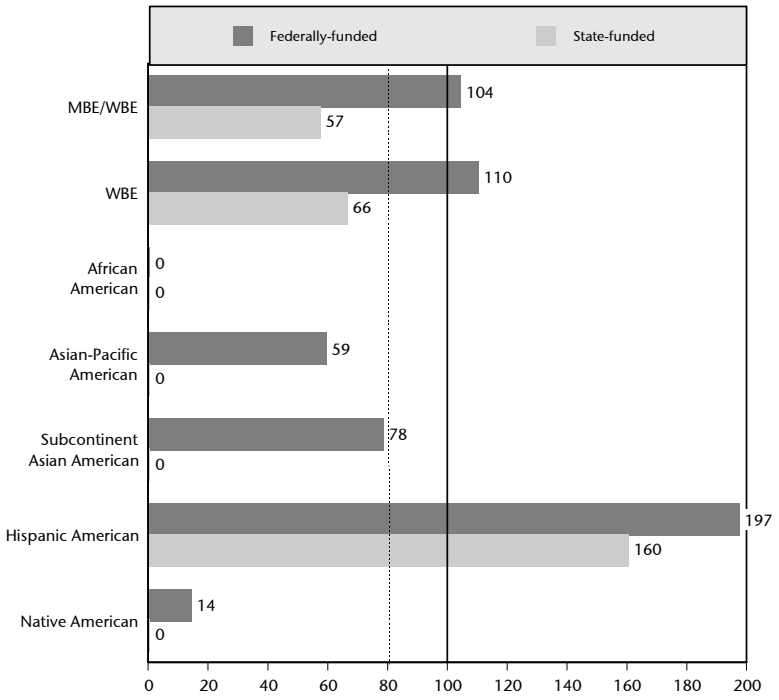
Note:

For more detailed information, see Figures E-62 and E-104 in Appendix E.

832 subcontracts for federally-funded and 62 subcontracts for state-funded contracts.

Source:

BBC Research and Consulting.



Federally-funded RFPs versus federally-funded term agreements. DBE project goals were typically only applied for federally-funded contracts issued through a Request for Proposal (RFP) process. ITD discontinued setting DBE contract goals for these contracts in January 2006. To better isolate the influence of DBE project goals on MBE/WBE utilization, BBC divided federally-funded contracts into two groups:

1. Contracts let through an RFP process for 2002 through January 2006; and

2. Work awarded through other means, including task orders off of term agreements through January 2006, plus all federally-funded contracts from February through December 2006.

Results are shown in Figure VII-4:

- Utilization of WBEs exceeded availability of contracts for which DBE goals could be set, and utilization of WBEs was substantially below availability for subcontracts on ITD work without DBE goals.
- There were disparities for African American-, Asian-Pacific American- and Native American-owned firms for subcontracts on both sets of federally-funded contracts.
- Utilization of Hispanic American-owned firms exceeded availability.
- There were mixed results for Subcontinent Asian American-owned firms.

On balance, this analysis of two subsets of federally-funded contracts confirms results from BBC's analysis of federally-funded versus state-funded contracts.

Figure VII-4. Disparity indices for MBE/WBE utilization on federally-funded transportation engineering subcontracts, RFPs 2002–Jan. 2006 versus other contracts, 2002–2006

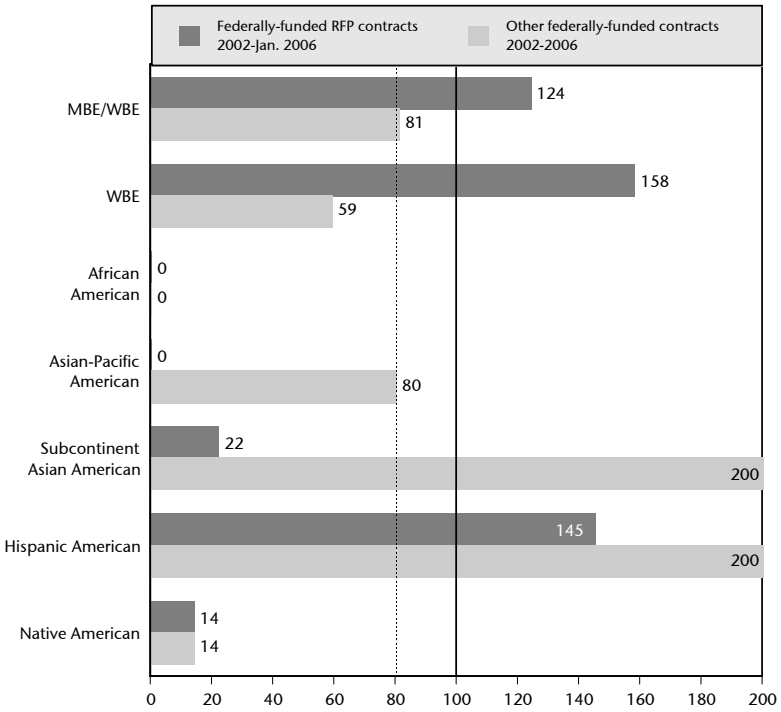
Note:

For more detailed information, see Figures E-70 and E-77 in Appendix E.

209 subcontractors for RFPs 2002-Dec. 2006 and 623 subcontracts for other contracts.

Source:

BBC Research and Consulting.



Conclusions for Engineering Subconsulting

BBC provides the following conclusions from review of information on engineering subconsulting.

1. Several interviewees were concerned about limited opportunities for MBE/WBEs as subconsultants on ITD engineering-related contracts after ITD discontinued setting DBE contract goals. BBC concluded from analysis from subconsultant use on state-funded engineering work and federally-funded term agreements that MBE/WBE utilization is relatively low for projects without DBE contract goals. Because ITD included information on anticipated levels of DBE participation on RFPs after January 2007, BBC was unable to assess the impact of this initiative on MBE/WBE utilization (BBC's analysis of ITD utilization extends through December 2006).

2. The past DBE goals program and ITD's technical assistance efforts have assisted minority- and women-owned firms in breaking into subconsulting relationships with larger engineering firms (based on the study team's interviews with business owners.

3. Many businesses reported that it was difficult to identify potential subconsulting opportunities on ITD engineering work, especially for non-RFP work.

4. Slow payment was identified as an issue.

ITD should consider the following program elements related to engineering subconsulting:

- Continue strong technical assistance efforts for minority- and women-owned firms;
- Develop systems to better identify and communicate ITD engineering opportunities in advance;
- Automatically inform subconsultants when prime consultants have been paid;
- Require prime consultants competing for certain term agreement categories to include subconsultants as part of a team submission (and encouraging DBE participation among subconsultants);
- Periodically hold mandatory pre-proposal conferences where subconsultants can introduce themselves to prime consultants;
- On certain RFPs, set minimum percentages of work that prime consultants must subcontract out and encourage use of small businesses on theses subcontracts; and
- Monitor individual prime's use of minority- and women-owned subconsultants on ITD work and further investigate certain prime consultants when warranted.

These conclusions are influenced by the results from BBC's analysis of MBE and WBE utilization as prime consultants on ITD engineering-related contracts (Section VIII). ITD's primary focus in encouraging MBE/WBE participation in engineering contracts should be as prime consultants not as subconsultants where work volume is quite limited.

SECTION VIII.
Engineering Prime Contracts

Unlike construction prime contracts, ITD and other public and private sector agencies typically select prime consultants for engineering contracts based on qualifications instead of just price. This presents a different set of potential barriers to MBE/WBE and small business participation as prime consultants on engineering and related work.

Qualitative Information on Prime Contracting in the Transportation Engineering Industry

BBC analyzed industry conditions and opportunities for transportation engineering-related work as prime consultants on ITD projects.

Public sector versus private sector work. Some engineering firms interviewed in this study indicated success obtaining work with ITD, other public sector entities and private sector clients. This includes MBE/WBEs and majority-owned firms.

Recently, the volume of engineering-related work has declined at ITD. As a result, firms are competing for a "shrinking pie" of ITD work.

Avenues to receive ITD transportation engineering-related prime contract work. ITD typically procures engineering services through a multi-step, qualifications-based procurement processes. Important parts of this system include:

- Licensing;
- Learning of the ITD opportunities;
- Pre-qualification for on-call work;
- Selection for a task order; and
- Qualifications-based selections for larger or unusual engineering-related contracts.

The study team's review of ITD's selection processes, and interviews and surveys with businesses owners and trade associations identified a number of barriers to obtaining work as a prime consultant.

Licensing. Firms conducting transportation engineering services for ITD must have the appropriate licenses.

Information on engineering work. As discussed in Section VII, ITD provides information on upcoming RFPs, and advertises in general how to get on the term agreement list. There is less information about upcoming engineering work than for construction contracts. Some firms recommended that ITD provide better information about upcoming engineering work (specific comments noted in Section VII).

Pre-qualification/term agreements. ITD issues term agreements for engineering-related work for firms pre-qualified for such work. Term agreements are for two years up to $750,000. ITD selects consultants for each area of service based on an RFQ process. ITD considers factors such as quality control, personnel, resources and understanding of requirements. Up until 2006, ITD would solicit qualifications statements once every two years. Beginning in 2006, consultants can submit qualifications at any point in the year.

Once a firm has a term agreement, ITD districts and local agencies can choose it for engineering work without further competition. ITD and the firm will negotiate a scope of work, man-day estimates, professional fees and total budget. Lists of pre-qualified consulting engineers are circulated through ITD and local agencies. Pre-qualification in no way ranks these firms for ITD use.

Task orders can be for work up to $250,000. There is a $750,000 limit on total work for a firm under a term agreement (local agency work does not count against this limit). Firms can exceed $750,000 in total work tasks with Board approval. (The $750,000 figure is Board policy. Exceeding the $750,000 limit has happened for only three or four firms.) Additional information on ITD's process for selecting firms for term agreements is provided at the end of this section.

Some consultants gave feedback on the term agreement process:

- One WBE firm reported that it is "not very difficult" to get on the term agreement list. She contrasted ITD's process with the Idaho Department of Public Works, which she says is more difficult. However, she said that she has received more work off the DPW list because the number of providers is smaller than the ITD list.
- Another WBE firm stated that it is difficult to get on the list. She reported a "catch-22 situation" where you cannot get on the list if you do not have the experience, but you cannot get the experience if you are not on the list.
- One firm reported that it was important to rank staff experience rather than firm experience. She indicated that larger engineering firms still list project qualifications even though she employs the staff who performed that work.
- A WBE firm suggested that ITD increase the $250,000 monetary cap on the use of task orders so that it could do more work with firms from the term agreement list.
- An MBE consulting firm reported that the ITD process is fair, but that he had difficulty being approved for the list when he first started his business.
- One minority-owned firm indicated that the firm had a term agreement but had not received any work. This firm reported the process as "a lot of paperwork to submit … questions, qualifications and references."
- Several majority-owned firms interviewed stated that it was not difficult to get on the ITD list. One firm reported cited its "good working relationship" with ITD as a reason it was easy for the firm to be pre-qualified.
- A WBE engineering firm noted that being on the list just opens the door to opportunities rather than guarantee them. "I have to work relationships with heads of various departments. You have to do your homework."

Several MBE/WBEs stated that it would help if smaller projects could be reserved for small businesses (or DBEs). "If they would at least give you even small projects that were just testing projects, say 'okay, you're starting out, let's see what you can do.'" One interviewee suggested carving out certain disciplines from a larger contract so that the work could be performed by small, local firms.

Qualifications-based selection for larger or unusual engineering contracts. Some engineering work is either too large to be handled through the term agreement process or is outside the disciplines encompassed by existing term agreements. ITD issues professional agreements for these projects.

Professional agreements are awarded through a qualifications-based Request for Proposals (RFP) process that is similar to the term agreement process. The major differences for selecting consultants for professional agreements is that ITD will evaluate the entire consulting team, including subconsultants, and that firms awarded a professional agreement can be reasonably assured of conducting the work (the term agreement process does not guarantee any work). As with term agreements, ITD does not consider price when evaluating proposals for professional agreements.

Presence of "good old boy network" and other barriers. Several engineering-related firms reported that they had seen the good old boy network at work in ITD.

- One MBE stated that the good old boy network is cultural and includes people who have been in Idaho for a very long time.

- A representative of a minority trade association indicated that ITD project selection committees need to be diversified. According to this interviewee, the selection committee is all "the good old boy." "They're going to use their friends and the people they know …."

Other interviewees saw potential favoritism at ITD, but that it could not be attributed to a good old boy network.

- A WBE stated that there is a good old boy network in the industry but not with ITD. She did add, "that is human nature to go where you are comfortable."

- One majority-owned firm said that there were a few times that other firms had beaten them out due to personal connections with ITD staff. "They're nice people, we work with them, but they have favorites." Nevertheless, this interviewee did not attribute this to a good old boy network in the Idaho transportation industry.

A representative of an MBE consulting firm stated that when he worked for ITD he heard certain ITD employees make ethnic comments and jokes and use negative terms to refer to certain groups. However, he does not believe this affected DBE firms' ability to obtain work. He has not heard such comments in the last ten years.

An MBE engineering firm stated that some bids were targeted to certain firms. "You can tell if something is targeted for somebody." However, she was not sure that she had seen this on an ITD contract.

A WBE engineering firm reported that women and minorities have to "scrap" and be more aggressive because the industry favors large, national firms. She stated "it does not play well for small DBEs." She has had difficulty entering the Idaho transportation industry.

ITD reimbursement and payment. One majority-owned firm reported that ITD does not consider cost in the competition for work, but then will approve or reject hourly rates submitted by the consultant. He is discouraged from doing work for ITD because the Department is "not doing their homework" in keeping up with market rates for his services.

A minority-owned firm reported that he likes working with the people at ITD but that "we get hammered a lot more than the big guys do" when negotiating projects. It's like we are so small they can beat us up more …."

Location. One MBE consultant who was based outside of Boise reported ITD favoritism towards Boise-based firms.

Prompt payment. Some consultants reported slow payment in the public sector.

MBE/WBE Utilization as Prime Consultants

BBC examined utilization of minority- and women-owned firms as prime consultants to ITD engineering and related projects.

Federally-funded and state-funded prime contracts. Including individual task orders issued off of term agreements, engineering-related prime contracts accounted for 961 federally-funded contracts and 160 state-funded contracts from 2002 through 2006. MBE/WBEs received about 3 percent of the prime contract dollars for both federally- and state-funded contracts. Certified DBEs received most of the dollars going to minority- and women-owned firms. Figure VIII-1 presents these results.

Figure VIII-1.
MBE/WBE share of prime contract dollars for transportation engineering contracts, federal vs. state funding, 2002-2006

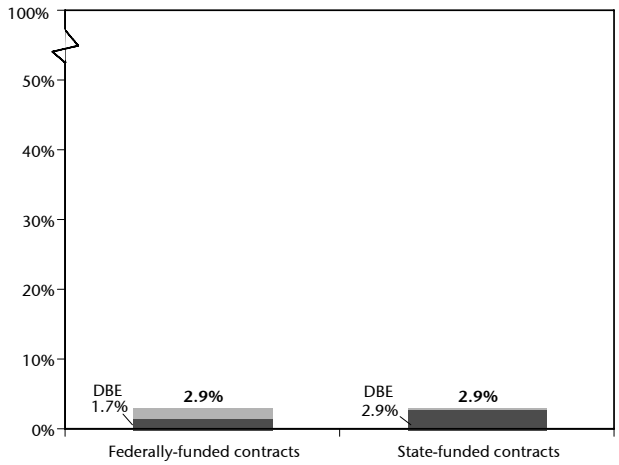
Note:

For more detail and for results by MBE/WBE group, see Figures E-59 and E-101 in Appendix E.

961 federally-funded and 160 state-funded contracts, including task orders off of term agreements.

Source:

BBC Research and Consulting from data on ITD contracts.



Utilization of firms by race and gender group. BBC also explored the share of prime contract dollars going to each MBE/WBE group for federally- and state-funded engineering-related contracts. Figure VIII-2 shows that firms owned by white women, Hispanic Americans and Native Americans accounted for nearly all of the MBE/WBE utilization as prime consultants on ITD engineering contracts.

Figure VIII-2. DBE and MBE/WBE share of federally- and state-funded prime contract dollars for transportation engineering contracts, by race/ethnicity/ gender, 2002-2006

Note:

Numbers rounded to nearest tenth of 1 percent.

For more detail, see Figures E-59 and E-101 in Appendix E.

961 federally-funded and 160 state-funded prime contracts, including task orders off of term agreements.

Source:

BBC Research and Consulting from data on ITD contracts.

	Federally-funded contracts	State-funded contracts
MBE/WBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.1	0.0
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.6	0.6
Native American-owned	0.2	1.0
Total MBE	**0.9%**	**1.5%**
WBE (white women-owned)	2.0	1.4
Total MBE/WBE	**2.9%**	**2.9%**
DBEs		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.5	0.6
Native American-owned	0.0	1.0
Total MBE	**0.5%**	**1.5%**
WBE (white women-owned)	1.2	1.3
White male-owned DBE	0.0	0.0
Total DBE	**1.7%**	**2.9%**

Disparity Analysis

The study team compared percentage utilization with availability for engineering prime contracts and calculated disparity indexes for each MBE/WBE group. Across the board, MBE/WBEs received only a small portion of the prime contracting dollars expected given their availability for this work.

Federally-funded and state-funded prime contracts. BBC identified large disparities in the utilization of MBE/WBEs as prime consultants for both federally- and state-funded engineering contracts. There were disparities between the utilization and availability for white women-owned firms and for each minority group.

Figure VIII-3.
Disparity indices for MBE/WBE utilization on federally- and state-funded transportation engineering prime contracts, 2002-2006

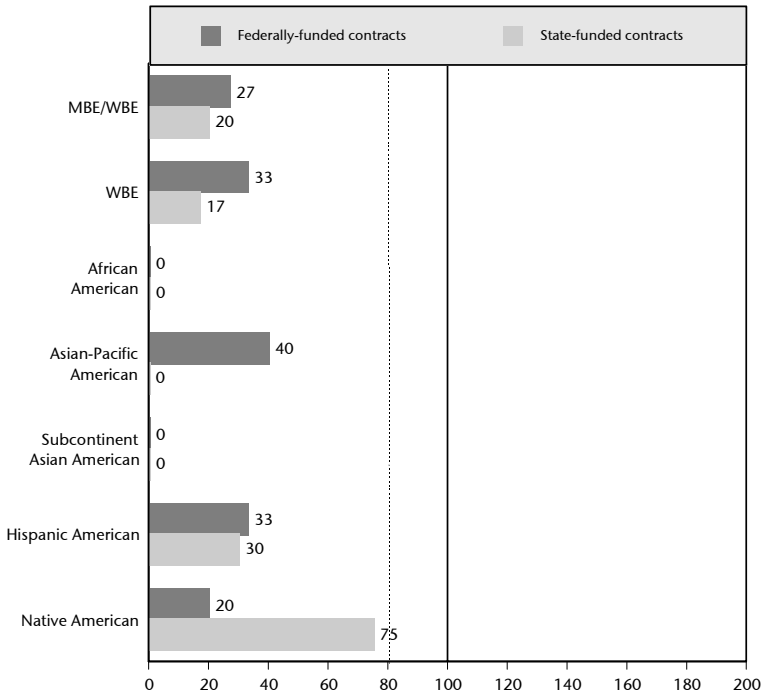
Note:

For more detailed information, see Figure E-59 and Figure E-101 in Appendix E.

961 federally-funded and 160 state-funded prime contracts, including task orders off term agreements.

Source:

BBC Research and Consulting.



BBC separately examined prime consultant utilization and availability for federally-funded contracts awarded through an RFP process for 2002 through January 2006, and other federally-funded prime contracts (typically task orders awarded off of term agreements).

BBC identified substantial disparities under both methods of contract awards. There were disparities for each MBE/WBE group except for Asian-Pacific American-owned firms for contracts awarded through RFPs. Disparities were somewhat more severe for prime contracts awarded through RFPs (the Asian-Pacific American-owned firm received one such contract out of the 60 examined for just 0.3 percent of the total dollars). MBE/WBE utilization for other federally-funded contracts was 4.7 percent. Figures E-68 and E-74 in Appendix E provide these results.

Results for small engineering prime contracts. BBC conducted separate disparity analyses of engineering contracts of $100,000 and below to determine if disparities persisted for these smaller contracts. As shown in Figure VIII-4, MBE/WBE utilization on small federally-funded engineering contracts was about 9 percent of prime contract dollars. MBE/WBE utilization on small state-funded contracts was 5.5 percent of prime contract dollars. MBE/WBEs obtain a larger share of prime contract dollars on small contracts than for all contracts (3 percent MBE/WBE utilization).

Figure VIII-4.
MBE/WBE share of prime contract dollars for transportation engineering contracts under $100,000, federal vs. state funding, 2002–2006

Note:

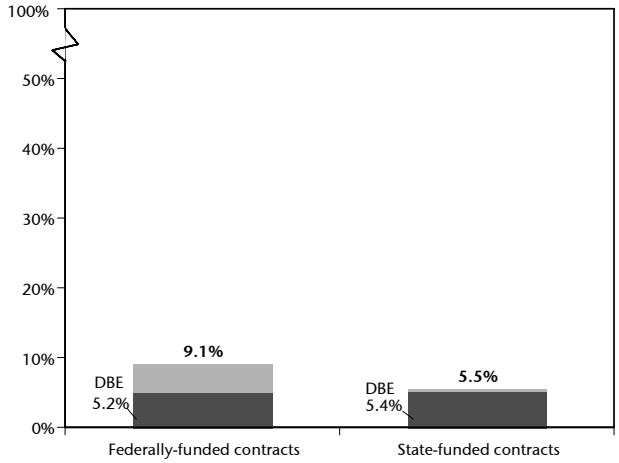
For contracts under $100,000, utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detail and for results by MBE/WBE group, see Figures E-146 E-149 Appendix E.

690 federally-funded and 141 state-funded prime contracts, including task orders off of term agreements.

Source:

BBC Research and Consulting from data on ITD contracts.



Even though MBE/WBE utilization was higher for this work, BBC identified substantial disparities between MBE/WBE utilization and availability for small engineering prime contracts. Figure VIII-5 shows disparities for each group for each set of small engineering contracts except for Hispanic American-owned firms for federally-funded contracts and Native American-owned firms for state-funded contracts.

Figure VIII-5.
Disparity indices for MBE/WBE utilization as prime contractors on federally- and state-funded transportation engineering contracts under $100,000, 2002–2006

Note:

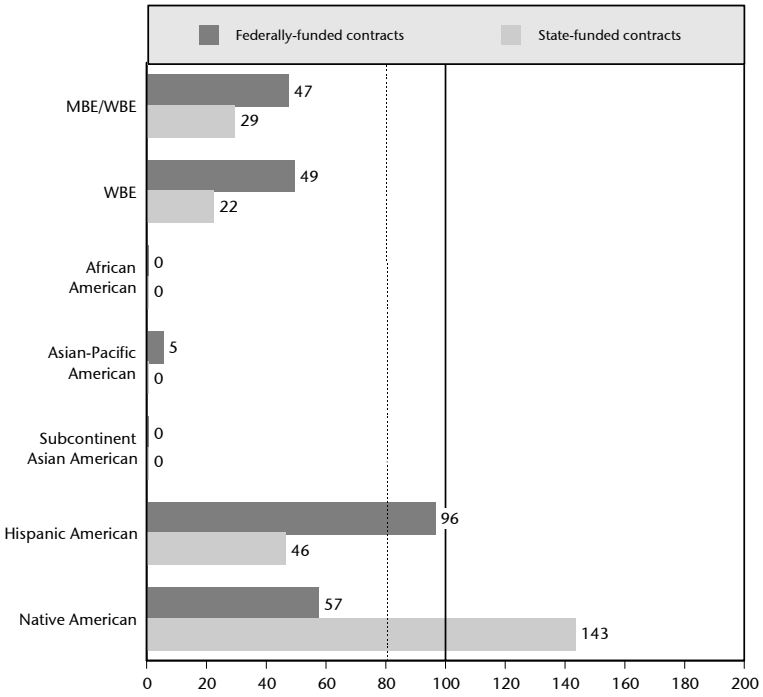
For contracts under $100,000, utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detailed information, see Figure E-146 and Figure E-149 in Appendix E.

690 federally-funded and 141 state-funded prime contracts, including task orders off of term agreements.

Source:

BBC Research and Consulting.



Analysis of ITD Proposal Processes

To explore why disparities may be occurring, the BBC study team examined ITD's term agreement and RFP processes. The objective of this analysis was to determine whether or not MBE/WBE firms appear to be advantaged or disadvantaged when competing as prime consultants.

Term agreement proposal process. ITD allows firms to submit proposals for about 60 term agreement categories. Prior to 2007, this occurred once every two years. In 2007, ITD gave roughly one-half of the firms on the 2005-2007 term agreement list a one-year extension. The other firms were required to submit proposals in 2007. ITD further changed this process to allow firms to submit proposals on a "rolling basis." The latest change resulted in the majority of firms being rated in a large batch, with several firms being rated independently after the first group had been rated.

Evaluation process. ITD staff evaluate proposals for each category, with one to four reviewers per category. Each proposal is rated on a 0-5 scale for four to five criteria. Typical criteria include quality control, personnel, resources and understanding of requirements. Price is not a factor in these evaluations. Comments explaining a chosen rating are recorded on evaluation forms where necessary.

There are no uniform criteria for the 0-5 rating system. While some evaluators have indicated a particular "cut off" point for acceptance of firms, there is no consistency in this number and few categories identify such a criteria.

Majority-owned firms and MBE/WBE firms go through the same evaluation process. DBE firms are not identified as such on the score sheet, but this is noted on the cover sheet required on each proposal. There are no points awarded for DBE status.

Results of the evaluation process. The BBC study team accessed all RFPs and evaluation forms for the term agreement processes in 2005 and 2007 (the Consulting Agreement Unit provided files). The study team reviewed every evaluation form for every firm proposing to be approved on the term agreement list in each of the 60 categories. The BBC study team noted the following information for each of 60 evaluated service categories of proposals for both 2005 and 2007:

- Number of proposals received;
- Number of proposals that were evaluated outside of the original batch (this is acceptable under the new process, but was tracked to determine whether this practice appeared to be advantageous or disadvantageous to proposing firms);
- Range of scores given the proposing firms;
- Qualifying score;
- Number of firms approved for the term agreement;
- Number of firms rejected for the term agreement;
- Number of DBE firms proposing;
- Number of DBE firms approved for the term agreement;
- Specific details about the DBE firm scores and which were approved or rejected; and
- Indication as to whether the study team's review of the evaluation of proposals raised questions about the consistency of the ratings, preference or bias against DBE firms, or preference or bias against firms proposing "out of batch."

In 2005, 170 firms proposed for at least one category of the term agreement list; 19 of these were certified DBE firms (11 percent of the total). DBEs represented 8 percent of the category proposals and 7 percent of the total awards within a category. The difference between the 7 percent DBE share of awards and 11 percent DBE share of firms participating is primarily due to DBEs proposing on fewer categories.

In the 2007 process, 82 firms proposed for at least one category of the term agreement list; 11 of these firms (13 percent) were certified DBEs. DBEs were 7 percent of category proposals and accounted for 6 percent of the category approvals.

Assessment of the 2005 and 2007 proposal reviews. DBE firms rated among the highest and lowest of all reviewed firms. There was no clear pattern of a DBE firm being approved without merit for a category, or denied without merit for a category. In fact, only two DBE firms were rejected for all categories for which they proposed. A review of their proposals substantiated these rejections.

In some cases where DBE firms were rejected for a category, it appeared that they did not possess the required experience or skills. These may be instances where DBE firms are trying to branch out but are not yet sufficiently qualified. This circumstance was not limited to DBE firms, however.

In other cases where DBE firms were rejected for a category, it appeared that they might not have understood the requirements of a category and/or did a poor job of presenting their proposal. This circumstance was not limited to DBE firms, however.

None of the written comments from the reviewers toward any of the proposing firms raises concerns of bias for or against DBEs. A few instances of inconsistent ratings were noted, but very few firms appeared to be advantaged or disadvantaged by this. ITD may wish to consider additional clarification for reviewers of criteria for scoring and minimum scores for each category to increase objectivity.

It appears that having prior experience with ITD may give a firm an advantage in scoring, but this advantage is shared between DBE and non-DBE firms. Occasionally reviewers agreed to give lower scoring DBEs the benefit of the doubt (i.e., when past experience was not strong but resources, personnel and understanding of the requirements were strong) and approve them on the list. However, this practice was not limited to DBEs and appears to have been consistently applied.

The practice of reviewing some proposals within a large batch and then reviewing other proposals individually as they are received does not seem to be creating any advantage for or against proposers. It appears that scoring for firms out of the batch period is not completely to scale with the scoring during the batch review, but there does not appear to be a pattern of firms being routinely advantaged or disadvantaged by this occurrence. ITD may wish to consider how to ensure that reviewers apply consistent scoring in the future when firms are rated individually instead of as a batch.

Professional agreements. The study team also analyzed ITD's professional agreement proposal and approval process. Professional agreements are typically awarded through Requests for Proposals (RFPs). ITD posts Requests for Technical Proposals, Statements of Interests, and information regarding specific scopes of work on its website. The required format for the responses is clearly identified. The documents are easy to understand.

Evaluation process. Approximately four to five ITD staff evaluates each submitted proposal. Each proposal is rated on a 0-5 scale for several criteria, including proposal format, project understanding, project manager, key personnel, location of work and communications, and quality control. Price is not a factor in these evaluations.

Assessment of the proposal reviews. The study team was able to access proposal files for 28 RFPs from 2002 through mid-2007. Between 2002 and 2005, bids were received from only one DBE firm (for two projects with one winning proposal). Between June 2006 and May 2007 three DBE firms bid as primes on a total of six out of 19 project solicitations. Each of the three firms was awarded one of the projects for which they bid as the prime consultant.

It appears that having prior experience with ITD may give a firm an advantage in scoring, but this advantage is shared between DBE and non-DBE firms. None of the written comments from the reviewers toward any of the proposing firms raises concerns of bias in any direction.

Conclusions

BBC offers the following conclusions concerning ITD engineering-related prime contracts.

1. Only 3 percent of prime consultant dollars on ITD engineering-related contracts goes to minority- and women-owned firms, substantially below what would be expected based on availability of MBEs and WBEs to perform this work. BBC identified large disparities for WBEs and each MBE group. The share of prime dollars going to MBE/WBEs is greater for small engineering-related contracts, but disparities still exist.

2. The process of selecting firms to conduct engineering-related work is subjective, however, ITD evaluations do not appear to unfairly disadvantage minority- and women-owned firms. A relatively large proportion of firms seeking term agreements were DBEs (11 and 13 percent for 2005 and 2007, respectively). Minority- and women-owned firms compete for fewer categories of ITD work under the term agreements. DBE firms competing for a category are about as likely to be successful as non-DBEs. Firms approved for term agreements still must market themselves within ITD in order to be chosen for task orders. This second step to obtaining work could be a barrier for firms without much experience with ITD. Minority- and women-owned firms are less likely to compete for contracts awarded through Requests for Proposals.

3. Several firms reported that it was difficult to learn of upcoming consulting opportunities at ITD.

4. A number of smaller firms indicated that it was difficult to compete for ITD work against large, established engineering firms that may operate nationally or internationally. This may be a growing concern as larger engineering firms may be competing with smaller firms for a declining volume of ITD engineering contracts.

5. ITD's past race- and gender-conscious programs related to engineering contractors primarily focused on subcontracting opportunities for DBEs. In the future, ITD may need to devote more efforts to directly developing MBE/WBE prime consultants.

BBC does not recommend reintroduction of the former DBE contract goals program as a remedy for the disparities identified for prime consultants on ITD projects. In addition to continuing current technical assistance, ITD should consider the following initiatives:

- ITD could provide intensive technical assistance to encourage proposals for term agreements from minority- and women-owned firms. ITD could also work with MBE/WBE firms to improve the quality of their proposals. ITD would review past unsuccessful and successful proposal submissions with MBE/WBEs as part of this training.

- In the scoring of firms for term agreements and RFPs, ITD could award points for firms that have not received prime work in a category but have a proven track record as a subconsultant.

- As discussed in Section VII, ITD could work to provide more advance information on upcoming engineering-related projects. In addition, ITD could assist MBE/WBEs that have won term agreements in marketing themselves across ITD.

- As presented in Section VII, ITD could consider soliciting proposals from teams of firms for particular categories of work awarded under term agreements so that smaller firms could leverage their capabilities through proposed team members.

- Mentor-protégé programs may also be effective for engineering prime consultants.

SECTION IX.
Summary

The Idaho Transportation Department (ITD) must implement the Federal Disadvantaged Business Enterprise (DBE) Program in order to receive U.S. Department of Transportation (USDOT) funds. Recent legal decisions and guidance from USDOT have led ITD to reexamine how it implements the Program. This summary discusses:

- Data concerning the overall annual goal for DBE participation in federally-funded contracts;
- Information on how much of the annual goal can be achieved through neutral means; and
- Specific measures ITD should consider to implement the program.

Overall Annual DBE Goal

ITD must develop an overall annual goal for DBE participation whether or not it implements race- or gender-conscious programs, or just race- and gender-neutral measures. The Federal DBE Program calls for a "base figure analysis" and consideration of any "step 2" adjustments in deriving an overall annual goal for DBE participation in federally-funded contracts.

Base figure analysis. After considering type, contract role, location and size of work involved in federally-funded projects and the relative availability of firms to perform that work, BBC determined that 15.3 percent of dollars on federally-funded contracts would go to minority- and women-owned firms (MBE/WBEs) if available MBE/WBEs received the same amount of work as similarly-situated majority-owned firms. Methods for determining relative availability of minority- and women-owned firms for ITD work are described in Section II.

Some of the largest MBE/WBEs would not meet the federal eligibility requirements for DBE certification. As discussed in Section II, these firms account for nearly 4 percentage points of the overall 15.3 percent benchmark for MBE/WBE utilization on ITD contracts. After removing these firms from the set of potentially DBE-certified firms, the revised based figure analysis indicates a benchmark of 10.5 percent participation of firms potentially certified as DBEs.

Step 2 adjustments. ITD could consider adjustments in the base figure through a "step 2" process. BBC reviewed relevant types of information for a step 2 adjustment that are outlined in the Federal DBE Program. BBC's review of the information suggests that any factors indicating downward adjustments in the base figure would be offset by factors indicating upward adjustments in the base figure. ITD may consider adopting 10.5 percent as its overall annual goal for DBE participation in federally-funded contracts (without any step 2 adjustments).

Preliminary Conclusions and Recommendations

The Federal DBE Program requires ITD to assess the percentage of its overall annual DBE goal that can be achieved through neutral means, and if necessary, the percentage to be achieved through race- and gender-conscious measures.

Evidence of disparities when ITD implements an all-neutral program. To help ITD make decisions on the extent to which it can implement the DBE Program solely through neutral means, BBC examined utilization of minority- and women-owned firms on past ITD contracts with and without DBE contract goals. The "without-goals" contracts include all state-funded contracts, as ITD has not implemented any race- or gender-conscious measures for non-federally-funded projects. They also include federally-funded contracts awarded after January 2006, when ITD discontinued setting DBE contract goals on these contracts.

Federally-funded contracts. From 2002 through 2006, minority- and women-owned firms (including firms not DBE certified) were awarded 13.1 percent of prime contract and subcontract dollars for federally-funded transportation construction and engineering contracts. This level of MBE/WBE utilization fell slightly below what would be expected based on overall analysis of MBE/WBEs available to perform that work (15.3 percent). However, about 12 percent of federally-funded contract dollars went to women-owned firms and 1 percent went to minority-owned firms. There were substantial disparities between utilization and availability for minority-owned firms (for each race/ethnic group) even for the time period with DBE contract goals in place.

When BBC examined only those federally-funded contracts after January 2006, MBE/WBE utilization was only 10.8 percent of contract dollars. This was substantially below the utilization expected based on MBE/WBE availability for these contracts and subcontracts.

State-funded contracts. MBE/WBE utilization on state-funded contracts from 2002 through 2006 was 14.6 percent, less than what would be expected based on MBE/WBE availability for these contracts (about 20 percent).

Overall results for subcontracting versus prime contracts. In general, BBC found that minority- and women-owned firms received a relatively large share of subcontract dollars on construction contracts whether or not DBE goals were in place. However, most of the subcontract volume went to white women-owned firms. There were disparities between actual utilization of minority-owned firms and what would be expected given MBE availability for these subcontracts.

For engineering-related subcontracts, utilization of minority- and women-owned firms was substantially below availability for these subcontracts.

BBC identified the largest disparities for construction and engineering prime contracts, even when just examining smaller contracts. The past DBE contract goals program focused on opening opportunities for subcontractors, not prime contractors.

Qualitative information. The study team collected and reviewed qualitative information from in-depth personal interviews conducted with minority-, women- and majority-owned firms across the state, from interviews with trade association representatives, from open-ended questions included in a large survey of local firms, and from public hearing testimony and written comments received after the preliminary disparity study report was published. This information helped to understand the disparities discussed above. There were some instances in which minority and female business owners reported that they were treated differently because of their race or gender. Many minority and female business owners identified disadvantages that were not directly related to race or gender of the firm owner.

BBC examined qualitative and quantitative information specific to construction subcontracts and prime contracts, and for engineering subcontracts and prime contracts. Specific research findings and possible remedies for ITD to consider are discussed below.

Conclusions and recommendations specific to construction subcontracting. Based on examination of subcontracting opportunities on ITD construction contracts, and review of qualitative information, BBC offers the following conclusions.

1. Several MBE/WBE subcontractors interviewed by the study team indicated a fear that they would not be solicited for subcontracting opportunities now that the old DBE contract goals program had been discontinued. A few subcontractors were concerned that primes would now self-perform work that they had previously subcontracted. Some of the subcontractors expressing these fears had not seen any decline in opportunities, however. The share of construction subcontracting dollars going to minority- and women-owned firms was greater on ITD projects without DBE goals than projects with goals. MBE/WBE utilization as a share of federally-funded subcontract dollars increased for February through December 2006. There was no evidence of disparities for white women-owned construction subcontractors without the DBE contract goals.
2. Utilization of minority-owned firms is relatively low regardless of whether or not DBE contract goals are applied. BBC identified disparities between utilization and availability across MBE groups.
3. Interviewees including white men indicated that a good old boy network existed in the Idaho transportation contracting industry. This may affect subcontracting opportunities for firms that are not part of this network, including some minority- and women-owned firms.
4. ITD has implemented a strong array of measures to encourage development of minority- and women-owned construction subcontractors and encourage participation in ITD projects. These efforts include publishing recommended levels of participation for DBEs for certain federally-funded construction contracts. BBC's review of ITD's contracting processes found that information on subcontracting opportunities was readily available to MBE/WBEs and majority-owned firms. There may be opportunities to further address barriers to MBE/WBE development and to further address potential bid shopping and late payments for subcontractors on ITD jobs.

In addition to continuing and strengthening its technical assistance efforts, ITD should consider the following recommendations for future remedies.

a. It does not appear that reintroduction of the former DBE contract goals program is needed at this time. ITD may decide to continue to communicate anticipated levels of participation for ITD construction contracts. Because ITD introduced this practice in 2007, the utilization data examined by BBC (through December 2006) are not useful in determining any effect of this initiative.

b. ITD should monitor both DBE and MBE/WBE utilization as subcontractors on both federally- and state-funded projects. This information is essential to gauge success of ITD's programs for subcontractors and whether or not reintroduction of DBE contract goals would be needed in the future.

c. ITD should track MBE/WBE utilization by specific prime contractors obtaining a large dollar volume of ITD construction contractors. If needed, ITD can further investigate whether there are particular barriers to use of minority- and women-owned firms for individual prime contractors. ITD has the authority to ensure that its prime contractors are not discriminating against potential subcontractors based on subcontractors' race, ethnicity or gender.

d. Mandatory pre-bid conferences for certain ITD contracts may provide a forum to introduce subcontractors to primes. (Perhaps hold a mandatory pre-bid conference in each region of the state at least once per year, and encourage subcontractors to attend.)

e. ITD should automatically notify subcontractors of ITD payment of prime contractors.

f. If ITD observes declines in subcontracting opportunities, it could consider setting minimum subcontracting requirements on specific projects.

Preliminary conclusions and recommendations for construction prime contracting. Firms seeking to compete for ITD construction prime contracts face a different set of challenges than businesses that focus on subcontracting. BBC prepared the following preliminary conclusions and recommendations. (Note that the numbers and letters assigned to preliminary conclusions and possible remedies continue in sequence throughout Section IX.)

5. Overall, MBE/WBE utilization as prime contractors on ITD federally-funded construction projects is somewhat below what would be expected based on availability for these contracts. For state-funded contracts, there is a substantial disparity between utilization and availability of MBE/WBEs as prime contractors.

6. ITD widely informs potential prime contractors of opportunities to bid and has a relatively straightforward bidding process. Awards typically go to the lowest bidder.

7. Because of the time needed to build prime contractor capabilities, capital, bonding capacity and other resources, it may take longer to build strong MBE/WBE prime contractors than strong subcontractors. Race or gender discrimination that may have

occurred many decades ago could still affect the current availability and bid capacity of minority- and women-owned firms.

8. ITD has implemented efforts to encourage development of minority- and women-owned construction firms. However, ITD's past implementation of the Federal DBE Program has concentrated on participation of DBEs as subcontractors, only some of which have emerged as prime contractors.

In the future, ITD may need to devote more efforts to directly developing MBE/WBE prime contractors. ITD should consider the following potential remedies.

g. Even though BBC's analysis found that ITD already has many small construction contracts and that disparities in MBE/WBE utilization remain on small contracts, ITD should attempt to further unbundle its large contracts to encourage bidding by smaller MBE/WBEs.

h. ITD should continue and intensify its intensive technical assistance that introduces firms to prime contracting roles on ITD projects and builds strong MBE/WBE prime contractors capable of completing larger projects. Specialized assistance to reservation-based Native American-owned firms may be needed.

i. ITD should consider identifying a limited number of small construction projects as joint venture "demonstration projects" for larger contractors teaming with small, emerging prime contractors. Bidding would be limited to joint venture partners.

j. ITD can also encourage additional mentor-protégé efforts by Associated General Contractors, other associations and individual prime contractors.

Strong prime contractor development programs will be needed for many years in order to address the disparities identified in MBE/WBE participation as construction prime contractors. ITD should closely monitor MBE/WBE bidding and contract awards to gauge the success of these efforts, and assess whether race- or gender-based programs are needed in the future.

Preliminary conclusions and recommendations for engineering subconsulting. Based on information on engineering subcontracts, BBC provides the following preliminary conclusions and recommendations.

9. As with construction subcontractors, several MBE/WBE engineering subconsultants interviewed by the study team were concerned about limited opportunities for MBE/WBE subconsultants on ITD engineering-related contracts after ITD discontinued setting DBE contract goals. MBE/WBE utilization is relatively low for projects without DBE contract goals. Because ITD began including information on anticipated levels of DBE participation on RFPs after January 2007, BBC was unable to assess the impact of this initiative on MBE/WBE utilization. (BBC's analysis of ITD utilization extends through December 2006.)

10. The past DBE goals program and ITD's technical assistance efforts have assisted minority- and women-owned firms in breaking into subconsulting relationships with larger engineering firms (based on the study team's interviews with business owners.

11. Many businesses reported that it was difficult to identify potential subconsulting opportunities on ITD engineering work, especially for non-RFP work. Slow payment was also identified as an issue.

ITD should consider the following program elements related to engineering subconsulting (and as with other areas, strong technical assistance efforts should also continue).

k. Develop systems to better identify and communicate ITD engineering opportunities in advance;

l. Require prime consultants competing for certain term agreement categories to include subconsultants as part of a team submission (and encouraging DBE participation among subconsultants);

m. Periodically hold mandatory pre-proposal conferences for RFPs where subconsultants can introduce themselves to prime consultants;

n. On certain RFPs, set minimum percentages of work that prime consultants must subcontract out and encourage use of small businesses on theses subcontracts; and

o. Monitor individual prime's use of minority- and women-owned subconsultants on ITD work and further investigate certain prime consultants when warranted.

p. Automatically inform subconsultants when prime consultants have been paid;

These recommendations are influenced by the results from BBC's analysis of MBE/WBE utilization as prime consultants on ITD engineering-related contracts. Although subconsulting on ITD contracts can be an important stepping stone to working directly with ITD. ITD's primary focus in encouraging MBE/WBE participation in engineering contracts should be as prime consultants not as subconsultants, where work volume is quite limited. This is one reason why ITD may not want to reintroduce the DBE contract goals program at this time. ITD may wish to continue reporting anticipated levels of DBE participation in its RFPs for engineering-related contracts.

Preliminary conclusions and recommendations for engineering prime contracts. Based on the information reviewed to date, BBC offers the following preliminary conclusions and recommendations concerning ITD engineering-related prime contracts.

12. Only 3 percent of prime consultant dollars on ITD engineering-related contracts goes to minority- and women-owned firms, substantially below what would be expected based on availability of MBEs and WBEs to perform this work. BBC identified large disparities for WBEs and each MBE group. The share of prime dollars going to MBE/WBEs is greater for small engineering-related contracts, but disparities still exist.

13. The process of selecting firms to conduct engineering-related work is subjective, however, ITD evaluations do not appear to unfairly disadvantage minority- and women-owned firms. A relatively large proportion of firms competing for term agreements were DBEs (11 and 13 percent for 2005 and 2007, respectively). Minority- and women-owned firms compete for fewer categories of ITD work under the term agreements. DBE firms competing for a category are about as likely to be successful as non-DBEs. Firms approved for term agreements still must market themselves within ITD in order to be chosen for task orders. This second step to obtaining work could be a barrier for firms without much experience with ITD. Minority- and women-owned firms are less likely to compete for contracts awarded through Requests for Proposals.

14. Several firms reported that it was difficult to learn of upcoming consulting opportunities at ITD.

15. A number of smaller firms indicated that it was difficult to compete for ITD work against large, established engineering firms that may operate nationally or internationally. This may be a growing concern as larger engineering firms may be competing with smaller firms for a declining volume of ITD engineering contracts.

16. ITD's past race- and gender-conscious programs related to engineering contractors primarily focused on subcontracting opportunities for DBEs. In the future, ITD may need to devote more efforts to directly developing MBE/WBE prime consultants.

ITD should consider the following initiatives:

q. ITD could provide intensive technical assistance to encourage proposals for term agreement proposals from minority- and women-owned firms. ITD could also work with MBE/WBE firms to improve the quality of their proposals.

r. In the scoring of proposals for term agreements and RFPs, ITD could award points for firms that have not been successful in competing for a type of work (or term agreement category) in the past.

s. As presented under the preliminary recommendations specific to subconsulting on engineer-related contracts, ITD could consider pre-qualifying teams of firms for particular categories of work awarded under term agreements so that smaller firms could leverage their capabilities through proposed team members.

General outreach and technical assistance. As discussed above, ITD should continue and expand upon its current efforts to build capabilities of minority- and women-owned firms. BBC recommends multiple tiers of assistance depending upon the age, size, line of work and other business factors to make assistance most useful for firms in different stages of development. Specialized assistance to reservation-based Native American-owned firms may be needed.

Overall Comments

ITD will need strong programs to remove barriers to MBE and WBE participation as prime contractors and must continue its efforts to open subcontracting opportunities. The Department can build on its past success in developing innovative programs.

No recommendation to reintroduce DBE contract goals. Reintroduction of the DBE contract goals program is not recommended at this time. This should not imply an end to ITD's efforts to build a successful MBE/WBE contracting community. It does mean a new direction for ITD's implementation of the Federal DBE Program that will require time and resources to be successful.

Over-concentration of DBEs in certain fields. BBC examined the issue of over-concentration of DBEs in certain fields per 49 CFR Part 26.33. BBC identified highway striping as one possible area of over-concentration. BBC reaches this determination because all of the firms successfully interviewed within this specialization are MBE/WBEs. However, ITD's current technical assistance efforts and those described above may effectively respond to the provisions of 49 CFR Part 26.33. Because ITD has discontinued its use of DBE contract goals, ITD does not need to incorporate any special provisions into use of these goals to account for potential over-concentration of DBEs.

Setting a specific percentage of overall annual DBE goal for FHWA projects to be met through neutral means. The Federal DBE Program requires ITD to meet the maximum feasible portion of its overall annual goal by using race-neutral means of facilitating DBE participation. However, some targeted efforts toward DBEs may be needed. BBC recommends that ITD consider meeting all or nearly all of its overall annual DBE goal through neutral means.

FTA and FAA programs. There are very few FTA- and FAA-funded contracts administered by ITD. BBC could not perform the types of analyses presented here for FHWA-funded contracts. BBC could not make an independent assessment of the overall goal for DBE participation in FTA- and FAA-funded projects. Because of the very small number of contracts, BBC recommends that ITD adopt the overall goals for DBE participation that USDOT has set for the nation for FTA- and FAA-funded contracts, and continue to operate all-neutral programs for these contracts.

Final Report

December 14, 2007

A Study to Determine DBE Availability and Analyze Disparity in the Transportation Contracting Industry in Idaho

APPENDICES A - I

Final Report

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APPENDICES A - I

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APPENDIX A.
Definitions of Terms

This appendix provides explanations and definitions useful to understanding the Disparity Study. These definitions are only relevant in the context of the ITD Disparity Study report.

Anecdotal evidence. Includes personal accounts of incidents, including of discrimination, told from an individual's perspective.

Availability analysis. Examination of the relative number of DBEs or MBE/WBEs ready, willing and able to perform work related to transportation construction and engineering work for ITD or local agencies.

Business. A for-profit company, including all of its establishments (equivalent to "firm").

Business listing. A record in the Dun & Bradstreet database of businesses (or other database). A D&B record is just a "listing" until the study team determines it to actually be a business establishment with a working phone number.

Business establishment. A place of business with an address and working phone number. One firm can have many business establishments. (Same as "establishment.")

Contract. A legally binding relationship between the seller of goods or services and a buyer.

Contractor. The study team uses "contractor" to refer to firms performing construction contracts.

Controlled. Exercising management and executive authority for a company, per 49 CFR Section 26.71.

Disadvantaged Business Enterprise (DBE). A small business owned and controlled by one or more individuals who are both socially and economically disadvantaged according to the guidelines in the Federal DBE Program (49 CFR Part 26). Membership in certain race and ethnic groups identified under "minority-owned business enterprise" in this appendix may meet the presumption of socially and economically disadvantaged. Women are also presumed to be socially and economically disadvantaged. Examination of economic disadvantage also includes investigating the gross revenues and the firm owner's personal net worth (maximum of $750,000 exclusive of equity in a home and in the business). Some minority- and women-owned firms do not qualify as DBEs because of the gross revenue or the net worth requirements. A firm owned by a non-minority male can be certified as a DBE. Tribally-owned concerns can be certified as a DBE if the enterprise meets the requirements in 49 CFR Part 26.

DBE directory. The Idaho Unified Certification Program's electronic directory of firms certified as DBEs in Idaho. Also known as the DBE Vendor List.

Disparity. A difference or gap between an actual outcome and a reference point. For example, a difference between an outcome for one race/ethnic group and an outcome for non-Hispanic whites may constitute a disparity.

Disparity analysis. Comparisons of actual outcomes with what might be expected based on other data. Analysis of whether there is a "disparity" between DBE utilization and availability is one tool in examining whether there is evidence consistent with discrimination against DBEs.

Disparity index. Computed by dividing percentage utilization by percentage availability and then multiplying the result by 100. A disparity index of 100 indicates "parity."

Dun & Bradstreet. The leading firm in the United States and abroad that provides lists of business establishments and other business information (see www.dnb.com).

Employer firms. Firms with paid employees other than the business owner and family members.

Enterprise. An economic unit that could be a for-profit firm or establishment, not-for-profit organization or public sector organization.

Establishment. See "business establishment."

Federal DBE Program. Unless otherwise specified, "Federal DBE Program" refers to the Disadvantaged Business Enterprise program established by the U.S. Department of Transportation after enactment of the Transportation Equity Act for the 21st Century (TEA-21) as amended in 1999 and thereafter. The elements of the Program are set forth in 49 CFR Part 26.

Federal Highway Administration (FHWA). An agency of the USDOT that works with state and local governments to construct, preserve and improve the National Highway System, other roads eligible for federal aid, and certain roads on federal and tribal lands.

Firm. See "business."

Federally-funded contract. Any contract or project funded in whole or in part with FHWA financial assistance, including loans. As used in this study, it is synonymous with "federally-assisted contract."

Industry. A broad grouping of firms providing related goods or services.

Local agency. Any local government that solicits bids, qualifications, or proposals for transportation construction or engineering projects.

Majority-owned businesses. For-profit firms not owned and controlled by minorities or women (see definition of "minorities" below).

Minorities. Racial and ethnic groups identified in the federal guidelines in 49 CFR Part 26:

- Black Americans (or "African Americans" in this study), which includes persons having origins in any of the black racial groups of Africa;
- Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- Native Americans, which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, Hong Kong, and other countries and territories in the Pacific set forth in 49 CFR Section 26.5; and
- Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

Minority-owned business (MBE). A firm with at least 51 percent ownership and control by minorities. Minority groups are defined according to federal guidelines, as outlined above. For purposes of this study, a firm need not be certified to be counted as a minority-owned firm. Firms owned by minority women are counted as MBEs in this study (where that information is available).

NAICS code. North American Industry Classification System code that identifies primary line of business of a an enterprise. http://www.census.gov/epcd/www/naics.html.

Idaho Transportation Department (ITD). The Idaho Transportation Department (ITD) is the owner/operator of Idaho's federal and state highway system.

Non-DBEs. Firms not certified as DBEs.

Non-response bias. Occurs when the observed value to a survey question differs from what would be obtained if all individuals in a population, including non-respondents, answered the question.

Owned. Ownership of at least 51 percent of a company. A "minority-owned" firm is at least 51 percent owned by one or more minorities. (For DBE certification, additional guidelines are set forth in 49 CFR Section 26.69.)

Prime consultant. The professional services firm performing a contract for an end user such as ITD.

Prime contract. The contract between the seller and an end user such as ITD.

Prime contractor. The firm performing a contract for an end user such as ITD.

Race-and gender-conscious. Remedies that apply to individuals or firms that includes some races and ethnicities and not others, and women and not men. This term is equivalent to "race- and gender-based." A DBE contract goal is one example of a race- and gender-conscious remedy. Note that this term is more accurately "race-," "*ethnicity-*" and "gender-" conscious. For ease of communication, the study team has shortened this to "race- and gender-conscious" remedies.

Race- and gender-neutral. Remedies that apply to individuals or firms that are not classified based on race, ethnicity or gender. Note that this term is more accurately "race-," "*ethnicity-*" and "gender-" neutral. For ease of communication, the study team has shortened this to "race- and gender-neutral."

Race- and gender-neutral remedies may include assistance in overcoming bonding and financing obstacles, simplifying bidding procedures, providing technical assistance, establishing programs to assist start-up firms, and other methods open to all firms or any disadvantaged firm regardless of race or gender. (A broader list of examples can be found in 49 CFR Section 26.51(b).)

Relevant geographic market area. The geographic area that contains most establishments receiving ITD or local agency transportation construction and engineering-related work, based on dollars. It is also referred to as the "local marketplace."

Remedy. A program element designed to address barriers to full participation for a particular group.

SIC code. Standard Industrial Classification code, which describes the primary business of a firm (see SIC Manual at http://www.census.gov/epcd/www/sic.html). The federal government groups firms into industries down to 4-digit SIC codes. Dun and Bradstreet further classifies types of work to the 8-digit level.

Small business. In general, a firm with low revenues or employment size relative to other firms in the industry. "Small business" does not necessarily mean that the firm is certified as such.

Small Business Administration (SBA). The U.S. Small Business Administration, which is an independent agency of the United States government.

State-funded contract. Any contract or project funded in whole or in part with State of Idaho funds administered through ITD that does not include federal funds.

Statistically significant difference. A difference in which chance in the sampling process can be eliminated as a cause, at the 95 percent confidence level (meaning that chance in the sampling process could still explain the difference in no more than 5 out of 100 cases).

Subconsultant. A professional services firm performing a service for the prime consultant as part of a larger contract.

Subcontract. The contract between a prime contractor and another firm selling services to the prime contractor.

Subcontractor. A firm performing a service for a prime contractor as part of a larger construction or engineering project.

Supplier. A firm selling supplies to a firm as part of a larger project.

Transportation construction and engineering. Work involving construction, design or related services concerning transportation facilities or projects.

USDOT. U.S. Department of Transportation, which includes the Federal Highway Administration, the Federal Transit Administration and the Federal Aviation Administration.

Work field. A narrow grouping of firms providing related goods or services, sometimes referred to as "work specialty." Sometimes a work field is one 4- or 8-digit SIC code. In other cases, it combines 4-digit SIC codes.

Utilization. Percentage of total dollars of a type of work going to DBEs or MBE/WBEs (or another group).

Women-owned business (WBE). A firm with at least 51 percent ownership and control by women. For this study, a firm need not be certified as a WBE or DBE to be counted as a woman-owned firm. In addition, firms owned and controlled by minority women are counted as minority-owned firms. Therefore, WBEs principally refer to firms owned by white women.

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APPENDIX B.
Report on Legal Analysis

Introduction

In this section Holland & Knight LLP analyzes recent cases regarding the Federal DBE Program and local M/WBE programs to provide a summary of the legal framework for the disparity study as applicable to the Idaho Transportation Department ("ITD"). This section begins with a review of the landmark United States Supreme Court decision in City of Richmond v. J.A. Croson.1 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. Pena,2 ("Adarand I"), which applied the strict scrutiny analysis set forth in Croson to federal programs that provide federal assistance to state government recipients. The Supreme Court's decision in Adarand I, provides the basis for the legal analysis in connection with ITD's participation in the Federal DBE Program.

The legal framework then analyzes and applies significant recent court decisions that have followed, interpreted, and applied Croson and Adarand I to the present and that are applicable to the ITD disparity study and the strict scrutiny analysis. In particular, this analysis applies the recent Ninth Circuit decision in Western States Paving Co. v. Washington State DOT,[3] in which the Ninth Circuit held that mere compliance with the Federal DBE Program, absent independent state-specific evidence of discrimination in its market, did not satisfy the strict scrutiny analysis. The analyses of Western States Paving Co., and these other recent cases are applicable to ITD and the disparity study because they are the most recent and significant decisions by federal courts setting forth the legal framework applied to the Federal DBE Program.[4] They also are applicable in terms of the preparation of ITD's DBE Program submitted in compliance with the Federal DBE Regulations.

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[1] 488 U.S. 469 (1989).

[2] 515 U.S. 200 (1995).

[3] 407 F.3d 983 (9th Cir. 2005).

[4] N. Contracting, Inc. v. Illinois DOT, 473 F.3d 715 (7th Cir. 2007); Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) ("Adarand VII").

Following *Western States Paving,* the USDOT has recommended the use of disparity studies by state DOTs to examine whether or not there is evidence of discrimination or its effects, and how remedies might be narrowly tailored in developing their DBE Program to comply with the Federal DBE Program.[5] The USDOT suggests consideration of both statistical and anecdotal evidence, which should be examined separately for each group presumed to be disadvantaged in 49 CFR Part 26.

U.S. Supreme Court Cases

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. 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 Minority Business Enterprises ("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.

The Court determined that the plan neither served a "compelling governmental interest" nor offered a "narrowly tailored" remedy to prior 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." 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. 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.

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, . . . [i]t could take affirmative steps to dismantle such a system." The Court held that "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the

[5] Questions and Answers Concerning Response to Western States Paving Company v. Washington State Department of Transportation [hereinafter DOT Guidance], available at http://www.fhwa.dot.gov/ civilrights/dbe_memo_a5.htm. See 49 CFR Section 26.9 (January 2006)

locality's prime contractors, an inference of discriminatory exclusion could arise." The Supreme Court noted 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."

Adarand Constructors, Inc. v. Pena ("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. In the wake of Adarand I, the many affirmative action programs established by the federal government are currently undergoing review. Adarand I sets forth the predicate constitutional standard that applies to ITD's implementation of the Federal DBE Program.

The Legal Framework Applied to the Federal DBE Program

The following provides an analysis for the legal framework focusing on key cases regarding the Federal DBE Program and local MBE/WBE programs, and their implications for a disparity study. Western States Paving, and other recent cases are applicable to ITD and the disparity study because they are the most recent and significant decisions involving the Federal DBE Program and states' implementation of the Program.[6]

Strict Scrutiny Analysis

Strict scrutiny analysis. ITD's implementation of the Federal DBE Program is subject to the strict scrutiny constitutional analysis. The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.

Compelling Governmental Interest. 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 enact a race-based program. The Ninth Circuit and other federal courts have held that, with respect to the Federal DBE Program, state departments of transportation do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.[7] The federal courts 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 C.F.R. Part 26).[8] Specifically, the

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[6] N. Contracting, 473 F.3d 715; Sherbrooke Turf, 345 F.3d 964; Adarand VII, 228 F.3d 1147.

[7] 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.

[8] Id. In the case of Rothe Dev. Corp. v. U.S. Dept. of Defense, 413 F.3d 1327 (Fed. Cir. 2005), the Federal Circuit questioned 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). The Federal Circuit 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

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."[9] 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).[10] 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 "old 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.[11]

- **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.[12]

- **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.[13]

- **Results of Removing Affirmative Action Programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinue, minority business participation in the relevant market drops sharply or even disappears, which courts have found strongly supports the government's claim that there are significant barriers to minority competition, raising the specter of discrimination.[14]

Reauthorization of the 1207 DOD Program constitutional. Rothe Devel. Corp. v. U.S. Dept. of Defense, Civil Action No. SA-98-CV-1011-XR (W.D. Tex. Aug. 10, 2007). The district court found the data contained in the *Appendix*, 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. See the discussion of the recent district court decision in Rothe below in Section VI(1)(A).

9 Sherbrooke Turf, 345 F.3d at 970, (citing Adarand VII, 228 F.3d at 1167 – 76); Western States Paving, 407 F.3d at 992-93.

10 See, e.g., 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").

11 Adarand VII, 228 F.3d. at 1168-70; Western States Paving, 407 F.3d at 992.

12 Id. at 1170-72.

13 Id. at 1172-74.

14 Id. at 1174-75.

Narrow Tailoring of a State Department of Transportation's Implementation of the Federal DBE Program. The second prong of the strict scrutiny analysis requires that a state department of transportation's implementation of the Federal DBE Program be "narrowly tailored" to remedy identified discrimination in a particular state's transportation contracting and procurement market.[15] The narrow tailoring requirement has several components. First, according to Western States Paving, a state must have independent evidence of discrimination within the state's own transportation contracting and procurement marketplace in order to determine whether or not there is the need for race- or gender-conscious remedial action.[16] Thus, the Ninth Circuit held in *Western States Paving* that mere compliance with the Federal DBE Program does not satisfy strict scrutiny.[17]

Second, in *Western States Paving,* the court found that even where evidence of discrimination is present in a state, a narrowly tailored program must apply only to those minority groups who have actually suffered discrimination. Thus, under a race-conscious program, for each of the minority groups to be included in any race-conscious elements in a state's implementation of the Federal DBE Program, there must be evidence that they suffered discrimination within the local marketplace.

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of the Federal DBE Program, the federal courts have held the following factors are pertinent:

- Evidence of state-specific identified discrimination in the transportation contracting industry;
- Flexibility and duration of a race-conscious remedy;
- Relationship of the numerical DBE goals to the relevant market;
- Effectiveness of alternative race- and gender-neutral remedies;
- Impact of a race-conscious remedy on third parties; and
- Application of the program to only those minority groups who have actually suffered discrimination (the over- or under-inclusiveness factor).[18]

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[15] Western States Paving, 407 F3d at 995-998; Sherbrooke Turf, 345 F.3d at 970-71.

[16] Western States Paving, 407 F.3d at 997-98, 1002-03.

[17] Id. at 995-1003. It should be pointed out that in the recent Northern Contracting decision (January 8, 2007), the Seventh Circuit 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 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." 473 F.3d at 722. The Seventh Circuit distinguished both the Ninth Circuit decision in Western States Paving and the Eighth Circuit decision in Sherbrooke Turf, relating to an as-applied narrow tailoring analysis. The Seventh Circuit stated in a footnote that the court in Western States Paving "misread" the decision in Milwaukee County Pavers. Id. at 722, n.5. The Seventh Circuit held instead that IDOT's application of a federally mandated program is limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program. Id. at 722. The Seventh Circuit 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. Id. at 723-24. The court held NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 C.F.R. Part 26). Id. Accordingly, the Seventh Circuit affirmed the district court upholding the validity of IDOT's DBE program.

18 See, e.g., Western States Paving, 407 F.3d at 998; Sherbrooke Turf, 345 F.3d at 971; Adarand VII, 228 F.3d at 1181.

As discussed above, if a recipient of federal funds through the Federal DBE Program (like a state DOT) lacks sufficient evidence of discrimination or its effects, then it should conduct a study in order to comply with the requirements of the Federal DBE Program, and to determine whether there is evidence of discrimination or its effects in the transportation contracting industry.[19] Both statistical and anecdotal evidence are relevant in this assessment.[20]

Burden of Proof. Under the strict scrutiny analysis, and to the extent a state department of transportation has implemented a race- and gender-conscious program, the governmental entity has the initial burden of showing a "strong basis in evidence" (both statistical and anecdotal evidence) to support its remedial action.[21] If the government makes its initial showing, the burden shifts to the challenger to rebut that showing.[22] However, the challenger bears the ultimate burden of showing that the governmental entity's evidence "did not support an inference of discrimination."[23]

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 the Federal DBE Program, to prove narrow tailoring of program implementation at the state or local level).[24]

One form of statistical evidence is the comparison of a government's utilization of minority contractors compared to the relative availability of qualified, willing and able minority contractors. It has been held that a precipitous drop in DBE participation when no race-conscious methods are used may support a conclusion that a substantial portion of a state's DBE goal cannot be met with race-neutral measures.[25]

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[19] DOT Guidance, supra note 7; 42 C.F.R. § 26.45; Western States Paving, 407 F.3d at 1002-03.

[20] Western States Paving, 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

[21] See 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 1166.

[22] Adarand VII, 228 F.3d at 1166.

[23] Id.; see also Sherbrooke Turf, 345 F.3d at 971; Eng'g Contractors Ass'n of S. Fla. Inc. v. Metro. Dade County, 122 F.3d 895, 916 (11th Cir. 1997); N. Contracting, 473 F.3d at 721.

[24] See, e.g., Croson, 488 U.S. at 509; N. Contracting, 473 F.3d at 718-19, 723-24; Western States Paving, 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

[25] N. Contracting, 473 F.3d at 717-720; Sherbrooke Turf, 345 F. 3d at 973.

Other considerations regarding statistical evidence include:

- Availability Analysis. A disparity index requires an availability analysis. DBE, MBE, and WBE availability measures the relative number of DBEs, MBEs, and WBEs among all firms ready, willing and able to perform a certain type of work within a particular geographic market area.[26] There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.[27] "An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach."[28]

- Utilization Analysis. Courts have accepted measuring utilization based on the proportion of an agency's contract dollars going to DBEs.[29]

- Disparity Index. A disparity index may be utilized to determine whether or not there is a significant statistical disparity.[30] A disparity index is defined as the ratio of the percentage utilization to the percentage 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% Rule."[31]

- Significant Statistical Disparity. The federal courts have held that 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 may raise an inference of discriminatory exclusion.[32] However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.[33]

- Two Standard Deviation Test. The standard deviation figure describes the probability that the measured disparity is the result of mere chance. A statistical disparity that corresponds to a standard deviation of less than two is not considered to be statistically significant evidence of discrimination.[34]

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[26] See, e.g., Croson, 448 U.S. at 509; 49 C.F.R. § 26.35; N. Contracting, 473 F.3d at 718, 722-23; Western States Paving, 407 F.3d at 995.

[27] Contractors Ass'n of Easton Pennsylvania, Inc. v. City of Philadelphia, 91 F.3d 586, 603 (3d Cir. 1996) ("CAEP II").

[28] Id.

[29] See N. Contracting, 473 F.3d at 717-720; Sherbrooke Turf, 345 F. 3d at 973.

[30] 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 Easton Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990, 1005 (3d Cir. 1993).

[31] See, e.g., Eng'g Contractors Ass'n, 122 F.3d at 914, 923; Concrete Works of Colo., Inc. v. City and County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994).

[32] Croson, 488 U.S. at 509; Concrete Works, 321 F.3d at 970; see Western States Paving, 407 F.3d at 1001.

33 Western States Paving, 407 F.3d at 1001.

[34] Eng'g Contractors Ass'n, 122 F.3d at 914, 917, 923; The Compelling Interest, 61 Fed. Reg. at 26047, n. 19.

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.[35] In Western States Paving, the Ninth Circuit found the absence of anecdotal evidence problematic.[36]

Personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.[37] Examples of anecdotal evidence may include:

- Testimony of DBE owners regarding whether they face difficulties or barriers;
- Descriptions of instances in which DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender;
- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from DBEs on non-DBE goal projects; and
- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.[38]

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 need not be verified.[39]

Race and Gender-Neutral Measures. To the extent a "strong basis in evidence" exists concerning discrimination in a state's particular transportation contracting and procurement industry, the courts analyze several criteria or factors to determine whether a state's implementation of the Federal DBE Program is narrowly tailored. One of the key factors is consideration of race- and gender-neutral measures.

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[35] Eng'g Contractors Ass'n, 122 F.3d at 924-25.

[36] 407 F.3d at 1001.

[37] See, e.g., Eng'g Contractors Ass'n, 122 F.3d at 925-26; Concrete Works, 36 F.3d at 1520; Contractors Ass'n, 6 F.3d at 1003; Coral Constr. Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991).

[38] See, e.g., Concrete Works, 321 F.3d at 989; Adarand VII, 228 F.3d at 1166-76; The Compelling Interest, 61 Fed. Reg. at 26058-62.

[39] See, e.g., Concrete Works, 321 F.3d at 989; Eng'g Contractors Ass'n, 122 F.3d at 924-26; Cone Corp. v. Hillsborough County, 908 F.2d 908, 915 (11th Cir. 1990); 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).

The federal regulations[40] and the courts require that state departments of transportation implement or seriously consider race- and gender-neutral remedies prior to the implementation of race- and gender-conscious remedies.[41] The Ninth Circuit in *Western States Paving* also found "the regulations require a state to 'meet the maximum feasible portion of [its] overall goal by using race neutral means.'"[42]

A state department of transportation must give "serious, good faith consideration of workable race-neutral alternatives" prior to implementing a race-conscious program. Examples of race- and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;
- Relaxation of bonding requirements;
- Providing technical, managerial and financial assistance;
- Establishing programs to assist start-up firms;
- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- "How to do business" seminars;
- Sponsoring networking sessions throughout the state to acquaint small firms with large firms;

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[40] 49 C.F.R. § 26.51(a) requires state departments of transportation to "meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation."

[41] See, e.g., Adarand VII, 228 F.3d at 1179; Western States Paving, 407 F.3d at 993; Sherbrooke Turf, 345 F.3d at 972. Additionally, in September of 2005, the United States Commission on Civil Rights (the "Commission") issued its report entitled "Federal Procurement After Adarand" setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at http://www.usccr.gov. The Commission found that ten years after the Court's Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral measures that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail "to engage in the basic activities that are the hallmarks of serious consideration," including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review.

42 407 F.3d at 993 (citing 49 C.F.R. § 26.51(a)).

- Creation and distribution of DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.[43]

49 C.F.R. § 26.51(b) provides examples of race- and gender-neutral measures that ITD should seriously consider and utilize. The Ninth Circuit in *Western States Paving* held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race- and gender-neutral alternative, it does "require serious, good faith consideration of workable race-neutral alternatives."[44]

Intermediate Scrutiny Analysis.

The Ninth Circuit Court of Appeals and other Federal Circuit Courts of Appeal apply intermediate scrutiny to gender-conscious programs.[45] The Ninth Circuit has interpreted this standard to require that gender-based classifications be:

1. Supported by both an exceedingly persuasive justification; and

2. Substantially related to the achievement of that underlying objective.

This standard as interpreted by the Ninth Circuit has been characterized as falling somewhere between intermediate and strict scrutiny.

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 probative evidence in support of its stated rationale for the program.[46]

Intermediate scrutiny, as interpreted by the Ninth Circuit and other 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. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, the intermediate scrutiny standard does not require any showing of government involvement, active or passive, in the discrimination it seeks to remedy.[47]

Ongoing Review. The above represents a summary of the legal framework pertinent to implementation of the Federal DBE program. Because this is a dynamic area of the law, this framework is subject to ongoing review as the law continues to evolve.

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43 See 49 C.F.R. § 26.51(b); See, e.g., Croson, 488 U.S. at 509-510; N. Contracting, 473 F.3d at 724; Adarand VII, 228 F.3d 1179.

44 Western States Paving, 407 F.3d at 993.

45 See generally, Western States Paving, 407 F.3d at 990 n. 6; Coral Constr. Co., 941 F.2d at 931; Equal. Found. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Eng'g Contractors Ass'n, 122 F.3d at 908; Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994).

46 Coral Constr. Co., 941 F.2d at 931-32.

47 Id.

Recent Decisions in the Ninth Circuit Involving the Federal DBE Program and Federally-funded Projects that Impact the ITD DBE Program

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

This case is binding on ITD's continued implementation of the Federal DBE Program. In Western States, the Ninth Circuit held that the State of Washington's implementation of the Federal DBE Program was unconstitutional because it did not satisfy the narrow tailoring element of the constitutional test. The Ninth Circuit held that the State must present its own evidence of past discrimination within its own boundaries in order to survive constitutional muster and could not merely rely upon data supplied by Congress. The United States Supreme Court very recently denied certiorari. The analysis in the decision also is instructive in particular as to the application of the narrowly tailored prong of the strict scrutiny test.

Plaintiff Western States Paving Co. ("Plaintiff") was a white male-owned asphalt and paving company. 407 F.3d 983, 987 (9th Cir. 2005). In July of 2000, Plaintiff submitted a bid for a project for the City of Vancouver; the project was financed with federal funds provided to the Washington State DOT ("WSDOT") under the Transportation Act for the 21st Century ("TEA-21"). Id.

Congress enacted TEA-21 in 1991 and after multiple renewals, it was set to expire on May 31, 2004. Id. at 988. TEA-21 established minimum minority-owned business participation requirements (10%) for certain federally funded projects. Id. The regulations require each state accepting federal transportation funds to implement a DBE program that comports with the TEA-21. Id. TEA-21 indicates the 10% DBE utilization requirement is "aspirational," and the statutory goal "does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent." Id.

TEA-21 sets forth a two-step process for a state to determine its own DBE utilization goal: (1) the state must calculate the relative availability of DBEs in its local transportation contracting industry (one way to do this is to divide the number of ready, willing and able DBEs in a state by the total number of ready, willing and able firms); and (2) the state is required to "adjust this base figure upward or downward to reflect the proven capacity of DBEs to perform work (as measured by the volume of work allocated to DBEs in recent years) and evidence of discrimination against DBEs obtained from statistical disparity studies." Id. at 989 (citing regulation). A state is also permitted to consider discrimination in the bonding and financing industries and the present effects of past discrimination. Id. (citing regulation). TEA-21 requires a generalized, "undifferentiated" minority goal and a state is prohibited from apportioning their DBE utilization goal among different minority groups (e.g. between Hispanics, blacks, and women). Id. at 990 (citing regulation).

"A state must meet the maximum feasible portion of this goal through race- [and gender-] neutral means, including informational and instructional programs targeted toward all small businesses." Id. (citing regulation). Race- and sex-conscious contract goals must be used to achieve any portion of the contract goals not achievable through race- and gender-neutral measures. Id. (citing regulation).

However, TEA-21 does not require that DBE participation goals be used on every contract or at the same level on every contract in which they are used; rather, the overall effect must be to "obtain that portion of the requisite DBE participation that cannot be achieved through race- [and gender-] neutral means." Id. (citing regulation).

A prime contractor must use "good faith efforts" to satisfy a contract's DBE utilization goal. Id. (citing regulation). However, a state is prohibited from enacting rigid quotas that do not contemplate such good faith efforts. Id. (citing regulation).

Under the TEA-21 minority utilization requirements, the City set a goal of 14% minority participation on the first project Plaintiff bid on; the prime contractor thus rejected Plaintiff's bid in favor of a higher bidding minority-owned subcontracting firm. Id. at 987. In September of 2000, Plaintiff again submitted a bid on project financed with TEA-21 funds and was again rejected in favor of a higher bidding minority-owned subcontracting firm. Id. The prime contractor expressly stated that he rejected Plaintiff's bid due to the minority utilization requirement. Id.

Plaintiff filed suit against the WSDOT, Clark County, and the City, challenging the minority preference requirements of TEA-21 as unconstitutional both facially and as applied. Id. The district court rejected both of Plaintiff's challenges. The district court held the program was facially constitutional because it found that Congress had identified significant evidence of discrimination in the transportation contracting industry and the TEA-21 was narrowly tailored to remedy such discrimination. Id. at 988. The district court rejected the as-applied challenge concluding that Washington's implementation of the program comported with the federal requirements and the state was not required to demonstrate that its minority preference program independently satisfied strict scrutiny. Id. Plaintiff appealed to the Ninth Circuit Court of Appeals (the "Court"). Id.

The Ninth Circuit considered whether the TEA-21, which authorizes the use of race- and gender-based preferences in federally funded transportation contracts, violated equal protection, either on its face or as applied by the State of Washington.

The Court applied a strict scrutiny analysis to both the facial and as-applied challenges to TEA-21. Id. at 990-91. The Court did not apply a separate intermediate scrutiny analysis to the gender-based classifications because it determined that it "would not yield a different result." Id. at 990, n. 6.

Facial Challenge (Federal Government). The Court first noted that the federal government has a compelling interest in "ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry." Id. at 991, citing City of Richmond v. J.A. Croson Co., 488 U.S. 469, 492 (1989) and Adarand Constructors, Inc. v. Slater ("Adarand VII"), 228 F.3d 1147, 1176 (10th Cir. 2000). The Court found that "[b]oth statistical and anecdotal evidence are relevant in identifying the existence of discrimination." Id. at 991. The Court found that although Congress did not have evidence of discrimination against minorities in every state, such evidence was unnecessary for the enactment of nationwide legislation. Id. However, citing both the Eighth and Tenth Circuits, the Court found that Congress had ample evidence of discrimination in the transportation contracting industry to justify TEA-21. Id. The Court also found that because TEA-21 set forth flexible race-conscious measures to be used only when race-neutral efforts were unsuccessful, the program was narrowly

tailored and thus satisfied strict scrutiny. Id. at 992-93. The Court accordingly rejected Plaintiff's facial challenge. Id.

As-Applied Challenge (State of Washington). Plaintiff alleged TEA-21 was unconstitutional as-applied because there was no evidence of discrimination in Washington's transportation contracting industry. Id. at 995. The State alleged that it was not required to independently demonstrate that its application of TEA-21 satisfied strict scrutiny. Id. The United States intervened to defend TEA-21's facial constitutionality, and "unambiguously conceded that TEA-21's race conscious measures can be constitutionally applied only in those states where the effects of discrimination are present." Id. at 996; see also Br. for the United States, at 28 (April 19, 2004) ("DOT's regulations . . . are designed to assist States in ensuring that race-conscious remedies are limited to *only* those jurisdictions where discrimination or its effects are a problem and *only* as a last resort when race-neutral relief is insufficient." (emphasis in original)).

The Court found that the Eighth Circuit was the only other court to consider an as-applied challenge to TEA-21 in Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied 124 S. Ct. 2158 (2004). Id. at 996. The Eighth Circuit did not require Minnesota and Nebraska to identify a compelling purpose for their programs independent of Congress's nationwide remedial objective. Id. However, the Eighth Circuit did consider whether the states' implementation of TEA-21 was narrowly tailored to achieve Congress's remedial objective. Id. The Eighth Circuit thus looked to the states' independent evidence of discrimination because "to be narrowly tailored, a *national* program must be limited to those parts of the country where its race-based measures are demonstrably needed." Id. (internal citations omitted). The Eighth Circuit relied on the states' statistical analyses of the availability and capacity of DBEs in their local markets conducted by outside consulting firms to conclude that the states satisfied the narrow tailoring requirement. Id. at 997.

The Court concurred with the Eighth Circuit and found that Washington did not need to demonstrate a compelling interest for its DBE program, independent from the compelling nationwide interest identified by Congress. Id. However, the Court determined that the district court erred in holding that mere compliance with the federal program satisfied strict scrutiny. Id. Rather, the Court held that whether Washington's DBE program was narrowly tailored was dependent on the presence or absence of discrimination in Washington's transportation contracting industry. Id. at 997-98. "If no such discrimination is present in Washington, then the State's DBE program does not serve a remedial purpose; it instead provides an unconstitutional windfall to minority contractors solely on the basis of their race or sex." Id. at 998. The Court held that a Sixth Circuit decision to the contrary, Tennessee Asphalt Co. v. Farris, 942 F.2d 969, 970 (6th Cir. 1991), misinterpreted earlier case law. Id. at 997, n. 9.

The Court found that moreover, even where discrimination is present in a state, a program is narrowly tailored only if it applies only to those minority groups who have actually suffered discrimination. Id. at 998, citing Croson, 488 U.S. at 478. The Court also found that in Monterey Mechanical Co. v. Wilson, 125 F.3d 702, 713 (9th Cir. 1997), it had "previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination." Id. In Monterey Mechanical, the Court held that "the overly inclusive designation of benefited minority groups was a 'red flag[] signaling that the

statute is not, as the Equal Protection Clause requires, narrowly tailored.'" Id., citing Monterey Mechanical, 125 F.3d at 714. The Court found that other courts are in accord. Id. at 998-99, citing Builder's Ass'n of Greater Chi. v. County of Cook, 256 F.3d 642, 647 (7th Cir. 2001); Associated Gen. Contractors of Ohio, Inc. v. Drabik, 214 F.3d 730, 737 (6th Cir. 2000); O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992). Accordingly, the Court found that each of the principal minority groups benefited by Washington's DBE program must have suffered discrimination within the State. Id. at 999.

The Court found that Washington's program closely tracked the sample USDOT DBE program. Id. WSDOT calculated its DBE participation goal by first calculating the availability of ready, willing and able DBEs in the State (dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory, by the total number of transportation contracting firms listed in the Census Bureau's Washington database, which equaled 11.17%). Id. WSDOT then upwardly adjusted the 11.17% base figure to 14% "to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs [during a certain time period]." Id. Although DBE's performed 18% of work on State projects during the prescribed time period, Washington set the final adjusted figure at 14% because TEA-21 reduced the number of eligible DBEs in Washington by imposing more stringent certification requirements. Id. at 999, n. 11. WSDOT did not make an adjustment to account for discriminatory barriers in obtaining bonding and financing. Id. WSDOT similarly did not make any adjustment to reflect present or past discrimination "because it lacked any statistical studies evidencing such discrimination." Id.

WSDOT then determined that it needed to achieve 5% of its 14% goal through race-conscious means based on a 9% DBE participation rate on state-funded contracts that did not include affirmative action components (i.e. 9% participation could be achieved through race-neutral means). Id. at 1000. The USDOT approved WSDOT goal-setting program and the totality of its 2000 DBE program. Id.

Washington conceded that it did not have statistical studies to establish the existence of past or present discrimination. Id. It argued, however, that it had evidence of discrimination because minority-owned firms had the capacity to perform 14% of the State's transportation contracts in 2000 but received only 9% of the subcontracting funds on contracts that did not include an affirmative actions component. Id. The Court found that the State's methodology was flawed because the 14% figure was based on the earlier 18% figure, discussed supra, which included contracts with affirmative action components. Id. The Court concluded that the 14% figure did not accurately reflect the performance capacity of DBEs in a race-neutral market. Id. The Court also found the State conceded as much to the district court. Id.

The Court held that a disparity between DBE performance on contracts with an affirmative action component and those without "does not provide any evidence of discrimination against DBEs." Id. The Court found that the only evidence upon which Washington could rely was the disparity between the proportion of DBE firms in the State (11.17%) and the percentage of contracts awarded to DBEs on race-neutral grounds (9%). Id. However, the Court determined that such evidence was entitled to "little weight" because it did not take into account a multitude of other factors such as firm size. Id.

Moreover, the Court found that the minimal statistical evidence was insufficient evidence, standing alone, of discrimination in the transportation contracting industry. Id. at 1001. The Court found that WSDOT did not present any anecdotal evidence. Id. The Court rejected the State's argument that the DBE applications themselves constituted evidence of past discrimination because the applications were not properly in the record, and because the applicants were not required to certify that they had been victims of discrimination in the contracting industry. Id. Accordingly, the Court held that because the State failed to proffer evidence of discrimination within its own transportation contracting market, its DBE program was not narrowly tailored to Congress's compelling remedial interest. Id. at 1002-03.

The Court AFFIRMED the district court's grant on summary judgment to the United States regarding the facial constitutionality of TEA-21, REVERSED the grant of summary judgment to Washington on the as-applied challenge, and REMANDED to determine the State's liability for damages.

The dissent argued that where the State complied with TEA-21 in implementing its DBE program, it was not susceptible to an as-applied challenge.

Western States Paving Co. v. Washington DOT,
US DOT and FHWA, 2006 WL 1734163 (W.D. Wash. June 23, 2006).

This case was before the district court pursuant to the Ninth Circuit's remand order in Western States Paving Co. Washington DOT, US DOT, and FHWA, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006). In this decision, the district court adjudicated cross motions for summary judgment on Plaintiff's claim for injunction and for damages under 42 U.S.C. §§1981, 1983, and §2000d.

Because the Washington Department of Transportation ("WSDOT") voluntarily discontinued its DBE program after the Ninth Circuit decision, supra, the district court dismissed Plaintiff's claim for injunctive relief as moot. The court found "it is absolutely clear in this case that WSDOT will not resume or continue the activity the Ninth Circuit found unlawful in Western States," and cited specifically to the informational letters WSDOT sent to contractors informing them of the termination of the program.

Second, the court dismissed Western States' claims under 42 U.S.C. §§ 1981, 1983, and 2000d against Clark County and the City of Vancouver holding neither the City or the County acted with the requisite discriminatory intent. The court held the County and the City were merely implementing the WSDOT's unlawful DBE program and their actions in this respect were involuntary and required no independent activity. The court also noted that the County and the City were not parties to the precise discriminatory actions at issue in the case, which occurred due to the conduct of the "State Defendants." Specifically, the WSDOT – and not the County or the City – developed the DBE program without sufficient anecdotal and statistical and evidence, and improperly relied on the affidavits of contractors seeking DBE certification "who averred that they had been subject to 'general societal discrimination.'"

Third, the court dismissed Plaintiff's 42 U.S.C. §§ 1981 and 1983 claims against WSDOT, finding them barred by the Eleventh Amendment sovereign immunity doctrine. However, the court allowed Plaintiff's 42 U.S.C. §2000d claim to proceed against WSDOT because it was not similarly barred.

The court held that Congress had conditioned the receipt of federal highway funds on compliance with Title VI (42 U.S.C. § 2000d et seq.) and the waiver of sovereign immunity from claims arising under Title VI. Section 2001 specifically provides that "a State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of . . . Title VI." The court held that this language put the WSDOT on notice that it faced private causes of action in the event of noncompliance.

The court held that WSDOT's DBE program was not narrowly tailored to serve a compelling government interest. The court stressed that discriminatory intent is an essential element of a plaintiff's claim under Title VI. The WSDOT argued that even if sovereign immunity did not bar Plaintiff's §2000d claim, WSDOT could be held liable for damages because there was no evidence that WSDOT staff knew of or consciously considered Plaintiff's race when calculating the annual utilization goal. The court held that since the policy was not "facially neutral" – and was in fact "specifically race conscious" – any resulting discrimination was therefore intentional, whether the reason for the classification was benign or its purpose remedial. As such, WSDOT's program was subject to strict scrutiny.

In order for the court to uphold the DBE program as constitutional, WSDOT had to show that the program served a compelling interest and was narrowly tailored to achieve that goal. The court found that the Ninth Circuit had already concluded that the program was not narrowly tailored and the record was devoid of any evidence suggesting that minorities currently suffer or have suffered discrimination in the Washington transportation contracting industry. The court therefore denied WSDOT's motion for summary judgment on the §2000d claim. The remedy available to Western States remains for further adjudication and the case is currently pending.

Recent Decisions In Other Circuits Involving The Federal DBE Program And Federally Funded Projects That May Impact The ITD DBE Program

There are several recent cases involving challenges to the United States Federal DBE Program and its implementation by the states and other governmental entities for federally funded projects. These cases could have a significant impact on the Federal DBE Program and its implementation by ITD, as well as potentially impacting the nature and provisions of ITD's contracting and procurement on federally funded projects, including and relating to the utilization of DBEs. Additionally, these cases provide an instructive analysis of the recent application of the strict scrutiny test to DBE type programs.

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

In Northern Contracting, Inc. v. Illinois, the Seventh Circuit affirmed the district court decision upholding the validity and constitutionality of the Illinois Department of Transportation's ("IDOT") DBE Program. First, the Seventh Circuit cited Western States Paving Co. and Sherbrooke Turf in holding IDOT could properly rely on the federal government's compelling interest in implementing its local DBE program. The Court held plaintiff Northern Contracting, Inc. ("NCI") forfeited any challenge to the compelling interest prong of the strict scrutiny test by not appealing the decision that the Federal DBE Program was constitutional. The court only considered the challenge to whether IDOT's DBE Program was narrowly tailored, and applied a "clearly erroneous" standard of review.

With respect to the narrow tailoring prong, the Seventh Circuit 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 here is acting as an instrument of federal policy and NCI cannot collaterally attack the federal regulations through a challenge to IDOT's program."

The Seventh Circuit distinguished both the Ninth Circuit decision in Western States Paving Co. and the Eighth Circuit decision in Sherbrooke Turf relating to an as-applied narrow tailoring analysis. The Seventh Circuit stated in a footnote that the Ninth Circuit in Western States Paving Co. "misread" the decision in Milwaukee County Pavers. The Seventh Circuit held instead that a state's application of a federally mandated program must be limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program. The Seventh Circuit 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. The Court held that NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 CFR Section 26). Accordingly, the Seventh Circuit affirmed the district court upholding the validity of IDOT's DBE program.

Northern Contracting, Inc. v. Illinois,
2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007).

This decision is the district court's order that was affirmed by the Seventh Circuit Court of Appeals and is instructive to the ITD in that it is one of the recent cases to address the validity of the Federal DBE Program and local and state governments' implementation of the program as recipients of federal funds. The case also is instructive in that the court set forth a detailed analysis of race-, ethnic-, and gender-neutral measures as well as evidentiary data required to satisfy constitutional scrutiny.

The district court conducted a trial after denying the parties' motions for summary judgment in Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004), discussed infra at number 7. The following summarizes the opinion of the district court.

Northern Contracting, Inc. (the "Plaintiff"), an Illinois highway contractor, sued the State of Illinois, the Illinois DOT, the United States DOT, and federal and state officials seeking a declaration that federal statutory provisions, the federal implementing regulations ("TEA-21"), the state statute authorizing the DBE program, and the Illinois DBE program itself were unlawful and unconstitutional. 2005 WL 2230195, at *1 (N.D. Ill. Sept, 8, 2005).

Under TEA-21, a recipient of federal funds is required to meet the "maximum feasible portion" of its DBE goal through race-neutral means. Id. at *4 (citing regulations). If a recipient projects that it cannot meet its overall DBE goal through race-neutral means, it must establish contract goals to the extent necessary to achieve the overall DBE goal. Id. (citing regulation). [The court provided an overview of the pertinent regulations including compliance requirements and qualifications for DBE status.]

Statistical Evidence. To calculate its 2005 DBE participation goals, IDOT followed the two-step process set forth in TEA-21: (1) calculation of a base figure for the relative availability of DBEs, and (2) consideration of a possible adjustment of the base figure to reflect the effects of the DBE program and the level of participation that would be expected but for the effects of past and present discrimination. Id. at *6. IDOT engaged in a study to calculate its base figure and conduct a custom census to determine whether a more reliable method of calculation existed as opposed to IDOT's previous method of reviewing a bidder's list. Id.

In compliance with TEA-21, IDOT used a study to evaluate the base figure using a six-part analysis: (1) the study identified the appropriate and relevant geographic market for IDOT's contracting activity and its prime contractors as the State of Illinois; (2) the study identified the relevant product markets in which IDOT and its prime contractors contract; (3) the study sought to identify all available contractors and subcontractors in the relevant industries within Illinois using Dun & Bradstreet's Marketplace; (4) the study collected lists of DBEs from IDOT and twenty other public and private agencies; (5) the study attempted to correct for the possibility that certain businesses listed as DBEs were no longer qualified or, alternatively, businesses not listed as DBEs but qualified as such under the federal regulations; and (6) the study attempted to correct for the possibility that not all DBE businesses were listed in the various directories. Id. at *6-7. The study utilized a standard statistical sampling procedure to correct for the latter two biases. Id. at *7. The study thus calculated a weighted average base figure of 22.7%. Id.

IDOT then adjusted the base figure based upon two disparity studies and some reports considering whether the DBE availability figures were artificially low due to the effects of past discrimination. Id. at *8. One study examined disparities in earnings and business formation rates as between DBEs and their white male-owned counterparts. Id. Another study included a survey reporting that DBEs are rarely utilized in non-goals projects. Id.

IDOT considered three reports prepared by expert witnesses. Id. at *9. The first report concluded that minority- and women-owned businesses were underutilized relative to their capacity and that such underutilization was due to discrimination. Id. The second report concluded, after controlling for relevant variables such as credit worthiness, "that minorities and women are less likely to form businesses, and that when they do form businesses, those businesses achieve lower earnings than did businesses owned by white males." Id. The third report, again controlling for relevant variables (education, age, marital status, industry and wealth), concluded that minority- and female-owned businesses formation rates are lower than those of their white male counterparts, and that such businesses engage in a disproportionate amount of government work and contracts as a result of their inability to obtain private sector work. Id.

IDOT also conducted a series of public hearings in which a number of DBE owners who testified that they "were rarely, if ever, solicited to bid on projects not subject to disadvantaged-firm hiring goals." Id. Additionally, witnesses identified twenty prime contractors in IDOT District 1 alone who rarely or never solicited bids from DBEs on non-goals projects. Id. The prime contractors did not respond to IDOT's requests for information concerning their utilization of DBEs. Id.

Finally, IDOT reviewed unremediated market data from four different markets (the Illinois State Toll Highway Authority, the Missouri DOT, Cook County's public construction contracts, and a "non-goals" experiment conducted by IDOT between 2001 and 2002), and considered past

utilization of DBEs on IDOT projects. Id. at *11. After analyzing all of the data, the study recommended an upward adjustment to 27.51%, however, IDOT decided to maintain its figure at 22.77%. Id.

IDOT's representative testified that the DBE program was administered on a "contract-by-contract basis." Id. She testified that DBE goals have no effect on the award of prime contracts but that contracts are awarded exclusively to the "lowest responsible bidder." IDOT also allowed contractors to petition for a waiver of individual contract goals in certain situations (e.g. where the contractor has been unable to meet the goal despite having made reasonable good faith efforts). Id. at *12. Between 2001 and 2004, IDOT received waiver requests on 8.53% of its contracts and granted three out of four; IDOT also provided an appeal procedure for a denial from a waiver request. Id.

IDOT implemented a number of race- and gender-neutral measures both in its fiscal year 2005 plan and in response to the district court's earlier summary judgment order, including:

(1) a "prompt payment provision" in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments;

(2) an extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects);

(3) reviewing the criteria for prequalification to reduce any unnecessary burdens;

(4) "unbundling" large contracts; and

(5) allocating some contracts for bidding only by firms meeting the SBA's definition of small businesses.

Id. (internal citations omitted). IDOT was also in the process of implementing bonding and financing initiatives to assist emerging contractors obtain guaranteed bonding and lines of credit, and establishing a mentor-protégé program. Id.

The court found that IDOT attempted to achieve the "maximum feasible portion" of its overall DBE goal through race- and gender-neutral measures. Id. at *13. The court found that IDOT determined that race- and gender-neutral measures would account for 6.43% of its DBE goal, leaving 16.34% to be reached using race- and gender-conscious measures. Id.

Anecdotal Evidence. A number of DBE owners testified to instances of perceived discrimination and to the barriers they face. Id. The DBE owners also testified to difficulties in obtaining work in the private sector and "unanimously reported that they were rarely invited to bid on such contracts." Id. The DBE owners testified to a reluctance to submit unsolicited bids due to the expense involved and identified specific firms that solicited bids from DBEs for goals projects but not for non-goals projects. Id. A number of the witnesses also testified to specific instances of discrimination in bidding, on specific contracts, and in the financing and insurance markets. Id. at *13-14. One witness acknowledged that all small firms face difficulties in the financing and insurance markets, but testified that it is especially burdensome for DBEs who "frequently are forced to pay higher insurance rates due to racial and gender discrimination." Id. at *14. The DBE witnesses also testified they have obstacles in obtaining prompt payment. Id.

The Plaintiff called a number of non-DBE business owners who unanimously testified that they solicit business equally from DBEs and non-DBEs on non-goals projects. Id. Some non-DBE firm owners testified that they solicit bids from DBEs on a goals project for work they would otherwise complete themselves absent the goals; others testified that they "occasionally award work to a DBE that was not the low bidder in order to avoid scrutiny from IDOT." Id. A number of non-DBE firm owners accused of failing to solicit bids from DBEs on non-goals projects, testified and denied the allegations. Id. at *15.

The court applied strict scrutiny to the program as a whole (including the gender-based preferences). Id. at *16. The court, however, set forth a different burden of proof, finding that the government must demonstrate identified discrimination with specificity and must have a "'strong basis in evidence' to conclude that remedial action was necessary, *before* it embarks on an affirmative action program. . . . If the government makes such a showing, the party challenging the affirmative action plan bears the 'ultimate burden' of demonstrating the unconstitutionality of the program." Id. The court held that challenging party's burden "can only be met by presenting credible evidence to rebut the government's proffered data." Id. at *17.

To satisfy strict scrutiny, the court found that IDOT did not need to demonstrate an independent compelling interest; however, as part of the narrowly tailored prong, IDOT needed to show "that there is a demonstrable need for the implementation of the federal DBE program within its jurisdiction." Id. at *16.

The court found that IDOT presented "an abundance" of evidence documenting the disparities between DBEs and non-DBEs in the construction industry. Id. at *17. The Plaintiff argued that the study was "erroneous because it failed to limit its DBE availability figures to those firms . . . registered and pre-qualified with IDOT." Id. The Plaintiff also alleged the calculations of the DBE utilization rate were incorrect because the data included IDOT subcontracts and prime contracts, despite the fact that the latter are awarded to the lowest bidder as a matter of law. Id. Accordingly, the Plaintiff alleged that IDOT's calculation of DBE availability and utilization rates was incorrect. Id.

The court found that other jurisdictions had utilized the custom census approach without successful challenge. Id. at *18. Additionally, the court found "that the remedial nature of the federal statutes counsels for the casting of a broader net when measuring DBE availability." Id. at *19. The court found that IDOT presented "an array of statistical studies concluding that DBEs face disproportionate hurdles in the credit, insurance, and bonding markets." Id. at *21. The court also

found that the statistical studies were consistent with the anecdotal evidence. Id. The court did find, however, that "there was no evidence of even a single instance in which a prime contractor failed to award a job to a DBE that offered the low bid. This . . . is [also] supported by the statistical data . . . which shows that at least at the level of subcontracting, DBEs are generally utilized at a rate in line with their ability." Id. at *21, n. 31. Additionally, IDOT did not verify the anecdotal testimony of DBE firm owners who testified to barriers in financing and bonding, however, the court found that such verification was unnecessary. Id. at *21, n. 32.

The court further found:

> That such discrimination indirectly affects the ability of DBEs to compete for prime contracts, despite the fact that they are awarded solely on the basis of low bid, cannot be doubted: '[E]xperience and size are not race- and gender-neutral variables . . . [DBE] construction firms are generally smaller and less experienced *because* of industry discrimination.'

Id. at *21, citing Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003).

The parties stipulated to the fact that DBE utilization goals exceed DBE availability for 2003 and 2004. Id. at *22. IDOT alleged, and the court so found, that the high utilization on goals projects was due to the success of the DBE program, and not to an absence of discrimination. Id. The court found that the statistical disparities coupled with the anecdotal evidence indicated that IDOT's fiscal year 2005 goal was a "'plausible lower-bound estimate' of DBE participation in the absence of discrimination." Id. The court found that the Plaintiff did not present persuasive evidence to contradict or explain IDOT's data. Id.

The Plaintiff argued that even if accepted at face value, IDOT's marketplace data did not support the imposition of race- and gender-conscious remedies because there was no evidence of direct discrimination by prime contractors. Id. The court found first that IDOT's indirect evidence of discrimination in the bonding, financing, and insurance markets was sufficient to establish a compelling purpose. Id. Second, the court found:

[m]ore importantly, Plaintiff fails to acknowledge that, in enacting its DBE program, IDOT acted not to remedy its own prior discriminatory practices, but pursuant to federal law, which both authorized and required IDOT to remediate the effects of *private* discrimination on federally funded highway contracts. This is a fundamental distinction. . . . [A] state or local government need not independently identify a compelling interest when its actions come in the course of enforcing a federal statute.

Id. at *23. The court distinguished Builders Ass'n of Greater Chicago v. County of Cook, 123 F. Supp. 2d 1087 (N.D. Ill. 2000), aff'd 256 F.3d 642 (7th Cir. 2001), noting that the program in that case was not federally funded. Id. at *23, n. 34.

The court also found that "IDOT has done its best to maximize the portion of its DBE goal" through race- and gender-neutral measures, including anti-discrimination enforcement and small business initiatives. Id. at *24. The anti-discrimination efforts included: an internet website where a

DBE can file an administrative complaint if it believes that a prime contractor is discriminating on the basis of race or gender in the award of sub-contracts; and requiring contractors seeking prequalification to maintain and produce solicitation records on all projects, both public and private, with and without goals, as well as records of the bids received and accepted. Id. The small business initiative included: "unbundling" large contracts; allocating some contracts for bidding only by firms meeting the SBA's definition of small businesses; a "prompt payment provision" in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments; and an extensive outreach program seeking to attract and assist DBE and other small firms DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects). Id.

The court found "[s]ignificantly, Plaintiff did not question the efficacy or sincerity of these race- and gender-neutral measures." Id. at *25. Additionally, the court found the DBE program had significant flexibility in that utilized contract-by-contract goal setting (without a fixed DBE participation minimum) and contained waiver provisions. Id. The court found that IDOT approved 70% of waiver requests although waivers were requested on only 8% of all contracts. Id., citing Adarand Constructors, Inc. v. Slater "Adarand VII", 228 F.3d 1147, 1177 (10th Cir. 2000) (citing for the proposition that flexibility and waiver are critically important).

The court held that IDOT's DBE plan was narrowly tailored to the goal of remedying the effects of racial and gender discrimination in the construction industry, and was therefore constitutional.

Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004)

This is the earlier decision in Northern Contracting, Inc., 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), see 1A., above, which resulted in the remand of the case to consider the implementation of the Federal DBE Program by the Illinois DOT. This case involves the challenge to the Federal DBE Program. The Plaintiff contractor sued the Illinois Department of Transportation and the U.S. DOT challenging the facial constitutionality of the Federal DBE Program (TEA-21 and 49 C.F.R. Part 26) as well as the implementation of the Federal Program by the Illinois Department of Transportation (i.e., the IDOT DBE Program). The Court held valid the Federal DBE Program, finding there is a compelling governmental interest and the federal program is narrowly tailored. The Court also held there are issues of fact regarding whether Illinois DOT's ("IDOT") DBE Program is narrowly tailored to achieve the federal government's compelling interest. The court denied the motions for summary judgment filed by the plaintiff and by IDOT, finding there were issues of material fact relating to IDOT's implementation of the Federal DBE Program.

The Court in Northern Contracting, held that there is an identified compelling governmental interest for implementing the Federal DBE Program and that the Federal DBE Program is narrowly tailored to further that interest. Therefore, the Court granted the Federal Defendants' Motion for Summary Judgment challenging the validity of the Federal DBE Program. In this connection, the District Court followed the decisions and analysis in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F. 3d 964 (8th Cir. 2003) and Adarand Constructors, Inc. v. Slater, 228 F.

3d 1147 (10th Cir. 2000) ("Adarand VII"), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001). The Court held, like these two Courts of Appeals that have addressed this issue, that Congress had a strong basis in evidence to conclude that the DBE Program was necessary to redress private discrimination in federally-assisted highway subcontracting. The Court agreed with the Adarand VII and Sherbrooke Turf Courts that the evidence presented to Congress is sufficient to establish a compelling governmental interest, and that the contractors had not met their burden of introducing credible particularized evidence to rebut the Government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market. 2004 WL422704, at *34 citing Adarand VII, 228 F. 3d at 1175.

In addition, the Court analyzed the second prong of the strict scrutiny test, whether the government provided sufficient evidence that its program is narrowly tailored. In making this determination, the Court looked at several factors, such as the efficacy of alternative remedies; the flexibility and duration of the race-conscious remedies, including the availability of waiver provisions; the relationships between the numerical goals and relevant labor market; the impact of the remedy on third parties; and whether the program is over-or-under-inclusive. The narrow tailoring analysis with regard to the as-applied challenge focused on Illinois' implementation of the Federal DBE Program.

First, the Court held that the Federal DBE Program does not mandate the use of race-conscious measures by recipients of federal dollars, but in fact requires only that the goal reflect the recipient's determination of the level of DBE participation it would expect absent the effects of the discrimination. 49 C.F.R. § 26.45(b). The Court recognized, as found in the Sherbrooke Turf and Adarand VII cases, that the Federal Regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting, that although narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require "serious, good faith consideration of workable race-neutral alternatives." 2004 WL422704, at *36, citing and quoting Sherbooke Turf, 345 F. 3d at 972, quoting Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. at 2344-45 (2003). The Court held that the Federal regulations, which prohibit the use of quotas and severely limit the use of set-asides meet this requirement. The Court agreed with the Adarand VII and Sherbrooke Turf Courts that the Federal DBE Program does require recipients to make a serious good faith consideration of workable race-neutral alternatives before turning to race-conscious measures.

Second, the Court found that because the Federal DBE Program is subject to periodic reauthorization, and requires recipients of Federal dollars to review their programs annually, the Federal DBE scheme is appropriately limited to last no longer than necessary.

Third, the Court held that the Federal DBE Program is flexible for many reasons, including that the presumption that women and minority are socially disadvantaged is deemed rebutted if an individual's personal net worth exceeds $750,000.00, and a firm owned by individual who is not presumptively disadvantaged may nevertheless qualify for such status if the firm can demonstrate that its owners are socially and economically disadvantaged. 49 C.F.R. § 26.67(b)(1)(d). The Court found other aspects of the Federal Regulations provide ample flexibility, including recipients may obtain waivers or exemptions from any requirements. Recipients are not required to set a contract goal on every U.S. DOT-assisted contract. If a recipient estimates that it can meet its entire overall

goals for a given year through race-neutral means, it must implement the Program without setting contract goals during the year. If during the course of any year in which it is using contract goals a recipient determines that it will exceed its overall goals, it must adjust the use of race-conscious contract goals accordingly. 49 C.F.R. § 26.51(e)(f). Recipients also administering a DBE Program in good faith can not be penalized for failing to meet their DBE goals, and a recipient may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49 C.F.R. § 26.51(f). Further, a recipient may award a contract to a bidder/offeror that does not meet the DBE Participation goals so long as the bidder has made adequate good faith efforts to meet the goals. 49 C.F.R. § 26.53(a)(2). The regulations also prohibit the use of quotas. 49 C.F.R. § 26.43.

Fourth, the Court agreed with the Sherbooke Turf Court's assessment that the Federal DBE Program requires recipients to base DBE goals on the number of ready, willing and able disadvantaged business in the local market, and that this exercise requires recipients to establish realistic goals for DBE participation in the relevant labor markets.

Fifth, the Court found that the DBE Program does not impose an unreasonable burden on third parties, including non-DBE subcontractors and taxpayers. The Court found that the Federal DBE Program is a limited and properly tailored remedy to cure the effects of prior discrimination, a sharing of the burden by parties such as non-DBEs is not impermissible.

Finally, the Court found that the Federal DBE Program was not over-inclusive because the regulations do not provide that every women and every member of a minority group is disadvantaged. Preferences are limited to small businesses with a specific average annual gross receipts over three fiscal years of $16.6 million or less (at the time of this decision), and businesses whose owners' personal net worth exceed $750,000.00 are excluded. 49 C.F.R. § 26.67(b)(1). A firm owned by a white male may qualify as social and economically disadvantaged. 49 C.F.R. § 26.67(d).

The Court analyzed the constitutionality of the Illinois DBE Program. The Court adopted the reasoning of the Eighth Circuit in Sherbrooke Turf, that a recipient's implementation of the Federal DBE Program must be analyzed under the narrow tailoring analysis but not the compelling interest inquiry. Therefore, the Court agreed with Sherbrooke Turf that a recipient need not establish a distinct compelling interest before implementing the Federal DBE Program, but did conclude that a recipient's implementation of the Federal DBE Program must be narrowly tailored. The Court found that issues of fact remain in terms of the validity of the Illinois DOT's DBE Program as implemented in terms of whether it was narrowly tailored to achieve the Federal Government's compelling interest. The Court, therefore, denied the contractor plaintiff's Motion for Summary Judgment and the Illinois DOT's Motion for Summary Judgment.

Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

This case is instructive in its analysis of State DOT DBE type programs and their evidentiary basis and implementation. This case also is instructive to ITD in its analysis of the narrowly tailored requirement for State DBE programs. In upholding the challenged Federal DBE Program at issue in this case, the Eighth Circuit emphasized the race-, ethnic- and gender-neutral elements, the ultimate

flexibility of the Program, and the fact the Program was tied closely only to labor markets with identified discrimination.

In Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, the U.S. Court of Appeals for the Eighth Circuit upheld the constitutionality of the Federal DBE Program (49 CFR Part 26). The Court held the Federal program was narrowly tailored to remedy a compelling governmental interest. The Court also held the federal regulations governing the states' implementation of the Federal DBE Program were narrowly tailored, and the state DOT's implementation of the Federal DBE Program was narrowly tailored to serve a compelling government interest.

Sherbrooke and Gross Seed both contended that the Federal Highway DBE Program on its face and as applied in Minnesota and Nebraska violated the Equal Protection component of the Fifth Amendment's Due Process Clause. The Eighth Circuit engaged in a review of the Federal DBE Program and the implementation of the Program by the Minnesota DOT and the Nebraska Department of Roads under a strict scrutiny analysis and held that the Federal DBE Program was valid and constitutional and that the Minnesota DOT's and Nebraska DOR's implementation of the Program also was constitutional and valid. Applying the strict scrutiny analysis, the Court first considered whether the Federal DBE Program established a compelling governmental interest, and found that it did. It concluded that Congress had a strong basis in evidence to support its conclusion that race-based measures were necessary for the reasons stated by the Tenth Circuit in Adarand, 228 F. 3d at 1167-76. Although the contractors presented evidence that challenged the data, they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to participation in highway contracts. Thus, the Court held they failed to meet their ultimate burden to prove that the DBE Program is unconstitutional on this ground.

Finally, Sherbrooke and Gross Seed argued that the Minnesota DOT and Nebraska DOR must independently satisfy the compelling governmental interest test aspect of strict scrutiny review. The government argued, and the district courts' below agreed, that participating States need not independently meet the strict scrutiny standard because under the DBE Program the State must still comply with the DOT regulations. The Eighth Circuit held that this issue was not addressed by the Tenth Circuit in Adarand. The Eighth Circuit concluded that neither side's position is entirely sound.

The Court rejected the contention of the contractors that their facial challenges to the DBE Program must be upheld unless the record before Congress included strong evidence of race discrimination in construction contracting in Minnesota and Nebraska. On the other hand, the Court held a valid race-based program must be narrowly tailored, and to be narrowly tailored, a national program must be limited to those parts of the country where its race-based measures are demonstrably needed to the extent that federal government delegates this tailoring function, as a State's implementation becomes relevant to a reviewing court's strict scrutiny. Thus, the Court left the question of state implementation to the narrow tailoring analysis.

The Court held that a reviewing court applying strict scrutiny must determine if the race-based measure is narrowly tailored, that is, whether the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose. The contractors

have the ultimate burden of establishing that the DBE Program is not narrowly tailored. Id. The compelling interest analysis focused on the record before Congress; the narrow-tailoring analysis looks at the roles of the implementing highway construction agencies.

For determining whether a race-conscious remedy is narrowly tailored, the Court looked 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. Id. Under the DBE Program, a state receiving federal highway funds must, on an annual basis, submit to DOT an overall goal for DBE participation in its federally funded highway contracts. See, 49 C.F.R. § 26.45(f)(1). The overall goal "must be based on demonstrable evidence" as to the number of DBEs who are ready, willing, and able to participate as contractors or subcontractors on federally-assisted contracts. 49 C.F.R. § 26.45(b). The number may be adjusted upward to reflect the state's determination that more DBEs would be participating absent the effects of discrimination, including race-related barriers to entry. See, 49 C.F.R. § 26.45(d).

The State must meet the "maximum feasible portion" of its overall goal by race-neutral means and must submit for approval a projection of the portion it expects to meet through race-neutral means. See, 49 C.F.R. § 26.45(a), (c). If race-neutral means are projected to fall short of achieving the overall goal, the State must give preference to firms it has certified as DBEs. However, such preferences may not include quotas. 49 C.F.R. § 26.45(b). During the course of the year, if a State determines that it will exceed or fall short of its overall goal, it must adjust its use of race-conscious and race-neutral methods "[t]o ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination." 49 C.F.R. § 26.51(f).

Absent bad faith administration of the program, a State's failure to achieve its overall goal will not be penalized. See, 49 C.F.R. § 26.47. If the State meets its overall goal for two consecutive years through race-neutral means, it is not required to set an annual goal until it does not meet its prior overall goal for a year. See, 49 C.F.R. § 26.51(f)(3). In addition, DOT may grant an exemption or waiver from any and all requirements of the Program. See, 49 C.F.R. § 26.15(b).

Like the district courts below, the Eighth Circuit concluded that the DOT regulations, on their face, satisfy the Supreme Court's narrowing tailoring requirements. First, the regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting. 345 F. 3d at 972. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require serious good faith consideration of workable race-neutral alternatives. 345 F. 3d at 971, citing Grutter v. Bollinger, 539 U.S. 306.

Second, the revised DBE Program has substantial flexibility. A State may obtain waivers or exemptions from any requirements and is not penalized for a good faith effort to meet its overall goal. In addition, the Program limits preferences to small businesses falling beneath an earnings threshold, and any individual whose net worth exceeds $750,000.00 cannot qualify as economically disadvantaged. See, 49 C.F.R. § 26.67(b). Likewise, the DBE Program contains built-in durational limits, a State may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49 C.F.R. § 26.51(f)(3).

Third, the Court found, the U.S. DOT has tied the goals for DBE participation to the relevant labor markets. The regulations require States to set overall goals based upon the likely number of minority

contractors that would have received federal assisted highway contracts but for the effects of past discrimination. See, 49 C.F.R. § 26.45(c)-(d)(Steps 1 and 2). Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contacting markets. Id. at 972.

Finally, Congress and DOT have taken significant steps, the Court held, to minimize the race-base nature of the DBE Program. Its benefits are directed at all small business owned and controlled by the socially and economically disadvantaged. While TEA-21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptably disadvantaged that demonstrate actual social and economic disadvantage. Thus, race is made relevant in the Program, but it is not a determinative factor. 345 F. 3d at 973. For these reasons, the Court agreed with the district courts that the revised DBE Program is narrowly tailored on its face.

Sherbrooke and Gross Seed also argued that the DBE Program as applied in Minnesota and Nebraska is not narrowly tailored. Under the Federal Program, states set their own goals, based on local market conditions; their goals are not imposed by the Federal government nor do recipients have to tie them to any uniform national percentage. 345 F. 3d at 973, citing 64 Fed. Reg. at 5102.

The Court analyzed what Minnesota and Nebraska did in connection with their implementation of the Federal DBE Program. Minnesota DOT commissioned a disparity study of the highway contracting market in Minnesota. The study group determined that DBEs made up 11.4% of the prime contractors and subcontractors in a highway construction market. Of this number 0.6% were minority-owned and 10.8% women-owned. Based upon its analysis of business formation statistics, the consultant estimated that the number of participating minority-owned business would be 34% higher in a race-neutral market. Therefore, the consultant adjusted its DBE availability figure from 11.4% to 11.6%. Based on the study, Minnesota DOT adopted an overall goal of 11.6% DBE participation for Federally assisted highway projects. Minnesota DOT predicted that it would need to meet 9% of that overall goal through race and gender-conscious means, based on the fact DBE participation in State highway contracts dropped from 10.25% in 1998 to 2.25% in 1999 when its previous DBE Program was suspended by the injunction by the district court in an earlier decision in Sherbrooke. Minnesota DOT required each prime contract bidder to make a good faith effort to subcontract to prescribe portion of the project to DBEs, and determine that portion based on several individualized factors, including the availability of DBEs in the extent of subcontracting opportunities on the project.

The contractor presented evidence attacking the reliability of the data in the study, but it failed to establish that better data was available or that Minnesota DOT was otherwise unreasonable in undertaking this thorough analysis and relying on its results. Id. The precipitous drop in DBE participation when no race-conscious methods were employed, the Court concluded, supports Minnesota DOT's conclusion that a substantial portion of its overall goal could not be met with race-neutral measures. Id. On that record, the Court agreed with the district court that the revised DBE Program serves a compelling government interest and is narrowly tailored on its face and as applied in Minnesota.

In Nebraska, the Nebraska DOR commissioned a disparity study also to review availability and capability studies of DBE firms in the Nebraska highway construction market. The availability study found that between 1995 and 1999, when Nebraska followed the mandatory 10% set-aside requirement, 9.95% of all available and capable firms were DBEs, and DBE firms received 12.7% of the contract dollars on federally assisted projects. After apportioning part of this DBE contracting to race-neutral contracting decisions, Nebraska DOR set an overall goal of 9.95% DBE participation and predicted that 4.82% of this overall goal would have to be achieved by race-and-gender conscious means. The Nebraska DOR required that prime contractors make a good faith effort to allocate a set portion of each contract's funds to DBE subcontractors. The Eighth Circuit concluded that Gross Seed, like Sherbrooke, failed to prove that the DBE Program is not narrowly tailored as applied in Nebraska. Therefore, the Court affirmed the district courts' decisions in Gross Seed and Sherbrooke. (See district court opinions discussed infra.).

Sherbrooke Turf, Inc. v. Minnesota DOT, 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unreported decision), aff'd 345 F.3d 964 (8th Cir. 2003)

Sherbrooke involved a landscaping service contractor owned and operated by Caucasian males. The contractor sued the Minnesota Department of Transportation claiming the Federal DBE Provisions of the Transportation Equity Act for the 21st Century ("TEA-21") are unconstitutional. Sherbrooke challenged the "federal affirmative action programs," the U.S. DOT implementing regulations, and the Minnesota DOT's participation in the DBE Program. The United States Department of Transportation and the Federal Highway Administration intervened as Federal Defendants in the case. Sherbrooke, 2001 WL 1502841, at *1.

The United States District Court in Sherbrooke relied substantially on the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), in holding that the Federal DBE Program is constitutional. The District Court addressed the issue of "random inclusion" of various groups as being within the program in connection with whether the Federal DBE Program is "narrowly tailored." The Court held that Congress cannot enact a national program to remedy discrimination without recognizing classes of people whose history has shown them to be subject to discrimination and allowing states to include those people in its DBE program.

The Court held that the Federal DBE Program attempts to avoid the "potentially invidious effects of providing blanket benefits to minorities" in part,

> by restricting a state's DBE preference to identified groups actually appearing in the target state. In practice, this means Minnesota can only certify members of one or another group as potential DBEs if they are present in the local market. This minimizes the chance that individuals – simply on the basis of their birth – will benefit from Minnesota's DBE program. If a group is not present in the local market, or if they are found in such small numbers that they cannot be expected to be able to participate in the kinds of construction work TEA-21 covers, that group will not be included in the accounting used to set Minnesota's overall DBE contracting goal.
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> Sherbrooke, 2001 WL 1502841 at *10 (D. Minn.).

The Court rejected plaintiff's claim that the Minnesota DOT must independently demonstrate how its program comports with Croson's strict scrutiny standard. The Court held that the "Constitution calls out far different requirements when a state implements a federal affirmative action program, as opposed to those occasions when a state or locality initiates the program." Id. at *11 (emphasis added). The Court, in a footnote ruled that TEA-21, being a federal program, "relieves the state of any burden to independently carry the strict scrutiny burden." Id. at *11 n.3. The Court held states that establish DBE programs under TEA-21 and 49 C.F.R. Part 26 are implementing a congressionally required program and not establishing a local one. As such, the Court concluded that the state need not independently prove its DBE program meets the strict scrutiny standard. Id.

Gross Seed Co. v. Nebraska Department of Roads, Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), aff'd 345 F. 3d 964 (8th Cir. 2003)

The United States District Court for the District of Nebraska held in Gross Seed Co. v. Nebraska (with the United States DOT and Federal Highway Administration as Interveners), that the Federal DBE Program (codified at 49 C.F.R. Part 26) is constitutional. The Court also held that the Nebraska Department of Roads ("NDOR") DBE Program adopted and implemented solely to comply with the Federal DBE Program is "approved" by the Court because the Court found that 49 C.F.R. Part 26 and TEA-21 were constitutional.

The Court concluded, similar to the Court in Sherbrooke Turf, that the State of Nebraska did not need to independently establish that its program met the strict scrutiny requirement because the Federal DBE Program satisfied that requirement, and was therefore constitutional. The Court did not engage in a thorough analysis or evaluation of the NDOR Program or its implementation of the Federal DBE Program. The Court points out that the NDOR Program is adopted in compliance with the Federal DBE Program, and that the U.S. DOT approved the use of NDOR's proposed DBE goals for fiscal year 2001, pending completion of U.S. DOT's review of those goals. Significantly, however, the Court in its findings does note that the NDOR established its overall goals for fiscal year 2001 based upon an independent availability/disparity study.

The Court upheld the constitutionality of the Federal DBE Program by finding the evidence presented by the federal government and the history of the federal legislation is sufficient to demonstrate that past discrimination does exist "in the construction industry" and that racial and gender discrimination "within the construction industry" is sufficient to demonstrate a compelling interest in individual areas, such as highway construction. The Court held that the Federal DBE Program was sufficiently "narrowly tailored" to satisfy strict scrutiny analysis based again on the evidence submitted by the federal government as to the Federal DBE Program.

Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta, 532 U.S. 941, 534 U.S. 103 (2001)

This is the Adarand decision by the United States Court of Appeals for the Tenth Circuit, which was on remand from the earlier Supreme Court decision applying the strict scrutiny analysis to any constitutional challenge to the Federal DBE Program. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). The decision of the Tenth Circuit in this case was considered by the United States Supreme Court, after that Court granted certiorari to consider certain issues raised on appeal. The Supreme Court subsequently dismissed the writ of certiorari "as improvidently granted" without

reaching the merits of the case. The Court did not decide the constitutionality of the Federal DBE Program as it applies to state DOTs or local governments.

The Supreme Court held that the Tenth Circuit had not considered the issue before the Supreme Court on certiorari, namely whether a race-based program applicable to direct federal contracting is constitutional. This issue is distinguished from the issue of the constitutionality of the United States DOT DBE Program as it pertains to procurement of federal funds for highway projects let by States, and the implementation of the Federal DBE Program by state DOTs. Therefore, the Supreme Court held it would not reach the merits of a challenge to federal laws relating to direct federal procurement.

Turning to the Tenth Circuit decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), the Tenth Circuit upheld in general the facial constitutionality of the Federal DBE Program. The Court found that the federal government had a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of federal funds and in remediating the effects of past discrimination in government contracting, and that the evidence supported the existence of past and present discrimination sufficient to justify the Federal DBE Program. The Court also held that the Federal DBE Program is "narrowly tailored," and therefore upheld the constitutionality of the Federal DBE Program.

It is significant to note that the Court in determining the Federal DBE Program is "narrowly tailored" focused on the current regulations, 49 C.F.R. Part 26, and in particular § 26.1(a), (b), and (f). The Court pointed out that the Federal Regulations instruct recipients as follows:

> [y]ou must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation, 49 C.F.R. § 26.51(a)(2000); see also 49 C.F.R. § 26.51(f)(2000) (if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting measures), and enumerate a list of race-neutral measures, see 49 C.F.R. § 26.51(b)(2000). The current regulations also outline several race-neutral means available to program recipients including assistance in overcoming bonding and financing obstacles, providing technical assistance, establishing programs to assist start-up firms, and other methods. See 49 C.F.R. § 26.51(b). We therefore are dealing here with revisions that emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized.
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> 228 F.3d at 1178-1179.

In considering whether the Federal DBE Program is narrowly tailored, the Court also addressed the argument made by the contractor that the program is over- and under-inclusive for several reasons, including that Congress did not inquire into discrimination against each particular minority racial or ethnic group. The Court held that insofar as the scope of inquiry suggested was a particular state's construction industry alone, this would be at odds with its holding regarding the compelling interest in Congress's power to enact nationwide legislation. Id., at 1185-1186. The Court held that because of the "unreliability of racial and ethnic categories and the fact that discrimination commonly occurs based on much broader racial classifications," extrapolating findings of discrimination against the various ethnic groups "is more a question of nomenclature than of narrow tailoring." Id. The Court

found that the "Constitution does not erect a barrier to the government's effort to combat discrimination based on broad racial classifications that might prevent it from enumerating particular ethnic origins falling within such classifications." Id.

Finally, the Tenth Circuit did not specifically address a challenge to the letting of federally funded construction contracts by state departments of transportation. The Court pointed out that plaintiff Adarand "conceded that its challenge in the instant case is to 'the federal program, implemented by federal officials,' and not to the letting of federally-funded construction contracts by state agencies." 228 F.3d at 1187. The Court held that it did not have before it a sufficient record to enable it to evaluate the separate question of Colorado DOT's implementation of race-conscious policies. Id. at 1187-1188.

Houston Contrs. Ass'n v. Metro. Transit Auth., 189 F.3d 467 (5th Cir. 1999)

In this case, the Fifth Circuit vacated a district court opinion ruling on summary judgment against a DBE program. The court noted a sharp conflict in the evidence regarding how the Metropolitan Transit Authority's ("Metro's") DBE program operates in practice. According to Metro's evidence, its DBE program was an outreach program instituted to reach DBE participation goals. Metro claimed that all that is required of the contractors is that they contact DBEs and give them an opportunity to bid as subcontractors on the project. The plaintiff's witnesses, on the other hand, contended that Metro coerced prime contractors into using race and sex in selecting subcontractors as a condition to securing Metro contracts. The plaintiff contended that the participation percentages were not "goals"; rather they required contractors to meet a coercive quota.

The Court, asserting these factual issues, vacated the summary judgment order of the District Court declaring Metro's DBE program unconstitutional as applied to non-federally funded contracts. The Court also vacated the injunction predicated on this conclusion, and remanded the case to the District Court for further proceedings. The Court vacated the injunction on federally-funded contracts because the Court had not permitted the United States to intervene as a party.

Klaver Construction, Inc. v. Kansas DOT, 211 F. Supp. 2d 1296 (D. Kan. 2002)

This is another case that involved a challenge to the U.S. DOT Regulations that implement TEA-21 (49 C.F.R. Part 26), in which the plaintiff contractor sought to enjoin the Kansas Department of Transportation ("DOT") from enforcing its DBE Program on the grounds that it violates the Equal Protection Clause under the Fourteenth Amendment. This case involves a direct constitutional challenge to racial and gender preferences in federally-funded state highway contracts. This case concerned the constitutionality of the Kansas DOT's implementation of the federally-funded DBE Program, and the constitutionality of the gender-based policies of the federal government and the race- and gender-based policies of the Kansas DOT. The Court granted the Federal and State Defendants' (U.S. DOT and Kansas DOT) Motions to Dismiss based on lack of standing. The Court held the contractor could not show the specific aspects of the DBE program that it contends are unconstitutional have caused its alleged injuries.

Recent Decisions and Authorities Involving Federal Procurement That May Impact the ITD DBE Program

Rothe Development Corp. v. U.S. Department of Defense, 413 F.3d 1327 (Fed. Cir. 2005) (affirming in part, vacating in part, and remanding) 324 F. Supp. 2d 840 (W.D. Tex. 2004).

Although this case does not involve the Federal DBE Program (49 CFR Part 26), it is an analogous case that may impact the legal analysis and law related to the validity of programs implemented by recipients of federal funds, including the Federal DBE Program. Additionally, it underscores the requirement that race-, ethnic- and gender-based programs of any nature must be supported by substantial evidence. In Rothe, an unsuccessful bidder on a federal defense contract brought suit alleging that the application of an evaluation preference, pursuant to a federal statute, to a small disadvantaged bidder (SDB) to whom a contract was awarded, violated the Equal Protection clause of the U.S. Constitution. The federal statute challenged is Section 1207 of the National Defense Authorization Act of 1987 and as reauthorized in 2003. The statute provides a goal that five (5%) percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantages individuals. 10 U.S.C. § 2323. Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms upwards by ten (10%) percent (the "Price Evaluation Adjustment Program" or "PEA").

The District Court held the federal statute, as reauthorized in 2003, was constitutional on its face. The Court held the 5% goal and the PEA program as reauthorized in 1992 and applied in 1998 was unconstitutional. The basis of the decision was that Congress considered statistical evidence of discrimination that established a compelling governmental interest in the reauthorization of the statute and PEA program in 2003. Congress had not documented or considered substantial statistical evidence that the DOD discriminated against minority small businesses when it enacted the statute in 1992 and reauthorized it in 1998. The Plaintiff appealed the decision.

The Federal Circuit found that the "analysis of the facial constitutionality of an act is limited to evidence before Congress prior to the date of reauthorization." The court limited its review to whether Congress had sufficient evidence in 1992 to reauthorize the provisions in 1207. The court held that for evidence to be relevant to a strict scrutiny analysis, "the evidence must be proven to have been before Congress prior to enactment of the racial classification." The Federal Circuit held that the District Court erred in relying on the statistical studies without first determining whether the studies were before Congress when it reauthorized section 1207. The Federal Circuit remanded the case and directed the District Court to consider whether the data presented was so outdated that it did not provide the requisite strong basis in evidence to support the reauthorization of section 1207.

Rothe Devel. Corp. v. U.S. Dept. of Defense, Civil Action No. SA-98-CV-1011-XR (W.D. Tex. Aug. 10, 2007)

On August 10, 2007 the federal district court for the Western District of Texas in Rothe Development Corp. v. U.S. Department of Defense, et al. (Civ. Action No. SA-98-CV-1011-XR) (W.D. Tex. Aug 10, 2007) issued its Order on remand from the Federal Circuit Court of Appeals decision in Rothe, 413 F.3d 1327 (Fed Cir. 2005), discussed above. The district court upheld the constitutionality of the 2006 Reauthorization of Section 1207 of the National Defense Authorization Act of 1987 (10 USC § 2323), which permits the U.S. Department of Defense to provide preferences

in selecting bids submitted by small businesses owned by socially and economically disadvantaged individuals ("SDBs"). The district court found the 2006 Reauthorization of the 1207 Program satisfied strict scrutiny, holding that Congress had a compelling interest when it reauthorized the 1207 Program in 2006, that there was sufficient statistical and anecdotal evidence before Congress to establish a compelling interest, and that the reauthorization in 2006 was narrowly tailored.

The district court, among its many findings, found certain evidence before Congress was "stale," that the Plaintiff contractor (Rothe) failed to rebut other evidence which was not stale, and that the decisions by the Eighth, Ninth and Tenth Circuits in the decisions in Concrete Works, Adarand Constructors, Sherbrooke Turf and Western States Paving (discussed above and below) were relevant to the evaluation of the facial constitutionality of the 2006 Reauthorization.

As pointed out in Section VI(1) above in the discussion in the Federal Circuit decision, this case does not directly involve the Federal DBE Program, but relates to a federal program for the U.S. Department of Defense ("DOD") concerning federal contracts. The case considers certain evidence before Congress that is relied in part by the cases upholding the validity of the Federal DBE Program that was discussed above in the Western States Paving, Adarand Constructors, Sherbrooke Turf, and Northern Contracting cases.

Facts. In the Section 1207 Act, Congress set a goal that five per cent (5%) of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. In order to achieve that goal, Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms up to ten per cent (10%) (the "Price Evaluation Adjustment Program" or "PEA") 10 U.S.C. § 2323(e)(3). Rothe, Slip Op. at 8. Plaintiff Rothe did not qualify as an SDB because it was owned by a Caucasian female. Although Rothe was technically the lowest bidder on a DOD contract, its bid was adjusted upward by ten per cent (10%), and a third party, who qualified as a SDB, became the "lowest" bidder and was awarded the contract. Id. Rothe claims that the 1207 Program is facially unconstitutional because it takes race into consideration in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment. Id. at 8-9. The district court's decision only reviewed the facial constitutionality of the 2006 Reauthorization of the 2007 Program.

Rejection of Rothe's Arguments. The district court initially rejected six (6) legal arguments made by Rothe regarding strict scrutiny review based on the rejection of the same arguments by the Eighth, Ninth, and Tenth Circuit Courts of Appeal in the Sherbrooke Turf, Western States Paving, Concrete Works, Adarand VII cases, and the Federal Circuit Court of Appeal in Rothe. Rothe, Slip Op. at 85-90. The court rejected the following legal arguments made by Rothe:

(1) The government must establish that it has discriminated against minority-owned businesses in order to satisfy its burden of production;

(2) The court must reject anecdotal and statistical evidence of discrimination unless those claims were actually "adjudicated" and the discrimination was proven to have occurred;

(3) All evidence contained in Congressional Committee Reports, hearing records and floor statements must be rejected on procedural grounds because that evidence is hearsay and is unreliable due to "the political nature of Congress;"

(4) The government must prove discrimination as to every racial sub-class identified in the regulations;

(5) The relevant industry sector for purposes of strict scrutiny review is the "computer maintenance and repair" sub-sector, not the "business services" sector; and

(6) Only evidence of discrimination and DOD procurement is admissible; evidence of state and local discrimination in contracting is irrelevant because "there is no private or state or local defense industry." Rothe, Slip Op. at 85-90.

The district court found that all six (6) arguments have no merit. Id. at 87. In addressing Rothe's sixth argument above, Rothe was arguing that the government could not rely on the evidence of state and local discrimination and contracting because it argued there was no private or state or local defense industry. The court rejected that argument finding that Rothe ignores the "passive participant" doctrine, which the Federal Circuit and other Courts of Appeals acknowledged. The court found that the DOD is a "passive participant" in a system of racial exclusion practiced by elements of various state and local contracting sectors because the government has compiled evidence of marketplace discrimination and linked its spending practices to that private or public discrimination. Rothe, Slip Op. at 88, citing Concrete Works IV, 321 F.3d 950, at 976.

The Legal Analysis in Sherbrooke Turf, Concrete Works IV, Adarand VII, and Western States Paving is Relevant. The court discussed and cited the decisions in Adarand VII (2000), Sherbrooke Turf (2003), and Western States Paving (2005), as holding that Congress had a compelling interest in eradicating the economic roots of racial discrimination in highway transportation programs funded by federal monies, and concluding that the evidence cited by the government, particularly that contained in *The Compelling Interest* (a.k.a. the *Appendix*), more than satisfied the government's burden of production regarding the compelling interest for a race-conscious remedy. Rothe, Slip Op. at 88-90. Because the Urban Institute Report, which presented its analysis of thirty-nine (39) state and local disparity studies, was cross-referenced in the *Appendix*, the district court found the courts in Adarand VII, Sherbrooke Turf, and Western States Paving, also relied on it in support of their compelling interest holding. Id.

The district court found that the Tenth Circuit in Concrete Works II, 36 F.3d 1513 (10th Cir. 1994) established certain legal principles relevant to the district court's strict scrutiny analysis in this case. Rothe, Slip Op. at 90. First, the court held that Rothe had standing to challenge the facial constitutionality of the 2006 Reauthorization. Second, the federal government has a compelling interest to prevent itself from acting as a passive participant in a system of racial exclusion by allowing public tax dollars to finance the evils of private prejudice. Third, the government is not limited to remedying only its own past or present discrimination in the defense contracting industry because it may design the 1207 Program to prevent public tax dollars from financing the evils of private prejudice. Fourth, anecdotal evidence of public and private race discrimination contained in Congressional hearings, floor debate and reports considered by Congress are appropriate supplementary evidence in the strict scrutiny analysis. Fifth, Rothe's conclusory objections to the government's empirical evidence did not raise a genuine issue of material fact. Six, Rothe's expert testimony attacking the government's empirical evidence based on the reliability of underlying data, the methodology of the study, and/or the interpretation of the study's results can raise a genuine issue of material fact. Seventh, the government may rely on disparity indices contained in empirical

reports in order to meet its burden of production. Eighth, although Croson does not require that a governmental entity identify an exact linkage between its award of public contracts and private discrimination, such evidence would enhance the governmental entity's factual predicate for a race-conscious program. Rothe, Slip Op. at pages 91-93. The Court rejected all of Rothe's arguments to the contrary.

The court also found that the Tenth Circuit decision in Concrete Works IV, 321 F.3d 950 (10th Cir. 2003), established legal principles that are relevant to the Court's strict scrutiny analysis. First, Rothe's claims for declaratory judgment on the racial constitutionality of the earlier 1999 and 2002 Reauthorizations were moot. Second, the government can meet its burden of production without conclusively proving the existence of past or present racial discrimination. Third, the government may establish its own compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Fourth, once the government meets its burden of production, Rothe must introduce "credible, particularized" evidence to rebut the government's initial showing of the existence of a compelling interest. Fifth, Rothe may rebut the government's statistical evidence by giving a race-neutral explanation for the statistical disparities, showing that the statistics are flawed, demonstrating that the disparities shown are not significant or actionable, or presenting contrasting statistical data. Sixth, the government may rely on disparity studies to support its compelling interest, and those studies may control for the effect that pre-existing affirmative action programs have on the statistical analysis. Rothe, Slip Op. at 93-94.

Based on Concrete Works IV, the district court did not require the government to conclusively prove that there is pervasive discrimination in the relevant market, that each presumptively disadvantaged group suffered equally from discrimination, or that private firms intentionally and purposefully discriminated against minorities. The court found that the inference of discriminatory exclusion can arise from statistical disparities. Rothe, Slip Op. at 94.

The court found evidence of discriminatory barriers to the formation of businesses by minorities was sufficient to show a "strong link" between a government's disbursement of public funds and the channeling of those funds due to private discrimination. Rothe, Slip Op. at 95. The court stated evidence of private discrimination that results in barriers to business formation is relevant because it demonstrates that SDBs are precluded at the outset from competing for the public contracts, and evidence of barriers to fair competition is relevant because it demonstrates that existing SDBs are precluded from competing. Id.

The district court also cited with support the Tenth Circuit decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) (Adarand VII). The court noted that in Adarand VII, the Tenth Circuit held that Congress may rely on evidence of discriminatory barriers to the formation of SDBs due to private discrimination, barriers to fair competition for public construction contracts, and local disparity studies to establish a strong basis in the evidence. Rothe, Slip Op. at 96, citing Adarand VII. The district court stated out that in Adarand VII the Tenth Circuit held Congress is not required to make specific findings regarding discrimination against every single sub-category of individual within the broad racial and ethnic categories designated in the challenged statute and regulations. Id.

The court pointed out that the details of the strict scrutiny standard enunciated by the Federal Circuit in Rothe III and Rothe V conflict to some degree with the Tenth Circuit's analysis in Concrete Works IV and Adarand VII, the Eighth Circuit's analysis in Sherbrooke Turf, and the Ninth Circuit's analysis in Western States Paving. Rothe, Slip Op. at 97-99.

Congress Had a Compelling Interest for the 2006 Reauthorization of the 1207 Program. The district court held that Congress had a compelling interest in the 2006 Reauthorization of the 1207 Program, which was supported by a strong basis in the evidence. The court relied in significant part upon six (6) state and local disparity studies that were before Congress prior to the 2006 Reauthorization of the 1207 Program. The court based this evidence on its finding that Senator Kennedy had referenced these disparity studies, discussed and summarized findings of the disparity studies, and Representative Cynthia McKinney also cited the same six (6) disparity studies that Senator Kennedy referenced. The court stated that based on the content of the floor debate, it found that these studies were put before Congress prior to the date of the Reauthorization of Section 1207. Rothe, Slip Op. at 102-107.

The court found that these six (6) state and local disparity studies analyzed evidence of discrimination from a diverse cross-section of jurisdictions across the United States, and "they constitute prima facie evidence of a nation-wide pattern or practice of discrimination in public and private contracting." Id, Slip Op. at 107. The court found that the data used in these six (6) disparity studies is not "stale" for purposes of strict scrutiny review. Id. The Court disagreed with Rothe's argument that all the data was stale (data in the studies from 1997 through 2002), "because this data was the most current data available at the time that these studies were performed." Rothe, Slip Op. at 108. The court found that the governmental entities should be able to rely on the most recently available data so long as that data is reasonably up-to-date. Id., Slip Op. at 108-109. The court declined to adopt a "bright-line rule for determining staleness." Id.

The court referred to the reliance by the Ninth Circuit and the Eighth Circuit on the *Appendix* to affirm the constitutionality of the United States Department of Transportation MBE [now DBE] Program, and rejected five (5) years as a bright-line rule for considering whether data is "stale." Id., Slip Op. at 109, footnote 86. The court also stated that it "accepts the reasoning of the *Appendix*, which the court found stated that for the most part "the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities." Rothe, Slip Op. at 108, quoting 61 Fed.Reg. 26042-01, 26061 (1996).

The court then discussed each of the six (6) studies and the findings of those studies. The court rejected the argument made by Rothe against the studies by stating that Rothe's objections to the data and reliability of the six (6) disparity studies were not supported by an expert report or other competent summary judgment evidence. Rothe, Slip Op. at 123. The court found that Rothe did not properly rebut the government's statistical evidence, including the six (6) disparity studies, but instead only provided generalized, conclusory objections that the court found were "of little persuasive value." Id.

The court also found that the anecdotal evidence presented by the six (6) disparity studies was sufficient, and that Rothe had failed to rebut the anecdotal evidence.

The Court found that the study entitled *Federal Procurement After Adarand*, which was conducted by the United States Commission on Civil Rights, was before Congress prior to the 2006 Reauthorization of the 1207 Program. The Court noted that the Majority Opinion in *Federal Procurement After Adarand* advocated that the federal government exclusively adopt race-neutral programs and that federal agencies had failed to adequately consider race-neutral alternatives in the manner required by Adarand III. Rothe, Slip Op. at 153. The Court discussed the Dissenting Opinion by Commissioner Michael Yaki that criticized the Majority Opinion, including noting that his statistical data was "*deleted*" from the original version of the draft Majority Opinion that was received by all Commissioners. Rothe, Slip Op. at 153-154 (emphasis in original). The court reviewed the statistical data from Commissioner Yaki and found that it was not categorically stale, but was less probative of present-day discrimination than the six (6) state and local disparity studies. Rothe, Slip Op. at 154, footnote 107. The court stated that Rothe did not produce "concrete, particularized" evidence challenging the Yaki statistical evidence. The court found that Rothe could not rely on the Majority Opinion's generalized objections to the Dissenting Opinion's statistical evidence for the same reason that it could not rely on its own generalized objections to the six (6) disparity studies that were before Congress prior to the 2006 Reauthorization. Rothe, Slip Op. at 155.

The district court also discussed additional evidence before Congress that it found in Congressional Committee Reports and Hearing Records. Rothe, Slip Op. 155 -164. The Court noted SBA Reports that were before Congress prior to the 2006 Reauthorization. Id., Slip Op. at 164-166.

The district court found that the data contained in the *Appendix*, the Benchmark Study, and the Urban Institute Report was "stale," and the Court did not consider those reports as evidence of a compelling interest for the 2006 Reauthorization. Rothe, Slip Op. at 166-175. The court also found that Rothe's expert report raised a genuine issue of material fact as to the reliability of the methodology of the Benchmark Study. The court stated that the Eighth, Ninth and Tenth Circuits relied on the *Appendix* to uphold the constitutionality of the Federal DBE Program, citing to the decisions in Sherbrooke Turf, Adarand VII, and Western States Paving. Rothe, Slip Op. at 166-167. The court pointed out that although it does not rely on the data contained in the *Appendix* to support the 2006 Reauthorization, the fact the Eighth, Ninth, and Tenth Circuits relied on this data to uphold the constitutionality of the Federal DBE Program as recently as 2005, convinced the court that a bright-line staleness rule is inappropriate. Id., Slip Op. at 170.

The district court found that Rothe's expert reports contain concrete, particularized rebuttal evidence that raised a genuine issue of material fact regarding the reliability of the *Appendix*, the Urban Institute Report, and the Department of Commerce's Benchmark Study. Although the Court found that the data contained in the *Appendix,* the Urban Institute Report, and the Benchmark Study was stale for purposes of strict scrutiny review regarding the 2006 Reauthorization, the court found that Rothe introduced no concrete, particularized evidence challenging the reliability of the methodology or the data contained in the six (6) state and local disparity studies, and other evidence before Congress. The court found that Rothe failed to rebut the data, methodology or anecdotal evidence with "concrete, particularized" evidence to the contrary. Rothe, Slip Op. at 172-173. The district

court held that based on the studies, the government had satisfied its burden of producing evidence of discrimination against African Americans, Asian Americans, Hispanic Americans, and Native Americans in the relevant industry sectors. Rothe, Slip Op. at 173.

The district court found that Congress had a compelling interest in reauthorizing the 1207 Program in 2006, which was supported by a strong basis of evidence for remedial action. Rothe, Slip Op. at 176. The court held that the evidence constituted prima facie proof of a nationwide pattern or practice of discrimination in both public and private contracting, that Congress had sufficient evidence of discrimination throughout the United States to justify a nationwide program, and the evidence of discrimination was sufficiently pervasive across racial lines to justify granting a preference to all five (5) purportedly disadvantaged racial groups. Rothe, Slip Op. at 176.

The 2006 Reauthorization of the 1207 Program Was Narrowly Tailored. The district court also found that the 2006 Reauthorization of the 1207 Program was narrowly tailored and designed to correct present discrimination and to counter the lingering effects of past discrimination. The court held that the government's involvement in both present discrimination and the lingering effects of past discrimination was so pervasive that the Department of Defense and Department of Air Force had become passive participants in perpetuating it. Rothe, Slip Op. at 177. The court stated it was law of the case and could not be disturbed on remand that the Federal Circuit in Rothe III had held that the 1207 Program was flexible in application, limited in duration and it did not unduly impact on the rights of third parties. Rothe, Slip Op. at 177, quoting Rothe III, 262 F.3d at 1331.

The district court thus conducted a narrowly tailored analysis that reviewed three (3) factors:

(1) The efficacy of race-neutral alternatives;

(2) Evidence detailing the relationship between the stated numerical goal of five percent (5%) and the relevant market; and

(3) Over- and under-inclusiveness.

Rothe, Slip Op. at 177-178. The court found that Congress examined the efficacy of race-neutral alternatives prior to the enactment of the 1207 Program in 1986 and that these programs were unsuccessful in remedying the effects of past and present discrimination in the federal procurement. Id., Slip Op. at 178. The court concluded that Congress had attempted to address the issues through race-neutral measures, discussed those measures, and found that Congress' adoption of race-conscious provisions were justified by the ineffectiveness of such race-neutral measures in helping minority-owned firms overcome barriers. Rothe, Slip Op. at 178-181. The court found that the government seriously considered and enacted race-neutral alternatives, but these race-neutral programs did not remedy the widespread discrimination that affected the federal procurement sector, and that Congress was not required to implement or exhaust every conceivable race-neutral alternative. Rothe, Slip Op. at 181. Rather, the court found that narrow tailoring requires only "serious, good faith consideration of workable race-neutral alternatives." Rothe, Slip Op. at 181.

The district court also found that the five percent (5%) goal was related to the minority business availability identified in the six (6) state and local disparity studies. Rothe, Slip Op. at 182. The court concluded that the five per cent (5%) goal was aspirational, not mandatory. Id. The court also

found that the availability analysis contained in all six (6) disparity studies indicated that on average, Minority Business Enterprises in the United States who are ready, willing, and able to bid on Department of Defense contracts far exceeds the five per cent (5%) aspirational goal set by the program. Rothe, Slip Op. at 183. The court found that the five per cent (5%) inspirational goal is far less than the overall proportion of small minority businesses presently participating in the United States economy. Id.

The court then examined and found that the regulations implementing the 1207 Program are not over-inclusive for several reasons, including: (1) The PEA regulations were amended to allow the Department of Commerce to recalculate the PEA on an annual basis based on relevant empirical data; (2) The 1207 Program requires suspension of the PEA if the five per cent (5%) goal was reached in the previous year; (3) The economic disadvantage regulations were amended to require an individualized showing of economic disadvantaged; (4) The burden of proof for non-minority firms to qualify as socially disadvantaged under Section 8(a) regulations were lowered from clear and convincing evidence to preponderance of the evidence, thus making it easier for non-minority firms to qualify for SDB status; (5)The regulations allow any interested party to challenge a SDB certification; and (6) The regulations allow the presumption of social disadvantage to be overcome with credible evidence to the contrary. Rothe, Slip Op. at 183-186.

Conclusion. In conclusion, the court granted summary judgment to the defendants, denied summary judgment to the plaintiffs, and held that the 2006 Reauthorization of the 1207 Program was constitutional.

Rothe Development Corp. v. United States Dept. of Defense, 2006 WL 2052944 (W.D. Tex. Jul. 24, 2006) (unpublished opinion)

On remand from the Federal Circuit's opinion, see Section V.1 supra, this case considered the constitutionality of Section 1207 of the National Defense Authorization Act of 1987 (the "Act"), in which Congress set a goal that 5% of defense contracts would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals (SDBs) under 10 U.S.C. § 2323. Under the Act, Congress authorized the Department of Defense (DOD) to upwardly adjust bids of non-SDBs by 10%. Plaintiff Rothe was technically the lowest bidder on a contract, however, due to the upward adjustment, the contract was awarded to an SDB; Rothe challenged both the 5% goal and the 10% upward adjustment as violative of the Equal Protection of the Fifth Amendment. The trial court upheld the constitutionality of the Act and the Federal Circuit vacated and remanded. This case came before the trial court on a number of cross motions by the parties.

The court first held that although Rothe had the burden to prove the program was unconstitutional, the DOD bore the burden of presenting evidentiary support to determine whether the legislative body had a "strong basis in evidence" to believe that race-based remedial action was necessary. Plaintiff Rothe requested the court to exclude all "stale evidence" based upon the May 2006 report by the U.S. Commission on Civil Rights titled *Disparity Studies as Evidence of Discrimination in Federal Contracting.* Rothe further argued that "Congress had no evidence before it that can be relied upon because 'in the context of 'politically charged affirmative action programs' and 'the political nature of Congress,' Congress cannot be relied upon."

The DOD argued that the older data relied upon Congress was "necessary to demonstrate the 'lingering effects of discrimination'" and that such evidence was presented only to serve as a "baseline

or marker indicating the level of discrimination at a particular point in time." The court found pursuant to the Federal Circuit's remand decision, the "evidence [before Congress] must be proven to have been before Congress prior to enactment of the racial classification." Additionally, the DOD was required to make a showing that the data presented was not "so outdated that it fails to provide a strong basis in evidence for the reauthorizations [of the race-conscious program]." Although the court declined to strike any stale evidence as part of the current discovery motions, the court held that in analyzing future dispositive motions, the Federal Circuit mandated the district court "conduct a 'detailed, skeptical, non-deferential analysis' as undertaken by the Croson Court . . . [and] be satisfied that a 'strong basis in evidence' supports the legislature's conclusion that discrimination persisted and remedial action was needed."

The court held that Rothe could engage in further limited discovery as to whether there still existed a compelling need for the challenged program and whether it was still narrowly tailored. The court also held that Rothe could propound certain discovery requests upon the Defendants including requesting specific statistical information.

"Federal Procurement After Adarand" (USCCR Report September 2005)

In September of 2005, the United States Commission on Civil Rights (the "Commission") issued its report entitled "Federal Procurement After Adarand" setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at http://www.usccr.gov, citing Adarand, 515 U.S. at 237-38. The following is a brief summary of the report.

In 1995, the United States Supreme Court decided Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995), which set forth the constitutional standard for evaluating race-conscious programs in federal contracting. The Commission states in its report that the Court in Adarand held that racial classifications imposed by federal, state and local governments are subject to strict scrutiny and the burden is upon the government entity to show that the racial classification is the least restrictive way to serve a "compelling public interest;" the government program must be narrowly tailored to meet that interest. The Court held that narrow tailoring requires, among other things, that "agencies must first consider race-neutral alternatives before using race conscious measures." [p. ix]

Scope and Methodology of the Commission's Report. The purpose of the Commission's study was to examine the race-neutral programs and strategies implemented by agencies to meet the requirements set forth in Adarand. Accordingly, the study considered the following questions:

- Do agencies seriously consider workable race-neutral alternatives, as required by Adarand?
- Do agencies sufficiently promote and participate in race-neutral practices such as mentor-protégé programs, outreach, and financial and technical assistance?
- Do agencies employ and disclose to each other specific best practices for consideration of race-neutral alternatives?
- How do agencies measure the effects of race-neutral programs on federal contracting?
- What race-neutral mechanisms exist to ensure government contracting is not discriminatory?

The Commission's staff conducted background research, reviewing government documents, federal procurement and economic data, federal contracting literature, and pertinent statutes, regulations and court decisions. The Commission selected seven (7) agencies to study in depth and submitted interrogatories to assess the agencies' procurement methods. The agencies selected for evaluation procure relatively large amounts of goods and services, have high numbers of contracts with small businesses, SDBs, or HUBZone firms, or play a significant support or enforcement role: the Small Business Administration (SBA), and the Departments of Defense (DOD), Transportation (DOT), Education (DOEd), Energy (DOEn), Housing and Urban Development (HUD), and State (DOS).

The report did not evaluate existing disparity studies or assess the validity of data suggesting the persistence of discrimination. It also did not seek to identify whether, or which, aspects of the contracting process disparately effect minority-owned firms.

Findings and Recommendations. The Commission concluded that "among other requirements, agencies must consider race-neutral strategies before adopting any that allow eligibility based, even in part, on race." [p. ix] The Commission further found "that federal agencies have not complied with their constitutional obligation, according to the Supreme Court, to narrowly tailor programs that use racial classifications by considering race-neutral alternatives to redress discrimination." [p. ix]

The Commission found that "agencies have largely failed to apply the Supreme Court's requirements, or [the U.S. Department of Justice's ("DOJ")] guidelines, to their contracting programs." [p. 70] The Commission found that agencies "have not seriously considered race-neutral alternatives, relying instead on SBA-run programs, without developing new initiatives or properly assessing the results of existing programs." [p. 70]

The Commission identified four elements that underlie "serious consideration" of race-neutral efforts, ensure an inclusive and fair race-neutral system, and tailor race-conscious programs to meet a documented need: "Element 1: Standards—Agencies must develop policy, procedures, and statistical standards for evaluating race-neutral alternatives; Element 2: Implementation—Agencies must develop or identify a wide range of race-neutral approaches, rather than relying on only one or two generic government-wide programs; Element 3: Evaluation—Agencies must measure the effectiveness of their chosen procurement strategies based on established empirical standards and benchmarks; Element 4: Communication—Agencies should communicate and coordinate race-neutral practices to ensure maximum efficiency and consistency government-wide." [p. xi]

The Commission found that "despite the requirements that Adarand imposed, federal agencies fail to consider race-neutral alternatives in the manner required by the Supreme Court's decision." [p. xiii] The Commission also concluded that "[a]gencies engage in few race-neutral strategies designed to make federal contracting more inclusive, but do not exert the effort associated with serious consideration that the Equal Protection Clause requires. Moreover, they do not integrate race-neutral strategies into a comprehensive procurement approach for small and disadvantaged businesses." [p. xiii]

Serious Consideration [P. 71]

Finding: Most agencies could not demonstrate that they consider race-neutral alternatives before resorting to race-conscious programs. Due to the lack of specific guidance from the DOJ, "agencies appear to give little thought to their legal obligations and disagree both about what the law requires and about the legal ramifications of their actions."

Recommendation: Agencies must adopt and follow guidelines to ensure consideration of race-neutral alternatives, which system could include: (1) identifying and evaluating a wide range of alternatives; (2) articulating the underlying facts that demonstrate whether race-neutral plans work; (3) collecting empirical research to evaluate success; (4) ensuring such assessments are based on current, competent and comprehensive data; (5) periodically reviewing race conscious plans to determine their continuing need; and (6) establishing causal relationships before concluding that a race-neutral plan is ineffective. Best practices could include: (1) statistical standards by which agencies would determine when to abandon race race-conscious efforts; (2) ongoing data collection, including racial and ethnic information, by which agencies would assess effectiveness; and (3) policies for reviewing what constitutes disadvantaged status and the continued necessity for strategies to increase inclusiveness.

Antidiscrimination Policy And Enforcement [P. 72]

Finding: The federal government lacks an appropriate framework for enforcing nondiscrimination in procurement. Limited causes of action are available to contractors and subcontractors, but the most accessible mechanisms are restricted to procedural complaints about bidding processes.

Recommendation: The enactment of legislation expressly prohibiting discrimination based on race, color, religion, sex, national origin, age, and disability, in federal contracting and procurement. Such legislation should include protections for both contractors and subcontractors and establish clear sanctions, remedies and compliance standards. Enforcement authority should be delegated to each agency with contracting capabilities.

Finding: Most agencies do not have policies or procedures to prevent discrimination in contracting. Generally, agencies are either unaware of or confused about whether federal law protects government contractors from discrimination.

Recommendation: The facilitation of agency development and implementation of civil rights enforcement policies for contracting. Agencies must establish strong enforcement systems to provide individuals a means to file and resolve complaints of discriminatory conduct. Agencies must also adopt clear compliance review standards and delegate authority for these functions to a specific, high-level component. Once agencies adopt nondiscrimination policies, they should conduct regular compliance reviews of prime and other large contract recipients, such as state and local agencies. Agencies should widely publicize complaint procedures, include them with bid solicitations, and codify them in acquisition regulations. Civil rights personnel in each agency should work with procurement officers to ensure that contractors understand their rights and responsibilities and implement additional policies upon legislative action.

Finding: Agencies generally employ systems for reviewing compliance with subcontracting goals made at the bidding stage, but do not establish norms for the number of reviews they will conduct, nor the frequency with which they will do so.

Recommendation: Good faith effort policies should be rooted in race-neutral outreach. Agencies should set standards for and carry out regular on-site audits and formal compliance reviews of SDB subcontracting plans to make determinations of contractors' good faith efforts to achieve established goals. Agencies should develop and disseminate clear regulations for what constitutes a good faith effort, specific to individual procurement goals and procedures. Agencies should also require that all prime contractors be subject to audits, and require prime contractors to demonstrate all measures taken to ensure equal opportunity for SDBs to compete, paying particular attention to contractors that have not achieved goals expressed in their offers.

Ongoing Review [P. 73]

Finding: Narrow tailoring requires regular review of race-conscious programs to determine their continued necessity and to ensure that they are focused enough to serve their intended purpose. However, no agency reported policies, procedures, or statistical standards for when to use race-conscious instead of race-neutral strategies, nor had agencies established procedures to reassess presumptions of disadvantage.

Recommendation: Agencies must engage in regular, systematic reviews (perhaps biennial) of race-conscious programs, including those that presume race-based disadvantage. They should develop and document clear policies, standards and justifications for when race-conscious programs are in effect. Agencies should develop and implement standards for the quality of data they collect and use to analyze race-conscious and race-neutral programs and apply these criteria when deciding effectiveness. Agencies should also evaluate whether race-neutral alternatives could reasonably generate the same or similar outcomes, and should implement such alternatives whenever possible.

Data And Measurement [Pp. 73-75]

Finding: Agencies have neither conducted race disparity studies nor collected empirical data to assess the effects of procurement programs on minority-owned firms.

Recommendation: Agencies should conduct regular benchmark studies which should be tailored to each agency's specific contracting needs; and the results of the studies should be used in setting procurement goals.

Finding: The current procurement data does not evaluate the effectiveness or continuing need for race-neutral and/or race-conscious programs.

Recommendation: A task force should determine what data is necessary to implement narrow tailoring and assess whether (1) race-conscious programs are still necessary, and (2) the extent to which race-neutral strategies are effective as an alternative to race-conscious programs.

Finding: Agencies do not assess the effectiveness of individual race-neutral strategies (e.g. whether contract unbundling is a successful race-neutral strategy).

Recommendation: Agencies should measure the success of race-neutral strategies independently so they can determine viability as alternatives to race-conscious measures (e.g. agencies could track the number and dollar value of contracts broken apart, firms to which smaller contracts are awarded, and the effect of such efforts on traditionally excluded firms).

Communication And Collaboration [P. 75]

Finding: Agencies do not communicate effectively with each other about efforts to strengthen procurement practices (e.g. there is no exchange of race-neutral best practices).

Recommendation: Agencies should engage in regular meetings with each other to share information and best practices, coordinate outreach, and develop measurement strategies.

Outreach [P. 76]

Finding: Even though agencies engage in outreach efforts, there is little evidence that their efforts to reach small and disadvantaged businesses are successful. They do not produce planning or reporting documents on outreach activities, nor do they apply methods for tracking activities, expenditures, or the number and types of beneficiaries.

Recommendation: Widely broadcast information on the Internet and in popular media is only one of several steps necessary for a comprehensive and effective outreach program. Agencies can use a variety of formats – conferences, meetings, forums, targeted media, Internet, printed materials, ad campaigns, and public service announcements – to reach appropriate audiences. In addition, agencies should capitalize on technological capabilities, such as listservs, text messaging, audio subscription services, and new technologies associated with portable listening devices, to circulate information about contracting opportunities. Agencies should include outreach in budget and planning documents, establish goals for conducting outreach activities, track the events and diversity of the audience, and train staff in outreach strategies and skills.

Conclusion. The Commission found that ten (10) years after the Court's Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral decisions that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail "to engage in the basic activities that are the hallmarks of serious consideration," including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review.

The Commission found that most federal agencies have not implemented "even the most basic race-neutral strategy to ensure equal access, i.e., the development, dissemination, and enforcement of clear, effective antidiscrimination policies. Significantly, most agencies do not provide clear recourse for contractors who are victims of discrimination or guidelines for enforcement."

One Commission member, Michael Yaki, filed an extensive Dissenting Statement to the Report. [pp. 79-170]. This Dissenting Statement by Commissioner Yaki was referred to and discussed by the district court in Rothe Development Corp. v. US DOD, Slip Op. at 154-155 (W.D. Tex. Aug. 10, 2007) (see discussion of Rothe above at Section VI, 1A.). In his dissent, Commissioner Yaki criticized the Majority Opinion, including noting that his statistical data was "*deleted*" from the original version of the draft Majority Opinion that was received by all Commissioners. The district court in Rothe considered the data discussed by Yaki.

Decisions Involving State or Local Government M/WBE Programs That May Impact The ITD DBE Program

Decisions in the Ninth Circuit

Monterey Mechanical v. Wilson, 125 F.3d 702 (9th Cir. 1997)

This case is instructive in that the Ninth Circuit analyzed and held invalid the enforcement of a M/WBE type program. Although the program at issue utilized the term "goals" as opposed to "quotas," the Ninth Circuit rejected such a distinction, holding "[t]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." The case also is instructive because it found the use of "goals" and the application of "good faith efforts" in connection with achieving goals to trigger strict scrutiny.

Monterey Mechanical Co. (the "Plaintiff") submitted the low bid for a construction project for the California Polytechnic State University (the "University"). 125 F.3d 702, 704 (9th Cir. 1994). The University rejected the Plaintiff's bid because the Plaintiff failed to comply with a state statute requiring prime contractors on such construction projects to subcontract 23% of the work to M/WBEs or, alternatively, demonstrate good faith outreach efforts. Id. The Plaintiff conducted good faith outreach efforts but failed to provide the requisite documentation; the awardee prime contractor did not subcontract any portion of the work to M/WBEs but did include documentation of good faith outreach efforts. Id.

Importantly, the University did not conduct a disparity study, and instead argued that because "the 'goal requirements' of the scheme '[did] not involve racial or gender quotas, set-asides or preferences,'" the University did not need a disparity study. Id. at 705. The Plaintiff protested the contract award and sued the University's trustees, and a number of other individuals (collectively the "Defendants") alleging the state law was violative of the Equal Protection Clause. Id. The district court denied the Plaintiff's motion for an interlocutory injunction and the Plaintiff appealed to the Ninth Circuit Court of Appeals (the "Court"). Id.

The Defendants first argued that the statute was constitutional because it treated all general contractors alike, by requiring all to comply with the M/WBE participation goals. Id. at 708. The Court held, however, that a minority or women business enterprise could satisfy the participation goals by allocating the requisite percentage of work to itself. Id. at 709. The Court held that contrary to the district court's finding, such a difference was not *de minimis*. Id.

The Defendant's also argued that the statute was not subject to strict scrutiny because the statute did not impose rigid quotas, but rather only required good faith outreach efforts. Id. at 710. The Court rejected the argument finding that although the statute permitted awards to bidders who did not meet the percentage goals, "they are rigid in requiring precisely described and monitored efforts to attain those goals." Id. The Court cited its own earlier precedent to hold that "the provisions are not immunized from scrutiny because they purport to establish goals rather than quotas. . . . [T]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." Id. at 710-11 (internal citations and quotations omitted). The Court found that the statute encouraged set asides and cited Concrete Works of Colorado v. Denver, 36 F.3d 1512 (10th Cir. 1994), as analogous support for the proposition. Id. at 711.

The Court found that the statute treated contractors differently based upon their race, ethnicity and gender, and although "worded in terms of goals and good faith, the statute imposes mandatory requirements with concreteness." Id. The Court also noted that the statute may impose additional compliance expenses upon non-MWBE firms who are required to make good faith outreach efforts (e.g. advertising) to MWBE firms. Id. at 712.

The Court then conducted strict scrutiny (race), and an intermediate scrutiny (gender) analyses. Id. at 712-13. The Court found the University presented "no evidence" to justify the race- and gender-based classifications and thus did not consider additional issues of proof. Id. at 713. The Court found that the statute was not narrowly tailored because the definition of "minority" was overbroad (e.g. inclusion of Aleuts). Id. at 714, citing Wygant v. Jackson Board of Education, 476 U.S. 267, 284, n. 13 (1986) and City of Richmond v. J.A. Croson, Co., 488 U.S. 469, 505-06 (1989). The Court found "[a] broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional scrutiny." Id. at 714, citing Hopwood v. State of Texas, 78 F.3d 932, 951 (5th Cir. 1996). The Court held that the statute violated the Equal Protection Clause.

Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991)

In Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991), the Ninth Circuit examined the constitutionality of King County, Washington's minority and women business set-aside program in light of the standard set forth in City of Richmond v. J.A. Croson Co. The Court held that although the County presented ample anecdotal evidence of disparate treatment of MBE contractors and subcontractors, the total absence of pre-program enactment statistical evidence, was problematic to the compelling government interest component of the strict scrutiny analysis. The Court remanded to the district court for a determination of whether the post-program enactment studies constituted a sufficient compelling government interest. Per the narrow tailoring prong, the Court found that although the program included race-neutral alternative measures and was flexible (i.e. included a waiver provision), the over breadth of the program to include MBE's outside of King County was fatal to the narrow tailoring analysis. The Court also remanded on the issue of whether the plaintiff's were entitled to damages under 42 U.S.C. §§ 1981 and 1983, and in particular to determine whether evidence of causation existed. With respect to the WBE program, the Court held the plaintiff had standing to challenge the program, and applying the intermediate scrutiny analysis, held the WBE program survived the facial challenge.

Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity, 950 F.2d 1401 (9th Cir. 1991) ("AGCC")

In Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity, 950 F.2d 1401 (9th Cir. 1991) ("AGCC"), the Ninth Circuit denied plaintiffs request for preliminary injunction to enjoin enforcement of the city's bid preference program. Although an older case, AGCC is instructive as to the analysis conducted by the Ninth Circuit. The Court discussed the utilization of statistical evidence and anecdotal evidence in the context of the strict scrutiny analysis. 950 F.2d at 1413-18.

Decisions in Other Circuits

Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc., 460 F.3d 859 (7th Cir. 2006)

In Rapid Test Products, Inc. v. Durham School Services Inc., the Seventh Circuit Court of Appeals held that 42 U.S.C. § 1981 (the federal anti-discrimination law) did not provide an "entitlement" in disadvantaged businesses to receive contracts subject to set aside programs; rather, § 1981 provided a remedy for individuals who were subject to discrimination.

Durham School Services, Inc. ("Durham"), a prime contractor, submitted a bid for and won a contract with an Illinois school district. The contract was subject to a set-aside program reserving some of the subcontracts for disadvantaged business enterprises (a race- and gender-conscious program). Prior to bidding, Durham negotiated with Rapid Test Products, Inc. ("Rapid Test"), made one payment to Rapid Test as an advance, and included Rapid Test in its final bid. Rapid Test believed it had received the subcontract. However, after the school district awarded the contract to Durham, Durham gave the subcontract to one of Rapid Test's competitor's, an business owned by an Asian male. The school district agreed to the substitution. Rapid Test brought suit against Durham under 42 U.S.C. § 1981 alleging that Durham discriminated against it because Rapid's owner was a black woman.

The district court granted summary judgment in favor of Durham holding the parties' dealing had been too indefinite to create a contract. On appeal, the Seventh Circuit Court of Appeals stated that "§ 1981 establishes a rule against discrimination in contracting and does not create any entitlement to be the beneficiary of a contract reserved for firms owned by specified racial, sexual, ethnic, or religious groups. Arguments that a particular set-aside program is a lawful remedy for prior discrimination may or may not prevail if a potential subcontractor claims to have been excluded, but it is to victims of discrimination rather than frustrated beneficiaries that § 1981 assigns the right to litigate." If race or sex discrimination is the reason why Durham did not award the subcontract to Rapid Test, then § 1981 provides relief. Having failed to address this issue, the Seventh Circuit Court of Appeals remanded the case to the district court to determine whether Rapid Test had evidence to back up its claim that race and sex discrimination, rather than a nondiscriminatory reason such as inability to perform the services Durham wanted, accounted for Durham's decision to hire Rapid Test's competitor.

Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development, 438 F.3d195 (2d Cir. 2006)

This recent case is instructive to the ITD and the disparity study in connection with the determination of the groups that may be included in a M/WBE type program, and the standard of analysis utilized to evaluate a local government's non-inclusion of certain groups. In this case, the Second Circuit Court of Appeals held racial classifications that are challenged as "under-inclusive" (i.e. those that exclude persons from a particular racial classification) are subject to a "rational basis" review, not strict scrutiny.

Plaintiff Luiere, a seventy-percent (75) shareholder of Jana-Rock Construction, Inc. ("Jana Rock") and the "son of a Spanish mother whose parents were born in Spain," challenged the constitutionality of the State of New York's definition of "Hispanic" under its local minority-owned business program. 438 F.3d 195, 199-200 (2d Cir. 2006). Under the U.S. Department of Transportation regulations,

49 C.F.R. § 26.5, "Hispanic Americans" are defined as "persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race." Id. at 201. Upon proper application, Jana-Rock was certified by the New York Department of Transportation as a Disadvantaged Business Enterprise ("DBE") under the federal regulations. Id.

However, unlike the federal regulations, the State of New York's local minority-owned business program included in its definition of minorities "Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race." The definition did not include all persons from, or descendants of persons from, Spain or Portugal. Id. Accordingly, Jana-Rock was denied MBE certification under the local program; Jana-Rock filed suit alleging a violation of the Equal Protection Clause. Id. at 202-03. The Plaintiff conceded that the overall minority-owned business program satisfied the requisite strict scrutiny, but argued that the definition of "Hispanic" was fatally under-inclusive. Id. at 205.

The Second Circuit found that the narrow-tailoring prong of the strict scrutiny analysis "allows New York to identify which groups it is prepared to prove are in need of affirmative action without demonstrating that no other groups merit consideration for the program." Id. at 206. The Court found that evaluating under-inclusiveness as an element of the strict scrutiny analysis was at odds with the United States Supreme Court decision in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) which required that affirmative action programs be no broader than necessary. Id. at 207-08. The Court similarly rejected the argument that the state should mirror the federal definition of "Hispanic," finding that Congress has more leeway than the states to make broader classifications because Congress is making such classifications on the national level. Id. at 209.

The Court opined – without deciding – that it may be impermissible for New York to simply adopt the "federal USDOT definition of Hispanic without at least making an independent assessment of discrimination against Hispanics of Spanish Origin in New York." Id. Additionally, finding that the Plaintiff failed to point to any discriminatory purpose by New York in failing to include persons of Spanish or Portuguese descent, the Court determined that the rational basis analysis was appropriate. Id. at 213.

The Court held that the Plaintiff failed the rational basis test for three reasons: (1) because it was not irrational nor did it display animus to exclude persons of Spanish and Portuguese descent from the definition of Hispanic; (2) because the fact the Plaintiff could demonstrate evidence of discrimination that he personally had suffered did not render New York's decision to exclude persons of Spanish and Portuguese descent irrational; and (3) because the fact New York may have relied on census data including a small percentage of Hispanics of Spanish descent did not mean that it was irrational to conclude that Hispanics of Latin American origin were in greater need of remedial legislation. Id. at 213-14. Thus, the Second Circuit affirmed the conclusion that New York had a rational basis for its definition to not include persons of Spanish and Portuguese descent, and thus affirmed the district court decision upholding the constitutionality of the challenged definition.

Virdi v. Dekalb County School District, 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion)

Although it is an unpublished opinion, Virdi v. DeKalb County School District is a recent Eleventh Circuit decision reviewing a challenge to a local government M/FBE type program, which is instructive to ITD and the disparity study. In Virdi, the Eleventh Circuit struck down a M/WBE type goal program that the Court held contained racial classifications. The Court based its ruling primarily due to the failure of the DeKalb County School District (the "District") to seriously consider and implement a race-neutral program, and due to the infinite duration of the program.

Plaintiff Virdi, an Asian-American architect of Indian descent, filed suit against the District, members of the DeKalb County Board of Education (both individually and in their official capacities) (the "Board") and the Superintendent (both individually and in his official capacity) (collectively "Defendants") pursuant to 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment alleging that they discriminated against him on the basis of race when awarding architectural contracts. 135 Fed. Appx. 262, 264 (11th Cir. 2005). Virdi also alleged the school district's Minority Vendor Involvement Program was facially unconstitutional. Id.

The district court initially granted the Defendants' motions for summary judgment on all of Virdi's claims and the Eleventh Circuit Court of Appeals reversed in part, vacated in part, and remanded. Id. On remand, the district court granted the Defendants' motion for partial summary judgment on the facial challenge, and then granted the Defendants' motion for a judgment as a matter of law on the remaining claims at the close of Virdi's case. Id.

In 1989, the Board appointed the Tillman Committee (the "Committee) to study participation of female and minority owned businesses with the District. Id. The Committee met with various District departments and a number of minority contractors who claimed they had unsuccessfully attempted to solicit business with the District. Id. Based upon a "general feeling" that minorities were under-represented, the Committee issued the Tillman Report (the "Report") stating "the Committee's impression that '[m]inorities ha[d] not participated in school board purchases and contracting in a ratio reflecting the minority make-up of the community." Id. The Report contained no specific evidence of past discrimination nor any factual findings of discrimination. Id.

In 1991, the Board adopted the Report and implemented several of the recommendations including advertising in the AJC, conducting seminars, and publishing the "how to" booklet. Id. The Board also implemented the Minority Vendor Involvement Program (the "MVP") which adopted the participation goals set forth in the Report. Id. at 265.

Virdi sent letters to the District expressing interest in obtaining architectural contracts. Id. In August 1994, Virdi sent a letter and a qualifications package to a project manager employed by Heery International. Id. In a follow-up conversation, the project manager allegedly told Virdi that his firm was not selected not based upon his qualifications, but because the "District was only looking for 'black owned firms.'" Id.

The Eleventh Circuit considered whether the MVP was facially unconstitutional and whether the Defendants intentionally discriminated against Virdi on the basis of his race. The Court held that strict scrutiny applies to all racial classifications, and is not limited to merely set-asides or mandatory

quotas; therefore, the MVP was subject to strict scrutiny because it contained racial classifications. Id. at 267. The Court first questioned whether the identified government interest was compelling. Id. at 268. However, the Court declined to reach that issue because it found the race-based participation goals were not narrowly tailored to achieving the identified government interest. Id.

The Court held the MVP was not narrowly tailored for two reasons. Id. First, because no evidence existed that the District considered race-neutral alternatives to "avoid unwitting discrimination." The Court 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." Id., citing Grutter v. Bollinger, 539 U.S. 306, 339 (2003), and Richmond v. J.A. Croson Co., 488 U.S. 469, 509-10 (1989). The Court found that District could have engaged in any number of equally effective race-neutral alternatives, including using its outreach procedure and tracking the participation and success of minority owned business as compared to non-minority owned businesses. Id. at 268 & n. 8. Accordingly, the Court held the MVP was not narrowly tailored. Id. at 268.

Second, the Court held that the unlimited duration of the MVP's racial goals negated a finding of narrow tailoring. Id. "[R]ace conscious . . . policies must be limited in time." Id., citing Grutter, 539 U.S. at 342, and Walker v. City of Mequite, TX, 169 F.3d 973, 982 (5th Cir. 1999). The Court held that because the government interest could have been achieved utilizing race-neutral measures, and because the racial goals were not temporally limited, the MVP could not withstand strict scrutiny and was unconstitutional on its face. Id. at 268.

With respect to Virdi's claims of intentional discrimination, the Court held that although the MVP was facially unconstitutional, no evidence existed that the MVP or its unconstitutionality caused Virdi to lose a contract that he would have otherwise received. Id. Thus, because Virdi failed to establish a causal connection between the unconstitutional aspect of the MVP and his own injuries, the Court affirmed the district court's grant of the J.M.O.L. on that issue. Id. at 269. Similarly, the Court found that Virdi presented insufficient evidence to sustain his claims against the Superintendent for intentional discrimination. Id.

The Court Reversed the district court's order pertaining to the facial constitutionality of the MVP's racial goals, and Affirmed the district court's order granting Defendants' J.M.O.L. on the issue of intentional discrimination against Virdi. Id. at 270.

Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari)

This case is instructive to ITD and the disparity study because it is one of the only recent decisions to uphold the validity of a local government M/WBE-type program. It is significant to note that the Tenth Circuit did not apply the narrowly tailored test and thus did not rule on an application of the narrowly tailored test, instead finding that the plaintiff had waived that challenge in one of the earlier decisions in the case. This case also is one of the only cases to have found private sector marketplace discrimination as a basis to uphold an M/FBE type program.

In Concrete Works the United States Court of Appeals for the Tenth Circuit held that the City and County of Denver had a compelling interest in limiting race discrimination in the construction industry, that the City had an important governmental interest in remedying gender discrimination in the construction industry, and found that the City and County of Denver had established a compelling governmental interest to have a race- and gender-based program. In Concrete Works, the Court of Appeals did not address the issue of whether the MWBE Ordinance was narrowly tailored because it held the district court was barred under the law of the case doctrine from considering that issue since it was not raised on appeal by the plaintiff construction companies after they had lost that issue on summary judgment in an earlier decision. Therefore, the Court of Appeals did not reach a decision as to narrowly tailoring or consider that issue in the case.

Case History. Plaintiff, Concrete Works of Colorado, Inc. ("CWC") challenged the constitutionality of an "affirmative action" ordinance enacted by the City and County of Denver (hereinafter the "City" or "Denver"). 321 F.3d 950, 954 (10th Cir. 2003). The ordinance established participation goals for racial minorities and women on certain City construction and professional design projects. Id.

The City enacted an Ordinance No. 513 ("1990 Ordinance") containing annual goals for M/WBE utilization on all competitively bid projects. Id. at 956. A prime contractor could also satisfy the 1990 Ordinance requirements by using "good faith efforts." Id. In 1996, the City replaced the 1990 Ordinance with Ordinance No. 304 (the "1996 Ordinance"). The district court stated that the 1996 Ordinance differed from the 1990 Ordinance by expanding the definition of covered contracts to include some privately financed contracts on City-owned land; added updated information and findings to the statement of factual support for continuing the program; refined the requirements for W/MBE certification and graduation; mandated the use of MBEs and WBEs on change orders; and expanded sanctions for improper behavior by MBEs, WBEs or majority owned contractors in failing to perform the affirmative action commitments made on City projects. Id. at 956-57.

The 1996 Ordinance was amended in 1998 by Ordinance No. 948 (the "1998 Ordinance"). The 1998 Ordinance reduced annual percentage goals and prohibited an MBE or a WBE, acting as a bidder, from counting self-performed work toward project goals. Id. at 957.

CWC filed suit challenging the constitutionality of the 1990 Ordinance. Id. The district court conducted a bench trial on the constitutionality of the three ordinances. Id. The district court ruled in favor of CWC and concluded that the ordinances violated the Fourteenth Amendment. Id. The City then appealed to the Tenth Circuit Court of Appeals. Id. The Court of Appeals reversed and remanded. Id. at 954.

The Court of Appeals applied strict scrutiny to race-based measures and intermediate scrutiny to the gender-based measures. Id. at 957-58, 959. The Court of Appeals also cited Richmond v. J.A. Croson Co., for the proposition that a governmental entity "can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment." 488 U.S. 469, 492, (1989) (plurality opinion). Because "an effort to alleviate the effects of *societal* discrimination is not a compelling interest," the Court of Appeals held that Denver could demonstrate that its interest is compelling only if it (1) identified the past or present discrimination "with some specificity," and (2) demonstrated that a "strong basis in evidence"

supports its conclusion that remedial action is necessary. Id. at 958 (quoting Shaw v. Hunt, 517 U.S. 899, 909-10 (1996)).

The Court held that Denver could meet its burden without conclusively proving the existence of past or present racial discrimination. Id. Rather, Denver could rely on "empirical evidence that demonstrates 'a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually engaged by the locality or the locality's prime contractors.'" Id. (quoting Croson, 488 U.S. at 509 (plurality opinion)). Furthermore, the Court of Appeals held that Denver could rely on statistical evidence gathered from the six-county Denver Metropolitan Statistical Area (MSA) and could supplement the statistical evidence with anecdotal evidence of public and private discrimination. Id.

The Court of Appeals held that Denver could establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Id. The Court of Appeals held that once Denver met its burden, CWC had to introduce "credible, particularized evidence to rebut [Denver's] initial showing of the existence of a compelling interest, which could consist of a neutral explanation for the statistical disparities." Id. (internal citations and quotations omitted). The Court of Appeals held that CWC could also rebut Denver's statistical evidence "by (1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data." Id. (internal citations and quotations omitted). The Court of Appeals held that the burden of proof at all times remained with CWC to demonstrate the unconstitutionality of the ordinances. Id. at 960.

The Court of Appeals held that to meet its burden of demonstrating an important governmental interest per the intermediate scrutiny analysis, Denver must show that the gender-based measures in the ordinances were based on "reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions." Id. (quoting Miss. Univ. for Women v. Hogan, 458 U.S. 718, 726 (1982)).

The Studies. Denver presented historical, statistical and anecdotal evidence in support of its M/WBE programs. Denver commissioned a number of studies to assess its M/WBE programs. Id. at 962. The consulting firm hired by Denver utilized disparity indices in part. Id. at 962. The 1990 Study also examined MBE and WBE utilization in the overall Denver MSA construction market, both public and private. Id. at 963.

The consulting firm also interviewed representatives of MBEs, WBEs, majority-owned construction firms, and government officials. Id. Based on this information, the 1990 Study concluded that, despite Denver's efforts to increase MBE and WBE participation in DPW projects, some Denver employees and private contractors engaged in conduct designed to circumvent the goals program. Id. After reviewing the statistical and anecdotal evidence contained in the 1990 Study, the City Council enacted the 1990 Ordinance. Id.

After the Tenth Circuit decided Concrete Works II, Denver commissioned another study (the "1995 Study"). Id. at 963. Using 1987 Census Bureau data, the 1995 Study again examined utilization of MBEs and WBEs in the construction and professional design industries within the Denver MSA. Id. The 1995 Study concluded that MBEs and WBEs were more likely to be one-person or family-run

businesses. The Study concluded that Hispanic-owned firms were less likely to have paid employees than White-owned firms but that Asian/Native American-owned firms were more likely to have paid employees than White or other minority-owed firms. To determine whether these factors explained overall market disparities, the 1995 Study used the census data to calculate disparity indices for all firms in the Denver MSA construction industry and separately calculated disparity indices for firms with paid employees and firms with no paid employees. Id. at 964.

The Census Bureau information was also used to examine average revenues per employee for Denver MSA construction firms with paid employees. Hispanic, Asian, Native American, and women-owned firms with paid employees all reported lower revenues per employee than majority-owned firms. The 1995 Study also used 1990 census data to calculate rates of self-employment within the Denver MSA construction industry. The Study concluded that the disparities in the rates of self-employment for Blacks, Hispanics, and women persisted even after controlling for education and length of work experience. The 1995 Study controlled for these variables but reported that Blacks and Hispanics working in the Denver MSA construction industry were less than half as likely to own their own businesses as were Whites of comparable education and experience. Id.

In late 1994 and early 1995, a telephone survey of construction firms doing business in the Denver MSA was conducted. Id. at 965. Based on information obtained from the survey, the consultant calculated percentage utilization and percentage availability of MBEs and WBEs. Percentage utilization was calculated from revenue information provided by the responding firms. Percentage availability was calculated based on the number of MBEs and WBEs that responded to the survey question regarding revenues. Using these utilization and availability percentages, the 1995 Study showed disparity indices of 0.64 for MBEs and 0.70 for WBEs in the construction industry. In the professional design industry, disparity indices were 0.67 for MBEs and 0.69 for WBEs. The 1995 Study concluded that the disparity indices obtained from the telephone survey data were more accurate than those obtained from the 1987 census data because the data obtained from the telephone survey was more recent, had a narrower focus, and included data on C corporations. Additionally, it was possible to calculate disparity indices for professional design firms from the survey data. Id.

In 1997, the City conducted another study to estimate the availability of MBEs and WBEs and to examine, *inter alia,* whether race and gender discrimination limited the participation of MBEs and WBEs in construction projects of the type typically undertaken by the City (the "1997 Study"). Id. at 966. The 1997 Study used geographic and specialization information to calculate M/WBE availability. Availability was defined as "the ratio of M/WBE firms to the total number of firms in the four-digit SIC codes and geographic market area relevant to the City's contracts." Id.

The 1997 Study compared M/WBE availability and utilization in the Colorado construction industry. Id. The statewide market was used because necessary information was unavailable for the Denver MSA. Id. at 967. Additionally, data collected in 1987 by the Census Bureau was used because more current data was unavailable. The Study calculated disparity indices for the statewide construction market in Colorado as follows: 0.41 for African American firms, 0.40 for Hispanic firms, 0.14 for Asian and other minorities, and 0.74 for women-owned firms. Id.

The 1997 Study also contained an analysis of whether African Americans, Hispanics, or Asian Americans working in the construction industry are less likely to be self-employed than similarly

situated Whites. Id. Using data from the Public Use Microdata Samples ("PUMS") of the 1990 Census of Population and Housing, the Study used a sample of individuals working in the construction industry. The study concluded that in both Colorado and the Denver MSA, African Americans, Hispanics, and Native Americans working in the construction industry have lower self-employment rates than Whites. Asian Americans had higher self-employment rates than Whites.

Using the availability figures calculated earlier in the Study, the Study then compared the actual availability of M/WBEs in the Denver MSA with the potential availability of M/WBEs if they formed businesses at the same rate as Whites with the same characteristics. Id. Finally, the Study examined whether self-employed minorities and women in the construction industry have lower earnings than white males with similar characteristics. Id. at 968. Using linear regression analysis, the Study compared business owners with similar years of education, of similar age, doing business in the same geographic area, and having other similar demographic characteristics. Even after controlling for several factors, the results showed that self-employed African Americans, Hispanics, Native Americans, and women had lower earnings than white males. Id.

The 1997 Study also conducted a mail survey of both M/WBEs and non-M/WBEs to obtain anecdotal evidence on their experiences in the construction industry. Of the M/WBEs who responded, 35% indicated that they had experienced at least one incident of disparate treatment within the last five years while engaged in business activities. The survey also posed the following question: "How often do prime contractors who use your firm as a subcontractor on public sector projects with [M/WBE] goals or requirements ... also use your firm on public sector or private sector projects without [M/WBE] goals or requirements?" Fifty-eight percent of minorities and 41% of white women who responded to this question indicated they were "seldom or never" used on non-goals projects. Id.

M/WBEs were also asked whether the following aspects of procurement made it more difficult or impossible to obtain construction contracts: (1) bonding requirements, (2) insurance requirements, (3) large project size, (4) cost of completing proposals, (5) obtaining working capital, (6) length of notification for bid deadlines, (7) prequalification requirements, and (8) previous dealings with an agency. This question was also asked of non-M/WBEs in a separate survey. With one exception, M/WBEs considered each aspect of procurement more problematic than non-M/WBEs. To determine whether a firm's size or experience explained the different responses, a regression analysis was conducted that controlled for age of the firm, number of employees, and level of revenues. The results again showed that with the same, single exception, M/WBEs had more difficulties than non-M/WBEs with the same characteristics. Id. at 968-69.

After the 1997 Study was completed, the City enacted the 1998 Ordinance. The 1998 Ordinance reduced the annual goals to 10% for both MBEs and WBEs and eliminated a provision which previously allowed M/WBEs to count their own work toward project goals. Id. at 969.

The anecdotal evidence included the testimony of the senior vice-president of a large, majority-owned construction firm who stated that when he worked in Denver, he received credible complaints from minority and women-owned construction firms that they were subject to different work rules than majority-owned firms. Id. He also testified that he frequently observed graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, he stated that he

believed, based on his personal experiences, that many majority-owned firms refused to hire minority or women-owned subcontractors because they believed those firms were not competent. Id.

Several M/WBE witnesses testified that they experienced difficulty prequalifying for private sector projects and projects with the City and other governmental entities in Colorado. One individual testified that her company was required to prequalify for a private sector project while no similar requirement was imposed on majority-owned firms. Several others testified that they attempted to prequalify for projects but their applications were denied even though they met the prequalification requirements. Id.

Other M/WBEs testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations. Id. There was testimony detailing the difficulties M/WBEs experienced in obtaining lines of credit. One WBE testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations. Id.

The Court also pointed out anecdotal testimony involved recitations of racially and gender-motivated harassment experienced by M/WBEs at work sites. There was testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of eighty feet. Id. at 969-70.

The Legal Framework Applied By The Court. The Court held that the district court incorrectly believed Denver was required to *prove* the existence of discrimination. Instead of considering whether Denver had demonstrated strong evidence from which an inference of past or present discrimination could be drawn, the district court analyzed whether Denver's evidence showed that there *is* pervasive discrimination. Id. at 970. The Court found that In Concrete Works II, it stated that "the Fourteenth Amendment does not require a court to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination." Id. at 970 (quoting Concrete Works II, 36 F.3d 1513, 1522 (10th Cir. 1994)). Denver's initial burden was to demonstrate that strong evidence of discrimination supported its conclusion that remedial measures were necessary. Strong evidence is that "approaching a prima facie case of a constitutional or statutory violation," *not* irrefutable or definitive proof of discrimination. Id. at 971 (quoting Croson, 488 U.S. at 500). The burden of proof at all times remained with the contractor plaintiff to prove by a preponderance of the evidence that Denver's "evidence did not support an inference of prior discrimination and thus a remedial purpose." Id. (quoting Adarand VII, 228 F.3d at 1176).

Denver, the Court held, did introduce evidence of discrimination against each group included in the ordinances. Id. at 971. Thus, Denver's evidence did not suffer from the problem discussed by the Court in Croson. The Court held the district court erroneously concluded that Denver must demonstrate that the private firms directly engaged in any discrimination in which Denver passively participates do so intentionally, with the purpose of disadvantaging minorities and women. The

Croson majority concluded that a "city would have a compelling interest in preventing its tax dollars from assisting [local trade] organizations in maintaining a racially segregated construction market." Id. at 971 (quoting Croson, 488 U.S. at 503). Thus, the Court held Denver's burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and linked its spending to that discrimination. Id.

The Court noted the Supreme Court has stated that the inference of discriminatory exclusion can arise from statistical disparities. Id. (citing Croson, 488 U.S. at 503). Accordingly, it concluded that Denver could meet its burden through the introduction of statistical and anecdotal evidence. To the extent the district court required Denver to introduce additional evidence to show discriminatory motive or intent on the part of private construction firms, the district court erred. Denver, according to the Court, was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. Id. at 972.

The Court found Denver's statistical and anecdotal evidence relevant because it identifies discrimination in the local construction industry, not simply discrimination in society. The Court held the genesis of the identified discrimination is irrelevant and the district court erred when it discounted Denver's evidence on that basis. Id.

The Court held the district court erroneously rejected the evidence Denver presented on marketplace discrimination. Id. at 973. 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 Concrete Works II and the plurality opinion in Croson. Id. 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." Id. (quoting Concrete Works II, 36 F.3d at 1529 (emphasis added)). 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." Id. (quoting Concrete Works II, 36 F.3d at 1529).

The Court stated that Denver could meet it 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. Id. at 973. Thus, Denver was not required to demonstrate that it is "guilty of prohibited discrimination" to meet its initial burden. Id.

Additionally, the Court had previously concluded that Denver's statistical studies which compare utilization of M/WBEs to availability, support the inference that "local prime contractors" are engaged in racial and gender discrimination. Id. at 974 (quoting Concrete Works II, 36 F.3d at 1529). Thus, the Court held Denver's disparity studies should not have been discounted because they fail to specifically identify those individuals or firms responsible for the discrimination. Id.

Court's Rejection of CWC's Arguments and The District Court Findings

Use of Marketplace Data. The Court held the district court, *inter alia,* erroneously concluded that the disparity studies upon which Denver relied were significantly flawed because they measured discrimination in the overall Denver MSA construction industry, not discrimination by the City

itself. Id. at 974. The district court's conclusion, however, the Court found is directly contrary to holding in Adarand VII that evidence of both public and private discrimination in the construction industry is relevant. Id. (citing Adarand VII, 228 F.3d at 1166-67).

The Court held the conclusion reached by the majority in Croson that marketplace data is relevant in equal protection challenges to affirmative action programs is consistent with the approach later taken by the Court in Shaw v. Hunt. Id. at 975. In Shaw, a majority of the Court relied on the majority opinion in Croson for the broad proposition that a governmental entity's "interest in remedying the effects of past or present racial discrimination may in the proper case justify a government's use of racial distinctions." Id. (quoting Shaw, 517 U.S. at 909). The Shaw Court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The Court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. "First, the discrimination must be identified discrimination." Id. at 976 (quoting Shaw, 517 U.S. at 910). The City can satisfy this condition by identifying the discrimination, " '*public or private,* with some specificity.' " Id. at 976 (citing Shaw, 517 U.S. at 910, quoting Croson, 488 U.S. at 504 (emphasis added)). The governmental entity must also have a "strong basis in evidence to conclude that remedial action was necessary." Id. Thus, the Court concluded Shaw specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality's burden of producing strong evidence. Id. at 976.

In Adarand VII, the Court 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. Id. (citing Adarand VII, 228 F.3d at 1166-67 ("[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*" (emphasis added)). Further, the Court pointed out in this case it earlier rejected the argument CWC reasserts here that marketplace data is irrelevant and remanded the case to the district court to determine whether Denver could link its public spending to "the Denver MSA evidence of industry-wide discrimination." Id. (quoting Concrete Works II, 36 F.3d at 1529). 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 Denver's burden of producing strong evidence. Id. (quoting Concrete Works II, 36 F.3d at 1530 (emphasis added)).

Consistent with the Court's mandate in Concrete Works II, the City 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." Id. The City 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. Id. (quoting Croson, 488 U.S. at 492).

The Court rejected CWC's argument that the lending discrimination studies and business formation studies presented by Denver are irrelevant. In Adarand VII, the Court concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition

between M/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." Id. at 977 (quoting Adarand VII, 228 F.3d at 1167-68). The Court found evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/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* M/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of M/WBEs in the Denver MSA construction industry, studies showing that discriminatory barriers to business formation exist in the Denver construction industry are relevant to the City's showing that it indirectly participates in industry discrimination. Id. at 977.

The City presented evidence of lending discrimination to support its position that M/WBEs in the Denver MSA construction industry face discriminatory barriers to business formation. Denver introduced a disparity study prepared in 1996 and sponsored by the Denver Community Reinvestment Alliance, Colorado Capital Initiatives, and the City. The Study ultimately concluded that "despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial." Id. at 977-78. In Adarand VII, the Court concluded that this study, among other evidence, "strongly support[ed] an initial showing of discrimination in lending." Id. at 978 (quoting, Adarand VII, 228 F.3d at 1170 and 1170 n. 13 ("Lending discrimination alone of course does not justify action in the construction market. However, the persistence of such discrimination ... supports the assertion that the formation, as well as utilization, of minority-owned construction enterprises has been impeded.")). The City also introduced anecdotal evidence of lending discrimination in the Denver construction industry.

CWC did not present any evidence that undermined the reliability of the lending discrimination evidence but simply repeated the argument, foreclosed by circuit precedent, that it is irrelevant. The Court rejected the district court criticism of the evidence because it failed to determine whether the discrimination resulted from discriminatory attitudes or from the neutral application of banking regulations. The Court concluded, that discriminatory motive can be inferred from the results shown in disparity studies. The Court held the district court's criticism did not undermine the study's reliability as an indicator that the City is passively participating in marketplace discrimination. The Court noted that, in Adarand VII it took "judicial notice of the obvious causal connection between access to capital and ability to implement public works construction projects." Id. at 978 (quoting Adarand VII, 228 F.3d at 1170).

Denver also introduced evidence of discriminatory barriers to competition faced by M/WBEs in the form of business formation studies. The 1990 Study and the 1995 Study both showed that all minority groups in the Denver MSA formed their own construction firms at rates lower than the total population but that women formed construction firms at higher rates. The 1997 Study examined self-employment rates and controlled for gender, marital status, education, availability of capital, and personal/family variables. As discussed, *supra,* the Study concluded that African Americans, Hispanics, and Native Americans working in the construction industry have lower rates of self-employment than similarly situated Whites. Asian Americans had higher rates. The 1997 Study also concluded that minority and female business owners in the construction industry, with the

exception of Asian American owners, have lower earnings than white male owners. This conclusion was reached after controlling for education, age, marital status, and disabilities. Id. at 978.

The Court held that the district court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in Adarand VII. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion." Id. at 979 (quoting Adarand VII,228 F.3d at 1174).

In sum, the Court 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 City's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary. Id. at 979-80.

Variables. CWC challenged Denver's disparity studies as unreliable because the disparities shown in the studies may be attributable to firm size and experience rather than discrimination. Denver countered, however, that a firm's size has little effect on its qualifications or its ability to provide construction services and that M/WBEs, like all construction firms, can perform most services either by hiring additional employees or by employing subcontractors. CWC responded that elasticity itself is relative to size and experience; M/WBEs are less capable of expanding because they are smaller and less experienced. Id. at 980.

The Court concluded that even if it assumed that M/WBEs are less able to expand because of their smaller size and more limited experience, CWC did not respond to Denver's argument and the evidence it presented showing that experience and size are not race- and gender-neutral variables and that M/WBE construction firms are generally smaller and less experienced *because* of industry discrimination. Id. at 981. The lending discrimination and business formation studies, according to the Court, both strongly supported Denver's argument that M/WBEs are smaller and less experienced because of marketplace and industry discrimination. In addition, Denver's expert testified that discrimination by banks or bonding companies would reduce a firm's revenue and the number of employees it could hire. Id.

Denver also argued its Studies controlled for size and the 1995 Study controlled for experience. It asserted that the 1990 Study measured revenues per employee for construction M/WBEs and concluded that the resulting disparities, "suggest[ ] that even among firms of the same employment size, industry utilization of MBEs and WBEs was lower than that of non-minority male owned firms." Id. at 982. Similarly, the 1995 Study controlled for size, calculating, *inter alia,* disparity indices for firms with no paid employees which presumably are the same size.

Based on the uncontroverted evidence presented at trial, the Court concluded that the district court did not give sufficient weight to Denver's disparity studies because of its erroneous conclusion that the studies failed to adequately control for size and experience. The Court held that Denver is permitted to make assumptions about capacity and qualification of M/WBEs to perform construction services if it can support those assumptions. The Court found the assumptions made in this case were consistent with the evidence presented at trial and supported the City's position that a

firm's size does not affect its qualifications, willingness, or ability to perform construction services and that the smaller size and lesser experience of M/WBEs are, themselves, the result of industry discrimination. Further, the Court pointed out CWC did not conduct its own disparity study using marketplace data and thus did not demonstrate that the disparities shown in Denver's studies would decrease or disappear if the studies controlled for size and experience to CWC's satisfaction. Consequently, the Court held CWC's rebuttal evidence was insufficient to meet its burden of discrediting Denver's disparity studies on the issue of size and experience. Id. at 982.

Specialization. The district court also faulted Denver's disparity studies because they did not control for firm specialization. The Court noted the district court's criticism would be appropriate only if there was evidence that M/WBEs are more likely to specialize in certain construction fields. Id. at 982.

The Court found there was no identified evidence showing that certain construction specializations require skills less likely to be possessed by M/WBEs. The Court found relevant the testimony of the City's expert, that the data he reviewed showed that MBEs were represented "widely across the different [construction] specializations." Id. at 982-83. There was no contrary testimony that aggregation bias caused the disparities shown in Denver's studies. Id. at 983.

The Court held that CWC failed to demonstrate that the disparities shown in Denver's studies are eliminated when there is control for firm specialization. In contrast, one of the Denver studies, which controlled for SIC-code subspecialty still showed disparities, provided support for Denver's argument that firm specialization does not explain the disparities. Id. at 983.

The Court pointed out that disparity studies must make assumptions about availability as long as the same assumptions can be made for all firms. Id. at 983.

Utilization of M/WBEs on City Projects. CWC argued that Denver could not demonstrate a compelling interest because it overutilizes M/WBEs on City construction projects. This argument, according to the Court, was an extension of CWC's argument that Denver could justify the ordinances only by presenting evidence of discrimination by the City itself or by contractors while working on City projects. Because the Court concluded that Denver could satisfy its burden by showing that it is an indirect participant in industry discrimination, CWC's argument relating to the utilization of M/WBEs on City projects goes only to the weight of Denver's evidence. Id. at 984.

Consistent with the Court's mandate in Concrete Works II, at trial Denver sought to demonstrate that the utilization data from projects subject to the goals program was tainted by the program and "reflect[ed] the intended remedial effect on MBE and WBE utilization." Id. at 984 (quoting Concrete Works II, 36 F.3d at 1526). Denver argued that the non-goals data was the better indicator of past discrimination in public contracting than the data on all City construction projects. Id. at 984-85. The Court concluded that Denver presented ample evidence to support the conclusion that the evidence showing M/WBE utilization on City projects not subject to the ordinances or the goals programs is the better indicator of discrimination in City contracting. Id. at 985.

The Court rejected CWC's argument that the marketplace data was irrelevant but agreed that the non-goals data is also relevant to Denver's burden. The Court noted that Denver did not rely heavily

on the non-goals data at trial but focused primarily on the marketplace studies to support its burden. Id. at 985.

In sum, the Court held Denver demonstrated that the utilization of M/WBEs on City projects has been affected by the affirmative action programs that have been in place in one form or another since 1977. Thus, the non-goals data is the better indicator of discrimination in public contracting. The Court concluded that, on balance, the non-goals data provided some support for Denver's position that its belief that racial and gender discrimination existed in public contracting before the enactment of the ordinances was supported by strong evidence. Id. at 987-88.

Anecdotal Evidence. The anecdotal evidence, according to the Court, included several incidents involving profoundly disturbing behavior on the part of lenders, majority-owned firms, and individual employees. Id. at 989. The Court found that the anecdotal testimony revealed behavior that was not merely sophomoric or insensitive, but which resulted in real economic or physical harm. While CWC also argued that all new or small contractors have difficulty obtaining credit and that treatment the witnesses characterized as discriminatory is experienced by all contractors, Denver's witnesses specifically testified that they believed the incidents they experienced were motivated by race or gender discrimination. The Court found they supported those beliefs with testimony that majority-owned firms were not subject to the same requirements imposed on them. Id.

The Court held there is no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. The Court stated that anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions. Id.

After considering Denver's anecdotal evidence, the district court found that the evidence "shows that race, ethnicity and gender affect the construction industry and those who work in it" and that the egregious mistreatment of minority and women employees "had direct financial consequences" on construction firms. Id. at 989 (quoting Concrete Works III, 86 F. Supp. 2d at 1074, 1073). Based on the district court's findings regarding Denver's anecdotal evidence and its review of the record, the Court concluded that the anecdotal evidence provides persuasive, unrebutted support for Denver's initial burden. Id. at 989-90 (citing Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 339 (1977) (concluding that anecdotal evidence presented in a pattern or practice discrimination case was persuasive because it "brought the cold [statistics] convincingly to life")).

Summary. The Court held the record contained extensive evidence supporting Denver's position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs. Id. at 990. The information available to Denver and upon which the ordinances were predicated, according to the Court, indicated that discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination.

To rebut Denver's evidence, the Court stated CWC was required to "establish that Denver's evidence did not constitute strong evidence of such discrimination." Id. at 991 (quoting Concrete Works II, 36 F.3d at 1523). CWC could not meet its burden of proof through conjecture and unsupported criticisms of Denver's evidence. Rather, it must present "credible, particularized evidence." Id. (quoting Adarand VII, 228 F.3d at 1175). The Court held that CWC did not meet its burden.

CWC *hypothesized* that the disparities shown in the studies on which Denver relies could be explained by any number of factors other than racial discrimination. However, the Court found it did not conduct its own marketplace disparity study controlling for the disputed variables and presented no other evidence from which the Court could conclude that such variables explain the disparities. Id. at 991-92.

Narrow Tailoring

Having concluded that Denver demonstrated a compelling interest in the race-based measures and an important governmental interest in the gender-based measures, the Court held it must examine whether the ordinances were narrowly tailored to serve the compelling interest and are substantially related to the achievement of the important governmental interest. Id. at 992.

The Court stated it had previously concluded in its earlier decisions that Denver's program was narrowly tailored. CWC appealed the grant of summary judgment and that appeal culminated in the decision in Concrete Works II. The Court reversed the grant of summary judgment on the compelling-interest issue and concluded that CWC had waived any challenge to the narrow tailoring conclusion reached by the district court. Because the Court found Concrete Works did not challenge the district court's conclusion with respect to the second prong of Croson's strict scrutiny standard – i.e. that the Ordinance is narrowly tailored to remedy past and present discrimination – the Court held it need not address this issue. Id. at 992 (citing Concrete Works II, 36 F.3d at 1531 & n. 24).

The Court concluded that the district court lacked authority to address the narrow tailoring issue on remand because none of the exceptions to the law of the case doctrine are applicable. The district court's earlier determination that Denver's affirmative-action measures were narrowly tailored is law of the case and binding on the parties.

In Re City of Memphis, West Tennessee Chapter of Associated Builders and Contractors, Zellner Construction Company, Inc. v. City of Memphis, 293 F. 3d 345 (6th Cir. 2002)

This case is instructive to the ITD and the disparity study in particular based on its holding that a local government may be prohibited from utilizing post-enactment evidence in support of a M/FBE type program. The United States Court of Appeals for Sixth Circuit held that pre-enactment evidence was required to justify the City of Memphis' MWBE Program. The Sixth Circuit held that a government must have had sufficient evidentiary justification for a racially conscious statue in advance of its passage. The district court had ruled that the could not introduce the post-enactment study as evidence of a compelling interest to justify its MWBE Program. The Sixth Circuit denied the City's application for an interlocutory appeal on the district court's order and refused to grant the City's request to appeal this issue.

Builder's Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001)

This case is instructive to the ITD and the disparity study because of its analysis of the Cook County M/FBE program and the evidence used to support that program. The decision emphasizes the need for any race-conscious program to be based upon credible evidence of discrimination by the local government against M/FBEs and to be narrowly tailored to remedy only that identified discrimination.

In Builder's Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001) the United States Court of Appeals for the Seventh Circuit held the Cook County, Chicago MWBE Program was unconstitutional. The Court concluded there was insufficient evidence of a compelling interest. The Court held there was no credible evidence that Cook County in the award of construction contacts discriminated against any of the groups "favored" by the Program. The Court also found that the Program was not "narrowly tailored" to remedy the wrong sought to be redressed, in part because it was over-inclusive in the definition of minorities. The Court noted the list of minorities included groups that have not been subject to discrimination by Cook County.

Associated Gen. Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), aff'g Case No. C2-98-943, 1998 WL 812241 (S.D. Ohio 1998)

This case is instructive to ITD and the disparity study based on the analysis applied in finding the evidence insufficient to justify a M/FBE program, and the application of the narrowly tailored test. The Sixth Circuit Court of Appeals enjoined the enforcement of the state MBE program, and in so doing reversed state court precedent finding the program constitutional. This case affirmed a district court decision enjoining the award of a "set-aside" contract based on the State of Ohio's MBE program with the award of construction contracts. The Court held, among other things, that the mere existence of societal discrimination was insufficient to support a racial classification. The Court found that the economic data was insufficient and too outdated. The Court held the State could not establish a compelling governmental interest and that the statute was not narrowly tailored. The Court held, among other things, the statute failed the narrow tailoring test because there was no evidence that the State had considered race-neutral remedies.

The Court was mindful of the fact that it was striking down an entire class of programs by declaring the State of Ohio MBE statute in question unconstitutional, and noted that its decision was "not reconcilable" with the Ohio Supreme Court's decision in Ritchie Produce, 707 N.E.2d 871 (Ohio 1999) (upholding the Ohio State MBE Program).

Associated Gen. Contractors v. Drabik, 50 F. Supp. 2d 741 (S.D. Ohio 1999)

In this decision, the district court reaffirmed its earlier holding that the State of Ohio's MBE program of construction contract awards is unconstitutional. The court cited to F. Buddie Contracting v. Cuyahoga Community College, 31 F. Supp. 2d 571 (N.D. Ohio 1998), holding a similar local Ohio program unconstitutional. The court repudiated the Ohio Supreme Court's holding in Ritchey Produce, 707 N.E. 2d 871 (Ohio 1999), which held that the State's MBE program as applied to the state's purchase of non-construction-related goods and services was constitutional. The Court found the evidence to be insufficient to justify the MBE program. The Court held that the program was not narrowly tailored because there was no evidence that the State had considered a race-neutral alternative.

This opinion underscored that governments must show four things to demonstrate narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies, (2) flexibility and duration of the relief, (3) relationship of numerical goals to the relevant labor market, and (4) impact of the relief on the rights of third parties. The Court held the Ohio MBE program failed to satisfy this test.

W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999)

This case is instructive to ITD and the disparity study because the decision highlights the evidentiary burden imposed by the courts necessary to support a local M/WBE program. Second, the Fifth Circuit permitted the aggrieved contractor to recover lost profits from the City of Jackson, Mississippi due to the City's enforcement of the M/WBE program that the court held was unconstitutional.

The Fifth Circuit, applying strict scrutiny, held that the City of Jackson, Mississippi failed to establish a compelling governmental interest to justify its policy placing 15% minority participation goals for City construction contracts. In addition, the Court held the evidence upon which the City relied was faulty for several reasons, including because it was restricted to the letting of prime contracts by the City under the City's Program, and it did not include an analysis of the availability and utilization of qualified minority subcontractors, the relevant statistical pool in the City's construction projects. Significantly, the Court also held that the plaintiff in this case could recover lost profits against the City as damages as a result of being denied a bid award based on the application of the MWBE program.

Eng'g Contractors Ass'n of S. Florida v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997)

Engineering Contractors Association of South Florida v. Metro Dade County is a paramount case in the Eleventh Circuit and is instructive to ITD and the disparity study.

In Dade County, six trade organizations (the "Plaintiffs") filed suit in the District Court for the Southern District of Florida, challenging three affirmative action programs administered by Dade County, Florida, (the "County") as violative of the Equal Protection Clause. 122 F.3d 895, 900 (11th Cir. 1997). The three affirmative action programs challenged were the Black Business Enterprise program ("BBE"), the Hispanic Business Enterprise program ("HBE"), and the Woman Business Enterprise program, ("WBE"), (collectively "MWBE" programs). Id. The Plaintiffs challenged the application of the program to County construction contracts. Id.

For certain classes of construction contracts valued over $25,000, the County set participation goals of 15% for BBEs, 19% for HBEs, and 11% for WBEs. Id. at 901. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County Commission would make the final determination and its decision was appealable to the County Manager. Id. The County reviewed the efficacy of the MWBE programs annually, and reevaluated the continuing viability of the MWBE programs every five years. Id.

In a bench trial, the district court applied strict scrutiny to the BBE and HBE programs and held that the County lacked the requisite "strong basis in evidence" to support the race- and ethnicity-conscious measures. Id. at 902. The district court applied intermediate scrutiny to the WBE program and found that the "County had presented insufficient probative evidence to support its stated rationale for implementing a gender preference." Id. Therefore, the County had failed to demonstrate a "compelling interest" necessary to support the BBE and HBE programs, and failed to demonstrate an "important interest" necessary to support the WBE program. Id. The district court assumed the existence of a sufficient evidentiary basis to support the existence of the MWBE

programs but held the BBE and HBE programs were not narrowly tailored to the interests they purported to serve; the district court held the WBE program was not substantially related to an important government interest. Id. The district court entered a final judgment enjoining the County from continuing to operate the MWBE programs and the County appealed. The Eleventh Circuit Court of Appeals AFFIRMED. Id. at 900, 903.

On appeal, the Eleventh Circuit considered four major issues:

- Whether the plaintiffs had standing. [The Eleventh Circuit answered this in the affirmative and that portion of the opinion is omitted from this summary].
- Whether the district court erred in finding the County lacked a "strong basis in evidence" to justify the existence of the BBE and HBE programs.
- Whether the district court erred in finding the County lacked a "sufficient probative basis in evidence" to justify the existence of the WBE program.
- Whether the MWBE programs were narrowly tailored to the interests they were purported to serve.

  Id. at 903.

The Eleventh Circuit held that the BBE and HBE programs were subject to the strict scrutiny standard enunciated by the U.S. Supreme Court in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). Id. at 906. Under this standard, "an affirmative action program must be based upon a 'compelling government interest' and must be 'narrowly tailored' to achieve that interest." Id. The Eleventh Circuit further noted:

> 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.
>
> Id. (internal citations omitted).

Therefore, strict scrutiny requires a finding of a "'strong basis in evidence' to support the conclusion that remedial action is necessary." Id., citing Croson, 488 U.S. at 500. The requisite "'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.'" Id. at 907, citing Ensley Branch, NAACPv. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994) (citing and applying Croson). However, the Eleventh Circuit found that 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." Id. (internal citations omitted).

Notwithstanding the "exceedingly persuasive justification" language utilized by the Supreme Court in United States v. Virginia, 116 S. Ct. 2264 (1996) (evaluating gender-based government action), the Eleventh Circuit held that the WBE program was subject to traditional intermediate scrutiny. Id. at 908. Under this standard, the government must provide "sufficient probative evidence" of discrimination, which is a lesser standard than the "strong basis in evidence" under strict scrutiny. Id. at 910.

The County provided two types of evidence in support of the MWBE programs: (1) statistical evidence, and (2) non-statistical "anecdotal" evidence. Id. at 911. As an initial matter, the Eleventh Circuit found that in support of the BBE program, the County permissibly relied on substantially "post-enactment" evidence (i.e. evidence based on data related to years following the initial enactment of the BBE program). Id. However, "such evidence carries with it the hazard that the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market." Id. at 912. A district court should not "speculate about what the data *might* have shown had the BBE program never been enacted." Id.

The Statistical Evidence. The County presented five (5) basic categories of statistical evidence: (1) County contracting statistics; (2) County subcontracting statistics; (3) marketplace data statistics; (4) The Wainwright Study; and (5) The Brimmer Study. Id. In summary, the Eleventh Circuit held that the County's statistical evidence (described more fully below) was subject to more than one interpretation. Id. at 924. The district court found that the evidence was "insufficient to form the requisite strong basis in evidence for implementing a racial or ethnic preference, and that it was insufficiently probative to support the County's stated rationale for imposing a gender preference." Id. The district court's view of the evidence was a permissible one. Id.

County Contracting Statistics: The County presented a study comparing three (3) factors for County non-procurement construction contracts over two time periods (1981-1991 and 1993): (1) the percentage of bidders that were MWBE firms; (2) the percentage of awardees that were MWBE firms; and (3) the proportion of County contract dollars that had been awarded to MWBE firms. Id. at 912.

The Eleventh Circuit found that notably, for the BBE and HBE statistics, generally there were no "consistently negative disparities between the bidder and awardee percentages. Id. at 913. In fact, by 1993, the BBE and HBE bidders are being awarded *more* than their proportionate 'share' . . . when the bidder percentages are used as the baseline." Id. For the WBE statistics, the bidder / awardee statistics were "decidedly mixed" as across the range of County construction contracts. Id.

The County then refined those statistics by adding in the total percentage of annual County construction dollars awarded to MWBEs, by calculating "disparity indices" for each program and classification of construction contract. The Eleventh Circuit explained:

> [A] disparity index compares the amount of contract awards a group actually got to the amount we would have expected it to get based on that group's bidding activity and awardee success rate. More specifically, a disparity index measures the participation of a group in County contracting dollars by dividing that group's contract dollar percentage by the related bidder or awardee percentage, and multiplying that number by 100%.

Id. at 914. "The utility of disparity indices or similar measures . . . has been recognized by a number of federal circuit courts." Id.

The Eleventh Circuit found that "[i]n general, . . . disparity indices of 80% or greater, which are close to full participation, are not considered indications of discrimination." Id. The Eleventh Circuit noted that "the EEOC's disparate impact guidelines use the 80% test as the boundary line for determining a prima facie case of discrimination." Id., citing 29 C.F.R. § 1607.4D. In addition, no circuit that has "explicitly endorsed the use of disparity indices [has] indicated that an index of 80% or greater might be probative of discrimination." Id., citing Concrete Works v. City & County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994) (crediting disparity indices ranging from 0% to 3.8%); Contractors Ass'n v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993) (crediting disparity index of 4%).

After calculation of the disparity indices, the County applied a standard deviation analysis to test the statistical significance of the results. Id. at 914. "The standard deviation figure describes the probability that the measured disparity is the result of mere chance." The Eleventh Circuit had previously recognized "[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance." Id.

The statistics presented by the County indicated "statistically significant underutilization of BBEs in County construction contracting." Id. at 916. The results were "less dramatic" for HBEs and mixed as between favorable and unfavorable for WBEs. Id.

The Eleventh Circuit then explained the burden of proof:

> [O]nce the proponent of affirmative action introduces its statistical proof as evidence of its remedial purpose, thereby supplying the [district] court with the means for determining that [it] had a firm basis for concluding that remedial action was appropriate, it is incumbent upon the [plaintiff] to prove their case; they continue to bear the ultimate burden of persuading the [district] court that the [defendant's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently 'narrowly tailored.'

Id. (internal citations omitted).

The Eleventh Circuit noted that a plaintiff has at least three (3) methods to rebut the inference of discrimination with a "neutral explanation" by: "(1) showing that the statistics are flawed; (2)demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data." Id. (internal quotations and citations omitted). The Eleventh Circuit held that the Plaintiffs produced "sufficient evidence to establish a neutral explanation for the disparities." Id.

The Plaintiffs alleged that the disparities were "better explained by firm size than by discrimination. . . . [because] minority and female-owned firms tend to be smaller, and that it stands to reason smaller firms will win smaller contracts." Id. at 916-17. The Plaintiffs produced Census data indicating, on

average, minority and female-owned construction firms in Dade County were smaller than non-MWBE firms. Id. at 917. The Eleventh Circuit found that the Plaintiffs explanation of the disparities was a "plausible one, in light of the uncontroverted evidence that MWBE construction firms tend to be substantially smaller than non-MWBE firms." Id.

Additionally, the Eleventh Circuit noted that the County's own expert admitted that "firm size plays a significant role in determining which firms win contracts." Id. The expert stated:

> The size of the firm has got to be a major determinant because of course some firms are going to be larger, are going to be better prepared, are going to be in a greater natural capacity to be able to work on some of the contracts while others simply by virtue of their small size simply would not be able to do it.

Id. The Eleventh Circuit then summarized:

> Because they are bigger, bigger firms have a bigger chance to win bigger contracts. It follows that, all other factors being equal and in a perfectly nondiscriminatory market, one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded then the smaller MWBE firms.

Id.

In an anticipation of such an argument, the County conducted a regression analysis to control for firm size. Id. A regression analysis is "a statistical procedure for determining the relationship between a dependent and independent variable, e.g., the dollar value of a contract award and firm size." Id. (internal citations omitted). The purpose of the regression analysis is "to determine whether the relationship between the two variables is statistically meaningful." Id.

The County's regression analysis sought to identify disparities that could not be explained by firm size, and theoretically instead based on another factor, such as discrimination. Id. The County conducted two regression analyses using two different proxies for firm size: (1) total awarded value of all contracts bid on; and (2) largest single contract awarded. Id. The regression analyses accounted for most of the negative disparities regarding MWBE participation in County construction contracts (i.e. most of the unfavorable disparities became statistically insignificant, corresponding to standard deviation values less that two). Id.

Based on an evaluation of the regression analysis, the district court held that the demonstrated disparities were attributable to firm size as opposed to discrimination. Id. at 918. The district court concluded that the few unexplained disparities that remained after regressing for firm size were insufficient to provide the requisite "strong basis in evidence" of discrimination of BBEs and HBEs. Id. The Eleventh Circuit held that this decision was not clearly erroneous. Id.

With respect to the BBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract between 1989-1991. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

With respect to the HBE statistics, one of the regression methods failed to explain the unfavorable disparity for one type of contract between 1989-1991, and both regression methods failed to explain the unfavorable disparity for another type of contract during that same time period. Id. However, by 1993, both regression methods accounted for all of the unfavorable disparities, and one of the disparities for one type of contract was actually favorable for HBEs. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

Finally, with respect to the WBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract in the 1993 period. Id. The regression analysis explained all of the other negative disparities, and in the 1993 period, a disparity for one type of contract was actually favorable to WBEs. Id. The Eleventh Circuit held the district court permissibly found that this evidence was not "sufficiently probative of discrimination." Id.

The County argued that the district court erroneously relied on the disaggregated data (i.e. broken down by contract type) as opposed to the consolidated statistics. Id. at 919. The district court declined to assign dispositive weight to the aggregated data for the BBE statistics for 1989-1991 because (1) the aggregated data for 1993 did not show negative disparities when regressed for firm size, (2) the BBE disaggregated data left only one unexplained negative disparity for one type of contract for 1989-1991 when regressed for firm size, and (3) "the County's own expert testified as to the utility of examining the disaggregated data 'insofar as they reflect different kinds of work, different bidding practices, perhaps a variety of other factors that could make them heterogeneous with one another." Id.

Additionally, the district court noted, and the Eleventh Circuit found that "the aggregation of disparity statistics for nonheterogenous data populations can give rise to a statistical phenomenon known as 'Simpson's Paradox,' which leads to illusory disparities in improperly aggregated data that disappear when the data are disaggregated." Id. at 919 n. 4 (internal citations omitted). "Under those circumstances," the Eleventh Circuit held that the district court did not err in assigning less weight to the aggregated data, in finding the aggregated data for BBEs for 1989-1991 did not provide a "strong basis in evidence" of discrimination, or in finding that the disaggregated data formed an insufficient basis of support for any of the MWBE programs given the applicable constitutional requirements. Id. at 919.

County Subcontracting Statistics: The County performed a subcontracting study to measure MWBE participation in the County's subcontracting businesses. For each MWBE category (BBE, HBE, and WBE), "the study compared the proportion of the designated group that filed a subcontractor's release of lien on a County construction project between 1991 and 1994 with the proportion of sales and receipt dollars that the same group received during the same time period." Id. The district court found the statistical evidence insufficient to support the use of race- and an ethnicity-conscious measures, noting problems with some of the data measures. Id. at 920.

Marketplace Data Statistics: The County conducted another statistical study "to see what the differences are in the marketplace and what the relationships are in the marketplace." Id. The study was based on a sample of 568 contractors, from a pool of 10,462 firms, that had filed a "certificate of competency" with Dade County as of January 1995. Id. The selected firms participated in a telephone survey inquiring about the race, ethnicity, and gender of the firm's owner, and asked for

information on the firm's total sales and receipts from all sources. Id. The County's expert then studied the data to determine "whether meaningful relationships existed between (1) the race, ethnicity, and gender of the surveyed firm owners, and (2) the reported sales and receipts of that firm. Id. The expert's hypothesis was that unfavorable disparities may be attributable to marketplace discrimination. The expert performed a regression analysis using the number of employees as a proxy for size. Id.

The Eleventh Circuit first noted that the statistical pool used by the County was substantially larger than the actual number of firms, willing, able, and qualified to do the work as the statistical pool represented all those firms merely licensed as a construction contractor. Id. Although this factor did not render the study meaningless, the district court was entitled to consider that in evaluating the weight of the study. Id. at 921. The Eleventh Circuit quoted the Supreme Court for the following proposition: "[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." Id., quoting Croson, 488 U.S. at 501 (quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 308 n. 13 (1977)).

The Eleventh Circuit found that after regressing for firm size, neither the BBE nor WBE data showed statistically significant unfavorable disparities. Id. Although the marketplace data did reveal unfavorable disparities even after a regression analysis, the district court was not required to assign those disparities controlling weight, especially in light of the dissimilar results of the County Contracting Statistics, discussed supra. Id.

PUMS Data: The County also introduced a statistical analysis prepared by Mr. Jon Wainwright, analyzing "the personal and financial characteristics of self-employed persons working full-time in the Dade County construction industry, based on data from the 1990 Public Use Microdata Sample database" (derived from the decennial census). Id. The study "(1) compared construction business ownership rates of MWBEs to those of non-MWBEs, and (2) analyzed disparities in personal income between MWBE and non-MWBE business owners." Id. "The study concluded that blacks, Hispanics, and women are less likely to own construction businesses than similarly situated white males, and MWBEs that do enter the construction business earn less money than similarly situated white males." Id.

With respect to the first conclusion, the analysis controlled for "human capital" variables (education, years of labor market experience, marital status, and English proficiency) and "financial capital" variables (interest and dividend income, and home ownership). Id. The analysis indicated that blacks, Hispanics and women enter the construction business at lower rates than would be expected, once numerosity, and identified human and financial capital are controlled for. Id. The disparities for blacks and women (but not Hispanics), were substantial and statistically significant. Id. at 922. The underlying theory of this business ownership component of the study is that any significant disparities remaining after control of variables are due to the ongoing effects of past and present discrimination. Id.

The Eleventh Circuit held, in light of Croson, the district court need not have accepted this theory. Id. The Eleventh Circuit quoted Croson, in which the Supreme Court responded to a similar argument advanced by the plaintiffs in that case: "There are numerous explanations for this dearth of minority participation, including past societal discrimination in education and economic

opportunities *as well as both black and white career and entrepreneurial choices. Blacks may be disproportionately attracted to industries other than construction.*" Id., quoting Croson, 488 U.S. at 503. Following the Supreme Court in Croson, the Eleventh Circuit held "the disproportionate attraction of a minority group to non-construction industries does not mean that discrimination in the construction industry is the reason." Id., quoting Croson, 488 U.S. at 503. Additionally, the district court had evidence that between 1982 and 1987, there was a substantial growth rate of MWBE firms as opposed to non-MWBE firms, which would further negate the proposition that the construction industry was discriminating against minority and women owned firms. Id. at 922.

With respect to the personal income component of the study, after regression analyses were conducted, only the BBE statistics indicated a statistically significant disparity ratio. Id. at 923. However, the Eleventh Circuit held the district court was not required to assign the disparity controlling weight because the study did not regress for firm size, and in light of the conflicting statistical evidence in the County Contracting Statistics and Marketplace Data Statistics, discussed supra, which did regress for firm size. Id.

The Brimmer Study: The final study presented by the County was conducted under the supervision of Dr. Andrew F. Brimmer and concerned only black-owned firms. Id. The key component of the study was an analysis of the business receipts of black-owned construction firms for the years of 1977, 1982 and 1987, based on the Census Bureau's Survey of Minority and Women Owned Businesses, produced every five years. Id. The study sought to determine the existence of disparities between sales and receipts of black-owned firms in Dade County compared to the sales and receipts of all construction firms in Dade County. Id.

The study indicated substantial disparities in 1977 and 1987 but 1982. Id. The County alleged that the absence of disparity in 1982 was due to substantial race-conscious measures for a major construction contract (Metrorail project), and not due to a lack of discrimination in the industry. Id. However, the study made no attempt to filter for the Metrorail project and "complete[ly] fail[ed]" to account for firm size. Id. Accordingly, the Eleventh Circuit found the district court permissibly discounted the results of the Brimmer study. Id. at 924.

The Non-Statistical "Anecdotal" Evidence. In addition, the County presented a substantial amount of anecdotal evidence of perceived discrimination against BBEs, a small amount of similar anecdotal evidence pertaining to WBEs, and no anecdotal evidence pertaining to HBEs. Id. The County presented three (3) basic forms of anecdotal evidence: "(1) the testimony of two County employees responsible for administering the MWBE programs; (2) the testimony, primarily by affidavit, of twenty-three MWBE contractors and subcontractors; and (3) a survey of black-owned construction firms." Id.

The Eleventh Circuit found that numerous black and some female owned construction firms in Dade County perceived that they were the victims of discrimination and two County employees also believed that discrimination could taint the County's construction contracting process. Id. However, such anecdotal evidence is helpful "only when it [is] combined with and reinforced by sufficiently probative statistical evidence." Id. In her plurality opinion in Croson, Justice O'Connor found that "evidence of a pattern of individual discriminatory acts can, *if supported by appropriate statistical proof*, lend support to a local government's determination that broader remedial relief is justified." Id., quoting Croson, 488 U.S. at 509 (emphasis added by the Eleventh Circuit).

Accordingly, the Eleventh Circuit held that "anecdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone." Id. at 925. The Eleventh Circuit also cited to opinions from the Third, Ninth and Tenth Circuits as supporting the same proposition. Id. at 926. The Eleventh Circuit affirmed the decision of the district court enjoining the continued operation of the MWBE programs because they did not rest on a "constitutionally sufficient evidentiary foundation." Id.

Although the Eleventh Circuit determined that the MWBE program did not survive constitutional muster due to the absence of a sufficient evidentiary foundation, the Eleventh Circuit proceeded with the second prong of the strict scrutiny analysis of determining whether the MWBE programs were narrowly tailored (BBE and HBE programs) or substantially related (WBE program) to the legitimate government interest they purported to serve, i.e. "remedying the effects of present and past discrimination against blacks, Hispanics, and women in the Dade County construction market." Id.

Narrow Tailoring. "The essence of the 'narrowly tailored' inquiry is the notion that explicitly racial preferences . . . must only be a 'last resort' option." Id., quoting Hayes v. North Side Law Enforcement Officers Ass'n, 10 F.3d 207, 217 (4th Cir. 1993), and citing Croson, 488 U.S. at 519 (Kennedy, J., concurring in part and concurring in the judgment) ("[T]he strict scrutiny standard . . . forbids the use of even narrowly drawn racial classifications except as a last resort.").

The Eleventh Circuit has identified four (4) factors to evaluate whether a race- or ethnicity-conscious affirmative action program is narrowly tailored: (1) "the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties." Id. at 927, citing Ensley Branch, 31 F.3d at 1569. The four (4) factors provide "a useful analytical structure." Id. at 927. The Eleventh Circuit focused only on the first factor in the present case "because that is where the County's MWBE programs are most problematic." Id.

The Eleventh Circuit

> flatly reject[ed] the County's assertion that 'given a strong basis in evidence of a race-based problem, a race-based remedy is necessary.' That is simply not the law. If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem." Id., citing Croson, 488 U.S. at 507 (holding that affirmative action program was not narrowly tailored where "there does not appear to have been any consideration of the use of race-neutral means to increase minority business participation in city contracting"). . . . Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications the government may use to treat a race-based problem. Instead, it is the strongest of medicines, with many potential side effects, and must be reserved for those severe cases that are highly resistant to conventional treatment.

Id.

The Eleventh Circuit held that the County "clearly failed to give serious and good faith consideration to the use of race- and ethnicity-neutral measures." Id.

The County admitted, and the Eleventh Circuit concluded, that the County failed to give any consideration to any alternative to the HBE affirmative action program. Id. at 928. Moreover, the Eleventh Circuit found that the testimony of the County's own witnesses indicated the viability of race- and ethnicity-neutral measures to remedy many of the problems facing black and Hispanic owned construction firms. Id. The County employees identified problems, virtually all of which were related to the County's own processes and procedures, including: "the decentralized County contracting system, which affords a high level of discretion to County employees; the complexity of County contract specifications; difficulty in obtaining bonding; difficulty in obtaining financing; unnecessary bid restrictions; inefficient payment procedures; and insufficient or inefficient exchange of information." Id. The Eleventh Circuit found that the problems facing MWBE contractors were "institutional barriers" to entry facing every new entrant into the construction market, and were perhaps affecting the MWBE contractors disproportionately due to the "institutional youth" of black and Hispanic owned construction firms. Id. "It follows that those firms should be helped the most by dismantling those barriers, something the County could do at least in substantial part." Id.

The Eleventh Circuit noted that the race- and ethnicity-neutral options available to the County mirrored those available and cited by Justice O'Connor in Croson:

> [T]he city has at its disposal a whole array of race-neutral measures to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination and neglect. . . . The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks.

Id., quoting Croson, 488 U.S. at 509-10. The Eleventh Circuit found that except for some "half-hearted programs" consisting of "limited technical and financial aid that might benefit BBEs and HBEs," the County had not "seriously considered" or tried most of the race- and ethnicity-neutral alternatives available. Id. at 928. "Most notably, . . . the County has not taken any action whatsoever to ferret out and respond to instances of discrimination if and when they have occurred in the County's own contracting process." Id.

The Eleventh Circuit found that the County had taken no steps to "inform, educate, discipline, or penalize" discriminatory misconduct by its own employees. Id. at 929. Nor had the County passed any local ordinances expressly prohibiting discrimination by local contractors, subcontractors, suppliers, bankers, or insurers. Id. "Instead of turning to race- and ethnicity-conscious remedies as a last resort, the County has turned to them as a first resort." Accordingly, the Eleventh Circuit held that even if the BBE and HBE programs were supported by the requisite evidentiary foundation, they violated the Equal Protection Clause because they were not narrowly tailored. Id.

Substantial Relationship. The Eleventh Circuit held that due to the relaxed "substantial relationship" standard for gender-conscious programs, if the WBE program rested upon a sufficient evidentiary foundation, it could pass the substantial relationship requirement. Id. However, because it did not rest upon a sufficient evidentiary foundation, the WBE program could not pass constitutional muster. Id.

For all of the foregoing reasons, the Eleventh Circuit affirmed the decision of the district court declaring the MWBE programs unconstitutional and enjoining their continued operation.

Contractors Ass'n of E. Pa. v. City of Philadelphia, 91 F.3d 586 (3d Cir. 1996)

This case is instructive to the ITD and the disparity study as it shows how courts may find a program invalid regardless of whether it has a compelling interest to remedy discrimination, if the program is not narrowly tailored. In this case, after examining the statistical and anecdotal evidence, the trial court held that the City of Philadelphia had failed to show a strong basis in evidence and therefore had no compelling governmental interest for its program. The trial court also determined that the ordinance was not narrowly tailored.

On appeal, the Third Circuit declined to determine whether the government had a compelling interest, and did not address the statistical or anecdotal evidence. The Court found the ordinance unconstitutional because it was not narrowly tailored. This holding was based on the Court's conclusion the ordinance had goals for subcontractor participation without any evidence of discrimination and any analysis of or evidence concerning subcontractor data.

Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307 (N.D. FLA. 2004)

This case is instructive in terms of the type of legislation to be considered by the ITD as to what the courts consider to be a "race-conscious" program and/or legislation, as well as to the significance of the implementation of the legislation to the analysis.

The Plaintiffs, A.G.C. Council, Inc. and the South Florida Chapter of the Associated General Contractors brought this case challenging the constitutionality of certain provisions of a Florida statute (Section 287.09451, *et seq.*). The Plaintiffs contended that the statute violated the Equal Protection Clause of the Fourteenth Amendment by instituting race- and gender-conscious "preferences" in order to increase the numeric representation of minority business enterprises ("MBEs") in certain industries.

According to the Court, the Florida Statute enacted race-conscious and gender-conscious remedial programs to ensure minority participation in state contracts for the purchase of commodities and in construction contracts. The State created the Office of Supplier Diversity ("OSD") to assist MBEs to become suppliers of commodities, services and construction to the state government. The OSD had certain responsibilities, including adopting rules meant to assess whether state agencies have made good faith efforts to solicit business from MBEs, and to monitor whether contractors have made good faith efforts to comply with the objective of greater overall MBE participation.

The statute enumerated measures that contractors should undertake, such as minority-centered recruitment in advertising as a means of advancing the statute's purpose. The statute provided that each State agency is "encouraged" to spend 21% of the monies actually expended for construction contracts, 25% of the monies actually expended for architectural and engineering contracts, 24% of the monies actually expended for commodities and 50.5% of the monies actually expended for contractual services during the fiscal year for the purpose of entering into contracts with certified MBEs. The statute also provided that state agencies are allowed to allocate certain percentages for black Americans, Hispanic-Americans and for American women, and the goals are broken down by construction contracts, architectural and engineering contracts, commodities and contractual services.

The State took the position that the spending goals were "precatory." The Court found that the Plaintiffs had standing to maintain the action and to pursue prospective relief. The Court held that the statute was unconstitutional based on the finding that the spending goals were not narrowly tailored to achieve a governmental interest. The Court did not specifically address whether the articulated reasons for the goals contained in the statute had sufficient evidence, but instead found that the articulated reason would, "if true," constitute a compelling governmental interest necessitating race-conscious remedies. Rather than explore the evidence, the Court focused on the narrowly tailored requirement and held that it was not satisfied by the State.

The Court found that there was no evidence in the record that the State contemplated race-neutral means to accomplish the objectives set forth in Section 287.09451 *et seq.*, such as "'simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination.'" Florida A.G.C. Council, 303 F. Supp. 2d 1307, 1315 (N.D. Fla. 2004), quoting Eng. Contractors Ass'n of S. Florida, Inc. v. Metro. Dade County, 122 F.3d 895, 928 (11th Cir. 1997) (quoting Croson, 488 U.S. at 509-10).

The Court noted that Defendants did not seem to disagree with the report issued by the State of Florida Senate that concluded there was little evidence to support the spending goals outlined in the statute. Rather, the State of Florida argued that the statute is "permissive." The Court, however, held that "there is no distinction between a statute that is precatory versus one that is compulsory when the challenged statute 'induces an employer to hire with an eye toward meeting . . . [a] numerical target.'" Florida A.G.C. Council, 303 F. Supp. 2d at 1316.

The Court found that the State applies pressure to State agencies to meet the legislative objectives of the statute extending beyond simple outreach efforts. The State agencies, according to the Court, were required to coordinate their MBE procurement activities with the OSD, which includes adopting a MBE utilization plan. If the State agency deviated from the Utilization Plan in two consecutive and three out of five total fiscal years, then the OSD could review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency met its utilization plan. The Court held that based on these factors, although alleged to be "permissive," the statute textually was not.

Therefore, the Court found that the statute was not narrowly tailored to serve a compelling governmental interest, and consequently violated the Equal Protection Clause of the Fourteenth Amendment.

Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County,
333 F. Supp. 2d 1305 (S.D. Fla. 2004)

The recent decision in Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County applied and followed the Dade County decision in the context of contracting and procurement for goods and services (including architect and engineer services). Many of the other cases focused on construction, and thus Hershell Gill is instructive as to the analysis relating to architect and engineering services. The decision in Hershell Gill also involved imposing compensatory and punitive damages upon individual County Commissioners due to the district court's finding of their willful failure to abrogate an unconstitutional M/FBE Program. In addition, the case is noteworthy because the

district court refused to follow the 2003 Tenth Circuit Court of Appeals decision in Concrete Works of Colorado, Inc. v. City and County of Denver, 321 .3d 950 (10th Cir. 2003). See discussion, infra.

Six years after the decision in Eng'g Contractors Ass'n v. Metropolitan Dade County, two white male owned engineering firms (the "Plaintiffs") brought suit against Dade County (the "County"), the former County Manager, and various current County Commissioners (the "Commissioners") in their official and personal capacities (collectively the "Defendants"), seeking to enjoin the same "participation goals" in the same MWBE program deemed to violate the Fourteenth Amendment in the earlier case. 333 F. Supp. 1305, 1310 (S.D. Fla. 2004). After the Eleventh Circuit's decision in Dade County striking down the MWBE programs as applied to construction contracts, the County enacted a Community Small Business Enterprise (CSBE) program for construction contracts, "but continued to apply racial, ethnic, and gender criteria to its purchases of goods and services in other areas, including its procurement of A&E services." Id. at 1311.

The Plaintiffs brought suit challenging the Black Business Enterprise (BBE) program, the Hispanic Business Enterprise (HBE) program, and the Women Business Enterprise (WBE) program (collectively "MWBE"). Id. The MWBE programs applied to A&E contracts in excess of $25,000. Id. at 1312. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Id. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County was required to review the efficacy of the MWBE programs annually, and reevaluated the continuing viability of the MWBE programs every five years. Id. at 1313. However, the District Court found "the participation goals for the three MWBE programs challenged . . . remained unchanged since 1994." Id.

In 1998, counsel for plaintiffs contacted the County Commissioners requesting the discontinuation of contract measures on A & E contracts. Id. at 1314. Upon request of the Commissioners, the County manager then made two reports (an original and a follow-up) measuring parity in terms of dollars awarded and dollars paid in the areas of A & E for blacks, Hispanics, and women, and concluded both times that the "County has reached parity for Black, Hispanic, and Women-owned firms in the areas of [A & E] services." The final report further stated "Based on all the analyses that have been performed, the County does not have a basis for the establishment of participation goals which would allow staff to apply contract measures." Id. at 1315. The district court also found that the Commissioners were informed that "there was even less evidence to support [the MWBE] programs as applied to architects and engineers then there was in contract construction." Id. Nonetheless, the Commissioners voted to continue the MWBE participation goals at their previous levels. Id.

In May of 2000 (18 months after the lawsuit was filed), the County commissioned Dr. Manuel J. Carvajal, and econometrician, to study architects and engineers in the County. His final report had four (4) parts:

> (1) data identification and collection of methodology for displaying the research results; (2) presentation and discussion of tables pertaining to architecture, civil engineering, structural engineering, and awards of contracts in those areas; (3) analysis of the structure and empirical estimates of various sets of regression equations, the calculation of corresponding indices, and an assessment of their importance; and (4) a conclusion that there is discrimination against women and Hispanics – but not against blacks – in the fields of architecture and engineering.

Id.

The district court issued a preliminary injunction enjoining the use of the MWBE programs for A & E contracts, pending the United States Supreme Court decisions in Gratz v. Bollinger, 539 U.S. 244 (2003), and Grutter v. Bollinger, 539 U.S. 306 (2003). Id. at 1316.

The court considered whether the MWBE programs were violative of Title VII of the Civil Rights Act, and whether the County and the County Commissioners were liable for compensatory and punitive damages.

The district court found that the Supreme Court decisions in Gratz and Grutter did not alter the constitutional analysis as set forth in Adarand and Croson. Id. at 1317. Accordingly, the race- and ethnicity-based classifications were subject to strict scrutiny, meaning the County must present "a strong basis of evidence" indicating the MWBE program was necessary and that it was narrowly tailored to its purported purpose. Id. at 1316. The gender-based classifications were subject to intermediate scrutiny, requiring the County to show the "gender-based classification serves an important governmental objective, and that it is substantially related to the achievement of that objective." Id. at 1317 (internal citations omitted). The court found that the proponent of a gender-based affirmative action program must present "sufficient probative evidence" of discrimination. Id. (internal citations omitted). The court found importantly, that under the intermediate scrutiny analysis, the County must (1) demonstrate past discrimination against women but not necessarily at the hands of the County, and (2) the gender-conscious affirmative action program need not be used only as a "last resort." Id.

The County presented both statistical and anecdotal evidence. Id. at 1318.

The statistical evidence consisted of Dr. Carvajal's report, most of which consisted of "post-enactment" evidence. Id. Dr. Carvajal's analysis sought to discover the existence of racial, ethnic and gender disparities in A & E, and then to determine whether any such disparities could be attributed to discrimination. Id. The study used four (4) data sets: three (3) were designed to establish the marketplace availability of firms (architecture, structural engineering, and civil engineering), and the fourth focused on awards issued by the County. Id. Dr. Carvajal used the phone book, a list compiled by infoUSA, and a list of firms registered for technical certification with the County's Department of Public Works to compile a list of the "universe" of firms competing in the market.

Id. For the architectural firms only, he also used a list of firms that had been issued an architecture professional license. Id.

Dr. Carvajal then conducted a phone survey of the identified firms.

Based on his data, Dr. Carvajal concluded that disparities existed between the percentage of A & E firms owned by blacks, Hispanics, and women, and the percentage of annual business they received. Id. Dr. Carvajal conducted regression analyses "in order to determine the effect a firm owner's gender or race had on certain dependent variables." Id. Dr. Carvajal used the firm's annual volume of business as a dependent variable and determined the disparities were due in each case to the firm's gender and/or ethnic classification. Id. at 1320. He also performed variants to the equations including: (1) using certification rather than survey data for the experience / capacity indicators, (2) with the outliers deleted, (3) with publicly owned firms deleted, (4) with the dummy variables reversed, and (5) using only currently certified firms." Id. Dr. Carvajal's results remained substantially unchanged. Id.

Based on his analysis of the marketplace data, Dr. Carvajal concluded that the "gross statistical disparities" in the annual business volume for Hispanic and women owned firms could be attributed to discrimination; he "did not find sufficient evidence of discrimination against blacks." Id. The court held that Dr. Carvajal's study constituted neither a "strong basis in evidence" of discrimination necessary to justify race- and ethnicity-conscious measures, nor did it constitute "sufficient probative evidence" necessary to justify the gender-conscious measures. Id. The court made an initial finding that no disparity existed to indicate underutilization of MWBEs in the award of A & E contracts by the County, nor was there underutilization of MWBEs in the contracts they were awarded. Id. The court found that an analysis of the award data indicated, "[i]f anything, the data indicates an overutilization of minority-owned firms by the County in relation to their numbers in the marketplace." Id.

With respect to the marketplace data, the County conceded that there was insufficient evidence of discrimination against blacks to support the BBE program. Id. at 1321. With respect to the marketplace data for Hispanics and women, the court found it "unreliable and inaccurate" for three (3) reasons: (1) the data failed to properly measure the geographic market, (2) the data failed to properly measure the product market, and (3) the marketplace data survey was unreliable. Id. at 1321-25.

The court ruled that it would not follow the Tenth Circuit decision of Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), as the burden of proof enunciated by the Tenth Circuit conflicts with that of the Eleventh Circuit, and the "Tenth Circuit's decision is flawed for the reasons articulated by Justice Scalia in his dissent from the denial of certiorari." Id. at 1325 (internal citations omitted).

The Defendant interveners presented anecdotal evidence pertaining only to discrimination against women in the County's A & E industry. Id. The anecdotal evidence consisted of the testimony of three A & E professional women, "nearly all" of which was related to discrimination in the award of County contracts. Id. at 1326. However, the district court found that the anecdotal evidence contradicted Dr. Carvajal's study indicating that no disparity existed with respect to the award of County A & E contracts. Id.

The court quoted the Eleventh Circuit in Dade County for the proposition "that only in the rare case will anecdotal evidence suffice standing alone." Id. (internal citations omitted). The court held that "[t]his is not one of those rare cases." The district court concluded that the statistical evidence was "unreliable and fail[ed] to establish the existence of discrimination," and the anecdotal evidence was insufficient as it did not even reach the level of anecdotal evidence in Dade County where the County employees themselves testified. Id.

The court made an initial finding that a number of minorities provided preferential treatment were in fact majorities in the County in terms of population, voting capacity, and representation on the County Commission. Id. at 1326-1329. For purposes only of conducting the strict scrutiny analysis, the court then assumed that Dr. Carvajal's report demonstrated discrimination against Hispanics (note the County had conceded it had insufficient evidence of discrimination against blacks) and sought to determine whether the HBE program was narrowly tailored to remedying that discrimination. Id. at 1330. However, the court found that because the study failed to "identify who is engaging in the discrimination, what form the discrimination might take, at what stage in the process it is taking place, or how the discrimination is accomplished, . . . it is virtually impossible to narrowly tailor any remedy, and the HBE program fails on this fact alone." Id.

The court found that even after the County Managers informed the Commissioners that the County had reached parity in the A & E industry, the Commissioner declined to enact a CSBE ordinance, a race-neutral measure utilized in the construction industry after Dade County. Id. Instead, the Commissioners voted to continue the HBE program. Id. The court held that the County's failure to even explore a program similar to the CSBE ordinance indicated that the HBE program was not narrowly tailored. Id. at 1331.

The court also found that the County enacted a broad anti-discrimination ordinance imposing harsh penalties for a violation thereof. Id. However, "not a single witness at trial knew of any instance of a complaint being brought under this ordinance concerning the A & E industry," leading the court to conclude that the ordinance was either not being enforced, or no discrimination existed. Id. Under either scenario, the HBE could not be narrowly tailored. Id.

The court found the waiver provisions in the HBE inflexible in practice. Id. Additionally, the court found the County had failed to comply with the provisions in the HBE requiring adjustment of participation goals based on annual studies, because the County had not in fact conducted annual studies for several years. Id. The court found this even "more problematic" because the HBE program did not have a built-in durational limit, and thus blatantly violated Supreme Court jurisprudence requiring that racial and ethnic preferences "must be limited in time." Id. at 1332, citing Grutter, 123 S. Ct. at 2346. For the foregoing reasons, the court concluded the HBE program was not narrowly tailored. Id. at 1332.

With respect to the WBE program, the court found that "the failure of the County to identify who is discriminating and where in the process the discrimination is taking place indicates (though not conclusively) that the WBE program is not substantially related to eliminating that discrimination." Id. at 1333. The court found that the existence of the anti-discrimination ordinance, the refusal to enact a small business enterprise ordinance, and the inflexibility in setting the participation goals rendered the WBE unable to satisfy the substantial relationship test. Id.

The court held that the County was liable for any compensatory damages. Id. at 1333-34. The court held that the Commissioners had absolute immunity for their legislative actions; however, they were not entitled to qualified immunity for their actions in voting to apply the race-, ethnic-, and gender-conscious measures of the MWBE programs if their actions violated "clearly established statutory or constitutional rights of which a reasonable person would have known. . . . Accordingly, the question is whether the state of the law at the time the Commissioners voted to apply [race-, ethnic-, and gender-conscious measures] gave them 'fair warning' that there actions were unconstitutional. " Id. at 1335-36 (internal citations omitted).

The court held that the Commissioners were not entitled to qualified immunity because they "had before them at least three cases that gave them fair warning that their application of the MWBE programs . . . were unconstitutional: Croson, Adarand and [Dade County]." Id. at 1137. The court found that the Commissioners voted to apply the contract measures after the Supreme Court decided both Croson and Adarand. Id. Moreover, the Eleventh had already struck down the construction provisions of the same MWBE programs. Id. Thus, the case law was "clearly established" and gave the Commissioners fair warning that the MWBE programs were unconstitutional. Id.

The court also found the Commissioners had specific information from the County Manager and other internal studies indicating the problems with the MWBE programs and indicating that parity had been achieved. Id. at 1338. Additionally, the Commissioners did not conduct the annual studies mandated by the MWBE ordinance itself. Id. For all the foregoing reasons, the court held the Commissioners were subject to individual liability for any compensatory and punitive damages.

The district court enjoined the County, the Commissioners, and the County Manager from using, or requiring the use of, gender, racial, or ethnic criteria in deciding (1) whether a response to an RFP submitted for A & E work is responsive, (2) whether such a response will be considered, and (3) whether a contract will be awarded to a consultant submitting such a response. The court awarded the plaintiffs $100 each in nominal damages, and reasonable attorneys fees and costs, for which it held the County and the Commissioners jointly and severally liable.

The Builders Ass'n of Greater Chicago v. The City of Chicago,
298 F. Supp. 2d 725 (N.D. Ill. 2003)

This case is instructive to the ITD and the disparity study because of the court's focus and analysis on whether the City of Chicago's M/WBE program was narrowly tailored. The basis of the court's holding that the program was not narrowly tailored is instructive for any program considered by ITD because of the reasons provided as to why the program did not pass muster.

The Plaintiff, the Builders Association of Greater Chicago, brought this suit challenging the constitutionality of the City of Chicago's construction Minority and Women Owned Business ("MWBE") Program. The Court held that the City of Chicago's MWBE program was unconstitutional because it did not satisfy the requirement that it be narrowly tailored to achieve a compelling governmental interest. The Court held that it was not narrowly tailored for several reasons, including because there was no "meaningful individualized review" of MWBEs; it had no termination date nor did it have any means for determining a termination; the "graduation" revenue amount for firms to graduate out of the program was very high, $27,500,000 and in fact very few firms graduated; there was no net worth threshold; and, waivers were rarely or never granted on

construction contracts. The Court found that the City program was a "rigid numerical quota," a quota related not to the number of available, willing and able firms. Formulistic percentages, the Court held, could not survive the strict scrutiny.

The Court held that the goals plan did not address issues raised as to discrimination regarding market access and credit. The Court found that a goals program does not directly impact prime contractor's selection of subcontractors on non-goals private projects. The Court found that a set-aside or goals program does not directly impact difficulties in accessing credit, and does not address discriminatory loan denials or higher interest rates.

The Court concluded that other race-neutral means were available to impact credit, high interest rates, and other potential market place discrimination. The Court pointed to race-neutral means including linked deposits, with the City banking at institutions making loans to startup and smaller firms. Other race-neutral programs referenced included quick pay and contract downsizing; restricting self-performance by prime contractors; a direct loan program; waiver of bonds on contracts under $100,000; a bank participation loan program; a 2% local business preference; outreach programs and technical assistance and workshops; and seminars presented to new construction firms.

The Court held that race and ethnicity do matter, but that racial and ethnical classifications are highly suspect, can be used only as a last resort, and cannot be made by some mechanical formulation. Therefore, the Court concluded the City's MWBE Program could not stand in its present guise. The Court held that the present program was not narrowly tailored to remedy past discrimination and the discrimination demonstrated to now exist.

The Court entered an injunction, but delayed the effective date for six months from the date of its order, December 29, 2003. The Court held that the City had a "compelling interest in not having its construction projects slip back to near monopoly domination by white male firms." The Court ruled a brief continuation of the program for six months was appropriate "as the City rethinks the many tools of redress it has available."

Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 218 F. Supp. 2d 749 (D. Md. 2002)

This case is instructive to the ITD and the disparity study because the court found the Executive Order of the Mayor of the City of Baltimore was precatory and imposed no substantial restrictions; the Executive Order announced goals that were found to be aspirational only.

The Associated Utility Contractors of Maryland, Inc. ("AUC") sued the City of Baltimore challenging its ordinance providing for minority and women owned business enterprise ("MWBE") participation in city contracts. Previously, an earlier City of Baltimore MWBE program was declared unconstitutional. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000). The City adopted a new ordinance that provided for the establishment of MWBE participation goals on a contract-by-contract basis, and made several other changes from the previous MWBE program declared unconstitutional in the earlier case.

In addition, the Mayor of the City of Baltimore issued an Executive Order that announced a goal of awarding 35% of all City contracting dollars to MWBEs. The Court found this goal of 35% participation was aspirational only and the Executive Order contained no enforcement mechanism or

penalties for noncompliance. The Executive Order also specified many "noncoercive" outreach measures to be taken by the City agencies relating to increasing participation of MWBEs. These measures were found to be merely aspirational and no enforcement mechanism was provided.

The Court addressed in this case only a motion to dismiss filed by the City of Baltimore arguing that the Associated Utility Contractors had no standing. The Court denied the motion to dismiss holding that the association had standing to challenge the new MWBE ordinance, although the Court noted that it had significant issues with the AUC having representational standing because of the nature of the MWBE plan and the fact the AUC did not have any of its individual members named in the suit. The Court also held that the AUC was entitled to bring an as applied challenge to the Executive Order of the Mayor, but rejected it having standing to bring a facial challenge based on a finding that it imposes no requirement, creates no sanctions, and does not inflict an injury upon any member of the AUC in any concrete way. Therefore, the Executive Order did not create a "case or controversy" in connection with a facial attack. The Court found the wording of the Executive Order to be precatory and imposing no substantive restrictions.

After this decision the City of Baltimore and the AUC entered into a settlement agreement and a dismissal with prejudice of the case. An order was issued by the Court on October 22, 2003 dismissing the case with prejudice.

Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000)

The Court held unconstitutional the City of Baltimore's "affirmative action" program, which had construction subcontracting "set-aside" goals of 20% for MBEs and 3% for WBEs. The Court held there was no data or statistical evidence submitted by the City prior to enactment of the Ordinance. There was no evidence showing a disparity between MWBE availability and utilization in the subcontracting construction market in Baltimore. The Court enjoined the City Ordinance.

Phillips & Jordan, Inc. v. Watts, 13 F. Supp. 2d 1308 (N.D. Fla. 1998)

This case is instructive to ITD and the disparity study because it addresses a challenge to a state and local government M/FBE type program implemented by a state department of transportation and considered the requisite evidentiary basis necessary to support the program. In Phillips & Jordan, the District Court for the Northern District of Florida held that the Florida Department of Transportation's ("FDOT") program of "setting aside" certain highway maintenance contracts for African-American and Hispanic-owned businesses violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The parties stipulated that the plaintiff, a non-minority business, had been excluded in the past and may be excluded in the future from competing for certain highway maintenance contracts "set aside" for business enterprises owned by Hispanic and African-American individuals. The Court held that the evidence of statistical disparities was insufficient to support the Florida DOT program.

The District Court pointed out that Florida DOT did not claim that it had evidence of intentional discrimination in the award of its contracts. The Court stated that the essence of FDOT's claim was that the two year disparity study provided evidence of a disparity between the proportion of minorities awarded FDOT road maintenance contracts and a portion of the minorities "supposedly willing and able to do road maintenance work;" that FDOT did not itself engage in any racial or

ethnic discrimination; so FDOT must have been a passive participant in "somebody's" discriminatory practices.

Since it was agreed in the case that FDOT did not discriminate against minority contractors bidding on road maintenance contracts, the Court found that the record contained insufficient proof of discrimination. The Court found the evidence insufficient to establish acts of discrimination against African-American and Hispanic-owned businesses.

The Court raised questions concerning the choice and use of the statistical pool of available firms relied upon by the disparity study. The Court expressed concern about whether it was appropriate to use census data to analyze and determine which firms were available (qualified and/or willing and able) to bid on FDOT road maintenance contracts.

APPENDIX C.
Availability Survey

This appendix describes study team steps to determining MBE/WBE availability for transportation construction and engineering work in Idaho. It expands on the analysis presented in Section II.

Overall Approach

The study team completed two phases of calling to firms for its availability survey. The first phases of calls were conducted by BBC staff to firms listed in a variety of ITD databases as having worked for previous prime contractors, subcontractors or bidders on ITD contracts. This phase of the survey included firms inside and outside Idaho.

For the second phase of the availability survey, BBC contracted with Customer Research International (CRI) to contact other Idaho, Eastern Washington and Northern Utah businesses potentially related to the transportation construction and engineering industry. The business establishments that CRI contacted were those listed under primary fields closely related to transportation construction and engineering in the D&B business directory. Only business establishments located in the relevant geographic market area were included in the second phase of the survey. The study team attempted to contact every listing rather than draw a sample of listings from D&B.

Combined, BBC and CRI attempted to reach 9,042 business listings. The study team completed surveys with 3,058 business establishments. After screening for qualifications and interest in future transportation construction and design work, and other factors, BBC was able to analyze MBE/WBE availability based on a database of 1,296 firms.

Sample Frame

BBC identified firms for the first phase of the availability survey from ITD contract and program data (the number of firms contacted from each source are listed in parentheses):

- Bidders list (884);
- CAMS database (632); and
- PATS database (278).

BBC matched firms to Dun & Bradstreet (D&B) business profile information using telephone numbers and addresses found within each data source. BBC also attempted to contact firms that D&B could not match if the firm had complete contact information. If a firm had partial or incomplete contact information, BBC searched for phone numbers and addresses using company websites or online telephone directories. BBC surveyed as many firms as possible, given phone number and other contact information availability. In total, BBC attempted to contact 1,086 firms using BBC staff.

For the second phase of the availability survey, BBC developed a sample frame based on a D&B database of establishments doing business in the relevant geographic market area. The study team determined business specializations that accounted for most transportation construction and engineering work. BBC then identified the 8-digit Standard Industrial Classification (SIC) codes best corresponding to that work. D&B provided the list of firms in Idaho, Eastern Washington and Northern Utah with primary lines of business within those SIC codes. Only those firms not already included in the lists of firms provided by ITD were contacted in this phase of the availability research.

The study team did not expect every firm in these lines of business to be available for transportation construction or engineering work. In some fields, we anticipated that relatively few firms would perform this work. In the same vein, the study team did not design the survey effort so that each firm possibly performing transportation construction or engineering work would be called as part of the survey. To do so would require including business sectors marginally related to transportation construction and design. Some firms within the core lines of work encompassed in the survey are also either missing from the D&B database or might not respond to the survey effort. Finally, only establishments from the D&B list located in the relevant geographic market area locations were included in the survey.

For these reasons, the survey is not a complete census of all firms possibly available for transportation contracting work in Idaho. The study team's objective was to develop unbiased estimates of the relative availability of MBE/WBEs among firms doing business in Idaho within the lines of work principally involved in transportation contracting.

Identifying the relevant subindustries for ITD transportation contracting. BBC determined the types of firms involved in ITD transportation construction and engineering services by reviewing firms listed in ITD databases for construction and design contracts. The study team further supplemented this effort to identify relevant SIC codes by examining the results from the first phase of the availability survey (in-house calling) and noting additional relevant fields with firms reporting qualifications and interest in transportation construction and engineering.

In categorizing firms as to their primary industry, BBC used 8-digit SIC codes developed by D&B. The 8-digit codes provided definitions of firm specializations that are more precise than the 4-digit SIC codes or the NAICS codes that have been prepared by the federal government.

List of establishments to be contacted. Each business establishment with the corresponding SIC code in the relevant geographic market area for which D&B had a phone number was included in the list purchased from D&B. There was no "sampling" of business establishments from the D&B list.

Because D&B organizes its database by "business establishment," not by "firm," BBC purchased the business listings in that fashion. Therefore, multiple Idaho locations for a single firm were obtained in the list of establishments to be called. The study team attempted to contact each establishment by telephone. (BBC's methods for consolidating information for multiple establishments into a single record for a firm are described later in this appendix.)

Questionnaire Development

Development of survey instrument. The study team drafted a telephone survey to collect business information from transportation construction and engineering firms. Before this survey was used in the field, ITD staff reviewed the survey instrument, and it was tested in a pilot survey. The basic survey document for construction firms is provided at the end of this appendix. The survey was slightly modified for certain groups of firms based on line of work in order to use the terms commonly employed in those fields. For example, the words "prime consultant" and "subconsultant" were substituted for "prime contractor" and "subcontractor" when surveying engineering-related firms.

A fax version of the survey was also developed. This version was faxed or e-mailed to firm owners or managers initially contacted by telephone who requested that a survey be faxed or e-mailed to them. They then returned the survey to BBC via fax or e-mail.

Survey structure. The telephone and fax/e-mail surveys included the following sections. Note that each area of questions was asked of all firms. Interviewers did not know ownership status when calling a firm. (The survey instrument is reproduced in its entirety at the end of this appendix.)

Identification of purpose. The survey began by identifying the Idaho Transportation Department as the survey sponsor and describing the purpose of the study (identifying firms doing transportation construction or engineering work in Idaho).

Verification of correct firm name. The interviewer verified that he or she had reached the correct business, and if not, inquired about the correct contact information for that business. When the firm name was not correct, interviewers asked if the respondent knew how to contact the company. The BBC study team followed up with the desired company based on the new contact information (see areas "X" and "Y" of the Availability Survey).

Performance of transportation construction or engineering work. Firms were asked, "First, I want to confirm that your firm does work related to transportation construction, maintenance or design. Is this correct?" Interviewers continued with firms responding "yes" to this question (Question A1). BBC instructed interviewers that "doing work" included trying to sell this work.

Verification of for-profit business status. The interviewer also asked whether the organization was a for-profit business as opposed to a government or not-for-profit entity (Question A2). Interviewers continued with firms responding "yes" to this question.

Confirmation of main line of business. Firms were asked to confirm industry classification from the D&B database (Question A4). Firms could also change or clarify this description. (After the survey was complete, BBC coded the new information on main line of business into appropriate SIC codes.)

Sole location, or multiple locations. Because the study team surveyed business establishments, business owners and managers were asked if they had other locations in Idaho (Questions A5–A6). They were also asked if the establishment was an affiliate or subsidiary of another firm (Questions A8–A9). (A discussion of how BBC consolidated this information into a single response for a firm is presented later in this appendix.)

Past bids or work with ITD, local governments and the private sector. The survey inquired about bids for or work on past ITD, local government and private sector transportation projects. This area of questions asked whether the firm had bid or worked as a prime contractor or as a subcontractor or supplier (Questions B1–B12).

Qualifications and interest in future transportation work. Firm representatives were asked about their qualifications and interest in future transportation work. The survey questions asked whether they were qualified and interested in work for ITD and/or local governments. Separate questions asked about qualifications and interest in this work as a prime contractor and/or as a subcontractor (Questions B13–B14).

Largest contracts. Interviewers asked firms to identify the largest transportation-related contract or subcontract they had been awarded in Idaho in the past five years. They were also asked about the largest contract or subcontract that they had bid on in Idaho in the past five years (Questions D2–D4).

Geographic areas. Interviewers asked a series of questions to identify the ITD districts in which the firm could work. (Questions C1-C6).

Ownership. Firms were asked whether they were at least 51 percent owned and controlled by women and/or minorities (Questions E1–E3).

Certification. All firms were asked if they were certified as a DBE by the State of Idaho (Questions E5–E8).

Business background. Several questions collected information on age of the firm (Question D4), 2005 revenues and number of employees (Questions F1–F6). For firms with multiple establishments in Idaho, the survey also asked about revenue and employee numbers for all of these locations.

Comments about the marketplace and doing business with ITD. Near the end of the survey, interviewers asked two open-ended questions concerning general insights on the marketplace (Question G1) and fairness of ITD prime contractor contracting practices (Question G2).

Contact information. The survey concluded by collecting complete contact information for the establishment (Questions H1–H6).

Survey Execution and Performance

Interviewers. BBC instructed BBC and CRI staff to make up to at least five attempts to reach a person at each phone number. This design is intentionally persistent to minimize non-response.

BBC instructed staff to identify and interview an available company representative such as the owner, manager, chief financial officer or other key official who could answer questions about the company's line of business, past contracts, financial and employment figures, interest in work with various clients, and ownership status. The survey effort began in May 2007. BBC collected faxed or e-mailed survey responses through July 2007.

Survey performance. The survey process began with a very large number of business listings for organizations in certain lines of work potentially related to transportation construction and engineering. At the end of the survey analysis process, firms reporting that they are available for, had bid on, or had performed transportation construction or engineering work were included in the database used for the availability analysis.

The survey effort produced a database of 1,296 for-profit firms in Idaho that were in the lines of business pertinent to the survey and reported they did work related to transportation construction, maintenance or design. This data set is comparable in size to data typically used in economic or other social science research.

Valid business listings. Some of the businesses BBC attempted to survey were:

- Duplicate numbers (664 listings);
- Non-working phone numbers (1,160 listings); or
- Wrong numbers for the desired businesses (397 listings).

Figure C-1, on the following page, shows how the beginning set of 9,402 listings was reduced to 6,821 because of these factors. Some non-working phone numbers and some wrong numbers for the desired businesses reflect firms going out of business or changing their names and phone numbers between the time that they listed them in the corresponding database and the time when the study team attempted to contact them.

Figure C-1 also shows the final disposition of the 6,821 business establishments that BBC and CRI attempted to contact:

- Slightly fewer than 15 percent of these business establishments could not be reached after a minimum of five phone calls (986 establishments). Call-backs to these business establishments were made at different times of day and different days of the week in order to maximize response.
- About 17 percent of these business establishments could not provide a staff member to answer the survey after a minimum of five phone calls (1,190 establishments).
- Surveys were only conducted in English. A very small fraction of one percent of business establishments could not communicate with the interviewer due to language barriers (19 establishments).
- Fourteen percent refused to participate in the interview (973 establishments).
- About 9 percent asked the study team to send the survey via fax or e-mail but did not successfully obtain the fax or e-mail (after multiple attempts) or received the survey but did not return a completed survey to BBC (595 establishments).

In sum, BBC obtained completed surveys from 3,058 business establishments, or about 45 percent of the business establishments with valid phone listings. This level of response to a business survey is relatively high. The very large number of responses and the high response rate add to the statistical validity of the study.

Figure C-1. Disposition of attempts to survey transportation construction and engineering businesses

	Number of Firms	Percent of Business Listings
Beginning list	**9,042**	
Less duplicate numbers	664	
Less non-working phone numbers	1,160	
Less wrong number/business	397	
Unique business listings with working phone numbers	**6,821**	
Less no answers*	986	14.46%
Less couldn't reach responsible staff member*	1,190	17.45%
Less language barriers*	19	0.28%
Less refused to answer	973	14.26%
Less unreturned fax/e-mail*	595	8.72%
Firms that completed surveys	**3,058**	**44.83%**

Note:

* After multiple attempts to complete survey.

Source:

BBC Research & Consulting from 2007
Availability Survey.

Firms that report being available for transportation construction and engineering work. Among the establishments successfully contacted, only a portion is deemed available for any type of ITD transportation construction and engineering work, as explained below:

- About 55 percent of the firms that completed a survey indicated they did not perform transportation construction, maintenance or design work (1,677 establishments). The survey ended when a business owner or manager reported that the business did not do this type of work.
- About 2 percent of the surveyed establishments were excluded because they were an organization other than a for-profit business (50 establishments). Non-profit and public sector agencies were not to be included in the survey as the availability analysis focuses on for-profit firms. The survey ended when a respondent reported that the establishment was something other than a for-profit business.
- About 1 percent of surveyed establishments indicated that they were involved in transportation construction, maintenance or design work but reported main lines of work that were well outside the scope of the Availability Survey (35 establishments). For example, some firms reported that they did transportation construction-related work, but that their primary line of business was single family homebuilding or other specialty outside the scope of the study. Interviewers completed the full survey with these firms. Prior to analyzing results, BBC excluded them from the final data set.
- Another 736 firms were eliminated from the count of firms available for ITD transportation projects because they said they were not interested in either prime contracting or subcontracting opportunities on such projects or because they had no past experience bidding on or working for ITD, local agencies or in the private sector, or because they did not report availability for an ITD district.

After these exclusions, the survey effort produced a database of 560 for-profit firms that were in the lines of business pertinent to the survey and reported they did work related to transportation construction, maintenance or design (see Figure C-2).

Figure C-2. Screening of completed business telephone interviews for possible inclusion in the availability analysis

Source:
BBC Research & Consulting from 2007 Availability Survey.

	Number of Firms	Percent of Business Listings
Firms that completed surveys	**3,058**	**100.0%**
Less no transportation work	1,677	54.8%
Less not a business	50	1.6%
Less line of work outside of scope	35	1.1%
Firms available for transportation work	**1,296**	**42.4%**
Less no interest in future work, no past bid/award, or missing geographic scope	736	
Firms available for ITD work	**560**	

Study team identification and coding of responses from multi-location firms. Multiple responses from different establishments operating under the same firm name were combined into a single, summary case according to the following rules:

- If any of the establishments reported bidding or working on a contract within a particular sector, the firm summary for that variable was coded to an affirmative response for the corresponding sector;
- The types of work (prime contractor, subcontractor, supplier, trucker) that establishments reported were summed to a single variable, again corresponding to the appropriate sector; and
- If any establishment said that it was interested and able to work within one of the six geographic regions (see part C of the survey instrument), the firm summary reflected that geographic scope.

The firm summary variables for contract sizes and Idaho-wide revenue are equivalent to the largest dollar amounts indicated by any of its establishments. The summary number of firm employees in the study area is equal to the largest response of the multiple establishments. Finally, firms with multiple locations were recoded as woman- or minority-owned, DBE, or certified small businesses if any establishment indicated such status.

Statistical Confidence in Results

BBC calculated confidence intervals for the MBE/WBE availability estimates. Because of the large sample relative to the population of firms, BBC employed a finite population correction factor in determining the standard errors and confidence intervals around these estimates from the Availability Survey. The 95 percent confidence interval for MBE/WBE availability across all industries and roles is +/- 1.6 percentage points.

Potential Limitations

The study team explored several possible limitations in its approach to estimating relative availability. These include:

- Assessing relative MBE/WBE availability and not providing a count of all available firms;
- Use of D&B as part of the sample frame;
- Selection of specific SIC codes to define the sample frame;
- Non-response bias; and
- Reliability of answers to survey questions.

Not providing a count of all firms available for ITD work. The purpose of the survey is to estimate the *percentage* of firms available for transportation construction and engineering work that are minority- and women-owned and controlled (i.e., "relative" MBE/WBE availability). The survey provides such information. The survey does not provide a comprehensive listing of every firm available for transportation work and should not be used as such.

The survey approach of measuring relative availability has been approved by federal courts (see, for example, the Seventh Circuit decision on *Northern Contracting*) when considering state implementation of the Federal DBE Program.[1] Use of a survey is recommended as an approach to measuring availability in the USDOT guidance on goal-setting.[2]

Use of D&B data as part of the sample frame. Dun & Bradstreet provides the most comprehensive private database of business listings in the United States. Even so, this database does not include all establishments operating in the relevant geographic market area:

- **New firms.** There can be a lag between formation of a new business and inclusion in the database. This means that the newest firms are underrepresented in the sample frame. Based on the firms successfully interviewed in the Availability Surveys, newly formed firms are more likely than older firms to be minority- or women-owned, which suggests that MBEs and WBEs might be underrepresented in the final database of surveyed firms.
- **Home-based businesses.** The D&B database is more likely to miss a business working out of the home than a firm with a distinct business office. Small, home-based firms are more likely than large firms to be minority- or women-owned, which again suggests that MBEs and WBEs might be underrepresented in the final survey data set.

Selection of specific SIC codes to define the sample frame. Defining an industry based on specific SIC codes (or NAICS codes) is a standard step when analyzing an economic sector. Government and private sector economic data are typically organized according to these industry codes. As with any such research, there are limitations when choosing the specific SIC codes to define the sample frame for an industry survey.

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[1] *N. Contracting, Inc. v. Illinois DOT,* 473 F.3d 715 (7th Cir. 2007)

[2] USDOT. *Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program* (http://osdbu.dot.gov/?TabId=133)

Both of these potential limitations have a negligible effect on the availability analysis. Post-survey comparison of the SIC codes for firms receiving ITD prime contracts and subcontracts found that the lines of work included in the survey accounted for 91 percent of total dollars of ITD work from 2002 through 2006. Surveying firms in additional SIC codes would be unlikely to have a material effect on the availability estimates.

A further limitation to the use of SIC codes to classify businesses, or any other work type classification method, is that some SIC codes are imprecise and overlap with other business specialties. Even though BBC used D&B's own 8-digit SIC codes, D&B does not maintain a detailed 8-digit code for each firm in its database. In addition, businesses often span several types of work, even at the 4-digit SIC code level of specificity. This overlapping makes classifying businesses into a single line of business difficult and imprecise. When firm owners and managers were asked to identify primary lines of business, they often gave broad answers. For these reasons, BBC collapsed many of the SIC codes into broader work categories in the final database of firms available for transportation-related work. This presents a more accurate assessment of MBE/WBE availability by work field than possible at a finer level of detail. However, this approach sacrifices the ability to separate relatively narrow areas of expertise such as guardrail work (which was not possible to obtain from the D&B information).

Non-response bias. Analysis of non-response bias considers whether firms not successfully surveyed are different from those successfully surveyed and included in the final data set for analysis. There are opportunities for non-response bias in any survey. The study team considered the potential for non-response bias due to:

- Survey sponsorship;
- Work specializations; and
- Language barriers.

Survey sponsorship and introduction. Interviewers introduced the survey by identifying ITD as the survey sponsor in order to encourage firms that performed transportation construction and engineering work to participate in the interview. Firms would be less likely to answer somewhat sensitive business questions asked by an interviewer unable to identify the sponsor of the survey. In fact, some firms asked to check with ITD to verify its sponsorship prior to answering the survey.

Analysis of survey refusal rates suggests that sponsorship had an overwhelmingly positive effect on response rates. Only 14 percent of business listings potentially contacted refused to answer the survey.

Work specializations. Businesses in highly-mobile fields, such as trucking, may be more difficult to reach than firms more likely to work out of a fixed office (e.g., engineering firms). This suggests that survey response rates will differ by business specialization.

If all surveyed firms were simply counted to determine relative MBE/WBE availability, this would lead to estimates that relied too heavily on fields that could be easily contacted by telephone. This potential non-response bias is minimal in this study because the availability analysis compares firms within work fields before determining an MBE/WBE availability figure. In other words, the potential for trucking firms to be less likely to complete a survey is less important because the number of MBE/WBE trucking firms completing surveys is compared with total number of trucking firms, not all firms across all fields.

Language barriers. ITD contracting documents are in English and not other languages. The study team made the decision to only include businesses able to complete the survey in English in the availability analysis so to remove language barriers as a potential explanation for any differences in outcomes observed between MBE/WBEs and majority-owned firms.

Individuals who could not communicate in English well enough to complete the survey and could not locate another individual to answer survey questions in English were not captured in the survey research. There were 19 firms out of 6,821 that could not be interviewed due to language barriers. Choosing to conduct the study in English and not translate it into other languages may have a very small effect on the relative number of minority-owned firms that completed the survey.

Response reliability. Firm owners and managers were asked questions that may be difficult to answer, including firm revenues and employment. For this reason, the study team prompted them with D&B information for their establishment when available, and asked them to confirm that information or provide more accurate estimates. Further, respondents were typically not asked to give absolute figures for difficult questions such as firm revenues. Rather, they were given ranges of dollar figures or employment levels.

Availability Data Overrides

To overcome some of the limitations described earlier in this section, the study team utilized information collected in other portions of the study to determine availability status. Data collected outside of the availability survey used to "override" availability response data include:

- ITD contracting records;
- ITD MBE/WBE/DBE status from the Civil Rights Office; and
- D&B business profile information.

The study team used data from these three sources for questions regarding firm ownership, past contracting amounts, contract role, and geographic availability. The study team only overrode an availability response in the analysis when an availability response was missing or when an availability response conflicted with ITD records. The methodology for resolving conflicts in availability response data and ITD records is described in Appendix D.

Summary

"Custom census" approaches to availability that begin with D&B data have been reviewed positively by federal courts. The study team's methodology for analyzing MBE/WBE availability takes the previous custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation construction and engineering work.

There was no "sampling" from the sample frame in preparing the list of firms to be surveyed. The study team attempted to contact 9,402 business listings. A relatively high proportion of the establishments were successfully contacted, and more than 3,000 business establishments completed the survey.

BBC examined several potential sources of non-response bias. It is possible that MBEs and WBEs were somewhat under-represented in the final database of available firms. However, BBC concludes that this potential under-representation of MBE/WBEs does not significantly affect the analyses.

APPENDIX D.
Procedures for Estimating Dollar-weighted MBE/WBE Availability and Analyzing MBE/WBE Utilization

This appendix discusses BBC's approach to developing dollar-weighted estimates of relative MBE/WBE availability.

Available Firm Characteristics

Before conducting the availability and utilization analysis, BBC determined following characteristics for each firm that completed an availability survey:

- MBE/WBE status and ethnicity classification;
- Contract role;
- Geographic availability;
- Contract size limit;
- Establishment date; and
- Work specialty.

As described below, BBC used information from four sources to determine the final status in each of these categories:

- Availability survey;
- ITD contracting records;
- ITD MBE/WBE/DBE status from the Civil Rights Office; and
- Dun & Bradstreet (D&B) business profile information.

Where necessary, BBC created decision hierarchies to determine the final status for specific characteristics of each firm.

MBE/WBE status and ethnicity classification. BBC determined the MBE/WBE and ethnicity status of every firm by using:

- ITD records as the primary source of MBE/WBE status and ethnicity classification.
- MBE/WBE status and ethnicity classification from the availability survey for firms that ITD records did not cover. BBC resolved conflicts between the availability survey data and ITD records on a case-by-case basis. Conflicting ethnicity was resolved by calling the firm again or by discussing the firm with ITD staff.
- D&B MBE/WBE status and ethnicity for firms missing information in ITD records that were not successfully contacted in the availability survey.

Contract role. BBC assigned each firm a contract role as either prime contractor, subcontractor, or prime and subcontractor using:

- The contract role as indicated in the availability survey.
- The contract role from ITD contracting records if the firm did not mention that role during the availability survey. For example, a firm might have indicated only prime contractor status in their availability survey response, but appeared on a contract as a subcontractor. The final role classification for that firm would be prime and subcontractor.

Geographic availability. BBC determined geographic availability in the six ITD districts for each firm by using:

- Availability across Districts 1-6 as indicated in the availability survey.
- Availability across Districts 1-6 based on the districts where the firm has performed work. BBC only added geographic availability information to a firm's availability survey response. For example, a firm might have indicated in their survey response that they are available to work in Districts 1 and 2, however ITD records show the firm performed work on a contract in District 3. The final geographic availability for that firm would be Districts 1, 2 and 3.

Largest contract. BBC determined the largest contract or subcontract amount each firm had performed or bid on using:

- The largest contract amount reported in the availability survey.
- The largest amount each firm won according to ITD contracting records, if this exceeded the amount reported in the availability survey. For example, if ITD listed a firm's largest contract during the study period at $1 million, but firm only reported availability for contracts under $500,000, BBC would consider the firm available for contracts of up to $1 million.

Establishment date. BBC used the establishment date reported in the availability survey where available. Firms that could not recall or did not report an establishment date were presumed to have been founded before the study period.

Work specialty. The work specialty code for each firm is based on the description of the main line of business confirmed or identified by the firm owner or manager in the availability survey.

Procedures for Determining MBE/WBE Availability

BBC used "firms," rather than "business establishments," as the unit of analysis for availability calculations. BBC screened firms for the availability analysis by applying two types of criteria:

- Fundamental criteria that a firm must meet to be considered in the analysis (regardless of the contract); and
- Criteria that a firm must meet to be considered for a particular contract.

Fundamental availability criteria. A firm must meet the following criteria to be counted in the MBE/WBE availability analysis for any contract element.

- Have a working phone number and someone who will answer the phone or return a phone call;
- Have an owner or manager who is willing to take part in the availability survey and be able to complete the survey in English;
- Confirm that the firm performs work related to transportation construction, maintenance or design;
- Be a for-profit business, not a public agency or not-for-profit organization;
- Confirm that the firm has a primary line of business within one of the areas of focus of the availability analysis;
- Have performed or bid on past ITD, local government or private sector transportation construction or engineering contracts as a prime contractor, subcontractor, or both during the study period;
- Be qualified and interested in working with ITD on future transportation construction or engineering contracts; and
- Be willing to work in at least one of the six ITD districts.

Contract specific screening criteria. Firm availability for a particular set of contracts was determined contract-by-contract for each element of a contract (i.e., prime portion and subcontract portions).

Firms were counted as available for some prime contracts or subcontracts and not for others depending upon the characteristics of the contract element and the characteristics of the firm.

For each contract element, the study team identified:

- Location the work took place(one of six regions based on ITD districts);
- Contract role (prime contractor or subcontractor);
- Contract size or contract element size;
- Bid open date for the contract; and
- Work specialty.

Location. Available firms were required to have a geographic availability status that included the district where the work was conducted (as reported by ITD).

Contract role. To be counted as available for a prime contract element, the firm must qualify for prime contractor roles according to the criteria discussed above. Similarly, to be counted as available for a subcontract element, a firm must have been assigned a subcontractor role.

Contract amounts. Available firms for subcontract elements were required to have a largest contract status greater than or equal to the size of the contract element. For prime contract elements, available firms needed a largest contract status equal to or greater than the entire contract amount.

Contract date. To be counted as available for a contract element, firms were required to have an establishment date during or before the year in which that prime contract began.

Work specialty. Each contract element was assigned a "work specialty code" based on the main line of work of the firm that actually performed the contract element. For utilized firms, BBC determined the work specialty based on the following hierarchy:

- The work specialty of the firm reported in the availability survey;
- The work specialty of the firm reported in the utilization survey if the firm did not complete an availability survey;
- The work specialty based on D&B SIC code information for the firm if the firm did not complete either survey; and
- Information reported on the Website of the firm if no D&B information was available.

For the majority of contract elements, available firms were required to have the same work specialty code as the contract element under consideration. In some cases, the work specialty code of a contract element was outside the core areas that were studied in the Availability Survey. These specialty areas were coded as other construction, other construction supply, or other professional services. With respect to specialty area, MBE/WBE availability for contract elements with these specialty areas were determined as follows:

- **Other construction.** All firms with a construction related specialty code were considered as a proxy for firms in these specialties.
- **Other suppliers.** All firms with a supply related specialty code were considered as a proxy for firms in these specialties.
- **Other professional services.** All firms with a professional services related specialty code were considered as a proxy for firms in these specialties.

In some cases, the work specialty code on an ITD contract element could not be identified beyond general construction or engineering work. Availability for those work elements was based on all firms that do prime or subcontracting work (for construction versus engineering contracts).

For a small number of contract elements, no firms fitting the specialty criteria were initially considered available. BBC reclassified each of these elements in one of three broader industry categories:

- General construction;
- General supply; and
- General professional services.

All firms in related specialty areas (e.g., all construction firms for a "general construction" element) were used as a proxy for firms in the specific specialty area when determining relative MBE/WBE availability for these contract elements.

A few utilized firms had work specialty codes outside of the scope of our analysis. Contract elements completed by these firms were excluded from the study.

Dollar-Weighting of MBE/WBE Availability across Contracts

The process described above relates to determining relative MBE/WBE availability for a specific contract element. To develop an availability figure pertaining to many different contracts, BBC weighted the MBE/WBE availability for a contract element by the dollars awarded for that contract element. Large subcontracts received a proportionally greater weight than smaller subcontracts.

The Disparity Study examines transportation construction and engineering contracts that ITD awarded between January 2002 and December 2006. These contracts involve both prime contractors and subcontractors ("prime consultants" and "subconsultants" for transportation engineering contracts). The balance of this appendix reviews the data ITD currently collects and maintains for these contracts and the additional data the study team collected to complete the MBE/WBE utilization analysis.

ITD Firm and Contract Information

The study team received information for ITD construction and engineering contracts during early 2007.

Civil Rights database. The Civil Rights database records business profile information of firms that have bid or registered with ITD. Information in the Civil Rights database includes: firm name; average annual gross revenue; firm owner race, ethnicity and gender; DBE certification classification; DBE certification periods; and industry classifications. This database was used to determine DBE status of utilized and available firms and as a source of information on MBE/WBE status and race and ethnicity information.

Commit Track database. The Commit Track database contains contract information on construction and engineering projects including location of work, funding source, and contract amount. BBC used the Commit Track database to determine location of work and funding data for most agreements. For agreements not listed in the Commit Track database, BBC asked the Consultant Agreement Administration department to determine location of work and funding source.

CAMS database. ITD maintains information about prime and subcontracts of highway-related construction contracts in a database called CAMS. Prime contract information from CAMS includes project bid open date, firm name, location of work, contract amount, and funding source.

Subcontract information in the CAMS database includes subcontractor(s) name, second tier subcontractor(s) name, and contract amount to sub. BBC did not include second tier subcontractors in the analysis (second tier dollar amounts were included in the first tier subcontract amount.)

BBC used ITD construction contract information for the period of January 2002 through 2006 from the CAMS database.

PATS database. ITD's Consultant Agreement Administration department maintains information of highway-related engineering agreements in its PATS database. BBC used the PATS database for prime consultant information including firm name, agreement date, not-to-exceed amount, additional services amount, and supplementary services amount. Subconsultant information in the PATS database includes firm name, subconsultant cost, and sub supplementary services amount.

The PATS database does not contain location of work or funding source information.

Verification of Contract Information

BBC compiled vendor information including vendors' DBE and WBE/MBE status, ethnicity where appropriate and the sum of contract amounts awarded to these firms during the study period. As a part of this process, BBC attempted to contact firms by telephone to verify basic firm information for businesses not previously included in the Availability Survey. ITD staff then reviewed this material to:

- Identify separate establishments that belonged to a single firm;
- Verify contract dollar amounts; and
- Check DBE certification status, WBE/MBE status and ethnicity.

Using ITD's feedback, BBC finalized the vendor and contract data.

APPENDIX E.
Disparity Tables

This appendix presents 154 detailed tables for subsets of ITD contracts, contract roles, funding sources and districts. Figure E-1 identifies the contract elements analyzed in each table by funding source, type (construction, engineering or both), time period, contract role (prime contractor, subcontractor/supplier or both) and geographic region. Each table includes the following seven columns of information for each type of firm analyzed:

- Number of contracts (subcontracts) in sample – the number of contract elements including prime contract and subcontracts where relevant;
- Dollars in sample (thousands) – the dollar amount represented by the analyzed contract elements;
- Estimated total dollars (thousands) – the estimated total dollars for each type for the entire population of contract elements;
- Percentage utilization (column c line n/column c line 1) – the estimated dollars for each firm type (column c line n) divided by the total dollars available (column c line 1);
- Utilization benchmark (availability) – BBC's estimate of relative availability for the given contract type;
- Difference (column d-e) – the difference between the percentage utilization and the utilization benchmark; and
- Disparity index (d/e)x100 – the ratio of percentage utilization to the utilization benchmark.

All dollar figures are reported in thousands. Utilization is reported as a percentage.

For the majority of the disparity figures, the MBE/WBE utilization for each group exceeds the DBE utilization for that group. In some cases, reallocation of the "Unknown DBE" contract elements causes DBE utilization estimates to exceed the MBE/WBE utilization estimates.

Figure E-1 (7 pages)

Figure E- :	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Federal																								
State																								
Type																								
Transportation construction and engineering	x	x	x	x	x	x	x	x	x															
Construction										x	x	x	x	x	x	x	x	x						
Engineering																			x	x	x	x	x	x
RFP Engineering																								
Non-RFP Engineering																								
Time Period																								
2002-2006	x			x			x			x			x			x			x			x		
2002-Jan 2006			x			x			x			x			x			x			x			x
Feb-Dec 2006		x			x			x			x			x			x			x			x	
2002																								
2003																								
2004																								
2005-Jan-2006																								
Contract role																								
Prime/Sub	x	x	x							x	x	x							x	x	x			
Prime				x	x	x							x	x	x							x	x	x
Sub/supplier							x	x	x							x	x	x						
Region																								
Idaho	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Districts 1+2																								
Districts 3-6																								
Small Contracts																								
Under $1M																								
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources	x	x	x	x	x	x	x	x	x	x	x	x												
Federal													x	x	x	x	x	x	x	x	x	x	x	x
State																								
Type																								
Transportation construction and engineering													x	x	x	x	x	x	x	x	x			
Construction																						x	x	x
Engineering	x	x	x																					
RFP Engineering																								
Non-RFP Engineering				x	x	x	x	x	x	x	x	x												
Time Period																								
2002-2006	x			x			x			x			x			x			x			x		
2002-Jan 2006			x			x			x			x			x			x			x			x
Feb-Dec 2006		x			x			x			x			x			x			x			x	
2002																								
2003																								
2004																								
2005-Jan-2006																								
Contract role																								
Prime/Sub				x	x	x							x	x	x							x	x	x
Prime							x	x	x							x	x	x						
Sub/supplier	x	x	x							x	x	x							x	x	x			
Region																								
Idaho	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Districts 1+2																								
Districts 3-6																								
Small Contracts																								
Under $1M																								
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources																								
Federal	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
State																								
Type																								
Transportation construction and engineering																								
Construction	x	x	x	x	x	x																		
Engineering							x	x	x	x	x	x	x	x	x									
RFP Engineering																x	x	x	x	x	x			
Non-RFP Engineering																						x	x	x
Time Period																								
2002-2006	x			x			x			x			x			x		x		x		x		
2002-Jan 2006			x			x			x			x			x		x		x		x			x
Feb-Dec 2006		x			x			x			x			x									x	
2002																								
2003																								
2004																								
2005-Jan-2006																								
Contract role																								
Prime/Sub							x	x	x							x	x					x	x	x
Prime	x	x	x							x	x	x						x	x					
Sub/supplier				x	x	x							x	x	x					x	x			
Region																								
Idaho	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Districts 1+2																								
Districts 3-6																								
Small Contracts																								
Under $1M																								
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources																								
Federal	x	x	x	x	x	x																		
State							x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Type																								
Transportation construction and engineering							x	x	x	x	x	x	x	x	x									
Construction																x	x	x	x	x	x	x	x	x
Engineering																								
RFP Engineering																								
Non-RFP Engineering	x	x	x	x	x	x																		
Time Period																								
2002-2006	x			x			x			x			x			x			x			x		
2002-Jan 2006			x			x			x			x			x			x			x			x
Feb-Dec 2006		x			x			x			x			x			x			x			x	
2002																								
2003																								
2004																								
2005-Jan-2006																								
Contract role																								
Prime/Sub							x	x	x							x	x	x						
Prime	x	x	x							x	x	x							x	x	x			
Sub/supplier				x	x	x							x	x	x							x	x	x
Region																								
Idaho	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Districts 1+2																								
Districts 3-6																								
Small Contracts																								
Under $1M																								
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources																								
Federal																	x	x	x	x				
State	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x					x	x	x	x
Type																								
Transportation construction and engineering																	x	x	x	x	x	x	x	x
Construction																								
Engineering	x	x	x	x	x	x	x	x																
RFP Engineering																								
Non-RFP Engineering									x	x	x	x	x	x	x	x								
Time Period																								
2002-2006	x			x			x		x			x			x									
2002-Jan 2006			x			x		x			x			x		x								
Feb-Dec 2006		x			x					x			x											
2002																	x				x			
2003																		x				x		
2004																			x				x	
2005-Jan-2006																				x				x
Contract role																								
Prime/Sub	x	x	x						x	x	x						x	x	x	x	x	x	x	x
Prime				x	x	x						x	x	x										
Sub/supplier							x	x							x	x								
Region																								
Idaho	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Districts 1+2																								
Districts 3-6																								
Small Contracts																								
Under $1M																								
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145
Agency																								
ITD	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Funding																								
All funding sources																								
Federal							x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			
State	x	x	x	x	x	x																x	x	x
Type																								
Transportation construction and engineering	x			x			x			x			x			x								
Construction		x			x			x			x			x			x		x	x	x	x	x	x
Engineering			x			x			x			x			x			x						
RFP Engineering																								
Non-RFP Engineering																								
Time Period																								
2002-2006	x	x	x	x	x	x													x			x		
2002-Jan 2006							x	x	x	x	x	x									x			x
Feb-Dec 2006													x	x	x	x	x	x		x			x	
2002																								
2003																								
2004																								
2005-Jan-2006																								
Contract role																								
Prime/Sub	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						
Prime																			x	x	x	x	x	x
Sub/supplier																								
Region																								
Idaho																			x	x	x	x	x	x
Districts 1+2	x	x	x				x	x	x				x	x	x									
Districts 3-6				x	x	x				x	x	x				x	x	x						
Small Contracts																								
Under $1M																			x	x	x	x	x	x
Under $100k																								
W/MBE Revenue Cap																								
Revenue Cap W/MBE based on Industry																								

Figure E- :	146	147	148	149	150	151	152	153	154	155
Agency										
ITD	x	x	x	x	x	x	x	x	x	x
Funding										
All funding sources							x	x	x	
Federal	x	x	x							x
State				x	x	x				
Type										
Transportation construction and engineering										x
Construction										
Engineering	x	x	x	x	x	x	x	x	x	
RFP Engineering										
Non-RFP Engineering										
Time Period										
2002-2006	x			x			x			x
2002-Jan 2006			x			x			x	
Feb-Dec 2006		x			x			x		
2002										
2003										
2004										
2005-Jan-2006										
Contract role										
Prime/Sub										x
Prime	x	x	x	x	x	x	x	x	x	
Sub/supplier										
Region										
Idaho	x	x	x	x	x	x	x	x	x	x
Districts 1+2										
Districts 3-6										
Small Contracts										
Under $1M										
Under $100k	x	x	x	x	x	x	x	x	x	
W/MBE Revenue Cap										
Revenue Cap W/MBE based on Industry										x

Figure E-2.
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	4,561	$1,091,719				
(2) MBE/WBE	1,235	$146,456	13.4	16.4	-3.0	81.9
(3) WBE	947	$129,929	11.9	12.4	-0.5	95.9
(4) MBE	288	$16,527	1.5	4.0	-2.5	38.1
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	16	$2,609	0.2	0.2	0.0	95.8
(7) Subcontinent Asian American-owned	6	$247	0.0	0.2	-0.1	15.0
(8) Hispanic American-owned	186	$5,997	0.5	1.0	-0.4	57.0
(9) Native American-owned	80	$7,674	0.7	2.5	-1.8	28.3
(10) DBE-certified	880	$71,080	6.5			
(11) Women-owned DBE	649	$59,527	5.5			
(12) Minority-owned DBE	231	$11,553	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	160	$4,303	0.4			
(17) Native American-owned DBE	65	$7,009	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-3
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	509	$173,043				
(2) MBE/WBE	119	$19,340	11.2	16.4	-5.2	68.2
(3) WBE	88	$17,198	9.9	13.3	-3.4	74.7
(4) MBE	31	$2,142	1.2	3.1	-1.8	40.1
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	24	$1,619	0.9	0.9	0.0	99.2
(9) Native American-owned	7	$523	0.3	1.7	-1.4	17.7
(10) DBE-certified	84	$8,967	5.2			
(11) Women-owned DBE	66	$7,597	4.4			
(12) Minority-owned DBE	18	$1,370	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	14	$917	0.5			
(17) Native American-owned DBE	4	$453	0.3			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-4
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	4,052	$918,676				
(2) MBE/WBE	1,116	$127,116	13.8	16.4	-2.5	84.5
(3) WBE	859	$112,731	12.3	12.2	0.0	100.2
(4) MBE	257	$14,384	1.6	4.1	-2.6	37.9
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	16	$2,609	0.3	0.3	0.0	106.9
(7) Subcontinent Asian American-owned	6	$247	0.0	0.1	-0.1	18.0
(8) Hispanic American-owned	162	$4,378	0.5	1.0	-0.5	49.2
(9) Native American-owned	73	$7,150	0.8	2.6	-1.9	29.6
(10) DBE-certified	796	$62,113	6.8			
(11) Women-owned DBE	583	$51,930	5.7			
(12) Minority-owned DBE	213	$10,183	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	146	$3,386	0.4			
(17) Native American-owned DBE	61	$6,557	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-5
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,628	$780,559				
(2) MBE/WBE	176	$64,867	8.3	12.7	-4.4	65.5
(3) WBE	118	$59,184	7.6	9.8	-2.2	77.4
(4) MBE	58	$5,683	0.7	2.9	-2.2	25.2
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	8	$2,432	0.3	0.2	0.1	165.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	40	$2,041	0.3	0.5	-0.3	47.8
(9) Native American-owned	10	$1,209	0.2	1.9	-1.8	8.1
(10) DBE-certified	95	$8,801	1.1			
(11) Women-owned DBE	55	$6,615	0.8			
(12) Minority-owned DBE	40	$2,186	0.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	33	$1,100	0.1			
(17) Native American-owned DBE	7	$1,086	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-6
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	227	$148,023				
(2) MBE/WBE	27	$11,170	7.5	13.7	-6.1	55.2
(3) WBE	18	$9,623	6.5	11.0	-4.5	59.2
(4) MBE	9	$1,547	1.0	2.7	-1.6	38.9
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	7	$1,228	0.8	0.8	0.0	100.9
(9) Native American-owned	2	$319	0.2	1.5	-1.3	14.2
(10) DBE-certified	10	$1,529	1.0			
(11) Women-owned DBE	7	$646	0.4			
(12) Minority-owned DBE	3	$884	0.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$609	0.4			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-7
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,401	$632,537				
(2) MBE/WBE	149	$53,697	8.5	12.5	-4.0	68.2
(3) WBE	100	$49,561	7.8	9.5	-1.7	82.3
(4) MBE	49	$4,136	0.7	2.9	-2.3	22.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	8	$2,432	0.4	0.2	0.2	191.1
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	33	$813	0.1	0.5	-0.4	26.6
(9) Native American-owned	8	$891	0.1	2.0	-1.9	7.0
(10) DBE-certified	85	$7,272	1.1			
(11) Women-owned DBE	48	$5,969	0.9			
(12) Minority-owned DBE	37	$1,302	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	31	$491	0.1			
(17) Native American-owned DBE	6	$812	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-8
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,933	$311,160				
(2) MBE/WBE	1,059	$81,589	26.2	25.7	0.6	102.2
(3) WBE	829	$70,745	22.7	19.0	3.8	119.8
(4) MBE	230	$10,844	3.5	6.7	-3.2	52.2
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	8	$177	0.1	0.4	-0.3	14.1
(7) Subcontinent Asian American-owned	6	$247	0.1	0.2	-0.1	45.7
(8) Hispanic American-owned	146	$3,956	1.3	2.0	-0.7	63.2
(9) Native American-owned	70	$6,464	2.1	3.9	-1.9	52.9
(10) DBE-certified	785	$62,279	20.0			
(11) Women-owned DBE	594	$52,912	17.0			
(12) Minority-owned DBE	191	$9,367	3.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.1			
(16) Hispanic American-owned DBE	127	$3,203	1.0			
(17) Native American-owned DBE	58	$5,923	1.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-9
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	282	$25,021				
(2) MBE/WBE	92	$8,170	32.7	32.4	0.2	100.7
(3) WBE	70	$7,575	30.3	27.0	3.3	112.3
(4) MBE	22	$596	2.4	5.5	-3.1	43.6
(5) African American-owned	0	$0	0.0	0.3	-0.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.4	-0.4	0.0
(8) Hispanic American-owned	17	$391	1.6	1.7	-0.1	94.1
(9) Native American-owned	5	$205	0.8	2.8	-2.0	29.0
(10) DBE-certified	74	$7,438	29.7			
(11) Women-owned DBE	59	$6,951	27.8			
(12) Minority-owned DBE	15	$486	1.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	12	$308	1.2			
(17) Native American-owned DBE	3	$178	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-10
Agency: ITD
Funding: All funding sources
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,651	$286,139				
(2) MBE/WBE	967	$73,419	25.7	25.1	0.6	102.3
(3) WBE	759	$63,170	22.1	18.3	3.8	120.7
(4) MBE	208	$10,249	3.6	6.8	-3.2	52.8
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	8	$177	0.1	0.4	-0.3	15.1
(7) Subcontinent Asian American-owned	6	$247	0.1	0.2	-0.1	56.0
(8) Hispanic American-owned	129	$3,565	1.2	2.0	-0.8	61.0
(9) Native American-owned	65	$6,260	2.2	4.0	-1.8	54.3
(10) DBE-certified	711	$54,841	19.2			
(11) Women-owned DBE	535	$45,960	16.1			
(12) Minority-owned DBE	176	$8,881	3.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.1			
(16) Hispanic American-owned DBE	115	$2,895	1.0			
(17) Native American-owned DBE	55	$5,745	2.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-11
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,546	$955,925				
(2) MBE/WBE	855	$137,236	14.4	16.9	-2.5	85.1
(3) WBE	694	$123,613	12.9	13.1	-0.2	98.8
(4) MBE	161	$13,623	1.4	3.8	-2.4	37.7
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	9	$2,340	0.2	0.2	0.0	113.1
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	3.3
(8) Hispanic American-owned	84	$3,895	0.4	0.8	-0.4	49.1
(9) Native American-owned	67	$7,381	0.8	2.7	-1.9	28.6
(10) DBE-certified	590	$64,134	6.7			
(11) Women-owned DBE	467	$54,877	5.7			
(12) Minority-owned DBE	123	$9,257	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	65	$2,387	0.2			
(17) Native American-owned DBE	58	$6,871	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-12
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	214	$151,020				
(2) MBE/WBE	68	$17,782	11.8	16.7	-4.9	70.6
(3) WBE	57	$16,169	10.7	14.0	-3.3	76.4
(4) MBE	11	$1,613	1.1	2.7	-1.6	40.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	7	$1,160	0.8	0.7	0.1	113.1
(9) Native American-owned	4	$453	0.3	1.8	-1.5	16.5
(10) DBE-certified	52	$8,080	5.4			
(11) Women-owned DBE	44	$6,983	4.6			
(12) Minority-owned DBE	8	$1,098	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	4	$645	0.4			
(17) Native American-owned DBE	4	$453	0.3			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-13
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,332	$804,906				
(2) MBE/WBE	787	$119,455	14.8	16.9	-2.1	87.8
(3) WBE	637	$107,444	13.3	12.9	0.4	103.3
(4) MBE	150	$12,010	1.5	4.0	-2.5	37.4
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	9	$2,340	0.3	0.2	0.1	124.7
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	4.5
(8) Hispanic American-owned	77	$2,735	0.3	0.9	-0.5	39.6
(9) Native American-owned	63	$6,928	0.9	2.9	-2.0	30.1
(10) DBE-certified	538	$56,054	7.0			
(11) Women-owned DBE	423	$47,894	6.0			
(12) Minority-owned DBE	115	$8,160	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	61	$1,742	0.2			
(17) Native American-owned DBE	54	$6,418	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-14
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	507	$676,069				
(2) MBE/WBE	57	$61,845	9.1	12.9	-3.8	70.7
(3) WBE	45	$57,132	8.5	10.4	-1.9	81.6
(4) MBE	12	$4,712	0.7	2.6	-1.9	26.9
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$2,289	0.3	0.2	0.2	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	5	$1,439	0.2	0.4	-0.1	59.1
(9) Native American-owned	2	$984	0.1	2.1	-1.9	7.0
(10) DBE-certified	13	$6,986	1.0			
(11) Women-owned DBE	10	$5,400	0.8			
(12) Minority-owned DBE	3	$1,586	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	0.1			
(17) Native American-owned DBE	2	$984	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-15
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	67	$130,023				
(2) MBE/WBE	9	$10,383	8.0	13.8	-5.8	57.8
(3) WBE	5	$8,991	6.9	11.5	-4.6	59.9
(4) MBE	4	$1,391	1.1	2.3	-1.2	47.1
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	3	$1,117	0.9	0.6	0.3	154.6
(9) Native American-owned	1	$274	0.2	1.6	-1.4	13.1
(10) DBE-certified	3	$1,287	1.0			
(11) Women-owned DBE	1	$411	0.3			
(12) Minority-owned DBE	2	$876	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	0.5			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-16
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	440	$546,046				
(2) MBE/WBE	48	$51,462	9.4	12.7	-3.3	74.0
(3) WBE	40	$48,141	8.8	10.1	-1.2	87.6
(4) MBE	8	$3,321	0.6	2.7	-2.1	22.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$2,289	0.4	0.2	0.3	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	2	$322	0.1	0.3	-0.3	18.8
(9) Native American-owned	1	$710	0.1	2.2	-2.1	5.9
(10) DBE-certified	10	$5,699	1.0			
(11) Women-owned DBE	9	$4,989	0.9			
(12) Minority-owned DBE	1	$710	0.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	1	$710	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-17
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,039	$279,856				
(2) MBE/WBE	798	$75,392	26.9	26.4	0.6	102.1
(3) WBE	649	$66,481	23.8	19.7	4.0	120.5
(4) MBE	149	$8,911	3.2	6.7	-3.5	47.8
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$51	0.0	0.4	-0.3	5.0
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	-0.1	3.3
(8) Hispanic American-owned	79	$2,456	0.9	2.0	-1.1	44.7
(9) Native American-owned	65	$6,397	2.3	4.2	-1.9	54.5
(10) DBE-certified	577	$57,148	20.4			
(11) Women-owned DBE	457	$49,477	17.7			
(12) Minority-owned DBE	120	$7,671	2.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	64	$1,785	0.6			
(17) Native American-owned DBE	56	$5,886	2.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-18
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	147	$20,996				
(2) MBE/WBE	59	$7,399	35.2	34.4	0.8	102.4
(3) WBE	52	$7,177	34.2	29.3	4.9	116.7
(4) MBE	7	$222	1.1	5.1	-4.1	20.6
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.3	-0.3	0.0
(8) Hispanic American-owned	4	$43	0.2	1.4	-1.2	14.3
(9) Native American-owned	3	$178	0.8	3.1	-2.2	27.6
(10) DBE-certified	49	$6,793	32.4			
(11) Women-owned DBE	43	$6,572	31.3			
(12) Minority-owned DBE	6	$222	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	3	$43	0.2			
(17) Native American-owned DBE	3	$178	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-19
Agency: ITD
Funding: All funding sources
Type: Construction
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,892	$258,860				
(2) MBE/WBE	739	$67,993	26.3	25.7	0.5	102.1
(3) WBE	597	$59,304	22.9	18.9	4.0	121.0
(4) MBE	142	$8,689	3.4	6.8	-3.4	49.4
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$51	0.0	0.4	-0.4	5.3
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	-0.1	4.6
(8) Hispanic American-owned	75	$2,412	0.9	2.0	-1.1	46.5
(9) Native American-owned	62	$6,218	2.4	4.3	-1.9	56.0
(10) DBE-certified	528	$50,355	19.5			
(11) Women-owned DBE	414	$42,905	16.6			
(12) Minority-owned DBE	114	$7,450	2.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	61	$1,742	0.7			
(17) Native American-owned DBE	53	$5,708	2.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-20
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,015	$135,794				
(2) MBE/WBE	380	$9,219	6.8	12.9	-6.1	52.5
(3) WBE	253	$6,316	4.7	7.7	-3.0	60.8
(4) MBE	127	$2,904	2.1	5.3	-3.1	40.5
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	7	$269	0.2	0.5	-0.3	40.9
(7) Subcontinent Asian American-owned	5	$239	0.2	1.0	-0.9	16.9
(8) Hispanic American-owned	102	$2,103	1.5	1.9	-0.4	80.9
(9) Native American-owned	13	$293	0.2	1.0	-0.8	21.5
(10) DBE-certified	290	$6,946	5.1			
(11) Women-owned DBE	182	$4,650	3.4			
(12) Minority-owned DBE	108	$2,296	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.2			
(16) Hispanic American-owned DBE	95	$1,916	1.4			
(17) Native American-owned DBE	7	$139	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-21
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	295	$22,024				
(2) MBE/WBE	51	$1,558	7.1	14.3	-7.3	49.3
(3) WBE	31	$1,029	4.7	8.4	-3.7	55.8
(4) MBE	20	$529	2.4	6.0	-3.6	40.3
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	17	$459	2.1	2.8	-0.7	75.6
(9) Native American-owned	3	$71	0.3	1.0	-0.6	33.4
(10) DBE-certified	32	$887	4.0			
(11) Women-owned DBE	22	$614	2.8			
(12) Minority-owned DBE	10	$272	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$272	1.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-22
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,720	$113,770				
(2) MBE/WBE	329	$7,661	6.7	12.7	-5.9	53.2
(3) WBE	222	$5,287	4.6	7.5	-2.9	61.8
(4) MBE	107	$2,374	2.1	5.1	-3.1	40.6
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	7	$269	0.2	0.5	-0.3	47.6
(7) Subcontinent Asian American-owned	5	$239	0.2	1.1	-0.8	19.9
(8) Hispanic American-owned	85	$1,644	1.4	1.8	-0.3	82.5
(9) Native American-owned	10	$222	0.2	1.0	-0.8	19.3
(10) DBE-certified	258	$6,059	5.3			
(11) Women-owned DBE	160	$4,036	3.5			
(12) Minority-owned DBE	98	$2,024	1.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.2			
(16) Hispanic American-owned DBE	85	$1,644	1.4			
(17) Native American-owned DBE	7	$139	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-23
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,121	$104,490				
(2) MBE/WBE	119	$3,023	2.9	11.0	-8.1	26.3
(3) WBE	73	$2,052	2.0	6.2	-4.2	31.7
(4) MBE	46	$970	0.9	4.8	-3.9	19.3
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	3	$143	0.1	0.4	-0.3	33.7
(7) Subcontinent Asian American-owned	0	$0	0.0	1.1	-1.1	0.0
(8) Hispanic American-owned	35	$602	0.6	1.8	-1.2	32.8
(9) Native American-owned	8	$225	0.2	0.8	-0.6	25.5
(10) DBE-certified	82	$1,815	1.7			
(11) Women-owned DBE	45	$1,215	1.2			
(12) Minority-owned DBE	37	$600	0.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	32	$499	0.5			
(17) Native American-owned DBE	5	$102	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-24
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	160	$17,999				
(2) MBE/WBE	18	$787	4.4	12.6	-8.3	34.6
(3) WBE	13	$632	3.5	7.0	-3.4	50.4
(4) MBE	5	$156	0.9	5.7	-4.8	15.2
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	4	$111	0.6	2.7	-2.1	22.5
(9) Native American-owned	1	$44	0.2	0.8	-0.6	29.2
(10) DBE-certified	7	$242	1.3			
(11) Women-owned DBE	6	$235	1.3			
(12) Minority-owned DBE	1	$8	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-25
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	961	$86,491				
(2) MBE/WBE	101	$2,235	2.6	10.7	-8.1	24.2
(3) WBE	60	$1,421	1.6	6.0	-4.4	27.2
(4) MBE	41	$815	0.9	4.6	-3.7	20.3
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	3	$143	0.2	0.4	-0.3	39.6
(7) Subcontinent Asian American-owned	0	$0	0.0	1.1	-1.1	0.0
(8) Hispanic American-owned	31	$491	0.6	1.5	-1.0	36.6
(9) Native American-owned	7	$181	0.2	0.8	-0.6	24.7
(10) DBE-certified	75	$1,573	1.8			
(11) Women-owned DBE	39	$980	1.1			
(12) Minority-owned DBE	36	$593	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	31	$491	0.6			
(17) Native American-owned DBE	5	$102	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-26
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	894	$31,304				
(2) MBE/WBE	261	$6,197	19.8	19.3	0.5	102.5
(3) WBE	180	$4,264	13.6	12.5	1.1	108.9
(4) MBE	81	$1,933	6.2	6.8	-0.6	90.8
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	4	$125	0.4	0.7	-0.3	54.4
(7) Subcontinent Asian American-owned	5	$239	0.8	1.0	-0.2	75.9
(8) Hispanic American-owned	67	$1,500	4.8	2.4	2.4	196.6
(9) Native American-owned	5	$68	0.2	1.5	-1.3	14.1
(10) DBE-certified	208	$5,131	16.4			
(11) Women-owned DBE	137	$3,435	11.0			
(12) Minority-owned DBE	71	$1,696	5.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.8			
(16) Hispanic American-owned DBE	63	$1,418	4.5			
(17) Native American-owned DBE	2	$37	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-27
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	135	$4,024				
(2) MBE/WBE	33	$771	19.2	21.9	-2.8	87.4
(3) WBE	18	$397	9.9	14.7	-4.8	67.2
(4) MBE	15	$374	9.3	7.2	2.1	128.4
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	13	$347	8.6	2.8	5.9	200+
(9) Native American-owned	2	$26	0.7	1.5	-0.8	44.0
(10) DBE-certified	25	$644	16.0			
(11) Women-owned DBE	16	$380	9.4			
(12) Minority-owned DBE	9	$265	6.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	9	$265	6.6			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-28
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	759	$27,279				
(2) MBE/WBE	228	$5,426	19.9	18.9	1.0	105.1
(3) WBE	162	$3,866	14.2	12.2	2.0	116.3
(4) MBE	66	$1,560	5.7	6.7	-1.0	84.8
(5) African American-owned	0	$0	0.0	1.0	-1.0	0.0
(6) Asian-Pacific American-owned	4	$125	0.5	0.7	-0.3	61.9
(7) Subcontinent Asian American-owned	5	$239	0.9	1.0	-0.1	86.2
(8) Hispanic American-owned	54	$1,153	4.2	2.4	1.8	177.0
(9) Native American-owned	3	$42	0.2	1.5	-1.4	9.9
(10) DBE-certified	183	$4,486	16.4			
(11) Women-owned DBE	121	$3,055	11.2			
(12) Minority-owned DBE	62	$1,431	5.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.9			
(16) Hispanic American-owned DBE	54	$1,153	4.2			
(17) Native American-owned DBE	2	$37	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-29
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,746	$76,992				
(2) MBE/WBE	300	$5,231	6.8	16.4	-9.7	41.3
(3) WBE	193	$3,213	4.2	9.7	-5.6	42.9
(4) MBE	107	$2,018	2.6	6.7	-4.1	39.1
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	6	$143	0.2	0.8	-0.6	23.9
(7) Subcontinent Asian American-owned	4	$191	0.2	1.1	-0.9	22.4
(8) Hispanic American-owned	85	$1,426	1.9	2.4	-0.5	78.2
(9) Native American-owned	12	$258	0.3	1.3	-1.0	25.0
(10) DBE-certified	220	$3,687	4.8			
(11) Women-owned DBE	131	$2,151	2.8			
(12) Minority-owned DBE	89	$1,536	2.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	0.2			
(16) Hispanic American-owned DBE	78	$1,240	1.6			
(17) Native American-owned DBE	6	$103	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-30
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	295	$22,024				
(2) MBE/WBE	51	$1,558	7.1	14.3	-7.3	49.3
(3) WBE	31	$1,029	4.7	8.4	-3.7	55.8
(4) MBE	20	$529	2.4	6.0	-3.6	40.3
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	17	$459	2.1	2.8	-0.7	75.6
(9) Native American-owned	3	$71	0.3	1.0	-0.6	33.4
(10) DBE-certified	32	$887	4.0			
(11) Women-owned DBE	22	$614	2.8			
(12) Minority-owned DBE	10	$272	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$272	1.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-31
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,451	$54,968				
(2) MBE/WBE	249	$3,673	6.7	17.3	-10.6	38.6
(3) WBE	162	$2,184	4.0	10.3	-6.3	38.6
(4) MBE	87	$1,488	2.7	7.0	-4.3	38.6
(5) African American-owned	0	$0	0.0	1.2	-1.2	0.0
(6) Asian-Pacific American-owned	6	$143	0.3	0.9	-0.7	28.2
(7) Subcontinent Asian American-owned	4	$191	0.3	1.2	-0.8	30.0
(8) Hispanic American-owned	68	$967	1.8	2.2	-0.5	79.5
(9) Native American-owned	9	$187	0.3	1.5	-1.2	22.8
(10) DBE-certified	188	$2,800	5.1			
(11) Women-owned DBE	109	$1,537	2.8			
(12) Minority-owned DBE	79	$1,264	2.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	0.3			
(16) Hispanic American-owned DBE	68	$967	1.8			
(17) Native American-owned DBE	6	$103	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-32
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,061	$64,692				
(2) MBE/WBE	118	$2,897	4.5	15.1	-10.6	29.7
(3) WBE	73	$2,052	3.2	8.6	-5.4	37.0
(4) MBE	45	$844	1.3	6.5	-5.2	20.1
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	2	$17	0.0	0.7	-0.6	4.1
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	35	$602	0.9	2.4	-1.4	39.4
(9) Native American-owned	8	$225	0.3	1.2	-0.9	28.3
(10) DBE-certified	82	$1,815	2.8			
(11) Women-owned DBE	45	$1,215	1.9			
(12) Minority-owned DBE	37	$600	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	32	$499	0.8			
(17) Native American-owned DBE	5	$102	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-33
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	160	$17,999				
(2) MBE/WBE	18	$787	4.4	12.6	-8.3	34.6
(3) WBE	13	$632	3.5	7.0	-3.4	50.4
(4) MBE	5	$156	0.9	5.7	-4.8	15.2
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	4	$111	0.6	2.7	-2.1	22.5
(9) Native American-owned	1	$44	0.2	0.8	-0.6	29.2
(10) DBE-certified	7	$242	1.3			
(11) Women-owned DBE	6	$235	1.3			
(12) Minority-owned DBE	1	$8	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-34
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	901	$46,693				
(2) MBE/WBE	100	$2,109	4.5	16.0	-11.5	28.2
(3) WBE	60	$1,421	3.0	9.2	-6.1	33.1
(4) MBE	40	$689	1.5	6.8	-5.3	21.7
(5) African American-owned	0	$0	0.0	1.2	-1.2	0.0
(6) Asian-Pacific American-owned	2	$17	0.0	0.8	-0.7	4.8
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	31	$491	1.1	2.2	-1.2	47.6
(9) Native American-owned	7	$181	0.4	1.4	-1.0	28.1
(10) DBE-certified	75	$1,573	3.4			
(11) Women-owned DBE	39	$980	2.1			
(12) Minority-owned DBE	36	$593	1.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	31	$491	1.1			
(17) Native American-owned DBE	5	$102	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-35
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	685	$12,299				
(2) MBE/WBE	182	$2,334	19.0	23.7	-4.7	80.0
(3) WBE	120	$1,161	9.4	15.9	-6.5	59.3
(4) MBE	62	$1,173	9.5	7.8	1.7	122.0
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	4	$125	1.0	1.4	-0.4	71.9
(7) Subcontinent Asian American-owned	4	$191	1.6	0.8	0.8	200+
(8) Hispanic American-owned	50	$824	6.7	2.4	4.3	200+
(9) Native American-owned	4	$33	0.3	1.9	-1.7	13.7
(10) DBE-certified	138	$1,872	15.2			
(11) Women-owned DBE	86	$936	7.6			
(12) Minority-owned DBE	52	$936	7.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	1.6			
(16) Hispanic American-owned DBE	46	$741	6.0			
(17) Native American-owned DBE	1	$1	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-36
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	135	$4,024				
(2) MBE/WBE	33	$771	19.2	21.9	-2.8	87.4
(3) WBE	18	$397	9.9	14.7	-4.8	67.2
(4) MBE	15	$374	9.3	7.2	2.1	128.4
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	13	$347	8.6	2.8	5.9	200+
(9) Native American-owned	2	$26	0.7	1.5	-0.8	44.0
(10) DBE-certified	25	$644	16.0			
(11) Women-owned DBE	16	$380	9.4			
(12) Minority-owned DBE	9	$265	6.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	9	$265	6.6			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-37
Agency: ITD
Funding: All funding sources
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	550	$8,275				
(2) MBE/WBE	149	$1,563	18.9	24.6	-5.7	76.8
(3) WBE	102	$764	9.2	16.5	-7.3	55.9
(4) MBE	47	$800	9.7	8.1	1.6	119.2
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	4	$125	1.5	1.8	-0.3	85.6
(7) Subcontinent Asian American-owned	4	$191	2.3	0.7	1.6	200+
(8) Hispanic American-owned	37	$477	5.8	2.2	3.5	200+
(9) Native American-owned	2	$6	0.1	2.1	-2.1	3.6
(10) DBE-certified	113	$1,228	14.8			
(11) Women-owned DBE	70	$557	6.7			
(12) Minority-owned DBE	43	$671	8.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	2.3			
(16) Hispanic American-owned DBE	37	$477	5.8			
(17) Native American-owned DBE	1	$1	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-38
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	3,443	$853,212				
(2) MBE/WBE	901	$111,532	13.1	15.3	-2.2	85.4
(3) WBE	687	$100,646	11.8	11.6	0.2	101.3
(4) MBE	214	$10,886	1.3	3.7	-2.4	34.8
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	11	$666	0.1	0.2	-0.1	46.4
(7) Subcontinent Asian American-owned	5	$239	0.0	0.2	-0.1	15.8
(8) Hispanic American-owned	155	$5,068	0.6	1.0	-0.4	58.7
(9) Native American-owned	43	$4,913	0.6	2.2	-1.6	26.5
(10) DBE-certified	668	$58,270	6.8			
(11) Women-owned DBE	488	$49,207	5.8			
(12) Minority-owned DBE	180	$9,062	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	139	$4,102	0.5			
(17) Native American-owned DBE	35	$4,719	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-39
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	440	$151,347				
(2) MBE/WBE	96	$16,314	10.8	15.6	-4.8	69.2
(3) WBE	69	$14,420	9.5	12.7	-3.2	75.0
(4) MBE	27	$1,894	1.3	2.9	-1.6	43.5
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	23	$1,549	1.0	1.0	0.0	97.7
(9) Native American-owned	4	$345	0.2	1.4	-1.1	16.9
(10) DBE-certified	67	$7,357	4.9			
(11) Women-owned DBE	52	$6,166	4.1			
(12) Minority-owned DBE	15	$1,192	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	14	$917	0.6			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-40
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	3,003	$701,865				
(2) MBE/WBE	805	$95,219	13.6	15.2	-1.7	89.0
(3) WBE	618	$86,226	12.3	11.4	0.9	107.7
(4) MBE	187	$8,992	1.3	3.8	-2.6	33.4
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	11	$666	0.1	0.2	-0.1	56.4
(7) Subcontinent Asian American-owned	5	$239	0.0	0.2	-0.1	19.3
(8) Hispanic American-owned	132	$3,519	0.5	1.0	-0.5	49.9
(9) Native American-owned	39	$4,568	0.7	2.3	-1.7	27.7
(10) DBE-certified	601	$50,912	7.3			
(11) Women-owned DBE	436	$43,042	6.1			
(12) Minority-owned DBE	165	$7,871	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	125	$3,185	0.5			
(17) Native American-owned DBE	34	$4,445	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-41
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,263	$598,950				
(2) MBE/WBE	134	$47,703	8.0	11.0	-3.0	72.4
(3) WBE	91	$44,937	7.5	8.6	-1.1	87.3
(4) MBE	43	$2,766	0.5	2.4	-1.9	19.2
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$527	0.1	0.1	0.0	74.3
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	32	$1,810	0.3	0.6	-0.3	49.6
(9) Native American-owned	7	$430	0.1	1.4	-1.3	5.1
(10) DBE-certified	75	$6,985	1.2			
(11) Women-owned DBE	44	$5,618	0.9			
(12) Minority-owned DBE	31	$1,367	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	27	$1,061	0.2			
(17) Native American-owned DBE	4	$306	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-42
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	194	$129,652				
(2) MBE/WBE	24	$10,138	7.8	12.8	-5.0	60.9
(3) WBE	16	$8,662	6.7	10.4	-3.8	64.0
(4) MBE	8	$1,477	1.1	2.4	-1.3	47.4
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	6	$1,158	0.9	0.9	0.0	97.6
(9) Native American-owned	2	$319	0.2	1.1	-0.8	22.5
(10) DBE-certified	10	$1,529	1.2			
(11) Women-owned DBE	7	$646	0.5			
(12) Minority-owned DBE	3	$884	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$609	0.5			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-43
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,069	$469,298				
(2) MBE/WBE	110	$37,564	8.0	10.5	-2.5	76.2
(3) WBE	75	$36,275	7.7	8.1	-0.4	95.6
(4) MBE	35	$1,289	0.3	2.4	-2.1	11.4
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$527	0.1	0.1	0.0	103.4
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	26	$652	0.1	0.5	-0.4	26.4
(9) Native American-owned	5	$111	0.0	1.5	-1.5	1.6
(10) DBE-certified	65	$5,456	1.2			
(11) Women-owned DBE	37	$4,972	1.1			
(12) Minority-owned DBE	28	$483	0.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	25	$451	0.1			
(17) Native American-owned DBE	3	$32	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-44
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	2,180	$254,262				
(2) MBE/WBE	767	$63,830	25.1	25.4	-0.3	98.7
(3) WBE	596	$55,709	21.9	18.8	3.1	116.5
(4) MBE	171	$8,120	3.2	6.6	-3.4	48.2
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	7	$139	0.1	0.3	-0.2	19.2
(7) Subcontinent Asian American-owned	5	$239	0.1	0.2	-0.1	47.3
(8) Hispanic American-owned	123	$3,258	1.3	2.0	-0.7	65.3
(9) Native American-owned	36	$4,484	1.8	4.0	-2.2	44.1
(10) DBE-certified	593	$51,285	20.2			
(11) Women-owned DBE	444	$43,589	17.1			
(12) Minority-owned DBE	149	$7,695	3.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.1			
(16) Hispanic American-owned DBE	112	$3,041	1.2			
(17) Native American-owned DBE	31	$4,413	1.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-45
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	246	$21,695				
(2) MBE/WBE	72	$6,175	28.5	32.0	-3.5	89.0
(3) WBE	53	$5,758	26.5	26.2	0.3	101.1
(4) MBE	19	$417	1.9	5.7	-3.8	33.6
(5) African American-owned	0	$0	0.0	0.3	-0.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.5	-0.5	0.0
(8) Hispanic American-owned	17	$391	1.8	1.8	0.0	98.0
(9) Native American-owned	2	$26	0.1	2.9	-2.8	4.2
(10) DBE-certified	57	$5,828	26.9			
(11) Women-owned DBE	45	$5,520	25.4			
(12) Minority-owned DBE	12	$308	1.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	12	$308	1.4			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-46
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,934	$232,567				
(2) MBE/WBE	695	$57,654	24.8	24.8	0.0	99.8
(3) WBE	543	$49,951	21.5	18.1	3.4	118.6
(4) MBE	152	$7,703	3.3	6.7	-3.4	49.3
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	7	$139	0.1	0.3	-0.2	20.7
(7) Subcontinent Asian American-owned	5	$239	0.1	0.2	-0.1	58.7
(8) Hispanic American-owned	106	$2,867	1.2	2.0	-0.7	62.5
(9) Native American-owned	34	$4,457	1.9	4.1	-2.2	46.7
(10) DBE-certified	536	$45,457	19.5			
(11) Women-owned DBE	399	$38,069	16.4			
(12) Minority-owned DBE	137	$7,387	3.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.1			
(16) Hispanic American-owned DBE	100	$2,733	1.2			
(17) Native American-owned DBE	31	$4,413	1.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-47
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,650	$725,335				
(2) MBE/WBE	549	$102,613	14.1	15.8	-1.6	89.8
(3) WBE	452	$94,495	13.0	12.4	0.7	105.4
(4) MBE	97	$8,118	1.1	3.4	-2.3	32.9
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$397	0.1	0.1	-0.1	46.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	61	$3,031	0.4	0.9	-0.4	49.0
(9) Native American-owned	32	$4,690	0.6	2.4	-1.7	27.2
(10) DBE-certified	402	$51,618	7.1			
(11) Women-owned DBE	320	$44,717	6.2			
(12) Minority-owned DBE	82	$6,901	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	52	$2,251	0.3			
(17) Native American-owned DBE	30	$4,650	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-48
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	153	$129,477				
(2) MBE/WBE	46	$14,760	11.4	15.8	-4.4	72.2
(3) WBE	39	$13,396	10.3	13.4	-3.1	77.0
(4) MBE	7	$1,365	1.1	2.4	-1.3	44.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	6	$1,090	0.8	0.8	0.1	111.3
(9) Native American-owned	1	$274	0.2	1.4	-1.2	14.9
(10) DBE-certified	35	$6,471	5.0			
(11) Women-owned DBE	30	$5,551	4.3			
(12) Minority-owned DBE	5	$919	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	4	$645	0.5			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-49
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,497	$595,858				
(2) MBE/WBE	503	$87,853	14.7	15.7	-1.0	93.6
(3) WBE	413	$81,100	13.6	12.1	1.5	112.3
(4) MBE	90	$6,753	1.1	3.6	-2.5	31.3
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$397	0.1	0.1	-0.1	56.8
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	55	$1,940	0.3	0.9	-0.5	37.2
(9) Native American-owned	31	$4,416	0.7	2.6	-1.8	28.6
(10) DBE-certified	367	$45,147	7.6			
(11) Women-owned DBE	290	$39,165	6.6			
(12) Minority-owned DBE	77	$5,982	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	48	$1,606	0.3			
(17) Native American-owned DBE	29	$4,376	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-50
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	302	$501,600				
(2) MBE/WBE	33	$44,889	8.9	11.1	-2.1	80.9
(3) WBE	28	$42,984	8.6	9.1	-0.5	94.2
(4) MBE	5	$1,905	0.4	2.0	-1.6	19.3
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	1	$383	0.1	0.1	0.0	109.7
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	3	$1,248	0.2	0.4	-0.1	64.0
(9) Native American-owned	1	$274	0.1	1.5	-1.5	3.6
(10) DBE-certified	10	$5,374	1.1			
(11) Women-owned DBE	8	$4,498	0.9			
(12) Minority-owned DBE	2	$876	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	0.1			
(17) Native American-owned DBE	1	$274	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-51
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	42	$111,807				
(2) MBE/WBE	7	$9,356	8.4	12.9	-4.5	65.0
(3) WBE	4	$8,035	7.2	11.0	-3.8	65.3
(4) MBE	3	$1,321	1.2	1.9	-0.7	63.0
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	2	$1,047	0.9	0.6	0.3	151.1
(9) Native American-owned	1	$274	0.2	1.1	-0.9	21.6
(10) DBE-certified	3	$1,287	1.2			
(11) Women-owned DBE	1	$411	0.4			
(12) Minority-owned DBE	2	$876	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	0.5			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-52
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	260	$389,793				
(2) MBE/WBE	26	$35,533	9.1	10.5	-1.4	86.5
(3) WBE	24	$34,949	9.0	8.5	0.4	104.9
(4) MBE	2	$584	0.1	2.0	-1.8	7.5
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	1	$383	0.1	0.1	0.0	180.4
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	1	$201	0.1	0.3	-0.3	16.0
(9) Native American-owned	0	$0	0.0	1.6	-1.6	0.0
(10) DBE-certified	7	$4,087	1.0			
(11) Women-owned DBE	7	$4,087	1.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-53
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,348	$223,736				
(2) MBE/WBE	516	$57,725	25.8	26.3	-0.5	98.2
(3) WBE	424	$51,512	23.0	19.7	3.4	117.0
(4) MBE	92	$6,213	2.8	6.6	-3.8	42.0
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	3	$14	0.0	0.2	-0.2	2.7
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	58	$1,783	0.8	1.9	-1.1	42.1
(9) Native American-owned	31	$4,416	2.0	4.3	-2.4	45.5
(10) DBE-certified	392	$46,244	20.7			
(11) Women-owned DBE	312	$40,219	18.0			
(12) Minority-owned DBE	80	$6,025	2.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	51	$1,649	0.7			
(17) Native American-owned DBE	29	$4,376	2.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-54
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	111	$17,671				
(2) MBE/WBE	39	$5,404	30.6	34.3	-3.7	89.3
(3) WBE	35	$5,361	30.3	28.9	1.5	105.0
(4) MBE	4	$43	0.2	5.4	-5.1	4.6
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.3	-0.3	0.0
(8) Hispanic American-owned	4	$43	0.2	1.6	-1.4	15.1
(9) Native American-owned	0	$0	0.0	3.2	-3.2	0.0
(10) DBE-certified	32	$5,184	29.3			
(11) Women-owned DBE	29	$5,141	29.1			
(12) Minority-owned DBE	3	$43	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	3	$43	0.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-55
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,237	$206,065				
(2) MBE/WBE	477	$52,320	25.4	25.6	-0.2	99.2
(3) WBE	389	$46,151	22.4	18.9	3.5	118.6
(4) MBE	88	$6,169	3.0	6.7	-3.7	44.6
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	3	$14	0.0	0.2	-0.2	2.9
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	54	$1,740	0.8	1.9	-1.1	44.0
(9) Native American-owned	31	$4,416	2.1	4.4	-2.3	48.3
(10) DBE-certified	360	$41,060	19.9			
(11) Women-owned DBE	283	$35,078	17.0			
(12) Minority-owned DBE	77	$5,982	2.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	48	$1,606	0.8			
(17) Native American-owned DBE	29	$4,376	2.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-56
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,793	$127,877				
(2) MBE/WBE	352	$8,919	7.0	12.8	-5.8	54.6
(3) WBE	235	$6,151	4.8	7.6	-2.8	63.4
(4) MBE	117	$2,769	2.2	5.2	-3.0	41.7
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	7	$269	0.2	0.4	-0.2	46.9
(7) Subcontinent Asian American-owned	5	$239	0.2	1.0	-0.8	18.1
(8) Hispanic American-owned	94	$2,037	1.6	1.9	-0.3	83.1
(9) Native American-owned	11	$223	0.2	1.0	-0.8	17.7
(10) DBE-certified	266	$6,652	5.2			
(11) Women-owned DBE	168	$4,491	3.5			
(12) Minority-owned DBE	98	$2,161	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.2			
(16) Hispanic American-owned DBE	87	$1,851	1.4			
(17) Native American-owned DBE	5	$69	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-57
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	287	$21,870				
(2) MBE/WBE	50	$1,554	7.1	14.3	-7.2	49.6
(3) WBE	30	$1,024	4.7	8.3	-3.6	56.2
(4) MBE	20	$529	2.4	6.0	-3.6	40.4
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	17	$459	2.1	2.8	-0.7	75.7
(9) Native American-owned	3	$71	0.3	1.0	-0.6	33.5
(10) DBE-certified	32	$887	4.1			
(11) Women-owned DBE	22	$614	2.8			
(12) Minority-owned DBE	10	$272	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$272	1.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-58
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,506	$106,007				
(2) MBE/WBE	302	$7,365	6.9	12.5	-5.5	55.8
(3) WBE	205	$5,126	4.8	7.4	-2.6	65.1
(4) MBE	97	$2,239	2.1	5.0	-2.9	42.0
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	7	$269	0.3	0.5	-0.2	55.7
(7) Subcontinent Asian American-owned	5	$239	0.2	1.0	-0.8	21.6
(8) Hispanic American-owned	77	$1,579	1.5	1.7	-0.3	85.5
(9) Native American-owned	8	$153	0.1	1.0	-0.8	14.5
(10) DBE-certified	234	$5,765	5.4			
(11) Women-owned DBE	146	$3,876	3.7			
(12) Minority-owned DBE	88	$1,889	1.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.2			
(16) Hispanic American-owned DBE	77	$1,579	1.5			
(17) Native American-owned DBE	5	$69	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-59
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	961	$97,350				
(2) MBE/WBE	101	$2,814	2.9	10.7	-7.9	26.9
(3) WBE	63	$1,953	2.0	6.0	-4.0	33.2
(4) MBE	38	$861	0.9	4.7	-3.8	18.8
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	3	$143	0.1	0.4	-0.2	39.9
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	29	$562	0.6	1.8	-1.2	33.0
(9) Native American-owned	6	$155	0.2	0.8	-0.7	19.7
(10) DBE-certified	65	$1,611	1.7			
(11) Women-owned DBE	36	$1,120	1.2			
(12) Minority-owned DBE	29	$491	0.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	26	$459	0.5			
(17) Native American-owned DBE	3	$32	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-60
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	152	$17,846				
(2) MBE/WBE	17	$783	4.4	12.6	-8.2	34.8
(3) WBE	12	$627	3.5	6.9	-3.4	51.0
(4) MBE	5	$156	0.9	5.7	-4.8	15.3
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	4	$111	0.6	2.8	-2.1	22.5
(9) Native American-owned	1	$44	0.2	0.8	-0.6	29.4
(10) DBE-certified	7	$242	1.4			
(11) Women-owned DBE	6	$235	1.3			
(12) Minority-owned DBE	1	$8	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-61
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	809	$79,504				
(2) MBE/WBE	84	$2,031	2.6	10.3	-7.8	24.8
(3) WBE	51	$1,326	1.7	5.8	-4.2	28.5
(4) MBE	33	$705	0.9	4.5	-3.6	19.8
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	3	$143	0.2	0.4	-0.2	48.3
(7) Subcontinent Asian American-owned	0	$0	0.0	1.1	-1.1	0.0
(8) Hispanic American-owned	25	$451	0.6	1.5	-1.0	37.3
(9) Native American-owned	5	$111	0.1	0.8	-0.7	17.4
(10) DBE-certified	58	$1,369	1.7			
(11) Women-owned DBE	30	$885	1.1			
(12) Minority-owned DBE	28	$483	0.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	25	$451	0.6			
(17) Native American-owned DBE	3	$32	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-62
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	832	$30,527				
(2) MBE/WBE	251	$6,105	20.0	19.3	0.7	103.8
(3) WBE	172	$4,197	13.8	12.5	1.3	110.0
(4) MBE	79	$1,907	6.2	6.8	-0.5	92.3
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	4	$125	0.4	0.7	-0.3	58.7
(7) Subcontinent Asian American-owned	5	$239	0.8	1.0	-0.2	77.7
(8) Hispanic American-owned	65	$1,475	4.8	2.4	2.4	197.3
(9) Native American-owned	5	$68	0.2	1.5	-1.3	14.4
(10) DBE-certified	201	$5,041	16.5			
(11) Women-owned DBE	132	$3,371	11.0			
(12) Minority-owned DBE	69	$1,670	5.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.8			
(16) Hispanic American-owned DBE	61	$1,392	4.6			
(17) Native American-owned DBE	2	$37	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-63
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	135	$4,024				
(2) MBE/WBE	33	$771	19.2	21.9	-2.8	87.4
(3) WBE	18	$397	9.9	14.7	-4.8	67.2
(4) MBE	15	$374	9.3	7.2	2.1	128.4
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	13	$347	8.6	2.8	5.9	200+
(9) Native American-owned	2	$26	0.7	1.5	-0.8	44.0
(10) DBE-certified	25	$644	16.0			
(11) Women-owned DBE	16	$380	9.4			
(12) Minority-owned DBE	9	$265	6.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	9	$265	6.6			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-64
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	697	$26,502				
(2) MBE/WBE	218	$5,334	20.1	18.9	1.3	106.7
(3) WBE	154	$3,800	14.3	12.2	2.2	117.9
(4) MBE	64	$1,534	5.8	6.7	-0.9	86.3
(5) African American-owned	0	$0	0.0	1.0	-1.0	0.0
(6) Asian-Pacific American-owned	4	$125	0.5	0.7	-0.2	67.5
(7) Subcontinent Asian American-owned	5	$239	0.9	1.0	-0.1	88.4
(8) Hispanic American-owned	52	$1,127	4.3	2.4	1.9	177.4
(9) Native American-owned	3	$42	0.2	1.6	-1.4	10.1
(10) DBE-certified	176	$4,396	16.6			
(11) Women-owned DBE	116	$2,991	11.3			
(12) Minority-owned DBE	60	$1,405	5.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.9			
(16) Hispanic American-owned DBE	52	$1,127	4.3			
(17) Native American-owned DBE	2	$37	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-65
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	269	$58,802				
(2) MBE/WBE	80	$3,989	6.8	8.3	-1.5	81.5
(3) WBE	60	$3,103	5.3	4.9	0.4	107.2
(4) MBE	20	$886	1.5	3.4	-1.9	44.3
(5) African American-owned	0	$0	0.0	0.5	-0.5	0.0
(6) Asian-Pacific American-owned	1	$126	0.2	0.1	0.1	200+
(7) Subcontinent Asian American-owned	1	$48	0.1	1.0	-0.9	8.5
(8) Hispanic American-owned	17	$676	1.2	1.3	-0.2	87.3
(9) Native American-owned	1	$35	0.1	0.6	-0.5	10.6
(10) DBE-certified	70	$3,259	5.5			
(11) Women-owned DBE	51	$2,499	4.2			
(12) Minority-owned DBE	19	$760	1.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$48	0.1			
(16) Hispanic American-owned DBE	17	$676	1.2			
(17) Native American-owned DBE	1	$35	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-66
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	269	$58,802				
(2) MBE/WBE	80	$3,989	6.8	8.3	-1.5	81.5
(3) WBE	60	$3,103	5.3	4.9	0.4	107.2
(4) MBE	20	$886	1.5	3.4	-1.9	44.3
(5) African American-owned	0	$0	0.0	0.5	-0.5	0.0
(6) Asian-Pacific American-owned	1	$126	0.2	0.1	0.1	200+
(7) Subcontinent Asian American-owned	1	$48	0.1	1.0	-0.9	8.5
(8) Hispanic American-owned	17	$676	1.2	1.3	-0.2	87.3
(9) Native American-owned	1	$35	0.1	0.6	-0.5	10.6
(10) DBE-certified	70	$3,259	5.5			
(11) Women-owned DBE	51	$2,499	4.2			
(12) Minority-owned DBE	19	$760	1.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$48	0.1			
(16) Hispanic American-owned DBE	17	$676	1.2			
(17) Native American-owned DBE	1	$35	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-67
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	60	$39,798				
(2) MBE/WBE	1	$126	0.3	4.4	-4.1	7.1
(3) WBE	0	$0	0.0	2.4	-2.4	0.0
(4) MBE	1	$126	0.3	2.1	-1.8	15.1
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	1	$126	0.3	0.0	0.3	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	0	$0	0.0	0.8	-0.8	0.0
(9) Native American-owned	0	$0	0.0	0.2	-0.2	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-68
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	60	$39,798				
(2) MBE/WBE	1	$126	0.3	4.4	-4.1	7.1
(3) WBE	0	$0	0.0	2.4	-2.4	0.0
(4) MBE	1	$126	0.3	2.1	-1.8	15.1
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	1	$126	0.3	0.0	0.3	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	0	$0	0.0	0.8	-0.8	0.0
(9) Native American-owned	0	$0	0.0	0.2	-0.2	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-69
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	209	$19,004				
(2) MBE/WBE	79	$3,863	20.3	16.4	3.9	123.6
(3) WBE	60	$3,103	16.3	10.3	6.0	158.4
(4) MBE	19	$760	4.0	6.1	-2.1	65.1
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	1	$48	0.3	1.2	-0.9	21.7
(8) Hispanic American-owned	17	$676	3.6	2.5	1.1	145.1
(9) Native American-owned	1	$35	0.2	1.3	-1.1	14.5
(10) DBE-certified	70	$3,259	17.1			
(11) Women-owned DBE	51	$2,499	13.1			
(12) Minority-owned DBE	19	$760	4.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$48	0.3			
(16) Hispanic American-owned DBE	17	$676	3.6			
(17) Native American-owned DBE	1	$35	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-70
Agency: ITD
Funding: Federal
Type: RFP Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	209	$19,004				
(2) MBE/WBE	79	$3,863	20.3	16.4	3.9	123.6
(3) WBE	60	$3,103	16.3	10.3	6.0	158.4
(4) MBE	19	$760	4.0	6.1	-2.1	65.1
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	1	$48	0.3	1.2	-0.9	21.7
(8) Hispanic American-owned	17	$676	3.6	2.5	1.1	145.1
(9) Native American-owned	1	$35	0.2	1.3	-1.1	14.5
(10) DBE-certified	70	$3,259	17.1			
(11) Women-owned DBE	51	$2,499	13.1			
(12) Minority-owned DBE	19	$760	4.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$48	0.3			
(16) Hispanic American-owned DBE	17	$676	3.6			
(17) Native American-owned DBE	1	$35	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-71
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,524	$69,075				
(2) MBE/WBE	272	$4,930	7.1	16.6	-9.4	43.1
(3) WBE	175	$3,048	4.4	9.8	-5.4	44.8
(4) MBE	97	$1,883	2.7	6.7	-4.0	40.5
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	6	$143	0.2	0.7	-0.5	27.7
(7) Subcontinent Asian American-owned	4	$191	0.3	1.1	-0.8	25.4
(8) Hispanic American-owned	77	$1,361	2.0	2.4	-0.5	81.2
(9) Native American-owned	10	$188	0.3	1.3	-1.1	20.2
(10) DBE-certified	196	$3,393	4.9			
(11) Women-owned DBE	117	$1,992	2.9			
(12) Minority-owned DBE	79	$1,401	2.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	0.3			
(16) Hispanic American-owned DBE	70	$1,174	1.7			
(17) Native American-owned DBE	4	$34	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-72
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	287	$21,870				
(2) MBE/WBE	50	$1,554	7.1	14.3	-7.2	49.6
(3) WBE	30	$1,024	4.7	8.3	-3.6	56.2
(4) MBE	20	$529	2.4	6.0	-3.6	40.4
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.4	-0.4	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	17	$459	2.1	2.8	-0.7	75.7
(9) Native American-owned	3	$71	0.3	1.0	-0.6	33.5
(10) DBE-certified	32	$887	4.1			
(11) Women-owned DBE	22	$614	2.8			
(12) Minority-owned DBE	10	$272	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$272	1.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-73
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,237	$47,205				
(2) MBE/WBE	222	$3,377	7.2	17.6	-10.5	40.6
(3) WBE	145	$2,023	4.3	10.5	-6.3	40.6
(4) MBE	77	$1,353	2.9	7.1	-4.2	40.6
(5) African American-owned	0	$0	0.0	1.2	-1.2	0.0
(6) Asian-Pacific American-owned	6	$143	0.3	0.9	-0.6	33.6
(7) Subcontinent Asian American-owned	4	$191	0.4	1.1	-0.7	35.5
(8) Hispanic American-owned	60	$902	1.9	2.3	-0.4	84.3
(9) Native American-owned	7	$117	0.2	1.5	-1.3	16.3
(10) DBE-certified	164	$2,506	5.3			
(11) Women-owned DBE	95	$1,378	2.9			
(12) Minority-owned DBE	69	$1,129	2.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	0.4			
(16) Hispanic American-owned DBE	60	$902	1.9			
(17) Native American-owned DBE	4	$34	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-74
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	901	$57,552				
(2) MBE/WBE	100	$2,688	4.7	15.1	-10.4	30.9
(3) WBE	63	$1,953	3.4	8.6	-5.2	39.5
(4) MBE	37	$735	1.3	6.5	-5.2	19.6
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	2	$17	0.0	0.6	-0.6	4.8
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	29	$562	1.0	2.4	-1.4	40.3
(9) Native American-owned	6	$155	0.3	1.2	-0.9	22.1
(10) DBE-certified	65	$1,611	2.8			
(11) Women-owned DBE	36	$1,120	1.9			
(12) Minority-owned DBE	29	$491	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	26	$459	0.8			
(17) Native American-owned DBE	3	$32	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-75
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	152	$17,846				
(2) MBE/WBE	17	$783	4.4	12.6	-8.2	34.8
(3) WBE	12	$627	3.5	6.9	-3.4	51.0
(4) MBE	5	$156	0.9	5.7	-4.8	15.3
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.3	-0.3	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	4	$111	0.6	2.8	-2.1	22.5
(9) Native American-owned	1	$44	0.2	0.8	-0.6	29.4
(10) DBE-certified	7	$242	1.4			
(11) Women-owned DBE	6	$235	1.3			
(12) Minority-owned DBE	1	$8	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-76
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	749	$39,707				
(2) MBE/WBE	83	$1,905	4.8	16.2	-11.4	29.6
(3) WBE	51	$1,326	3.3	9.4	-6.0	35.7
(4) MBE	32	$579	1.5	6.9	-5.4	21.3
(5) African American-owned	0	$0	0.0	1.2	-1.2	0.0
(6) Asian-Pacific American-owned	2	$17	0.0	0.7	-0.7	5.9
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	25	$451	1.1	2.3	-1.1	50.1
(9) Native American-owned	5	$111	0.3	1.4	-1.1	20.2
(10) DBE-certified	58	$1,369	3.4			
(11) Women-owned DBE	30	$885	2.2			
(12) Minority-owned DBE	28	$483	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	25	$451	1.1			
(17) Native American-owned DBE	3	$32	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-77
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	623	$11,522				
(2) MBE/WBE	172	$2,242	19.5	23.9	-4.5	81.4
(3) WBE	112	$1,095	9.5	16.1	-6.6	59.0
(4) MBE	60	$1,148	10.0	7.8	2.1	127.5
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	4	$125	1.1	1.4	-0.3	79.6
(7) Subcontinent Asian American-owned	4	$191	1.7	0.7	0.9	200+
(8) Hispanic American-owned	48	$798	6.9	2.4	4.5	200+
(9) Native American-owned	4	$33	0.3	2.0	-1.7	14.4
(10) DBE-certified	131	$1,782	15.5			
(11) Women-owned DBE	81	$872	7.6			
(12) Minority-owned DBE	50	$910	7.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	1.7			
(16) Hispanic American-owned DBE	44	$715	6.2			
(17) Native American-owned DBE	1	$1	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-78
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	135	$4,024				
(2) MBE/WBE	33	$771	19.2	21.9	-2.8	87.4
(3) WBE	18	$397	9.9	14.7	-4.8	67.2
(4) MBE	15	$374	9.3	7.2	2.1	128.4
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	13	$347	8.6	2.8	5.9	200+
(9) Native American-owned	2	$26	0.7	1.5	-0.8	44.0
(10) DBE-certified	25	$644	16.0			
(11) Women-owned DBE	16	$380	9.4			
(12) Minority-owned DBE	9	$265	6.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	9	$265	6.6			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-79
Agency: ITD
Funding: Federal
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	488	$7,498				
(2) MBE/WBE	139	$1,471	19.6	25.0	-5.4	78.5
(3) WBE	94	$697	9.3	16.9	-7.6	55.1
(4) MBE	45	$774	10.3	8.1	2.2	127.1
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	4	$125	1.7	1.7	-0.1	96.7
(7) Subcontinent Asian American-owned	4	$191	2.6	0.6	1.9	200+
(8) Hispanic American-owned	35	$451	6.0	2.3	3.8	200+
(9) Native American-owned	2	$6	0.1	2.2	-2.1	3.8
(10) DBE-certified	106	$1,138	15.2			
(11) Women-owned DBE	65	$492	6.6			
(12) Minority-owned DBE	41	$645	8.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	4	$191	2.6			
(16) Hispanic American-owned DBE	35	$451	6.0			
(17) Native American-owned DBE	1	$1	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-80
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,118	$238,507				
(2) MBE/WBE	334	$34,923	14.6	20.2	-5.6	72.4
(3) WBE	260	$29,283	12.3	15.2	-2.9	80.9
(4) MBE	74	$5,640	2.4	5.1	-2.7	46.8
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	5	$1,943	0.8	0.5	0.3	150.8
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	-0.1	5.9
(8) Hispanic American-owned	31	$930	0.4	0.8	-0.4	49.2
(9) Native American-owned	37	$2,760	1.2	3.6	-2.5	32.1
(10) DBE-certified	212	$12,810	5.4			
(11) Women-owned DBE	161	$10,319	4.3			
(12) Minority-owned DBE	51	$2,491	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	21	$201	0.1			
(17) Native American-owned DBE	30	$2,290	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-81
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	69	$21,696				
(2) MBE/WBE	23	$3,026	13.9	22.0	-8.0	63.4
(3) WBE	19	$2,778	12.8	17.4	-4.6	73.4
(4) MBE	4	$248	1.1	4.5	-3.4	25.2
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	$70	0.3	0.2	0.1	149.1
(9) Native American-owned	3	$178	0.8	4.2	-3.3	19.7
(10) DBE-certified	17	$1,610	7.4			
(11) Women-owned DBE	14	$1,431	6.6			
(12) Minority-owned DBE	3	$178	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	3	$178	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-82
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,049	$216,811				
(2) MBE/WBE	311	$31,897	14.7	20.1	-5.3	73.4
(3) WBE	241	$26,505	12.2	15.0	-2.7	81.8
(4) MBE	70	$5,392	2.5	5.1	-2.6	48.7
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	5	$1,943	0.9	0.6	0.3	154.3
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	-0.1	6.0
(8) Hispanic American-owned	30	$860	0.4	0.8	-0.5	46.7
(9) Native American-owned	34	$2,582	1.2	3.6	-2.4	33.5
(10) DBE-certified	195	$11,201	5.2			
(11) Women-owned DBE	147	$8,888	4.1			
(12) Minority-owned DBE	48	$2,313	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	21	$201	0.1			
(17) Native American-owned DBE	27	$2,112	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-83
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	365	$181,610				
(2) MBE/WBE	42	$17,164	9.5	18.2	-8.8	51.9
(3) WBE	27	$14,248	7.8	13.7	-5.9	57.1
(4) MBE	15	$2,916	1.6	4.5	-2.9	35.9
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	1.0	0.4	0.6	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	8	$231	0.1	0.3	-0.2	37.5
(9) Native American-owned	3	$780	0.4	3.6	-3.2	11.9
(10) DBE-certified	20	$1,816	1.0			
(11) Women-owned DBE	11	$997	0.5			
(12) Minority-owned DBE	9	$819	0.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.0			
(17) Native American-owned DBE	3	$780	0.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-84
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	36	$3,326				
(2) MBE/WBE	20	$1,995	60.0	35.3	24.7	169.9
(3) WBE	17	$1,816	54.6	31.5	23.1	173.1
(4) MBE	3	$178	5.4	3.8	1.6	143.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.8	-0.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	0	$0	0.0	0.5	-0.5	0.0
(9) Native American-owned	3	$178	5.4	2.4	3.0	200+
(10) DBE-certified	17	$1,610	48.4			
(11) Women-owned DBE	14	$1,431	43.0			
(12) Minority-owned DBE	3	$178	5.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	3	$178	5.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-85
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	332	$163,239				
(2) MBE/WBE	39	$16,133	9.9	18.1	-8.2	54.7
(3) WBE	25	$13,286	8.1	13.6	-5.5	59.8
(4) MBE	14	$2,846	1.7	4.4	-2.7	39.2
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	1.2	0.5	0.7	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	7	$161	0.1	0.4	-0.3	27.5
(9) Native American-owned	3	$780	0.5	3.5	-3.0	13.6
(10) DBE-certified	20	$1,816	1.1			
(11) Women-owned DBE	11	$997	0.6			
(12) Minority-owned DBE	9	$819	0.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.0			
(17) Native American-owned DBE	3	$780	0.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-86
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	753	$56,897				
(2) MBE/WBE	292	$17,759	31.2	26.7	4.5	117.0
(3) WBE	233	$15,035	26.4	19.8	6.7	133.7
(4) MBE	59	$2,724	4.8	6.9	-2.1	69.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$37	0.1	0.9	-0.9	7.1
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	0.0	22.0
(8) Hispanic American-owned	23	$698	1.2	2.2	-1.0	54.9
(9) Native American-owned	34	$1,981	3.5	3.6	-0.1	96.7
(10) DBE-certified	192	$10,994	19.3			
(11) Women-owned DBE	150	$9,322	16.4			
(12) Minority-owned DBE	42	$1,672	2.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	15	$161	0.3			
(17) Native American-owned DBE	27	$1,510	2.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-87
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	36	$3,326				
(2) MBE/WBE	20	$1,995	60.0	35.3	24.7	169.9
(3) WBE	17	$1,816	54.6	31.5	23.1	173.1
(4) MBE	3	$178	5.4	3.8	1.6	143.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.8	-0.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	0	$0	0.0	0.5	-0.5	0.0
(9) Native American-owned	3	$178	5.4	2.4	3.0	200+
(10) DBE-certified	17	$1,610	48.4			
(11) Women-owned DBE	14	$1,431	43.0			
(12) Minority-owned DBE	3	$178	5.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	3	$178	5.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-88
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	717	$53,572				
(2) MBE/WBE	272	$15,765	29.4	26.1	3.3	112.6
(3) WBE	216	$13,219	24.7	19.0	5.6	129.7
(4) MBE	56	$2,546	4.8	7.1	-2.4	66.9
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$37	0.1	0.9	-0.9	7.5
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	0.0	22.5
(8) Hispanic American-owned	23	$698	1.3	2.3	-1.0	55.7
(9) Native American-owned	31	$1,803	3.4	3.7	-0.3	91.5
(10) DBE-certified	175	$9,385	17.5			
(11) Women-owned DBE	136	$7,891	14.7			
(12) Minority-owned DBE	39	$1,494	2.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	15	$161	0.3			
(17) Native American-owned DBE	24	$1,332	2.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-89
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	896	$230,590				
(2) MBE/WBE	306	$34,623	15.0	20.4	-5.4	73.6
(3) WBE	242	$29,118	12.6	15.4	-2.8	82.0
(4) MBE	64	$5,505	2.4	5.0	-2.6	47.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$1,943	0.8	0.5	0.3	161.2
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	26.5
(8) Hispanic American-owned	23	$864	0.4	0.8	-0.4	49.7
(9) Native American-owned	35	$2,691	1.2	3.7	-2.5	31.6
(10) DBE-certified	188	$12,516	5.4			
(11) Women-owned DBE	147	$10,160	4.4			
(12) Minority-owned DBE	41	$2,356	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	13	$136	0.1			
(17) Native American-owned DBE	28	$2,220	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-90
Agency: ITD
Funding: State
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	61	$21,542				
(2) MBE/WBE	22	$3,022	14.0	22.0	-8.0	63.7
(3) WBE	18	$2,773	12.9	17.5	-4.6	73.7
(4) MBE	4	$248	1.2	4.5	-3.4	25.3
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	$70	0.3	0.2	0.1	151.9
(9) Native American-owned	3	$178	0.8	4.2	-3.4	19.7
(10) DBE-certified	17	$1,610	7.5			
(11) Women-owned DBE	14	$1,431	6.6			
(12) Minority-owned DBE	3	$178	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	3	$178	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-91
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	835	$209,048				
(2) MBE/WBE	284	$31,601	15.1	20.2	-5.1	74.7
(3) WBE	224	$26,344	12.6	15.2	-2.6	83.0
(4) MBE	60	$5,257	2.5	5.0	-2.5	49.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$1,943	0.9	0.6	0.4	165.0
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	27.2
(8) Hispanic American-owned	22	$794	0.4	0.8	-0.4	46.9
(9) Native American-owned	32	$2,512	1.2	3.6	-2.4	33.0
(10) DBE-certified	171	$10,907	5.2			
(11) Women-owned DBE	133	$8,729	4.2			
(12) Minority-owned DBE	38	$2,178	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	13	$136	0.1			
(17) Native American-owned DBE	25	$2,042	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-92
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	205	$174,469				
(2) MBE/WBE	24	$16,956	9.7	18.4	-8.6	52.9
(3) WBE	17	$14,149	8.1	14.0	-5.9	58.1
(4) MBE	7	$2,807	1.6	4.4	-2.8	36.7
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	1.1	0.4	0.7	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	2	$192	0.1	0.3	-0.2	39.5
(9) Native American-owned	1	$710	0.4	3.7	-3.3	11.0
(10) DBE-certified	3	$1,612	0.9			
(11) Women-owned DBE	2	$902	0.5			
(12) Minority-owned DBE	1	$710	0.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	1	$710	0.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-93
Agency: ITD
Funding: State
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	25	$18,217				
(2) MBE/WBE	2	$1,027	5.6	19.6	-14.0	28.8
(3) WBE	1	$957	5.3	14.9	-9.6	35.3
(4) MBE	1	$70	0.4	4.7	-4.3	8.2
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.0	0.0	100.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	1	$70	0.4	0.2	0.2	200+
(9) Native American-owned	0	$0	0.0	4.5	-4.5	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-94
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	180	$156,253				
(2) MBE/WBE	22	$15,929	10.2	18.2	-8.0	56.0
(3) WBE	16	$13,192	8.4	13.9	-5.4	60.9
(4) MBE	6	$2,737	1.8	4.4	-2.6	40.2
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	1.2	0.4	0.8	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	$122	0.1	0.3	-0.2	26.7
(9) Native American-owned	1	$710	0.5	3.6	-3.2	12.6
(10) DBE-certified	3	$1,612	1.0			
(11) Women-owned DBE	2	$902	0.6			
(12) Minority-owned DBE	1	$710	0.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	1	$710	0.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-95
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	691	$56,120				
(2) MBE/WBE	282	$17,667	31.5	26.7	4.7	117.7
(3) WBE	225	$14,969	26.7	19.9	6.8	134.4
(4) MBE	57	$2,698	4.8	6.9	-2.1	69.7
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$37	0.1	0.9	-0.8	7.4
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	27.7
(8) Hispanic American-owned	21	$673	1.2	2.2	-1.0	53.6
(9) Native American-owned	34	$1,981	3.5	3.6	-0.1	97.2
(10) DBE-certified	185	$10,904	19.4			
(11) Women-owned DBE	145	$9,258	16.5			
(12) Minority-owned DBE	40	$1,646	2.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	13	$136	0.2			
(17) Native American-owned DBE	27	$1,510	2.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-96
Agency: ITD
Funding: State
Type: Construction
Time Period: Feb-Dec 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	36	$3,326				
(2) MBE/WBE	20	$1,995	60.0	35.3	24.7	169.9
(3) WBE	17	$1,816	54.6	31.5	23.1	173.1
(4) MBE	3	$178	5.4	3.8	1.6	143.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.8	-0.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	0	$0	0.0	0.5	-0.5	0.0
(9) Native American-owned	3	$178	5.4	2.4	3.0	200+
(10) DBE-certified	17	$1,610	48.4			
(11) Women-owned DBE	14	$1,431	43.0			
(12) Minority-owned DBE	3	$178	5.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	3	$178	5.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-97
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	655	$52,795				
(2) MBE/WBE	262	$15,673	29.7	26.2	3.5	113.3
(3) WBE	208	$13,153	24.9	19.1	5.8	130.3
(4) MBE	54	$2,520	4.8	7.1	-2.3	67.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$37	0.1	0.9	-0.8	7.8
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	28.5
(8) Hispanic American-owned	21	$673	1.3	2.3	-1.1	54.3
(9) Native American-owned	31	$1,803	3.4	3.7	-0.3	92.0
(10) DBE-certified	168	$9,294	17.6			
(11) Women-owned DBE	131	$7,827	14.8			
(12) Minority-owned DBE	37	$1,468	2.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	13	$136	0.3			
(17) Native American-owned DBE	24	$1,332	2.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-98
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	222	$7,917				
(2) MBE/WBE	28	$300	3.8	15.4	-11.6	24.6
(3) WBE	18	$165	2.1	8.8	-6.7	23.7
(4) MBE	10	$135	1.7	6.6	-4.9	25.9
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.1	-1.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	8	$65	0.8	1.9	-1.0	44.3
(9) Native American-owned	2	$70	0.9	1.3	-0.4	67.4
(10) DBE-certified	24	$294	3.7			
(11) Women-owned DBE	14	$159	2.0			
(12) Minority-owned DBE	10	$135	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	8	$65	0.8			
(17) Native American-owned DBE	2	$70	0.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-99
Agency: ITD
Funding: State
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	8	$154				
(2) MBE/WBE	1	$4	2.9	17.2	-14.3	16.8
(3) WBE	1	$4	2.9	14.0	-11.1	20.7
(4) MBE	0	$0	0.0	3.3	-3.3	0.0
(5) African American-owned	0	$0	0.0	0.6	-0.6	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.6	-0.6	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	0.6	-0.6	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-100
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	214	$7,763				
(2) MBE/WBE	27	$296	3.8	15.4	-11.6	24.8
(3) WBE	17	$161	2.1	8.7	-6.6	23.8
(4) MBE	10	$135	1.7	6.6	-4.9	26.2
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.1	-1.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	8	$65	0.8	1.9	-1.0	44.6
(9) Native American-owned	2	$70	0.9	1.3	-0.4	67.9
(10) DBE-certified	24	$294	3.8			
(11) Women-owned DBE	14	$159	2.1			
(12) Minority-owned DBE	10	$135	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	8	$65	0.8			
(17) Native American-owned DBE	2	$70	0.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-101
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	160	$7,140				
(2) MBE/WBE	18	$208	2.9	14.8	-11.9	19.7
(3) WBE	10	$99	1.4	8.4	-7.0	16.6
(4) MBE	8	$109	1.5	6.4	-4.9	23.8
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	6	$40	0.6	1.8	-1.3	30.1
(9) Native American-owned	2	$70	1.0	1.3	-0.3	75.1
(10) DBE-certified	17	$204	2.9			
(11) Women-owned DBE	9	$95	1.3			
(12) Minority-owned DBE	8	$109	1.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.6			
(17) Native American-owned DBE	2	$70	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-102
Agency: ITD
Funding: State
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	8	$154				
(2) MBE/WBE	1	$4	2.9	17.2	-14.3	16.8
(3) WBE	1	$4	2.9	14.0	-11.1	20.7
(4) MBE	0	$0	0.0	3.3	-3.3	0.0
(5) African American-owned	0	$0	0.0	0.6	-0.6	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.6	-0.6	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	0.6	-0.6	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-103
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	152	$6,986				
(2) MBE/WBE	17	$204	2.9	14.7	-11.8	19.8
(3) WBE	9	$95	1.4	8.2	-6.9	16.4
(4) MBE	8	$109	1.6	6.5	-4.9	24.1
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	6	$40	0.6	1.9	-1.3	30.3
(9) Native American-owned	2	$70	1.0	1.3	-0.3	75.8
(10) DBE-certified	17	$204	2.9			
(11) Women-owned DBE	9	$95	1.4			
(12) Minority-owned DBE	8	$109	1.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.6			
(17) Native American-owned DBE	2	$70	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-104
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	62	$777				
(2) MBE/WBE	10	$92	11.8	20.9	-9.1	56.5
(3) WBE	8	$66	8.5	13.0	-4.5	65.7
(4) MBE	2	$26	3.3	8.0	-4.7	41.6
(5) African American-owned	0	$0	0.0	1.5	-1.5	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	2.2	-2.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	2	$26	3.3	2.1	1.2	160.4
(9) Native American-owned	0	$0	0.0	1.4	-1.4	0.0
(10) DBE-certified	7	$90	11.6			
(11) Women-owned DBE	5	$64	8.3			
(12) Minority-owned DBE	2	$26	3.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$26	3.3			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-105
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	62	$777				
(2) MBE/WBE	10	$92	11.8	20.9	-9.1	56.5
(3) WBE	8	$66	8.5	13.0	-4.5	65.7
(4) MBE	2	$26	3.3	8.0	-4.7	41.6
(5) African American-owned	0	$0	0.0	1.5	-1.5	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	2.2	-2.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	2	$26	3.3	2.1	1.2	160.4
(9) Native American-owned	0	$0	0.0	1.4	-1.4	0.0
(10) DBE-certified	7	$90	11.6			
(11) Women-owned DBE	5	$64	8.3			
(12) Minority-owned DBE	2	$26	3.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$26	3.3			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-106
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	222	$7,917				
(2) MBE/WBE	28	$300	3.8	15.4	-11.6	24.6
(3) WBE	18	$165	2.1	8.8	-6.7	23.7
(4) MBE	10	$135	1.7	6.6	-4.9	25.9
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.1	-1.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.2	-1.2	0.0
(8) Hispanic American-owned	8	$65	0.8	1.9	-1.0	44.3
(9) Native American-owned	2	$70	0.9	1.3	-0.4	67.4
(10) DBE-certified	24	$294	3.7			
(11) Women-owned DBE	14	$159	2.0			
(12) Minority-owned DBE	10	$135	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	8	$65	0.8			
(17) Native American-owned DBE	2	$70	0.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-107
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	8	$154				
(2) MBE/WBE	1	$4	2.9	17.2	-14.3	16.8
(3) WBE	1	$4	2.9	14.0	-11.1	20.7
(4) MBE	0	$0	0.0	3.3	-3.3	0.0
(5) African American-owned	0	$0	0.0	0.6	-0.6	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.6	-0.6	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	0.6	-0.6	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-108
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	214	$7,763				
(2) MBE/WBE	27	$296	3.8	15.4	-11.6	24.8
(3) WBE	17	$161	2.1	8.7	-6.6	23.8
(4) MBE	10	$135	1.7	6.6	-4.9	26.2
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.1	-1.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	8	$65	0.8	1.9	-1.0	44.6
(9) Native American-owned	2	$70	0.9	1.3	-0.4	67.9
(10) DBE-certified	24	$294	3.8			
(11) Women-owned DBE	14	$159	2.1			
(12) Minority-owned DBE	10	$135	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	8	$65	0.8			
(17) Native American-owned DBE	2	$70	0.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-109
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	160	$7,140				
(2) MBE/WBE	18	$208	2.9	14.8	-11.9	19.7
(3) WBE	10	$99	1.4	8.4	-7.0	16.6
(4) MBE	8	$109	1.5	6.4	-4.9	23.8
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	6	$40	0.6	1.8	-1.3	30.1
(9) Native American-owned	2	$70	1.0	1.3	-0.3	75.1
(10) DBE-certified	17	$204	2.9			
(11) Women-owned DBE	9	$95	1.3			
(12) Minority-owned DBE	8	$109	1.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.6			
(17) Native American-owned DBE	2	$70	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-110
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	8	$154				
(2) MBE/WBE	1	$4	2.9	17.2	-14.3	16.8
(3) WBE	1	$4	2.9	14.0	-11.1	20.7
(4) MBE	0	$0	0.0	3.3	-3.3	0.0
(5) African American-owned	0	$0	0.0	0.6	-0.6	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.6	-0.6	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	0.6	-0.6	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-111
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	152	$6,986				
(2) MBE/WBE	17	$204	2.9	14.7	-11.8	19.8
(3) WBE	9	$95	1.4	8.2	-6.9	16.4
(4) MBE	8	$109	1.6	6.5	-4.9	24.1
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.9	-0.9	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	6	$40	0.6	1.9	-1.3	30.3
(9) Native American-owned	2	$70	1.0	1.3	-0.3	75.8
(10) DBE-certified	17	$204	2.9			
(11) Women-owned DBE	9	$95	1.4			
(12) Minority-owned DBE	8	$109	1.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.6			
(17) Native American-owned DBE	2	$70	1.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-112
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	62	$777				
(2) MBE/WBE	10	$92	11.8	20.9	-9.1	56.5
(3) WBE	8	$66	8.5	13.0	-4.5	65.7
(4) MBE	2	$26	3.3	8.0	-4.7	41.6
(5) African American-owned	0	$0	0.0	1.5	-1.5	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	2.2	-2.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	2	$26	3.3	2.1	1.2	160.4
(9) Native American-owned	0	$0	0.0	1.4	-1.4	0.0
(10) DBE-certified	7	$90	11.6			
(11) Women-owned DBE	5	$64	8.3			
(12) Minority-owned DBE	2	$26	3.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$26	3.3			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-113
Agency: ITD
Funding: State
Type: Non-RFP Engineering
Time Period: 2002-Jan 2006
Role: Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	62	$777				
(2) MBE/WBE	10	$92	11.8	20.9	-9.1	56.5
(3) WBE	8	$66	8.5	13.0	-4.5	65.7
(4) MBE	2	$26	3.3	8.0	-4.7	41.6
(5) African American-owned	0	$0	0.0	1.5	-1.5	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	2.2	-2.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	2	$26	3.3	2.1	1.2	160.4
(9) Native American-owned	0	$0	0.0	1.4	-1.4	0.0
(10) DBE-certified	7	$90	11.6			
(11) Women-owned DBE	5	$64	8.3			
(12) Minority-owned DBE	2	$26	3.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	2	$26	3.3			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-114
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	859	$125,264				
(2) MBE/WBE	220	$13,696	10.9	16.0	-5.0	68.5
(3) WBE	168	$11,926	9.5	11.7	-2.1	81.6
(4) MBE	52	$1,770	1.4	4.3	-2.9	32.9
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	2	$389	0.3	0.2	0.1	124.5
(7) Subcontinent Asian American-owned	1	$92	0.1	0.3	-0.2	24.3
(8) Hispanic American-owned	37	$801	0.6	0.9	-0.3	70.4
(9) Native American-owned	12	$489	0.4	2.6	-2.2	14.8
(10) DBE-certified	157	$8,848	7.1			
(11) Women-owned DBE	112	$7,572	6.0			
(12) Minority-owned DBE	45	$1,276	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$92	0.1			
(16) Hispanic American-owned DBE	33	$717	0.6			
(17) Native American-owned DBE	11	$468	0.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-115
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2003
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	698	$155,622				
(2) MBE/WBE	181	$20,392	13.1	15.0	-1.9	87.3
(3) WBE	149	$19,431	12.5	11.4	1.1	109.3
(4) MBE	32	$961	0.6	3.6	-3.0	17.2
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$6	0.0	0.2	-0.2	2.0
(7) Subcontinent Asian American-owned	1	$48	0.0	0.1	-0.1	23.7
(8) Hispanic American-owned	26	$393	0.3	0.8	-0.6	31.1
(9) Native American-owned	4	$513	0.3	2.3	-2.0	14.2
(10) DBE-certified	135	$9,230	5.9			
(11) Women-owned DBE	105	$8,280	5.3			
(12) Minority-owned DBE	30	$950	0.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	1	$48	0.0			
(16) Hispanic American-owned DBE	26	$393	0.3			
(17) Native American-owned DBE	3	$508	0.3			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-116
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2004
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	698	$173,985				
(2) MBE/WBE	211	$36,718	21.1	16.2	4.9	130.6
(3) WBE	158	$33,478	19.2	12.4	6.8	154.9
(4) MBE	53	$3,241	1.9	3.7	-1.9	49.8
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$134	0.1	0.1	-0.1	56.9
(7) Subcontinent Asian American-owned	1	$37	0.0	0.2	-0.2	11.8
(8) Hispanic American-owned	38	$1,028	0.6	0.8	-0.2	74.9
(9) Native American-owned	10	$2,042	1.2	2.5	-1.3	47.0
(10) DBE-certified	154	$15,279	8.8			
(11) Women-owned DBE	107	$12,239	7.0			
(12) Minority-owned DBE	47	$3,041	1.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	1	$37	0.0			
(16) Hispanic American-owned DBE	36	$979	0.6			
(17) Native American-owned DBE	9	$2,023	1.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-117
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2005-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	748	$246,994				
(2) MBE/WBE	193	$24,412	9.9	14.4	-4.5	68.6
(3) WBE	143	$21,391	8.7	10.6	-1.9	82.0
(4) MBE	50	$3,021	1.2	3.8	-2.6	31.9
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	4	$137	0.1	0.1	-0.1	42.2
(7) Subcontinent Asian American-owned	2	$63	0.0	0.1	-0.1	17.9
(8) Hispanic American-owned	31	$1,296	0.5	1.3	-0.8	39.5
(9) Native American-owned	13	$1,524	0.6	2.1	-1.5	29.3
(10) DBE-certified	155	$17,555	7.1			
(11) Women-owned DBE	112	$14,951	6.1			
(12) Minority-owned DBE	43	$2,604	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	2	$63	0.0			
(16) Hispanic American-owned DBE	30	$1,096	0.4			
(17) Native American-owned DBE	11	$1,445	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-118
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	253	$43,164				
(2) MBE/WBE	81	$4,731	11.0	20.1	-9.1	54.6
(3) WBE	59	$3,479	8.1	14.4	-6.4	55.9
(4) MBE	22	$1,252	2.9	5.7	-2.8	51.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$579	1.3	1.0	0.3	134.5
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	8	$173	0.4	0.6	-0.2	65.2
(9) Native American-owned	13	$500	1.2	3.9	-2.7	29.9
(10) DBE-certified	48	$1,850	4.3			
(11) Women-owned DBE	34	$1,418	3.3			
(12) Minority-owned DBE	14	$432	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	4	$31	0.1			
(17) Native American-owned DBE	10	$402	0.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-119
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2003
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	254	$46,851				
(2) MBE/WBE	65	$4,535	9.7	21.3	-11.6	45.4
(3) WBE	50	$3,613	7.7	16.3	-8.6	47.2
(4) MBE	15	$923	2.0	5.0	-3.0	39.5
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$521	1.1	0.6	0.5	181.7
(7) Subcontinent Asian American-owned	1	$7	0.0	0.1	0.0	27.6
(8) Hispanic American-owned	6	$40	0.1	0.7	-0.6	12.5
(9) Native American-owned	7	$354	0.8	3.6	-2.8	21.2
(10) DBE-certified	43	$2,448	5.2			
(11) Women-owned DBE	33	$2,145	4.6			
(12) Minority-owned DBE	10	$303	0.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	0.1			
(17) Native American-owned DBE	4	$263	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-120
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2004
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	289	$71,247				
(2) MBE/WBE	89	$15,855	22.3	19.2	3.0	115.8
(3) WBE	73	$14,024	19.7	14.3	5.4	138.1
(4) MBE	16	$1,832	2.6	5.0	-2.4	51.9
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	1	$393	0.6	0.5	0.1	116.3
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	8	$327	0.5	0.9	-0.5	50.5
(9) Native American-owned	7	$1,111	1.6	3.5	-1.9	45.0
(10) DBE-certified	52	$3,523	4.9			
(11) Women-owned DBE	40	$2,349	3.3			
(12) Minority-owned DBE	12	$1,174	1.6			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	5	$63	0.1			
(17) Native American-owned DBE	7	$1,111	1.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-121
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2005-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	253	$55,549				
(2) MBE/WBE	76	$6,776	12.2	20.0	-7.9	60.8
(3) WBE	59	$5,391	9.7	15.1	-5.4	64.3
(4) MBE	17	$1,385	2.5	5.0	-2.5	50.4
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	2	$449	0.8	0.4	0.4	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	8	$319	0.6	1.1	-0.5	52.7
(9) Native American-owned	7	$617	1.1	3.4	-2.3	32.6
(10) DBE-certified	52	$3,380	6.1			
(11) Women-owned DBE	40	$2,977	5.4			
(12) Minority-owned DBE	12	$403	0.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$67	0.1			
(17) Native American-owned DBE	6	$336	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-122
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	247	$56,702				
(2) MBE/WBE	79	$8,273	14.6	18.7	-4.1	78.1
(3) WBE	68	$5,487	9.7	12.4	-2.7	78.2
(4) MBE	11	$2,786	4.9	6.3	-1.4	78.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$1,943	3.4	1.6	1.8	200+
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	37.8
(8) Hispanic American-owned	1	$2	0.0	1.1	-1.0	0.4
(9) Native American-owned	4	$833	1.5	3.6	-2.1	41.1
(10) DBE-certified	37	$2,246	4.0			
(11) Women-owned DBE	34	$1,488	2.6			
(12) Minority-owned DBE	3	$758	1.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$2	0.0			
(17) Native American-owned DBE	2	$756	1.3			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-123
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	208	$55,497				
(2) MBE/WBE	73	$8,225	14.8	18.7	-3.9	79.2
(3) WBE	62	$5,439	9.8	12.4	-2.6	78.9
(4) MBE	11	$2,786	5.0	6.3	-1.3	79.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	5	$1,943	3.5	1.6	1.9	200+
(7) Subcontinent Asian American-owned	1	$7	0.0	0.0	0.0	163.3
(8) Hispanic American-owned	1	$2	0.0	1.0	-1.0	0.4
(9) Native American-owned	4	$833	1.5	3.6	-2.1	41.5
(10) DBE-certified	31	$2,197	4.0			
(11) Women-owned DBE	28	$1,439	2.6			
(12) Minority-owned DBE	3	$758	1.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$2	0.0			
(17) Native American-owned DBE	2	$756	1.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-124
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	39	$1,205				
(2) MBE/WBE	6	$49	4.0	17.0	-13.0	23.7
(3) WBE	6	$49	4.0	10.5	-6.5	38.4
(4) MBE	0	$0	0.0	6.5	-6.5	0.0
(5) African American-owned	0	$0	0.0	1.3	-1.3	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.6	-0.6	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	0	$0	0.0	1.8	-1.8	0.0
(9) Native American-owned	0	$0	0.0	1.6	-1.6	0.0
(10) DBE-certified	6	$49	4.0			
(11) Women-owned DBE	6	$49	4.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-125
Agency: ITD
Funding: State
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	834	$180,569				
(2) MBE/WBE	253	$26,650	14.8	20.8	-6.0	71.1
(3) WBE	190	$23,795	13.2	16.1	-2.9	81.8
(4) MBE	63	$2,854	1.6	4.6	-3.1	34.0
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	30	$927	0.5	0.7	-0.2	72.7
(9) Native American-owned	33	$1,927	1.1	3.6	-2.6	29.4
(10) DBE-certified	175	$10,565	5.9			
(11) Women-owned DBE	127	$8,831	4.9			
(12) Minority-owned DBE	48	$1,733	1.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	20	$199	0.1			
(17) Native American-owned DBE	28	$1,535	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-126
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	688	$175,093				
(2) MBE/WBE	233	$26,398	15.1	20.9	-5.9	72.0
(3) WBE	180	$23,679	13.5	16.3	-2.8	82.7
(4) MBE	53	$2,719	1.6	4.6	-3.0	33.9
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	22	$862	0.5	0.7	-0.2	73.9
(9) Native American-owned	31	$1,857	1.1	3.7	-2.7	28.6
(10) DBE-certified	157	$10,319	5.9			
(11) Women-owned DBE	119	$8,721	5.0			
(12) Minority-owned DBE	38	$1,598	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	12	$133	0.1			
(17) Native American-owned DBE	26	$1,465	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-127
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	146	$5,477				
(2) MBE/WBE	20	$251	4.6	15.1	-10.5	30.4
(3) WBE	10	$116	2.1	8.5	-6.4	24.9
(4) MBE	10	$135	2.5	6.6	-4.1	37.5
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.3	-1.3	0.0
(8) Hispanic American-owned	8	$65	1.2	2.0	-0.8	60.6
(9) Native American-owned	2	$70	1.3	1.2	0.0	102.0
(10) DBE-certified	18	$246	4.5			
(11) Women-owned DBE	8	$111	2.0			
(12) Minority-owned DBE	10	$135	2.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	8	$65	1.2			
(17) Native American-owned DBE	2	$70	1.3			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-128
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,019	$291,674				
(2) MBE/WBE	266	$19,880	6.8	10.0	-3.1	68.4
(3) WBE	221	$16,687	5.7	6.7	-1.0	85.7
(4) MBE	45	$3,193	1.1	3.3	-2.2	33.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	3	$11	0.0	0.2	-0.2	2.3
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	29	$1,171	0.4	0.7	-0.3	54.5
(9) Native American-owned	13	$2,011	0.7	2.1	-1.4	32.7
(10) DBE-certified	165	$12,960	4.4			
(11) Women-owned DBE	125	$9,807	3.4			
(12) Minority-owned DBE	40	$3,152	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	28	$1,160	0.4			
(17) Native American-owned DBE	12	$1,992	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-129
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	511	$247,096				
(2) MBE/WBE	158	$17,086	6.9	10.1	-3.2	68.7
(3) WBE	133	$14,277	5.8	6.9	-1.1	84.0
(4) MBE	25	$2,809	1.1	3.2	-2.1	35.6
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	2	$8	0.0	0.2	-0.2	1.8
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	11	$826	0.3	0.6	-0.3	55.9
(9) Native American-owned	12	$1,975	0.8	2.4	-1.6	33.6
(10) DBE-certified	87	$10,908	4.4			
(11) Women-owned DBE	66	$8,136	3.3			
(12) Minority-owned DBE	21	$2,772	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$815	0.3			
(17) Native American-owned DBE	11	$1,957	0.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-130
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	508	$44,578				
(2) MBE/WBE	108	$2,794	6.3	9.4	-3.1	66.6
(3) WBE	88	$2,411	5.4	5.6	-0.2	97.0
(4) MBE	20	$384	0.9	3.8	-3.0	22.5
(5) African American-owned	0	$0	0.0	0.7	-0.7	0.0
(6) Asian-Pacific American-owned	1	$4	0.0	0.1	-0.1	6.2
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	18	$345	0.8	1.5	-0.7	51.3
(9) Native American-owned	1	$35	0.1	0.6	-0.5	12.7
(10) DBE-certified	78	$2,051	4.6			
(11) Women-owned DBE	59	$1,671	3.7			
(12) Minority-owned DBE	19	$380	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	18	$345	0.8			
(17) Native American-owned DBE	1	$35	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-131
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	1,905	$405,198				
(2) MBE/WBE	526	$74,981	18.5	19.0	-0.5	97.3
(3) WBE	385	$69,186	17.1	14.8	2.2	115.1
(4) MBE	141	$5,795	1.4	4.2	-2.8	34.2
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	8	$655	0.2	0.2	0.0	103.2
(7) Subcontinent Asian American-owned	5	$239	0.1	0.2	-0.1	33.2
(8) Hispanic American-owned	102	$2,344	0.6	1.2	-0.6	49.3
(9) Native American-owned	26	$2,558	0.6	2.5	-1.9	24.9
(10) DBE-certified	432	$37,874	9.3			
(11) Women-owned DBE	308	$33,160	8.2			
(12) Minority-owned DBE	124	$4,714	1.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.1			
(16) Hispanic American-owned DBE	96	$2,021	0.5			
(17) Native American-owned DBE	22	$2,453	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-132
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	986	$348,762				
(2) MBE/WBE	345	$70,767	20.3	19.8	0.5	102.6
(3) WBE	280	$66,823	19.2	15.8	3.3	121.0
(4) MBE	65	$3,944	1.1	3.9	-2.8	28.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	2	$389	0.1	0.1	0.0	146.4
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	44	$1,114	0.3	1.1	-0.8	29.9
(9) Native American-owned	19	$2,440	0.7	2.7	-2.0	25.5
(10) DBE-certified	280	$34,239	9.8			
(11) Women-owned DBE	224	$31,029	8.9			
(12) Minority-owned DBE	56	$3,210	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	38	$791	0.2			
(17) Native American-owned DBE	18	$2,419	0.7			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-133
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	919	$56,436				
(2) MBE/WBE	181	$4,214	7.5	14.4	-6.9	51.8
(3) WBE	105	$2,363	4.2	8.7	-4.5	48.3
(4) MBE	76	$1,851	3.3	5.8	-2.5	57.0
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	6	$265	0.5	0.7	-0.2	72.0
(7) Subcontinent Asian American-owned	5	$239	0.4	1.2	-0.7	36.6
(8) Hispanic American-owned	58	$1,230	2.2	1.8	0.4	120.0
(9) Native American-owned	7	$117	0.2	1.2	-1.0	16.8
(10) DBE-certified	152	$3,635	6.4			
(11) Women-owned DBE	84	$2,131	3.8			
(12) Minority-owned DBE	68	$1,504	2.7			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.4			
(16) Hispanic American-owned DBE	58	$1,230	2.2			
(17) Native American-owned DBE	4	$34	0.1			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-134
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	131	$24,909				
(2) MBE/WBE	26	$883	3.5	13.6	-10.0	26.1
(3) WBE	22	$834	3.3	9.2	-5.8	36.5
(4) MBE	4	$50	0.2	4.4	-4.2	4.5
(5) African American-owned	0	$0	0.0	0.2	-0.2	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.6	-0.6	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.2	-0.2	0.0
(8) Hispanic American-owned	4	$50	0.2	0.8	-0.6	24.1
(9) Native American-owned	0	$0	0.0	2.6	-2.6	0.0
(10) DBE-certified	19	$729	2.9			
(11) Women-owned DBE	16	$699	2.8			
(12) Minority-owned DBE	3	$30	0.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	3	$30	0.1			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-135
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	41	$18,869				
(2) MBE/WBE	7	$499	2.6	13.5	-10.8	19.7
(3) WBE	7	$499	2.6	9.0	-6.3	29.4
(4) MBE	0	$0	0.0	4.5	-4.5	0.0
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	3.1	-3.1	0.0
(10) DBE-certified	5	$438	2.3			
(11) Women-owned DBE	5	$438	2.3			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-136
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 1 and 2

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	90	$6,041				
(2) MBE/WBE	19	$384	6.4	13.9	-7.6	45.6
(3) WBE	15	$334	5.5	9.7	-4.2	56.8
(4) MBE	4	$50	0.8	4.2	-3.4	19.5
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.2	-0.2	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.8	-0.8	0.0
(8) Hispanic American-owned	4	$50	0.8	1.6	-0.8	51.0
(9) Native American-owned	0	$0	0.0	0.9	-0.9	0.0
(10) DBE-certified	14	$291	4.8			
(11) Women-owned DBE	11	$261	4.3			
(12) Minority-owned DBE	3	$30	0.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	3	$30	0.5			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-137
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	263	$119,914				
(2) MBE/WBE	65	$15,062	12.6	16.1	-3.5	78.0
(3) WBE	43	$13,250	11.0	13.8	-2.7	80.2
(4) MBE	22	$1,813	1.5	2.3	-0.8	65.1
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.1	-0.1	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	18	$1,468	1.2	0.9	0.3	136.5
(9) Native American-owned	4	$345	0.3	1.1	-0.8	25.3
(10) DBE-certified	47	$6,597	5.5			
(11) Women-owned DBE	36	$5,467	4.6			
(12) Minority-owned DBE	11	$1,130	0.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	10	$855	0.7			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-138
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	112	$110,609				
(2) MBE/WBE	39	$14,261	12.9	16.2	-3.3	79.6
(3) WBE	32	$12,896	11.7	14.2	-2.5	82.1
(4) MBE	7	$1,365	1.2	2.0	-0.8	61.8
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.0	0.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.1	-0.1	0.0
(8) Hispanic American-owned	6	$1,090	1.0	0.8	0.2	125.2
(9) Native American-owned	1	$274	0.2	1.1	-0.9	22.1
(10) DBE-certified	30	$6,033	5.5			
(11) Women-owned DBE	25	$5,114	4.6			
(12) Minority-owned DBE	5	$919	0.8			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	4	$645	0.6			
(17) Native American-owned DBE	1	$274	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-139
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Districts 3-6

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	151	$9,305				
(2) MBE/WBE	26	$801	8.6	15.0	-6.4	57.5
(3) WBE	11	$353	3.8	8.8	-5.0	43.4
(4) MBE	15	$448	4.8	6.2	-1.4	77.4
(5) African American-owned	0	$0	0.0	1.1	-1.1	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.7	-0.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	1.0	-1.0	0.0
(8) Hispanic American-owned	12	$377	4.1	2.2	1.9	184.6
(9) Native American-owned	3	$71	0.8	1.3	-0.5	60.3
(10) DBE-certified	17	$564	6.1			
(11) Women-owned DBE	11	$353	3.8			
(12) Minority-owned DBE	6	$210	2.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$210	2.3			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.
Source: BBC Research and Consulting Disparity Analysis.

Figure E-140
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(a) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	181	$59,209				
(2) MBE/WBE	25	$7,423	12.5	22.2	-9.6	56.6
(3) WBE	20	$5,517	9.3	15.0	-5.7	62.1
(4) MBE	5	$1,905	3.2	7.2	-3.9	45.0
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	1	$383	0.6	0.6	0.1	109.7
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	3	$1,248	2.1	1.0	1.1	200+
(9) Native American-owned	1	$274	0.5	5.5	-5.1	8.4
(10) DBE-certified	8	$3,135	5.3			
(11) Women-owned DBE	6	$2,258	3.8			
(12) Minority-owned DBE	2	$876	1.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	1.0			
(17) Native American-owned DBE	1	$274	0.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-141
Agency: ITD
Funding: Federal
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	18	$7,620				
(2) MBE/WBE	5	$2,041	26.8	26.3	0.5	101.9
(3) WBE	2	$720	9.4	18.5	-9.1	51.0
(4) MBE	3	$1,321	17.3	7.8	9.6	200+
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.8	-1.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	2	$1,047	13.7	0.9	12.9	200+
(9) Native American-owned	1	$274	3.6	5.1	-1.5	70.4
(10) DBE-certified	3	$1,287	16.9			
(11) Women-owned DBE	1	$411	5.4			
(12) Minority-owned DBE	2	$876	11.5			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$602	7.9			
(17) Native American-owned DBE	1	$274	3.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-142
Agency: ITD
Funding: Federal
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	163	$51,589				
(2) MBE/WBE	20	$5,382	10.4	21.5	-11.1	48.4
(3) WBE	18	$4,798	9.3	14.5	-5.2	64.2
(4) MBE	2	$584	1.1	7.1	-5.9	16.0
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	1	$383	0.7	0.4	0.3	180.4
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	1	$201	0.4	1.0	-0.6	37.5
(9) Native American-owned	0	$0	0.0	5.6	-5.6	0.0
(10) DBE-certified	5	$1,848	3.6			
(11) Women-owned DBE	5	$1,848	3.6			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-143
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	123	$42,777				
(2) MBE/WBE	17	$5,336	12.5	21.5	-9.0	58.0
(3) WBE	11	$3,239	7.6	12.9	-5.3	58.9
(4) MBE	6	$2,097	4.9	8.6	-3.7	56.7
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	4.5	1.6	2.8	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	2	$192	0.4	0.4	0.0	102.2
(9) Native American-owned	0	$0	0.0	6.6	-6.6	0.0
(10) DBE-certified	2	$902	2.1			
(11) Women-owned DBE	2	$902	2.1			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-144
Agency: ITD
Funding: State
Type: Construction
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	15	$4,957				
(2) MBE/WBE	2	$1,027	20.7	23.9	-3.2	86.6
(3) WBE	1	$957	19.3	15.9	3.4	121.1
(4) MBE	1	$70	1.4	8.0	-6.6	17.7
(5) African American-owned	0	$0	0.0	0.0	0.0	100.0
(6) Asian-Pacific American-owned	0	$0	0.0	0.0	0.0	100.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	100.0
(8) Hispanic American-owned	1	$70	1.4	0.6	0.8	200+
(9) Native American-owned	0	$0	0.0	7.4	-7.4	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-145
Agency: ITD
Funding: State
Type: Construction
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $1M

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	108	$37,819				
(2) MBE/WBE	15	$4,309	11.4	21.2	-9.8	53.8
(3) WBE	10	$2,282	6.0	12.5	-6.4	48.4
(4) MBE	5	$2,027	5.4	8.7	-3.4	61.4
(5) African American-owned	0	$0	0.0	0.0	0.0	0.0
(6) Asian-Pacific American-owned	4	$1,905	5.0	1.8	3.2	200+
(7) Subcontinent Asian American-owned	0	$0	0.0	0.0	0.0	0.0
(8) Hispanic American-owned	1	$122	0.3	0.4	-0.1	77.0
(9) Native American-owned	0	$0	0.0	6.5	-6.5	0.0
(10) DBE-certified	2	$902	2.4			
(11) Women-owned DBE	2	$902	2.4			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-146
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	690	$21,185				
(2) MBE/WBE	93	$1,933	9.1	19.5	-10.4	46.8
(3) WBE	57	$1,270	6.0	12.3	-6.3	48.9
(4) MBE	36	$662	3.1	7.2	-4.1	43.3
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	2	$17	0.1	1.7	-1.6	4.8
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	28	$490	2.3	2.4	-0.1	96.1
(9) Native American-owned	6	$155	0.7	1.3	-0.6	57.1
(10) DBE-certified	60	$1,106	5.2			
(11) Women-owned DBE	32	$687	3.2			
(12) Minority-owned DBE	28	$418	2.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	25	$386	1.8			
(17) Native American-owned DBE	3	$32	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-147
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	98	$3,579				
(2) MBE/WBE	14	$390	10.9	20.4	-9.5	53.3
(3) WBE	9	$235	6.6	13.2	-6.6	49.7
(4) MBE	5	$156	4.3	7.2	-2.9	60.0
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.7	-1.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.8	-0.8	0.0
(8) Hispanic American-owned	4	$111	3.1	2.5	0.6	126.3
(9) Native American-owned	1	$44	1.2	1.4	-0.1	91.7
(10) DBE-certified	6	$100	2.8			
(11) Women-owned DBE	5	$92	2.6			
(12) Minority-owned DBE	1	$8	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-148
Agency: ITD
Funding: Federal
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	592	$17,606				
(2) MBE/WBE	79	$1,542	8.8	19.3	-10.5	45.4
(3) WBE	48	$1,036	5.9	12.1	-6.2	48.7
(4) MBE	31	$507	2.9	7.2	-4.3	39.9
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	2	$17	0.1	1.7	-1.6	5.8
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	24	$379	2.2	2.4	-0.2	89.8
(9) Native American-owned	5	$111	0.6	1.3	-0.6	49.6
(10) DBE-certified	54	$1,006	5.7			
(11) Women-owned DBE	27	$595	3.4			
(12) Minority-owned DBE	27	$411	2.3			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	24	$379	2.2			
(17) Native American-owned DBE	3	$32	0.2			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-149
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	141	$3,793				
(2) MBE/WBE	18	$208	5.5	19.0	-13.5	28.9
(3) WBE	10	$99	2.6	12.0	-9.4	21.8
(4) MBE	8	$109	2.9	7.0	-4.1	41.2
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.8	-1.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	6	$40	1.0	2.2	-1.2	46.4
(9) Native American-owned	2	$70	1.8	1.3	0.6	143.3
(10) DBE-certified	17	$204	5.4			
(11) Women-owned DBE	9	$95	2.5			
(12) Minority-owned DBE	8	$109	2.9			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	1.0			
(17) Native American-owned DBE	2	$70	1.8			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-150
Agency: ITD
Funding: State
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	8	$154				
(2) MBE/WBE	1	$4	2.9	17.2	-14.3	16.8
(3) WBE	1	$4	2.9	14.0	-11.1	20.7
(4) MBE	0	$0	0.0	3.3	-3.3	0.0
(5) African American-owned	0	$0	0.0	0.6	-0.6	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.0	-1.0	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.6	-0.6	0.0
(8) Hispanic American-owned	0	$0	0.0	0.6	-0.6	0.0
(9) Native American-owned	0	$0	0.0	0.6	-0.6	0.0
(10) DBE-certified	0	$0	0.0			
(11) Women-owned DBE	0	$0	0.0			
(12) Minority-owned DBE	0	$0	0.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	0	$0	0.0			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-151
Agency: ITD
Funding: State
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	133	$3,639				
(2) MBE/WBE	17	$204	5.6	19.1	-13.5	29.4
(3) WBE	9	$95	2.6	11.9	-9.3	21.8
(4) MBE	8	$109	3.0	7.1	-4.1	42.0
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.8	-1.8	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	6	$40	1.1	2.3	-1.2	46.9
(9) Native American-owned	2	$70	1.9	1.3	0.6	145.9
(10) DBE-certified	17	$204	5.6			
(11) Women-owned DBE	9	$95	2.6			
(12) Minority-owned DBE	8	$109	3.0			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	6	$40	1.1			
(17) Native American-owned DBE	2	$70	1.9			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-152
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	831	$24,978				
(2) MBE/WBE	111	$2,141	8.6	19.4	-10.8	44.2
(3) WBE	67	$1,369	5.5	12.2	-6.7	44.8
(4) MBE	44	$772	3.1	7.2	-4.1	43.0
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	2	$17	0.1	1.7	-1.6	4.1
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	34	$529	2.1	2.4	-0.3	89.0
(9) Native American-owned	8	$225	0.9	1.3	-0.4	70.2
(10) DBE-certified	77	$1,310	5.2			
(11) Women-owned DBE	41	$782	3.1			
(12) Minority-owned DBE	36	$528	2.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	31	$426	1.7			
(17) Native American-owned DBE	5	$102	0.4			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-153
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: Feb-Dec 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	106	$3,733				
(2) MBE/WBE	15	$395	10.6	20.3	-9.7	52.1
(3) WBE	10	$239	6.4	13.2	-6.8	48.4
(4) MBE	5	$156	4.2	7.1	-2.9	58.9
(5) African American-owned	0	$0	0.0	0.8	-0.8	0.0
(6) Asian-Pacific American-owned	0	$0	0.0	1.7	-1.7	0.0
(7) Subcontinent Asian American-owned	0	$0	0.0	0.8	-0.8	0.0
(8) Hispanic American-owned	4	$111	3.0	2.4	0.6	125.1
(9) Native American-owned	1	$44	1.2	1.3	-0.1	90.1
(10) DBE-certified	6	$100	2.7			
(11) Women-owned DBE	5	$92	2.5			
(12) Minority-owned DBE	1	$8	0.2			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	1	$8	0.2			
(17) Native American-owned DBE	0	$0	0.0			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-154
Agency: ITD
Funding: All funding sources
Type: Engineering
Time Period: 2002-Jan 2006
Role: Prime Contractors
Region: Idaho
Small Contracts Under $100k

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	725	$21,245				
(2) MBE/WBE	96	$1,746	8.2	19.2	-11.0	42.7
(3) WBE	57	$1,130	5.3	12.0	-6.7	44.2
(4) MBE	39	$616	2.9	7.2	-4.3	40.3
(5) African American-owned	0	$0	0.0	0.9	-0.9	0.0
(6) Asian-Pacific American-owned	2	$17	0.1	1.7	-1.6	4.8
(7) Subcontinent Asian American-owned	0	$0	0.0	0.9	-0.9	0.0
(8) Hispanic American-owned	30	$418	2.0	2.4	-0.4	82.7
(9) Native American-owned	7	$181	0.9	1.3	-0.4	66.5
(10) DBE-certified	71	$1,210	5.7			
(11) Women-owned DBE	36	$690	3.2			
(12) Minority-owned DBE	35	$520	2.4			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	0	$0	0.0			
(15) Subcontinent Asian American-owned DBE	0	$0	0.0			
(16) Hispanic American-owned DBE	30	$418	2.0			
(17) Native American-owned DBE	5	$102	0.5			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

Figure E-155
Agency: ITD
Funding: Federal
Type: Transportation construction and engineering
Time Period: 2002-2006
Role: Prime Contractors, Subcontractors and Suppliers
Region: Idaho
Revenue Cap W/MBE based on industry

Firm Type	(b) Number of contract elements	(b) Dollars (thousands)	(c) Actual utilization (column b/b1) %	(d) Utilization benchmark (availability) %	(e) Difference (column c-d) %	(f) Disparity index (c/d)x100
(1) All firms	3,443	$853,212				
(2) MBE/WBE	901	$111,532	13.1	10.5	2.6	124.3
(3) WBE	687	$100,646	11.8	7.3	4.5	162.4
(4) MBE	214	$10,886	1.3	3.2	-2.0	39.3
(5) African American-owned	0	$0	0.0	0.1	-0.1	0.0
(6) Asian-Pacific American-owned	11	$666	0.1	0.1	-0.1	53.6
(7) Subcontinent Asian American-owned	5	$239	0.0	0.2	-0.1	15.8
(8) Hispanic American-owned	155	$5,068	0.6	0.8	-0.2	79.2
(9) Native American-owned	43	$4,913	0.6	2.0	-1.5	28.2
(10) DBE-certified	668	$58,270	6.8			
(11) Women-owned DBE	488	$49,207	5.8			
(12) Minority-owned DBE	180	$9,062	1.1			
(13) African American-owned DBE	0	$0	0.0			
(14) Asian-Pacific American-owned DBE	1	$2	0.0			
(15) Subcontinent Asian American-owned DBE	5	$239	0.0			
(16) Hispanic American-owned DBE	139	$4,102	0.5			
(17) Native American-owned DBE	35	$4,719	0.6			
(18) White male-owned DBE	0	$0	0.0			

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research and Consulting Disparity Analysis.

APPENDIX F.
Entry into the Industry

As discussed in Appendix B, federal courts have held that Congress had ample evidence of discrimination in the transportation contracting industry in upholding the constitutionality of the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 CFR Part 26). Specifically, 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."[1] Congress found that discrimination had impeded the formation of qualified minority business enterprises.

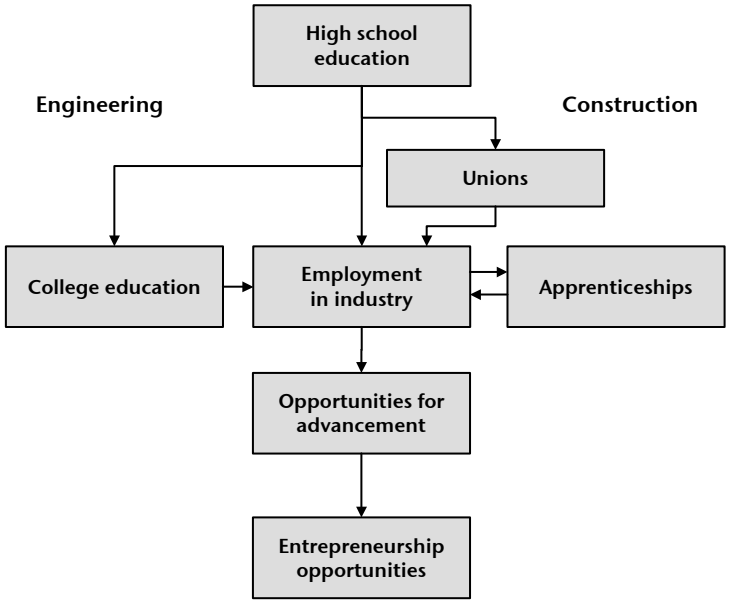
This section of the report examines whether some of these barriers to entry found for the nation as a whole also appear to occur in Idaho. The study team reviewed:

- Education and training related to the Idaho construction and engineering industries;
- Employment in the construction and engineering industries;
- Opportunities for advancement for individuals working in these industries; and
- Business formation and ownership in Idaho.

As illustrated in Figure F-1, this section examines potential barriers to minorities and women up through starting a business. Potential barriers including access to capital can also affect business ownership. These necessary inputs to starting and operating a business are discussed in Section IV of the report.

Figure F-1.
Model for studying the entry into industry

Source:
BBC Research and Consulting.



[1] *Sherbrooke Turf, Inc.*, 345 F.3d at 970, (*citing Adarand Constructors, Inc.*, 228 F.3d at 1167 – 76); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005) at 992.

Education and Training

Ten percent of the workforce in Idaho in 2000 was minority, including 6 percent Hispanic Americans, 2 percent Native American and less than 1 percent Asian-Pacific Americans. In 2000, 47 percent of the workforce was female, slightly lower than the women's share of the workforce for the nation as a whole. Figure F-2 details the percentages of workers in each race and gender group for Idaho and the United States.

The paths to job opportunities in construction and engineering, whether they be union programs to learn a construction trade or four-year college degrees in engineering, are important to understanding whether barriers affect employment opportunities for minorities and women that eventually affect the relative number of minority and female business owners in the Idaho construction and engineering industries.[2]

Exhibit F-2.
Percentage of all workers who are minority or female in Idaho and the U.S., 2000

Idaho		United States	
Race/ethnicity		**Race/ethnicity**	
African American	0.8%	African American	11.4% **
Asian-Pacific American	1.4% **	Asian-Pacific American	3.4% **
Subcontinent Asian American	0.1%	Subcontinent Asian American	0.7% **
Hispanic American	5.7% **	Hispanic American	11.3% **
Native American	2.0% **	Native American	1.2% **
Other minority group	0.4%	Other minority group	0.4% **
Total minority	**10.3% ****	**Total minority**	**28.4%**
Non-Hispanic white	89.7%	Non-Hispanic white	71.6%
Gender		**Gender**	
Female	46.9% **	Female	47.9% **
Male	53.1%	Male	52.1%
Total	**100.0%**	**Total**	**100.0%**

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% confidence level.

Source: BBC Research and Consulting from 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Construction. Construction industry employees in Idaho typically have a high school degree with little or no college education. Based on the 2000 Census of Population, 37 percent of workers in construction were just high school graduates and 19 percent had not finished high school. Only 8 percent of people working in construction had at least a four-year college degree. Formal education beyond high school is not a prerequisite for most construction industry jobs.

Training is largely on-the-job and through trade schools and apprenticeship programs. Entry level jobs for workers out of high school are often laborers, helpers or apprentices. Positions that are more skilled may require additional training through a technical or trade school or through an

[2] Feagin, Joe R. and Nikitah Imani. 1994. Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41 (4): 562-584.

apprenticeship or other employer-provided training program. Apprenticeship programs can be developed by employers, trade associations, trade unions and other groups. Workers can enter apprenticeship programs from high school or a trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.[3]

In 2000, only 12.6 percent of Native American workers 25 years and older in Idaho had a college degree, about half of the rate for non-Hispanic white workers in this age group. Only 7.5 percent of Hispanic American workers had college degrees. In Idaho, Hispanic Americans comprise a relatively large share of workers with less than a high school education.

From these data, educational attainment does not appear to be a barrier for entry of minorities in the construction industry:

- Based on education requirements of entry level jobs and the limited education beyond high school for many Hispanic Americans and Native Americans, one would expect a relatively high representation of these minority groups in the Idaho construction industry.

- Because of the relatively high educational levels of Asian-Pacific Americans and Subcontinent Asian Americans (among Idaho workers 25 and older, 33 percent and 72 percent of these groups, respectively, have college degrees), one might expect relative representation of these groups in construction be lower than other workers.

The percentage of women working in Idaho with just a high school diploma is similar to that of men based on 2000 Census of Population data.

Engineering. About one-half of the individuals working in the engineering industry have at least a four-year college degree. When only examining people who work as engineers, this percentage increases to 77 percent.[4]

The level of education needed to become an engineer may present a barrier for Hispanic Americans and Native Americans. Figure F-3 examines the percentage of workers 25 and older who have at least a four-year degree. About 26 percent of non-Hispanic whites working in Idaho had at least a four-year college degree in 2000, similar to the rate for African-Americans. Relatively fewer Hispanic Americans and Native Americans working in the state had college degrees. Relatively more Asian-Pacific and Subcontinent Asian Americans had college degrees than non-Hispanic whites.

Women in Idaho are not as likely to have a four-year college degree as men.

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[3] Bureau of Labor Statistics, U.S. Department of Labor. 2006-07. "Construction." C*areer Guide to Industries.* http://www.bls.gov/oco/cg/cgs003.htm (accessed February 15, 2007).

[4] BBC Research and Consulting from 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Figure F-3.
Percentage of all workers 25 and older
with at least a four-year degree in Idaho and the U.S., 2000

Idaho		United States	
Race/ethnicity		**Race/ethnicity**	
African American	24.2%	African American	17.2% **
Asian-Pacific American	33.0% **	Asian-Pacific American	43.5% **
Subcontinent Asian American	72.3% **	Subcontinent Asian American	66.8% **
Hispanic American	7.5% **	Hispanic American	12.0% **
Native American	12.6% **	Native American	15.9% **
Other minority group	24.1%	Other minority group	29.0% **
Total minority	**14.9% ****	**Total minority**	**20.0% ****
Non-Hispanic white	25.9%	Non-Hispanic white	31.0%
Gender		**Gender**	
Female	23.4% **	Female	27.6% **
Male	26.2%	Male	28.4%
All	24.9%	**All**	28.0%

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% confidence level.

Source: BBC Research and Consulting from 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Additional indices of high school educational attainment. Because of the importance of college admission as a step in entering the engineering industry, the study team examined additional information on the educational achievement of minority high school students in Idaho.

According to the 2006-2007 Idaho Standards Achievement Test (ISAT) results, African American, American Indian and Hispanic students did not perform as well as non-Hispanic white students in reading and mathematics.[5]

- On the Idaho Standards Achievement Test (ISAT), 73 percent of African American students, 65 percent of American Indian students and 61 percent of Hispanic students were determined to be proficient in reading, compared with 84 percent of non-Hispanic white students.

- On the ISAT, 63 percent of African American students, 59 percent of American Indian students and 59 percent of Hispanic students demonstrated proficiency in mathematics, compared with 80 percent of non-Hispanic white students.

Asian students outperformed all other racial groups, including non-Hispanic white students, on the reading and mathematics portions of the ISAT.

[5] Idaho State Department of Education, 2006-2007 Adequate Yearly Progress Report.

A 1999 study reported that the mean combined score of African American students on the 1999 Standard Aptitude Test (SAT) was 964, which was 120 points lower than the mean combined score for non-Hispanic white students, representing one of the smallest SAT achievement gaps in the nation and significantly smaller than the 201-point gap between average scores of African American and non-Hispanic students across the entire nation.[6] However, the report cited that the sample of African-American test takers was too small in Idaho to be considered statistically significant.

Additional factors affecting college engineering programs in Idaho. Historically, college engineering programs in the United States were slow to open doors to minorities such as African Americans.[7] Idaho is home to three public engineering programs at the University of Idaho, Idaho State University and Boise State University. Figure F-4 compares the racial distribution of graduating high school seniors, undergraduates in the University of Idaho system and undergraduates in Idaho's engineering programs.

Figure F-4.
Minority enrollment at select Idaho campuses by race and ethnicity

	Idaho high school graduating seniors (2003-2004)	Total enrollment at ID public universities* (2006)	Engineering enrollment** (2006)
African American	0.5 %	1.1	0.4
Asian-Pacific Islander	1.9	2.1	3.8
Native American/Alaskan Native	1.2	1.4	1.0
Hispanic	7.6	4.7	4.7
Total	**11.2 %**	**9.3 %**	**9.9 %**

Note: * Includes University of Idaho, Idaho State University and Boise State University
** Includes University of Idaho and Boise State University. Data for Idaho State University was not available.

Source: U.S. Department of Education Nation Center for Education Statistics (NCES), Idaho university websites and American Society for Engineering Education.

Data shows that most minority high school graduates are not significantly less likely to go to college in Idaho than non-minority high school graduates are. African American students made up a larger share of enrollment at Idaho public universities than they did of graduating high school seniors. Only Hispanic high school graduates made up a significantly smaller portion of the undergraduate population than the graduating high school senior population.

The racial distribution of the engineering student population differed somewhat from the racial distribution of the entire undergraduate population. African American undergraduates were less likely to be engineering students, and Asian American undergraduates were more likely to be engineering students. These data should be interpreted with caution, as engineering enrollment data includes an "other" racial category.

[6] "Ranking the States by Black-White SAT Scoring Gap." (2002). *The Journal of Blacks in Higher Education*.

[7] Unknown Author. 2003. "Blacks Strive to Build a Bridgehead in Academic Engineering." *The Journal of Blacks in Higher Education*. 41 (Autumn): 98-108, 98.

Employment

With educational opportunities and attainment for minorities and women as context, BBC has examined employment in construction and engineering in Idaho.

Construction. Based on 2000 Census of Population data, 9 percent of people working in the Idaho construction industry in 2000 were minority:

- Hispanic Americans were 5 percent of people working in construction;
- African American and Asian-Pacific Americans were each less than 1 percent of people working in construction; and
- Native Americans were 3 percent of the construction workforce.

Representation of Hispanic Americans in the construction industry is slightly lower than for all industries as a whole (5 percent in construction versus 6 percent in all industries in Idaho), the opposite of what is found in the U.S. as a whole.

Native Americans are relatively more likely to work in construction over other industries in Idaho; 3 percent of construction workers are Native American, compared with 2 percent for all industries.

African Americans and Asian-Pacific Americans are relatively less likely to work in construction:

- Asian-Pacific Americans were 0.3 percent of the construction workforce and 1.4 percent of all workers in Idaho in 2000 (a statistically significant difference). The fact that Asian-Pacific Americans are more likely to go to college than other groups may explain part of this difference.
- African Americans were 0.3 percent of the construction workforce and 0.8 percent of all workers in Idaho (a statistically significant difference). Average educational attainment of African Americans is consistent with requirements for construction jobs, so education cannot explain the difference. A number of studies throughout the United States have argued that race discrimination by construction unions have held down employment of African Americans in construction trades.[8]
- Relative under-representation of African Americans and Asian-Pacific Americans was found in both 1980 and in 2000.[9] For example, 0.4 percent of construction industry workers were African American in 1980 compared with 0.3 percent in 2000.

Between 1980 and 2000, the share of construction workers in the United States who are women increased from 8.9 percent to 10.2 percent. In 2000, 10.9 percent of people working in the Idaho construction industry were women, slightly more than in 1980. Figure F-6 compares the composition of the Idaho construction industry with the total Idaho workforce.

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[8] Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

[9] Note that Census definitions of race and ethnicity have changed over time, which affects comparability of statistics from one census year to the next. Appendix G discusses how BBC coded data concerning race and ethnicity for each decennial census.

Figure F-6.
Demographics of workers in construction and all industries in Idaho and the U.S., 1980 and 2000

	Construction		All industries	
	1980	2000	1980	2000
Idaho				
Race/ethnicity				
African American	0.4%	0.3% **	0.5%	0.8%
Asian-Pacific American	0.1%	0.3% **	0.9%	1.4%
Subcontinent Asian American	0.0% †	0.0% †	0.0%	0.1%
Hispanic American	2.1% **	4.8% **	2.9%	5.7%
Native American	0.8%	3.1% **	1.0%	2.0%
Other minority group	0.1%	0.5%	0.1%	0.4%
Total minority	**3.4%**	**8.9%**	**5.4%**	**10.3%**
Non-Hispanic white	96.5% **	91.1% **	94.6%	89.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
Gender				
Female	9.4% **	10.9% **	45.2%	46.9%
Male	90.6% **	89.2% **	54.8%	53.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
n=	*2,483*	*4,009*	*36,153*	*50,269*
United States				
Race/ethnicity				
African American	7.7% **	7.5% **	9.9%	11.4%
Asian-Pacific American	0.6% **	1.3% **	1.4%	3.4%
Subcontinent Asian American	0.1% **	0.2% **	0.2%	0.7%
Hispanic American	5.7% **	15.8% **	5.6%	11.3%
Native American	0.9% **	1.6% **	0.6%	1.2%
Other minority group	0.1%	0.4%	0.1%	0.4%
Total minority	**15.1%**	**26.8%**	**17.7%**	**28.4%**
Non-Hispanic white	84.9% **	73.2% **	82.3%	71.6%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
Gender				
Female	8.9% **	10.2% **	46.0%	47.9%
Male	91.1% **	89.8% **	54.0%	52.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
n=	*391,361*	*579,867*	*6,338,776*	*8,295,671*

Note: † Less than 0.05%.

** Denotes that the difference in proportions between the construction and all industry groups for the census year is statistically significant at the 95% confidence level.

Numbers may not add to totals due to rounding.

Source: BBC Research and Consulting from 1980 and 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Importance of unions in entering the construction industry. Idaho is a right-to-work state and the construction industry in the southern part of the state is not heavily unionized. Utah as well is a right-to-work state. Washington is not. Union contractors are more prevalent for work in the Idaho Panhandle. Therefore, BBC examined the role that unions play in recruiting and training the construction workforce.

Labor market researchers characterize construction as a historically volatile industry sensitive to business cycles, making the presence of labor unions important for stability and job security within the industry.[10] The temporary nature of construction work results in uncertain job prospects, and high turnover of laborers presents a disincentive for construction firms to invest in training. Some scholars have claimed that constant turnover has lent itself to informal recruitment practices and nepotism, compelling laborers to tap social networks for training and work. They credit the importance of social networks with the high degree of ethnic segmentation in the construction industry.[11] Unable to integrate themselves into traditionally white social networks, African Americans faced long-standing historical barriers to entering the industry.[12]

Construction unions aim to provide a reliable source of labor for employers and preserve job opportunities for workers by formalizing the recruitment process, coordinating training and apprenticeships, enforcing standards of work and mitigating wage competition. The unionized sector of construction would seemingly be the best inroad for African American and other underrepresented groups into the industry. However, discrimination by trade unions is identified as a major factor that has historically prevented minorities from obtaining employment in skilled trades.[13]

Researchers have suggested ways in which unions have perpetuated discrimination in construction:

- Unions have used admissions criteria that adversely affect minorities. Federal courts ruled in the 1970s that standardized testing requirements unfairly disadvantaged minority applicants with less exposure to testing and that requirements that new union members have relatives in the union perpetuate the effects of past discrimination.[14] More recent disparity studies in California reveal that these practices persist: admissions testing requirements for union membership were still being used that adversely affected minorities,[15] and applicants who were relatives of union members were often waived from admissions requirements.[16]

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[10] Applebaum, Herbert. 1999. *Construction Workers, U.S.A*. Westport: Greenwood Press.

[11] Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

[12] Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41(4): 368-370.

[13] U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042.

[14] Ibid. See *United States v. Iron Workers Local 86* (1971), *Sims v. Sheet Metal Workers International Association* (1973), and *United States v. International Association of Bridge, Structural and Ornamental Iron Workers* (1971).

[15] National Economic Research Association, Inc. 1992. *The Utilization of Minority and Woman-Owned Business Enterprises by Contra Costa County*. 185-186.

[16] BPA Economics, Mason Tillman Associates, and Boasberg and Norton. 1990. *MBE-WBE Disparity Study of the City of San Jose*.

- Of those minority individuals who are admitted to unions, a disproportionately low number are admitted into apprenticeship programs coordinated by unions. Apprenticeship programs are an important means of producing skilled construction laborers, and the reported exclusion of blacks from these programs has severely limited their access to skilled occupations in the construction industry.[17]
- While formal training and apprenticeship programs exist within unions, most training of union members takes place informally through social networking. Nepotism characterizes the unionized sector of construction as it does the non-unionized sector, and this favors a white-dominated status quo. [18]
- Traditionally white unions have been successful in resisting policies designed to increase black participation in training programs. The political strength of unions in resisting affirmative action in construction has hindered the advancement of blacks in the industry.[19]
- Discriminatory practices in employee referral procedures, including apportioning work based on seniority, have precluded minority union members from having the same access to construction work as their white counterparts.[20]
- According to testimony from black union members, even when unions implement meritocratic mechanisms of apportioning employment to laborers, white workers are often allowed to circumvent procedures and receive preference for construction jobs.[21]

However, these historical observations may not be indicative of current dynamics in construction unions. For example, the 2006 Current Population Survey (CPS) provides current data on union membership indicating higher union membership for African Americans in construction.[22] The CPS asked participants, "Are you a member of a labor union or of an employee association similar to a union?" CPS data show union membership for African Americans in construction to be higher (17 percent) than non-Hispanic whites (14 percent) On the other hand, only 7 percent of Hispanic Americans are union members based on these national data.

It is unclear from past studies whether unions help or hinder equal opportunity in construction today, and whether effects in Idaho are different from other parts of the country. Also, Hispanic American representation in the national construction industry has seen great advances despite relatively few Hispanic Americans being union members. There are no definitive results in this Report on the role of unions in disparities in African American or Asian-Pacific American employment in construction.

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[17] Applebaum. 1999. *Construction Workers, U.S.A.*

[18] Ibid. 299. The high percentage of skilled workers reported having a father or relative in the same trade. However, the author suggests this may not be indicative of current trends.

[19] Waldinger and Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction."

[20] U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042. See *United Steelworkers of America v. Weber* (1979) and *Taylor v. United States Department of Labor* (1982).

[21] Feagin and Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study."

[22] 2006 Current Population Survey (CPS), U.S. Census Bureau and Bureau of Labor Statistics.

Engineering industry. The study team also examined race, ethnic and gender composition of the engineering industry in Idaho. Ninety-four percent of people working in the engineering industry in 2000 were non-Hispanic whites, which is 4 percentage points greater than non-Hispanic whites' overall representation across all industries in the state.

As shown in Figure F-7 on the following page, Hispanic Americans had relatively low representation in the engineering industry—Hispanic Americans were 2 percent of engineering industry workers in 2000, less than one-third of Hispanic American representation in the overall Idaho workforce (6 percent).

In 2000, women were 33 percent of engineering industry workers, up from 20 percent in 1980 but still below overall representation in the Idaho workforce.

Employment patterns seen for Idaho's engineering industry are generally consistent with the nation as a whole, although minorities make up a relatively small percentage of the state's workforce.

Demographics of relevant engineering occupations. The study team also examined the relative number of minorities and women among civil, environmental, and mining and geological engineers in Idaho in 2000. Minorities make up 5 to 6 percent of engineers and all workers age 25 and older with a college degree.

About 12 percent of engineers in Idaho are women, far less than women's share of people with college degrees (44 percent). This difference is statistically significant. Figure F-8 presents these results.

Figure F-7.
Demographics of workers in engineering and all industries in Idaho and the U.S., 1980 and 2000

	Engineering		All industries	
	1980	2000	1980	2000
Idaho				
Race/ethnicity				
African American	0.0%	0.5%	0.5%	0.8%
Asian-Pacific American	1.7%	1.8%	0.9%	1.4%
Subcontinent Asian American	0.6%	0.8%	0.0%	0.1%
Hispanic American	0.6%	1.6% **	2.9%	5.7%
Native American	0.6%	1.1%	1.0%	2.0%
Other minority group	0.6%	0.2%	0.1%	0.4%
Total minority	**4.1%**	**6.0%**	**5.4%**	**10.3%**
Non-Hispanic white	95.9%	94.0% **	94.6%	89.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
Gender				
Female	20.4% **	33.2% **	45.2%	46.9%
Male	79.7% **	66.8% **	54.8%	53.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
n=	*172*	*539*	*36,153*	*50,269*
United States				
Race/ethnicity				
African American	3.1% **	4.3% **	9.9%	11.4%
Asian-Pacific American	2.7% **	4.7% **	1.4%	3.4%
Subcontinent Asian American	1.0% **	1.3% **	0.2%	0.7%
Hispanic American	3.5% **	5.7% **	5.6%	11.3%
Native American	0.4% **	0.8% **	0.6%	1.2%
Other minority group	0.1%	0.4%	0.1%	0.4%
Total minority	**10.9%**	**17.2%**	**17.7%**	**28.4%**
Non-Hispanic white	89.2% **	82.8% **	82.3%	71.6%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
Gender				
Female	23.2% **	27.1% **	46.0%	47.9%
Male	76.8% **	72.9% **	54.0%	52.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**
n=	*32,839*	*66,529*	*6,338,776*	*8,295,671*

Note: ** Denotes that the difference in proportions between the construction and all industry groups for the census year is statistically significant at the 95% confidence level.

The engineering industry sector in 2000 is "architectural, engineering and related services," and in 1980 is "engineering, architectural and surveying services." Though closely related, the groups are not exactly comparable.

Source: BBC Research and Consulting from 1980 and 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Figure F-8.
Demographics of engineers and workers 25 and older with a college degree in Idaho and the U.S., 2000

Idaho	Engineers	Workers 25+ with a college degree	United States	Engineers	Workers 25+ with a college degree
Race/ethnicity			**Race/ethnicity**		
African American	0.0%	0.7%	African American	3.9% **	6.6%
Asian-Pacific American	2.0%	1.8%	Asian-Pacific American	6.3% **	5.3%
Subcontinent Asian American	1.2%	0.4%	Subcontinent Asian American	2.6% **	1.7%
Hispanic American	1.9%	1.6%	Hispanic American	4.3%	4.3%
Native American	0.0%	1.0%	Native American	0.7% *	0.6%
Other minority group	0.0%	0.4%	Other minority group	0.4%	0.4%
Total minority	**5.1%**	**5.8%**	**Total minority**	**18.3% ** **	**19.0%**
Non-Hispanic white	94.9%	94.2%	Non-Hispanic white	81.7% *	81.1%
Gender			**Gender**		
Female	12.4% **	43.9%	Female	11.8% **	48.9%
Male	87.6% **	56.1%	Male	88.2% **	51.1%
n=	*125*	*9,569*	*n=*	*16,342*	*2,110,878*

Note: * Denotes that the difference in proportions between engineer and workers 25+ with a college degree is statistically significant at the 90% confidence level.

** Denotes that the difference in proportions between engineer and workers 25+ with a college degree is statistically significant at the 95% confidence level.

Source: BBC Research and Consulting from 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Advancement in Construction

To research opportunities for advancement, the study team examined a number of specific occupations in construction related to transportation construction. Relevant construction trades include:

- Cement masons, concrete finishers, segmental pavers and terrazzo workers, who smooth and finish poured concrete surfaces and work with cement to create sidewalks, curbs, roadways or other surfaces;
- Paving, surfacing and tamping equipment operators, who operate equipment used for applying concrete, asphalt, or other materials to road beds, parking lots, or airport runways and taxiways, or equipment used for tamping gravel and dirt;
- Miscellaneous construction equipment operators, who operate motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors, or front-end loaders to excavate, move, and grade earth, erect structures, or pour concrete or other hard surface pavement;
- Electricians, who install, connect, test and maintain building electrical systems, which also can include lighting, climate control, security and communications;

- Structural and reinforcing iron and metal workers, who place and install iron or steel girders, columns and other structural members to form completed structures or frameworks of buildings, bridges and other structures; and

- Construction laborers, who perform a wide range of physically demanding tasks at building and highway construction sites, such as tunnel and shaft excavation, hazardous waste removal, environmental remediation and demolition.

The above definitions are from the U.S. Bureau of Labor Statistics.[23] The U.S. Bureau of Labor Statistics also describes other trades involved in construction, several of which directly apply to transportation construction:

- Truck drivers;
- Crane and tower operators; and
- Dredge, excavating and loading machine and dragline operators.

The U.S. Bureau of Labor Statistics analyzes first-line supervisors and managers of construction trades and extraction workers. Management personnel are the most likely of any construction occupation to require a college degree.

Race and ethnic composition of construction trades. There are large differences in the racial and ethnic makeup of workers in different trades related to highway construction based on the 2000 U.S. Census of Population. Figure F-9 shows the percentage of minorities by occupation working in construction in Idaho in 2000. Overall, 9 percent of the construction workforce were minorities (5 percent Hispanic Americans and 4 percent other minorities). Minorities comprised a relatively large share of the Idaho construction workforce for:

- Construction laborers (14.6 percent);
- Cement masons, concrete finishers and terrazzo workers (16.1 percent);
- Iron and steel workers (21.2 percent); and
- Drivers (12.4 percent).

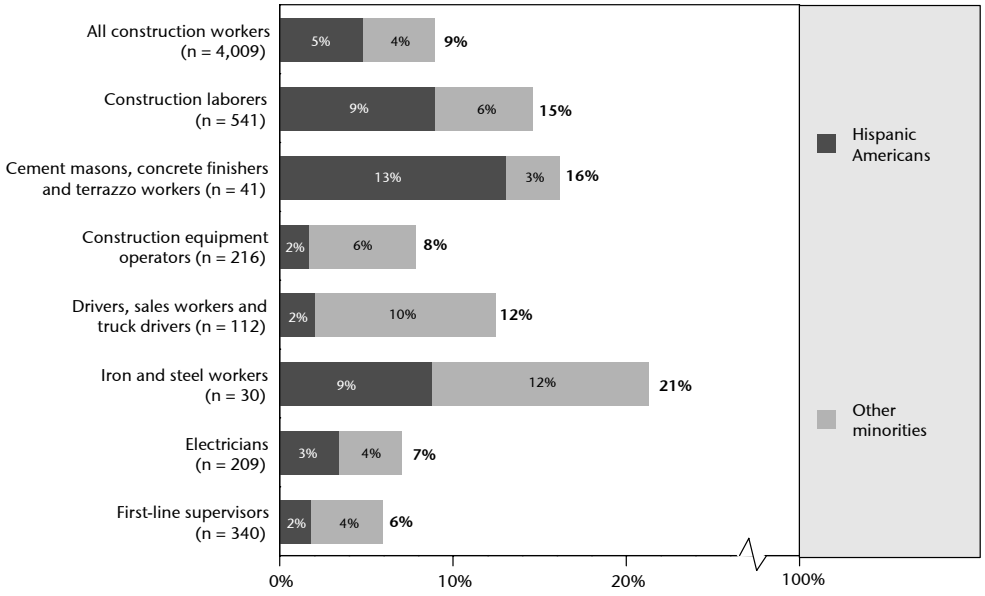
Two occupations had relatively low representation of minorities:

- Construction equipment operators, (7.8 percent); and
- Electricians (7 percent).

[23] Bureau of Labor Statistics, U.S. Department of Labor. 2001. "Standard Occupational Classification Major Groups." http://www.bls.gov/soc/soc_majo.htm (accessed February 15, 2007).

Six percent of first-line supervisors of construction workers were minorities, less than minorities' share of all occupations in construction. Figure F-9 examines these statistics.

Figure F-9.
Minorities as a percentage of construction workers in selected occupations in Idaho, 2000



Source: BBC Research and Consulting from 2000 U.S. Census.

Many of the differences for minorities, overall, reflect differences in Hispanic Americans' representation in these occupations. Some of the differences may be explained by other race groups:

- Native Americans are more likely to work as equipment operators and truck drivers (statistically significant at the 90 and 95 percent confidence levels, respectively).

- Asian-Pacific Americans and Native Americans are more likely to work as iron and steel workers, though these differences are not statistically significant.

Age, length of time in the construction industry, education and ability to speak English may explain some of the differences in occupational composition.

Women in construction trades. About 11 percent of workers in the Idaho construction industry in 2000 were women. In occupations most closely related to the highway construction industry, however, women made up a smaller proportion of workers than for all construction occupations. Figure F-10 shows the percentage of women by occupation working in the construction industry in Idaho in 2000.

In some occupations, women made up a slightly smaller proportion than in all construction occupations:

- Women made up 7 percent of construction laborers;
- Nine percent of truck drivers were women; and
- Women were 8 percent of all iron and steel workers.

In some occupations, women made up a substantially smaller proportion than in all construction occupations:

- Among cement masons, concrete finishers and terrazzo workers, fewer than 2 percent of workers were women;
- One and a half percent of construction equipment operators were women; and
- Women were 1 percent of electricians.

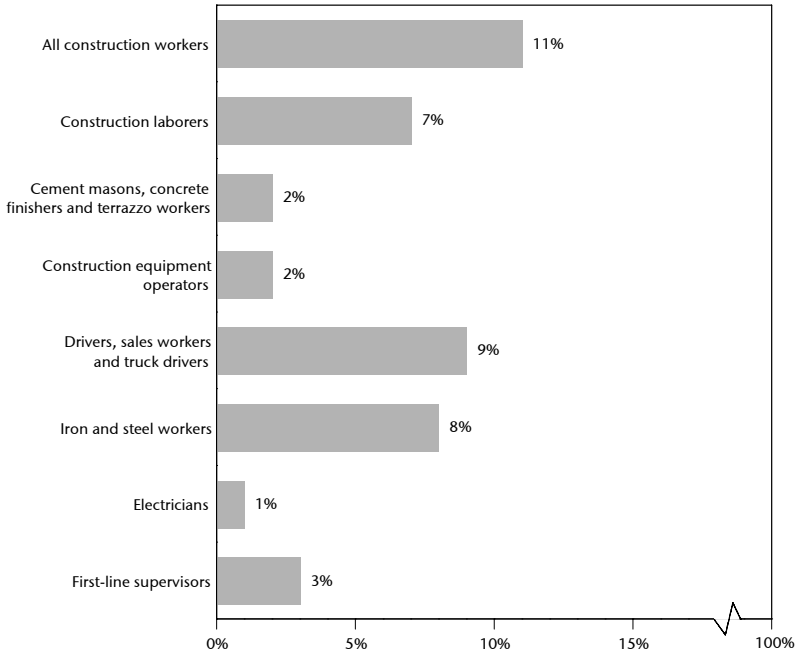
Women were 3 percent of first-line supervisors, well below the percentage of women in all construction occupations.

Women were a slightly larger share of workers in construction in 2000 than they were in 1980.

Figure F-10. Women as a percentage of construction workers in selected occupations in Idaho, 2000

Source:

BBC Research and Consulting from 2000 U.S. Census.



Relative share of minorities and women in construction who are managers. Figures F-9 and F-10 showed the representation of minorities and women among first-line supervisor positions in the Idaho construction industry. The study team also reviewed employment of minorities and women as managers in the industry, a higher position than first-line supervisors. Construction managers, on average, have more education than first-line supervisors (17 percent have at least a bachelor's degree in Idaho compared with 9 percent of first-line supervisors). Figure F-11 shows the proportion of workers in the construction industry in each group that report a "manager" occupation.

Only 3.7 percent of minorities working in construction were managers, compared with 6.7 percent of non-Hispanic whites. This difference is statistically significant.

A similar percentage of men and women working construction were managers. In addition, the proportions of female to male managers in the construction industry are similar to the gender proportions for all construction occupations combined. Women appear to have management opportunities even though they have a relatively low rate of working as supervisors. This was also true in 1980.

Figure F-11.
Percentage of construction workers who work as a manager in Idaho and the U.S., 1980 and 2000

Idaho	1980	2000	United States	1980	2000
Race/ethnicity			**Race/ethnicity**		
African American	0.0%	11.4%	African American	1.4% **	2.9% **
Asian-Pacific American	0.0%	7.9%	Asian-Pacific American	4.2%	7.0%
Subcontinent Asian American	0.0%	0.0%	Subcontinent Asian American	5.1%	10.3% **
Hispanic American	3.9%	0.8%	Hispanic American	1.9% **	2.4% **
Native American	5.0%	5.1%	Native American	2.2% **	4.2% **
Other minority group	0.0%	17.7%	Other minority group	4.7%	5.8% **
All minority groups	3.5%	3.7% **	All minority groups	1.8%	3.0%
Non-Hispanic white	5.4%	6.7%	Non-Hispanic white	4.6%	7.1%
Gender			**Gender**		
Female	5.1%	5.2%	Female	5.1% **	3.9% **
Male	5.4%	6.6%	Male	4.1%	6.2%
All	**5.4%**	**6.5%**	**All**	4.2%	6.0%

Note: **, * Denote that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% and 90% confidence levels, respectively.

Source: BBC Research and Consulting from 1980, 1990 and 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Business Ownership

Many studies have explored differences in rates of business ownership between minorities and non-minorities in the United States. Though self-employment rates have increased for minorities and women, studies by Waldinger and Aldrich (1990), Fairlie and Meyer (1996), and Fairlie and Robb (2006) indicate that different opportunities for entrepreneurship exist based on gender, ethnicity and race.[24] One study found that the explanatory power of race and ethnicity in self-employment is almost greater in the presence of other factors that also affect self-employment.[25]

Disparities in the rates of business ownership have been one type of evidence used by courts in finding the Federal DBE Program to be valid. Any disparities in business ownership rates may also be important when considering step 2 adjustments in the annual DBE goal.

Idaho construction industry. The 5% Public Use Micro-sample Data from the U.S. Census of Population can be utilized to study rates of self-employment in Idaho.

Business ownership rates in 2000. Figure F-12 shows the percentage of different groups working in the construction industry who were self-employed in 2000 and in 1980.

In 2000, 26 percent of non-Hispanic whites working in the construction industry in Idaho were self-employed (in incorporated or unincorporated businesses), about the same as the rate for the United States for that year.

Minorities in the Idaho construction industry are less likely to own businesses than non-Hispanic whites:

- Seventeen percent of non-Hispanic minorities were self-employed in 2000; and
- The rate of self-employment for Hispanic Americans is only 12 percent.

These differences in self-employment in Idaho are similar to what is found for the U.S. as a whole.

In 2000, 23 percent of women working in the Idaho construction industry were self-employed, similar to the rate for men (25 percent). In the United States, 17 percent of women in construction were self-employed, compared to 23 percent of men.

It is important to note that only 10 percent of people who owned construction businesses in Idaho had a bachelor's degree.

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[24] See Waldinger, Roger and Howard E. Aldrich. 1990. *Ethnicity and Entrepreneurship.* Annual Review of Sociology. 111-135.; Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793.; Fairlie, Robert W. and Alicia M. Robb. 2006. *Why are Black –Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital.* Forthcoming Journal of Labor Economics.; and Fairlie, Robert W. and Alicia M. Robb. 2006.*Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses.* Russell Sage Foundation.

[25] Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793.

Figure F-12.
Percentage of self-employed workers in the construction industry in Idaho and the U.S., 1980 and 2000

Idaho	1980	2000	United States	1980	2000
Race/ethnicity			**Race/ethnicity**		
African American	20.0%	24.1%	African American	9.0% **	15.7% **
Asian-Pacific American	50.0%	22.3%	Asian-Pacific American	11.2% **	21.4% **
Subcontinent Asian American	100.0%	0.0%	Subcontinent Asian American	5.9% **	19.6% **
Hispanic American	11.8% *	11.7% **	Hispanic American	10.5% **	12.6% **
Native American	10.0%	14.1% **	Native American	9.5% **	19.0% **
Other minority group	0.0%	30.5%	Other minority group	14.8% *	23.7%
All minority groups	14.0%	14.2% **	All minority groups	9.7% **	14.5% **
Non-Hispanic white	23.5%	25.5%	Non-Hispanic white	19.1%	25.2%
Gender			**Gender**		
Female	11.1% **	23.0%	Female	9.5% **	17.1% **
Male	24.5%	24.7%	Male	18.5%	22.9%
All individuals	23.2%	24.5%	**All individuals**	17.7%	22.3%

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% confidence level.

Source: BBC Research and Consulting from 1980, 1990 and 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Changes in business ownership rates in Idaho since 1980. In Idaho, the proportions of self-employment for minorities and non-minorities did not change from 1980 to 2000. In the United States, self-employment increased for all groups over the same period. The nation had lower rates of self-employment than the state of Idaho in 1980, and similar rates in 2000.

In Idaho, the difference between female and male ownership converged from 1980 to 2000. This pattern is not seen at the national level; self-employment rates for both men and women increased from 1980 to 2000. The business ownership rate in the U.S. for women increased from 9.5 to 17.1 percentage points (still remaining below the rate for men).

Idaho engineering industry in 2000. The study team also compared self-employment rates among people working in the Idaho engineering industry.

Men working in the engineering industry in Idaho were three times as likely to own an engineering business as women in 2000. Sample sizes were small when examining rates of business ownership for individual minority groups working in the Idaho engineering industry. Overall, relatively fewer minorities appear to own firms than non-Hispanic whites working in this industry.

Figure F-13.
Percentage of self-employed workers in the engineering industry in Idaho and the U.S., 1980 and 2000

Idaho	1980	2000	United States	1980	2000
Race/ethnicity			**Race/ethnicity**		
All minority groups	0.0%	1.9%	All minority groups	7.3% **	8.4% **
Non-Hispanic, white	17.6%	11.8%	Non-Hispanic white	15.4%	14.7%
Gender			**Gender**		
Female	2.9%	4.9% **	Female	4.2% **	7.8% **
Male	20.4%	14.3%	Male	17.6%	15.8%
All individuals	16.9%	11.2%	**All individuals**	14.5%	13.6%

Note: ** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% confidence level.

Source: BBC Research and Consulting from 1980, 1990 and 2000 U.S. Census 5% Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Potential causes of differences in business ownership rates.

A number of researchers have examined whether there are disparities in business ownership rates after considering factors such as education and age. A number of studies have found that disparities in business ownership still exist in the presence of such factors:

- Several studies have found that access to financial capital is a strong determinant of business ownership. One consistent finding is the positive relationship between startup capital and business formation, expansion and survival.[26] One study found that housing appreciation measured at the MSA-level is a positive determinant of entry into self-employment.[27] However, unexplained differences still exist when controlling for these factors.[28]
- Education has positive effects on the probability of business ownership. However, findings from multiple studies indicate that minorities are still less likely to own a business than their non-minority counterparts with the same levels of education.[29]

[26] See Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership.* Working paper, Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor.; and Fairlie, Robert W. and Alicia M. Robb. 2006.*Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses.* Russell Sage Foundation.

[27] Fairlie, Robert W. and Harry A. Krashinksy. 2006. *Liquidity Constraints, Household Wealth and Entreprenuership Revisited.*

[28] Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership.* Working paper, Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor.

[29] See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment.* Sociological Perspectives. 79-94..

- Intergenerational links contribute to the likelihood of self-employment. One study found that experience working for a self-employed family member increases the likelihood of self-employment for minority groups.[30]
- Studies have found that time since immigration, or assimilation to American Society, are important determinants of self-employment. However, unexplained differences in minority-business ownership still exist when controlling for these factors.[31]

Appendix H reports findings from multivariate statistical models that explain business ownership in Idaho's construction and engineering industries as a function of race and gender as well as neutral factors, such as age and education. These analyses draw upon the methods and model specification used in past business ownership research and in previous court-approved disparity studies.

Homeownership and Mortgage Lending

One of the factors researchers examine when studying business formation and success is access to capital. Discrimination in capital markets can prevent minorities and women from acquiring the capital necessary to start or expand a business.[32] BBC begins by studying homeownership and mortgage lending, as home equity is an important source of capital to start and expand businesses.

Homeownership. Wealth created through homeownership can be an important source of capital to start or expand a business. Any barriers to homeownership and home equity growth for minorities or women can affect business opportunities for these groups. Similarly, any barriers to accessing the equity in a home through home mortgages can also affect the capital available for new or expanding businesses. In sum:

- A home is a tangible asset that provides borrowing power;[33]
- Wealth that accrues from housing equity and tax savings from home ownership contribute to capital formation;[34]
- Mortgage loans have traditionally been the second largest loan type for small businesses behind lines of credit;[35] and
- Homeownership is associated with an estimated 30 percent reduction in predicted probability of loan denial for small businesses.[36]

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[30] See Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses.* Russell Sage Foundation; and Fairlie, Robert W. and Alicia M. Robb. 2006. *Why are Black –Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital.* Forthcoming Journal of Labor Economics..

[31] See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment.* Sociological Perspectives. 79-94.

[32] For an example, see: Coleman, Susan. *Small Firm Sources of Debt Capital: A Comparison by Gender, Race and Ethnicity.* University of Hartford.

[33] Nevin, Allen. 2006. "Homeownership in Nevada: A CBIA Economic Treatise." *Nevada Building Industry Association.* 2.

[34] Jackman, Mary R. and Robert W. Jackman 1980. "Racial Inequalities in Home Ownership." *Social Forces.* 58. 1221-1234.

[35] Berger, Allen N. and Gregory F. Udell. 1998. "The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle." *Journal of Banking and Finance.* 22.

The study team first considered homeownership rates in Idaho and home prices before turning to data on the home mortgage market.

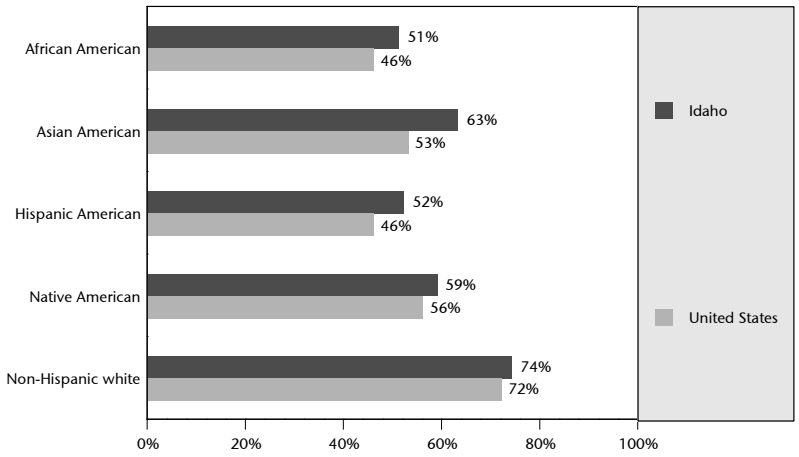
Homeownership rates. Homeownership is the first step toward building home equity that can be tapped for other purposes.

Many studies document past discrimination in the housing markets in the United States. For example, the United States has a history of restrictive real estate covenants and property laws affecting the ownership rights of minorities and women.[37] In the past, a woman's participation in home ownership was ancillary to that of her husband and parents.[38]

Figure F-14 illustrates disparities in homeownership between minority groups and non-Hispanic whites in Idaho and the nation in 2000. About 51 percent of African American households were homeowners compared with 74 percent of non-Hispanic whites in the state. Homeownership rates were also particularly low for Hispanic Americans in Idaho. Overall rates of homeownership were higher in Idaho than the nation.

Figure F-14. Homeownership rates in Idaho and the U.S., 2000

Source:
U.S. Census Bureau, KnowledgePlex Calculations, an online resource maintained by the Fannie Mae Foundation.



Different rates of homeownership in part reflect lower incomes for minorities. This may be self-reinforcing, as low wealth puts individuals at a disadvantage in becoming homeowners, which is an effective path to building wealth. One study found statistically significant results indicating that the probability of homeownership is considerably lower for African Americans than it is for comparable non-Hispanic whites throughout the U.S.[39]

[36] Cavalluzzo, Ken and John Wolken. 2005. "Small Business Loan Turndowns, Personal Wealth and Discrimination." *Journal of Business.* 78:2153-2178.

[37] Ladd, Helen F. 1982. "Equal Credit Opportunity: Women and Mortgage Credit." *The American Economic Review*. 72:166-170.

[38] Card, Emily. 1980. "Women, Housing Access, and Mortgage Credit." *Signs.* 5:215-219.

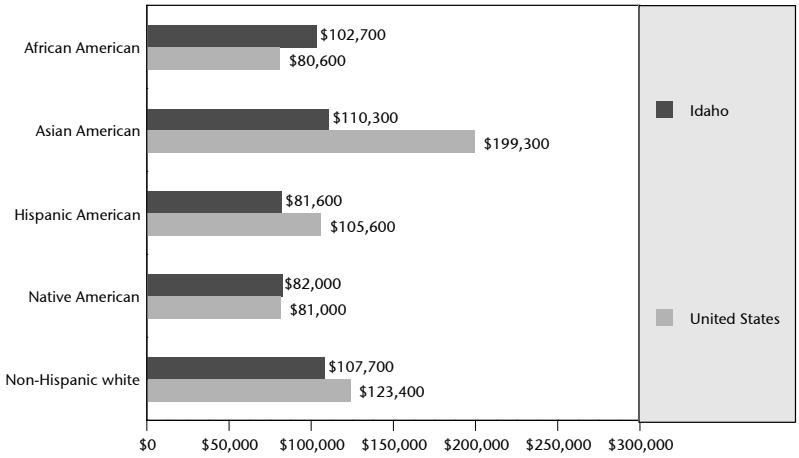
[39] Jackman. 1980. "Racial Inequalities in Home Ownership."

Home values. Homeownership and the value of the home is a direct indicator of capital available to form or expand businesses. For example, using microdata from matched Current Population Surveys (1993-2004), one study found that differences in housing appreciation between metropolitan areas affected entry into self-employment. The study indicated that a 10 percent annual increase in housing equity increases the mean probability of entrepreneurship by approximately 20 percent.[40]

U.S. Bureau of the Census data on home values in 2000 allows comparisons of median home values by race and ethnicity. The median home value of non-Hispanic whites in 2000 was $107,700 in Idaho, substantially above the median value of homes owned by Hispanic Americans and Native Americans, and slightly above homes owned by African Americans.

Figure F-15.
Median home value, 2000

Source:
U.S. Census Bureau, Census 2000 and BBC Research & Consulting



Steering by real estate agents. A number of researchers have found that discrimination by real estate agents contributes to residential segregation of minorities.[41] One such practice is "steering" of prospective homebuyers toward particular neighborhoods and away from others because of their race or ethnicity (a practice that has been prohibited by law for many decades).

Mortgage lending. Minorities may be denied opportunities to own homes, to purchase more expensive homes or to access equity in their homes if they are discriminated against when applying for home mortgages.

[40] Fairlie, Robert W. and Harry A. Krashinky. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited." *IZA Discussion Paper.* No. 2201.

[41] Galster, George and Erin Godfrey. 2005. "Racial Steering by Real Estate Agents in the U.S. in 2000." *Journal of the American Planning Association.* 71:251-268.

A common source of information concerning mortgage lending discrimination is Home Mortgage Disclosure Act (HMDA) data. HMDA data pertain to information about mortgage loan applications for financial institutions, savings banks, credit unions and some mortgage companies.[42] The data contain information about the location, dollar amount, and types of loans made, as well as racial and ethnic information, income, and credit characteristics of all loan applicants. The data are available for home purchases, loan refinances and home improvement loans.

The study team's analysis uses statistics provided by KnowledgePlex on loan denial rates of high-income borrowers. High-income borrowers include households with 120 percent or more of the U.S. Department of Housing and Urban Development (HUD) area median family income.[43] Conventional loans are loans not insured by a government program. Loan denial rates are calculated as a share of mortgage loan applications that have either been denied or originated (this excludes terminations of the application process by the potential borrower).

Data on loan denial rates for mortgages in Idaho show higher denial rates for minority than for non-Hispanic white high-income households, with the exception of Asian American households. Figure F-16 reports loan denial rates for the state for 2005. Among high-income households applying for mortgages, 26 percent of African American applicants had their applications denied compared with 13 percent of non-Hispanic white households. Loan denial rates were also higher for Native Americans and Hispanic Americans.

The patterns of loan denial rates by race and ethnicity in Idaho mirror those of the United States as a whole for 2005.

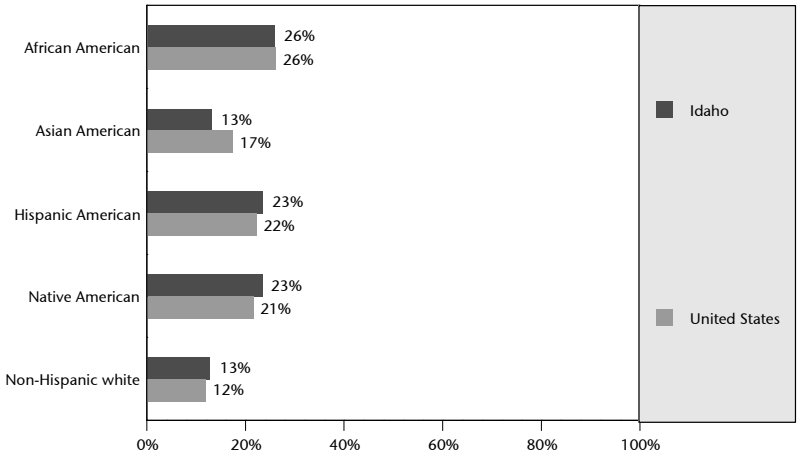
Figure F-16. Denial rates of conventional purchase loans to high-income households, 2005

Note:

High-income borrowers include households with 120% or more than the HUD area medina family income.

Source:

FFIEC HMDA data 2005 and KnowledgePlex calculations, an online resource maintained by the Fannie Mae Foundation.



[42] Financial institutions are required to report HMDA data if they have assets of more than $32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in a Metropolitan Statistical Area (or originated five or more home purchase loans in an MSA) and either had more than $10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

[43] 2005 median family income is $58,000 for the United States and $50,850 for Idaho. Based on 2000 census data on family incomes. Data are updated to 2005 using Census P-60 median family income data, Census American Community Survey data on changes in state median family incomes and local Bureau of Labor Statistics Wage data.

A number of national studies have examined disparities in loan denial rates and loan amounts for minorities in the presence of other influences. Examples include the following:

- The Boston Fed Study is one of the most discussed studies of mortgage lending discrimination.[44] It was conducted using the most comprehensive set of credit characteristics ever assembled for a study on mortgage discrimination.[45] The study provided persuasive evidence that lenders in the Boston area discriminated against minorities in 1990.[46]

- Using the Federal Reserve Board's 1983 Survey of Consumer Finances and the 1980 Census of Population and Housing data, logit statistical analysis revealed that minority households were one-third as likely to receive conventional loans as non-Hispanic white households after taking into account financial and demographic controls.[47]

- Findings from a Midwest study indicate a significant relationship between race and both the number and amount of mortgage loans. Data matched on socioeconomic characteristics revealed that African American borrowers across 13 census tracts received significantly less of both compared to their white counterparts.[48]

On the other hand, other studies have found that differences in preferences for FHA versus conventional loans among racial and ethnic groups may partly explain disparities found in conventional loan approvals between minorities and non-minorities.[49] Several studies have found that minority borrowers are far more likely to receive FHA loans than comparable non-Hispanic white borrowers at all income and wealth levels. FHA loans are insured by the government thus protecting the lender, but the borrower can be hurt by higher costs.[50]

Higher fees and interest rates. Denial of loans is only one way that minorities could be discriminated against in the home mortgage market; mortgage-lending discrimination can also reveal itself through high fees and interest rates. The housing market provides a unique atmosphere for this type of discrimination through fees associated with various loan types.

One of the fastest growing segments of the home mortgage industry is subprime lending. From 1994 through 2003, subprime mortgage activity grew by 25 percent per year and accounted for $330 billion of U.S. mortgages in 2003, up from $35 billion a decade earlier. Subprime loans are marketed

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[44] Munnell, Alicia H., Geoffrey Tootell, Lynn Browne and James McEneaney. 1996. "Mortgage Lending in Boston: Interpreting HMDA Data." The American Economic Review. 86: 25-53.

[45] Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." The Journal of Economic Perspectives. 12:41-62.

[46] Yinger, John. 1995. Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination. New York: Russell Sage Foundation, 71.

[47] Canner, Glenn B., Stuart A. Gabriel and J. Michael Woolley. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets." Southern Economic Journal. 58:249-262.

[48] Leahy, Peter J. 1985. "Are Racial Factors Important for the Allocation of Mortgage Money?: A Quasi-Experimental Approach to an Aspect of Discrimination." American Journal of Economics and Sociology. 44:185-196.

[49] Canner. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets."

[50] Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.* 80.

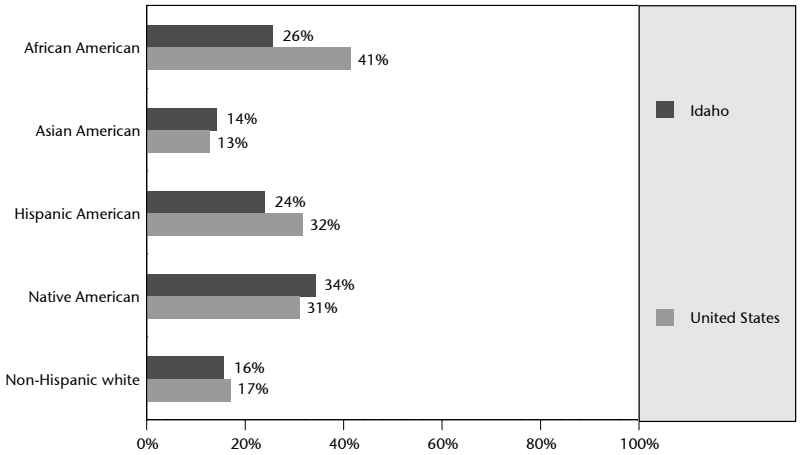
and sold to customers with blemished or limited credit histories that would typically not qualify for prime loans.

Minorities are more likely to receive a subprime loan, which charge higher interest fees than conventional loans. Financial institutions have been accused of taking advantage of minorities by charging unnecessarily high rates and imposing costs that endanger home ownership. One study found many users of the subprime market are qualified for prime loans.[51]

In Idaho, African American, Native American and Hispanic American borrowers are much more likely to have a subprime loan than non-Hispanic whites. For example, 26 percent of the conventional refinancing loans received by African Americans were from subprime lenders compared with only 16 percent of refinancing loans received by non-Hispanic whites. Asian Americans are, to a smaller degree, less likely than non-Hispanic whites to obtain a mortgage from the subprime market.

Figure F-17.
Percent of conventional refinancing loans from subprime lenders, 2004

Source:
FFIEC HMDA data 2005 and KnowledgePlex calculations, an online resource maintained by the Fannie Mae Foundation.



Historically, differences in types of loans awarded to minorities have been attributed to steering by real estate agents, who serve as an information filter between buyers and sellers.[52] Some studies claim that real estate brokers provide different levels of assistance and different information on loans to minorities and non-minorities.[53] This "steering" can shape the perceived availability of loans to minority borrowers.

Home value appraisal is another means of discrimination in mortgage lending. Differences in appraisal values can change the loan-to-value ratio, an indicator of risk for lending institutions. Findings suggest that minorities and women have been subject to the under-appraisal of home values. One study suggests that appraisers lower appraisal values for minorities.[54] Another study found that minorities have higher loan-to-value ratios.[55]

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[51] Freddie Mac. 1996, September. "Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families." *Freddie Mac.* (Accessed February 5, 2007).

[52] Kantor, Amy C. and John D. Nystuen. 1982. "De Facto Redlining a Geographic View." *Economic Geography.* 4:309-328.

[53] Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.* 78–79.

[54] Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.* 82.

[55] Tootell, Geoffrey M. B. 1996. "Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?" *The Quarterly Journal of Economics.* 111:1049-1079.

Other potential forms of discrimination by lenders are more difficult to analyze and document.[56] Areas include outreach and application procedures (i.e., helping non-minority applications look stronger), loan terms determined by the lender (interest rates, maturity, loan-to-value ratio and loan types), underwriting standards that may disproportionately affect minorities and women, and default and foreclosure options.

Anecdotal evidence suggests that African American home seekers generally must expend more time, effort and resources than non-Hispanic whites for the same end.[57] Minorities and women may also believe they are required to produce greater levels of equity and hard collateral in order to secure debt than their non-minority male counterparts and have fewer options for investment capital.[58]

Redlining. Redlining is the term for mortgage lending discrimination to geographic areas associated with high lender risk. These areas are often racially determined, such as African American and mixed race neighborhoods.[59] This practice can perpetuate problems in already poor neighborhoods.[60]

Most quantitative studies have failed to find strong evidence in support of geographic dimensions of lender decisions. Studies in Columbus, Ohio; Boston, Massachusetts; and Houston, Texas found that the racial differences in loan denial had little to do with racial composition of the neighborhood, but rather the individual characteristics of the borrower.[61] Some studies found race of the applicant to be a factor in loan denials, not the racial makeup of the neighborhood.

Studies of redlining have primarily focused on the geographic aspect of lender decisions; however, redlining can also include the practice of restricting credit flows to minority neighborhoods through procedures that are not observable in actual loan decisions. Examples include branch placement, advertising and other pre-application procedures.[62] These practices can deter minorities from starting businesses. Many local businesses rely on the financing of the local bank sector, thus the location of financial institutions important.[63] Redlining practices would deny this capital resource to minorities.

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[56] Yinger. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination.* 78-81.

[57] Bullard, Robert D. 1990. "Housing Barriers: Trends in the Nation's Fourth-Largest City." *Journal of Black Studies.* 21:4-14.

[58] Darryl E. Greene & Associates, P.C., and Triaxial Management Services, Inc., a Joint Venture. 1994. *DBE/MBE/WBE Predicate Study: Preliminary.* Los Angeles County Metropolitan Transportation Authority.

[59] Holloway, Steven R. 1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio." *Annals of the Association of American Geographers.* 88:252-276.

[60] Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." *The Journal of Economic Perspectives.* 12:41-62.

[61] See Holloway.1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio."; Tootell. 1996. "Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?"; and Holmes, Andrew and Paul Horvitz. 1994. "Mortgage Redlining: Race, Risk, and Demand." *The Journal of Finance.* 49:81-99.

[62] Yinger, John. 1995. "Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination." Russell Sage Foundation. New York. 78-79.

[63] Holloway. 1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio."

Gender discrimination in mortgage lending. Relatively little information is available on sex-based discrimination in mortgage lending markets. Historically, lending practices overtly discriminated against women by requiring information on marital and childbearing status. Risk associated with women of childbearing age and unmarried women resulted in "income discounting," limiting the availability of loans to women.[64] The Equal Credit Opportunity Act (ECOA) in 1973 suspended these discriminatory lending practices.

Access to Business Capital

Barriers to capital markets can have significant outcomes for small business formation and expansion. "Availability of credit" was identified as an issue for businesses in a recent survey conducted by the U.S. Chamber of Commerce. Survey results indicate that minority-owned firms are more likely to experience problems accessing capital than non-Hispanic white-owned firms.

Figure F-18.
Type of problem facing your business by race and ethnicity, 2005

	Availability of Credit	Rising Health Care Costs	Excessive Tax Burden	Lack of Qualified Workers	Rising Energy Costs	Rising Costs of Materials	Legal Reform
Race/ethnicity							
African American (n = 55)	45.5 %	30.9 %	45.5 %	21.8 %	29.1 %	52.7 %	10.9 %
Asian-Pacific American (n = 41)	34.1	65.9	51.2	34.1	43.9	31.7	17.1
Hispanic American (n = 50)	52.0	42.0	34.0	20.0	34.0	42.0	10.0
Native American (n = 14)	42.9	50.0	50.0	14.3	28.6	42.9	28.6
All minority groups (n = 177)	44.6	45.8	44.6	25.4	35.0	42.4	14.1
Non-Hispanic white (n = 823)	21.1	55.3	47.3	32.3	35.6	45.3	17.9
All (n = 1,080)	**25.3 %**	**53.8 %**	**47.0 %**	**31.0 %**	**35.5 %**	**44.7 %**	**17.2 %**

Note: Total percentages may be greater than 100% due to respondents having the option to select multiple choices.

Source: "Access to Capital: What Funding Sources Work for You?" Appendix Tables. U.S. Chamber of Commerce's Statistics and Research Center, 2005. Available at http://www.uschamber.com/publications/reports/access_to_capital.htm. Page 55.

Several studies have found evidence that start-up capital is important for business profits, longevity and other outcomes.[65]

- The amount of start-up capital is positively associated with small business sales and other outcomes.[66]
- Limited access to capital has limited the size of African American-owned businesses.[67]
- Weak financial capital was identified as a significant reason that more African American-owned firms than non-Hispanic white-owned firms were closed over a four-year period.[68]

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[64] Card. 1980. "Women, Housing Access, and Mortgage Credit."

[65] For examples see Fairlie. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited;" and Grown, Caren and Timothy Bates. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies." Center for Economic Studies, U.S. Bureau of the Census.

[66] See Fairlie, Robert W. and Harry A. Krashinsky. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited; " and Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

[67] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

Bank loans are one of the largest sources of debt capital for small businesses.[69] Discrimination in the application and approval processes of these loans and other credit resources could be detrimental to the success of minority- and women-owned businesses.

Previous studies have addressed race, ethnic and gender discrimination in capital markets by evaluating:

- Loan denial rates;
- Loan values;
- Interest rates;
- Individual assumptions that loan applications will be rejected;
- Sources of capital; and
- The relationship between start-up capital and business survival.

The study team reviewed literature from past studies to examine these questions. The body of literature contains little information on these issues in Idaho.

Loan denial rates. A number of studies have developed regression models to isolate the effects of race and ethnicity from other factors that affect loan approvals. Findings from these studies include:

- Commercial banks are less likely to loan to African American-owned firms than non-Hispanic white-owned firms, after controlling for other factors.[70]
- African American, Hispanic American and Asian American men are more likely to be denied for a loan than non-Hispanic white men. However, African American borrowers are more likely to apply for a loan.[71]
- There are substantial unexplained differences in credit applications, loan denials and interest rates between non-Hispanic white- and African American-owned firms. Competitiveness of lender markets helps explain these disparities.[72]

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[68] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

[69] Data from the 1998 SSBF indicates that 70 percent of loans to small business are from commercial banks. This result is present across all gender, race and ethnic groups with the exception of African Americans, whose rate of lending from commercial banks is even greater than other minorities. See Blanchard, Lloyd, Bo Zhao and John Yinger. 2005. "Do Credit Market Barriers Exist for Minority and Woman Entrepreneurs." *Center for Policy Research, Syracuse University.*

[70] Cavalluzzo, Ken, Linda Cavalluzzo and John Wolken. 2000. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey." *FEDS Working Paper No. 99-25*

[71] Coleman, Susan. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances." *The Journal of Business and Entrepreneurship.* 151-166.

[72] See Cavalluzzo, 2000. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

- The probability of loan denial decreases with greater personal wealth. However, controlling for personal wealth does not resolve the large differences in denial rates across African American-, Hispanic American-, Asian American-, and non-Hispanic white-owned firms. Specifically, information on personal wealth explained some differences for Hispanic- and Asian American-owned firms compared to non-Hispanic whites, but almost none for African Americans.[73]

- Loan denial rates are significantly higher for African American-owned firms than non-Hispanic white-owned firms in the presence of several other factors such as creditworthiness and other characteristics. This result is largely insensitive to econometric specification. Consistent evidence on loan denial rates and other indicators of discrimination in credit markets was not found for other minorities and women.[74]

Using data from the 1998 NSSBF and controlling for other variables, previous studies demonstrated that women are no less likely to apply for or to be approved for loans.[75] In its own analyses, reported in Appendix H, the study team explored the relationships between loan denial and race/gender of firm ownership. These relationships were explored using multivariate statistical models that controlled for a wide variety of neutral factors that explain the likelihood of a firm's loan denial, including the credit and financial help of the owner and of the business and contextual characteristics of the lending environment. Results of this analysis are presented in Figure H-7.

Loan values. Beyond loan denial rates, the study team considered the loan values for firms receiving loans. Previous national studies have found that African American-owned firms receive substantially lower loan amounts than their non-Hispanic white counterparts with similar characteristics. Examination of construction companies in the United States revealed that African American-owned firms received smaller loans than firms with otherwise identical traits, increasing the likelihood of firm closure. [76]

Interest rates. Studies of interest rates charged for commercial loans control for factors such as individual credit history, firm credit history, and Dun and Bradstreet credit scores. [77] Differences were found in some studies:

- Hispanic-owned firms had significantly higher interest rates in places with less credit market competition.[78]

- Among a sample of firms with no past credit problems, African American-owned firms paid significantly higher interest rates on approved loans.[79]

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[73] Cavalluzzo, Ken and John Wolken. 2002. "Small Business Turndowns, Personal Wealth and Discrimination." *FEDS Working Paper No. 2002-35.*

[74] Blanchflower, David G., Phillip B. Levine and David J. Zimmerman. 2003. "Discrimination in the Small Business Credit Market." *The Review of Economics and Statistics.* 85:930-943.

[75] Coleman. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances."

[76] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

[77] Cavalluzzo. 2000. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

[78] Cavalluzzo. 2000. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

[79] Blanchflower. 2003. "Discrimination in the Small Business Credit Market."

Individual assumptions that loan applications will be rejected. Fear of loan denial is a barrier to capital markets because it prevents small businesses from applying for loans and thus can help explain differences in business outcomes. In addition, it provides insight into minority business owners' perceptions of the small business lending market.

The body of literature identifies multiple factors that influence the decision to apply for a loan, such as firm size, firm age, owner age and educational attainment. Controlling for these factors can help to determine whether race and ethnicity explain fear of loan denial. Findings indicate:

- African American- and Hispanic American-owners are significantly less likely to apply for loans.[80]

- After controlling for educational attainment, there were no significant differences in loan application rates between non-Hispanic white, African American, Hispanic and Asian American men.[81]

- African American-owned firms are more likely than other firms to report being seriously concerned with credit markets and are less likely to apply for credit in fear of denial.[82]

Availability Survey Preliminary Results for Barriers to Doing Business in the Marketplace and with ITD

The 2007 Availability Survey included two open-ended questions:

- Finally, we are giving business owners and managers an opportunity to offer general insights on your industry, including how difficult it is to start or expand your business and to [bid / propose] on and win work. As you are thinking, be sure to consider any issues related to ITD and local government projects in Idaho. What thoughts do you have to offer on these topics?

- ITD is looking for ways to improve its contracting practices and those of its prime [contractors / consultants] to ensure that they are open and fair. Do you have any thoughts or suggestions?

Because the types of responses to these questions were so similar, BBC combined the responses when examining results. Multiple responses were coded.[83]

The questions asked were open-ended by design, which affects the number of comments concerning each potential barrier. If the study team had specifically asked about each potential barrier, more firms would have identified the issue area as a barrier for their firm. The strength of this methodology is that respondents identified areas of problems unprompted by the interviewers. It shows the degree to which certain barriers were "top of mind" for business owners and managers.

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[80] Cavalluzzo, 2000. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

[81] Coleman, Susan. 2004. "Access to Debt Capital for Small Women- and Minority-Owned Firms: Does Educational Attainment Have an Impact?" *Journal of Developmental Entrepreneurship*. 9:127-144.

[82] Blanchflower et al., 2003. *Discrimination in the Small Business Credit Market.*

[83] For example, if a firm owner responded to the first question by indicating that slow payment and contract specifications were barriers, BBC tracked both responses. If the firm owner answered the second question with further elaboration on slow payment, and then added a comment about difficulty finding information about contract opportunities, the information on bidding comment was added to the combined responses for that firm.

About 33 percent of all firms surveyed responded to the open-ended questions. Due to the small number of minority responses, minority-owned businesses are analyzed as a group and are not further categorized by race or ethnicity.

Access to capital. Unprompted, only about 1 percent of construction firms mentioned access to capital as a difficulty in starting or expanding their business or in working with ITD. Women-owned construction firms responding to the survey were less likely than other construction firms to mention this issue. In the engineering industry, less than 1 percent of majority-owned firms identified access to capital as a barrier. No women- or minority-owned engineering firms mentioned this issue. Comments regarding access to capital were generally related to the high costs associated with starting a business.

Bonding. Access to bonding and bonding requirements were brought up by 1 percent of transportation construction firms. Only a few transportation engineering firms mentioned this issue. Minority-owned construction firms were more likely to mention bonding as a barrier than any other firms. Most comments related to bonding were focused on general difficulties in obtaining bonds necessary for bidding. Some respondents feel that ITD's bonding requirements are excessive.

Insurance. Overall, less than 1 percent of transportation construction and engineering firms identified the costs associated with insurance as a barrier to doing business. Minority-owned construction firms were slightly more likely than other firms to mention insurance costs. Survey respondents who brought up this issue were primarily concerned with the costs of meeting current requirements.

One respondent specifically commented on difficulties for small businesses, stating: "Insurance requirements for small businesses are prohibitive." Another said ". . . insurance (costs) make it difficult to stay and grow our business."

Difficult industry regulations. About 1 percent of transportation construction firms brought up industry regulations as an issue. Less than 1 percent of engineering firms stated this was a barrier to doing business or in working with ITD. No minority-owned firms or women-owned engineering firms mentioned this difficulty. Respondents primarily cited issues with public licensing as well as permitting and environmental regulations.

Difficult to find qualified staff. Overall, about 2 percent of construction and engineering firms mentioned difficulties in finding qualified staff as a barrier to doing business. Minority-owned engineering firms were much more likely than any other firms to mention this issue.

Comments related to this difficulty included a lack of qualified individuals, including engineers, surveyors and other specialized labor, as well as general industry competitiveness. One minority business owner stated, "It's hard to get help. The (construction) industry has a lack of technically trained individuals." An engineering industry representative said, it's a "highly competitive market for talent, it's hard to find qualified people."

Ability to obtain subcontracts from primes and partner with firms. Very few construction industry respondents stated that it was difficult to get subcontracts from primes or partner with other firms. Unprompted, about 1 percent of transportation engineering firms indicated this was a problem; however, 6 percent of minority-owned transportation engineering firms mentioned this difficulty.

Some respondents indicated that larger firms do not provide smaller companies opportunities for work. One respondent stated that it is "very difficult for small trucking firms. Large contractors have their own trucks and don't want to hire small truckers." Another stated "I am small and relying on bigger companies to find work; I am only hired when they are overwhelmed and when they catch up I am terminated."

Other comments included: " it would be nice if it were a little easier to partner with other businesses" and "It's difficult to get sub-consultant jobs as a non-minority- and non-woman-owned firm." Some respondents suggested ITD facilitate better partnering by providing larger firms with a list of available subcontractors.

Competitive industry and high operating costs. Industry competitiveness and high operating costs were brought up by 7 percent of transportation construction firms as significant barriers to doing business. About 6 percent of transportation engineering firms mentioned this issue. Minority-owned construction firms and women-owned engineering firms were more likely than other firms to identify industry competitiveness as a barrier.

The majority of comments regarding industry competitiveness were related to the high cost of doing business, general market saturation and difficulties breaking into the industry. One respondent stated, "The trucking industry has changed. The price of freight has gone down and the price of fuel has gone up. It's hard to break even." Another said, "It's fairly difficult to expand in the business due the fact that it is very much relationship-based." More general comments such as "competition in the industry is fierce" and "it is difficult to get your foot in door in this industry" were common. Respondents also frequently cited rising fuel costs.

Some small businesses noted how difficult it is to compete with larger firms. "When you're small and have to hire help, keeping up with bigger and more established businesses is difficult" said one small business respondent. "We're a small firm and generally can't compete with the big dogs," said another.

A few respondents commented on the difficulty of competing for ITD work as a non-local firm: "It is very difficult to expand in the Idaho market without local connections and consultants." One respondent stated, "it's hard to win work without local representation."

Slow pay. Very few firms mentioned slow pay as a problem for their business. Overall, about 1 percent of transportation construction and engineering firms mentioned this issue. Three percent of women- and minority-owned engineering firms and 3 percent of minority-owned construction firms indicated slow pay as a barrier to doing business.

Comments were specific to ITD as well as prime contractors. One respondent stated, "ITD needs to reimburse companies faster." "ITD does not enforce prompt payment clauses," said another. One women-owned business representative stated, "It's often extremely difficult to work as only a subcontractor because the prime contractors do not pay on time or reliably."

Difficult specifications and complex contract language. Less than one percent of all firms surveyed indicated that poor specifications and complex contract language posed a barrier to doing business and working with ITD. Minority-owned firms were more likely than any other firms to bring up this issue.

In general, business-owners who mentioned difficult specifications or complex contract language feel that "ITD needs to identify its standards better." One firm stated, "the rapid changing of ITD specifications and requirements is hard; it changes sometimes four times a year and it's hard to keep up."

Prevailing wage and union requirements. Less than 1 percent of transportation construction firms and no transportation engineering firms identified prevailing wage rate and union requirements as a barrier. Respondents who brought up this issue generally indicated that the prevailing wage rate, Davis Bacon Act and union requirements make it difficult to work for ITD and remain profitable.

Paperwork and cumbersome processes. Of the transportation construction firms surveyed, 2 percent identified paperwork and other cumbersome processes as a barrier. About 5 percent of transportation engineering firms indicated this was a problem. In both industries, minority-owned firms were much more likely to bring up this issue than any other firms.

Respondents who view cumbersome processes as a barrier referenced excessive paperwork and lengthy approval process involved in working with ITD. "There's too much paperwork. We avoid trying to get work from ITD because of it," stated one respondent. Another said, "the ratio of paperwork required to the money earned when working with ITD isn't worth it a lot of the time."

Some respondents feel that ITD processes can be slow: "ITD is slow--it can be years between announcing and awarding work, which is hard on businesses." One respondent stated, "The response to the contract is time intensive. It can be simplified and improved."

Excessive qualifications. A few transportation construction firms feel that excessive qualifications create a barrier to doing business with ITD. Unprompted, less than 1 percent of construction firms and 2 percent of engineering firms brought up this issue. Minority-owned construction firms were more likely than all other firms to state this as an issue.

In addition to insurance and bonding requirements, past experience was the most referenced qualification in this category. Specific comments included "firms need to have experience to get jobs, but need to do jobs to get experience. It's a Catch-22." and "it's difficult to get contracts because past experiences is needed." One respondent noted the difficult requirements associated with increasing a firm's public work license.

Some respondents specifically commented on difficulties for small businesses: "I think that for a lot of small companies meeting the technical qualifications is difficult, said one respondent. "Small firms often get passed over by ITD despite their wealth of qualifications. The contracting process, even for small jobs, requires experience with much bigger jobs."

Some respondents stated that ITD's financial requirements made it difficult to obtain work. "ITD has stricter financial requirements than many other governmental organizations," said one respondent. On why his/her firm no longer works for ITD, one small business owner stated, "the reason I stopped was for sole proprietorships they require impossible accounting certification. The reason it's impossible is because I have no wage, and they want me to come up with a wage range, which as a small business owner, I cannot do."

Difficulties bidding and obtaining information. About 8 percent of transportation construction firms and 9 percent of engineering firms commented on the difficulty in obtaining information on bidding opportunities and bidding on ITD projects. Minority-owned engineering firms were much more likely than any other firms to identify this as a problem. In the construction industry, majority-owned firms were the most likely to bring up this issue.

The majority of respondents in this category commented on difficulties in obtaining information on upcoming projects and how to bid. Common responses included "It's hard to find out when bids are open or available to be made"; and "I don't really know where to go or how the bidding processes work." One respondent stated "I believe ITD needs a better way to communicate new projects with potential bidders, so bidders have more time to scope out projects and create informed bids."

Some respondents commented on the bidding process itself. "It's been difficult for us to get work with ITD because the system is too confusing. Last year, we made three trips to Boise to figure out the system, but that's costly." One business owner stated, "they [ITD] need to provide additional lead time for procurement." Another respondent stated that the online bidding process is "too confusing."

Many respondents had suggestions for ITD to enhance outreach and simplify processes. Several suggested that notification of upcoming projects should be sent to all available firms via email or direct mail. Others said ITD "need[s] a better website to announce jobs coming up" and "ITD should make plans for various projects available free online." One respondent suggested "seminars to explain the bidding process." Many indicated they would like to be put on a list to be notified of upcoming projects.

Barriers for small firms. Five and 7 percent of transportation construction and engineering firms, respectively, identified barriers for small firms in the local marketplace and in working with ITD. In both industries, minority-owned firms were much more likely to bring this up as an issue.

Comments related to difficulties for small firms included a general inability to compete with larger businesses. Respondents in this category attributed difficulties to lower overhead, better marketing and established relationships and general accessibility to resources associated with larger firms. Many respondents stated that it is hard to "get their foot in the door as a small business." Common responses included "we are struggling to compete with larger firms" and "It's tough, there are so many big outfits that tend to outbid us." One respondent stated, "The industry is more and more about big business rather than smaller firms. It takes more money now to get into the business."

Some comments were specific to ITD and their tendency to award only large contracts. For example, "IDT seems to prefer to have large firms as prime contractors, it's discouraging for a small company." One respondent stated, "a lot of 'Mom and Pop' type businesses get overlooked, because we don't know the right people". Other common responses were "it is difficult to contract with ITD, because its process is made for much larger construction contracts," and "Most projects are set big , small companies can't bid." One respondent stated, "If you aren't women-owned or minority-owned, you're competing with large firms with little government help. ITD doesn't have enough personnel to divide up work, so they give it to huge firms instead of small local businesses."

Award based on factors others than cost. About 1 percent of transportation construction firms and 2 percent of transportation engineering firms mentioned that awarding contracts based on the lowest bid makes it difficult to do business or work with ITD. Women-owned engineering firms were more likely than any other firms to bring up this issue. In the construction industry, only majority-owned firms stated this as a problem.

Respondents who brought this up as an issue feel that awards should be based more on qualifications rather than simply the lowest bid. In reference to the low bid rule, one respondent said "The state chooses to work with a contractor by the cost and it affects the quality of work." Another stated, "ITD should use qualification-based selection."

Other unfair practices and difficulties working with ITD. A relatively larger number of firms identified other unfair practices and difficulties working with ITD as a barrier to doing business. Unprompted, about 6 percent of transportation construction firms and 9 percent of transportation engineering firms mentioned this as an issue. Across both industries, minority-owned firms were much more likely than any other firms to identify unfair practices and other difficulties.

Many of the unfair practices identified were related to the tendency of ITD and large contractors to award projects to the same firms. Common responses included: "ITD has a tendency to offer preference to older companies," and "we are finding it difficult to break into the 'good ole boy' network of contractors in Idaho."

Other comments focused on difficulties for DBE firms including, "DBE goals should be set higher, it's hard for smaller DBE firms to get work," and "As a women-owned, it is very difficult. (We) have been turned down even with the lowest bid. One respondent stated, "ITD advertises for DBE firms, but (I'm) not sure DBE firms actually get used."

Many respondents feel that DBE firms are given an unfair advantage. One respondent stated, "I think the Caucasian male misses out on bidding opportunities available—they discriminate against the white male." Another said, its "difficult because I'm not a minority- or women-owned business."

Some respondents find it difficult to work with ITD and ITD employees. One business owner stated, "It's hard to work for ITD because the inspectors don't know what they're doing." Another said, "Working with state employees is difficult—there's friction." One respondent thinks "ITD should follow their own rules."

Difficult to certify as a DBE. Overall, few transportation construction and engineering firms stated it was difficult to certify as DBE. No minority-owned firms mentioned this issue. Difficulties in being certified included excessive paperwork and unfair practices.

No problems. Four and 5 percent of transportation construction and engineering firms stated they have no problems doing business in the local marketplace or working with ITD. Women-owned construction firms and majority-owned engineering firms were more likely to say they have no problems than any other firms.

Other comments. Overall, 4 to 5 percent of surveyed construction and engineering firms had other comments related to doing business in the local marketplace and working with ITD, respectively. These comments have no specific patterns.

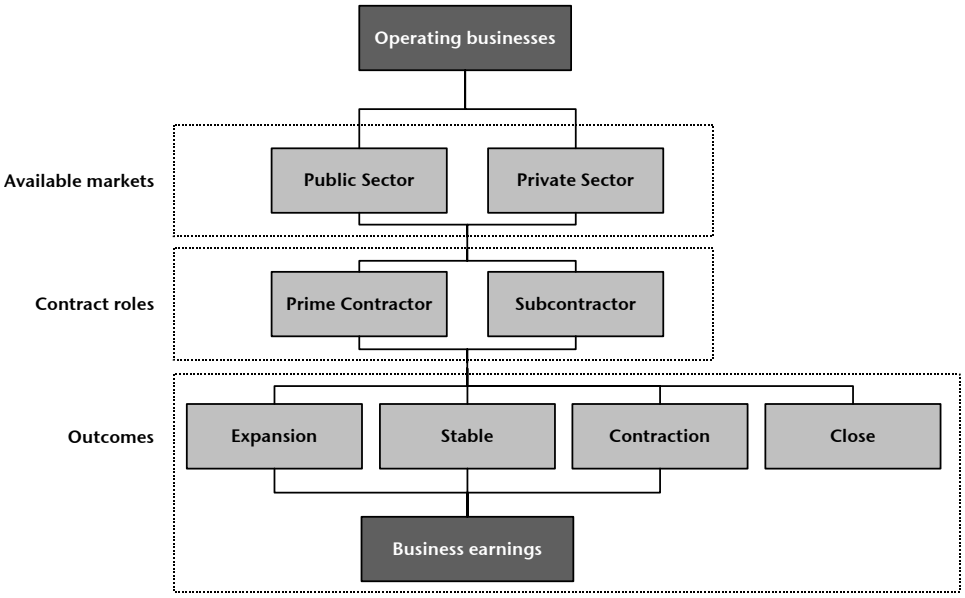
Relative Success of MBE/WBEs

BBC also examined the relative success of MBEs and WBEs once they are operating. The study team examined whether business opportunities and markets for minority- and women-owned transportation construction and engineering firms differ from majority-owned firms. The study team then researched outcomes for MBEs, WBEs and majority-owned businesses, including:

- Businesses discontinuing operations;
- Businesses expanding or contracting;
- Business earnings; and
- Size distribution of gross revenue.

This analysis examines whether some of the patterns found by Congress concerning disparities in outcomes for minority- and women-owned businesses are found in Idaho. Figure F-19 provides a framework for the analysis.

Figure F-19.
Business success



Source: BBC Research and Consulting, 2007.

Businesses Discontinuing Operations

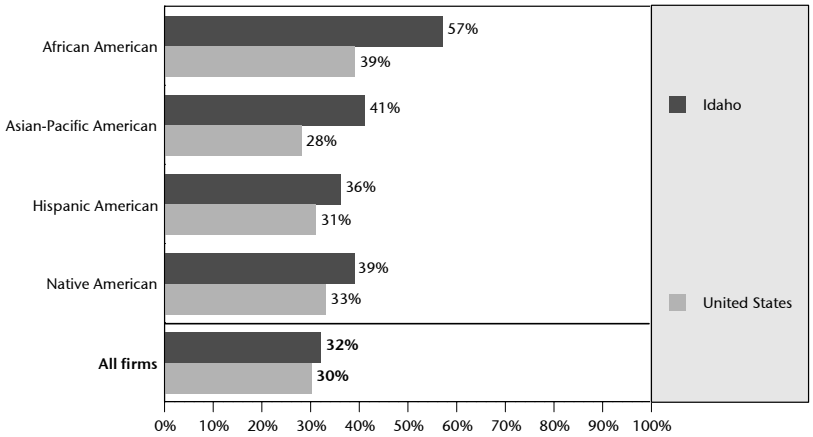
Rates of business closures in Idaho. BBC explored data sources that might indicate whether MBEs were more likely to discontinue operations than other firms. Using special data from the 1997 Survey of Minority- and Women-Owned Business Enterprises (SMOBE) provided by the U.S. Census Bureau, the U.S. Small Business Administration reports information regarding employer firm survival rates of minority business groups by state between 1997 and 2001 across all industrial sectors ("employer firms" are firms with paid employees beyond the business owner and family members).

Figure F-20 shows that minority firms in Idaho have much higher rates of closure than all firms throughout the state. Black-owned firms were particularly prone to closure in Idaho with 57 percent of black-owned firms closing over the 4-year period versus 32 percent of all firms. Asian American-owned firms also experienced a higher closure rate at 41 versus 32 percent. Rates of closure among minority firms are higher in Idaho than they are nationwide, and they are substantially higher for African American- and Asian American-owned firms.

Figure F-20. Idaho vs. National Minority Employer Firm Closure Rates, 1997-2001

Source:

U.S. Census Bureau and Lowrey, Ying. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy.



Rates of business closures for construction firms. The data shown in Figure F-20 relate to all firms in Idaho, however the patterns indicated for closure rates by minority group appear to extend to construction firms based on national data. Figure F-21 demonstrates that the higher closure rate for African American-owned firms was also true when only examining construction firms. Closure rates also appeared to be higher for construction firms owned by Native Americans and for Asian Americans. (No statistics were available for engineering firms.)

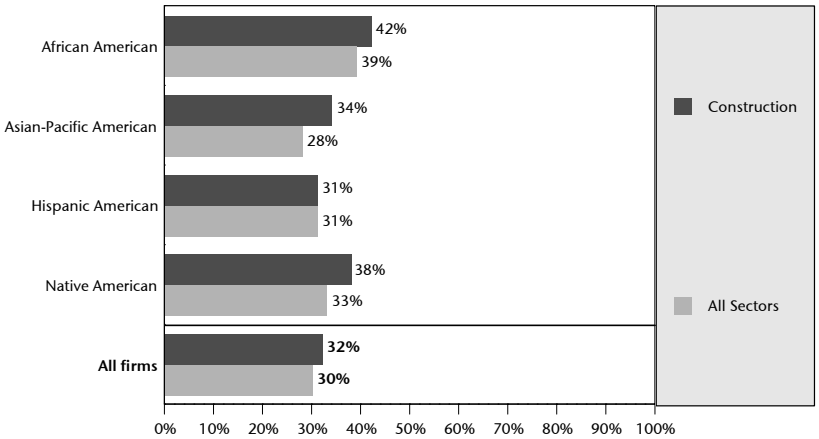
Figure F-21. Comparative National Rates of Firm Closure, 1997-2001

Note:

All statistics were significant at the 0.05 level.

Source:

U.S. Census Bureau 1997 Survey of Minority- and Women-Owned Business Enterprises (SMOBE) and U.S. Small Business Administration.



Successful versus unsuccessful closures. Not all firm closures can be interpreted as indicating "failure" of the business. Reasons that a firm may close "successfully" include retirement or the emergence of a more profitable business alternative.

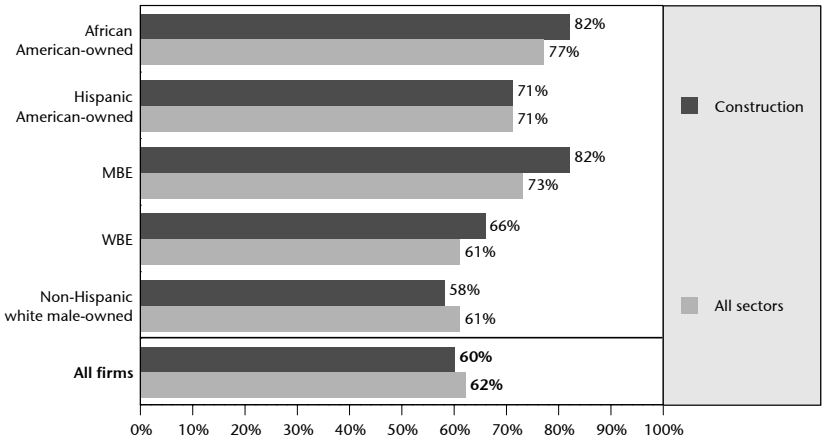
To date, the 1992 Characteristics of Business Owners Survey is the only dataset released by the Census Bureau that allows classification of firm closures into successful and unsuccessful subsets.[84] The CBO survey asked owners of businesses that had closed since 1992 the question "Which item below describes the status of this business at the time the decision was made to cease operations?" Only the responses "successful" and "unsuccessful" were permitted.

A firm reported to be unsuccessful at time of closure is understood to be a firm failure. Figure F-22 shows comparative data for the proportion of firms closing between 1992 and 1996 that failed.[85]

Figure F-22. Comparative National "Failure" Rates of Closed Firms, 1992-1996

Source:

U.S. Census Bureau, 1996 Characteristics of Business Owners Survey (CBO).



According to the CBO, closed African American-owned construction firms were the most likely to report "unsuccessful" when asked about the status of the business when it closed. About 82 percent of the African Americans who had owned and closed construction firms reported an unsuccessful business (77 percent for all African American business owners who had closed businesses). Only 58 percent of non-minority men who had owned construction businesses said that their business was unsuccessful at time of closing, a substantial disparity. The differences in status of a construction firm at closing were also large between other minorities (Asian Americans and Native Americans) and non-minority men.

[84] Data from the 1997 and 2002 Economic Census and CBOs do not include statistics on successful and unsuccessful closure. To date, the 1992 CBO is the only U.S. Census data set that does.

[85] All CBO data should be interpreted with caution due to a non-response bias. Firms that did not respond to the survey cannot be assumed to have the same characteristics of ones that did. This report does not include CBO data on firm closure because firms not responding to the survey were found to be much more likely to have closed than ones that did. This study does include CBO data on firm success because there is no compelling reason to believe that closed firms responding to the survey would have reported different rates of success/failure than those closed firms that did not respond to the survey. See Headd, Brian. U.S. Small Business Administration, Office of Advocacy. 2000. "Business Success: Factors leading to surviving and closing successfully."

Differences in the successful versus unsuccessful closing of construction firms were only somewhat narrower for other groups:

- About 71 percent of Hispanic Americans who had owned and closed construction businesses reported the business to be unsuccessful at time of closing, higher than the results for non-minority men.
- About 66 percent of women who had owned and closed construction firms reported the business to be unsuccessful, somewhat higher than the 58 percent for non-minority men.

Combining data on firm closure in Idaho with reported success of closed firms nationwide suggests that minority firms are more prone to "failure" than their non-minority counterparts. Data indicate that minority firms are more likely to close than all firms in Idaho, and nationwide data suggests that they are more likely to do so unsuccessfully. This is especially true for African American-owned firms, which had by far the highest rates of firm closure in Idaho at 57 percent, and the highest rate of "failure" among closed businesses nationwide.

Reasons for differences in failure rates. Several researchers have offered explanations for higher rates of successful closure among non-DBE firms and higher rates of failure among DBE firms nationwide:

- Minority business failure is largely due to barriers in access to capital. A regression analysis identifies initial capitalization as the most significant factor in determining firm viability. Because African American-owned businesses secure smaller amounts of debt equity in the form of loans, they are more inclined to fail. Difficulty in accessing capital is found to be particularly acute for minority firms in the construction industry.[86]
- Prior work experience in a family member's business and prior work experience in a similar business are found to be strong determinants of business viability. Because African American business owners are much less likely to have family business experience and/or similar business experience, their firms are less likely to survive.[87]
- Level of education is found to be a strong determinant in business survival. It explains a significant portion of the gap in firm closure rates between African Americans and non-minority firms.[88]
- Non-minority business owners have the opportunity to pursue a much wider array of business activities, which increases their likelihood of closing successful businesses to pursue more profitable business alternatives. Minority business owners, especially those who do not speak English, have greatly limited employment options and are less likely to close a successful business.[89]
- The high rate of survival of Asian American-owned firms compared to other minority-owned firms is determined by their possession of greater initial capital and the generally higher levels of education of Asian Americans.[90]

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[86] Bates, Timothy and Grown, Caren, 1991. "Commercial Lending Practices and the Development of Black-Owned Construction Companies." Center for Economic Studies, U.S. Census Bureau.

[87] Robb, A. and Fairlie, R. "Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital." 2006

[88] Ibid.

[89] Bates, Timothy. 2002. "Analysis of Young Small Firms That Have Closed: Delineating Successful from Unsuccessful Closures." Center for Economic Studies, U.S. Census Bureau.

[90] Bates, Timothy. 1993. "Determinants of Survival and Profitability Among Asian Immigrant-Owned Small Businesses." Center for Economic Studies, U.S. Census Bureau.

Summary. Available data suggest that closure rates for minority-owned firms are higher than other firms. Furthermore, national data indicates that closure is more likely to be a result of business failure for minority firms than for non-minority firms. African American business owners in Idaho are much more likely to close their businesses, and those businesses are more likely to be unsuccessful.

Comparative Rates of Expansion and Contraction

The comparative rates of expansion and contraction of MBE and non-MBE firms is also a useful indicator of the relative success of minority-owned businesses.

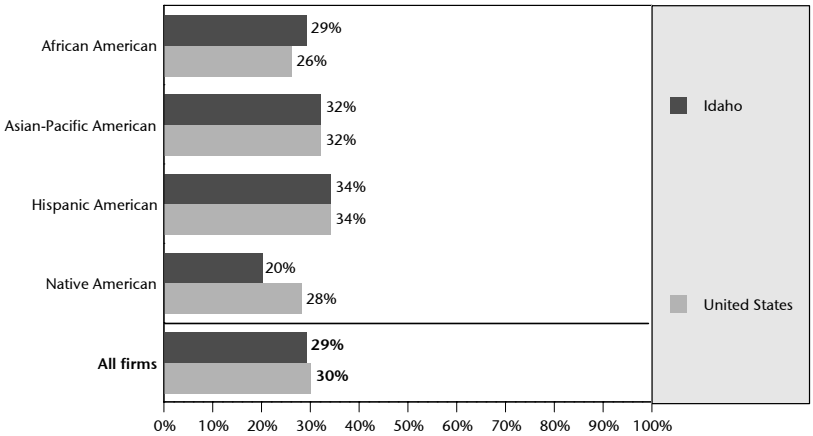
Expansion. The U.S. Small Business Administration's 2005 study of minority business dynamics from 1997-2001 also examines rates of expansion and contraction for minority-owned firms in Idaho that had paid employees at the starting time period for the analysis ("employer firms").

Figure F-23 compares the percentage of firms that increased their total employment between 1997 and 2001 in Idaho and nationwide. Except for Native American-owned firms, minority-owned firms fared well in comparison to all firms, experiencing similar or higher rates of business expansion. The rate of business expansion was highest among Hispanic-owned firms both in Idaho and nationwide.

Figure F-23. Percentage of employer firms that expanded employment, 1997-2001, Idaho and the U.S.

Source:

U.S. Census Bureau 1997 Survey of Minority- and Women-Owned Business Enterprises (SMOBE) and U.S. Small Business Administration.

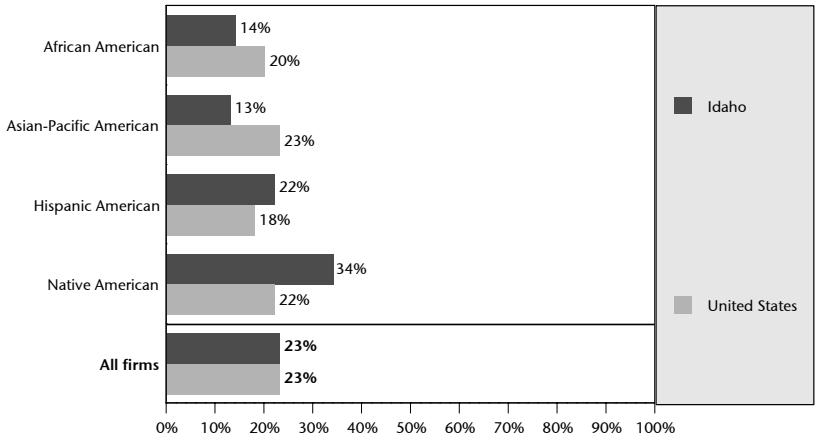


Contraction. Figure F-24 on the following page examines the percentage of firms that reduced their employment between 1997 and 2001. As with the analysis of expanding firms, these data track activity of employer firms beginning in 1997. Contraction data from the SBA study should be interpreted with caution as it tracks firms decreasing in employment but not those that discontinued businesses entirely.

Figure F-24. Percentage of firms that contracted employment, 1997-2001, Idaho and the U.S.

Source:

U.S. Census Bureau 1997 Survey of Minority- and Women-Owned Business Enterprises (SMOBE) and U.S. Small Business Administration.



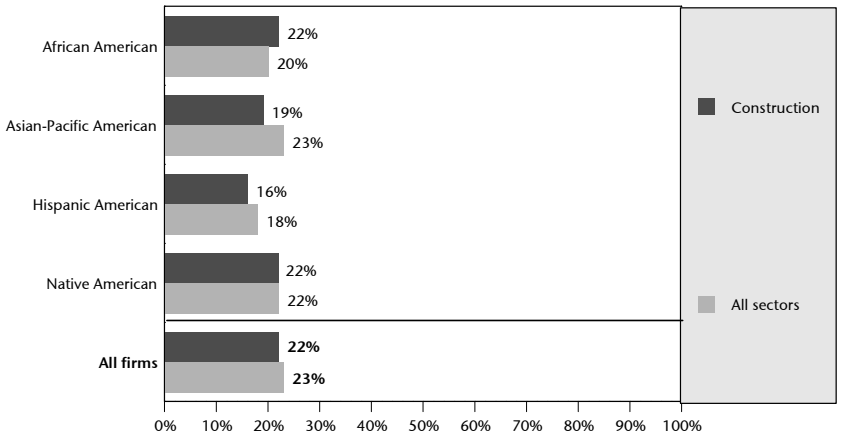
According to the SBA study, minority firms (except for Native American-owned firms) were less likely to decrease employment than all firms. African American- and Asian/Pacific Islander-owned firms were much less likely to decrease employment; however, they are much more likely to have discontinued business altogether.

The above results pertain to all firms in Idaho. The SBA study did not report results for the Idaho construction industry. However, minority-owned construction firms were not more likely to have contracted compared with all construction firms across the nation. Asian American- and Hispanic-owned construction firms had lower rates of contraction than all construction firms in the United States did, and they were about as likely to close as all construction firms were. African American construction firms were less likely to contract but significantly more likely to close. Figure F-25 shows these results.

Figure F-25. Comparative Rates of Employer Firm Contraction, 1997-2001

Source:

U.S. Census Bureau 1997 Survey of Minority- and Women-Owned Business Enterprises (SMOBE) and U.S. Small Business Administration.



Summary. Between 1997 and 2001, the SBA study found that 29 percent of Idaho employer firms had expanded employment, 23 percent had contracted employment and 32 percent had closed.

- African American-owned firms were as likely to expand and less likely to contract, but much more likely to close as all firms in the state.
- Asian American-owned firms were more likely to expand and less likely to contract, but more likely to close as all firms in the state.

- Native American-owned firms were more likely to close, much less likely to expand and much more likely to contract and close as all firms in the state.
- Hispanic American-owned firms were more likely to expand, about as likely to contract, and somewhat more likely to close as all firms in the state.

Data indicate that some minority firms in Idaho have lagged behind their non-minority counterparts in terms of firm survival and growth. African American-owned firms have a remarkably high rate of business closure, and Native American-owned firms were very likely to have contracted or closed. Asian American-owned firms and Hispanic American-owned firms fared better in Idaho, experiencing higher closure rates but lower rates of contraction.

Business Earnings

The BBC study team examined business earnings of firms in Idaho from U.S. Census data and from responses to the study team's 2006 Availability Survey.

Analysis of 2000 Census data. BBC analyzed sample means from the 2000 Decennial Census Five Percent Public Use Microdata to evaluate earnings across the construction and engineering industries.[91] The sample used for this analysis contains incorporated and unincorporated business owners between ages 16 and 64 that reported positive earnings.

Figure F-26 presents earnings for business owners in the construction industry. In Idaho, minority-owned firms report lower earnings than non-Hispanic white-owned firms do. Disparities are also apparent by gender: female-owned construction businesses on average earn slightly above one-half of the average earnings of male-owned firms. Average earnings in the construction industry in Idaho are lower than national averages, and show similar trends across gender, race and ethnicity.

Figure F-26.
Mean annual business owner earnings, construction industry

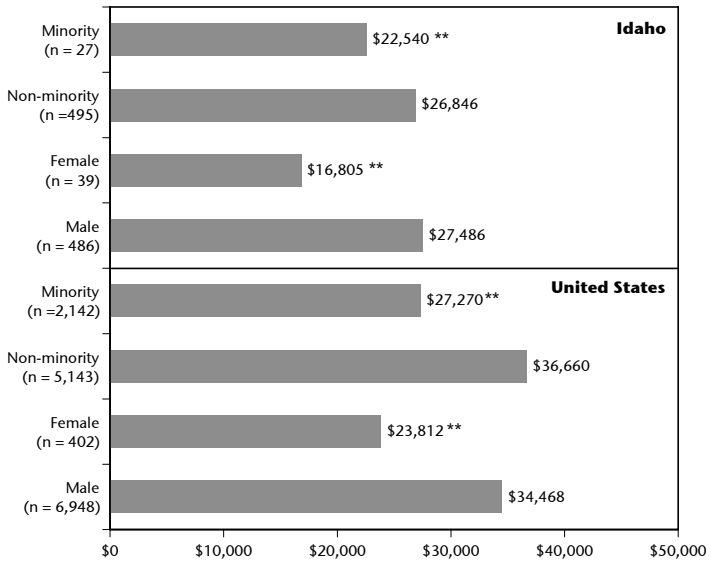
Note:

Universe is business owners between ages 16 and 64 that reported positive earnings.

** = Statistically significant at the 95% confidence level.

Source:

2000 Decennial Census Five Percent Public Use Microdata Samples and BBC Research & Consulting.



[91] See Appendix G for additional information on the sample, specifications and caveats.

BBC also examined earnings among Idaho firms in the engineering industry. However, sample sizes were too small to generate robust conclusions. A casual analysis reveals that earnings in the engineering industry are similar among minority-owned firms and non-minority-owned firms in Idaho, different from national trends, which indicate that minority-owned engineering firms earn less than other firms do. Women-owned engineering firms reported significantly lower average earnings than male-owned firms in Idaho did, which is consistent with findings on women-owned engineering firms across the nation that reported earning less than male-owned firms.

Appendix H contains the results of multivariate statistical models that explored that the study team conducted to explore whether the disparities in business earnings reported here remained for members of certain minority groups and woman after controlling for neutral explanatory factors, such as the owner's age and education level. These results are reported in Figures H-4, H-5 and H-6.

Gross revenue for firms in the 2007 Availability Survey. BBC analyzed the gross revenue reported by firms working in the Idaho transportation construction industry (from all sources, not just ITD contracts) based on information reported in the 2007 Availability Survey. As shown below, about 55 percent of minority-owned firms in the Idaho transportation construction industry have gross revenue of less than $1 million.

Figure F-27. Distribution of firms by gross revenue net class in 2006, transportation construction industry

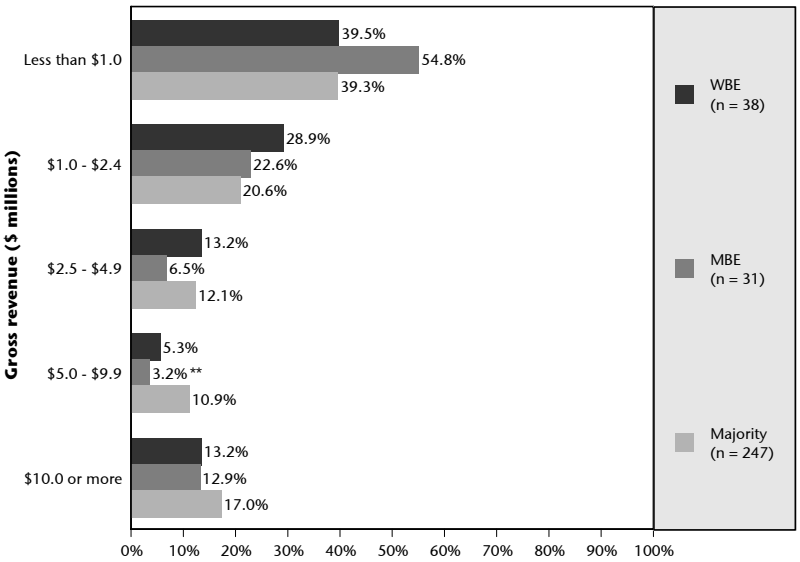
Note:

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research and Consulting from 2007 Availability Survey.

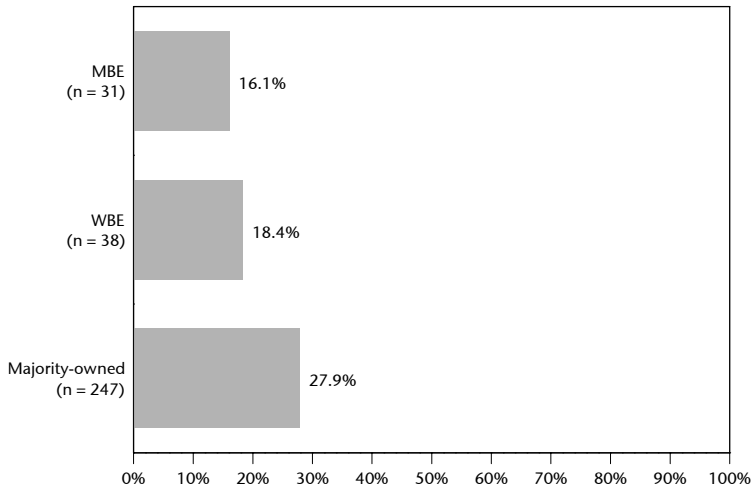


Relatively few MBEs and WBEs in the Idaho transportation construction industry have gross revenue of $5 million or more.

Figure F-28.
Percentage of transportation construction industry firms with $5 million or more gross revenues for all Idaho locations in 2006

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research and Consulting from 2007 Availability Survey.

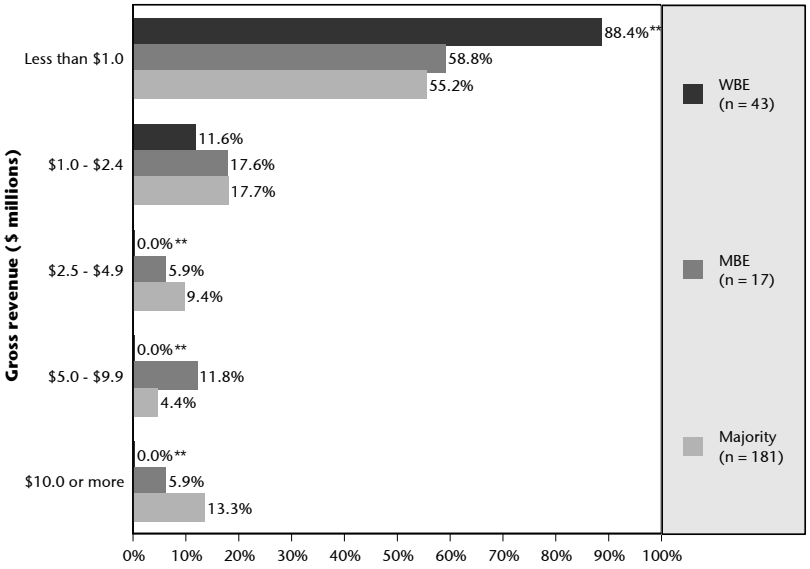


Similarly, majority-owned firms in the Idaho transportation engineering industry are more likely to be in the highest gross revenue classes than WBEs. A very large share of white women-owned firms reported gross revenue of less than $1 million.

Figure F-29.
Distribution of firms by gross revenue class in 2006, transportation engineering industry

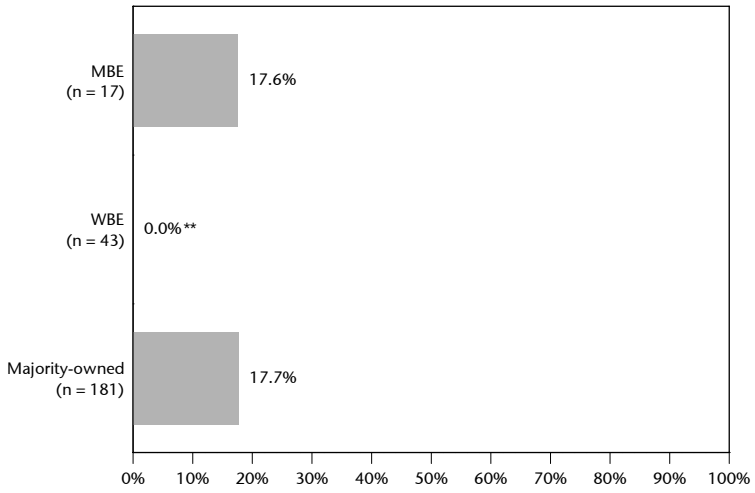
Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research and Consulting from 2007 Availability Survey.



None of white women-owned engineering-related firms interviewed in the 2007 Availability Survey reported gross revenue of $5 million or more.

Figure F-30.
Percentage of transportation engineering industry firms with $5 million or more gross revenue for all Idaho locations in 2006



Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research and Consulting from 2007 Availability Survey.

Summary. Minority and female owners of construction firms in Idaho had lower business earnings than non-minority and male business owners based on 2000 Census data. From the 2007 Availability Survey, minority- and women-owned construction firms in the Idaho transportation contracting industry had lower revenues, on average, than majority-owned firms. Relatively few MBE/WBEs reported gross revenue of $5 million or more for 2006. This is also true for women-owned engineering-related firms in the Idaho transportation contracting industry.

APPENDIX G.
Analysis of U.S. Census of Population Data

The study team utilized U.S. Census data from the 1980, 1990 and 2000 U.S. Census 5% Public Use Micro-samples (PUMS data) to analyze:

- Demographic characteristics of workers in construction and engineering, including related occupations;
- Educational attainment; and
- Self-employment (business ownership).

PUMS offers several features ideal to the analyses reported in this study, including historical cross-sectional data; stratified national and state-level samples; large sample sizes, even for subsets of the population (e.g., ethnic and occupational groups); and robust variables for statistically significant estimates.

BBC obtained selected Census data via the Minnesota Population Center's Integrated Public Use Micro-data Series (IPUMS). The IPUMS program provides access to customized, accurate data extracts. These data are available at the IPUMS web site.[1]

The study area for this report includes the state of Idaho and Spokane County in Washington State.[2]

Data for 2000

The 2000 U.S. sample contains 14,081,466 observations. Applying the Census person-level population weights, this sample represents 281,421,906 people in the United States. The 2000 Idaho and Spokane County sub-sample contains 84,371 individual observations, weighted to represent 1,712,391 people.

BBC utilizes the STATEFIP and PUMA variables to delineate the local study area. For the Idaho and Spokane County sub-set, STATEFIP is equal to 16 (Idaho), and PUMA is 500, 601 or 602, in conjunction with STATEFIP equal to 53 (Washington State).

[1] Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. *Integrated Public Use Microdata Series: Version 3.0* [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2004. http://usa.ipums.org/usa/

[2] Census 2000 data are geographically classified by Public Use Microdata Areas (PUMAs). Due to limitations as a result of this classification structure, BBC was unable to include northern areas of Utah in the local study area.

Categorizing individual race/ethnicity. To define race/ethnicity for the 2000 Census data set, BBC used the IPUMS race variable with the greatest level of detail and categorized each race type into one of seven groups:

- Non-Hispanic white;
- Hispanic American;
- African-American;
- Asian-Pacific American;
- Subcontinent Asian American;
- Native American; and
- Other minority (unspecified).

An individual is considered "non-Hispanic white" if not Hispanic and not in combination with any other race group. Any self-identified Hispanic individuals are considered Hispanic American, regardless of any other race group identification.

For the five other race groups, an individual's race/ethnicity is categorized by the first (or only) race group identified in each possible race-type combination. BBC uses a rank ordering methodology which complements the 2000 Census data dictionary rank ordering. African-American is first, followed by Native American, then Asian-Pacific American and finally Subcontinent Asian American. For example, if an individual identified "Korean," this person belongs in the Asian-Pacific American category, whereas, if the individual identified "Korean" in combination with "Black," the individual is considered African-American. Hispanic identification overrules any other race group identification.

- The Asian-Pacific American category includes the following race/ethnic groups: Cambodian, Chamorro, Chinese, Filipino, Guamanian, Hmong, Indonesian, Japanese, Korean, Laotian, Malaysian, Samoan, Taiwanese, Thai, Tongan, and Vietnamese. This category also includes other Polynesian, Melanesian and Micronesian races as well as individuals identified as Pacific Islanders.
- The Subcontinent Asian American category includes these race groups: Asian Indian (Hindu), Bangladeshi, Pakistani, and Sri Lankan. Any individuals identified as "Asian," but not clearly categorized as Asian-Pacific versus Subcontinent Asian, are put into the Asian-Pacific group. (Overall, nine in ten Asians counted in the 2000 Census in California were Asian-Pacific Americans.)
- American Indian, Alaskan Native, Hawaiian and Latin American Indian groups are considered Native American.
- If an individual is identified with any of the above groups and an "other race" group, the individual is categorized into the known category. Individuals identified as "Other race" or "White and other race" are categorized as "Other minority."

The exception to the rules listed above applies to individuals who are Asian-Pacific American in combination with Hawaiian. An individual identified as Hawaiian alone is considered Native American. Individuals who are a combination of Native American and Asian-Pacific are considered Native American in all cases except those identified as Hawaiian Native Americans. These individuals are considered primarily Asian-Pacific.

Business ownership. BBC uses the Census "class of worker" variable (CLASSWKD) to determine self-employment. Individuals are classified into eight categories:

- Self-employed for a non-incorporated business,
- Self-employed for an incorporated business,
- Wage or salary employee for a private firm,
- Wage or salary employee for a non-profit organization,
- Employee of the Federal government,
- Employee of a State government,
- Employee of a local government, or
- Unpaid family worker.

BBC included as business owners individuals who reported self-employment, either for an incorporated or a non-incorporated business.

Defining selected industry sectors. The construction sector is defined using the 2000 Census code for the industry, 077, which is equivalent to the 1997 NAICS code 23. The Architectural, Engineering and Related Services industry is Census code 729, corresponding to 1997 NAICS code 5413.

Relevant engineering occupational titles. When referring to engineering as an occupation, BBC included civil (136), environmental (142), mining and geological engineers (150). The Census codes for these occupational titles (in parentheses) tie to Standard Occupational Classification (SOC) codes 17-2051, 17-2081 and 17-2151, respectively.

Education variables. BBC used the variable denoting the highest level of educational attainment to classify individuals into the following four categories: less than high school, high school diploma, some college and at least a bachelor's degree.

Definition of workers. The universe for the class of worker, industry and occupation variables includes individuals over the age of 16 who reported last working within the five years preceding the Census survey.

Comparisons Over Time

BBC utilized IPUMS data from the 1980, 1990 and 2000 Censuses to analyze changes in worker demographics, educational attainment and business ownership over time.

The 1990 PUMA variable differs from the 2000 version of the same variable. For the Idaho and Spokane County sub-set, STATEFIP is equal to 16 (Idaho), and PUMA is 500 or 600, in conjunction with STATEFIP equal to 53 (Washington State).

For the 1980 data, BBC utilizes the county group variable, CNTYGP98, instead of the PUMA variable used for the 1990 and 2000 data sets. For the Idaho and Spokane County sub-set, STATEFIP is equal to 16 (Idaho), and CNTYGP98 is 5 or 6 in conjunction with STATEFIP equal to 53 (Washington State).

Changes in race/ethnicity categories between censuses. Figure G-1 lists the seven BBC-defined race/ethnic categories with the corresponding 2000, 1990 and 1980 Census race groups. The comparability of specific race/ethnic categories is relatively straightforward between 1980 and 1990. However, the U.S. Bureau of the Census introduced a combination of race types in 2000. Individuals could select multiple races when responding to the 2000 Census questionnaire.

For example, an individual who is primarily white, yet with one quarter of Native American ancestry, could choose the "White and American Indian/Alaska Native" race group in 2000. However, if the same individual must choose a single race, as in prior years, the choice may either be "white" or "American Indian/Alaska Native." The choice depends on unknowable factors including how strongly the individual identifies with his or her Native heritage. In addition, the data analyst does not have information about the proportions of individual ancestry, and will only know that the ancestry is mixed. The variability introduced by allowing multiple race selection complicates direct comparisons between race data from the 2000 Census and previous censuses. Even so, 98 percent of survey respondents in 2000 indicated a single race.[3]

Although there are fewer race types in the 1980 data, the 1990 race types fall into 1980 categories. However, by using two categories of Asian individuals, BBC loses some accuracy when comparing Asian individuals between 1980 and 1990: individuals identified as Bangladeshi, Pakistani and Sri Lankan are categorized as "Subcontinent Asian American" in 1990, yet these race groups are not included in 1980. In 1980, the same individuals would be included in the "Other Asian" race type, and therefore categorized by BBC as "Asian-Pacific American." Together, these three groups accounted for 0.04 percent of the 1990 sample.

[3] Grieco, Elizabeth M. & Rachel C. Cassidy. "Overview of Race and Hispanic Origin," *Census 2000 Brief*, March 2001, page 3.

Figure G-1.
BBC race/ethnic categories compared with
Census race and Hispanic Origin survey questions, 1980-2000

BBC-defined race/ethnic categories	2000 Census	1990 Census	1980 Census
African-American	**Hispanic origin:** no **Race:** Black/Negro alone or in combination with any other non-Hispanic group	**Hispanic origin:** no **Race:** Black/Negro	**Hispanic origin:** no **Race:** Black/Negro
Asian-Pacific American	**Hispanic origin:** no **Race:** Chinese, Taiwanese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Hmong, Laotian, Thai, Indonesian, Malaysian, Samoan, Tongan, Polynesian, Guamanian/Chamorro, Pacific Islander, Micronesian, Melanesian, or other Asian, either alone or in combination with any non-Hispanic, non-Black, or non-Native American groups. *Does include Asian-Pacific in combination with Hawaiian.*	**Hispanic origin:** no **Race:** Chinese, Taiwanese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Hmong, Laotian, Thai, Burmese, Indonesian, Malaysian, Okinawan, Samoan, Tahitian, Tongan, Guamanian/Chamorro, Northern Mariana Islander, Palauan, Fijian, Pacific Islander, Micronesian, Melanesian, other Polynesian, or other Asian	**Hispanic origin:** no **Race:** Chinese, Japanese, Filipino, Korean, Vietnamese, Pacific Islander or other Asian
Subcontinent Asian American	**Hispanic origin:** no **Race:** Asian Indian, Bangladeshi, Pakistani or Sri Lankan, alone or in combination with white or other groups only	**Hispanic origin:** no **Race:** Asian Indian, Bangladeshi, Pakistani or Sri Lankan	**Hispanic origin:** no **Race:** Asian Indian
Hispanic American	**Hispanic origin:** yes **Race:** any race groups, alone or in combination with other groups	**Hispanic origin:** yes **Race:** any	**Hispanic origin:** yes **Race:** any, - OR - **Hispanic origin: no** **Race:** Spanish
Native American	**Hispanic origin:** no **Race:** American Indian or Alaskan Native tribe identified, or Hawaiian, alone or in combination with any non-Hispanic, non-Black group. *Does not include Asian-Pacific in combination with Hawaiian.*	**Hispanic origin:** no **Race:** American Indian or Alaskan Native tribe identified, or Hawaiian	**Hispanic origin:** no **Race:** American Indian/Alaska Native or Hawaiian
Other minority group	**Hispanic origin:** no **Race:** other race alone or in combination with white only	**Hispanic origin:** no **Race:** other race	**Hispanic origin:** no **Race:** other race
Non-Hispanic white	**Hispanic origin:** no **Race:** white alone	**Hispanic origin:** no **Race:** white	**Hispanic origin:** no **Race:** white

Source: BBC Research and Consulting from the IPUMS program: http://usa.ipums.org/usa/.

Business ownership. BBC uses the Census "class of worker" variable (CLASSWKD) to determine self-employment. This variable is the same for 1980, 1990 and 2000.

Changes in industry codes between censuses. The Construction sector is coded as "077" in the 2000 Census, and "060" in the 1990 and 1980 Censuses. The 2000 Census includes the "Architectural, Engineering and Related Services" industry as code "729." In 1980 and 1990, the code is "882" for "Engineering, Architectural and Surveying Services."

Changes in occupational codes between censuses. Occupational titles and codes vary between censuses. BBC makes the following adjustments:

- **Codes used to determine the occupational (versus industry) category of engineer.** The 1980 and 1990 Censuses do not include specific categories for environmental or geological engineers, so these are omitted when comparing populations over time by engineering occupation. Instead, BBC focuses on civil engineers, coded as "136" in 2000, or "53" in 1980 and 1990.
- **Codes used to determine occupations within the construction industry.** Figure G-2 contains the occupational code crosswalk and all job descriptions.

Changes in educational variables between censuses. The 1990 and 2000 Censuses provide the same educational attainment variables, which denote the highest degree achieved, but the 1980 Census uses a highest-grade completed variable. In order to compare educational attainment from 1980 to 1990 or 2000, BBC made the following assumptions:

- An individual has less than a high school diploma the individual is attending 12th grade or at any lower grade level.
- An individual who completed 12th grade is considered a high school graduate.
- An individual who completed at least 12th grade, but less than completion of four years of college is categorized under "some college."
- An individual who completed at least four years of college is categorized as receiving at least a bachelor's degree.

Figure G-2.
Occupational crosswalk for 1980 and 2000 IPUMS data

Census 2000 Occupational title and code	Census 1980 Occupational title and code	Job description for 2000 titles
Construction laborers 626	Construction laborers 869	Perform tasks involving physical labor at building, highway, and heavy construction projects, tunnel and shaft excavations, and demolition sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, clean up rubble and debris, and remove asbestos, lead, and other hazardous waste materials. May assist other craft workers. Exclude construction laborers who primarily assist a particular craft worker, and classify them under "Helpers, Construction Trades."
Cement masons, concrete finishers and terrazzo workers 625	Concrete and terrazzo finishers 588	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs or gutters; patch voids; use saws to cut expansion joints. Terrazzo workers apply a mixture of cement, sand, pigment or marble chips to floors, stairways, and cabinet fixtures.
Iron and steel workers, including reinforcing iron and rebar workers 653	Structural metal workers 597	*Iron and steel workers* raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. *Reinforcing iron and rebar workers* position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters.
Electricians 635	Electricians and apprentices 575 & 576	Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with relevant codes. May install or service street lights, intercom systems, or electrical control systems. Exclude "Security and Fire Alarm Systems Installers." The 2000 category includes electrician apprentices.
Paving, surfacing and tamping equipment operators 630	Paving, surfacing and tamping equipment operators 594	Operate equipment used for applying concrete, asphalt, or other materials to road beds, parking lots, or airport runways and taxiways, or equipment used for tamping gravel, dirt, or other materials. Include concrete and asphalt paving machine operators, form tampers, tamping machine operators, and stone spreader operators.
Miscellaneous construction equipment operators, including pile-driver operators 632	Grader, dozer and scraper operators 855	Operate one or several types of power construction equipment, such as motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors, or front-end loaders to excavate, move, and grade earth, erect structures, or pour concrete or other hard surface pavement. Operate pile drivers mounted on skids, barges, crawler treads, or locomotive cranes to drive pilings for retaining walls, bulkheads, and foundations of structures, such as buildings, bridges, and piers.

Figure G-2. (continued)
Occupational crosswalk for 1980 and 2000 IPUMS data

Census 2000 Occupational title and code	Census 1980 Occupational title and code	Job description for 2000 titles
Driver/sales workers and truck drivers 913	Truck drivers (heavy), truck drivers (light) and driver-sales workers 804, 805 & 806	*Driver/sales workers* drive trucks or other vehicles over established routes or within an established territory and sell goods, such as food products, including restaurant take-out items, or pick up and deliver items, such as laundry. May also take orders and collect payments. Include newspaper delivery drivers. *Truck drivers (heavy)* drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license. *Truck drivers (light)* drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "Couriers and Messengers."
Crane and tower operators 951	Crane and tower operators 849	Operate mechanical boom and cable or tower and cable equipment to lift and move materials, machines, or products in many directions. Exclude "Excavating and Loading Machine and Dragline Operators."
Dredge, excavating and loading machine operators 952	Excavating and loading machine operators 853	*Dredge operators* operate dredge to remove sand, gravel, or other materials from lakes, rivers, or streams; and to excavate and maintain navigable channels in waterways. *Excavating and loading machine, and dragline operators* Operate or tend machinery equipped with scoops, shovels, or buckets, to excavate and load loose materials. *Loading machine operators, underground mining*, Operate underground loading machine to load coal, ore, or rock into shuttle or mine car or onto conveyors. Loading equipment may include power shovels, hoisting engines equipped with cable-drawn scraper or scoop, or machines equipped with gathering arms and conveyor.
First-line supervisors/managers of construction trades and extraction workers 620	Supervisors (categories separated): brickmasons, stonemasons, and tile setters; carpenters and related workers; electricians and power transmission installers; painters, paperhangers and plasterers; plumbers, pipefitters and steamfitters; n.e.c.; and extractive occupations 553-558 & 613	Directly supervise and coordinate the activities of construction or extraction workers.

Figure G-2. (continued)
Occupational crosswalk for 1980 and 2000 IPUMS data

Census 2000 Occupational title and code	Census 1980 Occupational title and code	Job description for 2000 titles
Construction managers 22	Managers and administrators, n.e.c 19	Plan, direct, coordinate, or budget, usually through subordinate supervisory personnel, activities concerned with the construction and maintenance of structures, facilities, and systems. Participate in the conceptual development of a construction project and oversee its organization, scheduling, and implementation. Include specialized construction fields, such as carpentry or plumbing. Include general superintendents, project managers, and constructors who manage, coordinate, and supervise the construction process.

Note: All occupational groups include only individuals who work in the construction industry. By definition, this includes workers over the age of 16 who reported last working within five years of the Census survey.

Source: 2000 Census occupational titles and codes at http://usa.ipums.org/usa/volii/00occup.shtml, 1980 codes and titles at http://usa.ipums.org/usa/volii/98occup.shtml, job descriptions from the Bureau of Labor Statistics www.bls.gov.

APPENDIX H.
Regression Analysis

In Section III and Appendix F, the study team noted that there were statistically significant disparities for some minority groups (and non-Hispanic, white women) in rates of business ownership, earnings of business owners, and frequency of business loan denials. BBC considered the possibility that neutral factors, such as age, education, access to capital and creditworthiness (among others) might account for at least a portion of these disparities. The study team further investigated these issues through multivariate regression analyses. This appendix documents the regression analysis.

In the comparison of availability versus utilization of minority and women-owned firms for the disparity analysis, the study team only considers firms to be available for a potential project if they had previously bid on (or been awarded) a project of similar size. If, however, there are significant disparities in "bid capacity" based on minority or female firm ownership, the study team's approach might underestimate the availability of minority and women-owned firms in the disparity analysis (and perhaps not find disparities when more comprehensive analysis would reveal them). This appendix also further investigates potential disparities in bid capacity for minority and women-owned firms.

Business Ownership

As discussed in Appendix F, there is an extensive literature on the determinants of business ownership. Prior studies have found that neutral factors such as access to financial capital, education, age, family characteristics (e.g. marital status) and other factors can help explain rates of self-employment.

This issue has also been examined in other disparity studies. Prior studies in Minnesota[1] and Illinois[2] have conducted econometric analyses to investigate whether or not disparities in business ownership among race, ethnic and gender groups in the combined construction and engineering industry remain after controlling for neutral factors. These studies have incorporated probit econometric models using data from the 2000 Census Public Use Microdata Sample (2000 PUMS). These studies have been among the materials submitted to the courts in subsequent litigation concerning states' implementation of the Federal DBE Program.

To further examine potential disparities in the rates of business ownership among employees in the Idaho construction and engineering industries, the study team developed a probit model using 2000 PUMS data for Idaho residents employed in these industries. The PUMS data is a 5 percent sample of U.S. households and the Census Bureau assigns a weight to each observation so that the weighted sample is representative of the population as a whole.

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[1] National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation.

[2] National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

The probit model of business ownership in Idaho includes nearly 3,700 individuals working in the construction and engineering industries. The dependent variable is binary—coded as a "1" for individuals who are self-employed and a "0" for individuals who are not self-employed. The model estimates the probabilities of being a business owner among workers in the industry. The study team excluded observations where the Census Bureau had imputed self-employment (the dependent variable).

BBC developed a model specification based on models developed by past researchers at the national level or in other states. Independent variables include:

- Personal characteristics potentially linked to the likelihood of business ownership (age, age-squared, marital status, number of children and elderly people in the household, ability to speak English and disability status);
- Variables to control for differences in educational attainment;
- Measures and indicators related to personal financial resources and constraints (home ownership, home value, monthly mortgage payment, dividend and interest income and additional household income from a spouse or unmarried partner); and
- Variables to indicate the race, ethnicity and gender of the individual.

The specification of this model is very similar to models used in other studies previously reviewed by the courts.

Results for the combined Idaho construction and engineering industries. Figure H-1 presents the coefficients and t-statistics for the initial probit model, which combines individuals working in both the construction and engineering industries. The model indicates that several of the neutral factors are statistically significant in predicting the probability of business ownership;

- Older individuals are more likely to be business owners, but this marginal effect declines for the oldest individuals;
- Individuals with children under 10 in the household are more likely to be business owners;
- Interest and dividend income is positively correlated with being a business owner;
- The likelihood of becoming a business owner is lower among individuals with greater levels of education[3]; and,
- Individuals with high valued homes are more likely to be business owners.

[3] In part, however, this result likely reflects the lower probabilities of business ownership among individuals in the engineering industry—who also tend to have greater education levels. The construction industry in isolation is considered later in this section.

The effects of these neutral factors are generally consistent with previous research on business ownership and entrepreneurship. After controlling for neutral factors identified based on the PUMS data set, statistically significant disparities in rates of business ownership remain for women in the construction and engineering industries, but not for other minority groups.

Figure H-1 presents the results of the probit model of self-employment in the construction and engineering industries in Idaho.

Figure H-1.
Idaho Combined Construction and Engineering Business Ownership Probit Model

Variable	Coefficient	t-statistic
Constant	-3.359643	-7.95 **
Age	0.085547	4.95 **
Age-squared	-0.000760	-3.60 **
Married	0.068212	0.95
Disabled	0.042222	0.45
Own children younger than 10	0.083773	3.40 **
Number of people over 65 in HH	-0.087520	-0.78
Own home	0.033809	0.41
Home value ($000s)	0.000002	4.75 **
Monthly mortgage payment	-0.000014	-0.18
Interest and dividend income ($000s)	0.000007	2.59 **
Income of spouse or partner ($000s)	0.000000	0.31
Speaks English very well	0.205318	0.77
Less than high school education	0.222234	2.45 **
Some college	-0.004608	-0.07
Four year degree	-0.163161	-1.70 *
Advanced degree	-0.461414	-2.85 **
African American	-0.266356	-0.54
Asian Pacific American	-0.603433	-1.42
Hispanic American	-0.297576	-1.61
Native American	-0.202908	-1.03
Other minority group	0.119414	0.28
Female	-0.260080	-3.08 **

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.
Source BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

Results specific to the construction industry. It is possible that the influence of neutral factors, and perhaps race and gender, on self-employment in the construction industry differ from those in the engineering industry. To examine this possibility the study team developed a separate model for the construction industry.

Figure H-2 presents the results of the probit model of self-employment in the Idaho construction industry.

Figure H-2.
Idaho Construction Business Ownership Probit Model

Variable	Coefficient	t-statistic
Constant	-3.437242	-7.78 **
Age	0.085704	4.73 **
Age-squared	-0.000754	-3.41 **
Married	0.068730	0.91
Disabled	0.000853	0.01
Own children younger than 10	0.091288	3.54 **
Number of people over 65 in HH	-0.192805	-1.54
Own home	0.068196	0.80
Home value ($000s)	0.000001	3.61 **
Monthly mortgage payment	0.000046	0.56
Interest and dividend income ($000s)	0.000008	2.26 **
Income of spouse or partner ($000s)	0.000001	0.42
Speaks English very well	0.254340	0.91
Less than high school education	0.216552	2.36 **
Some college	0.043583	0.65
Four year degree	-0.035667	-0.30
Advanced degree	0.002006	0.01
African American	-0.555777	-0.89
Asian Pacific American	-0.115941	-0.23
Hispanic American	-0.279281	-1.49
Native American	-0.226657	-1.13
Other minority group	0.082242	0.19
Female	-0.109535	-1.15

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.
Source: BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

Results of the construction industry only model are generally similar to the model for the combined industries, with the following exceptions:

- While individuals with less than a high school education become business owners more frequently than others in the Idaho construction industry, there are no significant differences in the rate of business ownership among individuals with other levels of educational attainment; and

- After accounting for neutral factors identifiable from the 2000 PUMS data, the model does not indicate statistically significant disparities in business ownership rates for women in the construction industry, or for other minority groups.

Results specific to the engineering industry. Due to the small number of minority business owners in the PUMS data set for the engineering industry, the study team was unable to develop a separate engineering-only business ownership model.

Business Earnings

Appendix F includes analysis of business earnings for business owners in the construction and engineering industries in Idaho. Differences in business owner earnings may be at least partially accounted for by race- and gender-neutral factors such as age.

The study team applied ordinary least squares (OLS) regression analysis to the 2000 PUMS data to examine whether disparities in business earnings remained after controlling for neutral factors. The OLS model of construction and engineering business owner earnings in Idaho included 572 observations. Due to the small number of minority business owners in the sample, the study team evaluated business earnings effects for minority-owned businesses as a whole.

The dependent variable in this model is the natural log of business earnings. Business owners reporting zero or negative business earnings were excluded, as were observations where the Census Bureau had imputed the amount of business earnings. Apart from variables indicating minority status and gender of the business owner, the model also contained the available measures from the PUMS data considered likely to affect earnings potential—including age, age-squared, marital status, ability to speak English very well, disability condition and educational attainment. This model is very similar to models reviewed by the courts after other recent disparity studies.[4]

[4] For example, National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation; and National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

Results for the Idaho construction and engineering industries. Figure H-3 depicts the results of the OLS model for the combined construction and engineering industries (past studies reviewed by the courts have combined construction and engineering). The model indicates that a few of the neutral factors are statistically significant in predicting earnings of business owners in the Idaho construction and engineering industries:

- Older business owners have greater earnings, but this marginal effect declines for the oldest individuals;
- Disabled business owners have lower earnings;
- Business owners that reported they speak English less than very well had higher earnings, but very few owners were in this group; and
- Business owners with some college, but less than a four year degree, have lower earnings.

After accounting for neutral factors, model results indicate statistically significant disparities in earnings for female business owners. The model also indicates that differences in the earnings of minority business owners were not statistically significant after controlling for other factors.

Figure H-3.
Idaho Combined Construction and Engineering Business Owner Earnings Model

Variable	Coefficient	t-statistic
Constant	5.881037	5.36 **
Age	0.230548	4.45 **
Age-squared	-0.002736	-4.26 **
Married	0.124520	0.79
Speak English Very Well	-0.879894	-1.81 *
Disabled	-1.038162	-2.42 **
Less than HS	0.219112	1.01
Some College	-0.335525	-2.03 **
Four Year Degree	-0.380479	-1.35
Advanced Degree	-0.039119	-0.13
Minority	-0.099981	-0.29
Female	-0.726657	-3.07 **

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.

Source: BBC Research & Consulting, 2007 based on analysis of 2000 Census Public Use Microdata Sample.

Business owner earnings results specific to the construction industry. The study team recognized that the influences on business owner earnings might differ between construction firms and engineering firms. Figure H-4 presents the results of the OLS model of business owner earnings specific to the Idaho construction industry.

Figure H-4.
Idaho Construction Business Owner Earnings Model

Variable	Coefficient	t-statistic
Constant	5.941389	5.14 **
Age	0.228401	4.22 **
Age-squared	-0.002713	-4.05 **
Married	0.180664	1.10
Speak English Very Well	-0.912134	-1.76 *
Disabled	-1.064836	-2.43 **
Less than HS	0.230929	1.06
Some College	-0.314886	-1.85 *
Four Year Degree	-0.151818	-0.47
Advanced Degree	0.027152	0.11
Minority	-0.232777	-0.62
Female	-0.704168	-2.61 **

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.

Source: BBC Research & Consulting, 2007 based on analysis of 2000 Census Public Use Microdata Sample.

The construction-only model of business owner earnings shows very similar influences from neutral factors as observed in the previous model combining construction and engineering firms. After controlling for neutral influences, model results continue to indicate that business earnings for female business owners in the construction industry are significantly lower than for similarly situated, non-Hispanic, white business owners.

BBC simulated business earnings for women in the construction industry in the absence of race and gender-related effects. Figure H-5 depicts simulated business earnings for women in the construction industry and compares them to the actual, observed mean probability of business earnings for female construction business owners. Results suggest that female business owners in the construction industry earn about 51 percent less than they would if they earned as much as similarly situated non-Hispanic, white males.

Figure H-5.
Comparison of Actual Construction Business Owner Earnings to Simulated Earnings Under Non-Hispanic, White Male Business Environment for Groups Experiencing Significant Disparities

Group	Self-employment Rates		Disparity index (100 = parity)
	Actual	Benchmark	
Female	$ 6,919	$ 14,049	49

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

Results specific to the engineering industry. Again, due to the small number of minority business owners in the PUMS data set, the study team was unable to develop a separate engineering-only business owner earnings model.

Likelihood of Business Loan Denial

As discussed in Appendix F, access to capital is an important factor in small business formation and expansion. Based on data for both the nation and the Mountain region from the 1998 National Survey of Small Business Finances (NSSBF), minority-owned firms are more frequently denied on business loan applications than non-Hispanic, white-owned firms.

Previous studies have used probit econometric analysis in an effort to determine whether higher rates of loan denial for minorities can be explained by neutral factors. The standard model includes four types of variables that describe:

- The owner's credit and resources;
- The firm's credit and financial health;
- The environment in which the firm and lender operate, and
- Whether or not the owner is a member of a minority group.[5]

To examine whether neutral factors might explain the higher rates of loan denials for minority groups, the study team developed a probit model using the data from the 1998 NSSBF. After excluding a small number of observations where the loan outcome was imputed, the national sample included 932 firms that had applied for a loan during the three years preceding the survey. The Mountain region included 77 such firms.

A large number of variables are required to control for differences in the neutral factors described previously. A total of 58 variables are included to represent the owners credit and resources (10 variables), the firm's credit and financial health (29 variables) and the environment in which the firm and lender operate including the nature of the loan applied for (19 variables). Given the relatively small sample sizes and the large number of variables the model requires, the study team did not attempt to estimate this model for the Mountain region by itself. Instead, we estimate a model that includes observations throughout the country and seek to identify any significant differences between the national credit market and the Mountain region credit market through interaction terms. These interactions include firms located in the Mountain region and firms owned by minorities and women in the region. This approach has been used in previous, peer-reviewed research.[6]

Figure H-6 on the following page presents the coefficients and t-statistics from the probit model of loan denials.

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[5] See, for example, Blanchard, Lloyd; Zao, Bo and John Yinger. 2005. *Do Credit Barriers Exist for Minority and Women Entrepreneurs?* Center for Policy Research, Syracuse University.

[6] Blanchflower, David G.; Levine, Phillip B. and David J. Zimmerman. 2003. "Discrimination in the Small-Business Credit Market." The Review of Economics and Statistics. 85(4): 930-943.

Figure H-6.
Dependent Variable: Loan Denial

Variable	Coefficient	t-statistic
Race/ethnicity/gender		
Constant	-5.757145	-4.47 **
Minority	0.885652	5.49 **
Female	0.045572	0.27
Mountain Region	0.268190	0.82
Minority in Mountain Region	-0.004220	-0.01
Female in Mountain Region	-0.628784	-0.90
Owners Credit and Resources		
Age	0.006314	0.80
Owner Experience	0.013064	1.21
Less than high school education	0.175602	0.55
Some college	-0.151659	-0.75
Four year degree	-0.529348	-2.45 *
Advanced degree	-0.476703	-1.98 **
Bankruptcy in past 7 years	1.532468	2.86 **
Judgement against in past 3 years	1.128853	3.70 **
Log of net worth excluding home	-0.028694	-0.51
Owner has negative net worth (indicator)	-0.529616	-0.77

Variable	Coefficient	t-statistic
Firm's Credit and Financial Health		
D&B credit score = moderate risk	0.761127	1.50
D&B credit score = average risk	0.796850	1.57
D&B credit score = significant risk	0.576757	1.11
D&B credit score = high risk	0.488350	0.87
Total employees	-0.001399	-0.48
Percent of business owned by principal	-0.002529	-0.56
Family owned business	0.669331	2.32 **
Firm purchased	-0.322277	-1.68 *
Firm inherited	-1.046112	-0.28
Firm age	-0.015050	-1.40
Firm has checking account	0.344229	1.03
Firm has savings account	-0.161990	-0.93
Firm has line of credit	-0.896570	-4.90 **
Existing capital leases	-0.080220	-0.42
Existing mortgage for business	-0.351520	-1.73 *
Existing vehicle loans	-0.546695	-2.98 **
Existing equipment loans	-0.546290	-2.55 **
Existing loans from stockholders	0.524311	2.60 **
Other existing loans	-0.133730	-0.70
Firm used trade credit in past year	-0.217514	-1.38
Log of total sales in prior year	0.001814	0.03
Negative sales in prior year (indicator)	0.327558	0.40
Log of cost of doing business in prior year	0.005052	0.10
Log of total assetts	0.020252	0.29
Negative total assetts (indicator)	-0.203130	-0.23
Log of total equity	0.081684	1.10
Negative total equity (indicator)	0.812546	1.06
Firm bankruptcy in past 7 years	0.801655	1.66 *
Firm delinquency in business transactions	1.216614	6.74 **

Variable	Coefficient	t-statistic
Firm and Lender Environment and Loan Characteristics		
Partnership	0.047895	0.14
S corporation	-0.282553	-1.22
C corporation	-0.298445	-1.07
Construction industry	0.529184	1.99 **
Manufacturing industry	0.269285	1.03
Transportation. communications and utilities industry	0.290553	0.67
Finance, insurance and real estate industries	-0.064389	-0.18
Engineering industry	0.616558	1.71 *
Other industry	0.246481	1.28
Herfindahl index =.10 to .18	2.478028	4.40 **
Herfindahl index = .18 or above	0.563648	4.98 **
Located in MSA	0.217083	1.21
Sales market local only	0.157603	1.01
Loan amount	0.000000	0.15
Capital lease application	-0.101897	-0.30
Business mortgage application	-0.799572	-2.91 **
Vehicle loan application	-1.121778	-3.90 **
Equipment loan application	-0.741263	-2.66 **
Loan for other purposes	-0.286563	-1.44

Note: * Significant at 90% confidence level.
** Significant at 95% confidence level.

Source: BBC Research & Consulting analysis of 1998 NSSBF data.

The loan denial model indicates that a number of neutral factors are significantly correlated with the probability of loan denial. These include:

- **Factors specific to the business owner, including education and whether or not the owner had been personally bankrupt or had a judgment against them within the past seven years.** Business owners with a four-year college degree or an advanced degree are less likely to be denied.

- **Factors related to the firm's credit and financial health, including if the firm had existing loans and lines of credit.** Family-owned firms are more likely to be denied while firms that were purchased are less likely. Firms with delinquencies in business transactions are also more likely to be denied.

- **Some of the firm, lender and loan environment characteristics.** Firms in the construction and engineering industries are more likely to have their loan applications denied than other firms. Firms in highly concentrated industry segments (as measured by the Herfindhahl Index) are also more likely to be denied. Potentially collateralized loans such as business mortgages, vehicle loans and equipment loans are less likely to be denied.

After accounting for these and the other potential neutral influences, minority-owned firms remain significantly more likely to have their loans denied than other firms. The interaction terms for the Mountain region, and for minority- and women-owned firms within the region, are insignificant. This result implies that the probabilities of loan denials for minority- and women-owned firms within the Mountain region are not statistically different from the national probabilities.

The study team simulated loan approval rates for minority-owned firms (note that the approval rate is equal to one minus the denial rate) in the absence of race, ethnicity and gender effects. Figure H-7 shows the simulated loan approval rate and compares it to the actual, observed mean probability of loan approval for minorities in the NSSBF data set.

Exhibit H-7.
Comparison of Actual Loan Approval Rates to Simulated Loan Approval Rates Under Non-Hispanic, White Male Business Environment for Groups Experiencing Significant Disparities

Group	Loan Approval Rates		Disparity Index (100 = parity)
	Actual	Benchmark	
Minority	57.2%	82.2%	70

Source: BBC Research & Consulting analysis of 1998 NSSBF data.

Based on the NSSBF data, minority-owned firms that applied for loans were denied at a rate of nearly 43 percent. Model results show that minority-owned firms would be denied loans about 18 percent of the time if they were denied at the same rate as similarly situated firms owned by non-Hispanic, white males.

Bid Capacity

One of the requirements for a firm to be considered available for an ITD project in BBC's disparity analysis is that the firm had previously bid on, or been awarded, another contract or subcontract of similar size. The study team considers the largest previous bid (or award) by a firm to be the measure of its "bid capacity." The following analysis considers whether there is evidence of disparities in bid capacity for minority- and women-owned firms in the Idaho construction and engineering industries.

The study team conducted an extensive survey of Idaho, Eastern Washington and Northern Utah transportation construction and engineering firms, which is described in Appendix C of the report. The team attempted to contact every establishment located in this region in the relevant lines of business. After narrowing the sample to firms in pertinent lines of work with appropriate experience and interest for ITD projects, and compressing multiple responses from multi-establishment firms in the region into single firm observations, the survey effort produced a database of 1,351 firms potentially available for ITD work.[7] Of these firms, 519 provided valid information on their largest previous bid and/or contract and met other criteria required to be considered available for transportation-related work in Idaho.[8] The following analysis of bid capacity relies on the results of the Availability Survey.

One of the factors that affects bid capacity is the industry specialization of construction and engineering firms. Some industry segments, such as construction of water, sewer and utility lines, apparently involve larger projects. Other segments, such as electrical work, involve smaller scale assignments. One way of controlling for variation in bid capacities in different sub-industries is to assess whether or not a firm has a bid capacity above or below the median level for firms in that sub-industry. BBC can then test whether minority- and women-owned firms bid on larger or smaller contracts or subcontracts compared with other firms in their sub-industry.

[7] See Appendix C, pages 5 through 7 for further description of the survey sample and process.

[8] Other availability criteria included appropriate geographic scope for the business and self-reported qualifications and interest in future transportation work in Idaho.

Figure H-8 indicates the median bid capacity among Idaho-based establishments in each of the 22 industry segments within the construction and engineering industries. Note that the survey questions regarding the largest project that firms had bid on or been awarded captured data in dollar ranges rather than specific dollar amounts.

Figure H-8.
Median Bid Capacity by Industry Segment

Industry Segment	Median Bid Capacity
Consulting and Research	$100,000 or less
Engineering and Design Services	Over $100,000 to $500,000
Surveying and Mapping Services	$100,000 or less
Traffic Control	$500,000
Testing and Remediation	Over $100,000 to $500,000
Landscape Counseling and Planning	Over $100,000 to $500,000
Fence and Landscape Installation	$100,000 or less
Earthwork, Drilling, and Other Site Prep	Over $100,000 to $500,000
Masonry Foundations and Walls	Over $500,000 to $1 million
Structural Steel Erection	$500,000
Wrecking and Demolition	Over $100,000 to $500,000
Sweeping Service	$100,000 or less
Electrical Work	Over $100,000 to $500,000
Water, Sewer, and Utility Lines Work	Over $100,000 to $500,000
Highway, Bridge, Concrete, and Tunnel Construction	Over $500,000 to $1 million
Pavement Marking	Over $500,000 to $1 million
Traffic Signs/Signals and Other Electrical Equipme	$100,000
Metal Products Supply	Over $100,000 to $500,000
Surface Paving Materials (Ready-Mix and Asphalt Mi	Over $500,000 to $1 million
Aggregate, Rock and Sand	$500,000
Equipment Supply and Rental	Over $100,000 to $500,000
Trucking	$100,000 or less

Source: BBC Research & Consulting, 2007 Availability Survey.

Firms with bid capacities above the median ("above average") for their industry segments are counted as available for larger ITD projects than most of the firms in their line of business (as well counted as available for smaller assignments). Thus, these firms figure more prominently in the availability analysis than firms with smaller bid capacities. An initial question is whether or not minority and women-owned firms are as likely as majority owned firms to have above average bid capacity for their industry segment. Figure H-9 compares the proportions of firms with above average bid capacity by ownership. Due to the relatively small number of minority owned businesses in the sample, the study team evaluated bid capacity effects for minority-owned businesses as a whole.

Figure H-9. Proportion of Firms with Above Average Bid Capacity by Ownership

Source:
BBC Research & Consulting, 2007 Availability Survey.

Firm Ownership	Proportion With Above-Median Bid Capacity	
	Construction	Engineering
Minority	25.0%	25.0%
Female	50.0%	22.9%
Majority-owned	37.1%	36.0%
All Firms	**38.5%**	**33.6%**

The results shown in Figure H-9 indicate that the proportion of minority and women-owned businesses with above average bid capacity differs from the proportion of firms owned by non-Hispanic, white males with above average bid capacity. Minority-owned construction firms appear less likely to have above average bid capacity. Construction firms owned by women more frequently have above average bid capacity than majority-owned firms.

Figure H-9 also indicates that minority and women-women owned engineering firms are generally less likely to have above average bid capacity.

BBC considered whether neutral factors account for differences among groups in the probability of having above average bid capacity and if there are statistically significant disparities in bid capacity after accounting for neutral factors.

There are a number of variables from the Availability Survey that may be correlated with bid capacity. Annual revenues, number of employees and, potentially, whether or not a firm has multiple establishments in Idaho, are examples. However, the direction of causation for these variables is unclear. Do firms have greater bid capacity because they have more employees, or do they have more employees because they bid on and win larger assignments?

After considering the array of variables from the Availability Survey, the study team determined that the neutral factor (beyond subindustry) that might best explain differences in bid capacity while being truly exogenous to that capacity was age of the firm. Theoretically, the longer firms are in business, the larger the contract or subcontract they may pursue.

To test this hypothesis, the study team conducted separate logistic regression analyses for the construction and engineering industries to determine whether or not bid capacity could be at least partly explained by the age of the firm and whether or not minority- and women-owned firms differ from majority-owned firms of similar ages.

Bid capacity results for the Idaho construction industry. Results for the Idaho construction industry are shown in Figure H-10, below. The logistic regression model indicates:

- The age of the firm is a significant predictor of having above average bid capacity;
- Women-owned construction firms in Idaho are significantly more likely to have above average bid capacity, even after controlling for firm age; and
- Remaining differences in the likelihood of having above average bid capacity for minority - owned firms (after controlling for firm age) were not statistically significant.

Figure H-10.
Idaho Construction Industry Bid Capacity Model

Variable	Coefficient	Wald-statistic
Constant	-0.989	19.692 **
Age of firm	0.019	7.853 **
Minority	-0.572	1.328
Female	0.639	3.410 *

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.
Source: BBC Research & Consulting, 2007 Availability Survey.

Bid capacity results for the Idaho engineering industry. Results for the Idaho engineering industry are shown in Figure H-11, below. The logistic regression model for this industry indicates:

- The age of the firm is a significant predictor of having above average bid capacity for engineering as well as construction; and

Any remaining negative differences in the likelihood of having above average bid capacity for minority and women-owned firms were not statistically significant.

Figure H-11
Idaho Engineering Industry Bid Capacity Model

Variable	Coefficient	Wald-statistic
Constant	-0.997	16.136 **
Age of firm	0.015	4.526 **
Minority	-0.424	0.372
Female	-0.465	1.121

Note: *Significant at 90% confidence level.
**Significant at 95% confidence level.
Source: BBC Research & Consulting, 2007 Availability Survey.

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APPENDIX I.
Anecdotal Report—ITD Summary of Anecdotal Interviews

INTRODUCTION AND BACKGROUND

This Anecdotal Interview Report ("Report") sets forth the summaries of 42 personal interviews. These interviews include perceptions and anecdotes regarding ITD's contracting practices and the ITD DBE Program and general marketplace conditions from the perspective of the interviewees. Attorneys with Holland & Knight conducted all interviews.

Interview participants included prime contractors, subcontractors, suppliers, engineers and other professional service providers. Multiple trade and professional associations, having a membership base of numerous minority-, non-minority-, female- and male-business owners, were also interviewed. In addition, certain non-profit organization and governmental agencies that interact with ITD were interviewed.

Of the businesses interviewed, some work exclusively or primarily as prime contractors or subcontractors, and some work as both. The interviewees include minority-owned businesses, female-owned businesses, and non-minority, male-owned businesses. Interviewees are located in Idaho and in Spokane, Washington. Firms from throughout Idaho participated in the interviews

Interviewees were primarily obtained from a random sample of transportation contracting businesses generated by BBC Research and Consulting. This sample was stratified by type of firm, location, and ethnicity, race and gender. All of the businesses that agreed to participate were interviewed. Most of the interviews were conducted with the owner, president, chief executive officer or other officer of the business, agency or association. The interviewees in this report are identified by their interview number.

The following trade associations, organizations and governmental agencies agreed to be interviewed and report on the experiences, anecdotes and perceptions of their members:

1. Hispanic Cultural Center of Idaho;[1]
2. Hispanic Business Association;[2]
3. Idaho Small Business Development Center—Twin Falls Chapter[3]

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[1] The Hispanic Cultural Center of Idaho (ITA #1) is an organization providing outreach to Hispanic-owned and other businesses. ITA #1 described itself as a non-profit community leader. They hold weekly SBA meetings. A member of their board is at the head of the Hispanic Chamber of Commerce of Idaho. Sixty percent of their members are Hispanic and 40 percent are white. Approximately 65 percent of the businesses they assist are male-owned, 30 percent are prime contractors and 70 percent are subcontractors. These businesses include landscaping contractors, heavy equipment contractors, and personnel contractors. The average size of these businesses is ten to twenty employees. ITA #1 estimated these businesses do 20 percent of their work in the public sector and 80 percent in the private sector. The businesses they assist hold both ITD DBE and SBA Section 8 (a) certifications.

[2] The Hispanic Business Association (ITA #2) is a Hispanic business trade association. One of ITA #2's members, a Hispanic male-owned business, also participated in the interview. Ninety-five percent of its 63 members are Hispanic and many of their members are family-owned businesses. Only one of ITA #2s members is SBA Section 8 (a) certified; none of their members are DBE certified. Their members include manufacturers, information technology firms, financial businesses, accountants, attorneys, and others. All of ITA #2s members act as subcontractors. Their members have been in business on average for 15 years and the size of their businesses range from five to 125 employees. ITA #2s member participant stated that he does about 20 percent of his work in the public sector.

4. AHANA Business and Professional Association;[4]
5. Idaho Small Business Development Center—Boise Chapter;[5]
6. TERO Office for the Shoshone Bannock Tribe;[6]
7. The Women of Color Alliance;[7]
8. U.S. Small Business Administration, Idaho District Office in Boise;[8] and
9. Associated General Contractors.[9]

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[3] The Idaho Small Business Development Center (ISBDC) is a non-profit organization, funded by the U.S. Small Business Administration and the State of Idaho, whose mission is to provide consulting, training, and technical assistance to small business owners. The ISBDC has six locations throughout Idaho, including Boise, Post Falls, Lewiston, Twin Falls, Pocatello, and Idaho Falls, each affiliated with one of Idaho's colleges or universities. ITA #3 is the ISBDC in Twin Falls. Some of these businesses solicit to or contract with the federal government and are certified DBEs.

[4] AHANA Business and Professional Association (ITA #4) is an African American, Hispanic, Asian American, and Native American trade association and economic development organization focused on improving the economic status and enhance the quality of life of these minority communities through the development of business and employment opportunities.

[5] ITA #5 is the Boise Chapter of the ISBDC. This chapter provides consulting to roughly 1,600 clients per year, and trains roughly 2,000 clients per year. Some 60 percent of ITA #5s clients are existing companies and 40 percent are start-ups. About 45 percent of ITA #5's clients are women, roughly 5 percent are Hispanic with 1 percent other minorities. ITA #5 has three practicing CPAs and two inactive CPAs on staff.

[6] The American Indian Tribal Employment Rights Ordinance (TERO) is a tribally based employment rights initiative created by tribal and federal law. The TERO seeks to maximize opportunities for American Indians by establishing employment preferences and contract compliance programs for private contractors who have construction projects on or near a reservation. More than 300 Indian Tribes nationwide have established TERO offices charged with overseeing compliance with the ordinance, registering Indian-owned businesses, and providing outreach to tribal members such as skills training, job counseling, coaching, complaint investigation, and other services. There are four TERO offices in Idaho. ITA #6 is the TERO Office for the Shoshone-Bannock Tribe. This tribe has roughly 5,000 tribal members.

[7] The Woman of Color Alliance (ITA #7) is an organization based out of Boise dedicated to the issues facing woman of color. The organization has 800-1,000 members. The membership includes African American, Asian American, Native American, Hispanic, Middle Eastern, and white females. Some of the members are certified with ITD as DBEs and some with SBA.

[8] The U.S. Small Business Administration (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small businesses. SBA's District Offices, including the Idaho SBA (ITA #8), are responsible for the delivery of SBA's programs and services throughout the country, including counseling and advice on staring a business, financial aid for new and existing small businesses, and assistance with personnel issues, understanding federal regulations, and business development. The SBA administers what is known as the Section 8 (a) Program, which provides preferences in government contracting to minority-owned small businesses. The program is similar to the U.S. Department of Transportation's DBE Program except the net worth threshold is $250,000 as opposed to $750,000. The Section 8 (a) Program does not consider females presumptively disadvantaged, although females can apply for Section 8 (a) certification and show disadvantage. Firms participate in a nine-year program. The SBA accepts contracts on behalf of Section 8 (a)-certified businesses so they must certify that the business has the technical and financial qualifications to handle a particular contract. Fewer than half of its 34 Section 8 (a)-certified businesses are also certified as DBEs.

[9] The Association of General Contractors (AGC) is a national trade association with 33,000 members nationwide. ITA #9 is the Boise office of the Idaho chapter of the AGC with 1,050 members. The Idaho chapter has four offices (Boise, Twin Falls, Idaho Falls, Coeur d'Alene). Members include commercial, but not residential, construction contractors. The Boise office has 15 staff members who provide outreach and assistance to its members. Unlike other chapters, ITA #9 is comprised of mostly subcontractors. More specifically, the membership is composed of 100 general contractors (65 of which are building contractors and 35 of which are highway contractors) with the remaining members being either specialty, i.e. subcontractors, or suppliers. ITA #9 reported that it is the largest specialty contractors association in Idaho. A significant number of ITA #9s members are DBEs, or minority- or female-owned.

This report includes summaries of anecdotes or perceptions regarding:

- Certification;
- Public and private sector work;
- ITD bidding process; prequalification; experience working with ITD; perceived general barriers to participation with ITD;
- Experiences with payment; licensing;
- Experiences regarding DBE utilization after the contract goals were no longer used by ITD;
- Partnerships; anecdotes regarding the existence or non-existence of barriers in the public and private sector; anecdotes regarding race, ethnicity and gender;
- Participation in and awareness of race-, ethnic-, and gender-neutral programs; and
- Recommendations by the interviewees.

BBC also examined oral and written testimony a received as part of a public hearing process ITD conducted in November 2007. After publication of a preliminary disparity study report, ITD solicited comments and recommendations concerning future programs. ITD held public hearings in Coeur d'Alene, Boise and Pocatello. BBC attended two hearings and reviewed transcripts of testimony as well as two written comments received.

SUMMARY OF ANECDOTES

Certification

The minority- and female-owned businesses that agreed to be interviewed were certified as DBEs with ITD. Some of these businesses also were certified with other agencies, including the Small Business Administration (SBA) and the Washington Department of Transportation.

Some interviewees reported that ITD's DBE certification process was both straightforward and fair. (Interviewees #8, #13, #16, #28, #33). Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that ITD has the best policies and certification process of any state in which he has been certified (Interviewee #8 is certified in multiple other states). Interviewee #8 compared the positive experience with the ITD certification process to the process in another state that was very difficult and required re-certification every year. Interviewee #16, an African American male-owned traffic control subcontractor, stated the certification process is "pretty good" and easy to understand. Interviewee #28, a white female-owned engineering firm, stated the certification process was easy, and that the interview process was pleasant. She did not think the process took too long.

Interviewee #26, a Native American/Hispanic female-owned demolition company, described the DBE certification process as "really good...because...we were certified Section 8 (a); a lot of the same requirements for DBE are similar to Section 8 (a)." Interviewee #9, a Native American male-owned underground utility company, found the ITD certification to be "fairly simple...a lot simpler than [he] thought it was going to be." Interviewee #9 reported that all he had to do was prove "that I had the Indian blood in me," and

demonstrate his financial worth, and that ITD just wanted to make sure that he "knew what [he] was doing." In sum, he feels that it was "fairly simple."

Interviewee #33, a Native American female-owned road construction business, described the ITD certification process as "quite reasonable." She described a process that involved filling out "a long form once every three years," which she described as "quite lengthy," and a shorter form in the interim years to maintain certification.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that the DBE certification process is fairly simple. He also does not think the majority of minority-owned businesses know about the DBE Program.

Some interviewees reported that certification was difficult, but ultimately fair. Interviewee #29, a white female-owned consulting engineering corporation, stated, it was "time consuming to gather all background information," but in the end "I thought the information they asked for was fair and that it was an adequate process." Interviewee #31, an Asian male-owned pavement inspections business, remarked that although ITD's people were "very nice and professional," the amount of documentation required was excessive, noting that "three years of tax returns...is a little too much." Interviewee #31 suggested that ITD not require "as much personal information." Interviewee #31 found this "intrusive."

Interviewee #27, a Native American male-owned refractory construction contractor, stated that the Section 8 (a) Certification was "painful." However, most of that information was transferable to ITD's certification forms.

Interviewee #23, a Hispanic/Native American male-owned steel erecting company, reported that "going through the SBA was difficult—and then having gone through that process of six months or something like that, I just forwarded everything to the highway district." Interviewee #23 added, "but it was a difficult process." Interviewee #23 explained that this was due to "missing forms, time lapse—it was just a time-consuming process...a lot of paperwork."

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that the certification process "could have been a little more efficient." He recalls that certification took four to five months. He stated that ITD was not timely in returning paperwork. ITA #7, a trade organization for minority females, stated that certification "can be a little rough—reading all the paperwork, knowing how to fill it out." He suggested ITD conduct training on how to fill out paperwork and find out about ITD jobs.

ITA #8, the Idaho District Office of the SBA, stated that people perceive working with the government as difficult and administratively burdensome. She has been trying to convince a female-owned trucker to become certified with DBE, but she is reluctant to fill out all the paperwork. "The ITD office here is pretty helpful, but I think a person's first inclination is paperwork and they don't want to spend the time to do it." Also, these businesses feel prime contractors are not interested in using them and no longer required to use them on ITD jobs.

Two interviewees classified the certification process as unfair. ITA #2, a Hispanic trade association, stated that obtaining certification is a prolonged process, based on the "good old boy system" and that it has been very difficult for her members to obtain certification. ITA #2 stated that she assisted one of her members four years ago and they were unsuccessful. A member of ITA #2 who participated in the interview stated that ITD

discouraged him from becoming certified as a Section 8 (a) with the SBA. He ceased his efforts to become certified with ITD 15 years ago.

Interviewee #25, a white female-owned flagging and traffic control company, noted that the first time she was certified, the process was simple, but she was decertified in 2000. Interviewee #25 recounted a $90,000 legal effort to regain her certification, which was pulled from Interviewee #25 when the company was accused of not meeting the qualifications for the DBE Program. Interviewee #25 believes that she was decertified in 2000 originally as a result of making a complaint to ITD about a derogatory comment made about Interviewee #25 as a female businesswoman. She believes that the decertification was in retaliation for speaking up to ITD. Eventually, Interviewee #25 proved that the company performs 80 percent of its work in the summer, and that they did meet the qualifications for the DBE Program.

Most interviewees certified with ITD described the certification as valuable. (Interviewees # 7, #8, #9, #10, #16, #20, #22, #24, #25, #27, #32; ITA #1, #3, #5, #8.) Three of these interviewees attributed more than 25 percent of their work to their DBE status. Interviewee #10, a female representative of a Native American male-owned engineering firm, believes there is value in certification and attributes roughly 25 percent of the company's contracts to their DBE status. She stated that sometimes, due to the DBE requirement or for other reasons, prime contractors make an effort to solicit bids from Native American firms. "In some cases a contract is targeted toward small disadvantaged." Nonetheless, Interviewee #10 has not kept up with their DBE certification through ITD because they have not received any work on ITD jobs.

Interviewee #22, a Hispanic male-owned concrete contractor, noted that the company has received work based upon the company having its DBE classification; "[they] ended up getting quite a few of the jobs that they bid on." Interviewee #22 thinks there is a value to certification because it gives the company "an opportunity to compete with bidding...and in getting bigger jobs."

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, believes that certification is valuable. He had not yet received any work due to his certification; however, he believes "it will be valuable" eventually. He stated that he needs to market his certification to the firms he already does business with, as well as new firms. He believes being certified will "lead to more contracts." Similarly, Interviewee #27, a Native American male-owned refractory construction contractor, thinks that eventually his certification will be valuable although it has yet to result in work.

Interviewee #26, a Native American/Hispanic female-owned demolition company, believes there is value to being certified. She reported that "they offer several different programs...if there is a project that comes out we are able to get our plans and stuff through them, and they keep us posted on the upcoming work that is coming out and available...it is a valuable tool—definitely."

Interviewee #24, a Native American heavy construction contractor, thinks that there is a value to certification because the prime contractors that are aware of the DBE Program look in the DBE directory for subcontractors. He has received some solicitations because of the DBE directory that they would not have otherwise received.

Interviewee #20, a Hispanic male-owned rebar installation business, responded "I know it's valuable, I just don't know how to exploit it...we would like to get with somebody that can help us out with that." As an example, Interviewee #20 reported that a prime contractor was looking to have the company do sub-work, but needed them to do certified payroll—but they do not know how. Interviewee #25, a white female-owned

flagging and traffic control company, feels that there is value to being certified, but she wonders if ITD staff are the right people to conduct the certification process.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated there is value to the DBE certification because it opens up another revenue string that would not otherwise exist. ITA #3 and #5, organizations providing outreach to small businesses, feel that certification is valuable and encourage all eligible clients seeking government work to become certified as a DBE with ITD.

Eight of the interviewees certified with ITD did not perceive value in the certification. (Interviewees #4, #21, #23, #26, #28, #29, #31, #33.) Interviewee #4, a male representative of a white female-owned construction company, does not feel there is much value in certification, since they no longer bid on public work. He stated that there was too much competition in the public sector, and private sector work he felt is easier to obtain. He believes about 15 percent of this work was a result of DBE certification five years ago.

Interviewee #33, a Native American female-owned road construction business, stated "the only value that it's ever given us is that we get a flyer once a month...that used to have different jobs coming up for bid." She also noted that the flyer listed non-ITD jobs, and offered free plans to bid for subcontractors.

Interviewee #21, an Asian male-owned environmental consulting company, does not see value to certification. "ITD does what they can. At times they give away travel money and training money and I was helped by that but that was cut off...I worked so hard to prepare the on-call consultant thing for ITD." The on-call application took him two to three weeks to complete. He got on the on-call list "but I never hear anything from them." "There was no opportunity, project-wise from ITD whatsoever. Yet, I know of DBEs who get projects in Boise." "I was very reluctant to renew my DBE certification." He commended ITD DBE support services as doing a "fine job, but it goes to the engineers and these guys don't know what they are talking about."

Five interviewees certified with ITD believed that the value of the certification had declined since the contract goals were removed in January of 2006. (Interviewees #8, #13, #23, #28, #29; ITA #4.) Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that there is a value to certification but the value has declined since the contract goals were removed in January of 2006. He stated that the absence of an incentive for larger companies to use DBE companies creates an obstacle for new DBE firms who were not "in the system" before January of 2006. A DBE company certified before January 2006 may have established connections through the Program and, therefore, has the advantage of prior experience.

Interviewee #13, a white female-owned traffic control subcontractor, stated that there is a value to having the certification at least with respect to those contracts requiring a DBE percentage goal. She stated that since January 2006, the number of these solicitations that she receives has decreased by 40 to 50 percent, and there "is a lot less work."

Interviewee #28, a white female-owned engineering firm, stated that currently she does not think there is value to her DBE certification. She stated that the value has declined in the past two years, starting in 2005 when people knew the process was going to change in 2006. She stated that because it is no longer a requirement for large companies to use small disadvantaged businesses, the large companies offer the same services in-house. Since these companies save money by doing the work in-house, there is no longer an advantage to using DBE firms.

Interviewee #29, a white female-owned consulting engineering corporation, does not see value to certification "because ITD does not have a DBE requirement after the recent Ninth Circuit decision." Interviewee #29 stated that certification was "invaluable" to her business at the beginning. She would not have survived as a business if not for the certification and the DBE program. However, without the DBE goals, certification is worthless. "We are not getting any work based on our DBE status."

Interviewee #23, a Hispanic and Native American male-owned steel erecting company, responded: "At one point in time I did" think there was value to being certified, but not after the "Western States versus the State of Washington" decision which ended the mandatory goals. "There's all this stigma on it and without the federal government telling them to do what is right, they won't do it. Because the federal government doesn't require them to meet goals, they don't have goals. I find that a waste of time. It was a waste of my time." Interviewee #23 reported feeling left out of the bidding process. On an airport job the FMC representative told him "give me your card, we'll make it work." "He was making an effort." In the end, a prime contractor received the entire job and Interviewee #23 did not receive any subcontracting work.

ITA #4, a trade association representing minorities, said, "certification has gone down in the last five years because of Initiative 200 in Washington State under the so-called Anti-Discrimination Initiative." Pursuant to Initiative 200, which passed in 1998, public entities in Washington, including the Washington DOT, are prohibiting from instituting mandatory race- or gender-based participation goals on public contracts. According to ITA #4, in light of this prohibition, "many businesses just didn't see why they need to get certified. And without that certification they cannot get certification through Idaho because that's a requirement." ITA #4 indicated that this is the reason the majority of its members are not certified DBEs. Nonetheless, ITA #4 believes that there is a value to DBE certification. DBEs still receive "support services" in Idaho, which, in his opinion, "are more progressive than the State of Washington." ITA #4 has heard that it's easier to get a contracting job in Idaho than in Washington; "they seem to be more supportive of entrepreneurs, the small businesses."

Although Interviewee #23, a Hispanic and Native American male-owned steel erecting company, had not yet noticed a change he believes the numbers will eventually decline if the goals are not reinstated. He reported generally that the work environment for DBEs in the Idaho transportation industry is hard, but it has improved over the years due to the DBE Program. Interviewee #23 stated, "the DBE Program has backed us and supported us and without the DBE Program we would have a lot more problems." Interviewee #23 "thinks that the only reason why they're still being used as this point by some contractors is because the DBE office has suggested that [prime contractors] keep using [DBEs]." "If the DBE goals do not come back we are headed for some hard times."

The U.S. Small Business Administration Section 8 (a) certification process and how it relates to the DBE Program. According to ITA #8, the Idaho District Office of the SBA, fewer than half of the 34 Section 8(a)-certified businesses in their office are also certified as DBEs. The SBA and ITD provide a certain amount of reciprocity in certification. If a company is Section 8(a)-certified, then ITD will only require limited additional paperwork. Since the Section 8(a) requirements are a bit more stringent, SBA requires more from DBE firms seeking Section 8 (a) certification, especially white females, which are not presumptively disadvantaged under Section 8 (a) standards. ITA #8 recommends DBE certification to all qualified firms they counsel. ITA #8 stated that ITD does the same with respect to Section 8 (a) firms.

The Tribal Employment Rights Ordinance (TERO) certification process and how it relates to DBE Program. There are 300 TERO offices in the United States; each affiliated with a different Indian tribe. There are four TERO offices in Idaho. ITA #6 represents the TERO office representing the Shoshone-

Bannock tribe. TERO offices issue certifications much like DBE certifications, which offer Native American-owned businesses preferences on construction work conducted on the reservation. Native American-owned businesses must register as a TERO separately with each individual TERO office. There are 37 Native American-owned businesses registered as TEROs with ITA #6. Currently, only one of these businesses is also certified as a DBE with ITD. At one point, there were three businesses registered with ITA #6 and ITD, but two of these businesses outgrew the program.

Three major thoroughfares cross the Shoshone-Bannock reservation. This TERO office, therefore, has significant interaction with ITD and its prime contractors when transportation-related projects are performed on tribal property. Prime contractors can comply with TERO requirements in two different ways. One way is by subcontracting a certain percentage of the work to TERO-registered businesses. Another way is by employing TERO-registered individuals as a certain percentage of the labor force used to perform the project.

ITA #6 estimated that 10 to 20 percent of these 37 businesses are capable of doing ITD work. She attributes the low DBE certification to lack of interest by the Native American-owned businesses or lack of knowledge of the benefits of certification or opportunities to work with ITD.

The TERO registration process is very similar to DBE certification. Native American-owned businesses must register separately with each TERO office or tribe. The business must demonstrate that it is 51 percent Native American-managed or controlled. The Native American owner must possess 51 percent of the skills and receive 51 percent of the profits from the business. Each TERO office maintains an independent Board, consisting of five members. The Board reviews applications on a quarterly basis. There are usually two or three applications considered at each meeting. A TERO officer meets personally with all applicants and reviews documents. The required documents include certification of Native American blood or tribal card, proof that they have registered and complied with Idaho contractor registration license, legal structure documents, organizational flow chart if three or more employees, list of technical qualifications, proof of insurance/bonding coverage, financial statements, tax forms, inventory list, and business profiles.

Public and Private Sector Work

All the interviewees were asked to relate their experiences, perceptions, and anecdotes in connection with public and private sector work opportunities. Roughly, one-third of the minority- and female-owned businesses interviewed did more than 50 percent of their work in the private sector. About two-thirds did more than 50 percent of their work in the public sector. One white female-owned business worked equally in both sectors.

DBEs as Prime Contractors

The majority of the DBEs interviewed reported working as a prime contractor at least some of the time. (Interviewees #4, #7, #8, #9, #10, #21, #22, #24, #25, #26, #27, #28, #29, #32, #33.) Some of these DBEs stated they chose to work as prime contractors due to the delay in payment that occurred when they worked as subcontractors. Interviewee #26, a Native American/Hispanic female-owned demolition company, operates exclusively as a prime contractor because she has more control over her choice of work and payment.

Similarly, Interviewee #33, a Native American female-owned road construction business, reported that they prefer to operate as a prime contractor because it takes too long to be paid when operating as a subcontractor. Nonetheless, the business sometimes operates as a subcontractor due to the specialized nature of the work—they perform inspections on ITD projects. Interviewee #33 reported that she has not observed any other DBE prime contractors. She said that "most of the [DBEs] are flaggers."

Interviewee #24, a Native American heavy construction contractor, reported that the company functions as a prime contractor because they like to control their schedule. "If you're a subcontractor, you're at the mercy of the prime contractor." Similarly, Interviewee #22, a Hispanic male-owned concrete contractor, functions as a prime contractor so that the company has control over everything and generally does all of the work itself.

Another DBE reported her choice to work as a prime contractor is related to the nature of the work and their client relationships. Interviewee #28, a white female-owned engineering firm, reported working as a prime contractor 85 percent of the time. She stated that they act as a prime contractor because they have two of the best project managers in the region specializing in their area. She stated that her project managers have maintained the client relationship from their time working in larger firms. She also said that because many of her employees have in excess of 20 years of experience working at larger firms, they do not want to be a subcontractor because that is not challenging for them. Thus, she stated the two primary reasons that they act as a prime contractor are to keep their project managers challenged and interested in the work they are doing, and to maintain their current client relationships.

Some interviewees did not know of any DBE prime contractors and could not recall ever having worked with a DBE prime contractor. (Interviewees #3, #12, #13, #17, #30, #22, #0, #31; ITA #4.) Interviewee #12, a white male-owned paving company has not seen any DBE prime contractors and has never worked with one. However, he knows there are some DBE subcontractors in the Idaho Falls area and they tend to pursue more of the federal work "because they see an opportunity there." Interviewee #17, a white male-owned landscape architecture firm, stated that the only prime contractors he knew were white male-owned.

Interviewee #20, a Hispanic male-owned rebar installation business, and Interviewee #26, a Native American/Hispanic female-owned demolition company, stated that they had never observed any other DBE prime contractors. Interviewee #31, an Asian/Pacific Islander male-owned pavement inspections business, stated that he did not know of any DBE prime contractors in Idaho nor had he ever worked under a DBE prime contractor. ITA #4, a minority trade association, noted that his members have worked exclusively as subcontractors, and they have not worked under DBE prime contractors.

Interviewee #22, a Hispanic male-owned concrete contractor, does not know whether there are any DBE prime contractors in Idaho, nor has Interviewee #22 worked with or under a DBE prime contractor. Interviewee #30 had no knowledge of any DBE prime contractors and has never worked under a DBE prime contractor.

Most interviewees reported very limited knowledge of DBE prime contractors. (Interviewees #4, #5, #6, #7, #8, #9, #10, #16, #18, #23, #25, #27, #28; ITA #1, #9.) Interviewee #28, a white female-owned engineering firm, stated there are "a couple" DBE prime contractors and they are very specialized. Interviewee #7, a Hispanic male-owned biological environmental consulting firm, is aware of DBE prime contractors and believes they are "common." He has worked under one or two DBE prime environmental consulting firms. Interviewee #7 works mostly as a subcontractor because "the bigger companies just need what I do."

Interviewee #18, a female representative of a white male-owned architecture firm, knows of only one DBE prime contractor in the Idaho Falls area. Interviewee #18 designed a facility on which the DBE prime contractor was the general contractor on the construction phase. Interviewee #18 solicited bids for the public entity and the public entity awarded the contract to the DBE directly because it was the low bidder.

Interviewee #6, a white male-owned concrete business, reported that his business works for "a number of DBE prime contractors." He explained that his company bids work to six prime contractors and "there may

be some of them who are DBE, and some of them who are not." Similarly, Interviewee #3, a white male-owned pre-stress concrete supplier, has worked with or under DBE prime contractors, and those experiences were "fine." Interviewee #16, an African American male-owned traffic control subcontractor, stated there is a Mexican DBE prime contractor who is doing "outstanding."

Interviewee #23, a Hispanic and Native American male-owned steel erecting company, reported having worked for a DBE prime contractor for ten years. He reported that the DBE was unique in that the female owner "did a lot of the office work, and her husband actually did all of the field work, but she had engineering degrees. She was the backbone of that company. And when things didn't happen, and she came out, you knew she was the owner."

Interviewee #10, a female representative of a Native American male-owned engineering firm, stated, "there are not a lot of opportunities for us to be a prime contractor, due to the nature of the work." "I think in the construction environment" DBE prime contractors "are more common." She stated that in the engineering area DBEs are not typically prime contractors, due to "technical complexity and depth of experience." Interviewee #10 has never worked with a DBE prime contractor.

Interviewee #4, a male representative of a white female-owned construction company, does not know of many DBE prime contractors. They bid a job under a DBE prime contractor only once and they were not awarded the work. Interviewee #5, a white male-owned heavy highway and building contractor, has rarely seen DBE prime contractors, and the company has never worked with or under a DBE prime contractor. Interviewee #9, a Native American male-owned underground utility company, stated, "there aren't very many" DBE prime contractors. Interviewee #9 has never worked with a DBE prime contractor. Interviewee #27, a Native American male-owned refractory construction contractor, has not noticed whether or not there are other DBE prime contractors regionally, but he has seen them at conferences he has attended. Interviewee #27 has never worked with or under another DBE prime contractor.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that there are "some" DBE prime contractors. He knew of one in heavy equipment and also large DBE landscaping firms. He stated that the businesses they assist subcontract under the large DBE landscaping firms.

ITA #9, a trade association representing general and subcontractors, stated that it has 100 members paying general contractor member dues. He knew of only one DBE out of these 100 members. This DBE works as a general contractor but primarily as a subcontractor on ITD jobs According to ITA #9, in the highway business, it is hard to find a true prime contractor anymore. Most contractors switch back and forth—do some prime contracting and some subcontracting. "Idaho is a small market so you can't really specialize in a niche area, you have to be a jack of all trades to get work." Similarly, ITA #2, a Hispanic business trade association, knew of only one female DBE prime contractor.

Some interviewees reported working primarily as subcontractors due to lack of capital, lack of bonding capacity, or lack of experience. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that there are "the big 10" prime contractors in the area and it takes a lot of money to act as a prime contractor; this is why most of the businesses they assist act as subcontractors. ITA #3, an organization providing outreach to small businesses, has not seen many DBE prime contractors and attributes this to the capital required to be a prime contractor. "DBEs are undercapitalized to be prime contractors." Similarly, the businesses in ITA #4's membership generally function as subcontractors because of capacity and funding.

Interviewee #15, a white female-owned concrete business, reported that they exclusively operate as a subcontractor because "it's a lot less hassle...and we don't have the bonding capability." Similarly, Interviewee #9, a Native American male-owned underground utility company, reported that they operate mostly as a subcontractor "because of the ease of it." Interviewee #9 stated that he is associated with a prime contractor that "has enough work that he just hands me work." The prime contractor "provides everything, all [Interviewee #9 has] to provide is equipment and labor and I get paid once a month, and that works out well for me." He stated it is "probably not as prosperous, but the headaches are a lot less."

Interviewee #6, a white male-owned concrete rubblizing business, attributed the fact that the business performs only as a subcontractor, to its being specialized. Interviewee #6 explained that "to expand to do the general contractor's work, we would have to expand our scope of work and we are strictly specialized to do this, and we are limiting ourselves by choice to do this work."

Interviewee #13, a white female-owned traffic control subcontractor, stated that she is a subcontractor because she would not know how to do the prime contractor side of the work. Similarly, Interviewee #23, a Hispanic and Native American male-owned steel erecting company, reported that he operates exclusively as a subcontractor because he lacks experience to operate as a prime contractor although he is "learning more." Interviewee #20, a Hispanic male-owned rebar installation business, explained that his company chooses to act as a subcontractor as opposed to a prime contractor because "we need more experience about the paperwork...we have the knowledge and everything to do the job, but I don't know if we need to have more money, or...I don't know how that works exactly."

Experiences of DBEs Regarding Private Sector Work Opportunities

Most of the minority- and female-owned firms interviewed reported success in the private sector. (Interviewees # 7, #8, #10, #13, #15, #16, #20, #21, #22, #24, #25, #27, #28, #29, #33; ITA #1, #2, #3, #4, #9.) Roughly, one-third of the DBEs interviewed reported receiving 50 percent or more of their business from the private sector. Interviewee #21, an Asian male-owned environmental consulting firm, does 98 percent of his business in the private sector and considers himself very successful. He gets most of his business through referrals and his own marketing efforts. "I don't just wait for the projects to come to me. You must create it and make it happen. However, that's not easy for everyone." He participates in community activities to get his name out. He also develops creative marketing plans such as the programs he puts on for real estate agents to teach them about environmental regulations.

Interviewee #28, a white female-owned engineering firm, stated that she has been very successful in the private sector and they have been very fortunate. She explained that her business is a specialized area and there are only a few companies that can compete. She stated that her business does well because they offer the same services as the larger companies. She said that many of her employees came from much larger firms and have large-firm experience that a lot of employees at smaller firms do not have. She stated that she likes to work directly with the clients. She noted that many larger firms keep the work in-house so she does not want to "be at their mercy" in terms of obtaining work.

Interviewee #27, a Native American male-owned refractory construction contractor, has attempted to obtain work in the private sector and most of those attempts have been successful; their competition is limited in the Western United States; its work is very specialized.

Interviewee #22, a Hispanic male-owned concrete contractor, stated that the company has been very successful in the private sector, but noted that the company performs better financially with larger private

sector jobs than with smaller private sector jobs. On the larger jobs, Interviewee #22 bids the whole project. He does 70 percent of his work in the private sector.

Interviewee #15, a white female-owned concrete business, feels they have been successful in the private sector. Although ITD jobs usually "runs pretty smooth," Interviewee #15 reported that working in the private sector "seems to run a lot smoother, not as much paperwork—the paperwork really bogs you down." Interviewee #15 does 20 percent of his business in the private sector.

Interviewee #20, a Hispanic male-owned rebar installation business, reported that they "are doing okay" in the private sector. Interviewee #16, an African American male-owned traffic control subcontractor, stated that he has done a lot of work in the private sector and the people in Idaho are "wonderful."

ITA #3, an organization providing outreach to small businesses, stated that he has seen great success stories from small businesses, including DBEs, which have participated in the College of Southern Idaho Business Incubator and are working in the private sector. This program offers financial assistance and business training to small businesses. ITA #6, a Native American organization, reported that her members are successful in the private sector; however, they tend to work for other tribal members and do not often venture off the reservation for either private or public sector work.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the businesses they assist have been successful in both the private sector and in the public sector on both ITD and non-ITD projects.

Interviewee #13, a white female-owned traffic control subcontractor, stated that she has been somewhat successful in obtaining work in the private sector. However, she stated the majority of their work is "dog eat dog" and they have to "scratch and bite to get any work." She stated they have very strong competition.

ITA #9, a trade association representing general and subcontractors, stated that the unemployment rate in Idaho is 2.5 percent. "You can't find someone to move dirt in this town for a private or an ITD job. Our problem is getting more than one person on a bidders list. If somebody's not getting work, they're doing something wrong." However, ITA #9 stated, "I don't specifically have knowledge of use of DBEs in private v. state work because it's not immediately apparent who all the DBEs are."

Some interviewees believed it was easier to obtain work in the private sector. Interviewee #7, a Hispanic male-owned biological environmental consulting firm, believes he has been successful in the private sector stating that it is "a little easier to market with them, more efficient" than the public sector. He markets by making cold calls, taking business contacts out to lunch, and through referrals.

Most of the work undertaken by ITA #4's members is on construction jobs. Overall, ITA #4, a minority trade association, thinks that its members have been more successful in the private sector. ITA #4 noticed that in the private sector, there has been outreach to minority companies for jobs, and that in the private sector, companies are looking for other qualities, such as saving money.

Interviewee #6, a white male-owned concrete business, reported that "theoretically [private sector jobs] are easier to handle—less permits and less obstacles to overcome, but we approach them the same way as the public work." Interviewee #14, a white male-owned road construction company, described work in the private sector as simple, saying you just "sign the contract and get to work, and get paid every month, and there's no paperwork...very, very user friendly." Interviewee #14 believes that they have been successful in the

private sector: "more successful than in the public sector—percentage of profit to gross has been higher in the private sector."

Interviewee #29, a white female-owned consulting engineering corporation, stated that she works mostly as a subcontractor in the public sector and mostly as a prime contractor in the private sector. She explained that the public sector jobs are typically larger and, therefore, a smaller, 7-person firm such as her firm cannot get these projects as a prime contractor. Similarly, Interviewee #23, a Hispanic male-owned steel erection and welding business, noted the projects in the private sector are smaller than in the public sector and, therefore, easier to receive.

Conversely, Interviewee #10, a Native American male-owned engineering firm, has chosen to pursue public sector work because she believes it is more profitable and more easily accessible since the opportunities are better publicized.

Some minority- and female-owned companies reported difficulty obtaining work in the private sector. For example, Interviewee #24, a Native American heavy construction contractor, stated that the company does not work extensively in the private sector because their bonding and insurance companies do not provide coverage/money for private sector work. ITA #7, a trade organization for minority females, stated that her members have been "somewhat" successful in the public and private sectors. However, as a woman they tend to get the lower paying work.

Some interviewees reported that payment-related issues discouraged them from pursuing work in the private sector. Interviewee #29, a white female-owned consulting engineering corporation, stated: "We don't target the private sector because I feel there is a greater chance of clients that don't pay their bills and a greater chance of volatility." Interviewee #29 further explained that the private sector work depends on development, which goes up and down based on the market. The public sector work is more stable. Interviewee #11, a white male-owned construction company, does about 90 percent of its work in the public sector, mostly for the State of Idaho. He explained that the money is better and more guaranteed in public sector and that payment can be difficult in private sector. On the other hand, public sector jobs are "a lot more competitive…because of the public bidding process."

Interviewee #33, a Native American female-owned road construction business, reported that "for the most part [working for the private sector is] good." However, Interviewee #33 described working in the private sector as "risky." She describes experiences where the private entities will complete work and try to leave the contractors with the bills—anticipating that they will not have the resources to hire attorneys. She said "we get very leery when we do something for these bigger out of state [companies]." Nonetheless, Interviewee #33 feels they have been successful in the private sector.

On the contrary, Interviewee #25, a white female-owned flagging and traffic control company, feels like that the private sector pays more promptly.

Experiences of DBEs Regarding Public Sector Work Opportunities

Most of the minority- and female-owned firms (DBEs) interviewed reported success in the public sector, although not necessarily with ITD. (Interviewees #7, #8, #9, # 10, #13, #15, #16, #20, #22, #23, #24, #25, #26, #28, #29, #31, #32, #33; ITA #2, #3, #4.) Interviewee #29, a white female-owned consulting engineering corporation, considers the business very successful in the public sector, doing ninety-five of its work with government entities. When the company started out, she chose to target the larger projects. She felt is was "better to build our resume on large multi-million dollar construction projects." In order to get these

jobs, the company worked as a subcontractor for larger engineering firms. Now that the company is more established "were doing more prime work but it is often smaller type projects. As far as dollar value, we do more as a sub. However, sheer number of contracts we're higher."

Interviewee #10, a female representative of a Native American male-owned engineering firm, does 99 percent of its work in the public sector. Interviewee #10 has chosen to pursue public sector work because it is more profitable and more easily accessible since the opportunities are publicized. She considers the company very successful in the public sector, although not with ITD. The company has not worked with ITD in the last five years. Interviewee #10 attributes this to the fact "most of the projects [ITD] sends out are packaged as construction and environmental support and we don't have a strong relationship with a construction company that also has an ITD Master [Contract]. Most of the construction companies have established relationships with other [environmental] firms. We've marketed that and tried to get on teams but they usually have somebody they've worked with for years." Interviewee #10 has only submitted two bids on an ITD project in the last five years.

Interviewee #25, a white female-owned flagging and traffic control business, has performed a small amount of work for local governments, but "it's minimal; $5,000—$6,000 per year." Interviewee #25's predominant source of work is ITD. The company feels that it has been successful in the public sector, but that they could have some more experience. Interviewee #25 noted that ITD is "good to work with." Interviewee #25 noted that "they have some stumbles everyone once and a while, but they work it out...usually when [they] go into a new district...each district is a little different." Interviewee #25 stated that the business functions primarily as a subcontractor because of bonding, funding, and because of the DBE Program (traffic control is a subcontracted package).

Interviewee #24, a Native American heavy construction contractor, stated that ITD jobs "have been really good jobs." Interviewee #24 noted that non-ITD, public-sector projects have been generally successful as well, but there have been some instances where the plans were not specific enough, and there were interpretation problems with the plans.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, believes he has been successful in the public sector and with ITD, stating "I haven't marketed as much as I could have." Similarly, Interviewee #11, a white male-owned construction company, felt it had been successful in the public sector but no longer pursued ITD work. He explained that "most ITD work is bridges and to get bridges you have to travel." His sons, and co-owners, do not want to leave Idaho Falls for work.

Interviewee #3, a white male-owned pre-stress concrete supplier, stated that the company has been successful with ITD construction jobs. "We've done quite a bit of work." "The only real problem that [Interviewee #3] has is that the people who are designing [ITD projects] for the state have not figured out whether the material they design will fit in the product." Interviewee #3 recounted that, "it just doesn't seem like the people that are drawing the drawings are doing any checking or taking any responsibility for them."

Interviewee #8, a Hispanic male-owned environmental consulting firm, does approximately 90 percent of its work in the public sector. Interviewee #8 stated he likes working in the public sector because "you might not get paid quickly but you eventually get paid." He compared this to the private sector wherein consultants are paid for an answer; he stated that often in his industry, the developer wants a particular answer, but he cannot always give them the answer they want. Interviewee #8 reported success on ITD projects and stated that ITD is very fair.

Interviewee #28, a white female-owned engineering firm, stated that her non-ITD public sector work is mostly with the U.S. Army Corps of Engineers ("Corps") and the Natural Resource Conservation Service ("NRCS"). She said that she has been very successful in this area because a number of her employees have strong experience in this area. She stated they are successful "not necessarily because we are woman-owned or [a] small business—although they do get points for that," but because that have the relationships and "we had them when we were at the big firms." She stated that she has been extremely successful with NRCS and they currently hold four contracts in three states with them. She reported that they just won a contract—three year Indefinite Delivery, Indefinite Quantity ("IDIQ") with the Corps, after competing against a large firm.

Interviewee #16, an African American male-owned traffic control subcontractor, stated that he has been successful in the public sector and has been able to obtain a number of contracts. He stated that a lot of minorities and women have been able to come into the transportation industry and make a lot of money.

Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that "good experiences" in the public sector, both non-ITD and ITD. Similarly, Interviewee #13, a white female-owned traffic control subcontractor, stated that she has been successful in the public sector on both ITD and non-ITD contracts.

On the other hand, Interviewee #17, a white male-owned landscape architecture firm, reported that it had been very successful in the public sector as a whole, but only somewhat successful with ITD. Interviewee #17 indicated that the issue was in the fee negotiation process. "I seem to have had a hard time getting a fair market fee for my services." In the professional services arena, ITD does not base its hiring decisions on cost, but quality and then approves a certain rate. A professional's rate is either approved or rejected by ITD. Interviewee #17's rate has been denied by ITD. According to Interviewee #17, the market value for landscape architects is "through the roof." Private sector and other public agencies have recognized this and are willing to pay more. ITD is "not doing their homework" and keeping up with the market. This discourages qualified professionals to bid on ITD jobs since it is more lucrative to work with others.

Interviewee #31, an Asian/Pacific Islander male-owned pavement inspections business, feels the company has been successful in the public sector, and noted that he works exclusively on ITD jobs.

Interviewee #3, a white male-owned pre-stress concrete supplier, noted that the company has been successful in the public sector, and that the volume of the company's work is growing every year. The work that Interviewee #3 performs in the public sector is different than in the private sector because the work product required of each job is not the same.

A member of ITA #2, a Hispanic trade association, who participated in the interview, stated his non-ITD public sector work has also been successful. ITA #2 stated that obtaining business in the public sector is generally through word of mouth.

Some interviewees noted receiving public sector work provides experience that may assist DBEs to then pursue work in the private sector. ITA #5, an organization providing outreach to small businesses, stated that when a small or disadvantaged business receives public sector work this builds their resume and provides them with valuable work experience. This experience may help them receive work in the private sector as well. For example, ITA #5 knew of a company that had a cleaning contract with ITD for many years. Eventually, they lost the contract, but went on to do very well in the private sector.

Interviewee #9, a Native American male-owned underground utility company, has been working in the public sector for 23 years. Interviewee #9 believes they have been successful in the public sector, and reported that "the DBE Program helped [the business] 'mainstream' more than just being a subcontractor." Interviewee #9 further stated that the DBE certification "gave [the business] the opportunity to learn enough to where [they] could go out and be a main contractor." Interviewee #9 reported that he had "good luck working with the transportation department." Interviewee #9 said that he has "never had any problems...had to file one claim in 23 years; I only had problems on one job and it was worked out, so I can't complain about it."

Some minority and female-owned companies (DBEs) reported difficulty obtaining work in the public sector. Interviewee #4, a white female-owned construction company, has shied away from public sector work lately and chosen to focus on the private sector. According to Interviewee #4, the public works arena "has become a lot more competitive. There are a lot of too low of bids coming out. I was bidding a lot of stuff I didn't get...The number of contractors bidding on jobs has doubled in recent years."

Interviewee #27, a Native American male-owned refractory construction contractor, has been successful in the public sector, but because work is so specialized, there is often not more to do. "It's more cumbersome to get in the gate and do what it is we do." Interviewee #27 has not found that these jobs care about his small business certification, despite being told at conferences that certification would help increase business. Interviewee #27 noted that it is difficult to perform government work as compared to private sector work; on ITD projects, there is a lot of paperwork compared to the private sector work and they are not used to it.

ITA #6, a Native American organization, stated that the predominant minorities in rural Idaho are Native Americans and Hispanics; however, these groups have low participation on ITD contracts. She attributes this to the size of these minority-owned companies. "I think it's because the businesses can't be start-ups, they have to have some experience." ITD requires experience. These businesses are too small and too new. These businesses are getting discouraged so they stop trying. "I think if they actually tried and put together a decent proposal...I feel pretty confident that ITD would give them a chance and try to work with them to some degree." She has seen some successful non-Native American, women-owned businesses. She attributes their success to developing teams of other experienced individuals.

Interviewee #16, an African American male-owned traffic control subcontractor, stated that he has been pretty successful working on ITD jobs; however, he stated that it became very difficult for him when the definition of DBE was expanded to include women because they were then his direct competitors. He stated that many prime contractors would prefer to work with a white woman than with a African-American man but "that's life."

Interviewee #25, a white female-owned flagging and traffic control company, stated that she is confused about what is required of her on ITD projects. It is unclear during the pre-construction meetings what the traffic control personnel are required to do with respect to time keeping, diaries, payment, responsibilities of individual traffic control personnel; ITD is hard to work with. Interviewee #25 noted that "there are too many bosses" within ITD.

ITA #4, a minority trade association, reported that his members have been successful on ITD jobs but not on other public sector jobs.

ITA #7, a trade organization for minority females, reported that very few of her members work in the public sector. Most of her members, particularly those in the rural areas work in factories, on farms, or in restaurants.

She stated that it is difficult for women to realize that they can start their own business and obtain the skills necessary to work with public entities such as ITD.

Utilization of DBEs by Prime Contractors in the Public and Private Sector

Most of the prime contractors interviewed reported using DBEs in the public and/or private sector. Interviewee #12, a white male-owned paving company, uses the same subcontractors in the public and private sectors. He uses about five different subcontractors and roughly, three of these are DBE firms (two females, one minority). He estimates that 10 percent of his subcontracting work goes to one of these female DBEs. He subcontracts concrete work, fence work and material supply. About 20 percent of the time, he uses these DBEs to fulfill a DBE requirement. The rest of the time, he uses these DBEs on jobs with no DBE requirement.

Interviewee #29, a white female-owned consulting engineering corporation, uses "a few" minority- and female-owned subcontractors. She does not use them fulfill a requirement since as a DBE subcontractor she meets the DBE requirement herself. "I used them because they were good." She does not use any subcontractors in the private sector.

Interviewee #25, a white female-owned flagging and traffic control company, indicated that she rarely uses subcontractors, but she has used DBE as subcontractors, including her competition. Interviewee #25 noted that they "hire whoever can do the job," especially if they are friendly with them. She has sub-subcontracted work on ITD projects roughly four times per year. Interviewee #25 noted that DBEs are listed on the DBE Program website, and they solicit DBEs to help the DBE Program. Interviewee #25 noted that same about using DBEs on small private sector projects.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, very rarely uses subcontractors; however the subcontractor he uses most often is a female-owned business. She is not certified as a DBE because her company is small and does not target ITD jobs. He uses this company because he knows her work, not because it is female-owned. He uses her in both the public and private sectors.

Interviewee #17, a white male-owned landscape architecture firm, uses the same subcontractors in public and private sectors. One of its subcontractors is a female landscape architect. He has never used her on an ITD project, but he uses her in the public and private sectors. He does not use her because there is a DBE requirement but because of her experience. He finds sub-consultants through word of mouth.

Interviewee #28, a white female-owned engineering firm, stated that she has worked with DBE subcontractors. She was just awarded a project and one of her subcontractors is a DBE. She stated that she also works with another DBE subcontractor. Interviewee #28 stated that she uses some of the same DBE subcontractors in the private sector and in the public sector.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that the prime contractor businesses they assist use DBE subcontractors 40 percent of the time in the public and private sectors. He stated there are just more non-DBE subcontractors in the area. He stated they will solicit work from DBEs and they find DBEs by word of mouth. He stated they will hire DBE landscapers and heavy equipment operators.

ITA #4, a minority trade association, stated that its members use the same subcontractors in the public and private sector because of need and the specialization required by the work of the individual companies.

"Sometimes companies both private and public encourage companies to work with minority contractors, but not very often because there is no enforcement, particular at the state level."

Interviewee #21, an Asian male-owned environmental consulting firm, stated that the subcontractors he uses in the public sector versus the private sector are "not necessarily the same. I describe the job for them, what I expect, we sign a one-page contract. It's very simple…it all depends on the client and the geographical location. It's not fair to the client if I have a job in Boise to use well-drillers from Twin Falls...if it is in this area then it depends on their performance…if they don't do a good job I will not use them again." He finds his subcontractors in the phone book or through their advertisements. About 40 percent of his sub-consultants are minority or female owned.

Interviewee #4, a male representative of a white female-owned construction company, has less of a need for subcontractors in the private sector due to the nature of the work he performs. He has about 20 to 30 subcontractors. Two of these subcontractors are female-owned (painter, concrete paver). One is Hispanic (HVAC). "I choose my subcontractors based on quality and price. If given the chance we certainly don't mind giving it to the minority."

ITA #4, a minority trade association, stated that prime contractors tend to use the same DBEs on all their projects.

Some minority- or female-owned (DBE) prime contractors make a point to use other minority- or female-owned businesses as subcontractors. Interviewee #10, a female representative of a Native American male-owned engineering firm, uses the same sub-consultants in the private and public sectors. They obtain these sub-consultants through word of mouth. About 50 percent of these sub-consultants are minority and female owned. "We try to use disadvantaged companies because we are." They sometimes use these DBEs to fulfill a DBE requirement.

Interviewee #8, a Hispanic male-owned environmental consulting firm, reported acting as prime contractor 10 percent of the time. When he acts as a prime contractor, Interviewee #8 stated that he utilizes the same subcontractors in the private sector as in the public sector. He explained that he enjoys subcontracting and teaming with other contractors because he wants to "spread the good wealth around" in the community, he prefers to use DBEs and other small businesses. He indicated that his subcontractors are generally experts in a given field like engineering. He stated they would very rarely look for a large company subcontractor.

Interviewee #21, an Asian male-owned environmental consulting firm, makes a special point to give minorities work. "Let's say this minority owned business is not as competent but willing to work, I hire them to give them an opportunity to be fair and that's how ITD should operate but they don't."

According to Interviewee #23, a Hispanic and Native American male-owned steel erecting company, some of its subcontractors are DBEs, and the company has attempted to use minority and DBE subcontractors in the private sector.

A few interviewees indicated they have little or no experience working with DBEs in either the public or private sector. Interviewee #24, a Native American heavy construction contractor, has a few minority- and female-owned subcontractors but does not know if any are DBEs. Interviewee #27, a Native American male-owned refractory construction contractor, rarely uses subcontractors and is not aware that any of these subcontractors are DBEs. He has not specifically attempted to use minority, female or DBE contractors.

Interviewee #30, a white male-owned engineering and plan-surveying firm, had no experience working with DBEs. Interviewee #22, a Hispanic male-owned concrete contractor, also no experience and did not know any DBE subcontractors in his area.

Interviewee #18, a female representative of a white male-owned architecture firm, works with five or six sub-consultants on a regular basis, none of which are minority or female owned. She has worked on probably six projects in the last five years where the general contractor was required to use a certain percentage of DBEs. These projects were overseen by TRPTA or ESIPTA (entities that use federal money on their projects). These entities monitored DBE utilization throughout the project. Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that she uses the same subcontractors in the private sector as in the public sector and that "to [her] knowledge" these are not DBEs: "you establish relationships with these people and are comfortable working with them and know what they're going to put out."

Interviewee #27, a Native American male-owned refractory construction contractor, had limited experience with DBEs." "It's all been based on merit or someone recommending you...it could have been unknowingly...it wasn't a factor."

Some interviewees report experiences relating to using DBEs to fulfill a DBE requirement. Interviewee #14, a white male-owned road construction company, has solicited bids from DBEs but never used them on a project. When asked whether he had ever used DBEs in the private sector, Interviewee #14 responded, "I doubt that because they're just not around here." When asked whether he solicits DBEs for price quotes in the public sector he responded "only when they're required—[ITD] posts it, and you have to get your numbers up, and so forth...'this is a DBE...contract,' so you know you've got to do it before you bid."

Interviewee #5, a white male-owned heavy highway and building contractor, reported that it sometimes uses the same subcontractors in the private and public sectors, usually because those companies are specialty contractors. Interviewee #5 stated that this experience has been "generally ok," and that's it a part of business now—the company is expected to use DBE contractors. Interviewee #5 often solicits for price quotes on ITD projects, using DBE lists and those companies with which Interviewee #5 has past experience. Often times, Interviewee #5 engages in contracts that have DBE requirements, and it specifically solicits for those portions of the contract. Interviewee #5 subcontracts most everything, pursuing DBEs in certain trades to make sure that goals are "covered." Interviewee #5 subcontracts urban gutter work, painting, landscaping and traffic control.

Interviewee #11, a white male-owned construction company, has roughly 10 subcontractors. He does not know if any are currently minority- or female-owned. In the past, he has used DBEs to fulfill DBE requirements on federal jobs. "I used to have a concrete guy that I used to maintain that 10 percent and he was very easy to work with."

Interviewee #33, a Native American female-owned road construction business, reported that she does not often solicit DBEs for price quotes "because I am a DBE, I don't need DBEs." One fencing company that Interviewee #33 uses is female-owned, but that business does not have a DBE certification.

Some interviewees indicated that DBEs are utilized more often for certain types of work. Interviewee #33, a Native American female-owned road construction business, reported, "I don't solicit out, unless it's for flagging or something." The average price range on these contracts is $2,000 to $3,000. Interviewee #33 reported that the business uses the same subcontractors in the private as in public sector: "yes, if we use

subs—we don't use very many subs—if we do, it's usually for hauling gravel...other than that, we don't use subs."

Interviewee #5, a white male-owned heavy highway and building contractor, engages in contracts that have DBE requirements, and it specifically solicits for those portions of the contract. Interviewee #5 subcontracts urban gutter work, painting, landscaping and traffic control. Interviewee #5 subcontracts most everything, but uses DBEs only for these types of work so that the goals are satisfied.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that many prime contractors in the construction industry only want a DBE flagger or fencer and are not interested in meeting their DBE requirement in any other areas; so, he stopped marketing to construction prime contractors.

ITA #9, a trade association representing general and subcontractors, stated that DBEs tend to specialize and establish niche practices, such as environmental engineering. For this reason, ITA #9 said DBEs end up working as subcontractors to larger, more generalized engineering firms. DBE contractors are concentrated in certain sub-trades: guardrail, flagging, landscaping. "You don't need as much flagging and guard-railing in a downtown office building." ITA #9 stated it is easy for prime contractors to meet their DBE goals because DBEs tend to specialize in certain areas where they are needed.

Perceptions of DBEs Regarding Their Utilization in the Public and Private Sectors

Many DBE interviewees reported the same prime contractors that use them in the public sector also use them in the private sector. (Interviewees #4, #7, #9, #10, #16, #20, #22, #23, #24, #25, #27, #28, #29, #32, #33.) Interviewee #29, a white female-owned consulting engineering corporation, said she is frequently used as a subcontractor on ITD projects. Prime contractors solicit her because they have used her in the past. In the beginning, the DBE program and the project goals were a huge help in getting solicitations. "I used to get calls due to DBE requirements—that was excellent for us because I didn't have experience and I needed a way into the ITD market." Interviewee #29 explained that the DBE program was "invaluable to us...I couldn't have survived without it. If I were started a firm right now I couldn't do it. I couldn't do it now." Now that she is well known in her area, prime contractors continue to solicit her in the public and private sectors. She has good relationships with the prime engineering firms in her area. "We know jobs are coming out three to four months ahead of time." This allows her to contact the prime contractors and negotiate work.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that the same prime contractors that use him in the public sector also use him in the private sector. About half of his public sector work is a result of prime contractors contacting him. These contacts result in work about half the time. When he contacts the prime, it results in work roughly 10 percent of the time. In the private sector, prime contractors contact him "the majority of the time" and he gets 80 percent of this work. Interviewee #7 does not believe a prime contractor has ever refused to work with him because he is a DBE.

Interviewee #22, a Hispanic male-owned concrete contractor, stated that general contractors that they have worked for in the past "call them all the time" in the public and private sectors.

Interviewee #28, a white female-owned engineering firm, stated that the same prime contractors use her in both the private sector and the public sector. She stated that she often submits qualifications but not on ITD projects. She stated that the larger firms do not have to use them for an ITD job because they can do the work themselves and that makes business sense. In terms of the subcontracting work they do, Interviewee #28 stated it is related to drainage, construction engineering inspections, etc.

Interviewee #16, an African American male-owned traffic control subcontractor, stated that the same contractors will use him in the private sector as in the public sector depending on the job, however, the work is different as between the private sector (masonry work) and the public sector (flagging).

Interviewee #4, a male representative of a white female-owned construction company, stated that the same prime contractors use them in the private as public. "I get a lot of primes contact us for quotes [on ITD jobs] but I haven't been bidding them in the last few years" because he has been so busy in the private sector. The same contractors who use ITA #4's members in the public sector use them in the private sector because of prior experience with those contractors.

Interviewee #20, a Hispanic male-owned rebar installation business, stated: "we have one prime that we're working for now, and he's the only one that keeps us busy-since we started the business, they're the only ones that we've worked with." He is used in the public and private sectors.

A member of ITA #2, a Hispanic trade association, who participated in the interview, stated that the same prime contractors use him in the private sector as they do in the public sector.

Two interviewees stated the prime contractors that use them in the public sector do not use them in the private sector. Interviewee #8, a Hispanic male-owned environmental consulting firm stated that the same prime contractors do not use him in both the private sector and the public sector. He stated that because there is no DBE requirement in the private sector, "we have to get our own work in the private sector." He stated that most of this work in the private sector is as a prime contractor. Interviewee #13, a white female-owned traffic control subcontractor, stated that the same prime contractors who use her in the public sector do not use her in the private sector. She stated that she has tried to obtain work with them in the private sector but this has been unsuccessful. She stated that she does not receive solicitations in the private sector very often, possibly, she said, because the private sector projects do not have goals. She stated she submits price quotes on private sector projects but they do not often result in work. Nonetheless, she does 87 percent of her work in the private sector.

Some DBEs stated that they work exclusively as subcontractors or that they work exclusively in either the public or private sector. For example, Interviewee #10, a female representative of a Native American male-owned engineering firm, does not work in the private sector. The company feels that public sector jobs better publicized, and therefore pursues them exclusively. Interviewee #21, an Asian male-owned environmental consulting firm, works almost exclusively as a prime contractor.

A few interviewees reported that prime contractors sometimes do not actually engage in genuine "good faith efforts" to utilize DBEs. Interviewee #13, a white female-owned traffic control subcontractor, stated that she received a telephone call three months ago from ITD asking if a certain company had ever contacted her to bid on a project. She indicated that she had never heard of the company before. The ITD person indicated that they had received the same response from some of the other subcontractors that they had called (Interviewee #13 said she insinuated that the company was falsifying its good faith efforts).

Similarly, Interviewee #22, a Hispanic male-owned concrete contractor, received a call from the EEO Office asking whether they were performing work for a certain prime contractor. Apparently, the prime contractor had listed them as doing some subcontracting which they were not doing. The prime later offered Interviewee #22 the work, but Interviewee #22 turned it down because he perceived it was a dishonest situation.

Interviewee #21, an Asian male-owned environmental consulting company, reported that he has been asked by prime contractors to submit bids for subcontracting work on ITD projects, but he feels these efforts were insincere. "They're supposed to have a number percentage, say 10 percent, DBE participation." He is usually solicited through letters and about once a year by phone. The prime contractors do not tell him the scope of the project and it seems clear they are not interested in using him.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he had not heard of falsification of good faith efforts although he would not be surprised if that does happen. He explained that he has some clients who will always put his name on a team submission so he would not be surprised if his name was put on a team but then did not use him. He would have no way of knowing if this had actually occurred. Interviewee #21, an Iranian male-owned environmental consulting firm, stated: "I think there is some of that because I never hear from [prime contractors]."

Interviewee #25, a white female-owned flagging and traffic control company, recalled an incident about 10 years ago when the DBE Program called to ask her about some pricing issues related to a particular bid. A contractor claimed that it had not been able to secure any DBE subcontractors, but Interviewee #25 was able to produce its bid for the job.

ITA #6, a Native American organization, feels that contractors often solicit Native American-owned businesses or individuals with no intention of hiring them or continuing to employ them after the TERO portion of the job is compete. ITA #6 prescreens businesses and individuals and sends lists to the prime contractors containing only those who are qualified. These businesses and individuals are not being utilized, and she believes this indicates "a problem." She reported that prime contractors sometimes contact her to help them with their audits. They want her paperwork that shows they contact her as part of their recruitment efforts. Although they may recruit Native American-owned businesses and Native American individuals, these are not genuine efforts.

ITA #6 reported that fewer than 5 percent of the 37 businesses registered as TEROs with her office have worked with ITD. She can recall two or three, all of which are professional service providers. "I think that one of the biggest problems is securing real solicitation opportunities and not just extending a good faith effort...I think that's not necessarily a true solicitation opportunity."

ITA #9, a trade association representing general and subcontractors, stated that the good faith effort requirement is an added expense to bid on ITD jobs. Prime contractors must put in all the effort up front and might not get the job. The price of the good faith effort is wrapped into the bids. Contractors do not know what ITD is going to settle for—maybe 7 percent or 8 percent. It might be a matter of which contractor spent the most time doing the good faith effort. It is hard to decide how much time to put in—whether to submit a higher bid or a bid with less DBEs. It is a risk. "How many hours can I commit to overhead and still stay in business."

Solicitation of DBEs by Prime Contractors in the Public and Private Sectors

Some DBEs stated that they are solicited by prime contractors in the private sector. Interviewee #27, a Native American male-owned refractory construction contractor, reported that he is solicited for private sector projects a couple times a month. He does not feel the private sector is swayed by certification; "they don't care; they just want to run their facility economically and efficiently. He does 98 percent of his work in the private sector.

Interviewee #24, a Native American heavy construction contractor, noted that the same prime contractors that use the company in the public sector use the company in the private sector because of their working relationships; "it works both ways." Nonetheless, Interviewee #24 reported that prime contractors do not often solicit the company for price quotes on private sector projects as often as they solicit in the public sector. He does only 5 percent of his work in the private sector.

Interviewee #10, a female representative of a Native American male-owned engineering firm, stated, "[w]e're targeted because of the fact that we're small disadvantaged." Prime contractors solicit them for bid roughly two times per month. This is how they obtain 20 percent of their work. The remaining 75 percent of the work comes from pursuing opportunities on their own. They do not work in the private sector.

Interviewee #33, a Native American female-owned road construction business, reported that prime contractors solicit them for price quotes on private sector projects "all the time." Interviewee #33 reported that they submit price quotes in response to solicitations on private sector projects, and these result in work on private sector projects 90 percent of the time.

Many DBEs stated that they are solicited by prime contractors in the public sector. Interviewee #24, a Native American heavy construction contractor, recounted that prime contractors solicit the company for price quotes on ITD projects about 80 percent of the time for the jobs in the company's local area. According to Interviewee #24, these are not projects with DBE goals. Interviewee #24 responds directly to prime contractors with price quotes for ITD work, and this results in work about half of the time.

Interviewee #23, a Hispanic and Native American male-owned steel erecting company, reported that she is solicited for price quotes "quite a bit" in the public sector. Interviewee #23 further reported, "I've had one—out of the three years—I've had one contractor call me and thank me for submitting bids, and 'one of these days, I'm getting close,' that's what he said, 'I'm getting close.' I go 'well, at least you called.'" Interviewee #23 reported that these solicitations have never resulted in work.

Although Interviewee #27, a Native American male-owned refractory construction contractor, considers itself successful working with ITD, he noted that it is rare for prime contractors to solicit the company for price quotes on ITD projects.

Interviewee #4, a male representative of a white female-owned construction company, stated that prime contractors contact him "weekly" to bid as a subcontractor on an ITD project. He believes he is contacted because he has worked for these prime contractors before in the past. They are "swamped" in the private sector doing subdivisions so they do not have time for public sector work. "Public sector is feast or famine." He reported that the work in the private sector is steadier.

Interviewee #33, a Native American female-owned road construction business, reported that prime contractors solicit her for price quotes on ITD projects "at least once a day." Interviewee #33 "sometime" submits price quotes in response to solicitations on ITD projects, but "not often." She reported that these solicitations "never" result in work on ITD projects, "because they expect you to work...for free."

Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that she sometimes get solicited for price quotes on ITD projects "not a lot, but we do." Interviewee #26 further stated "the down side to that is that sometimes it's a turnaround of not even a week." When asked whether these were ITD projects with goals, Interviewee #26 responded, "I'd say 9 times out of 10 they are."

Interviewee #9, a Native American male-owned underground utility company, reported that prime contractors "constantly" solicit him for price quotes. He suspects that these are all in ITD projects with goals. Interviewee #9 used to submit price quotes in response until about 4 years ago—when he "was getting beat-up on bidding...was just getting beat too often."

Experience with DBEs in the Public and Private Sector

All but two of the interviewees with experience working with DBEs reported that these experiences were positive. No interviewees reported refusing to work with a DBE. Interviewee #12, a white male-owned paving company, who uses DBE subcontractors in the public and private sectors, reported that he has had nothing but positive experiences. Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that his experience with DBE firms has been "fine" and "competence is not an issue."

Interviewee #4, a male representative of a white female-owned construction company, has had some negative experiences "but no more so than others. As a matter of fact, percentages wise, the DBEs have their stuff together more, women are way more organized than men." He has never refused to work with a DBE. Interviewee #15, a white female-owned concrete business, reported that she has worked with DBEs and stated, "they're the same as everybody else."

Similarly, Interviewee #8, a Hispanic male-owned environmental consulting firm reported a positive experience overall in working with DBEs and has never refused to work with a DBE. However, he stated he has refused to work with two larger companies because of the way that they do business. He explained that those companies have a system in place wherein "nothing you do is any good" and the subcontractor is blamed for things that are not his fault.

Interviewee #28, a white female-owned engineering firm, stated that on a $500,000 ITD project, she may subcontract 5 to 10 percent of that work to a DBE. She stated that she has had a positive experience working with DBEs because they are small and therefore extremely responsive. She stated they also provide quality work because she will usually use them for some specialty.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that the prime contractors they assist use DBE subcontractors in both the private and public sectors. He stated these prime contractors have had positive experiences working with DBEs and he was unaware of a prime contractor refusing to work with a DBE because it was a DBE; on occasion, a refusal is due to a personality conflict.

Only two interviewees reported a negative experience with a DBE. Interviewee #21, an Iranian male-owned environmental consulting firm, had a bad experience with a female DBE prime. "She was very unqualified." According to Interviewee #21, he did all the work and she did not pay him. Interviewee #14, a white male-owned road construction company, reported that he had experiences with DBEs who were "incompetent" and "unprepared."

Availability of DBE Subcontractors

Some interviewees felt that there was a lack of available DBE subcontractors in their area. Interviewee #18, a female representative of a white male-owned architecture firm, has seen only a few DBEs on their public sector projects. He stated that there are only a few DBE firms in Idaho Falls but that these firms are well utilized. ITA #3, an organization providing outreach to small businesses, stated that there are not many DBE subcontractors in the Twin Falls area. ITA #5, an organization providing outreach to small businesses, reported: "We probably don't have enough DBEs to fill the contracts that ITD has." ITA #5 stated that "many DBEs who are doing very well" and making millions of dollars a year. According to ITA #5, the market is good for DBEs because they are in demand.

Interviewee #14, a white male-owned road construction company, stated that DBEs "are just not around here." Interviewee #1, a white male-owned corridor planning business, responded that "we try to be diverse about hiring a lot of people...if there were more diverse people in my field [it would be easier]...but, just to be honest, there are very few African American, Asian, Native American...planners or architects, especially here in Idaho...It appears to me that this was a bigger issue a few years ago when small business and women…cause now it doesn't appear, people aren't asking me."

ITD Bidding Process

Many interviewees reported positive experiences with the ITD bidding process. (Interviewees #4, #6, #9, #13, #12, #15, #17, #23, #24, #25, #26, #30, #33; ITA #1, #3.) Interviewee #13, a white female-owned traffic control subcontractor, stated she has had a "really good" experience regarding the ITD bidding process. Interviewee #17, a white male-owned landscape architecture firm, believes that the ITD bidding process is "good." He reported three separate ways he has received ITD projects:

1. Sometimes he receives projects directly from ITD or another entity without submitting a proposal;

2. "[A] community might have a project that is funded by ITD and the community might recommend that we do the job. For small projects they can do this"; and

3. He has also been through the RFP process. The RFP process is for larger jobs that ITD is required to open to the public.

Interviewee #9, a Native American male-owned underground utility company, has had "real good luck" with the ITD bidding process. Interviewee #9 attributes his satisfaction to "unit prices—they pay you for what you do, there's usually not any grey area unlike some of the stuff [they] do now. I'm very happy with it." Interviewee #9 reported that the DBE program "brought an engineer in and helped me go through plans and learn how to read things and read the bids and they were just really helpful in that area." Interviewee #9 believes "the transportation department has a really good system."

Interviewee #25, a white female-owned flagging and traffic control business, noted that "overall it's been OK." Interviewee #25 stated that for traffic control services, the company would like ITD to require that costs be bid hourly rather than at actual cost of the project; sometimes this pricing structure prevents them from getting and/or submitting bids. Interviewee #25 noted that you can be caught up in the specifications of the particular jobs, but the bidding process is generally fair. For some jobs, Interviewee #25 sees that ITD wants to have all of one particular kind of work completed in one day and "she questions that" because it is very difficult to do.

Interviewee #24, a Native American heavy construction contractor, reported that the bidding process takes two to three weeks, and that is "adequate" time.

Interviewee #4, a male representative of a white female-owned construction company, described the ITD bidding process as "not too bad a process." Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that they have attended several classes regarding what ITD expects from bidders and has had no problems in the bidding process. Interviewee #33, a Native American female-owned road construction business, described the ITD bidding process as "fairly good," though they do not have much experience with it. ITA #3, an organization providing outreach to small businesses, feels that the ITD bidding process is fine. He only has experience with the on-line bidding process and stated that "you don't have to be too strong on computer skills in order to navigate the process."

Interviewee #30, a white male-owned engineering and plan-surveying firm, has never bid an ITD job directly, always as a subcontractor. "It's been fine. It's a little more paperwork intensive than other types of projects the [the company does]."

Interviewee #6, a white male-owned concrete business, reported that ITD's bidding process "is not any different than any other state's transportation department—they announce the work, and then there is a date to bid." Interviewee #6 reported that the process is "pretty well done," and "easy to follow—not that difficult." Interviewee #6 also stated he knows and when projects are advertised and he believes ITD provides enough time between the announcement and the bid date. Similarly, Interviewee #23, a Hispanic and Native American male-owned steel erecting company, described the bidding process as "pretty easy, because they [ITD] supply a lot of the stuff—the website, the plans are accessible, paper[work] are downloadable—it's actually really, really, really easy. And there's no out of pocket expenses." He added "it's just time—it's just time-consuming."

Interviewee #12, a white male-owned paving company, and ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the ITD bidding process itself is straightforward.

Interviewee #15, a white female-owned concrete construction company, stated "I like them [ITD] because everything's spelled out...I like it that the primes have to list their subs so they can't go in and shop numbers after the fact—in the private sector a lot of jobs get negotiated out from underneath you."

Most interviewees stated they are adequately notified of ITD bidding opportunities and identified multiple sources for this notification. Interviewee #6, a white male-owned concrete business, reported that the company is adequately notified of opportunities to bid: "we follow the bidding announcements. Plus, because we are known in the area for the work we do, the general contractors call us anyway, even if we don't."

Interviewee #9, a Native American male-owned underground utility company, reported that they are adequately notified of opportunities to bid on ITD jobs—they used to receive newsletters, although they no longer receive them. Interviewee #9 stated, "I know that I can get on the computer—but I don't like doing that." Interviewee #9 reported that general contractors also send them notices. "I wish they would send me the newsletter back."

Interviewee #22, a Hispanic male-owned concrete contractor, has no experience bidding directly for ITD work, but he is notified through telephone calls and in the mail. Often Interviewee #22 receives requests to bid that are for areas that are too far away. Interviewee #22 stated that prime contractors often call his house offering a job, telling him that they have sets of plans that they want him to look at to create a bid. Generally, these are companies that Interviewee #22 has performed work for many years.

Interviewee #24 thinks that he is adequately notified of opportunities to bid, including through the website postings, the list of contractors, and a forecast that you can keep up with. Interviewee #24 stated that the DBE Program sends out a prime contractor list when DBEs receive the list of plan holders for a particular project; "you just go down the list and ask who's bidding prime."

Interviewee #3, a white male-owned pre-stress concrete supplier, thinks that the company is adequately notified of opportunities on ITD jobs. The opportunities "come out in the AGC plan center and [a] magazine." Interviewee #3 also indicated that it receives notification of opportunities over the Internet.

Interviewee #25, a white female-owned flagging and traffic control business, is notified of opportunities through the website and notices sent to contractors; Interviewee #25, a white female-owned flagging and traffic control company, thinks that the company is adequately notified of jobs through the website and email notification. Interviewee #25 noted that unlike in the past, the company is responsible for checking online. Many companies will also send letters asking for quotes. Most of the time Interviewee #25 checks the ITD website once a week to see what jobs are out there. The EEO Office provides plans for the company for free and informs that what prime contractors are bidding the jobs. This is mainly how Interviewee #25 uses the DBE Program. Interviewee #25 noted that sometimes subcontractors are not notified of a particular bidding being postponed. She stated that the DBE Program newsletter is very helpful.

Interviewee #12, a white male-owned paving company, stated that ITD projects are advertised in the newspaper, posted at the AGC offices, and on the ITD website. He feels he is adequately notified of opportunities to bid with ITD. Interviewee #12 orders the plans and submits his bid. He reported that ITD calls him for smaller projects that they do not have to advertise. Interviewee #4, a male representative of a white female-owned construction company, feels he is adequately notified of opportunities. Interviewee #4 subscribes to some construction manuals that list all public sector opportunities in the area.

The prime contractors that work with Interviewee #30, a white male-owned engineering and plan-surveying firm, on those projects adequately notify the company of opportunities. Generally, Interviewee #30 receives telephone calls for work—they have worked on a couple ITD bridges and the contractors doing the design work called Interviewee #30 to participate in the projects. "Land surveying is kind of a local thing." Interviewee #30 has not looked for any kind of listing to know which prime contractors have expressed a particular interest in a given RFP. According to Interviewee #30, "[i]t looks to me like Idaho transportation department, when they advertise for bids, it's always for large projects that are out of our scope. We are only capable of doing small portions. Looks to me like they generally hire a larger contractor who then turns around and subs the work." "If there as a better way to see what jobs were out there," Interviewee #30 might be able to get more work from ITD. "All I see is what's in the paper."

Interviewee #22, a Hispanic male-owned concrete contractor, noted that at the Contractor's Exchange, they have listed all the jobs that come in the area, including the blueprints; if he wants to bid on that particular job or if he is low on work, he will go to the Contractor's Exchange to obtain that information. Interviewee #22 also noted that the Contractor's Exchange usually has a list of prime contractors that are bidding a particular job, too, and he'll call every contractor and give the company's price for the requested work.

Interviewee #13, a white female-owned traffic control subcontractor, stated that she is adequately notified of bidding opportunities via the ITD website. Interviewee #13 stated that she will review the ITD planholders' list to determine which prime contractors are interested in a particular project.

Interviewee #16, an African American male-owned traffic control subcontractor, stated that he has the "ultimate" opportunity to bid on jobs and in order to find out which prime contractors have expressed interest in a particular RFP, he would just ask for a bidder's list; he also stated that ITD also normally sends out a bidder's list.

As a subcontractor, Interviewee #7, a Hispanic male-owned biological environmental consulting firm, has never bid directly on ITD job but he feels he is adequately notified of opportunities to work with prime contractors on ITD jobs either by contacting the prime contractor or the prime contractor contacting him. ITD also sends him "announcements" in emails about ITD and non-ITD projects. He has not done much ITD work because "after [he] was certified, [he] had so much private sector work" that he did not actively pursue it. Similarly, Interviewee #17, a white male-owned landscape architecture firm stated: "I've been adequately notified of opportunities, but I haven't actively pursued them." He has enough work with other public and private entities.

Interviewee #18, a female representative of a white male-owned architecture firm, receives notices in the mail from ITD informing the company of an RFP. Other times they look on the ITD website for upcoming opportunities. Interviewee #18 also has a personal contact—she is a friend with the district engineer and he sometimes tells her about opportunities. Interviewee #18 responds to RFPs roughly five to six times a year. Interviewee #18 has responded less in the last two years because they are so busy with their private sector work. They generally receive about 50 percent of the projects they bid.

Interviewee #28, a white female-owned engineering firm, stated that she is adequately notified of opportunities but it is up to her to market herself. She stated that if she did not market the ITD project managers, she would not otherwise learn of opportunities. Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that they are adequately notified of opportunities to bid through the DBE program.

Interviewee #11, a white male-owned construction company, stated: "When we were bidding, they would send out a notice of a job in the mail...I think if you bid a few times then they solicit you." Interviewee #11 also found out about jobs in publications.

Interviewee #5 noted that the bidding process is typical, and that bidding is "ok." Interviewee #5 noted positively that ITD holds to its ad dates and times without delays. Interviewee #5 is notified of opportunities to bid from ITD's website, an advance list, and a weekly publication. Interviewee #5 reported that companies learn what prime contractors express an interest in a particular RFP from information at plan/regional book centers and Interviewee publishes a planholders' list on its website. Interviewee #5 "likes to know who they're bidding against."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the businesses they assist are adequately notified of bidding opportunities with ITD via the AGC Dobbs Report and public notices. He stated that potential bidders are transmitted on a list via mail and the Internet. ITA #1 also stated an individual can call ITD directly and request the names of the bidders who picked up the packages.

ITA #3, an organization providing outreach to small businesses, stated he is aware that ITD advertises bid opportunities through email, on their website, and in the weekly DBE newsletter. ITA #9, a trade association representing general and subcontractors, stated that DBEs should know where to look for work. The plan-holders' list is public information. ITA #9 also provides a plan holders list to subcontractors. "If they want to do the work, they would submit bids." The DBE requirements force prime contractors to take additional steps to "woo these firms to work."

Some interviewees reported unsuccessful and/or negative experiences with the ITD bidding process. Interviewee #10, a female representative of a Native American male-owned engineering firm, finds out about opportunities on-line and through the Federal Business Opportunities website ("FedBizOpps"). "We're pretty well tied in with the DOE and DOT systems—some of its word of mouth." She has received some notices through email for ITD projects. "It appears to be a fairly small pool of businesses that are successful with ITD...I think most of them are construction companies." Interviewee #10 has a master contract with ITD and bid roughly two times under this contract but has been unsuccessful. "Since they bid out construction we can't compete." They are solicited a couple times per year from ITD under the master contract. Interviewee #10 has sent representatives to the ITD meetings in an attempt to find a construction company to partner with but has thus far been unsuccessful.

Interviewee #3, a white male-owned pre-stress concrete supplier, stated, "[i]f it was a real sealed bid it would be OK, but I think that there's an awful lot going on after the bid, an awful lot. As a matter of fact, I could almost prove it for you. You have contractors who tell your competition your numbers."

Interviewee #27, a Native American male-owned refractory construction contractor, sees announcements for jobs, but they do not know if their scope of work is covered or not; "it's pretty tough to locate the work." Interviewee #27 noted that sometimes their work is difficult to define and in working with prime contractors, it's difficult to work off a square foot unit price; it's tough to get general contractors off the unit price.

ITA #6, a Native American organization, reported that her members have not been successful bidding with ITD. "Maybe they don't know how to respond to RFPs...they might be submitting non-responsive bids because they don't know the requirements. ITD has recently gone to electronic bidding—Bid X—we invited a lady to one of our workshops for a hands on training session and how it should be used." "If our people can't afford the software or have the technical savvy to understand how to use it that is again a missed opportunity." There is a number they can call for technical support. "I don't think many of our companies ordered the software." She is aware that ITD offers a software credit to DBEs, but only one of her members is certified as a DBE.

ITA #7, a trade organization for minority females, reported that very few of its members currently do business with ITD even though some of them are capable of this work. ITA #7 attributes this to a lack of knowledge of ITD opportunities. ITA #7 stated that the "average individual doesn't know how to bid, how to do paperwork, everybody needs to be mentored...The bidding process can be overwhelming for the average small business." She would like ITD to offer more assistance to DBEs in preparing bids. However, ITA #7 believes that ITD does an adequate job notifying businesses and organizations of work. ITD has contacted ITA #7 on several occasions.

Once ITD called ITA #7 to solicit help in finding minority females to bid on a small tree-cutting job. Other times ITD has called asking questions about the organization and the services they provide and requesting ITA #7 send ITD information on its membership. She stated that ITD also sends out mass emails notifying business of opportunities to bid. ITA #7 stated that bids are also in the BlueBook.

Interviewee #1, a white male-owned corridor planning business, described the ITD bidding process as "cumbersome—in the amount of paperwork." Interviewee #1 went on to explain, "for government work I keep two files: an admin. file and my work file. There is so much admin." However, Interviewee #1 reported that he is adequately notified of opportunities to bid—namely, by mail. Similarly, Interviewee #14, a white male-owned road construction company, described the ITD bidding process as involving "a lot of paperwork—everything is too much paperwork." Interviewee #14 reported this has dissuaded him from doing ITD work. He added that on his last project for ITD, "the paperwork bureaucracy almost required another employee full-time to deal with the payrolls, [etc.]."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the ITD bidding process is straightforward, but he stated that ITD projects tend to be very large and many of the bidders are large out-of-state companies; it is difficult and often expensive for the DBE subcontractor to market themselves to a large out-of-state company. However, Interviewee #13, a white female-owned traffic control subcontractor, stated that ITD's practice of providing free bid packages to DBEs "helps a lot."

Some interviewees reported problems with receiving notification of bid opportunities. ITA #6, a Native American organization, does not feel she is adequately notified of ITD work opportunities. ITA #6 would like ITD to send the RFPs to her office so she could then call the TERO registered businesses or other tribal businesses and pass along the information. That way, businesses could get a "tangible invitation to bid." ITA #6's office often finds out about ITD opportunities after the fact or so close to the deadline that contractors cannot prepare the best bid. She knows that DBE certified contractors and professional service providers get on a list and ITD solicits directly from that list. She is also aware that ITD publishes a weekly DBE newsletter and she receives this newsletter electronically. She does not know, however, whether the businesses receive this newsletter or whether they have access to the Internet. She used to notify her members of bid opportunities in the newsletter, but she stopped doing this a couple years ago because she did not receive any feedback from her contractors.

Interviewee #27, a Native American male-owned refractory construction contractor, does not believe that he is adequately notified of opportunities to bid on ITD job even though he looks at the website. Interviewee #33, a Native American female-owned road construction business, feels that the company is "not as well [notified of opportunities to bid] as we used to be." When asked how they find out about bidding opportunities, Interviewee #33 responded, "we don't—at all." Interviewee #33 explained that they are available online, but she is not comfortable with using the Internet, and tries to avoid it. Interviewee #23, a Hispanic and Native American male-owned steel erecting company, sometimes does not receive adequate notice and "sometimes [notice] come[s] in a little late."

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he is adequately notified of ITD projects coming into the pipeline because they are in the State Transportation Improvement Plan which you can review and find out what projects are coming into the pipeline and then market your company. However, he stated that if you are a DBE without a marketing background, you would not necessarily know what is going on. Interviewee #8 stated that he has not seen a readily available bidder's list for ITD to show which prime contractors have picked up a bidder's package, although he can always see who was awarded the contract after the fact.

Interviewee #21, an Iranian male-owned environmental consulting firm, does not feel he is adequately notified of bidding opportunities with ITD. He feels the public sector does not provide much advertising for its bidding. Interviewee #21 stated that his name is on a databank as a contractor with the Department of Environmental Quality (DEQ). Whenever there is a request for proposal from the DEQ, he receives it.

Interviewee #21 has participated and received many of these jobs. "They have a lot of respect for my work" and "I have been very successful with them." ITD advertises opportunities in its monthly DBE newsletter. "Unfortunately, ITD has a low regard for the type of work I do." "I don't know if they do it or if they do who is getting the work." ITD "is not very skilled" in the environmental consulting industry. He would like ITD to advertise contract opportunities via mail. "Send me the request for proposal. Maybe they do things on their website but I don't have time for their website." "ITD has a number of projects that have environmental work and I would like a chance to participate."

Only one interviewee reported having been denied the opportunity to submit a bid on an ITD project. Interviewee #27, a Native American male-owned refractory construction contractor, felt he been denied the opportunity to bid or submit a quote, because he found out about the job too late.

Prequalification

Very few interviewees reported experience with ITD's prequalification process. According to ITA #9, a trade association representing general and subcontractors, prequalification generally comes up with particularly specialized jobs. For example, if the work was near a river, and ITD wanted to make sure the contractor complied with all environmental regulation, ITD might pre-qualify subcontractors and tell the prime contractor he had to use one of these subcontractors. There might also be a special job where ITD only allows certain general contractors to bid. According to ITA #9, this can slow down the process, because it is easy for companies that were not pre-qualified to challenge the decision.

When the company first started up, Interviewee #3, a white male-owned pre-stress concrete supplier, remembers that there were no problems with pre-qualification, only that an inspection had to be completed. Interviewee #25, a white female-owned flagging and traffic control company, expressed some concern regarding workers' compensation and general insurance requirements; the limits for prequalification have been increased, and smaller companies have taken notice.

Some interviewees reported a positive experience with the Term Agreement List. The purpose of Term Agreement is for ITD to pre-qualify consultants who will be available to perform services as the need arises. The "term" of a Term Agreement is usually two years. Should ITD decide to utilize a consultant under the Term Agreement, a Work Task Agreement will be negotiated and written. A list of consultants with a current Term Agreement is maintained by ITD to select consulting firms for professional services (the "Term Agreement List" also referred to as the "on-call list").

Interviewee #29, a white female-owned consulting engineering corporation, stated it is "not very difficult" to get on ITD's Term Agreement List; a consultant fills out a form and is placed on the list. According to Interviewee #29, the on-call list maintained by the Idaho Department of Public Works (IDPW) is similar but much more difficult to get on. "You just have to put in the time to get them a marketing brochure...They rank submittals, interview five businesses, and will only qualify two firms in each of the four regions in Idaho." On the plus side, "we have gotten more work off DPW's list because [the] number of providers is smaller."

Interviewee #8, a Hispanic male-owned environmental consulting firm stated he believes the pre-qualification process is fair. He stated ITD was doing the Term Agreement List every two years, and when he first started his business, he had just missed getting on the Term Agreements List and that was difficult. However, he has not experienced a problem since then. Interviewee #8 stated the Term Agreement List is a good mechanism to get a subcontractor pre-approved but it has "been somewhat of a disappointment" as a mechanism to obtain work directly with ITD as a prime contractor. He stated that a prime contractor will look to the Term Agreements List to find a pre-approved subcontractor.

Interviewee #17, a white male-owned landscape architecture firm, has been on ITD's Term Agreement List three or four years; Interviewee #17 has received requests from ITD through this list. He stated it was not difficult to get on the list. He has to renew it every two or three years. Similarly, Interviewee #18, a female representative of a white male-owned architecture firm, reported that it was not difficult to get on the ITD on-call list due to their "good working relationship" with ITD.

Some professional service providers expressed frustration on not being on a Term Agreement List or not receiving work from being on the list. Interviewee #7, a Hispanic male-owned biological environmental consulting firm, is on ITD's Term Agreement List. He had not received any work as a result of being on this list, but hopes it will lead to work in the future. Interviewee #7 recalls the prequalification process as "a lot of paperwork to submit, questions, qualifications, and references."

Interviewee #28, a white female-owned engineering firm, stated that it is difficult to get on the Term Agreements List. She stated they look at your firm experience, but this creates a "catch-22" situation. You cannot get on the list if you do not have the experience but you cannot get the experience if you are not on the list. Interviewee #28 stated that it would help "if they would at least give you even small projects that were just testing projects, say 'okay, you're starting out, let's see what you can do.'" She stated it would be helpful for them to rank staff experience (as opposed to firm experience).

Interviewee #29, a white female-owned consulting engineering firm, is on the on-call list for consulting engineers. Interviewee #29 stated that you do not receive solicitations simply because you are on the-on call list, but rather being on this list opens the door to opportunities. It used to be that you could apply for the on-call list every two years, but now it is "open solicitation." "I don't get a call out of the blue from the on call list to get a project. I have to work relationships with heads of various departments. You have to do your homework."

Experiences Working With ITD

ITD Officials and Staff

Most of the interviewees that had experience working and interacting with ITD officials and staff reported a favorable impression. Interviewee #18, a female representative of a white male-owned architecture firm, stated that ITD staff members are "very professional. I enjoy working with them because they know their process." Interviewee #18 was very impressed that ITD's District Engineers are aware of projects throughout the state and not just in their districts. One of Interviewee #18's female partners served with ITD officials and staff of various committees and has always been impressed with their professionalism and their integrity. She thinks it is great that ITD has an architectural historian on staff.

Interviewee #21, an Iranian male-owned environmental consulting firm, stated: "[Support Services with the EEO Office are] good. I have talked to [Support Services in the EEO Office] on the phone, I have emailed with [Support Services in the EEO Office], I like [them]. [Support Services in the EEO Office] are good

[people]. [Support Services in the EEO Office] does [its] job. As far as it goes with engineers, they lack communication skills." Interviewee #21 spoke with Support Services in the EEO Office regarding certification and marketing allowances, but said, "we don't get that anymore. It was cut off two years ago for whatever reason. If they do provide it, it is unknown to me."

Interviewee #28, a white female-owned engineering firm, stated that she has had a "very, very good" experience with ITD officials and staff. She stated the Director of the DBE Program has been "extremely responsive." She stated Director of the DBE Program was under a lot of political pressure regarding the Connecting Idaho Program, and it was a very busy time, but Interviewee #28 requested and received interview with her. She stated that she has called the Director of the DBE Program and she returned her phone call that same day; "I think that is unusual."

Interviewee #4, a male representative of a white female-owned construction company, has only had experience with ITD inspectors, and stated that these experiences have been "mainly good." Similarly, Interviewee #11, a white male-owned construction company, noted that his experiences with inspectors and engineers have been "good."

Interviewee #25, a white female-owned traffic control business, recalls very good communications with staff; the DBE program has worked hard to keep communications open and to partner with Interviewee #25. Interviewee #30's, a white male-owned engineering and plan-surveying firm, experience has been positive with officials and staff. Most DBEs know what they're doing and the DBE Program office is very, very responsive.

Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that her experiences with ITD officials and staff has been "good."

ITA #5, an organization providing outreach to small businesses, stated: "I've never heard anything negative about ITD from businesses or anyone else." ITA #5 characterized ITD officials as "professional," "responsive," and "thorough." ITA #5 referenced multiple interactions with Support Services in the EEO Office.

ITA #6, a Native American organization, stated that "[Support Services in the EEO Office] are great." They are "completely knowledgeable and resourceful within their scopes of work and outwardly outgoing." There is a "free share in information between TERO office and ITD." ITA #6's only complaint is that lately the resident engineers in her area have forgotten to invite her to the pre-bid and pre-construction meetings. She believes it is important for her to attend these meetings so she can explain the TERO requirements to the prime and subcontractors. By excluding her from these meetings, the resident engineers are potentially delaying the project because the contractors must comply with the TERO requirements before the project can proceed. She believes the resident engineers are new and do not understand the process. She has called the resident engineers and explained that it is imperative for her to attend; however, they keep forgetting her. She does not believe this is intentional; she has not yet contacted ITD.

Interviewee #5, a white male-owned heavy highway and building contractor, noted that the experience with ITD personnel has been "very positive," but that it also depends on the office. Interviewee #17, a white male-owned landscape architecture firm has had "good" experiences with ITD officials and staff. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated ITD staff is helpful.

Interviewee #27, a Native American male-owned refractory construction contractor, has had neutral experiences with ITD staff. According to Interviewee #24, a Native American heavy construction contractor, the DBE staff in Boise is very helpful with plans and workshops. Interviewee #25, a white female-owned flagging and traffic control company, noted that the EEO Office support services staff are generally "pleasant."

Several of the interviewees indicated mixed and/or less favorable experiences and interactions with ITD officials and staff. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated overall: "I really like working for ITD and I like the people a lot...[They] have been very good to work with and they have always been really fair with me." However, Interviewee #8 expressed frustration "that for some reason, and I don't understand it because we are small, it seems to me...when we send out to negotiate on projects [with ITD] we get hammered a lot more than the big guys do...[I]t's almost like we are so small they can beat us up more and I see that on the Fed[eral] side too." He stated that it seems like "we get negotiated a lot tougher for our projects." He stated that this is upsetting because they are faster and more cost effective than the larger contractors.

Interviewee #13, a white female-owned traffic control subcontractor, stated that she has had a very positive experience with ITD staff and that everyone at ITD is "just wonderful." However, she did report a negative experience with a "new ITD inspector." She stated that she had one ITD inspector who was particularly "hard on [her]," and even the prime contractor commented to her that he did not know why the ITD inspector was being so hard on her. She stated that at times the ITD inspectors told her flaggers to do things that are illegal in terms of flagging and that she is liable for that. She stated that on an ITD federal contract, the ITD inspector was "fine with all the men" but was "real hard on her."

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, described his experience with ITD staff as "mixed...some are professional, some are not." He used to work at ITD.

Interviewee #25, a white female-owned flagging and traffic control company, noted that sometimes ITD staff easily becomes "irate," and that she thinks they are taught to bully younger individuals in the field. A member of ITA #2, a Hispanic trade association, who participated in the interview, stated that he did not have a good experience with ITD officials and staff, but did not provide details.

Interviewee #3, a white male-owned pre-stress concrete supplier, noted a bad experience with a particular inspector on a previous project. That inspector's problem is that the only way he could solve anything was to get on the phone and "call everybody."

ITD Online Website

Many of the interviewees indicated that the ITD online website is user friendly, helpful, and contains readily available information. Interviewee #4, a white female-owned construction company, described the website as containing helpful information. Interviewee #12, a white male-owned paving company, uses the ITD website to find ITD projects to bid on. Interviewee #25, a white female-owned traffic control business, stated that the website is very easy to use and is user-friendly.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, visited the ITD website a few times during the certification process and viewed it as helpful. Interviewee #13, a white female-owned traffic control subcontractor stated that she likes the ITD website and it is easy to use. Interviewee #17, a white male-owned landscape architecture firm, visited the ITD website to research technical issues related to the project he was working on and found the website helpful. Interviewee #15, a white female-owned concrete business, reported that she can find out which prime contractors have expressed an interest in a particular RFP on the ITD website.

Interviewee #28, a white female-owned engineering firm, stated the ITD website is good and serves its purpose. Interviewee #26, a Native American/Hispanic female-owned demolition company, also feels that ITD's website "is fine." ITA #4 was impressed with ITD's monthly DBE Newsletter that is available on ITD's online website. She was particularly impressed because the Washington DOT does not have a similar newsletter. ("Idaho has a lot going for them through their newsletter...").

According to Interviewee #24, a Native American heavy construction contractor, and Interviewee #27, a Native American male-owned refractory construction contractor, the website is "helpful." Interviewee #25, a white female-owned flagging and traffic control company, finds that the website is helpful and easy to navigate. Interviewee #14, a white male-owned road construction company, stated "whoever's running [ITD's] information technology has done a good job because you can see open bids and within two days you can get the abstracts and see who's bid what. So their website is, I think, very, very, very effective."

Other interviewees described mixed experiences with the ITD online website. Interviewee #5, a white male-owned heavy highway and building contractor, indicated that the website is slow, and that it would be helpful if Interviewee would publish engineers' estimates on the website. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated the ITD website is "okay," but it would be nice to open it up so that you can see who the bidders are on a given project; he stated you need a special password to do this now. He stated that it would be nice to know what discrete projects are coming up. Interviewee #18, a female representative of a white male-owned architecture firm, stated that the nomenclature on the website is sometimes confusing. It is not always intuitive what things are called. ITA #2, a Hispanic trade association, stated it is difficult to get through the ITD website and eventually you just give up.

DBE Directory

Most interviewees were familiar with ITD's list of qualified DBEs and the location of the list. (Interviewees #5, #8, #11, #12, #17, #18, #24, #25, #29.). Interviewee #18, a female representative of a white male-owned architecture firm, stated that ITD sends them a book of DBEs each year. Interviewee #24, a Native American heavy construction contractor, is aware of and has used the DBE directory. Interviewee #25, a white female-owned traffic control business, is aware of the DBE Program directory, and the company has found the directory to be helpful. Interviewee #25, a white female-owned flagging and traffic control company, uses the DBE directory, but noted that the DBE Program used to send the directory in the mail.

Some interviewees were aware of how to locate qualified DBEs, but did not rely on the ITD website to do so. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he reviews the DBE directory every once in a while, but it is not very user friendly and it is hard to get to. Interviewee #8 stated that he would find a DBE through the ITD list, but also explained that it is a small state and everyone knows everyone. He stated for example, that if he needed a specific type of subcontractor, he would contact the DBEs that he knows ("You know all the DBEs").

Interviewee #12, a white male-owned paving company, is aware of ITD's DBE directory. He stated that ITD sent him a list of DBEs about two years ago. Roughly, 50 percent of these subcontractors are DBEs, but he discovered these companies through word of mouth, not using ITD's lists.

Interviewee #29, a white female-owned consulting engineering corporation, stated that she has never used the DBE directory to find DBEs. Instead, she relies on word of mouth and reputations in the industry. "It's a small area here and there aren't that many environmental consultants" which is the type of subcontractor she uses most often.

A few of the interviewees knew of a DBE list, but did not know how to find it. (Interviewees #4, #7, #13, ITA #3.) For example, Interviewee #7, a Hispanic male-owned biological environmental consulting firm, is aware that ITD maintains a list of DBE firms, but he has never seen this list and is unaware of how to obtain it. Interviewee #13, a white female-owned traffic control subcontractor, stated that she knows there is an ITD DBE directory but she had never seen it. Interviewee #28, a white female-owned engineering firm, stated that she is aware of a DBE Directory but she has not used it. Interviewee #30, a white male-owned engineering and plan-surveying firm, has never seen a directory, but assumes that one exists.

Several of the interviewees were not familiar with ITD's list of qualified DBEs. (Interviewees #3, #10, #27; ITA #1.) Interviewee #3, a white male-owned pre-stress concrete supplier, is not personally aware of the directory because "he doesn't do that part." ITA #1, an organization providing outreach to Hispanic-owned and other businesses, was unaware of an ITD directory of DBEs. Interviewee #27, a Native American male-owned refractory construction contractor, is not aware of any DBE directory.

Perceived General Barriers to Participation with ITD

All the interviewees were asked to relate their experiences, perceptions and anecdotes in connection with performing work on ITD contracts in general. Much of their responses are documented in other sections of this report. When asked specifically to identify any perceived barriers to their participation in contracting and procurement with ITD, the interviewees provided the anecdotes below. These anecdotes and perceptions are categorized according to the type of perceived reported behavior.

Administrative Expense/Bureaucracy

Some interviewees listed the administrative expense and bureaucracy as reasons they avoid ITD work. Interviewee #18, a female representative of a white male-owned architecture firm, reported that the involvement of the Department of Public Works and the lag time between submitting plans to ITD and the receipt of comments creates barriers to their firm pursuing ITD projects. According to Interviewee #18, an architect is assigned by Department of Public Works to act as a "watch dog" on all the design projects. This architect is usually based in Boise and does not know what is going on with the projects in Idaho Falls. "It's almost like a road block sometimes...it's cumbersome." Interviewee #18 further reported that the time from submittal to comments is often too long. Architects submit their designs and prices for review and comment. The comments come back before the architect submits them to bid. "You don't know if the bottleneck is at Department of Public Works or ITD." Interviewee #18 believes that all public sector projects suffer from these same barriers because they all go through the Department of Public Works.

Interviewee #4, a male representative of a white female-owned construction company, believes the price of submitted bids is a barrier to him pursuing work with ITD. "I put a lot of time and energy into bidding projects and came up second or third. I feel like there was always a group of legitimate contractors bidding. If you get more than eight or ten contractors, whoever forgot something is the one that gets the bid. I'd see me

and the other contractors within $8,000 or $10,000 of each other and then one guy would be $45,000 below." Interviewee #4 stated that when he was actively pursuing public contracts, he had a full time estimator on staff to prepare the bids, go over the plans, and do the "take-off." Public bids are much more detailed. Now that he pursues primarily private sector contracts, he does not employ an estimator.

According to ITA #5, an organization providing outreach to small businesses, there are many requirements you have to fulfill to work in the public sector. Small contractors may be able to handle smaller contractors, but "when you scale up into larger contracts a certain level of professionalism has to come with that" and small contractors "don't always understand what that is." Marketing may also be a barrier to smaller contractors. "It's all marketing. Getting on the list is the first step, but this is not where this begins and ends." DBEs need to take the initiative to continue marketing after becoming certified. There are some DBEs that do this and they are very successful.

Interviewee #25, a white female-owned flagging and traffic control company, noted a lack of consistency in ITD's operation from district to district that has led to barriers and obstacles in pursuing work with ITD.

ITA #9, a trade association representing general and subcontractors, stated that the good faith effort requirement is an added expense to bid on ITD jobs. Prime contractors must put in all the effort up front and might not get the job. The price of the good faith effort is wrapped into the bids. Contractors do not know what ITD is going to settle for–maybe 7 percent or 8 percent. It might be a matter of which contractor spent the most time doing the good faith effort. It is hard to decide how much time to put in–whether to submit a higher bid or a bid with less DBEs. It is a risk. "How many hours can I commit to overhead and still stay in business."

Lack of Experience

Some interviewees expressed a lack of experience necessary to work on ITD jobs or serve as a prime contractor. Interviewee #13, a white female-owned traffic control subcontractor, stated that she is a subcontractor because she would not know how to do the prime contractor side of the work. Similarly, Interviewee #23, a Hispanic and Native American male-owned steel erecting company, reported that he operates exclusively as a subcontractor because he lacks experience to operate as a prime contractor although he is "learning more." Interviewee #20, a Hispanic male-owned rebar installation business, explained that his company chooses to act as a subcontractor as opposed to a prime contractor because "we need more experience about the paperwork...we have the knowledge and everything to do the job, but I don't know if we need to have more money, or...I don't know how that works exactly."

ITA #6, a Native American organization, attributes the low participation of minorities on ITD contracts to the size of these companies. "I think it's because the businesses can't be start-ups, they have to have some experience." ITD requires experience and according to ITA #6, minority-owned businesses are often too small and too new. She said these businesses are getting discouraged so they stop trying. "I think if they actually tried and put together a decent proposal...I feel pretty confident that ITD would give them a chance and try to work with them to some degree." She has seen some successful non-Native American, woman-owned businesses. She attributes their success to their developing teams of other experienced individuals.

Selection Criteria and Specifications

Many interviewees noted ITD's selection criteria and specifications as a barrier to pursuing or receiving ITD jobs. Interviewee #12, a white male-owned paving company, stated the specifications on ITD projects are too rigid and ITD is not flexible enough with contractors regarding changes. He has not received any of the projects he has bid for ITD because he has to "pad" his prices. "I've seen other prime contractors get beat up bad by the state of Idaho. ITD is hard to work for. I think their specifications are too rigid and their attitude is autocratic." He stated that the specifications on ITD asphalt projects are "asinine." The requirements related to segregation and aggregates on concrete work mandate costs three times higher than necessary. Interviewee #12 stated that other public entities are easier to work with. "I see too much of the attitude, sorry contractor this is the law and you can't get it right, I don't care, do it again." He stated that there is a lack of flexibility by ITD. He recalls one time an inspector on an ITD project had him rip out a portion of the road and redo it. At the end of the project, another inspector told him to put back to the way it was. The original inspector lied and said he had not instructed Interviewee #12 to redo the road. Interviewee #12 was able to document the first inspector's request, but ITD still had him redo the road at his cost. He did not feel that this was fair and this discourages him from working with ITD.

ITA #3, an organization providing outreach to small businesses, agreed that sometimes the specifications on ITD projects are not in line with the scope of the work. According to ITA #3, ITD should make sure its boilerplate requirements are appropriate.

Interviewee #24 a Native American heavy construction contractor, noted that on non-ITD, public-sector projects it has been generally successful, but there have been some instances where the plans were not specific enough, and there were interpretation problems with the plans. Interviewee #24, a Native American heavy construction contractor, also took issue with the way ITD's "specs" are written with respect to traffic control and flagging. According to Interviewee #24, ITD will not pay for all their hours worked and for their breaks.

Interviewee #29, a white female-owned consulting engineering corporation, explained that ITD employs a 5-person selection team that reviews the proposals. A large part of these proposals is the marketing material. "We are a seven man firm competing against big firms that have full time marketing staff so it's hard for us to compete against larger firms with marketing machines." She stated that she has been able to leverage her status as DBE to obtain experience with ITD, which is another part of the selection criteria. ITD officials evaluate their contractors and issue report cards when projects are completed. Interviewee #29 has always received favorable reports. She would like these report cards to become part of the selection criteria. She stated that large firms with poor report cards often beat her out because they have impressive marketing materials. A positive report card should count for more than mere marketing. She has spoken with her district head about this issue and hopes that something will be done.

Interviewee #17, a white male-owned landscape architecture firm, indicated that he had an issue with the fee negotiation process. "I seem to have had a hard time getting a fair market fee for my services." According to Interviewee #17, in the professional services arena, ITD does not base its hiring decisions on cost but quality and then approves a certain rate. A professional's rate is either approved or rejected by ITD. Interviewee #17's rate has been denied by ITD. According to Interviewee #17, the market value for landscape architects is "through the roof." Private sector and other public agencies have recognized this and are willing to pay more. ITD is "not doing their homework" and keeping up with the market. This discourages qualified professionals from bidding on ITD jobs since it is more lucrative to work with others.

Interviewee #28, a white female-owned engineering firm, stated the requirement in the qualification packages for firm experience is a problem. She noted that her firm is only two years old although most of her employees have extensive experience from working at large, national firms. She stated the request for experience does not accurately reflect her employees' experience. She said that many of the larger firms will list projects under their experience that were actually completed by her employees.

Contracts Too Large

Several interviewees identified the size of ITD projects as a barrier to receiving or pursuing work with ITD. Interviewee #12, a white male-owned paving company, stated that the size of ITD contracts serves as a barrier to him bidding the work. Interviewee #12 is not capable of doing 10-30 million dollar jobs. He stated that several years ago ITD broke up the projects into 1 to 5 million-dollar pieces. They do not do this anymore. As a result, the same large contractors get the large projects. These contractors do not subcontract out the work, he said, but rather keep it for themselves to increase their profit.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that ITD needs to unbundle contracts and attempt to work directly with DBE or other minority businesses in order to develop them. He stated that aside from the Grant Anticipation Revenue Vehicles ("GARVEE") Project, ITD is fairly slow so the "little guys" just get blown away.

Interviewee #30, a white male-owned engineering and plan-surveying firm, stated that, in general, ITD's contracts are too large for his company. "We don't bid on that much work because we're able to pick up enough by [non-ITD] walk-ins; we're busy. The only time I ever bid stuff is if we're slow or need something to do." Interviewee #30 noted that the company only works on public sector jobs when it needs work because they tend to take up more time administratively.

Interviewee #28, a white female-owned engineering firm, stated that she does not feel she has been successful in obtaining work on ITD projects. She stated that the shift with the GARVEE Project and the Connecting Idaho Program have been problematic. She stated that Connecting Idaho Program now controls the bulk of the transportation work in the state, whereas ITD used to control that work. She explained that Connecting Idaho Program is basically a program manager. She stated that due to the fast-track nature of the projects and Connecting Idaho Program's "belief in how the program should be run..." the packages have been really substantial and large. She stated, for example, if a given project needs to be completed in six months with 50 people, they are unable to act as a prime contractor on that project.

ITD #29 stated that ITD jobs are very large. "It's hard for us to compete with the larger firms in town." "The ITD project administrator debriefs us after we turn in proposals. We have a good reputation but we're smaller and some of the clients within ITD feel that we don't have the horse power" to compete as a prime. Interviewee #3, a white male-owned pre-stress concrete supplier, believes the company has not received certain ITD jobs because prime contractors thought Interviewee #3 was too small to handle the projects.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the ITD projects tend to be very large and many of the bidders are large out-of-state companies; it is difficult and often expensive for the DBE subcontractor to market themselves to a large out-of-state company.

Same Contractors Receiving the Work

Some interviewees reported that they feel that the same contractors receive all the ITD work. ITA #6, a Native American organization, stated that "the same handful of seven to ten contractors get the same jobs year after year with ITD." Other businesses see this, and it discourages them from bidding ITD work. ITA #6 does not know if this is the "good old boy network" or whether this is the "entire pool" of qualified contractors." If there are more qualified contractors, then ITD "needs to try harder" to include these businesses. She understands that ITD knows these contractors, knows their work and knows they are good to work with. "In this regard, it's positive."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, similarly referred to "the big 10" prime contractors in the area as receiving all ITD work. ITA #4, a minority trade association, said that companies take "the easy way out" by working with the same DBEs with whom they are familiar with and they do not like to venture out and give new firms a chance.

Location

Some interviewees feel the location of their business puts them at a disadvantage in pursuing ITD work. Interviewee #10, a female representative of a Native American male-owned engineering firm, felt that Boise-based companies have an advantage when it comes to receiving ITD work. "If it's a Boise-based company, they're going to use Boise-based [engineering] firm...[I] think a lot of the ITD stuff is Boise-based...I'm not aware of a lot of ITD stuff that's being done by companies [in Idaho Falls]." ITA #4, a minority trade association, noted positively that ITD does a better job of using local contractors than in Washington State. ITD jobs have been successful for ITA #4's membership. ITA #4s members indicate, "it is easy to do work with Idaho."

ITA #6, a Native American organization, reported that one of the main obstacles to Native American-owned businesses pursuing public and private sector work is their residence on the reservation. These businesses prefer to live and work on or near their reservations. It is rare that Native American-owned businesses go off the reservation to look for work. The businesses that pursue this work are usually larger general or mechanical and electrical contractors. The smaller "mom and pop" well, sewer, and excavation companies do not venture off the reservation. She explained that "there are certain rights and privileges extended to those who maintain a residence on a reservation," including hunting, fishing, housing, and healthcare. If these businesses moved off the reservation, even to an adjacent town, then some of those privileges are lost. ITA #6 believes that most of the ITD work is in the Boise Area, from Twin Falls to Boise (the "Treasure Valley"). This is where there is the largest concentration of highway, road and bridgework. Native American-owned businesses would lose their privileges if they relocated to these areas.

Interviewee #21, an Iranian male-owned environmental consulting firm, believes that less qualified consultants from Boise receive a larger portion of the ITD work in the Twin Falls area. "I know there are consultants in Boise that are not 10 percent as qualified as me and they receive ITD work." He believes there is favoritism toward Boise-based firms, but he does not know why. He said that many of the prime contractors working for ITD in the environmental consulting field are not located in Idaho but rather many are international firms. He stated that no one in the Twin Falls area is being utilized but he is capable of doing work in Boise. "I know there were some ITD yards in this area that were polluted. I never had a chance to look at them. In 2006, I saw a firm working, which was not a DBE and was not a local business. Those projects are here. Why wasn't I informed?"

Lack of Information

Only a few interviewees felt that lack of adequate notification of bid opportunities and information on how to do business with ITD was the primary barrier in their pursuing work with ITD. ITA #5, an organization providing outreach to small businesses, believes that ITD does an adequate job notifying small businesses of opportunities. However, ITA #5 listed communication as a barrier to becoming certified as a DBE. He reported that minority- or female-owned businesses might not think to look to ITD for the DBE Program since the relationship between ITD and the DBE Program is not intuitive. According to ITA #5, the DBE Program might make more sense being administered by another federal entity.

ITA #2, a Hispanic trade association, believes that ITD should do workshops for people who want to be considered for the DBE Program and announce those programs. A member of ITA #2, a Hispanic trade association, who participated in the interview, stated there are people who want to work with ITD but do not know how to do this.

Interviewee #27, a Native American male-owned refractory construction contractor, knows that ITD regularly puts on meetings about obtaining work with ITD, but the people that run those meetings do not know specifically about the kind of work they are speaking about. Interviewee #27 has not attended any of these workshops.

Experiences with Payment

Payment in the Public Sector and/or by ITD

Most interviewees reported late payment in the public sector, from either ITD or the prime contractor on an ITD job. (Interviewees #3, #4, #5, #6, #7, #8, #9, #13, #15, #17, #23, #25, #26, #29, #30, #33; ITA #2, ITA #2's member participant.) Only one interviewee felt that race or ethnicity affected his ability to obtain payment. For example, Interviewee #5, a white male-owned heavy highway and building contractor, noted that transportation departments typically pay slowly, and ITD is "typical." Interviewee #5 said, however, that payment has been "very reasonable." Interviewee #5 noted that when it's a subcontractor for work on ITD projects, the company can expect to "add another 10 to 30 days for payment." Interviewee #5 pointed out that usually payment is faster in the private sector because there is "less paperwork" or less "hurdles to justify money." The change order process is a barrier to prompt payment for Interviewee #5. Once a change order is involved obtaining payment is "always the hardest."

Interviewee #17, a white male-owned landscape architecture firm, stated that payment takes longer in the public sector due to the administrative process. ITA #2, a Hispanic business trade association, stated there is a 60 to 90 day lag on federal money, whereas a member of ITA #2 who participated in the interview stated it is a 45 day lag at the state level.

Interviewee #30, a white male-owned engineering and plan-surveying firm, said that "they don't get paid until the [general contractor] gets paid" on ITD projects." "There's a lag...the last ITD job that Interviewee #30 completed took at least two months before the completion of payment."

Other interviewees stated that late payment is not a significant issue in the public sector and/or with ITD. Interviewee #18, a female representative of a white male-owned architecture firm, reported that payment in the public sector, including on ITD projects, has been good. Interviewee #10, a female representative of a Native American male-owned engineering firm, has had no problems with payment in public or private sector. Interviewee #10 feels that the owner's ethnicity actually "helps us get paid."

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that being paid by ITD directly is fast–less than 30 days–and they offer direct deposit. However, Interviewee #8 stated that ITD "has the most onerous invoicing system that I have dealt with." Interviewee #8 stated that his company is okay because his wife does all of the invoicing and is very detail-oriented, but if you were a "micro company" doing a working invoice, "it would just bump you out."

Interviewee #24, a Native American heavy construction contractor, noted that it is easy and fast to receive money because of electronic payment and transfers. Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that they have had no problems being paid for ITD projects. She reported the only payment issues are "if your work's not done to their requirements, or there's a problem."

Interviewee #33, a Native American female-owned road construction business, reported that in her experiences receiving payments from ITD directly was "fine." Likewise, Interviewee #21, an Iranian male-owned environmental consulting firm, reported that payment was not an issue in either the public or private sectors.

Interviewee #11, a white male-owned construction company, stated: "I think the state kind of watches and if you have a complaint, they'll take care of it." One time, he had trouble with payment, he told the inspector who took care of it, and they were paid. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that his members have a good experience being paid by ITD. He stated ITD is not what is holding up payment, but rather issues related to final completion and related performance matters.

Interviewee #15, a white female-owned concrete business, reported when she is working on a state project, "you know you're getting paid, but a lot of time there's a huge lag-time between doing the work and getting paid." She compared payment in 30 to 60 days in the private sector with 30 to 60 days on a federal project. She stated the "state pays every 30 days—or I think they'll pay twice-a-month if you request it—but the generals only pay you once-a-month, and then that's only as good as what the inspector turns in."

Payment by Prime Contractors.

Some interviewees reported no problems with payment by prime contractors on projects, including ITD projects. Interviewee #28, a white female-owned engineering firm, stated that she has had a good experience being paid by ITD and payment is generally within two months. She stated that she did have one experience last year as a subcontractor receiving slow payment (six months out). The problem was not ITD, but the prime contractor. She stated that at one point, she had to "carry" a couple hundred thousand dollars, and that was problematic although she was able to do so because she had lots of other work. She stated that ITD makes a point to tell the prime contractor that when they pay them the prime contractor must turn it around quickly to the subcontractor. She stated ITD is a "stickler" on that.

Interviewee #16, a African-American male-owned traffic control subcontractor, stated that he has always been paid on time by prime contractors on ITD projects. According to Interviewee #22, a Hispanic male-owned concrete contractor, "usually you'll have a date in your contract for payment, and contractors are usually pretty good with that." Interviewee #22 noted that payment usually occurs within 20 to 60 days of completion, and they have only had two payment issues since the inception of the company.

Interviewee #27, a Native American male-owned refractory construction contractor, noted that being paid by prime contractors on ITD projects was fine. ITA #2, a Hispanic business trade association, stated that payment by private prime contractors is fine.

Other interviewees reported that prime contractors frequently pay slowly. Interviewee #4, a male representative of a white female-owned construction company, stated that sometimes public entities retain a certain amount of payment until the end, but he has never had any disputes over money. He has had issues being timely paid by prime contractors on ITD projects. There is no way for him to know whether the prime contractor has been paid.

When Interviewee #25, a white female-owned flagging and traffic control company, functions as a supplier, the company is paid more quickly. Interviewee #25 noted that general contractors usually pay within 20 days because they are required to pay promptly. She stated that it takes a long time to receive payments by prime contractors on ITD projects (usually 60 to 90 days for payment). She believes ITD "needs to shorten that up."

Interviewee #26, a Native American/Hispanic female-owned demolition company, stated that when she started her business slow payment by prime contractors was a problem. However, she reported that payment is now smoother due to the Prompt Payment Act, and the subcontracting plan where prime contractors are required to state who their subcontractor is and the amount of the subcontract.

Interviewee #29, a white female-owned consulting engineering corporation, stated that ITD pays prime contractors promptly. However, "when we are a subcontractor on an ITD project, I have no control when the prime puts in their bills to ITD. So often there is a lag." She explained that it takes two weeks for the prime contractor to process her invoice, two weeks for ITD to process the prime contractor's invoice, and one week for the payment to go through. Prime contractors are typically paid by ITD within 30 days of receiving their invoice. However, with all the processing, it can take up to eight weeks to receive payment as a subcontractor. "Cash flow is an issue where we are a sub. We don't know when ITD pays the primes so we don't know when the clock starts ticking. If ITD could tell us that would give us more leverage to know when to start calling the prime."

According to Interviewee #29, prime contractors are supposed to submit an affidavit of payment to subcontractors with each invoice. "As a sub, I don't have any input into that affidavit. Primes could say they are paying me. It's just the primes word. Nothing I have to sign off on." She stated that is difficult for her to go directly to ITD because she needs to maintain pleasant relationships with the prime contractors. She stated that ITD is, however, responsive to her payment concerns. She recalled a situation where the prime contractor on her job went bankrupt and ITD helped her obtain payment.

Interviewee #33, a Native American female-owned road construction business, stated "by the time the [prime] gets paid, they take another two weeks, or three weeks, or a month to pay...you're two months down the road." She added "it just takes too long to get paid from them, and [prime contractors] don't really care whether they pay you or not in a timely manner."

Interviewee #3, a white male-owned pre-stress concrete supplier, has no experience being paid directly by ITD. Being paid by prime contractors, according to Interviewee #3, is "pretty slow." Interviewee #3 recalled that it seems like at different times of the year, payment is slower than at other times. Interviewee #3 noted that when projects are two-phased, payment is even slower, even "quite a bit." Interviewee #3 stated that the average time to be paid on a public sector project is probably 90 days.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that his experience being paid by prime contractors on ITD projects is that payment is "a little slow, but it could have been the contractor." He stated that there is no way to know when ITD pays the prime contractor. He is not aware

that prime contractors have to certify that they paid their subcontractors and he has never signed such certification himself. Nonetheless, he stated that payment "is not a major concern." In the private sector, payment is "good 90 percent of the time." He does not believe there are any barriers to him receiving payment.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that payment is slow from the prime contractors. Interviewee #8 reported an experience where a prime contractor held the check in one hand and pushed a contract across the table with the other hand and required him to sign the contract requiring more work before they would get paid.

Interviewee #13, a white female-owned traffic control subcontractor, stated that she has no experience being paid by ITD directly, but her experience being paid by prime contractors in the public sector is pretty bad and once took six months. In that case she threatened to file a lawsuit before they paid her. She stated that receiving the retainage "takes forever," and she does not understand why they hold out retainage on a traffic control subcontract. She identified the prime contractor as the biggest barrier to receiving payment. She stated that at one time ITD called her and needed her to pay the fringe wage to her employees, but she had not yet received payment from the prime contractor.

Interviewee #33, a Native American female-owned road construction business, reported bad experiences being paid by prime contractors. She stated the prime contractors will generally "wait 30 days before they pay you even if they do get paid...then they'll give you the excuse, 'well, it was 30 days before we got paid, and I have 30 days to pay you.'" She reported "it takes forever" to receive payment from prime contractors on ITD projects. Interviewee #9, a Native American male-owned underground utility company, reported that payment by prime contractors on ITD work is "too slow." Interviewee #9 further stated "I know that they've made improvements...but the last time I worked on a job it took too long to get your money."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, identified miscommunication between the prime contractor and subcontractor as to the scope of work and completion thereof as a barrier to receiving payment; but he stated that the prime contractors who are notoriously slow at paying have a difficult time finding subcontractors to work for them.

Payment in the Private Sector

Most interviewees reported positive experiences with payment in the private sector. Interviewee #18, a female representative of a white male-owned architecture firm, reported that 99 percent of their private sector clients make timely payments. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that payment in the private sector is usually pretty good, although he has had occasional problems.

On private sector projects, Interviewee #3 is usually paid per its contracts, which provide that the company must be paid within 10 days of delivery. For Interviewee #27, a Native American male-owned refractory construction contractor, 90 days out is pretty old for receivables on private sector projects. Interviewee #27 noted that most contractors pay within 60 days.

Interviewee #13, a white female-owned traffic control subcontractor, stated she has had a "pretty good" experience being paid by prime contractors in the private sector–approximately 30 to 45 days. Similarly, a member of ITA #2, a Hispanic trade association, who participated in the interview stated he is usually paid by the prime contractor within 30 days in the private sector.

According Interviewee #25, a white female-owned flagging and traffic control company, payment in the private sector is usually faster. Interviewee #28, a white female-owned engineering firm, stated that she is paid within two to three weeks on private sector projects. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the businesses they assist generally report having a positive experience being paid in the private sector.

Other interviewees reported that payment in the private sector is an issue. Interviewee #4, a white female-owned construction company, stated that payment in the private sector is much worse than the public sector. "This is the one downside to focusing on the private sector. The contracts aren't as clear cut...It's always tough to get paid in private sector." This is due to discrepancies over what was done. Unlike the public sector, there is no inspector watching the work as it is completed. Interviewee #12, a white male-owned paving company, has had positive experiences being paid in the public and private sectors, although the private sector is a "little bit slow sometimes. It might take an attorney." "In the private sector, if you get paid, it's quickly," reported Interviewee #30, a white male-owned engineering and plan-surveying firm. However, "there is a pretty high default rate on private jobs," according to Interviewee #30.

Payment as Affected by Race, Gender, or Ethnicity

Only one interviewee reported payment being affected by race, gender or ethnicity. All other interviewees felt that race, ethnicity, and gender did not negatively affect payment. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he has heard of race, ethnicity, and gender affecting payment to other small businesses. He stated there was an African American subcontractor who was a great guy and related instances in which people just would not pay him.

Licensing

Interviewees were asked to relate their experiences with licensing through the Idaho State Contractor's Licensing Board. The vast majority of interviewees stated that the licensing process was straightforward and fair. Interviewee #4, a white female-owned construction company, stated that licensing is "not a problem." According to Interviewee #4, the process is tough but should be tough to keep unqualified contractors out. Interviewee #20, a Hispanic male-owned rebar installation business, reported no problems with the state contractor's licensing board, and described the process as "good." Similarly, Interviewee #33, a Native American female-owned road construction business, described the State Contractor's Licensing Board process as "pretty simple–no problems"

Interviewee #30, a white male-owned engineering and plan-surveying firm, works with a lot of general contractors who use him as a reference before the State Contractor's Licensing Board. Interviewee #30 said the licensing process has been painless. Interviewee #30 has an engineering and surveying license, not a contracting license.

Interviewee #26, a Native American/Hispanic female-owned demolition company, reported "we just filled out that [licensing] application and it seems to me that they don't have everything they need in place." She explained that "it's an application process, but is it not effectively working." Interviewee #13, a white female-owned traffic control subcontractor, stated the State Contractor's Licensing Board is "okay," but they recently doubled their rates, and she does not understand that cost.

Interviewee #25, a white female-owned flagging and traffic control company, recounted positive experiences dealing with the State Contractor's Licensing Board, but Interviewee #25 does not like their new elongated license number scheme.

Interviewee #16, a African-American male-owned traffic control subcontractor, stated that you have to have a license and sometimes "that is where you have the biggest problem;" however, often one can operate under the umbrella of the prime contractor.

A few interviewees reported negative experiences with licensing. Interviewee #12, a white male-owned paving company, stated "[t]here was a lot of paperwork involved" in becoming licensed. He attempted to expand his license into a new area a few years ago and was denied. The State Contractor's Licensing Board told him that he did not have the experience. He expressed frustration as to how he can get experience if he is not licensed to do these projects.

Interviewee #9, a Native American male-owned underground utility company, described the State Contractor's Licensing Board as "unreasonable." Interviewee #9 believes that they asked for too much background financial information. Interviewee #9 stated "to me if I can go to the bank and borrow money to do a job...and I can get the financing to do it, I don't think it's the [State Contractor's] Licensing Board's responsibility to stop me from doing that because my financial statement is not quite up to that level...That's really the only thing I would disagree with." Interviewee #9 further said, "On the other hand, I think there's a lot of people that need to go through the licensing process and don't. They're out here working and...making a lot of money and not going through the same process that we have to."

ITA #9, a trade association representing general and subcontractors, indicated that the public works license can be a barrier. ITA #9 reported that contractors must have a financial statement and assets to get a public works license. He believes that compared to the surrounding states it is easy to obtain. However, what the state requires is if you are going to work with any public entity state or local you have to have a public works license. On federal jobs, federal law states that you have 30 days to obtain the license after bid award. On state and local projects, you have to have the license to bid. ITA #9 stated you have to apply and fill out a background statement that you have the requisite experience. Construction business are licensed as either building, heavy, or highway. You have to pay a CPA to get a certified financial statement. The board then issues a license up to a certain value. A landscape firm might want to bid on a $1 million highway job but only be licensed up to 100K. "The thought behind it is they don't want you to bid jobs you can't handle." They consider experience and financials. Most people move up the dollar amount scale if they are successful over time.

Many interviewees did not have experience with licensing due to their area of work. For example, Interviewee #17, a white male-owned landscape architecture firm, explained that professional service providers such as architects and engineers are not licensed by the State Contractor's Licensing Board, but rather through professional organizations. Similarly, Interviewee #31, an Asian/Pacific Islander male-owned pavement inspections business, reported that due to the nature of their work, they are not required to be licensed with the State.

ITA #6, a Native American organization, explained that Indian reservations are not subject to state laws and therefore Native American-owned contractors do not have to obtain a license to work on the Reservation. These businesses must be licensed to work off the Reservation. This requirement, he said, is another potential reason Native American-owned businesses prefer to work on the Reservation.

Experiences Regarding DBE Utilization after ITD Removed DBE Contract Utilization Goals in January 2006

The only interviewees that expressed a difference in the DBE Program after ITD removed the contract goals in January 2006 reported a decline in their utilization as DBEs by prime contractors. (Interviewees #8, #13, #22, #23, #28, #29.) Interviewee #8, a Hispanic male-owned environmental consulting firm, reported that the number of prime contractors soliciting him for price quotes has "dropped off" since ITD moved to a race- and gender-neutral implementation of the DBE Program. He stated that even when ITD had "hard [DBE] goals...you could always tell when [the prime contractor] hit [their] percentage." He stated that post-January of 2006, he is still receiving work that he believes is due to his contacts from before. He stated that he is participating in the GARVEE Program and they still have work in the pipeline from before 2006, "but there is nothing in the pipeline now." He stated that the absence of an incentive for larger companies to use DBE companies creates an obstacle for new DBE firms who were not "in the system" before January of 2006. A DBE company certified before January 2006 may have established connections through the Program and, therefore, have the advantage of prior experience.

Interviewee #13, a white female-owned traffic control subcontractor, stated that since January 2006, the number of solicitations that she receives from prime contractors has decreased by 40 to 50 percent and there "is a lot less work." Before she was solicited on all ITD projects in Treasure Valley and all of these projects had DBE goals. She stated that she submits price quotes on all of the federal ITD projects and on 30 percent of the state ITD projects. She also stated that these solicitations used to result in a lot more work. She stated she has never received a state ITD project, and she receives five out of 10 of the federal funded ITD projects. She does not know why she does not receive the state ITD projects, but she suspects that it is because they do not have DBE requirements.

Interviewee #28, a white female-owned engineering firm, stated that, starting in 2005 when people knew the process was going to change in 2006, utilization of DBEs began to drop. She has been utilized less. Now that here is no longer a requirement for large companies to use small disadvantaged businesses, the large companies offer the same services in-house. Since these companies save money by doing the work in-house, there is no longer an advantage to using DBE firms. She stated that the goals before January of 2006 allowed her company to be utilized on an ITD project and build their resume. She said they will never compete with the companies that have 8,000—10,000 employees, but the DBE Program at least gave them an opportunity to participate. She also stated that now because the larger firms are not required to subcontract work to a DBE, her company is forced to go "head-to-head" against a firm that may have more experience with ITD as a firm. She said that this result has affected her business in the transportation market and she has shifted her business away from the transportation market, although she continues to pursue certain projects.

Interviewee #29, a white female-owned consulting engineering corporation, stated that certification was "invaluable" to her business at the beginning. She would not have survived as a business if not for the certification and the DBE program. Since January 2006 utilization has declined: "We are not getting any work based on our DBE status."

Interviewee #23, a Hispanic and Native American male-owned steel erecting company, reported that he used to receive work due to his DBE status, but this is no longer the case due to the "Western States versus the State of Washington" decision that resulted in the removal of ITD contract goals. "There's all this stigma on it and without the federal government telling them to do what is right, they won't do it. Because the federal government doesn't require them to meet goals, they don't have goals." Although he had not yet noticed a change, he believes the numbers will eventually decline if the goals are not reinstated. Interviewee #23 "thinks

that the only reason why they're still being used as this point by some contractors is because ITD has suggested that [prime contractors] keep using [DBEs]." "If the DBE goals do not come back we are headed for some hard times."

Interviewee #22, a Hispanic male-owned concrete contractor, noted that he was solicited for price quotes more often before 2006. According to Interviewee #22, prime contractors do not offer information regarding DBE goals and requirements; "they'll just tell you that a job requires a DBE licensed contractor and that prime contractors need my bid." At the public hearing ITD held in Coeur d'Alene, an owner of a certified DBE minority and woman-owned business testified that the DBE project goals have benefited her company. She recommended that the DBE project goals should remain in effect to "prevent a decline in the use of DBEs." She also suggested that, without the DBE goals, there may be an influx in new contractors "who would bring their own subcontractors."

Several owners of DBE businesses testified at the public hearings that they were concerned that prime contractors will self-perform the potential work of subcontractors when no DBE project goals are in place. One written statement sent to ITD noted that "General Contractors, if they do what we do, will ALWAYS self perform the work themselves if there is no DBE goal," and that it is "financially easier for a prime contractor to absorb the sub-contractor portion of their work than it is for the subcontractor to become a prime." They believe that the DBE goals force the general contractors to utilize their sub contractor options instead of self-performing.

A female owner of DBE contracting firm testified that she has seen things change over time and believes that there is still a need for the program. She noted that DBE goals have been gone for only two years and that there is still a lot of work left over from the time when goals were set. "Most of the existing contracts still had goals set," therefore "you're not going to have the evidence that you would need to see what would actually happen [without the DBE goals]."

Other firms have not noticed a decline in DBE participation since ITD moved to a race- and gender-neutral implementation of the DBE Program. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated he believed that DBE utilization on ITD projects was goal-oriented and he believed ITD was trying to "goal-orient" all of their projects now "as they should be." He stated he did not notice a difference as between before and after January of 2006.

Interviewee #24, a Native American heavy construction contractor, noted that the ITD DBE Program was good when it started, but that right now there are no DBE requirements for prime contractors to use DBEs, there are no incentives, and there are no DBE goals. However, Interviewee #24 has not noticed a decline in business with the "lessening" of the DBE goals requirements by ITD.

A representative of a women-owned excavation business testified that the firm has used the DBE program to get their "foot in the door" with big contractors that may not have otherwise given them the opportunity. They try to do a good job to put themselves in a position where the large contractors want to hire them without the DBE program. This representative stated, "We like our relationship with the contracting community here," and has not noticed a decline in opportunities after DBE project goals were discontinued. A manager for a prime contractor in the Idaho area gave testimony concerning the impact he has observed in the past year without DBE project goals. "We've met the [typical] DBE allocation … we did it because of the relationships that we've had with the contractors in this Valley." "Having the [DBE] goal, from my standpoint, I don't think is a benefit."

Partnerships

The vast majority of the businesses interviewed have had no involvement with partnerships, either joint venture or mentor/protégé arrangements. None of the interviewees reported participation in a joint venture on an ITD project. Only one of the interviewees participated in a mentor/protégé program sponsored by ITD. A few interviewees reported participation in a mentor protégé program sponsored by other government organizations and associations.

Interviewee #8, a Hispanic male-owned environmental consulting firm, reported that ITD is thinking about starting a mentor/protégé program and ITD contacted him to be a mentor. He stated he would "love" to be a mentor.

Joint Ventures

Nine of the businesses interviewed have participated in a joint venture(s) on non-ITD jobs. (Interviewees #6, #7, #10, #16, #18, #21, #26, #28, #33.) Interviewee #7, a Hispanic male-owned biological environmental consulting firm, participated in a joint venture with another engineering firm. He stated that together they have bid several projects in the public and private sector but none of these jobs were for ITD. They received a couple jobs last year and intend to continue the joint venture to bid more jobs in the future.

Interviewee #28, a white female-owned engineering firm, stated that she has engaged in a number of joint ventures with a non-DBE contractor on projects for the Army Corps. She stated they just completed a design-build joint venture and it was a positive experience.

Interviewee #10, a female representative of a Native American male-owned engineering firm, has participated in numerous joint ventures on public sector, non-ITD, jobs. These have been successful. "When you pair with a bigger company they have the depth of experience to allow you to get into sectors of work that you wouldn't be able to otherwise as a small disadvantaged company." Likewise, Interviewee #18, a female representative of a white male-owned architecture firm, has worked in joint ventures on non-ITD, public sector projects and reported that these arrangements were successful. They usually pair up with an engineering firm.

Interviewee #21, an Iranian male-owned environmental consulting firm, had experience bidding as a joint venture on a public, non-ITD, project but his team was not successful. Interviewee #26, a Native American/Hispanic female-owned demolition company, participated in a non-ITD joint venture. She reported that "it went okay, but it was kind of similar to subcontracting...you're kind of tied at the hip together, and if they're bigger and more powerful than you, it can be quite difficult."

Interviewee #6, a white male-owned concrete business, reported that they have worked on projects that were being run by a joint venture—"we don't see any difference." Interviewee #6 went on to explain "the bid process may be a little complicated."

Interviewee #33, a Native American female-owned road construction business, said that she has participated in a joint venture through the Bureau of Land Management. Interviewee #16, a African-American male-owned traffic control subcontractor, stated that a joint venture is a good way to "get in" with the bigger contactors who are already bondable. He stated that joint ventures are good opportunities and when a prime contractor is required to team with a DBE, they will do so because they want to make money.

Interviewee #25, a white female-owned flagging and traffic control company, is aware of joint ventures with ITD, and Interviewee #25 has seen this program at work in Boise. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated he was aware of a joint venture in the private sector, but not in the public sector.

Mentor/Protégé

Only one interviewee had participated in a mentor protégé program sponsored by ITD. Four interviewees had participated in a mentor-protégé programs with other organizations. (Interviewee #8, #10, #26; ITA #7.) Interviewee #25, a white female-owned flagging and traffic control company, participated in the mentor/protégé program (partnering) with ITD. She did not find it helpful.

Interviewee #8, a Hispanic male-owned environmental consulting firm, reported participating in a mentor/protégé program with the Air Force. Interviewee #8 stated the other business helped him with his employee manual and offered some other expertise, but otherwise it was a big waste of time and money. He stated it was also hard because the mentor offered him expertise, but would not give him any work because they did not have enough work for their own people. He stated that he spent a lot of time traveling for the mentor-protégé program, which was time that he could have spent on billable work. He also stated that at one point the mentor asked him to train one of their people, which was problematic.

Interviewee #10, a female representative of a Native American male-owned engineering firm, is involved in the SBA mentor program. "Some of our joint venture stuff has come out of" the SBA mentor program. "Large businesses team with small businesses for their own purposes. You have to go into it knowing that they aren't really interested in how well you do." "It helps us to get the qualifications and experience, but it's not very altruistic in my view." They had a DOE mentor that "absolutely nothing came out of." She stated that they received a new mentor this year and "I do believe that this will be a much more advantageous pairing." She was paired with this company after the company sent out solicitations for protégés. They submitted a proposal and were selected. She is not aware of whether ITD has a mentor protégé program. Interviewee #26, a Native American/Hispanic female-owned demolition company, is currently trying to mentor someone through the Section 8 (a) program.

ITA #7, a trade organization for minority females, is participating in a mentor protégé relationship with another larger non-profit organization dedicated to women of color that is called Accion Texas. ITA #7 was not aware of any mentor protégé programs for her members.

Interviewee #5, a white male-owned heavy highway and building contractor, stated he is engaged in "informal" mentor-protégé relationships.

Interviewee #16, a African-American male-owned traffic control subcontractor, stated that he had heard of mentor-protégé relationships, but he has never participated in one. Interviewee #27, a Native American male-owned refractory construction contractor, has not participated in a mentor/protégé program, but he has heard of them through the National Center for Indian Enterprises. Interviewee #27 has also looked at mentoring programs on the SBA website.

ITA #3, an organization providing outreach to small businesses, was not aware of any businesses that have gone through a mentor protégé program nor was he aware of ITD or SBA's mentor-protégé programs. However, he is aware of one program whereby retired consultants mentor newer consultants.

The female owner of a traffic control firm testified that she has developed mentor-type relationships with several prime contractors. She appreciates their knowledge and guidance in developing her small company, stating, " I feel like at this point most of the prime contractors try to teach us … they don't try to tell us what to do. Their knowledge is like having five peoples brain instead of one!"

Anecdotes Regarding the Existence or Non-Existence of Barriers in the Public and Private Sector

Financing, Bonding, Insurance, and Licensing

Some interviewees reported that bonding, financing and insurance is a barrier to pursing work in the public and private sectors. Interviewee #24, a Native American heavy construction contractor, stated that the company does not work extensively in the private sector because their bonding and insurance companies do not provide coverage/money for private sector work. Interviewee #14, a white male-owned road construction company, said "it's tough—and it's getting tougher."

Interviewee #28, a white female-owned engineering firm, stated that bonding is difficult because they look at your financial history, and her company does not have a long financial history. She said that she was fortunate to have the financial credit to obtain a bond. ITA #2, a Hispanic business trade association, stated that her members have not had problems with financing in general, but it depends on the age of the business. She said that entrepreneurs in general have a difficult time in obtaining financing when they are starting out. A member of ITA #2 who participated in the interview stated that a company cannot get bonding if it is not financially fit. Interviewee #14, a white male-owned road construction company, said the ability to obtain financing depends on "whether you have the financial capability to pay it back...those who understand interest, receive it, and those who don't, pay it. If you're income's less than your out-go, your upkeep's going to be your downfall."

ITA #6, a Native American organization, stated it is "very difficult" for her members to receive financing and bonding. This is particularly true for Native American-owned businesses whose principal place of business is on a reservation. ITA #6 believes this is largely due to the misconception that residents of Indian reservations are entitled to sovereign immunity. If the businesses default, the sureties worry that they will not be able to collect against them. This is not the case. It is true however that in order to put liens on property on a reservation or garnish wages from a Native American residing on a reservation, the surety must go before the tribal court. The lack of accurate information regarding collecting against such a firm is a barrier. ITA #6 holds workshops to explain to sureties and other financial institutions the nuances of working with tribal businesses. "We just need to explain those differences. We don't ever want tribal laws to be a hindrance to a business receiving work...it's not a problem as long as we show them there are remedies." ITA #6 stated that sometimes a smaller firm would then pair with larger Native American firm to "work the system" and get a bond.

Similarly, Interviewee #24, a Native American heavy construction contractor, recounted a negative experience with obtaining bonding noting that there are often sovereign immunity issues on reservations. To overcome these barriers, Interviewee #24 has worked closely with the bonding companies to resolve issues and "prove their track record."

ITA #9, a trade association representing general and subcontractors, reported that to work with ITD a business needs bonding and a public works license. In general, prime contractors cover the bond for their subcontractors. However, when they do not, it can be a barrier for a smaller firm.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he has had a positive experience obtaining financing now. However, he stated that in the Section 8 (a) Program 12 years ago, you were required to show three instances of discrimination and two of his experiences were related to obtaining financing from a bank. He stated that he had some difficulty obtaining insurance because he was a small business. Interviewee #8 stated that he would think race would affect ones ability to obtain financing, bonding, and/or insurance, especially if you were African-American, Hispanic American, or Native American. Interviewee #13, a white female-owned traffic control subcontractor, identified obtaining financing from banks as a barrier to obtaining work.

Interviewee #15, a white female-owned concrete business, reported that financing "has been a piece of cake" but that getting bonded "is a pain—a royal pain." She went on to explain "they want everything." She does not believe that gender has ever affected her ability to get bonding or financing.

Interviewee #33, a Native American female-owned road construction business, has had experience obtaining both financing and bonding, and reported that the greatest difficulty was in getting bonding. Interviewee #33 reported that this was due to the bonding company's unwillingness to have faith in her company's ability to handle large projects.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the businesses they assist have had a positive experience obtaining financing. He stated that the Hispanic Chamber of Commerce has a micro loan program to assist new businesses. Nonetheless, he identified a lack of understanding as to the process as a barrier to obtaining financing. He explained a lot of the smaller subcontractors have never written a business plan, which is required by most banks to obtain financing. He stated their organization as well as the AGC and ITD assist these businesses in teaching them how to prepare a business plan.

Written Statement #2, a small male owned DBE has difficulties completing orders without prepayment for the project because of his lack of working capital. Government entities payment is received after an order is complete and this poses a barrier making it as he suggests "impossible for me" to succeed.

Some interviewees reported that difficulty receiving bonding and financing prevents them from working as prime contractors. Interviewee #15, a white female-owned concrete business, said that they exclusively operate as a subcontractor because "it's a lot less hassle...and we don't have the bonding capability." Interviewee #25, a white female-owned flagging and traffic control company, stated that the business functions primarily as a subcontractor because of bonding and funding. Interviewee #25, noted that the company had a negative experience with one bank, so they changed banks in order to facilitate the company's payroll processes. The bank could not process her payroll fast enough. She believed that the bank did not want her business, either because she was a female or because of her area of work. ITA #1, an organization providing outreach to Hispanic-owned and other businesses, noted that it takes a lot of money to act as a prime contractor and this is why most of the businesses they assist act as subcontractors. He was unaware of anyone being denied the opportunity to submit a bid or price quote, but he identified the inability to bond as a barrier to bidding. ITA #3, an organization providing outreach to small businesses, attributes the lack of DBE prime contractors to the capital required to bid as a prime. "DBEs are undercapitalized to be prime contractors." ITA #3 stated that small business sometimes experience barriers obtaining financing and bonding because they do not have enough money or assets to put up as collateral. ITA #3 does not feel that race or gender affects a business' ability to obtain bonding. ITA #4, a minority trade association, believes DBEs generally function as subcontractors because of capacity and funding.

Other interviewees stated that bonding and financing was not a problem. Interviewee #4, a white female-owned construction company, stated that they had been successful in obtaining bonding and financing. Interviewee #25, a white female-owned flagging and traffic control business, indicated that financing is often easy to obtain, and bonding has also "been fairly easy to come across." Interviewee #26, a Native American/Hispanic female-owned demolition company, reported a "smooth" experience obtaining financing.

Only three interviewees and one public commenter reported that they felt race, ethnicity or gender affected a businesses' ability to obtain financing or bonding. (Interviewees #13, #26, ITA #1, ITA #2.) Interviewee #13, a white female-owned traffic control subcontractor, stated that it took her five years to obtain financing and she had good credit, whereas it took her male friend only three months to obtain financing. She stated she has encountered barriers to obtaining financing except with SBA with whom she did not encounter the same barriers. She has not ever had to obtain bonding.

Interviewee #26, a Native American/Hispanic female-owned demolition company, said that barriers to obtaining bonding are that "it takes a long time to build." Interviewee #26 reported that her ethnicity and gender affected her ability to obtain bonding "in the beginning—definitely." She did not give specific examples.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that statistically on a national level, race, ethnicity, or gender of the business owner affects its ability to obtain financing or bonding. However, he had not observed this locally nor did he know of any specific instances of this happening.

A member of ITA #2, a Hispanic trade association, who participated in the interview stated that he had a hard time obtaining financing when he started his business, but that was not due to his race or ethnicity. However, he stated that "if a white guy walks in [to a bank], his chance of getting financing is better than me walking in." ITA #2 stated the she would hope that in this day and age race and ethnicity would not affect ability to obtain bonding. ITA #2 said that part of the problem is that an individual must have a detailed business plan, which is difficult for some people to prepare. However, she stated it might be "a different story" if you just handed the bank the business plan without them knowing the race, ethnicity, or gender of the business owner.

A Hispanic male who owns a cabling and fiber optics company testified about being a minority contractor and how one's ethnic background, darker skin, and language barriers can push away business when working in Idaho. He stated that "we've had numerous, besides myself, Hispanic people work with us and they just don't get quite the opportunity."

Some interviewees reported that capital and experience are the most important factors in obtaining financing and bonding. Interviewee #9, a Native American male-owned underground utility company, said that he does not have a problem obtaining financing or bonding and stated that race or ethnicity is not a factor; rather, "it is always financial."

Interviewee #10, a female representative of a Native American male-owned engineering firm, stated: "Most of the bonding issues come from whether or not you have enough experience so that the bonding company feels comfortable….if you don't have experience in an area it is hard to get bonding…we have been able to get bonding." Interviewee #10 reported that race is not a factor. Interviewee #11, a white male-owned

construction company, noted that in the beginning his company had difficulty receiving bonding: "[Y]ou have to have a certain amount of capital, equipment, and experience." Interviewee #11 stated that bonding is no longer a problem since he is not trying to increase his capacity.

Good Old Boy Network

Some interviewees reported the existence of a "good old boy" network in the Idaho transportation industry. Interviewee #5, a white male-owned heavy highway and building contractor, believes a good old boy network exists depending upon where you are located. Interviewee #5 noted that people do tend to work with preferred subcontractors and suppliers, but noted that this is not because of the status of WBE or MBE. He stated it is typical to work with people that they have worked with for a long time. Similarly, Interviewee #30, a white male-owned engineering and plan-surveying firm, thinks that there is a good old boy network in the industry.

Interviewee #13, a white female-owned traffic control subcontractor, stated that several years ago there was a large company that owned another company and they only used each other for their subcontracting needs. She said that they routinely solicited price quotes from her, and she would ask them why they were doing so. They would assure her the bidding was open but they always used the same subcontractors. She stated that there is a good old boy network and indicated there are certain companies that will not hire a female owned business to subcontract.

Interviewee #21, an Iranian male-owned environmental consulting firm, feels that you have to be a member of the good old boy network to receive work from a city in Idaho that he has worked with. He stated that the city used to do a poor job of advertising opportunities, but the lead city engineer has changed and this has helped. Interviewee #21 said he asked the city Attorney why all the contracts were going to the same engineering firm, and the Attorney informed him that by law they do not have to advertise engineering projects. He stated that last year the city asked him to do an environmental assessment on some property; he wrote a proposal and beat another engineering firm. He said that things seem to have changed since then and he also spoke with the city engineer. "I am sure they will contact me from now on to submit RFPs."

Interviewee #23, a Hispanic and Native American male-owned steel erecting company, believes there is a good old boy network and stated "that's one of my goals, is to be a part of that." Interviewee #23 later added "they're all inter-married or relatives, and it's just getting into those type of groups of people." Interviewee #23 further stated: "It's almost like the AGC association...ITD goes to the AGC. They submit their plans there. The AGC all sticks together...it's almost like a union; union people stick together and they trade information, and so is the AGC. And a lot of those types of...clubs, they call them clubs—until you're established and you make enough money you can't afford their annual tuition, and dues, and stuff like that."

Interviewee #25, a white female-owned flagging and traffic control business, stated that she believes that there is a good old boy network in the Idaho transportation industry. Interviewee #25 stated that the company has had some experience being closed out of an opportunity to subcontract. She noted that there are favorite companies in the industry, but things are better than they used to be and that the good old boy network has changed for the "good."

Interviewee #27, a Native American male-owned refractory construction contractor, said that he felt there was a good old boy network in the transportation industry, noting that "people they get comfortable" working with other people and they socialize outside of the work environment on hunting trips for example. Similarly, a member of ITA #2, a Hispanic trade association, who participated in the interview stated that there is a

good old boy network and there is "prevalent cronyism." ITA #2 said there are two restaurants that the prime contractors in the transportation industry go to discuss business and being at one of these restaurants is better than any bidders' list.

A Hispanic male who owns a cabling and fiber optics company testified that he could not bid on larger contracts "without feeling like you have the good old boy network looking you straight in the eye, and not matter what you do, you're not going to really get a fair shake at it." Whether he submitted similar pricing or outbid his competitor, he noted feeling that the good old boy network is still very prominent, "white guys that have been running around with the same white guys that have controlled the money in the valley for some hundreds of years."

Interviewee #16, a African American male-owned traffic control subcontractor, stated that he believes the good old boy network is fading away because "a lot of it is coming to light." He said that people will always try to do what is right.

Some interviewees reported the existence of a "network" within ITD. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he has seen the good old boy network in ITD itself in certain districts. He stated the good old boy network is cultural and includes people who have been in Idaho for a very long time. He stated that he believes he has been closed out of an opportunity to subcontract because he was not in the particular network, although he could not recall a specific example. Interviewee #12, a white male-owned paving company, believes that "ITD has some of their favorite contractors, who are favored by their inspections people and administrative people. They've worked with them in the past—acquaintances."

Interviewee #4, a male representative of a white female-owned construction company, stated: "A lot of people have subcontractors who they work with. There's been cases where I know I was lower than another guy's bid." He sympathizes with the prime contractors, however, stating: "if bids are close and you're familiar with somebody and you know the quality of their work and you know they can be there on time, it's tough to take a chance on someone else." With respect to a "good old boy" system, Interviewee #4 recalls that he once tried to obtain a piece of land from ITD. He approached ITD and they promised him that they would contact him when they were ready to exchange the land. He was never contacted and ITD exchanged the land with someone else. This person, he said, had personal connections with the ITD officials. He would have offered much more money for the land. He feels that ITD needs to evaluate their system as to how they disperse ITD-owned properties.

Interviewee #18, a female representative for a white male-owned architecture firm, feels that a few times other architecture firms have beaten them out due to personal connections with the architect on staff with ITD in Boise. She recalled a time when they went into the bidding process as the number one bidder, but ended up as the number three bidder. "They're nice people, we work with them, but they have favorites." Nevertheless, Interviewee #18 did not feel there was a "good old boy" network in the Idaho transportation industry.

ITA #4, a minority trade association, indicated that ITD project selection committees need to be diversified. Typically the selections committee is all "the good old boys." "They're gonna use their friends and the people they know; they have the same thought process, and they don't see the importance of really being fair and looking at the future. They're not visionary people, typically."

Other interviewees reported that ITD is not part of the good old boy network. Interviewee #28, a white female-owned engineering firm, stated there is a good old boy network in the industry but not with ITD but

"that is human nature, to go where you are comfortable." She stated her comfort level is to go with the people that she knows although it is probably viewed as a negative.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that people are not closed out of opportunities with ITD. However, he stated there is a good old boy network everywhere although it is less pronounced in the public sector due to bidding rules and open meeting laws. He said that ITD is doing an extremely good job of not politicizing their projects but the legislature is trying to politicize them. He explained that generally ITD staff chooses the transportation projects on the basis of need. However, the legislature is attempting to evenly divide transportation monies across the state regardless of the need and population of the different regions.

Some interviewees reported feeling "closed out" of an opportunity because the prime contractor used a subcontractor within its own "network." Interviewee #3, a white male-owned pre-stress concrete supplier, felt that it has been closed out of opportunities to bid because prime contractors use subcontractors within their own networks; he said, "with certain contractors it happens often." Interviewee #3 does not think that there is a good old boy network in the industry, but some of the contractors who have been around for a long time do have certain people they are willing to work with.

Interviewee #30, a white male-owned engineering and plan-surveying firm, said that because his company is a small business, for projects that are packaged as large jobs, his company is able only to do a subcontract for small pieces. Interviewee #30 stated that the company has been closed out of business opportunities because a prime contractor used a subcontractor within its own network. There are environmental projects that Interviewee #30 has not been able to obtain because agencies have their "favorites," and "there is no way to get in." Interviewee #30 also said that people are being brought in from out of state to perform work even though there are local companies to do the work.

Interviewee #10, a female representative of a Native American male-owned engineering firm, stated that being closed out of opportunities "happens all the time. Companies work with people they are comfortable with or people they have experience with. If you're new or you haven't done work...it's harder to get an opportunity."

Interviewee #17, a white male-owned landscape architecture firm, said it has been closed out of certain subcontracting opportunities. If there are landscape architects on the large engineering firm's own staff "they are going to use them instead of a sub-consultant, like me. However, that's business."

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, recalled that he has been closed out of certain opportunities due to a prime contractor using a subcontractor within his "network." He stated that the work "tends to be on a basis of professional relationships" and that this is "not a bad thing." He stated that there "used to be" a good old boy network but he does not feel it now.

Interviewee #11, a white male-owned construction company, reported that he had not personally experienced being closed out of an opportunity, but stated "[t]here might be some of that. It's kind of human nature. If someone has worked with a certain contractor forever they might try to see if he'll do it. I wouldn't say it's illegal, but sometimes helpful."

ITA #3, an organization providing outreach to small businesses, stated that it is difficult for a subcontractor to get a prime contractor to use him because many prime contractors already have the subcontractors that they prefer to use. However, once a subcontractor is used, the prime contractor will usually use him again.

Bid Shopping

Some interviewees reported the knowledge of or experience with bid shopping by prime contractors. (Interviewees #3, #5, #8, #12; ITA #1, ITA #2's member participant.) Interviewee #3, a white male-owned pre-stress concrete supplier, noted that he knows of multiple occasions where companies/prime contractors have shared bids of subcontractors in order to get lower bids and/or better pricing from preferred subcontractors.

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that bid shopping happens a lot in the construction industry, but he does not think that it happens on the technical side because that is all based on qualifications.

Interviewee #12, a white male-owned paving company, felt that "[b]id shopping is prevalent in the building contracting industry" and that this practice is "inappropriate."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, said both prime contractors and subcontractors have experienced bid shopping in both the private and public sectors. A member of ITA #2, a Hispanic trade association, who participated in the interview stated that bid shopping is a common practice.

Interviewee #5, a white male-owned heavy highway and building contractor, has heard of bid shopping, but stated that his company does not engage in that practice.

Interviewee #13, a white female-owned traffic control subcontractor, stated that when she first started her business in 1996, a person at ITD told her to hold her bid until the day before in order to avoid bid manipulation or bid shopping.

Bid Manipulation/Different Bid Criteria

Very few interviewees reported experiencing bid manipulation. Interviewee #27, a Native American male-owned refractory construction contractor, noted that bid manipulation happens in larger corporations. Interviewee #3, a white male-owned pre-stress concrete supplier, recounted an experience where another contractor manipulated its bid by stating it had a standing discount with a particular company, and that company was able to obtain work using such a manipulative bidding rationale.

Some interviewees reported that they felt certain bids were "tailored" or "written" for certain contractors. Interviewee #10, a female representative of a Native American male-owned engineering firm, stated: "You can tell if something is targeted for somebody. If it's way, way, way [too] specific. That doesn't mean you know who it is, but you know it isn't you." She stated that this happens from time to time, but was not sure whether she had seen this on an ITD contract.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated the state just had an instance of bid manipulation—these were ITD projects in northern Idaho and they tried to ensure that local contractors received the projects instead of the out-of-state bidder.

ITA #3, an organization providing outreach to small businesses, stated he has seen other public entities, not ITD, tailor bids for certain contractors. "I think it's a matter of efficiency and streamlining the bidding process." These entities create specifications specific to a vendor—"size, experience, actual features, software."

Fronts

Some interviewees reported knowledge of "DBE fronts." Interviewee #23, a Hispanic and Native American male-owned steel erecting company, said "I'm dealing with a minority company right now...they're a sub and I'm a sub of them, but they're also a DBE through the highway district...His wife is the...the figurehead, but he does all the work, and he's always done all the work, and that gets into a whole different thing. You get a lot of these companies where they're women-owned, and their wife answers the phone." Interviewee #23 reported that DBE fronts occur "all the time."

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that he is aware of sham DBEs where the husband owns the company, but it is in his wife's name. Interviewee #13, a white female-owned traffic control subcontractor, stated that she "frequently" sees male-owned companies put the business in their wife's name but the wife will do no work or only occasional bookkeeping. She stated the sham DBEs are "out there and have always been there."

Interviewee #5, a white male-owned heavy highway and building contractor, stated that he had heard of DBE fronts. Interviewee #21, an Iranian male-owned consulting firm, suspects some firms in Boise are DBE fronts, but he has "no proof." These are both minority and female fronts.

Interviewee #30, a white male-owned engineering and plan-surveying firm, thinks "there are a lot of DBEs that have management people that fit certain definitions so that they can get certification." Interviewee #30 thinks that this phenomenon is more prevalent with minority-owned business, particularly those operated by Native Americans. Though he had no direct experience, Interviewee #14, a white male-owned road construction company, reported hearing stories of DBE fronts, "they get other people to organize and use a DBE as the owner, and so forth."

A member of ITA #2, a Hispanic trade association, who participated in the interview stated that DBE fronts happen all the time.

Interviewee #28, a white female-owned engineering firm, stated that she has heard of DBE fronts (as between a husband and a wife) but she said ITD does a good job of sending someone out to interview the DBEs when they are trying to get certified.

Anecdotes Regarding Race, Ethnicity, and Gender

Perceptions Regarding Whether Race-, Ethnicity-, and Gender Affects Ability to Engage in Business in the Idaho Transportation Industry

Some trade associations felt that race and ethnicity was a barrier to receiving work. ITA #3, an organization providing outreach to small businesses, feels that race and ethnicity can affect a business' ability to get business in the private sector. He attributes this to language barriers and communication issues. He has seen this with some Hispanic as well as Romanian and Serbian clients. He also believes there are some cultural differences and prejudices against certain minority groups. He believes there are stereotypes that certain ethnicities have a lower work ethic. He has also seen religious differences cause issues regarding the workweek. He hears these issues from the DBEs. The DBEs base their information on the fact comparable non-minority businesses beat them out for projects. Some of these DBEs have related specific experiences to ITA #3.

According to ITA #3, a female owner of a welding operation complained that a prime contractor on a private sector project would not give her the specifications or allow her to bid because of her gender. ITA #3 said that a Hispanic post-construction clean-up company complained that it was not allowed an opportunity to provide a proposal on a private contract because of ethnicity. According to the owner, the prime contractor told him that they did not trust his work ethic, and he knew they could not keep up at the pace they needed.

ITA #6, a Native American organization, stated: "There still is discrimination, not as blatant as it once was, could be de facto discrimination where we choose to be separate or it could be discrimination to us. It still exists." Nonetheless, she does not believe there is discrimination within ITD. "Let's say we had 10 Indian contractors certified as DBEs. I think that ITD would make the good faith efforts." "In District 5 we seem to have the best working relationship of all the TEROs in Idaho with ITD." "ITD has been pretty good" about meeting our goals on projects.

ITA #6 reported several examples, all within the last five years, of how ethnicity and gender has affected her members 'ability to receive work. In one example, a very large prime contractor secured a project on and near the reservation. The contractor was required to comply with TERO and extend recruitment to all protected classes. Her office referred two Native American female rollers. "The foreman either didn't like Indians or women." When the women were on the roller, he would travel behind them and "ram his roller into their roller." Both of the women quit after the project superintendent ignored their complaints. The women came to her office and reported what had happened. She asked whether they wanted to file a complaint. They said no because they had to work with these people in the future and "they didn't want to rock the boat." ITA #6 contacted ITD and together they approached the project manager employed by the prime contractor. He was aware of the situation. The foreman was disciplined, but not removed from the project. The manager offered to take the women back, but they chose not to return. ITA #6 stated that this is not the only incident where her female members were assaulted or attacked. She has worked with ITD on these matters. "I think we're pretty good at collectively trying to nip it in the bud."

ITA #6 stated that periodically another prime contractor sends out recruitment forms seeking heavy equipment operators. Her office makes referrals every time. The prime contractor interviews these businesses, but never hires them. ITA #6 believes that other contractors would "scoop these businesses up in a heart beat." ITA #6 sees this as an example of where a "basic extension of good faith effort" is made, but not genuine. ITD officials have contacted this prime contractor and questioned him on his hiring practices. ITA #6 stated that there are also contractors who will only hire Native Americans for the portion of work on the reservation, and then "cut them loose" when that portion of work is complete.

ITA #7, a trade organization for minority females, stated that her members have been "somewhat" successful in the public and private sectors. However, as a woman they tend to get the lower paying work. Most of her members, particularly those in the rural areas work in factories, on farms, or in restaurants. She stated that it is difficult for women to realize that they can start their own business and obtain the skills necessary to work with public entities such as ITD.

Some minority or female-owned businesses interviewed felt that race, ethnicity, and/or gender negatively affected their ability to obtain or engage in business with non-ITD projects. No business reported that race, ethnicity, and/or gender negatively affected their ability to obtain work directly with ITD. Interviewee #24, a Native American heavy construction contractor, noted that there have been issues on public sector, non-ITD projects where Interviewee #24 felt that race and ethnicity affected the company's ability to obtain or engage in business. Interviewee #24 was low bid on a public job. One company turned in

its bid late so the project was re-bid. He believes this occurred so a certain local company would receive the work.

Interviewee #13, a white female-owned traffic control subcontractor, stated that her gender has not affected her ability to obtain business with ITD, but it has on non-ITD projects in the public sector and in the private sector. She stated that some companies have never hired her and never will because she is a female. She stated that when a male enters the traffic control business they will hire him immediately. Interviewee #13 stated that as long as there are DBE goals, there are no barriers or obstacles to obtaining work with ITD. However, if the contracts do not have DBE goals then she does not get the work—she pointed to the fact that she has never received a state ITD project (without goals) as evidence of this. She stated that in the private sector some companies simply will not hire her because she is a female. She stated that she did not believe a prime contractor has ever refused to work with her because she was a DBE but she does believe they may have refused to work with her because she was a woman. Interviewee #13 gave an example of a large road project where her bid was several thousand dollars less than the next subcontractor; the other subcontractor who was a male received the job. She stated that this project did not have a DBE goal. She stated that it is very hard to be in this business as a woman.

Interviewee #26, a Native American/Hispanic female-owned demolition company, felt that race and gender was "sometimes" an obstacle to receiving work. "Until you build a relationship or until people get to know you, it's a true barrier, because you're in a so-called 'man's field' 'man's world' and it's tougher."

Interviewee #29, a white female-owned consulting engineering corporation, recalled a couple of isolated incidents in which she felt her gender affected her ability to obtain work. With "older gentlemen that have been in construction all their life" it is sometimes "hard to break the ice. However, once we show them what we can do, it's fine. If I didn't have the DBE hook to break the ice, I wouldn't have gotten in." She stated that it is difficult to get your foot in the door, but once you do and do good work, you are going to be a success.

Interviewee #16, an African American male-owned traffic control subcontractor, stated that he has been fairly successful working on ITD jobs; however, he stated that it became very difficult for him when the definition of DBE was expanded to include women because they were then his direct competitors. He said that many prime contractors would prefer to work with a white woman than with a African-American man but "that's life."

Interviewee #25, a white female-owned flagger traffic control business, noted that the company has had issues as a woman-owned company, stating that the male ego often gets in the way. Gender has affected the company's ability to obtain and engage in business with prime contractors; it's "really a problem with the general contractors." "Some contractors think that we should not be, as women, on the project."

Interviewee #25 noted that offensive comments are the norm and that it is the nature of the business. "Comments and attitudes...wisecracks...can put me in a bad mood, and that affects my bidding and negotiating, and getting the job."

Most minority or female-owned businesses interviewed felt that race, ethnicity, and/or gender did not negatively affect their ability to obtain or engage in business. Interviewee #21, an Iranian male-owned environmental consulting firm, reported that race was "not really" an issue. "I'm pretty popular. These guys in the middle of nowhere in Idaho, once they get to know you they're really good people." He thinks his participation in community events helps him in his business. "Actually, I've had good experience with Idahoans in this area, contrary to what you hear, I haven't seen that. In this part of the country, people are

somewhat uninformed, they want to just live their lives…it may be that old cowboy culture, once they get to know you, they'll do anything for you." He has not heard of discrimination or stereotyping. "I've lived in the U.S. for 35 years and with the exception of one time in Lincoln, Nebraska I have not experienced discrimination." He stated that discrimination is a systematic process whereby the industry tries to "squeeze you out." Name calling or talking behind his back does not bother him as long as it does not disturb his business.

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that stereotyping "occurs but I have no direct experience." He recalled that when he worked for ITD over 10 years ago he heard ITD employees make ethnic comments and jokes and use negative terms to refer to certain groups. He does not believe this affected DBE firms' ability to obtain work. Rather, he believes these were the views of certain individuals within ITD. He has not heard such comments in the last 10 years.

Interviewee #10, a female representative of a Native American male-owned engineering firm, believes that its ethnicity works in its favor. "As far as work, there are some companies that target Native Americans." "When you work in the west there's a larger percentage of companies that target Native Americans because it's a larger subgroup of the population." "I think there are some companies that like to give opportunities to minorities."

Similarly, Interviewee #22, a Hispanic male-owned concrete contractor, noted that his race and ethnicity has beneficially affected his ability to obtain or engage in business with ITD in a positive way because of his DBE status. However, Interviewee #22 has not noticed this with prime contractors, in other public sector or private sector work.

Similarly, Interviewee #1, a white male-owned corridor planning business, remarked that race, ethnicity, and gender worked in a businesses' favor. "The only time in which might it come up is in a strategy about how to get a job—you know 'well, gee, if we want this job we should have two more women.'"

Interviewee #12, a white male-owned paving company, said "what I have seen, DBEs in most cases aren't disadvantaged. They are solicited pretty heavily because of the requirements. However, on the same hat, most DBEs are good contractors." He was not aware of any stereotyping or discrimination.

Interviewee #4, a male representative of a white female-owned construction company, stated that gender has not affected their ability to obtain business and described the work environment for DBEs as "good."

Interviewee #9, a Native American male-owned underground utility company, does not believe that race/ethnicity has ever affected his ability to obtain or engage in business. Interviewee #9 describes the work environment for women/minorities/DBEs in the Idaho transportation industry as good, stating "I think they try to do a good job."

ITA #8, the Idaho District Office of the SBA, stated that she does not believe there is discrimination in the Idaho transportation industry, but rather selection is based on "performance and capability."

ITA #9, a trade association representing general and subcontractors, stated: "Everyone will take anyone they can get with a qualified crew. If there is discrimination it is based on somebody who is undercapitalized and can't deliver the job on time and on budget." He stated that he has been in the industry a long time. "If there's anything at all, it's that construction is a male-dominated area and so I would say females have had a bit of a" rough time, "but that is based on perceptions of competence in construction." One of the best

contractors in the state is a female owner of a guardrail company. "She probably had a tough time in the beginning." He thinks she is too large now to be a DBE, "and she still gets used."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that race, ethnicity, or gender does not affect a business's ability to obtain or engage in business with ITD or on other public sector projects, although he believes that this does happen in the private sector. Race, ethnicity, or gender will assist a business in obtaining work with ITD. ITA #1 stated that most of the barriers that every businesses faces is that they are a new company lacking experience on a larger project, and it is difficult to get in the door. He stated that many businesses are having a hard time finding qualified employees because the unemployment rate is only at 3 percent.

One interviewee reported that religion affected her ability to obtain work in certain areas of Idaho. Interviewee #29, a white female-owned consulting engineering corporation, stated "Idaho has a religious culture and in some areas we can't compete." She stated that there is a large concentration of Mormons in the Twin Falls and Idaho Falls regions. She no longer competes for projects "east of Idaho Falls...in districts five and six." She stated that having gone to a Catholic university and as a woman, she does not have a chance of receiving these jobs. She reported that this barrier exists within ITD and with the prime contractors in these areas. She feels that ITD and prime contractors in that location "only give business to members of their church. Non-Mormon firms can't compete over there."

Perceptions Regarding the Work Environment for Minorities and Females in the Idaho Transportation Industry

Most interviewees stated that the work environment is good, fair and open for minorities and females in the Idaho transportation industry. Interviewee #22, a Hispanic male-owned concrete contractor, stated that the work environment for minorities is "good" and that his experiences and "jobs have been positive." Interviewee #27, a Native American male-owned refractory construction contractor, recalled no negative experiences in the work environment for women and minorities in the Idaho transportation department. Interviewee #16, a African-American male-owned traffic control subcontractor, stated that the work environment of DBE's, women, and minorities in the Idaho transportation market is "normal," and that most people are good people.

Interviewee #5, a white male-owned heavy highway and building contractor, believes there are a lot of opportunities for women, DBEs, and minorities, and they are always looking for competent DBE contractors. Interviewee #17, a white male-owned landscape architecture firm, stated that the work environment for DBEs is "good...as far as I know" and was not aware of any discrimination.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that the work environment for DBEs, women, and minorities is the same as it is for everyone else. He stated there is no special treatment.

Interviewee #31, an Asian/Pacific Islander male-owned pavement inspections business, had not experienced any offensive or discriminatory behavior, noting that people within the industry were very careful not to offend because "everyone's pretty scared, actually."

Interviewee #26, a Native American/Hispanic female-owned demolition company, described the work environment for women, DBEs and minorities in the Idaho transportation industry as "pretty good." Interviewee #26 has heard of stereotyping and offensive comments or behavior "maybe a little bit."

Interviewee #26 reported "never to your face, but you might here back...like 'that crazy Indian woman' or something like that."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, was unaware of stereotyping in the Idaho transportation industry. He said the prime contractors are "not known for their p.c. behavior," but they are not targeting their offensive comments toward any one group. He also stated there are some people out there who are truly professional. He said that people do not complain about offensive behavior because it is the price of doing business in the industry. He was unaware of any of the businesses they assist being subject to discrimination or sexual harassment; but he stated it is a male-dominated industry.

Interviewee #18, a female representative of a white male-owned architecture firm, feels that the work environment for women and minorities is positive. One of the female partners reported that she has worked in almost every district in Idaho and stated: "I got to see a lot of stuff. I am very impressed with the quality of people I encountered...When I first started I was one of the few women in the construction world. Invariably the contractor would walk up to the male draftsman and start talking to him." This does not happen as often as it once did. Occasionally, people mistake her for the interior designer as opposed to the architectural designer. She feels that stereotyping based on ethnicity is rare because the Idaho Falls area "does not have a lot of diversity." She does not feel that there is discrimination in the Idaho transportation industry.

Interviewee #2, a white male-owned guardrail construction contractor, stated, "the contracting industry in...the Northwest from his 40 years of experience has always been price (and only price) driven. Thus the 'low responsible bidder' was always awarded the work until government mandated discrimination came to the table in 1982 and uprooted and set aside the competitive bidding system." Interviewee #2 believes that "it is a simple fact that he nor anyone else that he knows in the industry cares a whit about a business owner's race, color, gender or anything else. Are they the low bid and can they perform the work? That's what matters. The problem here is the existence of a whole bureaucratic society of professional victim advocacy that simply will never abate the idea of taking from one and giving to another in the name of "remedy." The jobs and careers of may depend on this "wrong" never going away.

Some interviewees reported discrimination, stereotyping and a less favorable work environment for minorities and females. Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that in general there is a certain amount of animosity toward DBEs and other small businesses. He stated that he has never seen overt discrimination, but he could see it occurring covertly. He stated that Idaho is 99 percent white. He stated that the Aryan Brotherhood is in Northern Idaho and there are stories from that area. He believes DBEs are brought in to fill requirements, and it is a bonus if they do a good job. He said that in the environmental field they are looked on with "fear and loathing" because it is an undefined area. He stated that there is a cultural issue both with them being a small DBE firm, coupled with the area of their expertise. Interviewee #8 said he has experienced stereotyping as a subcontractor because "there is a requirement to use you." He stated that what sometimes happens is that he will be placed on a team, but the prime contractor has hired two different companies to do the same thing, which is inefficient and costly to the client. Sometimes, he said, prime contractors will hire separate companies to do different portions of the project, which is also problematic.

Interviewee #24, a Native American heavy construction contractor, stated that the environment is "improving," noting "that without the goals it's kind of hard." "There are a lot of prime contractors out there that will use a DBE, but then there's some that if they don't have to, they aren't using DBEs as much as they should."

Interviewee #5, a white male-owned heavy highway and building contractor, has witnessed offensive comments and behavior, which generally come from non-management on-site at projects. Interviewee #5 is aware of race issues in the Idaho transportation industry, but noted that these issues are "not highly prevalent anywhere." Interviewee #5 noted that sexual harassment is not tolerated, but sometimes it happens.

Interviewee #25, a white female-owned flagging and traffic control company, reported generally that the work environment for DBEs in the Idaho transportation industry is hard, but it has become better over the years. Interviewee #25, stated "the DBE Program has backed us and supported us and without the DBE Program we would have a lot more problems." Interviewee #25 "thinks that the only reason why they're still being used at this point by some contractors is because the DBE office has suggested that [prime contractors] keep using [DBEs]." "If the DBE goals do not come back we are headed for some hard times."

Interviewee #28, a white female-owned engineering firm, stated the work environment for women and minorities in the Idaho transportation industry is "non-existent." She said that women and minorities have to "scrap" and be more aggressive and come up with creative marketing because the industry favors large, national firms. She stated "it does not play well for small DBEs." She said the work that does come is in large packages. She stated that the term "non-existent" may be harsh, and that she is getting work, but it is not easy. She felt that the transportation industry has been the toughest market in Idaho for her company to break into.

ITA #2, a Hispanic business trade association, stated that she has observed a lot of women as flaggers but she has not seen them operating heavy equipment. A member of ITA #2 who participated in the interview said that there are a lot of Hispanic men and women working on construction sites; but the supervisors are white. ITA #2's member stated the white supervisors treat the workers poorly.

Two interviewees reported that there was a stigma associated with being a DBE. Interviewee #21, an Iranian male-owned environmental consulting company, believes there is a perception that DBEs are less qualified. "That's not true in my case. I am too proud to look for a hand out. All I want is an opportunity. I've competed with a lot of big firms with no problems."

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that his ethnicity has affected his ability to obtain or engage in business "a little bit." He explained that there is a stigma attached to the DBE Program, which attaches to a small business once they enter the DBE Program. He stated the stigma is that "you're small, you're in the DBE Program, and therefore you don't know what you're doing." He stated that prime contractors are skeptical that DBEs have the necessary expertise.

Some interviewees felt that there were still barriers for females due to the male-dominated nature of the construction industry. Interviewee #25, a white female-owned flagging and traffic control company, noted that sexual harassment still occurs. She stated that on various jobs men talk to and flirt with flaggers more than they should. Interviewee #25 had heard of discrimination, once even leading to a wrongful termination lawsuit. Interviewee #25 has also heard of swearing and offensive comments on worksites. Interviewee #25 recalled the incident where an ITD regional employee called her a derogatory name, which was highly offensive, and Interviewee #25 felt retaliated against when she complained about this incident.

Interviewee #33, a Native American female-owned road construction business, reported one incident in which she was seeking to communicate with a subcontractor regarding work, and the subcontractor refused to communicate with her and wanted to speak to her husband. Interviewee #33 told him "if you don't speak with me, then you don't speak with anybody."

Interviewee #13, a white female-owned traffic control subcontractor, stated the work environment for women and minorities is "pretty good except for some of the ITD inspectors that are new." Interviewee #13 also stated that 80 percent of the time if she is standing with one of her male employees, the inspector, prime contractor, or whomever else she is speaking with will only speak to her male employee and not to her. She also relayed an experience in the private sector wherein a company with whom she had 90 percent of her work fired her in favor of a male-owned company. She stated that when the owner called her into his office and told her she was fired, she repeated loudly "you're firing me?," and he closed the door because he did not want anyone to know. She believes she was fired because the prime contractor preferred to work with men.

ITA #2, a Hispanic trade association, stated "a woman going into the construction industry has to understand what she is going into." If the woman is going to get offended by the language in this industry then she should not work in that industry. A member of ITA #2 who participated in the interview stated that his wife was offended by some offensive language and simply told the men to stop speaking that way. ITA #2 stated that everybody stereotypes other people.

Interviewee #3, a white male-owned pre-stress concrete supplier, stated, "I think that a lot of the business is pretty good." Interviewee #3 has had women work for the company, but the women "don't usually stay very long because it's such dirty work."

Participation In and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

Most interviewees had participated in or were aware of race-, ethnic, and gender-neutral programs or measures sponsored by ITD. (Interviewee #1, #4, #5, #8, #10, #11, #12, #13, #16, #17, #18, #21, #22, #24, #25, #26, #27, #28; ITA #1, #2, #3, #4, #5, #6, #7, #8, #9.) For example, Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that Idaho has the best outreach of any state that he has worked in based on the monetary support. He stated that ITD had a bonding company out of Portland and they offer some "really good financing classes." He stated it would be great if they offered an accounting class. He stated the ITD offers a lot of outreach programs, "as much as I would like to see." He stated the marketing and technology vouchers are great and he would like to seem more of that.

Interviewee #16, a African-American male-owned traffic control subcontractor, stated "there are a lot of good things going on" with respect to programs from ITD. Interviewee #13, a white female-owned traffic control subcontractor, stated that she used to attend a number of classes put out by ITD (four to five years ago) and they were very helpful. She specifically recalled attending a class on bidding and one on non-discrimination. She stated that ITD is very good about reimbursing individuals for class registration fees. She stated that she looked into a class on bonding, but did not pursue it because she did not need bonding.

Interviewee #28, a white female-owned engineering firm, stated that she receives emails "all the time" on training efforts and she thinks the EEO Offices support services staff are doing a good job with the DBE Program. She stated that ITD is good about offering to pay if a DBE wants to attend a conference or training program. She stated that she has not yet participated. Interviewee #22, a Hispanic male-owned concrete contractor, has received information in the mail for classes, but the company has never taken advantage of these opportunities.

Interviewee #1, a white male-owned corridor planning business, noted that he is aware of ITD programs "there are two-day seminars...and I look at them and I go 'these are for the big projects.'" Interviewee #1

stated "I want more help, but I also don't want more hassles, so I'm kinda' talking out of both sides of my mouth."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that in the past, ITD has gone out of their way to assist DBEs, but he was unaware of recent efforts. He knows ITD has a number of training programs related to understanding the bidding process and how to do business with ITD.

ITA #4, a minority trade association, stated that the EEO Office has held seminars for the association's membership regarding Section 8 (a) contracting, particularly for Native American members. The SBA also provides information to the association's members, but it has not yet provided one-on-one counseling for the association's members.

More anecdotes regarding interviewees' awareness of ITD programs follow.

Some interviewees were aware of programs by others. Interviewee #12, a white male-owned paving company, has been to programs and workshops sponsored by the Associated General Contractors. The AGC has workshops that relate to ITD and discuss the specification requirements; however, Interviewee #12 has not attended these programs. Interviewee #10, a female representative of a Native American male-owned engineering firm, goes to business workshops a few times a year. They have gone to several sponsored by the Environmental Protection Agency, the Department of Energy and the tribal authorities. Sometimes these programs focus on technical issues and other times include general information about how to work with these entities. According to Interviewee #4, a white female-owned construction company, "USIPTA has some training available and they help you with interface on public works jobs."

ITA #3, an organization providing outreach to small businesses, stated that he has seen great success stories from small businesses including DBEs that have participated in the College of Southern Idaho Business Incubator. This program offers financial assistance and business training to small businesses.

Some trade associations stated that they have teamed up with ITD to offer programs. (ITA #3, #5, #6.) ITA #3, an organization providing outreach to small businesses, sponsors training sessions once per year with ITD and SBA. Additionally, ITA #3 puts on sessions every two weeks to educate small business about starting a business, how to market, doing business with the government and other topics. They average 15 attendees per session.

ITA #5, an organization providing outreach to small businesses, also sponsors training sessions, which reach roughly 2,000 clients a year. These trainings vary from three-hour workshops to 40-hour classes. The trainings are typically focused on a particular specific topic, e.g. the 10 to 12 hour class on QuickBooks accounting system. The longer courses include lessons on how to set up business plans. According to ITA #5, this is extremely important. "Without a business plan and without a track record, it's really hard to get a large contract." The instructors are typically owners of successful businesses in the area. ITA #5 does not offer special programs specifically for DBEs but rather welcomes all small businesses. "We give our trainings to [the EEO Office] and they put them on the statewide DBE newsletter. All the resource groups get to put their trainings in those newsletters. It's a great help to our marketing efforts."

According to ITA #5, if a DBE wants to take a course and cannot afford it, ITD will cover the cost of the training. These training programs have been well-received by DBEs. It costs roughly $295 for a 10 week business training course, but most other programs cost about $50. The training courses are not necessarily targeted toward the construction industry. Rather, the businesses receive targeted, industry-specific advice through ITA #5's consulting services. The consultant might help the business with how to submit a bid, how

to get a bond, how to get a contractors' license, and related matters. The consultants will assist contractors with generic bidding tools and software. "One of the main hardships for contractors is forgetting certain parts of a bid and not knowing how to price things properly." The consultants will refer businesses to professionals, such as attorneys, accountants, or bankers, as needed for more assistance. "If we don't have the expertise internally, we'll find it for the business."

ITA #5 meets with ITD at least once a year to discuss the DBE Program and how to "cross-sell" their services. ITA #5 stated that it frequently refers clients to ITD to discuss certification. In addition, ITA #5 teams up with ITD at least once a year to put on a program. ITD typically picks the place and date and advertises in the local community. They invite representatives from the Air Force base, SCORE, CDC, SBA, Idaho Department of Purchasing, Boise Chamber of Commerce and others to speak at these programs. During the program, ITD gives a "wonderful packet" to the attendees, which "explains thoroughly the DBE program and the requirements, as well as what the services are of those resource groups that are participating." Each entity "takes as much time as they want to discuss their program and let them know we're there to help."

Once a year, ITA #6, a Native American organization, teams up with ITD or SBA to put on a workshop or seminar. These workshops or seminars usually last one day and target the local community, Native American and non-Native American. They discuss how to get certified as a DBE, SBE, or TERO, how to do business with these agencies, how to maximize solicitation opportunities, and how to qualify for contract set-asides. They generally get a "pretty good turn-out." Nonetheless, attendance at these programs does not necessarily translate into increase participation in the work. She does not feel they have been successful in targeting Native Americans. She knows of very few Native American-owned businesses certified with ITD and no Native American-owned businesses certified with SBA. There is "low interest in certifying" with these organizations "and I don't know why." "The opportunities are not being taken advantage of by Indians or even other minorities." "You can lead a horse to water, but you can't make him drink."

ITA #6 is aware of ITD's "supportive services." She stated that when DBEs need assistance, ITD offers small monetary assistance, scholarships, and technical training. ITA #6 recently hosted a trade fair and business exchange for any minority-owned or small business. These businesses were invited to set up booths in order to network with the public and other businesses.

ITA #6 stated: "I know [the staff at the EEO Office]. We've collaborated in the past for the last four years. I think the DBE and TERO programs are doing their best to try to bring the information to the people, but somehow we need to have more follow through, hold their hand and try to get them through the process, whether it is certification, or electronic bidding." "There are more than enough opportunities to capitalize on these initiatives." In the end, "we have to leave it up to the businesses owners to take advantage."

Assistance With Bonding, Insurance, Financing, and Capital

Some interviewees were aware of programs aimed at assisting small businesses to obtain bonding, insurance, or financing. Interviewee #26, a Native American/Hispanic female-owned demolition company, reported that she has attended classes dealing with bonding, insurance, and financing, education/training programs, and programs on how to do business with ITD. She reported that she became aware of them through the DBE program.

Interviewee #25, a white female-owned traffic control business, is aware of programs to assist businesses with financing. They have taken advantage of those opportunities and find them helpful. Interviewee #9, a Native

American male-owned underground utility company, reported that he has knowledge of outreach efforts/programs assisting with bonding, insurance, and financing/ educational programs through newsletters.

ITA #8, the Idaho District Office of the SBA, stated that the SBA works with sureties in every state and if a business fills out certain paperwork the SBA will guarantee up to $2 million. This is similar to what they do with their financing programs. The SBA will guarantee up to 80 percent on certain loans. If the loan goes into default the SBA will purchase the loan and take over its servicing. According to ITA #8, only one Idaho firm has taken advantage of the surety bond program in the last two or three years. ITA #8 lets people know about it during the workshops. "It might be the paperwork or they aren't doing jobs big enough."

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, referenced programs offered by ITA #1, the Hispanic Chamber of Commerce, the AGC, and ITD that offer assistance to small businesses to prepare a business plan, and obtain bonding and financing.

Educational, Training, Technical Skills

Some interviewees are aware of ITD programs aimed at educating, training, or improving the technical skills of small or disadvantaged business owners. ITA #9, a trade association representing general and subcontractors, stated that "ITD does some seminars. DBEs get a great deal. ITD provides some of the same type of services that we do. They are not an intentional competitor, but they are a competitor because they're providing services to these smaller firms who otherwise would either not know how to do it or they would have to join AGC to learn how. Other firms pay us to do that type of thing."

Interviewee #12, a white male-owned paving company, knows that ITD has some training and educational programs, but he has not attended. "Most of the workshops that I'm aware of do not relate to my industry." For example, ITD has held programs on "super pave" but "this is a technique used on multi-million dollar contracts which I am not capable of bidding."

Interviewee #7, a Hispanic male-owned biological environmental consulting firm, is aware of training and educational programs sponsored by ITD. He has received emails regarding these programs but he has never gone due to timing issues or because he felt he did not need the particular training offered. He is also aware of how-to-do-business-with-ITD workshops.

Interviewee #11, a white male-owned construction company, stated: "Sometimes [ITD] will send information about" programs. "A lot of its safety and a lot of it has to do with DBEs." He has not attended any programs within the last five years.

Interviewee #25, a white female-owned traffic control business, is aware of education programs and financial programs because of the DBE Program newsletter. Interviewee #25 has attended the educational programs and they have been somewhat helpful. Interviewee #25 attends a class each year on the DBE Program sponsored by ITD.

Interviewee #27, a Native American male-owned refractory construction contractor, engaged in some of ITD's online business courses for DBE entities, and they bought estimation software through the DBE assistance program.

Interviewee #5, a white male-owned heavy highway and building contractor, has experience with several of ITD's programs, particularly the programs geared towards education and training.

Interviewee #21, an Iranian male-owned environmental consulting firm, was aware of ITD training programs. "I lot of those I don't really need, I've got my own training." He was also aware of the marketing reimbursements. "They do advertise here and there, but they cut off some of those fundings" for reimbursement.

Interviewee #24, a Native American heavy construction contractor, noted that ITD partners with the Idaho Business Network, and there is shared knowledge about job opportunities. Interviewee #24 has participated in ITD training and education programs that were successful.

ITA #5, an organization providing training to small businesses, puts on training programs targeted toward a variety of areas including the construction industry. If a DBE wants to take a course and cannot afford it, ITD will cover the cost of the training. ITA #5 sometimes has professors from the state universities teach these programs.

How To Do Business With ITD

Some interviewees were aware and/or have participated in programs regarding how to do business with ITD. Interviewee #10, a female representative of a Native American male-owned engineering firm, traveled to Boise once for an ITD workshop. They discussed doing business with ITD and upcoming opportunities. She is not aware of any workshops in Idaho Falls.

Interviewee #18, a female representative of a white male-owned architecture firm, has been sent some notices on "how to do business with ITD" workshops. They did not attend these meetings because they "were at a bad time and I was very busy."

Interviewee #24, a Native American heavy construction contractor, knows that programs exist regarding how to do business with ITD and DBE workshops. Interviewee #24, a Native American heavy construction contractor, is also aware of efforts by the Idaho Business Network and the SBA to outreach and increase participation of DBEs to do work with ITD. Interviewee #5, a white male-owned heavy highway and building contractor, and Interviewee #27, a Native American male-owned refractory construction contractor, have knowledge of ITD programs on how to do business with ITD.

Interviewee #17, a white male-owned landscape architecture firm, was aware of professional conferences sponsored by ITD. At these conferences, ITD informs attendees of upcoming opportunities to work with ITD. ITD also holds "look-ahead" meetings. In addition, he has seen mailers come out for programs specifically targeted toward DBEs.

Interviewee #25, a white female-owned flagging and traffic control company, is aware of outreach efforts by local airports to promote working with ITD.

Efforts to Segment Larger Contracts into Smaller Contracts (Unbundling Large Contracts)

Most interviewees were not aware of efforts by ITD to segment larger contracts into smaller pieces to promote opportunities for small and mid-sized firms to act as prime contractors. Interviewee #4, a male representative of a white female-owned construction company, stated that with respect to ITD segmenting contracts "they don't do enough of it...There's only one contractor within 300 miles of here that can handle ITD projects." This contractor "has no competition." "There's pros and cons to that. You want a big contractor that can handle these major jobs timely. If you break it down too far you might get some

questionable people...but there ought to be more competition." "I see a lot of one bidder, two bidder deals where there used to be 15."

Interviewee #5 knows of ITD's efforts to segment its larger contracts, and the company thinks "it's great," as it provides "better opportunity for local contractors" and "connecting with Idaho partners." Interviewee #17, a white male-owned landscape architecture firm, stated: "I'm aware that ITD tries to do that [unbundle large contracts]," but he does not know whether it is working. Interviewee #13, a white female-owned traffic control subcontractor, stated that an effort to unbundle larger contracts would be good, but she had not heard of it happening.

Interviewee #28, a white female-owned engineering firm, stated that she is not aware of any efforts to segment larger contracts into smaller ones. She indicated just the opposite is happening. She stated that under CIP the projects are a lot faster and larger "so you're 0 for 2 if you're a small firm."

Simplify and Streamline the Bidding Process

Very few interviewees were aware of efforts by ITD to simplify or streamline the bidding process. Interviewee #5, a white male-owned heavy highway and building contractor, noted that ITD may be headed towards electronic bidding, which would simplify and streamline the process.

Interviewee #4, a male representative of a white female-owned construction company, stated that "ITD is putting a lot more responsibility on the contractor." ITD has moved toward "lump sum bidding." He would like the work to be broken out and itemized to include "quantities" as opposed to requiring the contractor to research the job and do a certain amount of guess work. "You have to do your own take-offs and figure out how many loads will come out of a demolished building."

Monitor DBE Utilization

Some interviewees were aware of efforts by ITD to monitor DBE utilization on work sites. Interviewee #24, a Native American heavy construction contractor, knew of ITD visiting work sites to see what companies are doing as far as compliance with DBE utilization. Interviewee #25, a white female-owned flagging and traffic control company, stated that ITD monitors its worksites for DBE utilization and that they used to "nag" her about not spending enough time on certain jobs.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that ITD does visit work sites to monitor DBE utilization. Interviewee #9, believes ITD visits work sites to monitor DBE utilization.

Interviewee #11, a white male-owned construction company, was not aware of whether ITD still monitors DBE utilization. "It used to be that you couldn't get the job unless you had 10 percent minorities. You had to give the name of the subcontractor you were using and they would check up."

Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that ITD tries to do audits and monitor DBE utilization and they are really good at this on the construction side. Interviewee #5, a white male-owned heavy highway and building contractor, has been through an Interviewee DBE compliance audit where an EEO officer completed the audit; "it was a positive process."

Interviewee #22, a Hispanic male-owned concrete contractor, did not have experience with ITD monitoring DBE utilization, but he recalled an occasion when the state came to check on Davis-Bacon wage payments.

Recommendations by Interviewees

The following is a compilation of recommendations received from the contractors and trade associations interviewed. Each of the interviewees was offered an opportunity to list the recommendations and changes they feel are most needed to improve ITD contracting and procurement procedures and specifically the DBE Program. All of the respondents made at least one suggested recommendation for improving ITD program. The recommendations below are, when possible, presented in the interviewee's own words and grouped by the number of similar responses. This section also provides some general recommendations that are based upon problems or issues identified by the interviewees and suggestions they made to address the problems and issues.

Segment, Unbundle, or Breakdown Large Contracts

Several businesses suggested breaking larger contracts into smaller pieces so that small businesses or DBEs could participate as prime contractors. Interviewee #10, a female representative of a Native American male-owned engineering firm, would like ITD to segment the engineering and construction components of projects. "If they want a diverse number of companies to be able to successfully bid they need to package their work differently. By focusing on the construction element, they put it in the hands of the construction companies to pick and choose who they use. If there is a significant component of it that is engineering or regulatory support, if they could segment it out, then there might be more opportunities for companies like ours." Interviewee #8, a Hispanic male-owned environmental consulting firm, stated that ITD "really, really need[s]" to work on unbundling contracts. He stated they also need to unbundle environmental from engineering. Interviewee #29, a white female-owned consulting engineering corporation, recommended ITD continue to "break out jobs into smaller pieces." "In order for me to compete on projects where I'm a prime, I can't go after multimillion projects." She stated that ITD "used to do a better job of it." She understands that it could cost ITD more money to award contracts this way.

Reinstitute Race-, Ethnic-, and Gender-Conscious Goals

Some businesses suggested reinstituting the race- and gender-conscious goals. Interviewee #13, a white female-owned traffic control subcontractor, recommended the implementation of more, and higher, DBE goals. She stated that the pre-January 2006 goals were better than they are now, but still could be higher. She stated the only public or ITD jobs she receives are those with DBE goals. She feels the DBE goals help her tremendously.

Interviewee #29, a white female owned consulting engineering corporation, would like ITD to bring back the mandatory goals. She believes the DBE Program and the goals were "invaluable" to her as a new and emerging female-owned firm. "I couldn't have survived without it." It allowed her to receive experience and build business contacts. Now that she has been in business over nine years, she has a reputation and is frequently solicited by prime contractors that used her to fulfill goals.

Interviewee #25, a white female-owned flagger and traffic control business, recommended that the DBE goals be reinstated on ITD projects. Interviewee #25 noted that the Program has helped the company tremendously and that the company would not have been successful without it, especially given the nature of the construction industry for women. According to Interviewee #25, the DBE Program in Idaho has broken down perceptions about women. She stated that the EEO office is very responsive.

ITA #4, a minority trade association, recommended that ITD not follow suit with Washington's Initiative 200 because that would close the door to Idaho, and they would lose a diverse pool of vendors and suppliers for Idaho Transportation.

ITA #9, a trade association representing general and subcontractors, offered suggestions with regard to the goal-setting process. He noted that before January 2006, ITD established mandatory project DBE goals. The officials setting the goals did not have construction experience and therefore sometimes the goals were unrealistic and out of touch with the industry. He suggested ITD hire retired contractors to assist in goal-setting since these contractors would unique understand how a project is built and the true subcontracting opportunities.

ITA #9 further believes ITD's current method of determining availability is not completely accurate. ITD asks that all contractors register online with ITD. He said ITD uses this as the denominator and the DBE certification list as the numerator. However, a lot of the firms do not go on the website and sign up with ITD, but still work for ITD or submit bids. Registering is not a mandatory requirement to receive work with ITD. To be accurate, ITD's list of available DBE and non-DBE firms should include all those that receive work with ITD and "all those that are bidding but never are low." He believes these non-DBEs that are interested and able are not counted so the denominator is low. "I have suggested to them for years, just take that list of 3,000 [contractors with a public works license] pick all the ones that have a highway or heavy license and that number is a lot higher...and of course then the percentage would be different."

Other interviewees suggested that ITD maintain a race- and gender-neutral program. Interviewee #12, a white male-owned paving company, believes that ITD should eliminate the mandatory DBE goals. "I have nothing against DBEs but a good contractor is a good contractor regardless of whether they are DBE or woman owned. I think there is some favoritism afforded to the DBEs. And I understand that to a point because they do need some assistance because of the attitudes of the good old boys and the sexism and discrimination that has taken place in the past, but I think that's coming to an end." Interviewee #12 stated that on Section 8 (a) projects with DBE set asides, he is not able to compete. He does not think it is fair that "I compete against some of those contractors in the general business sector but I don't have the opportunity to complete on these federal projects." Interviewee #17, a white male-owned landscape architecture firm, stated: "I don't see that the DBE program is necessary. It should be qualifications based."

Interviewee #30, a white male-owned engineering and plan-surveying firm, believes that DBEs, women, and minorities in the Idaho transportation industry "are given preference. All things being equal, a woman-owned business or disadvantaged business will get the contract before Interviewee #30...Nobody should get an advantage." He believes that the DBE program should be disbanded and the ITD bidding process should be strictly qualifications based. He noted that there are no preferences in other public contracting in which the company engages, and the company has been successful in these other projects. Interviewee #30 thinks that companies should be hired based on their expertise in a given local area. He "finds the DBE program unfair, because it should be a straight up bidding process, which is the way that the Idaho Department of Lands does it—straight up bidding, low-bidder wins."

Of the DBE program specifically, Interviewee #2, a white male-owned guardrail construction contractor, recounts, "[t]he reality result of the...DBE program...has been to create a 'windfall' for well run, successful companies that are still here today and never needed any help in the first place. These successful 'minority' companies have 'crushed' the small minority companies at the bidding table and forced their failure. The on-going pursuit of 'small minority contractors'...has no doubt helped some, but for many it has only set them up for failure. Many have chased the 'DBE dream' created by and promulgated by the government only to find failure at the end of the rainbow."

Interviewee #15, a white female-owned concrete business, stated: "I don't even know why they have that DBE distinction anymore because I don't really see the benefit of it—everybody's in it to make money, nobody's out there to cut somebody down just because they're a DBE. I would like to see it dissolved actually."

Improve the Bidding Process

Some interviewees recommended that ITD simplify or change the bidding process. Interviewee #29, a white female-owned consulting engineering firm, would like ITD to provide consultants with a list of upcoming projects. She stated that on the construction side there is a 3 to 6 month look ahead list on the website. On the design side there is "no way to find out what it coming down the pipeline" other than looking at the State Transportation Improvement Plans which are published on ITD's website. "We have to go through it and try to find out how much design money is out there. It does not tell what the money is budgeted for. We have to call each one of the districts and have a face to face with project development engineer and they will tell us about the projects." She believes this process is inefficient for everyone. ITD must "sit down with 30 consultants and review the same information" with each one. Interviewee #29 believes posting upcoming design projects on the ITD website would avoid this inefficiency.

Interviewee #33, a Native American female-owned road construction business, recommended that ITD "get the information out. . . not everyone has an Internet." Interviewee #1, a white male-owned corridor planning business, stated "somehow it would be nice to...streamline...somehow simplify the process...streamline...especially for small projects." Interviewee #3, a white male-owned pre-stress concrete supplier, recommends that if suppliers were able to submit sealed bids directly to the state, the process would be more open. However, he does not know how they would to that, because you still have to submit your bid to the subcontractor.

Some interviewees had recommendations related to ITD's selection criteria. Interviewee #4, a male representative of a white female-owned construction company, would like ITD to scrutinize the low bidder more carefully. "Bids that are 5 percent or 10 percent below should be thrown out." "There are people who bid the work for less than what it's worth" either because they have made a mistake or "because they are desperate for work."

Interviewee #28, a white female-owned engineering firm, stated that she does not believe that firm experience should be a factor in the review of a proposal because she stated that a list of projects is not helpful if the firm no longer has the people who completed them. She explained that a number of her employees came from larger firms and completed major projects and the larger firms still list the project in their list of qualifications even though they no longer have the employees working for them.

Interviewee #8, a Hispanic male-owned environmental consulting firm, recommended that ITD carve out parts of contracts that they can set-aside for smaller local businesses. He stated, for example, that if ITD needs a surveying company, they could carve out a surveying project from a larger contract, and then help develop that smaller local company and teach them how ITD likes things done. He stated that although this may require more project management on the front end but will result in a "win-win situation" wherein ITD ends up with a small local company that knows exactly what ITD wants, and it will also keep ITD's costs down. He explained that smaller local companies are very nimble, less expensive, and more responsive than larger companies. He explained that larger companies often "re-trench" meaning they will relocate their employees, so a noise technician that ITD once used may have been relocated to another state, which will cause ITD to incur additional expense having to fly that person back and forth. Interviewee #8 also stated that using non-

local companies can also result in a flawed work product such as a situation he recalled in which an Oregon company prepared a report for ITD using California regulations.

Interviewee #29, a white female-owned consulting engineering corporation, suggested ITD should favor firms native to Idaho. Interviewee #29 also suggested increasing the monetary cap on the use of term agreements limits. Presently, she stated, ITD can only use consultants off the term agreements for contracts less than $250,000. There are a small number of projects, getting smaller, that can be done under $250,000 due to increased environmental regulations. If ITD increased the limit, Interviewee #29 believes it would allow them to get more projects done without wasting time with requests for proposal.

Streamline and Improve the Certification Process

ITA #3, an organization providing outreach to small businesses, stated: "I think the filing and the paperwork are possibly considered an obstacle" to becoming certified. ITD should streamline the certification process and expand reciprocity between different agencies. ITA #3 believes that businesses should be certified even if less than 51 percent minority ownership.

ITA #3 stated, "I think how we market [the DBE certification program] is not effective." ITD needs to be clear that the DBE program is only advantageous to businesses that market to the federal government. There is a large population of minority businesses that could benefit from the DBE program, but do not know about the opportunity. ITD needs to improve its marketing. "I would recommend that they target in bilingual format." ITA #3 has hired a Hispanic consultant to do marketing and outreach in their area. He suggests that ITD hire a Hispanic consultant to target Hispanic businesses and to assist them in doing business with ITD.

ITA #4, a minority trade association, recommends that companies not be required to have their Washington certification prior to seeking Idaho certification, as that is a deterrent to seeking certification with ITD.

Interviewee #25, a white female-owned flagging and traffic control company, believes that it would be helpful to have an outside firm certifying ITD DBEs so that the process is more objective. Interviewee #25 also recommends a lack of rigidity in the DBE certification process, but noted that ITD really does have to be concerned about which entities are being certified.

Interviewee #31, an Asian/Pacific Islander male-owned pavement inspections business, suggested that ITD not require "as much personal information," citing, as an example, the three years worth of tax returns he was required to provide. Interviewee #31 found this "intrusive." Interviewee #7, a Hispanic male-owned biological environmental consulting firm, stated that the certification process "could have been a little more efficient." He suggested ITD conduct training on how to fill out paperwork and find out about ITD jobs.

Increase Outreach Efforts Such as Education, Training Programs, and Job Fairs

Some interviewees suggested ITD host more training programs and job fairs. ITA #7, a trade organization for minority females, stated that certification "can be a little rough—reading all the paperwork, knowing how to fill it out." She suggested ITD conduct training on how to fill out paperwork and find out about ITD jobs.

Interviewee #13, a white female-owned traffic control subcontractor, stated that ITD's practice of providing free bid packages to DBEs "helps a lot." She would lose a lot of money if she also had to pay for the bid packages since she does not often receive contracts.

Interviewee #29, a white female owned consulting engineering corporation, stressed the importance of continuing the outreach efforts beyond the mandatory goals. She recommended ITD continue the educational programs. "[The ITD support services office] does a good job of putting on seminars. We used to get a pot of money each year maybe 600 to apply to use that money for computer upgrades or software. Now that I'm a DBE for 9 years, I can't participate in that pot of money and I don't know why." She would like ITD to continue to provide free construction plans to DBEs. "Right now we can call and get free plans, where normally they cost thirty-five ($35.00) to sixty-five ($65.00) dollars. In ten months that money adds up."

Interviewee #20, a Hispanic male-owned rebar installation business, stated with respect to his certification: "I know it's valuable, I just don't know how to exploit it...we would like to get with somebody that can help us out with that." As an example, Interviewee #20 reported that a prime contractor was looking to have the company do sub-work, but needed them to do certified payroll—but they do not know how.

ITA #5, an organization providing outreach to small businesses, would like ITD to set up two hour video conference discussions every two weeks at which time DBEs could ask the DBE support services office questions regarding the DBE program or address concerns regarding current bids or projects. In addition, ITA #5 would like ITD to organize more "meet and greet" type activities to facilitate meetings between prime contractors and subcontractors.

ITA #8, the Idaho District Office of the SBA, would like ITD to encourage prime contractors to host their own programs on how to do business with them. Topics could include: how does a DBE approach a large prime, how would you like us to market to you, what do you look for? She thinks ITD would be the best entity to initiate this idea since they have relationships with the large prime contractors. These programs would allow DBEs insight into what to expect and how to craft their presentations and appear more professional. "That's what we try to do on the federal side." When she visits the federal agencies each year she asks them these questions, i.e. "what do you want businesses to do to work with you." Further, ITA #8 recommended that ITD encourage the mentor protégé programs. ITD should explain the benefits of such programs to the prime contractors.

ITA #8 would like ITD to create outreach targeted toward women-owned businesses. She believes women especially tend to be intimidated by working with ITD and assume they do not have the experience to work with ITD. She attributes this to the businesses' lack of information about the available programs and assistance. Since the SBA believes programs targeted toward females would be better implemented by ITD.

Increase Communication, Marketing, and Visibility Regarding the DBE Program

Some interviewees suggested ITD better advertise and promote the DBE program. Interviewee #7, a Hispanic male-owned biological environmental consulting firm, recommended that ITD take a more proactive role in marketing DBE firms to prime contractors. He stated that the Army Corps of Engineers maintains a list of businesses organized by area of work. Prime contractors call the Army Corps of Engineers when they need subcontractors. Interviewee #7 would like ITD to release the names of DBE firms to their prime contractors.

ITA #1, an organization providing outreach to Hispanic-owned and other businesses, stated that the DBE certification process is fairly simple. However, he does not think the majority of minority-owned businesses know about the DBE Program. He stated that ITD needs to be more visible in the minority communities in areas that one would not expect (e.g. at his organization). He stated that a minority summit is being held in

Boise in October of 2007; the purpose of the summit is to give minorities more of a voice in everything from redistricting to business opportunities and it would be great to have an ITD representative present.

ITA #2, a Hispanic trade association, stated that one barrier to minority participation is that ITD does not communicate well. Businesses are forced to interact with ITD's computer system, which is difficult. ITA #2 recommended holding workshops for people who want to be considered for the DBE Program.

ITA #8, the Idaho District Office of the SBA, identified one of the primarily obstacles with promoting the DBE and Section 8 (a) programs was reaching the right people. ITA #8 and ITD host numerous programs throughout the year but attendance is often low. She feels people are sometimes confused about the benefits of the programs. She suggests ITD combine efforts with other trade associations and organization. "You're more apt to get something is if you piggy back off something that's doing something with minority groups already…whatever conference or workshop that's already going on." "We did a Veterans one. We invited various agencies but we thought it would be good for DBE to attend…however, only 2 people came up to the ITD representatives afterward."

"There are still a lot of people who don't know these programs are out there." "It's better to piggy back on things that are already in existence. They just did something at the Boise Chamber of Commerce where they compiled all small business organizations to do a small business resource: SBA, SBDC, Commerce, etc. It was an hour and a half program, each entity gives a five minutes speech about what they do." She does not understand why firms do not take greater advantage of training classes with SBDC and the marketing vouchers offered by ITD. She stated that businesses do not utilize the services that are available to them.

ITA #8 pushes the Section 8 (a)'s to go to training and take advantage of the opportunities offered by SBA and others. It is written in to their contract with SBA that they will participate in SBA programs. She strongly encourages them in her individual letters to them, stating that it is not mandatory, but that it is part of their contract with SBA. She believes someone from their team should attend because its going to help them. All SBA workshops are free so she feels there is no reason not to attend.

Improve Communication Regarding Payment to Primes

Two interviewees recommended that ITD inform the subcontractors when the prime contractor has been paid. Interviewee #29, a white female-owned consulting engineering corporation, stated that ITD pays prime contractors promptly but the prime contractors do not promptly pay their subcontractors. "We don't know when ITD pays the primes so we don't know when the clock starts ticking. If ITD could tell us that would give us more leverage to know when to start calling the prime."

Likewise, Interviewee #4, a male representative of a white female-owned construction company, reported that he has had issues being timely paid by prime contractors on ITD projects. He stated that there is no way for him to know whether the prime contractor has been paid.

Other Recommendations

Interviewee #12, a white male-owned paving company, would like ITD to "take more responsibility for their projects." He would like ITD to have their own inspectors and their own survey crews instead of relying on the prime contractor for these services. At present, the prime contractors are responsible for designing the projects and monitoring the project.

Interviewee #13, a white female-owned traffic control subcontractor, stated that for federal ITD projects, there are published wage rates and fringe. She stated that several years ago they removed the flagging wage rates and fringe, and this has been very problematic and resulted in an approximate $10 per hour decrease in wage rates and fringe for her flaggers who are now paid the common laborer wage rate. This, she said, is very problematic for subcontractors.

Interviewee #3, a white male-owned pre-stress concrete supplier, "thinks that the [state's] engineers should have to work in the field before they are put in the office so that they understand what they're trying to build, and that goes for draftsmen and engineers."

Interviewee #24, a Native American heavy construction contractor, noted that when a DBEs receive that free set of plans, the DBE is not listed on the plan holders list (as a DBE plan holding subcontractor), and therefore, a company may miss out on some suppliers sending out quotes. According to Interviewee #24, "[w]hen you're not listed, the other prime contractors don't know whether you are bidding prime or as a DBE. You're not on that plan holders list so you don't see any suppliers quote coming to you unless you directly call, and there may be several different suppliers for one thing..." Interviewee #24 would change this so that DBE plan holders are listed to receive more direct solicitation from contractors and suppliers.

ITA #9, a trade association representing general and subcontractors, suggested that ITD apply retainage requirements equally to prime contractors and DBEs. He stated that one of the barriers to working with DBEs is that the civil rights office requires the prime contractor to release the retention to the DBEs, while ITD continues to hold the retainage back from the prime. This creates financial strain on the prime and increases the prime contractors risk in utilizing DBE firms. The prime has to do additional paperwork, which distracts it from the project. ITA #9 would like ITD to either eliminate retention or apply it equally to DBE and nonDBE firms.