

## SECTION V.

### Construction Subcontracts

As discussed in Section IV, it is important to understand why 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 issues specifically related to construction subcontracting. Sections VI, VII and VIII analyze construction prime contracting, engineering subcontracting and engineering prime contracting, respectively.

#### **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 interviews with minority-, women- and majority-owned firms, interviews with trade associations, review of oral and written public hearing testimony from individuals in this industry, and other sources. Appendix I describes this qualitative information in considerable detail.

**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 often work as subcontractors. One interviewee reported that working as a subcontractor avoids many requirements such as bonding that they would need to deal with if they worked as a prime.

Some minority business owners indicated that prime contract work in the public sector is too large. One interviewee who works for Caltrans as a subcontractor reported favorably on other public sector agencies that break down contracts by category of work.

Section VI, which follows this section, describes barriers to participation as prime contractors in Caltrans and other public sector work these barriers to participation as prime contractors can push some firms into subcontractor roles on Caltrans projects.

**Opportunities to submit price quotes on subcontracts.** Compared with bidding as a prime contractor, there are relatively few requirements to bid and perform work as a subcontractor in the public sector or the private sector. For example, Caltrans has very few requirements concerning subcontractors on its projects and how subcontractors are selected:

- Subcontractors must have appropriate contractors licenses;
- Subcontractors must not be debarred from doing business with Caltrans;
- There are no requirements for subcontractors to provide their own bonding (the project needs to be bonded but all of the bonding can be provided by prime contractors); and
- Contract provisions between Caltrans and the prime contractor often flow down to subcontractors, and primes may put in additional conditions.

Except for meeting these types of requirements, prime contractors typically select subcontractors using their own methods. Prime contractors do not need to have open solicitation of subcontractors for price quotes, nor must they select the lowest bidder (or have a good reason not to do so). On Caltrans contracts, any such requirements related to DBE firms were discontinued after May 1, 2006. The small business subcontracting goals program that some state agencies apply for certain state-funded contracts is not implemented by Caltrans.

**Methods to identify subcontracting opportunities.** Caltrans published open bids and lists of planholders on its website. The planholders list identifies whether the firm has purchased a complete bid package or a non-bid package, which helps to distinguish between potential prime bidders and other firms. The planholders list includes phone numbers and fax numbers of potential prime contractors.

If subcontractors are familiar with Caltrans procedures and its website, it is easy to identify subcontracting opportunities and potential prime contractors. A number of subcontractors interviewed in this study gave positive feedback.

A few firms mentioned that they use subscription e-mail notification services or receive Green Sheet or other sources. Some primes reported paying to advertise in the Green Sheet to solicit bids from subs. Some firms indicated that other public agencies' notification systems were more effective (Metropolitan Water District and Los Angeles airport were examples).

Firms generally reported that it was easy to get plans and specs from Caltrans to be able to develop subcontractor quotes for primes.

One subcontractor interviewed in the study, however, said that he did not own or have easy access to computers so Internet listings of projects would not help him. Another interviewee was unaware of information on Caltrans' website. These barriers for certain firms were confirmed in interviews with trade associations. They urged Caltrans to continue advertising in trade papers and community and ethnic papers, and to consider other means of notification including mail, faxes, and e-mail.

**Lists of potential subcontractors.** Caltrans maintains a DBE directory and makes it available to prime contractors and others in both hard copy form and on the Caltrans website.

Caltrans has also attempted to develop a bidders list. It currently maintains a website that allows contractors to enter information about the firm. Relatively few firms have taken advantage of this opportunity. It is unclear how Caltrans uses the information on the bidders list. There appears to be no method for prime contractors to access this list if they are seeking subcontractors.

Prime contractors reported using the Caltrans DBE directory and other local agencies' directories to identify potential subcontractors.

**Prime contractor solicitation of subcontractors for quotes.** Prime contractors are currently under no obligation to solicit quotes from subcontractors for any federally-funded construction contracts. Disabled veteran business enterprise (DVBE) goals apply to state-funded contracts, which require certain actions on the part of prime contracts on any contract with DVBE goals.

**Effect of the past DBE contract goals program.** Although many MBE/WBE and majority contractors criticized Caltrans' former DBE contract goals program (as noted below), some said that the program created opportunities for minority- and women-owned firms that they would not have otherwise had. Some reported that the program gave DBEs the opportunity to prove the quality of their work to prime contractors.

**Good faith efforts to meet goals.** Prior to May 1, 2006, prime contractors were required to meet DBE goals on federally-funded contracts with goals or make good faith efforts to meet the goals. As reported in Appendix I, MBE/WBEs, trade associations and majority-owned firms were critical of the good faith efforts process.

Many firms reported that some prime contractors abused the good faith efforts process by soliciting firms for subcontract quotes at the last minute or by soliciting companies that did not perform relevant types of work or in the relevant geographic area. Referring to prime contractors, one minority business owner said, "They're much more interested in just making an initial contact so that they can record in their records that they did that, rather than actually being interested in receiving bids from minority contractors." A number of minority business owners reported that there is really no way for them to know whether prime contractors falsified their good faith efforts to utilize DBEs.

One white male contractor said that he did not know of any primes falsifying their efforts "because mostly the bigger companies really aren't planning on using the DBEs anyway."

Some majority-owned prime contractors have a different perspective. For example, one contractor noted that his company spent a lot of time soliciting bids from DBEs, but that it received few responses. He estimated that fewer than 10 percent of the businesses on the Caltrans DBE list were responsive when asked for quotes. Another contractor indicated that primes are less price competitive if they use DBE subs that have not submitted the lowest quotes. He said that it was unfair when a prime is the low bidder with only good faith efforts, beating out another prime that actually met the DBE goals.

**Frequency of solicitations after DBE goals program discontinued.** Some minority- and women-owned subcontractors report that they receive fewer solicitations for quotes from primes on contracts since Caltrans discontinued DBE goals on federally-funded contracts. Some MBE/WBEs reported no change (see Appendix I). Some majority contractors say that they used to choose a DBE that was not the low bidder for subcontracts on projects with goals but that now they can just take the low bidder.

**Prime contractor use of DBEs listed on the project.** One business owner said that, once the prime has subcontracted out the required minimum percentage of DBE work on a project, "that's as far as they go." Some MBE/WBEs said that they believed that primes had listed them on contracts and not used them.

One interviewee reported about prime contractors that just give subcontractors a check without the subcontractor actually doing any work. One white male subcontractor reported that he gets work from DBEs that had Caltrans subcontracts when they are unable to do the work.

**Past Caltrans monitoring.** Some MBE/WBE firms had positive comments about past Caltrans monitoring of good faith efforts and DBE utilization and some were critical.

**Differences after Proposition 209.** More MBE/WBE contractors had comments about a decline in solicitations for work after Proposition 209 passed than noted any change after Caltrans discontinued its subcontracting goals program.

**Potential stigma of DBE certification.** Some MBE/WBEs believe that primes and others may perceive DBE-certified firms as less qualified than firms that are not DBE certified.

One interviewee reported hearing comments that “DBE” was synonymous with “not qualified.” Another interviewee said he heard firms refusing to work with a DBE. “They didn’t realize I was there. A couple of prime firms were talking about there’s no good DBEs around, you know, they can’t perform.”

**Prompt payment.** Some subcontractors to Caltrans construction projects reported that primes frequently paid rather slowly or on a dramatically delayed schedule. Such instances leave subcontractors in a “mercy” position relative to the prime contractor who is under contract with Caltrans.

Most who reported such difficulties with prompt payment from prime contractors further indicated that they perceived such issues as attributable to the prime contractors and not to Caltrans. In their experience, issues regarding payment are nearly, if not more, common within their private sector work.

A few firm owners and organizational leaders said that the problem of prompt payment to subcontractors is likely less common on public sector work, particularly when the project involves federal funding, because the contracting agency has the authority to withhold payment to the prime if they receive complaint about timely payment for subcontracted services.

### **Effect of DBE Contract Goals on Utilization**

Reports from minority and women business owners that they do not have the same opportunities to participate as subcontractors without DBE contract goals are supported by BBC’s analysis of projects with and without goals.

**Federally-funded and state-funded subcontracts.** BBC analyzed subcontracting dollars proposed at time of award for federally-funded and state-funded Caltrans, Local Assistance and SR 125 construction contracts. BBC examined about 5,300 subcontracts for federally-funded projects from January 2002 through April 2006 and about 3,300 subcontracts for state-funded contracts. In general, the subcontracts on pre-May 1, 2006 federally-funded contracts were affected by DBE contract goals. No Caltrans state-funded projects had goals and goals were generally not applied by local agencies on state-funded Local Assistance projects.

MBE/WBEs obtained 25 percent of subcontract dollars on projects without goals (state-funded projects), substantially less than the 39 percent of subcontract dollars for federally-funded contracts (with DBE goals).

Of the 25 percent MBE/WBE utilization for state-funded subcontracts, about three-quarters was for certified DBEs. DBE utilization was less on state-funded contracts than federally-funded contracts, as shown in Figure V-1.

**Figure V-1.**  
**MBE/WBE share of subcontract dollars for transportation construction contracts, federal vs. state funding**

**Note:**

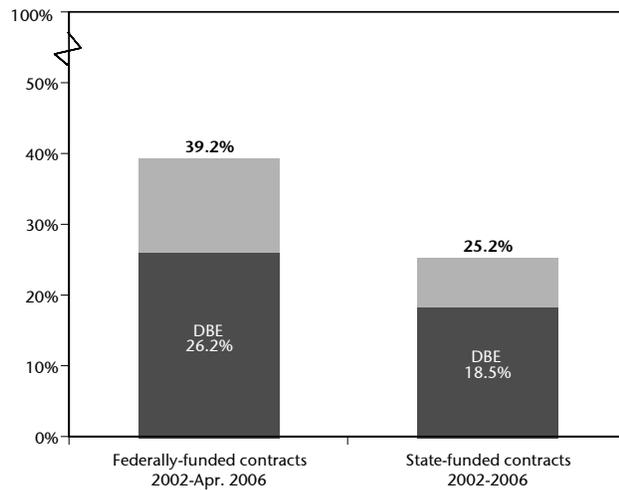
Statistics above each bar is total MBE/WBE utilization. Certified DBE utilization is noted in the bottom portion of each bar. The difference is utilization of MBE/WBEs that were not DBE certified.

For more detail and for results by MBE/WBE group, see Figures E-31 and E-72 in Appendix E.

Number of subcontracts analyzed is 5,297 for 2002-April 2006 federally-funded contracts and 3,279 for state-funded contracts.

**Source:**

BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.



**Federally-funded subcontracts before and after May 1, 2006.** BBC also compared MBE/WBE utilization on federally-funded contracts before and after the DBE contract goals program was discontinued. Prior to discontinuing the contract goals program, MBE/WBEs obtained 39 percent of the subcontract dollars on federally-funded contracts. MBE/WBE utilization fell to 27 percent of subcontract dollars for May through December 2006.

As shown in Figure V-2, DBEs received 26 percent of construction subcontract dollars before May 1, 2006 and 15 percent after May 1, 2006.

**Figure V-2.**  
**MBE/WBE share of subcontract dollars for federally-funded transportation construction contracts, before and after May 1, 2006**

**Note:**

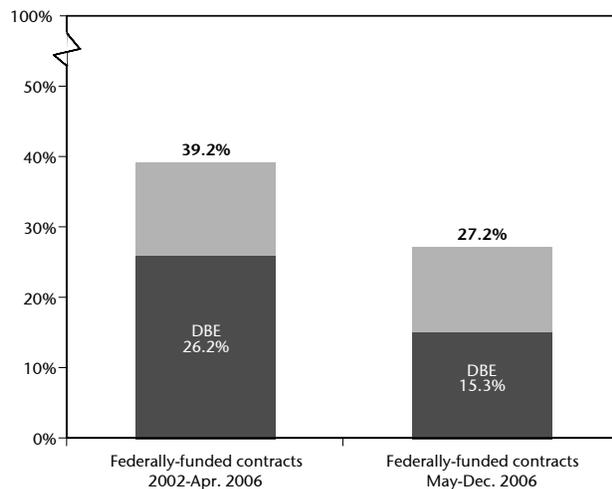
Statistics above each bar is total MBE/WBE utilization. Certified DBE utilization is noted in the bottom portion of each bar. The difference is utilization of MBE/WBEs that were not DBE certified.

For more detail and for results by MBE/WBE group, see Figures E-31 and E-32 in Appendix E.

Number of subcontracts analyzed is 5,297 for 2002-April 2006 and 148 for May-December 2006

**Source:**

BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.



**Utilization of firms by race and gender group.** Hispanic American-owned firms and white women-owned firms received the largest share of subcontract dollars on both federally-funded and state-funded contracts. On federally-funded contracts from 2002 through April 2006, 21 percent of all subcontract dollars went to Hispanic American-owned firms and 11 percent of subcontract dollars were awarded to WBEs. Utilization of Hispanic American and women-owned firms was lower for subcontracts after May 1, 2006 and on state-funded contracts.

Combined, utilization of all non-Hispanic MBEs was 8 percent of all subcontract dollars for federally-funded contracts prior to May 1, 2006 and 4 percent for subcontracts on state-funded projects. On federally-funded contracts after May 1, 2006, utilization of African American-, Asian-Pacific American- and Subcontinent Asian American-owned firms was higher than when projects had DBE subcontracting goals. However, these results are based on only 148 subcontracts on federally-funded projects for May through December 2006.

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

	Federally-funded		State-funded contracts 2002–2006
	2002–April 2006	May–December 2006	
<b>MBE/WBEs</b>			
African American-owned	1.1%	3.7%	0.6%
Asian-Pacific American-owned	3.6	5.5	1.0
Subcontinent Asian American-owned	1.4	3.8	1.5
Hispanic American-owned	20.5	8.5	15.2
Native American-owned	<u>1.4</u>	<u>0.0</u>	<u>1.2</u>
Total MBE	28.1%	21.6%	19.7%
WBE (white women-owned)	<u>11.1</u>	<u>5.6</u>	<u>5.5</u>
Total MBE/WBE	39.2%	27.2%	25.2%
<b>DBEs</b>			
African American-owned	0.8%	3.7%	0.6%
Asian-Pacific American-owned	3.1	5.0	0.9
Subcontinent Asian American-owned	1.0	0.5	1.1
Hispanic American-owned	17.1	5.1	12.9
Native American-owned	<u>1.4</u>	<u>0.0</u>	<u>1.1</u>
Total MBE	23.3%	14.4%	16.6%
WBE (white women-owned)	2.8	0.9	1.9
White male-owned DBE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total DBE	26.2%	15.3%	18.5%

Note: Numbers rounded to nearest tenth of 1 percent.

For more detail, see Figures E-31, E-32, and E-72 in Appendix E.

Number of subcontracts analyzed is 5,297 for 2002–April 2006 and 148 for May–December 2006 federally-funded contracts and 3,279 for state-funded contracts.

Source: BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.

## Disparity Analysis

The conclusion that utilization of MBE/WBEs as subcontractors drops when projects do not have DBE contract goals does not necessarily mean that minority- and women-owned firms are at a disadvantage when competing for subcontracts. BBC performed a disparity analysis for construction subcontracts to determine the relative difference between MBE/WBE utilization and the availability of MBE/WBEs for these subcontracts.

**Federally-funded and state-funded subcontracts.** BBC's analysis shows that the 39 percent of subcontract dollars MBE/WBEs received for federally-funded construction contracts prior to May 1, 2006 exceeded what one would expect given the relative availability of MBE/WBE for the location, types and sizes of these projects. Figure V-4 presents these results. Utilization exceeded availability for each MBE/WBE group except for African American-owned firms.

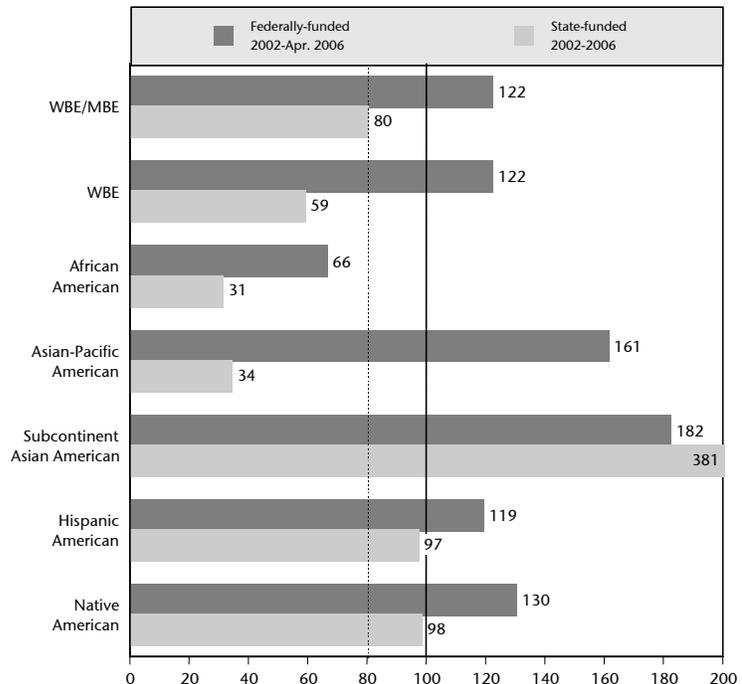
However, on state-funded construction contracts MBE/WBEs overall received about 80 cents out of every subcontract dollar expected based on availability (disparity index of 80). There were substantial disparities for WBEs and African American- and Asian-Pacific American-owned firms. Utilization of Hispanic American- and Native American-owned firms closely matched what would be expected based on availability for these subcontracts and utilization of Subcontinent Asian American-owned firms substantially exceeded availability.

These results indicate that, without DBE contract goals, there are disparities in the utilization of African American-, Asian-Pacific American- and women-owned firms as subcontractors based on information from state-funded contracts.

**Figure V-4.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally- and state- funded**  
**transportation construction**  
**subcontracts, 2002-April**  
**2006 and 2002-2006**

Note:  
 Includes Caltrans, Local Assistance and SR 125 contracts. For more detailed information, see Figure E-31 and Figure E-72 in Appendix E.

Source:  
 BBC Research and Consulting.



One possible neutral explanation for these disparities is that minority- and women-owned firms were drawn to subcontracts on federally-funded contracts and away from participation on state-funded contracts because of the goals program for federally-funded projects. In other words, perhaps firms were “over-utilized” as subcontractors on federally-funded contracts and “under-utilized” on state-funded contracts, but on balance were utilized on par with relative availability across all of these contracts. In fact, the “over-utilization” of MBE/WBEs on federally-funded contracts more than makes up for the dollar amount of “under-utilization” on state-funded contracts. Combining participation on federally- and state-funded contracts, MBE/WBEs received more subcontract dollars than expected based on availability.

There are a number of arguments against this possible neutral explanation for disparities on state-funded contracts:

- Hispanic-owned firms demonstrate that one can be “over-utilized” in one set of contracts and perform what would be expected based on availability for another set of contracts (state-funded contracts);
- African American-owned firms were under-utilized for subcontracts on both federally- and state-funded contracts;
- Federally- and state-funded transportation construction work administered through Caltrans is only a portion of the transportation construction work in California (Caltrans does not “use up” the ability of minority- and women-owned firms to perform transportation contracting work); and
- As demonstrated in the next pages, without contract goals, utilization of MBE/WBEs as subcontractors falls below availability on federally-funded contracts.

**Federally-funded subcontracts before and after May 1, 2006.** Based on the 148 subcontracts BBC was able to examine for May through December 2006, overall MBE/WBE utilization on federally-funded contracts without DBE goals fell below what would be expected based on MBE/WBE availability. Expressed another way, MBE/WBEs received 85 cents of every expected subcontract dollar for the work involved in these subcontracts, only slightly higher than what was found, overall, for state-funded contracts.

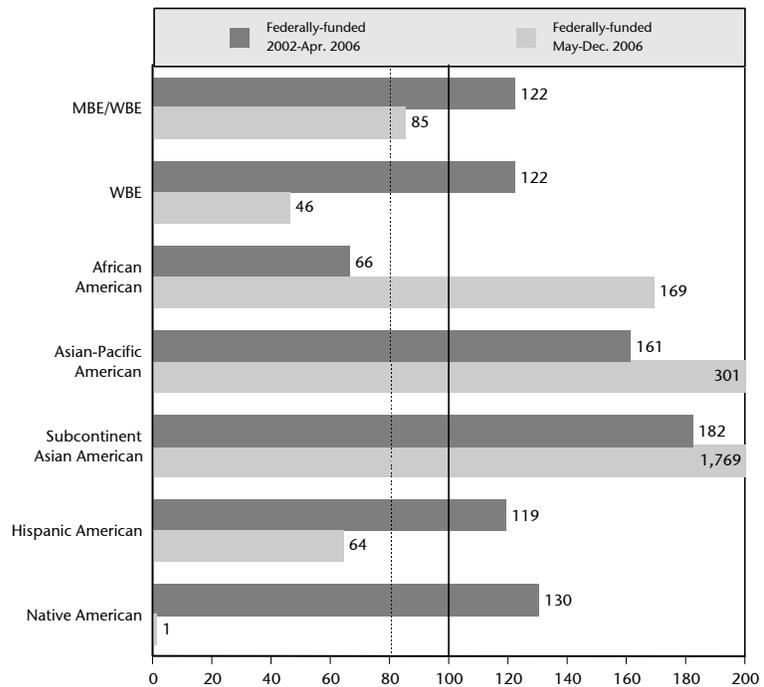
BBC identified disparities for women-owned firms, Hispanic American-owned firms and Native American-owned firms for federally-funded construction subcontracts after May 1, 2006. Utilization exceeded availability for other MBE groups.

Because of the number of subcontracts examined (148), one must be cautious in interpreting results for May through December 2006, especially for individual MBE/WBE groups. For example, results for African American-, Asian-Pacific American-, Hispanic American- and Native American-owned firms differ from what was found for the much larger set of state-funded subcontracts.

**Exhibit V-5.  
Disparity indices for  
MBE/WBE utilization on  
federally-funded  
transportation construction  
subcontracts, 2002-April  
2006 and May-Dec. 2006**

Note:  
Includes Caltrans, Local Assistance and SR 125  
contracts. For more detailed information, see Figure  
E-31 and Figure E-32 in Appendix E.  
Number of subcontracts analyzed is 5,297 for  
2002-April 2006 and 148 for May-December 2006

Source:  
BBC Research and Consulting.



**Participation of MBE/WBE Subcontractors in the Private Sector**

Most minority- and female-owned firms conducting in-depth interviews in this study reported success in the private sector. Some report that a firm can build a business through qualifications and reputation, not just having to always have the lower prices. Some subcontractors report that the same prime contractors repeatedly use them. Prime contractors working in the private sector say that they use minority- and women-owned subcontractors. However, some minority- and women-owned firms reported difficulty receiving private sector work, as discussed in Appendix I.

BBC also examined quantitative information concerning subcontracting opportunities on private sector construction contracts. The Availability Survey, discussed in Appendix C, included questions concerning whether the firm had bid as a subcontractor on a private sector transportation project in the past five years:

- Except for African American-owned businesses, each group of transportation construction industry firms were more likely to have bid on private sector work than on Caltrans work. Appendix F provides more information concerning BBC’s analysis of past attempts to obtain private sector subcontracts.
- Only a portion of the firms reporting bidding on private sector work were successful in obtaining that work. About 80 percent of majority-owned transportation construction industry firms that had bid on any private sector work (including subcontracts) were successful in receiving some work from this sector. The success rate of WBEs was slightly lower. MBEs pursuing private sector work were not as successful as majority-owned firms (see Appendix F). Disparities in success were especially large for African American-owned construction firms.

## **Summary**

Overall utilization of minority- and women-owned firms as subcontractors on Caltrans construction projects dropped after Caltrans discontinued the DBE contract goals program on May 1, 2006. On state-funded projects, which did not have DBE goals, utilization of minority- and women-owned firms was lower than federally-funded projects with goals. A number of MBE/WBEs interviewed in this study reported fewer solicitations for subcontract bids after Caltrans discontinued the DBE contract goals.

There were disparities between overall MBE/WBE utilization and availability for Caltrans construction subcontracts without DBE goals.

Interviewees made a number of suggestions for additional neutral measures that could assist small and MBE/WBE businesses in obtaining subcontracts on Caltrans construction projects. These are further discussed in Section IX.