

# APPENDIX A.

## Definitions of Terms

Appendix A defines terms that are useful to understanding the 2017 Los Angeles Metropolitan Transportation Authority (Metro) Disparity Study report. The following definitions are only relevant in the context of this report.

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

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

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

### **Anecdotal Information**

Anecdotal information includes personal qualitative accounts and perceptions of specific incidents—including any incidents of discrimination—told from individual interviewees' or participants' perspectives.

### **Availability Analysis**

An availability analysis assesses the percentage of dollars that one might expect a specific group of businesses to receive on contracts that a particular agency awards. The availability analysis in this report is based on various characteristics of potentially available businesses in Los Angeles County and contract elements that the Los Angeles Metropolitan Transportation Authority awarded during the study period.

## **Business**

A business is a for-profit company including all of its establishments or locations.

## **Business Listing**

A business listing is a record in a database of business information. A record is considered a *listing* until the study team determines that the listing actually represents a business establishment with a working phone number.

## **Business Establishment**

A business establishment is a place of business with an address and a working phone number. A single business, or firm, can have many business establishments, or locations.

## **Compelling Governmental Interest**

As part of the strict scrutiny legal standard, an agency must demonstrate a compelling governmental interest in remedying past identified discrimination in order to implement race- or gender-conscious measures. An agency that uses race- or gender-conscious measures as part of a minority- or woman-owned business program—such as the Federal Disadvantaged Business Enterprise Program—has the initial burden of showing evidence of discrimination—including statistical and anecdotal evidence—that supports the use of such measures. The agency must assess discrimination within their own relevant geographic market areas.

## **Consultant**

A consultant is a business performing a professional services contract.

## **Contract**

A contract is a legally binding relationship between the seller of goods or services and a buyer. The study team often treats the term “contract” synonymously with “procurement.”

## **Contract Element**

A contract element is either a prime contract or a subcontract.

## **Contractor**

A contractor is a business performing a construction contract.

## **Control**

Control means exercising management and executive authority of a business.

## **Custom Census**

A custom census availability analysis is one in which researchers attempt extensive surveys with all potentially available businesses working in the local marketplace to collect information about key business characteristics. Researchers then take survey information about potentially available businesses and match them to the characteristics of prime contracts and subcontracts

that an agency actually awarded during the study period. A custom census availability approach is accepted in the industry as the platinum standard for conducting availability analyses, because it takes several different factors into account including businesses' primary lines of work and their capacity to perform on an agency's contracts.

### **Disadvantaged Business Enterprise (DBE)**

A DBE is a business that is owned and controlled by one or more individuals who are socially and economically disadvantaged according to the guidelines in 49 CFR Part 26 which pertains to the Federal DBE Program. DBEs must be certified as such through the California Department of Transportation. The following groups are presumed to be socially and economically disadvantaged according to the Federal DBE Program:

- a) Asian Pacific Americans;
- b) Black Americans;
- c) Hispanic Americans;
- d) Native Americans;
- e) Subcontinent Asian Americans; and
- f) Women of any race or ethnicity.

A determination of economic disadvantage also includes assessing business' gross revenues (maximum revenue limits ranging from \$7million to \$24.1 million depending on subindustry) and business owners' personal net worth (maximum of \$1.32 million excluding equity in a home and in the business). Some minority- and woman-owned businesses do not qualify as DBEs because of gross revenue or net worth requirements. Businesses owned by non-Hispanic white men can also be certified as DBEs if those businesses meet the economic requirements in 49 CFR Part 26.

### **Disparity**

A disparity is a difference or gap between an actual outcome and some benchmark. In this report, the term "disparity" refers to a difference between the participation, or utilization, of a specific group of businesses in Los Angeles Metropolitan Transportation Authority contracting and the availability of those businesses for that work.

### **Disparity Analysis**

A disparity analysis examines whether there are any differences between the participation, or utilization, of a specific group of businesses in Los Angeles Metropolitan Transportation Authority contracting and the availability of those businesses for that work.

### **Disparity Index**

A disparity index is computed by dividing the actual participation, or utilization, of a specific group of businesses in Los Angeles Metropolitan Transportation Authority contracting by the availability of those businesses for that work and multiplying the result by 100. Smaller disparity indices indicate larger disparities.

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

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

## **Enterprise**

An enterprise is an economic unit that could be a for-profit business or business establishment; a nonprofit organization; or a public sector organization.

## **Federal DBE Program**

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

## **Federally-funded Contract**

A federally-funded contract is any contract or project funded in whole or in part with United States Department of Transportation financial assistance including loans. In this study, the study team uses the term “federally-funded contract” synonymously with “United States Department of Transportation-funded contract” or “Federal Highway Administration-funded contract.”

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

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

## **Firm**

See “business.”

## **Industry**

An industry is a broad classification for businesses providing related goods or services (e.g., *construction, architecture and engineering, or professional services*).

## **Los Angeles Metropolitan Transportation Authority Disparity Study (Metro)**

Metro is the transportation planner, coordinator, designer, builder, and operator of the public transportation system for Los Angeles County.

## **Majority-owned Business**

A majority-owned business is a for-profit business that is owned and controlled by non-Hispanic white men.

## Minority

A minority is an individual who identifies with one of the racial/ethnic groups specified in the Federal DBE Program: Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, or Subcontinent Asian Americans.

## Minority-owned Business

A minority-owned business is a business with at least 51 percent ownership and control by individuals who identify themselves with one of the racial/ethnic groups that the Federal DBE Program presumes to be socially and economically disadvantaged: Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, or Subcontinent Asian Americans. A business does not have to be certified as a DBE to be considered a minority-owned business. The study team considers businesses owned by minority women as minority-owned businesses.

## Narrow Tailoring

As part of the strict scrutiny legal standard, an agency must demonstrate that its use of race- and gender-conscious measures is narrowly tailored. There are a number of factors that a court considers when determining whether the use of such measures is narrowly tailored including:

- a) The necessity of such measures and the efficacy of alternative, race- and gender-neutral measures;
- b) The degree to which the use of such measures is limited to those groups that actually suffer discrimination in the local marketplace;
- c) The degree to which the use of such measures is flexible and limited in duration including the availability of waivers and sunset provisions;
- d) The relationship of any numerical goals to the relevant business marketplace; and
- e) The impact of such measures on the rights of third parties.<sup>1</sup>

## Non-DBE

A non-DBE is a minority- or woman-owned business or a majority-owned business that is not certified as a DBE regardless of the race/ethnicity or gender of the owner.

## Non-response Bias

Non-response bias occurs in survey research when participants' responses to survey questions theoretically differ from the potential responses of individuals who did not participate in the survey.

## Participation

See "utilization."

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<sup>1</sup> See, e.g., *AGC, SDC v. Caltrans*, 713 F.3d at 1198-1199; *Rothe*, 545 F.3d at 1036; *Western States Paving*, 407 F.3d at 993-995; *Sherbrooke Turf*, 345 F.3d at 971; *Adarand VII*, 228 F.3d at 1181; *Eng'g Contractors Ass'n*, 122 F.3d at 927 (internal quotations and citations omitted).

## **Potential DBE**

A potential DBE is a minority- or woman-owned business that is DBE-certified or appears that it could be DBE-certified (regardless of actual DBE certification) based on revenue requirements specified as part of the Federal DBE Program.

## **Prime Consultant**

A prime consultant is a professional services business that performed a professional services prime contract for an end user such as Metro.

## **Prime Contract**

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

## **Prime Contractor**

A prime contractor is a construction business that performed a prime contract for an end user such as Metro.

## **Project**

A project refers to a construction, professional services, or goods and other services endeavor that Metro bid out during the study period. A project could include one or more prime contracts and corresponding subcontracts.

## **Race- and Gender-Conscious Measures**

Race- and gender-conscious measures are contracting measures that are specifically designed to increase the participation of minority- and woman-owned businesses. Businesses owned by members of certain racial/ethnic groups might be eligible for such measures but not other businesses. Similarly, businesses owned by women might be eligible but not businesses owned by men. The use of DBE contract goals is one example of a race- and gender-conscious measure.

## **Race- and Gender-Neutral Measures**

Race- and gender-neutral measures are measures that are designed to remove potential barriers for all businesses or small businesses attempting to do work with an agency regardless of the race/ethnicity or gender of ownership. Race- and gender-neutral measures may include assistance in overcoming bonding and financing obstacles; simplifying bidding procedures; providing technical assistance; establishing programs to assist start-ups; and other efforts that are open to all businesses regardless of the race/ethnicity or gender of the owners.

## **Relevant Geographic Market Area**

The relevant geographic market area is the geographic area in which the businesses to which Metro awards most of its contracting dollars are located. The relevant geographic market area is also referred to as the "local marketplace." Case law related to minority- and woman-owned business programs and disparity studies requires disparity study analyses to focus on the

“relevant geographic market area.” The relevant geographic market area for Metro is Los Angeles County.

### **State-funded Contract**

A state-funded contract is any contract or project that is wholly funded with non-federal funds—that is, they do not include United States Department of Transportation or any other federal funds.

### **Statistically Significant Difference**

A statistically significant difference refers to a quantitative difference for which there is a 0.95 or 0.90 probability that chance can be correctly rejected as an explanation for the difference (meaning that there is a 0.05 or 0.10 probability, respectively, that chance in the sampling process could correctly account for the difference).

### **Strict Scrutiny**

Strict scrutiny is the legal standard that an agency’s use of race- and gender-conscious measures must meet in order for it to be considered constitutional. Strict scrutiny represents the highest threshold for evaluating the legality of race- and gender-conscious measures short of prohibiting them altogether. Under the strict scrutiny standard, an agency must:

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

An agency’s use of race- and gender-conscious measures must meet both the compelling governmental interest and the narrow tailoring components of the strict scrutiny standard for it to be considered constitutional.

### **Subconsultant**

A subconsultant is a professional services business that performed services for a prime consultant as part of a larger professional services contract.

### **Subcontract**

A subcontract is a contract between a prime contractor or prime consultant and another business selling goods or services to the prime contractor or prime consultant as part of a larger contract.

### **Subcontractor**

A subcontractor is a business that performed services for a prime contractor as part of a larger contract.

## **Subindustry**

A subindustry is a specific classification for businesses providing related goods or services within a particular industry (e.g., “water, sewer, and utility lines” is a subindustry of *construction*).

## **United States Departments of Transportation (USDOT)**

USDOT is a federal cabinet department of the United States government that oversees federal highway, air, railroad, maritime, and other transportation administration functions. FHWA is a USDOT agency.

## **Utilization**

Utilization refers to the percentage of total contracting dollars that were associated with a particular set of contracts that went to a specific group of businesses.

## **Vendor**

A vendor is a business that sells goods either to a prime contractor or prime consultant or to an end user such as Metro.

## **Woman-owned Business**

A woman-owned business is a business with at least 51 percent ownership and control by non-Hispanic white women. A business does not have to be certified as a DBE to be considered a woman-owned business. (The study team considered businesses owned by minority women as minority-owned businesses.)