

CHAPTER 11.

Program Implementation

Chapter 11 reviews information relevant to the Los Angeles County Metropolitan Transportation Authority's (Metro's) implementation of specific components of the Federal Disadvantaged Business Enterprise (DBE) Program for United States Department of Transportation (USDOT)-funded contracts.

A. Federal DBE Program

Regulations presented in 49 Code of Federal regulations (CFR) Part 26 and associated documents offer agencies guidance related to implementing the Federal DBE Program. Key requirements of the program are described below in the order that they are presented in 49 CFR Part 26.¹

Reporting to DOT – 49 CFR Part 26.11 (b). Metro must periodically report DBE participation in its USDOT-funded contracts to the Federal Transit Administration (FTA). Metro tracks DBE and non-DBE participation through its B2Gnow management software. Prime contractors enter all subcontractor payments into the B2Gnow systems and DBE subcontractors must verify those payments. Metro tracks the total amount of those payments to calculate DBE participation. Based on that information, Metro prepares Uniform Reports of DBE Awards or Commitments and Payments, which it reports to USDOT. Metro plans to continue to collect and report that information in the future using the same approach.

Bidders list – 49 CFR Part 26.11 (c). As part of its implementation of the Federal DBE Program, Metro must develop a bidders list of businesses that are available for its contracts. The bidders list must include the following information about each available business:

- Firm name;
- Address;
- DBE status;
- Age of firm; and
- Annual gross receipts.

Metro currently maintains a bidders list that includes all of the above information for businesses bidding or proposing on the agency's federally-funded prime contracts and subcontracts.

Information from availability surveys. As part of the availability analysis, the study team collected information about local businesses that are potentially available for different types of

¹ Because only certain portions of the Federal DBE Program are discussed in Chapter 11, Metro should refer to the complete federal regulations when considering its implementation of the program.

Metro prime contracts and subcontracts. Metro should consider using that information to augment its current bidders list.

Maintaining comprehensive vendor data. In order to effectively track the participation of minority- and woman-owned businesses on its contracts, Metro should consider continuing to improve the information that it collects on the ownership status of businesses that participate in its contracts, including both prime contractors and subcontractors. Not only should Metro consider collecting information about DBE status, but it should also consider obtaining information on the race/ethnicity and gender of business owners regardless of certification status. As appropriate, Metro can use business information that the study team collected as part of the 2017 disparity study to augment its vendor data.

Prompt payment mechanisms – 49 CFR Part 26.29. Metro’s prompt payment policies appear to comply with the federal regulations in 49 CFR Part 26.29. Prime contractors are required to pay their subcontractors no later than 7 days after receiving payment from Metro. Qualitative information that the study team collected through in-depth interviews and public meetings revealed that some businesses are dissatisfied with how promptly they receive payment on Metro contracts. Metro should consider maintaining the efforts it makes to ensure prompt payment to both prime contractors and subcontractors.

DBE directory – 49 CFR Part 26.31. Metro offers a directory on its website of all DBE-certified businesses by business name, industry (NAICS) code, and work type. Qualitative information that the study team collected through in-depth interviews and public meetings indicated that business owners whose firms work as certified DBE subcontractors are aware of the directory and its value, but that prime contractors do not readily use it to find DBE-certified subcontractors. Metro should continue to promote the DBE directory to prime contractors so they can continue to be aware of qualified DBE subcontractors.

Overconcentration – 49 CFR Part 26.33. Agencies implementing the Federal DBE Program are required to report and take corrective measures if they find that DBEs are so overconcentrated in certain work areas as to unduly burden non-DBEs working in those areas. Such measures may include:

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

BBC investigated potential overconcentration in Metro contracts. There were eighteen specific subindustries in which certified DBEs accounted for 50 percent or more of total subcontract dollars for contracts awarded between January 1, 2011 and December 31, 2015 based on contract data that the study team received from Metro:

- Building construction;
- Construction management;
- Electrical supplies;

- Elevator goods and services;
- Fencing, guardrails, and signs;
- Flagging services;
- Heavy construction;
- Heavy construction equipment rental;
- Landscape architecture;
- Landscape services;
- Other goods and supplies;
- Other services;
- Railroad construction;
- Surveying and mapping;
- Testing services;
- Trucking;
- Waste services; and
- Wrecking and demolition.

Because the above industries are based only on subcontract dollars, they do not include work that prime contractors self-performed in those areas. If the study team had included self-performed work in those analyses, the percentages for which DBEs accounted would likely have decreased. Metro should consider continuing to monitor the above types of work for potential overconcentration in the future. This might include collecting data on subcontractor utilization and prime contractor self-performance in each of the work types The USDOT provides the following recommendations for agencies to address over concentration:

If a recipient finds an area of overconcentration, it would have to devise means of addressing the problem that work in their local situations. Possible means of dealing with the problem could include assisting prime contractors to find DBEs in non-traditional fields or varying the use of contract goals to lessen any burden on particular types of non-DBE specialty contractors. While recipients would have to obtain DOT approval of determinations of overconcentration and measures for dealing with them, the Department is not prescribing any specific mechanisms for doing so.²

Business development programs – 49 CFR Part 26.35 and mentor-protégé programs – 49 CFR Appendix D to Part 26. Business Development Programs (BDPs) are programs that are designed to assist DBE-certified businesses in developing the capabilities to compete for work independent of the DBE Program. Metro offers a number of BDPs for potential and current DBEs including:

² 64 F.R. 5106 (February 2, 1999)

- The Small Business Prime set-aside program, which sets aside applicable contracts and enables small businesses to compete only against other small businesses for projects up to \$5 million; and
- The elimination of good faith efforts for non-federally funded contracts.

Metro should continue to communicate with certified DBEs to ensure that its BDPs provide the most relevant specialized assistance that is tailored to the needs of developing businesses in the Los Angeles marketplace. Metro might explore additional partnerships to implement other BDPs. Such programs could provide specialized assistance that would be tailored to the needs of developing businesses.

Responsibilities for monitoring the performance of program participants – 49 CFR Part 26.37 and 49 CFR Part 26.55. The Final Rule effective February 28, 2011, revised requirements for monitoring the work that prime contractors commit to DBE subcontractors at contract award (or through contract modifications) and enforcing that those DBEs actually perform that work. USDOT describes the requirements in 49 CFR Part 26.37(b). The Final Rule states that prime contractors can only terminate DBEs for “good cause” and with written consent from the awarding agency. In addition, 49 CFR Part 26.55 requires agencies to only count the participation of DBEs that are performing commercially useful functions (CUFs) on contracts toward meeting DBE contract goals and overall DBE goals. Metro implements a number of monitoring and enforcement mechanisms, including:

- A review of DBE participation both prior to and after contract award;
- DBE subcontract payment tracking through its B2Gnow contract management system; and
- Informal meetings with prime contractors and subcontractors.

Metro should consider reviewing the requirements set forth in 49 CFR Part 26.37(b), 49 CFR Part 26.55, and in The Final Rule to ensure that its monitoring and enforcement mechanisms are appropriately implemented and consistent with federal regulations and best practices.

Fostering small business participation – 49 CFR Part 26.39. When implementing the Federal DBE Program, Metro must include measures to structure contracting requirements to facilitate competition by small businesses, “taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.”³ The Final Rule effective February 28, 2011 added a requirement for agencies to foster small business participation in their contracting. It required agencies to submit a plan for fostering small business participation to USDOT in early 2012. USDOT also identifies the following potential strategies for fostering small business participation:

- Establishing a race- and gender-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million);

³ 49 CFR Part 26.39(a).

- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts; and
- Unbundling large contracts to allow small businesses more opportunities to bid for smaller contracts.

In order to facilitate small business participation, Metro implements a number of efforts including:

- Small business certification program;
- Small business contract goals on local-funded contracts;
- Small business Prime set-aside program sets aside contracts up to \$5 million in which only small businesses compete against other small businesses; and
- Unbundling of large contracts, when feasible.

In addition, Chapter 10 of the report outlines many of Metro's current and planned race- and gender-neutral measures and provides examples of measures that other organizations in Los Angeles have implemented. Metro should review that information and consider implementing measures that the agency deems to be effective. Metro should also review legal and budgetary issues in considering different measures.

To be of assistance to DBEs and SBEs that may be experiencing difficulties in contract work, the San Francisco Bay Area Rapid Transit District (BART) assigns an individual or firm to act as an Ombudsperson for DBE or SBE subcontractors or supplier to mediate disputes between prime contractor and subcontractor or supplies. Metro should consider a similar program for LA County DBEs and SBEs to help foster relationships between prime contractors and DBE or SBE subcontractors or suppliers.

Prohibition of DBE quotas and set-asides for DBEs unless in limited and extreme circumstances – 49 CFR Part 26.43. DBE quotas are prohibited under the Federal DBE Program, and DBE set-asides can only be used in extreme circumstances. Metro does not currently use DBE quotas or set-asides in any way as part of its implementation of the Federal DBE Program.

Setting overall DBE goals – 49 CFR Part 26.45. In the Final Rule effective February 28, 2011, USDOT changed how often agencies that implement the Federal DBE Program are required to submit overall DBE goals. As discussed in Chapter 1, agencies such as Metro now need to develop and submit overall DBE goals every three years. Chapter 9 uses data and results from the disparity study to provide Metro with information that could be useful in developing its next overall DBE goal submission.

Analysis of reasons for not meeting overall DBE goal – 49 CFR Part 26.47(c). Another addition to the Federal DBE Program made under The Final Rule effective February 28, 2011 requires agencies to take the following actions if their DBE participation for a particular fiscal year is less than their overall goal for that year:

- Analyze the reasons for the difference in detail; and
- Establish specific steps and milestones to address the difference and enable the agency to meet the goal in the next fiscal year.

Based on information about awards and commitments to DBE-certified businesses, Metro has not met its DBE goal in recent years. In federal fiscal years 2011 through 2015, DBE awards and commitments that Metro made on USDOT-funded contracts were below its overall DBE goal by an average of 11.4 percentage points.

Need for separate accounting for participation of potential DBEs. In accordance with guidance in the Federal DBE Program, BBC's analysis of the overall DBE goal in the disparity study includes DBEs that are currently certified and minority- and woman-owned businesses that could *potentially* be DBE-certified based on revenue standards (i.e., potential DBEs).⁴ Agencies can explore whether one reason why they have not met their overall DBE goals is because they are not counting the participation of potential DBEs. USDOT might then expect an agency to explore ways to further encourage potential DBEs to become DBE-certified as one way of closing the gap between reported DBE participation and its overall DBE goal. In order to have the information to explore that possibility, Metro should consider:

- Developing a system to collect information on the race/ethnicity and gender of the owners of all businesses—not just certified DBEs—participating as prime contractors or subcontractors in USDOT-funded contracts;
- Developing internal reports for the participation of all minority- and woman-owned businesses (based on race/ethnicity and gender of ownership; annual revenue; and other factors such as whether the business has been denied DBE certification in the past) in USDOT-funded contracts; and
- Continuing to track participation of certified DBEs on USDOT-funded contracts per USDOT reporting requirements.

Other steps to evaluate how Metro might better meet its overall DBE goal. Analyzing the participation of potential DBEs is one step among many that Metro might consider taking when examining any differences between DBE participation and its overall DBE goal. Based on a comprehensive review, Metro must establish specific steps and milestones to correct any problems it identifies to enable it to better meet its overall DBE goal in the future.⁵

Maximum feasible portion of goal met through neutral program measures – 49 CFR Part 26.51(a). As discussed in Chapter 10, Metro must meet the maximum feasible portion of its overall DBE goal through the use of race- and gender-neutral program measures. Metro must project the portion of its overall DBE goal that could be achieved through such measures. The agency should consider the information and analytical approaches presented in Chapter 10 when making such projections.

⁴ Note that minority- and woman-owned businesses that could be DBE-certified but that are not currently certified are counted as part of calculating the overall DBE goal. However, the participation of those businesses is not counted as part of Metro's DBE participation reports.

⁵ 49 CFR Part 26.47(c)(2).

Use of DBE contract goals – 49 CFR Part 26.51(d). The Federal DBE Program requires agencies to use race- and gender-conscious measures—such as DBE contract goals—to meet any portion of their overall DBE goals that they do not project being able to meet using race- and gender-neutral measures. Based on information from the disparity study and other available information, Metro should assess whether the continued use of DBE contract goals is necessary in the future to meet any portion of its overall DBE goal. USDOT guidelines on the use of DBE contract goals, which are presented in 49 CFR Part 26.51(e), include the following guidance:

- DBE contract goals may only be used on contracts that have subcontracting possibilities;
- Agencies are not required to set DBE contract goals on every USDOT-funded contract;
- During the period covered by the overall DBE goal, an agency must set DBE contract goals so that they will cumulatively result in meeting the portion of the overall DBE goal that the agency projects being unable to meet through race- and gender-neutral measures;
- An agency’s DBE contract goals must provide for participation by all DBE groups eligible to participate in race- and gender-conscious measures and must not be subdivided into group-specific goals; and
- An agency must maintain and report data on DBE participation separately for contracts that include and do not include DBE contract goals.

If Metro determines that it needs to continue using DBE contract goals on USDOT-funded projects, then it should also evaluate which DBE groups should be considered eligible for those goals. If Metro decides to consider only certain DBE groups (e.g., groups that Metro determines to be *underutilized DBEs*) as eligible to participate in DBE contract goals, it must submit a waiver request to FTA.⁶

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

- Several minority- and woman-owned businesses commented that race- and gender-conscious measures have made a positive impact on their firms by helping them get their “foot in the door” with prime contractors and win public sector work. A number of minority- and woman-owned businesses underlined that these measures open the door to greater opportunity for their businesses, and help their firms become known in the marketplace.
- Several interviewees observed that public agencies, including Metro, should reconsider how they define minority and disadvantaged business owners for race- and gender-conscious measures in present-day California where there is high diversity, and where

⁶ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006) This case out of the Ninth Circuit struck down a state’s implementation of the Federal DBE Program for failure to pass constitutional muster. In *Western States Paving*, 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 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.

women and minorities are excelling in certain professional sectors. A few interviewees urged a stronger focus on income disparity.

Metro should consider those comments if it determines that it is appropriate to use DBE contract goals on USDOT-funded contracts in the future.

Flexible use of any race- and gender-conscious measures – 49 CFR Part 26.51(f).

State and local agencies must exercise flexibility in any use of race- and gender-conscious measures such as DBE contract goals. For example, if Metro determines that DBE participation exceeds its overall DBE goal for a fiscal year, it must reduce its use of DBE contract goals to the extent necessary. If it determines that it will fall short of the overall DBE goal in a fiscal year, then it must make appropriate modifications in the use of race- and gender-neutral and race- and gender-conscious measures to allow it to meet its overall DBE goal in the following year. If Metro observes increased DBE participation (relative to availability) on contracts to which race- and gender-conscious measures do not apply, the agency might consider changing its projection of how much of its overall DBE goal it can achieve through the use of race- and gender-neutral measures in the future.

Good faith efforts procedures – 49 CFR Part 26.53. USDOT has provided guidance for agencies to review good faith efforts, including materials in Appendix A of 49 CFR Part 26. Metro's current implementation of the Federal DBE Program outlines the good faith efforts process that it uses for DBE contract goals. The Final Rule effective February 28, 2011 updated requirements for good faith efforts when agencies use DBE contract goals. Metro should review 49 CFR Part 26.53 and The Final Rule to ensure that its good faith efforts procedures are consistent with federal regulations.

Metro requires contractors to submit good faith efforts documentation and written confirmation in the event that bidders' efforts to include sufficient DBE participation were unsuccessful. Factors that are considered by Metro in evaluating good faith efforts include:

- A bidder's solicitation process;
- Whether a bidder has selected portions of work to be performed by DBEs or has broken out portions of work into more feasible units in order to increase the likelihood that that the DBE goal will be achieved;
- Whether a bidder has negotiated in good faith with interested DBEs in an effort to facilitate DBE participation;
- Whether a bidder has performed a comparative cost analysis while understanding that there may be additional costs involved in finding and using DBEs as long as the costs are not excessive and unreasonable; and
- Taking into account the performance of other bidders in meeting a DBE contract goal.

Perfunctory efforts are not considered good faith efforts. Determining the sufficiency of bidders' good faith efforts is at the agency's discretion and using quantitative formulas is not required. On multiple occasions during the study period, Metro accepted prime contractors' good faith efforts in lieu of actual subcontract commitments with DBEs. Several individuals participating in-

depth interviews and public meetings made comments related to good faith efforts. In general, minority- and woman-owned businesses indicated that prime contractors often fail to make genuine efforts to use minority- and woman-owned businesses.

- Several participants indicated that the current DBE program for federally funded projects does not require prime contractors to make anything more than perfunctory good faith efforts in order to comply with the program. A number of business owners noted that primes will reach out to prospective DBE-certified minority- and women-owned businesses but then will not follow through to seek their meaningful participation on projects.
- Several minority business owners also observed that Metro “goes through the motions” but does not always adequately enforce DBE contract goal requirements for federally funded projects to ensure DBE subcontractors are actually awarded project work.

Metro might review such concerns further when evaluating ways to improve its current implementation of the Federal DBE Program. It should also review legal issues including state contracting laws and whether certain program options would meet USDOT regulations.

Counting DBE participation – 49 CFR Part 26.55. 49 CFR Part 26.55 describes how agencies should count DBE participation and evaluate whether bidders have met DBE contract goals. Federal regulations also give specific guidance for counting the participation of different types of DBE suppliers and trucking companies. Section 26.11 discusses the Uniform Report of DBE Awards or Commitments and Payments. Metro currently tracks that information for all subcontractors including DBE-certified businesses and for uncertified minority- and woman-owned businesses or potential DBEs. Such measures will help the agency track the effectiveness of its efforts to encourage DBE participation. Metro should consider collecting and using the following information:

- Databases that BBC developed as part of the disparity study;
- Contractor/consultant registration documents from businesses working with Metro as prime contractors or subcontractors including information about the race/ethnicity and gender of their owners;
- Prime contractor and subcontractor participation on agency contracts;
- Subcontractor participation data (for all tiers and suppliers) for all businesses regardless of race/ethnicity, gender, or certification status;
- Descriptions of the areas of contracts on which subcontractors worked; and
- Subcontractors’ contact information and committed dollar amounts from prime contractors at the time of contract award on purchase orders.

Metro should consider maintaining the above information for some minimum amount of time (e.g., five years). Metro should also consider establishing a training process for all staff that is responsible for managing and entering contract and vendor data. Training should convey data entry rules and standards and ensure consistency in the data entry process.

DBE certification – 49 CFR Part 26 Subpart D. The California Unified Certification Program (CUCP) is responsible for all DBE certifications in the state of California. Metro is one of the

certifying agency members of CUCP. As a member of CUCP, Caltrans also maintains all of the DBE certification records for the state of California. The CUCP certification process is designed to comply with 49 CFR Part 26 Subpart D. As Metro continues to work with DBE-certified businesses, the agency should consider ensuring that the CUCP continues to certify all groups that the Federal DBE Program presumes to be socially and economically disadvantaged in a manner that is consistent with federal regulations.

Many business owners and managers participating in in-depth interviews and public hearings commented on the DBE certification process. Many business owners felt that certification was highly valuable, but commented on the length, complexity and cost of the certification process. Some business owners were highly critical of the certification process. A number of business owners reported that the process was difficult to understand; required lots of paperwork and sensitive information; and was very time consuming. Appendix D provides other perceptions of business owners that have considered DBE certification or that have gone through the certification process. Metro appears to follow federal regulations concerning DBE certification, which requires collecting and reviewing considerable information from program applicants. Metro follows CUCP guidelines and is the only agency that has implemented CUCP's online certification process. However, the agency might research other ways to make the certification process easier for potential DBEs.

Monitoring changes to the Federal DBE Program. Federal regulations related to the Federal DBE Program change periodically, such as with the DBE Program Implementation Modifications Final Rule issued on October 2, 2014 and the Final Rule issued on February 28, 2011. Metro should continue to monitor such developments and ensure that the agency's implementation of the Federal DBE Program is in compliance with federal regulations. Other transportation agencies' implementations of the Federal DBE Program are under review in federal district courts. Metro should also continue to monitor court decisions in those and other relevant cases (for details see Appendix B).

B. Additional Considerations

Based on disparity study results and the study team's review of Metro's contracting practices and program measures, BBC provides additional considerations that the agency should make as it works to refine its compliance with Metro's SBE Program and the Federal DBE Program. In making those considerations, Metro should also assess whether additional resources or changes in state law or internal policy may be required.

Networking and outreach. Metro hosts and participates in many networking and outreach events that include information about marketing; the DBE and SBE certification processes; doing business with the agency; and available bid opportunities. Metro should consider continuing those efforts but might also consider broadening its efforts to include more partnerships with local trade organizations and other public agencies.

In addition to the scheduled networking and outreach events, Metro also works closely with the Transportation Business Advisory Council (TBAC) to get information out to their members about policies, procedures, and upcoming opportunities. Metro should consider working with

TBAC board members to identify firms that might be eligible to become DBE certified. Metro should ask TBAC member to regularly provide updated member lists to identify these firms.

Subcontract data. Metro maintains comprehensive data on subcontracts that are associated with the prime contracts that it awards in construction and professional services but not for purchase orders. Metro should consider ensuring that it is collecting subcontracting data on all contracts. In addition, Metro should consider requiring the prime contractor on purchase order without DBE and SBE-goals to submit subcontractor payment data as part of the invoicing process and as a condition of receiving payment. Collecting subcontractor payment information will help ensure that Metro monitors the participation of minority- and woman-owned businesses for all purchase orders.

Unbundling Large Contracts. In general, minority- and woman-owned businesses exhibited reduced availability for relatively large contracts that Metro awarded during the study period. In addition, as part of in-depth interviews and public forums, several minority- and woman-owned businesses reported that the size of government contracts often serves as a barrier to their success (for details, see Appendix D). To further encourage the participation of small businesses—including many minority- and woman-owned businesses—Metro should consider making efforts to unbundle relatively large contracts into several smaller contracts. Doing so would result in that work being more accessible to small businesses, which in turn might increase opportunities for minority- and woman-owned businesses and result in greater minority- and woman-owned business participation.

Prime Contract Opportunities. Disparity analysis results indicated substantial disparities for most racial/ethnic and gender groups on the prime contracts that Metro awarded during the study period. Metro` currently has a small business prime set-aside program to encourage the participation of minority- and woman-owned businesses as prime contractors. Metro should consider continuing that program for small businesses

Subcontract opportunities. Subcontracts represent accessible opportunities for minority- and woman-owned businesses to become involved in public contracting. However, subcontracting accounted for a relatively small percentage of the total contracting dollars that Metro awarded during the study period. Metro could consider implementing a program that requires prime contractors to include certain levels of subcontracting as part of their bids and proposals. For each contract to which the program applies, Metro would set a minimum subcontracting percentage based on the type of work involved, the size of the project, and other factors. Prime contractors bidding on the contract would be required to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be responsive. If Metro were to implement such a program, the entity should include flexibility provisions such as a good faith efforts process.

Goods and other services contracts. Disparity analysis results indicated substantial disparities for all racial/ethnic and gender groups on goods and other services contracts that Metro's Procurement Division awarded during the study period. Metro should consider working with the Procurement Division to explore race- and gender-neutral, and if appropriate, race- and gender-conscious program measures that might better encourage the participation of minority-

and woman-owned businesses on goods and other services contracts in the future (e.g. materials management and inventory contracts).

DBE contract goals. Metro currently uses DBE contract goals on many of the contracts that it awards. Prime contractors can meet those goals by either making subcontracting commitments with certified DBE subcontractors at the time of bid or by showing that they made all reasonable good faith efforts to fulfill the goals but could not do so. Disparity analysis results indicated that most racial/ethnic and gender groups did not show disparities on contracts to which Metro applied DBE contract goals during the study period. In contrast, most racial/ethnic and gender groups showed substantial disparities on contracts to which Metro did not apply DBE contract goals. Metro should consider continuing its use of DBE contract goals in the future. The agency will need to ensure that the use of those goals is narrowly tailored and consistent with other relevant legal standards (for details, see Chapter 2 and Appendix B).

Prompt payment policies. Metro requires prime contractors to pay their subcontractors within 7 days of receiving payment from the agency. As part of in-depth interviews and public forums, several businesses—including many minority- and woman-owned businesses—reported difficulties with receiving payment in a timely manner on government contracts, particularly when they work as subcontractors (for details, see Appendix D). In light of such comments, Metro should consider reinforcing its prompt payment policies with its procurement staff and with prime contractors. Doing so might help ensure that both prime contractors and subcontractors receive payment in a timely manner.