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Report to Congressional Committees

June 2001

DISADVANTAGED BUSINESS ENTERPRISES

Critical Information Is Needed to Understand Program Impact

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Abbreviations

DBE	Disadvantaged Business Enterprise
DOCR	Department of Transportation's Office of Civil Rights
DOJ	Department of Justice
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GAO	General Accounting Office
MBE/WBE	Minority Business Enterprise/Women Business Enterprise
SBA	Small Business Administration
TEA-21	Transportation Equity Act for the 21st Century
UCP	Unified Certification Program
USDOT	Department of Transportation

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Congressional Committees

The U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) program is designed to remedy the effects of current and past discrimination against small businesses owned and controlled by socially and economically disadvantaged individuals and to foster equal opportunity in transportation contracting. The Surface Transportation Assistance Act of 1982 contained the first statutory DBE provision for federal highway and transit programs, requiring that at least 10 percent of the funds provided be expended with DBEs, unless the Secretary of Transportation determined otherwise. From 1983 through 1999, about $35 billion of the federal funds expended through USDOT-assisted highway and transit contracts went to DBEs. Congressional debate preceding the passage in 1998 of the Transportation Equity Act for the 21st Century (TEA-21), which reauthorized the DBE program, focused largely on the need for and impact of the DBE program. USDOT issued new regulations in 1999 that significantly altered the DBE program. These regulations were designed to respond to issues raised in the congressional debate and the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Pena*.

In addition to reauthorizing the DBE program, TEA-21 required that we review the program's impact throughout the United States and directed us to include analyses of specific program-related issues in our review.[1] (See app. I for the section of TEA-21 requiring our study.) Accordingly, this report provides information on (1) important changes made to the DBE program since 1999, (2) characteristics of DBEs and non-DBEs that receive USDOT-assisted highway and transit contracts, (3) evidence of discrimination and other factors that may limit DBEs' ability to compete for USDOT-assisted contracts, and (4) the impact of the DBE program on costs, competition, and job creation and the impact of discontinuing the federal and nonfederal DBE programs.

[1]Under TEA-21, at least 10 percent of the highway, transit, and research funds authorized by the act are to be expended with DBEs, unless the Secretary of Transportation determines otherwise. This report focuses on the DBE program applicable to state departments of transportation and transit authorities with respect to USDOT-assisted highway and transit contracts rather than on direct expenditures of federal funds by USDOT.

To address these issues, we conducted a nationwide mail survey in October 2000 of the 52 state departments of transportation (including those of the District of Columbia and Puerto Rico) and the 36 largest transit authorities.[2] We received responses to our survey from all 52 state departments of transportation (states) and 31 transit authorities, for an overall response rate of 94 percent. Our survey instrument and overall results are included in appendix II and selected survey results are available at www.gao.gov/special.pubs/dbe. We also assessed USDOT's DBE program data, reviewed court cases addressing the constitutionality of USDOT's DBE program since 1995, and analyzed transportation-specific disparity studies.[3] This report is not a compliance review and therefore does not address whether states and transit authorities followed the DBE program regulations or how USDOT enforced those regulations, particularly with respect to the certification of DBEs. (See app. III for a more detailed discussion of our report's scope and methodology.)

Results in Brief

The DBE program has changed significantly since USDOT issued new regulations in 1999, in part, to respond to a 1995 Supreme Court decision that heightened standards for federal programs that use race or ethnicity as a criterion in decision-making. The new regulations overhauled the DBE goal-setting process. States and transit authorities are no longer required to justify goals lower than 10 percent—the amount identified in the statutory DBE provision. Rather, goals are to be based on the number of "ready, willing, and able" DBEs in local markets. In addition, states and transit authorities must now use race-neutral measures (i.e., measures intended to help all small businesses, not just DBEs), such as outreach and technical assistance, to the greatest extent possible to achieve their DBE goals. Furthermore, the new regulations revised the eligibility requirements to

[2]Transit authorities provide local or regional multiple-occupancy-vehicle passenger services for general public use. We planned to survey all transit authorities required to submit DBE program plans. However, the Federal Transit Administration (FTA) could not provide an accurate list of these transit authorities. Therefore, we surveyed the 36 largest transit authorities (as defined by the number of unlinked passenger trips in 1999) across the nation. These transit authorities accounted for two-thirds of the federal transit grant funds obligated in 1999.

[3]These disparity studies measure the availability and utilization of minority- and women-owned businesses in transportation contracts. We chose to review only transportation-specific disparity studies published between 1996 and 2000, in part, because the DBE regulations state that any disparity study used in the DBE goal-setting process should be as recent as possible and focused on the transportation contracting industry.

include a personal net worth cap of $750,000 for the individuals who own and control DBEs. States and transit authorities were required to submit to USDOT new DBE program plans that reflected the new regulations in August 1999. About three-fourths of the states and transit authorities responding to our survey reported that the new regulations have made it more difficult for them to administer the DBE program. Furthermore, over half of the states and transit authorities indicated that the new regulations made it more difficult for DBEs to apply to the program. These views are probably attributable to the new goal-setting process that states and transit authorities must complete and the additional paperwork that DBEs must submit.

A lack of key information prevents anyone from gaining a clear understanding of the firms that participate in the DBE program and how these firms compare with the rest of the transportation contracting community. For example, we cannot calculate the total number of certified DBEs nationwide because of duplication in states' and transit authorities' DBE directories. In addition, about two-thirds of our survey respondents could not provide information on the annual gross receipts of DBEs or the personal net worth of the individuals who own and control DBEs—information that is required to determine eligibility for the program but is not reported to USDOT. The primary reason states and transit authorities cited for not being able to provide this information was that the information was not in an electronic database and therefore would be too difficult and time-consuming to compile. Moreover, states and transit authorities are just starting to collect personal net worth information as required by the new regulations. In addition, about 95 percent of the states and transit authorities we surveyed could not provide information on the annual gross receipts of non-DBEs, and none could provide information on the personal net worth of the individuals who own and control non-DBEs. Although financial information on DBEs and non-DBEs is lacking, the majority of the states and transit authorities could provide basic information on DBEs, such as the total number of prime contracts awarded to the firms—information that is regularly reported to USDOT. These data indicate that DBEs received about 7 percent of the prime contracts awarded and 2 percent of the federal dollars awarded for prime contracts in fiscal year 2000.

A variety of sources could provide information relevant to whether discrimination limits the ability of DBEs to compete for USDOT-assisted contracts. These sources include relevant court cases; studies of lending, bonding, and business practices affecting the formation and competition of

such firms; state and local disparity studies; and discrimination complaints. Our review focused on court cases addressing the constitutionality of the federal DBE program; transportation-specific disparity studies; and written complaints of discrimination filed by DBEs with states, transit authorities, and USDOT. We focused on these sources because they are directly related to transportation contracting and the federal DBE program. In summary, we found the following:

- The federal courts that have considered the constitutionality of USDOT's DBE program under the standard adopted by the Supreme Court in 1995 have concluded that discrimination adversely affects DBEs. These decisions were based on various types of evidence, including studies of business practices affecting DBE formation and competition, and disparity studies. In these cases, the courts found that the evidence of discrimination presented was sufficient for them to conclude that the federal DBE program serves a compelling governmental interest, namely, providing a remedy for that discrimination.
- Studies finding statistical disparities between the availability and utilization of minority- and women-owned firms in transportation contracting are recognized as a potential source of evidence of discrimination. As a result, numerous state and local governments have conducted disparity studies to support their minority contracting programs and to help set their federal DBE participation goals. All 14 studies we reviewed found that there were disparities between the availability and utilization of minority- and women-owned businesses in transportation contracts. Taken as a whole, these studies suggest that disparities exist; however, we found significant weaknesses in the disparity studies we reviewed. For example, the studies consistently overstated the number of qualified, willing, and able firms or understated firms' utilization in transportation contracts. The weaknesses we identified create uncertainties about the studies' findings—that is, they could result in either an overstatement or an understatement of minority- and women-owned businesses availability and utilization.
- USDOT does not systematically track information on complaints of discrimination filed with the Department by DBEs—information that could shed light on the existence of discrimination against DBEs. For example, although USDOT receives written discrimination complaints filed by DBEs, it could not provide the total number of such complaints, the total number of investigations launched, or the outcomes of the investigations. We also asked states and transit authorities about written

discrimination complaints filed by DBEs in 1999 and 2000. Eighty-one percent of the states and transit authorities reported that they did not receive any written complaints of discrimination filed by DBEs during this period. Nineteen percent of the states and transit authorities reported that they received a total of 31 written discrimination complaints from DBEs in 1999 and 2000. Of the 31 complaints filed, 29 had been investigated. Four of these investigations resulted in findings of discrimination.

Other factors may also limit the ability of DBEs to compete for USDOT-assisted contracts. According to our survey results, the majority of the states and transit authorities we surveyed had not conducted any type of analysis to identify these factors. Using anecdotal information, we identified a number of factors, or barriers, such as a lack of working capital and limited access to bonding, that may limit DBEs' ability to compete for contracts. However, there was little agreement among the officials we contacted on whether these factors were attributable to discrimination.

Limited data prevent a thorough assessment of the impact of the DBE program, including the impact on DBEs of discontinuing the federal or nonfederal DBE programs. We identified one state and one transit authority that had discontinued their federal DBE programs as a result of court decisions. In addition, through our survey, we identified 10 other states and transit authorities that had participated in nonfederal DBE programs that had been discontinued. Ten of these 12 states and transit authorities could not provide sufficient data for us to fully evaluate the impact of this action. The data provided from the remaining two states indicate that discontinuing the federal and nonfederal programs had a negative impact on minority- and women-owned businesses.

Our report contains several recommendations to USDOT designed to (1) enhance the collection of data so that more and better information will be available to evaluate the impact of the DBE program and (2) help states and transit authorities set DBE participation goals that reflect the availability of ready, willing, and able DBEs in the relevant market. We recognize that implementing these recommendations may result in some additional costs for USDOT, states, and transit authorities. However, given existing data collection requirements and the benefits associated with these recommendations, we believe such costs are warranted. We provided USDOT with a draft of this report for review and comment. USDOT did not comment on our recommendations but offered comments on such areas as the role of disparity studies in the DBE program, the need for states and

transit authorities to use the best available data in DBE goal-setting, and the status of DBE and non-DBE participation data.

Background

USDOT established a minority and women's business enterprise program for its highway, airport, and transit programs by regulation in 1980. The Surface Transportation Assistance Act of 1982 contained the first statutory DBE provision for federal highway and transit programs, requiring that a minimum of 10 percent of the funds provided by the act be expended with small businesses owned and controlled by socially and economically disadvantaged individuals, unless the Secretary of Transportation determined otherwise. Nonminority women were not included as socially and economically disadvantaged individuals. The Surface Transportation and Uniform Relocation Assistance Act of 1987 continued the program and included nonminority women in the statutory definition of socially and economically disadvantaged individuals, thereby allowing states to use contracts with both minority- and women-owned businesses to meet their DBE goals. The Intermodal Surface Transportation Efficiency Act of 1991 and TEA-21 (1998) reauthorized the program, continuing the combined 10-percent provision for participation by minority-owned and nonminority-women-owned DBEs. The percentage of federal funds expended through USDOT-assisted highway and transit contracts with DBEs increased from 9.9 percent in 1983 to 12.8 percent in 1999.

TEA-21 and USDOT's regulations establish the basic eligibility requirements for participation in the DBE program. The program is limited to small businesses owned and controlled by socially and economically disadvantaged individuals. Women and members of certain minority populations, such as African-, Hispanic-, and Native-Americans and other minorities found to be disadvantaged by the Small Business Administration (SBA), are presumed to be socially and economically disadvantaged unless proved otherwise.[4] These individuals must own at least 51 percent of thefirm and actually control its operations. To qualify as a small business, a firm must have average annual gross receipts over a 3-year period that do

[4]Firms owned and controlled by those who are not presumed to be socially and economically disadvantaged may qualify for the program if the owner can demonstrate disadvantage. However, no individual whose personal net worth exceeds $750,000 may be considered economically disadvantaged. This amount does not include the individual's interest in the business or equity in a primary residence.

not exceed either (1) the applicable SBA small business size standards[5] or (2) a USDOT-specific cap ($17.4 million).[6] There is no legislative or administrative requirement limiting the length of time firms can participate in the program. However, DBEs become ineligible, or "graduate," when their average annual gross receipts over a 3-year period exceed the applicable SBA small business size standards or the USDOT-specific cap. According to our survey results, most of the states and transit authorities did not have any DBEs graduate in 2000. In addition, about one-quarter of the states and transit authorities we surveyed could not provide this information. States and transit authorities are not required to track this information, and graduation is not a goal of the DBE program. Moreover, as we reported in 1994,[7] because average annual gross receipts do not reliably indicate DBEs' success, graduation is not a useful measure of the success of the program as a whole.

USDOT administers the DBE program through the Office of the Secretary and the Department's operating administrations, including the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA). USDOT develops program policies, instructions, and procedures; reviews and approves states' and transit authorities' DBE program plans; and provides technical assistance, among other things. States and transit authorities must certify that program applicants meet the eligibility criteria, reassess annually the eligibility of certified businesses, and establish overall annual goals for the participation of DBEs in their USDOT-assisted contracts. DBE participation goals are expressed as a percentage of all federal highway and transit funds expended on USDOT-assisted contracts in a fiscal year.

[5]SBA's size standards define the maximum size at which a firm can be considered a small business. The size standards are usually defined by the number of employees or the average annual receipts.

[6]TEA-21 established a cap of $16.6 million, but authorized the Secretary of Transportation to adjust this amount for inflation. In August 2000, USDOT raised this cap from $16.6 million to $17.4 million. Since the change was effective only for the last 2 months of fiscal year 2000, we used the $16.6 million figure when we asked in our questionnaire for fiscal year 2000 data on annual gross receipts.

[7]*Highway Contracting: Disadvantaged Business Program Meets Contract Goal, but Refinements Are Needed* (GAO/RCED-94-168, Aug. 17, 1994).

One of the sources states and transit authorities may use to help set their overall federal DBE participation goals is data derived from disparity studies, which measure the availability of minority- and women-owned businesses compared with their utilization in contracting. States and transit authorities also use disparity studies to support state and local minority business contracting programs. The significance of disparity studies as evidence of discrimination in this context was discussed in a 1989 Supreme Court decision.[8] In *City of Richmond v. J.A. Croson Co.*,[9] the Court held that state and local programs that use race or ethnicity as a factor in apportioning public contracting opportunities are subject to strict scrutiny.[10] This means that the programs must serve a compelling governmental interest and be narrowly tailored—that is, designed to be no broader than necessary—to meet that interest.

[8]This decision does not address state and local governments' implementation of the federal DBE program. Furthermore, several members of the Court stated that, unlike state and local governments, the Congress legislates on a nationwide basis and has inherently broader powers to remedy discrimination. Therefore, the Congress may deserve greater deference than state and local governments. Also, we note disparity studies are not required to support their participation in the federal program.

[9]488 U.S. 469 (1989).

[10]The purpose of strict scrutiny is to ensure that the goal of the program is important enough to warrant treating people differently on the basis of their race or ethnicity and that the means chosen to achieve the goal fit it so closely that there is little or no possibility that an illegitimate prejudice or stereotype is the motive for such different treatment. Programs that use gender as a factor in decision-making are subject to a more lenient standard than those involving race or ethnicity. These programs must be substantially related to the achievement of an important governmental interest.

The Court found that combating racial discrimination is a compelling interest. However, it held that the city had not presented sufficient evidence of discrimination to justify its minority contracting plan. In evaluating the city's evidence, the Court found, among other things, that the city had inappropriately relied on the disparity between the number of prime contracts awarded to minority firms and the minority population of Richmond. It stated that an appropriate disparity evaluation would compare the percentage of qualified minority contractors with the percentage of dollars actually awarded to minority businesses.[11] While courts have favorably cited disparity studies in some cases,[12] many courts have rejected the studies' findings, often because of methodological weaknesses, when considering whether a compelling interest exists for state or local minority contracting programs.[13] These decisions provide varying degrees of guidance on the data and methodology that need to be used in disparity studies to produce reliable evidence of discrimination.

[11]Several members of the Court emphasized that an inference of discrimination could arise from a significant statistical disparity between the number of qualified, willing, and able minority contractors and the number actually engaged to perform a particular service.

[12]*See*, *e.g.*, *Cone Corp. v. Hillsborough County*, 908 F.2d 908 (11th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990) and *Concrete General*, *Inc.* v. *Washington Suburban Sanitary Comm'n*, 779 F. Supp. 370 (D. Md. 1991)(both finding that statistical analyses presented in connection with motions for summary judgment did not suffer from the defects identified by the Supreme Court in *Croson*).

[13]*See*, *e.g.*, *W.H. Scott Construction Co.*, *Inc. v. City of Jackson*, 199 F.3d 206 (5th Cir. 1999)(study did not include an analysis of the availability and utilization of qualified minority subcontractors, the relevant statistical pool for the city's program); *Engineering Contractors Ass'n of South Florida*, *Inc. v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997), *cert. denied*, 523 U.S. 1004 (1998)(marketplace study included the number of licensed construction contractors rather than the number of firms willing, able, or qualified to perform work on county construction contracts and data on certain minority and women contractors did not contain any statistically significant unfavorable disparities after accounting for firm size); *Concrete Works of Colorado*, *Inc. v. City and County of Denver*, 86 F. Supp. 2d 1042 (D. Col. 2000)(studies assumed that all existing firms were available to perform within applicable time constraints and aggregated available minority firms regardless of their size or the services they performed); *Phillips & Jordan*, *Inc. v. Watts*, 13 F. Supp. 2d 1308 (N.D. Fla. 1998)(study assumed that every firm included in selected standard industrial codes was qualified, willing, and able to bid on road maintenance contracts and calculated availability and utilization rates on a statewide basis, even though contracts were let on the district level).

A 1995 Supreme Court decision had a significant impact on the federal DBE program, as well as other federal programs that use race or ethnicity as factors in decision-making. *Adarand Constructors, Inc. v. Pena*[14] involved FHWA's use of a subcontracting compensation clause in direct federal contracting to implement the DBE provision and provisions of the Small Business Act.[15] Adarand Constructors, a nondisadvantaged contractor, initiated the litigation in 1990 after it was denied a subcontract on a federal lands highway project. In 1992, the district court held that the programs at issue were constitutional, and in 1994 the Tenth Circuit Court of Appeals affirmed that decision.[16] In 1995, the Supreme Court set aside the Court of Appeals' decision and sent the case back to the lower courts, directing them to apply the strict scrutiny standard and thus determine whether the programs were narrowly tailored to further a compelling governmental interest. Applying this standard, the district court held that the subcontracting compensation clause and related statutory provisions were unconstitutional in 1997.[17] This decision was the subject of considerable discussion during the congressional debate over the reauthorization of the DBE program as part of TEA-21, which was enacted in 1998.[18]

[14]515 U.S. 200 (1995).

[15]The subcontracting compensation clause provided prime contractors additional compensation for hiring subcontractors certified as small businesses controlled by socially and economically disadvantaged individuals.

[16]*Adarand Constructors, Inc. v. Pena*, 16 F.3d 1537 (10th Cir. 1994); *Adarand Constructors, Inc. v. Skinner*, 790 F. Supp. 240 (D. Colo. 1992).

[17]*Adarand Constructors, Inc. v. Pena*, 965 F. Supp. 1556 (D. Colo. 1997). On appeal, the Tenth Circuit Court of Appeals found that the case was moot since Adarand Constructors had been certified as a DBE after the district court's decision. *Adarand Constructors, Inc. v. Slater*, 169 F.3d 1292 (10th Cir. 1999). However, the Supreme Court held that the case was not moot and directed the Tenth Circuit Court of Appeals to consider the district court's 1997 decision. *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216 (2000).

[18]USDOT believes that the Congress established a compelling governmental interest in the DBE program through the body of evidence that supporters of the program presented during the congressional debate over the program and the subsequent reauthorization of the DBE provision in TEA-21.

Responding largely to the Supreme Court's 1995 decision and congressional debate over the DBE program, USDOT issued regulations in 1999 to ensure that the DBE program is narrowly tailored. In addition, the regulations are designed to ensure nondiscrimination in the award and administration of USDOT-assisted contracts, remove barriers to the participation of DBEs in such contracts, and provide appropriate flexibility to the recipients of federal funds in establishing and providing opportunities to DBEs, among other things. In September 2000, the Tenth Circuit Court of Appeals upheld the constitutionality of the current DBE program because it found that the program served a compelling governmental interest and was narrowly tailored, largely because of structural changes in the program resulting from USDOT's new regulations.[19] Adarand Constructors requested that the Supreme Court review the Court of Appeals' decision in November 2000. In March 2001, the Supreme Court agreed to hear the case.[20]

USDOT's New Regulations Significantly Changed the DBE Program

USDOT's 1999 DBE regulations made significant changes to the DBE program. For example, the new regulations overhauled the program's goal-setting process, including the use of race-neutral measures (e.g., technical assistance) and revised its eligibility requirements. In addition, the new regulations required that states and transit authorities develop bidders lists and unified certification programs, among other things, to make the DBE program more streamlined and efficient. However, 72 percent of the states and transit authorities responding to our survey indicated that the new regulations have made it more difficult for them to administer the program. In addition, over half of the states and transit authorities indicated that the new regulations have made it more difficult for DBEs to apply to the program.

[19] *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147 (10th Cir. 2000). By the time of the Tenth Circuit Court of Appeals' decision, FHWA had discontinued its use of the subcontracting compensation clause.

[20] *Adarand Constructors, Inc. v. Mineta*, 121 S. Ct. 1401, *amended by* 69 U.S.L.W 3670 (U.S. Apr. 13, 2001) (No. 00-730). The Supreme Court will address the following two questions: (1) Did the court of appeals misapply the strict scrutiny standard in determining if Congress had a compelling interest to enact legislation designed to remedy the effects of racial discrimination? and (2) Is USDOT's current DBE program narrowly tailored to serve a compelling government interest?

New Goal-Setting Process Shifts Focus of Program

The new goal-setting process shifted the focus of the program from achieving the maximum feasible extent of DBE participation in USDOT-assisted contracting to achieving a "level playing field"—that is, the amount of participation DBEs would be expected to achieve in the absence of discrimination. For example, under the prior regulations, states and transit authorities were required to justify goals lower than 10 percent—the amount identified in the statutory DBE provision. The regulations established a direct link between the amount of participation identified in the statute and the goals set by states and transit authorities. In contrast, the new regulations require states and transit authorities to base their DBE participation goals on demonstrable evidence of the number of "ready, willing, and able" DBEs available in local markets relative to the number of all businesses "ready, willing, and able" to participate in USDOT-assisted contracts in such markets—representing the level of DBE participation expected in the absence of discrimination.[21]

The regulations outline a two-step process for goal-setting. First, states and transit authorities must establish a base figure that represents the "ready, willing, and able" DBEs in the state or transit authority's market relative to all "ready, willing, and able" firms in that market (i.e., relative availability of DBEs). To determine the relative availability of DBEs, the new regulations require that states and transit authorities use the best available data and suggest that states and transit authorities use DBE directories and Census Bureau data, bidders lists, disparity studies, or the goal of another recipient. Second, states and transit authorities must adjust their base figure to account for other factors affecting DBEs, such as the capacity of DBEs to perform work in USDOT-assisted contracts and findings from disparity studies. According to our survey results, the most common sources used to set states' and transit authorities' fiscal year 2000 participation goals were DBE directories, historical utilization patterns, Census Bureau data, and bidders lists. Under the new goal-setting process, the average DBE participation goal decreased from 14.6 percent in fiscal year 1999 to 13.5 percent in fiscal year 2000.

[21]According to the new regulations, the 10-percent goal established in TEA-21 is an aspirational goal at the national level that USDOT will use as a means of evaluating the overall performance of the DBE program nationwide; however, it is not tied to individual states and transit authorities and does not require that states and transit authorities set a 10-percent goal.

The new regulations also require that states and transit authorities meet the maximum feasible portion of their overall DBE goals using race-neutral measures rather than race-conscious measures. The prior regulations did not require the use of race-neutral measures (e.g., outreach and technical assistance), which are designed to increase contracting opportunities for all small businesses, and do not involve setting specific goals for the use of DBEs on individual contracts. A race-conscious measure is one that is focused solely on assisting DBEs. An example of a race-conscious measure is a contract goal—that is, a DBE participation goal set for a specific contract or project. While quotas are prohibited and set-asides are allowed only in the most extreme cases of discrimination, states and transit authorities must use contract goals to meet any portion of their overall goals they do not expect to meet using race-neutral measures.[22] States and transit authorities must submit their overall DBE participation goals, including the methodology used to set the goals and the projected use of race-neutral and race-conscious measures, to USDOT for approval on an annual basis. The states and transit authorities we surveyed indicated that, on average, they used race-neutral measures to achieve slightly over one-third of their overall DBE participation goals in fiscal year 2000.

New Eligibility Requirement Focuses on Owners' Personal Wealth

The new regulations established a personal net worth cap for individuals whose ownership and control of a business determines DBE eligibility. According to USDOT, this new eligibility requirement is designed to ensure that the program is limited to firms owned and controlled by genuinely disadvantaged individuals. Prior to the new regulations, the absence of a limit on personal net worth led to criticism that wealthy individuals could benefit from the program. Under the new regulations, to qualify as economically disadvantaged, individuals who own and control DBEs must have a personal net worth that does not exceed $750,000. USDOT chose the $750,000 cap because it is a well-established standard for the SBA's programs. According to our survey results, the number of firms that exceeded this limit and became ineligible for the DBE program in fiscal year 2000 ranged from 0 in 14 states and transit authorities to 39 in 1 state. Twenty-two percent of the states and transit authorities we surveyed reported that this information was not available.

[22]To the extent that race-conscious measures are no longer needed to achieve overall goals, states and transit authorities must discontinue their use.

New Regulations Include Other Requirements to Improve the DBE Program

The new regulations include other changes designed to improve the effectiveness and efficiency of the DBE program. For example, states and transit authorities are now required to create and maintain a bidders list, which is a record of all firms that bid on prime and subcontracts for USDOT-assisted projects. The list must include each firm's name, its status as a DBE or non-DBE, its years in operation, and its annual gross receipts.[23] The list is intended to count all firms that are participating, or attempting to participate in USDOT-assisted contracts; however the regulations do not specify how often the bidders list must be updated, for example, to ensure that firms no longer available are removed from the list. USDOT believes that the bidders list is a promising tool for states and transit authorities to accurately measure the relative availability of "ready, willing, and able" DBEs when setting their DBE goals. Sixty percent of the states and transit authorities we surveyed reported that they are in the process of developing or implementing their bidders lists while 27 percent indicated that their lists are fully implemented. Eight percent of the states and transit authorities reported that they had not yet started developing their bidders lists. The remaining 5 percent of the states and transit authorities reported that their bidders lists were in some other stage of development.

[23]USDOT issued an interim final rule in November 2000, specifying that states and transit authorities could collect annual gross receipts information from firms in ranges rather than exact figures.

Another change designed to improve the efficiency of the DBE program is the requirement that states and transit authorities develop and participate in a unified certification program (UCP). A UCP provides "one-stop shopping" for DBEs because it makes all DBE certification decisions within a state. All recipients within a state must honor the certification decisions of the UCP. Prior to the new regulations, DBEs often had to obtain separate certifications from multiple recipients within one state. For example, in California there were about 60 certifying agencies throughout the state. Under the new regulations, DBEs will have to be certified by only one agency to participate in the DBE programs administered by all recipients in that state. By March 2002, the state DOT and all transit authorities within each state must sign an agreement establishing the UCP for that state and submit an implementation plan to USDOT for approval. The UCP must be fully operational no later than 18 months after USDOT approves the plan. The majority of the states and transit authorities (72 percent) we surveyed indicated that their UCPs were in some stage of development or implementation while 7 percent indicated that their UCPs were fully implemented; 14 percent reported that they had not yet started to develop their UCPs; and the remaining 6 percent noted that their UCPs were in some other stage of development.[24]

New Regulations Make Application to and Administration of the DBE Program More Difficult

Fifty-four percent of the states and transit authorities we surveyed indicated that the new regulations had made it somewhat or much more difficult for DBEs to apply to the DBE program. This view could be attributable to the requirement for additional documentation that DBEs must now submit—specifically, documentation of the personal net worth of the individuals who own and control the firms. Furthermore, when states and transit authorities were asked to identify barriers to firms' participation in the DBE program, the two most common barriers cited were (1) reluctance to provide personal information and (2) the time required for certification paperwork. Despite these problems, most states and transit authorities (58 percent) indicated that they believe the benefits to firms participating in the DBE program outweigh any costs.

[24]Percentages do not add to 100 percent because of rounding.

In addition, states and transit authorities reported that the new regulations made it more difficult to administer the program. For example, 59 of 82 states and transit authorities we surveyed reported that the new regulations had made it somewhat or much more difficult to administer the DBE program while 9 states and transit authorities indicated that the new regulations had made it easier to administer the program.[25] Fourteen states and transit authorities reported that there was no change or they had no basis to judge. It is not surprising that most states and transit authorities reported that the new regulations made it more difficult to administer the DBE program, since the new regulations required that they completely overhaul their DBE goal-setting process and collect more information from DBEs and non-DBEs.

One source of frustration for states and transit authorities appears to be the process for developing and approving the new DBE program plans. The new regulations required that states and transit authorities develop and submit plans for fiscal year 2000 that reflected the requirements and changes under the new regulations to USDOT by August 31, 1999—about 6 months after the effective date of the new regulations. During the approval process, USDOT sometimes sent the DBE plans back to states and transit authorities multiple times for revisions and clarifications.[26] One state noted that even after it had worked closely with USDOT's local office to develop its plan, USDOT headquarters twice rejected the plan. On average, it took USDOT 8 months to approve the 2000 DBE plans. According to our survey results, one state and seven transit authorities reported that their 2000 DBE plans had yet to be approved.

Limited Data Are Available on the Characteristics of DBEs and Non-DBEs

A lack of key information prevents anyone from gaining a clear understanding of firms that participate in the DBE program and how they compare with the rest of the transportation contracting community. For example, we cannot use the information provided by the states and transit authorities we surveyed to calculate the total number of certified DBEs nationwide because of duplication in the states' and transit authorities' DBE directories. In addition, almost two-thirds of our survey respondents could not provide information on the annual gross receipts of DBEs or the personal net worth of the individuals who own and control DBEs—

[25]One survey respondent did not answer this question.

[26]According to USDOT, the plans were reviewed to ensure that they met legal requirements.

information that is used to determine firms' eligibility for the program but is not reported to USDOT and was not readily available. Furthermore, almost 95 percent of the states and transit authorities we surveyed could not provide information on the annual gross receipts of non-DBEs and none could provide information on the personal net worth of the individuals who own and control non-DBEs. While financial information on DBEs and non-DBEs is lacking, most states and transit authorities could provide some other type of information on DBEs, such as the total number of prime contracts awarded to DBEs—information that is regularly reported to USDOT. These data indicate, among other things, that DBEs received about 7 percent of the prime contracts awarded and 2 percent of the federal dollars awarded for prime contracts in fiscal year 2000.

Duplication and Data Problems Preclude Thorough Analysis of the DBE Community

We cannot calculate the total number of certified DBEs nationwide because of duplication in states' and transit authorities' DBE directories. States and transit authorities are required to maintain DBE directories that list all the DBEs they have certified.[27] However, DBEs can be certified in multiple locations. For example, a DBE may be certified by Virginia, Maryland, Pennsylvania, and the District of Columbia. Unlike the SBA's Small and Disadvantaged Business program, which gives a unique identification number to each certified small and disadvantaged business, the DBE regulations do not require states and transit authorities to assign unique identifiers to certified DBEs. As a result, a DBE certified with four states would be listed in four different DBE directories. Because of this duplication, aggregating the number of certified DBEs listed in states' and transit authorities' DBE directories would significantly overstate the number of firms certified. While we cannot provide the total number of certified DBEs nationwide, our survey results indicate that the number of certified DBEs per state and transit authority varies greatly. For example, in fiscal year 2000, the number of certified DBEs per state or transit authority ranged from 39 in the state of Maine[28] to 3,350 in the Metropolitan Atlanta Rapid Transit Authority, with an average of 551 per state and transit authority.

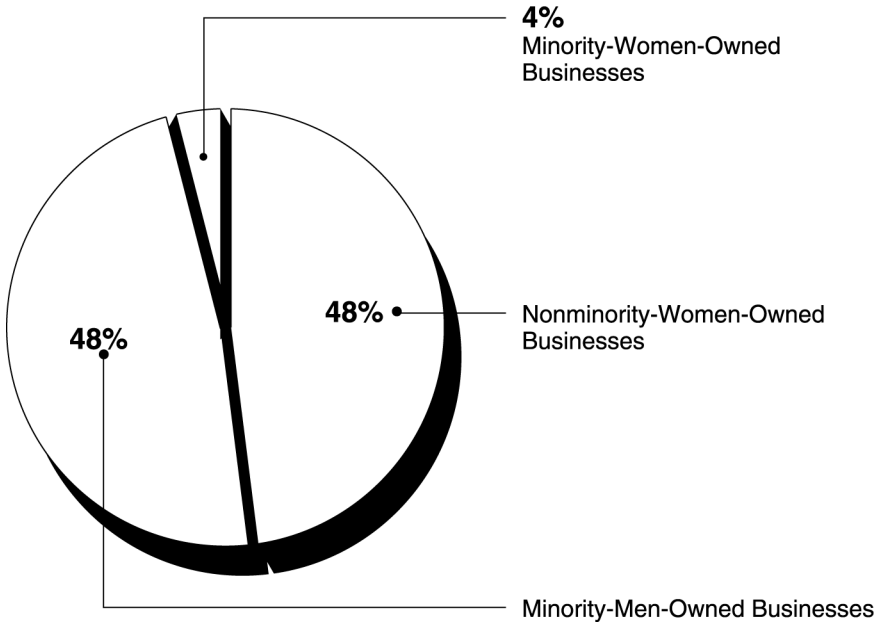
[27]The DBE directories must be updated at least annually.

[28]The Metropolitan Transit Authority of Harris County (Houston, Texas) reported that it had no certified DBEs in 2000. According to USDOT, the Metropolitan Transit Authority has a DBE program, with a goal intended to be met with all race-neutral participation, but does not certify firms itself.

Although FHWA could provide information on the demographics of DBEs that obtain highway contracts, FTA could not provide comparable data. As a result, the demographics of the entire DBE community are unknown. FHWA's data on DBE participation indicate that nonminority-women-owned businesses obtain a significant portion of contracts. Prior to 1987, states and transit authorities could not generally count contracts with nonminority-owned businesses toward DBE goals. The Surface Transportation and Uniform Relocation Assistance Act of 1987 included nonminority-women-owned businesses in the statutory definition of socially and economically disadvantaged individuals and thus allowed states and transit authorities to use contracts with both minority- and nonminority-women owned businesses to meet their DBE goals. According to FHWA's data, nonminority-women-owned businesses have become one of the most competitive groups in the DBE community since 1987. For example, in 1999 (the latest year for which these data are available), nonminority-women-owned businesses accounted for about 48 percent of all federal highway contract dollars awarded to DBEs; minority-owned businesses (those owned by both men and women) combined accounted for about 52 percent. (See fig. 1.) FTA was unable to provide reliable data on the demographics of the DBEs that were awarded federal transit contracts, even though transit authorities must provide this information to FTA on a quarterly basis.[29] According to FTA, it does not centrally compile this information.

[29]States and transit authorities must submit certain information about DBEs to USDOT on a quarterly basis, such as number of firms awarded prime and subcontracts, the ethnicity of the firms' owners, and the type of work the firms perform.

Figure 1: Percentage of Federal Highway Contract Dollars Awarded to DBEs, Fiscal Year 1999



Source: FHWA.

Data Are Available to Calculate Participation Rate of DBEs in Prime Contracts but Are Limited for Subcontracts

The majority of the states and transit authorities we surveyed (78 percent) provided sufficient data—that is, the number and value of prime contracts awarded to DBEs and non-DBEs—to determine DBEs' participation rates in prime contracts.[30] According to the data we obtained from these states and transit authorities, DBEs received about 7 percent of the prime contracts awarded and 2 percent of the federal dollars awarded for prime contracts in fiscal year 2000. In comparison, about 70 percent of the states and transit authorities could not provide both the number and value of subcontracts awarded to DBEs and non-DBEs—information necessary to calculate DBEs' participation rates in subcontracts. Because DBEs are small businesses and are more likely to compete for subcontracts, which generally require fewer resources (e.g., capital, equipment, and employees) than prime contracts, the lack of subcontracting data prevents anyone from

[30]We measured DBEs' participation rates in USDOT-assisted contracts using both the number and value of the prime and subcontracts awarded.

gaining a complete understanding of DBEs' participation in transportation contracting. The data provided from about one-third of the states and transit authorities indicate that DBEs received about 33 percent of all subcontracts awarded and 26 percent of the federal dollars awarded through subcontracts in fiscal year 2000. However, because this information is based on a small number of states and transit authorities, it may not be representative and therefore should not be generalized to the entire DBE community.

The participation rates of DBEs in both prime and subcontracts in fiscal year 2000 indicate that they received a relatively small percentage of federal prime and subcontracts and dollars when compared with non-DBEs. However, we do not know whether the percentage is disproportionately low. Such a determination cannot be made without an accurate measure of the availability of DBEs—that is, the number of DBEs "ready, willing, and able" to participate in prime and subcontracts compared with the number of non-DBEs.

Financial Profile of DBEs Cannot Be Determined With Current Data

The majority of states and transit authorities responding to our survey could not provide information on the annual gross receipts of DBEs. Specifically, 60 percent of these states and transit authorities could not provide information on the annual gross receipts of the DBEs that were awarded prime or subcontracts in fiscal year 2000. Furthermore, 75 percent of the states and transit authorities could not provide information on the annual gross receipts of the DBEs that were not awarded prime or subcontracts in fiscal year 2000. While the annual gross receipts of a DBE are required to determine the firm's eligibility for the program, this information is not reported to USDOT. The primary reason survey respondents cited for not being able to provide the information was that the information is not in an electronic database and therefore would be difficult and time-consuming to compile. The information that was provided from a limited number of states and transit authorities indicates that most DBEs' annual gross receipts are below $5 million—well below the current USDOT-specific cap of $17.4 million. Furthermore, 85 percent of the DBEs awarded contracts in fiscal year 2000 had annual gross receipts of less than $5 million. In comparison, 94 percent of the DBEs that did not receive a contract in fiscal year 2000 had annual gross receipts of less than $5 million. However, because this information is based on only a small percentage of the states and transit authorities we surveyed, it may not be representative and therefore should not be generalized to the entire DBE community. (For more detailed information see app. II.)

The majority of the states and transit authorities we surveyed could not provide information on the personal net worth of the individuals who own and control DBEs. Specifically, about 65 percent of the states and transit authorities indicated that they could not provide information on the personal net worth of the owners of DBEs that were awarded prime contracts in fiscal year 2000. Sixty-seven percent of the states and transit authorities reported that they could not provide information on the personal net worth of the owners of DBEs that were awarded subcontracts in fiscal year 2000. In addition, 81 percent of the states and transit authorities indicated that they could not provide information on the personal net worth of the owners of DBEs that were not awarded prime contracts in fiscal year 2000. Seventy-eight percent of the states and transit authorities indicated that they could not provide information on the personal net worth of the owners of DBEs that were not awarded subcontracts in fiscal year 2000. Similar to the information on a firm's annual gross receipts, personal net worth information is required to determine a firm's eligibility for the program but is not reported to USDOT. Since this eligibility requirement was introduced in the new regulations, states and transit authorities are just starting to collect this information.[31] Over 60 percent of the states and transit authorities indicated that they could not provide this information because it is not electronically maintained and therefore would be difficult and time-consuming to compile and report.

The information that was provided from a limited number of states and transit authorities indicates that over half of the DBEs that received prime and subcontracts in fiscal year 2000 had owners whose personal net worth was less than $250,000. Additionally, the data indicate that the personal net worth of the owners of DBEs receiving prime contracts was higher than the personal net worth of the owners of DBEs receiving subcontracts. However, because this information is based on the responses of a small percentage of all states and transit authorities, it may not be representative and therefore should not be generalized to the entire DBE community. (For more detailed information see app. II.)

[31]According to the regulations, firms applying to the DBE program must provide a signed and notarized statement of personal net worth from the individuals whose net worth is used to determine the firms' DBE eligibility. Firms that were participating in the program before the effective date of the new regulations (Mar. 1999) would have to submit the information the next time they applied for recertification, which occurs every 3 years. Hence, information on personal net worth may not be collected from all DBEs until fiscal year 2002.

Lack of Data Prevents a Financial Profile of Non-DBEs

Currently, the financial status of DBEs cannot be compared with that of the transportation contracting community as a whole because most states and transit authorities do not collect or maintain financial information on non-DBEs. For instance, over 90 percent of the states and transit authorities responding to our survey could not provide information on the annual gross receipts of non-DBEs. The primary reason for not being able to report the information was not having it in an electronic database. The new regulations require states and transit authorities to collect information on the annual gross receipts of the non-DBEs that bid on their USDOT-assisted contracts. This information is to be included in the states' and transit authorities' bidders lists. According to USDOT, states and transit authorities have expressed concern about their ability to collect this information because non-DBEs have been reluctant to share this information.

No survey respondent could provide information on the personal net worth of the owners of non-DBEs that were awarded prime or subcontracts in fiscal year 2000. The majority of the states and transit authorities (61 percent) indicated that they do not currently collect this information or plan to do so in the future. Only 8 percent reported that they plan to collect this information in the future. States and transit authorities are not required to collect information on the personal net worth of the owners of non-DBEs.

Information on Discrimination and Other Barriers That May Limit DBEs

There are numerous sources that could contain information relevant to whether discrimination limits the ability of DBEs to compete for USDOT-assisted contracts, including studies of lending, bonding, and business practices affecting the formation and competition of minority firms; state and local disparity studies; discrimination complaints; and relevant court cases. We focused our review on court cases involving the federal DBE program since the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Pena*, transportation-specific disparity studies published between 1996 and 2000; and written complaints of discrimination filed by DBEs with states, transit authorities, and USDOT. We focused on these sources because they are directly related to transportation contracting and the federal DBE program. However, we did not address whether the DBE program satisfies the requirements of strict scrutiny and is therefore constitutional. In our review, we found the following:

- The courts that have considered the constitutionality of the federal DBE program under the standard articulated in the Supreme Court's 1995 decision in the Adarand case have concluded that discrimination adversely affects DBEs.
- All 14 studies we reviewed found that there were disparities between the availability and utilization of minority- and women-owned business enterprises (MBE/WBEs) in transportation contracts.[32] Taken as a whole, these studies suggest that disparities exist. However, none provide reliable evidence of disparity because the limited data used to calculate disparities, compounded by methodological weaknesses, create significant uncertainties about the studies' findings—that is, they could result in either an overstatement or an understatement of MBE/WBEs' availability and utilization.
- USDOT does not systematically track information on the discrimination complaints filed by DBEs—information that could shed light on the existence of discrimination against DBEs.

In addition, a number of factors are often cited by agency officials and representatives from both industry and minority associations as limiting DBEs' ability to compete for contracts. These factors include a lack of working capital and limited access to bonding. However, there was little agreement among the officials we contacted about whether these factors are attributable to discrimination or are barriers that all small businesses face.

[32]Two studies did not have enough data to perform a statistically valid disparity ratio analysis of transportation-specific contracts, and instead conducted disparity analyses of contracts awarded by several agencies including the transportation agencies. Several studies analyzed disparity separately within sub-groups of MBE/WBEs. Disparity was found in at least one subgroup, but not in all of them.

Courts Have Found Sufficient Evidence of Discrimination to Justify the Federal DBE Program

In order to uphold a program, such as the federal DBE program, that uses race or ethnicity as a criterion for decision-making, a court must find sufficient evidence of discrimination to conclude that the program serves a compelling governmental interest. Therefore, cases considering the constitutionality of the federal DBE program can indicate whether discrimination adversely affects DBEs' participation in transportation contracting. The courts that have addressed the DBE program under the standard articulated by the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Pena* (discussed on page 13 of this report) have found that the evidence of discrimination presented was sufficient for them to conclude that the program serves a compelling governmental interest, specifically, remedying the effects of discrimination against DBEs.[33]

Most recently, in its review of the DBE program in *Adarand*, the Tenth Circuit Court of Appeals concluded that discrimination adversely affects both the formation of qualified minority subcontracting businesses and their ability to successfully compete for highway construction subcontracts.[34] On the basis of the evidence presented,[35] the court found

[33]Several additional challenges to the constitutionality of the DBE program are in various stages of litigation. In addition, in 1996, a district court in Texas concluded that the DBE program of the Metropolitan Transit Authority of Harris County was unconstitutional and called into question the constitutionality of the federal DBE program as well. See *Houston Contractors Ass'n v. Metropolitan Transit Authority of Harris County*, 993 F. Supp. 545 (S.D. Tex. 1997). The court did not, however, assess whether the programs served a compelling governmental interest. The Fifth Circuit Court of Appeals set aside the district court's decision and sent the case back to the district court for further review.

[34]As discussed earlier, the Tenth Circuit Court of Appeals reversed a 1997 district court decision finding that the subcontracting compensation clause and DBE provision were unconstitutional. The district court had found that the programs at issue served a compelling interest, but were not narrowly tailored. The district court's findings regarding discrimination were adopted by another district court addressing a constitutional challenge to the DBE provision, the Department of Transportation's implementing regulations, and the state of Minnesota's federal DBE program. In that case, the district court found that the DBE program satisfied the first element of strict scrutiny on the basis of the district court's 1997 decision in *Adarand*. However, as in *Adarand*, the court concluded that the program was not narrowly tailored to serve the identified compelling interest. See *In re: Sherbrooke Sodding*, 17 F. Supp. 2d 1026 (D. Minn. 1998).

[35]Throughout its decision, the court referred to the congressional investigations, hearings, statistical and anecdotal evidence, and other studies cited in a 1996 Department of Justice review entitled "The Compelling Interest for Affirmative Action in Federal Procurement," 61 Fed. Reg. 26050 (1996). As a preliminary matter, the court found that the federal government need not be as geographically limited as states and local governments in remedying the effects of discrimination in markets created by the disbursement of federal funds.

that discrimination by prime contractors, unions, and lenders impedes the formation of qualified minority businesses in the subcontracting market nationwide. The court also acknowledged the causal link between the availability of capital and the ability to implement public works construction projects and found that the studies cited by the government strongly supported a finding of discrimination in lending. For example, it cited a survey of 407 business owners in the Denver area that found significant differences in the loan denial rate for white, African-American, and Hispanic business owners, even after controlling for other factors like size and net worth.

The court also addressed barriers to competition by existing minority businesses. Citing congressional hearings and statistical evidence, among other things, the court found that minority businesses are often excluded by business networks of prime and subcontractors from opportunities to bid on construction projects. The court also discussed bonding requirements, finding another barrier to competition. For example, it cited a Louisiana study finding that minority firms were nearly twice as likely to be rejected for bonding; three times more likely to be rejected for bonding in amounts over $1 million; and, on average, charged higher rates for the same bonding policies than white firms with the same experience. Similarly, the court accepted evidence of suppliers' withholding price discounts from minority subcontractors, thus driving up their bids. In light of this evidence, the court rejected Adarand Constructors' argument that minority businesses face the same problems as all new businesses, regardless of the race of the owners.

Finally, the court considered disparity studies conducted by state and local governments.[36] In doing so, the court accepted the government's finding, based on a review of disparity studies, that minority construction subcontracting firms received 87 cents for every dollar that they would be expected to receive given their availability. The court also acknowledged the potential for weaknesses in the data and methodology used in disparity studies and stated that particular evidence undermining the reliability of specific studies would be relevant to a determination regarding discrimination. However, it noted that Adarand Constructors had not provided it with evidence undermining the studies' reliability.[37] Furthermore, the court found that Adarand Constructors had failed to introduce credible, specific evidence to refute the government's showing of a compelling interest.[38] As a result, it held that there was sufficient evidence of discrimination to justify the use of racial and ethnic criteria in transportation contracting.

[36]Although states and local governments do not conduct disparity studies to justify the federal DBE program, the Department of Justice review stated that disparity studies conducted by states and local governments throughout the country in connection with their own programs are of particular relevance to affirmative action measures in federal programs providing grants to such entities.

[37]The court acknowledged the need for studies to take into account the special qualifications needed to undertake the task at issue. However, the court stated that it was unaware of such qualifications, aside from the general qualifications necessary to operate a construction contracting business, and that the record was without evidence that the subcontractors who had been utilized had performed inadequately or otherwise demonstrated a lack of necessary qualifications.

[38]The court also "[took] notice" of evidence of the link between the discontinuance of a race-conscious program and minority business participation in the relevant market. The court stated that this evidence supported the claim of discriminatory barriers to participation by minority contractors.

Data and Methodological Weaknesses Limit the Findings of Transportation-Specific Disparity Studies

Fourteen recent, transportation-specific disparity studies[39] concluded that disparities existed between the utilization of MBE/WBEs in transportation contracts and availability of these firms in the marketplace.[40] Numerous state and local governments have used disparity studies to support their minority contracting programs and in setting their federal DBE goals. For example, about 30 percent of the states and transit authorities we surveyed reported that they used a disparity study to help set their fiscal year 2000 DBE participation goals. However, our review of the 14 disparity studies found that the limited data used to calculate disparities, compounded by methodological weaknesses, create uncertainties about the studies' findings.[41] Rather than discuss the limitations of each study specifically, we have chosen to discuss some of the more common problems we found. While not all studies suffered from every problem, each suffered from enough problems to make its findings questionable. We recognize that there are difficulties inherent in conducting disparity studies and that such limitations are common to social science research; however, the disparity studies we reviewed did not sufficiently address such problems or disclose their limitations. It is not clear what conclusions a court would draw about the studies' findings.

The studies we reviewed relied on a disparity ratio—that is, a comparison of the availability of MBE/WBEs to their utilization in contracts—as an

[39]We defined recent, transportation-specific disparity studies as studies published between 1996 and 2000 containing a separate disparity analysis on transportation contracting.

[40]We chose to review transportation-specific disparity studies published between 1996 and 2000, in part, because the new DBE regulations recommend that any disparity study relied on in the DBE goal-setting process should be as recent as possible and focused on the transportation contracting industry. We reviewed two additional transportation-specific studies published between 1996 and 2000 that examined minority- and women-owned business procurement. One of these studies did not use a traditional disparity ratio and thus is not included in our discussion. However, we did review the study and found that it contained methodological weaknesses that create uncertainties about its findings. The other study was considered a work in progress and thus was not included in our discussion. Both of these studies used new approaches to identify barriers to full and active MBE/WBE participation. For example, one study disaggregated the procurement process into discrete components to determine if any individual procurement practice negatively affects MBE/WBEs. USDOT has not conducted any disparity studies or any other type of analysis examining discrimination in federal transportation contracting because it believes such studies or analyses are not needed to justify the federal DBE program.

[41]Because our review of transportation-specific disparity studies was limited, our conclusions cannot be generalized to disparity studies as a whole. Moreover, the findings in any disparity study would be limited to the geographical scope of that particular study.

indicator of discrimination. However, the data necessary to properly calculate such ratios—complete and accurate lists of MBE/WBEs' availability and utilization—are often lacking. An availability list should include all qualified, willing, and able firms in the relevant market area, grouped by industry subspecialties and by MBE/WBE or non-MBE/WBE status. A utilization list should include all firms in the relevant market area that were awarded prime and subcontracts, grouped by industry subspecialty and MBE/WBE or non-MBE/WBE status. Because these data are often lacking, some proxies (i.e., substitute information) have been used to calculate disparity ratios.

To develop proxies of availability, the disparity studies we reviewed used sources including Census Bureau data, directories or other listings of firms, prequalification lists,[42] and/or bidders lists. These could be useful data sources. However, all of these data sources have shortcomings, whether used separately or in combination, that must be taken into account when using them as proxies for availability. Such shortcomings would result in availability lists that could either under- or overstate the number of firms available for transportation contracting. The limitations of using these data sources as proxies for availability include the following:

- Census Bureau data cannot adequately indicate whether a firm is truly available, that is, whether it has the qualifications, willingness, or ability to complete contracts. However, in using Census Bureau data, the studies depicted all operational firms as available for contracting. Some studies attempted to account for the qualifications of firms by including only firms in the relevant two-digit Standard Industry Classification (SIC) codes in their availability lists.[43] Using a finer degree of distinction (e.g., classification by the four-digit SIC code level) would help to ensure that firms are similar enough for comparison. For example, some studies used the two-digit SIC code for heavy construction, a category that includes firms as diverse as general contractors for highway construction and general contractors for radio tower construction.

[42]A prequalification list, sometimes referred to as a precertification list, includes all firms that have been prequalified by states or transit authorities to compete for contracts.

[43]SIC codes are used to identify companies by their primary business activity. The activity is determined by the major product produced or service rendered. The coding system consists of major industries that are further divided into a multitude of minor groups identified by a four-digit SIC code.

- Directories and other listings do not contain information on firms' qualifications, willingness, or abilities. This could result in an overstatement of how many firms are available for transportation contracting. In addition, some of the data obtained from directories and listings were inaccurate. For example, some of the disparity studies we reviewed indicated that as many as 16 percent of the firms included in the directories and listings were unreachable because of such problems as disconnected telephones, wrong telephone numbers, incorrect addresses, or dissolution of the firms.
- Prequalification and bidders lists may be better sources of availability than Census Bureau data or directories because they better approximate firms' qualifications, willingness, and ability to compete for contracts. However, the mechanisms used by states and transit authorities to compile them may limit their reliability. In the studies we reviewed, we found four problems. First, some studies we reviewed used bidders and prequalification lists that were updated infrequently or had no mechanism to ensure that firms no longer available were removed from the list. For example, one study used a list that never removed firms, increasing the risk that it contained firms no longer in business in the relevant market area. Second, some studies we reviewed used bidders or prequalification lists that were maintained for multiple city agencies, ranging from school districts to port authorities. Businesses qualified to perform school district work may not be qualified to perform port authority work. Third, the lists grouped all potential firms together, failing to take into account their industry subspecialty and capacity. Because of these problems, availability lists based on this information would overstate the number of firms that were qualified, willing, and able to perform transportation contracts. Finally, prequalification and bidders lists could under represent capable firms. Firms may refrain from participating because of perceived or actual barriers. For example, one study we reviewed surveyed firms and found that only 22 percent of those firms that expressed an interest in contracting with the transit agency had actually attempted to obtain such work in the past.

The disparity studies we reviewed made few efforts to mitigate the problems with using these data sources as proxies for availability, nor did they disclose the limitations of their use. For example, the disparity studies did not sufficiently account for the lack of information on firms' qualifications when the availability lists were developed. One aspect of a firm's qualifications is its capability to handle transportation contracting. Some studies used average yearly revenue as a proxy for capability.

However, revenue does not adequately explain the differences in firms' capability. For example, two firms could have similar yearly revenues, but one firm might have performed 100 small contracts throughout the year because it did not have the capacity to perform large contracts, whereas the second firm might have performed two very large contracts. If revenue were used as a proxy for capability, these two firms would be considered equivalent.

In addition to determining the availability of firms, disparity studies must measure the utilization of MBE/WBEs to determine if disparities in contracting exist. This requires an analysis of both the number and dollar amount of contracts awarded to MBE/WBEs and non-MBE/WBEs. Such measurement is difficult because some states and transit authorities have incomplete records of the prime and subcontracts they have awarded. For example, several studies we reviewed did not include any analyses of subcontracting and therefore may understate the utilization of firms. Because MBE/WBEs are more likely to be awarded subcontracts than prime contracts, MBE/WBEs in particular may appear underutilized when the focus remains on prime contractor data. Furthermore, although some studies did include calculations based on the number of contracts, all but two based their determination of disparities on only the dollar amounts of contracts. Because MBE/WBEs tend to be smaller than non-MBE/WBEs, they are often unable to perform larger contracts. Therefore, it would appear that they were awarded a disproportionately smaller amount of contract dollars. A more complete indicator of utilization would consider both the dollar amount and the number of contracts awarded or to control for differences in contract dollar amounts.

USDOT Has Not Provided Criteria for Reliability of Disparity Studies Used to Set DBE Goals

In March 2001, USDOT advised states and transit authorities that disparity studies used to set their DBE participation goals should be reliable. While pointing out that all or part of a disparity study pertaining to a local market area could provide a rich source of information for the goal-setting process, USDOT did not explain how states and transit authorities could evaluate the reliability of such studies. USDOT's guidance does not, for instance, caution against using studies that contain the types of data and methodological problems that we identified above. Without explicit guidance on what makes a disparity study reliable, states and transit authorities risk using studies that may not provide accurate information in setting their DBE goals.

Data on Written Discrimination Complaints Are Inconclusive

USDOT receives written complaints of discrimination from DBEs but does not systematically track or analyze information on these complaints.[44] As a result, this information is not readily available to shed light on the absence or presence of discrimination against DBEs. USDOT could not provide the total number of written complaints filed by DBEs for two reasons. First, while USDOT's Office of Civil Rights (DOCR) records the complaints and assigns identification numbers before routing them to FTA or FHWA for investigation, DOCR's records may not include complaints filed directly with those agencies. Second, DBEs may file complaints of discrimination under the DBE regulations or regulations issued under title VI of the Civil Rights Act of 1964; however, DOCR does not record which title VI complaints are filed by DBEs. Similarly, FTA does not separately track the title VI complaints filed by DBEs. Because of these two problems, information provided by USDOT would likely understate the number of complaints of discrimination filed by DBEs.

In addition, USDOT could not provide the total number of investigations launched as a result of the written discrimination complaints filed by DBEs or information on the outcomes of these investigations. In order to determine whether the discrimination complaints filed by DBEs have merit, the number of investigations launched and the outcomes of the investigations are critical pieces of information. USDOT officials stated they do not track the number of investigations of written discrimination complaints filed by DBEs or the number of times discrimination was found through their investigations. To gather this type of information, USDOT officials stated one would need to go through each case file individually—nearly 100 over the last several years, not including title VI complaints.

We also asked the states and transit authorities we surveyed about written discrimination complaints filed by DBEs in fiscal years 1999 and 2000. Eighty-one percent of the respondents reported that they had not received any written discrimination complaints filed by DBEs during this period. Nineteen percent of the states and transit authorities reported that they had received a total of 31 written discrimination complaints filed by DBEs in 1999 and 2000. Of the 31 complaints filed, 29 had been investigated. Four of these investigations resulted in findings of discrimination. While the number of complaints filed by DBEs with states and transit authorities may seem low, it is important to note that DBEs that believe they have been the

[44]We did not review USDOT's response to individual written complaints of discrimination.

victims of discrimination have several options and may have elected to pursue action elsewhere. For example, a DBE could file a complaint with the responsible state or transit authority, USDOT, and/or the courts. In addition, USDOT officials stated that the number of written discrimination complaints filed (at any level) probably understates the level of discrimination for two reasons. Specifically, DBEs may choose not to file complaints because they believe the process is too time-consuming or burdensome or because they fear retribution (i.e., they would be denied future work).

Other Barriers May Limit DBEs' Ability to Compete for Contracts

Other factors may also limit the ability of DBEs to compete for USDOT-assisted contracts. However, there was little agreement among the officials we spoke with as to whether these factors are due to discrimination or the nature of small businesses. According to our survey results, 80 percent of the states and transit authorities responding had not conducted any type of analysis on this subject.[45] In addition, neither USDOT, nor SBA, nor the industry groups we contacted had conducted any type of study on factors that may limit the ability of DBEs to obtain contracts.[46] The industry officials we spoke with often cited such factors as contract bundling; limited access to bonding, working capital, and credit; and prequalification requirements.

The most common factors cited as limiting DBEs' ability to compete for contracts are a lack of working capital and limited access to credit and bonding. For example, according to an association representing small minority-owned businesses, DBEs frequently lack the capital needed to finance jobs without drawing on credit and are denied credit because they lack sufficient cash flow. Since these factors are widely perceived as limiting the ability of DBEs to compete for contracts, USDOT has established a number of services, including short-term lending and bonding assistance, to help overcome these barriers.

[45]Eight of the 17 states and transit authorities that had conducted such analyses reported that the analyses were included in their disparity studies.

[46]The 1996 Department of Justice review contained information on these factors.

Another factor often cited as a barrier to DBEs' ability to compete for contracts is contract bundling. Contract bundling is the consolidation of two or more procurement requirements previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract.[47] The resulting contract is likely to be unsuitable for award to small businesses, such as DBEs, because of (1) the diversity, size, or specialized nature of the elements of the performance specified; (2) the aggregate dollar value of the anticipated award; (3) the geographic dispersion of contract performance sites; or (4) any combination of these three factors. USDOT officials stated that they believe contract bundling is one of the largest barriers for DBEs in competing for transportation contracts. GAO recently reported that there is limited government-wide data on the extent of contract bundling and its effect on small businesses.[48]

Prequalification requirements are also cited as a barrier for DBEs. Most states require that firms competing for prime contracts be prequalified, meaning they must prove to the state that they are capable of performing contracts. For example, firms must show that they have an adequate line of credit and are bonded. According to USDOT officials, these requirements can hurt DBEs because the firms may not have the working capital and access to credit required for prequalification.

Impact of the DBE Program

Several measures could be used to help determine the impact of the DBE program. TEA-21 directed us to analyze:

- the impact of the DBE program on costs, including the costs of administering the program;
- the impact of the DBE program on competition and the creation of jobs; and
- the impact of discontinuing federal or non-federal DBE programs on DBEs.

[47]A similar concept is contract consolidation. Contract consolidation occurs when agencies combine existing contracts into fewer contracts as a means of streamlining as well as reducing procurement and contract administration costs.

[48]*Small Businesses: Limited Information Available on Contract Bundling's Extent and Effects* (GAO/GGD-00-82, Mar. 31, 2000).

Impact of the DBE Program on Costs, Competition, and the Creation of Jobs

USDOT, states and transit authorities incur costs in implementing and administering the DBE program. USDOT estimates that it incurred about $6 million in costs (including salaries and training expenses) to administer the DBE program for highways and transit authorities in fiscal year 2000.[49] Sixty-nine percent of the states and transit authorities responding to our survey estimated that they incurred a total of about $44 million in costs, including certification costs, to administer the DBE program in fiscal year 2000. The costs incurred ranged from a high of $4.5 million to a low of about $10,000. In addition, 13 states and transit authorities incurred a total of about $250,000 in litigation costs in fiscal year 2000 that they attributed to the federal DBE program. Although it has been asserted that the DBE program increases the costs of contracting (referred to as additional construction costs), 99 percent of the states and transit authorities we surveyed had not conducted a study or analysis to determine whether the DBE program has an impact on their contract costs.[50] USDOT has also not conducted such an analysis.

Almost none of the states and transit authorities responding to our survey have analyzed the impact of the DBE program on competition and the creation of jobs. Nor has USDOT conducted this type of analysis. According to USDOT officials and representatives from transportation associations, the DBE program does not create jobs; rather it shifts jobs to individuals who might not receive the jobs otherwise. As USDOT officials noted, USDOT-assisted contracts will be let regardless of the DBE program, and the program encourages greater racial and gender diversity within transportation contracting.[51] However, there is less agreement about the effects of the program on competition. Officials from USDOT and a minority business group stated that the DBE program does not hurt competition, noting that the DBE program does not use quotas and that DBEs must compete with non-DBEs to receive USDOT-assisted contracts. Moreover, these officials commented that the DBE program enhances

[49]According to USDOT, the costs incurred in fiscal year 2000 are higher than typical because of the work associated with the new regulations, such as training and reviews of recipients' new programs and goal-setting methods. USDOT indicated that, during a typical year, it would incur about $3.5 million to administer the DBE program.

[50]The Dallas Area Rapid Transit (DART) reported that it is collecting information to determine the overall costs of unbundling larger contracts.

[51]We did not look at the make-up and number of employees that work for DBEs compared with non-DBEs.

competition because it encourages greater participation by more firms. In contrast, representatives from transportation associations believe that the DBE program stifles competition in certain subcontracting areas (e.g., guardrail work) where there is an overconcentration of DBEs. Because of this overconcentration of DBEs, according to the transportation associations, non-DBEs do not have an opportunity to work in those fields. Although USDOT does not have data indicating that overconcentration is a serious, nationwide problem, the new regulations authorized states and transit authorities to remedy situations in which an overconcentration of DBEs is limiting non-DBEs' ability to compete for contracts, such as varying the use of contract goals in these areas.

Impact of Discontinuing Federal and Nonfederal DBE Programs

Limited data prevent a thorough assessment of the impact of suspending or repealing (discontinuing) federal or nonfederal DBE programs on DBEs' participation in transportation contracting. As evidence that the DBE program is needed, supporters often cite statistics on DBEs' participation in transportation contracting after minority- and women-owned business contracting programs are discontinued. An example used during the congressional debate preceding the passage of TEA-21 was the effect of discontinuing the state of Michigan's minority business contracting program in 1989. According to evidence cited during the debate, within 9 months of the suspension, the proportion of state highway dollars awarded to minority-owned businesses had dropped from 5 percent to 0 percent, while the proportion of state highway dollars awarded to women-owned businesses had declined from about 10 percent to 1 percent. Moreover, these new low rates of participation in state transportation contracting by minority-and women-owned businesses were contrasted with these firms' participation rates in USDOT-assisted contracts, which were significantly higher.[52] USDOT has not conducted studies or analyses measuring the impact of discontinuing federal or nonfederal DBE programs.

[52]Michigan could not provide us with minority- and women-owned business participation data in state highway contracting for the years immediately before and after it discontinued its program. Furthermore, Michigan officials stated that the analysis showing the decline that is often cited was a one-time-only analysis and that the analysis is no longer available. Consequently, we cannot verify the numbers cited during the debate.

Most states and transit authorities that participated in federal DBE programs or nonfederal minority business enterprise and women business enterprise (MBE/WBE) contracting programs that were discontinued could not provide data that would allow us to thoroughly evaluate the impact of that action. For example, we identified one state and one transit authority that had discontinued their federal DBE programs as a result of a court order.[53] However, only the state could provide participation data that would allow us to evaluate the impact of discontinuing the federal DBE program. We also identified 10 states and transit authorities that had participated in nonfederal MBE/WBE programs that were discontinued prior to 2000.[54] Only one state could provide sufficient data for us to evaluate the impact of the action. Conversely, officials from six states and transit authorities, including Michigan, told us that participation data for minorities and women in state transportation contracting for the years immediately before and after the discontinuance of their nonfederal MBE/WBE programs were not available. In addition, few of the states and transit authorities could provide equivalent data on non-MBE/WBEs. This information is important to determine whether changes in MBE/WBEs' participation rates in state transportation contracting were similar to the changes in the participation rates of non-MBE/WBEs or unique to the MBE/WBE community. Consequently, we could not evaluate the impact of discontinuing these programs.

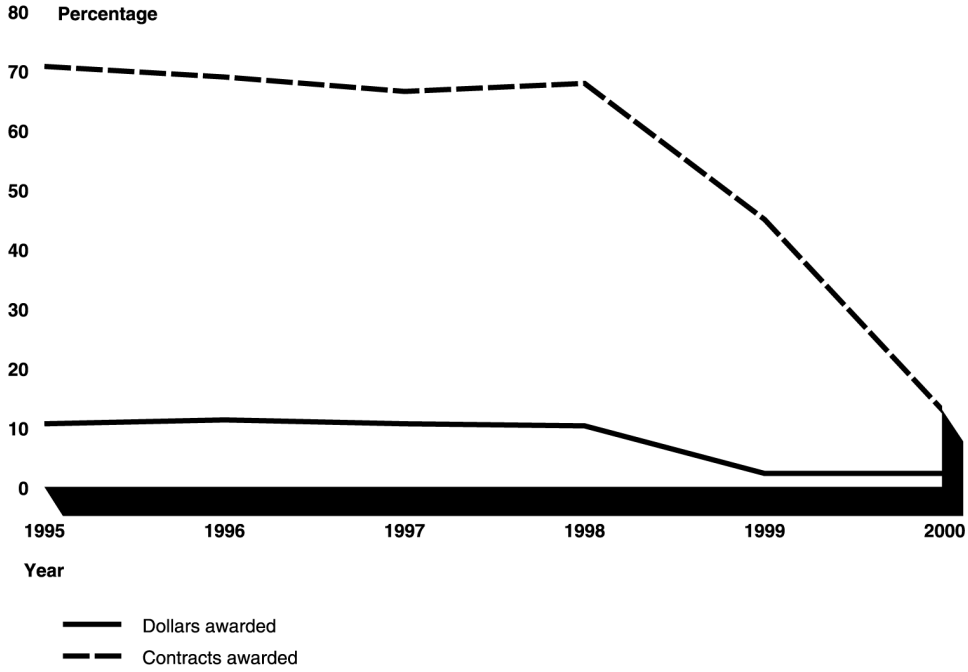
Two states—Minnesota and Louisiana—were able to provide sufficient data to assess the impact of discontinuing a federal and nonfederal program, respectively. We measured DBEs' and MBE/WBEs' participation using two indicators—(1) the number of transportation contracts awarded and (2) the dollar amounts awarded through those contracts. The participation data from these states suggest that discontinuing these programs had a negative impact on DBEs' and MBE/WBEs' participation in transportation contracting. For example, in Minnesota, DBEs' participation

[53]In 1998, Minnesota's Department of Transportation (MNDOT) discontinued its federal DBE program when it was declared unconstitutional; however, MNDOT reinstituted its federal program under the new DBE regulations in 2000. The Metropolitan Transit Authority of Harris County in Houston discontinued its federal DBE program in 1996 when its constitutionality was called into question. In 1998, it established a race and gender-neutral small business program, which FTA approved as its federal DBE program.

[54]Two other transit authorities had participated in minority- and women-owned business contracting programs that were discontinued in 2000. We did not try to obtain information from these two transit authorities because not enough time has elapsed for us to evaluate the impact of this action.

in federal transportation contracting remained relatively stable from 1995 to 1998. However, after the discontinuance of Minnesota's federal DBE program in 1998, DBEs' participation in federal transportation contracting dramatically declined. (See fig. 2.)

Figure 2: DBEs' Participation in Federal Transportation Contracting in Minnesota, 1995-2000

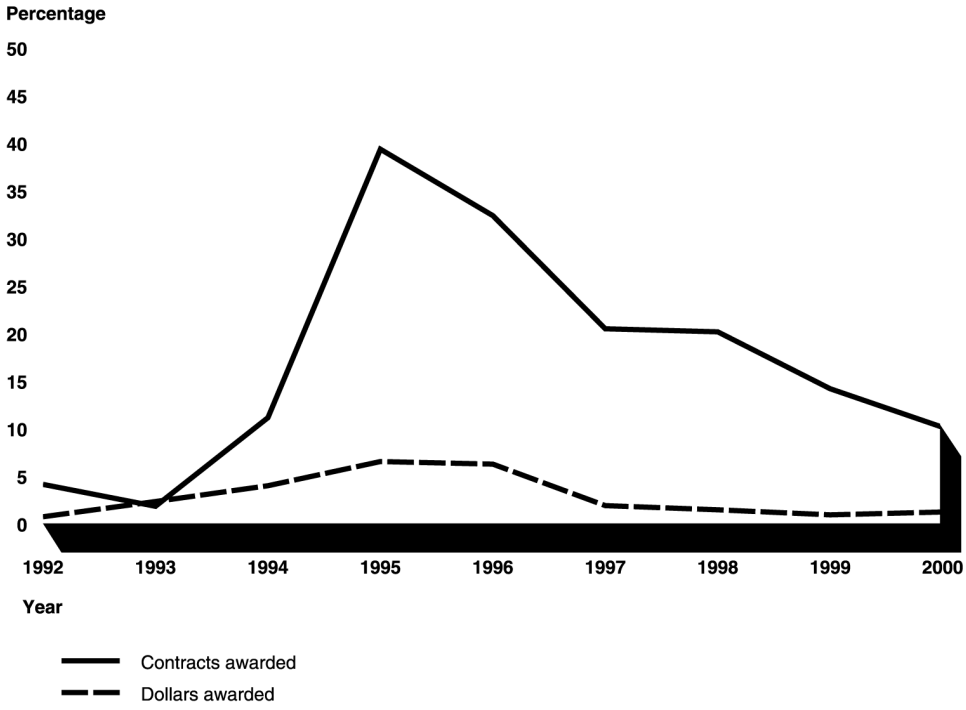


Source: GAO's analysis of data from Minnesota's Department of Transportation.

Similarly, the data provided by Louisiana indicate that MBE/WBEs' participation in transportation contracting declined after Louisiana's nonfederal program was discontinued. As shown in figure 3, MBE/WBEs' participation in state transportation contracting increased from 1992 to 1995. In 1996, the year the nonfederal program was discontinued, the participation rate of MBE/WBEs in state transportation contracting dropped and continued to decline over the next 4 years.[55] An official from Louisiana attributed the decline in MBE/WBEs' participation in state transportation contracting to the removal of affirmative action requirements on state funded projects and the realization by contractors that efforts to include MBE/WBEs were no longer necessary.

[55]We also obtained data on DBE participation in Louisiana's federal DBE program from 1995 to 2000. In our review of data on DBE and MBE/WBE participation in federally-assisted and state contracting, we did not observe a shift of MBE/WBEs to federally-assisted contracts after the Louisiana's MBE/WBE program was discontinued.

Figure 3: MBE/WBEs' Participation in Louisiana's State-Funded Transportation Contracting, 1992-2000



Source: GAO's analysis of data from Louisiana's Department of Transportation.

Conclusions

The Congress identified and directed us to collect information that would shed light on the impact of the DBE program across the nation—including information on who benefits from the program, the financial status of the DBE community compared with that of the non-DBE community, and degree to which DBEs participate in transportation contracting. However, much of this information is not readily available from USDOT, states and transit authorities, and industry groups. Without this information it is impossible to define the universe of DBEs, compare them with the transportation contracting community as a whole or gain a clear understanding of the overall impact of the DBE program. In some cases, USDOT has mechanisms in place, such as its quarterly reporting requirement, that could be used to collect additional information, including the annual gross receipts of DBEs and non-DBEs as well as non-DBEs' participation in subcontracting. In other cases, new mechanisms to collect

or process the information are needed such as a method for determining the total number of certified DBEs nationwide. USDOT could also do more to analyze the information that is currently collected. By not systematically tracking and evaluating the total number of discrimination complaints filed by DBEs, the number of investigations launched, and the outcomes of the investigations, USDOT misses an opportunity to obtain information that could be used to identify trends and problem areas that may need attention. USDOT could also identify ways to improve the effectiveness of its own policies and guidance to states and transit authorities, and ultimately DBEs, by collecting and analyzing the information that the Congress has identified. Such information would help USDOT contribute to an informed congressional debate on the impact of the DBE program in connection with its reauthorization in 2003 and more effectively administer the program.

USDOT could also look for ways to provide more guidance to the states and transit authorities that are implementing the DBE program. Specifically, USDOT's new regulations put a mechanism in place for setting DBE goals and identified Census Bureau data and DBE directories, bidders lists, and disparity studies as data sources that states and transit authorities could use in setting these goals. However, in our review of disparity studies, we identified problems with these data sources that should be avoided or mitigated to help ensure that goals set by states and transit authorities are based on the level of DBE participation expected in the absence of discrimination—specifically, a level consistent with the availability of ready, willing, and able DBEs in the relevant market. USDOT provided examples of how to set DBE goals in its regulations, but has issued minimal guidance to the states and transit authorities on how to avoid the types of data and methodological problems we identified and ensure that the data sources used to set goals are as reliable as possible. USDOT could provide additional guidance to help states and transit authorities carry out the program.

Recommendations for Executive Action

To assist USDOT in administering the DBE program and to help inform the Congress about the impact of the program, we recommend that the Secretary of Transportation take the following steps:

- Develop and implement a method for states and transit authorities to assign unique identification numbers to DBEs so that the total number of DBEs certified nationwide can be determined.
- Amend the quarterly reporting requirements for states and transit authorities to include information on the annual gross receipts of DBEs

and non-DBEs and the number and dollar amount of the subcontracts awarded to non-DBEs. This information could be used to gain a more complete understanding of the participation rate of DBEs in subcontracting and of their financial status compared with other transportation contracting firms. Furthermore, USDOT should compile, analyze, and publish (in aggregate format) the information collected in the quarterly reports.
- Compile and analyze data on written complaints of discrimination filed by DBEs with USDOT in order to (1) determine trends in the number and types of complaints filed and (2) identify problem areas that require action.
- Periodically compile information on DBEs, through a survey or other appropriate mechanism, to better understand the types of programs needed to assist these firms.

To better assist states and transit authorities in implementing the DBE program and help ensure that DBE participation goals reflect the availability of ready, willing, and able DBEs in the relevant market, we recommend that the Secretary of Transportation provide specific guidance to states and transit authorities on strategies to mitigate the potential problems associated with using Census Bureau data and DBE directories, disparity studies, and bidders lists to set their DBE goals.

We recognize that the implementation of these recommendations may result in some additional costs for USDOT, states, and transit authorities. However, given existing data collection requirements and the benefits associated with these recommendations, we believe such costs are warranted.

Agency Comments and Our Evaluation

We provided USDOT with a draft of this report for review and comment. On May 1, 2001, the Assistant Secretary for Administration responded for USDOT. USDOT did not comment on our recommendations. Instead, USDOT offered comments to clarify the role of disparity studies in the DBE program, the evidentiary value of disparity studies, the need for states and transit authorities to use the best available data in DBE goal-setting, and the status of DBE and non-DBE participation data. During recent meetings and discussions, USDOT provided similar comments, which we considered and incorporated where appropriate. Therefore, we believe that the majority of USDOT's comments are already reflected in the report. USDOT's comments and our responses are located in Appendix IV.

We conducted our review from August 2000 through April 2001 in accordance with generally accepted government auditing standards.

We are sending copies of this report to congressional committees with responsibilities for the activities discussed in this report; the Honorable Norman Y. Mineta, Secretary of Transportation; the Honorable Mitchell Daniels, Director of the Office of Management and Budget; Hiram Walker, Acting Deputy Administrator, Federal Transit Administration; and Vincent F. Schimmoller, Deputy Executive Director, Federal Highway Administration. We will make copies available to others upon request.

If you or your staff have any questions about this report, please call me at (202) 512-2834. Key contributors to this report are listed in appendix V.

Sincerely yours,

John H. Anderson, Jr.
Managing Director, Physical Infrastructure Issues

List of Committees

The Honorable Phil Gramm
Chairman
The Honorable Paul Sarbanes
Ranking Member
Committee on Banking, Housing, and
Urban Affairs
United States Senate

The Honorable Bob Smith
Chairman
The Honorable Harry Reid
Ranking Member
Committee on Environment and
Public Works
United States Senate

The Honorable Don Young
Chairman
The Honorable James L. Oberstar
Ranking Democratic Member
Committee on Transportation and
Infrastructure
House of Representatives

Section of the Transportation Equity Act for the 21st Century Requiring GAO's Study

The following is the text of the section of the Transportation Equity Act for the 21st Century (1998) requiring GAO's study.

Section 1101(b)(6):

(6) Review by comptroller general.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a review of, and publish and report to Congress findings and conclusions on, the impact throughout the United States of administering the requirement of paragraph (1), including an analysis of-

(A) in the case of small business concerns certified in each State under paragraph (4) as owned and controlled by socially and economically disadvantaged individuals—

(i) the number of the small business concerns; and
(ii) the participation rates of the small business concerns in prime contracts and subcontracts funded under titles I, III, and V of this Act;

(B) in the case of small business concerns described in subparagraph (A) that receive prime contracts and subcontracts funded under titles I, III, and V of this Act—

(i) the number of the small business concerns;
(ii) the annual gross receipts of the small business concerns; and
(iii) the net worth of socially and economically disadvantaged individuals that own and control the small business concerns;

(C) in the case of small business concerns described in subparagraph (A) that do not receive prime contracts and subcontracts funded under titles I, III, and V of this Act—

(i) the annual gross receipts of the small business concerns; and
(ii) the net worth of socially and economically disadvantaged individuals that own and control the small business concerns;

(D) in the case of business concerns that receive prime contracts and subcontracts funded under titles I, III, and V of this Act, other than small business concerns described in subparagraph (B)—

(i) the annual gross receipts of the business concerns; and
(ii) the net worth of individuals that own and control the business concerns;

(E) the rate of graduation from any programs carried out to comply with the requirement of paragraph (1) for small business concerns owned and controlled by socially and economically disadvantaged individuals;

(F) the overall cost of administering the requirement of paragraph (1), including administrative costs, certification costs, additional construction costs, and litigation costs;

(G) any discrimination on the basis of race, color, national origin, or sex against small business concerns owned and controlled by socially and economically disadvantaged individuals;

(H)(i) any other factors limiting the ability of small business concerns owned and controlled by socially and economically disadvantaged individuals to compete for prime contracts and subcontracts funded under titles I, III, and V of this Act; and (ii) the extent to which any of those factors are caused, in whole or in part, by discrimination based on race, color, national origin, or sex;

(I) any discrimination, on the basis of race, color, national origin, or sex, against construction companies owned and controlled by socially and economically disadvantaged individuals in public and private transportation contracting and the financial, credit, insurance, and bond markets;

(J) the impact on small business concerns owned and controlled by socially and economically disadvantaged individuals of—

(i) the issuance of a final order described in paragraph (5) by a Federal court that suspends a program established under paragraph (1); or
(ii) the repeal or suspension of State or local disadvantaged business enterprise programs; and

(K) the impact of the requirement of paragraph (1), and any program carried out to comply with paragraph (1), on competition and the creation of jobs, including the creation of jobs for socially and economically disadvantaged individuals.

GAO's Survey Instrument and Overall Results

GAO's Survey Instrument and Overall Results

U.S. General Accounting Office

GAO

Survey of State DOTs and
Transit Authorities Concerning Their
U.S. Department of Transportation Disadvantaged Business Enterprise Programs

October 2000

U.S. General Accounting Office
441 G Street, NW
Washington, D.C. 20548-0001

Introduction

The Transportation Equity Act for the 21st Century required the U.S. General Accounting Office (GAO) to examine the Department of Transportation's Disadvantaged Business Enterprise (DBE) program.

As part of our study of the DBE program, we are surveying Departments of Transportation (DOTs) in each of the 50 states, the District of Columbia, and Puerto Rico and selected Transit Authorities.

We recognize that there are great demands on your time; however, your cooperation is critical to our ability to provide current and complete information to the Congress.

Instructions

This questionnaire asks for information about the federal DBE program that your agency administers and the firms in the program.

For definitions of terms used throughout this questionnaire, please see U.S. DOT's regulations on the DBE program.

Please complete and mail your questionnaire **within three weeks** of receipt.

If the enclosed envelope is misplaced, the questionnaire should be returned to:

Nikki Clowers
U.S. General Accounting Office
441 G Street, NW, Mail Room 6K17R
Washington, D.C. 20548

If you have any questions, please contact Nikki Clowers at clowersa.rced@gao.gov or (202) 512-4010.

Reporting Dates

We would prefer to have data based on the federal fiscal year (FY) (October 1 to September 30). Please indicate the way the data from your agency will be provided: **(N=83)**

89% Federal Fiscal Year
5% State Fiscal Year
Dates for State Fiscal Year:
_____ to _____
month/day month/day

2% Calendar Year

(Note: Four percent of respondents indicated that they provided data based on their agency's fiscal year.)

Note: Please use the same reporting year throughout the questionnaire.

Section I:
Your Federal DBE Program and Participants

1. What are your total DBE participation goals for FY 1999 – FY 2001, and for FY 2000 and FY 2001, your goals to be achieved through race-conscious and race-neutral programs? (*Please indicate the percentage to be achieved through each type of program and the total percentages.*)

Fiscal Year	Type of Program		Total Participation Goal
	Race-Conscious	Race-Neutral	
1999			**14.6% (avg.) (N=67)**
2000	**8.6% (avg.) (N=70)**	**5.4% (avg.) (N=73)**	**13.5% (avg.) (N=80)**
2001	**8.2% (avg.) (N=69)**	**5.2% (avg.) (N=73)**	**13.1% (avg.) (N=78)**

2. Which of the following sources were used to set your FY 2000 DBE participation goal? (*Check all that apply.*) **N=82**

48.8% Census Bureau data
80.5% DBE Directory
36.6% Bidder's list
29.3% Disparity study/studies
59.8% Historical utilization patterns data
6.1% DBE goal(s) from another agency/agencies
26.8% Other *Please specify*:
_____
_____
_____

3. What race-neutral programs did your agency use in FY 2000 to achieve your DBE participation goal? (*Check all that apply.*) **N=79**

8.7% Mentor-protégé program
22.8% Business development program
26.6% Dividing larger contracts into smaller contracts
83.5% Outreach
72.2% Technical assistance
51.9% Training
21.5% Assistance obtaining bonding
13.9% Other *Please specify*:
_____
_____
_____

4. How many certified DBE firms were available (i.e., in your database or directory) to your agency in FY 1999 and FY 2000? (*Enter number. If none, enter 0.*)

FY 1999: **559.4 (avg.) (N=78)**

FY 2000: **551.5 (avg.) (N=81)**

5. Please indicate the number of DBE firms that were awarded prime contracts through your agency, the number of prime contracts that were awarded to these firms, and the total value of these prime contracts for FY 1999 and FY 2000. (*Enter numbers and dollar amounts. If none, enter 0.*)

Fiscal Year	Number of DBE firms awarded prime contracts	Total number of prime contracts awarded to these DBE firms	Total value of prime contracts awarded to these DBE firms
1999	# of Firms: **19.1 (avg.)** **(N=70)**	# of Contracts: **40.4 (avg.)** **(N=79)**	**$ 8,203,394 (avg.)** **(N=78)**
2000	# of Firms: **18.4 (avg.)** **(N=71)**	# of Contracts: **37.4 (avg.)** **(N=77)**	**$ 6,585,338 (avg.)** **(N=76)**

6. Please indicate the number of DBE firms that were awarded subcontracts through your agency, the number of subcontracts that were awarded to these firms, and the total value of these subcontracts for FY 1999 and FY 2000. (*Enter numbers and dollar amounts. If none, enter 0.*)

Fiscal Year	Number of DBE firms awarded subcontracts	Total number of subcontracts awarded to these DBE firms	Total value of subcontracts awarded to these DBE firms
1999	# of Firms: **66.9 (avg.)** **(N=72)**	# of Subcontracts: **254.5 (avg.)** **N=79)**	**$ 27,006,958 (avg.)** **(N=79)**
2000	# of Firms: **61.6 (avg.)** **(N=71)**	# of Subcontracts: **235.1 (avg.)** **(N=79)**	**$ 24,427,942 (avg.)** **(N=79)**

Note: Questions 7 – 14 have two parts— "a" and "b." If you cannot answer part "a" of these questions, please be sure to answer part "b."

Note: Thirty agencies (36%) provided information for Part 7a, while 52 agencies (63%) provided information for Part 7b. Two agencies gave estimates for Part 7a. One agency did not answer question.

7a. What were the annual gross receipts of the DBE firms that were awarded prime and/or subcontracts through your agency in FY 1999? Use the DBE firms' most recent certification or recertification to determine annual gross receipts. If you are not able to provide this information, please answer Question 7b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.*)

Annual Gross Receipts of DBE Firms That Were Awarded Prime Contracts and/or Subcontracts in FY 1999			
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000
# of Firms: **17.5 (avg.)** **(N=29)**	# of Firms: **16.1 (avg.)** **(N=30)**	# of Firms: **4.8 (avg.)** **(N=30)**	# of Firms: **1.2 (avg.)** **(N=29)**

7b. If you answered Question 7a (above), please go on to Question 8a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

15.4% Information is not collected.
15.4% Information is being collected, but is not yet available.
11.5% Our agency relies on the certification of other jurisdictions.
7.7% Information is verified during certification and recertification, but it is not retained.
61.5% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
19.2% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Thirty-three agencies (40%) provided information for Part 8a, while 50 agencies (60%) provided information for Part 8b. Two agencies gave estimates for Part 8a.

8a. What were the annual gross receipts of the DBE firms that were awarded prime and/or subcontracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine annual gross receipts. If you are not able to provide this information, please answer Question 8b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.*)

Annual Gross Receipts of DBE Firms That Were Awarded Prime Contracts and/or Subcontracts in FY 2000			
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000
# of Firms: **15.6 (avg.)** **(N=33)**	# of Firms: **14.7 (avg.)** **(N=33)**	# of Firms: **4.3 (avg.)** **(N=33)**	# of Firms: **1.2 (avg.)** **(N=31)**

8b. If you answered Question 8a (above), please go on to Question 9a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

12.0% Information is not collected.
24.0% Information is being collected, but is not yet available.
12.0% Our agency relies on the certification of other jurisdictions.
6.0% Information is verified during certification and recertification, but it is not retained.
64.0% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
12.0% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Nineteen agencies (23%) provided information for Part 9a, while 63 agencies (76%) provided information for Part 9b. One agency did not answer question.

9a. What were the annual gross receipts of the DBE firms that were not awarded prime or subcontracts through your agency in FY 1999? Use the DBE firms' most recent certification or recertification to determine annual gross receipts. If you are not able to provide this information, please answer Question 9b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.*)

Annual Gross Receipts of DBE Firms That Were Not Awarded Prime Contracts or Subcontracts in FY 1999			
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000
# of Firms: **122.2 (avg.)** **(N=19)**	# of Firms: **37.2 (avg.)** **(N=19)**	# of Firms: **6.3 (avg.)** **(N=19)**	# of Firms: **2.5 (avg.)** **(N=19)**

9b. If you answered Question 9a (above), please go on to Question 10a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

22.2% Information is not collected.
14.3% Information is being collected, but is not yet available.
9.5% Our agency relies on the certification of other jurisdictions.
4.8% Information is verified during certification and recertification, but it is not retained.
54.0% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
15.9% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Twenty-one agencies (25%) provided information for Part 10a, while 62 agencies (75%) provided information for Part 10b. One agency gave estimates for Part 10a.

10a. What were the annual gross receipts of the DBE firms that were not awarded prime or subcontracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine annual gross receipts. If you are not able to provide this information, please answer Question 10b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.)*

Annual Gross Receipts of DBE Firms That Were Not Awarded Prime Contracts or Subcontracts in FY 2000			
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000
# of Firms: **102.3 (avg.)** **(N=21)**	# of Firms: **33.2 (avg.)** **(N=21)**	# of Firms: **5.9 (avg.)** **(N=20)**	# of Firms: **2.5 (avg.)** **(N=20)**

10b. If you answered Question 10a (above), please go on to Question 11a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

21.0% Information is not collected.
17.4% Information is being collected, but is not yet available.
9.7% Our agency relies on the certification of other jurisdictions.
4.8% Information is verified during certification and recertification, but it is not retained.
54.8% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
12.9% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Twenty-eight agencies (34%) provided information for Part 11a, while 54 agencies (65%) provided information for Part 11b. One agency did not answer question.

11a. What was the personal net worth of individuals who own and control DBE firms that were awarded prime contracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine personal net worth. We are aware that you may not have personal net worth information for all DBE firms; however, please provide the information that is available. If you cannot provide any personal net worth information, please answer Question 11b.

(*Enter the number of firms for each category of personal net worth. If none, enter 0.*)

Personal Net Worth of Individuals Who Own and Control DBE Firms That Were Awarded Prime Contracts in FY 2000			
Less than $100,000	$100,000 to $250,000	$250,001 to $500,000	$500,001 to $750,000
# of Firms: **1.4 (avg.)** **(N=24)**	# of Firms: **1.9 (avg.)** **(N=24)**	# of Firms: **1.8 (avg.)** **(N=25)**	# of Firms: **1.0 (avg.)** **(N=24)**

11b. If you answered Question 11a (above), please go on to Question 12a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

5.6% Information is not collected.
16.7% Information is being collected, but is not yet available.
13.0% Our agency relies on the certification of other jurisdictions.
9.3% Information is verified during certification and recertification, but it is not retained.
66.7% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
9.3% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Twenty-seven agencies (33%) provided information for Part 12a, while 56 agencies (67%) provided information for Part 12b.

12a. What was the personal net worth of individuals who own and control DBE firms that were awarded subcontracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine personal net worth. We are aware that you may not have personal net worth information for all DBE firms; however, please provide the information that is available. If you cannot provide any personal net worth information, please answer Question 12b.

(*Enter the number of firms for each category of personal net worth. If none, enter 0.*)

Personal Net Worth of Individuals Who Own and Control DBE Firms That Were Awarded Subcontracts in FY 2000			
Less than $100,000	$100,000 to $250,000	$250,001 to $500,000	$500,001 to $750,000
# of Firms: **11.9 (avg.)** **(N=27)**	# of Firms: **8.8 (avg.)** **(N=26)**	# of Firms: **6.1(avg.)** **(N=27)**	# of Firms: **3.7 (avg.)** **(N=26)**

12b. If you answered Question 12a (above), please go on to Question 13a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

5.4% Information is not collected.
17.9% Information is being collected, but is not yet available.
12.5% Our agency relies on the certification of other jurisdictions.
8.9% Information is verified during certification and recertification, but it is not retained.
67.9% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
7.1% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Fifteen agencies (18%) provided information for Part 13a, while 67 agencies (81%) provided information for Part 13b. One agency did not answer question 13.

13a. What was the personal net worth of individuals who own and control DBE firms that were not awarded prime contracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine personal net worth. We are aware that you may not have personal net worth information for all DBE firms; however, please provide the information that is available. If you cannot provide any personal net worth information, please answer Question 13b.

(*Enter the number of firms for each category of personal net worth. If none, enter 0.*)

Personal Net Worth of Individuals Who Own and Control DBE Firms That Were Not Awarded Prime Contracts in FY 2000			
Less than $100,000	$100,000 to $250,000	$250,001 to $500,000	$500,001 to $750,000
# of Firms: **60.2 (avg.)** **(N=14)**	# of Firms: **35.6 (avg.)** **(N=14)**	# of Firms: **26.0 (avg.)** **(N=15)**	# of Firms: **12.9 (avg.)** **(N=14)**

13b. If you answered Question 13a (above), please go on to Question 14a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

10.5% Information is not collected.
16.4% Information is being collected, but is not yet available.
10.5% Our agency relies on the certification of other jurisdictions.
7.5% Information is verified during certification and recertification, but it is not retained.
64.2% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
6.0% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Eighteen agencies (22%) provided information for Part 14a, while 65 agencies (78%) provided information for Part 14b.

14a. What was the personal net worth of individuals who own and control DBE firms that were not awarded subcontracts through your agency in FY 2000? Use the DBE firms' most recent certification or recertification to determine personal net worth. We are aware that you may not have personal net worth information for all DBE firms; however, please provide the information that is available. If you cannot provide any personal net worth information, please answer Question 14b.

(*Enter the number of firms for each category of personal net worth. If none, enter 0.*)

Personal Net Worth of Individuals Who Own and Control DBE Firms That Were Not Awarded Subcontracts in FY 2000			
Less than $100,000	$100,000 to $250,000	$250,001 to $500,000	$500,001 to $750,000
# of Firms: **46.4 (avg.)** **(N=18)**	# of Firms: **34.2 (avg.)** **(N=17)**	# of Firms: **21.8 (avg.)** **(N=17)**	# of Firms: **13.8 (avg.)** **(N=17)**

14b. If you answered Question 14a (above), please go on to Question 15. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

12.3% Information is not collected.
13.9% Information is being collected, but is not yet available.
10.8% Our agency relies on the certification of other jurisdictions.
7.7% Information is verified during certification and recertification, but it is not retained.
64.6% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
6.2% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

15. How many DBE firms became ineligible for the DBE program in FY 1999 and FY 2000 because they exceeded the program's statutory cap on annual gross receipts ($16.6 million)? (*Enter number. If none, enter 0.*) **N=83**

FY 1999: **0.5 (avg.) (N=60)** ☐ Check here if information is not available.

FY 2000: **0.3 (avg.) (N=60)** ☐ Check here if information is not available.

16. How many DBE firms became ineligible for the DBE program in FY 1999 and FY 2000 because they exceeded applicable SBA small business size standards? (*Enter number. If none, enter 0.)* **N=83**

FY 1999: **1.1 (avg.) (N=62)** ☐ Check here if information is not available.

FY 2000: **1.7 (avg.) (N=63)** ☐ Check here if information is not available.

17. How many DBE firms became ineligible for the DBE program in FY 2000 because individuals who own or control the firm exceeded the program's cap on personal net worth ($750,000)? (*Enter number. If none, enter 0.*) **N=83**

FY 2000: **6.1 (avg.) (N=65)** ☐ Check here if information is not available.

18. Please estimate the cost of administering the DBE program in your agency? (*In your estimate include such things as salaries, certification costs, technical assistance, database development and maintenance, and contracted studies/analyses.)* **N=83**

FY 1999: **$633,124 (avg.) (N=55)** ☐ Check here if information is not available.

FY 2000: **$772,160 (avg.) (N=57)** ☐ Check here if information is not available.

Section II:
Non-DBE Firms

19. Please indicate the number of non-DBE firms that were awarded prime contracts through your agency, the number of prime contracts that were awarded to these firms, and the total value of these contracts for FY 1999 and FY 2000. (*Enter numbers and dollar amounts. If none, enter 0. If this information is not available, put a check in the appropriate box on the right side of the table below.*)

Fiscal Year	Number of non-DBE firms awarded prime contracts	Total number of prime contracts awarded to these non-DBE firms	Total dollar value of prime contracts awarded to these non-DBE firms	
1999	# of Firms: **202.6 (avg.)** **(N=58)**	# of Contracts: **474.8 (avg.)** **(N=67)**	**$ 313,477,141 (avg.)** **(N=69)**	☐ Check here if FY 1999 information is not available.
2000	# of Firms: **185.2 (avg.)** **(N=59)**	# of Contracts: **454.2 (avg.)** **(N=68)**	**$ 308,620,950 (avg.)** **(N=69)**	☐ Check here if FY 2000 information is not available.

20. Please indicate the number of non-DBE firms that were awarded subcontracts through your agency, the number of subcontracts that were awarded to these firms, and the total value of these subcontracts for FY 1999 and FY 2000. (*Enter numbers and dollar amounts. If none, enter 0. If this information is not available, put a check in the appropriate box on the right side of the table below.*)

Fiscal Year	Number of non-DBE firms awarded subcontracts	Total number of subcontracts awarded to these non-DBE firms	Total dollar value of subcontracts awarded to these non-DBE firms	
1999	# of Firms: **180.1 (avg.)** **(N=28)**	# of Subcontracts: **597.1 (avg.)** **(N=27)**	**$ 92,747,776 (avg.)** **(N=27)**	☐ Check here if FY 1999 information is not available
2000	# of Firms: **190.3 (avg.)** **(N=29)**	# of Subcontracts: **604.6 (avg.)** **(N=28)**	**$ 96,320,366 (avg.)** **(N=28)**	☐ Check here if FY 2000 information is not available

Note: Questions 21 – 23 have two parts— "a" and "b." If you cannot answer part "a" of these questions, please be sure to answer part "b."

Note: Three agencies (4%) provided information for Part 21a, while 80 agencies (96%) provided information for Part 21b. Two agencies gave estimates for Part 21a.

21a. What were the annual gross receipts of the non-DBE firms that were awarded prime and/or subcontracts through your agency in FY 1999? If you are not able to provide this information, please answer Question 21b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.*)

Annual Gross Receipts of Non-DBE Firms That Were Awarded Prime Contracts and/or Subcontracts in FY 1999				
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000	Greater than $16,600,000
# of Firms: **21.3 (avg.)** **(N=3)**	# of Firms: **36.0 (avg.)** **(N=3)**	# of Firms: **11.7 (avg.)** **(N=3)**	# of Firms: **11.7 (avg.)** **(N=3)**	# of Firms: **17.7 (avg.)** **(N=3)**

21b. If you answered Question 21a (above), please go on to Question 22a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

32.5% Information is not collected, but will be in the future.
18.8% Information is not collected, and there are no plans to collect it in the future.
12.5% Information is being collected, but is not yet available.
31.3% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
11.3% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: Five agencies (6%) provided information for Part 22a, while 78 agencies (94%) provided information for Part 22b. Three agencies gave estimates for Part 22a.

22a. What were the annual gross receipts of the non-DBE firms that were awarded prime and/or subcontracts through your agency in FY 2000. If you are not able to provide this information, please answer Question 22b.

(*Enter the number of firms for each category of annual gross receipts. If none, enter 0.*)

Annual Gross Receipts of Non-DBE Firms That Were Awarded Prime Contracts and/or Subcontracts in FY 2000				
Less than $1,000,000	$1,000,000 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 to $16,600,000	Greater than $16,600,000
# of Firms: **16.8** **(avg.)** **(N=5)**	# of Firms: **20.6** **(avg.)** **(N=5)**	# of Firms: **9.0** **(avg.)** **(N=5)**	# of Firms: **7.8** **(avg.)** **(N=5)**	# of Firms: **10.4** **(avg.)** **(N=5)**

22b. If you answered Question 22a (above), please go on to Question 23a. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

29.5% Information is not collected, but will be in the future.
20.5% Information is not collected, and there are no plans to collect it in the future.
16.7% Information is being collected, but is not yet available.
28.2% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
10.3% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Note: No agency could provide information for Part 23a. Eighty-two agencies (99%) provided information for Part 23b. One agency did not answer question.

23a. What was the personal net worth of individuals who own and control non-DBE firms that were awarded prime and/or subcontracts through your agency in FY 2000. If you are not able to provide this information, please answer Question 23b.

(*Enter the number of firms for each category of personal net worth. If none, enter 0.*)

Personal Net Worth of Individuals Who Own and Control Non-DBE Firms That Were Awarded Prime Contracts and/or Subcontracts in FY 2000				
Less than $100,000	$100,000 to $250,000	$250,001 to $500,000	$500,001 to $750,000	Greater than $750,000
# of Firms: **(No respondents provided information)**	# of Firms: **(No respondents provided information)**	# of Firms: **(No respondents provided information)**	# of Firms: **(No respondents provided information)**	# of Firms: **(No respondents provided information)**

23b. If you answered Question 23a (above), please go on to Question 24. If you did not provide the above information, please indicate the reason(s). (*Check all that apply.*)

8.5% Information is not collected, but will be in the future.
62.2% Information is not collected, and there are no plans to collect it in the future.
4.9% Information is being collected, but is not yet available.
19.5% Information is not maintained in an electronic database, and would be difficult and/or time-consuming to report.
11.0% Other. *Please explain:*

_____
_____
_____
_____
_____
_____

Section III: Litigation and Complaints

24. Has the federal DBE program administered by your agency been the subject of litigation? (*Please check one.*) **N=83**

71% No *Please go to Question 27.*
29% Yes

25. What year(s) was this program under litigation? **N=24**

Year(s): **Responses ranged from 1986 to 2001**

26. What were your litigation costs for FY 1999 and FY 2000? (*Enter dollar amount(s). If none, enter 0.*) **N=24**

FY 1999: **$ 7,166.7 (avg.) (N=15)**
☐ Check here if information is not available.

FY 2000: **$ 19,897.3 (avg.) (N=13)**
☐ Check here if information is not available.

27. Were any formal written discrimination complaints filed by DBE firms with your agency in FY 1999 and FY 2000? (*Please check one.*) **N=83**

81% No *Please go to Question 31.*
19% Yes

28. How many complaints were filed? (*Enter the number of complaints. If none, enter 0.*) **N=16**

FY 1999: **15 (sum) (N=16)**
☐ Check here if information is not available.

FY 2000: **16 (sum) (N=15)**
☐ Check here if information is not available.

29. Of the formal written discrimination complaints filed by DBE firms in FY 1999 and FY 2000, how many were investigated by your agency? (*Enter the number of complaints. If none, enter 0.*) **N=16**

Number of complaints investigated in FY 1999: **15 (sum) (N=16)**
☐ Check here if information is not available.

Number of complaints investigated in FY 2000: **14 (sum) (N=15)**
☐ Check here if information is not available.

30. With respect to the complaints and investigations identified in Questions 27 to 29, how many times did your agency find evidence of discrimination? (*Enter the number of times. If none, enter 0.*) **N=16**

FY 1999: **2 (sum) (N=14)**
☐ Check here if information is not available.

FY 2000: **2 (sum) (N=12)**
☐ Check here if information is not available.

Section IV:
DBE-Related Studies
Conducted for Your Agency

31. Have you conducted, or are you conducting, any studies or analyses to determine if awarding prime contracts to DBE firms affects contract costs? *(Please check one.)* **N=83**

98.8% No
1.2% Yes
Please briefly describe:

32. Have you conducted, or are you conducting, any studies or analyses to determine if awarding subcontracts to DBE firms affects contract costs? *(Please check one.)* **N=83**

98.8% No
1.2% Yes
Please briefly describe:

33. Have you conducted, or are you conducting, any studies or analyses of discrimination against DBE firms on the basis of race, color, national origin, or sex? (*Please check one.*) **N=83**

67.5% No
32.5% Yes *Please briefly describe:*

34. Have you conducted, or are you conducting, any studies or analyses of discrimination on the basis of race, color, national origin, or sex against DBE construction firms by the financial, credit, insurance, or bond markets and/or in other contracts? (*Please check one.*) **N=82**

84.2% No
15.9% Yes *Please briefly describe:*

35. Have you conducted, or are you conducting, any studies or analyses of other factors that limit the ability of DBE firms to compete for prime and/or subcontracts? (*Please check one.*) **N=83**

79.5% No
20.5% Yes *Please briefly describe:*

36. Have you conducted, or are you conducting, any studies or analyses on the impact of the DBE program on competition and the creation of jobs? (*Please check one.*) **N=83**

92.8% No
7.2% Yes *Please briefly describe:*

Section V:
Other Related Programs

37. In addition to the federal DBE program, is your agency subject to the requirements of a non-federal minority business enterprise (MBE), women-owned business enterprise (WBE), or another DBE program? (*Please check one.*) **N=83**

65.1% No
34.9% Yes

38. Has your agency participated in a non-federal MBE, WBE, or DBE program that has been suspended, repealed, or otherwise terminated? (*Please check one.*) **N=83**

85.5% No *Please go to Question 40.*
14.5% Yes

39. Please indicate the year(s) that program(s) were repealed and the type of program(s) repealed.

Repealed Program: _____ Year Repealed: _____

Repealed Program: _____ Year Repealed: _____

Repealed Program: _____ Year Repealed: _____

Repealed Program: _____ Year Repealed: _____

Repealed Program: _____ Year Repealed: _____

Note: Years ranged from 1989 to 2000.

Section VI:
Implementation of the Federal DBE Program

40. When was your FY 2000 DBE program plan submitted to DOT? **N=83**

Month: _____ Year: _____

Note: All 83 agencies indicated that they submitted a FY 2000 DBE program plan to DOT.

41. Has your FY 2000 DBE program plan been approved by DOT? (*Please check one.*) **N=83**

10% No
90% Yes When was your program approved?
Month: _____ Year: _____

Note: On average, it took DOT 8 months to approve the FY '2000 DBE plans.

42. In your opinion, which of the following, if any, are barriers to participation in the DBE program? (*Check all that apply.*) **N=83**

19.3% The costs (e.g., hiring accountants, lawyers) associated with the certification process
62.7% The time required for completing certification paperwork
79.5% Reluctance to provide personal information (e.g., personal net worth)
18.1% Lack of information about eligibility requirements
32.5% Stigma associated with participating in the DBE program
6.0% None of the above
24% Other *Please briefly describe*

_____
_____

43. In your opinion, which of the following best describes the costs and benefits of participation in the DBE program? (*Please check one.*) **N=79**

3.8% The costs greatly outweigh the benefits
7.6% The costs somewhat outweigh the benefits
7.6% The costs and benefits are about equal
25.3% The benefits somewhat outweigh the costs
32.9% The benefits greatly outweigh the costs
22.8% No basis to judge

44. In your opinion, have the revised DBE regulations made it easier or more difficult for firms to participate in the DBE program? (*Please check one.*) **N=81**

0.0% Much easier for firms to participate
16.1% Somewhat easier for firms to participate
21.0% No change in the ease or difficulty of participation
40.7% Somewhat more difficult for firms to participate
13.6% Much more difficult for firms to participate
8.6% No basis to judge

65

45. How would you rate the guidance and technical assistance you have received from FTA on implementing the revised DBE regulations? (*Please check one.*) **N=83**

8.4% Excellent
38.6% Good
26.5% Average
12.1% Below average
13.3% Poor
1.2% No basis to judge

46. How would you rate the guidance and technical assistance you have received from FTA on developing your FY 2000 DBE program plan? (*Please check one.*) **N=83**

12.1% Excellent
38.6% Good
24.1% Average
10.8% Below average
13.3% Poor
1.2% No basis to judge

47. In your opinion, have the revised DBE regulations made it easier or more difficult to administer the DBE program? (*Please check one.*) **N=82**

1.2% Much easier to administer
9.8% Somewhat easier to administer
9.8% No change in the ease or difficulty of administering the DBE program
30.5% Somewhat more difficult to administer
41.5% Much more difficult to administer
7.3% No basis to judge

48. Has your uniform certification program (UCP) been submitted to the U.S. DOT? (*Please check one.*) **N=82**

91.5% No *Please go to Question 50.*
8.5% Yes When was your plan submitted?

Month: _____ Year: _____

49. Has your uniform certification program (UCP) been approved by the U.S. DOT? (*Please check one.*) **N=7**

28.6% No
71.4% Yes When was your plan approved?

Month: _____ Year: _____

50. Which of the following best describes the status of your uniform certification program (UCP)? (*Please check one.*) **N=83**

7.2% Our agency's UCP is fully implemented
10.8% Our agency is in the process of implementing our UCP
61.5% Our agency is currently developing our UCP
14.5% Our agency has not yet started developing our UCP
6.0% Other Please briefly describe:

_____
_____
_____

51. What is the current status of your Bidder's List? (*Please check one.*) **N=83**

26.5% Our agency's Bidder's List is fully developed and fully implemented
21.7% Our agency is in the process of implementing our Bidder's List
38.6% Our agency is currently developing our Bidder's List
8.4% Our agency has not yet started developing our Bidder's List
4.8% Other Please briefly describe:

_____
_____
_____

66

52. Do you use a computer database system to track and monitor the information identified in the revised DBE regulation? (*Please check one.*) **N=81**

56.8% No
43.2% Yes When was your system implemented?

Month: _____ Year: _____

53. Which of the following best describes the status of your database system used to track and monitor the information identified in the revised DBE regulation? (*Please check one.*) **N=82**

14.6%	Our agency's system is fully implemented
19.5%	Our agency is in the process of implementing our system
40.2%	Our agency is currently developing our system
9.8%	Our agency has not yet started developing our system
2.4%	Our agency has no plans to develop a computer database system to track this information
13.4%	Other Please briefly describe:

_____
_____
_____

67

Please provide the following information about the individual(s) who completed this questionnaire:
(Note: We are planning to report contact names and phone numbers for each DBE program included in this survey. Please check the box to the right of the name of the person who should be listed for your program.)

Name: _____
Title: _____
Office/Department: _____
Phone Number: _____
Email Address: _____

☐ **Check here to list this person as your program's contact.**

Name: _____
Title: _____
Office/Department: _____
Phone Number: _____
Email Address: _____

☐ **Check here to list this person as your program's contact.**

Name: _____
Title: _____
Office/Department: _____
Phone Number: _____
Email Address: _____

☐ Check here to list this person as your program's contact.

Thank you very much for taking time to complete this questionnaire. If you would like to make additional comments concerning any of the questions or comment on topics not covered, please feel free to use this page or to attach additional pages.

68

Objectives, Scope, and Methodology

The Transportation Equity Act for the 21st Century directed us to evaluate the impact of the U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) program throughout the nation and address 11 specific objectives. We grouped the statute's 11 objectives into the following 4 researchable questions:

1. How has the DBE program changed since 1999?

2. What are the characteristics of DBEs and non-DBEs that receive USDOT-assisted highway and transit contracts?

3. What do selected sources indicate about discrimination or other factors that may limit DBEs' ability to compete for USDOT-assisted contracts?

4. What is the impact of the DBE program on costs, competition, and job creation as well as the impact of discontinuing federal and nonfederal DBE programs?

To determine how the DBE program has changed since 1999 and to identify the characteristics of DBEs and non-DBEs that receive USDOT-assisted contracts, we reviewed USDOT's regulations and guidance pertaining to the DBE program. We also interviewed USDOT officials and representatives from minority-owned business and transportation associations. In addition, we surveyed the departments of transportation of the 50 states, the District of Columbia, and Puerto Rico, and 36 transit authorities throughout the nation. (We planned to survey all transit authorities required to submit plans for a DBE program. However, the Federal Transit Administration could not provide an accurate list of these transit authorities.) The 36 transit authorities we surveyed are the largest transit authorities in the nation as defined by the number of unlinked passenger trips in 1999.[1] They also received about two-thirds of all federal transit grant funds obligated in 1999. Our survey was designed to obtain information on the issues that TEA-21 directed us to examine, including the participation rates of DBEs in USDOT-assisted contracts, the annual gross receipts of DBEs and non-DBEs, and the cost of administering the DBE program.

[1]Unlinked passenger trips represent the number of passengers who board public transportation vehicles. A passenger is counted each time he/she boards a vehicle even though he/she may be on the same journey from origin to destination.

To help design our survey, we obtained input from USDOT, states, and transit authorities. After we developed our survey, we pre-tested the questionnaire with officials of 4 state departments of transportation (states) and 5 transit authorities. We selected states and transit authorities from a variety of geographical regions for our pre-tests. For each pre-test, members of our staff met with officials from the state or transit authority and simulated the actual survey experience by asking the officials to fill out the questionnaire. We also interviewed the officials after they had completed the questionnaire to ensure that (1) the questions were understandable and clear, (2) the terms used were precise, (3) the questionnaire did not place undue burden on state or transit authority officials, and (4) the questionnaire was unbiased. Appropriate changes were incorporated in the final survey based on our pre-testing. In addition, we provided a draft copy of our questionnaire to USDOT officials and incorporated comments from them, as appropriate.

To increase the response rate of our survey, we sent two additional reminders after the survey was mailed in October 2000, including (1) a postcard sent one week after the survey and (2) a follow-up letter and replacement survey to nonrespondents sent about 3 weeks after the initial mailing. In addition, we conducted follow-up phone calls to nonrespondents through January 2001. We received survey responses from all 52 states and 31 transit authorities for a response rate of 94 percent.

To evaluate the existence of discrimination against DBEs, we reviewed recent court cases that have addressed the constitutionality of the federal DBE program, transportation-specific disparity studies, and written discrimination complaints filed by DBEs with USDOT, states and transit authorities. Specifically:

- We reviewed the court decisions that have addressed the constitutionality of the federal DBE program since the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Pena*. We identified decisions meeting these criteria and consulted with officials from USDOT and the Department of Justice (DOJ) to ensure that we included all relevant decisions in our review. We also obtained information from USDOT and DOJ about pending cases concerning the constitutionality of the federal DBE program.
- We identified and reviewed all (14) transportation-specific disparity studies published between 1996 and 2000. We reviewed disparity studies because DOJ has stated that they are of particular relevance for affirmative action measures in federal programs providing grants to

states and local governments, and because courts have recognized them as a source of evidence of discrimination in considering the federal DBE program. In addition, USDOT has identified disparity studies as one source that states and transit authorities could use to help set their federal DBE participation goals. Numerous state and local governments have used them to support their minority business contracting programs and to set their federal DBE goals. We selected disparity studies that (1) were published between 1996 and 2000, (2) contained a separate disparity analysis on transportation contracting, and (3) used a disparity ratio—that is, a comparison of the availability of MBE/WBEs to their utilization in contracts—as a indicator of discrimination.[2] These criteria are generally consistent with USDOT's regulations, which state that any disparity studies used in the DBE goal setting process should be as recent as possible and focused on the transportation contracting industry. To determine whether the disparity studies' findings were reliable, we evaluated the methodological soundness of the studies using common social science and statistical practices. For example, we systematically examined each study's methodology, including its assumptions and limitations, data sources, analyses, and conclusions.

To identify relevant disparity studies, we obtained information from USDOT, DOJ, the Policy Sciences Graduate Program of the University of Maryland Baltimore City, the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF). In addition, we obtained information from the five consulting firms most noted for conducting disparity studies: National Economic Research Associates, Inc., BBC Research and Consulting, MGT of America, Mason-Tillman Associates, Ltd., and DJ Miller and Associates, Inc.

The evidence—along with its strengths and weaknesses—contained in any disparity study would be limited to the geographical scope of that particular study. Moreover, because we limited our review to transportation-specific disparity studies, our conclusions cannot be generalized to disparity studies pertaining to other industries.

- We interviewed USDOT officials about written complaints of discrimination DBEs filed with USDOT. We also reviewed USDOT's data on written complaints of discrimination filed by DBEs since fiscal year

[2]Only one transportation-specific disparity study published between 1996 and 2000 did not use a disparity ratio in its analysis and therefore was excluded from our review.

1996. In addition, we analyzed information on written complaints of discrimination filed by states and transit authorities collected through our nationwide survey.

We recognize that we did not review all of the information that could be relevant to the issue of discrimination in transportation contracting. However, we chose to review sources directly related to transportation contracting and the federal DBE program, including those suggested by USDOT and minority-owned business and transportation associations. Since we did not conduct an exhaustive review and evaluation of all evidence of discrimination, our results cannot be used to support or dismiss claims about the existence of discrimination against DBEs throughout the nation. Moreover, we did not address whether the DBE program satisfies the requirements of strict scrutiny and is therefore constitutional.

To identify factors, other than discrimination that may limit the ability of DBEs to compete for transportation contracts, we reviewed information collected in our nationwide survey and recent GAO reports. In addition, we interviewed officials from USDOT and the Small Business Administration (SBA) and representatives from the American Road and Transportation Builders Association, Associated General Contractors of America, Minority Business Enterprise Legal Defense and Education Fund, Inc., Women Construction Owners and Executives, and National Black Chamber of Commerce.

To determine the impact of the DBE program on costs, competition, and job creation, we collected data from states and transit authorities through our survey and from USDOT. In addition, we interviewed officials from USDOT and SBA as well as representatives from minority- and women-owned business groups and transportation associations.

To evaluate the impact of discontinuing a federal DBE program, we identified the states and transit authorities that had discontinued the federal DBE program through our review of the court decisions that have addressed the constitutionality of the federal DBE program since the Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Pena*. We identified 1 state and 1 transit authority that had discontinued their federal DBE programs due to court decisions. We interviewed officials from the state and transit authority and requested DBE and non-DBE participation data in federal transportation contracting for the years immediately before

and after the discontinuance. Only the state DOT provided the requested data.

To assess the impact of discontinuing a nonfederal DBE program, we used our survey to identify states and transit authorities that had participated in a nonfederal DBE program that was discontinued. Twelve survey respondents indicated that they had participated in such programs. We excluded the two transit authorities that had participated in nonfederal DBE programs that were discontinued in 2000 because sufficient time had not elapsed to determine the impact of this change. We contacted the remaining ten states and transit authorities and requested data on DBEs' and non-DBEs' participation in nonfederal and federal transportation contracting for the years immediately before and after the program was discontinued. Eight of the 10 states and transit authorities responded to our requests for data; however, only one state could provide the data necessary to thoroughly evaluate the impact of discontinuing its program—that is, data on DBEs' and non-DBEs' participation in nonfederal transportation contracting before and after the nonfederal program was discontinued.

We conducted our review from August 2000 through April 2001 in accordance with generally accepted government auditing standards.

Comments From the U.S. Department of Transportation

U.S. Department of Transportation

Assistant Secretary for Administration

400 Seventh St., S.W.
Washington, D.C. 20590

May 1, 2001

Mr. John H. Anderson Jr.
Managing Director, Physical Infrastructure
U.S. General Accounting Office
441 G Street N.W.
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for the opportunity to review the draft General Accounting Office (GAO) report, "Disadvantaged Business Enterprises: Critical Information Is Needed To Understand Program Impact." The draft report represents a great deal of hard work by GAO staff to respond to a complex statutory directive in a short timeframe. We appreciate the positive working relationship that we have experienced with GAO throughout this effort.

As Congress recognized when enacting Disadvantaged Business Enterprise (DBE) statutory provisions, it is a vitally important objective to ensure that all firms interested in working on Department of Transportation (DOT) assisted contracts compete on a nondiscriminatory, level playing field. The DOT DBE program has provided opportunities for firms owned by socially and economically disadvantaged individuals to perform millions of dollars in DOT-assisted contracts each year, opportunities they may well not have enjoyed in the absence of the program. The program is carefully designed to provide nondiscriminatory opportunities for DBEs to compete in a way that is administratively and legally sound.

Our comments are intended to clarify the role of disparity studies in the DOT's DBE program, the evidentiary value of these studies, the need for state and local agencies to use the best available data in setting DBE goals, and the status of data on the participation of DBE and other contractors.

See comment 1.

DOT Program Does Not Depend On Disparity Studies

Disparity studies are not required within the context of the Department's program to demonstrate the existence of discrimination or of a compelling need for the DBE program. Congress has already made this determination, as the courts have repeatedly affirmed. Also, it is not necessary for DOT financial assistance recipients to use disparity studies for setting DBE goals. The final report should clearly

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emphasize these issues to ensure full understanding of the key point that disparity studies are not a principal underpinning of the DOT DBE program.

See comment 2.

Studies Provide A Reasonable Inference Of Discrimination

The body of evidence considered by Congress, the Department, and the courts supports the findings offered by disparity studies that show there are significant disparities in utilizing firms owned by minorities and women on federally funded highway and transit projects. A reasonable inference of discrimination can be drawn from these disparities. As a result, while there may be some variability in the methodological reliability of individual disparity studies, as a whole, they constitute a valuable source of evidence concerning the opportunities afforded DBE firms.

The value of this evidence is underlined by other reviews and expert analyses of disparities in Government contracting. One example is a 1997 report by the Urban Institute, "Do Minority-Owned Businesses Get a Fair Share of Government Contracts?" The report considered 95 disparity studies and conducted a detailed analysis of the data contained in 58 of them, including several studies that focused specifically on transportation contracting. The report also specified the methods used to analyze the studies. The analysis found that, as a group, these studies demonstrated substantial disparities in Government contracting. Because the GAO draft report does not discuss in detail the methods used to analyze the 14 disparity studies GAO considered, persons interested in a comprehensive review of disparity studies and their role in affirmative action programs may wish to consult other sources as well.

See comment 3.

State And Local Agencies Must Use Best Available Data To Set DBE Goals

Federal regulations direct state and local agencies to use the best available data as the basis for determining the availability of DBE and non-DBE firms as they calculate their overall DBE goals. This can come from such sources as disparity studies, census data, bidders lists, prequalification lists, and DBE directories. That there may be imperfections in data sources does not mean that it is inappropriate, either as a matter of policy or law, for state and local agencies to use the best available data to make decisions about DBE goals. In discussing various data sources used for determinations of DBE availability, the GAO draft report appears to seek a level of sophistication and detail that does not currently exist, and that the courts have not required, to provide a sound basis for DBE goal-setting. State and local agencies must have the latitude to use existing information sources that permit even smaller agencies to administer a program without undue difficulty.

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See comment 4.

Most Recipients Have Data Concerning DBE Participation By Prime Contractors And Subcontractors

States and transit authorities are required to collect and maintain data on DBE participation in both prime contracts and subcontracts. That data is submitted to the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) so that each agency can determine overall DBE participation in its respective DBE programs. For example, every state submits information quarterly to FHWA on the number and dollar value of total prime contracts awarded as well as DBE prime and subcontracts awarded during that quarter. This information is readily available from FHWA on a state-by-state basis. As a result, the draft report's finding that a majority of states and transit authorities do not have DBE participation data available is confusing, since this information is routinely made available to DOT.

We hope that these suggestions will facilitate GAO's efforts to produce a final report that is as useful as possible to Congress and the public. Again, we appreciate the courtesies that GAO has afforded us in developing this report. Please contact Martin Gertel on (202) 366-5145 with any questions.

Sincerely,

Melissa J. Allen

GAO's Comments

The following are GAO's comments on USDOT's letter dated May 1, 2001.

1. As noted on pages 24 and 74, our objective was not to address the question of whether the DBE program satisfies the requirements of strict scrutiny and is therefore constitutional as USDOT seems to suggest. In particular, we did not attempt to determine whether sufficient evidence of discrimination exists to demonstrate that the DBE program serves a compelling interest. Further, as stated on pages 11, 14, and 24, we recognize that disparity studies are not required to support the federal DBE program, represent one of several sources of evidence of discrimination, and are but one method that states and transit authorities could use to set their federal DBE goals.

2. We agree with USDOT's assertion that an inference of discrimination can be drawn from studies finding statistical disparities between the availability and utilization of MBE/WBEs. Consequently, we chose to review disparity studies as one source of evidence of discrimination. Also, as we stated on pages 6 and 29, all 14 studies we reviewed found disparities between the availability and utilization of MBE/WBEs in contracting, and taken as a whole, these studies suggest discrimination against MBE/WBEs. However, the data limitations and methodological weaknesses we identified create uncertainties about their findings.

Furthermore, we agree with USDOT that we did not review all sources of evidence of discrimination against DBEs—a point we make repeatedly throughout the report. While we could not review all possible sources, we chose to review the sources directly pertaining to transportation contracting and the federal DBE program. As such, one of the sources we reviewed were transportation-specific disparity studies published between 1996 and 2000. As noted on page 29, we defined transportation-specific studies as those containing a separate disparity analysis on transportation contracting. While the Urban Institute report cited by USDOT included several studies focusing on transportation contracting, it combined these studies with a variety of others in its analysis and did not contain a separate disparity analysis of transportation contracting. In addition, although the Urban Institute published its report in 1997, all of the disparity studies it examined had been published before 1996. Therefore, the Urban Institute report did not meet our criteria.

We did not discuss all of the details about the methods we used to analyze the 14 disparity studies because the methods are commonly used in social

science research. To help clarify this for readers who are unfamiliar with these methods, we have added an example to our discussion in appendix III.

3. We agree with USDOT that states and transit authorities must use the best available data in setting their DBE goals and that there are inherent limitations in conducting disparity studies. However, we disagree that we are seeking an unobtainable level of sophistication and detail in these endeavors. Rather, we believe we identified some basic problems with the data sources that should be recognized and, in most cases, could reasonably be avoided in conducting disparity studies and setting DBE goals. For example, if bidders lists are used to set DBE goals, they should be as up-to-date as possible in order to avoid overstating or understating the number of available firms.

4. We disagree that the information necessary to calculate DBE participation rates in subcontracts is routinely made available to DOT. To calculate DBE participation rates in prime contracts and subcontracts, one needs the number and value of prime contracts and subcontracts awarded to DBEs and the number and value of prime contracts and subcontracts awarded to non-DBEs. We were able to calculate DBE participation rates in prime contracts because most states and transit authorities could provide the number and value of prime contracts awarded to DBEs and non-DBEs. However, the majority of states and transit authorities could not provide the number and value of subcontracts awarded to non-DBEs and therefore the data on DBEs' participation rates in subcontracts are limited. Information on the number and value of subcontracts awarded to non-DBEs is not reported to USDOT and USDOT does not maintain this information. Most states and transit authorities provided the number and value of subcontracts awarded to DBEs—information that is routinely provided to USDOT. However, this information alone does not allow one to calculate DBEs' participation rates in subcontracts.

GAO Contacts and Staff Acknowledgments

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