

# **A Vision Fulfilled?**

The Impact of Proposition 209 on Equal Opportunity  
for Women Business Enterprises



In 1996, Proposition 209 eliminated affirmative action in public education, employment and contracting. Entitled the California Civil Rights Initiative, this proposition ended most programs designed to open the doors of equal opportunity for women and people of color in public contracting. *A Vision Fulfilled?* documents the 11-year impact of Proposition 209 on Women Business Enterprises seeking public contracts in California's transportation construction industry.

**THELTON E. HENDERSON**  
**CENTER FOR SOCIAL JUSTICE**  
UNIVERSITY OF CALIFORNIA  
BERKELEY SCHOOL OF LAW

SEPTEMBER 2007

## Authors

Monique W. Morris, MS  
Michael D. Sumner, PhD  
Jessica Z. Borja

*Additional support from:*

Diane T. Chin, JD  
Mary Louise Frampton, JD  
Darcy Vaughn

Willoughby Anderson  
Mary Elliott, PhD  
Molly Higgins  
Erica Malveaux-Miller  
Jennifer Navarro  
Sara Pierre, MA

## Acknowledgments

This report was funded by a grant from the Fulfilling the Dream Fund/Public Interest Projects.

*The Thelton E. Henderson Center for Social Justice at the University of California, Berkeley School of Law acknowledges the following organizations and individuals for their assistance and support regarding this report:*

Open Society Institute

California Commission on the Status of Women  
California Department of Transportation  
Equal Justice Society  
Equal Rights Advocates  
Lawyers Committee for Civil Rights of the San Francisco Bay Area  
National Association of Women Business Owners  
National Economic Development and Law Center  
The Impact Fund  
The California Coalition to Analyze the Impact of Proposition 209  
San Diego Hispanic Chamber of Commerce

Amanda Berger  
Jan Brown  
Dominique C. Fulling  
Vivian Huang  
Aileen C. Hernandez  
Benjamin Todd Jealous  
Jovita Jenkins  
Molly Martin  
Melanie McLeod  
Eva Jefferson Paterson  
Steven C. Pitts  
Alvin Starks  
Kimberly Thomas-Rapp  
Beth Youhn

*Lastly, we wish to extend our gratitude to the public contractors who participated in this study and for whom this work continues.*



## **A Vision Fulfilled?**

The Impact of Proposition 209 on Equal Opportunity  
for Women Business Enterprises

### **Table of Contents**

Executive Summary .....	2
Introduction .....	4
Legal Review .....	6
Literature Review .....	10
Methodology .....	15
Results: WBE Award Access .....	17
Results: WBE Survival .....	22
Results: Survey .....	24
Results: WBE Focus Groups and Interviews .....	33
Discussion .....	37
Recommendations .....	38
Conclusion .....	40

# Executive Summary

Affirmative action programs were initiated in the 1960s to correct patterns of discrimination against people of color and women of all racial groups in order to fulfill a vision to include all in the mainstream of the nation. Designed to open the doors of opportunity for all people, these programs sought to level the playing field in public employment, public contracting, and education. However, beginning in 1989 with the Supreme Court's ruling in *City of Richmond v. J.A. Croson Company*, the courts began to narrowly restrict mandatory affirmative action programs in public contracting. In California, growing efforts to eliminate affirmative action culminated in 1996, when voters passed Proposition 209, the California Civil Rights Initiative. This law ended virtually all affirmative action programs in public education, public employment, and public contracting. Although the federal district court ruled that Proposition 209 was unconstitutional, the Court of Appeals reversed the lower court and upheld the initiative.

California's transportation construction industry is the source of over \$2 billion in public contracts each year and will disburse several billion dollars in bond money to contractors throughout the state. As the largest granting agency for transportation construction statewide, the California Department of Transportation (Caltrans) has tremendous capacity to increase the wealth and employment opportunities among California's diverse population. To correct the historic exclusion of people of color and women of all racial groups from the transportation construction industry, Caltrans initiated a race- and gender-conscious Disadvantaged Business Enterprise (DBE) program and administered it for two decades until 1996 when Proposition 209 eliminated affirmative action for all but federally funded projects. In May 2006, Caltrans discontinued the remaining race- and gender-conscious aspects of the federal program and adopted a race- and gender-neutral program.

In 2007, the Thelton E. Henderson Center for Social Justice (HCSJ) at the U.C. Berkeley School of Law completed an evaluation of the impact of Proposition 209 on businesses that were certified as Women Business Enterprises (WBEs) in 1996, when the initiative was passed. *A Vision Fulfilled?* analyzes how the elimination of race- and gender-conscious programs have affected women-owned businesses in California's transportation construction industry. Five distinct methodologies were used to analyze and document the impact of Proposition 209 on women-owned businesses. The study's research team analyzed WBE access to awards, measured the survival rate for 1996 certified WBEs, surveyed those WBEs who survived, led focus groups with surviving WBEs, and conducted in-depth interviews with surviving WBE contractors. By using multiple methods, the research team was able to document and verify a significant impact of Proposition 209 on WBEs. Key findings include:

- **After the passage of Proposition 209, real dollars awarded to certified WBEs fell by roughly 40 percent.** In 1985, certified WBEs were awarded 2.1 percent of federally funded Caltrans projects. This percentage steadily increased thereafter to reach an average of 6.7 percent in the six years leading up to and including 1996, the year that Proposition 209 was passed. With the elimination of the Caltrans affirmative action program, this percentage dropped significantly to 3.8 percent in the years that followed the passage of Proposition 209. White women-owned WBEs mirrored these trends closely while women of color-owned WBEs showed a different pattern. Prior to 1991, women of color-owned WBEs had received no awards at all. By 1993 they were receiving almost 2 percent of the awards but thereafter this number dropped to 1 percent and has remained steady since that time, for the years that data were collected.
- **Only 36 percent of WBEs certified with Caltrans in 1996 are still in business today.** In 1996, 2,096

transportation construction businesses were owned by women and registered with Caltrans as WBEs. Today, only 763 of those businesses are still in operation, 79 percent of which are owned by white women. However, without an appropriate comparison group, the interpretation of the relative success of WBEs is difficult to ascertain. Firms owned by African American women were significantly less likely to survive than other WBEs.

- **WBEs reported that the overall helpfulness of the DBE program fell significantly after 1996.** Following the passage of Proposition 209, WBEs reported a decline in the quality of pre-bidding conferences, “good faith” outreach efforts initiated by prime contractors, and the DBE program in general. Surviving WBEs also reported a regular inability to work with Caltrans. Women of color-owned WBEs reported relatively more difficulties post-Proposition 209 than white-owned WBEs.
- **Surviving WBEs have struggled to overcome gender bias in the transportation construction industry.** Focus groups and interviews reveal that the transportation construction industry still embraces a “good old boy” network that is difficult for women to access and overcome. Participants attributed their success in the construction industry to continued visibility to potential clients, shifting their focus from public agencies, strategically responding to requests for proposals, and exercising legal recourse when necessary.

*A Vision Fulfilled?* has found that women face significant barriers when trying to participate in California’s transportation construction industry. To support equal opportunity for women-owned businesses to participate in this field, HCSJ recommends the augmentation and enforcement of a robust DBE program that utilizes gender-conscious equal opportunity goals and programming. The findings of this report suggest that women are currently underrepresented

among firms receiving public contracts, and that this underrepresentation has been hastened by the implementation of Proposition 209. Because of California’s ongoing interest in supporting the equal participation of women in the transportation construction industry, HCSJ also suggests that Caltrans and other public agencies provide training for key leadership at contracting agencies to address historical and present manifestations of gender bias and institute policies to enforce anti-discrimination in the workplace and on public projects. The development of additional structures to support and encourage the participation of women along key pathways to becoming entrepreneurs is also critical. Other recommendations include improved data collection for women-owned businesses, continued research on the impact of Proposition 209 on women in the transportation construction industry, and advocacy for implementing the business model of diversity. ■

# Introduction

*“I see a future of justice—the simple human justice of equal rights for all men and for all women, guaranteed equal rights at last under the Constitution of the United States of America...I want women free to pursue without limit the full life of what they want for themselves...I want the people in business free to pursue with boldness and freedom new ideas...and I want minority citizens fully to join the mainstream of American life. I need for all of you to join me in fulfilling that vision...If we succumb to a dream world then we’ll wake to a nightmare. But if we start with reality and fight to make our dreams a reality, then Americans will have a good life, a life of meaning and purpose in a nation that’s strong and secure.”—President Jimmy Carter<sup>1</sup>*

For centuries, women have been engaged in a struggle to achieve parity with men in access to employment and other opportunities that foster economic development. While some doors have been opened to include women in industries that have historically excluded them, there continue to be significant barriers to their full and equal participation. Prior to the 1940s, it was not common for white women to formally work in the labor market. While women of color have a long history of such participation in the labor force, primarily as domestic and agricultural workers, it was not until the early 1940s that women of all racial groups began to comprise a sizeable percentage of working adults. This growth filled the blue-collar vacancies caused by men joining the military during World War II, a time in which the numbers of women in the labor force increased by nearly 32 percent.<sup>2</sup>

Twenty years later, largely in response to the Civil Rights Movement of the 1960s, the federal government enacted a series of corrective responses to racial and gender discrimination. These responses included a series of affirmative action programs that implemented systems of accountability via goal-setting and incentives to encourage the participation of those who had faced historical exclusion and discrimination in the public sector.

In 1961, President Kennedy signed Executive Order 10925, in which he called upon federal con-

tractors to use “affirmative action to ensure that applicants are treated equally without regard to race, color, religion, sex, or national origin.” President Johnson signed Executive Order 11246 in 1965, establishing a series of contracting and employment programs to guard against the underutilization of and discrimination against people of color. This order was amended in 1967 to include gender-responsive strategies for women of all racial groups who had also encountered measurable discrimination. With diversity established as a compelling government interest, Disadvantaged Business Enterprise (DBE) programs were developed. Still, it was not until the early 1980s that the federal government began to prioritize including women as equal citizens—allowing equal access to employment and other systems to foster their economic development.

While there is some evidence to suggest that women have been the largest beneficiaries of affirmative action since the 1980s, the legal and political discourse and media coverage have, in general, treated women as an afterthought.<sup>3</sup> In addition to President Johnson’s two-year delay before amending his Executive Order to include women, there was also a delay in President Richard Nixon’s effort to include women in programs to support equal opportunity. In 1971, President Nixon’s Order No. 4 was expanded to include women—a full year after it

---

<sup>1</sup> President Jimmy Carter, Second Presidential Nomination Acceptance Speech. Delivered on August 14, 1980.

<sup>2</sup> Arriola, E.R. (1990, Fall). “What’s the Big Deal? Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985.” *Columbia Human Rights Law Review*. 22, 21-71.

---

<sup>3</sup> Wise, T. (1998, Fall). “Is Sisterhood Conditional? White Women and the Rollback of Affirmative Action.” *NWSA Journal*. 10(3), 1-26. See also Jackson, J. (1999, January/February). “Affirmative Action Coverage Ignores Women—and Discrimination: A six-month study of media coverage.” *Extra!*

had already authorized flexible goals and timetables to correct the underutilization of Minority Business Enterprises (MBEs) by federal contractors. It was not until President Jimmy Carter's administration that significant strides were made to support the development of women-owned businesses. In 1979, President Carter established the National Women's Business Enterprise policy, which encouraged the nation to take affirmative action in supporting women's businesses. The nation responded and began a trend that would increase the participation of Women Business Enterprises (WBEs) on public projects.

Still, longstanding prejudice, cultural bias, and discriminatory practices have placed women at a comparative disadvantage to men.<sup>4</sup> This is especially true in fields traditionally dominated by men, including the transportation construction industry. The percentages of women in the construction industry as tradespersons and business owners have always been small. While gender-conscious affirmative action programs have supported an increase in the number of women participating in public contracting, the federal government has never been able to reach its target of awarding five percent of contracts to women.<sup>5</sup> The inability to reach this modest goal reflects the difficulty for women entrepreneurs to enter and succeed in the male-dominated transportation construction industry.

### **The Dismantling of Gender-Conscious Affirmative Action in Public Contracting**

Despite a significant increase in the visibility and participation of women-owned businesses in public contracting in the 1980s, there were a number of legal challenges to the merits of affirmative action

that impacted the enforcement of gender-responsive remedies to exclusion and discrimination. In 1989, the U.S. Supreme Court ruling in *City of Richmond v. J.A. Croson Company* began the erosion of judicial support for race- and gender-conscious equal opportunity programs. Following that decision were a number of cases that indirectly and directly impacted the use of gender-responsive equal opportunity programs in public contracting.<sup>6</sup> In the 1990s, a growing effort to eliminate affirmative action programs in education and public services culminated in 1995 with Proposition 209, a ballot initiative designed to eliminate affirmative action in public education, public employment, and public contracting. Entitled the California Civil Rights Initiative, Proposition 209 passed with 55 percent of the public vote in 1996. After surviving a series of legal challenges, Proposition 209 became law in 1997. Since the elimination of affirmative action in California, relatively little research has been conducted on any potential changes in public contracting and employment and how these changes have impacted women in business. As of this report's publishing, a decade has passed since Proposition 209 amended California's constitution to eliminate race- and gender-conscious equal opportunity programs in public education, employment, and contracting.

*A Vision Fulfilled? The Impact of Proposition 209 on Equal Opportunity for Women Business Enterprises* reports on the ways in which the removal of gender-conscious equal opportunity programs affected women seeking public contracts in California's transportation construction industry from 1996 to 2007, focusing on public contracting trends in the state Department of Transportation (Caltrans). This report investigates whether the transportation construction industry has successfully responded to President Jimmy Carter's call to action in 1980. Have we fulfilled the vision of a just society in which women have an equal ability to freely pursue their business ambitions? ■

<sup>4</sup> Otten, L. A. (1993). *Women's Rights and the Law*. Westport, CT: Praeger Paperback. See also Cheng, A. S. (2002). "Affirmative Action for the Female Entrepreneur: Gender as a Presumed Socially Disadvantaged Group For 8(a) Program Purposes." *American University Journal of Gender, Social Policy & the Law*. 10(1), 185-231.

<sup>5</sup> Rand Corporation for the Small Business Administration. (2007). *The Utilization of Women-Owned Small Businesses in Federal Contracting*.

<sup>6</sup> See Legal Review for further explanation.

# Legal Review

## Overview of Affirmative Action Jurisprudence

In the early years of affirmative action, the courts consistently upheld governmental programs designed to correct entrenched patterns of race- and gender-based exclusion and discrimination. For example, in 1979, the U.S. Supreme Court held that the use of temporary, voluntary affirmative action programs to remedy past discrimination did not conflict with the Civil Rights Act of 1964.<sup>7</sup> In 1987, the Court reiterated the view that gender-based classifications in hiring designed to remedy the imbalance of women in traditionally segregated job categories was consistent with the purpose of the Civil Rights Act of 1964.

Two years later, however, in *City of Richmond v. J.A. Croson Company*,<sup>8</sup> the Supreme Court struck down the City of Richmond's affirmative action plan and declared that racial classifications which benefited people of color would be analyzed by the same strict constitutional scrutiny used to evaluate laws that discriminated against such people of color. Applying this "strict scrutiny" standard, the Court held that government-initiated race-conscious affirmative action programs must serve a compelling government interest and be narrowly tailored to achieve this interest. To demonstrate a compelling interest, reasoned the Court, the governmental entity was required to show that it had discriminated against people of color in the past and to prove that an affirmative action program was necessary to address the effects of such discrimination.<sup>9</sup> The program was also required to be narrowly tailored to benefit only those who could demonstrate that they had been victims of discrimination.<sup>10</sup> The Court indicated that local entities could amend their affirmative action programs to correct discriminatory practices that had a statistically demonstrated disparate impact<sup>11</sup> and set defined goals, expiration dates,

and procedures for mitigating the effects on those not benefiting from them.<sup>12</sup> Government entities were also instructed to consider possible race-neutral programs that extend opportunities to all through race-neutral classifications and to avoid disadvantaging those not eligible for government programs.<sup>13</sup>

While this ruling specifically addressed only racial classifications, the opinion had a significant practical impact on gender-based affirmative action programs as well. In the wake of the *Croson* decision, many agencies across the country immediately dismantled their race- and gender-conscious anti-discrimination programs, while others merely suspended programs pending the results of the disparity studies required by the ruling.

However, the U.S. Supreme Court has consistently held that gender-based classifications are subject to "intermediate" scrutiny, a different constitutional standard than race-based classifications. In cases such as *United States v. Virginia*,<sup>14</sup> the Court has held that gender-based classifications must only serve an important government interest and be substantially related to this interest. In applying this "intermediate scrutiny," a lesser level of scrutiny, the Court has recognized that men and women are not similarly situated sociologically, physiologically, or legally.<sup>15</sup> Indeed, in many instances, the Court has shown a tendency to defer to the legislature's identification of an important interest that would be advanced by policies promoting gender equality and engaging in only a minimal analysis of whether there is a substantial relationship between the policy or program being challenged and the identified government interest.<sup>16</sup> Despite this different standard, the Supreme Court has never explicitly established a separate level of scrutiny for gender-based affirmative action programs.

<sup>7</sup> *United Steelworkers v. Weber*, 443 U.S. 193 (1979).

<sup>8</sup> 488 U.S. 469 (1989).

<sup>9</sup> *Ibid.* at 496-97.

<sup>10</sup> *Ibid.* at 506.

<sup>11</sup> *Ibid.* at 509.

<sup>12</sup> *Ibid.* at 510.

<sup>13</sup> *Ibid.* at 507.

<sup>14</sup> 518 U.S. 515 (1996).

<sup>15</sup> *Ibid.* at 533-34.

<sup>16</sup> See *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 473 (1981).

... *Proposition 209 barred all affirmative action programs that used race-based or gender-based classifications.*

Prior to the enactment of Proposition 209, a California statute<sup>17</sup> required general contractors, including those in the transportation construction industry, to demonstrate a “good faith” effort to subcontract five percent of their work to WBEs, as well as 15 percent to MBEs and three percent to disabled veteran-owned businesses.<sup>18</sup> In *Monterey Mechanical Co. v. Wilson*, the Ninth Circuit Court of Appeals held that the statute violated the Equal Protection Clause because California had not offered legislative or factual findings proving past discrimination by the state against the benefited groups as required by *Croson*.<sup>19</sup> Because of this narrow holding, the Court did not address the question of what constitutional standard should be applied in this case.<sup>20</sup>

### **Proposition 209 and Immediate Challenges**

Notwithstanding the federal courts’ guidelines for crafting affirmative action programs that met constitutional standards, Proposition 209 barred all affirmative action programs that used race-based or gender-based classifications. Proposition 209, enacted as Article I, Section 31 of the California State Constitution, reads in part, “the state shall not discriminate against or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education, or public contracting.”<sup>21</sup> Subsection C further states that “nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.”<sup>22</sup> Immediately after the enactment of Proposition 209, groups representing the interests of women and people of color filed a complaint against the State

of California challenging the law as violative of the Equal Protection Clause.<sup>23</sup> The plaintiffs asserted that Proposition 209 created an invalid political structure that limited the ability of local governments to remedy the effects of past discrimination.<sup>24</sup> The district court prohibited the implementation of Proposition 209 on the grounds that it singled out people of color and women of all racial groups for unique political burdens, could not withstand the strict scrutiny test under the Equal Protection Clause, and was contrary to the purpose of the Civil Rights Act of 1964.<sup>25</sup>

However, on appeal, the Ninth Circuit Court of Appeals held that because women and people of color constitute a majority of the population they could not have voted to “stack the political deck” against themselves and that it is for the people, not the courts, to determine whether the initiative vindicated compelling state interests.<sup>26</sup> The Court also noted that affirmative action programs would generally be viewed as attempts to grant preferential treatment, which would be contrary to the Equal Protection Clause.<sup>27</sup> It noted that while carefully crafted race- or gender-based preferences could sometimes be justified under the Constitution, the Equal Protection Clause does not mandate them.<sup>28</sup> The ruling encompassed not only numerical goal-oriented programs, but also any targeted outreach programs based on race or gender, including those operating in the transportation construction industry.

Although the Court cited *Virginia* for its gender-based classifications standard, its actual analysis conflated the constitutional requirements for race- and gender-based classifications and thus appears inconsistent with most federal jurisprudence on the issue.

<sup>17</sup> Cal. Pub. Cont. Code § 10,115 (Deering 1994).

<sup>18</sup> 125 F.3d 702, 704 (9th Cir. 1997).

<sup>19</sup> *Ibid.* at 702.

<sup>20</sup> *Ibid.* at 713.

<sup>21</sup> Cal. Const. art 1, sec. 31(a).

<sup>22</sup> *Ibid.* at sec 31(c).

<sup>23</sup> *Coalition for Economic Equity v. Wilson*, 946 F. Supp. 1480 (N.D. Cal. 1996).

<sup>24</sup> *Ibid.* at 1508-09.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Coalition for Economic Equity v. Wilson*, 122 F.3d 692, 707 (9th Cir. 1997).

<sup>27</sup> *Ibid.* at 708.

<sup>28</sup> *Ibid.*

### **Challenges to Gender-Based Affirmative Action Post-Proposition 209**

Since the enactment of Proposition 209, attempts to defend affirmative action at any level of government in California have largely been unsuccessful. In 2000, a general contracting firm challenged a program that had been established by the City of San Jose in 1983 to encourage public works projects participation by WBEs and MBEs.<sup>29</sup> Under this program, the City established a preference for granting contracts to bidders who had demonstrated reasonable efforts to subcontract with a specific percentage of WBEs, documented solicitations of WBEs, and provided justification for insufficient representation of WBE and MBE subcontractors.<sup>30</sup> Ruling that Proposition 209 prohibits programs from considering race or gender in its formal outreach and procurement programs, the California Supreme Court struck down the City's outreach requirements.<sup>31</sup> The Court ruled that some forms of outreach would still be permissible under Proposition 209, including efforts to increase opportunities and participation in public employment and contracting directed to all types of subcontractor enterprises, such as small business enterprises. The Court also ruled that other attempts to make information about public employment, education and contracting more widely available would be permissible.<sup>32</sup>

In an attempt to comply with Proposition 209, many local governments responded by immediately suspending WBE and MBE certification programs and attempting to develop programs that could legally provide assistance to women contractors and contractors of color. For example, the County of Contra Costa instituted a new outreach program that encouraged participation from an array of small and developing businesses, in-

cluding WBEs, without specific hiring goals.<sup>33</sup> In 2001, a group of WBEs and MBEs brought a class action lawsuit against the County, contending that its contracting system was invalid because it had a disparate impact on them. Plaintiffs also argued that the subjectivity of the system allowed the County to discriminate against WBE contractors.<sup>34</sup> The Court ruled against the plaintiffs on the grounds that they had not offered sufficient data to prove disparate impact and had not demonstrated that the discrimination was intentional.<sup>35</sup>

However, a recent Court of Appeals opinion may signal a shift in Proposition 209 jurisprudence.<sup>36</sup> When two construction companies challenged San Francisco's Minority/Women/Local Business Utilization Ordinance for its use of race- and gender-conscious classifications, the City raised a number of defenses, including a political restructuring argument, an international human rights approach, and an assertion that elimination of its program would threaten its continued receipt of federal funds.<sup>37</sup> The City's record included a 2003 disparity analysis conducted by the City's Human Rights Commission, which showed that the City was actively discriminating against women in its contracting and that its discriminatory practices had a statistically disparate impact on women. This study also showed that the City's discriminatory contracting practices violated federal law and that gender-conscious remedial programs would be required to bring the City into compliance.<sup>38</sup> Though the Court of Appeal held that the City had not met its burden of producing substantial evidence that it would lose its federal funding without gender-based remedi-

---

<sup>29</sup> *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537 (2000).

<sup>30</sup> *Ibid.* at 543-544.

<sup>31</sup> *Ibid.* at 563-565.

<sup>32</sup> *Ibid.* at 566.

---

<sup>33</sup> *L. Tarango Trucking v. County of Contra Costa*, 181 F. Supp. 2d 1017, 1034-35 (N.D. Cal. 2001).

<sup>34</sup> *Ibid.* at 1023-1024.

<sup>35</sup> *Ibid.* at 1032.

<sup>36</sup> *Coral Construction, Inc. v. City and County of San Francisco*, 149 Cal. App. 4th 1218 (1st Dist. 2007). Note: the California Supreme Court granted review of this decision on August 22, 2007.

<sup>37</sup> *Ibid.* at 1231-1240.

<sup>38</sup> *Ibid.* at 1229-1230.

al measures,<sup>39</sup> it did determine that the trial court had failed to consider whether the City's program was a narrowly tailored program designed to remedy past discrimination as constitutionally required.<sup>40</sup> In its opinion, the Court stressed that while the trial court had focused on the requirements of Section 31 of the California Constitution, "[t]he federal *equal protection clause* is the last word."<sup>41</sup>

As noted above, San Francisco defended its race-based affirmative action program on the grounds that its receipt of federal funding requires it to comply with Title VI of the Civil Rights Act of 1964,<sup>42</sup> which bars race-based discrimination in all programs receiving federal financial assistance.<sup>43</sup> The Court of Appeal concluded that the agency's affirmative action program violated Proposition 209 and that no federal law mandated the use of race-based affirmative action when race-neutral measures had not been tested.<sup>44</sup> However, the Court's holding did not extend to gender-based affirmative action programs because only the race-based aspects of the agency's program were challenged.<sup>45</sup> Although federal requirements must be documented for any race- or gender-based program to be defended under the federal funding exemption, there does not appear to be any specific case law addressing how the exemption would be evaluated in the gender context.

### **Response of the California Transportation Contracting Industry**

In general, the California transportation contracting industry has taken a cautious approach in response to recent federal affirmative action jurisprudence. In 2005, the U.S. Court of Appeals for the Ninth Circuit

struck down a State of Washington DBE program with a minority utilization requirement.<sup>46</sup> Concerned about maintaining its federal funding, Caltrans suspended its race- and gender-based DBE program in favor of race-neutral measures in 2006 after concluding that evidence provided by a past disparity study would be insufficient to meet federal constitutional standards. Caltrans has hired a consultant to conduct an availability and disparity analysis in order to assess whether race- and gender-conscious programs should be reinstated. While Caltrans' initial announcement regarding the abandonment of its DBE program did not explicitly refer to gender-based remedial programs – a reminder that jurisprudence in this area remains unsettled – its analysis found justification for a gender-conscious equal opportunity program.<sup>47</sup>

Whether at a federal or state level, judicial analysis of gender-based classifications in affirmative action programs has not reached the same level of development as that for race-based classifications in such programs. Perhaps a more probing analysis will follow in which courts will clarify what constitutional standard should be applied to gender-based affirmative action programs. With the present uncertainty however, under Proposition 209, gender-based programs to assist WBEs seeking public contracts have been difficult to maintain in California. ■

---

<sup>39</sup> *Ibid.* at 1234.

<sup>40</sup> *Ibid.* at 1250.

<sup>41</sup> *Ibid.* at 1247 (emphasis in original).

<sup>42</sup> 42 U.S.C. § 2000d (West 2006).

<sup>43</sup> 122 Cal. App. 4<sup>th</sup> 284, 304 (3d Dist. 2004).

<sup>44</sup> *Ibid.* at 311-312.

<sup>45</sup> *Ibid.* at 292, n.2.

---

<sup>46</sup> *Western States Paving Co. v. Washington State Department of Transportation*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005).

<sup>47</sup> See Literature Review for further explanation. See also BBC Research and Consulting for the California Department of Transportation. (2007, June). *Availability and Disparity Study*.

# Literature Review

Since its inception, the transportation construction industry has traditionally been male-dominated. Between 1980 and 1996, the percentage of women in the construction trades tripled, yet still only accounted for less than three percent of the construction workforce.<sup>48</sup> Women entering non-traditional fields often face strong resistance, often to the extent that their skills or experiences are overlooked or undermined.<sup>49</sup> Pervasive sexual harassment, unequal treatment, and intimidation in the construction field has had devastating effects on the advancement of women.<sup>50</sup> Nevertheless, in part due to gender-conscious goals and procurement programs, many women-owned businesses have made great strides over the last several decades. For example, in 1972, women owned five percent (approximately 400,000) of businesses nationwide;<sup>51</sup> however, by 2002, the number of businesses owned by women jumped to nearly 6.5 million, representing approximately one third of all businesses in the country.<sup>52</sup>

While the overall number of businesses owned by women has increased over time, these businesses have been clustered in industries such as retail and personal services.<sup>53</sup> Women have remained relatively invisible as competitors in industries that are traditionally male, such as the construction industry, and face unique challenges to their participation as skilled tradespersons, business owners, and public contractors. Nationwide, of the 2.8 million construction businesses, only seven percent are women-owned.<sup>54</sup>

Projections based on figures from the 1997 and 2002 Economic Census estimate that between 1997 and 2006 the number of women-owned construction businesses decreased by 45 percent, including a 42 percent decline in the number of employees, and a 35 percent decline in annual sales nationwide.<sup>55</sup> The challenge faced by women in non-traditional fields, such as construction, is having to prove that they are equally qualified to compete with men. Affirmative action programs have attempted to help women break into and compete equally in all fields since the 1960s. However, the success of women-owned businesses has become increasingly limited in non-traditional industries since the elimination of such programs.

## Gender-Conscious Affirmative Action Programs

One of the first uses of affirmative action in public contracting, the Philadelphia Plan, was put into operation in the late 1960s by then-Assistant Secretary of Labor, Dr. Arthur Fletcher. Using participation goals and timetables, the program sought the inclusion of businesses owned by members of historically disadvantaged groups on federal contracts in Pennsylvania.<sup>56</sup>

In the decades that followed, with the development and implementation of equal opportunity programs across the nation, business ownership began to expand among groups that had faced historical discrimination. Federal, state, and local governments developed various affirmative action programs aimed at strengthening the competitiveness of underutilized businesses, but these programs regularly did not include women. In the late 1970s, in response to the lobbying efforts of female entrepreneurs, the fed-

---

<sup>48</sup> Discrimination Research Center and Equal Rights Advocates. (2004, June). *Proposition 209 and the Decline of Women in the Construction Trades*.

<sup>49</sup> Payne, B. J. (1990). "Is Women Business Enterprise Discrimination a Reality?" *Journal of the Transportation Research Board*. 1282.

<sup>50</sup> *Supra*, note 48.

<sup>51</sup> US Census Bureau. (1972). "Table 1." *Women-Owned Businesses*.

<sup>52</sup> US Census Bureau. (2002). "Women-Owned Firms, Table 1." *Survey of Business Owners*.

<sup>53</sup> *Ibid*.

<sup>54</sup> US Census Bureau. (2002). "Women-Owned Firms, Table 11." *Survey of Business Owners*.

---

<sup>55</sup> These numbers are a projection. Actual numbers will be presented in the 2007 U.S. Economic Census. Center for Women's Business Research. (2006, September). *Women-Owned Businesses in the United States 2006, Fact Sheet*. Washington, DC.

<sup>56</sup> Office of the Assistant Secretary for Administration and Management. "Nixon and Ford Administrations." *In Brief History of DOL*. Retrieved March 24, 2006, from <http://www.dol.gov/oasam/programs/history/dolchp07.htm>.

eral government created the Interagency Task Force on Women Business Ownership. In its report, “The Bottom Line: Unequal Enterprise in America,” the task force reviewed the status of women-owned businesses in the United States. In 1979, President Jimmy Carter responded to the barriers documented in the report by establishing the Office of Women’s Business Ownership within the Small Business Administration (SBA). Soon after, the office began to proactively encourage the participation of women-owned businesses in government projects, marking an important step for firms owned by women.<sup>57</sup>

Gender-conscious equal opportunity programs were initiated with the intention of opening doors for women who had faced discrimination as a result of their gender. In the transportation construction industry and for women in general, the development of specific gender-conscious programs came only after programs were already broadly established for people of color. For example, in 1965, Executive Order 11246 required federal contractors and subcontractors to maintain written affirmative action plans for underutilized businesses owned by people of color. However, it was not until two years later, in 1967, that Executive Order 11375 extended these guidelines to include women of all races.<sup>58</sup>

In 1982, Congress established the DBE program through the U.S. Department of Transportation (USDOT) to encourage the participation of small businesses owned by people of color, including women of color, and other socially and economically disadvantaged groups, including disabled veterans, in federally funded projects. However, small businesses owned by women of all racial groups were not included in this program until five years later, in 1987, when the Surface Transportation and Uniform Relocation

Assistance Act was enacted.<sup>59</sup> For women, the path to equal rights and opportunities through American policies is often fraught with inconsistencies, despite the establishment of policies aimed to correct racial discrimination.

### **Barriers to Success for Women Business Enterprises**

For women, the ability to own a business is often challenged by specific issues that prevent them from participating on equal footing with men. In California and elsewhere, these include poor agency data collection regarding the participation of women, gender discrimination, unequal access to capital and financial support for women-owned businesses, barriers presented by the intersection between race and gender, and the impact of Proposition 209 on pathways to entrepreneurship.

### **Poor Agency Data Collection Regarding the Participation of Women**

The House Small Business Committee has found that “miscoding,” or awarding contracts that are intended for small businesses to ineligible large businesses, is problematic among many federal departments. The committee found that in 2005 the SBA had reported an inflated small business participation rate of 25 percent. Once miscoding was factored in, this rate fell to 22 percent, accounting for a total of \$11.9 billion wrongfully awarded. USDOT also reported a miscoding rate of 25 percent.<sup>60</sup> Such a high rate of miscoding creates a false perception of participation of small businesses in the marketplace, resulting in the reduction of genuine opportunities for all small businesses, especially those owned by women.

---

<sup>57</sup> National Women’s Business Council. (2002, December). *Support for Women’s Enterprise in the United States: Lessons Learned*.

<sup>58</sup> Office of Federal Contract Compliance Programs. “Executive Order 11246, As Amended.” Retrieved May 30, 2007, from <http://www.dol.gov/esa/regs/statutes/ofccp/eo11246.htm>.

---

<sup>59</sup> Blanchflower, D.G., and Wainwright, J. (2005, November). *An Analysis of the Impact of Affirmative Action Programs on Self-Employment in the Construction Industry*. NBER Working Paper No. W11793.

<sup>60</sup> House Small Business Committee Democratic Staff. (2006, July). *Scorecard VII: Faulty Accounting by Administration Results in Missed Opportunities for Small Businesses*.

## Literature Review

### Gender Discrimination

Gender discrimination has had a consistent and substantial presence in the history of women-owned business in the construction industry. The traditional path toward upward mobility begins with entry-level workers who increase their skills by receiving direct mentorship and skill development from supervisors, trade schools, or apprenticeship programs, experience that can eventually lead them to become managers and contractors themselves.<sup>61</sup> Unfortunately, gender discrimination in the traditionally male construction industry has prevented women from accessing and obtaining well-paying construction jobs, which can interfere with their ability to acquire the necessary work experience to qualify them as future contractors.<sup>62</sup> Although women-owned firms tend to be smaller and younger, there is evidence that their limited access to markets for business can be attributed, in part, to being women-owned. As women-owned businesses face discriminatory barriers which prevent them from selling their goods and services, women-owned businesses are unable to grow as quickly as male-owned businesses.<sup>63</sup> A study published in 2002 found WBEs faced barriers to accessing larger contracts. The study found that when the value of subcontracts increased, the share of awards to women-owned small businesses decreased. For example, when federal prime contractors subcontract more than \$1 million, WBEs receive less than half the share that they would if subcontracts offered were less than \$1 million, receiving only four percent compared to nine percent of the dollars. This can be explained in part by the fact that smaller businesses in general have difficulty competing for and

obtaining very large subcontracts (such as those that are several million dollars).<sup>64</sup>

Previous studies that have examined economic data and collected anecdotal evidence have established that discrimination in market access continues to exist for women-owned businesses, particularly for women of color.<sup>65</sup> Women business-owners are regularly excluded from “good old boy” networks, not informed of bidding opportunities, and are barred from bids entirely. They have also reported discriminatory competition such as unequal pricing for different firms and biased standards of review. Resistance to women entering the construction industry is also found within unions. Women are discouraged from pursuing unionization by being subject to exclusionary entrance procedures that include advance payment of fees, secretive or limited application acceptance dates, difficult testing, or requirements that mandate that the applicant complete a certain number of hours for an industry employer prior to applying.<sup>66</sup> These practices undermine the ability of women to compete and also impact whether women are able to launch and sustain viable enterprises. Some WBEs have responded by focusing on companies with whom they have built relationships or by simply staying out of the public contracting sector altogether.<sup>67</sup>

In a Pennsylvania-based focus group that included WBEs who bid for state and municipal contracts, participants stated they felt that male contractors and vendors held prejudicial views regarding the ability of WBEs to complete a job and generally regarded them as “unsophisticated, lacking necessary equipment and resources, and not having needed ex-

---

<sup>61</sup> This differs from engineering, where the majority of individuals working in the engineering industry have at least a four-year college degree. BBC Research and Consulting for the California Department of Transportation. (2007, June). *Availability and Disparity Study*.

<sup>62</sup> *Supra*, note 48. See also *supra*, note 61.

<sup>63</sup> Bates, T. (2002, July). “Restricted Access to Market Characterizes Women-Owned Businesses”. *Journal of Business Venturing*, 17, 313-324.

---

<sup>64</sup> National Women’s Business Council. (2002, September). *Women-Owned Small Businesses in Federal Subcontracting: Measures and Data*.

<sup>65</sup> *Supra*, note 59.

<sup>66</sup> *Supra*, note 48.

<sup>67</sup> McLymont, R. (2003, June). “Reconstructing affirmative action; Opinions differ as to the damage done and how to repair it.” *Minority Business Entrepreneur*, 20(3), 16.

perience in or knowledge of contracting procedures.”<sup>68</sup> This is compounded by the prevalent negative perception among prime contractors that affirmative action programs give preference to unqualified applicants, affecting all women, especially women of color.<sup>69</sup> Although studies have shown no evidence of weaker labor market performance among beneficiaries of affirmative action programs,<sup>70</sup> WBEs reported that they must make an extra effort to prove their abilities to prime contractors in order to win a subcontract award, even when fully qualified for the job. Others have responded to negative stereotypes by lowering their prices or increasing the amount of work without increasing the submitted bid price.<sup>71</sup> Other studies report that prime contractors abuse the WBE good faith efforts in order to win contracts—listing WBEs as one of their subcontractors, but never following through with actual subcontracting projects.<sup>72</sup>

### **Unequal Access to Capital & Financial Support**

Access to financial capital is an important component to success. In its 1997 report summarizing disparities in government contracting, the Urban Institute found that limited experience in borrowing, difficulty demonstrating creditworthiness, having low income, low rates of home ownership and poor capital resources limit WBEs’

*WBEs reported that they must make an extra effort to prove their ability to prime contractors in order to win a subcontract award, even when fully qualified for the job.*

access to financial resources. Insufficient funding puts small businesses, including WBEs, at risk of defaulting on their bonds or other financial commitments, especially if there is delay in payment for work completed.<sup>73</sup>

In 2004, the National Women’s Business Council, a bipartisan federal advisory council, found that while the SBA has increased the number of total dollars loaned to women-owned firms at a faster rate than to other firms, the actual number of loans and investments to women-owned businesses is not growing at the same pace. Between 1998 and 2003, the SBA increased the dollars loaned to and invested in women-owned businesses by 30 percent, compared to a 21 percent increase in dollars loaned to all small businesses. Over the same period, however, the number of loans and equity investments to women-owned small businesses grew by only 41 percent, much lower than the 57 percent increase to all businesses. The cause for this disparity is unknown given that other studies have documented that women-owned firms do not differ significantly from the average American firm regarding bill payments, financial strength, and overall creditworthiness.<sup>74</sup>

Capital created through home ownership is often necessary to start or expand a business. Barriers to home ownership and home equity growth for women can negatively affect their opportunities for business growth. Historical evidence of gender discrimination in lending practices is evident; for instance, the availability of loans to women was often reduced because of the perceived risk associated with being single or of childbearing age.<sup>75</sup> These practices have since been

---

<sup>68</sup> US Commission on Civil Rights. “Barriers Facing Minority- and Women-Owned Businesses.” In *Barriers Facing Minority- and Women-Owned Businesses in Pennsylvania*. Retrieved December 8, 2006 from <http://www.usccr.gov/pubs/sac/pa0802/ch3.htm>.

<sup>69</sup> Jabbara, N. W. (2001, August). “Affirmative Action and the Stigma of Gender and Ethnicity: California in the 1990s.” *Journal of Asian and African Studies*. 36(3), 253-274.

<sup>70</sup> Holzer, H. J., and Neumark, D. (2006, Spring). “Affirmative Action: What Do We Know?” *Journal of Policy Analysis and Management*, 25(2), 463-490.

<sup>71</sup> US Commission on Civil Rights. “Developments in Minority- and Women Owned Business Utilization at the State and Local Levels.” In *Barriers Facing Minority- and Women-Owned Businesses in Pennsylvania*. Retrieved December 8, 2006 from <http://www.usccr.gov/pubs/sac/pa0802/ch5.htm>.

<sup>72</sup> *Supra*, note 59. See also *supra*, note 68.

---

<sup>73</sup> Bonds guarantee that “a contractor will fully perform the contract and offer protections against breach” US Commission on Civil Rights. *Supra*, note 68.

<sup>74</sup> National Women’s Business Council. (2004, April). *Trends in SBA-backed Financing to Women-Owned Businesses, FY1998-FY2003*.

<sup>75</sup> Stephanopoulos, G. & Edley, C. (1995). Affirmative action review: Report to the President. Washington D.C.: U. S.

## Literature Review

outlawed, but barriers to home ownership and equity growth continue to exist for women of all racial groups.

### **The Intersection between Race and Gender**

Women of color face unique challenges that often compound the impact of discrimination based upon race, ethnicity, and gender. The legacy of slavery and other culturally destructive policies produced unique work histories, standards and expectations regarding the mandatory or necessary participation of women of color in the workforce. However, while women of color were expected to work, they were not encouraged to own. Still, despite significant social and economic barriers to building economic self-sufficiency, women of color often managed to own successful businesses that were in typically gendered fields, such as hair care, food/restaurants, laundry, and domestic or personal service. Because women of color, particularly African American women, were largely never accepted as “housewives,” expectations regarding their participation in manual labor varied greatly from their white counterparts.<sup>76</sup>

Like their male counterparts, many women of color have historically become entrepreneurs as a way to escape racism and discrimination.<sup>77</sup> This racism, inflicted by unions, employers, project managers, and others, has served as a constant reminder for women of color that they were often their own best advocates. It has been observed that “whatever the hierarchy of preference[,] ...black women could always be found at the bottom.”<sup>78</sup>

Still, many of the obstacles that have historically prevented women of color from entering and succeeding as entrepreneurs linger in the modern climate of opportunity. Indeed, women of color must not only overcome

those barriers in place for women, but those that exist for people of color as well. Women of color face obstacles to business ownership such as lower rates of home ownership, or lower home values for those that do own homes, higher denial rates for business loans, and lower amounts of loans for those that receive them.<sup>79</sup> For women of color, the odds of opening a business are much lower than those for their white counterparts. A study by the SBA shows that as women they are 62 percent as likely to open a business as men; as people of color, their chances of opening a business are only 55 percent as likely.<sup>80</sup>

Unfortunately, the position faced by women of color as unique from both men of color and white women in non-traditional industries is often difficult to study because of limited data. As is currently the case with Caltrans, many agencies do not collect data for women of color separate from their male or white female counterparts. While women of color are often subject to experiences that are not comparable with those of men and white women, policies that affect either group have not responded to the unique barriers they face to full and equal participation.

### **Impact of Proposition 209 on Pathways to Entrepreneurship**

Prior to the passage of Proposition 209, many of California’s business enterprise programs increased MBE and WBE participation in public contracting and helped to mitigate the underutilization seen in that arena.<sup>81</sup> However, the proposition appears to have halted and even reversed these gains. Most notably, Caltrans experienced a significant decline in the amount award-

---

Government Printing Office. See also *supra*, note 61.

<sup>76</sup> Davis, A.Y. (1983). *Women, Race, and Class*. New York, NY: Vintage Books.

<sup>77</sup> Lerner, G. (1972). *Black Women in White America*. New York, NY: Vintage Books.

<sup>78</sup> Anderson, K. (1982, June). “Last Hired, First Fired: Black Women Workers during World War II.” *Journal of American History*. 69.

<sup>79</sup> *Supra*, note 61. See also *supra*, note 75.

<sup>80</sup> The SBA does not provide figures for women of color separate from white women or men of color, thus, data regarding this group is difficult to ascertain. BCT Partners, LLC for the Small Business Administration. (2007, July). *The Effect of Wealth and Race on Start-up Rates*.

<sup>81</sup> Ong, P., ed. (1997). *The Impact of Affirmative Action on Public-Sector Employment and Contracting in California*. Berkeley, CA: California Policy Seminar. 9(3), 1-7.

ed to MBEs, falling from 16 percent to 7.9 percent.<sup>82</sup> In California, the number of women employed in the construction industry had initially increased by 26 percent between 1990 and 1996; it declined by 33 percent after the passage of Proposition 209. The number of women in apprenticeship programs also declined after the proposition passed, further hindering their advancement in the field and their ability to secure more lucrative salaries.<sup>83</sup>

A 2007 Caltrans study found racial and gender disparity in subcontracts and prime contracts at the state and federal levels for WBEs, illustrating that after the removal of DBE goals on federal projects, the utilization of WBEs dropped to “less than one-half of what would be anticipated from the relative availability of women-owned firms.”<sup>84</sup>

There is a dearth of research on several issues important to understanding women business enterprises, affirmative action, and other gender-conscious remedies to discrimination. Even more scarce is research that examines the unique intersection between race and gender, and that which can provide analyses of how women have been impacted by the removal of race- and gender-conscious equal opportunity programs. However, existing studies suggest that women have faced a spectrum of barriers related to accessing male-dominated networks, accessing credit and other forms of financial support, and overcoming gender discrimination in male-dominated industries. Literature on WBEs also reveals a trend of declining participation by WBEs when there is an absence of gender-conscious goals, strategies, and outreach programs in place to counter discrimination and enforce equal opportunity. ■

---

<sup>82</sup> Discrimination Research Center. (2006, August). *Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises*.

<sup>83</sup> *Supra*, note 48.

<sup>84</sup> *Supra*, note 61.



## Methodology

A multi-method approach was used to determine the impact of Proposition 209 on WBEs.<sup>85</sup> These included analyses of award data provided by Caltrans, the survival rate of certified 1996 WBEs, a statewide survey of surviving WBEs, focus groups, and in-depth interviews with surviving WBEs.<sup>86</sup>

Aggregate, quantitative data provided by Caltrans for women of color-owned WBEs, white-owned WBEs, and to WBEs in total was collected and analyzed for each Fiscal Year (FY) from FYs 1985 through 2006. These data included the total dollars awarded to each group, as well as relative amounts awarded for all Federal Highway Administration (FHWA) Caltrans awards. Data were provided by Caltrans through several summary sheets. These included the Quarterly/Annual 1405 Reports of DBE

---

<sup>85</sup> A WBE is a small business majority owned and controlled by one or more women.

<sup>86</sup> Data collection for the survival and survey sections was completed by the Discrimination Research Center.

## Methodology

Awards and Commitments for FY 1985 through FY 1998, the 1405 Quarterly/Annual Reports of DBE Awards and Commitments for FY 1999 through FY 2002, and the Uniform Report of DBE Awards or Commitments and Payments for FY 2003 through FY 2006.

The research team collected data for 2,096 in-state women-owned businesses listed in the 1996 volumes of California's *Department of Transportation Disadvantaged Business (DB)*, *State Women Business Enterprise (SWBE)*, and *State Minority Business Enterprise (SMBE) List*. All women-owned, 1996 certified DBEs were included. In the initial search, which took place in winter 2006 through spring 2007, the researchers utilized a minimum of two internet phone book searches to locate current status information of all 2,096 certified WBEs. Any business that was likely to be still in business (i.e., finding a business with the same name and at the same location as in 1996) or possibly still in business (i.e., a business listing with a similar name, location, and/or contact information) was contacted to verify its current status. Businesses were then labeled as definitely still in business, possibly still in business, or definitely out of business. For the survival rate analyses, businesses that were definitely or possibly still in business were considered as "in business." The survival rate for white-owned WBEs was compared to the rate for women of color-owned WBEs.<sup>87</sup>

The researchers surveyed all surviving 1996 certified WBEs to ascertain their business experiences both before and after 1996. WBEs were contacted in the spring of 2007 to complete an 89-item, 20 minute questionnaire. Surviving WBE owners and managers were queried regarding their experiences with the DBE program, pre-bidding conferences, good faith outreach efforts, their relationship with the state, and the state of their business before and after 1996. Statistical tests were performed to check for differences across time and between white-owned and women of color-

owned WBEs.<sup>88</sup> Due to a limited sample size, tests could not be performed among ethnic subgroups (e.g., Hispanic/Latina American, Asian Pacific American, and African American). In an effort to bypass the limited statistical power of each individual question, the HCSJ researchers compared, for each of the items in the survey, whether reported outcomes were better, worse, or the same for women of color-owned WBEs relative to white-owned WBEs at each time point, before 1996 and after 1996, as well as for the relative change from before 1996 to after 1996.<sup>89</sup>

Focus groups and interviews were held with WBEs from a variety of regions in California, including San Diego, Los Angeles, Central Valley, the San Francisco Bay Area, and Sacramento. All participants were California-based companies owned by women that were certified as WBEs in 1996. All WBEs who participated in this qualitative examination voluntarily chose to participate in focus groups and interviews after completing the survey. ■

---

<sup>88</sup> Response rates were analyzed using Chi-squares. For continuous variables, changes over time from before 1996 until after 1996 were analyzed using paired t-tests. Differences in changes over time by race/ethnicity were analyzed using independent samples t-tests on change scores from before 1996 until after 1996. Differences at each time point by race/ethnicity were analyzed using independent samples t-tests at each time point, before 1996 and after 1996. For dichotomous variables, differences over time were analyzed using McNemar tests, differences at each time point were analyzed using Chi-squares, and differences over time by race/ethnicity were analyzed using logistic regressions.

<sup>89</sup> In total, 34 items were used in this analysis. For items in which a median and mean were both presented in this report, only the median was used. For items concerning revenue from pre-bidding conferences and outreach efforts, only results for the entire sample were used. Significance testing was performed using the binomial distribution test on better versus worse outcomes, with a null hypothesis of no difference between the two options. For each item, a better outcome was considered to be a higher participation and helpfulness of the DBE program, lower difficulties, and greater revenue and contracts.

---

<sup>87</sup> Differences in survival rate were analyzed using Chi-squares.

# Results: WBE Award Access

In California's transportation construction industry, contracts awarded to firms owned by women experienced a significant decline following the passage and implementation of Proposition 209. Table 1 and Figure 1 illustrate the dollars awarded for Caltrans transportation construction projects, in total from FY 1985 through FY 2006, and to WBEs and non-WBEs from FY 1985 through FY 2002 for the FHWA contracts. Dollar values are inflation-adjusted 2006 real dollar amounts using the Consumer Price Index (CPI) as the measure of inflation. The relative amount awarded to WBEs is calculated by dividing the amount awarded to WBEs by the total value of projects awarded in that fiscal year.

In FY 2003, Caltrans switched to the federally mandated Uniform Report of DBE Commitments/Awards and Payments. Due to this change, Caltrans shifted to reporting only the federal portion of awards for projects with at least some federal funding, contributing to a reduction in the total reported level of awards as well as in the portion awarded to DBEs.

Another change that occurred in the transition to the federally mandated Uniform Report in FY 2003 was a change in the subcategories of DBEs for which award data were provided. Before the change to the Uniform Report, Caltrans had provided data separately for DBEs owned by men of color and women of color. However, the Uniform Report format only provides pooled data for men of color and women of color. Thus, since FY 2003, it has been impossible to identify the contracts awarded to DBEs owned by women of color. However, awards to WBEs owned by white women remain a distinct available category in the Uniform Report, and these data are provided for all years.

The transition to the Uniform Report in FY 2003 resulted in the loss not only of the category of women of color-owned WBEs, but the categories of WBEs in total and non-WBEs. For the 1405 Quarterly/Annual Reports, used from FY 1985 through FY 2002, award data for WBEs in total was tallied by adding together awards for women of color-owned WBEs and

white women-owned WBEs. However, due to the removal of the women of color category, it is impossible to determine the amount awarded to WBEs in total and non-WBEs from FY 2002 through FY 2006.<sup>90</sup>

The total amount of money awarded by Caltrans to contractors has increased since FY 1985, though it has varied from year to year, in part due to variations in public projects for any particular year.

*The latter half of the 1990s saw an erasure of the gains made in WBE award access experienced in the earlier half of the 1990s.*

In general, the value of awards to WBEs increased from FY 1985 through FY 1995, rising six-fold from FY 1985 to FY 1995. However, in FY 1996, there was a greater than two-thirds reduction in awards. The amount awarded to WBEs decreased further in FY 1997 and saw only modest increases over the next several years. The latter half of the 1990s saw an erasure of the gains made in WBE award access experienced in the earlier half of the 1990s.

Award values to white-owned WBEs contribute to the vast majority of awards to WBEs, and thus trends for white-owned WBEs reflect the trends seen for WBEs in total. In the ten years between FY 1985 and FY 1995, the amount of real dollars awarded to white-owned WBEs increased five-fold. However, that entire gain was nearly lost in FY 1996. Since then, increases have occurred, but have never approached the absolute level of funding seen in FY 1995, and in recent years have been hovering at FY 1985 levels.

The pattern for women of color-owned WBEs is drastically different than the pattern seen for white-owned WBEs. According to the 1405 reports, there were no awards to women of color-owned WBEs from

---

<sup>90</sup> A request to receive award data for WBEs owned by women of color or WBEs in totality was unable to be fulfilled by Caltrans.

## Results: WBE Award Access

**TABLE 1: Real dollars of Caltrans FHWA awards in total, to WBEs owned by white women, women of color, and in total, and to non-WBEs, by Fiscal Year†**

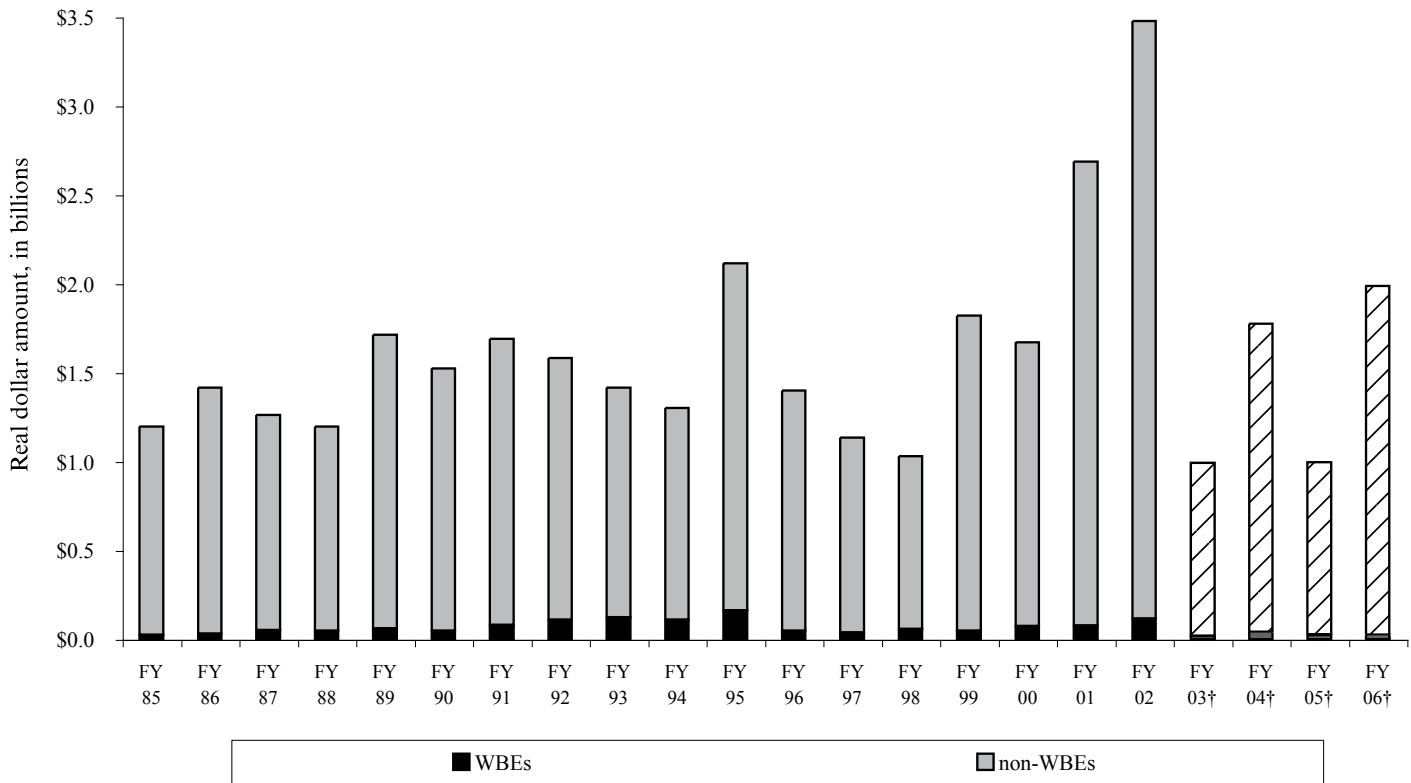
FY	Women of color-owned WBEs		White-owned WBEs		WBEs in total		Non-WBEs		All contracts
	Total dollar awarded	Percent awarded	Total dollar awarded	Percent awarded	Total dollar awarded	Percent awarded	Total dollar awarded	Percent awarded	Total dollar awarded
FY 85	\$0	0%	\$25,327,252	2.1%	\$25,327,252	2.1%	\$1,170,039,241	97.9%	\$1,195,366,493
FY 86	\$0	0%	\$33,789,583	2.4%	\$33,789,583	2.4%	\$1,380,310,441	97.6%	\$1,414,100,024
FY 87	\$0	0%	\$51,471,821	4.1%	\$51,471,821	4.1%	\$1,210,909,342	95.9%	\$1,262,381,163
FY 88	\$0	0%	\$49,601,236	4.1%	\$49,601,236	4.1%	\$1,146,204,028	95.9%	\$1,195,805,264
FY 89	\$0	0%	\$61,655,194	3.6%	\$61,655,194	3.6%	\$1,650,576,096	96.4%	\$1,712,231,290
FY 90	\$0	0%	\$48,962,303	3.2%	\$48,962,303	3.2%	\$1,474,627,305	96.8%	\$1,523,589,608
FY 91	\$0	0%	\$83,313,833	4.9%	\$83,313,833	4.9%	\$1,605,904,171	95.1%	\$1,689,218,004
FY 92	\$10,322,113	0.7%	\$100,017,047	6.3%	\$110,339,159	7.0%	\$1,471,729,699	93.0%	\$1,582,068,858
FY 93	\$24,584,435	1.7%	\$99,715,020	7.0%	\$124,299,455	8.8%	\$1,290,404,803	91.2%	\$1,414,704,258
FY 94	\$12,101,563	0.9%	\$99,613,380	7.7%	\$111,714,942	8.6%	\$1,189,155,545	91.4%	\$1,300,870,488
FY 95	\$23,630,089	1.1%	\$138,616,833	6.6%	\$162,246,922	7.7%	\$1,951,303,297	92.3%	\$2,113,550,219
FY 96	\$16,171,043	1.2%	\$32,935,677	2.4%	\$49,106,720	3.5%	\$1,350,824,268	96.5%	\$1,399,930,988
FY 97	\$8,007,271	0.7%	\$32,703,547	2.9%	\$40,710,817	3.6%	\$1,094,061,947	96.4%	\$1,134,772,765
FY 98	\$10,708,143	1.0%	\$48,920,783	4.7%	\$59,628,925	5.8%	\$970,733,315	94.2%	\$1,030,362,240
FY 99	\$17,217,425	0.9%	\$33,212,481	1.8%	\$50,429,906	2.8%	\$1,769,197,016	97.2%	\$1,819,626,922
FY 00	\$16,282,528	1.0%	\$57,862,741	3.5%	\$74,145,269	4.4%	\$1,595,039,032	95.6%	\$1,669,184,301
FY 01	\$16,964,692	0.6%	\$62,213,882	2.3%	\$79,178,574	2.9%	\$2,606,849,521	97.1%	\$2,686,028,095
FY 02	\$34,497,654	1.0%	\$83,081,469	2.4%	\$117,579,122	3.4%	\$3,358,320,878	96.6%	\$3,475,900,000
FY 03‡	—	—	\$19,422,942	2.0%	—	—	—	—	\$993,178,391
FY 04‡	—	—	\$43,959,425	2.5%	—	—	—	—	\$1,775,112,730
FY 05‡	—	—	\$24,060,275	2.4%	—	—	—	—	\$989,338,574
FY 06‡	—	—	\$25,569,370	1.3%	—	—	—	—	\$1,986,840,436

Source: Caltrans Quarterly/Annual 1405 Reports from FY 1985 - FY 1998, Quarterly Report of DBE Awards and Commitments from FY 1999 - FY 2002, & Uniform Report of DBE Awards or Commitments and Payments from FY 2003 - FY 2006.

† Awards to women of color-owned WBEs and white-owned WBEs may not sum to WBEs in total, and WBEs in total and non-WBEs may not sum to total contracts, due to rounding.

‡ Total awards and awards to white-owned WBEs for these years include only the federal portion of these awards. Data are not available for WBEs in total, women of color-owned WBEs, and non-WBEs for these years.

**Figure 1: Real dollars of Caltrans FHWA awards to WBEs and non-WBEs, by Fiscal Year**



Source: Caltrans Quarterly/Annual 1405 Reports from FY 1985 - FY 1998, Quarterly Report of DBE Awards and Commitments from FY 1999 - FY 2002, & Uniform Report of DBE Awards or Commitments and Payments from FY 2003 - FY 2006.

† For these years, only the federal portion of awarded projects is reported. The solid bars represent awards to white-owned WBEs only, as data are not available for women of color-owned WBEs. The cross-hatched bars include the portion of awards to non-WBEs as well as women of color-owned WBEs.

FY 1985 through FY 1991. However, it is possible that awards to women of color-owned WBEs were commingled with DBEs owned by men of color or white women during this time period. In FY 1992, roughly 10 million real dollars were awarded to women of color-owned WBEs, and the value has generally increased over time, up to a peak of 34 million real dollars in FY 2002, though reductions were seen in several years.

The relative awards to white- and women of color-owned WBEs can be seen in Figure 2 and Table 1. The first year of recorded data was produced in FY

1985 and showed that the relative amount awarded to WBEs in total compared to non-WBEs was roughly two percent. On average, the relative proportion of awards to WBEs in total increased steadily until the mid-1990s, reaching a peak of nine percent in FY 1993. After modest drops the next two years, the rate decreased nearly two-thirds in one year, to below four percent of awards, in FY 1996. The rate varied between three and six percent the next several years. Data are not available for WBEs in total in the years since FY 2002. In the six years that followed the pas-

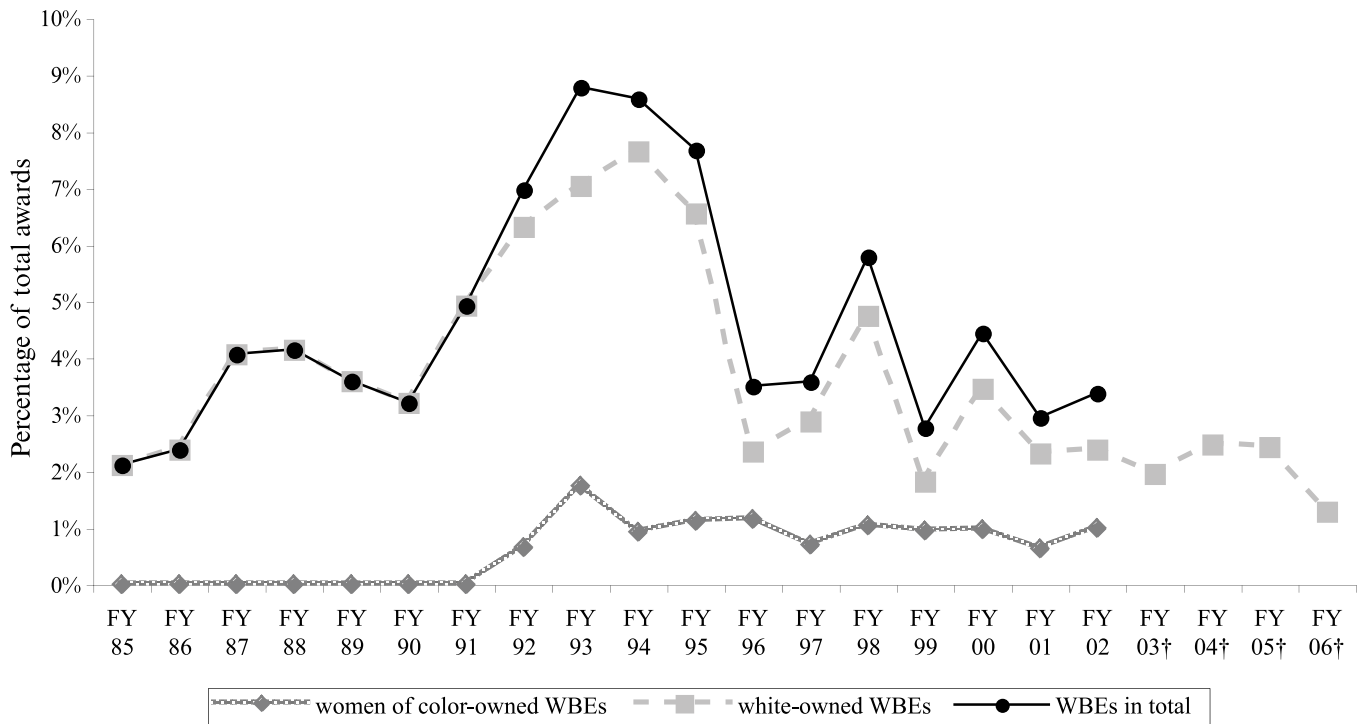
**Results : WBE Award Access**

sage of Proposition 209, awards to WBEs dropped significantly, to 3.8 percent relative to 6.7 percent of awards in the six years preceding the passage of Proposition 209.

Because white women-owned WBEs constitute the vast majority of WBEs in total, the pattern of awards received by them mirrors the trend for WBEs in total. For white women-owned WBEs, relative award levels peak at nearly eight percent in FY 1994, but then drop to just over two percent in FY

1996. With the exception of two years (FYs 1998 and 2000), white-owned WBEs have never again received more than two and one-half percent of awards. White-owned WBEs hovered at or just above two percent for several years, until FY 2006, when awards to white owned-WBEs were just over one percent. In the ten years following the passage of Proposition 209, awards to white-owned WBEs significantly decreased by almost 50 percent, from 5.0 percent to 2.6 percent.

**Figure 2: The percentage of Caltrans FHWA awards to WBEs owned by white women, women of color, and in total, by Fiscal Year**



Source: Caltrans Quarterly/Annual 1405 Reports from FY 1985 - FY 1998, Quarterly Report of DBE Awards and Commitments from FY 1999 - FY 2002, & Uniform Report of DBE Awards or Commitments and Payments from FY 2003 - FY 2006.

† Only the federal portion of awarded projects is reported. Award data are not available for women of color-owned WBEs or WBEs in total.

The relative amount of awards received by women of color-owned WBEs was reported as zero percent from FY 1985 through FY 1991. This percentage rose to almost two percent of awards in FY 1993, but then dropped to roughly one percent of awards for FYs 1994 through 2002. Data are not available for FYs 2003 through 2006, but given the corresponding drop in awards to white-owned WBEs, it would seem unlikely that awards to women of color-owned WBEs increased during those years. In the six years following the passage of Proposition 209, awards to women of color-owned WBEs did not evidence any significant changes, with 0.9 percent of awards going to firms owned by women of color before and after the passage of Proposition 209. Awards to women of color-owned WBEs were modest before the passage of Proposition 209 and remained low after Proposition 209.

There are several limitations for these analyses. The non-uniform methods used to collect and categorize WBEs and non-WBEs over time makes comparisons by year less than ideal, as well as making it difficult to identify, with exact precision, the amount and number of contracts awarded to WBEs and non-WBEs. It is also impossible to report on the total amount and relative portion of awards that went to businesses owned by women that were not certified as WBEs. Additionally, the research team was not able to obtain reports which summarized awards for WBEs and non-WBEs for state contracts. Since the implementation of Proposition 209, the DBE program only operates for contracts with at least some federal money. As previously mentioned, since Caltrans switched to the Uniform Reports in FY 2003, it no longer provides information separately for DBEs owned by men of color and women of color, making it impossible to report on recent trends to women of color-owned WBEs or WBEs in total. ■

*In the six years that followed the passage of Proposition 209, awards to WBEs dropped significantly, to 3.8 percent relative to 6.7 percent of awards in the six years preceding the passage of Proposition 209.*

# Results: WBE Survival

In 1996, there were 2,096 firms certified as Women Business Enterprises. Of the 2,096 WBEs certified with Caltrans in 1996, 1,599, or 76 percent, were white owned. The remaining 497, or 24 percent, were owned by women of color. Today, the breakdown of surviving 1996 firms is similar to eleven years ago, with 79 percent owned by white women and 21 percent owned by women of color. Table 2 provides the 11-year survival of certified women-owned DBEs from 1996.

The average survival rate for WBEs in total over the 11-year period from 1996 to 2007 was 36 percent, with 763 out of the 2,096 WBEs identified as being definitely or possibly in business. For white-owned WBEs, 38 percent or 602 out of 1,599 businesses survived. This was significantly higher than the survival rate for women of color-owned WBEs, for whom only 161 out of 497 businesses had definitely or possibly survived. The resulting survival rate was 32 percent.

African American-owned WBEs evidenced the lowest survival rate (27%), significantly lower than both white- (38%) and Asian Pacific American-owned (39%) WBEs. There were no other significant differences in the survival rate between any of the other racial/ethnic groups.

With an 11-year survival rate of less than 40 percent for all races and ethnicities, the difficulties for women-owned businesses to compete in the transportation construction industry are apparent. However, without an appropriate comparison group, such as the survival of small businesses primarily owned by white men, it is difficult to ascertain the relative success of WBEs and the impact of Proposition 209 upon them.

One reason for the lower survival rate of businesses owned by women of color relative to those owned by white women may be the double jeopardy

**Table 2: Total WBEs certified in 1996 and in business in 2007, and racial and ethnic breakdown of 1996 and 2007 surviving businesses†‡**

	Number of certified WBEs in 1996 (percentage of total)	Number of WBEs definitely or possibly still in business (percentage of total)	WBE survival rate
Total sample	2,096 (100%)	763 (100%)	36%
White women	1,599 (76%)	602 (79%)	38%
Women of color	497 (24%)	161 (21%)	32%
Hispanic/Latina American	149 (7%)	49 (6%)	33%
Asian Pacific American	143 (7%)	56 (7%)	39%
African American	150 (7%)	41 (5%)	27%
Native American§	27 (1%)	8 (1%)	30%
Asian Indian American§	28 (1%)	7 (1%)	25%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

† Percentages may not add up to 100 percent because of rounding.

‡ Due to a very limited sample size, 13 Portuguese American- and 3 Spanish American-owned WBEs certified in 1996 were not investigated, and are not included in the analyses.

§ Due to the low number of Native American- and Asian Indian American-owned businesses, caution should be used when interpreting these results, which will not be discussed in the main body of this report.

*Businesses owned by African American women had the lowest survival rate, significantly lower than both Asian Pacific American- and white-owned businesses, highlighting the difficulties for African American women to succeed in the transportation construction industry.*

women of color face as being both “non-white” and “non-male,” in an industry that is still dominated by white men. While white women-owned businesses may face difficulties based on their gender, women of color-owned businesses may face obstacles pertaining to both their race and gender.

However, this double jeopardy for women of color is often overlooked. Women of color are often treated, both historically and currently, as either being a woman or person of color, but not both. This includes current requirements by the US Department of Transportation which only counts women of color-owned DBEs as “non-white,” but makes no further distinction between men and women of color.

WBEs owned by Asian Pacific American women had the highest survival rate, which was significantly higher than the rate for African American-owned WBEs and non-significantly surpassed the survival rate for white-owned WBEs. Across the nation, the number of firms owned by Asian Pacific American women increased by 80 percent, suggesting a network nationwide to support entrepreneurship.<sup>91</sup>

Businesses owned by African American women had the lowest survival rate, significantly lower than both Asian Pacific American- and white-owned businesses, highlighting the difficulties for African American women to succeed in the transportation construction industry. Across the nation, there are an estimated 849,430 firms owned by African American women, generating more than \$36 billion in sales annually, and employing 287,913 people.<sup>92</sup> Still, more research is needed to understand potential barriers to business survival for firms owned by African American women in the transportation construction industry. ■



Ray Chavez

<sup>91</sup> Center for Women’s Business Research. (2006). *Businesses Owned by Asian American Women in the United States, Fact Sheet*.

<sup>92</sup> Center for Women’s Business Research. (2006). *Businesses Owned by African American Women in the United States*.

# Results: Survey

Surviving 1996 certified WBEs paint a mixed picture for the DBE program and the current environment of the transportation construction business. The 763 firms identified as 1996 certified WBEs confirmed as surviving or possibly surviving businesses were contacted and asked to complete a questionnaire (see Table 3). Of the 763 attempts, 105 WBEs completed the questionnaire, resulting in a response rate of 14 percent. This response rate, 14 percent, was identical for white-owned WBEs and women of color-owned WBEs, resulting in 83 completions with white-owned WBEs and 22 completions with women of color-owned

WBEs. As there were only six to seven completions with Hispanic/Latina American-owned, Asian Pacific American-owned, and African American-owned WBEs and one completion each for Native American-owned and Asian Indian-owned WBEs, survey results were not broken down by a specific race or ethnicity, though comparisons were made between WBEs owned by white women and those by women of color. As the vast majority of WBEs were owned by white women, results for white-owned businesses have a considerable effect on the pattern of results for WBEs in general.

**Table 3: Number of completed surveys and response rate, in total and by race/ethnicity**

	Number of WBEs definitely or possibly still in business (percentage of total)	Total surveys completed (percentage of total)	Response rate
Total sample	763 (100%)	105 (100%)	14%
White	602 (79%)	83 (79%)	14%
Women of color	161 (21%)	22 (21%)	14%
Hispanic/Latina American†	49 (6%)	7 (7%)	14%
Asian Pacific American†	56 (7%)	6 (6%)	11%
African American†	41 (5%)	7 (7%)	17%
Native American†	8 (1%)	1 (1%)	13%
Asian Indian American†	7 (1%)	1 (1%)	14%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

† Due to the low number of businesses among each race and ethnicity, particularly for Native American-, and Asian Indian American-owned businesses, caution should be used when interpreting these results.

## Lending Programs, Mentorship Opportunities and Technical Assistance

The use of lending programs, mentorship opportunities and technical assistance by WBEs was modest (see Table 4). At no point did a quarter of the WBEs surveyed use any of these three programs. White-owned and women of color-owned WBEs reported similar usage of the programs, and there were no changes after 1996 relative to before 1996. Of these programs, technical assistance programs were used the most and lending programs were used the least.

## Pre-bidding Conferences

Pre-bidding conferences are meetings during which projects are openly discussed and requirements are reviewed for potential bidders. Most WBEs utilized pre-bidding conferences, with more than half of WBEs making use of pre-bidding conferences before and after 1996 (see Table 5). The percentage of WBEs attending pre-bidding conferences showed a trend toward increasing, with 59 percent attending before 1996 and 69 percent attending after 1996. This increase was significant for white-owned, but not women of color-

**Table 4: Participation in DBE Program**

	Lending Programs		Mentorship Opportunities		Technical Assistance	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	4%	5%	11%	14%	17%	16%
White women	4%	5%	11%	13%	16%	17%
Women of color	5%	5%	9%	18%	23%	14%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

owned WBEs. WBE owners received significantly fewer invitations to attend pre-bidding conferences after 1996 (reduced from 28 to 11 conferences), invitations were sent with significantly less advance notice (reduced from 3.9 to 3.1 on a 1 to 5 scale with 5 being more timely), and significantly fewer conferences were attended after 1996 (seven conferences before 1996 and three conferences after 1996). WBE contractors also said pre-bidding conferences were significantly less helpful after 1996 relative to before 1996 (down from 2.6 to 1.7 on a 1 to 5 scale, with 5 being more helpful). Women of color-owned WBEs reported that pre-bid-

ding conferences were significantly less helpful after 1996 than white-owned WBEs. The percentage of revenue that was derived from contracts in which WBEs attended conferences was 17 percent before 1996 and 11 percent after 1996 for those who attended conferences, though this was not a significant decline.

WBE contractors reported that invitations to pre-bidding conferences were most commonly received by traditional mail, both before and after 1996 (see Table 6). About 50 percent of WBE contractors reported receiving invitations by fax and roughly 25 percent reported receiving invitations by phone both

**Table 5: Participation in and impressions of pre-bidding conferences**

	Pre-bidding conference participation		Number of invitations received (per year)		Number of conferences attended (per year)	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	59%	69%	28	11	7	3
White women	54%	70%	23	13	5	3
Women of color	77%	68%	43	6	10	1

	Invitations sent in a timely manner (1 to 5, higher is more timely)		Helpfulness of conferences (1 to 5, higher is more helpful)		Percentage of revenue from conferences (for those who attended)		Percentage of revenue from conferences	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	3.9	3.1	2.6	1.7	17%	11%	10%	7%
White women	4	3.3	2.7	1.9	19%	13%	10%	7%
Women of color	3.9	2.8	2.4	1.2	14%	6%	9%	4%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

Results: Survey

**Table 6: Methods used to contact WBEs about pre-bidding conferences**

	By mail		By phone		By email		By fax	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	70%	60%	23%	23%	2%	57%	45%	47%
White women	65%	56%	24%	21%	3%	53%	44%	47%
Women of color	85%	69%	23%	31%	0%	69%	46%	46%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

before and after 1996. Invitations by email, virtually unused before 1996, became nearly as popular as traditional mail after 1996, rising from two percent before 1996 to 57 percent after 1996.

**Outreach Efforts**

Prime contractors are required to make a best effort – in “good faith” – to include DBEs in public projects. Good faith efforts can be made by sending notices by fax or email, or by making a phone call or in-person visit to inquire about the interest and availability of a DBE to participate in public projects. On average, 74

percent of WBEs were contacted via good faith outreach efforts by prime contractors before 1996 and 72 percent were contacted after 1996 (see Table 7). For women of color-owned WBEs, 81 percent reported that they were contacted by prime contractors before 1996 but only 62 percent were contacted after 1996, while white women-owned WBEs reported 73 and 75 percent involvement before and after 1996, respectively. The percentage of revenue that resulted from good faith outreach efforts was reduced significantly over time for WBEs. Although the number of times WBE contractors were contacted did not decrease, the good

**Table 7: Prime contractor outreach efforts**

	Contacted via good faith efforts		Percentage of revenue from good faith efforts		Percentage of revenue from good faith efforts <i>(for those who received efforts)</i>	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	74%	72%	16%	11%	23%	17%
White women	73%	75%	17%	13%	23%	18%
Women of color	81%	62%	15%	6%	21%	10%

	Number of times contacted <i>(per month)</i>		Helpfulness of good faith efforts <i>(1 to 5, higher is more helpful)</i>		Timeliness of good faith efforts <i>(1 to 5, higher is more timely)</i>		Percent of time told trying to fill quota	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	26	24	2.4	1.9	3.3	3.1	64%	52%
White women	31	29	2.4	2	3.4	3.1	61%	52%
Women of color	6	2	2.3	1.7	3	3.1	79%	53%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

**Table 8: Methods used to contact WBEs by prime contractors for outreach efforts**

	By mail		By phone		By email		By fax	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	47%	39%	65%	61%	11%	39%	53%	65%
White women	43%	35%	70%	65%	9%	37%	52%	63%
Women of color	64%	55%	45%	45%	18%	45%	55%	73%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

faith outreach efforts were seen as significantly less helpful, dropping from 2.4 to 1.9 on a 1 to 5 scale, with 5 being more helpful.

WBE contractors reported that the timeliness of good faith outreach efforts did not change after 1996. On average, WBEs felt that the amount of lead time (3.3 and 3.1 before and after 1996, respectively, on a 1 to 5 scale in which 5 is more timely) was not long enough, even if they usually made the necessary deadlines. WBE contractors also reported that prime contractors mentioned trying to fill their quota more than half the time, both before and after 1996. This

percentage was significantly reduced, from 64 percent to 52 percent, after 1996, most likely reflecting the reduced importance of DBE goals.

As seen in Table 8, the telephone and fax were the most popular methods for reaching WBEs for good faith outreach efforts. In 1996, the telephone was the most popular method. However, a significant increase in the use of fax machines after 1996 elevated it to the same popularity as the telephone. Email was used only 11 percent of the time in 1996, but a significant increase after 1996 resulted in a tie with traditional mail, at 39 percent.

**Table 9: DBE program helpfulness – How helpful was the DBE program to:**

	Helpfulness scale (all 8 items)		Fiduciary scale (3 items)		Obtain more credit?		Qualify for loan program?		More easily secure bonding?	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	2.1	1.8	1.5	1.6	1.5	1.6	1.4	1.6	1.3	1.3
White women	2.1	1.8	1.4	1.6	1.5	1.6	1.4	1.6	1.3	1.2
Women of color	2.3	1.7	1.7	1.6	1.6	1.5	1.4	1.5	1.4	1.4

	Subcontract with prime contractors?		Develop relationships with suppliers?		Join or expand networks that made it easier for firm to receive contracts?		Develop a more extensive track record?		Expand the scope of services provided?	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	2.5	1.9	1.8	1.6	2.4	1.7	2.5	1.9	2.2	1.8
White women	2.5	2.0	1.8	1.7	2.4	1.7	2.6	1.9	2.1	1.7
Women of color	2.6	1.7	1.8	1.4	2.5	1.8	2.4	1.9	2.6	2.0

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007. On a scale of 1 to 5, where 1 is “not at all helpful” and 5 is “very helpful.”

**Results: Survey**

**Table 10: Challenges to working with the state – How much of a challenge was caused by:**

	Qualifications or eligibility requirements needed to bid?		Number of hours needed to prepare a bid or proposal for a public contract?		Amount of lead time given to respond to a request for proposals?		Getting the information required or questions answered prior to the bid due date?		Costs involved in submitting the required documents to be certified as a WBE?	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	2.8	2.9	3.3	3.3	2.6	2.7	2.9	2.8	3.1	3.0
White women	2.8	2.8	3.2	3.2	2.6	2.7	2.9	2.8	3.1	3.0
Women of color	2.7	3.1	3.5	3.5	2.6	2.6	2.8	2.9	2.8	2.8

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007. On a 1 to 5 scale, where 1 is “not a challenge at all” and 5 is “an extreme challenge.”

**DBE Program Helpfulness**

WBE contractors were asked eight questions about the helpfulness of the DBE program before and after 1996 (see Table 9). None of the eight items were seen as very helpful, as the scores ranged from 1.3 to 2.5 on a 1 to 5 scale, with 5 being more helpful. Of the eight aspects, those that were seen as the most helpful before 1996 were helping with subcontracting with prime contractors, developing a more extensive track record, joining or expanding the networks that made it easier for their firm to receive contracts, and expanding the scope of services provided. All four of these aspects were seen as less helpful after 1996 for WBEs in total, with white-owned WBEs reporting a significant reduction for the first three aspects and women of color-owned WBEs reporting a significant reduction for the first two aspects.

Data reduction techniques<sup>93</sup> indicated that two scales could be constructed based on these eight items. The first was an overall helpfulness scale, containing all eight of the items, and the second was a fiduciary scale, consisting of the items relating to obtaining credit, loans, and bonding. As seen with the

<sup>93</sup> Data reduction techniques included factor analyses using Varimax rotation, which indicated the presence of a first factor that pulled positively from all eight aspects, and a second factor which pulled positively from the three fiduciary items.

individual items, the overall DBE helpfulness scale indicated that the program was not seen as very helpful by WBEs in 1996, registering only 2.1 on a 1 to 5 scale, with 5 being more helpful. The helpfulness was significantly reduced to 1.8 after 1996. The reduction was significant for white women-owned WBEs as well. Although women of color-owned WBEs registered an even larger drop than white women-owned WBEs, this drop did not reach significance due to the smaller sample size.

Results from the fiduciary scale indicate that this aspect of the program was seen as the least helpful aspect of the program, registering only a 1.5 (on a 1 to 5 scale) before 1996 and a 1.6 after 1996. This difference was not significant, and there were no differences between white- and women of color-owned WBEs.

**Challenges to Working with the State**

On average, WBE contractors found working with the state moderately challenging, with no differences before or after 1996 (see Table 10). Scores varied between 2.6 and 3.3 (on a one to five scale, with five being the most difficult). The most challenging aspect was reported as the number of hours needed to prepare a bid or proposal for a public contract, while the least

**Table 11: Percentage of time spent in different aspects of position†**

	Administrative	Trade	Craft	Other skilled labor	Other non-skilled labor
Total Sample	56%	15%	6%	16%	3%
White Women	53%	16%	6%	16%	2%
Women of color	66%	11%	7%	13%	3%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

† May not add to 100 percent due to rounding and due to contractors not reaching a total of 100 percent.

challenging aspect was the amount of lead time given to respond to a request for proposals.

### State of the Women-owned Business Enterprise

Since 1996, certified WBEs have maintained modest success. Surveyed businesses had been in business for an average of 22 years and most female contractors had managed their business for nearly the entire time. On average, WBE contractors surveyed owned roughly 85 percent of their business. Over 60 percent of WBE owners surveyed owned 100 percent of the business. Just under 20 percent of those surveyed owned either 50 or 51 percent of their business, with the majority of these businesses being co-owned with spouses and/or family. At the present time, WBE contractors spent more than half of their time with administrative concerns (see Table 11).

There was no growth in the number of employees, with a mean of five employees before 1996 and four after 1996 and a median of nine employees at both time points (see Table 12). There was no signifi-

cant change in the number of contracts, with a mean of 133 before 1996 and 91 after 1996, while the median held steady at 12 contracts.

Surviving WBEs did see growth in total revenue; with revenue increasing from \$1.2 million before 1996 to \$1.8 million after 1996 (see Table 13). Increases were significant for both white women-owned and women of color-owned WBEs, though white-owned WBEs had significantly higher revenue than women of color-owned WBEs both before and after 1996. Median revenue increased more modestly, from \$468,000 to \$550,000.

The growth seen by WBEs does not appear to have been a result of working with Caltrans (see Table 14). The percentage of revenue coming from Caltrans dropped from nine percent before 1996 to four percent after 1996, a pattern of reduction that was significant for white-owned WBEs. The percentage of contracts coming from Caltrans and the number of contracts from Caltrans prime contractors evidenced a similar pattern of reduction but were not significant.

**Table 12: Number of employees and contracts**

	Number of employees (median)		Number of employees (mean)		Number of total contracts (median)		Number of total contracts (mean)	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	5	4	9	9	12	12	133	91
White women	6	4	9	10	12	12	165	107
Women of color	3	2	7	7	14	10	27	37

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

**Results: Survey**

**Table 13: WBE total revenue**

	Total revenue (mean)		Total revenue (median)	
	Pre-96	Post-96	Pre-96	Post-96
Total sample	\$1,193,384	\$1,797,128	\$468,000	\$550,000
White women	\$1,402,119	\$2,094,085	\$500,000	\$700,000
Women of color	\$545,211	\$875,000	\$250,000	\$300,000

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

Trends indicated that a large number of 1996 certified WBEs had little contact with Caltrans, before and after 1996. Over 60 percent of WBEs in total, white owned WBEs, and women of color owned WBEs surveyed indicated that zero percent of their contracts came from Caltrans, zero percent of their revenue came from Caltrans, or that none of their contracts came from Caltrans prime contractors, both before and after 1996.

However, despite the fact that more than two-thirds of WBEs received no revenue or contracts from

Caltrans, it appears that some WBEs were able to begin working with Caltrans in at least some form. The proportion of WBEs that received none of their revenue from Caltrans was significantly reduced from 81 percent before 1996 to 70 percent after 1996. The proportion of WBEs that received no contracts from Caltrans prime contractors was significantly reduced from 80 percent before 1996 to 67 percent after 1996. A similar trend was seen for the proportion of WBEs that received zero percent of their revenue from Caltrans sources, which was 79 percent before 1996

**Table 14: Contracts and revenue from Caltrans and Caltrans prime contractors**

	Percentage of contracts coming from Caltrans		Percentage of revenue coming from Caltrans		Number of contracts from Caltrans prime contractors	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	8%	5%	9%	4%	7	4
White women	8%	5%	10%	4%	5	4
Women of color	9%	6%	6%	4%	13	5

	Percentage of WBEs with no contracts from Caltrans		Percentage of WBEs with no revenue from Caltrans		Percentage of WBEs with no contracts from Caltrans prime contractors	
	Pre-96	Post-96	Pre-96	Post-96	Pre-96	Post-96
Total sample	79%	70%	81%	70%	80%	67%
White women	82%	71%	82%	68%	79%	67%
Women of color	70%	65%	74%	79%	83%	67%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

**Table 15: Number of services offered†**

	Number of services offered ( <i>relative to 1996</i> )		
	Percentage offering fewer	Percentage offering same	Percentage offering more
Total sample	13%	46%	41%
White women	13%	46%	41%
Women of color	10%	48%	43%

Source: *California Women Business Enterprise Survey*, Thelton E. Henderson Center for Social Justice, 2007.

† May not add to 100 percent due to rounding

and 70 percent after 1996. Still, the improvement seen by surviving WBEs in their ability to secure at least one contract or similar source of revenue via Caltrans is restrained by the fact that the vast majority of WBEs did not secure any business from Caltrans despite being certified with Caltrans.

The vast majority of WBEs offered the same number of services (46 percent) or more services (41 percent) than they did in 1996 (see Table 15). Around one in ten were offering fewer services. There were no differences between white owned- and women of color-owned WBEs.

### **Hiring Trends and Outcomes among Women of Color-owned and White-owned WBEs**

There was no overall change in the demographic make-up of WBEs in terms of the percentage of employees that were people of color or women after 1996 (see Table 16). Women of color-owned WBEs hired significantly more people of color, both before and after 1996. More than half of the employees of women of color-owned WBEs were people of color before and after 1996, while less than 20 percent of employees of white-owned WBEs were people of color. Furthermore, women of color-owned WBEs hired significantly more women than white owned-WBEs after 1996, though more than half of the employees of both white-owned and women of color-owned WBEs were women before and after 1996.

In this section, several differences are noted between responses given by WBEs owned by women of color and those owned by white women. However, many differences were not statistically significant, in part due to limited power, making it difficult to report on the overall trends for these two groups of WBEs. Thus, HCSJ examined the overall pattern of results for the items in the survey in aggregate. Before 1996, women of color-owned WBEs appeared evenly matched relative to white-owned WBEs, reporting better outcomes than white-owned WBEs on 50 percent of the items and a worse outcome on 41 percent of the items. However, after 1996, women of color-owned WBEs reported better results on only 24 percent of the items and worse on 65 percent of the items, a statistically significant difference. The relative change from before 1996 to after 1996 shows a similar pattern, with women of color-owned WBEs reporting significantly more negative outcomes (68 percent) than positive outcomes (24 percent). Thus, there is a clear pattern that women of color-owned businesses were more impacted in the post-Proposition 209 environment than white-owned business among surviving 1996 certified WBEs.

In summary, WBEs were likely to have maintained or increased the number of services provided and showed growth in total revenue. However, there was no growth in the number of employees or the number of contracts from Caltrans. Most surviving 1996 certified WBEs have never worked with Caltrans

Results: Survey

**Table 16: Demographics of WBE employees**

	Percentage of employees that are people of color		Percentage of employees that are women	
	Pre-96	Post-96	Pre-96	Post-96
Total sample	27%	26%	57%	57%
White women	19%	17%	55%	53%
Women of color	59%	65%	63%	70%

Source: California Women Business Enterprise Survey, Thelton E. Henderson Center for Social Justice, 2007.

in any capacity, both before and after 1996, though there was a modest improvement post-Proposition 209 in the ability for surviving WBEs to secure at least some work through Caltrans.

On the whole, WBE contractors did not find the DBE program to be particularly effective, either before or after the passage of Proposition 209. WBE contractors reported that the DBE program became even less helpful after the passage of Proposition 209. In particular, items related to networking and expanding the scope of their business saw the largest drop. Although WBEs did not see a reduction in being contacted at least occasionally after 1996, good faith efforts and pre-bidding conferences show a pattern of reduced helpfulness and usefulness after 1996.

There are several limitations that constrain these findings. This includes common limitations which are associated with using recalled, self-reported data derived in part from over eleven years ago. For some analyses, the sample sizes offered limited statistical power to determine whether apparent differences were statistically significant or due to random chance. The limited sample size also does not allow for analyses by geographic area, years in business, relative success of the WBE or other factors that may influence responses. The small number of women of color-owned WBEs surveyed requires caution to be used in the interpretation of results for this group and also results in an inability to analyze results for racial and ethnic subgroups. Since only surviving certified

WBE businesses were sampled, the results may not indicate the pattern of results that would occur for non-WBEs, WBEs that did not survive, or for women-owned business that chose not to certify. Some of the reduced contact with the DBE program, effectiveness of the DBE program, and importance of the DBE program may reflect the natural growth of WBEs rather than the reduced effectiveness of the DBE program after 1996. Finally, many of those surveyed were unable to answer some or all of the questions pertaining to the helpfulness of the DBE program or relationship with the state because they did not use the program or interact with the state and with the bidding process, largely because many of those surveyed indicated they primarily or completely do not bid for public contracts. ■

# Results: WBE Focus Groups and Interviews

The goal of the focus groups and in-depth interviews was to provide an opportunity for owners of surviving WBEs to discuss the impact of Proposition 209 on public contracting in California’s transportation construction industry, and on their businesses in particular. To measure this impact, questions were posed in the following areas:

- **The culture of the transportation construction industry:** What aspects of the transportation construction industry culture potentially affect women differently than men? What aspects of the transportation construction industry may not be directly related to gender but could have an impact on women in public contracting?
- **The business challenges for WBEs:** What are the main challenges for WBEs when establishing and developing a business as a professional, supplier, or tradesperson in the transportation construction industry?
- **The federal DBE Program:** What were the benefits and challenges associated with California’s implementation of the federal DBE program?
- **The impact of Proposition 209:** What was the impact of Proposition 209? Were there any collateral effects?
- **WBE survival strategies:** What have been the primary strategies used by women to sustain their businesses in the transportation construction industry? How were these strategies impacted by Proposition 209?

## **Culture of the Transportation Construction Industry**

Participants agreed that the bureaucracy of public agencies often challenges the ability of WBEs to be competitive in the transportation construction industry. Slow payments, the lack of enforcement with regard

to good faith efforts so as to minimize fraud, breach of contract, important omissions from instructions, and incomplete explanations of guidelines related to projects were examples provided by participants to illustrate the manner in which the success of WBEs is undermined in the transportation construction industry. Participants agreed that it remains a significant challenge for women to access what is perceived as a “good old boy” network that rewards personal relationships. Participants agreed that the process of filing a grievance or discrimination complaints is also challenging, which many participants interpreted as a lack of willingness among the agencies to correct the institutional biases that are often sustained through existing networks between prime contractors and agency project managers.

Many of these agency challenges were perceived as exacerbated by the historical and current challenges faced by women in the transportation construction industry. While women tend to be more accepted as professionals or administrators, women who own companies in heavy construction still face a fair amount of overt discrimination. Participants agreed that women in the transportation construction industry are constantly challenged to demonstrate their knowledge and endure the humiliation of being randomly quizzed on industry standards by men who questioned their command of their work. In certain professions, such as architecture, there may be other factors that steer women away from the industry—including long hours, lack of substantial networks to obtain projects, and an underrepresentation of women in upper-level decision-making positions in firms. However, women who own companies and compete for public contracts in heavy construction and the trades often face a tremendous amount of physical and emotional intimidation, exhibited through the use of demeaning language, physical threats, dismissive behavior, and other actions that show a disrespect for women in the industry.

## Results: WBE Focus Groups and Interviews

*“Once, a prime contractor didn’t want to pay us for work that we’d completed. When I visited him to tell him that we were going to file a lien against them, he literally jumped in my face, with his cigar hanging from his mouth, and was yelling at me. He was yelling, ‘Who do you think you are? I’m not going to have no little girl filing paperwork against me!’ I was shocked, of course, but I had to just laugh it off. I’ve been in this business for over 25 years!” – WBE owner*

Participants agreed that Caltrans and other contracting agencies should improve their policies to ensure a more equitable distribution of contracts and to ensure fairness in the bidding and awarding process. While some women described experiences in which they were the low bidder and were forced to “fight” (i.e., file a formal complaint, make a public complaint, challenge the legitimacy of awards, etc.) in order to maintain the integrity of a fair public contracting process, others reported never having experienced collusion, bid-rigging, or other unethical processes.

### **Business Challenges for WBEs**

Participants agreed that women face a series of unique challenges when establishing and developing their business in the transportation construction industry. While WBEs are fully capable of working on a number of projects, many described being hindered by bonding requirements that are prescribed according to the assets of the company. Participants agreed that bonding and access to financial support from lending institutions are difficult for WBEs, particularly those that are also small businesses.

*“We’re fully capable of responding to large projects, but we always have bonding problems. We can’t get more than \$10 million in bonding because of the assets of our company. If you’re a small business, how can you compete with a multi-millionaire?...They always say, ‘we’ll help you with bonding and business loans.’ Well, I’ve been in*

*business for 20 years and I’ve never been able to get help in this area.” – WBE owner*

The suggestion that women are covers for male-owned business haunts many WBEs. While participants were split on the degree to which women served as covers for male-owned businesses, all agreed that it is not unreasonable for contracting agencies to explore the validity of women-owned businesses. The consensus among all participants was that the overwhelming majority of WBEs are legitimate businesses and that those which are not hinder the ability of some WBEs to be taken seriously.

### **The Federal Disadvantaged Business Enterprise (DBE) Program**

Participants cited obtaining economic upward mobility as the primary reason for certifying as a WBE under the Disadvantaged Business Enterprise (DBE) program. The overwhelming reason women participated as WBEs in the DBE program was to increase their access to public projects, and thereby increase their income. Participants varied in their responses regarding the usefulness of the DBE program. While some acknowledged that they were able to develop networks and access contracts through the DBE program, others expressed a great deal of dissatisfaction with the program.

*“I don’t even get calls from big firms any more. I get notices about jobs that are completely unrelated to what I do—it makes me crazy!” – WBE owner*

Participants agreed that statewide, the DBE program—and in particular, its implementation of goals and good faith efforts to include WBEs on public projects—was problematic on many levels. Participants expressed a great deal of dissatisfaction with the good faith effort, claiming that because the initiative has no strong enforcement, there are many opportunities for this effort to fail. Participants agreed that while they do receive requests for bids or propos-

als, they are often unrelated to their company's focus. Participants considered it a common occurrence for WBEs to be contacted for projects within unrealistic timeframes, and for WBEs to spend time and money preparing bids for projects on which prime contractors never intended to use their services. Without enforcement, WBEs described good faith efforts as a "waste of time" and a strategy used by many prime contractors to appear as if they were fulfilling a requirement without any intention of actually doing so. Many participants interpreted the general lack of confidence in the WBE program and its core good faith effort as a function of the ongoing overt and covert sexism they experience in the transportation construction industry in general.

### **The Impact of Proposition 209**

Participants agreed that when Proposition 209 eliminated affirmative action in public contracting, there was a shift in the way that project managers and prime contractors engaged them. While some participants described little change because they had never been able to access Caltrans' public contracts, most participants described marked declines in contracts and contract amounts following the elimination of race- and gender-conscious equal opportunity programs.

*"When Proposition 209 passed, I was working on \$200,000 worth of projects. The day after Proposition 209 passed, the senior project manager walked up to me and said, 'Hey, Prop 209 passed, and we don't have to use you anymore.' I didn't say anything to him at first, but the next day, I told him that I wanted to talk to him about what he had said to me. I said, 'Did it occur to you that I've been working here for a number of years and that I have always finished on time or early...and how many letters do you have from clients praising my cleanliness and professionalism?' Well, he didn't care. He just looked at me and said, 'Well, it's true. Prop 209 passed, and we don't have to use you anymore.' The next year, my projects plummeted*

*to \$30,000. To this day, I have to call and remind clients that I'm in still in business...do you think my male counterparts have to do that?" – WBE owner*

Many participants questioned the usefulness of Proposition 209. They expressed concern that while Proposition 209 was designed to enforce race and gender neutrality, it did nothing to challenge the "good old boy" network that still operates at many key levels in the public contracting industry. WBEs were beginning to make advancements in California's transportation construction industry when the proposition was implemented. In fact, awards to WBEs experienced the most gains during the six years prior to the passage of Proposition 209. WBEs agreed that the biggest impact of Proposition 209 was the elimination of participation goals, which affected the outreach efforts of prime contractors and the systems to hold state agencies and prime contractors accountable for their contracting decisions and practices.

### **WBE Survival Strategies**

Overall, participants agreed that women, in general, were just beginning to become more visible in the transportation construction industry when Proposition 209 passed. To maintain their businesses in a challenging industry climate, WBEs attributed their longevity to the following strategies:

- *Remain visible.* WBEs have to ensure that they maintain contacts and networks that can increase their visibility. Given the unreliability of good faith efforts, WBEs must engage other organizations, including civil, professional, or social networks that can engage potential clients and/or contractors.
- *Shift focus from public agencies.* WBEs agreed that shifting focus from public agencies to private sector and nonprofit organizations helps to sustain businesses owned by women. WBEs also empha-

## Results: MBE Focus Groups and Interviews

sized maintaining contact with existing clients in order to increase the likelihood of winning other projects from them in the future.

- *Strategically respond to Request for Proposals (RFPs).* WBEs agreed that it is critical for women to gauge which outreach efforts are genuine and limit the number of RFPs to which they respond. Because preparing a bid and proposal can be very expensive, many participants suggested that WBEs only spend the time and money to respond to RFPs that perfectly match their expertise and that are received in a timely fashion.
- *Exercise legal recourse when necessary.* WBEs who were victims of discrimination survived as a result of receiving financial awards from class action litigation. When necessary and justified, WBEs suggested women use legal advocacy and protection to remedy discrimination. ■

# Discussion

Proposition 209 ended California's ability to implement the nation's leading strategy to correct racial and gender discrimination. From the five methods used to analyze the impact of Proposition 209 on Women Business Enterprises in California's transportation construction industry—Caltrans contract awards to WBEs, the survival of 1996 certified WBEs, a statewide survey of surviving WBEs, focus groups with surviving WBEs, and in-depth interviews with surviving WBEs—there are several themes that demonstrate the degree to which women-owned businesses were impacted by the removal of race- and gender-conscious equal opportunity programs in California.

The quantitative data reveal that race- and gender-conscious policies that were previously implemented to remedy discrimination and hostility against women in the transportation construction industry before 1996 were at least partially successful in increasing participation among women-owned firms. However, the culture of the transportation construction industry appears to challenge, at every step, the inclusion of women. These trends appear to be more pronounced for women of color, particularly African American-owned WBEs, though it is important to note that their small representation within the industry and thus in this study, precludes the possibility of painting a comprehensive picture of their experiences in California's transportation construction industry before and after the elimination of affirmative action. The dearth of research on women of color in this industry, and in general, reflects a need for greater understanding about the specific barriers that prevent the development and success of firms owned by women of color in this industry.

The quantitative data reveal that the number and percentage of awards to women decreased after the elimination of these goals. The qualitative data suggest that the climate of the industry became increasingly hostile to women after the elimination of gender-conscious goals—reflecting an entrenched social bias against women in the transportation construction industry. While surviving WBEs in this study

maintained modest success and relative longevity in the industry, it is important to note that the majority of them indicated that this was a result of working with the private and nonprofit sectors. Access to public contracts remains a challenge.

Race- and gender-conscious remedies to discrimination, including affirmative action programs, were designed to correct a history of bias and exclusion. The findings of this study suggest that just as women were beginning to make advances in the public domain—as evidenced by increased Caltrans awards for WBEs and as supported by aspects of the Caltrans DBE program, including the pre-bidding conferences, with some regularity—the removal of affirmative action programs impeded this progress, and in many ways, erased it altogether. ■

*...just as women were beginning to make advances in the public domain [...] the removal of affirmative action programs impeded this progress, and in many ways, erased it altogether.*

# Recommendations:

## Strategies for Providing Equal Opportunity

Women continue to face significant barriers to equal participation in California's transportation construction industry. Data consistently demonstrate the underrepresentation of women-owned firms among those awarded public contracts. This study and other examinations of equal opportunity in California public contracting find significant disparities for women following the elimination of gender-conscious equal opportunity programs. To ensure equal opportunity for WBEs seeking public contracts in California's transportation construction industry, HCSJ recommends increased attention and action in five primary areas, including: 1) equal opportunity goals and programming, 2) culture of transportation construction industry toward women, 3) data collection for women-owned businesses, 4) continued research on the impact of anti-affirmative action legislation on pathways to entrepreneurship for women, and 5) advocacy for the business model of diversity.

### Equal Opportunity Programming

The findings of this report suggest an inconsistent application of the legal standards as they pertain to gender-conscious equal opportunity programs, which negatively impacts women-owned businesses that seek to participate in gender-conscious remedies to discrimination. While federal case law has generally indicated that gender-based classifications are to be reviewed according to a more flexible standard under the Equal Protection Clause than the strict scrutiny rule applied to race-based classifications, affirmative action programs designed to remedy discrimination against women have been analyzed as if they were race-conscious programs. Specific recommendations are as follows:

- *Recommendation:* Design gender-conscious programs to meet the federal standards for gender-based classifications and develop tailored programs that respond to the needs of women of all racial groups. Caltrans and other public contracting agencies should develop and implement specific remedies for women of color where there is demonstrated disparity. Numerical goals should

be articulated regarding the participation of women of color in proportion to their availability.

- *Recommendation:* Implement gender-conscious goals with strict enforcement and review policies. Caltrans and other public contracting agencies should develop strategies to confirm and enforce good faith outreach and participation efforts. Goals should be developed using mechanisms both to encourage interpretation of WBE participation goals as minimal goals and to develop incentives to reward firms that exceed these goals.

### Culture of Transportation Construction Industry toward Women

The findings of this report highlight that gender discrimination continues to exist at all stages along the pathway to entrepreneurship in the transportation construction industry. While no single agency or institution can eradicate racial and gender discrimination, there are a number of strategies that can be implemented to challenge discriminatory actions toward women:

- *Recommendation:* Training for key leadership at contracting agencies on the historical and present manifestations of gender bias and policies to enforce anti-discrimination in the workplace and on public projects. Caltrans and other public contracting agencies should routinely provide equal opportunity and sexual harassment training to prime contractors, project managers, inspectors, and other key personnel involved with the public contracting process.
- *Recommendation:* Examine and expand representation of women business owners on small business councils. Caltrans and other public contracting agencies should routinely examine the representation of women, including women of color, on councils charged with the task of reviewing and developing policies and practices regarding the equitable distribution of public contracts.

- *Recommendation:* Build networks to support capacity-building among firms owned by women. Caltrans and other public contracting agencies should consider partnering with organizations, including Chambers of Commerce, to increase the outreach and participation of women-owned firms in the transportation construction industry. Professional networks, advocacy organizations, and Chambers of Commerce should partner with Caltrans and other public contracting agencies to provide technical assistance and support for the capacity-building of firms owned by women in the transportation construction industry.
- *Recommendation:* Develop structures to support and encourage the participation of women in key institutions that provide entrepreneurial pathways. Institutions that provide training and education on trades, professional schools, and unions should develop mechanisms to ensure equal access for women to gain experience.
- *Recommendation:* Enforce anti-discrimination policies in lending, bonding, and insurance. Legislators and federal equal opportunity enforcement officers should monitor the extent to which lending institutions are in compliance with anti-discrimination laws. Lending, bonding, and insurance institutions should continue to implement self-monitoring processes to ensure objective decision-making in rewarding credit, loans, bonding, and other forms of financial support to businesses owned by women in the transportation construction industry.
- *Recommendation:* Separate data by race, ethnicity, gender, award type and award amount. Caltrans and other public contracting agencies should ensure that the collection of demographic data distinguishes data pertaining to women of color from data relating to men of color or white women. This will ensure a more accurate analysis of trends regarding firms owned by women and ensure that women of color are not treated as invisible entities in analyses of potential disparity.
- *Recommendation:* Legislation to enforce accurate data collection and recording for ten years within the state of California. Policymakers should consider legislation to mandate the collection and storage of accurate disaggregated data from Caltrans and other public contracting agencies. Many agencies misinterpreted Proposition 209 as a mandate to eliminate data collection efforts. Enforcing data collection at these agencies would ensure accurate analyses and monitoring regarding award trends for all businesses.

### **Research on the Impact of Anti-affirmative Action Laws on WBEs**

The findings of this report highlight the dearth of research on trends for women in the transportation construction industry and other traditionally male industries following the removal of affirmative action programs. In order to develop informed and tailored policies to encourage the participation of women-owned firms in industries in which they are underrepresented, more information is needed on their experiences. Specific recommendations are as follows:

- *Recommendation:* Continued research on the impact of Proposition 209 on women in the transportation construction industry. More research is needed regarding the impact of eliminating affirmative action in specific segments of the transportation construction industry, including professional services, supplying, and construction/trades.

### **Data Collection for Women-Owned Businesses**

The findings of this report revealed significant challenges to collecting comprehensive, longitudinal data for women of all racial groups. Data collection is essential to developing informed policies and tailored responses to discrimination. Specific recommendations are as follows:

## Recommendations:

- *Recommendation:* Continued research on the impact of Proposition 209 and barriers to capacity-building for businesses owned by women. More research is needed on the successful pathways to entrepreneurship for women and on the impact of eliminating affirmative action on women in key areas of capacity-building, including access to technical assistance regarding business management, training/apprenticeship programs, representation in unions and other areas.
- *Recommendation:* Increased research on the intersection between race and gender in measuring the impact of anti-affirmative action laws and policies. More research is needed regarding the specific ways in which women of color are impacted by the elimination of race- and gender-conscious remedies to discrimination.

### **Advocacy for the Business Model of Diversity**

The findings of this report suggest a failure to equally engage women-owned businesses following the elimination of affirmative action in California. Engaging the full spectrum of California's business community fosters the broader implementation of economic development opportunities. Specific recommendations are as follows:

- *Recommendation:* Caltrans and other public contracting agencies should examine and evaluate successful practices in the private sector. Many private enterprises have successfully demonstrated a business model that encourages the participation of diverse business enterprises. Examining and implementing outreach and utilization strategies can help to eradicate biased or discriminatory decision-making that negatively impacts women in traditionally male industries.
- *Recommendation:* Caltrans and other public contracting agencies should consider implementing incentives and awards for businesses that exceed participation goals for underrepresented groups and actively demonstrate a commitment to engaging in business practices that extend beyond personal networks. ■

## Conclusion

The structural exclusion of one group from any public process because of race, ethnicity, gender or national origin is not only illegal, it is antithetical to any demonstration of the ideals of our nation. Our whole society loses when significant segments of our extended community are unable to freely compete. President Carter's vision of a democracy inclusive of everyone, including women, has yet to be fully realized. This collective struggle for equity is a call to action for legislators, academics, legal advocates, and the voting public to mobilize our nation to develop laws, policies, and practices that reflect the salient virtues of fairness and equal opportunity and that protect everyone from discrimination. The right to exist free of discrimination is not only a core social justice issue, but also an essential human right.

A number of reports have revealed a lack of fairness and equal access to public contracts that result from the absence of gender-conscious equal opportunity programs. California, along with the rest of the nation, must continue to examine the degree to which we have upheld our promise of enforcing equal opportunity. Across the nation, women-owned businesses emerge as important employers in our society—spending approximately \$546 billion annually on salaries and benefits.<sup>94</sup> Engaging these women as equal participants and competitors—thereby fulfilling the vision of a fair democracy—not only benefits women. It benefits us all. ■

---

<sup>94</sup> Center for Women's Business Research, (2006). *Key Facts about Women-Owned Businesses, Update*.

**Thelton E. Henderson Center for Social Justice**

University of California, Berkeley School of Law

**Staff:**

Mary Louise Frampton, Director

Diane T. Chin, Associate Director

Monique W. Morris, Senior Research Fellow

Michael D. Sumner, Research Fellow

Jessica Z. Borja, Research Associate

Mary Elliott, Program Administrator

Jennifer Navarro, Program Assistant

**Advisory Council:**

The Honorable Thelton E. Henderson

The Honorable Ken Kawaichi, Ret.

The Honorable John Racanelli, Ret.

The Honorable John True III

Mario Barnes

Angela Blackwell

Barbara Bryant

Abby Ginzberg

Irma Herrera

Judith Droz Keyes

Bernida Reagan

Amitai Schwartz

Brad Seligman

Ellen Widess



of Ray Chavez



**THELTON E. HENDERSON**  
**CENTER FOR SOCIAL JUSTICE**  
UNIVERSITY OF CALIFORNIA  
BERKELEY SCHOOL OF LAW

Bancroft Research Center  
2440 Bancroft Way, Suite 209  
Berkeley, CA 94704  
[www.law.berkeley.edu/centers/csj](http://www.law.berkeley.edu/centers/csj)