

## **FINAL REPORT**

# **ASSESSMENT OF THE STATE BAR OF CALIFORNIA'S POLICIES & PRATICES RELATED TO PROCUREMENT ACTIVITIES**



ROSALES LAW PARTNERS LLP

March 29, 2024

## I. EXECUTIVE SUMMARY

Rosales Law Partners LLP (RLP), in collaboration with Merriwether & Williams Insurance Services (MWIS) and D R Linton & Associates (together, the “Project Team”), was retained by the State Bar of California (the “Bar” or the “State Bar”) to assess the Bar’s practices, policies and procedures related to the procurement of goods and services, including construction. Phase 1 of RLP’s engagement included documentation of the procurement process, data identification and gathering, assessment of data provided by the State Bar, and recommendations for the creation of an inclusive and equitable system of procurement for the Bar.<sup>1</sup>

The Project Team reviewed various materials, conducted staff interviews, and analyzed contracting data for the period January 1, 2020 through December 31, 2022 (“assessment period”). Since the State Bar does not collect demographic information regarding its vendors, the Project Team also developed a vendor survey, which was sent by the State Bar via email to vendors who performed work during the assessment period.<sup>2</sup>

Some of the key findings of the procurement assessment and vendor survey were:

- The Bar lacks a centralized procurement system, which hinders its ability to implement race/gender neutral procurement measures.
- The Bar does not currently advertise its procurements widely and does not conduct extensive or robust outreach specifically to small businesses, including businesses owned by people of color and women.
- Notwithstanding the above, the State Bar’s current pool of vendors includes small businesses. Three-quarters of the vendors who responded to the survey have only one owner and two-thirds qualify as California Department of General Services (CADGS) microbusinesses.
- The Bar currently lacks a mechanism or system to collect demographic data regarding its vendors, which significantly impacts its ability to determine the diversity of its vendor pool. Without robust data collection, it will be difficult for the Bar to evaluate the effectiveness of any adopted race/gender neutral measures targeted at small businesses.
- The demographic representation of the survey respondents are: 76% White, 9% Black, 6% Hispanic/Latino, 6% Multiracial, and 3% Asian.

---

<sup>1</sup> Phase 2, which is yet to be initiated, entails an Availability and Utilization (Disparity Study) Analysis.

<sup>2</sup> Although the vendor survey response rate was only 24% (94 received out of 385 emails sent), Bar staff believes that the pool of vendors who did respond is relatively consistent with their understanding of the Bar’s vendor demographics, a conclusion supported by the fact that the business categories identified by survey respondents corresponded fairly well to the Bar’s procurement dollars. Though insufficient to draw definitive conclusions about the demographics of the Bar’s vendors, the survey results present a point of reference to assist the Bar’s procurement efforts moving forward.



- Fifty-six percent (56%) of survey respondents are male and forty-four percent (44%) are female.<sup>3</sup>

To implement the Bar's Strategic Plan focus on diversifying exam development and grading services providers, the Bar's Admissions Group staff has developed an outreach and engagement plan to enlarge the pool of faculty and engage affinity groups for graders. An analysis of the demographic and employment sector of California Bar Exam (CBX) graders versus the grader pool found that the Admissions Group's race/gender neutral outreach efforts have resulted in the inclusion of attorneys from diverse backgrounds to serve as graders and Bar exam developers.

RLP conducted extensive legal research under the United States and California Constitutions relating to the permissible consideration of racial and gender classifications in public contracting.<sup>4</sup> We conclude that the in-depth procurement assessment yielded important information which can assist the Bar in maximizing the equitable participation of small businesses, including diverse businesses, in its procurement portfolio. The data collected, however, is insufficient to support a conclusion that minority-owned businesses (MBEs) or woman-owned businesses (WBEs) face race or gender based discriminatory practices by the State Bar or in the markets the Bar does business. Consequently, an MBE or WBE program based on the data in the Final Report would not satisfy either the Fourteenth Amendment's strict scrutiny or intermediate tests and would be prohibited by Proposition 209. Thus, the recommended path forward is a race/gender neutral procurement policy which can focus on encouraging and incentivizing the equitable participation of California small businesses, including those that are owned by MBEs and WBEs, in the State Bar's procurement opportunities.

---

<sup>3</sup> To ensure that race and gender data was self-reported only, the State Bar limited the race and gender analysis of vendors to those who had a sole owner who completed the vendor survey and answered demographic questions. The total number of survey respondents who met those criteria was 34, representing 36% of respondents.

<sup>4</sup> RLP's privileged and confidential legal opinion is provided as a separate work product.



## II. BACKGROUND

The Project Team reviewed various materials, conducted interviews, and analyzed contracting data for the period January 1, 2020 through December 31, 2022 (“assessment period”). The Project Team reviewed the following resources:

- The Bar’s General Procurement Manual, updated February 2023
- The Bar’s Strategic Plan for 2022-2027
- The Bar’s website, including information regarding the Bar’s DEI Leadership Seal Program
- A sample Request for Proposals (RFP)
- A sample contract
- The California Department of General Services Small Business/DVBE Program materials
- Procurement data for the period January 1, 2020 through December 31, 2022

The Project Team also interviewed State Bar staff members in the Office of General Council (OGC), Procurement Unit, Information Technology (IT), and Admissions. Because vendor demographic data (e.g., race/ethnicity/gender of owners, business size, etc.) is not currently collected by the Bar, the Project Team and the Bar developed a survey instrument, which was distributed to the Bar’s vendors who provided goods and/or services during the assessment period.

### A. Procurement Process and Data Collection

The State Bar’s Procurement Unit currently consists of three (3) dedicated full-time employees, with additional support from a part-time temporary worker. The Bar does not have a centralized procurement process. There are approximately 20 departments in the Bar, almost all of which procure goods and services of some kind. Each department determines the goods and services that are needed, identifies the appropriate pool of vendors, conducts outreach to vendors and is responsible for many of the procurement-related activities.

The Bar follows the procedures outlined in the General Procurement Manual (GPM). The GPM establishes various methods of procuring goods and services based on the estimated dollar amount and whether the goods and services are IT-related. The procurement methods are:

- **Contracts estimated at less than \$5,000:** Competitive bidding is not required.
- **Contracts estimated from \$5,000 to less than \$15,000:** Informal competitive bidding. At least two verbal bids are required.
- **Contracts estimated at from \$15,000 to less than \$50,000 or from \$15,000 to less than \$100,000 for IT:** Informal competitive bidding. At least three written bids are required.
- **Contracts estimated at greater than or equal to \$50,000 or \$100,000 for IT:** Formal competitive bidding is required, using the Request for Proposal process or comparable process (e.g., Invitation for Bid). This process is managed by the Procurement Unit. Approval by the Board of Trustees is also required before a contract can be executed.<sup>5</sup>

---

<sup>5</sup> General Procurement Manual, pp. 11-12.



The GPM also outlines the roles and responsibilities for various State Bar units.

**Table 1: Procurement Steps and Staff Roles<sup>6</sup>**

STEP	Requesting Office	Procurement Unit	Office of General Counsel (OGC)
Planning	Develops Statement of Work (SOW)	Reviews	Reviews, if requested
Determining the Procurement Mechanism	Collaborates with Procurement Unit	Advises office based on SOW	Advises office and Procurement Unit, if requested
Selecting a Vendor	Conducts vendor selection & selects winning bidder	Reviews vendor selection	Reviews vendor selection, if requested
Issuing an Award and Creating a Contract	Collaborates with Procurement Unit to create a contract	Develops detailed contract	Develops and/or reviews detailed contract, if required
Managing the Contract	Manages compliance, consults with Procurement Unit & OGC	Advises re contract enforcement, if requested	Advises re contract enforcement, if requested

The Procurement Unit ensures that procurement policies are followed and documented. For less than \$5,000, each department can award a contract without a competitive process. The Procurement Unit generally does not question whether multiple issuances of contracts less than \$5,000 to the same vendor is appropriate. For informal contracts between \$5,000 and \$15,000 in value, the Procurement Unit requires proof of two verbal bids; the department can award a contract at their discretion. For informal contracts between \$15,000 and \$50,000 (\$100,000 for IT), the Procurement Unit requires proof that three written bids are received and, if the award is to the non-lowest bidder, the department must provide a justification memorandum.

The Procurement Unit does not ask the department procuring the goods and/or services about the pool of bidders that were solicited for informal bids. Likewise, the Procurement Unit is not generally involved in identifying vendors for solicitations, rather, the department that is procuring goods and services identifies the pool of solicited firms from various industry sources.

For formal solicitations, the procurement department must see the pool of solicited vendors to ensure that it was sufficient (generally five to seven firms). Formal solicitations are advertised on the State Bar's website. The Bar previously had the ability to post solicitations on the California Department of General Services (DGS) website but can no longer do so due to DGS's recent transition to a new software system. Extensive outreach to potential bidders/proposers is not generally undertaken because the Procurement Unit does not have the capacity to review a large number of proposals.

---

<sup>6</sup> General Procurement Manual, p. 8.

The GPM outlines multiple exemptions from formal solicitations. Bids for most exemptions are generally solicited from multiple sources. The department procuring the goods or services prepares a best value memorandum regarding why the selected vendor was chosen. Board of Trustees approval is required for any exemptions over \$50,000. For California Department of General Services Multiple Award Schedules CMAS or other leveraged purchasing agreements, the department procuring the goods and services will choose from the pool.

Subcontracting, which is customary in the construction industry, often provides opportunities for small, diverse businesses because they face barriers to accessing the bonding, insurance and financing required to perform as a prime construction contractor for a public agency. Since the Bar does not generally engage in large construction or infrastructure projects, the Procurement Unit's understanding is that subcontractor participation on contracts is limited. One notable exception occurred in 2012, where the Bar hired a general contractor with twenty (20) or so subcontractors to perform tenant improvements. When there are subcontractors on State Bar projects, the Bar manages the work being procured through the prime contractor and does not track subcontractor participation.

The Bar issues "Various" purchase orders (PO) for a variety of services, e.g., Various Security Services for Exams, Various Group Facilitators – LAP, Various grant recipients, Various Individual Therapists. "Various" POs are used for high volume procurements for individuals. Only one PO is issued, but there is no tracking of individual vendors by the Procurement Unit. The work performed under "Various" POs is managed by the department procuring the services. Generally, a short template contract is signed by each individual vendor. The Bar also administers grants to legal services nonprofits as pass-throughs and uses "various" POs to disperse those funds via the Office of Access and Inclusion.

Procurement practices relating to diversity, equity, and inclusion (DEI)<sup>7</sup> of vendors was contemplated or discussed during the recent revision of the GPM. Since Bar staff was aware that the recommendations for DEI in contracting would be forthcoming from the Project Team, they wanted to avoid delaying the revision, since it was essentially a restatement and streamlining of the current procurement policies. The Procurement Unit stated it would welcome suggestions for how to expand outreach to be more inclusive of small, diverse, emerging firms. The Procurement Unit expressed openness to DEI efforts but expressed concern about their ability to implement recommendations given their limited resources.

### **III. ASSESSMENT OF COLLECTED DATA**

#### **A. Purchase Order Analysis**

The Bar provided a list of more than 2,000 POs issued during the assessment period of January 1, 2020 through December 31, 2022. The Project Team assigned each PO to a procurement category using the Bar's chart of expense account descriptions to determine the nature of the goods and/or services provided. Due to the number of expense accounts in overlapping procurement areas, certain categories were consolidated.

---

<sup>7</sup> For purposes of this Report, the term "diversity, equity and inclusion," "DEI," or "DEI in procurement" refers to the inclusive and equitable participation of diverse businesses, including, but not limited to, businesses owned by people of color, women, disabled veterans, LGBTQ identified individuals and economically disadvantaged individuals.



**Table 2: State Bar Procurements 2020-2022 by Category**

<b>Category</b>	<b>% of Total</b>	<b>Dollar Amount</b>
Professional Services	36.62%	\$27,516,575.24
Software Maintenance	9.07%	\$6,814,898.47
Proctors	7.97%	\$5,988,171.51
Exam. Room Rental	7.22%	\$5,422,824.18
Laptop License	6.11%	\$4,587,922.50
Multi-State Bar Exam.	3.27%	\$2,455,261.00
Equipment - Hardware Purch.	2.70%	\$2,029,102.51
Graders Book Fees	2.44%	\$1,833,600.00
Security	2.18%	\$1,638,483.01
Books & Publications	1.81%	\$1,363,163.11
Graders	1.70%	\$1,276,320.00
Travel	1.68%	\$1,262,689.10
Janitorial Services	1.59%	\$1,195,573.66
Laptop Fee-Onsite Support	1.52%	\$1,141,400.00
Parking - Lease Contracts	1.51%	\$1,137,000.00
Fingerprinting	1.47%	\$1,107,828.00
EDG Team	1.42%	\$1,069,775.00
Engineering Services	1.21%	\$906,076.77
Computer Software Purchase	1.18%	\$887,194.59
All Other	7.32%	\$5,502,548.71
<b>Total</b>	<b>100.00%</b>	<b>\$75,136,407.36</b>



The POs issued for Professional Services were further analyzed because a large percentage of POs were awarded in that category:

**Table 3: Professional Services Purchase Orders 2020-2022**

<b>Category</b>	<b>Amount</b>	<b>% of Prof Svc</b>	<b>% of Total</b>
IT Consulting services	\$7,769,851.37	28.24%	10.34%
Exam Development/Grading	\$4,876,835.46	17.72%	6.49%
Temporary Outside Help/Contractors	\$1,961,838.02	7.13%	2.61%
Software Maintenance and Support	\$1,516,002.12	5.51%	2.02%
Testing Accommodations	\$1,419,351.00	5.16%	1.89%
AV Hardware and Services	\$1,012,143.68	3.68%	1.35%
Organizational Development Services	\$986,575.00	3.59%	1.31%
Computer Software Purchase	\$962,036.79	3.50%	1.28%
Educational Services	\$900,000.00	3.27%	1.20%
Real Estate Services	\$846,756.68	3.08%	1.13%
Expert Witnesses	\$734,551.00	2.67%	0.98%
Grants	\$693,431.03	2.52%	0.92%
Legal services	\$636,032.50	2.31%	0.85%
Lobbying/Government	\$545,000.00	1.98%	0.73%
Communications	\$449,763.56	1.63%	0.60%
Financial Services	\$419,259.00	1.52%	0.56%
DEI Consulting Services	\$299,550.00	1.09%	0.40%
All other	\$1,487,577.03	5.41%	1.98%
<b>Total</b>	<b>\$27,516,554.24</b>	<b>100.00%</b>	<b>36.62%</b>

## **B. Vendor Demographics**

The State Bar does not collect demographic information regarding its vendors. Thus, the Project Team and the Bar developed a vendor survey, which was sent by the State Bar via email to vendors who performed work during the assessment period. The survey distribution list contained 437 emails (385 emails sent, 51 emails bounced back, and 1 email blocked). It was first distributed on August 21, 2023 with a September 1, 2023 deadline. Reminders were sent on August 23<sup>rd</sup>, August 30<sup>th</sup>, September 6<sup>th</sup>, and September 11<sup>th</sup>. The deadline for those who had not responded by September 11<sup>th</sup> was extended to September 13<sup>th</sup>. The response rate was 24% (94 received/385 emails sent). The State Bar's complete report on the survey results can be found in Attachment A.

### **1. Business Category**

The business categories identified by survey respondents corresponded fairly well to procurement dollars, though there were two notable exceptions. First, the highest response rate was among attorneys/law firms, exceeding the procurement dollars awarded to those firms by nearly a third. Second, the percentage of survey respondents who identified professional services as one of their business categories was significantly lower than the percentage of procurement dollars received by firms in that category.





**Table 4: Vendor Survey Responses by Type of Business**

<b>Category</b>	<b>Response %</b>	<b>Procurement Dollar %</b>	<b>Difference</b>
Attorney/Law Firm	31%	0.9%	30.2%
Professional Services	15%	36.6%	-21.7%
IT-Software	12%	13.9%	-1.9%
IT - Consulting	10%	10.1%	-0.1%
Communications/Public Relations	5%	0.6%	4.4%
Graphic Design	4%	0.2%	3.9%
Temporary Outside Help	4%	3.1%	1.0%
IT- Hardware	4%	0.1%	3.9%
Training	3%	0.2%	3.0%
Books/Publications	3%	1.8%	1.3%
A/V Equipment and/or Services	3%	1.4%	1.7%
Security	3%	2.4%	0.6%
DEI Services	3%	0.4%	2.6%
Organizational Development Services	3%	1.6%	1.5%
HR/Employee Services	2%	0.4%	1.6%
Accounting/Financial	2%	0.6%	1.4%
Awards	1%	0.0%	1.1%
Maintenance and Repairs	1%	1.2%	-0.2%
Furniture Non-Capital	1%	0.2%	0.9%
Outside Printing	1%	0.6%	0.5%
Question Development	1%	0.2%	0.8%
Construction-Specialty Contractor	1%	0.9%	0.1%
A&E	1%	1.3%	-0.3%
Merchant Wholesalers/Suppliers	1%	0.6%	0.4%
Transcription/Court Reporting	1%	0.7%	0.3%
Document Storage	1%	0.3%	0.7%
Statistical Analysis	1%	0.3%	0.7%
Promotional Products	1%	0.0%	1.0%
Delivery/Courier	1%	0.8%	0.2%

## 2. Number of Years in Business

Sixteen percent of survey respondents had been in business for 5 years or less, 9% for 6-10 years, 14% for 11-15 years, and 60% for more than 15 years.



**Table 5: Vendor Years in Business**

Field	Choice Count
0-5	16% 15
6-10	9% 8
11-15	14% 13
More than 15	60% 55
	91

### 3. Number of Employees

Nearly three quarters (74%) of the survey respondents had 25 or less employees, with 87% meeting the Small Business Administration's definition of a small business based on number of employees (less than 100). Twelve percent of survey respondents indicated that they had more than 200 employees.

**Table 6: Vendor Number of Employees**

Field	Choice Count
0-25	74% 67
26-50	9% 8
51-100	4% 4
101-150	1% 1
151-200	0% 0
More than 200	12% 11

### 4. Annual Gross Receipts

Nearly two-thirds (63%) of survey respondents indicated that their average gross receipts over the past three years was less than \$1,000,000, with 78% meeting the State of California's Department of General Services (DGS) threshold requirements to qualify as a microbusiness (annual gross receipts up to \$5,000,000). Though the definition of a small business varies based on the type of work a firm engages in and the small business certification program, more than 80% of survey respondents would meet the gross income requirements to be certified as a small business by DGS (up to \$16,000,000). Fourteen percent (14%) of survey respondents averaged more than \$37,000,000 in gross receipts.



**Table 7: Vendor Gross Receipts**

Field	Choice Count
Less than \$1,000,000	63% 54
\$1,000,000-\$2,500,000	8% 7
\$2,500,001-\$5,000,000	7% 6
\$5,000,001-\$16,000,000	5% 4
\$16,000,001-\$37,000,000	3% 3
More than \$37,000,000	14% 12
	86

## 5. Form of Ownership

The plurality of survey respondents were sole proprietors (44%). More than a quarter (26%) were corporations.

**Table 8: Vendor Form of Ownership**

Field	Choice Count
Sole Proprietorship	44% 40
Partnership	2% 2
Joint Venture	0% 0
Corporation	26% 23
Limited Liability Partnership	6% 5
Limited Liability Corporation	11% 10
Private-equity owned	3% 3
Publicly traded	1% 1
Other (please specify):	7% 6
	90

## 6. Number of Owners

Nearly three quarters (74%) of survey respondents had only one owner.



**Table 9: Vendor Number of Owners**

Field	Choice Count
0	5% 4
1	74% 59
2	10% 8
3	5% 4
5	3% 2
7	1% 1
43	1% 1
550	1% 1
	80

## 7. Certifications

Of the survey respondents who indicated they held a certification, nearly one quarter (23%) of survey respondents held a DGS small business certification. Eighteen percent indicated that they were certified as a Minority- or Woman-Owned Business (MBE/WBE) and 5% indicated that they were certified under the U.S. Department of Transportation's DBE Program.<sup>8</sup>

**Table 10: Vendor Certifications**

Field	Choice Count
DBE (Issued by State Unified Certification Program)	5% 1
SBE (Issued by Calif. Dept. of General Services)	23% 5
LBE (Issued by SF General Services Agency)	5% 1
MBE/WBE (Name of Issuing Agency):	18% 4
DVBE	0% 0
SBA 8A	5% 1
Other (please specify):	59% 13
	22

<sup>8</sup> The Bar analyzed "Other" responses in the Certifications category to determine whether the respondents were certified as a small, minority-, and/or woman-owned business under a certification program not listed in the survey instrument. All but one of the "Other" responses in this category referred to professional certifications or licenses (e.g., medical doctor, attorney, psychologist), and one "Other" response listed the respondent's corporate status.

## 8. Subcontracting

Only 11% of survey respondents indicated that they subcontracted a portion of the work that they performed for the State Bar.

**Table 11: Vendor Subcontracting**

Field	Choice Count
We did not subcontract any portion of the work we performed for the State Bar	89% 63
We subcontracted our work for the State Bar to subconsultants/subcontractors	11% 8
	71

## 9. DEI Policies

Sixty-five percent (65%) of survey respondents indicated they did not have a DEI in contracting/ procurement policy, and 55% indicated they did not have a DEI in employment policy.

**Table 12: Vendors with a DEI in Contracting/Procurement Policy**

Field	Choice Count
Yes	35% 22
No	65% 40
	62

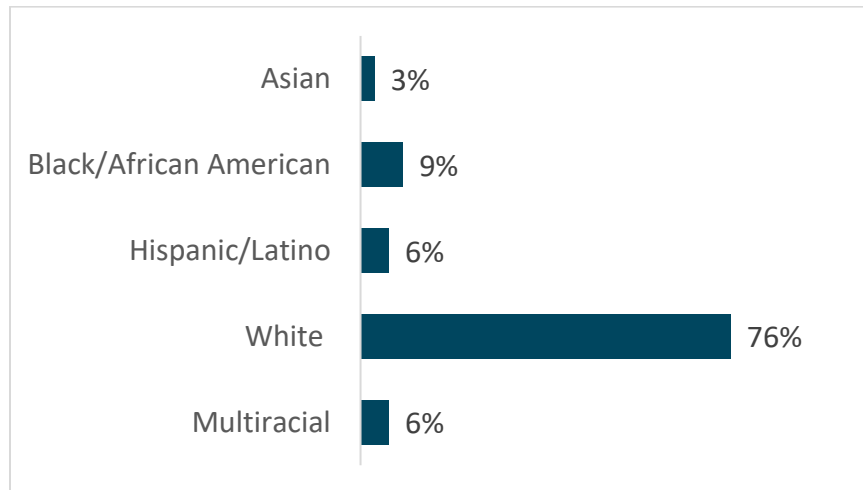
**Table 13: Vendors with a DEI in Employment Policy**

Field	Choice Count
Yes	45% 28
No	55% 34
	62

## 10. Race/Ethnicity

To ensure that demographic data was self-reported only, the State Bar limited the demographic analysis of vendors to those who had a sole owner who completed the vendor survey and answered demographic questions. The total number of survey respondents who met those criteria was 34, representing 36% of respondents. The demographic representation of the respondents are: 76%White, 9% Black, 6% Hispanic/Latino, 6% Multiracial, and 3% Asian.

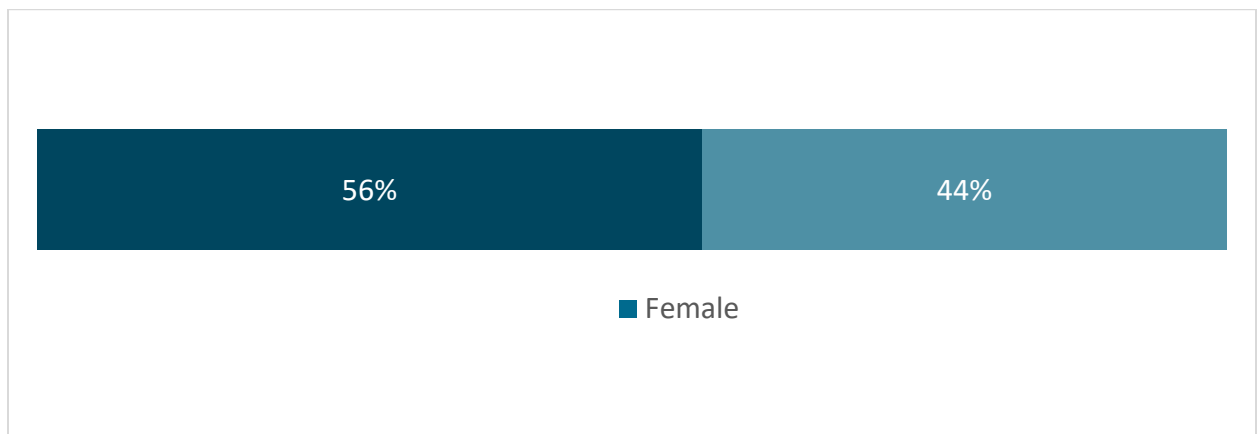
**Table 14: Vendor Race/Ethnicity**



## 11. Gender

Fifty-six percent (56%) of survey respondents are male and forty-four percent (44%) are female.

**Table 15: Vendor Gender**



## IV. ADMISSIONS

The Admissions Group performs three core functions relating to the administration of the California Bar Exam: exam development, exam administration to applicants seeking admission to the State Bar, and grading of the exams. For the most part, these activities generate procurement opportunities requiring special expertise. For example, the Bar solicits law professors to develop essay questions and eligible graders who meet additional criteria other than being an active licensed Bar member. The activities relating to securing the facilities required to administer the Bar exam twice a year do present some vendor opportunities. Examples include rental of tables and chairs and AV equipment, electrician services, and facility security services. In the interview with staff, however, it appears that because of the sensitive nature of



administering the Bar exam – which requires heightened security and privacy – and the large number of attendees, staff prefers hotels or similar venues.

### **A. Outreach Efforts**

During an interview with the Admissions Group the Project Team was informed of the Board of Trustees' Strategic Plan focus on diversifying exam development and grading services providers. Staff has developed an outreach and engagement plan to enlarge the pool of faculty and engage affinity groups for graders at large.

### **B. Data Research for Graders**

At the request of the Project Team, the Mission Advancement and Accountability Division performed research on the following question: “How does the demographic and employment sector of California Bar Exam (CBX) graders compare with the grader pool?” Race/ethnicity, gender identity, employment sector, and region demographics were analyzed in ten California regions. The results are summarized in Attachment B.

The highlights of the data research are:

- People of color comprise 45% of CBX graders, which is a higher percentage than their representation of all attorneys.
- White attorneys are underrepresented (67%) among CBX graders as compared to their representation in the grader pool (55%).
- The share of Hispanic/Latino, Black and Multiracial attorneys among CBX graders is higher than their representation among the grader pool.
- The share of Asian attorneys among CBX graders is relatively equal to their representation in the grader pool.
- Attorneys of different gender identities are represented relatively equally to their representation in the grader pool.
- Nearly half of the CBX graders work in the government sector, although government attorneys comprise 15% of the grader pool.
- Attorneys employed at law firms are 40% of the eligible grader pool but are 23% of the graders. Attorneys employed as solo practitioners are 19% of the eligible grader pool but are 12% of the graders.
- Over 70% of the CBX graders are from the San Francisco Bay Area, although 25% of the grader pool is from this region. By contrast, Los Angeles County has 29% of the eligible CBX graders but only 6% of the CBX graders are from the county.
- CBX graders come from all the regions studied, except for Southern San Joaquin Valley.



## **V. SUMMARY FINDINGS**

### **A. Procurement**

- The Bar has undertaken significant efforts to improve the inclusion of diverse firms in some areas of its activities, particularly Admissions. However, it currently has no procurement policy which includes language regarding the participation of diverse or small businesses in its procurement opportunities.
- The Bar currently lacks a mechanism or system to collect demographic data regarding its vendors, which significantly impacts its ability to determine the diversity of its vendor pool and will hamper its ability to evaluate the effectiveness of any adopted race/gender neutral measures targeted at small businesses.
- The Bar's lack of a centralized procurement system hinders its ability to implement race/gender neutral measures such as a program targeted at small businesses.<sup>9</sup>
- The Bar does not currently advertise its procurements widely and does not conduct extensive or robust outreach specifically to small businesses, including business owned by people of color and women, disabled veterans, LGBTQ identified individuals and economically disadvantaged individuals. Only those vendors on lists maintained or developed by the department procuring the services or who know how to access the Bar's website are aware of upcoming contracting opportunities.
- Because the Procurement Unit receives vendor selection recommendations after the selection has taken place, the Procurement Unit cannot correct procurement errors or omissions. This process may cause the Procurement Unit to approve procurement decisions without appropriate due diligence.
- The Bar's bi-weekly payment terms to its vendors is hugely beneficial to small businesses that, because of marketplace practices beyond the control of the Bar, face barriers to capital and cash flow mechanisms.
- The State Bar's current pool of vendors includes small businesses. Though the survey response rate was lower than that necessary to draw any definitive conclusions, three-quarters of the vendors that did respond had only one owner and two-thirds qualify as CADGS microbusinesses. The survey data, however, does not capture the dollars awarded to small businesses, which is the industry standard for evaluating actual participation by small businesses.

### **B. Admissions Group**

- The Admissions Group's race/gender neutral outreach efforts and planning have resulted in the inclusion of attorneys from diverse backgrounds to serve as graders and Bar exam developers.

---

<sup>9</sup> For an example of a centralized procurement process, see the Federal Transit Administration's Best Practices Procurement & Lessons Learned Manual, especially Section 2.2 Organizational Roles and Responsibilities (pages 14 through 17) and Appendix B-2.2 Organizational Roles and Responsibilities (pages B-5 through B-7).





- Much of the Bar’s in-house race/gender-neutral model to increase diversity among graders and Bar exam developers includes best practices that can be applied to its procurement activities, particularly goods and services procured through “Various” POs.

## **VI. RECOMMENDATIONS**

### **A. Procurement**

- Add a general statement in the Procurement Manual highlighting the Bar’s DEI<sup>10</sup> values, as an overarching message.
- Adopt a race and gender-neutral Small Business Enterprise (SBE) policy. Such a policy should feature prominently on the Bar’s website and in all its procurement documents, including the General Procurement Manual.
- Adopt the State’s minimum goal of 25 percent participation for small business based on dollars awarded, including microbusinesses. (See AB 2019 and Government Code section 14838).
- Although the State Bar does not regularly undertake large procurements in its regular course of business, unbundle any large procurements to enhance opportunities for small businesses.
- If within the State Bar’s legal discretion and as one SBE program participation tool, consider and where feasible implement, a “contract set aside” policy, which would limit competition for selected contract opportunities among small businesses where there is a sufficient availability of small business firms to perform the relevant services.
- Review the list of exemptions to competitive solicitation for services. Although no entity, the State Bar included, would be expected to competitively procure all its goods and services, utilizing exemptions from competitive processes only when necessary or most desirable to enhance small business participation ensures that procurements are being competitively bid to the maximum extent possible. This approach will likely increase participation by small businesses, including diverse businesses.
- Reconsider GPM Section 6.4: Architectural, Engineering, and Broker Contracts, which specifies that the Bar does not have to undertake a Request for Proposal process for these services but can use an abbreviated qualifications process.
- Monitor multiple sub-\$5,000 procurements to the same vendor to ensure equitable participation in the Bar’s contract opportunities.
- Ask prime vendors for their small business program/policy and, if none, ask them to adopt the Bar’s SBE program.
- Provide a quarterly or semi-annual report regarding procurements and small business efforts to the Executive Director and Board of Trustees (including exemptions).

---

<sup>10</sup> See footnote 7 of this Report for the definition of DEI regarding the State Bar’s procurement activities.



## **B. Data Gathering and Tracking**

- Implement a vendor registration portal to capture potential vendor interest in Bar contracting opportunities.
- Implement a system for tracking information regarding the race, ethnicity, gender, gender identity, disability, sexual orientation, and veteran status of the Bar's vendors on the prime and subcontracting level. The data tracking system should require vendors to provide such information either prior to being awarded a contract or as part of the vendor's bid/proposal.
- Implement a system for tracking payments to subcontractors. Although subcontractor participation is limited due to the nature of the Bar's procurements, such a system would enhance participation by small businesses, including diverse businesses, as subcontractors on the Bar's contracts.

## **C. Outreach**

- Develop and implement a robust vendor outreach plan and include strategies to increase the number of bidders/proposers competing for Bar contracting opportunities. This action will likely result in more diversity among successful vendors and may also yield better pricing proposals from interested competitors.
- Review the California Department of General Services website to determine if the State database identifies small businesses that should be included in any solicitation process.
- Publicize opportunities in small business sites/journals/media, including those targeted toward small businesses owned by people of color and women, disabled veterans, LGBTQ identified individuals and economically disadvantaged individuals.

## **D. Admissions**

- Formalize the Admissions group's race/gender neutral efforts to increase diversity in the admissions, testing and grading area.
- Track data on vendor demographics in the Admissions arena, including to whom the solicitations are sent.
- Continue the Bar's efforts to increase diversity and inclusivity in exam developers, testers and graders as emphasized in the 2022-2027 Strategic Plan. Pay particular attention to those areas where diversity is important in assessing performance skills and ensuring that performance tests are relevant, representative of timely and relevant issues, and fair.



## **E. Organizational**

- Hire a staff member at the executive level (or with direct access to the Executive Director) to oversee the Bar's SBE program and to ensure compliance with the adopted Final Report Recommendations.
- Incorporate small business procurement activities into the DEI Leadership Seal Program.
- Continue Implicit Bias training for Executive Team and managers.
- Include compliance with any adopted SBE program in performance evaluations of staff involved with procurement.
- Expand Strategic Plan Goal 4 focusing on community partners to include small business contracting.
- Once achieved, highlight the Bar's successful efforts regarding small business procurement activities.



# **ATTACHMENT A**

## **State Bar Vendor Survey**



The State Bar *of California*

# 2023 State Bar Vendor Survey Results

MAAD, October 2023

# Methodology



# Methodology and Survey Response Rates

- Distribution list contained 437 emails (385 emails sent, 51 emails bounced, and 1 email blocked)
- Survey distribution: August 21, 2023 with a September 1, 2023 deadline
- Reminders sent: August 23, August 30, September 6, and September 11
- Deadline extended to: September 13, 2023
- Response rate: 24% (94 received/385 emails sent)

The State Bar has limited the demographic analysis of vendors to the following:

- Had just one owner
- Owner filled out vendor survey
- Owner answered demographic questions

Survey respondents provided demographic information of other owners and subcontractors. However, the State Bar recommends limiting analysis to demographics that were self-reported.



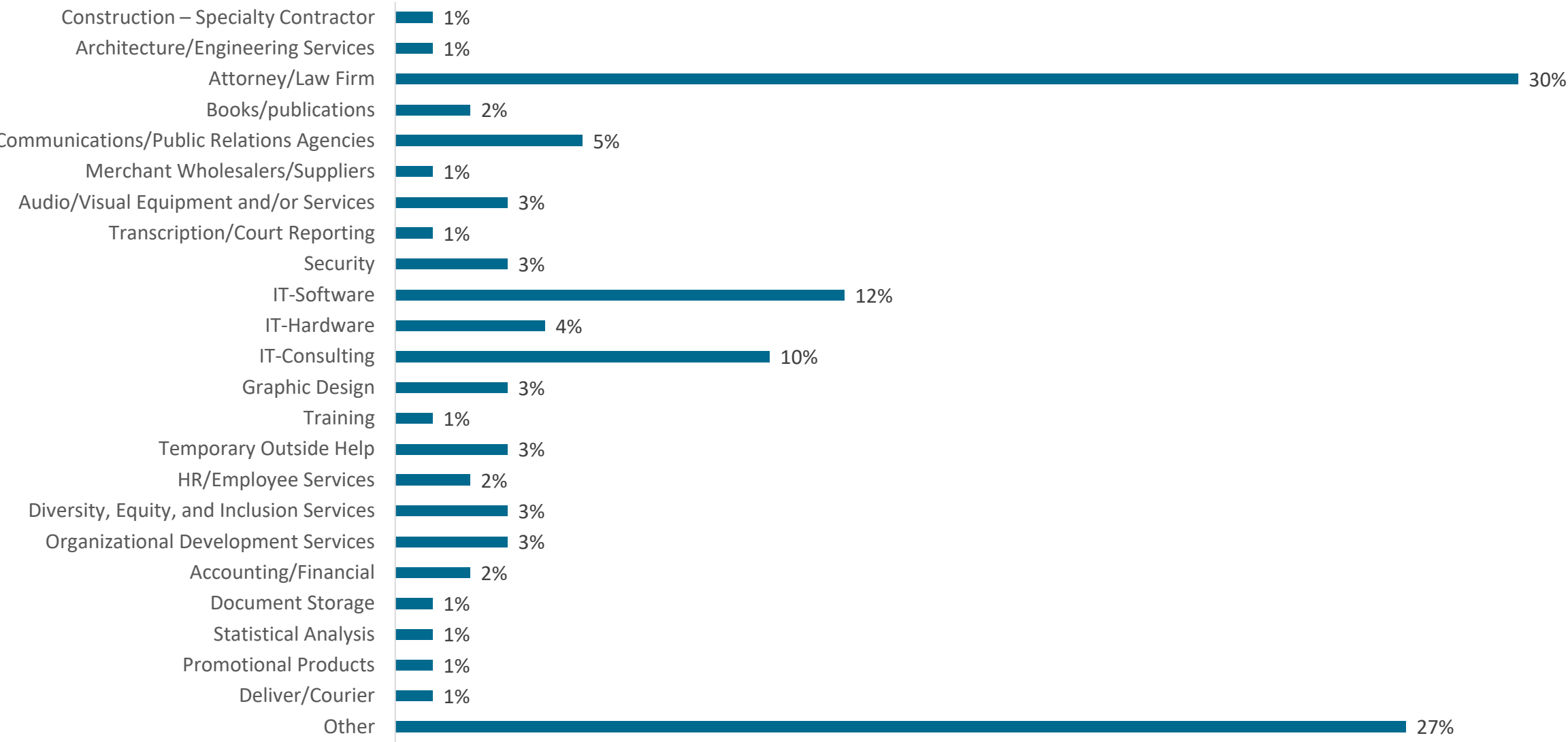


# Survey Results





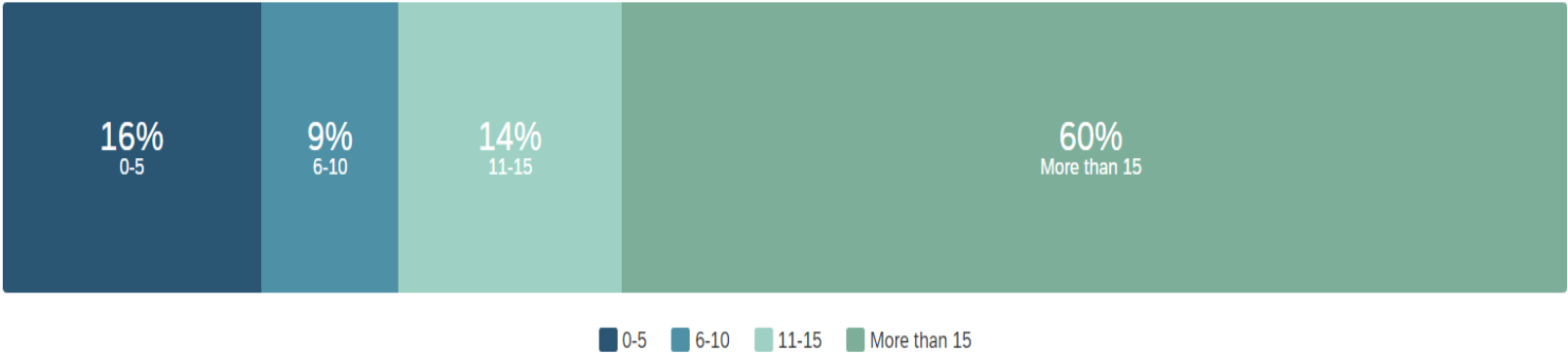
# “Type of Business”



The following categories were excluded from the graph and were not selected by respondents: Construction – General Contractor, Equipment Rental (non-Audio/Visual), Janitorial, Property Maintenance and Repairs, Lobbying/Government, Real Estate. N=91.



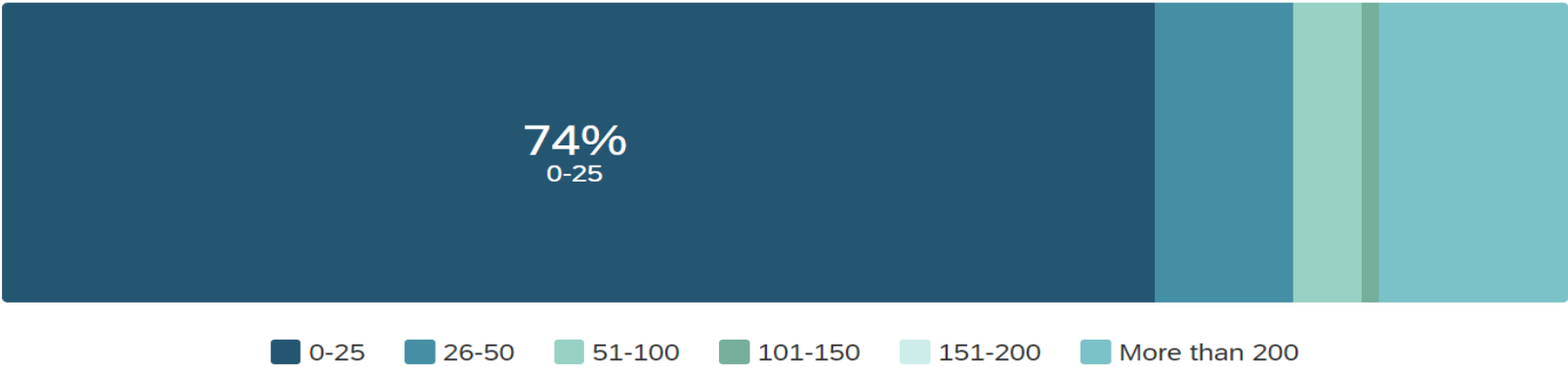
# “Number of Years in Business”



Field	Choice Count	
0-5	16%	15
6-10	9%	8
11-15	14%	13
More than 15	60%	55



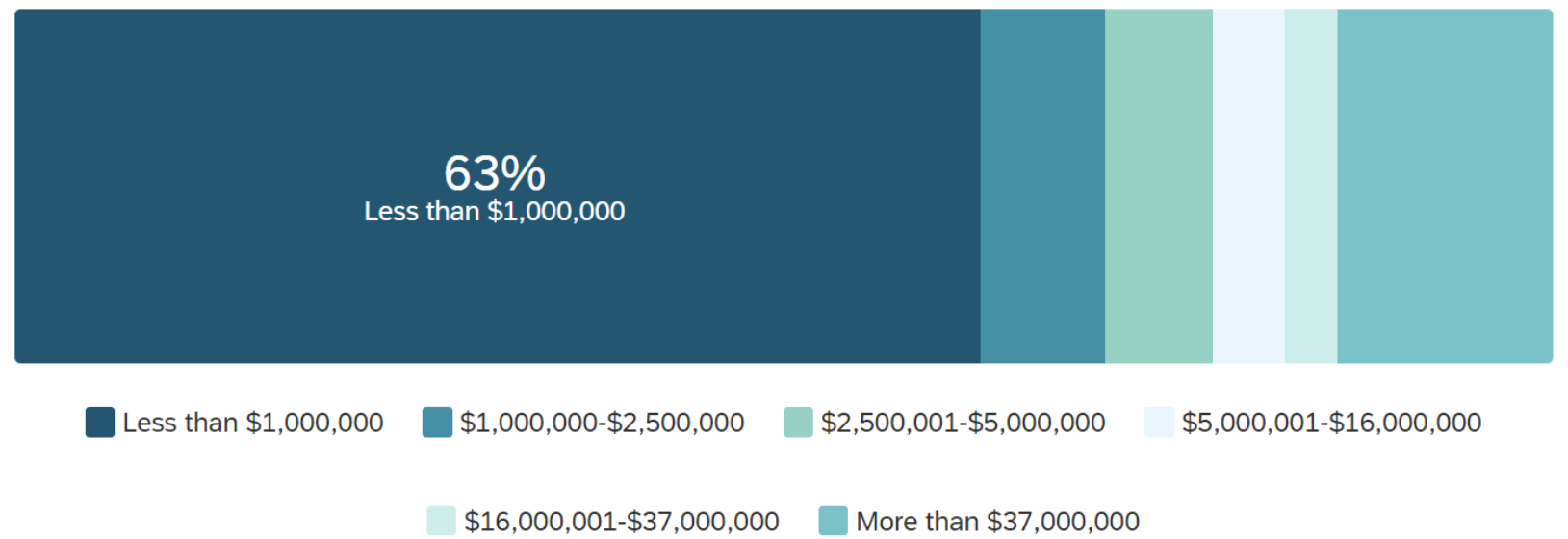
# “Number of Employees”



Field	Choice Count	
0-25	74%	67
26-50	9%	8
51-100	4%	4
101-150	1%	1
151-200	0%	0
More than 200	12%	11



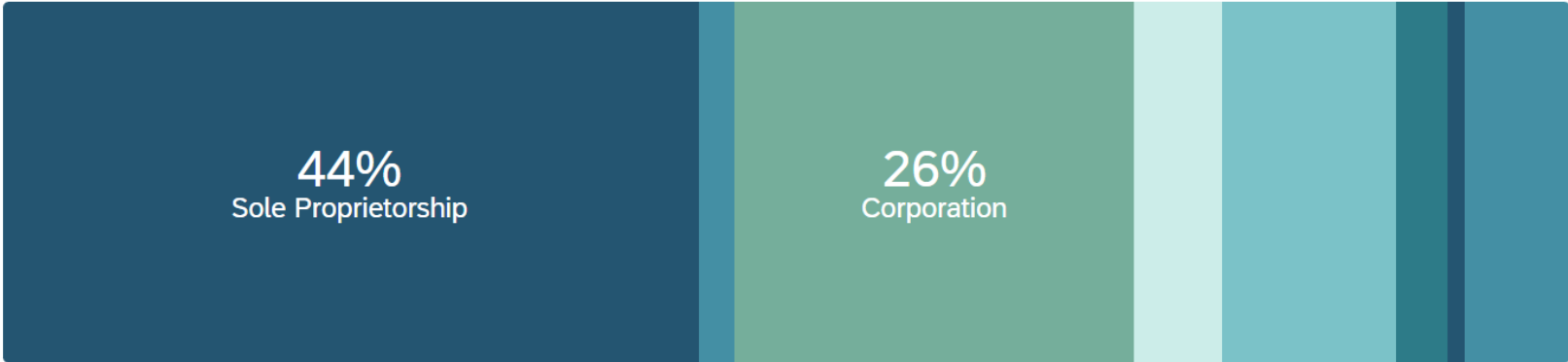
# “Annual Gross Receipts Over the Past Three Years”



Field	Choice Count	
Less than \$1,000,000	63%	54
\$1,000,000-\$2,500,000	8%	7
\$2,500,001-\$5,000,000	7%	6
\$5,000,001-\$16,000,000	5%	4
\$16,000,001-\$37,000,000	3%	3
More than \$37,000,000	14%	12



# “Form of Ownership”



- Sole Proprietorship
- Partnership
- Joint Venture
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Private-equity owned
- Publicly traded
- Other (please specify):

Field	Choice Count	
Sole Proprietorship	44%	40
Partnership	2%	2
Joint Venture	0%	0
Corporation	26%	23
Limited Liability Partnership	6%	5
Limited Liability Corporation	11%	10
Private-equity owned	3%	3
Publicly traded	1%	1
Other (please specify):	7%	6
		90



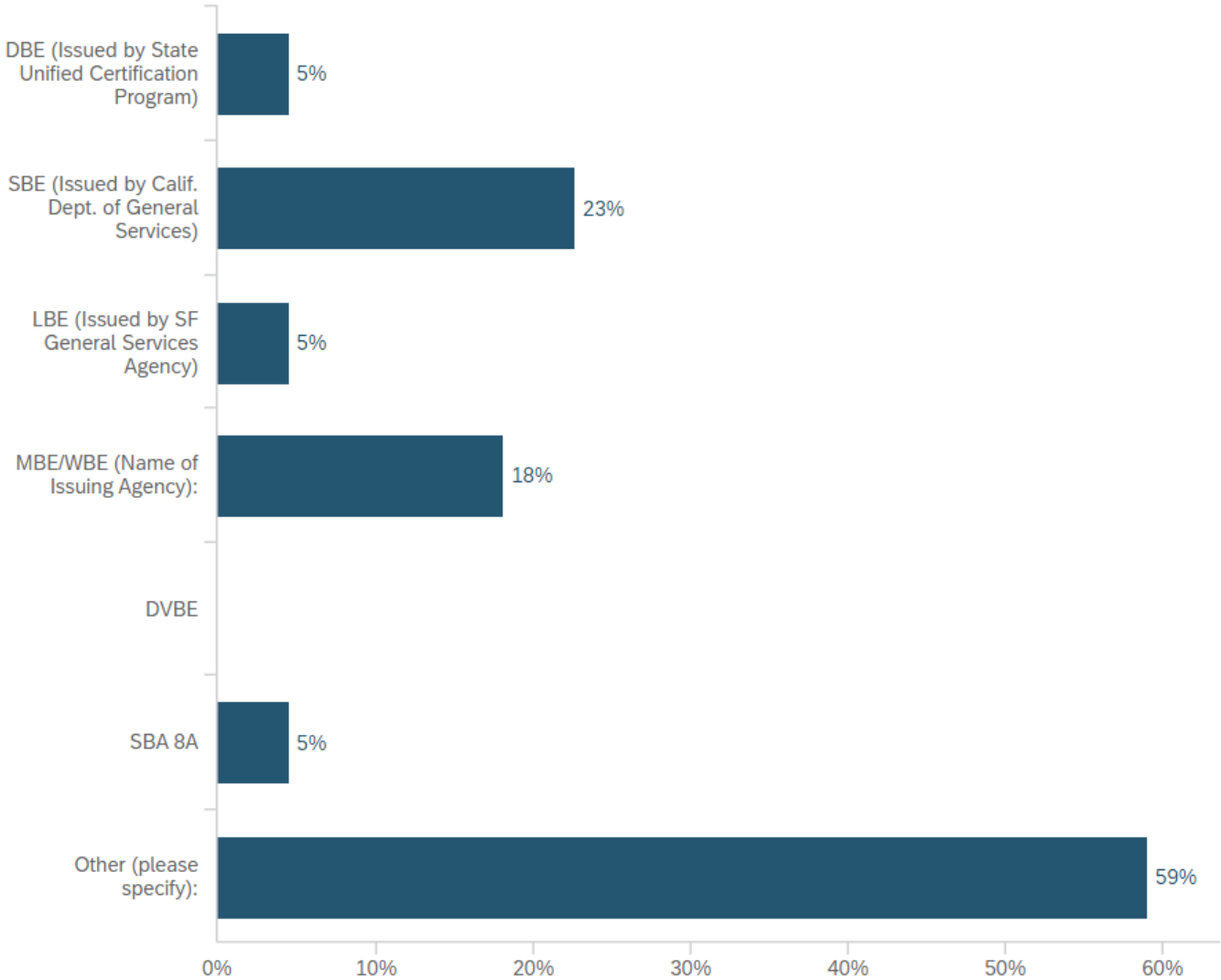
# “Number of Owners”



Field	Choice Count
0	5% 4
1	74% 59
2	10% 8
3	5% 4
5	3% 2
7	1% 1
43	1% 1
550	1% 1



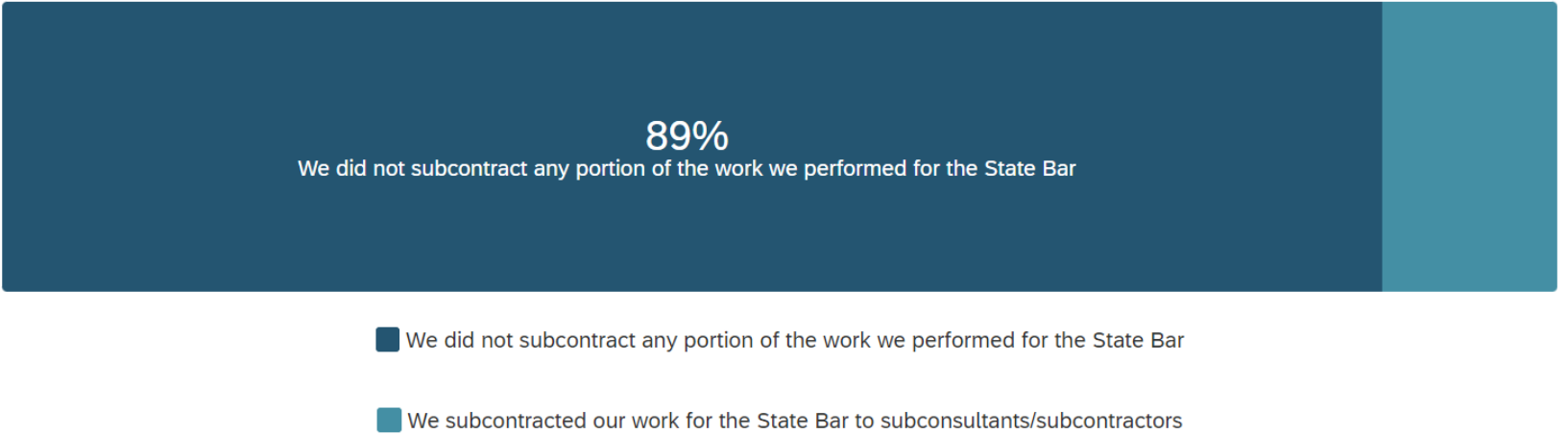
# “Certifications”



Field	Choice	Count
DBE (Issued by State Unified Certification Program)	5%	1
SBE (Issued by Calif. Dept. of General Services)	23%	5
LBE (Issued by SF General Services Agency)	5%	1
MBE/WBE (Name of Issuing Agency):	18%	4
DVBE	0%	0
SBA 8A	5%	1
Other (please specify):	59%	13
		22



# “Subcontracting”



Field	Choice Count	
We did not subcontract any portion of the work we performed for the State Bar	89%	63
We subcontracted our work for the State Bar to subconsultants/subcontractors	11%	8
		71



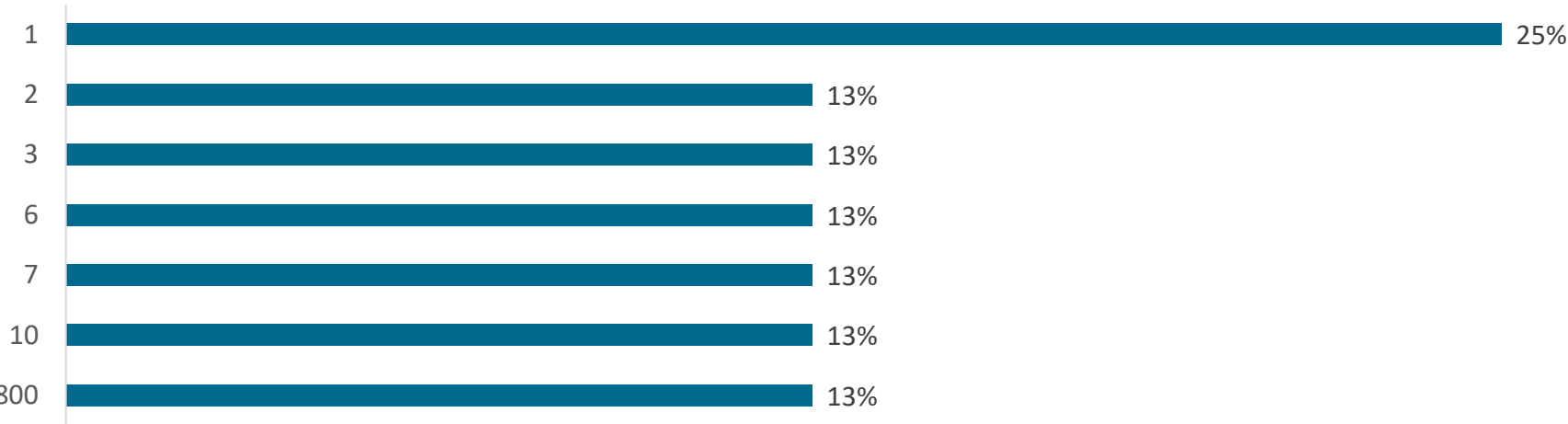


# “Percentage of work for the State Bar subcontracted to subconsultants/subcontractors”

**Finding:** The average percent of work for the State Bar subcontracted to subconsultants/subcontractors was 38 percent, with a range from 1 to 100 percent.

Field	Minimum	Maximum	Mean	Count
Percentage of work for the State Bar subcontracted to subconsultants/subcontractors:	1	100	38	6

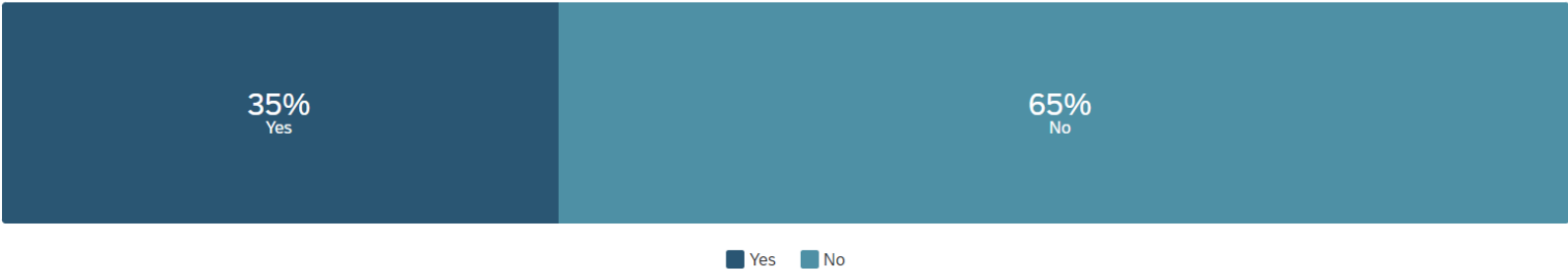
# “Number of Subcontractors”



Field	Choice Count
1	25% 2
2	13% 1
3	13% 1
6	13% 1
7	13% 1
10	13% 1
2800	13% 1
	8

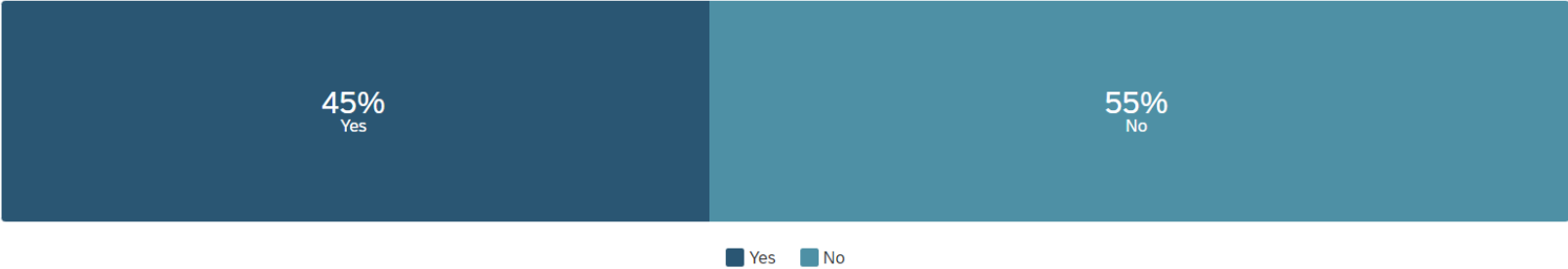


# “Does your firm have a Diversity, Equity, and Inclusion in Contracting/Procurement policy?”



Field	Choice	Count
Yes	35%	22
No	65%	40
		62

# “Does your firm have a Diversity, Equity and Inclusion in Employment policy?”



Field	Choice Count	
Yes	45%	28
No	55%	34
		62



# Owner Demographics

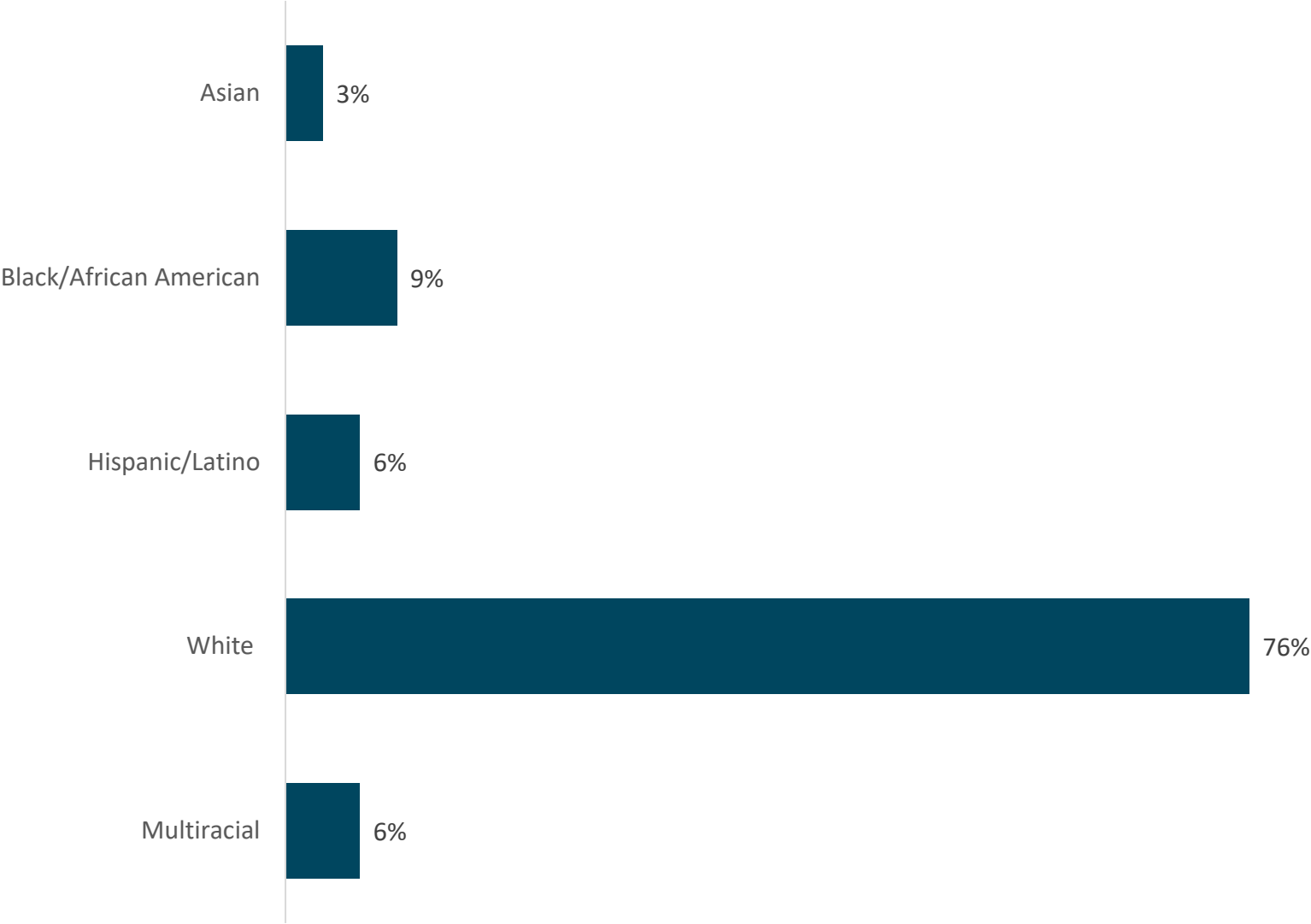
Note: Demographic analysis is limited to the following 34 vendors:

- Reported just one owner
- Owner filled out the survey
- Owner answered demographic questions

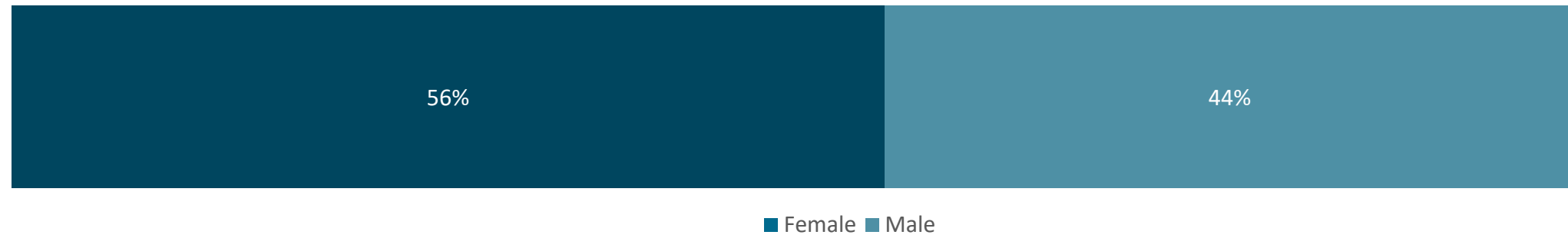
This group comprises 36 percent of all vendors who participated in the survey.



# Race/Ethnicity (N=34)



## Gender Identity (N=34)



# **ATTACHMENT B**

## **Diversity of California Bar Exam Graders**





The State Bar *of California*

# Diversity of California Bar Exam Graders

Lisa Chavez, Program Director  
Mission Advancement and Accountability Division

Last updated: August 11, 2023

# Methodology



**Guiding research question:** how does the demographic and employment sector composition of California Bar Exam (CBX) graders compare with the grader pool?



**Demographics analyzed:** race/ethnicity, gender identity, employment sector, and region. Ten regions were analyzed using attorney address, following the [2020 Census Regions](#).



**Data on CBX Graders:**

- The Office of Admissions provided MAAD with a list of **161** current CBX graders.
- Demographic, county, and employment sector data was merged into this file using a variety of State Bar data sources including AS400, the Attorney Census, and the Admissions Information Management System (AIMS).
- Data was available for background characteristics for the majority of CBX graders. Missing data for CBX graders is as follows: race/ethnicity (6%), gender identity (2%), sector (14%), region (0%).

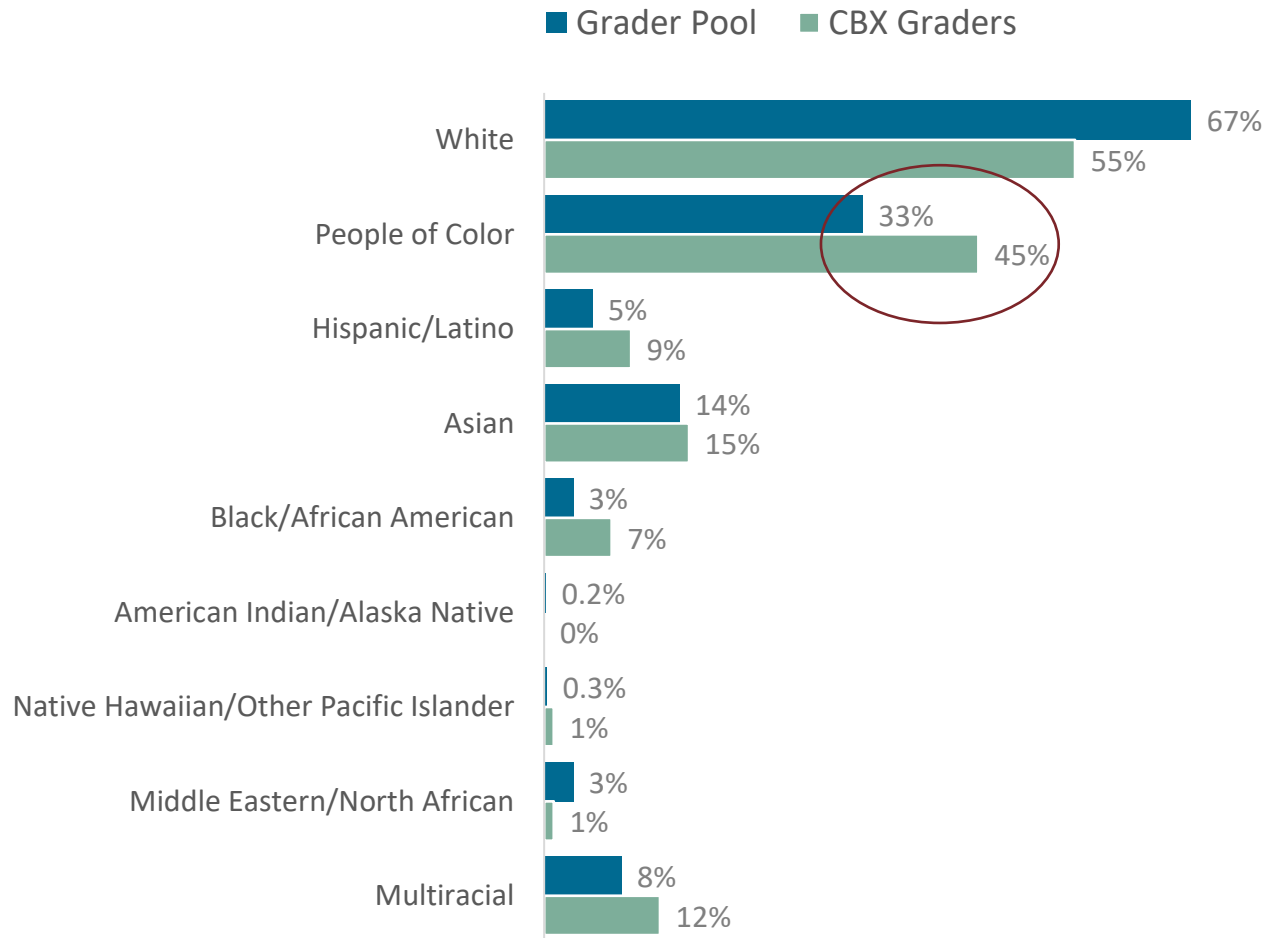


**Analyses compare CBX graders with the potential pool of graders (N=160,514 current active licensees).** This group of attorneys is referred to as “Grader Pool.” The CBX grader requirements are:

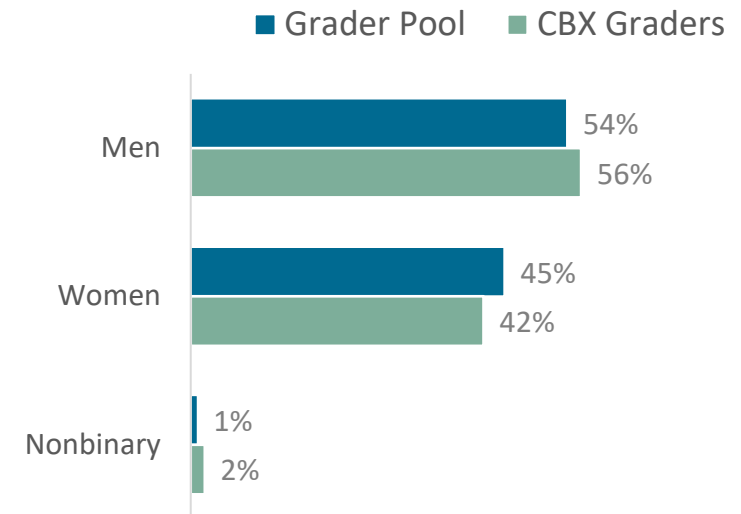
- Active licensee in good standing of the State Bar of California;
- Was admitted not less than one year prior to the examination for which the grader is to be selected; and
- Passed the CBX on the first or second attempt.



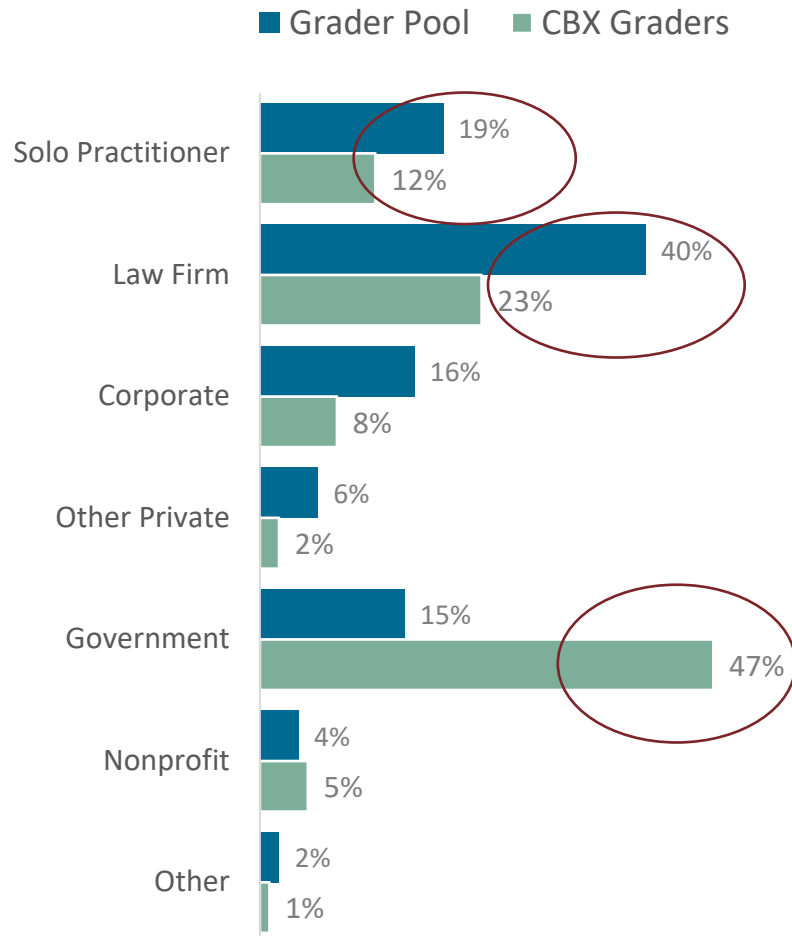
# Race/Ethnicity and Gender Identity



- ✓ People of color comprise 45% of CBX graders. This is higher than their representation among all attorneys. In contrast, white attorneys are underrepresented among CBX graders compared to their representation among the total pool
- ✓ The share of Hispanic/Latino, Black, and Multiracial attorneys among CBX graders is higher than their representation among the pool of graders.
- ✓ Attorneys of different gender identities are relatively equally represented among CBX graders compared with their representation among the grader pool.



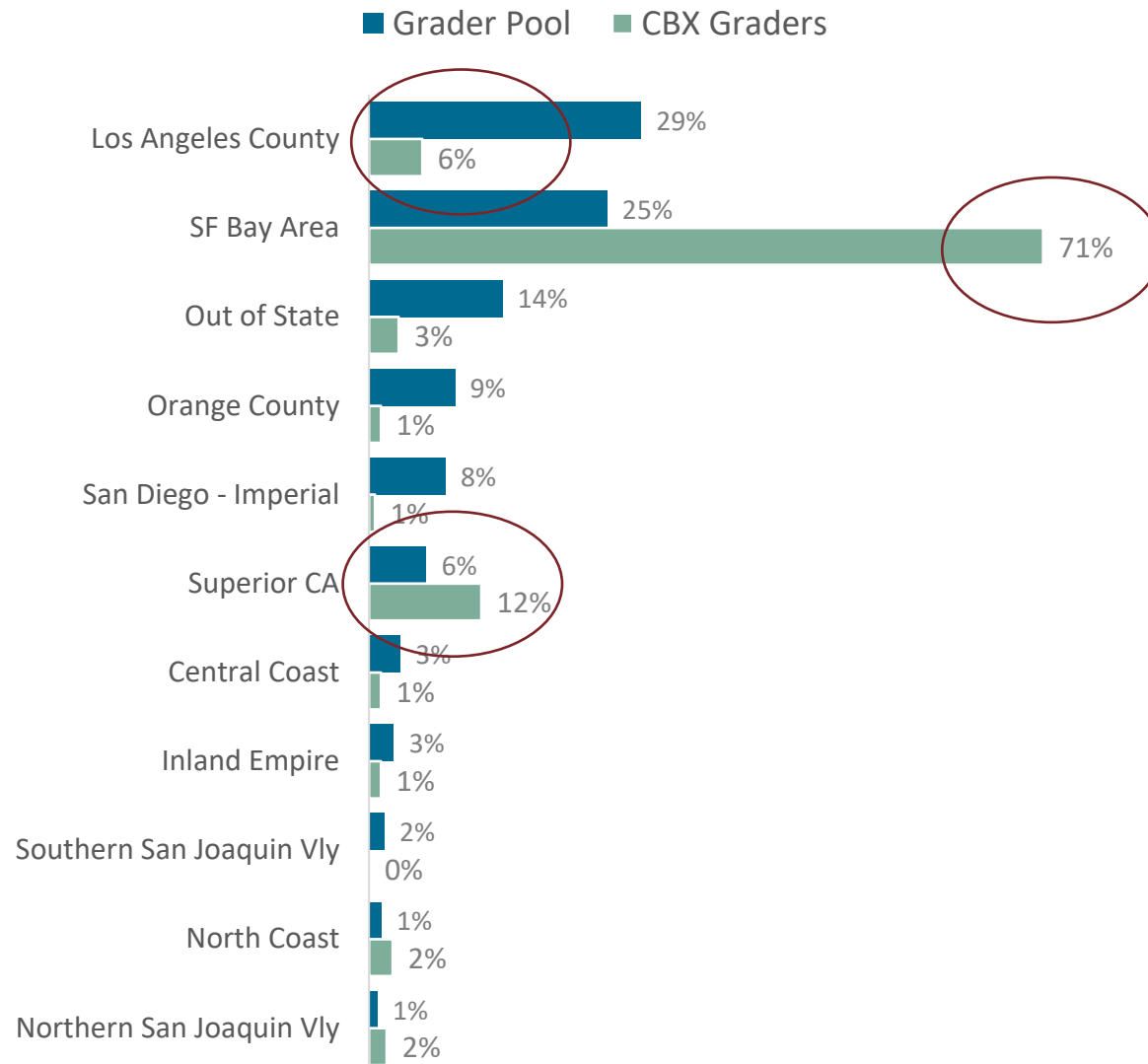
# Employment Sector



- ✓ Attorneys who work in the government sector comprise nearly half of all CBX graders (47 percent). In contrast, the comprise just 15 percent of the grader pool.
- ✓ The two biggest categories of employment sector for the grader pool are law firms (40 percent) and solo practitioners (19 percent). However, these sectors are underrepresented among CBX graders (23 and 12 percent respectively).



# Region



- ✓ Over 70 percent of CBX graders are from the SF Bay Area. In contrast, only one in four members of the total grader pool are from the SF Bay Area.
- ✓ Superior CA is another region where attorneys are overrepresented among CBX graders.
- ✓ All other regions are underrepresented among CBX graders with Los Angeles County having the highest level of underrepresentation with just 6 percent of all CBX graders.
- ✓ CBX graders come from all regions except for Southern San Joaquin Valley.

