

September 23, 2020

Good morning Chairman DeFazio and members of the Committee:

My name is Mary Lerdahl and I formerly owned an electrical contracting firm in the Seattle area named DBE Electric. I started the firm in November 2009 during the "Great Recession" after losing my share of a similar firm as a result of a marital dissolution. Altogether I had been an electrical contractor since 1996, for a total of 22 years before I was driven out of business as a result of WSDOT's (Washington State Department of Transportation) decision to waive white women out of the federal DBE program. My company focused exclusively on highway electrical projects; traffic signal systems, illumination, Intelligent Transportation Systems. From 2009 to 2018 (the year the company closed) my firm successfully completed 122 projects valued at nearly \$ 80 million. My firm never failed to complete a project on time and finished all contracted projects with the exception of two, which were the result of blatant discrimination, which I will explain later in greater detail. The typical size of projects performed were \$ 500,000-\$ 2,000,000.

The highlight of my career was building the SR 520 Floating Bridge project, a design build project with Kiewit, the longest floating bridge in the world. The overall project was about five years long; about 2 years in design and 3 years in actual construction. The initial contract was \$ 8.9 million with the final contract value being \$ 14 million. This project had an 8% mandatory DBE goal, which is why my firm had a "place at the table", along with my company's proven track record of projects with Kiewit and other firms. I learned so much from that project, both technically as well as what it was like to "work with the big boys". As doors opened to me because of my certification as a DBE firm, I could see a bright future ahead for my company after the successful completion of the project.

Kiewit treated me fairly and with respect and was a good example of how a mega firm and a small, DBE firm could work together to build a great project that all parties could be proud of.

At the same time I was working on the design portion of the bridge project, I was working on the SR 99 Bored Tunnel project with Seattle Tunnel Partners, (STP) a joint venture between Tutor-Perini and Dragados

The project had a value of \$ 1.6 Billion and a 8% DBE Condition of Award goal.

Initially my firm worked as a second tier subcontractor to one of the larger local general contractors, and then directly for STP. The contrast between Kiewit and STP couldn't be more stark. My firm faced discrimination in many ways throughout my 2 year experience on the tunnel project, finally culminating in a meeting required by WSDOT as a result of the Conciliatory Change Order required by FHWA after an investigation by FHWA showed widespread discrimination by STP against DBE firms. Some of the specific instances of discrimination that I personally suffered and my firm experienced are as follows:

1. Initial DBE "outreach" meetings in which Fisk Electric, a large electrical contracting firm purchased by Tutor-Perini shortly after winning the project, stated outright that they were only interested in "labor only" bids from DBE firms, thereby denying DBE firms the opportunity for profit on the less risky material purchases portion of the project.
2. Sexual advances made directly to me by STP supervisors while I was in the field supervising operations.
3. Slow payment processing and a feeling of "begging" to get paid during the direct visits to STP's offices because of intentionally slow payment processing; for example, two check signers who were hard to track down, no option for ACH payments, delayed processing of change orders while being demanded to perform work by STP supervisors prior to the change orders being executed.
4. Invitations to bid electrical systems inside the tunnel that were virtually identical to the work I was performing on the bridge project just to provide "good faith efforts" and allow SICE, an electrical firm owned by Dragados, to self-perform the work. My firm wasted countless hours bidding this design-build work when STP knew all along that they would never use my firm to build the work.
5. The final incident occurred when my firm was working to convert electrical power from temporary diesel generators to provide power to the refrigerated containers being unloaded at the Seattle waterfront to permanent power. Since my crews primarily worked on signal systems, I put in a call to the local IBEW (electrical workers) union for a call for a journey level electrician with experience with such work; the union failed to fill my call for labor and after a week without getting my call for labor filled I had a meeting with the project superintendent, Mike Kerschner to discuss the situation. At this time there was a pending change order for \$ 200,000 with specialized Siemens equipment that I wasn't going to order the equipment until the change order was approved. Mike Kerschner had been pressuring me to order it anyway without a change order but I refused. When I met with him regarding the power conversion issue due to the union's continued failure to supply the requested labor, he was openly hostile to me while at the same time giving me unwanted top to bottom looks that were sexual in nature. He informed me that if I didn't get the needed labor that he would take over my work. The next day I received a letter from the IBEW stating that they were pulling all manpower off ALL of my jobs because I had failed to make a trust payment, which was only two weeks late due to STP's failure to pay my company. The union was colluding with STP and Fisk Electric to drive my firm off the tunnel job, and there were other large electrical contractors who were hoping to take over my SR 520 Floating Bridge Project. Fortunately Kiewit didn't allow that to happen, so the outright destruction of my business didn't happen at that time. In retrospect I realize that my firm was a threat to the assertion that DBE firms didn't have the technical expertise

to perform on such a large, technically challenging projects because I was doing just that across the water. By the time I was locked out of the job STP owed my firm over \$ 80,000 and I am certain that the only reason I eventually got paid was because of the focus of FHWA's investigation into STP and WSDOT's administering of the DBE program. Public records show that SICE, Inc. did \$ 34,315,556.53 on the project and Fisk Electric did \$ 106,057,656.02, while my firm, DBE Electric did \$ 977,246.59. Both SICE and Fisk were hired by a local company, JH Kelley, in order to minimize the appearance of the self-dealing by STP's ownership of Fisk and SICE. It is widely known that Tutor-Perini has been found guilty of DBE fraud in other areas of the country and has paid millions of dollars in fines; our state simply wasn't prepared to handle the assortment of dirty tricks that Tutor-Perini pulled in order to line their own pockets while appearing to be employing "good faith efforts" among the DBE firms who were hoping for a piece of the pie.

While the SR 99 Bored Tunnel was one of the worst examples of discrimination I experienced, it certainly wasn't the only one. I could spend hours citing examples, but since my time for testimony before the committee is limited, I will share just one more in detail. My firm was working on a city project that had federal funds administered through WSDOT Local Programs. The contract value was approximately \$ 1.2 million. The general contractor was falling behind the critical path schedule as originally submitted and approved by the city, and changed the schedule to place the blame for the delays on my firm. When I challenged the project manager and eventually the company president regarding the disputed schedule and delays, they didn't want to meet with me, only with my male project superintendent. The dispute few uglier by the day, and resulted in the general contractor failing to pay my firm nearly \$ 300,000 at one point. The general contractor sought to have my contract terminated, and WSDOT became involved in their request in accordance with CFR Part 26 rules. In the interim, the general contractor contacted my main pole supplier and threatened not to pay for the \$ 500,000 pole order if they placed it with my firm. Due to the on-going hostilities WSDOT allowed the contract to be terminated, but only for convenience, not for cause. I then brought suit against the contractor and eventually was awarded the \$ 300,000 owed and attorney's fees after 3 years of legal battles. I know that the only reason this situation wasn't able to be resolved without litigation was because I am female and stood up for my company. I had done business with this company before when I was in business with my ex-husband, and when issues came up as they do in construction, they were able to be resolved, "man to man". Not so when I was the principal. The general contractor even stated in front of WSDOT attorney's during meetings to resolve the issues that "the only reason he hired me was because he had to make the goal". I'd also like to mention that this man himself was a minority and had been in

the DBE program before graduating from the program. He was openly hostile to women in the construction industry, unless they worked in the office, not in the field and certainly not being an owner herself.

There are many other instances of outright and subtle discrimination that I could cite, but unfortunately the worst was when the agency that was supposed to help firms like mine actually caused the destruction of my business by enacting the waiver to exclude white women from the federal DBE program in Washington State. When the waiver was enacted in June 2017 after being approved by Secretary Foxx on December 16, 2016, my firm was doing approximately \$ 8,000,000 in revenue. After June 2017 when my firm was no longer considered eligible for "Condition of Award" projects with DBE goals, I did not win one single bid, including several that I knew I was the low bidder for. This is when the full knowledge of the level of discrimination in the highway construction industry really sunk in. I had fought battle after battle for years, but surely I thought that my company's proven track record of successful projects would see me through this unfortunate and unfair period, but I was dead wrong. I did everything I could to get work, begging contractors to use me on their projects. I had been the only female electrical contractor doing major highway electrical projects, and now the "good ole boys" were making up for lost time getting on projects that I formerly might have won. When WSDOT excluded my firm from participation, those project dollars didn't go to another DBE firm; they went to larger firms in our region doing \$ 50-600 million in annual revenues! In the space of 18 awful months, my company died a death of a thousand cuts as I watched my firm die, month after month. I had to lay off my daughter, whom I had hoped to pass the company on to, along with other family members and employees. Word spread at the IBEW union that my company was going to go under, so getting quality labor dispatches to finish my jobs was extremely difficult. I could have easily filed for bankruptcy but I wanted to finish my projects and cause as least amount of collateral damage as possible for my employees, general contractors with which I had project backlog with, and the public agencies who were counting on the projects to be finished. By the fall of 2018 it was finished and there was nothing left to show for my years of hard work except exposure to creditors due to the

personal guarantees typically required by DBE firms due to credit discrimination. During the period of the demise of my business I made two trips to Washington DC to meet with FHWA and USDOT to plead for WSDOT's request to rescind the waiver dated September 13, 2017. I met with Terence Coleman of the Department of Assistant General Counsel to share how this delay in responding affirmatively to WSDOT's request to rescind the waiver was causing my business failure, along with many other women in the region, all to no avail.

Finally on December 13, 2019 USDOT denied WSDOT's request to rescind the waiver; while the reasons cited speak for themselves, there is no mention whatsoever of the skewing of the 2009-2011 data included in the flawed study, which included both the DBE awarded dollars of the two largest projects in Washington state history (SR 99 Bored Tunnel and SR 520 Floating Bridge) as well as documented DBE fraud purported by a white woman trucking firm that was eventually decertified as a DBE firm by WSDOT.

In summary, while I am a positive person, I am also a realist. I had hoped to see discrimination end during my lifetime, unfortunately it seems to be getting worse in our society. While one can only change oneself to be a fair and just person, we can't change human nature. This committee through the federal DBE program has an opportunity to make a big difference in small DBE firms. I don't think it's realistic to expect to "level the playing field", but it is realistic to make a significant impact and hold to account the large general contractors who complain about the DBE contracting community getting a few pennies of the federal contracting dollar. While it is too late for my firm to benefit from the return of white women as Condition of Award as of October 1, 2020, I am determined to do all that I can to coach and mentor DBE firms as they navigate the difficult construction industry and avoid being used and abused

by some of the unethical prime contractors who seek to abuse “good faith efforts” for their own gain.

I had hoped to participate in building the Interstate Bridge Replacement program, replacing the aging bridge connecting Washington and Oregon after my successful completion of the SR 520 Floating Bridge. When I left Oregon as a young girl in 1968 to move to Washington with my mother and younger siblings she related that I said “Seattle is my town” when I saw the Space Needle. Now instead of helping to build a physical bridge, I hope that I can use my experience to build a bridge between DBE firms and the good general contractors like Kiewit that do believe in this program to help empower DBE firms to grow in the way that the DBE program was intended for.

Thank you for your time.