



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**California Division**

August 28, 2015

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Sacramento, CA 95814  
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In Reply, Refer To:  
HDA-CA

Mr. Malcolm Dougherty  
Director  
California Department of Transportation  
1120 N Street  
Sacramento, CA 95814

**SUBJECT: FY 2016 Disadvantaged Business Enterprise (DBE) Goal Methodology Approval**

Dear Mr. Dougherty:

In accordance with the provisions of 49 CFR § 26.45, the Federal Highway Administration (FHWA) California Division has reviewed the overall Disadvantaged Business Enterprise (DBE) Goal Methodology (Methodology) submitted by the California Department of Transportation (Caltrans) for Federal Fiscal Years (FFY) 2016 - 2018. Caltrans submitted an overall goal of 12.5%, of which it projects that it will meet 3% through race neutral measures and 9.5% through race conscious measures.

Our review considered the overall goal as well as Caltrans' descriptions of the data and methods used in arriving at the overall goal, including the base figure calculation and evidence supporting the calculation; any adjustments made to the base figure and evidence supporting these adjustments, including a summary of the relevant evidence specific to your jurisdiction; the projection of the portion of the overall goal that Caltrans will meet through race neutral and race conscious means as well as the basis for these projections; and evidence of public participation in establishing the overall goal.

We have determined that the methodology Caltrans employed is consistent with the requirements of 49 CFR § 26.45. We have also approved the projection of the portions of the overall goal which Caltrans expects to meet through race neutral and race conscious means. That projection is subject to modification in accordance with 49 CFR § 26.51. The basis for our conclusions is set forth more fully in the attached document.

Caltrans is expected to make a good faith effort to meet its goal each year during the three-year period in which it is in effect. Any mid-cycle adjustments to the goal which may be needed to reflect changed circumstances require prior FHWA approval. Caltrans' next regularly scheduled DBE Goal Methodology is due August 1, 2018.

Please note that Caltrans must submit a separate DBE Goal Methodology for programs funded by the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA), based on the goal setting approach outlined in Caltrans' approved DBE program. Caltrans should contact its regional FTA and FAA offices for further guidance and assistance.

Caltrans has represented that it has not made significant changes to its DBE Program, which was approved by the FHWA on March 27, 2013. It has therefore determined not to submit its DBE Plan for FHWA review and approval.

Pursuant to CFR § 26.47(c), State Departments of Transportation (State DOTs) that fall short of their overall DBE goal in any given year must submit a Shortfall Analysis and Corrective Action plan that describes specific reasons for the shortfall and includes a timeline for corrective actions that could reasonably be projected to cause the State DOT to meet its goal during the next goal cycle.

Thank you for your diligence in administering the DBE program.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Duman".

For: Vince Mammano  
Division Administrator  
Federal Highway Administration

Enclosures

## **Explanation for Approval of California DBE Program Goal Setting Process for Fiscal Years 2016 - 2018**

This document sets forth the Federal Highway Administration's reasons for approving the California State Department of Transportation's (Caltrans') Disadvantaged Business Enterprise (DBE) goal methodology and the portion of the goal to be attained by race- and gender- neutral means for FY 2016.

- **Goal Setting Methodology Section 26.45**

The regulations require recipients to set overall goals based on demonstrated evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts.

- **Step One: Base Figure Section 26.45(c)**

Under the DBE regulations, Caltrans must begin the process by determining the base figure for the relative availability of DBEs. Consistent with the regulations, Caltrans relied on the results of the August 31, 2012 Availability and Disparity Study (hereafter Study) conducted by BBC Research & Consulting (hereafter BBC) to derive its base figure.

BBC used a modified version of the custom census approach used by the Illinois and Minnesota Departments of Transportation that was accepted by the Seventh and Eighth Federal Circuit Courts of Appeals, respectively, to estimate the relative availability of DBEs. BBC refined the availability data by weighting it by the type of work, contractor role (prime vs. subcontractor), location of work, size of the work element, contract date and whether a contract is a Caltrans or local agency contract. This weighting process is described in detail in Chapter 4, Page 8 of the Study.

In the first steps of the BBC analysis, of roughly 3,377 firms potentially available for specific construction and engineering contracts that Caltrans awarded during the study period, 33 percent were identified as minority- or woman-owned (MBE/WBE). Thirty percent of the construction firms are minority- or women-owned prime contractors and 33 percent are minority- or woman-owned subcontractors. Among the engineering-related firms, 29 percent are minority- or woman-owned prime consultants and 34 percent are minority- or woman-owned subconsultants.

BBC conducted a statistical analysis that examined 15,446 of Caltrans and local agency prime contracts and subcontracts for California Federal-aid highway projects from 2007 through 2010. For each contract element, BBC estimated the number of

minority- and woman-owned firms and the total number of firms surveyed that were available for that work based on the firms’:

- Qualification and interest in performing transportation-related contracts in the work of the contract element;
- Prime contract versus subcontract role;
- Ability to serve customers in the geographic location of the contract element;
- Past experience in bidding or performing work of the size of the contract; and
- Existence in the year that Caltrans awarded the contract element.

BBC then weighted the relative MBE/WBE availability for each of the 15,466 contract element by the dollars for that element. The details of this process are described in Chapter 4, Page 9 of the Study.

The sum of the aggregate availability of the 15,446 contracting elements yields an 18.1 percent minority- and women-owned firms (MBE/WBE) availability for Federal-aid highway contracts. This means that, after considering type of work, contract role, location and size of work involved in federally-funded projects and the types, contract roles, locations and contract sizes for work performed by available firms, 18.1 percent of dollars on federally-funded contracts would go to MBE/WBE if available MBE/WBE received the same amount of work as similarly-situated majority-owned firms available for such work. Firms that would not qualify as DBEs because they exceed the business size standard were excluded from the pool of available MBE/WBE, resulting in a base figure of 12.5% DBE availability.

### • **Step 2 Adjustments Section 26.45(d)**

Once a base figure is calculated, Caltrans must examine all of the evidence available in its jurisdiction to determine if an adjustment is needed to the base figure to arrive at the overall goal. The Study looked at types of information described in the DBE regulations governing the Step 2 analysis.

- Current capacity of DBEs to perform work on FHWA-assisted contracts, as measured by the volume of work DBEs have performed in recent years.
- Barriers to entry such as education, training, employment, and advancement.
- Rates of business formation, closure, and earnings.
- Access to capital (including home ownership, home value, mortgage loan denials, sub prime loans, business loan denial rates, and business loan values), bonding, and insurance.

See the Study, Chapter 3 and Appendix E and H. Caltrans also considered in its Step 2 analysis the impact of the high number of potential DBEs that have not sought certification. Based on the evidence, Caltrans reached the qualitative decision that a Step 2 adjustment is not necessary.

### **Past volume of work performed**

Caltrans considered its past DBE participation in FY 2012 – 2014 and the first half of FY 2015. However, it would not be appropriate to make a downward adjustment for past DBE participation as a measure of DBE capacity. In past goal submissions Caltrans has not made such an adjustment because a very small percentage of the DBEs are awarded contracts. Thus, DBE capacity is greater than that reflected in the volume of work performed by a select few DBEs. Under the circumstances we agree with Caltrans that past participation is not an adequate measure of DBE capacity.

### **Current DBE certification of minority-and women-owned firms**

Caltrans mentions that four out of five DBE firms counted in its base figure were not certified in 2012. This figure is cited in the Study, Chapter 9, Page 4. However, it does not make a Step 2 adjustment for this factor. We agree. The consideration of this factor as part of the Step 2 adjustment would be misplaced; it bears no relation to a determination of the level of DBE participation one would expect absent the effects of discrimination.

### **Possible Quantifiable Adjustments**

BBC was able to quantify disparities in business ownership rates, which was some of the evidence examined in considering a potential Step 2 adjustment. The overall DBE goal would be 17.6 percent if Caltrans made this adjustment. See the Study, Chapter 8, Figure 8-3. However, Caltrans decided to not make an upward adjustment at this time, choosing instead “a lower bound estimate” of DBE participation in a discrimination free transportation contracting market.

Other evidence examined in the Study, while important, did not yield quantifiable adjustments to the base figure. For example, barriers to obtaining financing may affect current availability of DBEs, but the impact is complex and not readily quantified.

- **Consultation and Public Participation Section 26.45(g)**

The regulations require that Caltrans provide for consultation and public participation when establishing its overall goal. Caltrans consulted with its Statewide Small Business Council (SBC) whose members represent over two dozen contractor associations representing minority and women contracting firms in all major types of work done in the State’s Federal-aid Highway Program. Also, it consulted with the Associated General Contractors of California, the Southern California Contractors Association, the United Contractors Association, and the American Council of

Engineering Companies. These consultations were held on May 1 and 8, 2015 in Sacramento. Participants could attend in person or via teleconference. Additionally, Caltrans consulted with its SBC on May 14, 2015 at their Construction, Professional Services, Local Assistance, and Commodities committee meetings. Caltrans received a written comment from its consultations that listed barriers similar to some of those identified in the Study.

The overall goal methodology was released and made available to the public on its web site on July 2, 2015. At the conclusion of the 30-day comment period Caltrans received numerous comments, including that the DBE goal is too low, DBEs face barriers and challenges identified in the Study's Step 2 adjustment considerations, and numerous suggestions for improving Caltrans' DBE program. A summary of public comments are summarized in Caltrans' goal submission.

Caltrans has carefully considered all of the comments and determined that no changes to the overall goal are warranted.

- **Race and Gender-Neutral and Conscious Measures**  
**Section 26.51**

The regulations require Caltrans to meet the maximum feasible portion of its overall goal by using race- and gender-neutral means of facilitating DBE participation and to submit its projection of that portion of the goal it expects to meet through race-neutral means.

**Race-Neutral and Race-Conscious Division:** Caltrans projects that it can achieve 3% of its DBE participation through race and gender neutral (RN) means and 9.5% through race and gender conscious (RC) means. The RN neutral projection is based on the average RN DBE participation it achieved during F.Y. 2011 through the first half of F.Y. 2015.

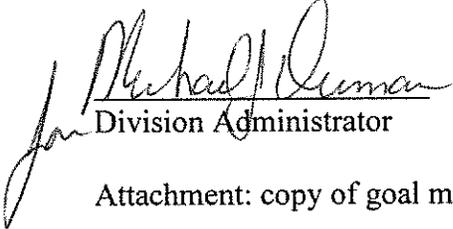
**Race-Neutral Measures Implemented by the State:** Caltrans has identified numerous race and gender-neutral measures or initiatives it is implementing or plans to implement to meet its goal. Some of the measures include:

- Technical training and one-on-one assistance to small business firms provided through the CalMentor-Protégé program that includes construction as well as architectural and engineering industries.
- Use of mandatory pre-bid conferences in all districts. This provides a networking forum for small businesses and bidders.

- Expanding Caltrans/Office of Business and Economic Opportunity web site for easier access to information needed by small businesses and providing links to other supportive services, local agencies and technical assistance.
- Unbundling Caltrans contracts.
- Removed the performance bond requirement on Minor B (under \$281,000) contracts to encourage small business participation.

### **Conclusion**

For the above reasons, the California Department of Transportation goal setting methodology and race-neutral/race-conscious projections for FY 2016 are approved.

  
Division Administrator      8/28/2015  
Date

Attachment: copy of goal methodology approved

**CALIFORNIA DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
OVERALL DISADVANTAGED BUSINESS ENTERPRISE  
GOAL AND METHODOLOGY  
For Federal Fiscal Years 2016-2018**

**Executive Summary**

The California Department of Transportation (Caltrans) submits this Federal Fiscal Years (FFY) 2016-2018 goal and methodology to the Federal Highway Administration (FHWA) pursuant to 49 Code of Federal Regulations (CFR) Section 26.45, for federally assisted highway contracts. For FFYs 2016-2018, Caltrans will continue its established Disadvantaged Business Enterprise (DBE) Program with an annual DBE goal of 12.5 percent without a Step Two adjustment as stated below.

**Goal Setting Methodology–Section 26.45**

Caltrans followed a two-step process for setting its overall DBE goal.

- Step One describes the calculation of a base figure for the relative availability of DBEs.
- Step Two is the examination of all the evidence available to determine if an adjustment to the base figure is needed to arrive at the overall goal.

**Step One Base Figure–Section 26.45(c)**

In order to establish the base figure, Caltrans commissioned an Availability and Disparity Study (Study) that was completed by BBC Research & Consulting (BBC) on August 31, 2012.

The Study:

- Analyzed use and availability of minority/women-owned firms in California transportation contracts.
- Examined other quantitative analysis of marketplace conditions.
- Reviewed anecdotal information from in-depth interviews with over 100 business owners and others across California.
- Analyzed oral and written testimony from businesses, trade associations, and other organizations at 12 public hearings held by Caltrans in May 2012. One hearing was held in each Caltrans District – Bishop, Eureka, Fresno, Irvine, Oakland, Los Angeles, Redding, Sacramento, San Bernardino, San Diego, San Luis Obispo, and Stockton. Two Stakeholder Discussion Group meetings were held in Sacramento and Los Angeles in February and June 2012.

**Summary of the Base Figure Analysis**

To examine relative availability of minority/women-owned firms, a custom census was conducted of business firms related to transportation contracting work in the California marketplace and analysis of more than 2,940 contracts from 2007 through 2010 that determined the following:

1. Thirty-three percent of firms available for federally funded transportation construction and engineering work are minority/women-owned. Caltrans did not use this figure as availability for the share of federal funds going to minority/women-owned firms since not all of these firms are available for every type and size of transportation-related work.

2. The Study examined contract type, location, and award size of work involved with Caltrans and its subrecipients' federally funded contracts, and the firms available to do this work. BBC determined the dollar-weighted availability of minority/women-owned firms is 18.1 percent after considering the size, type of work, and locations of the federally assisted transportation contracts and subcontracts in recent years.
3. When examining firms that appear to meet the U.S. Department of Transportation (USDOT) DBE certification guideline, the dollar-weighted availability figure for minority/women-owned firms was calculated to be 12.5 percent.

### **Available Firms Surveyed for Transportation Contracting Work**

To identify minority/women-owned firms available for public transportation construction and engineering work in California, BBC conducted a telephone survey of California business firms related to transportation contracting. BBC selected California as the relevant geographic market area for the availability analysis because 98 percent of all 2007 through 2010 transportation construction and engineering project dollars going to prime contractors or subcontractors went to firms with offices in California.

Firms contacted in the survey were those listed by Dun & Bradstreet as doing business most pertinent to Caltrans transportation construction and engineering contracts. BBC attempted to reach 46,196 business listings. Of these listings, 13,439 were out of business or otherwise did not have valid phone numbers, leaving 32,757 business establishments with valid phone listings. BBC successfully interviewed 15,499 (or about 47 percent) of the business establishments with valid phone numbers, a relatively high response rate for a business survey.

Of the 15,499 firms interviewed, 3,377 were for-profit firms reporting they performed work related to transportation construction, maintenance, or design and are qualified and interested in performing transportation-related work for Caltrans and/or local governments in the future or had attempted to obtain transportation-related work in the public sector. These firms also identified the regions of California in which they could perform work. Of these 3,377 firms in the transportation construction and engineering industry, 33 percent reported that they were minority/women-owned firms.

### **Weighted Relative Availability**

In the base figure analysis, the Study weighted relative availability of minority/women-owned firms using a methodology that builds upon the guidance USDOT provided in *Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program*.<sup>1</sup> BBC examined type of work, size, contract role, and location of work involved in federally funded projects, and the relative availability of minority/women/majority-owned firms to perform that work. The Study developed information for more than 2,940 contracts from 2007 through 2010, including contracts using FHWA funds administered through Caltrans that were awarded by local governments or others in California.

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<sup>1</sup> Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, <http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

BBC determined 12.5 percent of dollars on FHWA-funded contracts would be expected to go to certified DBEs and potential DBE firms based on the type, size, contract role, location, and time frame for these contracts and subcontracts.

### **FFYs 2016-2018 FHWA-Assisted Contracts**

Caltrans will receive approximately \$3 billion in federal-aid highway program assistance during the next three FFYs. Projects are expected to be similar to the contracts reviewed in the Study in work type, size, and location. These contracts include projects, such as the widening and rehabilitating of roadways, repairing storm damage, replacing bridges, constructing high-occupancy vehicle lanes, installing and/or repairing median barriers, and converting two-lane to four-lane expressways.

### **Resulting Baseline Goal**

Caltrans considers 12.5 percent DBE participation as the base figure for its annual overall DBE goal for FFYs 2016-2018.

### **Step Two Adjustment—Section 26.45(d)**

Caltrans examined a broad range of evidence in the Study when considering possible Step Two adjustments to the base figure. The Study contained types of information for a possible Step Two adjustment that are outlined in the DBE Program, including:

- Current capacity of DBEs to perform work on FHWA-assisted contracts as measured by the volume of work DBEs have performed in recent years.
- Data on employment, self-employment, education, training, and union apprenticeship programs.
- Information on the ability of DBEs to obtain financing, bonding, and insurance.

Approximately four out of five minority/women-owned firms counted in the base figure are noncertified. Based upon Caltrans' experience, other state departments of transportation, and Study research, encouraging firms to become DBE-certified will continue to be a challenge. When a sample of DBE-eligible, but noncertified minority/women-owned firms were interviewed, most business owners knew of DBE certification and were interested in certification but had not previously pursued certification. Common reasons for the lack of interest in becoming or obtaining certification are:

- Certification documentation requirements under 49 CFR Part 26 are complex.
- Documentation of proof of business ownership, control, and management is extensive and time consuming.
- Some business owners see the requirements to submit business and personal information as intrusive.

In addition, Caltrans also considered the DBE attainment over the last five years and is counting certified DBEs in the DBE utilization reports prepared and submitted to FHWA. The following table summarizes Caltrans DBE attainment as reported for the last five years:

FFY	Goal	DBE Attainment	Race-Neutral Portion
2015*	12.5%	11.20%	3.87%
2014	12.5%	11.89%	3.38%
2013	12.5%	10.66%	2.33%
2012	13.5%	8.43%	2.64%
2011	13.5%	7.19%	2.49%
*Six-month report for FFY 2015			

Although noncertified minority/women-owned firms are counted as potential DBEs in determining the base figure, they cannot be counted as DBEs in the utilization report. Caltrans properly took into account these facts when considering any Step Two adjustments to the base figure. This factor may lessen in importance in the future if a larger number of minority/women-owned firms choose to become certified DBEs.

Additionally, BBC’s analysis suggests that there are numerous barriers to entry and expansion in the transportation construction and engineering industries that may begin with education and training and continue through forming a business and gaining access to capital.

- **Education.** Lack of college education appears to be a barrier for African Americans, Hispanic Americans, and Native Americans, which ultimately affects representation of these groups in the California engineering industry. Disparities in educational attainment for African Americans and Hispanic Americans appear to be at high school level, which may affect college opportunities and enrollment into engineering programs. These factors may affect the number of African Americans, Hispanic Americans, and Native Americans working as engineers.
- **Employment.** Employment of African Americans in the construction industry is relatively low compared to other industries in California even among entry-level jobs. The employment of women in construction as a whole is relatively low, and very few women in the construction trades are involved in transportation construction. Employment of Hispanic Americans in the construction industry is considerably higher than for all industries as a whole (48 percent in construction and 34 percent in all industries in California).

There is also low employment of women among civil, environmental, and geological engineers in California that cannot be explained by overall levels of college education.

- **Advancement.** Minorities and women were generally less likely than non-Hispanic whites and males to advance to the level of construction manager.

- **Business formation and ownership.** BBC examined U.S. Census data on business ownership rates using similar methods to the information reviewed in the court cases involving the Illinois and Minnesota Departments of Transportation.

African Americans, Hispanic Americans, and women working in the California construction industry are less likely than non-Hispanic whites to own construction businesses. BBC, through regression analysis, identified statistically significant disparities after controlling for neutral factors. If qualified members of these groups working in the construction industry owned businesses at the same rate as non-Hispanic whites (and men), there would be almost twice as many construction firms owned by African Americans, Hispanic Americans, and women in California.

Subcontinent Asian American, Asian-Pacific Americans, and Hispanic Americans, own engineering businesses at rates that are substantially lower than those non-Hispanic whites who share the same personal characteristics. Similar to those results, non-Hispanic white women own engineering businesses at about two-thirds the rate that would be expected based on the simulated business ownership rates of non-Hispanic white males who share the same personal characteristics.

- **Rates of business closure.** BBC analyses found that African American-owned firms in California, in general, are more likely to close than other firms.
- **Access to capital.** There is evidence that minority-owned firms face disadvantages in accessing capital necessary to start and expand businesses.
- **Business capital from home equity.** Home equity is an important source of capital for business start-up and growth.
  - o Relatively fewer African Americans, Hispanic Americans, and Native Americans in California own homes than non-Hispanic whites, and those who do own homes tend to have lower home values.
  - o African Americans, Hispanic Americans, and Native Americans applying for home mortgages are denied at higher rates than non-Hispanic whites.
  - o All minority mortgage borrowers are more likely to have subprime loans.
- **Business loans.** BBC also identified disparities in access to business loans for certain minority groups. African American- and Hispanic American-owned businesses have higher denial rates when applying for business loans; and, when they receive loans, they are typically for smaller amounts. After accounting for certain neutral influences, firms owned by African Americans and Hispanic Americans remain significantly more likely to have their loans denied than other firms.

Relatively more African American- and Hispanic American-owned firms that need credit do not apply for loans because they fear being denied the loan.

- **Bonding.** Interviews with business owners and trade associations indicated difficulty obtaining bonding for small and new construction contractors in California. Problems in obtaining bonding were reported in interviews with minority/women-owned firms and nonminority-owned firms. Minority/women-owned firms in the transportation contracting industry in California are more likely to be small businesses than majority-owned firms and, therefore, may be adversely affected by barriers in obtaining bonding.
- **Insurance.** Similarly, some small business owners had problems obtaining insurance as required for Caltrans projects.
- **Largest bids of minority/women-owned firms.** In the Availability Survey, BBC asked firms in the transportation construction and engineering industry to identify the largest contract and subcontract a firm had received or bid on in the past five years. There were some minority groups for which “bid capacity” lagged behind other firms, but these disparities were explained by the firm’s specialization and age.<sup>2</sup>
- **Business earnings.** The Study reports U.S. Census data on earnings of business owners in construction and engineering. BBC identified disparities in earnings of firms in California for certain minority groups and for women:
  - o In the California construction industry, minority and female owners of construction businesses tended to earn less than non-minorities and men.
  - o In the California engineering industry, Asian American business owners had earnings equal to or greater than non-Hispanic white business owners.
  - o Business owners for other minority groups combined had lower earnings than non-Hispanic business owners of engineering firms.
  - o Female business owners had lower earnings than male business owners.

BBC performed statistical analyses of business ownership rates. BBC identified that business ownership rates for certain groups would be higher than observed rates—statistically significant different rates after controlling for other factors.

BBC performed additional calculations to quantify the effect of adjusting the base figure for the statistically significant differences in ownership rates described above. The result of the analyses would determine an upward adjustment to be 39 percent higher than the 12.5 percent base figure for DBE participation, which is equal to 17.6 percent.

BBC reviewed disparity studies from across the country to determine the most appropriate methods to analyze information regarding marketplace conditions for women and minorities in the transportation contracting industry. For example, as stated in Appendix H on page 33, “BBC applied an ordinary least squares (OLS) regression model to the data that was very similar to models reviewed by courts after other disparity studies.” The study team also reviewed marketplace

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<sup>2</sup> The extent to which minority/women-owned firms tend to be younger and in different subindustries than majority-owned firms may not be an entirely “neutral” explanation for disparities in bid capacity if past discrimination has influenced whether there are relatively few older Minority Business Enterprise/Women Business Enterprise (MBE/WBE) firms or the relative concentration of MBE/WBE firms in different subindustries.

information in several disparity studies recently completed in California. The study team did not include specific results from these marketplace analyses because these studies often focused on a specific portion of California rather than the state as a whole. Additionally, with the continual release of new data by the Census Bureau and other federal data sources, many of these studies relied on older data than those used for Caltrans' 2012 Study.

As stated in Appendix L on page 1, "Appendix L presents information from more than 130 interviews that BBC and its sub-consultants conducted as part of three recent disparity studies in Southern California: a 2011 disparity study for the Burbank-Pasadena-Glendale Airport Authority, a 2010 study for the San Diego County Regional Airport Authority, and a 2010 study for a consortium of Southern California transportation agencies.<sup>3</sup>" The study team included information from these interviews to provide Caltrans with additional information on marketplace conditions throughout the state.

The study team reviewed the methodology and results used in the utilization, availability and disparity analyses included in recent disparity studies. The study team did not include specific results from these analyses in the Study for several reasons, including but not limited to:

- Other studies often focused on a smaller region other than the State of California.
- Agencies involved in the studies may have had different sizes, types and locations of contracts than the contracts studied for the Caltrans' 2012 Study.
- Agencies involved often used different bid or proposal processes than Caltrans.
- Agencies involved were often using their own implementation of the Federal DBE program.
- Availability data used were not gathered as recently as the Caltrans availability data.

### **Summary of Step Two Considerations**

Past levels of DBE participation and the challenges for Caltrans to encourage non-DBE-certified firms to apply for certification are factors suggesting a downward adjustment to the overall DBE goal. However, analysis of local marketplace data reveals barriers to enter into the California construction and engineering industries, low rates of business ownership, lower earnings for certain groups, and other barriers, such as access to capital. These factors, overall, indicate the need for upward adjustments to the overall DBE goal.

Taking all of these factors under consideration; however, they compel Caltrans to not make any Step Two adjustments to the base figure of 12.5 percent for the FFYs 2016-2018 overall DBE goal.

### **Public Participation Section 26.45(g)**

Caltrans continuously conducted meetings by hosting bi-monthly Statewide Small Business Council (SBC) and committee meetings. In turn, the SBC members and committee members met with their individual organizations to provide feedback to Caltrans.

Additional meetings in 2014 through 2015 included other organizations, such as:

- Associated General Contractors

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<sup>3</sup>The Consortium study included of five Southern California transportation agencies; Los Angeles County Metropolitan Transportation Authority, the Southern California Regional Rail Authority, the Orange County Transportation Authority, the San Diego Association of Governments, and the San Diego Metropolitan Transit Systems.

- Associated General Contractors of San Diego
- United Contractors Association
- American Council of Engineering Companies - California
- Southern California Contractors Association
- California Public Utilities Commission
- California Small Business Association

Caltrans participated in the following statewide and local chamber of commerce meetings:

- California Hispanic Chamber of Commerce
- California Black Chamber of Commerce
- California Asian American Chamber of Commerce
- California American Indian Chamber of Commerce

Caltrans continued to have one-on-one discussions on the goal and methodology and race-neutral measures with small businesses, DBEs, and minority/women-owned firms as they sought help on how to do business with Caltrans. Based on meetings and discussions in 2014 through 2015, DBEs and non-DBEs identified barriers as:

- Access to capital.
- Financial limitations.
- Bonding.
- Prompt payment.
- Access to insurance and/or limits requirements too high.
- Certification process is too long, too difficult, too costly, and need help to complete the application.
- Recertification should not require documentation be resubmitted unless there was significant business structure changes.
- Projects are too large; therefore, very few DBEs can act as primes.
- DBEs have more success in the private sector as there is less competition, more profit, greater accessibility, and less bureaucracy.
- Primes do not engage in a genuine good faith effort (GFE).
- Enforcement of the GFEs submitted by primes is desired.
- Bidding process was costly and time/labor intensive.
- Internet access and knowledge.
- Auditing of public professional service contracts is not efficient and is unfair.

These comments are consistent with comments received during the anecdotal interviews and public hearing testimony collected by BBC for the Study.

#### Consultation

Caltrans scheduled industry forums in Sacramento on May 1 and 8, 2015, to gather information for its 2016-2018 DBE goal and methodology submission. Caltrans Statewide SBC members and representatives from the Associated of General Contractors of California, the Southern California

Contractors Association, the United Contractors Association, and the American Council of Engineering Companies were invited to participate in person or via teleconference.

On Thursday, May 14, 2015, Caltrans staff attended Statewide SBC committee meetings—Construction, Professional Services, Local Assistance, and Commodities—to discuss its 2016-2018 overall DBE goal and methodology submittal. Committee members were asked to submit their feedback via fax, e-mail, or by telephone.

As a result of these consultation meetings, Caltrans received written feedback from one minority- and women-owned business organization, which listed barriers consistent with those identified in Caltrans' Study.

#### Public Comment

On Thursday, July 2, 2015, Caltrans posted its proposed overall DBE goal and methodology on the OBEO Website for a 30-day public comment period. Multiple notices of the public comment period were delivered via Caltrans' Facebook and Twitter accounts throughout the public comment period. Notice of posting and a reminder of the deadline to submit comments were sent via e-mail to:

- Certified DBEs in the California Unified Certification Program database with e-mail addresses.
- Caltrans' District Small Business Liaisons to forward to their small/minority business and industry e-mail distribution lists.
- Caltrans' Statewide Small Business Council members for distribution to their member organizations.
- Caltrans' DBE Participation Committee members.
- Caltrans' industry liaisons to forward to construction and engineering organization contacts representing organizations, such as the Associated General Contractors, United Contractors, Southern California Contractors Association, and American Council of Engineering Companies.
- Caltrans' Division of Local Assistance list-server subscribers.

Caltrans reviewed public comments from the following:

#### 1. DBEs

- 1.1. Several DBEs considered the 12.5 percent overall DBE goal as too low.

*Caltrans' response: Race- or gender-conscious measures are implemented to remedy identified discrimination or its effects and must be "narrowly tailored" to remedy identified discrimination. BBC's analysis in the 2012 Disparity Study indicated that the availability of potential DBEs for Caltrans FHWA-funded transportation contracts as 12.5 percent. The 12.5 percent goal is a statewide "overall" goal and does not affect individual contract goals, which are based upon the type of work, items of work, and DBE availability.*

- 1.2. Several DBEs identified barriers and challenges that were consistent with prior Study findings as listed on page 8 of this submission.

*Caltrans reviewed the above comments and has taken these comments into consideration in the final overall proposed goal and methodology.*

### 1.3. Other comments from DBEs

- 1.3.1. Primes set up or put into place own minority or DBE firms that subcontract work for payment.
- 1.3.2. Primes call to request DBE quotes for GFE purposes only and have no intention of hiring a DBE firm.
- 1.3.3. Bring back the UDBE race-conscious program.
- 1.3.4. Unfair procurement practices; Cal-Card buyers buy what they want.
- 1.3.5. Contracts awarded to same long-established firms.
- 1.3.6. Caltrans in-house real estate division blocks opportunities for DBE firm.
- 1.3.7. Adjust counting for trucking.
- 1.3.8. Primes not obligated to use DBE even though DBE has assisted Prime with on-call or consultant services proposal.

*Caltrans reviewed the above comments and has taken these comments into consideration in the final overall proposed goal and methodology.*

### 1.4. Recommendations regarding Caltrans DBE program implementation:

- 1.4.1. Increase monitoring and enforcement, including subrecipients.

*Caltrans' response: Caltrans has established a Compliance Review Branch within the OBEO to increase monitoring and oversight of Caltrans' DBE program. Caltrans' Division of Local Assistance monitors DBE program compliance of subrecipients.*

- 1.4.2. Eliminate good faith efforts (GFE).

*Caltrans' response: Caltrans follows federal law regarding GFEs. Per 49 CFR Part 26.53(a)(2), "If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal."*

- 1.4.3. Eliminate goals.
- 1.4.4. Improve communication and streamline notification of work opportunities.
- 1.4.5. Encourage DBEs to bid as primes.

*Caltrans' response: The number of DBE firms performing as primes on Caltrans' contracts continues to increase: in FFY 2012/13, there were 15 DBEs performing as primes on Caltrans' contracts; in 2013/14, there were 45 DBEs performing as primes.*

- 1.4.6. Provide capital, bonding, and insurance assistance.
- 1.4.7. Prevent outsourcing by employing "the same protocols like prevailing wage rules to ensure end users can vet professional services contracts for contract adherence."
- 1.4.8. Lower income limit from \$1.3 million to \$500,000.

*Caltrans' response: Caltrans follows federal law regarding the personal net worth limit for DBE certification, which is currently capped at \$1.32 million. [49CFR§26.67(a)(2)(i)]*

- 1.4.9. Increase project goals.
- 1.4.10. Implement a rating system for primes regarding use of DBE firms.
- 1.4.11. Require primes to use firms from every ethnic group on a project.

*Caltrans' response: Caltrans has established an annual "Prime Contractor Award." One of the selection criteria is based on the number of DBE firms utilized.*

- 1.4.12. Advertise all projects in one place.
- 1.4.13. Require primes to list trucking companies at bid time.
- 1.4.14. Create a forum for DBEs to communicate with each other on a regular basis, to market themselves to primes and within.

*Caltrans' response: Caltrans provides a number of opportunities for DBEs to network with primes or other DBE firms through workshops, mandatory pre-bid meetings, and other outreach events. Locate these events on the "Event Calendar" on the OBEO Website ([www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep)). Contact your District Small Business Liaison (DSBL) to be added to their outreach e-mail distribution list; a link to the DSBL contact list is also located on the OBEO Website.*

- 1.4.15. Include a requirement for number of DBE firms on a project so one trade cannot be used to meet the goal.
- 1.4.16. If waiver requested, provide exemptions for specific regions.
- 1.4.17. Electronic submittal of DBE quotes.
- 1.4.18. Unbundle large contracts.

*Caltrans' response: Caltrans continues to unbundle large contracts whenever possible.*

- 1.4.19. Improve communication of DBE program changes.
- 1.4.20. Utilize "new" primes.

*Caltrans reviewed the above recommendations and may consider these for further research.*

#### 1.5. Other comments received:

- 1.5.1. Adjust DBE contract goal setting methodology.

*Caltrans' response: Caltrans reviews its goal setting methodology regularly and makes adjustments in order to meet its overall DBE goal.*

- 1.5.2. Exclude federal government involvement in state programs.
- 1.5.3. Inflated DBE quotes because prime must meet the goal.
- 1.5.4. Preferential treatment given to groups based on their ethnicity and gender is a discriminatory practice.
- 1.5.5. Overconcentration of DBEs in asphalt milling industry.
- 1.5.6. Recommendations for new Study and best practices for program improvement.

*Caltrans reviewed the above comments and has taken these comments into consideration in the final overall proposed goal and methodology.*

## **Overall DBE Goal for FFYs 2016-2018 and Race/Gender-Neutral/Conscious Measures—Sections 26.45(e) and 26.51**

### Race-Neutral and Race-Conscious DBE Goal Projections

Based on the information collected and data reviewed, Caltrans has established an overall annual goal of 12.5 percent DBE participation for FFYs 2016-2018. This overall goal is expected to be achieved in proportions of 3 percent with race-neutral measures (average by past participation, FFY 2011 - 2.49 percent, FFY 2012 - 2.64 percent, FFY 2013 - 2.33 percent, FFY 2014 - 3.38 percent, FFY 2015 - 3.87 percent) and the remaining balance of 9.5 percent with race-conscious measures.

As more data on the utilization of DBEs becomes available and information is obtained from the semi-annual utilization reports, future modifications to the proportions may prove to be necessary. Future adjustments, if any, would be based on the effectiveness of each adopted measure with respect to the various groups and the different geographical areas of the State and may also be based upon information from Caltrans' new Availability and Disparity Study, which is expected to be complete by the end of March 2016.

### Race-Neutral Measures

Caltrans currently has a broad range of race- and gender-neutral measures in place to encourage the participation of all small businesses—including DBEs—in its transportation contracts. Caltrans plans to continue the use of those measures in the future. Caltrans' race- and gender-neutral efforts can be classified into four categories:

- Business outreach and communication with DBEs and the construction industry
- Technical assistance and training
- Improved contracting processes
- Improved data collection, monitoring, and reporting of DBEs

*Note: Additional individual measures can be found in Chapter 9, figure 9-4, of the 2012 Study.*

A successful race-neutral measure has been the appointment of Small Business Liaisons in each of Caltrans' district offices as a point of contact for SB firms, including DBEs, in those geographic areas as well as for focused outreach, e.g., local procurement fairs and SB events.

DBE Program highlights in FFY 2015:

- Continue to facilitate several workgroups with members from the Associated General Contractors, American Council of Engineering Companies, United Contractors, California Small Business Entrepreneurs, Asian American Architects and Engineers, Chambers of Commerce, Southern California Contractors Association, and Southern California Native American Tribes to collaborate on several areas, e.g., increasing DBE participation, DBE data collection, outreach, good faith effort, as well as other ad hoc workgroups, such as the statewide SBC African American DBE Participation Workgroup, and the Caltrans DBE Participation Committee.
- Continue to waive Performance Bond requirements for Minor B projects.
- Continue to research the development of a Data Management System to capture all subcontracting activities.
- Continue to provide education and training to Caltrans Resident Engineers and Contract Managers in DBE Program requirements.

- Provide training to prime contractors regarding the DBE Program and meeting its requirements.
- Provide training to Caltrans' staff and subrecipients in DBE contract goal setting.
- Outreach to internal and external stakeholders through an OBEO network newsletter.

Caltrans continues to maintain a Bidders List on the Caltrans Office Engineer (OE) Website. In addition, the "opt-in" feature on the OE Website allows subcontractors or suppliers to express their interest and be considered for providing bids on projects they select without having to order a plan set. Prime contractors can also use this feature to search for nonbidding plan holders to meet the DBE goal or make a good faith effort.

Caltrans' efforts during FFYs 2016-2018 will focus on:

- Conducting the new Availability and Disparity Study.
- Continuing to expand the CalMentor/Mentor-Protégé Program statewide, which includes construction as well as architectural and engineering industries.
- Scheduling mandatory pre-bid conferences in all districts.
- Expanding Caltrans/OBEO Website for easier access to information needed by SB and DBE firms and providing links to other supportive services, local agencies, and technical assistance.
- Establishing relationships with financial institutions, surety companies, and insurance companies to market Caltrans opportunities in conjunction with SBs and DBEs.
- Identifying opportunities to package smaller contracts.
- Increasing the number of certified DBE firms by developing a partnership with the Contractors State License Board to reach all potential DBEs in California.

#### Race-Conscious Measures

The race- and gender-conscious portion of the overall DBE goal will be achieved by:

- Setting a DBE goal on individual contracts based upon the type of work, work items, and availability of certified DBEs capable of performing such work.
- Using Appendix A to 49 CFR Part 26, Guidance Concerning Good Faith Efforts, to justify the award when the DBE goal is not met.
- Providing DBE Supportive Services (DBE/SS) that consist of technical training and one-on-one technical assistance to certified DBE firms in the highway transportation related construction and professional service industries. Caltrans is currently in the process of re-establishing a DBE/SS contract to enhance DBE participation in Caltrans' projects.
- Encouraging prime bidders to use additional DBEs, whenever possible, as a race-neutral component.